

BABERGH DISTRICT COUNCIL

# Application for the Modification or Discharge of a Section 106 Planning Obligation

Town and Country Planning Act 1990 (Section 106A)  
Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992

**FOR OFFICE USE ONLY**

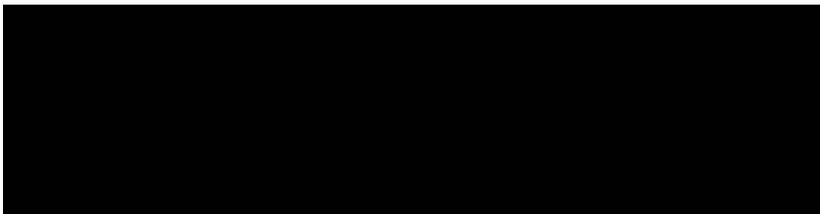
**APPLICATION NO.  
DATE REGISTERED**

*APPLICATION FORMS ARE PUBLIC DOCUMENTS AND ALL INFORMATION CONTAINED ON THEM WILL BE PLACED ON DEPOSIT FOR PUBLIC INSPECTION BOTH IN THE COUNCIL OFFICES AND ON THE BDC WEB SITE*

**1a**

**Applicant Name:** DENBURY HOMES LIMITED

**Address:** Westley Bottom, Westley, Bury St Edmunds, Suffolk, IP33 3WD



**To**  
**Name and Address of Agent (if any):**

**Contact Name:**

**Tel. No:**

**Email:**

**2. Address of the Site**

Land adjacent to the Village Hall Manningtree Road Stutton  
Planning Ref -DC/17/02111

**3. Description of Planning Obligation - please give sufficient information to enable the identification of the Planning Obligation you wish to modify or Discharge**

The Site is subject to a Section 106 Agreement dated 29<sup>th</sup> June 2018 which was altered by virtue of a Deed of Variation dated 11<sup>th</sup> June 2020. The Agreement imposes affordable housing obligations in clause 2 of the Third Schedule of the original agreement and we are seeking to modify the wording of part of the affordable housing obligations Briefly there are three aspects:

1. Alteration of the definition of a shared ownership lease
2. Altering the proposed nomination agreement to provide for two agreements rather than one. It is proposed we have a one a nomination agreement for the affordable rented units and one for the shared ownership units.
3. The mortgagee protection clause

**4. Please state why you are applying for the modification or discharge of the obligation identified above.**

In relation to the three changes:

1. A registered Provider is required to use the current shared ownership model lease published by Homes England. The existing definition in the Section 106 Agreement is an out-of-date reference and conflicts with the most recent model lease published by Homes England. If the definition is not changed, we will not be able to sell the shared ownership properties.
2. The current nomination agreement relates to both tenures of affordable housing and provides the same procedure for both rented and shared ownership dwellings, so it is impossible to comply with the nomination agreement as set out in the Section 106 Agreement. E.g. Shared ownership properties must be offer via Choice Based Lettings which is not possible.
3. The mortgagee protection clause does not follow the industry standard wording and will not be acceptable to a lender so an RP who purchases the affordable housing on this site will not be able to raise a mortgage.

**5. Please provide any additional information that you consider relevant to the determination of this application. Attach additional sheet if necessary**

We have drafted a Deed of Variation to deal with the changes that are needed to the original Section 106 Agreement to assist, and this is attached to the application.

**6. Please state the nature of the applicant's interest in the land.**

Freehold owner

**7. Declaration TO BE COMPLETED BY ALL APPLICANTS**

I/we hereby apply for the modification or discharge of a planning obligation under section 106A of the Town & Country Act 1990 in accordance with the details above, and the submitted plan(s) and documents

I/we have completed an ownership certificate (either certificate A, B, C or D as appropriate) and attached it to this application.



# Guidance notes

## Town and Country Planning Act 1990 (Section 106A)

## Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992

Your completed application will comprise:-

- I. **One copy** of the completed application forms.
- II. **One copy** of all plans submitted with the site edged in red.
- III. **One copy** of either Certificate A, B or C (and one copy of the press notice if appropriate).
- IV. If you wish to bring other matters in support of your application to the attention of the Council please provide it in writing either on the application form or as a supplementary document.

Or alternatively you can send the application and supporting information by email to [planning@babberghmidsuffolk.gov.uk](mailto:planning@babberghmidsuffolk.gov.uk)

### Notes to assist completing the Application form

**Address of the Site:** Describe precisely the location of the land to which this application relates and attach a **copy** of an Ordnance Survey based plan showing the boundary of the land in red.

**Description of the section 106 Obligation:** please give sufficient information to enable the planning authority to identify the Section 106 which the applicant wishes to have modified or discharged.

