

Dated 27 APRIL 2021

(1) South Holland District Council

and

(2) Ashley King (Developments) Limited

DEED OF VARIATION
Sections 106 and 106A of the Town and Country Planning Act 1990

**Relating to a Section 106 Agreement at
Land at Crease Drove, Crowland (Fincham)**

**South Holland District Council
Council Offices
Priory Road
Spalding
PE11 2XE**

SHDC Reference: LD/H02-1006-20

Date

27 APRIL

2021

BETWEEN

- (1) **SOUTH HOLLAND DISTRICT COUNCIL** of Council Offices, Priory Road, Spalding, PE11 2XE ("the Council"); and
- (2) **ASHLEY KING (DEVELOPMENTS) LIMITED** (Company Registration Number 04242280) whose registered office is 1 Goodison Road, Lincs Gateway Business Park, Spalding, PE12 6FY ("the Owner")

INTRODUCTION

- (A) The Council is the Local Planning Authority for the purposes of the Act for the area within which the Land is situated.
- (B) The Owner is the freehold owner the Land registered under title number LL382357.
- (C) On 22 January 2019 the Council and the Owner entered into the Original Agreement.
- (D) The Owner has submitted the S.73A Application to vary condition 2 to allow amendments to previously approved plans.
- (E) Without prejudice to the terms and the other covenants contained in the Original Agreement the parties have agreed to vary the terms of the Original Agreement as set out in this Deed.
- (F) This Deed is made under sections 106 and 106A of the Act and is supplemental to the Original Agreement.

NOW THIS DEED WITNESSES AS FOLLOWS:**1. DEFINITIONS**

For the purposes of this Deed the following expressions shall have the following meanings:

"Original Agreement"	means the agreement made under section 106 of the Act relating to land at Crease Drove, Crowland dated 22
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	January 2019 between the Council (1) and the Owner (2)
"S.73A Application"	means the application under S.73A of the Act received by the Council on 11 November 2020 for the variation of condition 2 attached to the Original Planning Permission and allocated the Council's reference number H02-1006-20

2. CONSTRUCTION OF THIS DEED

- 2.1 Unless the context otherwise requires and save as herein varied all words and phrases defined in the Original Agreement shall have the same meaning in this Deed.
- 2.2 Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.
- 2.3 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.4 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that act or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party to the Land or any part thereof and in the case of the Council, successors to its functions.

3. LEGAL BASIS

- 3.1 This Deed is made pursuant to Sections 106 and 106A of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and

all other enabling powers with the intent that the covenants and obligations shall run with the Land.

- 3.2 This Deed and the obligations contained herein are conditional upon the grant of the S.73 Permission and the Commencement of Development SAVE FOR the provisions of this clause 3 and clauses 6, 7, 8, 9, 10, 11 and 12 which shall take effect immediately upon completion of this Deed

4. VARIATIONS TO THE ORIGINAL AGREEMENT

- 4.1 The following definitions shall be added to the Original Agreement:

"Original Planning Permission"	means the planning permission issued by the Council and given reference H02-0575-18
"S.73A Application"	means the application under S.73A of the Act received by the Council on 11 November 2020 for the variation of condition 2 attached to the Original Planning Permission and allocated the Council's reference number H02-1006-20
"S.73A Permission"	means the planning permission issued pursuant to the S.73A Application

- 4.2 Recital (C) in the Introduction section in the Original Agreement shall be deleted and replaced with the following:

"The Owner applied to the Council for planning permission for the Land for residential development for 47 Dwellings under reference H02-0575-18 as varied by reference H02-1006-20"

- 4.3 The phrase "Application" in Clause 1.1 to the Original Agreement shall be deleted and replaced with the following:

"Application"	means the application for Planning Permission for the Development and allocated reference number H02-0575-18 or the S.73A Application
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- 4.4 The phrase "Dwelling" in Clause 1.1 to the Original Agreement shall be deleted and replaced with the following:

"Dwelling"	means any unit of residential accommodation constructed pursuant to the Original Planning Permission or the S.73A Planning Permission and "Dwellings" shall be construed accordingly
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- 4.5 The phrase "Planning Permission" in Clause 1.1 to the Original Agreement shall be deleted and replaced with the following:

"Planning Permission"	means either the Original Planning Permission or the S.73A Planning Permission
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- 4.6 Clause 8.7 shall be deleted in its entirety and replaced with the following wording:

This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Original Planning Permission and the S.73A Planning Permission is quashed, revoked or otherwise withdrawn or (without the consent of the Owner) modified by any statutory procedure or expires prior to the Commencement of Development

