SOUTH HOLLAND DISTRICT COUNCIL

Report of: **Development Manager**

To: **Planning Committee - 22 June 2022**

(Author: **Polly Harris-Gorf - Principal Planning Officer)**

Purpose: **To consider Planning Application H09-0180-22**

Application Number:	H09-0180-22	**Date Received:**	15 February 2022
Application Type:	MODIFIED AGREEMENT		
Description:	Modification of 106 Agreement to omit 8 two bed dwellings - relating to H09-0326-17 and H09-1178-19		
Location:	Land off Wignals Gate Holbeach Spalding		
Applicant:	Loosegate Developments Ltd.	**Agent:**	Andrew M Wright Ltd
Ward:	Holbeach Town	**Ward Councillors:**	Cllr F Biggadike Cllr T Carter Cllr G T D Rudkin

You can view this application on the Council's web site at
http://planning.sholland.gov.uk/OcellaWeb/planningDetails?reference=H09-0180-22

1.0 REASON FOR COMMITTEE CONSIDERATION

1.1 As a result of the affordable housing arrangements for this site.

2.0 PROPOSAL

2.1 Modification of 106 Agreement to omit 8 two bed dwellings - relating to H09-0326-17 and H09-1178-19

2.2 The application is supported by a viability assessment and addendum prepared by Maxey Grounds & Co. The applicant's submission, including their response to the independent review of the viability case can be viewed in full at APPENDIX B of this report.

3.0 SITE DESCRIPTION

3.1 Holbeach is considered to be a Main Service Centre within the SELLP. Within the settlement boundaries of the Main Service Centres development will be permitted that supports their role as a service centre for the settlement itself, helps sustain existing facilities or helps meet the service needs of other local communities.

3.2 The application site is shown in the SELLP to be outside the settlement boundary of Holbeach, to the south of Wignals Gate, however the site benefits from the planning consents listed below. The site can be accessed from Wignals Gate, the end of which abuts the Northern site boundary. An electricity substation is sited to the north east of the site.

3.3 Development on the site is well advanced.

4.0 RELEVANT PLANNING POLICIES

4.1 **The Development Plan**

South East Lincolnshire Local Plan, March 2019

If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, Section 38 (6) to the Town and Country Planning Act as amended by the 2004 Act states that the determination must be made in accordance with the plan unless material considerations indicate otherwise.

Policies:
1 Spatial Strategy
2 Development Management
3 Design of New Development
4 Approach to Flood Risk
5 Meeting Physical Infrastructure and Service Needs
6 Developer Contributions
10 Meeting Assessed Housing Requirements
11 Distribution of New Housing
12 Reserve Sites
18 Affordable Housing
28 The Natural Environment
31 Climate Change and Renewable and Low Carbon Energy
32 Community, Health and Well-being
APPENDIX 6 Parking Standards
APPENDIX 8 Developer Contributions for Education Facilities
APPENDIX 9 Developer Contributions for Health Care Facilities

National Guidance

National Planning Policy Framework (NPPF), 2021

Section 2 - Achieving sustainable development
Section 4 - Decision making
Section 5 - Delivering a sufficient supply of homes
Section 8 - Promoting healthy and safe communities
Section 9 - Promoting sustainable transport
Section 11 - Making effective use of land
Section 12 - Achieving well-designed places
Section 14 - Meeting the challenge of climate change, flooding and coastal change
Section 15 - Conserving and enhancing the natural environment
Section 16 - Conserving and enhancing the historic environment

Planning Practice Guidance (PPG)

5.0 RELEVANT PLANNING HISTORY

5.1 H09-0200-22. S73A CONTINUATION. Erection of 77 dwellings & associated works - approved under H09-0872-18. Modification of Condition 1 to allow amendments to previously approved plans. Amend non-adopted roadway in front of plots 68-70. APPROVED 27-05-22.

