

APPLICATION REPORT – 22/00330/S106A

Validation Date: 22 March 2022

Ward: Chorley North And Astley

Type of Application: Section 106 Amendment

Proposal: Request 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 04 December 2015

Location: The Strawberry Fields Digital Hub Euxton Lane Chorley PR7 1PS

Case Officer: Mr Iain Crossland

Applicant: Trafford Housing Trust

Agent: Devonshires Solicitors

Consultation expiry: 14 April 2022

Decision due by: 21 June 2022

RECOMMENDATION

It is recommended that this application is approved and the terms of the Section 106 Agreement be modified.

SITE DESCRIPTION

The application site is located to the north of Euxton Lane in Chorley and forms the easternmost part of a larger site that was granted Outline planning permission, ref. 15/00224/OUTMAJ, for a mixed use development comprising Digital Health Park, industrial/employment units, Care Home and Specialist Care Facility, local convenience store; family pub and/or medical centre; residential units and associated access, landscaping and infrastructure. Reserved matters applications have subsequently been approved for various parts of the scheme, including the erection of 122 dwellings, ref. 19/00904/REMAJ, which is the part of the site to which this application relates.

DESCRIPTION OF PROPOSED MODIFICATIONS

This application has been submitted under Section 106A of the Town and Country Planning Act 1990 (as amended) and seeks to modify the planning obligation attached to outline planning permission 15/00224/OUTMAJ insofar as it relates to the provision and delivery of affordable housing as part of the development.

It is proposed to modify the obligation in relation to the use and definition of the term 'Chargee', to remove clauses that determine the point by which certain proportions of Affordable Housing Units shall have been constructed, to more explicitly define the wording of clauses, provide better clarity and to tie in relevant exclusions within the Agreement, the amount of time a Social

Rented Unit is advertised for applicants normally resident within the Borough and the amount of time Intermediate Units are marketed to applicants normally resident within the Borough.

All of the other obligations within the original Agreement are not affected by this application.

PLANNING CONSIDERATIONS

Section 106 agreements may be renegotiated at any time by mutual consent. Several developers have already approached the Council to renegotiate Section 106 Agreements to make adjustments to planned schemes, including the type of affordable housing provided.

The Government's planning guidance is clear that local planning authorities should be flexible in their requirements, taking into account specific site circumstances and changing circumstances.

The proposed amendments to the S106 agreement are specifically as follows:

1) Amend recital 1.4 to the following:

"The Developer is the registered proprietor of a Charge dated 28 May 2014 against part of the Site registered under Title Number LAN64768."

2) Amend definition of "Chargee" at Clause 2 to the following:

"Chargee" means a mortgagee or chargee or any receiver (including an administrative receiver 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 or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Affordable Housing Units"

4) Amend Clause 8.7.1 to the following:

"any owner-occupier, tenant of any Dwelling constructed pursuant to the Planning Permission or any mortgagee, chargee or receiver of such persons or any persons or bodies deriving title from them or such mortgagee, chargee or receiver;

5) Delete Clauses 8.7.2 and 8.7.3.

6) Delete and replace Clause 8.7.4 as follows:

"a Chargee or persons or bodies deriving title through such Chargee provided that the provisions of Clause 6 of the Sixth Schedule are complied with"

7) Delete and replace Clause 8.7.5 as follows:

"any Protected Tenant or any mortgagee, chargee or receiver of any Protected Tenant or any persons or bodies deriving title from them or such mortgagee, chargee or receiver;"

8) Delete and replace Clause 10.1 as follows:

"No mortgagee, chargee or receiver of any of the Site or mortgagee, chargee or receiver of any owner of any part of the Site from time to time shall be liable for the provisions of this Agreement unless such mortgagee, chargee or receiver shall go into possession of the Residential Development Land or part thereof or the Reserved Matter Land or part thereof"

9) Clause 10.2 shall be deleted

10) Delete and replace Paragraph 3 of Part 2A of the Fifth Schedule as follows:

"The Affordable Housing Units shall be used solely for the purpose of providing Affordable Housing Units to be occupied as the sole residence of households in need of Affordable Housing (subject always to the relevant exclusion provisions contained within Clause 8.7 and Clause 6 of the Sixth Schedule of this Agreement)"

11) Paragraphs 5.1 and 5.2 of Part 2A of the Fifth Schedule shall be deleted.

