

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H15-0022-24 **Applicant:** Stinders Homes SPV1 Ltd

Proposal: Modification of 106 Agreement in relation to affordable housing (planning approval H15-0014-22)

Location: Land Adj. Crossroads Nursery Main Road Quadring

Terminal Date: 6th March 2024

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

01	Spatial Strategy
06	Developer Contributions
10	Meeting Assessed Housing Requirements
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

National Planning Policy Framework

Section 4 - Decision-making
Section 5 - Delivering a sufficient supply of homes

National Planning Practice Guidance Viability

Representations:

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

CASE OFFICER ASSESSMENT

Reason for Chairman's Panel

The nature of the proposal requires Panel consideration.

Proposal

This is an application to modify an existing Section 106 Agreement attached to planning permission H15-0014-22, which granted permission for 59 dwellings and associated works.

A S106 Agreement was signed, dated 25th August 2022, requiring 25% onsite affordable housing (17 units) and £272,141 in total other contributions.

This application seeks to modify the existing S106 by removing both on site affordable housing contributions; as well as the £272,141 commuted sums (made up of £223,761 for Education, £44,880 for Health & £3,500 S106 costs).

Site Description

The site formerly comprised of a horticultural nursery, with extensive glasshouses, poly tunnels and sheds.

In September 2019 the property was granted an outline consent (H15-1207-18) for up to 60 dwellings, subject to conditions and legal agreement.

In September 2022, full planning permission (H15-0014-22) was granted for 59 dwellings and associated works.

Relevant History

H15-1207-18 - Outline - Residential development - up to 60 dwellings (approved September 2019)

H15-0942-20 - Reserved Matters - Residential Development of 9 dwellings - Phase 1 (Outline approval H15-1207-18) (approved January 2021)

H15-0538-21 - Modification of 106 Agreement relating to adjustment (deferral) of affordable housing, education contribution and health care facilities contribution (H15-1207-18) - 106 - Approved December 2021

H15-0726-21 - Conditions 4, 9, 10, 11, 12, 14, 15, 18 & 19 of H15-1207-18 - Discharge of Conditions - Approved October 2021

H15-0014-22 - Erection of 59 dwellings & associated works. Approved 01-09-22

H15-0894-22 - Conditions 3, 5, 10, 11 & 13 of H15-0014-22 - Discharge of Conditions - Approved January 2023

H15-1095-23 - Proposed residential development comprising 14 dwellings - Full - Under Consideration

H15-0147-24 - Conditions 3, 5, 10, 11 & 13 of H15-0014-22 - Discharge of Conditions - Under Consideration

Consultation Responses

CP Viability (Independent Viability Experts) - Full response available

In conclusion, we agree that there is a viability argument here for removing all planning policies from the S106 agreement in order to give the scheme the best chance of being delivered.

Planning Considerations

Section 38 (6) of the Planning and Compulsory Purchase Act 2004, as amended, 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 (December 2023) are also a material consideration in the determination of planning applications, alongside national Planning Practice Guidance.

Viability

Having regard to viability, Paragraph 58 of the National Planning Policy Framework (December 2023) is relevant, it states that:

Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.

Policy 6 of the South East Lincolnshire Local Plan (2019) sets out Developer contributions. The original application was subject to and was considered to be in accordance with this policy. Subsequently, external factors shaping the financial landscape have impacted upon this scheme.

The policy justification, under paragraph 3.7.11 sets out the following:

In exceptional circumstances, where applicants state that financial viability prevents the delivery of some or all developer contributions, a financial appraisal should be submitted. Preferably this should form part of the pre-application negotiations but must be submitted with a planning application. Each Local Planning Authority's independent valuer will consider the assessment. All costs associated with the assessments will be met by the developer.

Policy 18 of the South East Lincolnshire Local Plan (2019) relates to affordable housing. In part, the policy states *The proportion of affordable housing that can be provided on market housing sites may vary according to the site specific considerations such as viability, other infrastructure requirements and the type of affordable housing need to be met.*

Appendix 8 and Appendix 9 of the plan sets out requirements for Education and Health respectively. In the context of this, the applicant has submitted viability information to remove both the affordable housing contributions as well as commuted sums for education and health. The Council has had this submitted detail independently tested.

The conclusions from the independent assessment, are as follows:

-With nil affordable housing/nil S106 contributions, and a 17.5% developer profit, the scheme generates a negative residual land value. This is therefore below the accepted benchmark land value and therefore unviable. This therefore points to the scheme being unable to meet the normal threshold for viability even before planning policies are factored in.

-This suggests that, at the current time at least, the viability pressure on the scheme has increased significantly since the S106 agreement was originally signed in 2022, which we anticipate is due to recent sharp increases in build cost inflation during the last 18 months or so, together with house price inflation slowing (South Holland average house prices actually show a loss in value since 2022). And;

-In conclusion, we agree that there is a viability argument here for removing all planning policies from the S106 agreement in order to give the scheme the best chance of being delivered.

The independent assessor draws attention to how recent the S106 was signed and given that it is

under 5 years South Holland District Council have no legal obligation to reconsider the terms of this contract.

However, given the policy position as regards demonstrating viability, it is clear that at present the scheme would unlikely be deliverable and so in line with Policy 6 of the South East Lincolnshire Local Plan (2019). Drawing on the specialist advice from the independent viability assessor, it is accepted that the removal of affordable housing and commuted sums from the S106 is necessary in order for the development to be delivered.

Planning Balance

Having regard to the allowance made under Policy 6 of the South East Lincolnshire Local Plan (2019) and given that the applicant has demonstrated through viability, which in turn has been independently assessed, it is considered that the removal of the contributions set out above are in this instance necessary to make the scheme deliverable.

Conclusion

This application seeks to modify the existing S106 by removing both on site affordable housing contributions; as well as the £272,141 commuted sums (made up of £223,761 for Education, £44,880 for Health & £3,500 S106 costs).

It is considered that the removal of affordable housing and commuted sums are necessary for the scheme to be delivered.

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

It is considered that the removal of affordable housing and commuted sums are necessary for the scheme to be delivered and as such, it is therefore recommended that the proposal be approved under delegated authority.