

Section 106 Authority to Seal – Deed of Variation

TOWN AND COUNTRY PLANNING ACT 1990

DOV REF NUMBER:	22/01201/DOVO5
RELATED APPLICATION:	16/00031/OUT
PROPOSAL:	Deed of variation under TCPA 1990 Section 106A of the terms of the Unilateral Undertaking (UU) dated 10th February 2017 linked to outline planning permission 16/00031/OUT - To change the affordable housing requirement from 30% to 20%.
LOCATION:	Turpins Farm Elm Tree Avenue Kirby Le Soken Essex CO13 0DA

1. Approved Development

16/00031/OUT approved 'The erection of up to 210 dwellings with access from Elm Tree Avenue, including green infrastructure, children's play areas, school drop off and parking facility and other related infrastructure.' This outline planning permission was subject to a S106 legal agreement dated 10/02/2017 for education contribution, affordable housing, open space, and health contribution.

16/00031/OUT was varied by 21/01667/VOC: 'Variation of condition 16 of application 16/00031/OUT to change the form of junction specified in the condition from a priority junction with right turn lane to a simple priority junction. And to re-word the Condition to specify footway provision and dropped kerb/tactile crossing points on Walton Road and Elm Tree Avenue in accordance with an amended drawing.'

The associated reserved matters application is 20/00307/DETAIL (subject to UU for RAMS and non material amendment under 22/00701/NMA) and the site is currently under construction.

22/01333/FUL also approved: 'Proposed re-plan of part of site to provide 21 additional smaller units increasing total from 210 approved to 231 (as alternative to part of planning permission 16/00031/OUT, 20/00307/DETAIL and 21/01667/VOC).' That had a Deed of Variation to the original legal agreement dated 12/04/2024.

2. Summary of Planning Obligations

The applicant contested that the 30% on site affordable housing provision secured under Schedule 2 of the S106 was unviable and they wanted to reduce this to 20% affordable housing. Following submission and independent review of the applicant's viability assessment this position is agreed. The applicant has therefore drafted a second supplemental deed (the first DOV being to 22/01333/FUL) to secure this change.

As development has already commenced an affordable housing plan has been provided which shows the 6 additional units secured under 22/01333/FUL plus the agreed 20% for 16/00031/OUT. The mix was agreed by Housing at the time of 20/00307/DETAIL, however that affordable housing plan (rev C) which showed the 20% was not included as an

approved plan. The proposed second supplemental deed confirms 62.5% (30) for affordable rent and 37.5% (18) for shared ownership and includes an 'Affordable Housing Plan' and list showing the plot number, tenure and size of the affordable housing dwellings.

3. Previous Deed of Variation

The Deed of Variation dated 12/04/2024 added contributions for RAMS, Highways and Libraries to the existing legal agreement.

4. Proposed Deed of Variation

The applicant contested that the 30% on site affordable housing provision secured under Schedule 2 of the S106 was unviable and they wanted to reduce this to 20% affordable housing. Following submission and independent review of the applicant's viability assessment this position is agreed.

5. Officer Recommendation

Recommend approval of the proposed variation to ensure the legal agreement reflects the agreed viability position of a reduction from 30% affordable housing to 20% affordable housing. The necessary site notice has been posted (expired 07/11/23) and no comments were received.

It is recommended that the Planning Manager agree the request for the completion of the S106 Agreement under delegated powers.

6. Authority to Seal

DATED: 24/09/2024

SIGNED:



John Pateman-Gee
Head of Planning and Building Control