

Item 3i **15/00691/S106A**

Case Officer **Nicola Hopkins**

Ward **Chorley South East**

Proposal **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 (Affordable
Housing) dated 10 April 2013**

Location **Site Of Former Social And Athletic Club, Duke Street, Chorley**

Applicant **Fellows Homes & Northern Trust Ltd**

Consultation expiry: **N/A**

Decision due by: **13TH October 2015**

Recommendation
Approve modification of the S106 obligations

Proposal

1. The site is the former Social and Athletic Club located on the corner of Duke Street and Brindle Street. Full planning permission was granted in April 2013 for the redevelopment of the site with the erection of 70 dwellings and associated infrastructure (12/01247/FULMAJ). Permission was granted subject to a number of conditions and obligations contained within a Section 106 Agreement. The development is well underway.
2. This is an application submitted 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 the planning obligation insofar as it relates to the percentage of market units which can be occupied prior to the affordable units being ready for occupation.
3. The delivery of the affordable housing clauses is set out in the S106 Agreement signed 10th April 2013 (Schedule 4, Part 3) in the following clauses:

A Construction of the Affordable Units

1. To provide on the Land 20% affordable housing comprising of 14 Affordable Units a mixture of Social Rented Units and Intermediate Units as more particularly set out below and agreed with the Council.
 2. Prior to the construction of the Affordable Units to provide and agree in writing with the Council a programme and timetable ("the Programme") for the provision of the Affordable Units (such agreement not to be unreasonably withheld or delayed by the Council).
 3. Subject as hereinafter provided the Affordable Units shall be used solely for the purpose of providing Affordable Housing to be occupied as the sole residence of households in need of Affordable Housing within the Borough
 4. The Owner and/or Developer shall serve notice on the Council within fifteen [15] Working Days after the completion of the construction of the Affordable Units
 5. The Owner and/or Developer shall not occupy or allow more than 50% of the Market Units to be Occupied until all of the Affordable Units have been constructed in accordance with the Planning Permission (and for the avoidance of doubt construction of the Affordable Units shall not be achieved unless all the services are connected and operating and the Affordable Units are accessible by both vehicles and pedestrians) and they are ready to be transferred for Occupation by a person or persons who meet the applicable Eligibility Criteria.
4. The developer has requested that the wording of clause 5 of the original S106 be amended to increase the number of market units which can be occupied prior to the construction of the affordable units as follows:

The Owner and/or Developer shall not occupy or allow more than 80% of the Market Units to be Occupied until all of the Affordable Units have been constructed in accordance with the Planning Permission (and for the avoidance of doubt construction of the Affordable Units shall not be achieved unless all the services are connected and operating and the Affordable Units are accessible by both vehicles and pedestrians) and they are ready to be transferred for Occupation by a person or persons who meet the applicable Eligibility Criteria.
 5. All of the other obligations within the original Agreement are not affected by this application.

Background

6. To date 21 market houses on the site have been completed and are occupied, 8 market houses are exchanged and near completion, 14 market houses have been reserved and the foundations have commenced.

7. In respect of the affordable houses the ground has been remediated and the site cleared for commencement.
8. The current clause only allows for 28 of the market dwellings to be occupied until the affordable houses have been constructed which is close to occurring on site. The proposed modification to the S106 obligation would allow 45 market units (total number of market units is 56 on this site) to be occupied before the affordable units have been constructed.

Assessment

9. 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.
10. The applicant has provided evidence of discussions they have had with affordable housing providers which include Symphony Housing Group, Progress Group and Adactus Housing. The applicant intended to go with Symphony Housing Group (Contour Homes) in respect of the affordable units on this site and it was on this basis that the application was submitted. However on 17th August this Registered Provider confirmed the following:
At present Contour Homes are reconsidering their business plan, in the light of the budget changes announced after the 2015 general election and are therefore not in a position to make an immediate decision about whether to pursue this s106 proposal.
11. The applicant has confirmed that the other offers received from the other registered providers were very similar to the original offer from Symphony. These offers are considered to be more than reasonable for this scheme and given the position from Symphony detailed above, the applicant initially confirmed that they would make further contact with Progress Group and Adactus Housing to take forward one of their offers.
12. The Council's Strategic Housing Officer has raised concerns that the submitted application forms cite *not being able to obtain a viable offer* as a reason for the request to amend the planning obligation. The evidence submitted details 3 viable offers from registered providers and as such it is clear that finding a willing provider is not an issue. If the issue is the amount the registered providers are offering, which as stated previously is considered to be reasonable, then viability of the scheme does appear to be an issue.
13. In this regard the applicant has provided further correspondence from Symphony on 27th August which states that *things have moved on more quickly than anticipated and they should be able to give us a definite decision about the go ahead within the next few weeks.*
14. The main consideration in respect of this site is ensuring the delivery of affordable housing. Although issues of viability appear to have factored into the delay in the provision of the affordable housing on this site no viability information has been submitted in support of this application. In order to secure a reasonable timescale for the delivery of affordable housing on this site and to provide assistance to the developers if they cannot secure a Registered Provider (RP) by assisting and opening up discussions between the Council and RPs the following additional clauses have been suggested to the applicants:

