

Agenda Item	A8
Application Number	14/00713/VLA
Proposal	Variation of legal agreement on 00/00920/OUT and subsequent renewal consent 05/01432/OUT to vary the terms of the Fourth Schedule concerning affordable housing in relation to the applicants land only, remove the requirements to obtain covenants from future land owners to restrict vehicular use over Mill Lane between points A and B (as set out in the Third Schedule), amend and partly discharge the provisions of the public open space obligations and to discharge the obligation relating to the provision of the industrial buildings.
Application site	Halton Mill Mill Lane Halton Lancashire
Applicant	Halton Mills Ltd / Town End Way Estate No.1 Limited
Agent	Mr David Hall
Case Officer	Mrs Jennifer Rehman
Departure	Departs from planning policy in respect of the affordable housing.
Summary of Recommendation	Approval (subject to the signing and completion of the Deed of Variation)

(i) Procedural Matters

This application was originally reported to the Planning and Highways Regulatory Committee on 5 June 2015. This Committee report is attached as a background paper to this report. The recommendation to vary the original s106 legal agreement was supported by the Committee, subject to the variations being executed by way of a Deed of Variation to the s106 legal obligation. The application was reported back to the Planning Regulatory Committee on the 7 December 2020, as the terms in respect of the affordable housing obligations had changed since the Committee resolution in June 2015. For various reasons this Deed of Variation has still not been completed and following the last resolution in December 2020, the applicant later advised that they were unable to take on the long-term maintenance of the public open space as originally proposed. The application is being reported back to the Planning Regulatory Committee, as the terms in respect of the public open space have subsequently changed since the Committee resolution in June 2015. The affordable housing obligations remain as per the report in 2020.

1.0 Application Site and Setting

1.1 The land relating to the original legal agreement and its associated planning permission is known as Halton Mills, situated between the River Lune and Low Road in Halton village. Despite years of stalled development, the Halton Mills complex is now largely redeveloped predominantly comprising residential development with some employment development. Most of the site's redevelopment

does not relate to the original planning permission, though the site that is the subject of this application does.

1.2 The site relates to land between Forge Lane and Mill Lane. It also includes Mill Lane and land to the south of Mill Lane that comprises open space including an equipped play area. The land between these two roads has been developed out for housing, including apartments, based on the original outline and reserved matters approvals relating to the original redevelopment proposals for the wider Halton Mills complex. The employment land approved and required by the original proposals has also been developed and has been occupied for many years now. The far eastern part of the wider Halton Mills complex was successfully developed by Lancaster Co-housing in around 2012. After that, Barratt Homes developed two small parcels of land between the River and Mill Lane. Land immediately to the east of the proposed site has secured planning permission for housing being advanced by Lune Valley Community Land Trust (20/00613/FUL). This development has commenced. The adjacent site (to the east again) is being advanced by Halton Senior Cohousing Ltd. Their planning application (20/00614/FUL) has been reported to planning committee with a resolution to approve subject to the completion of the legal agreement (a matter that is still outstanding). The Local Plan allocates the wider Halton Mills site for housing.

2.0 Proposal

2.1 The applicant has made an application under Section 106A of the Town and Country Planning Act to discharge and modify the legal agreement that relates to the site's comprehensive redevelopment including demolition of existing Mill, erection of houses, industrial units, construction of new access and provision of associated open space and landscaping pursuant to outline planning permission 00/00920/OUT and the subsequent renewal permission.

2.2 For the avoidance of doubt, the applicant, Halton Mills Limited (hereafter referred to as the first applicant) was dissolved in December 2018. However, this application, which was received before the company was dissolved, remains to be determined and is now supported by Town End Way Estate No.1 Limited (hereafter referred to as the second applicant).

