

Agenda Item	A9
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 applicant's 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) and to discharge the obligations relating to public open space and the provision of the industrial buildings.
Application site	Halton Mill, Mill Lane, Halton, Lancashire
Applicant	Halton Mills Ltd / Town End Way No.1 Limited
Agent	Mr David Hall
Case Officer	Mrs Jennifer Rehman
Departure	N/A
Summary of Recommendation	Approve

(i) Procedural Matters

This application was previously reported to the Planning and Highways Regulatory Committee on 5 June 2015. The 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. For various reasons this Deed of Variation has not been completed. The application is being reported back to the Planning Regulatory Committee, as the terms in respect of the affordable housing obligations have changed since the Committee resolution in June 2015.

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. Land immediately to the east of the site in question remains undeveloped, but has been the subject of subsequent planning permissions for housing (now lapsed) and is currently the subject of two pending planning applications for residential development being advanced by Lune Valley Community Land Trust and

Halton Senior Cohousing Ltd (which are being reported to this Committee). The far eastern part of the 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. The new Local Plan allocates the subject site and the adjacent undeveloped sites 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 was dissolved in December 2018. However, this application, which was received before the company was dissolved, still needs to be determined and is now supported by Town End Way No.1 Limited.

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 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 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. To avoid unnecessary duplication, this additional addendum report shall focus on the changes since this resolution in relation to the affordable housing provisions only.

3.0 Site History

3.1 The table below provides an updated (and relevant) planning history associated with the site, including more recent planning consents associated with the adjoining site to the east:

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 (now lapsed)
15/00510/OUT	Outline application for the erection of a nursing home and associated access	Approved (now 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.	Pending Consideration
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	Pending Consideration

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 54, 56 - 57 (Planning Obligations) and paragraphs 59-62 of 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:-

- That the planning obligation shall continue to have effect without modification;
- If the obligation no longer serves a useful purpose, that it shall be discharged; or
- 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
<p>Paragraph 1, Third Schedule.</p> <p>To discharge the obligation.</p>	<p>No occupation of any dwelling until the building to replace Elro Products (Lancaster) Limited has been erected and available for use</p>	<p>No change from original recommendation (see paragraphs 7.9, 7.10 of background paper).</p> <p>Obligation to be discharged.</p>
<p>Paragraph 2, Third Schedule.</p> <p>To remove the obligation.</p>	<p>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;</p>	<p>Paragraph 7.11 of the background paper sets out the applicant's case that the obligation is not enforceable and therefore no longer serves a useful planning purpose. The planning update ahead of the 15 June 2015 Planning and Highways Regulatory Committee sought delegation back to the Head of Planning Services awaiting legal interpretation on the matter. No formal comments from our legal services were received. Further details on this matter are set out in the report below.</p>
<p>Paragraph 1, Fourth Schedule.</p> <p>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.</p>	<p>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;</p>	<p>The principle of accepting an off-site affordable housing contribution remains unchanged and acceptable (see paragraph 7.13 of the background paper). The Planning and Highways Regulatory Committee previously resolved to approve the application based on an off-site affordable housing contribution of £345,000. This was to be offset against the agreed highway costs (£143,439) (see paragraphs 7.17 – 7.21 of the background paper) leaving an affordable housing contribution, totalling £201,561. The application is being reported back to the Planning Regulatory Committee because the applicant's offer has been revised downwards. Further details on this matter are set out in the report below.</p>
<p>Paragraphs 2 -5, Fourth Schedule.</p> <p>To discharge paragraph 2 (provision of POS) and to vary the remaining terms to for the management and maintenance of the existing POS.</p>	<p>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 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.</p>	<p>No change from the original recommendation (see paragraph 7.15 of the background paper). As the provision and future maintenance of public open space around and forming part of a development remains integral to proper planning, the obligation continues to serve a useful purpose. However, it would serve that purpose equally well (if not better in the current circumstances) with the proposed modifications to the agreement.</p> <p>Vary the agreement to secure long-term maintenance of the POS without transfer of such land to the Council.</p>
<p>Paragraph 7, Fourth Schedule.</p> <p>To discharge this obligation.</p>	<p>Provision of industrial buildings within 18 months of development commencing on site.</p>	<p>No change from original recommendation (see paragraphs 7.16 of background paper).</p> <p>Obligation to be discharged.</p>

