

DECISION DELEGATED TO HEAD OF PLANNING

Application No:	H14-1159-21	Applicant:	Keston Fields Ltd.
Proposal:	Discharge of 106 Agreement relating to affordable housing, education & Call Connect Bus contributions due to the financial viability of the development (planning approval H14-0355-17)		
Location:	Keston Nurseries Mill Green Road Pinchbeck		
Terminal Date:	5th February 2022		

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
RESIDENTS	2	0	0	0

CASE OFFICER ASSESSMENT

PROPOSAL

Outline planning permission was granted for a residential development of up to 100 dwellings under application ref. H14-0355-17 in February 2018. This was subject to a legal agreement which required:

- 33.3% of the dwellings on the site to be affordable units
- £50,000 CallConnect Bus Contribution (to extend the service)
- £15,000 CallConnect Bus Maintenance and Improvements Contribution (specifically the introduction and maintenance of a real time passenger information function on the route
- An education contribution (formula based given the outline nature of the application)

No healthcare contribution was requested.

This legal agreement was subsequently amended in 2019 under application ref. H14-0194-19 to reduce the affordable housing contribution from 33.3% to 25%, in line with the new Local Plan requirement. The agreement was varied once again in 2020 (ref. H14-1170-19) to allow changes to the timing and delivery of affordable housing to assist the developer in obtaining finance.

However, the applicant is now seeking to remove all developer contributions on viability grounds.

SITE DESCRIPTION

Development has commenced on site. The site was formerly greenfield in nature, being previously used as a horticultural nursery. To the west the site is bordered by Mill Green Road, with open fields beyond, as well as the rear of a number of properties in the southern portion of the site. To the east is the railway line and properties beyond on Mayfield Close and Penway Drive. To the north is a single property on the opposite side of Mill Green Road, the level crossing linking the site to Pinchbeck and a property previously linked to the nursery.

RELEVANT PLANNING HISTORY

H14-0197-21 - Reserved Matter - Details of external materials (Part Condition 4 ii of H14-0355-17) (approved May 2021)

H14-1170-19 - Modification of s106 Agreement to allow changes to the timing and delivery of affordable housing (H14-0355-17) (approved January 2020)

H14-0194-19 - Modification of Section 106 Agreement to reduce the percentage of affordable housing from 33.3% to 25% - planning approval H14-0355-17 (approved April 2019)

H14-1162-18 - Reserved Matters - Erection of 100 dwellings and associated works - Outline approval H14-0355-17 (approved March 2019)

H14-0355-17 - Outline - Proposed residential development (re-submission of H14-0942-16) (approved February 2018)

REPRESENTATIONS

Pinchbeck Parish Council - The Keston Nurseries development has already fully signed up to developer contributions via a S106 agreement. These being Affordable Housing, Education, Call Connect and an NHS contribution. The S106 agreement was signed on February 22nd 2018. The development is for 100 properties, for which construction is currently well underway. This is, without doubt, a sizable development. Families will occupy these properties, expecting there to be capacity at the local schools and GP surgeries for which the contribution is vital. Given the development is on the outer edge of Pinchbeck, it is only appropriate there is a contribution to Call Connect. Furthermore, it is incumbent upon the developer to ensure there is adequate affordable housing within said development. The applicant would, or should, have fully understood their costs and revenues for developing the site at the outset. Although building costs have increased, property values have also increased since development started, and an allowance for an increase in costs would/should have been built into their projections. A development of this size should recognise and fulfil its obligations toward Pinchbeck and the wider community, both financially and morally. We hope that SHDC will be using a 3rd party to fully and thoroughly assess the applicant's viability

assessment. We cannot therefore support the applicant's attempt to discharge their responsibilities to the community of Pinchbeck and South Holland. The South East Lincolnshire Local Plan (Adopted March 2019) calls for developers to ensure there is sufficient infrastructure to support development, and it is realistic to require developers to contribute toward meeting this provision'. We believe, should this be approved, it would set a very dangerous precedent for both the present and also in the future for developers to renege on their obligations to the local community.

Public (2 objections received, summarised) -

- Will have adverse impact on village infrastructure
- Very large development in small village
- Permanent loss of prime agricultural land
- Much upheaval to existing local residents due to the building works
- Will SHDC please investigate whether permission can be rescinded for any undeveloped land, in order to reduce the impact of further housing increasing the village population for which contributions to their Education needs, NHS needs, and Call Connect Bus needs would now not be available from the developers. There is no clear plan for how these needs would now be met; from whom? from where? from what budget, and how?
- Roads, dykes and drainage in appalling state

PLANNING CONSIDERATIONS

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 (included as Appendix A), which the Council has had independently tested. The response of the independent assessment, prepared by CP Viability, is included as Appendix B. This has concluded that the scheme can viably support the full suite of developer contributions set out in the s106 agreement.

The independent valuer advises that the key differences which are having a negative impact on the viability of the scheme are:

- Market values average
- Contingency
- Plot construction costs
- Benchmark land value

In addition to the above, the situation in respect of this site is different to the usual scenario of assessing viability at the outset, as development has already commenced on site and sales have been agreed.

The National Planning Practice Guidance (NPPG) sets out the government's recommended approach to viability assessment for planning.

Paragraph 9 of the NPPG, as updated on 9 May 2019, deals with the question of how viability should be reviewed during the lifetime of a project.

Paragraph 9 states:

Plans should set out circumstances where review mechanisms may be appropriate, as well as clear process and terms of engagement regarding how and when viability will be reassessed over the lifetime of the development to ensure policy compliance and optimal public benefits through

economic cycles. Policy compliant means development which fully complies with up to date plan policies. A decision maker can give appropriate weight to emerging policies.

Where contributions are reduced below the requirements set out in policies to provide flexibility in the early stages of a development, there should be a clear agreement of how policy compliance can be achieved over time. As the potential risk to developers is already accounted for in the assumptions for developer return in viability assessment, realisation of risk does not in itself necessitate further viability assessment or trigger a review mechanism. Review mechanisms are not a tool to protect a return to the developer, but to strengthen local authorities' ability to seek compliance with relevant policies over the lifetime of the project.

Therefore, notwithstanding the technical viability outcome, the guidance set out in the NPPG would suggest that the Local Planning Authority is under no obligation to agree to the removal of the obligations set out in the s106 in a circumstance such as this.

Other Considerations

A number of the points raised by objectors relate to the principle of development on the site, which has already been agreed by virtue of previous applications.

Planning Balance

The conclusion of the independent viability assessment is that the scheme can viably support the full suite of developer contributions set out in the s106 agreement.

Furthermore, where a scheme has already commenced, National Planning Practice Guidance suggests that a Local Planning Authority is not obliged to accept a reduction in / the removal of developer contributions through a viability review and viability cannot be used as a means of boosting a developer's return in these circumstances. In light of this, the terms of the original s106 agreement, and the subsequent Deeds of Variation, should remain.

Conclusion

The proposal is contrary to Policies 6 and 18 of the South East Lincolnshire Local Plan (2019), Section 5 of the National Planning Policy Framework (2021) and National Planning Practice Guidance on Viability.

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.

N.B. The application was presented to Chairman's Panel on 13th May 2022 and members were content that the application be determined under delegated powers.