

Planning Statement in Support of a Deed of Variation to the S106 Agreement

1. Introduction

This statement accompanies an application made pursuant to Section 106A of the Town and Country Planning Act 1990 seeking to vary the planning obligation relating to the timing of payment of the financial contribution secured through the Section 106 Agreement associated with planning permission reference H11-1207-17 (Outline) and H11-0076-22 (Reserved Matters).

The proposed amendment seeks to revise the payment trigger from **prior to occupation of 50%** of the approved dwellings (92nd property) to **prior to the occupation of 65%** of the approved dwellings (120th property).

No amendment is proposed to the amount of the contribution, the purpose for which it is secured, or any other obligation contained within the agreement.

For the viability reasons demonstrated within Section 5, there will not be funds available to pay the S106 contributions at the 50% trigger and therefore to mitigate against this, the Applicant will have no choice but to simply stop developing before this trigger is reached. The applicant does not wish for this to happen, as because of the significant cashflow shortage the only way to correct this is to continue, and so after careful financial review is providing a solution that this can still be provided whilst consciously providing a betterment than previously applied for under H11-0332-26.

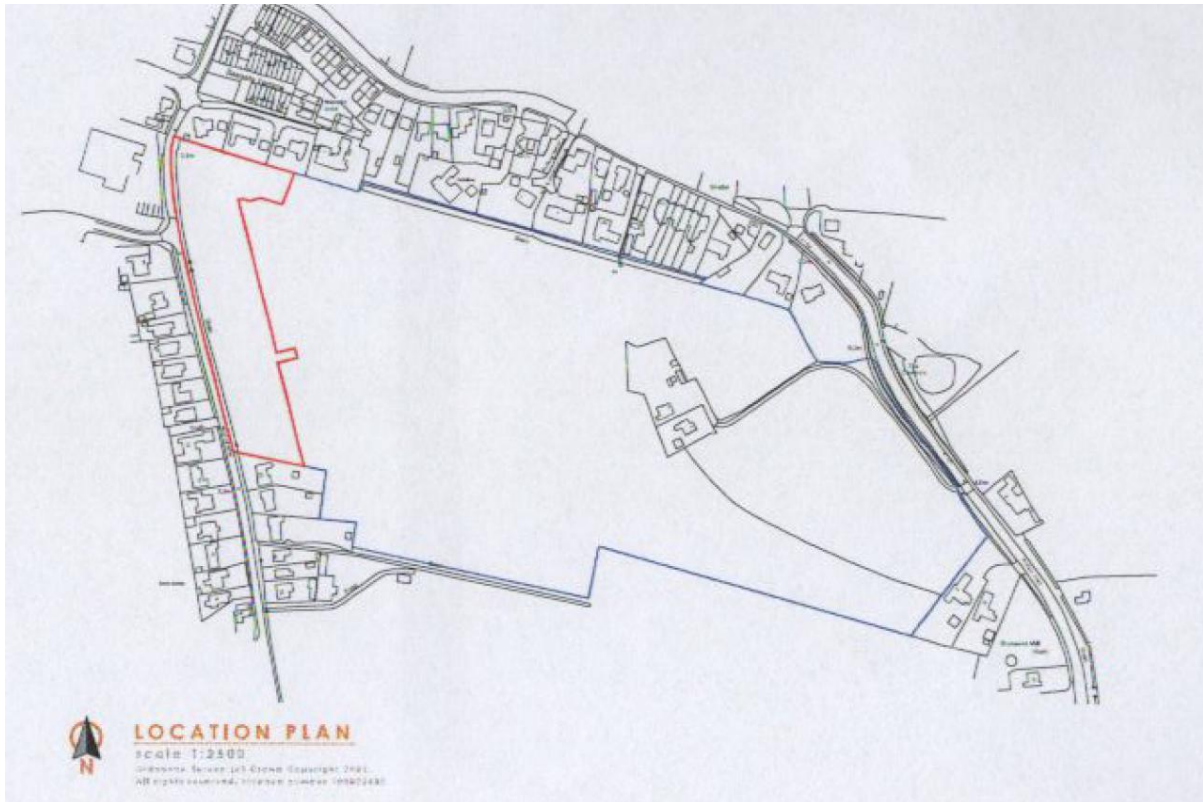
2. Current S106 Agreements

There are currently 2 separate S106 agreements operating against the development.

