

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H11-0332-26 **Applicant:** Loosegate Developments (Long Sutton) Ltd

Proposal: Modification of 106 Agreement to revise the occupation trigger points for the payment of the Education Contribution and the Healthcare Facilities - Approved under H11-1207-17 & H11-0076-22

Location: Land Between Seagate Road & Wisbech Road Long Sutton Spalding

Terminal Date: 28th May 2026

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

06 Developer Contributions

National Guidance

National Planning Policy Framework December 2024

Section 4 - Decision-making

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	1	0	0	0
WARD MEMBER	0	0	0	0
OTHER STATUTORY BODIES	1	0	0	1

CASE OFFICER ASSESSMENT

Proposal

This application seeks a Modification of Section 106 Agreement associated with planning permissions H11-1207-17 and H11-0076-22.

The proposed Deed of Variation seeks to amend Schedule 2 of the original Section 106 Agreement to revise the occupation trigger points relating to the payment of the Education Contribution and

Healthcare Facilities Contribution.

At present, the obligations require payment prior to the occupation of 50% of the approved dwellings. The applicant seeks to amend the trigger point so that payment would instead be required prior to the occupation of more than 80% of the dwellings.

The application is accompanied by a supporting covering letter which states that the request is driven by slower residential sales, increased construction costs and the front-loaded delivery of affordable housing units early within the development programme. The applicant advises that these factors have resulted in increased pressure on available development cashflow during the early and mid-phases of the development.

The applicant further states that the revised trigger point would continue to secure payment of the contributions prior to completion and full occupation of the development.

Site Description

The application site relates to a large residential development located on land between Seagate Road and Wisbech Road, Long Sutton.

Outline planning permission has previously been granted for residential development of approximately 215 dwellings together with associated infrastructure, landscaping and public open space. Reserved Matters approvals and subsequent applications relating to the wider development have since been approved across various phases of the site.

The development is currently under construction and partially occupied.

History

·H11-1207-17 - Residential development of approximately 215 dwellings. Approved 26-09-19

Section 106 dated 26th September

·H11-1346-21 - Reserved Matters - Erection of 171 dwellings and associated works. Approved 1 September 2022.

·H11-0882-21 - Full - Erection of 9 dwellings. Approved 16 February 2022

Section 106 dated 10th February 2022 (Affordable Housing/Healthcare). Inserted S73 clause.

·H11-0076-22 - S73 - Residential Development of approximately 215 dwellings - approved under H11-1207-17. Modification of condition 12 to allow amendments to wording relating to Flood Risk Assessment. Approved 10 March 2022.

·H11-0972-22 - NMA - Erection of 171 dwellings and associated works - outline approval H11-1207-17 - approved under H11-1346-21. Amendment to position of plots 143, 144 and 172. Amendments to design of Yew, Blackthorn & Elder house types and solar panels added to all plots. Approved 3 November 2022.

·H11-0923-22 - Removal of 106 agreement relating to financial viability of the development - Planning approval H11-1207-17 - Refused 19th January 2023.

·H11-0349-23 - Modification of 106 Agreements relating to the removal of the affordable housing obligation from both the outline planning approval H11-1207-17 and full planning approval H11-0882-21. Approved 11-06-24

Section 106 7th June 2024

·H11-0367-23 - Details of contamination, landscaping, boundary treatment, refuse & recycling, archaeological details, estate road & associated footways, surface water drainage scheme, travel plan, public open space including management plan and construction management including precautions to prevent mud deposit on public highway (Conditions 5, 6, 7, 8, 9, 16, 17, 18, 20, 21, 22 & 23 of H11-1207-17) - Approved 20-05-25

·H11-0935-23 - Non Material Amendment - H11-0935-23 - Erection of 171 dwellings and associated

works - approved under H11-1346-21. Amendments of private drive to plots 96 & 108 and to external appearance to all plots. Approved 12 December 2023

·H11-0365-23 - Details of external materials of construction of buildings and hard surfaced areas and management and maintenance schedule for areas of landscaping, incidental open space, drainage features, refuse & recycling collection points & parking courts/private drives (Conditions 2 & 5 of H11-1346-21) - Approved 1 March 2024.

·H11-1122-23 - Full - Erection of 4 dwellings. Previous extant permission for 2 dwellings. Withdrawn 14 February 2024.

·H11-0137-24 - Non Material Amendment - Erection of 171 dwellings and associated works - outline approval H11-1207-17 - approved under H11-1346-21. Amendment of private drives to Plots 96 & 108 to improve access to both plots. Withdrawn

·H11-0017-25 - Full - Erection of 5 no. Dwellings. Approved 31-03-26

Section 106 dated 24th March 2026

Consultation Responses

Parish

The Parish Council object to the proposed amendment. Concerns are raised regarding the cumulative impact of repeated amendments to obligations associated with the wider development and the resulting pressures placed upon local infrastructure and services. Additional concerns are raised regarding estate management, open space provision, drainage issues and the long-term maintenance arrangements associated with the wider development.

NHS

Lincolnshire ICB has reviewed the proposal and advises that it would only support amendment of the healthcare contribution trigger point to 60% occupation due to the impact upon healthcare services arising from the development. The ICB confirms that this position should not be treated as precedent for future requests.

