

**HIGH PEAK BOROUGH COUNCIL
DEVELOPMENT CONTROL COMMITTEE**

Date: 4th October 2021

Application No:	HPK/2021/0234	
Location	Former Forge Works, Forge Road, Chinley, High Peak.	
Proposal	Variation of section 106 planning obligation to reduce affordable housing provision relating to HPK/2012/0323 (appeal ref. APP/H1033/A/13/2189819).	
Applicant	Wainhomes North West Ltd	
Agent	Hourigan Connolly	
Parish/Ward	Chinley	Date registered: 07/04/2021
If you have a question about this report please contact: Rachael Simpkin rachael.simpkin@highpeak.gov.uk 01538 395400 extension 4122		

REFERRAL

This scheme has been referred as relates to a major development.

1. SUMMARY OF RECOMMENDATION

APPROVE

2. DESCRIPTION OF THE SITE AND ITS SURROUNDINGS

2.1 The application relates to the former Forge Mill premises, more recently known as the Dorma Works, which is located off Forge Road, Chinley. The whole site covers a total of 12.44 ha (hectares) and lies in a dip between the villages of Chinley and Whitehough. The site is nestled between Black Brook to the north and the Peak Forest Tramway to the south. It is located immediately to the south of the village of Chinley and north of the hamlet of Whitehough. The Peak Forest Tramway runs alongside the southern boundary of the site and the Black Brook watercourse borders and crosses the site on its northern side. Aligning the western boundary of the site is footpath 124, which links Forge Road to the Tramway. There are some habitats of local value within the site, as well as tree cover to the boundaries of the site.

3. THE APPLICATION PROPOSAL

3.1 A further application under Section 106A of the Town & Country Planning Act 1990 (as amended) has been received by the Council to modify the affordable housing provisions of the original Section 106 Agreement in relation to original the outline planning permission ref. HPK/2012/0323 allowed at appeal in May 2013 ref. APP/H1033/A/13/2189819. It follows the refusal of a similar scheme ref. HPK/2020/0517 'Variation of section 106

planning obligation to reduce affordable housing provision relating to HPK/2012/0323 (appeal ref. APP/H1033/A/13/2189819)' refused at the May 2021 committee meeting.

3.2 The original Section 106 Agreement requires inter alia for the development to provide 30% of the total number of dwellings to be erected on the site to be affordable units (60% as Social Rented and 40% as Shared Ownership).

3.3 A Supplementary Legal Agreement was entered into on the 20th November 2017 with revised clauses ensuring the provision of good quality affordable housing and facilitating a balance between securing the delivery of affordable housing in relation to the development of this part of the site, construction of a bridge and the commercial dwellings. There were also other amendments reflecting a phased approach such as the timing of agreeing a site management company for onsite private roads and any unsold areas of open space on the site. In relation to the onsite roads, it was noted that the Phase 1 roads were to be adopted and this also required a minor amendment. In addition, the Parish Council requested that offsite highways contribution be amended to better reflect need in the village and this was applied to improving accessibility to the railway station.

3.4 The first reserved matters approval ref. HPK/2013/0577 issued in January 2014 consisted of 91 dwellings and provided 27 affordable homes. The applicant has confirmed that the scheme has been developed and all commercial dwellings sold. As well, the 27 affordable homes secured as part of the original permission for this phase of development have all been transferred to a Registered Provider.

3.5 Reserved Matters approval ref. HPK/2016/0313 provides a further 62 dwellings of which 18 are to be affordable homes. The applicant states that the proposed number of affordable dwellings is slightly less than the policy compliant position of 19 units (due to rounding), but this position was agreed with the Council at the time of the reserved matters application on a tenure basis. The applicant confirms that 28 of these dwellings have been developed and sold. This includes 3 properties which have been transferred to the Registered Provider. Accordingly, a total of 15 affordable dwellings are required to be delivered under the provisions of the original Section 106 Agreement for this phase of the development. In total, the legal agreement requires a total of 42 affordable dwellings on site, of which 30 have been delivered. A total of 12 affordable onsite units therefore remain to be delivered within Phase 2.

3.6 The now applicant seeks the following amendments to the original Section 106 Agreement:

3.7 The Definitions Section provides that:

“Affordable Unit or Units means subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available at the

open market and which comprise 30% of the total number of Dwellings to be erected on the Site and shall comprise 60% Social Rented Housing and 40% Shared Ownership Housing”.

