

Application Correspondence "Confirmation that no Deed of Variation Required"

From: Simon Davis
Sent: 21 July 2021 15:32
To: Sam Pinkus [REDACTED]
Cc: Daun Johnson <Daun.Johnson@arun.gov.uk>; Kate Little [REDACTED] Katherine Child
[REDACTED]
Subject: RE: Request for further information Y/106/21/PL

Ok I can accept it if you are happy with it.

Daun – I have no objection to validation.

Simon J Davis MRTPI
Principal Planning Officer
Directorate of Place

T: 01903 737874
E: simon.davis@arun.gov.uk



Arun District Council, Civic Centre, Maltravers Rd, Littlehampton, West Sussex, BN17 5LF
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From: Sam Pinkus [REDACTED]
Sent: 21 July 2021 15:03
To: Simon Davis <Simon.Davis@arun.gov.uk>
Cc: Daun Johnson <Daun.Johnson@arun.gov.uk>; Kate Little [REDACTED] Katherine Child
[REDACTED]
Subject: RE: Request for further information Y/106/21/PL

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Hi Simon,

Please see below clause taken from the attached Deed of Variation. Our interpretation is that this would enable the clauses which have not been varied from the S106 remain as they were. i.e clause 12.

1. DEFINITIONS

- 1.1 All words and phrases defined in the Original Agreement shall have the same meaning in this Deed save where the context otherwise dictates and for the avoidance of any doubt the Original Agreement shall remain in full force and effect save as varied by this Deed.

Kind regards

Sam

From: Simon Davis <Simon.Davis@arun.gov.uk>

Sent: 21 July 2021 14:53

To: Sam Pinkus [REDACTED]

Cc: Daun Johnson <Daun.Johnson@arun.gov.uk>; Kate Little [REDACTED] Katherine Child [REDACTED]

Subject: RE: Request for further information Y/106/21/PL

Dear Sam,

I agree that it does. However, my concern was that the Deed of Variation completed in association with Y/72/20/RES would no longer apply if this s73 was granted. Can you confirm/advise re this point.

Simon.

Simon J Davis MRTPI
Principal Planning Officer
Directorate of Place



T: 01903 737874

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From: Sam Pinkus [REDACTED]

Sent: 21 July 2021 14:49

To: Simon Davis <Simon.Davis@arun.gov.uk>

Cc: Daun Johnson <Daun.Johnson@arun.gov.uk>; Kate Little [REDACTED] Katherine Child [REDACTED]

Subject: RE: Request for further information Y/106/21/PL

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Good afternoon Simon,

Our legal team have reviewed the S106 for the 70 unit scheme. Clause 12 covers future s73 consents, therefore I don't believe we need a s106 deed of variation to tie the obligations to a future s73 consent as this clause should operate to do that? Please can you confirm and if so validate the application under reference Y/106/21/PL.

Below clause taken from attached S106 agreement.

12	FUTURE SECTION 73 CONSENTS		
	12.1	Subject to clauses 12.2 to 12.5 below, if any Section 73 Consent is granted after the date of this Deed:	
		12.1.1	the obligations in this Deed shall relate to and bind such Section 73 Consent; and
		12.1.2	the definitions of Planning Application, Development and Planning Permission (other than for the purposes of clause 1) shall be construed to include reference to (respectively) the planning application for the Section 73 Consent the development permitted by the Section 73 Consent and the Section 73 Consent itself;
	12.2	nothing in this clause shall fetter the discretion of the Council in determining any planning application for a Section 73 Consent and the appropriate planning obligations required in connection with the determination of the same;	
	12.3	to the extent that any of the obligations in this Deed have already been discharged at the date that a Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent;	
	12.4	the provisions of this clause 12 shall not apply to any Section 73 Consent which necessitates or requires amendments to the substantive terms or obligations of or contained within this Deed; and	
	12.5	the Council reserves the right to insist upon the completion of a separate planning obligation by deed of agreement in connection with any Section 73 Consent if the Council (acting reasonably) considers it necessary to do so.	
13	INDEX LINKED		
	13.1	Unless there is an express provision to the contrary the Owners agree with the Council that any sum payable by the Owners and referred to in the First Schedule shall be increased by the application of the following formula:	
		A = (B x C) divided by D	
	Where	A	is the sum actually payable on the Specified Date
		B	is the original sum mentioned in this Deed
		C	is the RPI Index for the month two months before the Specified Date
		D	is the RPI Index for the month two months before the date that Planning Permission is granted
		C/D	is equal to or greater than 1

Kind regards
Sam

Sam Pinkus
Land & Planning Coordinator



From: Simon Davis <Simon.Davis@arun.gov.uk>

Sent: 20 July 2021 12:14

To: Sam Pinkus [REDACTED]

Cc: Daun Johnson <Daun.Johnson@arun.gov.uk>; Kate Little [REDACTED] Katherine Child [REDACTED]

Subject: RE: Request for further information Y/106/21/PL

Dear Sam,

Since our conversation, I have been advised that the s106/Deed of Variation is a requirement of our validation criteria (see

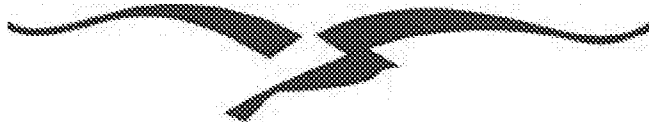
<https://www.arun.gov.uk/download.cfm?doc=docm93jjm4n16296.pdf&ver=17650>). It states that:

To enable the speedy processing of the application to vary or remove a condition, a draft S106 needs to be submitted with the application. Applicants are advised to have instructed their legal team and need to be aware that a further legal fee will be required to cover the council's costs in drawing up the new agreement.

Therefore, we do need the draft agreement in order to validate the application.

Simon

Simon J Davis MRTPI
Principal Planning Officer
Directorate of Place



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From: Sam Pinkus [REDACTED]
Sent: 20 July 2021 11:58
To: Simon Davis <Simon.Davis@arun.gov.uk>
Cc: Daun Johnson <Daun.Johnson@arun.gov.uk>; Kate Little [REDACTED] Katherine Child
[REDACTED]
Subject: FW: Request for further information Y/106/21/PL

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Hi Simon,

Further to our conversation this morning I have now had the opportunity to instruct our solicitors to draft a Deed of Variation to the S106, which will be with you this week.

In the meantime, if we provide a letter confirming we will be submitting a DoV to the S106 adding a clause to include S73 applications, will you be able to validate the application?

Kind regards
Sam

Sam Pinkus
Land & Planning Coordinator