

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H03-0657-26 **Applicant:** Emerald Homes Group Ltd.

Proposal: Modification of 106 Agreement relating to viability review and enforceability of obligations on mortgagee (planning approval H03-0161-17)

Location: Home Farm Littleworth Drove Deeping St Nicholas

Terminal Date: 7th September 2026

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

01	Spatial Strategy
02	Development Management
05	Meeting Physical Infrastructure and Service Needs
06	Developer Contributions
18	Affordable Housing
APPENDIX 8	Developer Contributions for Education Facilities
APPENDIX 9	Developer Contributions for Health Care Facilities

National Guidance

National Planning Policy Framework August 2026

Section 106A of the Town and Country Planning Act 1990 (as amended)

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	0	0	0
WARD MEMBER	0	0	0	0
OTHER STATUTORY BODIES	0	0	0	1

CASE OFFICER ASSESSMENT

Proposal

This is an application to modify an existing Section 106 Agreement attached to planning permission H03-0161-17, which granted outline planning approval (with all matters reserved) for the erection of up to 120 dwellings, and a village hall and ancillary development. This agreement has been subject to a deed of variations, under reference H03-1042-25, which sought to modify the S106 by removing both on site affordable housing contributions; as well as the the commuted sums (made up of ££605,390 for Education and £79,92 for healthcare).

An initial S106 Agreement was signed, dated 20th December 2021, requiring on-site affordable housing provision (11 dwellings), financial contributions (to the sum of £605,390 for Education and £79,92 for healthcare), open space provision on the site and the delivery of a village hall. This was subsequently modified, via a deed of variations, signed 25 February 2026.

This application seeks to modify the S106 and deed of variation, to comprise a drafting change relating to clause 3.4, the review mechanism (17.1) and enforceability of obligations on mortgagee (Clause 9.2).

Site Description

The frontage of the site is located within the settlement limits of Deeping St Nicholas as outlined in the adopted South East Lincolnshire Local Plan (SELLP) March 2019, with the remaining area outside.

Home Farm is located and can be accessed off Littleworth Drove and comprises of large agricultural buildings, ancillary buildings, concrete hardstanding and agricultural land to the south east.

The site is 4.3 hectares in area and comprises agricultural land with large storage and ancillary agricultural buildings and concrete hardstanding, on the south east side of Littleworth Drove, Deeping St.Nicholas. Residential dwellings exist opposite and adjacent with an open ditch on the north eastern boundary, and agricultural fields behind. Overall the topography of the site is largely flat.

Relevant History

H03-0161-17 - Outline planning application with all matters reserved - Erection of up to 120 dwellings and a village hall and ancillary development. Approved 22.12.2021.

H03-0598-24 - Reserved Matters - Erection of 119 dwellings and a village hall along with ancillary development including the construction of an attenuation pond - Outline approval H03-0161-17. Approved 07.11.2024.

H03-1042-25 - Modified Agreement - Modification of 106 Agreement relating to affordable housing and infrastructure contributions (planning approval H03-0161-17) - Approved 03.08.2026, and deed of variations signed 25 February 2026.

Consultation Responses

Housing Strategy

If the Council's legal advisor is comfortable with the suggested changes the Local Housing Authority has no objection.

Planning Considerations

Section 38 (6) of the Planning and Compulsory Purchase Act 2004, as amended, requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

In this case, the South East Lincolnshire Local Plan 2011-2036, adopted March 2019, forms the development plan for the district, and is the basis for decision making in South Holland.

The relevant development plan policies are detailed within the report above. The policies and provisions set out in the National Planning Policy Framework (August 2026) are also a material

consideration in the determination of planning applications, alongside national Planning Practice Guidance.

Planning Considerations

The applicant seeks to modify the agreement to allow for the following:

- The new clause inserted into the Original Agreement pursuant to clause 3.4 of Supplementary Agreement shall be deleted and replaced with the updated and revised wording, which alters 17.1 from "In the event that that 80% of the Dwellings comprising the Development are not practically completed within 4 years of the date of this deed...", to "In the event that that 80% of the Dwellings comprising the Development are not practically completed within 4 years of 25th February 2026...".
- A new clause 9.2 shall be inserted into the original Agreement as follows: "The obligations contained in this Deed shall not be enforceable against any mortgagee or chargee of the whole or any part of the Land from time to time or any person deriving title from such mortgagee or chargee unless and until any such party takes possession of the Land (or any part thereof to which such obligation relates) in which case it will be bound by obligations as a person deriving title from the Owner PROVIDED THAT neither any mortgagee or chargee or person deriving title through such mortgagee or charge will be liable for any breach of the obligations contained in this Deed unless committed at a time when that person is in possession of the Land (or any part of it to which such obligation relates)."

It is considered that the proposed modification would not alter the obligation requirements, but rather seek to regularise drafting errors and insert a mortgagee protection clause as is also standard.

On this basis the modifications of the S106 are supported.

Additional Considerations

Public Sector Equality Duty

In making this decision the Authority must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:

- A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
- B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).
- C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149. It is only one factor that needs to be considered, and may be balanced against other relevant factors.

It is NOT considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.

Human Rights

In making a decision, the Authority should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as South Holland District Council to act in a manner that is incompatible with the European Convention on Human Rights. The Authority is referred specifically to Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property).

It is NOT considered that the recommendation in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general public interest and the recommendation is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

Conclusion

This application seeks to modify the existing S106, to comprise a drafting change relating to clause 3.4, the review mechanism (17.1) and enforceability of obligations on mortgagee (Clause 9.2).

On the basis of the above, the modifications of the S106 are supported.

Recommendation

The proposed modifications do not undermine or reduce the impact of the obligations sought and it is recommended such modification be approved.