

**Application No:** 11/2999C

**Location:** LAND SOUTH OF, PORTLAND DRIVE, SCHOLAR GREEN, STOKE ON TRENT

**Proposal:** Variation of conditions 2, 3, 5, 10, 10 and 11 of Planning Permission 08/0712/FUL and variation of S106 Agreement follow completion and occupation of 34 dwellings (including 17 affordable)

**Applicant:** Ben Bailey Homes(Part of Gladedale Group)

**Expiry Date:** 04-Oct-2011

<b>Planning Reference No:</b>	11/2999C
<b>Application Address:</b>	Land South of Portland Drive, Scholar Green, Stoke-On-Trent
<b>Proposal:</b>	Variation of conditions 2, 3, 5, 10, 10 and 11 of Planning Permission 08/0712/FUL and variation of S106 Agreement follow completion and occupation of 34 dwellings (including 17 affordable)
<b>Applicant:</b>	Ben Bailey Homes(Part of Gladedale Group)
<b>Application Type:</b>	Full Planning Permission
<b>Ward:</b>	Congleton Rural
<b>Registration Date:</b>	9-August-2011
<b>Earliest Determination Date:</b>	12-October-2011
<b>Expiry Date:</b>	4-October-2011
<b>Date report Prepared</b>	11-January-2011
<b>Constraints:</b>	None

**SUMMARY RECOMMENDATION:**

APPROVE

**MAIN ISSUES:**

- Principle of Development
- S106 Agreement
- Conditions
- Other Issues Raised by Representation

## **1. REASON FOR REFERRAL**

Cllr Rhoda Bailey has called this application in for determination by the Southern Planning Committee for the following reasons:

“The permission originally granted was ".to provide a much needed healthcare centre as well as affordable and low cost housing. The proposal would accord with the policies of the adopted Congleton Borough Local Plan First Review and with PPS1 and PPS3," to quote from the decision notice dated 30th July, 2009.

The basic premise of the grant of permission was for the provision of the surgery before that of the houses. The present proposal turns that basis on its head; it is not in the interests of the community for the application to be dealt with under delegated powers and the arguments should be placed before the planning committee.”

## **2. PREVIOUS MEETINGS**

At the 16<sup>th</sup> November 2011 Southern Planning Committee, Members resolved to defer the planning application pending the receipt of further information from the applicants over the requirement and status for the delivery of the Health Centre.

Having received additional information, the application was then heard at the Southern Planning Committee of 7<sup>th</sup> December. However, Members still wanted further clarification on the delivery of the proposed health care centre and the method by which this could be secured. Accordingly, the application was deferred for a second time.

To address the concerns expressed by Members, the applicant has now proposed to vary the terms of the s106 agreement and has submitted additional letters of support from key stakeholders. The effect of the existing agreement is that whilst the houses can be built, they cannot be occupied until:

- a. The healthcare centre has been completed
- b. A contract has been let for the fitting out of the health care centre

It is proposed that the agreement be varied to enable the developer to:

- a. Sell up to 34 houses prior to the completion of the healthcare centre of which 17 would be affordable

This update report therefore deals with the additional information / proposals and supplements the original reports.

## **3. DESCRIPTION AND SITE CONTEXT**

The application site comprises a vacant farmhouse and its associated farm buildings that include a barn and single storey outbuildings and open fields. The outbuildings have a very low level of

use and the fields are used for grazing and the buildings generally present a poor appearance of neglect and decay. The site covers an area of approximately 1.85 hectares and is bounded to the north by Portland Drive and a row of terraced properties in the North West corner, to the east by open fields beyond which lies the Macclesfield Canal which, in this location lies within a deep cutting. To the south and west the site is bounded by residential development. The site generally slopes up towards the Canal which lies in a deep cutting in this location. Current access to the site is from Congleton Road North. Boundary treatment is generally made up of hedging.

#### **4. DETAILS OF PROPOSAL**

Planning permission was granted in October 2008 for the erection of a new health care centre and residential development comprising of 56 residential units with a dedicated access off Portland Drive. This application seeks to vary condition numbers 2, 3, 5, 10 & 11 of this approval under Section 73 of the Town and Country Planning Act 1990 and also seeks to vary the terms of the section 106 legal agreement.

