

Section 106 Authority to Seal – Deed of Variation

TOWN AND COUNTRY PLANNING ACT 1990

DOV REF NUMBER:	24/01230/DOVO5
RELATED APPLICATION:	No current application. (Determined application 18/00367/FUL)
PROPOSAL:	Deed of variation, under the Town and Country Planning Act 1990 Section 106A, of the terms of the legal agreement dated 11 September 2019, linked to planning permission 18/00367/FUL to ensure the mortgage exclusion clause is sufficient for lenders.
LOCATION:	Land North of Cockaynes Lane Alresford Essex CO7 8BT

This report covers the following matters:

1. Approved Development
2. Original Planning Obligation
3. First Deed of Variation
4. Second Deed of Variation
5. Proposed Deed of Variation
6. Officer Recommendation
7. Authority to Seal

1. Approved Development

18/00367/FUL was approved 16/09/2019: Erection of 84 dwellings, including the provision of affordable homes together with means of access, parking, garaging, associated landscaping and public open space provision

21/01051/FUL was approved 05/08/2021: Variation of condition 3 (External Finishing Materials) of Planning Permission ref: 18/00367/FUL to omit approved external materials laid out in the site layout drawing no. TW013-PL-07 Rev E, and add external materials laid out in the site layout drawing no. TW013-PL-07 Rev F

22/00351/NMA was approved 16/03/2022: Non-material amendment of 18/00367/FUL sought to reduce the extent of hard surfacing and to create greater separation between the retained tree and the new buildings.

23/00625/NMA was approved 19/05/2023: Non Material Amendment to application reference 18/00367/FUL for amendments to the landscaping.

2. Original Planning Obligation

Dated 11/09/2019

Schedule 1	-	Education Contribution
Schedule 2	-	Affordable Housing
Schedule 3	-	Open Space
Schedule 4	-	Healthcare

3. First Deed of Variation

Dated 16/09/2020 - pages 5 and 6 below:

Schedule 1

Amendments and Variations to the Principal Agreement

The following amendments and variations to the Principal Agreement are agreed between the parties to this Deed:

- (a) The definition of "**Secondary Education Purposes**" within Paragraph 1 of Schedule 1 of the Principal Agreement shall be amended by substituting the words "**Primary Education Contribution**" with the words "**Secondary Education Contribution**"
- (b) The definition of "**Secondary School Contribution**" within Paragraph 1 of Schedule 1 of the Principal Agreement shall be deleted in its entirety and replaced with the following:
"**Secondary Education Contribution**" means the sum of Three Hundred and Eighty Nine Thousand Nine Hundred and Ninety Five Pounds (£389,995.00) plus Relevant Education Indexation
- (c) The definition of "**Early Years and Childcare Purposes**" within Paragraph 1 of Schedule 1 of the Principal Agreement shall be amended by substituting the words "the ward of Alresford" with the words "3 miles of the Development"
- (d) The following new definition for "**Index Point**" shall be inserted into Paragraph 1 of Schedule 1 after the definition of "**House**" and before the definition of "**Primary Education Contribution**":
"**Index Point**" means a point on the most recently published edition of the relevant index at the time of use"
- (e) Paragraph 2.1 of Schedule 1 shall be amended to include the word "the" after the words "not to Commence"
- (f) Paragraph 4.5 of Schedule 1 shall be amended to include the words "the Secondary Education Purposes," after the words "the Primary Education

Purposes," and before the words "and the Secondary Transport Purposes as appropriate"

- (g) Paragraph 1.4.1 of Schedule 3 shall be amended to substitute the words "Open Space Scheme" on the first and second line of the paragraph, with the words "Open Space Specification".
- (h) Paragraph 1.4.1 of Schedule 3 shall be amended to substitute the word "Chartered" on the third line of the paragraph, with the word "Chartered"
- (i) Paragraph 2.1 of Schedule 3 shall be amended to substitute the word "Maintenance" on the third line of the paragraph, with the word "Maintenance".

4. **Second Deed of Variation**

Dated 29/11/2024

Schedule 1 Variation of the Original Agreement

- 1 The Parties agree that following paragraphs of the Original Agreement shall be varied as follows:
 - 1.4.3 The Open Space Maintenance Contribution and the Open Space Play Equipment Contribution have been paid to the Council and the Council will transfer these to Alresford Parish Council upon completion of the Open Space Land to the Parish Council.
- 2 Paragraph 2 where references are made to the Council, these shall be replaced by Alresford Parish Council.

5. **Proposed Deed of Variation**

The applicant wishes to alter the affordable housing clauses to gain a better value from lenders for their affordable housing:

SCHEDULE 1
VARIATIONS TO THE PRINCIPAL AGREEMENT

The Parties hereby agree that the following variations shall be made to the Principal Agreement:

- 1) Clause 2.6 of the Principal Agreement shall be amended by changing the reference to paragraph 8 of Part One of Schedule 2 to a reference to paragraph 5 of Part One of Schedule 2.
- 2) Paragraph 5.1.3 of Part I, Schedule 2 shall be deleted and replaced with the following:

"a mortgagee or chargee|(or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Affordable Housing Dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

 - (1) such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Dwellings; and
 - (2) shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Dwellings to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
 - (3) if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Dwellings free from the Affordable Housing provisions in this Agreement which provisions shall determine absolutely"

6. Officer Recommendation

Officers recommend approval of the proposed variation which reflects the industry standard mortgagee protection clause in order to 1) benefit the registered providers to raise more funds against their properties to then reinvest in more affordable housing; and 2) still provide sufficient assurance that the properties will remain in use for their approved purpose as affordable housing.

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

7. Authority to Seal

DATED: 01 May 2025

SIGNED:

A handwritten signature in black ink, appearing to read 'J Pateman-Gee', is enclosed within a thin black rectangular border.

John Pateman-Gee
Head of Planning and Building Control