- 4.7 The following Clause shall be inserted after Clause 8.11 of the Original Agreement to the Original Agreement:

*"It is agreed between the parties that where planning permission is issued in relation to the Development pursuant to an application under section 73 of the 1990 Act this Deed shall continue to bind the Development and shall be in full force and effect subject to and in accordance with the provisions contained herein **AND PROVIDED THAT** in the event that upon receipt of an application under section 73 of the 1990 Act the Council considers that the obligations contained in this Deed should be varied or amended it is agreed and acknowledged that the Council should retain the right to refuse such application unless and until a deed of variation or alternative agreement has been entered into to secure the appropriate obligations."*

- 4.8 The draft decision notice for the S.73A Permission annexed to this Deed at Schedule 1 shall be added as Schedule 5 of the Original Agreement.

- 4.9 In all other respects the Original Agreement (as varied by this Deed) shall remain in full force and effect.

5. THE OWNER'S COVENANT

- 5.1 The Owner covenants to observe and perform the obligations on the part of the Owner contained in the Original Agreement as varied by this Deed and subject to the terms thereof.

6. LOCAL LAND CHARGE

- 6.1 This Deed shall be registerable as a local land charge by the Council.

7. COUNCIL'S COSTS

- 7.1 On completion of this Deed, the Owner shall pay to the Council their reasonable legal costs together with all disbursements that have been incurred in the negotiation and completion of this Deed.

8. VAT

- 8.1 Any consideration given under this Deed shall be done in such a way that the VAT liability is borne by the Owner and not the Council.

9. THIRD PARTY RIGHTS

- 9.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

10. JURISDICTION

- 10.1 This Deed is governed by and interpreted in accordance with the laws of England.

11. EXECUTION AND DELIVERY

This Deed is executed as a deed by the parties and is delivered on the date first hereinbefore written

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

SCHEDULE 1
DRAFT S.73A PLANNING PERMISSION (H02-1006-20)
TO BE ISSUED UNDER THE S.73A APPLICATION

Ashwood Homes
1 Goodison Road
Lincs Gateway Business Park
Spalding
PE12 6FY

Council Offices
Priory Road
Spalding
Lincolnshire
PE11 2XE

Admin 01775 764723
DC Officers 01775 761161
Facsimile 01775 762937

planningadvice@sholland.gov.uk
www.sholland.gov.uk

TOWN AND COUNTRY PLANNING ACT 1990

DRAFT APPROVAL

Reference: H02-1006-20 **Date of Decision:**

Applicant: Ashwood Homes
1 Goodison Road
Lincs Gateway Business Park
Spalding
PE12 6FY

Location: Land At Crease Drove (Fincham) Crowland

Description: Erection of 47 dwellings with associated garaging, roads and sewers - approved under H02-0575-18. Modification of Condition 2 to allow amendments to previously approved plans.

South Holland District Council hereby give notice that permission has been GRANTED (or equivalent) subject to the following condition(s):

- 1 The development hereby permitted shall be carried out in accordance with the following approved plans:

Accompanying H02-0575-18:

1229-LP;
1229-004 Rev C;
98-SL-01;
98-WEL-001;
98-TAY-001A;
98-TAY-002B;
98-RIBB-001;
98-MER-001;
98-MER-002;
98-LCK-001;

98-CLY-001;
98-AV-001;
98-A732-001;
98-A902-001;
TG-01;
SG-01;
DSG-01;

Combined Phase I Desk Study & Phase II Exploratory Investigation for Ashwood Homes (prepared by GeoDyne Limited, dated 29th June 2018);
Transport Assessment (prepared by ADC Infrastructure Ltd, dated 27th June 2018);
Surface water storage requirements (prepared by Laura Birkin, dated 31st May 2018); and
Flood Risk Assessment (prepared by Inspire Design and Development Ltd, dated July 2018).

Accompanying H02-1006-20:

Environmental Noise Assessment (Report No. SEM/J3311/17813), prepared by Acoustic Associates Peterborough, dated September 2020)

Reason: For the avoidance of doubt and in the interests of proper planning.

- 2 The development shall be carried out in accordance with the surface water drainage scheme approved by virtue of condition compliance application ref. H02-0102-19. The approved scheme shall be retained and maintained in full in accordance with the approved details.

Reason: To ensure that the permitted development is adequately drained without creating or increasing flood risk to land or property adjacent to, or downstream of, the permitted development.

This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019 and national guidance contained in Section 14 of the National Planning Policy Framework, 2019.

- 3 The development shall be carried out in accordance with the foul water drainage scheme approved by virtue of condition compliance application ref. H02-0102-19.

Reason: To ensure that the site is adequately drained and to avoid pollution.

