APPLICATION NO	**PA/2012/0920**
APPLICANT	Redrow Homes Yorkshire
DEVELOPMENT	Application to modify existing agreement originally made under Section 106 of the Town and Country Planning Act 1990 relating to a commuted sum for educational payment
LOCATION	Foxs Fold Tofts Road, Barton-upon-Humber
PARISH	**BARTON-UPON-HUMBER**
WARD	Barton-upon-Humber
CASE OFFICER	Graeme Moore
SUMMARY RECOMMENDATION	**The existing planning obligation be modified**
REASONS FOR REFERENCE TO COMMITTEE	Objection by Barton-upon-Humber Town Council

POLICIES

National Planning Policy Framework: Paragraph 19 - the Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system.

Paragraph 173 - pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.

Regional Spatial Strategy for Yorkshire and the Humber: No specific policies apply.

North Lincolnshire Local Plan: SPG8 (Developer Contributions to Schools)

North Lincolnshire Core Strategy: Policy CS27 (Planning Obligations)

CONSULTATIONS

Education Services: Request that primary school payments are prioritised and paid as close to the existing payment dates as possible. They are concerned about the level of payments that may become due between the 120th and 149th dwellings. They are also

concerned that any change in index linking will reduce the monies available in future for educational provision.

Housing Strategy: Have requested that all affordable units agreed on the site are retained.

TOWN COUNCIL

Object to the proposal due to the lack of information available.

PUBLICITY

Site and press notices posted.

ASSESSMENT

Description

The site is located to the south-west of Barton-upon-Humber. It was purchased by Redrow Homes in 2006 and development has been underway since 2007. It is partially complete.

Proposal

An application has been made under Regulation 3 of the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 to vary the existing Section 106 agreement. Redrow Homes have submitted details to show that house prices on the development have dropped by 25% since they purchased the site. Sales began in September 2007 and were calculated at approximately 3.3 per month. Sales have actually been approximately 1.1 per month which gives an overall development lifetime of 130 months rather than 48 originally predicted. Redrow Homes have requested, due to the profitability of the development being driven down, that the council agree to vary the existing Section 106 agreement to reduce or remove the education contribution for the development. Redrow have calculated that these payments would be approximately £261,000 and £348,000.

To support their proposal Redrow Homes submitted a full open book viability assessment including sales values and build costs to date. Redrow Homes have stated that due to the size of contributions required it is more financially viable to mothball the site until the housing market improves. Redrow Homes are also concerned that any contribution agreed with the council may also become unviable in the future due to index linking which they calculate could cost up to £250,000 over the life of the development.

It should be noted that affordable housing provision is not being negotiated as it was not part of the Section 106 agreement but was covered by condition.

Site history

PA/2003/0696	Outline planning permission for residential development – granted. Section 106 agreement dated 18 October 2005 relating to the payment of an education contribution at various phases throughout the development.
PA/2006/1235	Approval of reserved matters following the grant of outline planning permission PA/2003/0696 granted 20/10/2005 to erect 161 dwellings including associated car parking – withdrawn.

PA/2007/1777 Approval of reserved matters following the grant of outline planning permission PA/2003/0696 granted 20/10/2005 to erect 159 dwellings, including associated car parking (resubmission of 2006/1235) – approved.

PA/2008/1728 Application to modify existing agreement originally made under Section 106 of the Town and Country Planning Act 1990 relating to a commuted sum for educational payment – no further action taken due to the Section 106 having been completed for less than five years.

There has also been a number of minor applications amending house types.

The main issue in the determination of this application is whether or not the proposed amendment to the Section 106 agreement is acceptable.

Section 106 and planning obligations

Since completion of the original Section 106 agreement in 2005, the regulations covering these agreements have changed. The CIL Regulations 2010 contain three tests to determine whether developer contributions can be sought. These tests are that contributions should be:

(i) necessary to make the development acceptable in planning terms;

(ii) directly related to the development; and

(iii) fairly and reasonably related in scale and kind to the development.

Having discussed the proposal with Educational Services, information has been provided to show that there is a need for primary education provision which is under particular strain. There is also a projected need for secondary education provision, although this is not as pressing. As the development will generate pupils at both primary and secondary levels it is considered that the request for a contribution towards education is necessary to make the development acceptable. The level of payment is calculated through standard calculators on pupil numbers for dwellings and is therefore also considered to be directly related to this development and fairly and reasonably related in scale and kind, and in accordance with adopted council policy as set out in SPG8.

Section 106 of the 1990 Planning Act states that Section 106 agreements cannot be varied within the first five years after signing without agreement from the other signatories. As five years have passed the developer is now free to seek a variation to the agreement with the council.

