

APPLICATION NO	PA/2022/1702
APPLICANT	Persimmon Homes
DEVELOPMENT	Application to modify/discharge the S106 Agreement attached to PA/2019/1782 relating to the request for contributions be removed for viability reasons
LOCATION	Land south of Moorwell Road, Yaddlethorpe, Bottesford
PARISH	Bottesford
WARD	Bottesford
CASE OFFICER	Millie Arden
SUMMARY RECOMMENDATION	The Section 106 be modified, including a clause to allow North Lincolnshire Council to re-evaluate the viability if market conditions improve prior to the completion of the development
REASONS FOR REFERENCE TO COMMITTEE	Member 'call in' (Cllrs Margaret Armiger and Janet Longcake – significant public interest)

POLICIES

National Planning Policy Framework:

2 Achieving sustainable development

Paragraph 7 explains that the purpose of the planning system is to contribute to the achievement of sustainable development and that 'at a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs.'

Paragraph 9 states, 'Planning policies and decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area.' It also explains that the three overarching objectives are not criteria against which every decision can or should be judged.

3 Plan making

Paragraph 34 explains that plans should set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required, along with other infrastructure (such as that needed for education, health, transport, flood and water management, green and digital infrastructure). Such policies should not undermine the deliverability of the plan.

4 Decision making

Paragraph 57 states that planning obligations must only be sought where they meet all of the following tests:

- (a) necessary to make the development acceptable in planning terms
- (b) directly related to the development, and
- (c) fairly and reasonably related in scale and kind to the development.

Paragraph 58 states that where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.

National Planning Guidance:

Paragraph 8 explains that the weight given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and viability evidence underpinning the plan is up to date, and site circumstances including any changes since the plan was brought into force, and the transparency of assumptions behind evidence submitted as part of the viability assessment.

North Lincolnshire Local Plan:

H10 Leisure and open space

C1 Educational facilities

R2 Open space and area of play

North Lincolnshire Core Strategy:

CS7 Overall housing provision

CS9 Affordable housing

CS27 Planning obligations

CS23 Leisure and open space

New North Lincolnshire Local Plan Submission: The new North Lincolnshire Local Plan was submitted for public examination to the Planning Inspectorate on 11 November 2022. Examination of the Plan has therefore commenced, although public hearing sessions are not anticipated until later in 2023 or early 2024.

The Submitted North Lincolnshire Local Plan can be given some weight as a material planning consideration in the determination of planning applications. The relevant policies concerning this application are:

CSC3 Protection and provision of open space, sports and recreation facilities

SS5 Overall housing provision

SS6 Spatial distribution of housing sites

H1 Site allocations

TOWN COUNCIL

Bottesford Town Council objects to this proposal on the grounds of significant loss to the community, the removal and loss of affordable housing, and the reduction in previously agreed S106 contributions to mitigate the overall impact of the development.

PUBLICITY

The application has been advertised by site notices in accordance with Article 15 of the Development Management Procedure Order 2015. Over eighty letters of objection have been received to this application to modify the planning obligations raising the following issues:

- loss of funding towards local recreation provision, for example swimming pools
- lack of affordable housing for those in need
- increased council tax for existing residents
- loss of funding required for over-subscribed local schools
- children being sent to schools further afield
- no play provision for children
- no nearby public transport access
- NHS services over-subscribed (doctors, hospitals, dentists)
- sewerage and drainage concerns
- safety concerns over the highway access to the development
- high volume of traffic and excess speeds on Scotter Road and Moorwell Road
- traffic concerns – speeding, animal casualties, accidents, congestion
- proposed development is out of character for the area
- inadequate connectivity – roads, footpaths, cycleways

- environmental and ecological impact
- risk of flooding
- loss of investment into local area and businesses
- lack of bungalows in the proposed development
- overwhelming local services.

