

Development and Planning
West Berkshire Council
Market Street
Newbury
RG14 5LD

Our Ref: JXB/STO68/18

18 July 2022

Dear Sir/Madam,

Application to vary the Section 106 Agreement dated 7 March 1997 made between (1) Aldworth Parish Council (2) English Villages Housing Association and (3) Newbury District Council relating to land situated adjacent to the Glebe, Aldworth, Berkshire Planning ref: 145245

Name and Address of Applicant:

STONEWATER (2) LIMITED
(Registered Society No. 19412R)
Suite C Lancaster House
Grange Business Park
Enderby Road
Whetstone
Leicester
LE8 6EP

Name and Address of Agent:

Devonshires Solicitors LLP
The Octagon
27 Middleborough
Colchester, CO1 1TG
Name for contact: [REDACTED]
Tel: [REDACTED]

Address of the Site and Property:

The Glebe, Aldworth, Berkshire, RG8 9SH (formerly known as land situated adjacent to the Glebe, Aldworth, Berkshire). The applicant purchased the freehold land for 6 of the affordable units mentioned in the S106 agreement under title number BK342909 being 9-12

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(inclusive), and 15 and 17 The Glebe, Aldworth, Berkshire, RG8 9SH. We enclose copies of the title register and title plan.

Planning Obligation which the applicant wishes to have modified and the reasons why they need to be modified:

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

- 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 [REDACTED], if the property is secured to a lender on an MVST basis the applicant will receive a value of [REDACTED].

- 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 [REDACTED], if the property is secured to a lender on an EUV-SH basis the applicant will receive a value of [REDACTED].

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, not only do the properties need to be able to be charged, but any mortgagee exclusion clause (MEC) in a Section 106 Agreement 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 the Section 106 Agreement dated 7 March 1997 which at present makes the properties unchargeable due to the current wording of clause (b) of Schedule 4 restricting all ‘disposals’ without written consent (with the word ‘dispose’ catching a charge). Thereafter an adequate MEC would be required at clause (c) of Schedule 4. The inclusion of the adequate 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 the following amendments:

1) We propose to amend the preamble at clause (b) of Schedule 4 as follows:

'Subject to the proviso hereinafter contained not to sell lease or dispose of the Land or any part thereof (whether such sale lease or other disposal is of bare land or land with constructed or partly constructed dwellings thereon) otherwise than to James Butcher Housing Association Limited whose registered office is at James Butcher House 39 High Street Theale Berkshire RG7 5AH or to such other Registered Social Landlord which shall first have been notified to and approved in writing by the Local Authority and at a price reflecting the Total Cost Indicator Guidelines for Newbury District issued from time to time by the Housing Corporation PROVIDED THAT this obligation shall not restrict disposals by way or legal mortgage or a disposal by James Butcher Housing Association Limited or another Registered Social Landlord'

2) We propose amending clause (c) of Schedule 4 as follows:

'(d) 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 Six Dwellings 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 Local Authority of its intention to dispose of the Six Dwellings; and

(ii) shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Six Dwellings to another registered housing association/bona fide housing trust or to the Local Authority 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

(iii) *if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Six Dwellings free from the affordable housing provisions in this Agreement which provisions shall determine absolutely'*

We should be grateful if you could please progress with this application to vary the Section 106 Agreement and we look forward to hearing from you at your earliest convenience.

Yours faithfully

Devonshires Solicitors LLP

Direct Tel: [REDACTED]

E-mail: [REDACTED]

ENCs:

Office Copy Entry & Title Plan