The applicant wishes to vary these conditions and the legal agreement so that work can proceed on commencing development on the residential element of the approved scheme before commencing the approved health care centre.

#### **5. RELEVANT HISTORY**

08/0712/FUL – Demolition of dwelling & erection of new health care centre & residential development comprising 39no. open market units & 17no. affordable housing units with associated means of access, landscaping & alterations to Portland Drive, including parking bay & dedicated residents' car park (resubmission of 06/1146/FUL) - Amended Plans – Approved 07.10.2011

06/1146/FUL - Demolition of dwelling and erection of new Health Care Centre and enabling residential development comprising 39 No. open market units and 17 No. affordable units with associated means of access, landscaping and alterations to Portland Drive, including parking bay and dedicated residents' car park. Amended Plans - re-plan of south end of site; additional financial and legal info; tree survey; habitat survey. – Withdrawn - 17.04.2011

#### **6. POLICIES**

##### **Local Plan Policy**

PS5	Villages in the Open Countryside and Inset in the Green Belt
GR1	New Development
GR2	Design
GR3	Residential Developments of More than 10 Dwellings
GR4	Landscaping
GR6&7	Amenity & Health
GR9	Accessibility, servicing and parking provision
GR10	Managing Travel Needs
GR18	Traffic Generation

GR19	Infrastructure
GR20	Public Utilities
GR21	Flood Prevention
GR22	Open Space Provision
H1 & H2	Provision of New Housing Development
H4	Residential Development in Towns
H13	H13 Affordable and Low Cost Housing
NR1	Trees & Woodland
NR2	Wildlife & Nature Conservation
SPG1	Provision of Public Open Space in New Residential Developments
SPG2	Provision of Private Open Space in New Residential Developments
SPD4	Sustainable Development
SPD6	Affordable Housing and Mixed Communities

### **Other Material Considerations**

Interim Policy on the Release of Housing Land  
 Interim Planning Statement on Affordable Housing  
 Planning for Growth' Ministerial Statement

Circulars of most relevance include: ODPM 05/2005 Planning Obligations; and 11/95 'The use of Conditions in Planning Permissions'.

## **7. CONSIDERATIONS (External to Planning)**

### **Environmental Health:**

No objection

## **8. VIEWS OF ODD RODE PARISH COUNCIL**

No objections provided that the new wording of the conditions does not prejudice the proper commencement and completion of the Heath Centre.

A further letter has been received stating that Odd Rode Parish Council wish to have sight of the new legal agreement before it is signed so that they can comment on it.

## **9. OTHER REPRESENTATIONS**

Letters from 27 properties have been received objecting to this application on the following grounds:

- The new Doctor's surgery should be built and occupied before the new homes are built
- This flies in the face of the council's initial decision
- This is not a minor change
- If the Health Centre isn't delivered, will more houses be built on the site
- Scholar Green needs a new health centre not houses.
- There is no demand for houses in Scholar Green

- If extra houses included in this development on the village edge against the Macclesfield Canal will ruin the area's rural character.
- Portland Drive is unsuitable to accommodate any increase in traffic resulting from this scheme.
- The area is a commuter area.
- Local Amenities and public transport are lacking and any further house will make this worse
- Lack of publicity
- If funding is an issue, why is this not being sought elsewhere

## 10. APPLICANT'S SUPPORTING INFORMATION

Prior to the last meeting, the applicant's agent submitted additional information to support the commitment to deliver the approved health centre. This information comprises of a letter from the agent, a response from the PCT's Primary Care Project Manager and Chief Executive, a letter from Scholar Green Surgery and a letter from the developer charged with delivering the Health Centre (Oakapple Primary Care). The PCT have confirmed that the financing relating to the health centre is in place including detailed plans and specifications for the building itself.

In response to the last deferral, the agent has submitted further letters from; the Doctors at Scholar Green Surgery; the Solicitors for Oakapple Primary Care; the applicant's Solicitors; and Plus Dane Housing Group. These letters evidence a commitment to deliver the proposed healthcare centre. The solicitor letters confirm that contracts and leasing arrangements have been exchanged between Oakapple (the developer for the healthcare centre) and the Doctors at Scholar Green Surgery. In their letter, Scholar Green Surgery confirms this and expresses concern about any further delays. Plus Dane Housing state that this proposal (as revised) will deliver much needed affordable housing within Scholar Green of which there is a high demand.

