DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H08-1015-24**	**Applicant:**	**Emerald Homes**
Proposal:	Modification of 106 Agreement relating to affordable housing and cash contributions (planning approval H08-0870-22)		
Location:	Site Adj: Silverdene Boston Road Gosberton		
Terminal Date:	27th January 2025		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019	
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 4 - Decision-making

Planning Practice Guidance Paragraph 009

Representations:

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

CASE OFFICER ASSESSMENT

Proposal

Modification of 106 Agreement relating to affordable housing and cash contributions (planning approval H08-0870-22)

The applicant has provided a viability assessment by Maxey Grounds along with other supporting information. The Maxey Grounds assessment appraises the scheme, which is for:

On site affordable housing contributions (25%) as well as an Education Contribution of £102,012 and a Health Contribution of £13,200.

The applicant has also appraised the alternative scenario of no affordable housing or S106 cash contributions.

Site Description

The application site benefits from planning permission to erect 20 number dwellings. The application site is located adjacent to Silverdene, Boston Road, Gosberton. It is located outside of the development boundary and within the open countryside for policy purposes.

History

H08-0870-22 - Full - Proposed residential development comprising 20 dwellings (Re-submission of H08-1183-21). Approved 04-05-23
H08-1183-21 - Full - Proposed residential development compromising 20 dwellings, Refused March 2022]
H08-0218-20 - Reserved Matters - Residential Development of 19 Dwellings. Approved July 2020
H08-0518-19 -Outline - Residential Development (re-submission of H08-0866-18) (refused July 2019)
H08-0866-18 - Outline - Residential Development for up to 18 Dwellings (approved March 2019)

Consultation Responses

Strategic Development Officer - LCC

LCC Education have looked at the application that was recently sent to us for consultation after noting on the planning portal that additional documents were present in relation to Viability, we would like to make the below additional comments alongside our response to ensure you have the full picture as it has been noted that in the Viability assessment report that there are no s106 contributions possible. The development is 20 dwellings with dwelling sizes known and unknown, the ask from LCC Education original asked as written in the S106 agreement is £102,012 for secondary phase education at Donington Thomas Cowley Academy The development creates 4 additional secondary children, and the above amount is in relation to those children. The secondary phase has been and is also predicted to be way over the 95% FULL threshold with the nearest school predicted to even be over its maximum capacity and that is without the additional 4 children from this development therefore we shall require the full £102,012 ask from the developer to mitigate the impact of the additional children otherwise children will have to attend school further away. We have ensured we have looked at the most up to date data we have for pupil projections to ensure we are assessing correctly.

Parish Clerk

There is need for affordable housing in the area and the original application was passed with an agreement for the developer to contribute 106 monies- this application will bring more families to the village and 106 monies is required to help update infrastructure schools, doctors etc in the are

CP Viability

The council is within it rights to refuse the application for 2 reasons:

(i)The S106 agreement is under 5 years old
(ii)Realisation of risk for a commenced scheme is not justification of a viability argument, a principle supported in the recent Barlborough links appeal decision.

Representations

The application has been advertised in accordance with the publicity requirements outlined within the DMPO. One letter of objection has been received:

The HCA Appraisal tool used is out of date being the model released by Homes England in 2014. It clearly states on the Homes England site that the latest HCA appraisal tool and site data should be utilised (April 23 version). The s106 monies are critically important to the village

Planning Considerations

Evaluation

Section 38 (6) of the Town and Country Planning Act, as amended by the 2004 Act, 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 (updated December 2023) are also a material consideration in the determination of planning applications, alongside national Planning Practice Guidance.

Framework for Assessment:

Local Plan Policies & Supporting Information

SELLP Policy 6 sets out Developer contributions. The original application was subject to and considered to be in accordance with this policy. Subsequently the applicant claims external factors shaping the financial landscape have impacted upon this scheme, resulting in this application.

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

SELLP Policy 18 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.

NPPF Paragraph 59

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.

Planning Practice Guidance

How viability should be reviewed during the lifetime of a project:

Plans should set out circumstances where review mechanisms may be appropriate, as well as clear process and terms of engagement regarding how and when viability will be reassessed over the lifetime of the development to ensure policy compliance and optimal public benefits through economic cycles. Policy compliant means development which fully complies with up to date plan policies. A decision maker can give appropriate weight to emerging policies.

Where contributions are reduced below the requirements set out in policies to provide flexibility in the early stages of a development, there should be a clear agreement of how policy compliance can be achieved over time. As the potential risk to developers is already accounted for in the assumptions for developer return in viability assessment, realisation of risk does not in itself necessitate further viability assessment or trigger a review mechanism. Review mechanisms are not a tool to protect a return to the developer, but to strengthen local authorities' ability to seek compliance with relevant policies over the lifetime of the project.

Assessment

In the context of this, the applicant has submitted viability information to remove both the affordable housing contributions as well as commuted sums for education and health.

The contributions are broken down as follows:

-5 onsite affordable dwellings
-Education Contribution of £102,012
-Health Contribution of £13,200

The Council has had independently tested. Conclusion from the Independent assessment are as following:

The viability request should be refused on the following basis:
(i)The S106 agreement is under 5 years old
(ii)Realisation of risk for a commenced scheme is not justification of a viability argument, a principle supported in the recent Barlborough links appeal decision.

Referring to the document 'Planning Obligations: good practice advice' (Updated April 2023) the assessors draws the LPAs attention to the following:

For obligations entered into after 6th April 2010 - an application can be made after 5 years beginning with the date the obligation has been entered into.

The S106 Agreement was signed in May 2023 and therefore the period doesn't lapse until May 2028. The council are therefore in a position to give weight to how recently the S016 was signed.

Secondly the assessor draws reference to Planning Practice Guidance para. 009 which in part states: *As the potential risk to developers is already accounted for in the assumptions for developer return in viability assessment, realisation of risk does not in itself necessitate further viability assessment or trigger a review mechanism*.

The assessor concludes that if the scheme generates a return which is below the initial expectations (realisation of risk) then it is not the local authorities role to mitigate that risk. This is reinforced in the Brickyard Farm & Balborough Links Appeal (ref: APP/R1010/Q/24/3350501).

Therefore in considering the independent assessors advice the viability request is refused.

Conclusion

This application seeks to modify the existing S106 by removing on site affordable housing contributions (25%) as well as an Education Contribution of £102,012 and a Health Contribution of £13,200.
Having reviewed the supporting information it is considered that the request is refused on the following grounds:

The viability request is refused as the local authority see fit to impose the terms of the S106 agreement given that it was executed in May 2023; less than 5 years ago, Furthermore, the realisation of risk does not in itself necessitate further viability assessment or trigger a review

mechanism. The applicant has not justified that conditions are such that the planning obligations should be removed, It is considered that the development is deliverable subject to the terms outlined within the S106, following on advice from the independent assessor. This decision is made in accordance with paragraph 59 of that National Planning Policy Framework (December 2024), 'Planning Obligations: good practice advice' (Updated April 2023) as well as well as Planning Practice Guidance Paragraph: 009 (Revision date: 09 05 2019)

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.