This Condition is imposed in accordance with Policy 30 of the South East Lincolnshire Local Plan, 2019.

- 4 The management of the areas of publicly accessible open space and any outdoor play areas shall be carried out in accordance with the details approved by virtue of condition compliance application ref. H02-0102-19.

Reason: To ensure that adequate open space provision is made available for the occupiers of the development hereby permitted and that provision is made for the management and maintenance of the open space.

This Condition is imposed in accordance with Policy 32 of the South East Lincolnshire Local Plan, 2019.

- 5 The development shall be constructed in accordance with the details levels details approved by virtue of condition compliance application ref. H02-0102-19.

Reason: To reduce the risk of flooding of the development. This issue is integral to the development and therefore full details need to be finalised prior to the commencement of works.

This Condition is imposed in accordance with Policy 4 of the South East Lincolnshire Local Plan, 2019 and national guidance contained in Section 14 of the National Planning Policy Framework, 2019.

- 6 The development shall be carried out in accordance with the landscaping scheme approved by virtue of condition compliance application ref. H02-0102-19. The approved scheme shall be carried out and completed in its entirety during the first planting season following practical completion of the development. All trees, shrubs and bushes shall be maintained by the owner or owners of the land on which they are situated for the period of five years beginning with the date of completion of the scheme and during that period all losses shall be made good as and when necessary.

Reason: To ensure that the development is adequately landscaped, in the interests of its visual amenity and that of the area in which it is set.

This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

- 7 The development shall be carried out in accordance with the scheme of boundary treatment approved by virtue of condition compliance application ref. H02-0102-19.

Reason: In the interests of the character and appearance of the development and the amenity of the area in which it is set including the amenity of nearby occupiers.

This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

- 8 The development shall be constructed in accordance with the materials details approved by virtue of condition compliance application ref. H02-0102-19.

Reason: To ensure that the Local Planning Authority retains control over the external materials of construction of the development in the interests of the character and appearance of the development and the visual amenity of the area in which it is set.

This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

- 9 The development hereby permitted shall be carried out in accordance with the measures set out in the Flood Risk Assessment (prepared by Inspire Design and Development Ltd, dated July 2018) forming part of application ref. H02-0575-18, unless otherwise agreed in writing by the Local Planning Authority, in particular the following measures shall be fully implemented before the property is first occupied:

- Buildings shall be a minimum of two storey;
- Finished floor levels shall be set at a minimum of 1m above existing ground level;
- Demountable defences shall be installed up to 600mm above finished floor levels; and
- Flood resilient construction shall be incorporated up to 300mm above the predicted flood

depth.

Reason: To ensure that the development does not increase the risk of flooding or be at risk of flooding.

This Condition is imposed in accordance with Policies 3 and 4 of the South East Lincolnshire Local Plan, 2019 and national guidance contained in Section 14 of the National Planning Policy Framework, 2019.

Notes:

This planning permission is subject to an Agreement under Section 106 of the Town & Country Planning Act 1990 dated 22nd January 2019 (as modified by the Deed of Variation dated *****) and can only be implemented as a consequence of meeting the provisions of that Agreement

All roads within the development hereby permitted must be constructed to an engineering standard equivalent to that of adoptable highways. Those roads that are to be put forward for adoption as public highways must be constructed in accordance with the Lincolnshire County Council Development Road Specification that is current at the time of construction and the developer will be required to enter into a legal agreement with the Highway Authority under Section 38 of the Highways Act 1980. Those roads that are not to be voluntarily put forward for adoption as public highways, may be subject to action by the Highway Authority under Section 219 (the Advance Payments code) of the Highways Act 1980.



Phil Norman
Planning and Building Control Manager
South Holland District Council

17th March 2021

BUILDING REGULATIONS:

This decision refers only to planning permission as granted under the Town and Country Planning Act 1990. The works that you are proposing may also require Building Regulations and this planning permission does not give authority under Building Regulations to commence work. Please contact the Building Control section for further information on 01775 764557 or bcadmin@sholland.gov.uk

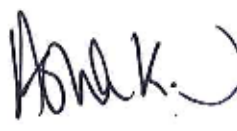
The **COMMON SEAL** of **SOUTH
HOLLAND DISTRICT COUNCIL**

was hereunto affixed
in the presence of:-


Authorised Signatory



EXECUTED as a **DEED** by
ASHLEY KING (DEVELOPMENTS)
LIMITED acting by a Director in the presence of:



Witness Signature: 

Name: 

Address: 

Occupation: 



ICRAVEN

610 WOODSIDE RD SPADINE

FIN DIRECTOR