In March 2011 a letter entitled Planning for Growth was issued to all Heads of Planning by Steve Quartermain, the Chief Planner, which stated that the Minister for Decentralisation (Greg Clark) set out that '*all local authorities should reconsider, at developers' request, existing section 106 agreements that currently render schemes unviable, and where possible modify those obligations to allow development to proceed; provided this continues to ensure that the development remains acceptable in planning terms'*. The letter further states that '*Benefits to the economy should, where relevant, be an important consideration when other development-related consents are being determined*'.

Viability

Redrow Homes have submitted information showing that since 2007 the projected overall gross development value of the development has dropped by approximately 25% whilst build costs have risen. They have submitted a cashflow breakdown which shows that the initial purchase price of the land was based on the development being completed in a much shorter timescale than is now predicted. These costs, along with those set out in the preceding sentence, have gone above those provided for through development contingency and have also reduced the developers' profit.

The data provided by Redrow Homes has been assessed using a residual value model, the use of which is supported by The Royal Institute of Chartered Surveyors for assessing viability. The model assesses:

Gross development value (minus) development costs (minus) developer profit (equals) profit/funds available for land purchase and developer contributions.

Since 2007 (and with the exception of London) house prices have dropped across the country. Information freely available online shows that on average house prices in the Humber area have dropped by more than 20% since 2007 (source Halifax House Price Index and Lloyds Banking Group).

Although actual development costs and developer profit has been submitted these have also been assessed against other figures submitted from similar developments. Although there are minor differences in these figures it is considered that they reflect the actual position on this particular development. When considered against other information available on the purchase price of development sites it is considered that the purchase price of the land in the prevailing economic climate was considered reasonable.

Educational need in Barton-upon-Humber

As covered in a preceding paragraph, it is not debated that the development will generate a need for primary school provision which cannot at this time be accommodated in the local schools. It is also not debated that the proposal will generate a need for secondary provision but that this is less pressing and provides more flexibility. In order to comply with policy CS27 of the Core Strategy it is necessary for a development to meet the needs of new or extensions to existing infrastructure. Discussions with educational services have led to agreement that primary school places are most pressing and that these should be prioritised. This prioritisation was then taken forward in negotiations with Redrow Homes.

The original Section 106 agreement set out that 30% of the contribution was payable prior to occupation of the first dwelling (already paid), 30% prior to the occupation of the 60th dwelling and the balance paid prior to occupation of the 90th dwelling. Redrow Homes have set out that due to the economic situation there is not sufficient cashflow to make the next two payments in two large amounts.

Index linking

The current financial contributions in the Section 106 agreement are linked to the Retail Price Index (RPI). There is no formal guide to the use of index linking developer contributions although some type of index linking is used if contributions are expected to be paid over extended periods of time. The Law Society model section 106 agreement refers to the Retail Index but also mentions that in particular cases other indexes may be more

suitable. Redrow Homes have stated that, due to the potential for the cost of the contribution to rise by such a level, they do not feel that they are able to sign an agreement which links the payments to RPI. As a middle ground they have offered to link the payments to the House Price Index (HPI). Educational Services have calculated that the difference between RPI and HPI could be approximately £100,000 over the life of the payments and have objected to this change.

Conclusion and recommendation

Section 106 of the 1990 Planning Act sets out that developers have a right to apply for the modification or discharge of a Section 106 after five years. The need for local planning authorities to take viability into account, and where possible to vary agreements to allow development to proceed subject to it still being acceptable in planning terms, was set out in the March 2011 letter by the Chief Planner. The council has carried out negotiations with the developer with the aim of allowing development to continue whilst still providing the infrastructure required to make the development sustainable and comply with policy CS27. Further to the submission of an open book viability assessment, discussions have taken place with Educational Services and Strategic Housing over the need for developer contributions. After assessment of the supplied figures it is considered that the viability of the development has been reduced since the site was originally purchased and that this has placed pressures on the developer which has led to a position where mothballing is a viable option. This is not an isolated position and there are examples of similar sites across the country.

Based on a priority need for primary school provision, negotiations focused on maintaining this element of the education contribution whilst reducing cashflow pressures on the developer. In order to conclude negotiations the Section 106 officers suggested a new payment structure which is set out below.

Primary Contributions (% of the outstanding payment):

5% prior to occupation of the 60th dwelling
5% prior to occupation of the 70th dwelling
5% prior to occupation of the 80th dwelling
5% prior to occupation of the 90th dwelling
5% prior to occupation of the 100th dwelling
5% prior to occupation of the 110th dwelling
12.5% prior to occupation of the 120th dwelling
12.5% prior to occupation of the 130th dwelling
15% prior to occupation of the 140th dwelling

Secondary Contributions:

To be assessed at circa 130 dwellings to assess existing need and development viability based on the housing market at that time.

Regarding the inclusion of a clause requiring payments to be index linked, it is not considered acceptable for the payment to have no index linking clause but that this is balanced against the developers concerns that they would be signing an agreement under which the final liability may be much greater than that set out. In order to conclude a Section 106, agreement is required between all parties and with this in mind it is suggested that the payments are linked to the House Price Index rather than the Retail Price Index. This would provide the council with indexation whilst giving the developer security that index linking will not make the development unviable in coming years.