5.2 Consideration 2 - Paragraph 2, Third Schedule Removal of Covenant to prevent use of Mill Lane

- 5.2.1 The legal agreement requires the owner to obtain a covenant from any future owner of any of the land (subject to the application) not to use the narrow section of Mill Lane between Station Road (Halton Bridge) and the applicant's parcel of land comprising the Town End development for the purpose of vehicular access and egress. Full details of the applicant's case is set out in paragraph 7.11 of the background paper. The latest resolution was to delegate this matter back to the Head of Services to await legal interpretation on this matter. Legal advice has been received indicating that the covenant could be unlawful if on the facts it is not necessary to make the development acceptable in planning terms.
- 5.2.2 The applicant contends the issue is the enforceability of the obligation and its overall value in planning terms. Regulation 122 of the Community Infrastructure Levy Regulations 2010 provides one of the main tests. This plainly states that a planning obligation may only constitute a reason for granting planning permission if the obligation is:-
- a) Necessary to make the development acceptable in planning terms;
 - b) Directly related to the development; and
 - c) Fairly and reasonably related in scale and kind to the development.
- 5.2.3 It is unclear how the obligation came to be imposed within the legal agreement, as it is not set out in the Planning and Highways Regulatory Committee report or minutes for either the original planning application or the 2015 renewal application. Notwithstanding this, Officers understand there were concerns at the time of determination over the comprehensive redevelopment of the wider Halton Mills complex as a whole and the risk of general use of the western, narrow section of Mill Lane. This, however, was largely addressed as part of the original application with a new much larger junction onto Low Road. Overall, the anticipated traffic impacts potentially using the narrow section of Mill Lane is less than originally envisaged via the original development proposals (fewer dwellings) and perhaps less now than at the time officers reported this application back in 2015. The reason for this is two-fold. Firstly, most of the traffic from the development would utilise the main access via Forge Lane onto Low Road. Secondly, now that the Bay Gateway has opened, most traffic from Halton wishing to access the strategic road network (particularly if traveling north) will now utilise the new junction to the motorway network off Halton Road rather than crossing Halton Bridge at Denny Beck. On this basis, the need to have a restrictive covenant to prevent vehicular use over this small section of Mill Lane by future owners of the land is arguably unreasonable. The removal of this covenant would not render the development unacceptable and therefore it does not meet the tests set out in Regulation 122 of CIL 2010, nor does it serve a useful planning purpose. The removal of this obligation (in relation to the applicant's land only) can be removed from the legal agreement.

5.3 Consideration 3 - Paragraph 1, Fourth Schedule of s106 Affordable housing Contribution

- 5.3.1 Paragraph 7.13 of the background paper sets out the acceptance over the principle of allowing a commuted sum in lieu of on-site provision. This remains unchanged even in the context of the newly adopted Local Plan, policy DM3 of the DM DPD. Between the last resolution and now, the developer has completed the development and is now largely occupied.
- 5.3.2 The development of the site in question has been protracted and its ownership has changed on several occasions. This has led to several complications affecting progress with the pending application to vary the legal agreement, matters pertaining to the s38 road adoption process agreement (a separate matter with the County Council) and commercial difficulties for the developer and owner of the land. There have been lengthy negotiations between the applicant and officers and our respective solicitors. The outcome is a reduced affordable housing contribution, equating to £141,218. This is around £60,000 less than previously agreed and reported. The shortfall is, in part, a consequence of additional highway costs, additional costs to acquire Mill Lane and the open space land from the Bank of Ireland (to complete the Deed under the terms of the previous resolution), changes in ownership and funding available and the delay in resolving this matter.
- 5.3.3 The previous owner of the land (Halton Mills Ltd) was wound up but did retain some funds for the purposes of finalising this matter (both the commitment to provide an affordable housing contribution and securing the adoption of Mill Lane). Whilst the previous recommendation (paragraph 7.21 of the background paper) made it clear that any additional costs to bring the roads to adoptable standard must be borne by the developer, officers are informed by the respective solicitors that there simply

are no additional funds available to cover everything. It is worth recalling that the approach adopted here was exceptional and one vested in the public interest – to support the completion of the Halton Mills complex and to address matters of public concern that had been ongoing over a period of now almost 20 years (since the original approval and 8 years since the applicant commenced development on the site), including the state of the estate road network. Subsequently, Officers recommend that the reduced figure should be accepted. This presents the best-case scenario to deliver a reasonable contribution to affordable housing locally. It also provides opportunities to secure the long-term maintenance of Mill Lane (through the highway adoption process) and the provision, management and maintenance of the open space associated with the development.

5.3.4 It is understandable that there will be some concern about the risk of further delays and the failure to complete the Deed. To offer some reassurances, the reduced affordable housing offer has been provided in good faith (via legal representations) setting out that the owner is keen to dispose of the matter as far as they are able to do so. Officers have also being informed that in the last 6 months there has been positive steps forward in respect of the road adoption process too, with their s38 application made to the County Council with both professional and legal fees paid. The applicant has also undertaken all necessary remedial works required by the Highway Authority. On this basis, there is clearly a commitment to secure the s38 agreement to enable the roads to be adopted. Whilst not a direct planning matter, it has relevance here, and it is a significant step forward compared to when the application was last reported. Given the development is largely complete, Officers also recommend that the trigger for the payment of the affordable housing contribution is upon completion of the Deed or a very short period thereafter.

6.0 Conclusion and Planning Balance

6.1 The original recommendation to support the applicant's proposals in relation to the affordable housing provisions were based on exceptional circumstances, which remain valid and unchanged (see paragraph 9.1 of the background paper). A further five years since the Committee's resolution and the status of the roads within the Halton Mills complex remain an ongoing challenge. However, it is positive to note that in the last six months there have been very positive steps forward in respect of the roads being put forward for adoption. The Council is undoubtedly left in an uncomfortable position whereby the contribution towards affordable housing has been reduced by almost £60,000. Whilst this is hugely disappointing, the reduced funds will still make a positive contribution to supporting the delivery of alternative affordable housing schemes locally. Arguably, this is the optimum outcome that can be achieved given the complexities of the site and the length of time the matter has been negotiated. The other proposed changes to the legal agreement are reasonable with betterment provided in respect of the variations to the open space maintenance provisions. The Committee is recommended to support the proposed variations to the legal agreement.

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 (provision of POS) and to vary clauses 3-5 to ensure the POS is retained, managed and maintained by a Management Company.
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.

Background Paper

5 June 2015 Planning Committee Agenda Item 10 – Application 14/00713/VLA Halton Mill, Mill Lane, Halton