5.2 H09-0365-22. FULL. Erection of 2 dwellings (Plots 78 & 79), reconfiguration of Plots 75, 76 & 77, reconfiguration of highway turning head and design amendment to Plot 71. UNDER CONSIDERATION.

5.3 H09-0188-21. FULL. Residential Development comprising 34 dwellings and associated works. Application supported by viability assessment. APPLICATION WITHDRAWN 02-12-21.

5.4 H09-1178-19 MODIFIED S106 AGREEMENT. Modification of 106 Agreement appended to permission referenced H09-0326-17 to ensure delivery of units is in line with the contract

programme of works and to allow safe occupation upon transfer of units to SHDC. APPROVED WITH Deed of Variation of S106. 25-02-20.

5.5 H09-0326-17. OUTLINE. Residential development for 77 dwellings. APPROVED WITH S106 21-08-18.

This S106 ensures the provision of 25% of the development being comprised of affordable dwellings, with 70% of this contribution being Rented Housing and 30% being Intermediate Dwellings. Rounding up in the usual way this sets an affordable expectation of 20 affordable units. In addition education contributions (half of a form of entry place and funds towards additional land for the University Academy at Holbeach) and NHS contributions (£444 per dwelling) are set out in the S106.

6.0 REPRESENTATIONS

6.1 Holbeach Parish Council

Object to reduction in affordable housing.

6.2 SHDC Housing Strategy

Comments:

According to Building Control records as of the end of January 2022 this development is under construction with 37 homes completed and at least a further 20 under construction. Given this progression the applicant should advise what is the actual barrier to delivery, if any, in the first instance, and whether there is anything the local authority or any other public sector intervention could assist with before the viability of the developers contributions are assessed.

If this indicates that there are valid reasons for revisiting the developer contributions that can viably be delivered, the submitted viability assessment should be independently tested by the Council to determine what level of contributions can viably be delivered. If that demonstrates that reduced contributions are necessary to support the schemes viability, the authority should consider which contributions to prioritise and not necessarily prioritise the other contributions above the affordable housing delivery.

CASE OFOFFICER UPDATE - At the time of writing this report (29.4.22) there had been 45 completions with a further 18 under construction.

6.3 Independent Development Appraisal - CP Viability

The scheme does not meet the normal criteria of what would be defined as a viable scheme. However, the normal parameters of a residential scheme of this nature (15% to 20% on revenue) apply to a scheme which has yet to commence. The subject scheme has already commenced, with various sales secured, therefore the circumstances are different.

Furthermore, the scheme still makes a positive return with 14.29% affordable housing. Even with 25% affordable housing (as per the S106 agreement) the scheme still makes a return, which we calculate to be around 8.85% on revenue. This means that the developer would make some profit (and not a financial loss). Given this outcome we do not consider that the scheme is therefore at risk from stalling.

Based on our findings, a reduction in the number of affordable units / S106 contributions would simply serve to 'boost' the projected developer return. This, though, is not in itself a justification for reducing planning policy requirements. We note paragraph 009 of the Planning Practice Guidance: Viability, which 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.

Put plainly, if a developer's return turns out to be lower than they originally hoped, this does not mean that a developer can use a viability argument as a means of trying to offset the poor performance of the development (to uplift their profit). It would be unreasonable to expect the Council to reduce their planning policies simply to give a higher profit to the developer.

In summary, we conclude that the scheme is not at risk from stalling as it is still able to generate a positive return to the developer, even with 25% affordable housing applied. Where a scheme has already commenced, the guidance is clear that there is no obligation for a viability review and furthermore viability cannot be used as a means of boosting a developer's return. In light of this, we conclude that the terms of the original S106 agreement (dated 14th August 2018), and the subsequent Deed of Variation (dated 24th Feb 2020) should remain. "

6.4 This independent review of the applicant's viability case, including a further response to the applicant's concerns, can be viewed in full at APPENDIX C of this report.

