

Section 106 Authority to Seal – Deed of Variation

TOWN AND COUNTRY PLANNING ACT 1990

DOV REF NUMBER:	23/01700/DOVU5
RELATED APPLICATION:	19/01858/OUT
PROPOSAL:	Deed of Variation of the terms of the legal agreement dated 23rd March 2020 linked to outline planning permission 19/01858/OUT under Town and Country Planning Act 1990 Section 106A, to move the trigger for payment of the Open Space contribution to the occupation of the 4th dwelling.
LOCATION:	Sherbro House Boarding Kennels Colchester Main Road Alresford Colchester Essex CO7 8AP

This report covers the following matters:

1. Approved / Proposed Development
2. Summary of Planning Obligations
3. Proposed Deed of Variation
4. Officer Recommendation
5. Authority to Seal

1. Approved / Proposed Development

The site is subject of an approved development for the erection of 5 no dwellings.

The development was originally approved under planning application 19/01858/OUT (reserved matters approved under application reference 21/01881/DETAIL) subject to a Unilateral Undertaking (UU) securing the required financial contributions toward open space provision improvements in accordance with adopted Local Plan Policy DI1, and mitigation against any recreational impact from residential developments in accordance with Regulation 63 of the Conservation of Habitat and Species Regulations 2017.

2. Summary of Planning Obligations

Application 19/01858/OUT is supplemented by a Unilateral Undertaking securing the following planning obligations:

- Schedule 3 - RAMS contribution per dwelling to be paid prior to commencement.
- Schedule 5 - Public Open Space contribution in accordance with the table of contributions to be paid prior to commencement.

3. Proposed Deed of Variation

- 3.1 The RAMS contribution has been paid in full. This application seeks a Deed of Variation to the original UU to alter the trigger for payment of the Open Space contribution to the occupation of the 4th dwelling (Fifth Schedule, Paragraphs 1. and 2). There is no related planning application

as the variation relates to the UU only. The layout, design etc of the development remain as approved.

3.2 Extract from original agreement shown below:

FIFTH SCHEDULE Public Open Space Contribution.

1. Before commencement of the Development to pay to the Council a Public Open Space Contribution calculated using the net increase in the number of dwellings on the Land and applying Table 4 of the Council's Supplementary Planning Document "Provision of Recreational Open Space for New Development" published in May 2008 then Index Linking using the Index from May 2008 (being 215.1) as the base index and the latest published Index to calculate the percentage change.

2. Not to commence the Development unless and until the said Public Open Space Contribution has been paid to the Council.

3. Notifications and payments shall be marked for the attention of the Ss.106 Officer, Tendring District Council, Council Offices, Weeley, Clacton-on-Sea, Essex, CO16 9AJ or via email at obligations@tendringdc.gov.uk

Table 4

Number of bedrooms per Dwelling	Contribution per Dwelling
Studio Flat	£544.00
1 bedroom	£845.00
2 bedrooms	£1690.00
3 bedrooms	£2253.00
4 bedrooms	£2816.00
5+ bedrooms	£3380.00

SIXTH SCHEDULE Location of the Public Open Space to benefit from the Contribution.

The Council will spend the Public Open Space Contribution on improving the Public Open Space known as St Andrews Close, Alresford and any money not so spent shall if requested be returned in accordance with paragraph 6.7.2 of the Council's Supplementary Planning Document "Provision of Recreational Open Space for New Development" published in May 2008.

3.3 Information / Justification provided by agent:

- Development substantially complete.
- Current market conditions have had a negative impact on cash flow (cash flow problems caused by the increased cost of materials and labour, and current state of the housing market meaning we have not sold enough to recover cash flow).
- We are seeking a variation to defer payment of the contribution to the 5th house sale, payment of the open space contribution can be made from the proceeds of sale.

3.4 Variations to the Original Undertaking

The parties agree that the Original Undertaking is varied as follows:

- The words "Before commencement of the Development" shall be deleted from Paragraph 1 of the Fifth Schedule to the Original Undertaking and replaced with the following: "On the legal completion of the sale of the fourth dwelling forming part of the Development".
- The words in Paragraph 2 of the Fifth Schedule to the Original Undertaking shall be deleted in their entirety and replaced with the following words:

- "Not to occupy cause or permit to be occupied more than four dwellings forming part of the Development unless and until the said Public Open Space Contribution has been paid to the Council."
- The address for the Council in Paragraph 3 of the Fifth Schedule shall be deleted and replaced with "Tendring District Council, Town Hall, Station Road, Clacton on Sea, Essex, CO15 1SE".
- A new Paragraph 4 shall be included in the Fifth Schedule as follows:

"Written notice of the legal completion of the sale of the fourth dwelling forming part of the Development shall be given to the Council in accordance with paragraph 3 of this Fifth Schedule."
- In all other respects, the Original Undertaking (as varied by this Deed) shall remain in full force and effect.

4. Officer Recommendation

Officers recommend approval of the proposed variation having special regard to the justification provided by the developer in relation to increasing costs and market changes impacting this site and development.

The development is substantially complete and is therefore in breach of the Fifth Schedule, Paragraphs 1 and 2 of the UU.

By allowing the variation sought, sales can take place without obstruction from buyer's solicitors due to the current breach, thus allowing proceeds of sale to satisfy the outstanding open space contribution.

It is recommended that the Head of Planning and Building Control agree the request for the completion of the revised Unilateral Undertaking under delegated powers.

5. Authority to Seal

DATED: 5 March 2024

SIGNED:



John Pateman-Gee
Head of Planning and Building Control