

## DECISION DELEGATED TO HEAD OF PLANNING

Application No:	H16-0746-25	Applicant:	Broadgate Homes Ltd & Broadgate Builders (Spalding) Ltd
Proposal:	Modification of 106 Agreement to allow allocated plots to be registered & sold under the first homes scheme, insertion of Insertion of a Mortgagee Protection Clause and amend clause 7.2 to allow for the transfer of the Phase 2 Affordable Housing Units to another party (registered provider). The allocated plots are identified in the Deed of Variation S106 (Listed in Section 5) on plan 1202-RM-AH Rev A Affordable Housing Plan - Approved under H16-0116-22		
Location:	Site To South West Of Spalding With Access From Broadway To The North & B1172 To The South		
Terminal Date:	30th September 2025		

### Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework December 2024

Section 106A of the Town and Country Planning Act 1990 (as amended)

### Representations:

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

### CASE OFFICER ASSESSMENT

#### Proposal

Modification of 106 Agreement, made under Section 106a of the Town & Country Planning Act 1990 (as amended), to allow allocated plots to be registered & sold under the first homes scheme. Allocated plots are identified in the Deed of Variation S106 (Listed in Section 5) on plan 1202-RM-AH Rev A Affordable Housing Plan - Approved under H16-0116-22.

The applicant also seeks to have the insertion of a Mortgagee Protection Clause as well as Amend Clause 7.2, to allow for the transfer of the Phase 2 Affordable Housing Units to another party (for example a Registered Provider).

The application therefore seeks the following insertions:

-allocated plots to be allowed to be registered and sold under the First Homes Scheme. These allocated plots are shown on drawing 'Affordable Housing Plan' 2101-RM-AH-Rev A.

-Insertion of a Mortgagee Protection Clause into the agreement.

-Amend Clause 7.2, to allow for the transfer of the Phase 2 Affordable Housing Units to another party (for example a Registered Provider).

## Site Description

The application site benefits from a broader scheme to erect a large residential development named Holland Park, located to the south west of Spalding. This site in particular relates to the Northern Neighbourhood 'phase 2' (outline approval H16-0571-09).

## History

H16-0571-09 - Erection of 2,250 dwellings, district centre, 2 local centres, primary school, public open space, access and estate roads - Outline application approved 18/05/12.

H16-0904-13 - Engineering works to man-made structure to accommodate surface water discharge for northern neighbourhood. Full application approved 30/07/15. H16-0905-13 - Details submitted relating to Conditions 14, 21-23, 25, 28-34, 37, 44-46, 50, 53, 54, 56, 69 and 75 of H16-0571-09. Condition compliance application undetermined.

H16-0339-14 - Erection of 2,250 dwellings, district centre, 2 local centres, primary school, public open space, access and estate roads - approved under H16-0571-09.

Modification of condition numbers 38 and 39. S73 application undetermined. H16-0355-14 - Erection of 2,250 dwellings, district centre, 2 local centres, primary school, public open space, access and estate roads - approved under H16-0571-09.

Modification of conditions 12 and 13 relating to affordable housing. S73 application undetermined. H16-0356-14 - Details of Condition 12 of H16-0571-09 relating to affordable housing (Plots 1 to 40 only). Condition compliance application approved 11/09/18.

H16-0370-14 - Erection of 2,250 dwellings, district centre, 2 local centres, primary school, public open space, access and estate roads - approved under H16-0571-09. Removal of conditions 5, 10, 15, 16, 17, 18, 19, 35, 60, 61, 62, 64, 66 and 68 and modification of conditions 4, 6, 7, 11, 63 and 67. S73 application undetermined.

H16-0372-14 - Details of energy strategy, renewable energy for Plots 1-40 and programme of archaeological works for Plots 1-132 (condition 8 and part condition 9 and 67 of H16-0571-09). Condition compliance application approved 03/02/15. H16-0398-14 - Details of materials for Plots 1-70 (Part Condition 3(2) of H16-0571-09). Condition compliance application approved 05/11/14. H16-0464-14 - Phase I covering part of the northern neighbourhood comprising 312 dwellings, including associated infrastructure and public open space - Reserved Matters approved 21/10/14.