Additionally, the applicant's solicitors have stated the following:

*"There are two elements to the application before you.*

### *FIRST ELEMENT*

*The application to vary some of the conditions is made because at present no part of the residential component can commence without commencement of the healthcare centre. In other words there is no provision to phase the two elements. There are a number of conditions precedent that tie both together before ANY development can commence.*

### *THE SECOND ELEMENT*

*The Section 106 agreement, rather than the planning decision notice, currently controls the timing of delivery of the healthcare centre. At present Gladedale can build all the houses but cannot put them on the market before the healthcare centre is delivered. Some Committee Members seemed to be of the opinion that the Section 106 agreement controlled the commencement of construction of the houses. This is not the case.*

*From a commercial point of view Gladedale need to be able to offer for sale and sell houses on the site in the summer of 2012. The healthcare centre is unlikely to be completed before the end of 2012.*

*The Section 106 agreement, rather than the planning decision notice, currently controls the timing of delivery of the healthcare centre. At present Gladedale can build all the houses but cannot put them on the market before the healthcare centre is delivered. The Section 106 agreement does not control the commencement of construction of the houses.*

*From a commercial point of view Gladedale (the house builder) need to be able to offer for sale and sell houses on the site in the summer of 2012. The healthcare centre is unlikely to be completed before the end of 2012.*

### **THE NEW OFFER**

*The application was made initially to have the requirement to first deliver the healthcare centre completely removed. As a result of the clear concerns of the Committee Members regarding this, which has resulted in two deferrals of the application at committee and because matters are now positively progressing with the contracts to deliver the healthcare centre, Gladedale are in a position to offer a new variation which they hope will be satisfactory to the committee members.*

*The effect of the existing planning and Section 106 obligations mean that whilst the housing development can go ahead and be built out, houses cannot be occupied until:-*

- a. The healthcare centre has been completely built and finished; and*
- b. A Contract has been let for the fitting out of the healthcare centre.*

*The restriction on occupation of the housing component currently includes the affordable housing element which means that none of those houses can be occupied until the healthcare centre has been delivered.*

*Therefore the aim of the varied application relating to the Section 106 is to enable Gladedale to be able to:*

- 1. sell up to 34 houses prior to the completion of the healthcare centre; and*
- 2. deliver the 17 much needed affordable housing units. These will comprise 17 of the 34 houses mentioned above.*

*Gladedale are committed to facilitate and secure the delivery of the healthcare centre. In order for the healthcare centre to be developed it will be necessary for Gladedale to commit significant sums in capital infrastructure such as mains electricity supply and foul and surface water drainage. This expenditure can only be undertaken if simultaneously the residential element can be commenced and for the resultant dwellings (the 34) to be sold and occupied immediately by residential purchasers provided that 17 of these will comprise the affordable units and so are intended to be sold to a registered social landlord (Plus Dane).*

*The present state of the planning regime for this site clearly precludes that. Gladedale have to satisfy their funders that it is a proper commercial risk to invest the required monies in the*

*acquisition of the overall site and to fund the necessary infrastructure. However the present planning constraints, where houses cannot be sold and occupied until the healthcare centre is constructed and fitted out, represents a wholly unacceptable commercial proposition.*

*Therefore unless the planning restrictions can be modified in the manner of the present application for a variation of the planning permission and a variation of the Section 106 Agreement, it is highly unlikely that there will be any implementation of the planning permission and of course that does mean that the provision of the healthcare centre will be delayed and so too the affordable housing.”*

## **11. OFFICER APPRAISAL**

### **Principle of Development**

The previous approval established the acceptability in principle of the proposed new health care centre as well as the construction of 56 residential units on the site. As a result, this application does not present an opportunity to re-examine those matters.

The main issues in the consideration of this application are the acceptability of building 34 of the approved dwellings before completion of the approved health care centre and the variation of the relevant conditions to enable information for the health care centre to be submitted at a later date without preventing development from commencing on the dwellings.

### **S106 Agreement**

When the original application for this development was considered, local residents were concerned about the release of this green field site for housing and also the delivery of the proposed health care centre. To give local residents some comfort, the applicant decided to include within the s106 a requirement for the new health care centre to be complete and ready for use prior to the first occupation of the housing scheme.