The operative parts of the Principal Deed dated 10th April 2013 shall be amended as follows:

In Schedule 4, Part 1 there shall be added a new clause 2.4 "Within two months of the date of this letter the Owner and/or Developer shall provide written evidence of the negotiations with Affordable Housing Providers to secure the transfer of the Affordable Units along with confirmation of the Owner and/or Developer's preferred Affordable Housing Provider and a timetable for the transfer of the Units."

In Schedule 4, Part 1 there shall be added a new clause 2.5 "In the event that the Owner and/or Developer has not identified an Affordable Housing Provider for the disposal of all of the Affordable Units in accordance with clause 2.4 within three months of the date of

this letter the Council shall then use reasonable endeavours to identify a suitable Affordable Housing Provider which is ready able and willing to exchange contracts for the purchase of all of the Affordable Units.”

15. The Solicitor acting on behalf of the applicant has confirmed the following points in respect of this site and the request to modify the planning obligation:
1. To ensure the timely delivery of the development as a whole, the margin needs to be increased from 50% to 80%;
 2. This needs to be done by deed of variation, which in turn, will need the approval of the freehold owner of course; and
 3. The further clauses/amendments put forward by yourself concerning time frame and delivery are noted and there is no problem in principle, but ultimately my client must have the final say as to whether any offers made (whether via the Council or otherwise) are acceptable to it/actually viable.
16. Although the applicant has not accepted the clauses set out above it is considered that a suitable agreement can be come to so as to ensure that affordable housing is delivered on this site within a timely manner. The precise wording of the additional clauses will be addressed within the addendum.

Overall Conclusion

17. It is considered preferable to ensure that the development of this site is completed and as set out above increasing the number of market houses which can be occupied to 80% will enable the development to continue whilst further negotiations take place with affordable housing providers. One of the important elements of this scheme is the delivery of on-site affordable housing and whilst the changes pushes this delivery further back into the development timetable it is considered that suitable additional clauses can be contained within the Deed of Variation to assist with securing the delivery of affordable housing on this site in a timely manner. As such the modification of the obligation is recommended for approval.

Planning Policies

In accordance with s.38 (6) Planning and Compulsory Purchase Act (2004), the application is to be determined in accordance with the development plan (the Central Lancashire Core Strategy, the Adopted Chorley Local Plan 2012-2026 and adopted Supplementary Planning Guidance), unless material considerations indicate otherwise. Consideration of the proposal has had regard to guidance contained within the National Planning Policy Framework (the Framework) and the development plan. The specific policies/ guidance considerations are contained within the body of the report.

Planning History

Reference	Description	Decision	Date
97/00747/FUL	Demolition of existing pavilion building and erection of 57 two storey houses.	Refused	November 1997
97/00756/FUL	Demolition of existing pavilion building and erection of 57 two storey houses	Withdrawn	January 1999
05/01146/OUTMAJ	Outline application for the redevelopment of 1.5ha of land for residential use and bowling green.	Withdrawn	January 2006
08/01170/OUTMAJ	Outline application for the erection of 71 dwellings including access and scale	Withdrawn	April 2013
12/01247/FULMAJ	Development of 70 dwellings and associated infrastructure	Approved	April 2013
13/00786/DIS	Application to discharge conditions 5 (external facing materials), 6 (hard surfacing materials), 8 (landscaping), 10	Discharged	November 2013

	(replacement tree planting), 19 (ground contamination), 21 (gas protection measures), 24 (foul and surface water drainage), 26 (Construction Method Statement) and 27 (Boundary fence details) attached to planning approval 12/01247/FULMAJ		
13/01022/DIS	Application to discharge conditions 8 (landscaping), 10 (replacement tree planting), 14 (Code for Sustainable Homes), Condition 16 (Carbon Reduction), Condition 18 (Cotoneaster eradication), Condition 22 (SUDs) and 24 (foul and surface water drainage) attached to planning approval 12/01247/FULMAJ	Discharged	December 2013