

Variation of Section 106 Agreement

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION NUMBER:	17/01658/FUL
PROPOSAL:	32 No. houses and 18 No. flats (C3 use class) with associated works.
LOCATION:	Land North of Williamsburg Avenue, Harwich

Background

Full planning permission for the erection of 32 no. dwellings and 18 no. flats on Land North of Williamsburg Avenue, Harwich was approved on 13th December 2018 subject to a Unilateral Undertaking. The development is nearing completion, which will provide 50 affordable flats and houses all for social rent (being part funded by Homes England with a requirement for all homes to be complete by 28th January 2022 after which it is highly unlikely that grant funding can be retained).

The associated Section 106 Agreement dated 13th December 2018 secured, in summary, the following obligations:

- **Part A: Affordable Housing Review**
 - In order to monitor the “Interim” and “Final” sales figures against the “Benchmark Figure” to secure a “Final Affordable Housing Contribution” if required.

- **Part B: Open Space**

Prior to the occupation of more than 26 dwellings:

 - The submission and approval of the “Open Space Works Specification” prior to occupation;
 - Provision of the approved “Open Space Works Specification”, the transfer and future maintenance of the “Open Space” to the Council (for £1); and,
 - An “Open Space Contribution” of £50,000 paid to the Council to be used solely toward the maintenance of the transferred “Open Space”.

Part A: Affordable Housing Review

In October 2021, the LPA authorised the variation of the s106 to remove Part A which requires an affordable housing contribution. As the site provided 100% affordable housing the contribution is no longer required.

Part B: Open Space

This deed of variation request relates to Part B of the agreement only, specifically Paragraph 3. An extract from the relevant Schedule is shown overleaf:

3. Not to Occupy (or allow, cause or permit the Occupation of) more than twenty-six (26) Residential Dwellings unless and until the Owner has:
 - (a) Provided the Open Space by the carrying out of the Open Space Works in accordance with the Open Space Works Specification to the reasonable satisfaction of the Council;
 - (b) Transferred the Open Space to the Council for the nominal consideration of one pound (£1.00) whereupon the said Open Space shall thereafter be maintained by the Council; and
 - (c) Paid the Open Space Contribution to the Council

Proposed Variation

Birketts LLP act on behalf of Chelmer Housing Partnership Limited, the registered proprietors of the above mentioned site, seeking a variation to:

- The trigger point from occupation of the 26th dwelling to the occupation of the 50th dwelling; and,
- An additional trigger point relating to the maintenance of the open space prior to and following 'the first grass cut'.

An extract from the accompanying supporting information setting out the amended wording sought is shown below:

Amend part B paragraph 3 of the Schedule to read:

"Following the Occupation of the 50th Dwelling as part of the Development to use reasonable endeavours to:

- a. Provide the Open Space by the carrying out of the Open Space Works in accordance with the Open Space Works Specification to the reasonable satisfaction of the Council;
- b. Transfer the Open Space to the Council for the nominal consideration of One Pound (£1) with an obligation for the Council to maintain the Open Space following the first grass cut, and with rights reserved in favour of the Owner and its agents or contractors to maintain the Open Space in accordance with the approved Open Space Specification until the first grass cut;
- c. Pay the Open Space Contribution to the Council.

Justification for Variation

- All homes need to reach Practical Completion by the end of January to ensure Homes England funding can be retained.
- Delays with construction due caused by the impact of the ongoing pandemic with various labour and material shortages.
- The Open Space needs levelling, contouring and grass seeded during a suitable planting season (Springtime).

Recommendation

The Assistant Director of Planning has delegated powers to agree the deed of variation after consulting with the services affected where necessary.

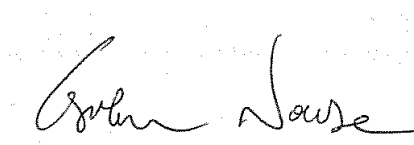
In response to the request, TDC Public Realm confirm they have no objections to this variation.

The LPA must recognise and make allowances for the ongoing impacts of Covid-19. In circumstances such as this, the delivery of affordable homes must take precedent over the transfer of the open space and financial contribution payment. Nonetheless, the condition of the open space it is not of an acceptable standard to proceed with the transfer to the Council at this present time. The open space transfer and contribution will still be secured but at a later stage in the development than originally planned.

Officers consider this to be a reasonable request reflecting common issues with the ongoing pandemic. This change will enable the development to proceed providing much needed affordable housing for the District and the transfer of the open space once of an acceptable standard.

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 "John Nourse". The signature is written in a cursive style and is positioned above the printed name.

Assistant Director (Planning)

Date 18th January 2022