

Section 106 Authority to Seal – Deed of Release

TOWN AND COUNTRY PLANNING ACT 1990

RELATED APPLICATION:	26/00131/DOVU5
PROPOSAL:	Deed of Release (under Town and Country Planning Act 1990 Section 106A), in respect of the unilateral undertaking related to planning application reference 24/00486/FUL to allow for the release/discharge of the obligations given in the unilateral undertaking in respect of the approved permission.
LOCATION:	Admirals Green, North of Michael Wright Way, Heckfords Road, Great Bentley CO7 8RS

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 is subject of an approved development for the erection of a two-storey building that will comprise five units including medical wellness and polyfunctional facilities (Use Class E (e)), retail (Use Class E(a)) and professional services (Use Class E (c)(ii)). The application was initially refused under reference 24/00486/FUL but then allowed at appeal in December 2025 (reference APP/P1560/W/25/3369845).

As part of the approved development, a Unilateral Undertaking was finalised to provide assurance to the Council that the existing store within the village centre would continue to operate following the opening of the proposed new store. During the determination period, the Council concluded that the unilateral undertaking did not provide a guarantee that the existing store would remain operational for at least five years following the commencement of trading of the proposed Tesco store. The Council considered that the legal agreement was not effective in making the development acceptable in planning terms and that the proposal would cause significant harm to Great Bentley Village Centre.

The proposal was then allowed at appeal, however the Inspector concluded that there was insufficient justification for the imposition of the Unilateral Undertaking and that it was not necessary to make the development acceptable in planning terms.

Consequently, the current application (26/00131/DOVU5) is to allow for the removal of the Unilateral Undertaking from the approved permission.

2. Previous Unilateral Undertaking

The Unilateral Undertaking dated 22 July 2025 provided the following:

FIRST SCHEDULE

OBLIGATIONS TO THE COUNCIL

1. Tesco will not commence trading from the Retail Unit unless and until it has entered into an underlease with the Franchise Partner in respect of the Existing Unit for a term of five years.
2. In the event that the underlease with the Franchise Partner pursuant to paragraph 1 is brought to an end before the expiry of five years following the grant of any such underlease, Tesco shall:
 - (a) Notify the Council that the underlease with the Franchise Partner has been brought to an end; and
 - (b) Use reasonable commercial endeavours to ensure that the Existing Unit is occupied and used for an Appropriate Use following the vacation of the Existing Unit by the Franchise Partner, conditional on Tesco obtaining landlord's consent to the grant of the underlease of the Existing Unit.

For the avoidance of doubt, the commencement of trading or the continued trading by Tesco from the Retail Unit is not conditional on the discharge of the obligation in this paragraph 2.

3. Without prejudice to generality the covenants on behalf of Tesco in paragraph 2 above shall require Tesco:
 - (a) (If permitted by the landlord of the Existing Unit) to make enquiries to the market in order to locate an occupant for the Existing Unit and to advertise the availability or anticipated availability of the Existing Unit to future occupiers; and
 - (b) In the event that a prospective occupier of the Existing Unit proposes to use it for a purpose other than that which is presently permitted by the Council Tesco shall lend such assistance (in the form of provision of information about its own period of occupation) as is reasonable in the circumstances to assist the prospective occupier in promoting its planning application for a change of use.

4. If notwithstanding the reasonable commercial endeavours of Tesco under paragraph 2 above, it shall have been unable to procure the occupation of the Existing Unit within 12 months after the date the Franchise Partner vacates the Existing Unit then it shall be treated as having discharged its obligation under paragraph 2.
5. For the avoidance of doubt, the obligation in paragraph 2 is not a continuing obligation and provided it is complied with by Tesco on the first occurrence of the underlease with the Franchise Partner pursuant to Paragraph 1 being brought to an end, Tesco shall be treated as having discharged its obligations under paragraph 2.
6. In the event that paragraph 2 of this Schedule applies, Tesco shall provide to the Council progress reports setting out what reasonable commercial endeavours have been made in order to achieve compliance with the obligation in paragraph 2 of this Schedule and if the Council is not satisfied that reasonable commercial endeavours have been made it may refer any dispute to an expert under Clause 7 of this Deed.
7. The Owner shall not commence, permit or allow commencement of trading from the Retail Unit unless and until Tesco has entered into an underlease with the Franchise Partner in respect of the Existing Unit for a term of five years in accordance with paragraph 1 of this schedule save that, in the event that paragraph 2 of this Schedule applies, Tesco shall be permitted to commence trading or continue trading from the Retail Unit.

3. Proposed Deed of Release

The proposed amendments sought under application 26/00131/DOVU5 are to remove the requirements mentioned in the aforementioned Unilateral Undertaking.

5. RELEASE

- 5.1 The Council hereby discharges the Original Undertaking and releases the Owner and Tesco and their respective successors and assigns in title and the Site from all of the obligations contained in or arising under the Original Undertaking (including all obligations contained in the Schedule thereto).
- 5.2 The Parties hereby agree that the Original Undertaking ceases to bind the Site from the date of this Deed and that the Owner and Tesco and their successors in title shall no longer be bound by any of the provisions in the Original Undertaking which shall cease to be of effect.

4. Officer Recommendation

Officers recommend approval of the proposed application, which follows the Inspectors comments within the determination of APP/P1560/W/25/3369845 that a Unilateral Undertaking is not necessary to make the development acceptable in planning terms.

It is recommended that the Head of Planning and Building Control agree the request for the release/discharge of the original Unilateral Undertaking under delegated powers.

5. Authority to Seal

DATED: 10 September 2026

SIGNED:



John Pateman-Gee

Head of Planning and Building Control

AUTHORITY FOR DELEGATED DECISION

Part 3, Schedule 2 Responsibility for Council (Non-Executive) Functions

The powers delegated from Council and the Planning Committee to the Director of Planning and Community for the discharge of the Non-Executive Functions specified in Town and Country Planning Conservation functions within Schedule 1 to the Local Authorities (Functions and Responsibilities (England) Regulations 2000 (as amended) and detailed in Appendix 1 to Part 3 of the Constitution are set out in Part 3, Schedule 2 (Part 3.15). All planning (including all prior approval applications), enforcement, building control and conservation matters are delegated to the Director (Planning & Community) except in relation to the determination of certain planning applications reserved for determination by the Committee.

The general principles for the responsibility of Schedule 2 (Non-Executive) Functions specify (Part 3.6, paragraph 12) that any authority granted to a Corporate Director, unless otherwise indicated, may be exercised by an officer with appropriate qualifications authorised by the Corporate Director in writing for that purpose. The relevant Corporate Director will maintain a record of such authorisations, a central record of which will be kept by the Monitoring Officer and available for inspection.

The Corporate Director of Planning and Community, Gary Guiver, has delegated operational matters relating to all Planning and related Decisions to the Head of Planning and Building Control, John Pateman-Gee, and officers Matthew Lang, Alison Newland, Amy Lang and Michael Pingram.

Officer	Initials	Date
Report prepared by Officer:	MP	10/09/2026
Authorisation	Initials	Date
Planning Manager /Team leader authorisation and sign off:	ML	10/09/2026
Assistant planner final checks and despatch:		