

Variation of Section 106 Agreement - Land East of New Road Mistley - DOV to Unilateral Undertaking reference: 19/01956/OUT

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION NUMBER:	19/01956/OUT
PROPOSAL:	Variation of condition 4 (Approved Plans) to amend to approved layout of application 17/00004/OUT (Approved on appeal APP/P1560/W/17/3176089). 67 dwellings
LOCATION:	Land to The East of New Road, Mistley

Proposal

Outline planning permission for 67 dwellings with affordable housing provision was approved on the 16th April 2020. A Unilateral Undertaking dated 20th March 2020 ensures the relevant properties are secured as affordable housing and also made provision for a RAMS and education contribution.

Paragraphs 7.6 to 7.9 of Schedule 2 of the Unilateral Undertaking contain the mortgagee exclusion provisions. The drafting of the mortgagee exclusion provisions in the Unilateral Undertaking would not, in the current market, enable the Affordable Dwellings to be charged at a market value subject to tenancy valuation (MVST) and they will likely only achieve Existing Use Value for Social Housing (EUV-SH) valuation for the following reasons:

- The definition of Chargee only includes receivers appointed under the LPA 1925 and not other types of receivers that can be appointed;
- The timescale and procedure for serving notice under chargees duty is unclear;
- Successors to the chargee and those deriving title are not covered and the clause does not contain a provision that the affordable housing obligations determine absolutely following a sale by the charge

As such Trowers & Hamblins Solicitors are requesting that a Deed of Variation be secured to amend the Mortgagee Exclusion Clause within the Unilateral Undertaking in order to obtain MSVTT valuation on charging.

Background

Whilst the outline application was approved via planning committee the Assistant Director of Planning has delegated powers to agree the deed of variation after consulting with the services affected where necessary.

In response to the request TDC Housing confirm they have no objections to this alteration.

It is increasingly common for S106's to contain clauses similar to the proposal 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.

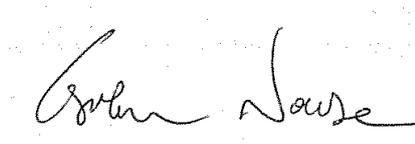
It is recommended that the Associate Director of Planning approve the request and agree the request under delegated powers.

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' and 'H'.

Assistant Director (Planning)

Date 14th September 2021