SOUTH HOLLAND DISTRICT COUNCIL

Report of: **Development Manager**

To: **Planning Committee - 04 October 2023**

(Author: **Maxine Simmons - Planning Officer)**

Purpose: **To consider Planning Application H09-1093-22**

Application Number:	H09-1093-22	**Date Received:**	08 November 2022
Application Type:	MODIFIED AGREEMENT		
Description:	Modification of 106 Agreement relating to affordable housing - planning approval H09-0521-14		
Location:	Holbeach Meadows Hall Gate Holbeach		
Applicant:	Ashwood Homes	**Agent:**	Waller Planning
Ward:	Holbeach Town	**Ward Councillors:**	Cllr N Chapman Cllr T Carter Cllr S Hutchinson

You can view this application on the Council's web site at
http://planning.sholland.gov.uk/OcellaWeb/planningDetails?reference=H09-1093-22

1.0 REASON FOR COMMITTEE CONSIDERATION

1.1 Due to the overall complexity of the scheme and related applications it is considered necessary for Committee to consider this case. The scheme also relates to viability.

2.0 PROPOSAL

2.1 This application is to modify the Section 106 agreement relating to:
-Removal of the financial obligation to pay £1m towards the provision of Peppermint Junction, and changes to trigger levels of transport related payments
-Remove the obligation to provide affordable housing
-Amend the delivery timeframe for the repair and refurbishment of Manor Farm House, from 100 to 200 dwellings.

3.0 SITE DESCRIPTION

3.1 The site is within the settlement boundary of Holbeach. The site is generally flat, crossed by a number of drainage ditches, bounded by the Old River Holbeach to the east and transversed in places with tree belts and older hedgerows. Hall Gate runs east-west from the southern edge of Holbeach town centre and is to the north of the overall site.

3.2 The southern and western boundaries are open to adjacent fields. The site contains some post war agricultural buildings, two dwellings and a Grade II listed Manor Farm House 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.

3.4 To date 120 dwellings have been constructed on the site.

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 3 - Design of New Development
Policy 4 - Approach to Flood Risk
Policy 5 - Meeting Physical Infrastructure and Service Needs
Policy 6 - Developer Contributions
Policy 10 - Meeting Assessed Housing Requirements
Policy 11 - Distribution of New Housing
Policy 18 - Affordable Housing
Policy 28 - The Natural Environment
Policy 29 - The Historic Environment
Policy 30 - Pollution
Policy 31 - Climate Change and Renewable and Low Carbon Energy
Policy 32 - Community, Health and Well-being
Policy 33 - Delivering a More Sustainable Transport Network
Policy 35 - Delivering the Spalding Transport Strategy
Policy 36 - Vehicle and Cycle Parking

Appendix 6 - Parking Standards
Appendix 8 - Developer Contributions for Education Facilities
Appendix 9 - Developer Contributions for Health Care Facilities

4.2 **National Guidance**

National Planning Policy Framework (NPPF), 2023

Section 4 - Decision Taking
Section 5 - Delivering a sufficient supply of homes
Section 8 - Promoting health 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 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 buildings) - outline planning permission approved 7 December 2016. The terms of the S106 agreement were as follows:

Affordable Housing

5.2 The S106 agreement required a number of payments to mitigate the impact of the development which included:
-33% affordable housing. Affordable housing scheme for each phase detailing the quantum, tenure, mix, size and location of the affordable housing, with 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 commenced. No more than 60% of the market dwellings in each phase to be occupied until the construction of all affordable dwellings has been complete and transferred to the affordable housing provider.

5.3 Peppermint Junction

5.4 -£1,000,000 contribution to Peppermint Junction. No more than 200 dwellings to be occupied until contribution paid in full.

5.5 Education

5.6 -£2,159,920 Education contribution paid in 7 phases. A serviced parcel of land is also required to be provided plus a one form entry school.

5.7 Traffic Signals Contribution

5.8 -£150,000 Traffic Signals contribution. To be paid in full by the 100th dwelling.