The 9nr frontage plots along Seagate Road (H11-0882-21) are subject to their own individual S106 agreement dated 10/2/2022 as they were submitted separately into planning prior to the bulk of the development. This document is specifically referred to as Original Agreement (Full) by SHDC and has not received any prior variations.

The bulk of the development containing 171nr dwellings, passed under reference H11-1346-21 and subsequently increased to 175nr dwellings under the last planning approval H11-0017-25, is covered by the latest Deed of Variation dated 24/3/2026 and derives from the 26/9/2019 Original S106 Agreement named "Original Agreement (Outline)" by SHDC.

The below is an extract from the S106 which separates the 2 active agreements; Plots 1-9 outlined in red and the remainder of the development in blue:



Obligations as they currently stand are as follows:

Original Agreement (Full):

- Affordable housing requirements – Nil (To be secured against main development)
- Education requirements – Not applicable
- Healthcare requirements - £5,940 (To be paid at 50% of occupation – PAID)

Original Agreement (Outline):

- Affordable housing requirements – Nil (Removed by viability)
- Education requirements – £1,079,634 (To be paid at 50% of occupation)
- Healthcare requirements - £77,700 (To be paid at 50% of occupation)
- Travel Plan - £5,000 (Of which £2,559.52 has been paid to date)

Based on an overall total site density of 184nr dwellings secured by Reserved Matters, the Education trigger point is currently set at **50% of occupation** and therefore **due on the occupation of the 92nd dwelling**.

This application seeks to move the trigger point to **65% of occupation** and would therefore move contributions to **the occupation of the whole developments 120th property**. The reasons for which are robustly evidenced within Section 5 – Viability.

Officers made comment on the previous application that this would be the third Deed of Variation associated with the wider development (it would be the fourth for transparency) and *“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...”*

This statement has been carefully prepared to provide such evidence; however, it is also important to note the background of the previous number of previous Variations in order to protect against any unnecessary judgement as they bear no weight on this request:

- Original S106 dated 26/9/19 – Based upon the outline planning permission.
- Deed of Variation Nr 1 dated 9/3/22 – This is based on the reserved matters application being made and so such Variation is unavoidable given the Outline to Reserved Matters journey to planning taken.
- Deed of Variation Nr 2 dated 7/6/24 – After a viability was independently assessed by the LPA, the 25%/45nr affordable housing obligations were removed. It is important to bear weight that despite this, the Applicant has still delivered these as affordable dwellings for Accent Group, as agreed with the LPA during discussions at the time.
- Deed of Variation Nr 3 dated 24/3/26 – The reserved matters planning permission was changed to add 4nr additional dwellings to the scheme, achieved by removing a large bespoke built dwelling on Plot 1 and replacing it with 5nr bungalows. The active S106 education and healthcare obligations were suitably increased given the increase in density.

Based on the above, there is no cause for concern that there is a trend of seeking to constantly amend the S106 and when there has been one that has affected contributions, these have come at no detriment to the Local Authority with 45nr affordable dwellings still delivered and contributions increased following the increase in numbers.

3. Previous Modification Applications

A similar application was made by the Applicant, under planning reference H11-0332-26, to request altering the occupation trigger point to 80%, which was subsequently refused by the Local Planning Authority under delegated authority on 26th May 2026. The reasons for application refusal are:

- “In the absence of robust viability, cashflow or delivery evidence, the Local Planning Authority is not satisfied that the proposed deferral would continue to secure the timely delivery of infrastructure mitigation required...”
- “Furthermore, consultees have raised concerns that impacts upon education and healthcare infrastructure associated with the development are likely to arise significantly earlier than the proposed revised trigger point.”

This application specifically seeks to therefore add the missing detail required as per the first paragraph for refusal, as well as mitigate the impact as per the second paragraph for refusal with the reduction in occupation triggers from 80% previously, to 65% now following a detailed financial review by the Applicant and their accountants.