Whilst it would be beneficial to deliver the health care centre as soon as possible, there is no policy requirement to do so and as such it is considered that it would be unreasonable to require the developer/applicant to commit to such. The housing element of the scheme was not enabling development and therefore if an application were to be considered for the housing scheme only without the healthcare centre, the principle of such would be acceptable on its own merits.

Without the sale of some of the housing units, the applicant has stated that the proposals are not commercially viable. ‘In order for the healthcare centre to be developed it will be necessary to commit significant sums in capital infrastructure such as mains electricity supply and foul and surface water drainage. This expenditure can only be undertaken if simultaneously the residential element can be commenced and some of the dwellings (the 34) can be sold and occupied’.

This revised proposal will enable the delivery of some much needed housing including a decent number (17 units) of affordable housing within the first phase of development. The sale of these units will not preclude the development of the proposed healthcare centre and the agent argues that this will assist in its delivery.

Given that there is no policy justification for delivering the health care centre before the residential element, it is recommended that the terms of the s106 be varied to allow the sale of 34 units (including 17 affordable) before the health care centre is completed. This should be secured by way of a formal deed of variation. Taking this into account, condition numbers 2, 3, 5, 10 and 11 would need to be varied to reflect this.

## **Conditions**

Condition number 2 requires details of the materials to be submitted and approved prior to the commencement of development. The applicant wishes to vary this condition to allow details of the health care centre and the housing to be submitted separately to reflect the phasing of development. The same request is made for condition number 3, which relates to landscaping. The variation of these conditions would still meet with the tests of the conditions circular 11/95.

Condition number 5 deals with drainage. The health care centre and the housing development will be drained on separate systems and therefore the application also seeks to vary this condition in order to differentiate between the two systems. Such variation is considered to be acceptable and in accordance with the conditions circular.

Condition number 10 and 11 require the submission of a Crime Prevention Plan and a scheme for the acoustic enclosure of fans and compressors prior to the commencement of development. These conditions are aimed specifically at the health care centre and are not required for the housing element. As such, it is proposed that this condition be reworded to make specific reference to the commencement of development on the health care centre so that it does not preclude the development from commencing on the housing scheme. Such variation would accord with the tests of the conditions circular.

## **Other Issues Raised by Representation**

With respect to other issues raised by representation, these deal with the principle of the development, which has already been accepted by the original approval. With respect to funding, this is not a material planning consideration.

