



SOUTH  
KESTEVEN  
DISTRICT  
COUNCIL




## Officer Delegated Decision

11<sup>th</sup> July 2024

Emma Whittaker  
Assistant Director – Planning & Growth

### Variation of S106 agreement related to planning reference S18/1207 - Kettering Road, Stamford

Phil Jordan, Development Management & Enforcement Manager

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<b>Decision made by:</b>	Emma Whittaker, Assistant Director – Planning and Growth
<b>Decision:</b>	To decline the request to vary the S106 agreement related to planning reference S18/1207
<b>Public or Exempt:</b>	Public
<b>Reasons for exemption:</b>	N/A
<b>Conflicts of interest:</b>	No
<b>Policy compliant:</b>	Yes
<b>Details of delegation:</b>	In accordance with Part 3 of the Council's Constitution to allow the proper management of services.

Taking into consideration implications relating to finance; and legal and governance, the following implications have been identified:

### **Finance**

- 1.1 The financial implications are set out within the report. The decision results in a further officer delegated decision to recover the full amount owed, which would result in no variance from the original agreed s.106.

Completed by: Paul Sutton Interim Head of Finance (Deputy s.151)

### **Legal and Governance**

- 1.2 There are no significant legal and governance implications which are not already referenced in the notice.

Completed by: Graham Watts, Monitoring Officer

## **2 The Purpose of the Report**

- 2.1 To consider the request to vary the S106 agreement related to planning reference S18/1207 in the letter received 1 February 2024. The letter requests that the section 106 agreement is varied to the effect that the affordable housing payment is reduced to £363,128.00.

## **3 Background**

- 3.1 On 2 April 2019 SKDC's Development Management Committee resolved to grant planning permission for the proposed development of 5 market dwellings, subject to a planning obligation being entered into. The S106 agreement secured an off-site contribution for affordable housing in lieu of any provision on-site. The applicant voluntarily entered into the agreement which was signed on 17 July 2019 and planning permission for the erection of 5 detached dwellings was granted on 19 July 2019.
- 3.2 The applicant is seeking agreement to vary the affordable housing clause only.
- 3.3 The relevant clause for the Affordable housing contribution on pages 1 and 2 of the section 106 agreement (planning obligation) for S18/1207 states: *"means a sum of Three Hundred and Sixty-Three Thousand One Hundred And Twenty Eight Pounds (£363,128.00) (adjusted by the Indexation Factor) payable in lieu of the provision of Affordable Housing Units within the Development"*. When this is indexed to date, the total amount is £423,829.99.
- 3.4 The relevant clause for the Additional affordable housing contribution on page 14 of the section 106 agreement for S18/1207 states: *"The Additional Affordable*

*Housing Contribution (if any) shall be calculated as follows (but subject to the amount not exceeding the Maximum Additional Affordable Housing Contribution) : 50% x (Actual Sales Price – Predicted Sales Price)."* The Maximum Additional Affordable Housing Contribution is stated as £626,872.00 on page 5 of the section 106 agreement.

- 3.5 The actual sales figures according to land registry information by plot number are as follows, with the predicted sales figures alongside for comparison:

Plot Number	Completion Date	Actual Sales Price (ASP)	Predicted Sales Price (PSP)
St Martins Fields (S18/1207)			
1	19-May-21	£1,725,000	£1,360,000
2	30-Jun-21	£2,150,000	£1,500,000
3	14-May-21	£1,650,000	£1,660,000
4	25-Nov-21	£2,200,000	£1,625,000
5	29-Jul-22	£2,500,000	£1,685,000
	Total	£10,225,000	£7,830,000

- 3.6 50% of the ASP – PSP = £1,197,500 and therefore the Maximum Additional Affordable Housing Contribution of £626,872.00 is due.
- 3.7 The applicant is now challenging the amount that is due, largely on the basis of subsequent permissions and associated financial contribution on the adjacent land, which they also own. The applicant contends that officers were not consistent in their approach when applying the calculation set out in the adopted Supplementary Planning Document (SPD) [i.e. the calculation of average property values in the locality]. The applicant alleges that this inconsistency has meant the financial contribution due in respect of the obligation is not fairly or reasonably related to the scale of the development and it has requested that it be allowed to vary the amount as a result of the alleged inconsistent approach taken by officers in applying the SPD.
- 3.8 The financial contributions for affordable housing have been calculated on all developments using the South Kesteven Developer Contributions Supplementary Planning Document 2012 (SPD). Having reviewed the affordable housing contributions required across all of these developments, the same methodology has been followed as detailed on page 28, para 2.1.54 of the SPD. i.e. Open Market Value of agreed number of units - Purchase value of affordable units = Commuted Sum
- 3.9 The applicant is not disputing that an affordable housing contribution in lieu of on-site provision is required nor are they disputing the methodology per se, the dispute relates to how the Council calculated the figure for the “average value of an equivalent property” and the required indexation amount. The matter in dispute relates to the open market value of the properties which is defined at para 2.1.55 as the “*average value of an equivalent property within the local area*”. The SPD sets-out some values at Appendix A (stated figure for a 4-

bedroom dwelling in a Band B location in 2012 was £200,000) and states these will be updated on an annual basis to ensure that it is consistent with current market trends. No formal annual update has taken place, and therefore the “average value of an equivalent property” is essentially a planning judgment made at the time and on the relevant factors of the case. Further, there are no stated figures for dwellings larger than 4-bedrooms, as have been developed as part of this proposal.

- 3.10 The Council has discretion as to whether or not to agree to such amendments. The only requisite being that the Council must act reasonably in considering any such request.

## **4 Legal context**

- 4.1 The relevant test under s.106A(6)(c) is whether the obligation “continues to serve a useful purpose but would serve that purpose equally well if it had effect subject to the modifications specified in the application”. This is a planning judgment.

## **5 Evaluation**

- 5.1 No argument has been presented that seeks to argue the site is no longer viable based on the affordable housing payments that are now due. All of the properties have been sold and the actual sales prices have significantly exceeded the predicted sales prices, as set-out in the section 106 agreement. The Maximum Affordable Housing payment as set-out by the section 106 agreement is therefore due, in addition to the outstanding indexation payment above.
- 5.2 Officers have carefully considered the request but do not consider that there is a good reason why the obligation ought to be re-opened within the relevant period. Officers remain satisfied that the obligation serves a useful planning purpose and that the fact that a lower sum was agreed in respect of off-site affordable housing for other sites in the district, at different points in time, does not mean that this obligation no longer serves a useful planning purpose. The applicant voluntarily entered into the agreement.
- 5.3 The financial payment would go towards meeting the acute affordable housing needs of the people of the district. It is not in the public interest for the Council to exercise its discretion to re-open the obligation within the relevant period. The request does not provide a cogent and compelling justification for why the modification should be considered so soon after the agreement was reached.
- 5.4 In light of the above, modification of the legal agreement in relation to the affordable housing contribution should be refused.

Signed by: **Emma Whittaker**

Dated: **11 July 2024**