ASSESSMENT

The proposal

This is not an application seeking planning permission but rather an application to modify the existing Section 106 agreement attached to outline planning permission PA/2019/1782 for up to 200 dwellings by virtue of section 106A(2)).

The submitted viability appraisal has been independently assessed by a qualified assessor in accordance with the NPPF, the Royal Institution of Chartered Surveyors (RICS) Financial Viability in Planning Guidance Note (1st Edition) and the PPG guidance on Viability. The independent assessment explored the increased abnormal costs and states, 'the increase in abnormal costs is due to both further items which have come to light following subsequent site investigations, together with a general increase in construction costs as a whole', subsequently making the site unviable. The independent assessment carried out by Carter Jonas then goes on to explain that further discussion took place with their own in-house Planning and Development Department, who confirmed 'the costs appear to be in line with current expectations'.

At the 2 August 2023 planning committee, members requested a second independent review be undertaken to re-assess the viability report submitted by the applicant. The second independent review was assessed by a qualified assessor in accordance with the PPG guidance on viability, the NPPF and the RICS Financial Viability in Planning Guidance Note (1st Edition). North Lincolnshire Council requested that the qualified assessor take a closer look into the abnormal costs at the request of Bottesford Town Council. Additional supporting evidence for the abnormal costs was requested from the applicant where the independent assessor deemed necessary.

This application requests the removal of the following planning obligations due to viability:

- £716,800 towards secondary education
- £490,512 towards primary education
- the provision of 20% affordable housing of the total dwellings (equalling 40 dwellings if all 200 are built)
- £2,000 towards a traffic regulation order (TRO) contribution.

The proposal does retain:

- the leisure contribution of £172,382.00 to support the delivery of a 3G sports pitch at Birch Park;
- informal open space on-site, totalling an area of 2.46ha (equalling 30% of the gross site area);
- the on-site area of play requirement, providing a park with five pieces of equipment.

The key issues in determining this request are whether the development is viable with the current planning obligations identified within the original Section 106 in order to warrant the removal of contributions relating to the provision of education spaces and affordable homes to the detriment of the local community.

Relevant planning history

PA/2019/1782: Outline planning permission for up to 200 dwellings with appearance, landscaping, layout and scale reserved – approved 3 April 2020.

PA/2022/1628: Application for approval of reserved matters following outline planning permission PA/2019/1782 dated 03/04/2020 for the erection of up to 200 dwellings, namely appearance, landscaping, layout and scale – approved 4 August 2023.

Principle

This application requests the removal of the following planning obligations due to viability:

- £716,800 towards secondary education
- £490,512 towards primary education
- the provision of 20% affordable housing of the total dwellings (equalling 40 dwellings if all 200 are built)
- £2,000 towards a traffic regulation order (TRO) contribution.

The proposal does retain:

- the leisure contribution of £172,382.00 to support the delivery of a 3G sports pitch at Birch Park;
- the informal open space on-site, totalling an area of 2.46ha (equalling 30% of the gross site area);
- and the on-site area of play requirement, providing a park with five pieces of equipment.

The site now has outline planning permission and reserved matters approval. The highway and drainage concerns raised in the objectors' comments will have been considered as part of the reserved matters application.

The development plan for North Lincolnshire comprises three parts: those policies of the North Lincolnshire Local Plan (2003) which were saved by a direction of the Secretary of State in September 2007; the North Lincolnshire Core Strategy DPD (2011) (CS); and the Housing and Employment Land Allocations DPD (2016). Policy CS1 of the CS sets out a spatial strategy for North Lincolnshire.

Policy H10 of the North Lincolnshire Local Plan is concerned with public open space. It states, '(i)... New housing developments on allocated and windfall sites of 0.5ha or more will be required to provide recreational open space on a scale, and in a form, appropriate to serve the needs of residents, or alternatively, where appropriate, to provide commuted payments for this provision to be made off-site, either individually or in combination with existing or other proposed recreational sites and facilities...'