12) Paragraph 1 of Part 2B of the Fifth Schedule shall be amended by the addition of the wording “(on the initial disposal only)” after the word “dispose” on the first line.

13) Paragraph 12 of Part 2B of the Fifth Schedule shall be amended by the addition of the wording “(subject always to the relevant exclusion provisions contained within Clause 8.7 and Clause 6 of the Sixth Schedule of this Agreement)” At the end of the clause.

14) Paragraph 13.2.3 of Part 2B of the Fifth Schedule shall be amended by the addition of the wording “(subject always to the relevant exclusion provisions contained within Clause 8.7 within this Agreement) and” after the word “and” on the third line.

15) Paragraph 13.2.4 of Part 2B of the Fifth Schedule shall be amend chargee to lowercase and adding other relevant parties so it is not using the defined term

16) Delete and replace Paragraph 1 of the Sixth Schedule as follows:
“Subject to the provisions of paragraph 2 of this Schedule and to the extent permitted by legislation the Affordable Housing Units and Intermediate Units shall remain and be retained as Affordable Housing (subject always to the relevant exclusion provisions contained within Clause 8.7 and Clause 6 of the Sixth Schedule of this Agreement)”

17) Delete and replace Paragraph 2 of the Sixth Schedule as follows:
“That each Affordable Housing Unit shall not be used other than by those in Housing Need (or by their mortgagee, chargee, receiver or successors in title), or by any Protected Tenant or their mortgagee, chargee, receiver or successors in title “(subject always to the relevant exclusion provisions contained within Clause 8.7 and Clause 6 of the Sixth Schedule of this Agreement)”

18) Delete and replace Paragraph 6 of the Sixth Schedule in its entirety as follows:
“The provisions of this Agreement shall not be binding on any Chargee or persons or bodies deriving title though such Chargee provided that:

6.1 The Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units; and

6.2 the Chargee 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 Housing Units to another Affordable Housing Provider/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 accrued principal monies, interest and costs and expenses; and

6.3 if such disposal has not completed within the three-month period, the Chargee shall be entitled to dispose of the Affordable Housing Units free from the provisions in this Agreement which provisions shall determine absolutely”

19) Paragraph 7 of the Sixth Schedule shall be amended by the addition of the wording “(subject always to the relevant exclusion provisions contained within Clause 8.7 and Clause 6 of the Sixth Schedule of this Agreement)” at the end of the existing clause.

20) Paragraph 8 of the Sixth Schedule shall be amended by the removal of the wording “Chargee” and replacing the references with “mortgagee, chargee or receiver” throughout. Reason: Paragraph 8 of schedule 6 uses the defined term of “Chargee” in relation to Shared Ownership Units which would need to be amended as it should not include the defined term.

21) Delete and replace Paragraph 1.12 of the Seventh Schedule as follows:
“The Council and the Affordable Housing Provider agree that the nomination provisions contained in this Agreement are personal to the Council and shall not be enforceable against any mortgagee or chargee or any receiver (including an administrative receiver) 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 or any administrator (howsoever

appointed) including a housing administrator of the whole or any part of the Affordable Housing Units”

22) References to “the borough” in Paragraphs 3.1, 3.2 and 3.3 of the Eighth Schedule shall be deleted and replaced with “the Borough”.

23) Paragraph 5 of the Eighth Schedule shall be amended by the deletion of the wording “(3 months)” on the fourth line and replacing it with “4 weeks”.

24) Paragraph 6 of the Ninth Schedule shall be amended by the deletion of the wording “6 months” on the first line and replacing it with “4 months”.

Solicitors for the applicant say that the proposed amendments would have the effect of bringing the wording up to date with the current standard that lenders require, in order for their client to be able to achieve the maximum funding value possible from a lender when charging their properties. Without the correct and updated wording, they report that this can create problems for Registered Providers to raise the finance they need to fund future affordable housing projects.

