DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H09-1086-25**	**Applicant:**	**Ashwood Homes Ltd**
Proposal:	Modification of 106 Agreement to enable the sale & conveyance of the approved `first homes` plots (Approved under H09-1044-23)		
Location:	Off Hallgate & Fen Road Holbeach Spalding		
Terminal Date:	7th April 2026		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework December 2024

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 seeks to secure a Deed of Variation pursuant to Section 106A of the Town and Country Planning Act 1990 (as amended).

The proposed Deed of Variation would:

Vary the S106 Agreement with regard to Phase 3, comprising 285 dwellings including parking, public open space, drainage, infrastructure, landscaping, access, appearance, layout and scale, so far as it relates to first homes. This would enable the sale and conveyance of the approved 'first home' plots.

While the Reserved Matters application H09-1044-23 included the provision of First Homes, some of the required wording was not included into the Second Deed of Variation to the S106, dated dated 28 February 2024.

This specifically relates to the details of how the properties can be marketed, sold and secured as First Homes in perpetuity.

Homes England provide specific First Homes Clauses which they require to be contained within a Section 106 to ensure that the properties remain as First Homes in perpetuity. The clauses proposed contain specific details relating to the sales process and include information on the eligibility of buyers; restrictions on ownership; the mortgagee exclusion clause; and the wording of the restriction that should be placed on the title of every First Home along with details required for purchasers relating to lettings and resales. A prospective purchaser's conveyancer will require these details to be in a Section 106 before a sale can take place and they will be needed in order to comply with the requirements of the Conveyancer Pack which will be issued once each application has been approved.

Site Description and Background

The site is within the settlement boundary of Holbeach and is a large development site that will be built out over approximately 19 years with outline consent for 900 dwellings in total.

Phase 3 was the subject of application H09-1044-23, and is split into two areas, with 'Phase 3 North' in the north east of the site behind Oxford Gardens, and next to the land for the education facility, stretching up to land behind Fen Road and The Boundaries, and 'Phase 3 South' along the western boundary of the overall site to the south of Phase 1 and the Care Home granted under H09-1172-20.

Application H09-1044-23 was approved for the Erection of 285 dwellings including parking, public open space, drainage, infrastructure, landscaping, access, appearance, layout and scale (Phase 3) under outline approval H09-0521-14 and re-submission of H09-0845-22 and H09-1118-22.

It proposed there be 215 Market Houses and 70 affordable units. The mix for Affordable Housing is: 15 x 1 bed, 32 x 2 bed, 22 x 3 bed and 1 x 4 bed. 43 units were proposed as affordable rented, 8 units as shared ownership and 19 units as First Homes.

It should be noted that the reserved matters approval under H09-1044-23 has been subject to a subsequent Section 73 application under reference H09-0432-25. The terms of the permission largely remained unaltered, with this section 73 approval relating to the variation of condition 7, so far as to alter the 'trigger point' for this condition to a future date which ties in with completion of homes in the vicinity of the eastern boundary.

First Homes are discounted market sales by a minimum of 30% against the market value, sold to a person meeting the First Homes criteria. First Homes are the government's preferred discounted market tenure and should account for at least the first 25% of all affordable housing units. The proposed tenure split for that application equates to 27% First Homes, 61% affordable rent and 8% shared ownership.

The modified legal agreement has now been drawn up with an additional definition to Clause 1.1 set out in Schedule A.

History

H09-0521-14 - Residential development of up to 900 dwellings, with access off Hall Gate and Fen Road, including public open space, drainage infrastructure, landscaping, including demolition of two dwellings and agricultural buildings (but not listed Manor Farm and adjacent buildings). Outline planning permission - Approved 07.12.16.

H09-0331-17 - Application for 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 and 2). Development Brief and Masterplan for phased development of remainder of site (Outline permission H09-0521-14) at Manor Farm, Fen Road (Land south of Hall Gate) Holbeach. Reserved Matters - Approved 09.11.17.

H09-0416-19 - 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 the 100th occupation; -Indexation calculation to commence as each phase starts. Approved 12.06.19.

The Section 106 agreement with the outline permission (H09-0521-14) 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, i.e. the roundabout, main roads and drainage. The developer submitted a viability report which was independently checked on behalf of the Council. The result of this was, it was accepted on the basis of the viability evidence that the first phases of development of 330 dwellings could not support the provision of any affordable housing units.

H09-1172-20 - Erection of a 66 bed two storey care home for the elderly with access, car parking and associated works. Approved 28.04.21.

H09-1093-22 - Holbeach Meadows - Revised S106 Application - Modification of 106 Agreement relating to affordable housing - planning approval H09-0521-14. Approved 05.03.24.

This application modified the overall Section 106 agreement to reduce the number of affordable housing units to 140, reduced the overall payment to Peppermint Junction to £900,000 and altered other trigger levels associated with the agreement enabling later payments for various pieces of infrastructure. The amount associated with Education contributions of £2,159,920 remains unchanged, as does the requirement to provide a serviced parcel of land for Education, plus the restoration of Manor Farm House to use as a community facility. The £5,000 town centre regeneration payment, the £150,000 Traffic Signals contribution, The £40,000 'CallConnect' Bus contribution and a £290,000 'CallConnect' Bus Service Maintenance contribution are still required as part of the legal agreement.

H09-1031-22 - Holbeach Meadows - Section 73 Application - 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) - approved under H09-0331-17. Modification of Condition 1 to allow amendments to previously approved plans. Approved subject to S106 agreement. Approved 11.03.24.

H09-0219-23 - Holbeach Meadows Phase 2B, Land off Hall Gate - 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) - approved under H09-0331-17. Modification of Condition 1 to allow amendments to previously approved plans. Approved 8 May 2024.

H09-0432-25 - Section 73A Application - Erection of 285 dwellings including parking, public open space, drainage, infrastructure, landscaping, access, appearance, layout and scale (Phase 3) - outline approval H09-0521-14 and re-submission of H09-0845-22 and H09-1118-22 - Approved under H09-1044-23. Modification of Condition 7 to allow amendments to the wording. Approved 23.09.2025.

Consultation Responses

Housing Strategy

"Thank you for consulting the Local Housing Authority regarding the proposed modification of the 106 Agreement to enable the sale & conveyance of the approved `first homes` plots We can confirm that this amendment has been agreed upon by both the Local Housing Authority and the applicant and would enable an effective sale of the First Homes plots. Accordingly, the Local Housing Authority raises no objections to the proposal, provided that an appropriate Deed of Variation is prepared and completed to secure the necessary changes to the existing agreement."

Planning Considerations

Principle of the Deed of Variation

Section 106A of the Town and Country Planning Act 1990 enables the modification of planning obligations by agreement. The key consideration is whether the proposed amendments would undermine the purpose or effectiveness of the original obligation.

Assessment of the Deed of Variation

The proposed deed of variation does not impact the planning merits assessed in relation to the outline or reserved matters approval. The variation allows for further clarity of the definition of First Homes, those eligible now and upon disposal/resale.

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 proposed Deed of Variation seeks to update the clauses in relation to First Homes without reducing the quantum or altering the overall delivery of affordable housing secured under the original Section 106 Agreement.

The Local Housing Authority has confirmed its agreement to the proposed amendments. The changes are considered reasonable, proportionate, and consistent with standard drafting practice. Importantly, they would not undermine the intent or effectiveness of the original planning obligation.

The modification is therefore considered acceptable.