SOUTH HOLLAND DISTRICT COUNCIL

Report of: Development Manager

To: Planning Committee - 29 May 2019

(Author: Richard Fidler - Development Manager)

Purpose: To consider Planning Application H09-0416-19

Application Number:	H09-0416-19	**Date Received:**	17 April 2019
Application Type:	MODIFIED AGREEMENT		
Description:	Modification of Section 106 agreement to: - Reduce the percentage of affordable housing from 33.3% to 25% of the remaining balance of 570 dwellings; - Manor Farmhouse scheme to be submitted by 100th occupation; - Indexation calculation to commence as each phase starts Planning approval H09-0521-14.		
Location:	Land at Manor Farm Holbeach		
Applicant:	Ashwood Homes	**Agent:**	Ashwood Homes
Ward:	Holbeach Town	**Ward Councillors:**	Cllr F Biggadike Cllr T Carter Cllr G Rudkin

You can view this application on the Council's web site at
http://planning.sholland.gov.uk/OcellaWeb/planningDetails?reference=H09-0416-19

1.0 REASON FOR COMMITTEE CONSIDERATION

1.1 Significant modifications proposed to the Section 106 Agreement which merit Committee consideration.

2.0 PROPOSAL

2.1 The modifications to the Section 106 Agreement proposed are:

-Manor Farm House Scheme: the occupational trigger point for submission of the scheme is to be amended to 100 Dwellings.

-Indexation: indexation is to apply from the date of completion of the Deed of Variation, rather than from the date of the original S106 Agreement.

-Affordable Housing: there is no affordable housing to be provided on Phases 1B and 2 (comprising 330 dwellings in total), and 25% affordable housing is to be provided on the balance of the houses on the land (570 dwellings).

3.0 SITE DESCRIPTION

3.1 The site is generally flat, crossed by a number of drainage ditches, bounded by the Old River Holbeach to the east, and with several recently established internal tree belts and older

hedgerows. Hall Gate runs east-west from the southern edge of Holbeach town centre and past the site to the A151 via Wignals Gate.

3.2 The southern and western boundaries are open to adjacent fields. To the north and east are existing houses and bungalows, some fronting the site but mostly backing on to it. The site contains some post-war agricultural buildings, two dwellings and the Grade II listed Manor Farmhouse building.

3.3 The site lies on the southern edge of Holbeach. The immediate surroundings are residential in character to the north and east and agricultural to the south and west.

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.

Policy 1 - Spatial Strategy
Policy 2 - Development Management
Policy 6 - Developer Contributions
Policy 18 - Affordable Housing
Policy 29 - The Historic Environment

National Guidance

National Planning Policy Framework (NPPF), 2019

Section 4 - Decision making
Section 5 - Delivering a sufficient supply of homes
Section 8 - Promoting healthy and safe communities
Section 16 - Conserving and enhancing the historic environment

Planning Practice Guidance (PPG)

5.0 RELEVANT PLANNING HISTORY

5.1 H09-0521-14 Outline application for residential development of up to 900 dwellings, with access off Hall gate and Fen Road, including primary school, public open space, drainage infrastructure, landscaping, including demolition of two dwellings and agricultural buildings (but not listed Manor Farm and adjacent outbuildings). Approved 7 December 2016.

Section 106 agreement contributions were as follows:

Affordable Housing
Minimum of 33% of the total number of dwellings to be provided.

Affordable Housing Scheme to be submitted for each phase for approval detailing the quantum, tenure, mix, size and location of the Affordable Housing, which shall have an initial target tenure split of 70% Affordable Rent and 30% Intermediate Dwellings.

No more than 40% of the market dwellings in each phase to be occupied until the construction of all affordable dwellings has been commenced.

No more than 60% of the market dwellings in each phase to be occupied until the construction of all affordable dwellings has been certified practically complete and has been transferred to the Affordable Housing provider.

A Viability Review may be submitted to the District Council at any point following submission of first reserved matters and thereafter during the construction of the development, where the

owner considers that the financial viability of the development is insufficient to enable the owner to provide the affordable dwellings and make a competitive return so that the development is not deliverable.

Viability review to be independently assessed on behalf of District Council.

Call Connect Bus
Contribution of £40,000 to Lincolnshire County Council for the provision of a CallConnect bus.

CallConnect bus maintenance contribution of £290,000 to Lincolnshire County Council.

Not to occupy 100 dwellings until CallConnect bus contribution paid.

Not to occupy 100 dwellings until 30% of CallConnect bus maintenance contribution paid.

Not to occupy 300 dwellings until further 30% of CallConnect bus maintenance contribution paid.

Not to occupy 600 dwellings until final 40% of CallConnect bus maintenance contribution paid

Manor Farm
Scheme to be submitted to and approved by the District Council detailing the restoration of the listed Manor Farm House and its use as a community facility including the timetable, plans, drawings and specification of the restoration project.

No dwellings to be occupied until the scheme has been submitted to and approved by the District Council.

Final dwelling on the relevant phase not to be occupied until the restoration is completed.

Open Space
Scheme to be submitted to and approved by the District Council for the detail and management of the Open Space which indicates details submitted and approved as part of any Reserved Matters application.

Not to commence development of any phase until open space scheme for each phase submitted to the District Council.

Not to occupy any dwellings of each phase until open space scheme for relevant phase has been approved by the District Council

Not to occupy more than 60% of the dwellings on each phase until the open space has been transferred to a management company.

