

Item No	Application No. and Parish	8/13 week date	Proposal, Location and Applicant
(1)	17/02295/MDOPO Thatcham Town Council	31 st January 2017	<p>Application to modify planning obligation: To discharge the S106 obligation in connection with planning consent 15/02077/OUTMAJ (outline application for development of 26 apartments and 7 houses. Matters to be considered: Access, Layout and Scale.</p> <p>129, 129a, 131, 133, 137 and Land at 139 and 141 Bath Road, Thatcham, Berkshire.</p> <p>Ressance Land No.9 Limited</p>

To view the plans and drawings relating to this application click the following link:
<http://planning.westberks.gov.uk/rpp/index.asp?caseref=17/02295/MDOPO>

Recommendation Summary: To **DELEGATE** to the Head of Development & Planning to **GRANT PERMISSION** for the reasons set out in section 7 of this report.

Ward Member: Councillor Ardagh-Walter
Councillor Goodes

Reason for Committee determination: The overage clause that this application seeks to remove was requested by the Eastern Area Planning Committee as part of their resolution to grant permission for application 15/02077/OUTMAJ.

Committee Site Visit: Not required

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1. RELEVANT PLANNING HISTORY

- 1.1 There is a comprehensive planning history relating to this site, however the history relevant to this modification application relates to application 15/02077/OUTMAJ under which outline planning permission was granted for the erection of 26 apartments and 7 houses. This item was considered and approved by the Eastern Area Planning Committee on the 1st June 2016 as per the officer recommendation with the addition of an overage clause to review the affordable housing contribution.

2. PUBLICITY

Site notice not required

3. CONSULTATIONS AND REPRESENTATIONS

Thatcham Town Council	Object: Conditions imposed for the benefit of residents of Thatcham should not be relaxed.
Housing	Concern for setting a precedent however advice sought from planning regarding policy position.
Representations	The public are not consulted on modification applications

4. DESCRIPTION OF PROPOSAL

- 4.1 This modification application seeks to make changes to the legal agreement secured under application 15/02077/OUTMAJ under which outline planning permission was granted for the erection of 26 apartments and 7 houses. This item was considered and approved by the Eastern Area Planning Committee on the 1st June 2016 as per the officer recommendation with the addition of an overage clause to be agreed by the Council and applicant. Planning permission was subsequently granted on the 29th September 2016 following completion of the legal agreement.
- 4.2 The legal agreement, dated the 26th September 2016 secures the provision of an overage clause. Schedule 3 of the agreement states that prior to the occupation of the penultimate residential unit the developer shall carry out a viability review to determine whether the viability of the development has materially improved since planning permission was granted and if so to determine the value of any off-site affordable housing contribution that is to be provided. The off site affordable housing contribution should be 60% of the development profit after accounting for developer profit identified in the viability review provided it does not exceed the sum of one million one hundred and fifty two thousand four hundred and seventy seven pounds (£1,152,477.00).

4.3 This modification application seeks to remove the overage clause set out in Schedule 3.

5. CONSIDERATIONS:

5.1 As part of this assessment consideration must be given to:

- 1) The extent any overage clause is supported within the development plan and national/local guidance
- 2) The extent to which the provision of affordable housing is under target at this development.

The planning policy position:

5.2 There is no development plan policy or local guidance to support the principle of such an overage clause.

5.3 The National Planning Policy Framework (NPPF) paragraph 173 states that the costs to be applied to a development, with affordable housing being recognised as one of these costs, should, when taken into account with the other development costs, provide competitive returns to a willing landowner and willing developer to enable the development to be deliverable. No reference is made within the NPPF to the use of overage clauses.

5.4 The Government's Planning Practice Guidance (PPG) states that 'viability assessment in decision-taking should be based on current costs and values. Planning applications should be considered in today's circumstances. However, where a scheme requires phased delivery over the medium and longer term, changes in value of development and changes in costs of delivery may be considered.' This development is currently being built out and the applicant has confirmed within paragraph 2.8 of the supporting statement that this is not a phased development. It is for this reason considered that the use of an overage clause in this instance is not supported by national guidance.