Other Consultee comments received in the previous application, as per the Planning Officers Report, were:

- Parish Council – Whilst the Planning Officers Report has this listed as an objection, when fully reviewing the contents of their comments, it can be concluded that nothing is on the topic of what is due to be considered by the LPA on the moving of the trigger point. It can be concluded that an opportunity has simply been taken to have a broad-brush rant about developers, not specific to the Applicant, but their opinions on-
 - S106 funding being eroded – the applicant is asking for it to be pushed back, not removed, and has already contributed to NHS and the Travel Plan
 - S106 money not available to the Parish – outside of our Applicants control
 - Management companies – nothing to do with the application or our Applicant, as Anfield Way is not this development.
 - Reference to 60 social housing plots – no such application exists
 - Removal of open space in lieu of the 5 bungalows – has been thoroughly vetted and approved by the LPA and relevant to this application, S106 obligations have actually increased meaning more money is provided.
 - Drainage and habitat – Not relevant to this application but is worth confirming that our Applicant has had no issues with either and that all of it is either adoptable and/or controlled by planning conditions.
 - Management companies mentioned again and John Swains Way which isn't this development.
- NHS – Advised that it would support an increased trigger move to 60% of occupation (based upon a previous request for 80%). Because of viability reasons outlined within Section 5 the Applicant is not able to move from 65%. However, it is definitely worthwhile noting the split in Section 106 agreements already mentioned within Section 2 as this NHS difference in request of 5% (equating to £3,885) has already been paid for (and with excess), as part of the separate Front 9 agreement which we don't believe has been acknowledged. As part of the Front 9 S106 agreement, the NHS sum of £5,940 has already been paid which taking this off their total of £77,700, would mean that the revised request of 65% would still see them get the money needed by the same percentage requested pro rata per property.
- Education – LCC Education raised concerns that demand from the development will come “significantly earlier” than the 80% previously applied for. A full financial review, shared within Section 5, has allowed us to unassumingly reduce this percentage to 65% to cut the gap significantly which hopefully makes it more palatable. It is worth noting that as per the approved planning drawing, of the 28nr properties difference between the original 50% and 65% suggested, 19 of these properties due to be built in that period are bungalows. Demographically we have seen so far that all bungalows sold on the development to date have been over the age of 55. It can therefore be

safely assumed that this trend will continue and that in accordance with Lincolnshire County Council's Planning Obligations Protocol, pupil yield will not be produced from these dwellings meaning the actual effect from increasing the trigger points as requested will be minimal.

Education also raised concerns that the development could potentially stall prior to the contribution becoming payable. As per the Introduction Notes, the graveness of the situation is just that but the Applicant has since provided sound cashflow figures to evidence that can be avoided.

4. Planning Policy Context

NPPF

The key paragraphs are:

- **Paragraph 58 (Planning obligations)**
 - Planning obligations should only be sought where they are:
 - necessary to make the development acceptable;
 - directly related to the development; and
 - fairly and reasonably related in scale and kind.
 - This does not require contributions to be paid early—it requires them to be necessary and proportionate.
- **Paragraph 60 (Viability)**
 - Where applicants demonstrate that particular circumstances justify the need for viability assessment, this should inform decision making.
 - Although viability should ideally be addressed at plan-making stage, the NPPF recognises that site-specific circumstances can justify flexibility.
- **Chapter 6 – Building a strong, competitive economy and Chapter 11 – Making effective use of land**
 - The NPPF promotes development coming forward without unnecessary delay.
 - If earlier payment jeopardises cashflow and delays delivery, a later trigger that still secures infrastructure can align with these objectives.

South East Lincolnshire Local Plan (SELLP)

The most relevant policy is:

- **Policy 29 – Developer Contributions**
 - Developer contributions should mitigate the impacts of development.
 - Contributions should be fairly and reasonably related to the development.
 - The policy does not specify that payments must be made before a particular percentage of occupation.
 - It allows obligations to be negotiated through legal agreements.

The proposed amendment does not seek to reduce or remove the developer contribution but solely to amend the trigger for payment from 50% occupation to 65% occupation. The revised trigger continues to secure the contribution with minimal change from the original request and therefore still ahead of when associated infrastructure is required in full, and therefore satisfies the statutory and policy tests for planning obligations.

The amendment improves development cashflow and assists in the efficient delivery of housing without prejudicing infrastructure provision. The proposal is consistent with NPPF policy requiring planning obligations to be necessary, directly related and fairly and reasonably related to the development, together with Policy 29 of the South East Lincolnshire Local Plan, which supports appropriately negotiated developer contributions to mitigate development impacts.

5. Viability

In making their decision previously, Officers raised questions whether the proposed deferral of the trigger point previously had been sufficiently justified. Therefore, this revised application seeks to provide just that.

