

SOUTH HOLLAND DISTRICT COUNCIL

Report of: Development Manager

To: Planning Committee - 04 September 2024

(Author: Oscar Patman - Planning Officer)

Purpose: To consider Planning Application H22-0574-24

Application Number: H22-0574-24

Date Received: 28 June 2024

Application Type: MODIFIED AGREEMENT

Description: Modification of 106 Agreement relating to removal of indistinguishable element (planning approval H22-0733-19)

Location: Off High Road Weston Spalding

Applicant: Weston Consolidated Charity **Agent:** G R Merchant Ltd

Ward: Cowbit, Weston and Moulton **Ward Councillors:** Cllr T E Sneath
Cllr A Casson
Cllr A R Woolf

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

<http://planning.sholland.gov.uk/OcellaWeb/planningDetails?reference=H22-0574-24>

1.0 REASON FOR COMMITTEE CONSIDERATION

1.1 The application is made by a body on which a Councillor sits

2.0 PROPOSAL

2.1 This is an application to modify an existing Section 106 Agreement (LD/H2209733-19) attached to planning permission H22-0733-19, which granted outline permission for a four-plot residential development. This development allowed for the creation of two market dwellings and two Almshouses.

A S106 agreement was signed 3rd February 2021 which, under clause 3 of Schedule 3 (erroneously labelled as clause 2, although referred to as clause 3 from here on out), stipulated the following:

"The Almshouses shall be indistinguishable from the Market Dwellings."

This application seeks to wholly remove this clause.

3.0 SITE DESCRIPTION

3.1 The site lies beyond the defined settlement boundary of Weston as defined in the South East Lincolnshire Local Plan (adopted March 2019); albeit, adjoining the boundary.

The application site is relatively flat, with a drain to the front of the site. Grassed agricultural land is located to the northern rear of the site. Two semi-detached bungalows, approved under H22-0802-22, are located to the west of the site. 189 High Road is located to the east of the

site, with two storey dwellings at 202a and 206 High Road located to the south of the site, residing to the southern side of the road.

4.0 RELEVANT PLANNING POLICIES

4.1 The Development Plan

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) of the Planning and Compulsory Purchase Act 2004, as amended, states that the determination must be made in accordance with the plan unless material considerations indicate otherwise.

South East Lincolnshire Local Plan, March 2019

Policy 1 - Spatial Strategy
Policy 2 - Development Management
Policy 3 - Design of New Development
Policy 5 - Meeting Physical Infrastructure and Service Needs

National Guidance

National Planning Policy Framework (NPPF), December 2023

Section 12 - Achieving well-designed and beautiful places

Planning Practice Guidance (PPG)

5.0 RELEVANT PLANNING HISTORY

5.1 H22-0190-19 - Outline - Residential development (4 plots) - Refused - 02 May 2019.

H22-0733-19 - Outline - Residential development (4 plots) - Approved - 09 February 2021.

H22-0272-22 - RM - Erection of pair of semi-detached bungalows (outline approval H22-0733-19) - Approved 09 May 2022.

H22-0802-22 - RM - Erection of pair of semi-detached bungalows (re-submission of H22-0272-22) - outline approval H22-0733-19. Approved 06 October 2022.

H22-1070-23 - Outline - Residential Development - Erection of 2 Dwellings. Approved 08 February 2024.

6.0 REPRESENTATIONS

6.1 The responses received from consultees during the initial consultation exercises, which can be viewed in their entirety through the South Holland website, can be summarised as follows:

No responses received

Public Representations

This application has been advertised in accordance with the Development Procedure Order and the Council's Statement of Community Involvement. In this instance, no letters of representation have been received.

7.0 CONSIDERATIONS

7.1 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.

Assessment of S106 Modification

As stated above, the Clause 3 of the relevant S106 agreement stated that:

"The Almshouses shall be indistinguishable from the Market Dwellings."

Within the submitted application form, it was stated that this clause has created difficulties with the sale of the land. The word "indistinguishable" has created ambiguity over the allowances of the potential design of the Market Dwellings, with this instead being seemingly interpreted as an identical design. As a result, the scheme has become largely unsuitable for development.

Under Policies 2 and 3 of the SELLP, Section 12 of the NPPF and the relevant provisions of the National Design Guide, the design of the potential dwellings would be controlled in order to be in keeping with the character of the area. As a residential unit, particular weight would be given to ensuring said design would be consistent with (although not indistinguishable from) that of the Almshouses, and therefore, the spirit of the clause would be maintained regardless of its removal. It is noted that this clause is typical of larger development proposals; however, in this instance, the issues arising in respect of the consideration of the dwellings 'requiring an identical design', is not the reasoning for the use of such clause in this instance.

It is considered that the existence of clause 3 of the relevant S106 agreement creates undue ambiguity, and therefore failing to achieve its own aims. As such, its removal is considered appropriate. The necessary consideration of design and assurances of the creation of a clear sense of place could be achieved via the relevant policies of the Local Plan, NPPF and National Design Guide. The removal of this clause will aid in the delivery of the dwellings approved under the H22-0733-19 and H22-1070-23.

Planning Balance

As detailed above, 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.

It has been demonstrated that clause 3 of the S106 agreement is unsuitable for its purpose and its removal will help to ensure the delivery of this residential development.

7.2

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

It has been demonstrated that the relevant clause of the S106 agreement is not required for its intended purpose and should therefore be removed.

8.0 RECOMMENDATIONS

- 8.1 **Based on the assessment detailed above, it is recommended that the clause 3 of the Section 106 agreement reference LD/H22-0733-19 should be removed.**

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:

Application Form
4226-23 01

Background papers:- Planning Application Working File

Lead Contact Officer

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Appendices attached to this report:

Appendix A Plan A

MapThat Scale Print Title