5.5 While the emphasis within the PPG is on using such a review mechanism only for phased developments it is noted that the Inspector when considering appeal reference 2227656 (65-69 Parkhurst Road, London N7 0L), a scheme for 112 residential units in 6 blocks, also considered the size of the scheme, its configuration and the extent of the affordable housing shortfall justified the need for such a clause (paragraph 78 of the attached appeal, Appendix 1). The development at Bath Road, Thatcham is considerably smaller than this appeal scheme totalling 33 units and, while the units are distributed in separate blocks they will not be delivered in distinct phases. The works undertaken on site to date, accompanied by the written confirmation from the applicant, demonstrates that the build period is relatively short. Development commenced in April 2017 and practical completion is expected in July 2018. Furthermore the layout and conditions require for the scheme to be completed

as a whole. As such, in this case, other material considerations are not deemed to justify the retention of the overage clause.

- 5.6 A number of appeal decisions have been reviewed during the consideration of this application. Within this district appeals at Crookham House, Thatcham (3153625) and Lakeside, Theale (3159722 & 3163215 joined appeals) have explored this specific issue while at a national level there are a significant number of cases. These decisions consistently conclude that the only policy or guidance to this type of provision is the reference within the PPG. The Inspector in respect of appeal 3153625, Crookham House, Thatcham (see Appendix 2), a scheme for 14 dwellings, states in paragraph 17 that 'the absence of policy support is perhaps unsurprising as, given the overall approach of the guidance to unlock stalled developments, the introduction of overage arrangements could undermine the basis of a competitive return as envisaged by the Framework by introducing uncertainty at a late stage in the process.' National guidance requires Local Authorities to be flexible in applying policies where the viability of a scheme is in question and realistic decisions should be made which support growth. With reference to this case, Crookham House, weight was given by the Inspector to the absence of any details from either party as to the method of calculating the overage however fundamentally he concluded that there are no policies in the development plan, national policy or guidance which supports the introduction of an overage clause in this instance and the appeal was dismissed on this basis.
- 5.7 With respect to the Lakeside decision (Appendix 3) the Inspector explored the mechanics of the overage clause i.e. the method of calculating the overage. This scheme was for up to 325 houses and the applicant had outlined a phased approach to the development of the site. The principles of securing such a clause on a scheme of this scale accord with the advice in the PPG and this was not the subject of debate. The scale and built time for such a scheme is not directly comparable to the case at Bath Road which is now being considered. The Inspector does however, highlight the cautious approach that should be taken when applying an overage clause (paragraph 42), their time consuming and resource intensive nature for both parties (paragraph 41) and how future changes should be factored into the original viability appraisal.
- 5.8 In addition to the above, Regulation 122 of the Community Infrastructure Levy Regulations 2010, state that a planning obligation can only be imposed 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.
- 5.9 While the recent appeal (July 2017) at Tower House, The Street, Mortimer (Appendix 4) does not relate specifically to the inclusion of an overage clause it highlights that notwithstanding local need the provision of affordable housing or a contribution towards it must not undermine the viability of a scheme. As part of this appeal the Council sought to defend a condition which sought to secure an affordable housing contribution in accordance with Policy CS6

however in light of the applicants viability case the Inspector concluded that the requirement was not necessary or reasonable. With respect to the development at Bath Road the applicant presented their viability case at outline stage and following extensive negotiations it was agreed that the scheme would be unviable were a contribution to be made. The purpose of this application is not to revisit this aspect of the case.