2.3 A summary of the main terms of the original legal agreement are as follows:

1. No occupation of any dwelling until the building to replace Elro Products (Lancaster) Limited has been erected and available for use;
2. To obtain a covenant from any future owner of any of the land not to use that section of Mill Lane between points A and B (narrow section of Mill Lane) to access and egress the land;
3. To provide at least 17.5% of the total dwellings on the land as Affordable Housing to be disposed to an Approved Person at no more than 80% of the open market value of the dwelling;
4. Provision of public open space and maintained either in accordance with a scheme approved by the Council to provide for future management and maintenance if retained by the Owners or after a period of 12 months to transfer the public open space to the Council with a maintenance contribution; and
5. Provision of industrial buildings within 18 months of development commencing on site.

2.4 The first applicant acquired a small part of the wider Halton Mills complex in 2012 and subsequently implemented the extant consent for residential development within the central core of the complex. Prior to the submission of this application, the applicant had originally explored providing the affordable housing based on the terms of the original legal agreement. However, recognising the shortfalls in the original legal agreement and the fact that it did not provide a type of affordable housing that the Council now regards suitable, the first applicant engaged with the local planning authority to consider suitable, alternative mechanisms to deliver the affordable housing requirements associated with the development.

2.5 In summary, the proposed application seeks to modify the existing agreement as follows:

1. Provide an off-site contribution in lieu of on-site affordable housing in relation to the applicant's land only.
2. To complete Mill Lane to adoptable highway standards with the costs of such off-set against the agreed affordable housing contribution.

3. Remove the obligation in relation to obtaining a covenant from any future owner of any land not to use a section of Mill Lane to access and egress the site.
4. Discharge the obligations in relation to the industrial buildings.
5. Discharge the obligation in relation to the provision of public open space.

2.6 The Planning and Highways Regulatory Committee has previously resolved to vary the original legal agreement in relation to each of the points above. Full details of this are set out in the early Committee report provided as a background paper. The application was reported back to the Planning Committee in December 2020 to deal with a further modification to the affordable housing provisions by the second applicant. Full details are provided in the second report provided as a background paper. To avoid unnecessary duplication, this additional report (third report) shall focus on the changes since this resolution in relation to the public open space maintenance provisions (point 5 above).

3.0 Site History

3.1 Halton Mills has an extensive and complex planning history, compounded by the commercial difficulties experienced on site back in the late 1990s/2000s when the land had been subdivided with numerous land owners. Halton Mills was envisaged to have been comprehensively redeveloped under two separate outline permissions; one covering the western part of the site (which covers the sites now in question) and the other covering the eastern part of the site. In order to keep matters as succinct as possible, the most relevant planning history is reported in the table below:

Application Number	Proposal	Decision
00/00920/OUT	Outline application for proposed redevelopment including demolition of existing Mill, erection of houses, industrial units, construction of new access and provision of associated open space and landscaping.	Approved
05/00562/REM	Erection of two new B1/B2 commercial units	Approved
05/01305/FUL	Amendments to elevations to housing scheme approved as 04/01301/REM	Approved
05/01432/OUT	Renewal of application 00/00920/OUT for proposed redevelopment including demolition of existing mill, erect houses, industrial units, construct new access and provision of associated open space and landscaping	Approved
04/01301/REM	Reserved Matters application for the erection of 47 houses and 27 apartments, associated access road and play area	Approved
14/01350/FUL	Erection of 20 residential dwellings with associated access road.	Approved (lapsed)
15/00510/OUT	Outline application for the erection of a nursing home and associated access	Approved (lapsed)
20/00613/FUL	Erection of 16 affordable residential dwellings and 2 residential buildings comprising a total of 4 affordable apartments, with associated parking and hard landscaping.	Approved
20/00614/FUL	Erection of 4 dwellings, a block of 16 self-contained flats and a shared ancillary accommodation building for the residents over the age of 55, with associated access, internal roads and parking areas	Resolved to be approved subject to s106

4.0 Consultation Responses

4.1 Under s106A of the Town and Country Planning Act, there is no requirement to publicise the proposed amendments to the agreement. Notwithstanding this, when the application was reported in June 2015, some comments had been received from the Council's Strategic Housing Officer and Lancashire County Council as the Highway Authority. Whilst the Case Officer has maintained

dialogue with the Strategic Housing Officer and the County Council in respect of the affordable housing obligation there have been no formal or material changes to the original comments received.