5.9 Call Connect Bus

5.10 -£40,000 'Call Connect' Bus contribution. Not to occupy 100 dwellings until Call Connect bus contribution paid.
-£290,000 'Call Connect' Bus maintenance contribution. Not to occupy 100 dwellings until 30% of Call Connect maintenance contribution paid. Not to occupy 300 dwellings until further 30% of Call Connect bus maintenance contribution paid. Not to occupy 600 dwellings until final 40% of Call Connect bus maintenance contribution paid.

5.11 Town Centre Regeneration

5.12 -£5000 town centre regeneration payable prior to commencement. This has been paid.

5.13 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.

5.14 Indexation

The financial payments due under the terms of the S106 agreement are subject to indexation when they become payable.

5.15 Viability Review Mechanism

5.16 The S106 contained a Viability Review which could be submitted to the District Council at any point following submission of the 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 the District Council.

5.17 H09-0331-17 Reserved matters 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 9 November 2017.

5.18 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 June 2019.

5.19 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.

5.20 Other current planning applications relating to the same site currently undetermined are:

5.21 H09-0845-22 - Land to the West of Fen Road - 100 Affordable Housing Units.
H09-1031-22 - Modification of Condition 1 to allow amendments to previously approved plans.
H09-1118-22 - Holbeach Meadows Reserved Matters - Erection of 170 dwellings including parking, public open space, drainage, infrastructure and landscaping (Phase 3) - outline approval H09-0521-14 - undetermined at the time of writing.
H09-0219-23 - Holbeach Meadows Phase 2B - Section 73A application - Modification of Condition 1 to allow amendments to previously approved plans - undetermined at the time of writing.
H09-0598-23 - Manor Farm - Change of Use of Farmhouse and Outbuilding to Community use - undetermined at the time of writing.
H09-0591-23 - Listed Building Consent - Manor Farm - demolition of modern additions and refurbishment of Farm House - undetermined at the time of writing.

6.0 REPRESENTATIONS

6.1 Lead Local Flood Authority and Local Highway Authority

6.2 *Response dated 7 December 2022*
The improvements to the A17/A151 junction, 'the Peppermint Junction Roundabout', were required in much part, to mitigate the impact the construction and occupation of 900 dwellings on the Holbeach Meadows development, in terms of the safety and the capacity of the local highway network. The justification is therefore based upon need and not affordability. The Section 106 Agreement is a tri-party legal agreement and therefore it is presumably outside of the remit of the Planning process to change the terms of that legal agreement without the consent of all three parties. The highway authority has constructed the Peppermint Junction Roundabout and will be seeking payment of the Peppermint Junction Roundabout Contribution when the 200 dwelling completion trigger has been met. Recommendation: Refuse planning permission.

6.3 *Response dated 24 August 2023*
No objection: This response is made on behalf of Lincolnshire County Council, in its role as the highway authority and the education authority. It supersedes the Authority's previous response, made on to the 7th December 2022, to the Local Planning Authority's consultation on this application. Lincolnshire County Council does not object to the changes that are proposed, in this application, to be made to the Planning Obligations that concern highway matters and education matters in the Section 106 Agreement dated 29 November 2016.

6.4 LCC Education

6.5 No comments since proposal does not affect S106 contributions for education.

6.6 SHDC Housing

6.7 The application relates to outline planning approval H09-0521-14 for the 900 unit development at Meadows Hall Gate, Holbeach which benefited from a S106 providing for 33% affordable housing.

6.8 A subsequent deed of variation reduced the affordable housing contribution to 25%.

6.9 For the first 330 dwellings of the development, it was agreed there would be no affordable

housing. The remaining 570 units would provide the 25% affordable housing equating to 142 dwellings. The development included 6 Phases, development 1A relating to highways and infrastructure, 1B and Phase 2, and where there is no affordable housing. Residential phases 3, 4, 5 and 6 are to provide the remaining 142 dwellings.

6.10 Recently planning application H09-0845-22 was submitted for Phase 3 of the development regarding 100 affordable dwellings of the remaining 142 dwellings. The developers have now submitted, as part of the current planning application H09-1093-22, a viability study for independent assessment, concerning viability of the whole site development. Housing Strategy await the outcome of the independent viability assessment process and can advise on an affordable housing mix as appropriate.

