

**RESOLUTION TO BE MADE ON THIS ITEM BEFORE THE CONSIDERATION OF  
APPLICATION CODE REF. 25/00069/REM**

**PARISH** Old Bolsover Parish

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**APPLICATION** Request to modify obligations contained within a legal agreement relating to planning permission code ref. 14/00080/OUTEA dated 22nd September 2021, which proposes a reduction to financial contributions, along with reductions to the Extra Care Land/Affordable Housing Land and Public Open Space/Town Park areas

**LOCATION** Land Between Welbeck Road and Oxcroft Lane, Bolsover

**APPLICANT** Strata Homes, Persimmon Homes and Stancliffe Homes, C/O Agent

**APPLICATION NO.** 25/00433/OTHER **FILE NO.**

**CASE OFFICER** Mr Chris Whitmore

**DATE RECEIVED** 17<sup>th</sup> October 2025

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**SUMMARY**

This item requires planning committee consideration as the proposals seek to make more than minor changes to obligations imposed on an earlier permission granted by the planning committee and, as such, it is not a matter that can be delegated to officers in accordance with the Council's scheme of delegation contained within its constitution. In objecting to the proposals, Cllrs. Anne and Rowan Clarke also requested that the matter be heard, and a decision taken by planning committee.

Agreement is sought to modify the s106 agreement secured in respect of application code ref. 14/00080/OUTEA, which gave outline planning permission (with all matters except access reserved) for residential development in the region of 950 dwellings, provision of an extra care facility (approx. 70 units) and an Infant School, dated 22<sup>nd</sup> September 2021.

In addition to land for an infant and nursery school, extra care facility and / or affordable housing and a town park, the s106 agreement secures the following outstanding contributions based on the amount of development proposed (and where applicable including indexation):

- Elmton Lane Contribution - £104,638
- Framework Travel Monitoring Plan - £14,359
- New School Contribution - £3,528,988
- Road Network Contribution (per plot) - £335,046
- Public Realm Sum - £90,711
- Town Park Commuted Sum - £738,430
- Primary Education Contribution - £931,390
- Secondary Education Contribution - £962,397
- Town Park – Delivery and maintenance - £647,690

These obligations were deemed to be necessary to make the development acceptable in planning terms, were directly related to the development and fairly and reasonably related in scale and kind.

Since the grant of outline permission, two approval of reserved matters applications for phases 1A and 1B have come forward for 259 dwellings.

A further approval of reserved matters application for 547 dwellings has been made under planning application code ref. 25/00069/REM, which is pending consideration. As part of this application the development consortium, comprising Persimmon, Stancliffe and Strata Homes have proposed an amount of development and laid it out in a manner that results in a 14.3% reduction in the area of the town park land and a 20% reduction in the area set aside for an extra care facility or affordable housing.

To be able to approve such development there is a requirement to modify the s106 agreement insofar as it relates to the land to be set aside for such uses. The applicant has also submitted a viability appraisal to justify a reduction in developer contribution.

The s106 dated 22nd September 2021 can only be modified with the mutual agreement of the Local Planning Authority (as the appropriate authority in this case), as the relevant period of 5 years set out in S106A of the Town and Country Planning Act (1990) has not yet passed since the original agreement was completed.

Following independent review of the consortium's viability position and assessment of the abnormal costs presented by a Quantity Surveyor (QS), it has been established that the development would not be viable with a 17.5% profit on revenue (which is considered to be a reasonable level of profit).

Officers are satisfied that the manner in which the development has come forward and is proposed as part of the latest approval of reserved matters application, which is pending consideration makes effective use of the site (having regard to its constraints) and would deliver high quality development / successful place.

The site is a strategic land allocation in the District Council's Local Plan and the Local Planning Authority is keen to see the site come forward and contribute towards the delivery of sustainable development to meet identified housing needs and the infrastructure necessary to achieve this.

In assessing the appropriateness of the proposed modifications to the original s106, the Local Planning Authority needs to be satisfied that they would continue to serve the purposes of the original obligations equally well in terms of the delivery of sustainable development.

The Local Planning Authority's Viability Expert has indicated through their modelling that the development is not capable of providing the approved level of developer contributions with a 17.5% profit on revenue below an accepted development viability threshold. They have, however, concluded that that development is able to provide developer contributions in excess of the travel plan and Elmton Lane road improvements contributions and £1m towards the other planning obligations, amounting to circa £1,118,997 first offered up by the consortium (excluding the land for a town park, primary school and an extra care facility / affordable housing).

The District Council's Infrastructure Study and Delivery Plan (2025) sets out a general

hierarchy for infrastructure, with primary phase education and road capacity deemed of critical importance i.e. infrastructure that must be delivered in order for sustainable growth to take place without causing severe adverse impacts to local communities in the short term. Of the original financial contributions, £4,900,062 are related to the delivery of primary phase education and road capacity.

Recognising that such contributions are critical to the sustainability of the development, the consortium agreed to provide those contributions. It was recommended that the request to modify the agreement, with such contributions and having regard to the viability position and other funding mechanisms that exist to deliver infrastructure necessary to support the development, be approved at the Planning Committee meeting of the 10<sup>th</sup> December 2025.

The County Council in its capacity as the education authority issued a holding objection to the request to modify the agreement to the District Council on the 9<sup>th</sup> December 2025. The basis of their objection was that the secondary school place contribution (categorised as necessary within the District Council's Infrastructure Study and Delivery Plan (2025)) secured would be deferred and that this would have a significant detrimental effect on the already stretched local area catchment secondary school. It was also considered that if the secondary school place payment was deferred it could not be argued that this would serve the purposes of the original obligation equally well, as other funding streams referenced in the officer report to planning committee of the 10<sup>th</sup> December 2025 were not available to cover the shortfall.

The County Council requested that the application be deferred to further consider the applicant's viability position and to commission their own independent viability assessment. In light of this request officers at the Planning Committee meeting on the 10<sup>th</sup> December 2025 advised that a decision on the request to modify the agreement and associated planning application code ref. 25/00069/REM be deferred to allow the County Council to carry out this work and the consortium and the County Council to discuss the matter further. The planning committee resolved to defer determination of the request for such reasons.

