

Agenda Item A7	Committee Date 5 th June 2015	Application Number 14/00713/VLA
<p align="center">Application Site</p> <p align="center">Halton Mill Mill Lane Halton Lancashire</p>	<p align="center">Proposal</p> <p>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), to vary the terms relating to public open space and maintenance and discharge the obligations relating to the provision of the industrial buildings.</p>	
<p align="center">Name of Applicant</p> <p align="center">Halton Mills Ltd</p>	<p align="center">Name of Agent</p> <p align="center">Mr David Hall</p>	
<p align="center">Decision Target Date</p> <p align="center">2 October 2014</p>	<p align="center">Reason For Delay</p> <p align="center">Awaiting information from the applicant and subsequent negotiations in respect of the proposed contribution.</p>	
<p>Case Officer</p>	<p>Mrs Jennifer Rehman</p>	
<p>Departure</p>	<p>Departs from planning policy in respect of the affordable housing.</p>	
<p>Summary of Recommendation</p>	<p>Approval (subject to a revised affordable housing figure being agreed and the exact wording/legal mechanisms to deliver the proposed changes to the existing obligation also being agreed, drafted and signed). Recommendation seeks delegation back to Officers.</p>	

1.0 The Site and its Surroundings

- 1.1 This site forms part of the wider Halton Mills complex located between Low Road and the River Lune on the southern edge of the main built up part of Halton village. The site is accessed off Low Road onto Forge Lane (or Mill Lane via Station Road). Halton Mills previously occupied a cotton factory and flour mill (dated 1844-5) and has for a number of years (before the proposals for comprehensive redevelopment) been used predominately for industrial purposes. The site redevelopment commenced in 2005-6 but soon fell into commercial difficulty leaving the site in a state of flux for some considerable time. More recently we have seen development commence again and new residential proposals approved which are currently being implemented. The site now consists of housing sites (under construction and occupied), an area of public open space including an equipped play area, two modern industrial/business units, a long established business (Out of the Woods) and the Co-Housing development. There are only two remaining parcels of land undeveloped. These comprise of land to the west of the Mill complex (former fisheries building) and land to the west of the industrial units, though an application for its redevelopment has now been submitted.

- 1.2 The Development Plan for the district identifies Halton as a rural settlement and Halton Mills specifically as an allocated employment site. The site is also located partly within the village conservation area, straddles all flood zones (1, 2 and 3), sits alongside the River Lune Biological Heritage State, contains protected trees and has two public rights of way running through the site (running west to east).
- 1.3 Land currently controlled by the applicant relates to the central core of the Halton mills complex which is enclosed by the internal loop road system of Forge Lane and Mill Lane.

2.0 The 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 sites 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 The planning permission for the redevelopment of Halton Mills was subject to a legal agreement covering the following:
- No occupation of any dwelling until the building to replace Elro Products (Lancaster) Limited has been erected and available for use;
 - 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;
 - 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;
 - 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,
 - Provision of industrial buildings within 18 months of development commencing on site.
- 2.3 The applicant acquired part of the wider Halton Mills site in 2012 and has since implemented the extant consent for residential development within the central core of the complex. The developer has explored providing the affordable housing based on the terms of the existing agreement but has not been successful. A discount of only 80% of the open market value does not produce genuinely affordable properties and as a consequence the applicant now seeks to modify the agreement. The applicant has had pre-application discussions including with the Strategic Housing Officer principally concerning the affordable housing obligations and the shortcomings of the existing agreement.

The application seeks to modify the existing agreement as follows:

- Provide an off-site contribution in lieu of on-site affordable housing in relation to the applicants land only;
- Discharge the obligations in relation to the industrial buildings;
- 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, in relation to their land only, and;
- Remove the obligation in relation to public open space as it is outside the applicant's land ownership.

In addition to the above, the applicant recognises that one of the main constraints remaining on the complex relates to the current condition and road status of Forge Lane and Mill Lane – neither are adopted at this stage, though Forge Lane is built to adoptable standards. The applicant is prepared to (and is already in discussions with the land owner of Mill Lane) to acquire this land and bring it up to adoptable standards with the appropriate legal agreements with the County Council (Section 38 Highway Act). In this regard the proposal seeks to impose an additional obligation and off-set such cost against the off-site affordable housing contribution. This principle of adopting this approach was discussed informally at the Planning Committee Briefing on the 12th September 2014. The purpose of the briefing was to discuss options to secure improvements to the roads and their status and to seek direction from Members that the proposed approach was reasonable in principle - in order to

allow such negotiations to continue. Members at the Briefing were generally supportive of the proposed option.

