

Requested Modifications

1. The site forms part of Buckshaw Village and reserved matters consent was granted in 2005 (05/00488/REMMAJ) for the erection of 54 houses with associated garages, roads and works. The approved scheme also included the erection of 18 affordable housing units comprising 8 flats and 10 mews houses. Reserved matters consent was granted subject to a number of conditions and the obligations contained within the 2002 Section 106 Agreement associated with the original outline consent (02/00748/OUTMAJ). 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 staircasing provisions and the mortgagee exclusions in respect of the shared ownership properties.
3. The original affordable housing clauses within the 2002 Section 106 Agreement were amended by a supplemental agreement dated 1st November 2005. The 2005 agreement included the following clauses:

6.6 Non-Liability of Predecessors and Successors in Title

(a) No person shall be liable for a breach of this Supplemental Agreement after parting all interest in the Site or the part of the Site in respect of which such breach occurs but without prejudice to any liability for any subsisting breach prior to parting with such interest.

(b) No mortgagee of any of the Site or part thereof shall be liable for any provision of this Supplemental Agreement unless such mortgagee shall go into possession of the Site or part thereof

(c) The provision of this Supplemental Agreement shall not be binding on any purchasers or lessees or occupiers of any part of the Site other than the Affordable Houses.

4. The registered provider is seeking to modify this clause in respect of 10 shared ownership properties located on Cheshire Court, Buckshaw Village to enable the units to be charged at Market Value Subject to Tenancies (MVT). The suggested changes would, in the worst case scenario, enable Progress Housing to dispose of the property on the open market which may result in some equity which would be recycled back into affordable housing in Chorley (if a profit is realised by the RP when the property is sold).
5. Members should note that no RP Lender has ever exercised a power of sale, let alone used an exclusion clause to remove affordable housing restrictions. In practice, all RPs are backed by the HCA who would intervene should an RP ever get into financial difficulty (which in itself is highly unlikely given that the HCA must approve all RP financing deals and business plans). The reason for the change is purely to secure an increase in the availability of finance which would result in more money for RPs to invest in new affordable housing schemes.
6. The applicant also sought to amend clause 7.1 of the 2002 Section 106 Agreement in respect of the staircasing restrictions as follows:

The Owner hereby covenants with the Councils that fifteen percent of the total number of Residential Units shall be provided for use for Affordable Housing purposes and details of the precise location of any Affordable Housing Unit the mix and tenure thereof and the phasing of provision shall be submitted to and agreed in writing between the Owner and the Councils by either no later than the date of submission of the first reserved matters application or full planning application in relation to any Phase of the Development which is to be developed in whole or in part for residential purposes or in the case of the first Phase of the Development which is to be developed in whole or in part for residential purposes within twelve months of the date of this Agreement.

7. However, this clause does not relate to staircasing and the affordable housing clauses within the 2002 Section 106 Agreement were amended by virtue of the 2005 supplemental agreement. The staircasing restrictions in respect of the affordable houses on Buckshaw are contained within a Memorandum of Agreement (dated 12th April 2006) between Chorley Council, South Ribble Council and Progress Housing. The Memorandum includes the following:

6.5 New Progress shall ensure that it retains at all times a minimum share of 20% of the equity in each Shared Ownership Unit.

8. As this Memorandum of Agreement is not technically a Section 106 Agreement it cannot be modified by virtue of S106A of the Town and Country Planning Act. However, the applicants have agreed that the most sensible way forward is to include the staircasing provisions within the new supplemental agreement.
9. The definition of Shared Ownership Units to enable the lessee to increase their equity share in the property up to 100% would be worded as follows:

means an Intermediate Unit where the lessee enters into a lease and purchases a percentage of the equity up to 100% of the equity (subject to the initial equity share of a shared ownership lease being restricted to between 25% and 75% equity share), the lessee pays a rent to the Affordable Housing Provider in respect of the remaining equity share in the property, the documentation for which will follow the Homes and Communities Agency model lease with the rent payable calculated at no more than 2.75% of the value of the unsold equity in the Dwelling. The lessee has the option to Staircase so as to increase their equity share in the Affordable Housing Unit up to 100% and acquire the freehold or long leasehold interest (as appropriate.)

10. The deed of variation will include provisions which restrict the owner from buying 100% share until they had owned the property for at least 12 months along with a recycling provision of at least 40% of receipts received from lessees purchasing the remaining equity share to be re-invested in Chorley.

Assessment

11. 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.
12. The change to the clauses would allow Progress Housing to dispose of the property on the open market which may result in some equity (this would be recycled back into affordable housing in Chorley). However for the reasons set out above it is very unlikely that this would occur and the changes purely relate to the RP securing best value when charging assets as required by the Homes and Community Agency.
13. The principle of allowing leaseholders of Shared Ownership properties to buy out 100% of the equity is considered to be acceptable and has been accepted on other sites within the Borough as this concession is conducive to allowing buyers to access mortgages to buy the properties and therefore improves the housing offer in the borough.
14. As such it is recommended that the definition is changed although the deed of variation will include provisions which restricts the owner from buying 100% share until they had owned the property for at least 12 months along with a recycling provision of at least 40% of receipts received from lessees purchasing the remaining equity share to be re-invested in Chorley. These additional provisions have been included on other sites within the Borough where the staircasing provisions have been amended and will be included within the deed of variation.

Overall Conclusion

15. 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
97/00509/OUTMAJ	Outline application for mixed use development (housing,	Approved	August 1999

	employment, shopping, leisure & commercial uses, open spaces, roads, sewers, community facilities & rail station) & indication of junction improvements on surrounding road network,		
02/00748/OUTMAJ	Modification of conditions on outline permission for mixed use development (housing, employment, shopping, leisure & commercial uses, open spaces, roads, sewers, community facilities, road improvements & rail station),	Approved	December 2002
04/01303/REMMAJ	Reserved matters application for the erection of 50 dwellings	Refused	February 2005
04/01306/REMMAJ	Reserved matters application for the erection of 50 dwellings	Refused	February 2005
05/00488/REMMAJ	Erection of 54 houses with associated garages, roads and works & erection of 18 affordable housing units comprising of 8 flats & 10 mews houses,	Approved	August 2005
05/00489/REMMAJ	Erection of 54 houses with associated garages, roads and works & erection of 18 affordable housing units comprising of 8 flats & 10 mews houses (Duplicate),	Approved	August 2005