

SOUTH HOLLAND DISTRICT COUNCIL

Report of: Development Manager

To: Planning Committee - 21 July 2021

(Author: Lucy Buttery - Principal Planning Officer)

Purpose: To consider Planning Application H15-0538-21

Application Number: H15-0538-21

Date Received: 12 May 2021

Application Type: MODIFIED AGREEMENT

Description: Modification of 106 Agreement relating to adjustment (deferral) of affordable housing, education contribution and health care facilities contribution (H15-1207-18)

Location: Crossroads Nurseries Main Road Quadring

Applicant: Crossroads Nurseries Ltd

Agent: Moulton Land and Planning Ltd

Ward: Donington, Quadring and Gosberton

Ward Councillors: Cllr H J W Bingham
Cllr S C Walsh
Cllr J L King

You can view this application on the Council's web site at

<http://planning.sholland.gov.uk/OcellaWeb/planningDetails?reference=H15-0538-21>

1.0 REASON FOR COMMITTEE CONSIDERATION

1.1 The site is owned by a District Councillor.

2.0 PROPOSAL

2.1 Outline planning permission was granted for the development of up to 60 dwellings under application ref. H15-1207-18 in September 2018. This was subject to a legal agreement which requires a minimum of 25% of the total number of dwellings on site to be affordable units, as well as the developer to pay an education contribution (formula based), and a healthcare contribution (£660 per dwelling).

2.2 **Schedule 3 of the legal agreement contains the following requirements:**

2.3 Affordable Housing

- 2.4
- Not to Occupy or permit the Occupation of more than 40% of the Market Dwellings until the construction of all Affordable Dwellings has been commenced in accordance with the Affordable Housing Scheme and written notification of that commencement has been received by the Council
 - Not to Occupy or permit the Occupation of more than 60% of the Market Dwellings until the construction of all Affordable Dwellings has been certified practically complete and has been transferred to the Affordable Housing Provider.

2.5 Education Contribution

2.6 Not to Occupy or permit the Occupation of more than 50% of the Dwellings unless and until the Education Contribution has been paid to the Council in full.

2.7 Healthcare Contribution

2.8 Not to Occupy or permit the Occupation of more than 50% of the Dwellings unless and until the Healthcare Facilities Contribution has been paid to the Council in full.

2.9 **Due to the phased approach being taken to the scheme, the applicant is seeking to amend the triggers to the following:**

2.10 Affordable Housing

2.11 - Not to occupy or permit occupation of more than 27 market units until construction of all affordable dwellings has been commenced in accordance with the affordable housing scheme
- Not to occupy or permit occupation of more than 36 market dwellings until construction of all affordable dwellings has been certified practically complete
(Affordable housing scheme to be submitted to Local Planning Authority prior to commencement of the 10th dwelling i.e. Phase 2).

2.12 Education and Healthcare Contributions

2.13 To be paid prior to more than 50% occupation of 'the dwellings' (i.e. 30 dwellings).

3.0 **SITE DESCRIPTION**

3.1 The site comprises of a horticultural nursery on the front half with agricultural land to the rear. There are properties to the west/south-west and Stonehaven Care Home adjoins the site immediately to the south west. The northern and eastern boundaries are open.

4.0 **RELEVANT PLANNING POLICIES**

4.1 The Development Plan

South East Lincolnshire Local Plan, March 2019

If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, Section 38 (6) to the Town and Country Planning Act as amended by the 2004 Act states that the determination must be made in accordance with the plan unless material considerations indicate otherwise.

Policy 6 - Developer Contributions

Policy 18 - Affordable Housing

Appendix 8 - Developer Contributions for Education Facilities

Appendix 9 - Developer Contributions for Health Care Facilities

National Guidance

National Planning Policy Framework (NPPF), 2019

Section 5 - Delivering a sufficient supply of homes

Planning Practice Guidance (PPG)

5.0 **RELEVANT PLANNING HISTORY**

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

- 5.2 H15-1207-18 - Outline application for residential development - up to 60 dwellings (approved September 2019)

6.0 REPRESENTATIONS

6.1 Quadrang Parish Council

Unanimous support for application.