3.0 Site History

3.1 Halton Mills has a large and complex planning history, compounded by the commercial difficulties experienced on site and the land being 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 straight forward 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.	Pending Consideration
15/00510/OUT	Outline application for the erection of a nursing home and associated access	Pending Consideration

4.0 Consultation Responses

4.1 The following responses have been received from statutory and non-statutory consultees:

Consultee	Response
Legal	No objections
Environmental Health	No objections
Strategic Housing	Due to the specific circumstances presented, no objections to the proposal for an off-site contribution in lieu of on-site provision.
Conservation	At the time of compiling this report no comments have been received.
County Highways	LCC Highways have confirmed that the applicant's highway costs to bring Mill Lane up to adoptable standards are reasonable.

5.0 Neighbour Representations

5.1 At the time of compiling this report, a total of 6 letters of representation have been received with only 2 raising formal objections. A summary of the comments are noted below:

- General support – the current unadopted roads are a problem to residents and busienseses at Halton Mills, and no alternative solution is likely;
- Some concerns expressed in relation to the removal of the covenants preventing use of the narrow section of Mill Lane and maintenance of the public open space when this is land outside the control of the applicant;

- Given poor sightlines and conflicts between vehicles, pedestrians and cyclist along the narrow section of Mill Lane to the junction with Station Road, it would be sensible to retain the opportunity to close this road if the legal rights of way associated with existing businesses on site were ever relinquished;
- Suggestions have been put forward that the Council should purchase the POS from the current land owner and maintain this as envisaged under the original planning application.
- Mixed use development on the site has been fulfilled by Wenning House (multiple office space), Riverside House (B1 unit) and conversion of the Mill on the Co-housing site to mixed office/workshops.
- The Parish Council discussed the application and supported the proposal but found that other developers should be making similarly proportionate contributions towards the road adoptions. The Parish Council requested the City Council purchase the open space and if the off-site affordable housing contribution is not ring-fenced the contribution be allocated to the Parish for community projects.
- Objections on the grounds that there should be no obstruction and closing off of any part of Mill Lane as existing businesses rely on this route and have legal rights of way over it.

6.0 Principal National and Development Plan Policies

6.1 The National Planning Policy Framework indicates that the purpose of the planning system is to contribute to the achievement of sustainable development. At the heart of the NPPF is a presumption in favour of sustainable development (paragraph 14). The following paragraphs of the NPPF are relevant to the determination of this proposal:

Paragraph 12 – Development Plan as starting point for decision making

Paragraph 17 – 12 core land-use planning principles

Paragraph 49 – Delivering housing and creating sustainable communities (affordable housing)

Paragraph 73-74 – Open Space and well-being of communities

Paragraphs 187-190 – Decision-taking and pre-application engagement

Paragraphs 204-205 – Planning Obligations

Paragraphs 215-216 - Policy weighting of existing and emerging development plan planning policy.

6.2 Lancaster District Core Strategy

MR 1 – Planning Obligations

SC1 – Sustainable Development

SC4 – Meeting the District's Housing Need

6.3 Development Management DPD

DM26 – Open spaces

DM41 – New Residential Development

6.4 Saved Lancaster District Local Plan

EC4 – Rural Employment Site - Halton Mills

EC7 – Halton Mills Employment Opportunity Site

6.5 Emerging Land Allocations DPD

Policy OPP4 – Halton Mills

6.6 Planning Guidance

Meeting Housing Needs SPD

National Planning Practice Guidance

7.0 Comment and Analysis

7.1 The primary consideration of this application is whether or not the existing obligation no longer serves a useful planning purpose. To determine this, consideration is paid to the nature of the approved development and the implication of the applicant's proposal on each of the obligations set out in the original Agreement.