7.0 CONSIDERATIONS

7.1 Planning Considerations

7.2 This planning application, submitted on behalf of Ashwood Homes, seeks to amend the S106 agreement in relation to the original outline planning application H09-0521-14 on the basis of financial viability.

7.3 Outline permission was granted in December 2016 under application H09-0521-14 for the construction of up to 900 dwellings and a primary school, the refurbishment of the Grade II listed building Manor Farm House, 33% affordable housing, and a number of payments to mitigate the impact of the development, including a contribution towards Peppermint Junction, Traffic Signals, Education, Call Connect Bus, and Town Centre improvements.

7.4 Part of the submission of the current planning application under consideration is a Financial Viability Assessment (FVA) prepared by Maxey Grounds & Co. LLP, together with a Cost Report by Two Two Five Ltd. The submitted information claimed that the development at Holbeach Meadows is not financially viable as it stands; that the development would make a loss of c.£7.7 million, even without any affordable housing in the next phase of development, or other financial contributions. The FVA claims that development can only be undertaken on the basis that Ashwood Homes purchased the land several years ago, and there are limited overages in place, which allows them to take a view on the value of that land. What this means is they would not make what could be regarded as a reasonable profit as the landowner. The developer's profit would be below the standard 20% recommended by Government guidance.

7.5 To date, Phase 1A has been constructed, which is the road layout, and 98 dwellings have been completed from a combination of phases 1B and 2A. The occupation of the 100th dwelling triggers a payment of £577,000 in financial contributions towards various items, including £300,000 towards the cost of providing a new primary school within the site. There is also a requirement for the provision of a serviced parcel of land to be given to the County Council, to accommodate a primary school, prior to the occupation of the 100th dwelling. Further payments towards the school are required at 200, 300, 400, 500 and 600 dwellings (totalling over £2,150,000 at 2019 prices). Ashwood Homes are not seeking to change these aspects of the S106 agreement.

7.6 The modification of the Section 106 agreement relates to three elements. These elements have been tested in terms of whether or not the Council accepts the principle of altering the S106 agreement on the grounds of viability. The viability has been independently checked by a viability expert on behalf of the Council. The report also goes on to consider what would be acceptable in terms of changing the Section 106 agreement.

7.7 Affordable Housing

7.8 The outline planning permission reflected the policy position at that time with a 33.3% affordable housing requirement. However, the Section 106 agreement was drafted so that the viability of that provision could be tested over the build out period to see if it was still viable over time. Thus it was acknowledged that the provision of affordable housing could vary over a lengthy build out period.

7.9 The policy position changed subsequently as a result of the adoption of the SELLP in 2019. The new requirement for affordable housing was then 25%. Application H09-0416-19 applied to modify the original S106 agreement to reduce the requirement to a 25%. A key issue at the time was whether the 25% should apply to the total number of dwellings (900) or just the remaining balance of 570 dwellings. Viability information was also submitted providing justification that no affordable housing could be provided for the first 330 dwellings.

7.10 It was agreed that the first phases of 330 dwellings could not viably provide any affordable housing. It was agreed that the revised S106 requirement of 25% affordable housing be applied to the balance of the remaining dwellings to be constructed, i.e. 570 dwellings. This created a balance in the modified agreement of 142 dwellings.

7.11 In the current application, it was requested to completely remove the affordable housing requirement for the remaining 570 dwellings. Instead, a separate application for 100 dwellings was submitted as a full application, inside the red line boundary of the 900 unit scheme, for 100 dwellings under reference H09-0845-22. This was to act as a contribution towards affordable housing for the site. It was to be funded via Homes England grant rather than being subsidised via the 900 unit application. This was suggested on viability grounds. H09-0845-22 remains undetermined due to the fact that there are design and landscaping issues and due to the fact that it has been clarified that Homes England are unlikely to fund an application to provide homes which should be provided as a result of a Local Plan policy. It is anticipated that the scheme requires amendments in order to be acceptable.

7.12 The Council's independent assessment revealed that the scheme could support affordable housing albeit a reduced number of 140 units. It is therefore not accepted that the entire affordable housing quota be omitted from the scheme, but officers are comfortable by a small reduction of 2 units. The applicants accept this position.

