

Mrs S Kasparian
Planning Department
North Hertfordshire District Council
Council Offices
Gernon Road
Letchworth Garden City
SG6 3JF

Our ref: SRS/503/55/1/S106DOV2

Date: 19 May 2026

Dear Sarah,

Re: Highover Farm, Hitchin – Deed of Variation (DOV2) to S106 for 18/01154/OP

Now that the DOV1 in relation to Schedule 2, Part 2, clauses 14.1-14.7 of the above mentioned S106 Agreement has been completed (dated 15 May 2026), I am instructed by BDW Trading Ltd to submit another application to further modify the S106 in respect of open space management principles.

This submission comprises –

- This covering letter
- Relevant form and certificate
- Draft Deed of Variation
- Redline Site Location Plan

Throughout the negotiations on the original S106, the Council advised that it was its intention to pursue the management and maintenance of the open space on all of the strategic allocations (Highover Farm being one of them); conversely, BDW made it clear that it wished to pursue the use of a Management Company (ManCo)/Residents Management Organisation, as is common practice across all of its developments.

In terms of the green infrastructure/open space that is provided as part of the development, this includes- LEAPs, NEAPs, incidental open space, play on the way, street trees, strategic landscaping, SUDS drainage features (2 basins and numerous swales), semi-natural open space, Biodiversity Net Gain (BNG), hedgerows, nature conservation habitats and biodiversity enhancements, allotments and associated footpaths and other hard landscaping elements.

The S106 and a number of conditions on the outline permission have various requirements/considerations for management/maintenance of aspects of the development –

- The S106 focusses on ‘open space’,
- Condition 13 focusses on a management and maintenance scheme for ‘open space’, excluding Biodiversity Net Gain (BNG),

Rapleys – 120 Colmore Row Birmingham B3 3AP

T: 0370 777 6292 E: info@rapleys.com www.rapleys.com @rapleys [linkedin/twitter](#)

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- Condition 21 focusses on landscape and ecological management, principally the BNG provision being provided on site,
- Condition 6 -Design Code -requires detail on 'stewardship' – details of adoption, management and maintenance of highways, footpaths, cycleways, green space and public realm,
- Condition 8 requires management arrangements for allotments,
- Condition 22 focusses on street management/maintenance either through S38 or a Private ManCo.

Bearing in mind the above, there are several things of note –

- The County Council Highway Authority will only adopt (and therefore maintain) The Avenue and associated loop roads to the north and south of it, although it is not clear whether this extends to the trees and verges,
- The maintenance regime for all other highways is currently unknown, although a ManCo is expressly a possibility in relation to other highways,
- The S106 currently requires 'relevant' open space to be transferred to the Council -the reality of this means that there is no absolute requirement for ALL areas of open space to be transferred to the Council,
- The concept of 'stewardship' would ordinarily be interpreted as being linked to the use of some form of Management Organisation, with the aim usually being to secure the delivery of open space management and other items on a holistic basis - under the auspice of 'stewardship', the approved Design Code, section 4.16, specifically refers to the public realm being managed by the County Council Highway Authority and a Management Company with the latter set up to manage shared facilities (both open space/green infrastructure and buildings (apartments)),
- BNG maintenance period is a minimum of 30 years,
- Open space maintenance within the S106 is expressly 25 years.

Whilst acknowledging the Council's preference and aspiration to take on the open space, BDW considers the use of a Management Organisation removes the burden not only of daily maintenance costs from the Council, but also the prospect of no new income beyond the 25 years to fund its ongoing management liabilities which are only likely to increase with age. The use of a Management Organisation can ensure the holistic management of all aspects of the public realm. It also brings other advantages for the residents –

- Residents have the opportunity to be on the Management Board,
- It gives residents direct control over how the open space/public realm is maintained,
- It gives residents motivation to ensure upkeep, etc is completed to a high standard without being hindered by bureaucracy or pressure on budget cuts,
- The community can oversee the budget, and this is ongoing in perpetuity,
- The residents have a direct say in how the open space functions, for example, an increased focus on ecology.

Notwithstanding the Council's preference, the adopted Local Plan policy NE6 and its associated justification text, whilst requiring long term management and maintenance plans, is not specific in terms of management entity. The adopted Developer Contributions SPD on the other hand is more specific, stating at paragraph 8.4.24 -

"The Council will consider the adoption and management of new strategic space in the following circumstances....

- *Located in... Hitchin..., (yes)*
- *...is meeting a current deficiency..., (no it provides for its own needs)*
- *...is meeting a strategic gap in green space network...and improving ...connectivity..., (possibly)*
- *...longer term revenue streams...can be effectively recycled back into the locality as part of place investment, (this applies to all development schemes)*
- *...other corporate objectives can be met such as climate change, biodiversity, health and wellbeing, (also applies to all development schemes).*

And at paragraphs 8.4.25 and 26 that for smaller green spaces and allotments other options such as Parish Councils or Management Companies should be considered.

Critically at paragraph 8.4.28, it states –

"...The Council will consider other management approaches such as private management companies..."

Each development is different, and a Management Organisation can be formed with bespoke requirements/rules tailored for the specific needs of each site to deal with the specific requirements of the Open Space Management and Maintenance Plan and LEMPs approved under conditions 13 and 21.

For all of the above reasons, BDW consider that the use of a Management Organisation is the optimum and appropriate mechanism for the long-term management and maintenance of all of the public realm (open space, other highways, communal apartment space, etc).

The S106 Open Space covenants are enforceable against the District Council and BDW Trading Ltd, NOT the County Council – it is for this reason that this DOV2 has been drafted without the inclusion of the County Council as we do not consider the latter needs to be a party to the DOV in this instance.

I look forward to progressing this DOV2 as quickly as possible with you and your legal team. The client has used the same lawyers that drafted the original S106 and the DOV1, specifically Anna Carledge of Shakespeare Martineau (tell 0121 214 0126, anna.cartledge@shma.co.uk), and in that context, please do pass Anna's details to your legal department to progress as necessary.

Should you have any queries with the submission, please do not hesitate to contact me.

Yours sincerely,

Sarah R Smith

[SarahRSmith \(May 19, 2026 15:16:23 GMT+1\)](#)

Sarah R Smith
BA (Hons) MRTPI
Consultant - Town Planning
sarah.r.smith@rapleys.com
07787 527109