- 7.2 S106A of the Town and County Planning Act 1990 states:-
(1) A planning obligation may not be modified or discharged except –
a. By agreement between the appropriate authority and the person or persons against whom the obligation is enforceable; or
b. In accordance with this section and section 106B.
- 7.3 There is no agreement (or so that the LPA are aware) between the applicant and others whom the obligation is also enforceable against therefore the application is not being pursued under section 106A (1a). It is, however, pursued under S106A (1b). The applicant has served the appropriate notices on others whom the obligation is enforceable against.
- 7.4 Sub-paragraph 3 of S106A, states that a person whom a planning obligation is enforceable may, at any time after the expiry of the relevant period, apply to the appropriate authority for the obligation-
(a) to have the effect subject to such modifications as may be specified in the application or
(b) to be discharged.
- 7.5 Sub-paragraph 6 of S106A, states that where an application is made to modify the 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.
- 7.6 The applicant has sought to discharge some of the obligations set out in the original agreement and to modify others. The original outline planning application was considered against policies EC4 and EC7 of the Lancaster District Local Plan. This required that the development of the Halton Mills site be for a mixed commercial and residential use within the existing developed footprint of the site and that the development should be comprehensive. Policy EC7 allows for limited extensions to the built area to provide for improvements to the access and the retention or expansion of an existing employer at the site. The policy also requires that any development incorporates provision for improvements to the site access, the removal of dereliction and contamination and that employment should remain as the dominant use of the site as a whole. This original outline application did not include the all of the land covered by the policy allocation (all of Halton Mills). The eastern part of the site comprising the former Luneside Engineering buildings/land did not form part of the outline permission relevant to this case. In essence the allocated site was sub-divided into two sections with outline consents sought separately for the east and western parts of the site. Subsequently, comprehensive development of the whole site was not pursued but at the time of the local planning authority's consideration of the outline application for the western part of the site (relevant to this case), it was contended that the lack of comprehensive development could not be substantiated as the proposals did not prejudice the redevelopment of the eastern part of the site.
- 7.7 The outline consent sought a mixed use residential and commercial scheme with the formation of a new access onto Low Road. To secure an appropriate mix of uses, a planning obligation was considered necessary to make the development acceptable in planning terms. These obligations are set out above in section 2.0. The substantive test for the local planning authority to consider is whether the obligation no longer serves a useful purpose or that, if it does, that purpose could be equally served by a modified obligation.
- 7.8 For clarity and greater understanding, the following section of this report covers each of the terms set out in the Agreement and the implications of the applicant's proposal.

7.9 **THE OBLIGATIONS:**

THE THIRD SCHEDULE

- 1) *Not to allow occupation of any dwelling erected on the Land until the building notated 1 notated on the submitted plan or as subsequently, approved as reserved matters as replacement accommodation for Elro Products (Lancaster) Limited has been erected and is 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 on the Plan attached to this Deed for the purposes of vehicular access to egress from the Land.*

