

**5b 3/13/0528/SV – Deed of variation to S106 obligation dated 15 April 2005 under planning reference 3/04/0657/OP – to insert an additional clause, following Clause 2.4, stating that successors in title does not include leaseholders at 95–97 London Road, Bishop’s Stortford, CM23 3DU for Cala Homes Limited**

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**Date of Receipt:** 11.04.2013

**Type:** Variation of S106 – Major

**Parish:** BISHOP’S STORTFORD

**Ward:** BISHOP’S STORTFORD – CENTRAL, SOUTH AND ALL SAINTS

**RECOMMENDATION:**

That the S106 legal agreement be varied to add a clause to the effect that:

- The reference to ‘successors in title’ in the agreement does not include leaseholders.

\_\_\_\_\_ (130528SV.MP)

**1.0 Background:**

- 1.1 The application site is shown on the attached OS extract. The site is located between the railway line and the River Stort, with access gained off London Road by the public house known as The Tanners Arms.
- 1.2 The site contains a number of large buildings, currently under construction, that will provide some 130 apartment dwellings and a large office building. Planning permission has also been granted for a further office building to the north of the site, just to the south of the office building currently under construction. However, that building has not yet been constructed.
- 1.3 A legal agreement was entered into in relation to the original permission – LPA reference 3/04/0657/OP. That legal agreement required the developer to pay financial contributions relating to highways matters, education, libraries, youth and child care and community facilities.
- 1.4 However, some members may recall that the applicant submitted an application, LPA reference 3/11/0688/SV, to vary the amount of contributions required, for viability reasons. This variation was agreed at the Development Control Committee meeting on 20 July 2011 but has not been signed yet.
- 1.5 This current application seeks a further amendment of the agreement by the addition of a further clause which would state that the

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'successors in title' to the agreement does not include leaseholders. This would ensure that the individual purchasers of the flats do not become liable for any commuted sums not paid and do not have to be signatories to any deed of variation.

### **2.0 Site History:**

2.1 The following is the relevant planning history relating to the site.

<b><u>Lpa reference</u></b>	<b><u>Description of development</u></b>	<b><u>Decision</u></b>
<u>3/11/2137/SV</u>	Removal of highway obligation (3/04/0657/OP)	Applicant has appealed against non-determination (no decision from Planning Inspectorate at time of writing)
<u>3/11/0688/SV</u>	Variation of S106 contributions	Members resolved to grant consent, subject to variation of legal agreement
<u>3/07/2675/FP</u>	Erection of 4 storey office for B1 Office Use	Approved
<u>3/07/1220/RP</u>	Erection of a 4 storey office for B1 Office Use	Approved
<u>3/06/2304/FP</u>	Change of use of part existing undercroft car park for residents fitness suite and external alterations to form door and window openings	Approved
<u>3/05/0824/RP</u>	Approval of reserved matters for the erection of 130no. apartments	Approved
<u>3/04/0657/OP</u>	Erection of 130 Apartment Dwellings, Erection of 2 no. Commercial (B1) Office Buildings, undercroft Car Park, Sub-station and Domestic Refuse Enclosure	Approved

### **3.0 Consultation Responses:**

3.1 No consultation responses have been received

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#### **4.0 Town Council Representations:**

4.1 Bishop's Stortford Town Council do not comment on the basis of insufficient information.

#### **5.0 Other Representations:**

5.1 The application has been advertised by way of press notice, site notice and neighbour notification.

5.2 No representations have been received.

#### **6.0 Policy:**

6.1 The relevant 'saved' Local Plan policies in this application include the following:

IMP1 Planning Conditions and Obligations

#### **7.0 Considerations:**

7.1 As set out above, a legal agreement in relation to the site has previously been agreed by the Council but has not yet been signed. The applicant has submitted a supporting letter which sets out that delays in the signing of the variation to the S106 is owing to administration processes and that County Council legal representatives have advised that it is necessary to vary the provision of the S106 agreement relating to successors in title (i.e. future owners of the residential units) so that any future owners of the residential units are not liable for any commuted sums and do not have to be signatories to any Deed of Variation.

7.2 Officers understand that such wording is normal practice within S106 agreements and does not, in any way, impact on the contributions previously agreed by the Council within LPA reference 3/11/0688/SV. The variation to the S106 will still require the applicant, Cala Homes, to make the financial contributions, but removes any liability for any future householders or owners of the residential dwellings to make the payment.

#### **8.0 Conclusion:**

8.1 The variation to the legal agreement is minor and will not, in any way, impact on the level of financial contributions previously agreed and Officers therefore recommend that the application be approved.