Following deferral of the item the consortium, through their agent, clarified that primary and secondary school place contributions that had already been paid to Derbyshire County Council from phases 1A and 1B had not been accounted for in their viability appraisal. This omission resulted in additional funds being available in respect of the anticipated primary school contribution amounting to £218,797.22. The consortium also advised that if the secondary school place contribution was calculated on a pro-rata basis, based on the amount of development to come forward and excluding the contributions that had already been paid or invoiced in respect of the development on phases 1A and 1B, a remaining contribution of £554,138.06 was required. Taking into consideration the primary school contribution overage of £218,797.22 this amounted to a £335,340.78 difference between the proposed and originally agreed position. To reach mutual agreement with the District and County Council the consortium has agreed to cover / contribute this difference, essentially taking a further hit on their developer profit. To assist with the delivery of a new school on site and the provision of school places, the consortium also has agreed to modify the agreement so that it offers enhanced flexibility with regard to the claw back provisions / periods and the scope of the contributions relating land and financial contributions in favour of the education authority.

Having considered the revised position and explanation of the consortium in respect of the education contributions, the County Council has advised that this is acceptable and has

formally withdrawn their holding objection. The County Council is satisfied that the enhanced offer ensures that the County Council's developer contribution requirements for both primary and secondary education provision, necessitated by the proposed development, will be met.

Whether or not government funding is available to provide school places in circumstances where a development has been demonstrated to not be viable and any argument that deferred contributions towards secondary school places would serve the purposes of such an obligation equally well in this regard, this is now a moot point.

The consortium have agreed to the following revised contributions:

- Elmton Lane Contribution - £104,638
- New School Contribution - £3,528,988
- Road Network Contribution (per plot) - £335,046
- Primary Education Contribution - £712,598.78
- Secondary Education Contribution - £554,138.06

The now enhanced contribution results in the consortium taking a hit on developer profit, in order to be able to deliver the sustainable growth in Bolsover and meet the requirements of strategic policy SS4 of the Local Plan for Bolsover (2020). The proposed modifications, with enhanced financial contributions to deliver all critical and some necessary infrastructure would, it is considered, serve the purposes of the original obligations equally well in planning terms.

The other developer contributions to be deferred, whilst necessary, would not cause severe adverse impacts to the local community in the short term for reasons explained in the officer's report. Furthermore, such contributions would be subject of future project viability review. Where any surplus profit is made this will be assigned to the deferred developer contributions on an agreed split.

Whilst the District Council could choose not to agree to modify the original s106, it is clear through viability testing that the proposed development would not be a viable proposition based on national guidance on reasonable developer profit margins, i.e. 17.5%, with the amount and nature of developer contributions currently secured. The now enhanced contributions offer, at the expense of the consortium's expected profit, would facilitate the delivery of housing to meet the district's housing needs, whilst delivering all of the critical infrastructure required. The deferral of other necessary infrastructure would not unacceptability impact on the town, to the extent that the development could be construed as not delivering sustainable development in the round. The modifications to the developer contributions as set out would, in planning terms, continue to serve the purposes of the original obligations equally well in this respect and ensure that high quality, planned development comes forward that satisfies the aims and objectives of the development plan and national planning policy and guidance.

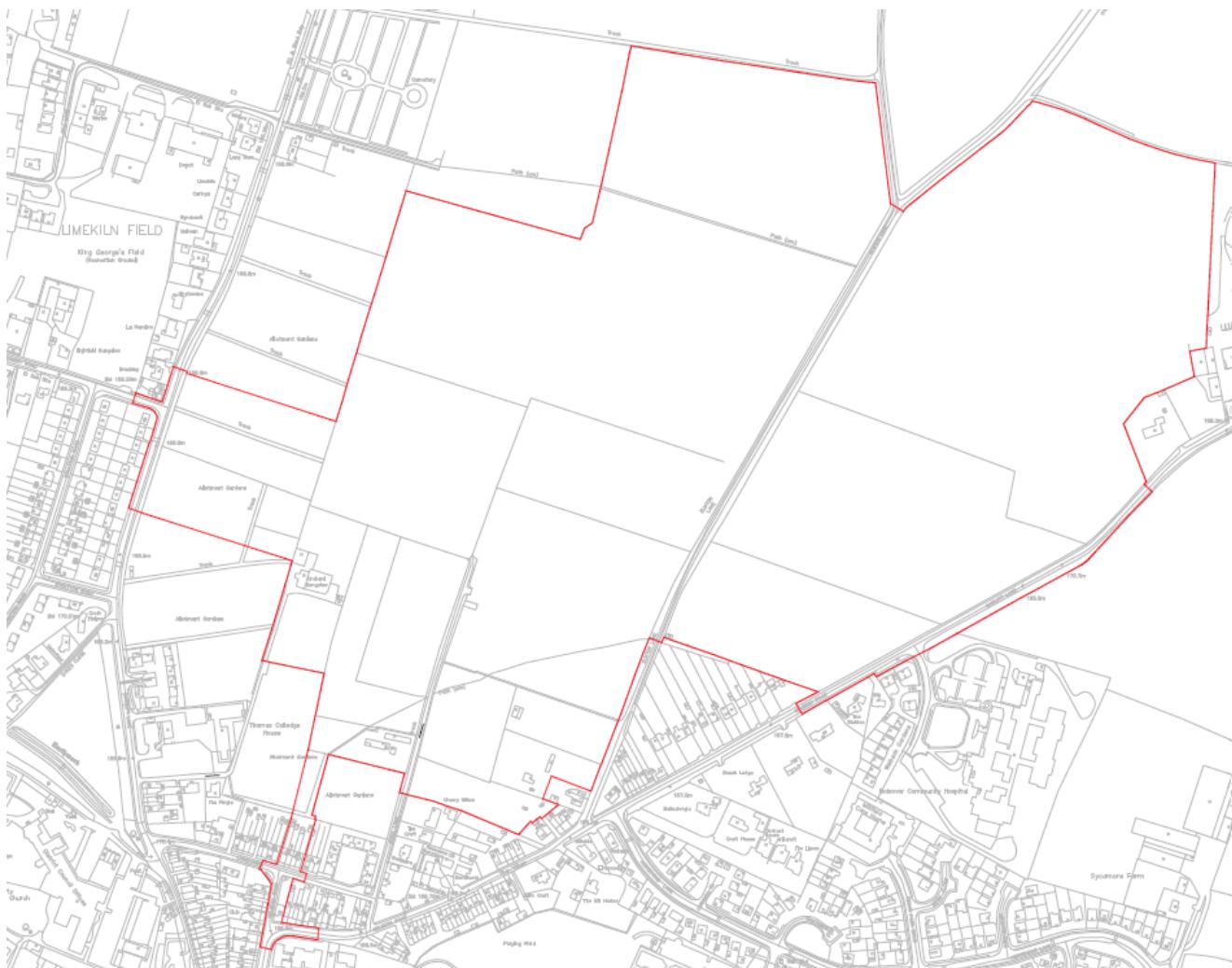
Taking the above into consideration it is recommended that planning committee agree to modify the s106 agreement dated 22<sup>nd</sup> September 2021 to secure £5,235,408.84 towards the following:

- Elmton Lane Contribution - £104,638

- New School Contribution - £3,528,988
- Road Network Contribution (per plot) - £335,046
- Primary Education Contribution - £712,598.78
- Secondary Education Contribution - £554,138.06

and to reduce the town park land area to 3.6ha and the extra care facility land to 0.8ha and extend the current claw back provisions / periods and scope of the contributions in favour of the education authority (land and financial contributions), with all other outstanding financial contributions to be deferred following viability review at an appropriate stage(s) in the future build out.

