

**Item 4h**                    **13/00785/S106A**

**Case Officer**            **Nicola Hopkins**

**Proposal**                    **Application under Section 106 A of the Town and Country Planning Act 1990 (as amended) and the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 to modify a planning obligation (General Mitigation) dated 16 December 2002**

**Location**                    **Royal Ordnance Site Including Land Between Dawson Lane And Euxton Lane Euxton Lane Euxton**

**Applicant**                    **Redrow Homes Lancashire**

**Consultation expiry:** **17 September 2013**

**Application expiry:** **4 October 2013**

### **Proposal**

1. This is an application under Section 106A of the Town and Country Planning Act 1990 (as amended) and the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 to modify a planning obligation (General Mitigation) dated 16 December 2002.
2. The 16 December 2002 Section 106 Agreement is the main legal agreement associated with the development of Buckshaw Village and included various obligations. This modification relates to the General Mitigation obligation.
3. Section 106A of the Town and County Planning Act enables parties to the agreement to apply for the obligation-
  - a) (a)to have effect subject to such modifications as may be specified in the application; or
  - b) (b)to be discharged.

### **Recommendation**

4. It is recommended that the General Mitigation obligation included within the S106 Agreement dated 16 December 2002 is modified to exclude the 30 approved apartments on Parcel N.

### **Main Issues**

5. The main issues for consideration in respect of this planning application are:
  - Original S106 Agreement
  - Proposed amendments

### **Assessment**

#### Original S106 Agreement

6. Clause 12.2 of the 2002 S106 Agreement states the following:  
The Owner hereby covenants with Chorley to pay the following sums to Chorley following the construction of the two thousandth Residential Unit:

12.2.1 five thousand pounds (£5000) Index Linked from the date of this Agreement in respect of every Residential Unit constructed on the Site, in excess of two thousand residential units, having a floor area in excess of 1000 square feet but excluding Affordable Housing Units; and

12.2.2 three thousand pounds (£3000) Index Linked from the date of this Agreement in respect of every Residential Unit constructed on the Site, in excess of two thousand residential units, having a floor area of 1000 square feet or under but excluding Affordable Housing Units

Such sums to be paid to Chorley on a quarterly basis following construction of the two thousandth Residential Unit to be defrayed by Chorley for such facilities or highway works as Chorley in its discretion may decide will benefit the Development or otherwise mitigate against its impacts.

#### Proposed amendments

7. The Town and Country Planning Act allows Local Authorities to determine:
  - a) that the planning obligation shall continue to have effect without modification;
  - b) if the obligation no longer serves a useful purpose, that it shall be discharged; or
  - c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.
8. Redrow Homes have applied to vary the wording of the obligation to:  
*three thousand pounds (£3000) Index Linked from the date of this Agreement in respect of every Residential Unit constructed on the Site (except for any apartments constructed on the land outline in red on Plan 2), in excess of two thousand residential units, having a floor area of 1000 square feet or under but excluding Affordable Housing Units*
9. The proposed change effectively excludes the 30 approved two bedroom apartments which Redrow have reserved matters approval for on parcel N of the Village (which is adjacent to Buckshaw Hall) and is currently under construction. These are red edged as follows:



10. Redrow have requested that the 30 approved apartments are excluded from the requirement to pay the General Mitigation contribution as this would make the apartments unviable. To support this assertion Redrow Homes refer to the Examiner's report on the Central Lancashire Community Infrastructure Levy (CIL) and in particular the Examiner's recommendation to remove apartments from the definition of chargeable development, a recommendation which was carried through in the Council's adopted CIL.
11. The CIL Examiner made the following comments in respect of including apartments as chargeable development:

*A differential rate of £10 is proposed for apartments on the basis that the evidence shows them to have materially different viability levels to dwelling houses. Indeed it does. It shows apartments, with a nil CIL charge, to have a residual margin of only 15% on cost. This is a level at which the Councils fully concede developers are unlikely to proceed.*

*The Councils put forward several points to justify this levy rate. However, while the degree to which it would affect viability may be limited, an appraisal detailing its effect has not been produced. In any case, it is obvious that introducing the £10 rate would worsen an already untenable viability position, to a greater or lesser extent. Even if there may be some circumstances where apartments might be viable with the levy, for example as part of mixed use schemes, this would amount to a cross-subsidy. There is no evidence to support the proposition that other uses could bear this cost, and I see no reason why they should. The Councils' suggestion that there may be more positive market conditions over the lifetime of the schedules is founded on hope rather than any evidential basis. In any event, CIL schedules must be founded on present economic circumstances.*

*Overall, I do not accept these arguments. This is not, as the Councils suggest, a matter of the appropriate balance. Rather, it is one of consistency with the evidence. While there is no requirement for levy rates to exactly mirror the evidence, they must be reasonable given the evidence available. The rate for apartments is wholly inconsistent with the viability evidence produced. That is not reasonable.*

