



**REPORT of
DIRECTOR OF PLANNING AND REGULATORY SERVICES**

to
**SOUTH EASTERN AREA PLANNING COMMITTEE
15 AUGUST 2016**

Application Number	MLA/MAL/16/00630
Location	1-3 Fairman Close and 12-36 (even) Woodside, Southminster
Proposal	Application for a modification to the existing Section 106 Legal Agreement (executed under planning application OUT/MAL/96/00655).
Applicant	Colne Housing Society
Agent	Devonshires Solicitors
Target Decision Date	5th August 2016 (EOT to 22 nd August 2016)
Case Officer	Joy Thomas TEL : 01621 875879
Parish	Southminster
Reason for Referral to the Committee/Council	In accordance with Area Planning Committee Terms of Reference

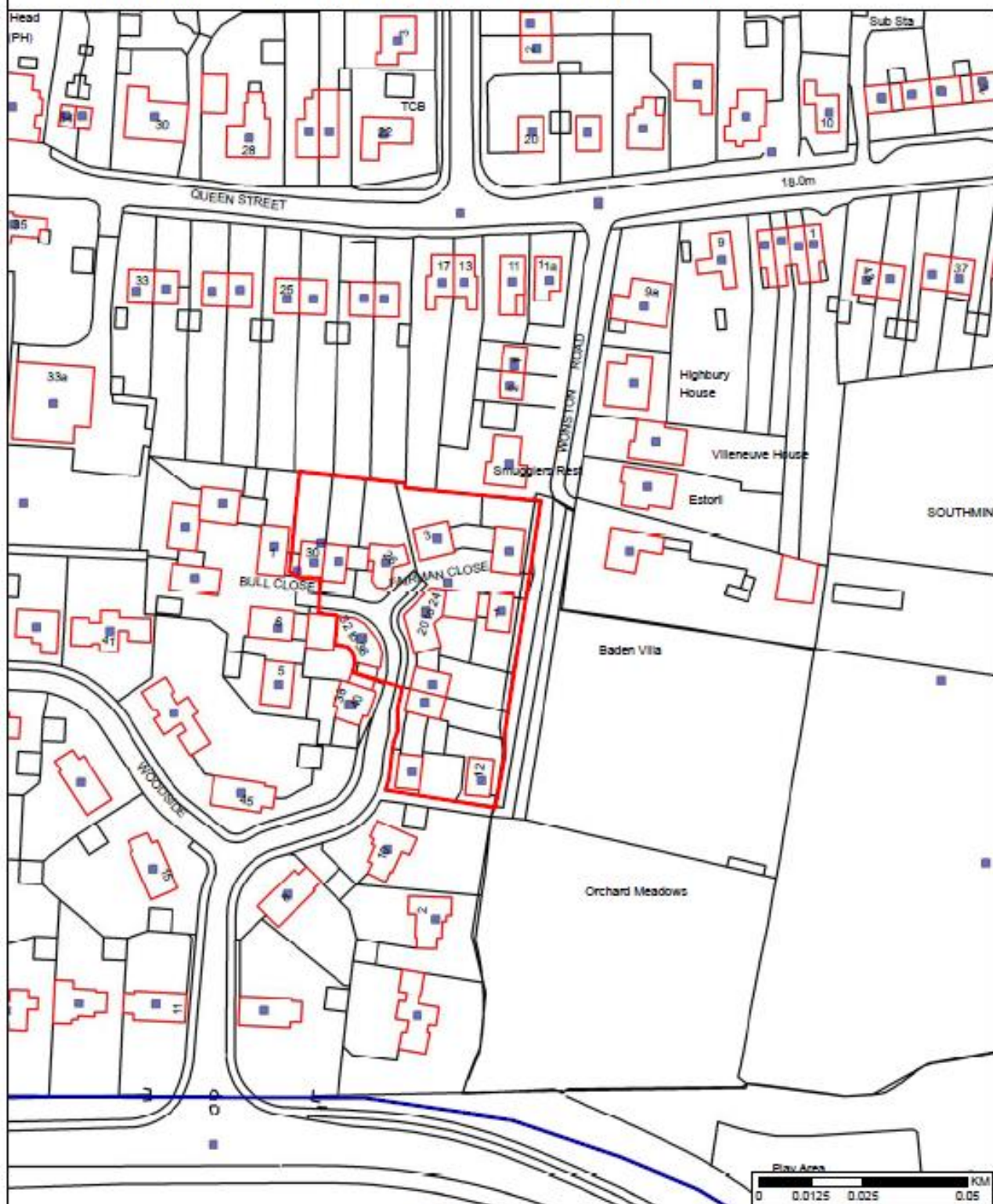
1. RECOMMENDATION

APPROVE subject to the applicant entering into a Deed of Variation pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended).

2. SITE MAP

Please see overleaf.

1-3 Fairman Close & 12-36 (even) Woodside, Southminster



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 Maldon District Council 100018588 2014


 MALDON DISTRICT COUNCIL

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Scale:	1:1,250
Organisation:	Maldon District Council
Department:	Department
Comments:	SE Committee 16/00630/MLA
Date:	04/08/2016
MSA Number:	100018588

3. SUMMARY

3.1 Proposal / brief overview, including any relevant background information

- 3.1.1 A request has been received to modify the original legal agreement dated 22nd April 1997 which was entered into in respect of the planning application (OUT/MAL/96/00655) for proposed development comprising housing (including affordable housing 1.3 acres) business park public open space and associated highway works. The reason for this modification is that the clause relating to mortgagee exclusion (in respect of the Affordable Housing provision) is no longer considered acceptable by the lenders. Mortgagee in Possession clauses are a fundamental element of S106 agreements and the proposed revision is consistent with other agreements. The Colne Housing Society, who are responsible for the affordable units therefore now require a modification to the agreement by adding an appropriate clause.

3.2 Conclusion