## **Site Location Plan**



## **OFFICER REPORT ON 25/00433/OTHER**

### **SITE & SURROUNDINGS**

The request to modify the s106 relates to the Bolsover North strategic site set out in the Local Plan for Bolsover (2020).

The site is located immediately to the north of Bolsover Town adjacent to existing residential development between Oxbridge Lane and Marlpit Lane. It is an irregular shape parcel of land extending to an area approximately 38.96 hectares in size.

Development has come forward to the east of the site, between Marlpit Lane and Elmton Lane. As of 30<sup>th</sup> September 2025, 204 out of 238 no. dwellings approved under reserved matters application 19/00005/REM had been completed, with the remaining houses under construction. This part of the development has been built out by Persimmon and Strata Homes. On the northern edge of this development is a large surface water attenuation

feature. A further 21 no. dwellings have been approved under application code ref. 23/00238/REM to the west of the site, comprising an extension of the Stancliffe Homes development off Oxcroft Lane. On the 30<sup>th</sup> September 2025 16 dwellings had been constructed in this area, with the remaining 5 units under construction.

The remainder of the site is primarily used as fields for agricultural use with areas of unused rough pasture land. The site is gently sloping with undulating areas with valleys and ridges.

Oxford Lane and the existing allotment gardens form the western boundary to the development. Existing residential development along Marlpit Lane/Welbeck Road and Longlands identify the southern and southeastern boundary to the site.

The site is divided by Elmton Lane which is an unmetalled bridle path (BW60) running in a north east direction from Marlpit Lane in the south and cutting through the site to join Ovencroft Lane (track) to the north. There is also a network of other public footpaths that cross the site linking Elmton Lane to Oxcroft Lane (FP33) and also between Longlands and Elmton Lane to the South (FP30/FP31).

The application site includes five dwellings off Welbeck Road and Longlands to facilitate a highway link through the development.

## **BACKGROUND**

The site is a strategic land allocation in the Local Plan for Bolsover District (2020). Local Plan Policy SS4 anticipated that the development to be delivered over 14 years, via 6 phases starting in 2020.

Outline planning permission for residential development in the region of 950 dwellings, provision of an extra care facility (approx. 70 units) and an infant school was granted at the site, under planning application code ref. 14/00080/OUTEA in October 2017.

Permission was granted subject to a condition that no development should be commenced until a s106 agreement had been completed, securing all of the developer contributions necessary to make the development acceptable in planning terms at that time. Obligations were included in a s106 legal agreement dated 22<sup>nd</sup> September 2021 to provide the following:

- Approximately 1ha of serviced land for an extra care facility and / or affordable housing
- Delivery, maintenance and transfer of approximately 4.2ha of land for a Town Park
- 1ha of serviced land suitable for single form entry infant and nursery school

Financial contributions:

- Bus Stop Improvements Contribution
- Elmton Lane Contribution
- Framework Travel Monitoring Plan
- New School Contribution
- Road Network Contribution
- Public Realm Sum

- Town Park Commuted Sum
- Primary Education Contribution
- Secondary Education Contribution
- Traffic Regulation Order Contribution

Following the completion of the s106 agreement dated 22<sup>nd</sup> September 2021, 238 dwellings have been approved under planning application code ref. 19/00005/REM. This approval has/is being built out by Strata and Persimmon Homes off Marlpit Lane. 21 no. under application code ref. 23/00238/REM comprising an extension of the Stancliffe Homes 'Mulberry Way' development off Oxcroft Lane at the western end of the site has also been approved. As of the 30<sup>th</sup> September 2025 approximately 220 dwellings had been completed across both developments.

The requirement for much larger surface water attenuation features on site, layout enhancements including street trees and a dedicated cycle lane and development that delivers successful place and provides for an appropriate density and type of housing to respond positively to this part of the settlement has resulted in a reduced amount of development coming forward.

Application code ref. 25/00069/REM, which is a joint application presented by the consortium of house builders (consisting of Persimmon, Strata and Stancliffe Homes) proposes 547 dwellings, across the remaining phases of development, with the exception of 0.8ha of residential land to the south of the land to be set aside for a primary school – referred to by the consortium as phase 2. This application is pending consideration and proposes some changes to the terms of the outline permission that were secured in the s106 agreement dated 22<sup>nd</sup> September 2021.

This item seeks approval of / agreement to those changes, which must be resolved before a decision can be taken on application 25/00069/REM. In particular, owing to an overall reduction in the amount of housing development and high abnormal costs associated with phase 2, application code ref. 25/00069/REM proposes to reduce the area of the town park and extra care facility / affordable housing land and to reduce the amount of s106 financial developer contributions to be made. Such modifications are requested to ensure a commercially viable development and the delivery of strategic development allocated in the Local Plan for Bolsover District (2020).

In assessing overall project viability and the justification for any reduction in developer financial contributions it is necessary to consider the profitability of the development that has come forward on the site and value / potential profits to be derived from the small area of residual land that does not form part of the latest approval of reserved matters application that is pending consideration.

## **PROPOSAL**

The proposal as originally submitted sought approval, through mutual agreement, (as the relevant period of 5 years has not yet passed since the original agreement was completed) to modify the section 106 agreement 22<sup>nd</sup> September 2021 as follows:

- Reduce the area of the town park to be provided from 4.2ha to 3.6ha
- Reduce the area of extra care facility / affordable housing land to be provided from 1ha to 0.8ha.

Provide the following financial contributions:

- Elmton Lane Contribution - £104,638
- Framework Travel Monitoring Plan - £14,359
- Provision of £1m towards all other financial contributions.

Following independent review of the applicant's viability appraisals by a viability expert and abnormal costs by a QS, and the requirement to provide critical infrastructure, the applicants / agreed, in principle, to modify the obligations as follows:

- Reduce the area of the town park to be provided from 4.2ha to 3.6ha
- Reduce the area of extra care facility / affordable housing land to be provided from 1ha to 0.8ha.