- 7.10 The industrial unit required under this schedule was provided and occupied by Elro Products albeit in a revised location agreed under the reserved matters application. This building is no longer occupied by Elro Products but remains in employment use. This obligation no longer serves a useful purposes in that the obligation has been met and can therefore be discharged.
- 7.11 The applicant contends that section 2 of this schedule is unenforceable and should therefore be removed. The outline application sought a new access off Low Lane due to the limited visibility at the junction of Mill Lane and Station Road. This access has been implemented and provides the principal vehicular access point for traffic accessing and egressing the wider Halton Mills complex. Access along Mill Lane towards Station Road is not physically prohibited (i.e. with barriers) due to legal rights of access along Mill Lane towards Station Road for some existing businesses on the complex. Contrary to some of the public representations, the applicant does not seek to impose additional restrictions in relation to the use of the narrow section of Mill Lane (marked A-B on the Plan attached to the obligation) or prevent these legal rights of access to continue. The applicant appears to simply question the enforceability of such an obligation and thus whether the obligation still serves a useful planning purpose. It is apparent that access/egress from the site to Station Road is not ideal and that in the majority of cases visitors, residents, workers of Halton Mills will use the access direct onto Low Road. Access across Mill Lane will in the majority of cases will be traffic wishing to use Halton Bridge and Denny Beck Lane. The outline permission considered that any increase in traffic towards Halton Bridge would be relatively small in relation to that already generated by the existing village. The scale of development controlled by this obligation is now less than what was originally envisaged (as new development on site has been pursued under separate planning applications) and so the need for the covenant is perhaps questionable. Officers are in negotiations with our legal services regarding the enforceability of this obligation. A verbal update will be provided.
- 7.12 **FOURTH SCHEDULE**
- 1) *To provide at least 17.5% of the total dwellings erected on the Land as Affordable Housing and to transfer the Affordable Housing to an Approved Person*
 - 2) *To provide Public Open Space within the Development on the Land*
 - 3) *To layout and landscape the Public Open Space in phases in accordance with a scheme to be submitted and approved in writing by the Council and such scheme to provide for the future management and maintenance if the Public Open Space is to be retained by the Owners*
 - 4) *To provide Informal Open Space in accordance with a scheme to be submitted and approved in writing by the Council*
 - 5) *Upon completion of each phase of landscaping of the Public Open Space and Informal Open Space the Owner shall maintain for a period of 12 months and at the end of 12 months transfer to the Council.*
 - 6) *Upon transfer the Public Open Space and Informal Open Space pay the Council a maintenance contribution (equivalent to ten years).*
 - 7) *Provision and phasing of the delivery of industrial buildings notated on the submitted plan attached to the Obligation*
- 7.13 The applicant is implementing the extant approval for 47 houses and 27 apartments. Of these a total of 13 units would need to be provided as affordable units based on the terms of the existing obligation. The affordable housing requirements set out in the existing obligation are not such that the Council would support today – policy has evolved since then and discounted dwellings are not a tenure the Council supports. In this particular situation, given the location of the site (rural settlement) and current marketing prices of the units, a 20% discount of the market price does not produce genuinely affordable dwellings. Council policy seeks developers to enter into partnership with Registered Providers to provide and manage a mix of rented and intermediate properties – preference being social rented and shared ownership tenures. The applicant has tried to engage with Registered Providers operating in the area but has regretfully failed to secure any commitment from a Registered Provider. Concerns informally expressed to the applicant were the lack of detail in the Agreement about the type of affordable units to be delivered if transferred to the Register Provider; concerns over taking some flatted accommodation in a larger block (service charges and management issues) and the fact that if discounted by only 20% the properties would not be genuinely affordable. Following discussions with Council Officers, it was accepted that an off-site financial contribution towards affordable housing in the district would in this particular set of circumstances be an appropriate solution. This remains the opinion of the Council's Strategic Housing Officer. Subsequently, the principle of a commuted sum in lieu of on-site affordable housing

provision is considered acceptable provided that the contribution is equivalent to the number/cost of delivering the on-site provision. Whilst this is not wholly compliant with policy DM41 of the DM DPD or the Meeting Housing Needs SPD, Officers are satisfied that in this case sufficient evidence has been provided to demonstrate that delivering the on-site affordable housing provision as required by the existing terms of the Agreement is not likely to be forthcoming and that securing a contribution towards affordable housing would be a reasonable.

