

**Item 4a**                    **13/00785/S106A**

**Case Officer**            **Mrs 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) to have effect subject to such modifications as may be specified in the application; or
  - (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

### **Representations**

6. **Euxton Parish Council** objects to this application for the following reasons:
  - The viability of the reasons are not available for information
  - This was agreed as part of the planning application which the developer was quite happy with when it was granted.
  - Buckshaw developers appear to be seeking to shed commitments that they have previously made. In recent months:
    - Application 13/00817/REMAJ has sought to remove the Community Infrastructure Levy from apartment properties
    - Application 13/00649/FUL (which was approved despite Parish Council reservations) permitted the proportion of affordable housing to be reduced over a large part of Buckshaw.
  - The Council accepts that changing circumstances might justify changes in agreements made some time ago but notes the general direction of the proposed changes is to reduce

the developers' community obligations but increase the return on their investment and hopes that the Borough Council will ensure that such changes are fully justified.

## **Assessment**

### Original S106 Agreement

7. 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

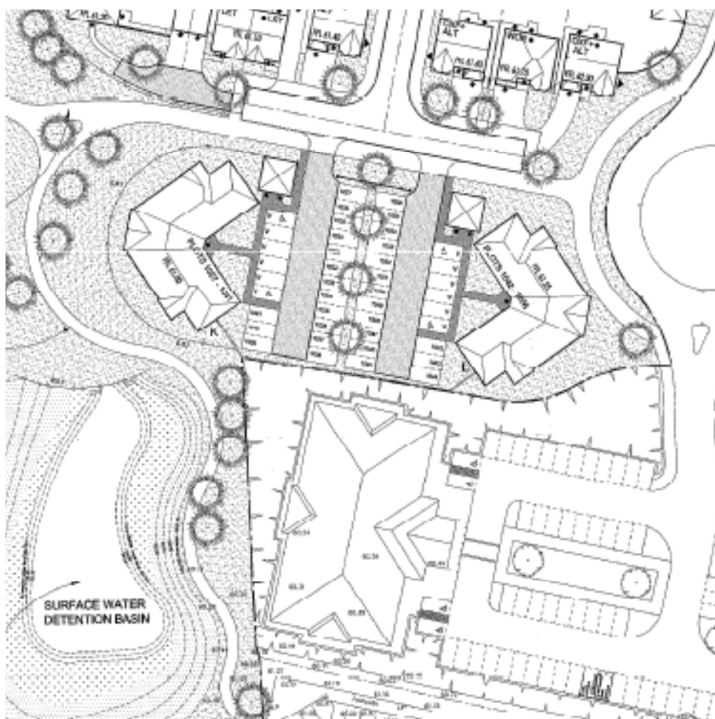
8. The Town and Country Planning Act allows Local Authorities to determine:

- (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.

9. 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*

10. 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 detailed as follows including the adjacent office buildings:



11. 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. Members will recall that originally Redrow Homes, to support this assertion, referred 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.

12. 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.*

13. 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 originally relied on the CIL Examiners comments in regards to their suggested modification.

14. If the approved apartments, subject to this proposed modification, had been subject to the suggested CIL levy (£10/sqm) 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. 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.

15. Notwithstanding the above following consideration at Development Control Committee on 1<sup>st</sup> October Redrow Homes have now submitted financial viability information to further justify their assertions, this is explored further below.

16. 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.

17. The submitted financial viability has been assessed by Liberata on behalf of the Council who have concluded that this scheme is negative in profits with and without the S106 sum.

Incorporating the S106 General Mitigation obligation will only produce a higher negative return. The submitted information includes the following headline figures:

Element	Included figure	Liberata's comments	Redrow's response
Land Value	£200,000	This is in line with other Chorley residential comparable evidence.	
Costs of Construction	£1,459,381 (£76.13 per sq ft and £48,646 per unit)	These are relatively low to average build costs but are assumed there are smaller areas for apartments.	
Total Build Cost	£99,756 per unit	The build cost is actually more than the selling prices of the apartments which will result in a negative profit.	
Buckshaw Infrastructure Contribution	£629,090	It is unclear why this is related to this particular appraisal	The costs of developing Buckshaw Village were very high (e.g. spine roads, drainage infrastructure and various off-site junction improvements etc.). This development site must bear a fair proportion of those costs and is based on its site area.
Revenue from House Sales	£2,760,000 (£92,000 per unit)	the sale prices of the apartments are very low	Land Registry house price data has been provided which confirm that the average selling price for apartments is £90,732.

18. The developer has provided two financial viabilities, one demonstrating the residual appraisal for 30 apartments with the S106 contribution of £137,280 and an appraisal without this sum. Both show negative viabilities of -£432,709 and -£295,429.
19. Liberata conclude that the appraisal is cost heavy in relation to the selling prices. Both the inclusion of the Buckshaw Infrastructure Contribution within this particular appraisal and the estimated sales values were queried with the applicant, including the request for comparable selling prices. This information has been provided as set out above and it is evident that although the apartment scheme is not commercially attractive it will assist Redrow in sales for neighbouring sites and help to recover the large infrastructure cost.
20. Based upon the submitted information the 30 approved apartments result in a negative level for return with and without the general mitigation obligation.

### Overall Conclusion

21. 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. On a mixed use Village such as Buckshaw 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.

22. 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.
23. 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.
24. 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.
25. 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.
26. This is a finely balanced decision. Whilst the modification applied for will reduce the level of General Mitigation Clause which the Council would receive it is considered that maintaining the requirement to pay the obligation for these 30 apartments will render the development unviable. The design considerations of this part of the site are very specific and the apartments, as approved, are considered to be the most appropriate solution for this part of the site. The apartments as approved secure high density development within a sustainable location and do not impact on the potential to develop the whole of the adjacent office land.
27. Redrow Homes have confirmed that they estimate that the General Mitigation contribution (solely in relation to the Redrow element of Buckshaw) would be a sum in excess of £250,000. As a rough calculation, utilising the Council's housing supply figures of April 2013, 2,571 dwellings have been constructed in the Village with an additional 308 under construction. This would generate a contribution of between approximately £4,022,304 (£4576 for all the dwellings

under 1000sqft) and £6,702,375 (£7625 for all the dwellings over 1000sqft). The precise figure will be dependent on the size of the dwellings which have approval and exceed the 2000th unit on the site. The precise level of contribution cannot be calculated until Redrow/ Barratt provide full details of house construction on the Village and as such the figures above are estimates. This information has been requested from the Developers.

28. Based on the submitted viability the developers will not receive any profit from the proposed apartments and the inclusion of the General Mitigation Clause will further impact on the scheme. Whilst higher sales prices may be enough to cover the cost of the S106 sums this however would be speculative and unachievable based upon the comparable evidence provided for apartment sales on Buckshaw in the past three years. The financial viability of this scheme demonstrates that the apartments are unviable even without the contribution.
29. Redrow have also requested that the obligation be split evenly between Redrow/ Barratt (i.e. 1000 dwellings per company) which will form part of the deed of variation if Members are minded to approve the proposed modification.
30. Based upon the design considerations of this part of the site and the fact that the financial viability information confirms that inclusion of the apartments within the requirement to pay the obligations would render the scheme unviable 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)**