DECISION DELEGATED TO HEAD OF PLANNING

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| **Application No:** | **H03-1042-25** | **Applicant:** | **Emerald Homes Group Ltd** |
| **Proposal:** | Modification of 106 Agreement relating to affordable housing and infrastructure contributions (planning approval H03-0161-17) | | |
| **Location:** | Home Farm Littleworth Drove Deeping St Nicholas | | |
| **Terminal Date:** | 19th December 2025 | | |

**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 December 2024**

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

**Representations:**

| | Object | Support | No Obj. | Comments |
|---|---|---|---|---|
| PARISH COUNCIL | 0 | 0 | 0 | 1 |
| WARD MEMBER | 0 | 0 | 0 | 0 |
| OTHER STATUTORY BODIES | 1 | 0 | 0 | 3 |
| RESIDENTS | 1 | 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.

A 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 application seeks to modify the existing 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).

It should be noted that this is the subject to a viability appraisal, which has been independently assessed. The proposed modification, and the assessment outlined, has been undertaken with the provision of the 'village hall' being retained.

It is proposed that the trigger for the delivery of the village hall, in so far as this relates to the modified legal agreement, will be reduced to occupation of 25% of the dwellings.

### 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.

### Consultation Responses

CP Viability (Independent Viability Experts) - Full response available

In summary, in keeping with the applicant's conclusions, and despite various adjustments in our appraisal, our model also demonstrates that the scheme is unable to viably support any affordable housing / S106 contributions (although our model does still retain the construction of the Community Centre). This is a reflection of the
current poor market conditions and is a national issue at the present time.

### 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 (December 2023) are also a material consideration in the determination of planning applications, alongside national Planning Practice Guidance.

Viability

The National Planning Policy Framework, under Paragraph 58, sets out that "Planning obligations must only be sought where they meet all of the following tests: a) necessary to make the development acceptable in planning terms; b) directly related to the development; and c) fairly and reasonably related in scale and kind to the development".

This goes on to express, under Paragraph 59, that "Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning practice guidance, including standardised inputs, and should be made publicly available".

Policy 6 of the of the South East Lincolnshire Local Plan set out that "Developers will either make direct provision or will contribute towards the provision of local and strategic infrastructure and services required by the development, either alone or cumulatively with other developments. Contributions will be determined having regard to: the viability of the proposed development".

The policy justification, under paragraph 3.7.11 sets out the following:

*In exceptional circumstances, where applicants state that financial viability prevents the delivery of some or all developer contributions, a financial appraisal should be submitted. Preferably this should form part of the pre-application negotiations but must be submitted with a planning application. Each Local Planning Authority's independent valuer will consider the assessment. All costs associated with the assessments will be met by the developer.*

Paragraph 3.7.14 details that "Where a developer can demonstrate that the viability of a development affects the provision of developer contributions, the Local Planning Authorities will balance the adverse impact of permitting the scheme on the delivery of such provision, with any identified planning benefits of the scheme".

Policy 18 of the South East Lincolnshire Local Plan (2019) relates to affordable housing. In part, the policy states *The proportion of affordable housing that can be provided on market housing sites may vary according to the site specific considerations such as viability, other infrastructure requirements and the type of affordable housing need to be met.*

Appendix 8 and Appendix 9 of the plan sets out requirements for Education and Health respectively.

In the context viability, the submission has been supported by a Viability Appraisal. This concludes that the development is not viable. As such, the applicant has submitted viability information to remove both the affordable housing contributions, as well as commuted sums for education and healthcare. It should be noted that the application seeks to retain the delivery of the village hall, with this being delivered prior to the occupation of 25% of the dwellings.

In line with the requirements of the SELLP, the LPA sought an independent assessment, via an independent viability assessor, at the cost of the applicant. Whilst it was noted that "various adjustments" were made within the independent assessors appraisal, it was concluded that the appraisal "demonstrates that the scheme is unable to viably support any affordable housing / S106 contributions (although our model does still retain the construction of the Community Centre)".

The conclusions from the independent assessment, are as follows:

*-"For our initial appraisal testing, we have run a scheme which complies with the S106 agreement (i.e. 11 onsite affordable units and S106 costs of £725,000, plus the construction of the community centre). However, this generates a residual land value which is below our benchmark land value of £1,560,600 and is therefore deemed to be unviable".*
*- "On a 'trial and error' basis we have subsequently reduced the planning policy contributions to determine at what point (if possible) the scheme returns a viable outcome (i.e. the residual land value is broadly in line with the benchmark land value). With nil affordable housing and nil S106 contributions (but the community centre still factored into the model) the scheme generates a residual land value of £933,744. This is below our benchmark land value of £1,560,600 and therefore this fails to meet the viability threshold, even with nil affordable housing / S106 contributions".*
*- "In summary, in keeping with the applicant's conclusions, and despite various adjustments in our appraisal, our model also demonstrates that the scheme is unable to viably support any affordable housing / S106 contributions (although our model does still retain the construction of the Community Centre). This is a reflection of the*
*current poor market conditions and is a national issue at the present time".*

Given the policy position as regards demonstrating viability, and drawing on the specialist advice from the independent viability assessor, it is accepted that the removal of affordable housing and commuted sums from the S106 is necessary in order for the development to be delivered.

Notwithstanding this, it is again noted that such an outcome is considering the retention of the village hall (community centre). Furthermore, the independent assessor has also advised that "in this respect, it is conceivable that market conditions will improve again in the future. If the Council agrees to relax the existing S106 requirements in order to help ensure the site is delivered, then we would recommend that an amended S106 agreement retains the ability to revisit viability in the future to allow the Council the ability to 'clawback' lost policy provisions. We note that a review mechanism is already referenced in the S106 agreement and we would strongly recommend that this is retained to allow viability considered at a later date, during the delivery of the project".

As such, any such modify agreement would retain a requirement for the delivery of the community centre (village hall), with the trigger for this to be delivered, be altered to a point of 25% occupation of dwellings within the scheme. Likewise, a claw back clause will also be sought, whereby a further viability assessment would be required, should the development not be completed within a relevant and proportionate time period.

## Planning Balance

Having regard to the allowance made under Policy 6 of the South East Lincolnshire Local Plan (2019) and given that the applicant has demonstrated through viability, which in turn has been independently assessed, it is considered that the removal of the contributions set out above, when also considering the matters retained and triggers altered, are in this instance necessary to make the scheme deliverable.

## 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 by removing both on site affordable housing contributions; as well as the commuted sums (for Education and for Health).

It is considered that the removal of affordable housing and commuted sums are necessary for the scheme to be delivered; alebit, any such variation would include the retention of the delivery of the community hall, an a revision to trigger for its delivery to 25% occupation of dwellings, and would also introduce a claw back clause.

## Recommendation

It is considered that the removal of affordable housing and commuted sums are necessary for the scheme to be delivered and as such, it is therefore recommended that the proposal be approved under delegated authority.