

Ref DoV 2

17<sup>th</sup> August 2023

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

**For the attention of Mr Andy Bateson, Development Manager Team Leader, DM Division**

Dear Mr Bateson,

**S106A Town and Country Planning Act 1990 - Deed of Variation to Legal Agreement**

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

Heyford Regeneration Limited wish to request a Deed of Variation to the S106 Legal Agreement dated 22 December 2011 attached to 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."*

You will recall application 20/03596/M106 related to a Deed of Variation in relation to Schedule 3 (affordable housing) relating to earlier plots. This approach was previously discussed and agreed at the time with your colleague, Mr Peckford. Application 20/03596/M106 is considered in more detail below.

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

- Application Form duly completed.

- Site Location Plan – numbered D.0291\_42 Site Location Plan.
- Draft Deed of Variation (to follow). However, the nature of the variations required are the same as the Deed of Variation that completed on 19 April 2021 under planning reference 20/03596/M106.
- Official Copy Title Plan for the following properties:
  - 4 Dards Road, OX25 5DT; and 2, 4, 6, 8, 10, 12, 14 and 16 Ower Drive, OX25 5DS (Title Number ON370044).

In addition to the properties listed above, the following properties will also be affected by the Deed of Variation but the transfers of these properties to Heyford Regeneration Limited are pending registration at the Land Registry. As such, the Land Registry title numbers and official copies of the relevant title plans cannot be provided at present:

- 2 and 4 Westover Street, Heyford Park, Bicester, OX25 5BU; 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32 and 34 Westover Street, Heyford Park, Bicester, OX25 5BY; and 62, 64, 66, 68, 70, 72 and 74 Mcguire Road, Heyford Park, Bicester, OX25 5DW;
- 31, 33, 35, 37, 39, 41, 43, 45, 47, 49 and 51 Lindh Road, Heyford Park, Bicester, OX25 5BT;
- 2 and 4 Barrat Road, Heyford Park, Bicester, OX25 5BQ; and 133, 135, 137, 139, 141, 143 and 145 Camp Road, Heyford Park, Bicester, OX25 5BP;
- 6 Gordon Road, Heyford Park, OX25 5TF;
- 8 Gordon Road, Heyford Park, OX25 5TF;
- 154 Camp Road, Heyford Park, OX25 5AG;
- 2A, 2B and 2C Dow Street, Heyford Park, OX25 5TD; and 4 Gordon Road, Heyford Park, OX25 5TF;
- 3 and 5 Walker Road, Heyford Park, OX25 5BG;
- 1A Dow Street, Heyford Park, OX25 5TD;
- 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 63 and 65 Offutt Drive, Heyford Park, OX25 5BU;
- 119, 121, 123, 125, 127, 129, 131, 133, 135, 137, 139 and 141 Offutt Drive, Heyford Park, OX25 5BU;
- 1, 3, 5, 7, 9, 11, 15, 17 and 19 Offutt Drive, Heyford Park, OX25 5BU; and
- 67, 69, 71, 73, 75, 77, 79, 81, 83, 85, 87, 89, 91, 93, 95, 97, 99 and 101 Offutt Drive, Heyford Park, OX25 5BU.

#### The Purpose of the Deed of Variation

As the Council will be aware, the S106 Legal Agreement dated 22 December 2011 (“the Principal Agreement”) sets out a number of obligations to be secured as part of the development permitted by outline planning 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 August 2012
- 27 June 2014
- 30 March 2016



- 8 May 2017
- 12 October 2017;
- 21 March 2019; and
- 19 April 2021.

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 state 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.

This is to be achieved by the replacement of Paragraph 9 with an amended paragraph, which includes the use of the term 'chargee' which is defined to encompass the above scenario. The nature of the variations required are therefore the same as those within the Deed of Variation dated 19 April 2021 under planning reference 20/03596/M106.

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 Solicitors LLP  
30 Finsbury Circus  
London  
EC2M 7DT

Tel: [REDACTED]

Mob: [REDACTED]

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 sincerely,

[REDACTED]  
Neil Cottrell

Planning Manager

**Agent for Heyford Regeneration Limited**

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