3.8 Clause 2.5 further provides that:

“Subject to clauses 2.1 to 2.4 above 30% of the Dwellings which are constructed on the Site shall be Affordable Units (in accordance with current Homes and Communities Agency Standards) to be provided in accordance with each and every Reserved Matters Approval”.

3.9 The applicant proposes that the Definitions Section of the original Section 106 Agreement be amended to:

“Affordable Unit or Units means subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available at the open market and which comprise 30 of the total number of Dwellings to be erected on the Site and shall comprise 16 Social Rented Dwellings and 14 Shared Ownership Dwellings”.

3.10 The applicant further proposes that Clause 2.5 of the original Section 106 Agreement be amended to:

“Subject to clauses 2.1 to 2.4 above 30 of the Dwellings which are constructed on the Site shall be Affordable Units (in accordance with current Homes and Communities Agency Standards)”.

3.11 The application to vary the legal agreement would deliver 30 (19.6%) affordable units on the site rather than 42 (30%) units secured by the legal agreement. It is based on the justification that it is no longer viable to deliver the amount of housing as required by the planning obligation. The submission is supported by the submitted Grasscroft Residential Viability Report dated November 2020 (the FVA) to support the submission.

3.12 The applicant’s intended planning appeal for ref. HPK/2020/0517 ‘Variation of section 106 planning obligation to reduce affordable housing provision relating to HPK/2012/0323 (appeal ref. APP/H1033/A/13/2189819) as refused does not yet appear to have been validated by the Planning Inspectorate.

4. RELEVANT PLANNING HISTORY

HPK/2020/0517 Variation of section 106 planning obligation to reduce affordable housing provision relating to HPK/2012/0323 (appeal ref. APP/H1033/A/13/2189819). Refused May 2021.

HPK/2018/0143 Residential development comprising 12 dwellings (open market and affordable), public open space and associated infrastructure together with a new car park for 1st Chinley Scout Group. Approved 26th March 2021.

- HPK/2016/0313 Reserved Matters application with details of the appearance, landscaping, layout and scale for Phase 2 of the residential development comprising of 62 dwellings and associated works pursuant to planning appeal reference APP/H1033/A/13/21898819 (HPK/2012/0312). Approved November 2017.
- HPK/2014/0582 Erection of a building to accommodate a D1 day nursery with ancillary worker accommodation and construction of a bin store – Approved February 2015.
- HPK/2013/0577 Application for Approval of Reserved Matters following Outline Approval For Phase 1 - Construction Of 91 No. Dwellings, 1no. B1 Office Unit And 1no.D1 Creche Unit Including Access From Green Lane / Whitehough Head Lane and Associated Works (Reserved Matters - Large-Scale Major) – Approved January 2014.
- HPK/2012/0323 Demolition of remaining structures & redevelopment for up to 182 dwellings, up to 1,672 sqm business floorspace (use class B1), up to 279sqm of non residential institution floorspace (use class D1), community facilities & associated infrastructure – Allowed at appeal May 2013.
- HPK/2011/0683 Outline application for the redevelopment of the site – Withdrawn February 2012.

5. PLANNING POLICIES RELEVANT TO THE DECISION

Adopted High Peak Local Plan 2016

- Policy S1 Sustainable Development Principles
 Policy S1a Presumption in Favour of Sustainable Development
 Policy H4 Affordable Housing
 Policy CF7 Planning Obligations and Community Infrastructure Levy

Supplementary Planning Guidance

- Housing Needs Survey
- Planning Obligations

National Planning Policy Framework (NPPF) July 2018

National Planning Practice Guidance (NPPG)

6. CONSULTATIONS

Council's Independent Financial Viability Consultant:

Viability Assessment Review Report, Forge Works, Forge Road, Chinley ref. HPK/2020/0518 and HPK/2021/0234

In preparing the FVA review, it confirmed that the Residential Viability Report: Former Forge Works, Chinley (November 2020) prepared by Grasscroft has been relied upon, together with the documentation listed from page 9 onwards of their Quantity Surveyor report.