7.0 CONSIDERATIONS

7.1 Planning Considerations

7.2 Section 38 (6) of the Town and Country Planning Act, as amended by the 2004 Act, states that the determination must be made in accordance with the development plan unless material considerations indicate otherwise.

7.3 CASE OFOFFICER UPDATE - At the time of writing this report (29.4.22) there had been 45 completions with a further 18 under construction.

Proof and consideration of viability case

7.4 Paragraph 57 of the NPPF 2021 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.

7.5 The National Planning Policy Guidance (NPPG) sets out the government's recommended approach to viability assessment for planning. The approach supports accountability for communities by enabling them to understand the key inputs to and outcomes of viability assessment.

7.6 Paragraph 9, of the NPPG, as updated on 9 May 2019, deals with the question of how viability should be reviewed during the lifetime of a project.

7.7 Paragraph 9 states:

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.

7.8 This guidance relates to the application of paragraph 57 of the NPPF 2021, that 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.

7.9 It is the opinion of officers that in accordance with local and national policies and guidance, that there is an expectation that this development deliver affordable housing in accordance with the policies of the South East Lincolnshire Local Plan and the guidance and expectations of the NPPF. Also, in the light of the independent review of the applicant's viability case, it is considered that significant weight is to be given to the guidance set out in the NPPG and in particular, but not restricted to paragraph 9 of that document.

7.10 For the reasons set out above, it is recommended that this Deed of Variation application, to vary the S106 upon this site and development is refused.

7.11 Planning Balance

7.12 Section 38 (6) of the Town and Country Planning Act, as amended by the 2004 Act, states that the determination must be made in accordance with the development plan unless material considerations indicate otherwise.

7.13 Taking into consideration the policies and national guidance set out above, it is considered that there are no significant factors in this case that indicate against the proposal and outweigh factors in favour of the proposal and the policies referred to above.

7.14 The application proposal would not accord with the provisions of Policies of the SELLP and the guidance of the NPPF.

7.15 **Conclusion**

7.16 The proposal is contrary to Policies 6 and 18 of the South East Lincolnshire Local Plan (2019), Section 5 of the National Planning Policy Framework (2021) and National Planning Practice Guidance on Viability.

7.17 **Additional Considerations**

7.18 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.

8.0 RECOMMENDATIONS

8.1 **Refuse to modify the Section 106 agreement, for the reasons listed at Section 9.0 of this report.**

9.0 REASONS FOR REFUSAL

1. Where a scheme has already commenced, the National Planning Policy Guidance is clear that there is no obligation for a viability review and furthermore viability cannot be used as a means of boosting a developer's return in these circumstances. In light of this, the terms of the original S106 agreement (dated 14th August 2018), and the subsequent Deed of Variation (dated 24th Feb 2020) should remain.

   The reduction of affordable housing obligations based upon the applicant's submission would not accord with the expectations of the delivery of affordable housing, and would be contrary to Policies 6, 10 and 18 of the South East Lincolnshire Local Plan and the guidance of the National Planning Policy Framework 2021 (NPPF), as explained by the National Planning Policy Guidance (NPPG).

2. The determined plans and documents are:

   Application form
   Maxey Grounds letter VJM/21107E dated 26th January 2022
   HCA Data
   Additional Viability Information BCS 24-Mar-2022 15:53
   Amended Accommodation Schedule
   PD01 P2

Background papers:- Planning Application Working File

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Appendices attached to this report:

Appendix A Plan A

Appendix B Applicants Viability Case
- (i) Maxey Grounds Viability Assessment 06/09/21
- (ii) HCA Development Appraisal Tool 01/01/20
- (iii) Maxey Grounds Additional Viability Information 24/03/22
- (iv) BCIS Build Costs 24/03/22

Appendix C CP Viability
- (i) CP Viability Development Appraisal 02/11/21
- (ii) CP Viability Development Appraisal 15/03/22
- (iii) CP Viability Further Response 28/03/22

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