12. The development at Buckshaw Village will not be liable for CIL as outline planning permission was granted prior to the adoption of CIL and applications are dealt with as reserved matters applications however Redrow Homes relies on the CIL Examiners comments in regards to their suggested modification.
13. Buckshaw Village is a mixed use scheme where it could be argued that the inclusion of apartments could be cross subsidised by the other development. Additionally it is noted that the inclusion of apartments is not a specified dwelling type for this part of the Village, the Design Code suggests that the house types should be principally terraced with individual houses sandwiched in between, and although the apartments have reserved matters approval this part of the site could be redesigned and the apartments replaced with more standard house types. Replacing apartments with more standard house types has occurred elsewhere on the Village and Redrow Homes have recently applied to replace the approved apartments adjacent to the retail area of the Southern Commercial Area with 14 dwellings and 4 Maisonettes (13/00817/REMMAJ). Redrow Homes acknowledge the fact that apartments have been designed out elsewhere on the Village within their submission however they have confirmed that construction of the apartments on these plots could proceed, subject to their suggested S106 modification, with the continued support of Government Initiatives such as Help to Buy.
14. However on this part of the site the relationship with the adjacent land use is a consideration. The land to the south of Parcel N immediately adjacent to the approved apartments is allocated for use as B1 offices within the Southern Commercial Design Code. In November 2009 Orbit Developments secured reserved matters approval (09/00659/REMMAJ) for three storey apartments on all of the land to the south of Parcel N apartments and to the north of the railway station. Although this reserved matters approval is no longer extant the Council would be looking to secure office use on this part of the Village and the relationship between office use and residential use is a key consideration in respect of this part of the site. The apartments were designed to ensure that main habitable room windows were 23 metres from the side elevation of the office building and obscure glazing of side windows was secured to protect the amenities of the future residents. It would be more difficult to accommodate standard house types within this part of the site whilst providing an acceptable design solution, i.e. detailing a clear link between the residential uses and the office uses in terms of massing, and protecting the amenities of the future residents.
15. Redrow Homes are not proposing to exclude all apartments on the Village out of the definition in respect of the General Mitigation obligation however typically modifications such as this, which are requested due to the viability of a scheme, are supported by a financial viability appraisal of the scheme which demonstrates the applicant's assertions. This application is not supported by such an appraisal and the requested modifications purely relate to the CIL Examiners comments in respect of the current financial viability of apartments.

16. Taking this into consideration if the approved apartments, subject to this proposed modification, had been subject to the proposed CIL levy (£10sqm) then this would have resulted in a charge of £17,808 (based upon 1708.8sqm of floor space). The current S106 obligation would generate a contribution of £137,280 (which is based upon the £3000 index linked to £4576 as of March 2013) in respect of the 30 approved apartments.
17. As such it is clear that if the apartments were CIL chargeable, a cost which would affect the schemes residual margins and impact on the likelihood of the developers continuing with the development as acknowledged by the Examiner, the liability would be significantly less than the S106 obligation. As such it would appear, although this is purely based on recent considerations as part of the CIL examination and not evidence to support Redrow Homes assertions, that the additional cost of the General Mitigation obligation in respect of apartment accommodation would affect the schemes residual margins.

### **Overall Conclusion**

18. Buckshaw Village is a mixed use scheme which has secured a varied range of dwelling types including a significant number of apartments. This variation has helped to develop the Village into a community with a range of residential choices and enables residents to remain within their community as family/ financial circumstances change.
19. Although it is noted that the Council's adopted CIL does not include apartments as chargeable development it is noted that Buckshaw Village is a mixed use scheme with individual parcels incorporating both dwellings with a suitable residual margin and dwellings with marginal residual margins however this enables the whole scheme to be assessed as a whole in respect of the financial viability of the scheme. As such the financial impact of including apartments within a parcel can be borne by the entire development.
20. This notwithstanding however it is noted that Redrow Homes do not wish to exclude all apartments from the General Mitigation definition and the proposed modification purely relates to a small proportion of the Village. In the case of the apartments in question it is considered that the design and siting respects the character of the residential parcel whilst respecting the neighbouring land use and will not hinder the development of the adjacent piece of land for office accommodation.
21. It is not considered that the suggested modification will set a precedent to remove apartment development elsewhere in the Village from the General Mitigation definition as the design considerations are very specific to this part of the site. Additionally the modification will enable the development of this parcel to continue in accordance with the approved scheme allowing further choice within a very sustainable part of the site, close to the railway station.
22. As such it is recommended that the modification in respect of the 30 approved apartments is taken forward as follows:  
*three thousand pounds (£3000) Index Linked from the 16<sup>th</sup> December 2002 in respect of every Residential Unit constructed on the Site (except for any apartments constructed on the land outline in red on Plan 2), in excess of two thousand residential units, having a floor area of 1000 square feet or under but excluding Affordable Housing Units*

### **Planning History**

**97/00509/OUT:** Outline application for mixed use development (granted in 1999)

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

**12/00463/REMMAJ:** Reserved matters application for the erection of 123 dwellings with associated garaging, bin / cycle stores, parking areas, landscaping, roads, drains, sewers and boundary treatments at the Southern Commercial Area, Buckshaw Village (resubmission of application 12/00148/REMMAJ). Approved August 2012

**Recommendation: Permit (Subject to Legal Agreement)**

**Not subject to Conditions**

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