

7th March 2022

Planning Services
Ribble Valley Borough Council
Council Offices, Church Walk
Clitheroe BB7 2RA

smith&love
PLANNING CONSULTANTS

Our ref: OAKM104

By email only

Dear Sir or Madam,

APPLICATION TO MODIFY THE SECTION 106 AGREEMENT ATTACHED TO PLANNING PERMISSION 3/2020/0325 AT LAND NORTH OF CHATBURN ROAD, CLITHEROE

On behalf of our client Oakmere Homes Ltd we enclose an application to modify the Agreement made under Section 106 of the Town and Country Planning Act 1990 which is attached to planning permission 3/20202/0325 for the construction of 17 no. dwellings with associated works, landscaping and access on land north of Chatburn Road, Clitheroe.

The application comprises the following information in accordance with the Council's validation checklist;

- Application form and ownership certificate
- Location plan
- Original Section 106 Agreement dated 15th July 2021¹
- Proposed draft Deed of Variation

The application fee of £450 has been paid directly by our client.

Proposed modification

The application concerns the provisions of Schedule 3 and Plan 2 of the Original Section 106 Agreement which relates to the delivery and occupation of the 'Market Over 55 Accommodation Unit' which is Plot 9.

The development, and adjacent Phase 1, has been very popular and all of the houses are sold or under-offer apart from Plot 9. It has not sold because interested purchasers are deterred by the terms of the Over 55 occupancy restriction as presently set out in Schedule 3 of the Original Section 106 Agreement. Oakmere Homes contacted Rachael Stott (Housing Strategy Officer) on 17th November 2021 to explain this and suggest that the terms of the Over 55 occupancy restriction are modified so that the 'step out' clause which is available to Oakmere Homes after the practical completion of Plot 9 is extended and made available to future owners. This will mean that future owners do not face the risk of being unable to re-sell the property without losing money. Several mortgage lenders have also raised the same concern. It is not necessary, or proposed, to remove the Over 55 occupancy restriction however as the interested purchasers meet the qualifying age requirement.

¹ This is the version taken from the Council website and has out of sequence pages

It is not clear from the reply received from Rachael Stott of 15th December 2021 whether this is properly understood as the response explains that a Deed of Variation will be required to remove the Over 55 occupancy restriction, which it adds, is unlikely to be supported. We hope that this letter therefore makes Oakmere Homes' intention, and the need for the proposed modification, clear so that Plot 9 does not unnecessarily remain unsold and empty any longer.

The following modifications are therefore proposed in this application;

- 1) Plan 2 in the Original Section 106 Agreement is substituted with the Plan 2 to be attached to the proposed draft Deed of Variation to identify and confirm Plot 9 as the 'Market Over 55 Accommodation Unit';
- 2) Clause 1.2.2 of Schedule 3 of the Original Section 106 Agreement is deleted and substituted with the following clause;

1.2.2 One of the Over 55 Accommodation Units (which shall be a Market Dwelling) shall be a 3-bedroom house and shall be constructed on Plot 9 as shown on Plan 2 ("the Market Over 55 Accommodation Unit");

- 3) Clause 1.5 of Schedule 3 of the Original Section 106 Agreement shall be amended by the addition of the following words at the end of the clause;

"and subject to the provisions of clause 1.7 of this Agreement");

- 4) Clause 1.7 of Schedule 3 of the Original Section 106 Agreement shall be deleted in its entirety and the following clause substituted;

1.7 In the event that despite the proper marketing of the Market Over 55 Accommodation Units no sale of the Market Over 55 Accommodation Unit has been effected:-
(a) in the case of the Owner within 3 (three) months of Practical Completion of the said Unit; and
(b) in the case of a sale by the successors in title to the Owner within 4 (four) months from the date of commencement of marketing the said Unit
then paragraph 1.8 of this Schedule 3 (below) shall apply in respect of such Market Over 55 Accommodation Unit;

- 5) The words "Where paragraph 1.7 applies then:" in clause 1.8 of Schedule 3 of the Original Section 106 Agreement shall be deleted and substituted with the following words;

"Where paragraph 1.7 applies then the provisions of clauses 1.8 to 1.10 inclusive shall apply and all references to "the Owner" in these clauses shall be to the Owner and the Owner's successors in title".

- 6) Clause 1.10 of Schedule 3 of the Original Section 106 Agreement shall be deleted in its entirety and the following clause substituted;

1.10 *In the event that the Council or an Expert (pursuant to clause 13 of this Deed) confirms pursuant to this paragraph 1.10 of this Schedule 3 or clause 13 (as the context requires) that despite complying with paragraph 1.6 of this Schedule 3 the Owner has been unable to sell the Market Over 55 Accommodation Unit to those eligible for such then the Owner shall be entitled to dispose of the Market Over 55 Accommodation Unit to those eligible for such units on the open market free from the restrictions of this Schedule 3 provided that on the subsequent sale of the Market Over 55 Accommodation Unit the provisions of Schedule 3 will apply to such sale.*

We trust that we have supplied everything you require to validate the application and look forward to receiving confirmation shortly. In the meantime, should you have any questions, please do not hesitate to contact me.

Yours sincerely

Graham Love MRTPI
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Encs.