

Agenda Item A6	Committee Date 21 August 2017	Application Number 17/00924/VLA
Application Site Land Off Sycamore Road Brookhouse Lancashire	Proposal Variation of legal agreement attached to planning permission 14/00270/OUT to remove the obligation relating to the allotment contribution.	
Name of Applicant Oakmere Homes	Name of Agent Mr Daniel Hughes	
Decision Target Date 19 September 2017	Reason For Delay None	
Case Officer	Mrs Jennifer Rehman	
Departure	N/A	
Summary of Recommendation	Approve	

1.0 The Site and its Surroundings

1.1 The site that is the subject of this application, relates to an existing property (47 Sycamore Road) and the adjoining field to the west. The site is accessed via Sycamore Road within the village of Brookhouse located in the Forest of Bowland AONB. The site is surrounding by existing residential development to the east and south and open agricultural land to the north and partly to the west where land is also used for equestrian purposes.

2.0 The Proposal

2.1 This is an application made under Section 106A(1)(a) of the Town and Country Planning Act 1990. The applicant is seeking to remove paragraph B of Schedule 3 from the legal agreement associated with planning permission 14/00270/OUT. Paragraph B reads as follows:

“Prior to Commencement of Development the Owner covenants to provide an on-site area for allotments or a financial contributions towards the provision of an off-site area for allotments the particulars of which and the amount of such contribution to be agreed at Reserved Matters stage”.

3.0 Site History

3.1 The relevant planning history is set out below:

Application Number	Proposal	Decision
14/00270/OUT	Outline application for the demolition of existing bungalow and erection of up to 31 dwellings	Approved
16/01603/FUL	Demolition of existing dwelling and erection of 21 dwellings with associated access, landscaping and parking	Pending
17/00730/REM	Reserved Matters application for the erection of 22 dwellings	Pending

17/00925/RCN	Application to removal condition 4 of 14/00270/OUT relating to off-site highway works.	Pending
17/00133/DIS	Application to agree details reserved by pre-commencement conditions on the outline permission 14/00270/OUT	Pending validation

4.0 Consultation Responses

4.1 Legal Services have been consulted about this proposal with no comments received to date.

5.0 Neighbour Representations

5.1 No comments received.

6.0 Principal National and Development Plan Policies

6.1 National Planning Policy Framework
Paragraphs 203 – 206 Planning conditions and obligations

Development Management DPD
DM26 – Open Space, Sports and Recreational Facilities
DM48 – Community Infrastructure

Other Considerations

National Planning Practice Guidance

Planning Advisory Note (October 2015) - Open Space Provision within New residential Developments.

7.0 Comment and Analysis

7.1 An application under s106A(1)(a) provides for a discharge or modification of a planning obligation by agreement with the Local Planning Authority and the person or persons against whom the obligation is enforceable. The applicant has evidenced that all parties whom the obligation is enforceable against are agreeable to make the proposed modifications. There is no specific time period under section 106 A(1)(a), so this can be done at any time with agreement but must be executed as a formal deed (i.e. by legal agreement).

7.2 The applicant contends that the obligation which covenants the owner to provide on-site provision or off-site contributions towards allotments, is effectively no longer necessary to make the development acceptable and no longer serves a useful planning purpose.

7.3 The reasoned justification relates to the fact that following the outline planning permission being issued, the Council published a Planning Advisory Note (PAN) in relation to open space. This is set out in the Open Space PAN document (dated October 2015). This guidance informs consideration of open space requirements for new development under Policy DM26 and clearly states that contributions towards allotment provision should only be sought on-site for schemes comprising 500 or more dwellings. The PAN document states that there are no requirements for financial contributions in lieu of on-site provision.

7.4 For small scale schemes such as this one, there is no longer any justification for securing contributions towards allotment provision. It is accepted that the obligation concerning the provision of allotments (on-site or a financial contribution off-site) does not make the development unacceptable. In short, it is questionable whether the obligation in the first instance was compliant with the requirements of the Community Infrastructure Levy but certainly now, in light of current guidance, the contribution is not considered necessary. To further support the argument this obligation no longer serves a useful planning purpose, the Council's Public Realm Officer has indicated (in their response to the Reserved Matters application) that the Parish Council has been unable to identify land for allotments. With no allotments in the settlement or planned within the village, the contribution could not be spent in the village (potentially spent on allotments elsewhere in the District) rendering the obligation unreasonable as it would not be directly related to the

development either. On this basis, Officers have no alternative but to support the applicant's proposed modifications and recommend that there are no grounds not to reach agreement to allow the removal of Paragraph B of the Third Schedule.

8.0 Planning Obligations

8.1 A formal deed is required to remove the obligations relating to the allotment contribution set out at Paragraph B of Schedule 3.

9.0 Conclusion and Recommendation.

9.1 This legal agreement can only be modified by agreement. For the reasons set out above, Members are recommend to accept the proposed modifications as it no longer serves a useful planning purpose:

That Paragraph B of the Third Schedule of the legal agreement attached to the outline planning permission 14/00270/OUT be removed.

Background Papers

None