It was stated in the previous report that “Officers acknowledge that changes in market conditions and development cashflow can, in certain circumstances, justify amendments to trigger points...”.

It is on this support that the Applicant expands on their 3 core reasons for money not being available by the stated trigger:

Slow Sales Conversions

The extant CP Viability assessment for the development assumed an overall period of 60 months, containing a construction period of 54 months and a sales period of 55 months which commences 6 months after site works commence. This would equate to an average selling rate of 3.4 properties per month.

A full cashflow forecast is attached within **Appendix A** and based on actual project performance and sales figures shows it took 21 months for the first property to be handed over. Furthermore the 54-month sale period assumed was for the whole development of 184nr dwellings, whereas to today's period of August 2026 there has only been 70 completions in the same period. Representing a comparable sales rate of 1.2 properties per month.

The impact this has had on the cashflow forecast is that properties are being built to full completion and are left stagnate for long periods of time while awaiting a sale. This can be evidenced using commercially available data for the LPA such as Building Control completion dates that can be cross referenced against Land Registry completion dates. To provide an example, plot 6 (full address 75 Seagate Road, Long Sutton, PE12 9AD) received its SHDC Building Control completion certificate on 20/03/2025. This property remains unsold to this day, holding back £575,000 of sales proceeds as its current market price.

The length of time it takes to sell a property has a huge direct impact on;

- Finance – More interest paid on development finance loans
- Sales costs – Needing to agree lower prices because of the desperateness to sell properties

The result of which are expanded in the below subheadings.

Reduced Sales Values

In producing the extant viability for the development, CP Viability (CPV) provided a list of projected sales values for each dwelling. Owing to the widely known slump in residential sales, the achieved prices vs predicted prices have been significantly less. This means that from the sales achieved so far, there is less money available within the project cashflow than CPV had shown. An analysis of these price differences is:

<u>Sold Properties</u>									
<u>House Type</u>	<u>Property Type</u>	<u>CPV Appraisal</u>	<u>Average Selling Cost</u>	<u>Difference Ea</u>	<u>Nr Sold/Reserved</u>	<u>Negative Cashflow</u>			
Alder	2 bed semi-detached house	£ 198,083.00	£ 192,500.00	-£ 5,583.00	9	-£ 50,247.00			
Yew	3 bed detached house	£ 270,130.00	£ 253,286.00	-£ 16,844.00	6	-£ 101,064.00			
Cherry	3 bed detached house	£ 338,177.00	£ 337,500.00	-£ 677.00	3	-£ 2,031.00			
Beech	3 bed detached bungalow	£ 429,975.00	None sold	N/A	0	N/A			
Blackthorn	3 bed detached bungalow	£ 428,049.00	£ 416,125.00	-£ 11,924.00	5	-£ 59,620.00			
Elder	3 bed detached bungalow	£ 362,600.00	£ 362,600.00	£ -	5	£ -			
Pine	3 bed detached bungalow	£ 350,000.00	£ 347,500.00	-£ 2,500.00	2	-£ 5,000.00			
Elm	4 bed detached house	£ 575,000.00	£ 574,750.00	-£ 250.00	2	-£ 500.00			
Mulberry	4 bed detached house	£ 570,000.00	£ 570,000.00	£ -	1	£ -			
Willow	4 bed detached house	£ 595,000.00	£ 595,000.00	£ -	1	£ -			
Tulip	4 bed detached house	£ 470,000.00	£ 470,000.00	£ -	1	£ -			
Aspen	4 bed detached house	£ 475,000.00	£ 475,000.00	£ -	2	£ -			
Cedar	4 bed detached house	£ 436,480.00	None sold	N/A		N/A			
Hawthorn	4 bed detached house	£ 631,280.00	£ 599,500.00	-£ 31,780.00	0	£ -			
Foxtail	4 bed detached house	£ 585,875.00	£ 560,000.00	-£ 25,875.00	1	-£ 25,875.00			
Various	Market properties sold to affordable provider	£ 203,183.00	£ 167,746.68	-£ 35,436.32	45	-£ 1,594,634.44			
		Based on CPV rate given	Average cost attached						
					83	-£ 1,838,971.44	Negative cashflow to date		

The above shows the Applicant is currently **£1,838,971.44 down on available funds** than CP Viabilities forecast. Severely restricting the necessary cash required at the current trigger point to pay contributions which is evidenced further on the cashflow forecast.