5.0 Analysis

5.1 **Consideration 1 – Previous Recommendation and the Legal Agreement** (NPPF paragraphs 55-57: Planning Conditions and Planning Obligations and paragraphs 60-63: Section 5 Delivering a Sufficient Supply of Homes, Policy H2 (Housing Delivery in Rural Areas of the District) of the SPLA DPD and policies DM3 (Delivery of Affordable Homes), DM27 (Open Space, Sports and Recreational Facilities), DM 58 (Infrastructure Delivery and Funding) and DM60 (Enhancing Accessibility and Transport Linkages) of the DM DPD)

5.1.1 The key assessment is whether the proposed variations to the legal agreement meet the requirements of sub-paragraph 6 of S106A, which states where an application is made to modify an Agreement, the authority may 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.

5.1.2 The original recommendation (provided as a background paper) addresses each of the proposed changes against the above tests under each of the relevant schedules of the legal agreement. This report does not intend to repeat the recommendations where the material considerations and the proposal remain unchanged and acceptable. Instead, a summary is set out below:

S106 Schedule reference and proposal.	Legal Agreement Terms	Recommendation
Paragraph 1, Third Schedule. To discharge the obligation.	No occupation of any dwelling until the building to replace Elro Products (Lancaster) Limited has been erected and available for use	No change from original recommendation (June 2015) (<i>see paragraphs 7.9, 7.10 of the first background paper</i>). <i>Obligation to be discharged.</i>
Paragraph 2, Third Schedule. To remove the obligation.	To obtain a covenant from any future owner of any of the land not to use that section of Mill Lane between points A and B (narrow section of Mill Lane) to access and egress the land;	No change from the December 2020 recommendation (see Paragraphs 5.2.1-5.2.3 of the second background paper). <i>Obligation removed in relation to the second applicants land only.</i>
Paragraph 1, Fourth Schedule. To remove the existing obligation and to replace with new clauses to provide an off-site financial affordable housing contribution in lieu of on-site provision.	To provide at least 17.5% of the total dwellings on the land as Affordable Housing to be disposed to an Approved Person at no more than 80% of the open market value of the dwelling;	The principle of accepting an off-site affordable housing contribution remains unchanged and acceptable (see paragraph 7.13 of the first background paper). No change from the December 2020 recommendation (see paragraphs 5.3.1-5.3.4). <i>Obligation to be varied removing clauses relating to on-site provision and to include new provisions for an off-site financial contributions towards affordable housing totalling £141,218.</i>
Paragraphs 2 -5, Fourth Schedule. To discharge paragraph 2 (provision of POS)	To provide public open space in accordance with local plan policy and a phasing scheme to be agreed with the Council. Upon completion of each phase to maintain the	The original recommendation and the later recommendation (June 2015 and December 2020) sought to vary the public open space obligations to remove the requirement for the Council to maintain the open space and to secure a management

and to vary the remaining terms to for the management and maintenance of the existing POS.	POS for 12 months and thereafter transfer the POS to the Council and to agree a contribution towards future maintenance for a period of 10 years.	company to secure the ongoing provision and maintenance of such land (see paragraph 7.15 of the first background paper). The application is being reported back to the Planning Regulatory Committee because the second applicant's offer to secure a management company to maintain the open space has been revoked. Further details on this matter are set out in the report below.
Paragraph 7, Fourth Schedule. To discharge this obligation.	Provision of industrial buildings within 18 months of development commencing on site.	No change from original recommendation (see paragraphs 7.16 of the first background paper). <i>Obligation to be discharged.</i>