- 7.14 The applicant has offered a contribution to the sum of £307,000. There are some concerns over the robustness of the information provided and the methodology used to calculate the contribution and so Officers are currently negotiating a revised figure. It is slightly difficult as the Council does not have an adopted methodology for calculating contributions for schemes above the thresholds set out in the SPD (more than 4 dwellings). However, the methodology provided in the SPD is a good and reasonable starting point. If this methodology was applied to the development being carried out a figure of £585,606 would be required. That said, this figure is not representative of the terms of the existing obligation and so if some adjustments are made, officers contend an appropriate contribution should be somewhere above £344,200 and below £450,000. Officers are waiting for the applicant to submit a revised offer in order to satisfy officers that an appropriate contribution suitably equivalent to the provision of on-site affordable housing required by the terms of the existing Agreement. Members shall be verbally updated on this matter. Notwithstanding the precise figure the principle of varying the original terms of this schedule in relation to the applicant land are accepted.
- 7.15 The Public Open Space at the time of receiving the application did not fall within land controlled by the applicant and as such the existing terms (2-6 noted above) of the Agreement were considered necessary to remain in force, though it is acknowledged that the Public Open Space has been provided on the site and voluntarily maintained by the applicant. However, during the consideration of the application the applicant has been in discussions with the Bank of Ireland who own Mill Lane and the public open space (land between the two Barratt Home sites). These discussions have been essential to facilitate options in relation to highway adoptions (see below paragraph 7.18). The applicant has now confirmed to officers that they will be acquiring all the land from the Bank of Ireland including the public open space. Subsequently, as they will be owners of the land where the public open space has been provided, they would be obligated by the terms of the existing Agreement. Subsequently, the applicant has confirmed that they prepared to modify the legal agreement to secure the public open space in perpetuity and for it to be managed and maintained by a management company rather than the existing terms remaining which would place an obligation on the Council to take on the POS if the developer transferred the land and offered a maintenance contribution. Members will be aware that the Council does not wish to take on new POS and so the varied obligation is a betterment from the existing terms and is something that can be accepted.
- 7.16 Sub-paragraph 7 of the Fourth Schedule (provision of industrial buildings) has been complied with and as such could be satisfactorily discharged in accordance with s106A of the Act.
- 7.17 *ADDITIONAL OBLIGATIONS*
Following many years of the site laying vacant and development stalling, more recently the redevelopment of the complex has gathered momentum. The applicants have contributed towards this along with Lancaster Co-housing and Barratt Homes. However, there remain some areas undeveloped or in a state of flux as a consequence predominately of the commercial difficulties experienced on site and land ownership. One of the main stumbling blocks now appears to relate to the status of the internal road network with both Forge Lane and Mill Lane remaining in private hands. Forge Lane has been constructed to adoptable standards but remains unadopted and is owned by one of the existing businesses on site. Mill Lane on the other hand is in a poor condition and not yet completed to an adoptable standard. Officers understand this road remains in the hands of the administrative receivers, but in any case not the applicant. However, the applicant has committed to purchase the land (Mill Lane) from the existing owner and bring the roads to adoptable standard provided the cost for doing so is deducted from the affordable housing contribution. This is not an approach the Council would usually seek to encourage, particularly in the absence of a full viability appraisal and under an application to vary the legal agreement. However, in light of the scale of the redevelopment of Halton Mills it is contended that there is significant public benefit in securing formal adoption of the roads by Lancashire County Council.
- 7.19 Officers have been in discussions with Lancashire County Council for some time about the mechanism to deliver formal adoption of the roads on site. In fact, there was discussion over this

very issue when the Council considered and determined the Barratts development on the Halton Mills complex (14/00200/FUL). At this time it was considered sensible and reasonable to expect all the land owners to make fair, proportionate and reasonable contributions to resolve this issue separate from the planning system. At this time, one potential route was thought to be via a Private Street Works Code under the Highway Act. However, this would require all the land owners being supportive of the Private Street Works Code and making fair contributions. Given the multiple ownerships on the site it was accepted that this would not be resolved quickly. Following the determination of the Barratt's scheme, Officers continued to engage with the County Council to establish the best and most practical ways forward to resolve the current status of the internal road network. Upon receipt of this application, officers sought advice from the Highway Authority about the potential options available to resolve the current status of roads on Halton Mills. This advice provided 3 main options. The first being a Private Street Works Code (section 205 to 218 of the Highways act 1980). This approach would need agreement of all affected landowners to dedicate the land as highway. It transpired that the owners of Mill Lane (thought to be the Duchy at the time) would not be able to consent to the Private Street Works Code as a consequence of the way the Duchy had acquired land limiting their freedom to use the land for any purpose other than selling it on to a new owner. Subsequently, taking this approach would inevitably be a lengthy process and one with an uncertain outcome. The second option would be for one of the existing developers to purchase the affected land (Mill Lane) and make up the road under a Section 38 Agreement (under the Highway Act), which is a standard approach. In principle the Highway Authority recommended this approach as giving best certainty to adopt the highways. However, this was on a without prejudice basis to the principle of allowing the developer to offset such costs against other obligations. The final option was for the roads to remain in private ownership. This was not considered an approach that would favour local support. Equally, due to the fact that the site is now in multiple ownership and is not a comprehensive scheme it would be difficult for a single management company to take the maintenance and management of the road network.

