

Application to modify or discharge a section 106 Planning Obligation Town and Country Planning Act 1990

Please use this form when applying for the modification or discharge of a planning obligation to Havant Borough Council. Forms should be returned to Public Service Plaza, Civic Centre Road, Havant PO9 2AX.

For further information refer to the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992.

1. Type of application

Are you applying to **modify** a planning obligation

☒ Yes

☐ No

Are you applying to **discharge** a planning obligation

☐ Yes

☒ No

2. Your details

Name: Name and Address of Applicant:
Address: Stonewater Limited
 Suite C
 Lancaster House
 Grange Business Park
 Enderby Road
 Whetstone
Postcode: Leicester
LE8 6EP
Email address:
Daytime tel no:

3. Agent details if applicable

Name: Devonshires Solicitors LLP
Address: The Octagon
 27 Middleborough
 Colchester,
 CO1 1TG
Postcode: Name for contact: Shengul Seymert
Tel: 02038152571
Email address: Email: shengul.seymert@
devonshires.co.uk
Contact name:
Daytime tel no:

4. Full postal address of the site to which the obligation relates:

15 Tamworth Road, Waterlooville, Hampshire, PO7 7PW; 1-6 (inclusive) Balwen House, Tamworth Road, Waterlooville, Hampshire, PO7 7PW; 5-8 (inclusive) Moorit Place, Waterlooville, Hampshire, PO7 7TR; 10-24 (even), and 32-48 (even) Ayrshire Road, Waterlooville, Hampshire, PO7 7TT; 2 Manx Close, Waterlooville, Hampshire, PO7 7UT; 1-9 (inclusive) Norfolk House, Manx Close, Waterlooville, Hampshire, PO7 7UT and 5 and 6 Beulah Court, Waterlooville, Hampshire, PO7 7YD. We enclose copies of the title register and title plan.

5. Nature of the applicant's interest in the land:

Freehold under title number HP790052 - We enclose copies of the title register and title plan.

6. Please provide sufficient information to enable us to identify the planning obligation (planning reference numbers, etc) and the particular obligation(s) to be modified/changed:

S106 dated 20 December 2007 made between (1) Hampshire County Council (2) Winchester City Council (3) The Council of the Borough of Havant (4) Taylor Wimpey UK Limited (5) Laing Homes Limited relating to Land at Old Park Farm south of Hambledon Road, Waterlooville, Hampshire - We enclose copy of S106 dated 20 December 2007 .

7. What reason(s) do you have for applying for the modification or discharge of the obligation?

When a registered provider is securing property to a lender the property will be given one of two values:

- o Market Value Subject to Tenancy ("MV-STT") which assumes that a property can be sold on the open market subject to a pre-existing tenant. A valuation on this basis is usually around 66% of the open market value of the property. So assuming a three bed house has an open market value of £300,000, if the property is secured to a lender on an MVST basis the applicant will receive a value of £200,000.
- o Existing Use Value - Social Housing ("EUV-SH") which assumes that a property may only ever be used as social/affordable housing in perpetuity. This restricts the value of the property to approximately 33% of the open market value of the property. So assuming a three bed house has an open market value of £300,000, if the property is secured to a lender on an EUV-SH basis the applicant will receive a value of £100,000.

From the example above it is clear why the applicant would like to ensure that they receive an MV-STT valuation for the properties. In order for an MV-STT valuation to be issued, any mortgagee exclusion clause (MEC) in a Section 106 Agreement, nomination agreement or other document needs to effectively carve out any ongoing requirement for a lender (following a default from our client) to use the property as affordable housing.

The applicant's Property is subject to a Section 106 Agreement dated 20th December 2007. An adequate MEC is required as at present the property is restricted in value to EUV-SH without one. The inclusion of the industry standard MEC will not change the existing and current use of the property whilst it is in the ownership of our client or any other RP. It is only required in the event that our client should ever default on their loan and the lender takes possession or appoints a receiver, which is extremely unlikely and has never happened in the history of the social housing sector. The sector is seen as very safe for lenders to lend money, who are very risk adverse.

We propose to delete the Mortgagee Release at clause 6.30 of the Agreement and replace with the following conditional mortgagee exclusion clause so the applicant can borrow on an MV-STT basis:

6.30 The affordable housing provisions in this Agreement shall not be binding on 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 Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

6.30.1 such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units; and

6.30.2 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 Units to an Alternative Affordable Housing 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

6.30.3 if such disposal has not completed within the three month period, the mortgagee or chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the affordable housing provisions in this Agreement which provisions shall determine absolutely

Signed - Applicant:

Or signed - Agent:

Date (DD/MM/YYYY)

Devonshires Solicitors

18/09/2023

Checklist:

Please tick

A 1 copy of this form, signed and dated



B 1 copy of a map identifying the land to which the obligation relates



C 1 copy of such other information as you consider relevant to the determination of the application