Peppermint Junction Roundabout
£1 million contribution to Lincolnshire County Council.

No more than 200 dwellings to be occupied until contribution paid in full.

Primary School
Area of 1.1 Ha for erection of one form entry primary school and financial contribution of £2,159,920.

Not to occupy more than 100 dwellings unless and until the primary school land has been brought up to serviced site standard and transferred to Lincolnshire County Council.

£300,000 to be paid prior to practical completion of 100, 200, 300, 400, 500 and 600 dwellings and £359,920 prior to practical completion of 700 dwellings.

Town Centre Regeneration Competition
£5,000 contribution to the District Council.

Not to commence development unless and until the contribution has been paid in full.

Traffic Signal Improvement Contribution
Contribution of £150,000 to be used by Lincolnshire county Council for improvements to the existing traffic signals and pedestrian crossing facilities in the centre of Holbeach.

Not to occupy more than 100 dwellings until contribution paid in full.

All contributions to be index linked from date of S106 Agreement.

5.2 H09-0331-17 Access, appearance, landscaping, layout and scale for highways infrastructure (new link road, roundabout, junctions and modifications to Hall Gate and Fen Road (Phase 1A)), and two phases of residential development totalling 330 dwellings (Phases 1B & 2). Development Brief and Masterplan for phased development of remainder of site (Outline permission H09-0521-14). Reserved Matters Approved 9 November 2017.

The Section 106 agreement with the outline permission sought to provide policy compliant affordable housing but also included a viability review mechanism. The reserved matters application included a significant amount of upfront infrastructure which would service the whole development, ie the roundabout, main roads and drainage. Given this the developer submitted a viability report which was independently checked on behalf of the Council. The result of this is that it was accepted on the basis of the viability evidence that these first phases of development of 330 dwellings cannot support the provision of any affordable housing units.

6.0 REPRESENTATIONS

6.1 Ward Members

Former Cllr P C Foyster prior to the election objected on the basis he is sick of applications that specify a set number of affordable homes on outline application and then reduce the number once approval has been granted. Amendment should be refused as in his opinion it amounts to abuse of the system.

7.0 CONSIDERATIONS

7.1 Planning Considerations

7.2 The modification to the Section 106 agreement relates to three elements of the agreement. The Deed of Variation has been drafted and has been forwarded to Lincolnshire County Council as it was a party to the original Section 106 agreement. The proposed changes do not affect the LCC contributions. LCC has confirmed it has agreed to the Deed of Variation.

7.3 Affordable Housing

7.4 The outline planning permission reflected the policy position at that time with a 33.3% contribution. However, the Section 106 agreement was drafted for viability of that provision to be reassessed at the submission of reserved matters stages. Thus it was acknowledged on a development of this scale which would take a number of years to build out that the provision of affordable housing could well be less than the policy requirement. The viability assessment undertaken for the first reserved matters application concluded that no affordable housing could be provided and this was independently checked and agreed.

7.5 The policy position has now changed and the requirement is for a 25% affordable housing contribution. As Members may be aware a number of major residential planning permissions have been amended to reduce the affordable housing contribution from 33.3% to 25%. The key issue here is whether the 25% should apply to the total number of dwellings or just the remaining balance of 570 dwellings.

7.6 Given that it has already been demonstrated that the first phases of 330 dwellings could not viably provide affordable housing, officers are comfortable that this number of units should be excluded from the outstanding requirement to provide affordable housing and in order to ensure the deliverability of this major development the Section 106 agreement should be varied to apply to the balance of 570 dwellings.

7.7 Manor Farm Scheme

7.8 It was considered important at the outline stage to secure a future use for the listed Farmhouse on the site, which is falling into disrepair and for this to be agreed at an earlier stage. The Section 106 agreement was therefore worded such so no dwellings shall be occupied until the scheme has been submitted to and approved by the District Council detailing the restoration of the listed Manor Farm House and its use as a community facility including the timetable, plans, drawings and specification of the restoration project.

7.9 The developer considers the local community should be included in the project in order to ensure any community use meets its needs and is more likely to be sustainable rather than imposing a project from the outset. By setting back the period to allow 100 dwellings to be occupied this also allows the developer to make a commencement on this major project without further delay drawing up and agreeing a scheme.

7.10 The view of officers is that this represents a reasonable approach and would still deliver the objective of securing a viable future use for the listed Farmhouse.

7.11 **Indexation**

7.12 The developer did envisage making a start on site some time ago. As such the position on indexation would have been less of an issue. However, the time that has elapsed since the date of the Section 106 agreement in 2016 means that the amount of indexation is a very significant sum, which would impact on the viability and deliverability of the development. Therefore in order to facilitate the delivery of this major development it is considered reasonable for indexation in relation to the financial contributions to apply from the date of the Deed of Variation.

7.13 **Additional Considerations**

7.14 Public Sector Equality Duty

In making your decision you 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 is only one factor that needs to be considered, and may be balance against other relevant factors.

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

7.15 Human Rights

In making your decision, you 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.

You are referred specifically to Article 8 (right to respect for private and family life), 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 interest and the recommendation is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

7.16 **Conclusion**

7.17 The proposed amendments to the Section 106 agreement are considered reasonable and acceptable for the reasons set out above.

8.0 RECOMMENDATIONS

8.1 **That the Deed of Variation to the original Section 106 agreement be approved.**

9.0 CONDITIONS

Background papers:- Planning Application Working File

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Appendices attached to this report: Appendix A - Plan A