### Notes to assist completing the Certificate and Notice

An application for the modification or discharge of a Section 106 shall be accompanied by a certificate; either

Certificate A, B or C.

**Certificate A** - to be completed where on the day 21 days before the date of the accompanying application the Section 106 to which the application relates was enforceable against nobody other than the applicant.

**Certificate B** - to be completed where the applicant gives **notice** of the application to any person (other than the applicant) against whom, 21 days before the date of the application, the Section 106 to which the application relates was enforceable; **and whose name and address is known to the applicant.**

**Certificate C** - to be completed where the applicant needs to give notice of the application to any person (other than the applicant) against whom, 21 days before the date of the application, the Section 106 to which the application relates was enforceable; **but where the names and addresses of all such persons are NOT known to the applicant after he/she has taken reasonable steps to ascertain the information.** The applicant shall during the 21-day period immediately preceding the application, publish notice of the application in a local newspaper.

**RETURN TO COUNCIL**

Town and Country Planning Act 1990 (Section 106A)  
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CERTIFICATE UNDER REGULATION 4

**CERTIFICATE A**

I certify that:

On the day 21 days before the date of the accompanying application the planning obligation to which the application relates was enforceable against nobody other than the applicant

**SIGNED**

**DATE** 07/09/2012

**On behalf of: DENBURY HOMES LIMITED**

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**CERTIFICATE B**

I certify that:

I have/The applicant (\*) has given the required notice to everyone else against whom, on the day 21 days before the date of the accompanying application the Section 106 to which the application relates was enforceable, as listed below:

Name of person:

Address at which notice was served:

Date on which notice served

**SIGNED**

**DATE**

**On behalf of:**

**RETURN TO COUNCIL**

**Town and Country Planning Act 1990 (Section 106A)  
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CERTIFICATE UNDER REGULATION 4

**CERTIFICATE C**

I certify that:

- 1.  
I / The applicant (\*) cannot complete a Certificate A or B in respect of the accompanying application;
- 2.  
I have / The applicant (\*)has given notice to the persons listed below, being persons against whom, on the day 21 days before the date of the accompanying application the Section 106 to which the application relates was enforceable.

Name of person

Address at which notice was served

Date on which notice served

1. I have/The applicant (\*) has taken reasonable steps to ascertain the name and address of every person whom, on the day 21 days before the date of the accompanying application, the planning obligation to which the application relates was enforceable and who has not been given notice of the application: These steps were as follows:

- (a) Notice of the application, as attached to this application has been published on the (b) In the (c)

SIGNED .....

DATE .....

On behalf of: .....

**NOTES**

- (\*)Delete where inappropriate
- (a)description of steps taken
- (b)date of publication
- (c)name of newspaper in which the notice was published

*SERVE ON INDIVIDUAL(S) BY APPLICANT*

**Notice of an Application to Modify or Discharge a Section 106 Planning Obligation**

I GIVE NOTICE that (a)

---

is applying to BABERGH DISTRICT COUNCIL to MODIFY/ DISCHARGE

\*

The section 106 planning obligation described below: (a)

Section 106 planning obligation description: (b)

Address of site: (c)

Section 106 planning obligation date: (d)

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Any person against whom the Section 106 planning obligation is enforceable who wishes to make representations about this application should make them in writing to the Chief Planning Officer, Babergh District Council, Endeavour House, 8 Russell Road, Ipswich, IP1 2BX

by:  
(e) .....

Signed: .....

Date .....

\*

On behalf of

**NOTES**

(a)  
Insert name of applicant.

(b)  
Insert a brief description of the Section 106 which the applicant wishes to modify or discharge

(c)  
Insert address or location of land to which the Section 106 relates.

(d)  
Insert date that the Section 106 was entered into

(e)  
Insert date giving a period of 21 days beginning with the date of service of this notice

\*

Delete where inappropriate.

TO BE PUBLISHED IN A NEWSPAPER BY APPLICANT

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Obligation**

I GIVE NOTICE that (a)

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is applying to BABERGH DISTRICT COUNCIL to MODIFY/ DISCHARGE

\*

the Section 106 planning obligation described below:

Section 106 planning obligation description :(b)

Address of site: (c)

Section 106 obligation date: (d)

---

Any person against whom the Section 106 planning obligation is enforceable who wishes to make representations about this application should make them in writing to the Chief Planning Officer, Babergh District Council, Endeavour House, 8 Russell Road, Ipswich IP1 2BX

by:

(e) .....

Signed .....

Date .....

\*On behalf of .....

**NOTES**

(a)

Insert name of applicant.

(b)

Insert description of Section 106 which the applicant wishes to modify or discharge

(c)

Insert address or location of land to which the Section 106 relates.

(d)

Insert date that the Section 106 was entered into

(e)

Insert date giving a period of 21 days beginning with the date of publication of this notice

(\*)Delete where inappropriate.