The proposed amendments would not alter the number of Affordable Housing Units to be delivered, their type, or their tenure, and the changes would have little practical effect upon the way in which the Affordable Housing Units are delivered and managed. Most notably the amount of time a Social Rented Unit is advertised for applicants normally resident within the Borough would change from 3 months to 4 weeks and the amount of time Intermediate Units are marketed to applicants normally resident within the Borough would change from 6 months to 3 months. With regard to the time limit for advertising Social Rented Units this would only become relevant should Select Move or an alternative Choice Based Lettings system no longer be used, whilst 4 weeks would be in line with 3 cycles of Select Move in any event. With regards to the time limit for advertising Intermediate Units the proposed change is in line with the standard required by the National Housing Federation. On this basis the proposed amendments to the time periods for advertising are considered to be acceptable.

It also noteworthy that Paragraphs 5.1 and 5.2 of Part 2A of the Fifth Schedule would be deleted. These paragraphs set out a requirement not to allow market housing to be occupied until a certain percentage of the Affordable Housing Units are constructed and occupied.

The development will deliver over and above the minimum level of affordable housing required on this site as an extra 30% of the homes will be affordable (60% affordable housing in total). 30% of the dwellings are secured through the s106 agreement, whilst the additional affordable homes are to be delivered at the behest of the developer. The layout of the site is such that the build route would result in some of the s106 secured affordable housing being constructed later in the build programme. The current terms of the s106 agreement would mean that houses that have been developed in order to work through the site in response to levels and other constraints would remain empty for a period of time, whilst the remaining affordable units are completed. This would affect the viability of the scheme and would be detrimental to the provision of much needed new housing some of which is affordable. The risks of deleting these paragraphs would be limited as it is anticipated that the site will be developed out in full by mid 2024. The numbers and types of affordable housing would remain as approved.

CONSULTATION

Planning Policy have been consulted and do not object to the latest iteration of the proposed modifications following negotiations which eliminated proposed modifications which were not acceptable to Planning Policy.

“ALL OR NOTHING” DECISION

In *R (Garden and Leisure Group Ltd) v North Somerset Council* (2004) it was held that the decision for the Local Planning Authority is “all or nothing” Members may not selectively approve

the application by disallowing some proposed modifications. The only choice is between approval or refusal.

On the basis that there are limited risks to the delivery of affordable housing and no changes to the quantum and type of affordable housing that has been previously approved it is recommended that the proposed amendments are accepted.

CONCLUSION

It is recommended that the application is approved and the S106 agreement is modified.

RELEVANT HISTORY OF THE SITE

Ref: 15/00096/SCE **Decision:** PESCEZ **Decision Date:** 18 February 2015
Description: Request for Screening Opinion Pursuant to Regulation 5 of The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011 for a mixed use development comprising Digital Health Park, light industrial/employment units (B1/B2/B8), care home and specialist care facility (C2), local convenience store (A1), family pub (A4), residential units (C3), and associated access, landscaping and infrastructure.

Ref: 15/00224/OUTMAJ **Decision:** PERFPP **Decision Date:** 4 December 2015

Description: Outline application (specifying access only) for a mixed use development comprising Digital Health Park, industrial/employment units (Use Classes B1/B2/B8); Care Home and Specialist Care Facility (Use Class C2); local convenience store (Use Class A1); family pub (Use Class A4) and/or medical centre (Use Class D1); residential units (Use Class C3) and associated access, landscaping and infrastructure.

Ref: 16/00337/REMMAJ **Decision:** PERRES **Decision Date:** 13 May 2016

Description: Reserved matters application (for the appearance, landscaping, layout and scale) for the erection of a digital office park (use class B1); data centre (use class B8) and business centre units (use classes B1/B2/B8), associated spine road and car parking (associated with outline planning permission ref: 15/00224/OUTMAJ).