Paragraph 57 of the NPPF concludes obligations must meet all the following tests:

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development.

Within policy CS27 it is clear that if developments are unable to support the costs of a planning obligation (other than those essential to allow development to proceed) then negotiations can occur. Paragraph 58 of the NPPF allows local planning authorities to assess the weight that is given to a viability assessment having regard to all the circumstances in the case.

Within policy CS27 (Planning Obligations) the supporting text for this policy states, 'It is important that development costs, including the cost of implementing planning obligation agreements, should not prejudice development that supports North Lincolnshire Council's aspiration to see the regeneration, improvement and revitalisation of the area. If it is claimed that a development is unable to support the costs of a planning obligation (other than those essential to allow the development to proceed) then this could be the subject of negotiations. In such cases, the developer will have to demonstrate non-viability via an 'open book' approach.' The applicant has concerns that the S106 contributions required would make the scheme unviable. As a result the applicant has submitted a viability report.

The first independent assessment was undertaken as requested and instructed by North Lincolnshire Council. Mark Williams MRICS, a professional expert in this field on behalf of Carter Jonas LLP, concluded that the scheme is unable to support any of the S106 contributions.

At the 2 August 2023 committee, it was requested that a second independent assessment was undertaken to review the viability appraisal submitted by the applicant. North Lincolnshire Council instructed Avison Young to undertake the second review, in accordance with the NPPF, the Royal Institution of Chartered Surveyors (RICS) Financial Viability in Planning Guidance Note (1st Edition) and the PPG guidance on Viability.

The conclusion of the second report was that the scheme was unviable and therefore unable to support any S106 contributions. Avison Young did recommend that North Lincolnshire

Council consider a 'clawback arrangement' where the council can reassess the viability if market conditions improve. This would provide the council with an opportunity to clawback some contributions if the site becomes viable across the development period.

Therefore, on balance, the removal of the education, affordable housing and TRO S106 contributions will allow for the delivery of this residential scheme on this site. The development would contribute positively to the council's housing land supply and would provide a mix of housing types on the site. These benefits are considered to outweigh the loss of the education contribution, TRO contribution and 40 affordable dwellings on the site in this case. The scheme therefore complies with the relevant policies in the NPPF and Core Strategy which confirm that there can be flexibility with regard to obligations that would make a scheme financially unviable.

Other matters raised

Residents have raised a number of issues that relate to the approved developments on the site for up to 200 dwellings (PA/2019/1782 – outline) and the reserved matters application (PA/2022/1628). These matters have all previously been assessed within the outline and reserved matters applications associated with the site. These issues are not material to this application which is for the modification of the existing S106 agreement to remove the education contribution, TRO contribution and affordable housing contribution attached to the planning permission.