The proposal accords with the aims of the National Planning Policy Framework and March 2011 letter from the Chief Planner by allowing the variation of an agreement which it has been shown causes the development to become unviable. Through retention of a contribution towards education provision it is also considered that the proposal accords with policy CS27 of the North Lincolnshire Core Strategy.

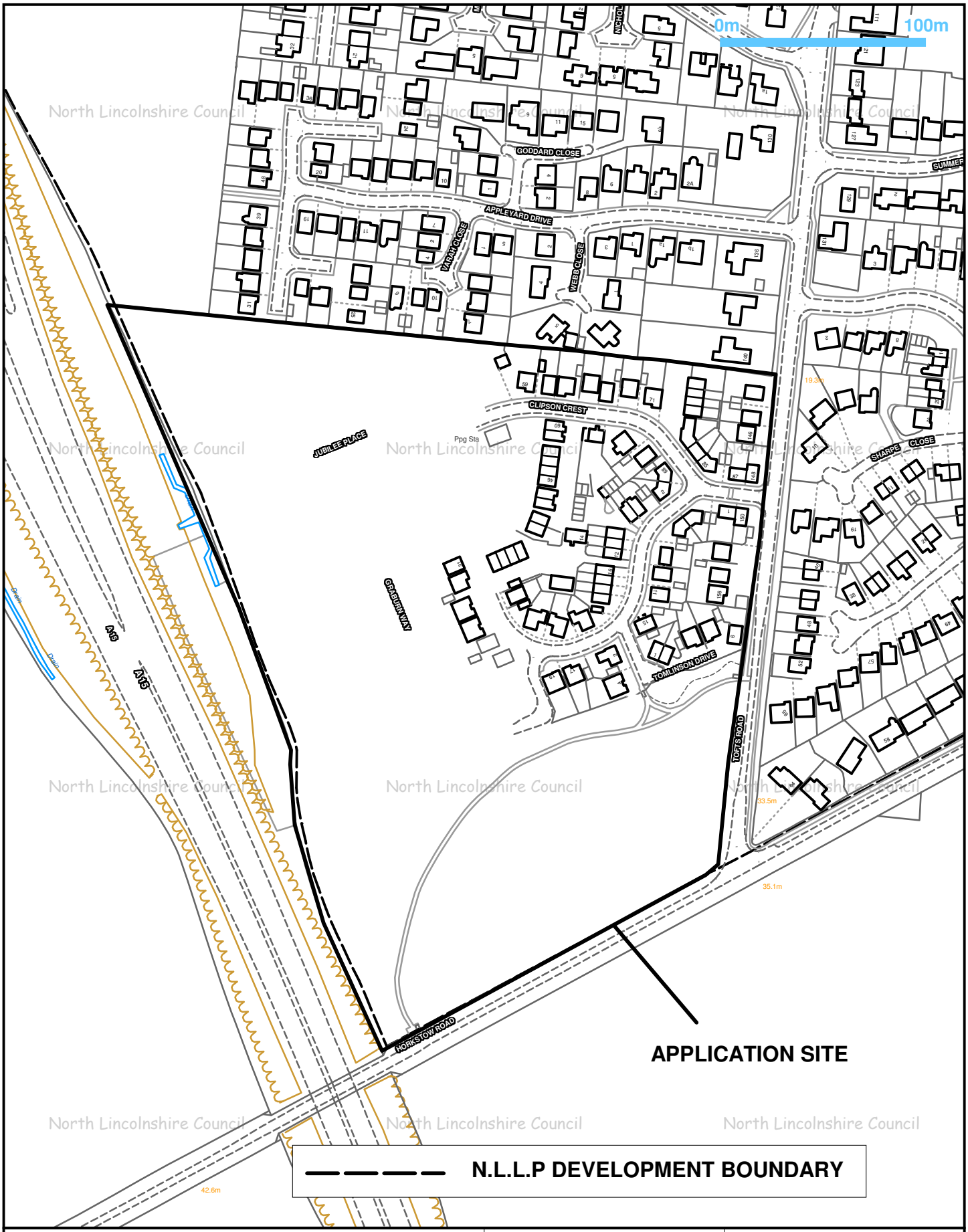
RECOMMENDATION

The existing planning obligation relating to the provision of affordable housing completed as part of planning permission PA/2003/0696 be modified in accordance with the terms of the application subject to the following additional provisions:

- **Members agree to the variation of this agreement based on the payment triggers set out above;**

- **Members agree that monetary payments agreed as part of the Section 106 should be linked to the House Price Index; and**

- **responsibility be delegated to the Head of Development Management to agree new repayment dates for the monies with the developer.**



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Director of Places
Peter Williams
BSc,DMS,CEng,MEI,MCMI,AMIMechE