

Barratt David Wilson Homes  
Tollbar House  
Tollbar Way  
Hedge End  
Southampton  
SO312UH

Date: 30th January 2026

Please ask for: Hannah Kersley  
Tel: 01903 737856

Your Ref:

Our Ref: BN/126/25/DOV

Dear Ms Ballam,

**Section 106A of the Town and Country Planning Act 1990**  
**Request to modify or discharge a planning obligation on a Section 106 Agreement less than 5 years old.**

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Application to enter into a Deed of Variation to the Section 106 dated 3.12.2021 linked to planning permission BN/142/20/OUT in relation to Schedule 1 Clause 2 (Affordable Housing).

Land South of Barnham Station Barnham

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## CONTEXT

This application seeks a Deed of Variation to the Section 106 dated 03/12/2021 linked to planning permission BN/142/20/OUT in relation to Schedule 1 Clause 2 (Affordable Housing). Schedule 1 Clause 2 has previously been varied under BN/66/24/DOV, with the Section 106 DoV dated 21/02/25. This variation sought to incorporate first homes as part of the affordable housing tenure mix; altering the mix from 75% affordable rent and 25% intermediate to 67% affordable rent, 25% first homes, and 8% intermediate. This was accepted by the Planning Committee on 18th December 2024.

## VARIATION AND DECISION

It is proposed to amend Schedule 1 Clause 2 for the following reasons:

- To provide the affordable housing units (other than those to be provided as First Homes) as Discount Market Sales units;
- After a specified time period to re-market the affordable apartments; the cascade mechanism will be altered such that it will conclude with the sale of the apartments as discount market sales units, instead of the payment of a commuted sum.

Other than the above description, and copy of the original S106 dated 03/12/2021, no further documentation has been provided to support this DoV.

On 18th March 2025, Officers took a Report to ADC Planning Policy Committee regarding the deliverability of affordable housing through the Section 106 process. Produced by the Three Dragons consultant, this report was commissioned in response to a growing number of approaches from developers who had been unable to dispose of their affordable housing, as required under Section 106 agreements. It sought to produce a framework for the purposes of discussions and negotiations with applicants who are seeking to submit a DoV in respect of affordable housing, and provide options for how issues with affordable housing can be resolved. This report was subsequently adopted by the Planning Policy Committee, and is relevant now in consideration of this application. The Three Dragons report can be found here: <https://democracy.arun.gov.uk/documents/s20726/Appendix%20to%20Item%208%20-%20Affordable%20housing%20delivery%20-%20Three%20Dragons%20Report.pdf>

The report identifies the benefits of Cascade Mechanisms within S106 agreements pertaining to the disposal of affordable housing, and sets out pathways for how these cascades should work. On Page 27 of the report, Figure 5.1 provides a 'Framework for response to request for DoV - two pathways'. This sets out an Officer methodology for DoV Requests, where two pathways are provided and can be followed, dependant on whether there has or has not been RP interest.

As stated above, this application has been supported only by an application form and the original S106. There is no supporting evidence or justification as to why this DoV is being sought. It is also undiscernible from the provided reasons as to whether this is sought following engagement with RPs, or marketing of the affordable rent units, and the outcomes of this. Therefore, it is unclear whether the parameters of the requests are reasonable.

It is understood that engagement has been made with the Group Head of Planning and Housing Development Officer prior to the submission of this application. This engagement confirms support for the principle of this DoV; however this application is unclear as to what paragraphs of Clause 2 are being varied, the exact obligations being amended, or whether additional wording needs to be inserted. The request is therefore too vague for Officers to determine what exactly is being varied, nor has it been evidenced that this variation is acceptable.

The Council is open to discussion and negotiation with variations to the S106, and it is confirmed that the principle of this change is supported through prior discussion. However, in line with the contents of the Three Dragons Report, without sufficient supporting evidence or justification, Officers cannot determine that this is a reasonable or justified approach, and must decline this DoV.

The planning obligation(s) the subject of this request can only be modified or discharged by agreement between the authority and the person against whom the obligation is enforceable and shall not be entered into except by an instrument executed as a deed.

The modification or discharge proposed is not acceptable, as a result of lack of supporting evidence and justification, and as such the planning obligation shall continue to have effect

without modification.

If you have any queries please do not hesitate to contact the above case officer.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Neil' followed by a surname starting with 'C'.

Neil Crowther  
Group Head of Planning