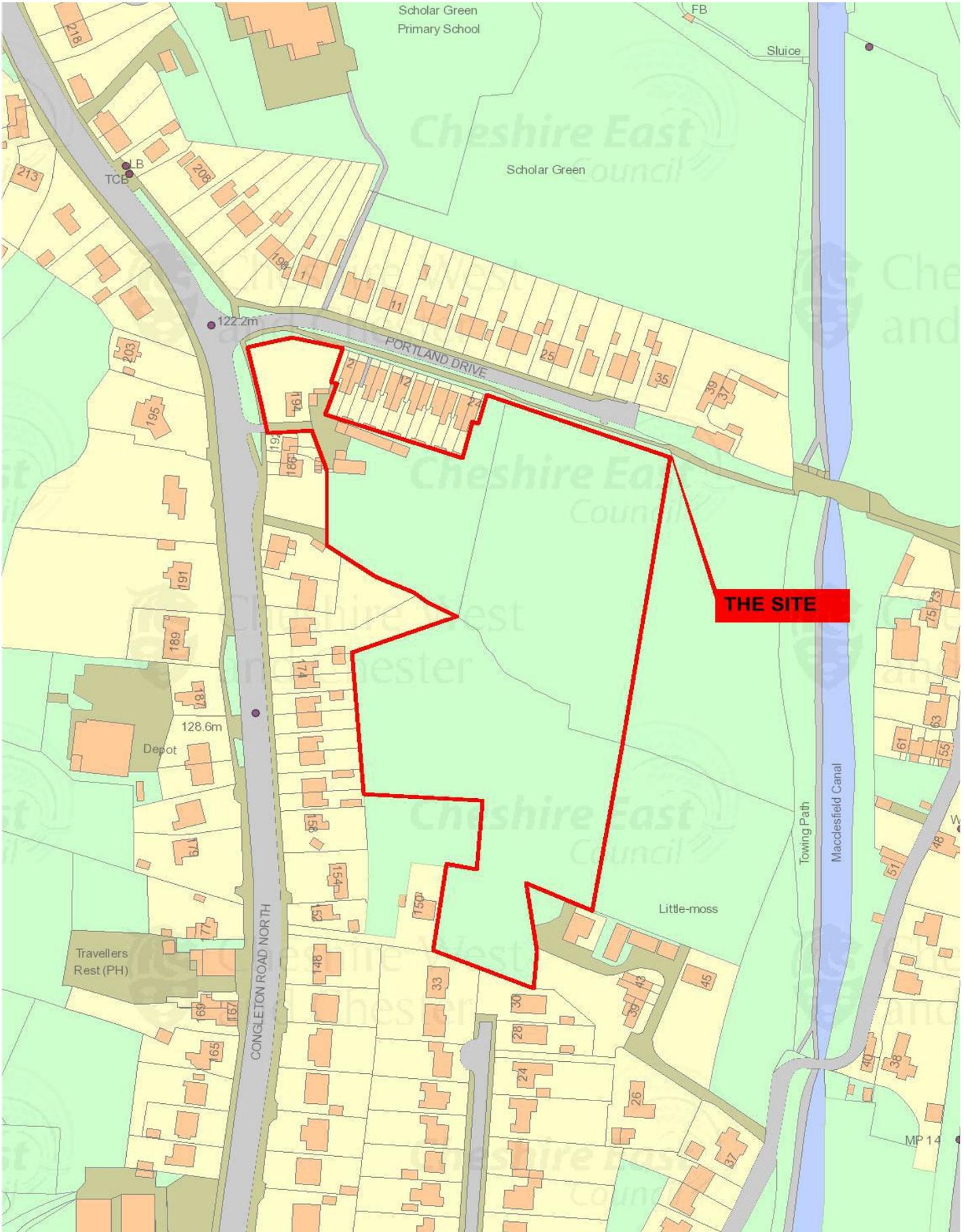
## **12. CONCLUSIONS AND REASONS FOR THE DECISION**

The principle of the development has already been accepted. The terms of the existing S106 legal agreement will need to be varied, as currently there is a clause which prevents the new dwellings from being occupied until the new health care centre has been delivered. This and the wording of condition numbers 2, 3, 5, 10 and 11 is precluding the delivery of much needed housing in the borough. The variation of such conditions would continue to meet the tests outlined within Circular 11/95 and as such the proposal is deemed to be acceptable and is recommended for approval.

## **RECOMMENDATION:**

**APPROVE the formal deed of variation on the S106 Legal Agreement to allow sale and occupation of 34 units (inc 17 affordable) and permit the variation of condition numbers 2, 3, 5, 10 and 11 to allow the development to commence on the housing scheme prior to the delivery of the health care centre subject to the following conditions:**

- 1. Development to commence within 3 years**
- 2. Details of materials to be submitted and approved in 2 phases**
- 3. Details of landscaping to be submitted in 2 phases**
- 4. Submission of Tree protection measures for retained trees**
- 5. Details of foul and surface water drainage to be submitted in 2 phases**
- 6. Hours of construction limited**
- 7. Further gas monitoring shall be carried out**
- 8. Protected species – details of bat boxes to be submitted**
- 9. No work to be carried out with the bird breeding season**
- 10. Details of CCTV to be submitted prior to commencement on the new health care centre**
- 11. Scheme for acoustic enclosure of fans/compressors etc. to be submitted prior to commencement on the new health care centre**
- 12. No burning of materials associated with demolition**
- 13. Management regime for hedgerows to be submitted and approved prior to commencement**
- 14. Hours of operation limited**
- 15. Submission of details of levels for rear gardens**
- 16. Submission of details of levels for rear gardens**



Scholar Green  
Primary School

FB

Sluice

Cheshire East  
Council

Scholar Green

TCE

122.2m

PORTLAND DRIVE

**THE SITE**

128.6m

Depot

Travellers  
Rest (PH)

CONGLETON ROAD NORTH

Little-moss

Towing Path

Macclesfield Canal

MP 14