It is acknowledged that the bulk of this difference is contained within the 45nr properties sold to a Housing Association as opposed to market sale. However, with extremely slow sales and rising finance costs, there are commercial advantages to not increasing these further and de-risking which is what the Applicant has done.

Increase in Finance Costs

With the reduced sales rates mentioned above comes increased interest on the borrowed development finance amount to build them. In the extant viability document, CPV referenced a projected Total Finance Cost of **£1,591,754 for the entire project**.

To date, up to the period of August 2026 the amount of interest **physically paid out to date is £2,576,978**.

The above has left the Applicant with a significant shortfall in available funds due to the steep rise in interest rates and prolonged cashflow exposure due to slower sales, as evidenced on the attached cashflow forecast.

It is worth noting that the amount above is only the amount **to date**. To compare this against the expected position, it would be a fair comparison to take the overall CPV assumed finance figure of £1,591,754 and divide it against the total number of dwellings to give a forecast finance cost per property.

As per the below, this equates to:

£1,591,754 div by 184nr dwellings = £8,650.84 predicted finance cost per property

Up to the August 2026 period noted on the cashflow, which is based on actual figures, there has been 70 completions which when multiplied by the above cost per property, would give an expected finance position at this point in time of £605,558.80 according to the extant viability, which assumed a finance rate of 8% vs an evidencable average of 9.7%.

This shows the huge impact slow sales mixed with higher interest rates has had on the Applicants cashflow, with the difference between actual and forecast **accounting for a significant shortfall of £1,971,420 in today's cash in hand position.**

It is primarily for this reason why the Applicant is affected so badly as these finance costs are collected automatically every month with no respite.

Compounded Effect

Reduced sales compared to extant viability forecast:	-£1,838,971
Slow sales increasing finance costs incurred (paid out monthly):	-£1,971,420

<u>Total reduction in project cash position:</u>	<u>-£3,810,391</u>
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Cashflow

A cashflow based solely on actual project performance is attached within **Appendix A** for full transparency.

At the current 50% trigger date highlighted on the cashflow, the cash position of the Applicant will be at -£9,262,430. Whilst this seems a significant shortfall, the cashflow evidenced the selling theory mentioned previously that properties are being fully built and left to sell for long periods of time before eventually selling and money is received. The effect of this is a steep rise in construction and finance costs to the point where construction in fact ceases on these phases (shown by the red lines annotated at January 2027 on the cashflow and data chart), followed by a steep improvement of the position as there are now no outgoings attached to sales revenue other than repaying interest.

By the requested trigger point of the 120th property, it is forecast that the development will be in positive funds of £1,673,070. This provides the Applicant with the necessary comfort to revise their application request from 80% previously to 65% upon this figure, as it allows a safe float for any further reductions in sales values and for the indexation increase on current S106 obligations.

6. Executive Summary

- The Applicant is requesting a Deed of Variation to the existing S106 Agreement dated 26/9/19 (Original Agreement (Outline)) and most active Deed of Variation dated 24/3/26
- The request is to move the trigger point when S106 obligations are due for payment from the 50%/92nd property stage of occupation to the 65%/120th property stage of occupation
- The reason for the request is due to insufficient funds being available by the stated date (minus £9,262,430), resulting in the developing needing to cease unless a compromise can be made
- In order to support such change, the Applicant has presented a robust viability and cashflow evidence. Evidencing reduced Sales Values (information publicly available), increased finance costs (Can be made available upon request and completion of NDA) and timescales (Can be evidenced against SHDC Building Control records).
- This represents a 15% reduction against the previous request for 80% of occupation
- Previous consultee comments against this application have been addressed as part of this application, with calculations shown to demonstrate the previous NHS request has been accommodated. There are therefore no other active objections against the application other than the timing request by Education which cannot be avoided due to the cashflow reasons stated
- It is for those reasons that provide justification for the application to be decided positively against the relevant NPPF and SELLP policies stated.

7. Attachments

- A. Updated cashflow based on actual project performance, the 3 key factors being Sales Values, Finance and Timescales
- B. Original Agreement (Outline) dated 26/9/19
- C. Latest Deed of Variation dated 24/3/26
- D. Extant CP Viability for the development