

DECISION DELEGATED TO DEVELOPMENT MANAGER

Application No: H16-0315-19 **Applicant:** Mrs E J Bush

Proposal: Modification of 106 Agreement dated 29-08-07 to allow a cascade to sell on the open market free of the current restrictions and pay to SHDC 20% of the sale price in lieu of the property remaining as an affordable unit

Location: 97 St Thomas Road Spalding

Terminal Date: 13th June 2019

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

17 Providing a Mix of Housing
18 Affordable Housing

National Guidance

National Planning Policy Framework 2019

NPPF 2019

Representations:

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

CASE OFFICER ASSESSMENT

Proposal

This is an application to vary a S106 planning obligation dated 29th August 2007 between (1) the Council and (2) Fieldview Homes Ltd and (3) Natwest Bank plc.

History

The modification proposed is to allow a cascade to sell on the open market free of the current restrictions and pay to the Council 20% of the sale price in lieu of the property remaining as an affordable unit. The applicant who currently resides in 97 St Thomas Road, has been trying to sell

the property with the restrictions for a period in excess of 20 months but with no success. Three possible purchasers of the property could not fulfil the requirements of the affordable criteria and all sales therefore failed as a result of the strict qualifying criteria.

Consultation Responses

The Strategic Housing officer has been assisting the applicant with a way forward and their consultation response is as follows:

"Strategic Housing is aware that the owner has been attempting to sell this property with the current affordable restrictions for a significant period of time. Due to the lack of eligible households offering to purchase the property and the lack of cascade mechanism in the original planning s.106 agreement, it has been suggested, subject to the appropriate planning decision making route, that an amendment to this agreement is required allowing the owner to sell free of the restrictions provided that they pay a financial contribution to the council equating to 20% of the sale value."

Conclusion

Due to the problems experienced by the applicant for such a lengthy period of time, along with the mitigation proposed in the form of a financial contribution equating to 20% of the sale value and also the agreement of the Councils Strategic Housing Officer, a modification to the obligation as proposed, is considered to be reasonable in the circumstances. A delegated approval is considered appropriate in the circumstances.

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 to grant permission 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 to grant permission 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 to grant permission is considered to be a proportionate response to the submitted application based on the considerations set out in this report.