- 3.2.1 A Deed of Variation has been drafted. Given the need for this amendment due to the requirements of mortgagees, it is considered that the wording proposed in the Deed of Variation is acceptable, and the Strategic Housing Manager agrees that this amendment is needed and acceptable.

4. MAIN CONSIDERATIONS

4.1 Principle of Development

- 4.1.1 The ‘principle of development’ on this site has already been established and the site has now been developed accordingly.
- 4.1.2 This application has been made to vary the S106 legal agreement for this site as the owners of the affordable housing (Colne Housing Society) are looking to secure the affordable housing against loan finance in order to continue developing affordable housing and other properties.

4.2 Other Material Considerations

- 4.2.1 This amendment is necessary as, due to the passage of time since the original S106 agreement was signed in 1997, the lack of a clause which addresses this issue is no longer considered acceptable by prospective lenders. Therefore the amendments contained in the draft Deed of Variation are suggested in order to ensure that a lender, should they take possession of a property, can sell the property free of the affordable housing restrictions.
- 4.2.2 The original S106 does not contain a mortgagee exclusion clause and whilst the position relating to the affordable housing is not fundamentally changing, the amendment contained in the draft Deed of Variation addresses the concerns of prospective mortgagees.

- 4.2.3 For future reference, the clause which requires amendment, now appears in new S106 agreements in this updated format and therefore future agreements should not require this change.

5. **ANY RELEVANT SITE HISTORY**

- **OUT/MAL/96/00655** – Proposed development comprising housing (including affordable housing 1.3 acres) business park public open space and associated highway works. Approved subject to S106. 24/04/97.
- **FUL/MAL/06/00886** – Construction of estate roadway and 24 dwellings. Allowed on appeal 27/02/07.

6. **DEED OF VARIATION**

The proposed change to the S106 Agreement dated 22 April 1997 is as follows:

Add New Clause 6

The 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)) or any persons or bodies deriving title through such mortgagee or chargee or Receiver.