

DECISION DELEGATED TO DEVELOPMENT MANAGER

Application No: H16-0739-19 **Applicant:** Adam Thomas

Proposal: Discharge of Section 106 Agreement to allow 2 Celandine Close to be sold as an unrestricted open market property

Location: 2 Celandine Close Spalding

Terminal Date: 4th October 2019

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

02	Development Management
10	Meeting Assessed Housing Requirements
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	2

CASE OFFICER ASSESSMENT

Proposal

Modification of existing S106 agreement - Discharge of Section 106 Agreement to allow 2 Celandine Close to be sold as an unrestricted open market property.

Site Description

The application property is a two storey, end of terrace dwelling within the wider residential estate.

History

H16-0650-01. Land off The Hayfields, Wygate Park. Residential development. Outline Allowed on appeal. S106 included - 23 May 2003.

H16-0430-05. Land off The Hayfields, Wygate Park. Residential development - comprising 316 dwellings. Reserved matters approved. 21-02-06.

Consultation Responses

SHDC Strategic Housing Service

The property was secured as a low cost market dwelling through Broadgate Homes in 2011. There is no set discount for the value of the property, but it must be sold to a person in 'local housing need' which will in effect lead to a reduction in the value. The product would not meet the current NPPF 2019 definition of affordable housing.

The current owner has been attempting to sell the property since 31 October 2018 and has provided evidence that there has been a lack of interest, partially due to the nature of the product. There is also no cascade mechanism within the planning agreement that secured this product in 2011.

Given the above factors Strategic Housing supports the removal of the planning obligations which in turn allows the current owner to sell the property on the open market free of any restrictions. In other situations where a planning obligation is being removed the council may request a financial contribution in lieu of on-site delivery, however on this occasion given the nature of the product the advice from the council's legal service has been that they do not consider that there is any payment that the Council can recover from this.

SHDC Legal Services

No objection.

Planning Considerations

As the dwelling in question was delivered as an affordable housing product that does not meet the current NPPF 2019 definition of affordable housing, it is not considered that there would be insisting on the provisions of the original S106 would be reasonable.

Conclusion

Agree to variation of the S106 agreement for the purposes of this property.

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.