Provide the following financial contributions:

- Elmton Lane Contribution - £104,638
- New School Contribution - £3,528,988
- Road Network Contribution (per plot) - £335,046
- Primary Education Contribution - £931,390

With deferred contributions towards:

- Framework Travel Monitoring Plan - £14,359
- Public Realm - £90,711
- Town Park Commuted Sum - £738,430
- Secondary Education Contribution - £962,397
- Town Park – Delivery and maintenance contribution - £647,690

being the subject of future viability review, in addition to the additional secondary school place contribution and uplift in affordable housing provisions included in the original agreement.

Following consideration of the item at planning committee on the 10<sup>th</sup> December 2025 and subsequent negotiations between the applicant and County Council, who would need to be in agreement with any changes, the applicant has clarified that some primary and secondary school places contributions had already been paid / invoiced and that the total secondary education contribution amount was less if based on the revised number of dwellings proposed. This has resulted in a reduction in the primary education contribution of £712,598.78 and agreement to provide a secondary school contribution of £554,138.06.

The consortium also agrees to modify the agreement so that it offers enhanced flexibility with regard to the claw back provisions / periods and the scope of the contributions relating land and financial contributions in favour of the education authority.

## Supporting Documents

The application is accompanied by an application form (comprising the Local Planning Authority's S106A application form), covering letter and viability appraisal, which includes details of the joint venture and individual house builder's abnormal costs for phase 2 and a separate viability appraisal for phase 1.

## **AMENDMENTS**

Amendments to the application have been made during the consideration of the application as set out in the 'Proposals' section of this report following independent assessment of the applicant's viability appraisal by a viability expert and abnormal costs by a QS, the requirement to provide critical infrastructure and to reach agreement with the County Council with regard to education contributions, during the consideration of the application. This has resulted in revised offers in respect of the developer contributions to be provided.

## **EIA SCREENING OPINION**

This item relates to obligations secured in respect of an outline planning application, code ref. 14/00080/OUTEA which was deemed to constitute Environmental Impact Assessment development. Scoped into the Environmental Statement that accompanied this application were the following matters:

- The need for the development and alternatives considered.
- Landscape and visual resources.
- Ecology.
- Hydrology and drainage.
- Archaeology and cultural heritage.
- Transportation.
- Air quality.
- Noise and vibration.
- Ground conditions.
- Socio-economic considerations.

The proposed modifications to the s106 have the potential to impact on the socio-economic considerations.

The conclusion in the Environmental Statement in respect of this topic was that the development would meet an identified need for further housing in an appropriate location, with no harm to existing facilities whilst increasing the spend within the town (as well as creating jobs). The proposals were considered to be beneficial in this regard and would not result in environmental harm.

The modifications to the agreement reduce the amount of developer contributions, however, will ensure that all critical and some necessary infrastructure is provided in order to deliver sustainable development in the short term, with any adverse effects associated with reduced developer contributions tempered for reasons set out in the officer's report so as to be inconsequential. As such, the modifications do not change the outcomes of the original

Environmental Statement with regard to the environmental effects to warrant the submission of a new Environment Statement or addendum.

## HISTORY

13/00397/SCOPE	COMM	Request for scoping opinion – Residential development with associated roads and other facilities.
14/00080/OUTEA	GC	Outline planning application (with all matters except access reserved for later consideration) for residential development in the region of 950 dwellings, provision of an extra care facility (approx.. 70 units) and an Infant School together with vehicular access points from Marlpit Lane, Oxcroft Lane and Longlands (with associated demolition of dwellings on Longlands and Welbeck Road), cycle and pedestrian access, associated car parking spaces and open space provision (application as supplemented/amended by Drainage Strategy document submitted 28/04/14
19/00005/REM	GC	Approval of Reserved Matters application for details of appearance, landscaping, layout and scale in relation to the development of 238 homes, open space and associated infrastructure, along with discharge of conditions 6 (Phasing Programme), 8 (Framework Travel Plan), 11 (Highway Surface Water Disposal), 15 (Maintenance/Management of public areas) and 16 (hedgerow retention/creation) of the outline planning permission ref. 14/00080/OUTEA in respect of the areas of the site included in this application.
21/00471/REM	GC	Approval for reserved matters for attenuation basin serving residential phase 1a and discharge of Conditions 5 (Supplementary Design & Access Statement), 7 (Site Wide phasing plan), 14b (Written Scheme of Investigation for Archaeological Work), 18 (Construction Management & Mitigation Plan) and 20 (Site Investigation) of outline approval (14/00080/OUTEA), insofar as these conditions relate to the attenuation basin area that is subject of this application.
21/00492/ADV	GC	Proposed advertisements comprising 2 free standing signs, 10 flags & one lightbox (to be attached to side of proposed dwelling)

21/00562/MINAM	GC	Application for a non-material amendment following a grant of planning permission to amend condition 24 of planning permission 14/00080/OUTEA to say: No development shall be commenced within any phase (or sub phase as may be agreed with the local planning authority in writing) unless and until a S106 planning obligation has been completed (signed by all relevant parties, including all parties with an interest in the land to be developed in that phase or sub phase) to address the details included as Appendix A to this planning permission.
21/00594/ADV	GC	Advertisements for the sale of new homes
21/00745/MINAM	GC	Minor amendment to application 19/00005/REM - Changing the following house types: Greyfriar to be replaced by Ashdown, Clayton Corner to be replaced by Barnwood, Hatfield to be replaced by Sherwood (for certain plots), Roseberry to be replaced by Rivington, Leicester to be replaced by Whinfell, Winster to be replaced by Selwood
22/00238/MINAM	GC	Minor amendment of application 19/00005/REM, insofar as it relates to the Strata parcel (only), for: relocation of bin collection points to plots 11-13, 60 -63, 64-81; identification of dry stone wall to the front of plots 31 – 34; identification of timber post and rail fence boundary treatments to front of Plot 34; and identification of bus stop and addition of associated dropped pedestrian crossings to Marlpit Lane.
22/00292/MINAM	GC	Minor amendment to planning application 19/00005/REM – Substitution of house types
22/00632/ADV	GC	Strata Light Box fixed on Plot 34 show home gable. Two 3m x 3m Signage boards. 10 Flag poles.
23/00166/MINAM	GC	Minor amendment to Planning Application 19/00005/REM – installation of temporary post & rail fence/amendment to plot 33's garage/minor amendment of footpath on southern boundary/amendment to location

of bus stop/addition of rear footpath to plot 1's garage/addition of rear access door to plot 1's garage

23/00238/REM	GC	Reserved matters application for the approval of details relating to access, appearance, landscaping, layout and scale in relation to the development of 21 dwellings (Phase 1B) on land to the east of Oxcroft Lane, Bolsover and discharge of Conditions 5, 7, 8, 10, 11, 14, 15, 18, 21 and 23 of Outline Planning Permission Ref. 14/00080/OUTEA.
23/00487/MINAM	GC	Minor amendment of application 19/00005/REM (Addition of PV Solar Panels to plots 87-144)
25/00069/REM	PCO	Application for approval of reserved matters for residential development (547 dwellings), public open space (including a town park), landscaping, spine road (including required demolition of Nos. 34-40 Longlands & No. 42 Welbeck Road) and associated infrastructure (An Environment Impact Assessment was submitted alongside the original outline planning application). The application also proposes the discharge of conditions 21 and 22 of planning permission 14/00080/OUTEA in relation to the phases/development included within this reserved matters application.

