

**Variation of Section 106 Agreement - Land adjacent 142 Harwich Road, Mistley, CO11 2DN**

**TOWN AND COUNTRY PLANNING ACT 1990**

<b>APPLICATION NUMBER:</b>	<b>11/00037/FUL</b>
<b>PROPOSAL:</b>	<b>Construction of 15 affordable rural dwellings with associated parking, carports, cycle stores, and new vehicular access.</b>
<b>LOCATION:</b>	<b>Land adjacent 142 Harwich Road, Mistley, CO11 2DN</b>

**Proposal**

2-9 (inclusive) Heathview Close, Mistley, Manningtree CO11 2BL were built out following the approval of planning permission 11/00037/FUL as a rural exception scheme delivered by English Rural Housing Association. A section 106 agreement of 19/11/2011 ensures the properties are used as affordable housing and made provision for open space.

Devonshire solicitors have been instructed by English Rural Housing Association Limited to make an application for a deed of variation of the Section 106 Agreement. The deed of variation is required to enable English Rural Housing Association to charge the properties covered under the Section 106 Agreement on a Market Value basis rather than Existing Use Value for Social Housing (EUV-SH) basis, by either replacing the existing mortgagee exclusion clause with a new one which is adequate and acceptable to a lender or amending the existing mortgagee exclusion clause to make it adequate and acceptable to the Lender.

**Background**

Although the application was approved by the Planning Committee the Head of Planning has delegated power to agree the deed of variation after consulting with the services affected where necessary.

In response to the request the TDC Housing say:-... "whilst varying the deed contains a risk, that risk is pretty minimal given that ERHA are a very established provider subject to the necessary regulation and governance and that the risk has never materialised before in the UK. Furthermore, as the Council is no longer subject to a borrowing cap in the HRA, in the event that ERHA ceased trading, I see no reason why the Council would not step in to purchase the homes from the mortgagee in possession to retain the homes in the social sector.

It is increasingly common for S106's to contain clauses similar to the proposal below as Council's appreciate that the RP's ability to borrow and deliver affordable homes is enhanced if the properties are valued at a market as opposed to a social value."

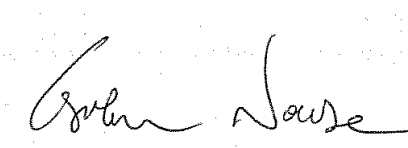
Legal Services have been consulted and agree that the use of such clauses is common and the draft deed of variation supplied by Devonshires is "fit for purpose". It is recommended that the Head of Planning approve the request and agree the request under delegated powers.

**Recommendation**

It is considered that this is a reasonable request reflecting common issues raised by registered providers in securing lenders for developments. This change will enable the development to proceed providing much needed affordable housing for the District.

It is therefore reasonable for the Council to enter in to the Deed of Variation in the circumstances.

Signed

A handwritten signature in black ink, appearing to read "Colin House". The signature is written in a cursive style with a large initial 'C'.

Assistant Director (Planning)

Date 6<sup>th</sup> April, 2020.