Ref: 18/00046/DIS **Decision:** PEDISZ **Decision Date:** 3 January 2020

Description: Application to discharge conditions 1 (phasing plan); 3 (levels); 5 (samples of materials); 7 (ground contamination); 11 (construction method statement); 16 (surface water drainage); 17 (foul water drainage); 20 (site access and off site highway works); 21 (estate street phasing); 22 (future management and maintenance of streets); 23 (construction details of streets); 26 (risk assessment) and 30 (services provision) of outline planning permission ref:15/00224/OUTMAJ (which was for the means of access for a mixed use development comprising Digital Health Park, industrial/employment units (Use Classes B1/B2/B8) ; Care Home and Specialist Care Facility (Use Class C2); local convenience store (Use Class A1) ; family pub (Use Class A4) and/or medical centre (Use Class D1); residential units (Use Class C3) and associated access, landscaping and infrastructure) and conditions 3 (amphibian crossing tunnels), 5 (elevational treatment below FFL and 6 (noise assessment) of reserved matters consent ref. 16/00337/REMMAJ (which was for the appearance, landscaping, layout and scale) for the erection of a digital office park (use class B1); data centre (use class B8) and business centre units (use classes B1/B2/B8), associated spine road and car parking (associated with outline planning permission ref: 15/00224/OUTMAJ).

Ref: 18/00161/FUL **Decision:** PERFPP **Decision Date:** 17 April 2018

Description: Widen existing access, re-surface area using reinforced concrete

Ref: 18/00316/FUL **Decision:** PERFPP **Decision Date:** 8 June 2018

Description: Temporary construction access

Ref: 18/01115/MNMA **Decision:** PEMNMZ **Decision Date:** 19 December 2018

Description: Amendment to approved scheme (ref: 15/00224/OUTMAJ) to substitute a revised parameters plan so that: 1) use classes A1 and A4 are no longer relevant to the proposed development; 2) use class C2 is now located left of the proposed access point; 3) use class D1 has been reduced at the entrance to the site but is now also located at the far north; 4) use classes B1 / B2 and B8 are also located at the far north of the site and have retained their position south of the spine road; 5) use class C3 has been shifted slightly to the right to accommodate the previous point.

Ref: 19/00904/REMMAJ **Decision:** PERRES **Decision Date:** 15 March 2021
Description: Reserved matters application for the erection of 122 dwellings (appearance, landscaping, layout, and scale) pursuant to outline planning permission 15/00224/OUTMAJ.

Ref: 20/00750/DIS **Decision:** PEDISZ **Decision Date:** 19 August 2020
Description: Application to discharge conditions nos. 7 (ground contamination) and 11 (construction method statement) of outline planning permission ref: 15/00224/OUTMAJ (Outline application (specifying access only) for a mixed use development comprising Digital Health Park, industrial/employment units (Use Classes B1/B2/B8); Care Home and Specialist Care Facility (Use Class C2); local convenience store (Use Class A1); family pub (Use Class A4) and/or medical centre (Use Class D1); residential units (Use Class C3) and associated access, landscaping and infrastructure)

Ref: 20/00759/MNMA **Decision:** PEMNMZ **Decision Date:** 11 September 2020
Description: Application for a minor non-material amendment to planning permission ref: 15/00224/OUTMAJ (Outline application (specifying access only) for a mixed use development comprising Digital Health Park, industrial/employment units (Use Classes B1/B2/B8); Care Home and Specialist Care Facility (Use Class C2); local convenience store (Use Class A1); family pub (Use Class A4) and/or medical centre (Use Class D1); residential units (Use Class C3) and associated access, landscaping and infrastructure) to amend the wording of condition 23 to enable works to commence on-site whilst the technical approval of the highways and drainage design takes place

Ref: 20/00790/DIS **Decision:** PEDISZ **Decision Date:** 3 September 2020
Description: Application to discharge condition no. 9 (energy and sustainability statement) of outline planning permission ref: 15/00224/OUTMAJ (Outline application (specifying access only) for a mixed use development comprising Digital Health Park, industrial/employment units (Use Classes B1/B2/B8); Care Home and Specialist Care Facility (Use Class C2); local convenience store (Use Class A1); family pub (Use Class A4) and/or medical centre (Use Class D1); residential units (Use Class C3) and associated access, landscaping and infrastructure)