## CONSULTATIONS

Bolsover District Council (Planning Policy and Housing Strategy) –

*Conclude the following:*

The application site is a strategic housing allocation under Policy SS4: Bolsover North, in the Local Plan for Bolsover District. Outline Permission has been granted on the site with a Section 106 agreement being completed on 22nd September 2021. Phase 1 of the site is under construction. The application relates to a variation in the terms in the existing S106 agreement. This is related to a pending reserve matters application that has been submitted for 547 dwellings, Phase 2 of the Bolsover North development. The applicant has raised viability issues in relation to Phase 2 which forms the remaining area to be development under the outline permission.

Substantially as a result of the need for additional areas of land for sustainable urban drainage, the anticipated number of dwellings in the outline application "in the region of 950 dwellings" will not be achieved. With existing reserved matters permissions and the pending

application, it is anticipated approximately 811 dwellings will be delivered on the site.

For viability reasons, the proposal is currently not able to meet all of the infrastructure financial obligations set out in the current S106 agreement. National policy and guidance require that viability is considered in relation to local plans and development management decisions. The Council's Local Plan for Bolsover District recognises that there may be viability issues in relation to housing sites and allows for deviation away from policy requirements in relation to affordable housing provision (policy LC2), type and mix of housing (policy LC3) and role of developer contributions (policy II1). Abnormal costs have been identified which have been reviewed and agreed by an independent QS. As is the Council's practice, the applicant's viability assessment has been reviewed by an independent viability consultant who has advised that the full Section 106 financial obligations cannot be met at this time.

As a strategic housing allocation, the site has a number of specific obligations to deliver. With minor changes in the land areas, it will deliver the land for the extra care / affordable housing, the school and the Town Park / open space in accordance with the provision for a development of 811 dwellings. It provides improved road links and provides the index linked agreed contributions towards the new school and wider primary education provision. However, a number of other contributions including secondary education contributions and the Town Park commuted sum cannot be achieved at this time and would need to be considered as part of a future viability review as provided for within the existing S106 agreement.

In relation to education, while developer contributions should be the 'first port of call' to meet the educational requirements arising from residential development, Planning Practice Guidance Viability and the Department for Education (DfE) non-statutory guidance identifies that there will be circumstances where a development cannot meet the full education requirements due to viability issues.

Whether a proposal represents sustainable development is a matter of planning judgement. It is deemed that on balance a decision to approve would be reasonable given that the proposal is a strategic site which has a key role in relation to achieving the spatial strategy set out Strategic Policy SS3, which identifies Bolsover as being one of the most sustainable locations with the district. The site makes a significant contribution towards meeting the local housing need for the district, provides for infrastructure on site and contributes towards meeting a number of local infrastructure capacity needs. This is particularly the case given the weight to be given to the Ministerial Statement about the need for housing and the Council's own five-year housing land supply position.

The planning policy comments are available to read in full on the Council's Public Access Platform under the documents associated with the planning case file. Where applicable to the case, the general comments made have been incorporated into the assessment section of this report.

Derbyshire County Council (Strategic Planning) –

**7<sup>th</sup> January 2026** - On the basis of the enhanced developer contributions offer provided by the applicant, Derbyshire County Council considers that the enhanced developer contributions offer is now acceptable and as such, the County Council wishes to

formally withdraw its holding objection previously submitted on the proposed modification.

The enhanced offer now ensures that the County Council's developer contributions requirements for both primary and secondary education provision, necessitated by the proposed development, will be met.

The County Council also welcomes the additional flexibility provided by the applicant regarding the timing of the transfer of the land for the primary school.

In the context of the above, the County Council will no longer be pursuing an independent appraisal of the viability assessment previously commissioned by the District Council.

**9<sup>th</sup> December 2025** – Sharpe Pritchard LLP representing the County Council raised the following concerns in confirming a holding objection.

If the secondary school contribution secured would be deferred it would have a significant detrimental effect on the already stretched local area catchment secondary school.

It was wrong to claim that deferment of the secondary school contribution would serve the purposes of the original obligation equally well, as other funding streams referenced in the officer report to planning committee of the 10th December 2025 were not available to cover the shortfall.

The County Council, through Sharpe Pritchard LLP requested that the application be deferred to further consider the applicant's viability position and to commission their own independent viability assessment.

**28<sup>th</sup> November 2025** - I note that we have a consultation response due regarding the above development. I understand that there have been ongoing discussions between Clare Wilkins and Andrew Stevenson with officers at Bolsover District Council. I am unable to send a response to you at this time pending discussions re. financial assessments.

#### Old Bolsover Town Council

While the Council recognises the importance of enabling delivery of this key strategic housing allocation, we have concerns regarding the proposed modifications and the potential implications for the wider community.

The original outline planning permission (14/00080/OUTEA) and the accompanying S106 agreement were granted on the basis of delivering an extra care facility, and an Infant School, alongside key infrastructure and open space. The current proposals, while broadly in line with the outline, do not fully comply with the terms of the original permission. OBTC maintains that reserved matters approval must comply with the terms of the outline planning permission, including the delivery of infrastructure and community facilities.

OBTC recognises that project viability is a material consideration. However, the independent viability assessment indicates that the development can deliver all of the originally agreed developer contributions, with only minor reductions in land for the town park and extra care facility. The Council is concerned that reducing contributions or land provision for viability

reasons sets a precedent that could erode the provision of community infrastructure in future phases or developments.

The Council urges the Local Planning Authority to ensure that the strategic objectives of the Bolsover North allocation are upheld, and that all infrastructure, community facilities, and open space are delivered as intended in the original planning permission and S106 agreement.

## **PUBLICITY**

The Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 sets out the publication requirements in respect of applications to modify agreements under s106A of the Town and Country Planning Act (1990). Although the proposal sits outside of the application process prescribed by section 106A, in that the relevant period of 5 years has not yet passed since the original agreement was completed, the same publicity requirements have been followed.

Regulation 5 (1) advises that when a local planning authority receive an application for the modification or discharge of a planning obligation they shall publicise the application by–

- (a)posting notice of the application on or near the land to which the planning obligation relates for not less than 21 days; or
- (b)serving notice of the application on the owners and occupiers of land adjoining that land; or
- (c) publishing notice of the application in a local newspaper circulating in the locality in which that land is situated.

