

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H11-0563-23 **Applicant:** Stinders Homes SPV2 Ltd

Proposal: Modification of S106 Agreement relating to Affordable Housing (planning approval H11-1264-18)

Location: Land To South & East Of 36 Lime Walk Long Sutton

Terminal Date: 20th December 2023

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

06 Developer Contributions
18 Affordable Housing
APPENDIX 8 Developer Contributions for Education Facilities
APPENDIX 9 Developer Contributions for Health Care Facilities

National Guidance

National Planning Policy Framework 2023

Section 5 - Delivering a sufficient supply of homes

National Planning Practice Guidance

Viability

Representations:

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

CASE OFFICER ASSESSMENT

Proposal

Outline planning permission was granted for a residential development of up to 70 dwellings under application ref. H11-1264-18 in November 2019. This was subject to a legal agreement which

required:

- 25% of the total number of dwellings on the site to be affordable units.
- A health care facilities contribution of £660 per dwelling, subject to any increases in accordance with the health care contribution formula.
- An education contribution calculated per dwelling in line with the Education Formula set out in the S106.

Reserved matters approval was subsequently granted for 70 dwellings under application ref. H11-0552-22, including 18 affordable dwellings. However, the applicant is now seeking to modify the S106 to exclude the affordable housing element due to escalating costs making the development unviable.

Site Description

As original application.

Relevant History

H11-1264-18 - Outline - Proposed residential development (up to 70 dwellings) - Approved 7 November 2019.

H11-0552-22 - RM - Erection of 70 dwellings - outline approval H11-1264-18 - Approved 16 December 2022.

H11-0196-23 - Cond Comp - Details relating to contamination & drainage - (Conditions 6, 7 & 12 of H11-1264-18 and construction management plan (Condition 5 of H11-0552-22) - Approved 4 August 2023.

H11-0383-23 - S73 - Proposed Residential Development - up to 70 dwellings - approved under H11-1264-18. Modification of Condition 11 to allow for a temporary access road into the site for construction traffic & deliveries rather than only the first 60 metres of estate road to be constructed before any dwelling is commenced - Awaiting completion of Deed of Variation.

Neighbouring site to the north

H11-0994-22 - Full - Residential development comprising 56 dwellings - Refused 9 June 2023. Appeal pending.

H11-0842-23 - Full - Residential development comprising 48 dwellings - re-submission of H11-0994-22 - Refused 15 November 2023.

Consultation Responses

Long Sutton Parish Council

Developers continue with this practice on a regular basis and on almost all of sites in South Holland.

This practice has to cease and any future development must be to the benefit not the detriment of the community. Developers agree S106 funding with every intention of reducing it. SHDC should look back over the last ten years at least to calculate how many affordable homes and funding has been lost by approving such amendments. The Council once again request that SHDC adopt CIL.

Cllr. D J Wilkinson

I object to this application. This application was granted with conditions, one of which was the provision of 106 monies. If it was not viable it should not have formed part of the original application.

It could be suggested that the developer only included the provision of S106 to obtain permission and then submit a modification to remove it at a later date? If the site is not viable with a S106 agreement in my opinion it should not go ahead.

Housing Strategy

This is a challenge to our affordable housing requirement on viability grounds. I would expect the

matter to be referred to the District Valuer or a competent private sector valuer for assessment and for those costs to be met by the applicant.

Planning Considerations

Evaluation

Section 38 (6) of the Town and Country Planning Act, as amended by the 2004 Act, requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

In this case, the South East Lincolnshire Local Plan 2011-2036, adopted March 2019, forms the development plan for the District, and is the basis for decision making in South Holland. The relevant development plan policies are detailed within the report above.

The policies and provisions set out in the National Planning Policy Framework (updated December 2023) are also a material consideration in the determination of planning applications, alongside national Planning Practice Guidance.

Viability

Paragraph 3.7.11 of the supporting text to Policy 6 (Developer Contributions) of the South East Lincolnshire Local Plan (2019) states that:

The policy implications of this Local Plan, including those matters to be sought by developer contributions, have been subject to a Whole Plan Viability Assessment to ensure that the cost would not adversely impact upon the viability of development in South East Lincolnshire. As such, it is expected that the costs of developer contributions are factored in when land is purchased. In exceptional circumstances, where applicants state that financial viability prevents the delivery of some or all developer contributions, a financial appraisal should be submitted... Each Local Planning Authority's independent valuer will consider the assessment.

Furthermore, Policy 18 of the Local Plan states that:

The proportion of affordable housing that can be provided on market housing sites may vary according to the site specific considerations such as viability.

In the context of this, the applicant has submitted viability information, which the Council has had independently tested. By way of a brief background summary:

- the applicant's consultant S106 Management submitted a viability report dated 10th May 2023. This showed that, even before any planning policies were factored in, the scheme was significantly unviable.
- the Council's independent consultant CP Viability Ltd concluded in their report dated 19th July 2023 that the scheme was viable with the full planning policies applied (25% affordable, plus S106 payments totalling £426,596). The key reasons why they reached a different conclusion related to assumptions in the appraisal around (i) plot costs / externals (ii) Part L & F allowances (iii) Bio diversity net gain (iv) contingency (v) professional fees (vi) debit interest.

The above has been challenged by S106 Management. However, CP Viability Ltd have not been persuaded to adjust their position.

Planning Balance

The outcome of the independent viability assessment is that the scheme is viable with the full planning policies applied (25% affordable, plus S106 payments totalling £426,596).

It is therefore considered that the removal of the affordable housing element relating to this site is unjustified.

Conclusion

The proposal is contrary to Policies 6 and 18 of the South East Lincolnshire Local Plan (2019) and Section 5 of the National Planning Policy Framework (December 2023).

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.

Recommendation

That the application be refused under delegated powers for the reasons outlined above.