Summary Conclusions:

“7.6 The outcome of our assessment and the financial appraisal results illustrate that the development at present is not sufficiently viable to support 30% affordable housing. With the 30 affordable dwellings already constructed and sold, then the development is viable. The residual land value is slightly higher than our assessed benchmark land value by £8,524. This sum is not sufficient to support additional affordable dwellings. However if there were further house price increases over and above build cost increases then this might be sufficient to support some additional affordable housing.

7.7 To demonstrate the position we have prepared some sensitivity testing which models 5% and 10% price increases for those remaining dwellings that have not yet sold. The testing assumes that all other costs remain the same. With 5% price increases across these dwellings the testing shows that the development could support a further 7 affordable dwellings – 4 rent and 3 shared ownership. Assuming 10% price increases then the development could support the remaining affordable dwellings up to 30%.

7.8 Realistically however such price increases are now likely to be offset to some degree by forecast build cost increases, so in reality we would not expect the application proposals to be able to support substantive additional affordable units over the period, other than those that have been provided to date.

7.9 As noted previously the Council has refused application ref HPK/2019/0561 which amongst other matters seeks approval for revised dwelling types for plots 110 – 114. Table 7.2 contains details of the revised dwellings types for these plots.

7.10 We have been asked by the Council to consider whether these changes have any impact on the overall viability of the scheme consented under the original outline application. Reflecting these changes we have adjusted the sales revenues and construction costs associated with the phase 2 development. We have also adjusted the benchmark land value to reflect the slightly greater net developable area.

7.11 With these changes made our conclusion remains the same in that the development would still not be able to support 30% affordable housing provision. Based on the 30 affordable dwellings already provided, the development is viable and again provides a small surplus over the benchmark

land value. As with the appraisal based on the consented scheme, this surplus is not sufficient to support further affordable housing”.

HPBC Regeneration Officer (Affordable Housing): As requested I have fact checked the information regarding the affordable housing within the KM report. To the best of my knowledge, the information on s106 contributions and completions is correct.

7. OFFICER COMMENTS

7.1 Planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended) are a mechanism which makes a development proposal acceptable in planning terms, which would not otherwise be acceptable. In this case, the planning obligations, amongst other matters, secured onsite affordable housing provision and specified the type and timing of this housing.

7.2 If the s106 is not complied with, it is enforceable against the person whom entered into the obligation and any subsequent owner. The legal tests for a s106 agreement are: (i) necessary to make the development acceptable in planning terms, (ii) directly related to the development, and, (iii) fairly and reasonably related in scale and kind to the development. Under the Planning Act s106 (A) a person bound by the obligation can seek to have the obligation modified or discharged after five years. The principles for modifying an obligation are to consider whether the agreement continues to serve a useful purpose and should remain; that it no longer serves a useful purpose and should be discharged; or that it continues to serve a useful purpose, but would serve the purpose equally well if the modification proposed took effect.

7.3 When a developer makes an application under Section 106A to vary an affordable housing obligation, the Council must assess the affordable housing obligation and decide whether it prevents the development from being economically viable (i.e. when assessed together with all the other contributions due, the costs of development, for example abnormal costs associated with remediating contaminated land and expected profits) and if it does prevent the development from being completed whether that means the obligation no longer continues to serve a useful purpose.

7.4 If the Council finds that the obligation prevents the development from being economically viable, then the application should be dealt with in a way that safeguards and promotes the economic viability of the permitted scheme to which it relates balanced against a reduced affordable housing provision. In order to achieve this, the Council has two options:

- (1) it can modify the obligation either in the way the application suggests (or in another way if the applicant agrees), or,
- (2) it can remove the obligation altogether.

7.5 The applicant states that the submitted FVA (Financial Viability Assessment) provides a justification for not delivering the final 12 affordable

dwellings on the site as required by the planning obligation. Although, the applicant states that all other financial obligations have been paid relating to off-site highway works, open space, play space and primary school improvements and has established a site wide management company all as required by the original Section 106 Agreement and subsequent Supplementary Agreement.

7.5 In addition, the applicant further considers that it is a material consideration that the reserved matters approval has been granted for 153 dwellings rather than the 125 dwellings anticipated at the outline planning application stage. In response to this point, the original planning permission description included “up to” 182 dwellings rather than a fixed quantum of development and is material in these regards. The subsequent reserved matters schemes have delivered a total of 153 dwellings in accordance with Adopted Local Plan policy. The applicant does not envisage any more than 153 dwellings on the site through any subsequent planning applications. However, ref. HPK/2018/0143 has secured a scheme of 12 mostly executive dwellings on land adjoining the nursery.

