

FAO: Planning Department
Eastleigh Borough Council

Sent by email only:
planning@eastleigh.gov.uk

Our Ref:	mki/lcd2/232017/222
Your Ref:	
Date:	2 August 2023
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Dear Sir/Madam

Application to vary Section 106 Agreement dated 16 June 2016 made between (1) Eastleigh Borough Council (2) Hampshire County Council (3) Mr P Browning, Mr T Browning and Mr C Browning (4) Mrs J Hooper (5) Mrs V Saunders (6) Mrs I Wilton-Combes (7) Mr P Snook (8) Mr R Poore (9) Mrs J Parr (10) Mrs R Roderigo (11) Mrs G Shorney (12) Gleeson Developments Limited (13) Miller Homes Limited (14) Welbeck Strategic Land LLP (15) MF Strategic Land Limited ("the Section 106 Agreement")

Previous application number O/15/75953 – Granted on appeal with reference: APP/W1715/W/15/3130073. Land to the West of Boorley Green, Winchester Road, Eastleigh, Hampshire (also known as Land at Hedge End North)

We are instructed on behalf of Vivid Housing Limited ("Vivid") to submit this letter as a formal application to modify the provisions described below in the Section 106 Agreement pursuant to Section 106A of the Town and Country Planning Act 1990. A copy of the Section 106 Agreement and site location plan is enclosed.

Our client is the owner of 142 Affordable Housing Dwellings provided for under the Section 106 Agreement. Our client will also shortly be exchanging contracts for a further 46 Affordable Housing Dwellings.

Proposed Amendments

The proposed changes are to amend the Mortgagee Exclusion Clause at paragraphs 1.17 and 1.18 of Schedule 5 of the S106 Agreement to ensure that the wording is suitable to achieve charging.

The proposed amended wording to paragraphs 1.17 and 1.18 is a variation of Eastleigh Borough Council's standard clause wording as follows:

"The Affordable Housing Dwellings constructed on the Affordable Housing Land will not be used for any purpose other than as Affordable Housing to rent and/or Affordable Housing subject to a shared ownership or shared equity scheme save that such an obligation shall not apply:

- a) to a mortgagee or chargee or to a receiver (including an administrative receiver) appointed thereby 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 and/or Affordable Housing Land or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

- i. 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 shall have used reasonable endeavours over a period of 3 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 principle monies, interest, cost and expenses; and*
 - ii. if such disposal is not completed within the 3 month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Dwellings free from the provisions and obligations contained in this Deed which shall determine absolutely.*
- b) on a sale to a tenant exercising their right to acquire or purchase under a statutory power or under a voluntary right to buy and their mortgagees and chargees and receivers and any persons or bodies deriving title through them;*
 - c) to a shared ownership or shared equity owner acquiring such percentage that will take their ownership to 100% of a property subject to a shared ownership or shared equity lease and their mortgagees and chargees and receivers or to the successors in title to such persons."*

Council Fee

We will arrange payment of the relevant fee for the application under a separate cover, following receipt of the allocated application number.

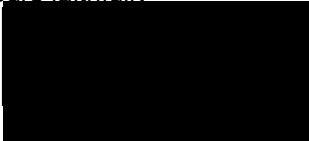
Next steps

We would be grateful if you could confirm that the Council are supportive of this application and provide us with contact details of the relevant person in your legal department who will progress the deed of variation.

Please let me know if there is any further information that you require.

I look forward to hearing from you.

Yours faithfully

A large black rectangular box redacting the signature of the sender.

Foot Anstey LLP