

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H11-1115-25 **Applicant:** Amplus Living

Proposal: Modification of 106 Agreement to replace the affordable housing plan to reflect the 12 rented dwellings that are now being provided (Planning Approvals H11-0842-23 & H11-0289-25)

Location: Land Off Lime Walk Long Sutton Spalding

Terminal Date: 15th January 2026

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework December 2024

Section 106A of the Town and Country Planning Act 1990 (as amended).

Representations:

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

CASE OFFICER ASSESSMENT

Proposal

This application seeks to secure a Deed of Variation pursuant to Section 106A of the Town and Country Planning Act 1990 (as amended).

The proposed Deed of Variation would:

1. Replace the Mortgagee in Possession clause (Schedule 2, paragraph 1.11) to:

- Embed the definition of mortgagee/chargee within the clause;
- Extend the exemption to receivers, administrators and successors in title;
- Introduce a requirement for notice to the Council and a three-month disposal period; and

- Allow disposal free from Section 106 obligations if no transfer occurs within that period.

2. Update the definitions of "Affordable Housing Scheme" and "Affordable Housing Plan" to:

- Clarify the provision of 12 rented dwellings; and
- Reference the updated Affordable Housing Plan submitted by the applicant.

Suggested wording for both amendments has been provided by the applicant.

Site Description

The application site forms part of housing allocation LOS008 (which abuts LOS026). The allocation extends to approximately 1.72 hectares (including an existing dwelling and its curtilage) and identifies a capacity of approximately 34 dwellings.

No. 36 Lime Walk lies immediately to the west. Phase 1 development (70 dwellings) is located to the south-west, beyond an LCC footpath and the Anfield Road/Magpie Close estate. A play area lies to the south-east, beyond which are residential properties off St John Swains Way.

The site adjoins open countryside along its northern boundary and recreational open space to the east. The built settlement lies to the south, with Lime Walk forming the western boundary.

History

·H11-0842-23 - Residential development comprising 48 dwellings (re-submission of H11-0994-22). Allowed at appeal.

·H11-0418-25 - Details of Construction Method Statement (Condition 3 of H11-0842-23). Approved 25/06/25.

·H11-0289-25 - Modification of Condition 2 (approved plans) and Conditions 17 and 18 (finished floor levels). Approved 15/08/25.

The original Legal Agreement dated 28 August 2024 secured, amongst other matters, the provision of 12 affordable dwellings.

Consultation Responses

Housing Strategy

Thank you for consulting the Local Housing Authority regarding the proposed modification of the Section 106 Agreement, specifically the update to the Affordable Housing Plan to reflect the provision of 12 rented dwellings. We can confirm that this amendment has been agreed upon by both the Local Housing Authority and the applicant. As a result of this modification, the development will now deliver a total of 48 affordable homes. Accordingly, the Local Housing Authority raises no objections to the proposal, provided that an appropriate Deed of Variation is prepared and completed to secure the necessary changes to the existing agreement.

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 is whether the proposed amendments would undermine the purpose or effectiveness of the original obligation.

The Deed of Variation seeks two amendments:

- Replacement of the Mortgagee in Possession clause; and
- Updating of definitions relating to the Affordable Housing Scheme and Affordable Housing Plan.

Mortgagee in Possession Clause

The proposed replacement clause embeds the definition of mortgagee/chargee and extends its

application to receivers, administrators and successors in title. It introduces a requirement for notice to the Council and a three-month marketing/disposal period prior to release from obligations.

Such clauses are standard within planning obligations to ensure that affordable housing provisions do not unduly restrict lending, while still securing a reasonable opportunity for the affordable housing to be transferred to a Registered Provider or equivalent body.

The proposed wording is considered reasonable and would not undermine the delivery of affordable housing secured through the original agreement.

Affordable Housing Definitions

The updated Affordable Housing Plan clarifies the delivery of 12 rented dwellings within the 48-unit scheme. The proposed amendments require deletion of clauses 4.3 and 4.4 and updated definitions of "Affordable Housing Scheme" and "Affordable Housing Plan".

The Local Housing Authority has confirmed agreement to these amendments. The changes do not reduce the quantum of affordable housing secured under the original agreement, nor do they alter tenure in a manner that conflicts with policy requirements.

Accordingly, the amendments are not considered to undermine the objectives of the original Legal Agreement or the planning balance established through the appeal decision.

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.

Conclusion

The proposed Deed of Variation seeks to update the Mortgagee in Possession clause and clarify the Affordable Housing Plan without reducing the quantum or altering the overall delivery of affordable housing secured under the original Section 106 Agreement.

The Local Housing Authority has confirmed its agreement to the proposed amendments. The changes are considered reasonable, proportionate, and consistent with standard drafting practice. Importantly, they would not undermine the intent or effectiveness of the original planning obligation.

The modification is therefore considered acceptable.