

From: [Developer Contributions](#)
To: [Developer Contributions](#)
Subject: FW: Vivid Housing- Deed of Variation to the S106 Agreement [TH-THL.FID121716281]
Date: 27 September 2023 12:35:56
Attachments: [image001.jpg](#)
[image002.jpg](#)

Developer Contributions

Planning & Environment - Planning/Development Management

Ext.: 023 8068 8000

From: Forhad Ahmed <FAhmed@trowsers.com>
Sent: Thursday, September 14, 2023 4:31 PM
To: astrid.patil@eastleigh.gov.uk; Planning @ Eastleigh Borough Council
<Planning@eastleigh.gov.uk>
Cc: Ezi Omoduemuke <EOmoduemuke@trowsers.com>
Subject: Vivid Housing- Deed of Variation to the S106 Agreement [TH-THL.FID121716281]

Dear Sirs

We would be most grateful for your assistance please.

We have been instructed by Vivid Housing Limited in relation to a number of their developments to be charged to a funder.

We have reviewed the Agreements at these sites and advised our client that the current mortgagee exclusion clause (MEC) is not in line with current lending requirements. This has meant that these schemes will only be achieved a reduced Existing Use valuation (subject to tenancies) (EUV-SH) upon charge.

We believe it was the Council's intention to provide an effective MEC originally, (as the existing wording indicates) but the market and acceptable wording, has changed over time. What we are asking is really just an update to current market requirements.

Our client is under a duty to try and procure best value for their assets. This would mean obtaining a Market Valuation (subject to tenancies) (MV-STT) upon charge, which can be 40% higher than an EUV-SH valuation and sometimes considerably in excess of this figure. Consequently, the shortfall in valuation has a significant impact in terms of borrowing capacity and impacts our client's development programme. Ultimately, a higher valuation secured against the development will enable our client to increase the supply of funding for affordable housing in the area. There is a high risk of borrowing capacity being significantly reduced as a result of a MEC not being in line with current funding requirements and this should be considered in the context that there is a very low risk of a funder invoking the MEC.

In order to maximise the possibility of securing MV-STT, we request a variation to the MEC in line with the agreed wording which is approved and published by the NHF and a Property Finance Working Group comprising the key valuers, funders and lawyers in the sector. We attach for your reference an article published by Inside Housing promoting the approved wording. The link to the website providing details of this Property Finance Working Group and the relevant clause is: <https://www.housing.org.uk/resources/example-standard-mortgagee-protection-clause/>

Many Local Authorities have also approved this wording and have adopted it in relation to newly drafted Section 106 Agreements and variations thereto.

We have identified the following S106 agreement and one transfer deed which require variation:

1 to 11 (odds) and 15 to 35 (odds) Bodmin Road and 6 Bodmin Road, Bishopstoke, Eastleigh SO50 6GH

The title notes a transfer dated 2 July 2009 between (1) Eastleigh Borough Council and (2) Atlantic Housing Limited.

We attach copies of the relevant S106 agreements and a copy of the transfer deed for your information. We also attach a copy of the deed of variation recently agreed by our client which contains the effective mortgage exclusion clause.

We look forward to hearing from you as soon as possible.

Kind regards

Forhad

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