

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H09-0917-25 **Applicant:** Ashwood Homes Ltd
Proposal: Modification of 106 Agreement relating to affordable housing tenures to be changed to first homes (approved under H09-0784-21)
Location: Land Off Fen Road Holbeach Spalding
Terminal Date: 20th November 2025

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

18 Affordable Housing

National Guidance

National Planning Policy Framework December 2024

Section 106a of the Town & Country Planning Act 1990 (as amended)

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	0	0	0
WARD MEMBER	0	0	0	0
SHDC INTERNAL	0	0	0	1

CASE OFFICER ASSESSMENT

Proposal

This application is for a deed of variation made under Section 106a of the Town & Country Planning Act 1990 (as amended).

The purpose of this deed of variation relates to affordable housing tenures to be changed to first homes (approved under H09-0784-21).

Site Description

The site is currently greenfield land and is 1.196Ha in area, located within the settlement boundary

of Holbeach. Site levels vary between circa 3.3m AOD to 3.093m AOD. The site is generally flat. The site is within Flood Zone 3, and benefits from significant tidal and fluvial flood defences. The Environment Agency consider that this land is in a "low hazard" rating area with "danger for some". Vehicular access will be from the development to the north. An existing watercourse maintained by the South Holland IDB abuts the western boundary of the site. An existing infiltration ditch abuts the eastern boundary of the site. To the south of the site is an existing residential property and commercial business with an extensive hedge line along the southern boundary of the site.

History

H09-0784-21 - Erection of 38 dwellings with associated roads and sewers. Approved 3rd February 2022

Consultation Responses

Housing Strategy

Thank you for consulting with the Local Housing Authority regarding the modification to the tenure of the 10 affordable homes in the current S106 agreement for this site to First Homes.

This has been agreed with the Local Housing Authority and the applicant, subject to the payment of the agreed commuted sum, due to no affordable housing provider willing and able to proceed with the acquisition of the properties being identified in the agreed timescales. Therefore, if an appropriate Deed of Variation can be produced to make the necessary changes to the S106 agreement, which will need to include the First Homes Clauses and the payment of the commuted sum prior to the conversion of the properties to First Homes, the Local Housing Authority has no objections.

Planning Considerations

Background

The affordable units, captured through the S106 associated with H09-0784-21 were to be delivered as a mix of affordable rented and shared ownership. The applicant has not been able to encourage a registered provider to take up these units. Therefore strategically, and to also ensure that these units are an affordable product (which First Homes are), the shift in affordable housing product, from affordable rented and shared ownership to First Homes is necessary.

However, as there is a difference in the value the housebuilder would receive by changing to First Homes. (Typically they would receive 70% of the open market value for Shared ownership properties so no commuted sum would be payable to convert to First Homes at a 30% discount to market, however in the case of the affordable rented properties they would normally only receive 60% of market value). So there is a requirement to capture the difference between the affordable rented properties and the First Homes value the developer will now receive for selling them as First Homes. In this instance it calculates to £120,000.

Assessment

In this case, then the proposed deed of variation seeks to amend the tenure mix of the affordable housing units secured under application H09-0784-21, replacing the previously agreed affordable rented and shared ownership units with First Homes. The modification arises due to the inability of the developer to secure a Registered Provider willing to acquire the affordable dwellings within the agreed timescales. The proposed change therefore ensures that the affordable housing provision within the development remains deliverable and continues to meet local housing needs.

First Homes are a Government-endorsed form of affordable housing, aimed specifically at supporting first-time buyers and meeting identified affordability challenges within the district. Their introduction on this site maintains compliance with the overarching objectives of Policy 18 (Affordable Housing) of the South East Lincolnshire Local Plan (2011-2036), which seeks to secure the delivery of affordable homes that meet local needs. The payment of the £120,000 commuted sum appropriately mitigates the uplift in value associated with the conversion of affordable rented units to First Homes, thereby ensuring that the public value of the affordable housing contribution is preserved.

On balance, the proposed modification maintains the intent and public benefit of the original Section 106 agreement, ensuring continued delivery of affordable housing in an alternative but still policy-compliant tenure form, with appropriate financial mitigation secured. The proposal is therefore considered to represent a fair and reasonable variation that continues to meet the relevant policy objectives and serves a useful planning purpose

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

The modification has been agreed (and is acceptable) that all previous attached affordable products are replaced with the requirement to provide First Homes instead. This change also necessitates a commuted sum of £120,000 which is the difference between the affordable rented properties and the First Homes value.

Therefore, the deed will include the change from previous affordable products to the provision of First Homes as well as the above commuted sum.