7.6 In consideration of the above, LP (Local Plan) policy H4 ‘Affordable Housing’ includes a financial viability test to justify any reduced provision of affordable housing below the required 30% onsite provision policy level equating to 46 onsite affordable dwellings – the s106 agreement and fallback position requires a total of 42 affordable dwellings to be delivered.

7.7 The Council’s Independent Financial Viability Consultant considers that the submission is currently sufficient to properly support the viability justification to omit 12 onsite affordable dwellings.

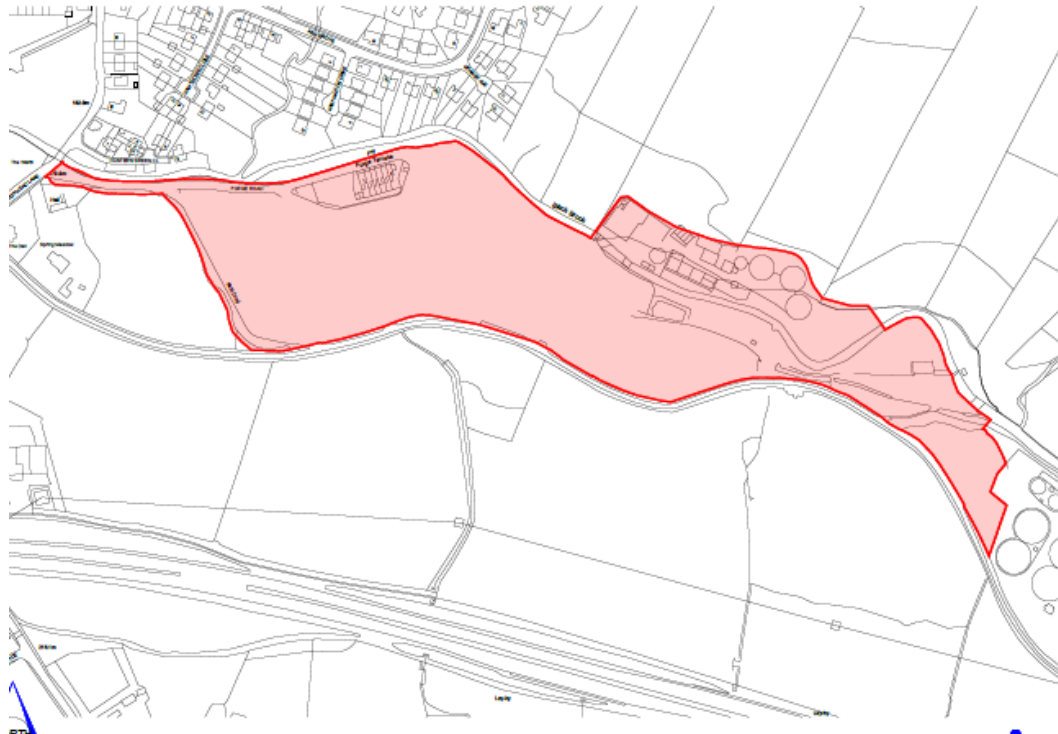
7.8 Accordingly Officers consider that the modification of the agreement would serve a useful purpose by facilitating the completion of the development which would otherwise be rendered unviable and is therefore recommended for approval.

8. RECOMMENDATIONS

- A. APPROVE, subject to legal agreement(s) to vary onsite affordable housing provision.**

- B. In the event of any changes being needed to the wording of the Committee’s decision (such as to delete, vary or add conditions/informatives/planning obligations or reasons for approval/refusal) prior to the decision being issued, the Head of Development Services has delegated authority to do so in consultation with the Chairman of the Development Control Committee, provided that the changes do not exceed the substantive nature of the Committee’s decision.**

Site Plan



ON PLAN

A legend box with the text "ON PLAN" above a red shaded rectangular area.

A blue north arrow graphic pointing upwards.

A professional seal for Bert M. MacDermott, a Licensed Professional Engineer in the State of Michigan. The seal includes the text "Bert M. MacDermott, P.E.", "Professional Engineer", "State of Michigan", "License No. 92034", "Exp. 12/31/2024", and "www.michigan.gov/EP".

FORGE ROAD, CHINLEY - Location Plan