H16-0927-15 - Erection of 2,250 dwellings, district centre, 2 local centres, primary school, public open space, access and estate roads - approved under H16-0571-09. Modification of Condition 1 to extend the time period for the submission of reserved matters to 20 years - NMA approved 25/05/16.

H16-0639-16 - Details of external materials for Plots 237-312 (Condition 3(2) of H16-0571-09). Condition compliance application approved 25/08/16.

H16-0640-16 Details of landscaping and bat and bird box scheme (Conditions 2, 3 and 4 of H16-0464-14). Condition compliance approved 26/08/16.

H16-1153-16 - Details of scheme to deal with contamination (Condition 76 of H16-0571-09). Condition compliance approved 04/01/17.

H16-0681-17 - Details of materials schedule for plots 71 - 105 part condition 3 (2) of H16-0571-09.

Condition compliance approved 20/07/17.

H16-1078-17 - Phase I covering part of the northern neighbourhood comprising 312 dwellings, including associated infrastructure and public open space - approved under H16-0464-14 - Amendments to include change of surface treatment and addition of tree. NMA approved 07/12/17.

H16-0067-18 - Details of scheme to deal with contamination (Condition 76 of H16-0571-09). Condition compliance approved 22/02/18.

H16-0704-18 - Details of affordable housing (Condition 12 of H16-0571-09). Condition compliance approved 02/02/21.

H16-0279-19 - Details submitted relating to materials for Plots 106 to 236 (Part Condition 3(2) of H16-0571-09). Condition compliance approved 30/04/19.

H16-0123-20 - Phase 1 covering part of the northern neighbourhood comprising 312 dwellings including associated infrastructure and public open space - approved under H16-0464-14. Amendments to dwelling substitution, layout and design. NMA approved 05/03/20.

H16-0115-22 - Details of large scale drawings, sustainable drainage scheme, surface water drainage, flood risk details of collection & disposal of surface water run off (Conditions 3 (2), 27, 28, 35 & 37 of H16-0571-09). Condition compliance undetermined.

H16-0958-22 - Details relating to affordable housing (Condition 12 of H16-0571-09). Condition compliance undetermined.

## Consultation Responses

### Housing Strategy

Thank you for consulting the Local Housing Authority on this application to modify the S106 relating to the affordable housing provision. The modifications to the S106 relate to the provision of First Homes on the site that are required to be able to facilitate their sale. If the council's legal advisor is comfortable with the suggested changes the Local Housing Authority has no objections.

## Planning Considerations

A deed of variation under Section 106 of the Town & Country Planning Act 1990 (as amended) was prepared by Howes Percival and dated March 18th 2025. The applicant seeks to modify this agreement to allow for the following:

-allocated plots to be registered and sold under the First Homes Scheme. These allocated plots are shown on drawing 'Affordable Housing Plan' 2101-RM-AH-Rev A.

-Insertion of a Mortgagee Protection Clause into the agreement.

-Amend Clause 7.2, to allow for the transfer of the Phase 2 Affordable Housing Units to another party ( for example a Registered Provider).

### *First Homes Scheme*

Given the market discount associated with the first homes scheme, these would comfortably sit under the definition of what constitutes affordable housing as set out under Annex 2 of the NPPF Glossary. Though First Homes are not explicitly referred to as an affordable product within that definition.

### *Mortgagee Protection Clause*

This clause is essential for RP's to secure finance for housing schemes, as it gives lenders confidence that they can recover their investment.

### *Amend Clause 7.2*

This clause currently enforces that affordable housing are transferred to the council. The

management of this clause, opening up the transfer to include other parties such as Registered Providers is acceptable and does not undermine the bringing forward of the obligation.

It is considered that the sum of the charges would not alter the obligation requirement but rather allow greater flexibility in terms of securing purchases for the affordable units, which first homes are likely to be considered to be. Allowing First Homes to be included is then acceptable, a mortgagee protection clause is also standard and would in fact aid prospective RPs to secure the necessary finance. Lastly the transfer of affordable housing to other parties, such as RPs is also acceptable, and a natural insertion given the inclusion of the previous two points. On this basis the modifications of the S106 are supported.

## **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.

## **Conclusion**

The proposed modifications do not undermine or reduce the impact of the obligations sought but rather allow more flexibility to the development in broadening the terms of affordable products as well as allowing these to be purchased by RPs and not just the council.