Bolsover District Council in its capacity as the Local Planning Authority posted 8 site notices on or near to the land and served notice on the occupants of 398 dwellings on and adjoining the site of the request (in writing) on the 21<sup>st</sup> October 2025.

This has resulted in the receipt of twenty-eight representations. Of those twenty-eight representations, twenty-seven object to the proposed modifications to the s106 dated 22<sup>nd</sup> September 2021. In doing so the following summary comments are made:

- Concerns are raised about the fairness and impact of the proposals on the community.
- The financial reductions are unjustified. The developer's own figures show combined earnings of £163.4 million and a profit of £28.6 million. It is therefore extremely difficult to understand how they can claim to only afford £1 million combined in local investment.
- If a development can generate tens of millions in profit, the company should honour the commitments that were key to the scheme's approval. Reducing contributions now undermines public trust and sends the message that promises made to local residents are optional.
- Residents bought homes based on promises of investment – to now remove or shrink those areas – particularly the Town Park and Public Open Space is misleading and unfair.
- Bolsover already struggles with affordable and specialist housing availability. Reducing

the land for these uses directly contradicts local housing needs and council policy. It also removes future opportunities for younger families and older residents who want to stay in the community but need smaller or supported accommodation.

- The application does not clearly set out what is being removed or by how much. Before any decision is made, the Council should publish a side-by-side comparison of the original and proposed obligations, updated plans showing land reductions, and a full open-book viability assessment reviewed independently at the developer's expense.
- This development has already had a huge impact on the town. It's only fair that the community receives the benefits that were promised – proper open space, affordable housing, and financial contributions to local infrastructure like schools, healthcare, and highways.
- If the Council accepts these reductions, future developers may feel they can promise community benefits to gain approval and then withdraw them later. That would seriously damage public confidence in the planning process.
- The Council's independent review (CP Viability Ltd) shows the scheme is viable with full S106 obligations (£7.4m) or with 10% affordable housing and reduced S106 (£3.9m). The applicant's higher costs and profit assumptions are not justified.
- The REM application assumes full delivery of original S106 obligations (Town Park, Extra Care Land, infrastructure). Reductions in this variation would make the REM undeliverable or inconsistent.
- Derbyshire County Council and Bolsover residents expect full obligations (Elmton Lane upgrades, bus rerouting, travel plan measures, Town Park maintenance). Reductions undermine these commitments.
- Running the S106A variation alongside the undecided REM risks inconsistency, judicial review, and procedural unfairness. Approving one before the other could invalidate or frustrate the planning process.
- The proposals will result in development that will be contrary to policies SS4, LC2, SC3, SC4 and II1 of the Local Plan for Bolsover District (2020) and national planning policy.
- The applicant's viability assessment lacks transparency.
- Approval would compromise sustainable development, placemaking, and legal integrity.
- The developer's offer of £1,000,000 as a financial contribution is insufficient to mitigate the significant, wider impacts this large-scale development will have on the existing community and services in Bolsover.
- The developer lists approximately £4.8 million of on-site works (including serviced land for a school, a town park, and a new link road) as "wider benefits". This is misleading. These items are not optional "benefits" to the community; they are essential infrastructure required to make the development itself functional, safe, and acceptable. These are standard costs of development for an estate of this size and should not be presented as a justification for reducing the financial contributions needed to support the rest of the town.
- The developer's letter implies that their preferred position was to offer no cash contribution at all, and that this £1,000,000 is a "compromise". This position prioritises developer profit over the genuine, long-term needs of the Bolsover community. This "Without Prejudice Offer" should be rejected as it fails to provide fair mitigation for the impact of the development.
- The developer is clearly pushing for this application to be decided at the 10<sup>th</sup> December Planning Committee. The Planning Committee should not to be pressured by the developer's arbitrary deadline.

- When will the council grow a backbone and actually stand up for their constituents? These companies are absolutely huge, Persimmon and Strata both having record profits and are part of the FTSE 100 in the UK and you're letting them take Bolsover for a ride. Do you honestly think that they will pull the whole project if you decline to reduce contributions? They will make hundreds of millions of pounds on this development. You are only bothered about increasing the size of Bolsover to get more money into the council, you don't care at all about the quality of life here.
- The developers have already profited from this project and based their financial plans on it, so they should now honour the terms in full. This funding is important for our community, particularly to address: the continuing pressure on local schools and special educational needs provision, the lack of adequate facilities for elderly care, especially following the recent closure of local care homes the reduced sense of community cohesion, given that the promised town park has not yet been delivered these contributions are essential for maintaining the balance and wellbeing of our area.
- It appears to be of no concern to the Planning Department of Bolsover District Council that the report is not numerically sound. The individual square footage of the supposed properties does not accord with the claimed total square footage. Furthermore, the individual number of the properties to be offered does not match the supposed total.
- The CPV review cannot inform or substitute for the Council's required prioritisation exercise under Policy INF1 (SIC – should read II1), where S106 requirements are "proven" to exceed viability. A formal statement from the Council detailing the specific priorities for infrastructure items in this Application, including how they align with the ISDP's settlement-specific delivery plan for Bolsover and the rational for such prioritisation is requested.
- The remaining c500 homes should not be allowed without the original full commitment to the town park and extra care land. If these are not delivered, what are the expectations of the land allocated to this? I hope more houses are not in a future plan the builders are submitting to planning.
- I believe a reduction in the 106 monies agreed previously would:
  - impact on schools and SEND provision negatively.
  - there would be a lack of facilities for elderly care homes, especially with closure of carehomes locally.
  - there would be a reduction of community cohesion (with reference made to the town park).
- The reduction to financial contribution from the developer is a ridiculous u-turn. How can a legal document be dismissed in such a way? The local people are sick of the building work that has gone on for years now and deserve something back. Bolsover is a growing population, so the extra care funding for the elderly and local open space/town parks for the younger generation is hugely important.
- The developers have profited off the houses already built and before being allowed to continue they should have to fulfil the agreed plans for the community. Our community and local areas are already affected by no school places and doctors over run. We've lost countryside walks and becoming very overcrowded the roads cannot cope with the traffic now.
- The £1m figure is well below what would be expected for a development of this magnitude. The developers are taking a punt on getting a reduction to boost their profits. The development was only given approval on the basis of large contributions to compensate the adverse effects on the local community, to the council should stand firm

and not give into the Developers.

