DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H11-0923-22**	**Applicant:**	**Loosegate Developments (Long Sutton) Ltd.**
Proposal:	Removal of 106 Agreement relating to financial viability of the development - Planning Approval H11-1207-17		
Location:	Land At Seagate Road And Wisbech Road Long Sutton Spalding		
Terminal Date:	15th January 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 2021

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	0	0	0	0
SHDC INTERNAL	0	0	0	1
OTHER STATUTORY BODIES	0	0	0	2

CASE OFFICER ASSESSMENT

Proposal

Outline planning permission was granted for a residential development of approximately 215 dwellings under application ref. H11-1207-17 in September 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 (£444, to be subject to any increases in accordance with the health care contribution formula)
- An education contribution (formula based given the outline nature of the application)
- A travel plan contribution of £5,000

The applicant is now seeking to remove all developer contributions on viability grounds.

Site Description

As original application.

History

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 & 172. Amendments to design of Yew, Blackthorn & Elder house types and solar panels added to all plots (approved November 2022)

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 March 2022)

H11-0882-21 - Full - Erection of 9 Dwellings (approved February 2022)

H11-1207-17 - Outline - Residential development of approximately 215 dwellings (approved September 2019)

Consultation Responses

Long Sutton Parish Council

The Council strongly object to this amendment which underlines the need for a change of policy in respect of the S106 Agreements which seem to be rarely enforced in full and allowing developers to submit amendments. The Council again request that SHDC look at adopting the Community Infrastructure Levy in order that developers pay CIL before commencing a development and the Parish Council and their parishioners receive funds directly to invest in their Parish and be recompensed for the disruption caused by the large developments being approved to the detriment of the local population. The Council respectfully ask for the application to be refused and that SHDC look again at the CIL policy as it states in the Local Plan.

LCC Education - Advises that the contribution would be £1,048,967 based on the approved dwelling mix in the Reserved Matters application.

SHDC Strategic Housing - Reiterates the affordable housing mix requested at Reserved Matters stage and awaits the outcome of the viability assessment to provide a revised housing mix as appropriate/required.

NHS - Whilst we acknowledge the planning process approval of the housing, consideration needs to be made to ensure that patients have access to NHS Primary Care facilities. The viability claim and any associated removal of any section 106 funds will shift the burden of any required increase to the National Health Service. The developers contributions and supporting regulations are designed to help mitigate the impact of the development. The Integrated Commissioning Board considers there will be impact of 215 new houses. This impact will be felt on primary care services. Using the South Holland District Councils multiplier (2.4 residents per house) this is going to increase the population, resulting in 516 additional patients for local GP surgeries. The request for funding is requested to assist in mitigating the impact of this development. We consider that the tests of the section 106

regulations are met and do not support the removal of section 106 obligations for Health. Advises that contribution should be £118,800.

Planning Considerations

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. Following discussions on the initial draft report prepared by CP Viability, the conclusion of the final version of the independent assessment is that, with a reasonable uplift in the sales vales, the scheme can viably support a significant level of developer contributions, namely 25% affordable housing and £1,005,000 worth of financial contributions. This is £167,767 less than the full total sum of £1,172,767 (education, NHS and travel plan contributions combined) and only a minor difference when considering the developer is seeking to remove all contributions.

The independent valuer advises that the key differences between the applicant's viability appraisal and their assessment are:
- Average plot construction costs
- Contingency
- Debit interest
- Credit interest

Planning Balance

The outcome of the independent viability assessment is that, with a reasonable uplift in the sales vales, the scheme can viably support a significant level of developer contributions, namely 25% affordable housing and £1,005,000 worth of financial contributions.

It is therefore not considered that the removal of all developer contributions relating to this site is justified.

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 (2021).

The recommendation is therefore that the application be refused.

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.