6.2 SHDC Strategic Housing

This scheme benefits from a s106 agreement dated 12 September 2019 relating to application H15-1207-18. The agreement obligates the developer to provide 25% affordable homes with the affordable housing scheme agreed prior to the scheme starting on site. The affordable homes should be practically complete and transferred to an Affordable Housing Provider when no more than 60% of the market homes are occupied. In this application the developer has applied to amend the triggers so that no more than 80% of the market is occupied before the affordable is complete. Given that this will support the delivery of the scheme and the affordable homes will still be provided on-site there are no objections from Strategic Housing.

6.3 LCC Education

The County Council is content with the proposed amendment of payment of the education contribution prior to occupation of the 35th dwelling.

6.4 NHS

No objection to the moving of the trigger point.

7.0 CONSIDERATIONS

7.1 **Planning Considerations**

- 7.2 The issue to consider in this case is whether the modification of the S106 legal agreement to change the triggers for delivery of affordable housing and the payment of the developer contributions would prejudice the provision of the housing/services to be provided in a timely fashion, that would be of detriment to the District and/or contrary to the provisions of the National Planning Policy Framework (2019) and the South East Lincolnshire Local Plan (2019) (SELLP).

- 7.3 This application does not seek to reduce the agreed contributions, but to move the triggers due to the phased approach that is being taken to the development. The Reserved Matters application for Phase 1 (H15-0942-20) was accompanied by a supporting statement that provided the following justification for the phased approach, and was accepted:

- 7.4 *"There are business, financial and practical reasons for approaching this development in a phased manner. This large parcel of land is situated close to the centre of Quadrang and will ultimately increase the housing provision in the village by a significant amount. This site differs from many other similar sized residential development opportunities within the District in that the Applicant still operates an established business on this site and the current operational layout means that the business can logically reduce its production area by removal of polytunnels, glasshouse and external growing areas to the north-western portion of the site near to Main Road and accommodate a new estate road and a small housing development. The Applicant has already made significant investment in a nearby site at Sarahgate Lane and the objective of this established local business is to relocate to this site and vacate the current site in its entirety. This phased strategy will enable the Applicant to protect his business, his staff, and implement the relocation of his business in a sustainable manner. This re-investment within the village will retain employment opportunity and the intention is that the expansion of the business will generate further employment in the village. The construction of Phase 1 of the site will provide an adoptable estate road, infrastructure and delivery of 9 bungalows to the western portion of the site adjacent to existing dwellings. This effectively displaces the activities of the horticultural business away from those existing residents."*

- 7.5 Neither the NHS, Education Authority or SHDC's Strategic Housing officer have objections to the trigger points being deferred.
- 7.6 **Planning Balance**
- 7.7 This application does not seek to reduce the agreed affordable housing, NHS or education contributions, but to move the triggers due to the phased approach that is being taken to the development.
- 7.8 Neither the NHS, Education Authority or SHDC's Strategic Housing officer have objections to the trigger points being deferred.
- 7.9 On that basis, the planning balance is considered to be in favour of the proposal.
- 7.10 **Additional Considerations**
- 7.11 Public Sector Equality Duty
- 7.12 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.
- 7.13 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 7.14 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.
- 7.15 It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.
- 7.16 Human Rights
- 7.17 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).
- 7.18 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.
- 7.19 **Conclusion**

7.20 The proposed amendments to the S106 agreement are considered reasonable and acceptable for the reasoning set out above.

8.0 RECOMMENDATIONS

8.1 **That, subject to the applicant entering into a Deed of Variation, the modifications to the original Section 106 agreement be approved.**

9.0 CONDITIONS

1. South Holland District Council hereby approve the Modification of the Agreement in accordance with the application and details submitted under s.106A of the Town and Country Planning Act 1990.
2. The determined plans are:
CN01/pl/LP
Application Form
Supporting Statement (prepared by Moulton Land and Planning, dated 29th April 2021)

Background papers:- Planning Application Working File

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Appendices attached to this report:

Appendix A Plan A