- The independent report from CPV of the 20/10/2025 says the development can support S106 contributions of £7,408,709 well in excess of what the developers are offering and on that alone the proposal should be rejected. There is no demonstration and proof of developer costs to back up their calculation.
- The large number of houses is putting a strain on all services in Bolsover and so the Developers should pay for the issues and disruption caused to improve the town.
- It is already impossible to access doctors due to inadequate provision. Our market town cannot cope with more development without service provision being the priority.
- The development so far has already had a significant detrimental effect on the lives of local residents due to associated noise, mess, increased traffic and traffic violations such as speeding on Welbeck Road, the loss of green space, and the additional burden on services and amenities. To increase this still further without honouring the commitment to at least provide some small compensation in the form of a town park and the provision of affordable housing would be to completely disregard the needs and wellbeing of local residents, and to instead prioritise profit for the developers.
- This development cannot be seen as an improvement for the town if it fails to provide housing that local people can afford and facilities that might enhance quality of life for existing residents, to counteract the inevitable negative effects that such a wide scale expansion entails.
- If the developers want to put profit over services needed to sustain their development then they should NOT have promised to achieve the requirement at the time the planning application was approved.
- Bolsover is already set to suffer both environmental impact and infrastructure deficits as a result of so many houses being built in a short timeframe.
- Bolsover needs facilities for the elderly since recent closures, and also school places are short, so the growth of the town needs to secure the additional school site as originally promised.
- Wildlife loss due to the impact of losing so much green space and trees has always been my biggest objection to this site and any reduction of promised green spaces or hedgerow and tree removal is not acceptable.
- I understand this is a regular tactic by building companies to try and reduce their commitments when the site construction is well underway, and that regulations can prevent councils from ensuring the promises are upheld. I will be writing to our own MP to discuss her raising such repeated manipulation of regulations in parliament.
- An independent CPV report confirms the development can support S106 contributions of over £7m far higher than the £1m offered. The proposed amount is significantly below what is reasonable for a development of this size.
- On what basis are the Developers using to justify the lower figure? If it is based on a downturn in the housing market, then this is of their own making. The large number of new homes is straining local services in Bolsover, for instance a lack of school places will have a negative impact on families wishing to move to the area. A reduction in the contribution will make matters worse.
- The Developers should contribute fully to mitigate the problems caused to the town's infrastructure. Having made profits from their initial phases of development they should not be allowed to renege on their obligations to the town. Planning approval was granted on the basis of substantial community contributions, so the council should not agree to this reduction.

- When planning approval was first granted, it was based on a set of clear commitments and obligations designed to ensure fairness, community benefit, and balance between profit and public interest. These commitments were integral to securing public support and regulatory approval.
- The developers have already achieved substantial profit margins from the development, and any attempt to dilute previously agreed obligations appears to be an opportunistic effort to increase profits further at the expense of the community and the integrity of the planning process. Such actions undermine public trust in both the developer and the planning system. The original commitments – whether financial contributions, community infrastructure, environmental measures, or affordable housing provisions – must therefore be upheld in full.
- There is no proof of Developer costs to back up their calculation.
- This development and similar is putting a strain on all community services in Bolsover and it is right that the Developers should pay for the disruption caused.
- Many of the houses are already sold and residents moving from outside Bolsover are struggling to access local services.
- School provision is key as many new residents have young families. Local School buildings are inadequate to cater for potentially 2,000 extra children from this Development. In addition, other recent developments in the area all require school places. Welbeck Road Infants and New Bolsover schools are housed in Victorian buildings which needed replacing a generation ago. Horsehead Lane Primary is struggling to offer places. If school provision is a problem potential new residents will be reluctant to buy the houses and they will not sell. In its current parlous financial state Derbyshire County Council is unable to improve our school provision without substantial funding from large housing Developers.
- In its current parlous financial state Derbyshire County Council is unable to improve our school provision without substantial funding from large housing Developers. Local Health Centres are finding it increasingly difficult to register new patients and we have one Dental Practice.
- The infrastructure of the town requires major improvement, especially roads and access to what is a very small-town centre. The Strata and Persimmon developments all converge on the town centre at the same point. It is essential these Developers help minimise the issues their housing developments create for Bolsover.
- The changes are misleading, making the planning process look like a “laughing stock.”
- It cannot be considered to be the same scheme that was passed several years ago.
- It is not the role of the Planning Committee and/or the Council to make the proposed development financially viable. Under S106 of the Town & Country Planning Act 1990, local planning authorities can make legally binding agreements with developers when granting planning permission. These legally binding agreements are meant to mitigate the impact of new developments, ensuring developers contribute to community needs, such as affordable housing, infrastructure, public open spaces and local amenities. It would seem that the developers are now attempting to not honour that agreement purely to increase their profit margins at the expense of the residents of Bolsover.
- There is no lawful, logical or evidence-based justification for reducing the agreed S106 obligations.
- If the scheme cannot afford S106 contributions, a £1,000,000 contribution is impossible. If a £1,000,000 contribution is possible, their FVA is incorrect. A public, unsupported offer is not viability evidence and carries no weight under the NPPF or PPG. It cannot

lawfully justify reducing binding S106 obligations.

- The independent review of the developers' FVA concludes that the S106 contributions are viable. Accepting the reduced S106 would be legally unsafe.
- Given the contradiction in the developers' evidence and the findings of the independent viability review the Council should:
  1. Reject the unsupported £1,000,000 offer- It has no evidential basis and carries no planning weight.
  2. Require Persimmon Homes, Strata Homes and Stancliffe Homes to pay the agreed S106 contributions.
  3. Require a new FVA if the developers wish to dispute the Independent Review's findings.

Until then the original contributions must stand.

- Approval would compromise sustainable development, placemaking, and legal integrity.

Comments received that are unrelated to this application, but relevant to the assessment of approval of reserved matters application 25/00069/REM which is pending consideration can be summarised as follows:

- The 2<sup>nd</sup> phase of the Persimmon development will only have one road, which is Crown Crescent where we live to feed all the houses on the 2<sup>nd</sup> phase as well as a lot of properties that have already been built in the 1<sup>st</sup> phase. The amount of traffic which will be coming and going down this one access road at peak times will be horrendous. The rest of the proposals for the park are a great idea but has any consideration gone into the wildlife that will be uprooted as there are Common Buzzards and loads of other birds that nest around the area which is being developed.
- The Current Infant School location will be unsafe with the new major road network that is planned.
- Reference is made to excessive water on site and this being a consequence of land drainage measures having been weakly executed on site. It is considered that this should be inspected, corrected / repaired before any future work is signed off.

These have been included in the report for this related application.

One representation in support of the application has been received, with no comments provided.

Full details of the representations received can be viewed on the Council's Public Access Platform under the documents associated with the planning case file.

