

PB/DJR/CIR.D.0341

16<sup>th</sup> December 2020

Public Protection & Development Management  
Cherwell District Council  
Bodicote House  
Bodicote  
Banbury  
Oxfordshire  
OX15 4AA

**For the attention of Mr. Andrew Lewis, Principal Planning Officer – Major Projects**

Dear Sir,

**S106A Town and Country Planning Act 1990  
Deed of Variation to Legal Agreement dated 22<sup>nd</sup> December 2011**

**Heyford Park, Upper Heyford, Bicester, Oxfordshire, OX25 5HD**

The Pegasus Group are instructed on behalf of our client, Heyford Regeneration Limited, to submit a Deed of Variation for the S106 Legal Agreement dated 22<sup>nd</sup> December 2011 attached to outline planning permission 10/01642/OUT for the mixed-use redevelopment of the above site.

The submission is made pursuant to Section 106A (1) of the Town and Country Planning Act 1990 (as amended) which states that:

***"106A Modification and discharge of planning obligations***

*(1) A planning obligation may not be modified or discharged except –*

- a. by agreement between the appropriate authority and the person or persons against whom the obligation is enforcement: or*
- b. in accordance with –*
  - i. this section and section 106B or*
  - ii. sections 106BA and 106BC.*

*(2) An agreement falling within subsection (1)(a) shall not be entered into except by instrument executed as a deed."*

In respect of this submission, the applicant has undertaken pre-submission discussions with the Assistant Director, Mr.D.Peckford, which have indicated that the Council in its role as the 'appropriate authority' for the purposes of S106A (1)(a) are in agreement that the

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obligation can be made by way of an appropriate Deed of Variation. The submission is therefore made by 'agreement' with the appropriate authority rather than on application to it.

Accordingly, please find attached the following documentation for consideration by the Council and its legal representatives:

- Application Form duly completed.
- Location Plan – D.0291\_42
- Supplemental Deed of Variation (Draft dated 09.12.20)
- Official Copy Title Plan – ON316908
- Official Copy Title Plan – ON317508
- Official Copy Title Plan – ON324085
- Official Copy Title Plan – ON324086
- Official Copy Title Plan – ON324087
- Official Copy Title Plan – ON324093
- Official Copy Title Plan – ON324094
- Official Copy Title Plan – ON324099
- Official Copy Title Plan – ON324100
- Official Copy Title Plan – ON330191
- Official Copy Title Plan – ON331367
- Official Copy Title Plan – ON332595
- Official Copy Title Plan – ON338225
- Official Copy Title Plan – ON341607
- Official Copy Title Plan – ON351207
- Official Copy Title Plan – ON355724
- Official Copy Title Plan – ON357283
- Plan for Plots 226 and 227 (29 and 30 Nash Road) – dwg ref: UPP3-05-108
- Plan for Plots 239, 240, 242-244 (21 and 23 Lally Drive, 9-13 odd Barrat Road) – dwg ref: UPP3-05-109 Rev.A
- Plan for Plots 245-248 (1-7 odd Barrat Road) – dwg ref: UPP3-05-110 Rev.A

#### The Purpose of the Deed of Variation

As the Council will be aware the S106 Legal Agreement dated 22<sup>nd</sup> December 2011 (“the Principal Agreement”) sets out a number of obligations to be secured as part of the development permitted by outline permission 10/01642/OUT for the mixed-use redevelopment of Heyford Park. In addition, as the development proposals have evolved over time since 2011, the Principal Agreement itself, has been subject to subsequent Supplemental Agreements and Deeds of Variation dated:

- 28<sup>th</sup> August 2012

- 27<sup>th</sup> June 2014
- 30<sup>th</sup> March 2016
- 8<sup>th</sup> May 2017
- 12<sup>th</sup> October 2017; and
- 21<sup>st</sup> March 2019.

The current Deed of Variation arises from a requirement to amend the restrictions regarding the occupation of the affordable housing units secured by way of Schedule 3 (Affordable Housing) of the Principal Agreement, in the event of a mortgagee of an Affordable Housing Provider or its appointed receiver exercising their right of sale.

As currently worded Paragraph 1.5 of Schedule 3 restricts the occupation of the affordable housing units to the provisions of the Council's Local Lettings Plan and Nomination Agreements and Paragraph 8 of Schedule 3 restricts the use of the affordable housing units secured by the schedule for no other purpose other than as affordable housing provided in accordance with the approved Affordable Housing Scheme.

Paragraphs 9 and 9.1 of Schedule 3 then states that, subject to certain criteria, Paragraph 8 only shall not bind:

*"a mortgagee of an Affordable Housing Provider exercising its power of sale or a receiver appointed by such mortgagee or a purchaser from such mortgagee or receiver (other than a purchaser which is an Affordable Housing Provider) nor any successor in title to such purchaser....."*

However, in recognition of the applicant's freehold interest in the affordable housing units on Heyford Park and their role as a Registered Provider, there is now a need to update and amend Paragraph 9 to reflect this interest and to ensure that the exemption afforded to a potential mortgagee adequately covers all the restrictions on use and occupancy.

As set out in the enclosed Deed of Variation, this is achieved by the replacement of Paragraph 9 with amended paragraph which includes the use of the term 'chargee' which is defined to encompass the above scenario.

In this regard it is important to note that the Deed of Variation is not seeking to modify or discharge the affordable obligations or any other obligations of the Principal Agreement. The variation relates solely to the substitution and amendment of wording regarding land interests to which the existing paragraphs relate.

With regard to progressing this Deed, it is acknowledged that the Council's team will require an undertaking to pay the reasonable costs arising in the assessment, engrossment and execution of the Deed.

In facilitating this, the key legal representative for the applicant is:

Saghar Roya  
Partner  
Devonshires  
30 Finsbury Circus  
London  
EC2M 7DT

Tel: 0207 880 4360

Mob: 07912388327

Email: [saghar.roya@devonshires.co.uk](mailto:saghar.roya@devonshires.co.uk)

In the meantime, I hope the above and enclosed covers all the relevant and necessary particulars to allow you to progress this Deed of Variation. However, should you have any questions or require any further information, please do not hesitate to contact me.

Yours faithfully,



PP

**Paul Burrell**  
**Executive Director**

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