

Section 106 Authority to Seal – Deed of Variation

TOWN AND COUNTRY PLANNING ACT 1990

DOV REF NUMBER:	25/00060/DOVO5
RELATED APPLICATION:	24/01431/VOC
PROPOSAL:	Deed of variation, under the Section 106 and 106A of the Town and Country Planning Act 1990 (as amended), of the terms of the legal agreement dated 13 December 2018 as varied by the first Deed of Variation dated 10 March 2022 linked to planning permission 17/01658/FUL, to allow for the Open Space Plan to be replaced and to vary the date for completion and transfer of the public open space.
LOCATION:	Land at Williamsburg Avenue Harwich Essex CO12 4EN

This report covers the following matters:

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

1. Approved / Proposed Development

The site subject of approved development for the erection of 50 dwellings (32 houses and 18 flats), under planning reference 17/01658/FUL.

The current s73 application, reference 24/01431/VOC, seeks a variation of Conditions 2 (Approved plans) and 4 (Landscaping - discharged under 21/00228/DISCON) of application 17/01658/FUL to alter the parking layout and landscaping.

- Re-orientation of Plot 1;
- rear gardens added to plots 31-33 and 34-36;
- replacement of one parking space with landscaping to South-west of plot 23;
- one parking space on landscaped area to south of plot 23;
- re-configuration of parking to front of plots 2, 8 and 9;
- removal of one space/re-configuration of 2 spaces closer to parking court;
- knee rail fencing to highway with S bar gate for access to open space;
- larger front gardens to 49/50 and re-configuration of their frontage off street parking;
- re-configuration of the parking court area between plots 46-48 and plot 49 from 18 parking spaces to 22, with this spreading closer to the highway;
- 3 additional visitor parking bays opposite plots 28 and 29 in place of landscaping;
- removal of 6 parking bays to the south of plots 31-33;
- relocation of the two parking spaces serving plot 13 from the side to the front; and
- fenced private amenity space added to rear of plots 31-33 and 34-36 on previous public open space.

The proposed amendments trigger the requirement for a Deed of Variation to the Section 106 legal agreement dated 13 December 2018 secured as part of 17/01658/FUL and the subsequent Deed of Variation dated 10 March 2022.

2. Previous Deed of Variation

The Deed of Variation dated 10 March 2022 agreed the following:

4. VARIATIONS TO THE SECTION 106 AGREEMENT

4.1 The following variations will be made to the Original Agreement:

4.1.1 The following terms and their corresponding definitions listed in clause 2 are deleted in their entirety:

"Average Gross Disposal Price"

"Benchmark Figure"

"Final Affordable Housing Contribution"

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"Final Total Sales Figure"

"Interim Affordable Housing Contribution"

"Interim Total Sales Figure"

"Sales Information"

4.1.2 The definition of "Open Space Works Specification" is deleted and replaced with the following:

"Open Space Works Specification" means a specification for the laying out and profiling of the Open Space to enable the land to be used for recreational land and amenity uses by all members of the public (the details of which have been approved in writing by the Council under planning reference 21/00228/DISCON

4.1.3 Clause 5.3 is amended by the deletion of the words

"to serve notice in writing on the Council not more than ten (10) Working Days after the Disposal of the thirty-ninth (39th) Residential Dwelling and the forty-ninth (49th) Residential Dwelling;"

- 4.1.4 Clause 7.11 of the Original Agreement is deleted and replaced with the words

"Not used"

- 4.1.5 Part A of The Schedule to the Original Agreement is deleted in its entirety and replaced with the words

"Not used"

- 4.1.6 Paragraph 3 of Part B of The Schedule is deleted and replaced with the following wording in its place:

" 3. On or before the 30th November 2022 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*

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and its agents or contractors to maintain the Open Space in accordance with the approved Open Space Works Specification until the first grass cut;

- (c) Simultaneously with completion of the transfer referred to in paragraph (b) above, to pay the Open Space Contribution to the Council "*

- 4.1.7 Paragraph 4 of Part B of The Schedule is amended to read:

" 4. The Council shall accept the transfer of the Open Space from the Owner referred to in paragraph 3(b) herein as soon as reasonably practicable and pursuant to the terms of the transfer shall maintain the Open Space following the first grass cut in perpetuity. "

3. Proposed Deed of Variation

The proposed amendments sought under s73 application 24/01431/VOC trigger the requirement for a further Deed of Variation, to allow for the Open Space Plan to be replaced and to vary the date for completion and transfer of the public open space.

The DOV sets out the new definitions as follows:

As set out in Clause 3 of the Deed, the variation seeks to replace the Open Space Plan and to transfer the Open Space to the Council as follows;

3.1 The following variations will be made to the Original Agreement (as varied by the First Variation):

3.1.1 The Open Space Plan contained in Annexure 3 to the Original Agreement (as varied by the First Variation) shall be deleted and replaced with the Open Space Plan (with drawing number 22053-GAA-ZZ-OO-DR-T-1002 Rev No. CO7) attached to this Second Deed of Variation

3.1.2 Paragraph 3 of Part B of The Schedule to the Original Agreement (as varied by the First Variation) shall be deleted and replaced with the following:

“3. On or before the 31 March 2026 (or such other date as otherwise agreed between the Owner and the Council in writing) 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 Works Specification until the first grass cut;
- (c) Simultaneously with completion of the transfer referred to in paragraph (b) above, to pay the Open Space Contribution to the Council"

3.1.3 The definition of 'Open Space Works Specification" in the Original Agreement (as varied by the First Variation) shall be deleted and replaced with the following definition:

"Open Space Works Specification" means a specification for the laying out and profiling of the Open Space to enable the land to be used for recreational land and amenity uses by all members of the public the details of which are set out in drawing numbers 2545-WWA-ZZ-XX-D-L-0306 Rev Po2 and 2545-WWA-ZZ-XX-D-L-0307 Rev Po3 submitted to the Council for approval under planning reference 24/01431/VOC."

4. **Officer Recommendation**

Officers recommend approval of the proposed variation to ensure the legal agreement reflects the latest application number and updates the Open Space Plan to ensure the development is completed in accordance with the approved plans and the planning obligations remain in effect.

It is recommended that the Head of Planning and Building Control agree the request for the completion of the S106 Agreement under delegated powers.

5. **Authority to Seal**

DATED: 17 February 2026

SIGNED:



John Pateman-Gee
Head of Planning and Building Control