Education

Lincolnshire County Council Education have raised concerns regarding the proposed amendment to the trigger point for education contributions.

Education officers advise that educational demand associated with the development will arise progressively throughout the occupation of the site and that the requirement for additional school places is likely to materialise significantly earlier than the proposed 80% occupation threshold.

Concerns are also raised regarding the risk that development could substantially progress, or potentially stall, prior to the contribution becoming payable, thereby prejudicing the timely delivery of required education infrastructure mitigation.

Education officers have therefore indicated that they do not support the proposed amendment to 80% occupation.

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 in the assessment of a Deed of Variation is whether the proposed amendments would undermine the purpose, effectiveness or deliverability of the original planning obligations.

The proposal seeks to amend the occupation trigger points associated with the payment of the Education Contribution and Healthcare Facilities Contribution secured under the existing Section 106 Agreement.

The principle of securing financial contributions toward education and healthcare infrastructure through the existing Section 106 Agreement is not disputed and would remain unchanged. The sole matter for consideration is whether the proposed deferral of the trigger points from 50% occupation to 80% occupation has been sufficiently justified and whether such a change would continue to appropriately mitigate the impacts arising from the development.

Assessment of Proposed Trigger Point Amendments

The applicant's supporting statement advises that the request is driven by slower residential sales, increased construction costs and the front-loaded delivery of affordable housing units during the early phases of the development. It is stated that these factors have resulted in increased pressure on development cashflow during the early and mid-stages of delivery.

Officers acknowledge that changes in market conditions and development cashflow can, in certain circumstances, justify amendments to trigger points within planning obligations, particularly where development remains deliverable and infrastructure mitigation would continue to be secured.

However, in this instance, the application is supported only by a covering letter and site location plan. No viability appraisal, cashflow assessment, occupation trajectory, development programme, sales evidence or other financial information has been submitted to substantiate the extent of the trigger point deferral sought.

Whilst the applicant asserts that the existing 50% occupation trigger creates financial pressure during the development programme, no substantive evidence has been provided to demonstrate why the existing trigger point is no longer achievable or why a revised trigger of 80% occupation is necessary or reasonable.

Furthermore, consultees have raised concerns regarding the timing of infrastructure impacts associated with the development.

Lincolnshire ICB has advised that healthcare impacts arising from the development would justify, at most, a revised trigger point of 60% occupation rather than the 80% threshold proposed by the applicant.

Lincolnshire County Council Education have similarly advised that educational demand associated with the development would arise significantly earlier than the proposed 80% occupation threshold and have expressed concern regarding the risk that development could substantially progress, or potentially stall, before the contribution becomes payable.

Officers afford significant weight to these responses given that the purpose of the original obligations was to ensure the timely delivery of infrastructure mitigation directly related to the impacts arising from the development.

The proposed amendment would result in a substantial delay in the payment of contributions when compared to the existing obligation. In the absence of robust viability or cashflow evidence, officers are unable to conclude that the extent of the proposed deferral is necessary, justified or would not prejudice the timely delivery of required education and healthcare infrastructure.

It is also material that this represents the third Deed of Variation associated with the wider development. Whilst each application must be considered on its own merits, officers consider that repeated amendments to obligations should be supported by clear and robust evidence where they seek to substantially alter the timing or delivery of agreed mitigation measures.

Planning Balance

The proposal does not seek to remove the education or healthcare contributions secured through the existing Section 106 Agreement and officers acknowledge that, in principle, amendments to trigger points may be acceptable where adequately justified.

However, the application seeks a substantial deferral of the trigger points from 50% occupation to 80% occupation and insufficient evidence has been submitted to demonstrate why such a significant amendment is necessary or reasonable.

The concerns raised by Lincolnshire ICB and Lincolnshire County Council Education further indicate that infrastructure impacts associated with the development are likely to arise substantially earlier than the proposed revised trigger point.

In the absence of robust supporting evidence, officers are unable to conclude that the proposed amendments would continue to appropriately secure the timely delivery of infrastructure mitigation required as a consequence of the development.

Conclusion

The application seeks a Modification of Section 106 Agreement to amend the occupation trigger points associated with the payment of Education and Healthcare Facilities Contributions secured under the existing planning obligations relating to development approved under H11-1207-17 and H11-0076-22.

Whilst officers acknowledge that amendments to planning obligations may be appropriate in certain circumstances, the applicant has failed to provide sufficient evidence to demonstrate that the proposed deferral of the trigger points from 50% occupation to 80% occupation is necessary, justified or reasonable.

Furthermore, consultees have raised concerns that the impacts upon education and healthcare infrastructure associated with the development are likely to arise significantly earlier than the proposed revised trigger point.

Accordingly, the Local Planning Authority is not satisfied that the proposed amendments would continue to secure the timely delivery of infrastructure mitigation required as a direct consequence of the development. The proposed Deed of Variation is therefore recommended for refusal being contrary to policy 6 of the South East Lincolnshire Local Plan (2019) as well as Section 4 of the National Planning Policy Framework, December (2024).

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.