7.13 Peppermint Junction

7.14 The outline planning permission required a contribution of £1,000,000 towards the Peppermint Junction improvements, which is not the total cost of the highway improvement. This application sought initially to delete that payment on viability grounds. This was not accepted by the Council's viability assessor. However, the Council's viability assessor did accept that a reduction in contributions was justified on viability grounds. A reduction of £100,000 was considered justified in viability terms. Therefore it was suggested to the applicant that a £900,000 contribution, in combination with a slight reduction in affordable housing was acceptable to the Council in terms of viability. The County Council, who are also co-signatories to the S106 agreement accepted this position. The applicant has accepted this revised position.

7.15 The proposals also relate to changing the trigger levels of the various transport payments. The first Peppermint Junction payment was to take place at the 100th dwelling's occupation. The applicants want to change that trigger payment to the occupation of the 300th dwelling. The CallConnect bus contributions (contribution and maintenance) were to start at the occupation of the 100th dwelling. The applicants want to change it to the 300th dwelling. The traffic signal improvements were to start at the occupation of the 100th dwelling. The applicants want to change that to the 300th dwelling. Other than the reduction in payment of the Peppermint Junction, the overall amounts of payments are to remain the same. As a result, it is considered that the delayed payments would be acceptable, and they allow for flexibility in terms of making sure the scheme stays as viable as possible.

7.16 Manor Farm

7.17 The original Section S106 agreement required that a scheme for the repair and refurbishment of the Grade II listed Manor Farm House be submitted by the 100th dwelling. A planning application and listed building application have indeed been submitted to this effect under references H09-0598-23 and H09-0591-23.

7.18 A further requirement was not to occupy or permit the occupation of the last dwelling of the relevant phase containing the Manor Farm House unless or until the Manor Farm restoration has been completed in accordance with the Manor House Scheme. The completion of Manor Farm is connected with the first Reserved Matters tranche of 330 plots. Reference to the

'relevant phase' isn't very clear. The applicants wish for the wording to be made more transparent so that the Manor Farm restoration is completed prior to the final occupation of the 330th dwelling.

7.19 It is not considered that allowing this wording change would be problematic, and will allow flexibility towards the marketing of the community facility and the restoration of Manor Farm. There is therefore no objection to this change.

7.20 Other matters

7.21 The applicants also seek flexibility on payments associated with education. Instead of paying contributions at the occupation of the 100th and 200th dwelling, they seek to make the first education payment of the 300th dwelling. This seems reasonable given that education may not need the contribution for school places until further along in the build out period. It is not thought that this aspect of the proposal is unacceptable.

7.22 Conclusion

7.23 Following the viability review it is not accepted that the scheme should provide no affordable housing. However, the viability information does support a small reduction of affordable housing of two units, providing 140 affordable units overall.

7.24 It has not been accepted that the entire Peppermint Junction improvement can be waived on viability grounds. However, the viability evidence does show a reduction to a £900,000 contribution is justified on viability grounds.

7.25 The adjustment to the wording of the trigger for the Manor Farm restoration is considered to be acceptable.

7.26 In conclusion, if the S106 agreement was modified to allow for a reduction in the amount of affordable housing to 140 units, and that the payment towards Peppermint Junction be reduced to £900.000, and the trigger for the restoration of Manor House be modified, this would be considered acceptable. Committee are being asked to agree the concept of these changes, and once drafted, the final updated agreement can be presented to Chairman's panel for final approval whereby the revised S106 agreement can be signed and the decision issued.

7.27 **Additional Considerations**

7.28 Public Sector Equality Duty

7.29 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.

7.30 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

7.31 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.

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

7.33 Human Rights

7.34 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).

7.35 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 That Committee approve the general approach to amending the S106 agreement based on the terms above and delegate to officers agreement to finalise the wording of a Deed of Variation and associated updated conditions, and report the final agreed wording to Chairman's Panel prior to the decision being issued.

9.0 CONDITIONS

1. South Holland District Council hereby approve the Modification of the Agreement in accordance with the application and details submitted under s106A of the Town and Country Planning Act 1990.

2. The development hereby permitted shall be carried out in accordance with the following approved plans and documents:
Application Form
Covering Letter dated 8 November
Updated Viability Information
Supporting Information
Site Location Plan

Reason: For the avoidance of doubt and in the interests of proper planning.