Conclusion

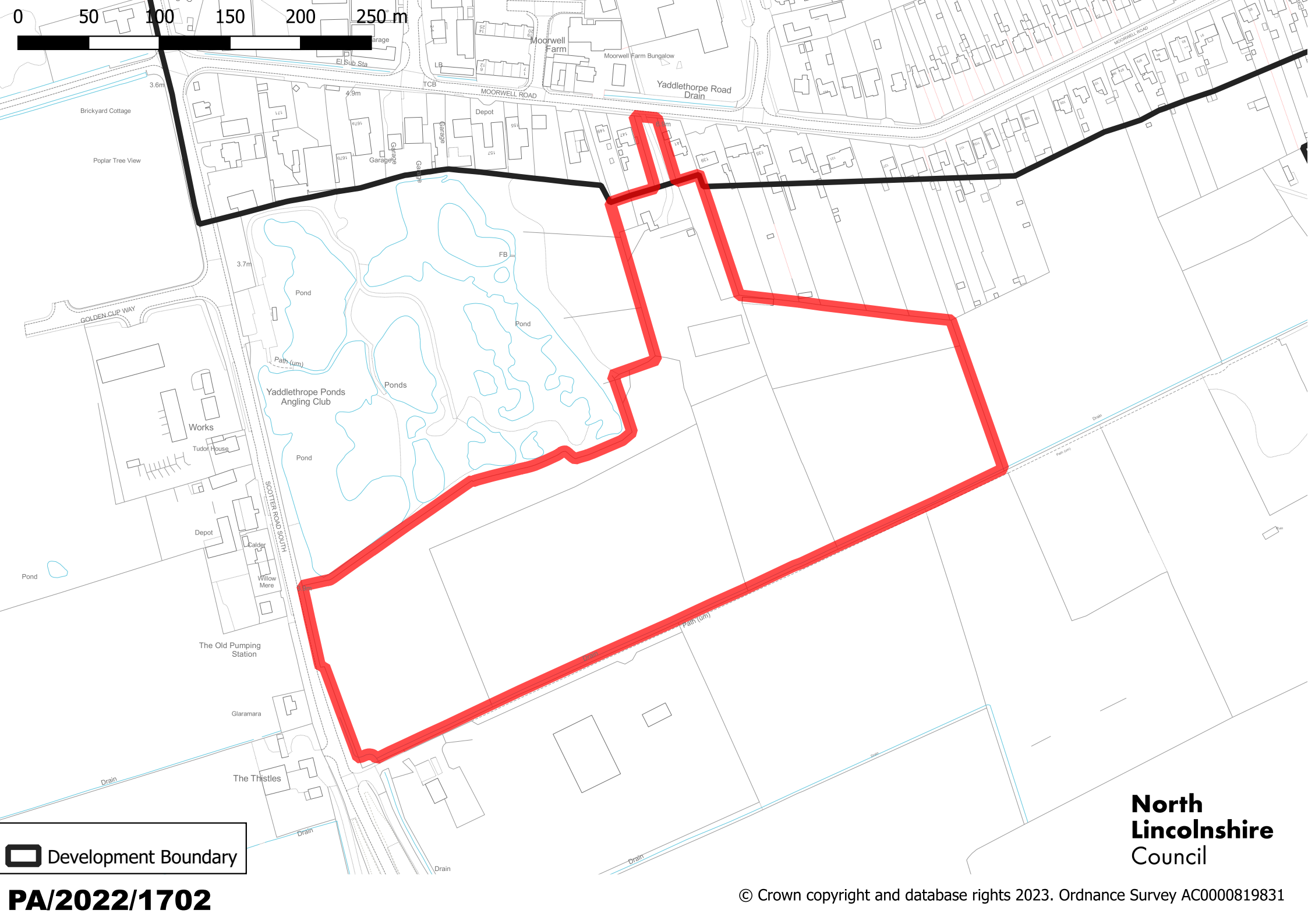
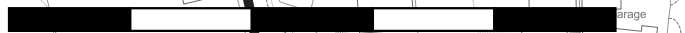
The removal of the S106 contributions will allow for the delivery of this residential scheme on this site, thereby increasing the council's housing land supply and will provide a mix of housing types to meet housing needs in North Lincolnshire. The scheme complies with the relevant policies in the NPPF and Core Strategy which confirm that there can be flexibility with regard to obligations that would make a scheme financially unviable. The conclusions of the two independent assessments show that non-viability has been demonstrated and the Section 106 agreement should therefore be modified to remove the education contribution, TRO contribution and affordable housing contribution attached to planning permission PA/2019/1782.

RECOMMENDATION

The existing Section 106 agreement be modified as proposed:

- **removal of the education contribution, TRO provision and affordable housing provision, as per the viability report**
- **the off-site financial leisure contribution, open space and recreation on-site contribution will remain in the S106 agreement**
- **the council to include a clawback mechanism within the S106 modification agreement to allow an open-book viability review prior to the completion of the development subject to improvements to market conditions.**

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 Development Boundary

PA/2022/1702

**North
Lincolnshire
Council**

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