- 5.10 In conclusion and following a review of a number of appeal decisions, both within the district and nationally (see appendix 5), the Inspector appears to take a consistent view on the application of overage clauses. There is no support for their use within the West Berkshire Development Plan and the only supporting guidance at a national level is within the PPG, which is limited to phased developments. The Inspectorate is clear that such mechanisms should be used cautiously so as not to place an un-necessary or unreasonable burden on developers or add uncertainty to the development process at a late stage.
- 5.11 For the reasons set out above, it is considered that the use of an overage clause in this instance is not necessary, nor is it fairly related to the development in scale and kind. In the absence of any supporting policy for the use of such a review mechanism associated with a scheme of this scale or nature there is an absence of any justification to retain such a clause.

The extent to which the provision of affordable housing is under target:

- 5.12 In accordance with the requirements of Policy CS6 of the Core Strategy an affordable housing contribution is sought at 30%. In relation to this scheme this equates to 9.9 units. A Viability Assessment accompanied application 15/02077/OUTMAJ which sought to demonstrate that the scheme would not be viable in the event that a contribution was made. This issue was thoroughly examined at outline stage and the opinion of a viability assessor was sought. The application was subsequently approved without any affordable housing contribution. As such the shortfall is significant but justified within the scope of the Policy.
- 5.13 The Inspector when determining appeal reference 2227656, (65-69 Parkhurst Road, London N7 0L), a scheme for 112 residential units in 6 blocks, (Appendix 1) gave weight to the extent of the shortfall of the contribution. This is discussed within paragraph 78 of the attached decision. The shortfall in the contribution in this case is greater than the appeal scheme, however the Inspector's decision to retain the overage clause was also justified on the size and configuration of the scheme, two factors which have been considered in relation to this application in paragraph 5.5 above. While it is acknowledged that there is a greater shortfall in this instance the use of the clause is not warranted based on the other material considerations this Inspector discussed i.e. size and delivery timeframe.
- 5.14 It is not for this application to re-examine the first viability statement however as a means to determine whether site circumstances have changed to the detriment of the viability of the scheme and the need for such an overage

clause the costs/inputs are a material consideration. The applicant's supporting statement which accompanies the application states that the viability of the scheme was, as determined at outline stage, in a significant deficit which equated to 6% of the Gross Development Value. The applicant has advised that the costs of materials for a timber frame construction, such as celotex insulation has gone up by about 40% and cost of timber has also risen. The cost of labour is also greater than that factored into the viability assessment. As a consequence it is envisaged that the build-rate used for the original appraisal has increased by at least 8.33%. This is still comfortably within the BICS range of prices. Other costs that have impacted on the scheme relate to higher interest rates, finance fees, site holding costs, vacant possession costs and legal fees.

- 5.15 In conclusion there is an absence of any policy support at a local or national level for the inclusion of an overage clause in this instance. Recent appeal decisions demonstrate that factors such as the size and form of the scheme which impact on the timeframes for delivery and the extent of the shortfall of the contribution are all material considerations. These matters have been discussed in detail above and when looking at these factors cumulatively it is not considered that a clause is justified in this instance and it is therefore recommended that the application be approved and the obligation discharged.

6 Conclusion

- 6.1 For the reasons set out above it is recommended that the application be approved.

7 Recommendation

To **DELEGATE** to the Head of Development and Planning to **GRANT PERMISSION** for the obligation as set out in Schedule 3 of the legal agreement dated the 26th September 2016 to be discharged.

8 Appendices

- Appendix 1: 65-69 Parkhurst Road, Former Territorial Army Site, London N7 0LP (page numbers 27-46)
- Appendix 2: Crookham House, Crookham Common, Thatcham, Berkshire, RG19 8DQ (page numbers 47-50)
- Appendix 3: Land known as 'Lakeside', off The Green, Theale, Berkshire (page numbers 51-76)
- Appendix 4: Tower House, The Street, Mortimer Common, Reading, RG7 3RD (page numbers 77-86)
- Appendix 5: Appeal decisions considered as part of the assessment of 17/02295/MDOPO (page numbers 87-88)