

CHIGWELL PARISH COUNCIL – PLANNING OFFICER REPORT

Application reference: EPF/1100/26/DOV

Site: Chigwell Primary Academy, Mandir Lane, Chigwell, IG7 6ED

Proposal: Deed of Variation to the section 106 legal agreement attached to EPF/1681/19

Recommendation: Strong objection. Request refusal.

Background

This application relates to the legal agreement attached to the original planning permission for the new Chigwell Primary Academy and 59 homes.

The original permission was not just for housing. It was for a combined scheme: a new school, demolition of the old school buildings, a new playing field/playground, and 59 homes.

The site is in the Green Belt. The housing was allowed as enabling development because it helped deliver the new school. The school was therefore central to the planning permission, not an optional extra.

The applicant now wants to vary the section 106 agreement so that Coral Properties Limited no longer has to deliver the new school. Instead, the applicant proposes a £2 million education contribution.

Planning history

Members should note that the applicant has already tried to remove the school from the permission.

EPF/1902/25 tried to vary conditions to remove references to the school.

EPF/1903/25 tried to amend the description of development so that it referred only to the 59 homes.

Both were refused by EFDC. EFDC's view was that removing the school would be a substantial change and that a fresh full planning application would be needed.

The present application is different in legal form, because it seeks to vary the section 106 agreement. However, the practical effect is similar: it would separate the housing from the school delivery that justified the original permission.

Members should also note EPF/0047/24/DOV, approved in February 2024. That earlier variation was only a rescheduling of payment trigger points to assist cashflow. It did not remove the school delivery obligation. The supporting material for that application stated that the school construction was to take place alongside the early residential construction and that the section 106 stages were linked to residential trigger clauses. That supports the Parish Council's position that the school and housing were intended to be linked.

Main issue

The legal test under section 106A is whether the existing obligation still serves a useful planning purpose and, if so, whether the proposed change would serve that purpose equally well.

The applicant's own legal note accepts that the school obligation still serves a useful purpose. It says the current obligation is to build a new primary school. It says the purpose is to improve educational infrastructure and provision near the site. It then accepts that this is a useful purpose.

That is important. It means the key issue is not whether the obligation has become pointless. It has not. The issue is whether a £2 million payment would serve the same purpose equally well as the obligation to deliver the approved school.

Officers do not consider that it would.

Assessment

The current agreement secures a specific new school, playing field/playground works and phasing controls linked to the housing. A general education payment is not the same thing.

The applicant suggests that the Department for Education or REAch2 may bring forward a separate school scheme. That may happen, but the Parish Council has not seen evidence of a planning permission, building contract, funding agreement, delivery timetable or legal agreement that guarantees it.

The applicant also says the £2 million figure has been agreed with BPS, EFDC's viability assessor. No BPS letter, report or written confirmation has been provided in the papers seen by the Parish Council. EFDC should be asked to publish that evidence before any weight is given to the claim.

Even if BPS has agreed the figure, that does not answer the legal test. The issue is not just whether £2 million is viable. The issue is whether it serves the same planning purpose as the original obligation equally well. A payment does not deliver the approved school.

There is also a concern about where the money would be spent. The existing obligation secures a new school at Chigwell. The applicant's legal note refers to money being used for education infrastructure across Essex. That is not equivalent to securing a specific local school.

The proposed Deed of Variation would remove the main clauses, definitions, plans and schedules that secure the new school. That is a major change to the agreement. It would remove the practical machinery for school delivery rather than simply update it.

Conclusion

The existing section 106 agreement should remain in place.

The applicant accepts that the school obligation still serves a useful purpose. The applicant has not shown that the proposed £2 million contribution would serve that purpose equally well.

The current proposal would weaken the link between the housing and the school infrastructure which justified the original Green Belt enabling development.

The Parish Council should strongly object and ask EFDC to refuse the application.

Recommended comments to EFDC

Chigwell Parish Council STRONGLY OBJECTS to application EPF/1100/26/DOV and requests that Epping Forest District Council refuses the proposed Deed of Variation.

The Parish Council considers that the existing section 106 obligations attached to EPF/1681/19 continue to serve a useful planning purpose. They secure the delivery of the new Chigwell Primary Academy school, associated demolition, playing field/playground works, phasing and occupation controls. These obligations were central to the original permission and to the planning balance for enabling residential development in the Green Belt.

The applicant's own legal note accepts that the current obligation serves a useful purpose. It identifies the current obligation as the building of a new primary school in conjunction with REAch2 Academy Trust, states that its purpose is to improve educational infrastructure and provision in the vicinity of the site, and accepts that this is a useful purpose. The statutory issue is therefore whether the proposed modification would serve that useful purpose equally well.

The Parish Council does not consider that the proposed £2 million education contribution would serve that useful purpose equally well. The current obligation secures a specific replacement primary school and associated works at Chigwell. A financial contribution towards education infrastructure is not equivalent to the direct, enforceable delivery of the approved school and related works.

The Parish Council is also concerned that the applicant's legal note refers to the proposed contribution being capable of use for education infrastructure across Essex. That is not the same as securing the approved school at Chigwell or education provision in the immediate locality of the development.

The Parish Council is further concerned that the proposed Deed of Variation would remove the key provisions of the section 106 agreement which secure the new school, including school-related definitions, clauses, schedules and plans. This would materially weaken the link between the residential development and the public benefits relied upon when EPF/1681/19 was granted.

The Parish Council notes the previous approval of EPF/0047/24/DOV. That decision related to the rescheduling of payment trigger points and was approved "as per option 1". It did not remove the school delivery obligation. The supporting material for that variation confirmed that school construction was to be concurrent with early residential construction and that the section 106 stages were linked to residential trigger clauses. EPF/0047/24/DOV therefore supports, rather than weakens, the Parish Council's position that the school obligation remains central to the approved scheme.

The Parish Council also notes that EFDC has already refused applications EPF/1902/25 and EPF/1903/25, which sought to remove the school from the approved development through section 73 and section 96A routes. The present application appears to seek a similar outcome through variation of the section 106 agreement, while leaving the operative planning permission unchanged. If the applicant wishes to pursue a residential-only scheme, the proper route is a fresh full planning application.

The Parish Council further notes that the applicant states the proposed £2 million contribution has been agreed with BPS, the Council's viability assessor. No evidence of that agreement has been provided to the Parish Council. EFDC is asked to publish the BPS advice and confirm what assumptions were used, what obligations would remain payable, what obligations would be removed, and whether the £2 million is additional to or in substitution for existing obligations.

In any event, viability evidence would not by itself satisfy the section 106A test. The statutory test is whether the modified obligation would serve the same useful planning purpose equally well. The Parish Council does not consider that test is met.

The Parish Council therefore requests that EFDC determines that the section 106 agreement should continue to have effect without the proposed modification.

Should EFDC be minded to approve the application, the Parish Council requests that the matter is referred to the relevant Planning Committee and that no decision is issued until EFDC has published the BPS viability review, obtained clear written confirmation from Essex County Council, REAch2 Academy Trust and the Department for Education on the status and enforceability of any alternative school delivery proposal, and fully explained how the proposed variation satisfies the statutory section 106A test.