



SOUTH
KESTEVEN
DISTRICT
COUNCIL



Officer Delegated Decision

8th July 2024

Emma Whittaker
Assistant Director – Planning & Growth

Collection of outstanding Section 106 monies in relation S18/1207 – Kettering Road, Stamford

Phil Jordan, Development Management & Enforcement Manager

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Decision made by:	Emma Whittaker, Assistant Director – Planning & Growth
Decision:	To seek approval to instruct Legal Services Lincolnshire to pursue the collection of section 106 funds totalling £687,573.99 that remain outstanding from S18/1207 – Kettering Road, Stamford.
Public or Exempt:	Public
Reasons for exemption:	N/A
Conflicts of interest:	No
Policy compliant:	Yes
Details of delegation:	The Assistant Director has the necessary authority under paragraph 20 (Management of Services) of the Scheme of Delegation set out in Part 3 (Responsibility for Functions) of the Council's Constitution to take this decision.

1 Implications

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

Finance

- 1.1 The report sets out the proposals to seek recovery of unpaid s106 monies relating to the development of dwellings at Kettering Road Stamford.

Completed by: Richard Wyles, Deputy Chief Executive and s151 Officer.

Legal and Governance

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

Completed by: Graham Watts, Monitoring Officer

2 The Purpose of the Report

- 2.1 The purpose of this report is to seek approval to instruct Legal Services Lincolnshire to pursue the collection of section 106 funds totalling £687,573.99 that remain outstanding from S18/1207 – Kettering Road, Stamford.

3 Background

- 3.1 On 2 April 2019 SKDC's Development Management Committee resolved to grant planning permission for the proposed development, subject to a planning obligation being entered into. 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 section 106 agreement related to planning approval reference S18/1207 – Kettering Road, Stamford has an outstanding balance of £687,573.99 which is made up of an outstanding balance for Affordable housing contribution indexation figure of £60,701.99 (this has been calculated to the current quarter Q2 2024) and an additional affordable housing contribution of £626,872.00.
- 3.3 The Council is in receipt of £328,128.00 received 01/12/2023 and £35,000.00 received 14/12/2023 which is only part of the affordable housing payment that is due. The outstanding balance has not been settled, despite requests for payment from the Infrastructure Delivery Officer.

- 3.4 The relevant clause for the Affordable housing contribution on pages 1 and 2 of the section 106 agreement 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.
- 3.5 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.
- 3.6 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

- 3.7 50% of the ASP – PSP = £1,197,500 and therefore the Maximum Additional Affordable Housing Contribution of £626,872.00 is due.

4 Next Steps

- 4.1 Legal Services Lincolnshire will write to the applicant requesting payment in full of the amount outstanding within 21 days of receipt. If payment is not made in full within this period, then the next step would be for the Council to consider taking formal action to enforce the S106 Agreement by way of an Injunction. This will require taking action through the Courts.

5 Available Options Considered

- 5.1 The Council could use its discretion to vary the section 106 agreement and this is subject to a separate decision. However, in summary this is not considered to be justified, as the developer has not provided any credible evidence to support why the obligation no longer serves a useful purpose.

6 Reasons for the Decision(s)

- 6.1 The financial payment would contribute towards meeting the acute affordable housing needs of the people of the district. It is in the public interest for the Council to exercise its discretion to re-consider 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.
- 6.2 A draft letter to the developer is appended to this report. This letter will form part of the pre-action correspondence in the event that legal action through the Courts to enforce the terms of the agreement is required.

Signed by: **Emma Whittaker**

Dated: **8 July 2024**