7.20 In light of this advice, the proposal put forward by the applicant does offer a potential solution to the situation, albeit one that is not strictly policy compliant. Subsequently, a briefing note was prepared and discussed at a briefing for planning committee where officers sought direction from the Members present whether or not to continue negotiations along the lines set out above (the applicant's proposal). It was considered that the proposal offered a potential solution to one of the remaining stumbling blocks on site and found that there was public interest and community benefit in advancing the applicants proposal.

7.21 In terms of the highway costs submitted by the applicant (to the sum of £143,439) to complete the works required for road adoption (this does not include the cost to purchase the land) the Highway Authority has confirmed the costs are reasonable. If Members support the applicant's proposals to off-set these highway costs against the affordable housing contribution, this would be the figure used in any such calculation. Notwithstanding this, any additional costs arising from the s38 Agreement would have to be borne by the developer as these costs are an estimate for the purposes of agreeing the affordable housing contribution. Similarly, such costs do not account for the applicant purchasing the land or granting any necessary easements. It would be essential to ensure in any s106 that in accepting that these costs be off-set against their affordable housing contribution, that the developer is legally obligated to enter into and complete a s38 Agreement with the County Council for Mill Lane. Any new obligation inserted into the Deed (or in the event this option is not legally feasible a unilateral undertaking offered by the applicant) it is contended that such an obligation would not place an additional burden on others whom the obligation is enforceable against.

8.0 Planning Obligations

8.1 The above section of the report sets out the applicant's proposed modifications to the existing agreement. The following are accepted:

- Modifying the existing agreement with an off-site contribution in lieu of on-site provision. The final figure is yet to be agreed.
- POS obligations to be modified to secure the provision of POS and equipped play area to be managed and maintained by the owner or appointed management company once the applicant obtains ownership of this land.
- Discharging the obligations relating to the provision of the industrial buildings.

The planning balance is whether it is appropriate for the developer to off-set their affordable housing contribution with costs to bring Mill Lane up to adoptable standards. If it is agreed, this can only be achieved once the applicant owns the land. One option could be for the applicant to enter into a Section 111 Agreement which is effectively an agreement to enter into a Section 106 as soon as the land is purchased and owned by the applicant (the same issue applies to the POS).

Officers are still assessing the legal enforceability of the obligation relating to the restrictive use of Mill Lane between points A and B on the plan attached to the existing obligation. A verbal update will be provided.

9.0 Conclusions

9.1 There are exceptional circumstances here that have led officers to accept this approach put forward. Such circumstances relate to the commercial difficulties the site has faced over the past fifteen years, multiple owners on site limiting the ability to secure road adoptions via a Private Street Works Code and the fact that there is public support to bring the roads up to an adoptable standard. The Highways Authority have also considered various other options to secure the roads are adopted and recommend to the local planning authority that this is one option with the most certainty. If Members felt it was not appropriate to off-set the highway works against the affordable housing contribution, officers will need to agree to a revised affordable housing contribution with the applicant (not offsetting the highway costs) and could then grant a Deed of Variation as set out in the proposal section of this report but without the inclusion of any reference to road adoptions. This would be perfectly reasonable. The only potential implication would be that the developer may not purchase Mill Lane or the POS and that the roads and POS could remain in private hands and not be maintained. For the community of Halton Mills this would be very disappointing but in planning terms not necessarily unacceptable. Should Members support the approach put forward, the application would need to be delegated back to the Chief Officer for the legal agreement(s) to be drafted and signed by the applicant (either a s111 or a s106).

Recommendation

In accordance with S106 (A) of the Town and Country 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 GRANTED** subject to resolving the outstanding matters.

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

In accordance with the above legislation, the City Council can confirm the following:

Lancaster City Council has made the decision in a positive and proactive way to foster the delivery of sustainable development, working proactively with the applicant to secure developments that improve the economic, social and environmental conditions of the area.

For the reasons stated in the report, the proposal departs from the Development Plan. However, taking into account the other material considerations which are presented in full in the report, it is considered that these outweigh the provisions of the Development Plan, and in this instance the proposal can be considered favourably.

Human Rights Act

This recommendation has been reached after consideration of the provisions of The Human Rights Act. Unless otherwise stated in this report, the issues arising do not appear to be of such magnitude to override the responsibility of the City Council to regulate land use for the benefit of the community as a whole, in accordance with national law.

Background Papers

None