

Members should also note that the description has been amended as above. This is due to the fact that Section 106 (A) of the Town and Country Planning Act only enables the submission of an application to modify or discharge an obligation after 5 years which is not the case here. However Section 106(A) paragraph 1 does allow for the modification or discharge of an obligation by agreement between the appropriate authority (Chorley Council) and the person or persons against whom the obligation is enforceable. This is considered to be an appropriate mechanism in the case of this site to ensure the delivery of affordable housing.

Site to which the S106 Agreement relates

1. The site is a former greenfield site accessed from Moss Bank. Full planning permission was granted in September 2011 for the erection of 25 two-storey dwellings and associated infrastructure (including 20% affordable dwellings) (10/00833/FULMAJ). Permission was granted subject to a number of conditions and obligations contained within a Section 106 Agreement.
2. In 2011 a number of the conditions were varied by virtue of Section 73 (11/00865/FULMAJ) which resulted in the issuing of a new planning permission with a supplemental S106 Agreement. Then in 2012 further amendments were proposed which included an additional dwelling (12/00235/FUL).
3. In 2014 a deed of variation was completed at the site to allow the shared ownership properties to staircase upto 100%.
4. This is a request submitted under Section 106A (1) of the Town and Country Planning Act 1990 (as amended) and to modify the planning obligation insofar as it relates to:
 - The mortgagee exclusion provisions at Schedule 2 be amended
 - The requirements for the recycling percentages to be held in a designated reserve fund as per Schedule 3 (in respect of the 2014 deed of variation) to be varied so that the funds can simply be accounted for but do not need to be held in a separate reserve fund.

Assessment

5. In accordance with the Town and Country Planning Act the Local Authority can consider the request in respect of the following options:
 - (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.
6. However it is noted that the Local Planning Authority (LPA) does not have a duty to determine the request but case law has established that the LPA has discretion to consider a request. The Local Planning Authority also has the option to authorise something other than those requests put forward by the applicant. In such cases no right of appeal lies to the Planning Inspectorate.
7. The requested changes to the mortgagee exclusion provisions are as follows:

" Chargee" means any mortgagee or chargee or any receiver (including an administrative receiver) or administrator appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security of the whole or any part of the Affordable Units or any persons or bodies deriving title through such mortgagee, chargee, receiver or administrator.

Clause 4.10 – this should either be deleted in its entirety or the following wording should be added at the end of the clause *"Provided always that the provisions of paragraphs 1 and 2 of the Second Schedule shall apply in respect of a Chargee exercising power of sale."*

Second Schedule paragraph 2 should be deleted and replaced with the following wording:

The Chargee shall prior to seeking to dispose of the Affordable Units pursuant to any default under the terms of its mortgage or charge:

- a) *first give written notice to the Council of its intention to dispose of the Affordable Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Units to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all principal monies, interest, costs and expenses; and*
- b) *If such disposal has not completed within the three month period, the mortgagee, chargee, receiver or administrator shall be entitled to dispose of the Affordable Units free*

from the affordable housing obligations, covenants and restrictions in this agreement which shall determine absolutely

8. The Council's Housing Section has reviewed this proposals and confirmed that Progress Housing Group have had an issue with a shared ownership owner who faced repossession and the clauses set out above would allow Progress Housing to dispose of the property on the open market which would result in some equity. The Council's Strategic Housing Officer considers that if this was recycled in Chorley then this would be a benefit. As such it is recommended that the deed of variation includes the above clauses along with recycling provisions. However for the reasons set out above it is very unlikely that this would occur.
9. In respect of the requested changes to the designated reserve fund for the recycling percentages the Council's Strategic Housing Officer initially raised concerns that not having a separate pot for receipts for shared ownership may become a problem when accounting for interest gained on these receipts although he has suggested that a separate pot for all Chorley receipts may be a way forward. In this regard the applicant's Solicitor has concerns that separate bank accounts are an administrative burden. To take this issue forward the applicant's Solicitor has confirmed that his client is happy to account for interest earned on the recycling funds held. Suggested wording has been provided and this will be appropriately dealt with in the deed of variation.

Overall Conclusion

10. For the reasons set out above the suggested modification of the planning obligations are considered to be reasonable and as such are recommended for approval.

Planning History

Reference	Description	Decision	Date
97/00730/OUT	Outline application for 18 dwellings & construction of roads & sewers in connection with residential development. This consent lapsed in July 2004.	Approved	10 July 2001
04/00717/FULMAJ	Erection of 18 residential units and construction of associated roads and sewers	Withdrawn	
04/01452/FULMAJ	Erection of 18 residential units (including optional conservatories) and construction of associated roads and sewers	Withdrawn	4 March 2005
05/00413/ADV	Retrospective application for the erection of a sign for a housing site	Withdrawn	18 November 2005
05/00674/FULMAJ	The erection of 16 residential units including optional conservatory positions with associated roads and drainage. This was refused on housing land availability grounds, and the absence of affordable housing in the scheme. An appeal was submitted but withdrawn before it was determined	Refused	28 September 2005
10/00833/FULMAJ	Erection of 25 no. two-storey dwellings and associated infrastructure (including 20% affordable dwellings).	Approved	9 September 2010
11/00865/FULMAJ	Application to vary conditions 1,	Approved	23 November 2011

	4 and 8 of planning approval 10/00833/FULMAJ to allow alterations to the approved plans. The amendments are: slight repositioning of plots 5 - 13 to accommodate a sewer easement, changes to the finished floor levels (raising plots 1-4, lowering plots 5-13 and raising plots 14 - 22), alterations to the elevations of the Rufford house type, changes to window style of all properties and omission of the water pumping station building.		
11/00940/DIS	Application to discharge conditions 3 (gabion wall), 5 (boundary treatments), 6 (hardsurfacing), 9 (landscaping scheme), 12 (sustainable resources), 14 (surface water scheme), 17 (himalayan balsam scheme), 18 (management company), 20 (ground contamination), 21 (construction environment management plan, 22 (lighting scheme), 23 (ecology re-survey), 24 (materials), 25 (programme for development) of planning approval 11/00865/FULMAJ	Discharged	February 2012
12/00235/FUL	Amendments to previously approved application 11/00865/FULMAJ to include an additional dwelling (plot 26), the substitution of house types on plots 23 and 25 and the repositioning of plots 22 and 24 to allow for this.	Approved	May 2012