Ref: 20/00865/DIS **Decision:** PEDISZ **Decision Date:** 4 August 2021
Description: Application to discharge condition nos. 16 and 17 (flood risk and drainage strategy), 21 (estate street phasing plan), 22 (management and maintenance of streets) and 25 (Construction Method Statement) of outline planning permission ref: 15/00224/OUTMAJ (Outline application (specifying access only) for a mixed use development comprising Digital Health Park, industrial/employment units (Use Classes B1/B2/B8); Care Home and Specialist Care Facility (Use Class C2); local convenience store (Use Class A1); family pub (Use Class A4) and/or medical centre (Use Class D1); residential units (Use Class C3) and associated access, landscaping and infrastructure)

Ref: 21/00234/DIS **Decision:** PEDISZ **Decision Date:** 21 September 2021
Description: Application to discharge conditions nos.5 (materials), 6 (landscaping), 7 (ground contamination), 11 (construction method statement), 16 (surface water drainage) and 17 (drainage scheme) attached to planning permission ref: 15/00224/OUTMAJ (Outline application (specifying access only) for a mixed use development comprising Digital Health Park, industrial/employment units (Use Classes B1/B2/B8); Care Home and Specialist Care Facility (Use Class C2); local convenience store (Use Class A1); family pub (Use Class A4) and/or medical centre (Use Class D1); residential units (Use Class C3) and associated access, landscaping and infrastructure)

Ref: 21/00678/MNMA **Decision:** PEMNMZ **Decision Date:** 17 August 2021

Description: Minor non material amendment to reserved matters consent 19/00904/REMMAJ (Reserved matters application for the erection of 122 dwellings (appearance, landscaping, layout, and scale) pursuant to outline planning permission 15/00224/OUTMAJ) involving changes to finished floor levels, layout and elevational details

Ref: 21/01130/MNMA **Decision:** PEMNMZ **Decision Date:** 30 September 2021

Description: Minor non material amendment to reserved matters consent 19/00904/REMMAJ (Reserved matters application for the erection of 122 dwellings (appearance, landscaping, layout, and scale) pursuant to outline planning permission 15/00224/OUTMAJ) involving changes to the position of the retaining wall and rear garden boundaries of Plots 100 to 111

Ref: 22/00326/DIS **Decision:** PEDISZ **Decision Date:** 8 July 2022

Description: Application to discharge conditions 23 (engineering, drainage, street lighting and constructional details of the streets proposed for adoption) and 26 (vibro-impact risk assessment and method statement) attached to outline planning permission ref:15/00224/OUTMAJ (Outline application (specifying access only) for a mixed use development comprising Digital Health Park, industrial/employment units (Use Classes B1/B2/B8); Care Home and Specialist Care Facility (Use Class C2); local convenience store (Use Class A1); family pub (Use Class A4) and/or medical centre (Use Class D1); residential units (Use Class C3) and associated access, landscaping and infrastructure.)

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Ref: 22/01144/DIS **Decision:** PEDISZ **Decision Date:** 30 January 2023

Description: Application to discharge condition no.26 (vibro-impact works risk assessment and method statement) attached to planning permission ref: 15/00224/OUTMAJ (Outline application (specifying access only) for a mixed use development comprising Digital Health Park, industrial/employment units (Use Classes B1/B2/B8); Care Home and Specialist Care Facility (Use Class C2); local convenience store (Use Class A1); family pub (Use Class A4) and/or medical centre (Use Class D1); residential units (Use Class C3) and associated access, landscaping and infrastructure.)

Ref: 23/00158/MNMA **Decision:** PEMNMZ **Decision Date:** 27 March 2023

Description: Minor non-material amendment to reserved matters consent ref. 19/00904/REMMAJ (Reserved matters application for the erection of 122 dwellings (appearance, landscaping, layout, and scale) pursuant to outline planning permission 15/00224/OUTMAJ) to amend layout of plots 56 and 57 and change the naming of houses on plots 119 and 120

RELEVANT 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.