Background papers:- Planning Application Working File

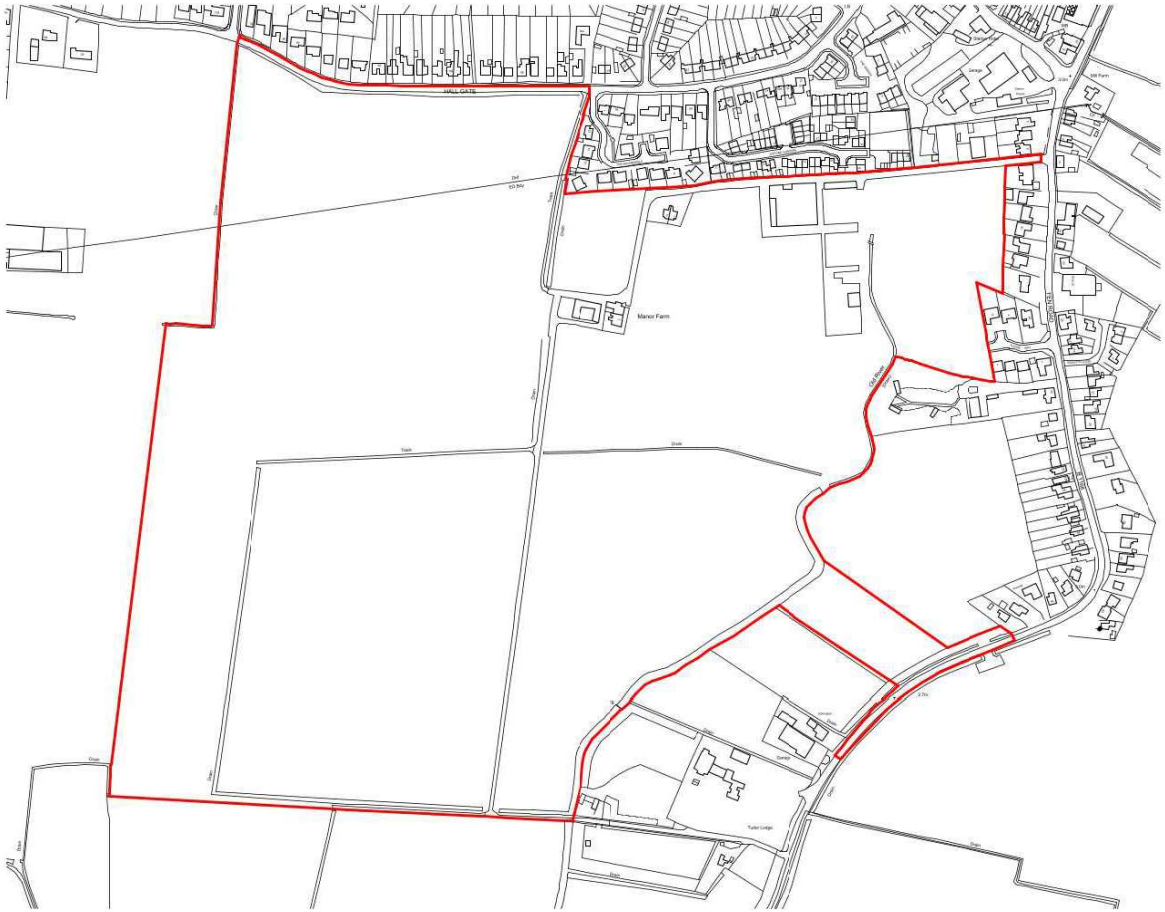
Lead Contact Officer

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Appendices attached to this report:

Appendix A Plan A
Appendix B Viability Assessment on behalf of the Council
Appendix C Updated Viability Assessment for Ashwood Homes

Revision: Date:



N

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Project:	Land South of Hall Gate, Holbeach, Lincolnshire
Client:	Ashley King Developments
Sheet title:	Location Plan @ A3
Ref:	7884 019
Scale:	1:5000 @ A3
Date:	May 2014
Drawn:	PK
Checked:	

0 50 100m 200m 300m

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