5.2 Consideration 2 - Paragraph 2 -5 , Fourth Schedule Public Open Space obligations

- 5.2.1 Paragraph 7.15 of the first background paper sets out the initial position which fundamentally sought to remove the original provisions requiring the public open space to be transferred to the council with new provisions included requiring the owner of the land to maintain the public open space land (through the setting up of a management company). These changes were supported by both the second applicant and the Council but following the Planning Regulatory Committee's resolution, this offer has now been revoked.
- 5.2.2 The Public Open Space Obligations included a scheme for open space to be agreed with the council included phasing and future management and maintenance if the public open space was to be retained by the owners of the land. The existing provisions included a mechanism to transfer the public open space to the Council with a commuted sum for maintenance. The earlier recommendations and subsequent resolutions sought to remove this mechanism. This would have been replaced by a clause requiring the owner to maintain the public open space via a management company (funded by maintenance costs imposed on residents).
- 5.2.3 Regretfully, the second applicant has confirmed they are unable to set up a management company to manage and maintain the public open space. This is because there is no legal obligation (under separate contractual arrangements with residents) to incur service charges (after dwellings have been purchased and occupied), which would have been the source of funding for the public open space maintenance.
- 5.2.4 Consequently, the option to transfer the land back to the Council (as originally drafted in the s106) remains the only feasible option. However, given the financial circumstances associated with this development, the legal agreement would still need to be varied to remove the requirement for a commuted sum for maintenance. Since the last resolution, Officers have been working with colleagues to reach a solution in respect of the retention, management and maintenance of the existing on-site public open space. The Council's Public Realm team and Property Group have now confirmed agreement to take on the existing amenity greenspace and equipped play area with no commuted sum. The second applicant has been approached with this proposal, but not confirmed the position. Although in an effort to proceed, if the second applicant was not to accept the amendment proposed and recommended for approval under this Report, they would be required to discharge the obligations without amendment. This would be a greater financial burden on the second applicant and for that reason, with a view to getting an expedited decision on this matter to help deliver the scheme sooner rather than later, this proposal seeks to provide an amicable solution to the second applicant whilst also providing long-term deliverability of a space that will be protected for public use by the Council for the future.
- 5.2.5 Subsequently, clauses 2 to 6 of Schedule 4 shall be deleted and replaced with alternative provisions requiring the Public Open Space (identified by a plan) to be transferred to the Council within a prescribed time period to be agreed as part of the Deed of Variation.

6.0 Conclusion and Planning Balance

6.1 The proposed changes to the public open space provisions do remove some of the betterment gained during earlier negotiations and subsequent resolutions. However, with the Council now accepting it will take on the existing open space, the proposed changes to the agreement ensures the community of Halton Mills will retain access to a small but pleasant play space alongside the River Lune in the long term. The failure not to maintain this play area and amenity greenspace would not be in the public interest. Furthermore, in reaching this position, it allows the council to recover the commuted sum for affordable housing agreed in the earlier resolutions and enables the application to be determined, which has been pending for a considerable period. It is concluded that the relevant terms of the obligation continue to serve a useful planning purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application. Consequently, the Planning Regulatory Committee are recommended to support these further changes to the deed of variation.

Recommendation

In accordance with S106(A) of the Town and County Planning Act, Officers recommend that the proposed application to modify and discharge the terms of the original agreement in relation to the applicant's land only can be supported, subject to the changes set out below being executed by a legal of a Deed of Variation.

Paragraph 1, Third Schedule - to remove (discharge) this clause.
Paragraph 2, Third Schedule - to remove this clause.
Paragraph 1, Fourth Schedule - to remove this clause and to replace with new clauses to provide an off-site financial affordable housing contribution in lieu of on-site provision totalling £141,218.
Paragraphs 2 -5, Fourth Schedule - to remove clause 2 – 5 and replace with amended provisions to transfer to the public open space to the Council within a prescribed period to be set out in the Deed.
Paragraph 7, Fourth Schedule - to remove (discharge) this obligation.
Additional clauses to be included requiring (best endeavours) the applicant to put Mill Lane forward for adoption under s38 of the Highways Act.

Article 35, Town and Country Planning (Development Management Procedure) (England) Order 2015

Background Papers

First Background Paper - 5 June 2015	Planning Committee Agenda Item 10 – Application 14/00713/VLA Halton Mill, Mill Lane, Halton
Second Background Paper – 7 December 2020	Planning Committee Agenda Item A9 - Application 14/00713/VLA Halton Mill, Mill Lane, Halton