## **POLICY**

### Local Plan for Bolsover District ("the adopted Local Plan")

Planning law requires that applications for planning permission be determined in accordance with policies in the adopted Local Plan, unless material considerations indicate otherwise. In this case, the most relevant Local Plan policies include:

- SS1: Sustainable Development
- SC3: High Quality Development
- SS4: Strategic Site Allocation – Bolsover North
- LC2: Affordable Housing through Market Housing
- LC3: Type and Mix of Housing
- SC4: Comprehensive Development
- II1: Plan Delivery of the Role of Developer Contributions

### National Planning Policy Framework (“the Framework”)

The National Planning Policy Framework sets out the Government’s planning policies for England and how these should be applied. The Framework is therefore a material consideration in the determination of this application and policies in the Framework most relevant to this application include:

- Chapter 2 (paras. 7 – 14): Achieving sustainable development
- Paragraphs 61 – 84: Delivering a sufficient supply of homes
- Paragraphs 48 – 51: Determining applications
- Paragraphs 56 – 59: Planning conditions and obligations
- Paragraphs 124 – 130: Making effective use of land
- Paragraphs 131 – 141: Achieving well-designed places

## **ASSESSMENT**

1.1 The applicants seek approval from the Local Planning Authority to modify the legal agreement dated 22<sup>nd</sup> September 2021 to facilitate a 0.2ha area reduction in the size of the extra care facility and / or affordable housing land and a 0.6ha area reduction in the size of the Town Park to correspond with the development applied for under planning application code ref. 25/00069/REM, which is pending consideration. The applicants have also presented viability information to demonstrate that the future development would not be a viable proposition, with the secured level of developer contributions. A revised offer of circa £1,118,997 (including the travel plan and Elmton Lane road improvements) was been offered up in lieu of the following contributions:

- New School Contribution - £3,528,988
- Road Network Contribution (per plot) - £335,046
- Public Realm Sum - £90,711
- Town Park Commuted Sum - £738,430
- Primary Education Contribution - £931,390
- Secondary Education Contribution - £962,397
- Town Park – Delivery and maintenance - £647,690

in addition to the provision and transfer of 1ha of land for a new infant and nursery school and the town park and extra care facility land.

1.2 The mechanism to modify the original agreement is prescribed in the Town and

Country Planning Act 1990, which states that a planning obligation may not be modified or discharged except either by agreement between the “appropriate authority” (the LPA in the case) and the person(s) against whom the obligation is enforceable or in accordance with s106A. An application can only be made under s106A after the relevant period of 5 years. This means 5 years beginning with the date that the obligation is entered into. As the original agreement was completed on the 22<sup>nd</sup> September 2021, it can only be modified through mutual agreement at this time. In such a scenario, there is no right of appeal in respect of any decision that is taken.

- 1.3 The Local Planning Authority could choose not to accept/consider the request, however, there is an expectation that, as a responsible authority, it will consider proposals the effect land use and development in the public interest, particularly where this is linked to its plan making responsibilities and ensuring the delivery of sustainable development within its planning area to meet identified needs.
- 1.4 The site is identified in the Local Plan for Bolsover District as a strategic site allocation – Bolsover North, under Policy SS4. As a strategic site it has a key role in relation to achieving the spatial strategy set out Strategic Policy SS3, which identifies Bolsover as being one of the most sustainable locations with the district. The site also makes a significant contribution towards meeting the local housing need for the district.
- 1.5 The request needs to be considered in the context of meeting the Council’s ambitions for growth and change. It is also considered appropriate to consider the legislative framework for determining s106A applications to establish whether the proposed modifications would be acceptable in planning terms, notwithstanding that these provisions do not apply to the current request. In assessing an application to modify an agreement under S106A an authority may determine:-
  - (a) that the planning obligation shall continue to have effect without modification;
  - (b) if the obligation no longer serves a useful purpose, that it shall be discharged; or
  - (c) if 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, that it shall have effect subject to those modifications.
- 1.6 Having regard to the scope of consideration, relevant provisions of the development plan and consultation comments and representations received, the main issues to consider in reaching any decision on whether to approve the modifications include:
  - a) The reasons / case for modification
  - b) The impact of the changes to the obligations on the acceptability of the approved development to which they relate, and;
  - c) Whether the obligations serve a useful purpose and if so, whether the changes would serve that purpose equally well

#### The reasons / case for modification

- 1.7 There are two drivers behind the proposed modifications to the section s106 agreement dated 22<sup>nd</sup> September 2021. The first is the requirement to make physical changes to the development on the ground to optimise the amount of development

whilst responding positively to the character of area and the site constraints, including the need for larger surface water attenuation features than originally envisaged due to underlying ground conditions. The desire to deliver high quality development, incorporating a good standard of landscaping including street trees and a dedicated cycle lane has also reduced the developable area further and has contributed to a reduction in the amount of development.

- 1.8 The second driver is the viability of future development. The Local Plan for Bolsover District 2020 recognises that viability can be an issue on housing development sites. Key issues for Bolsover District" include paragraph 2.41 g) "Ensuring the delivery of new housing in an area of marginal viability where delivery has been challenging." The key housing issues identified in the Local Plan includes paragraph 5.2 f) "A remaining viability challenge for residential schemes to deliver both infrastructure and policy requirements." Local Plan Policies LC2, LC3 and II1 all make provision for considering viability issues.
- 1.9 The applicant in making the request to modify the obligations presented a review of the viability of phase 2. The viability review was prepared in accordance with national guidance, including that any viability assessment should reflect the Government's recommended approach to defining key inputs as set out in Planning Practice Guidance on Viability. The appraisal examines in detail both the expected gross development value generated from the sale of the various elements of the development, i.e. the market houses, the expected build costs for the development, i.e. the cost of building the new houses and other forms of development; professional fees; Section 106 policy obligations; financing and developer profit.
- 1.10 The consortium assessed a single scenario with 100% market value housing and Section 106 contributions totalling £7,648,845. This resulted in a residual land value of (minus) -£17,532,284. This was below their separately assessed benchmark land value of £6,700,000 and therefore failed to meet the viability threshold. The deficit of £24,323,284 was such that the development was not considered to be able to contribute towards any of the secured planning obligations.
- 1.11 Notwithstanding the above position the consortium in a letter accompanying the application, stated that the consortium was committed to the delivery of the following infrastructure/S106 requirements:
  - Serviced Land for the onsite Primary School;
  - Elmton Lane Improvements;
  - 3.6ha Town Park and initial 12 month maintenance;
  - Delivery of the Travel Plan;
  - Incidental Open Space areas;
  - New link road and associated demolition of existing properties at Longlands and construction of new properties to facilitate rehoming of the Longlands residents.
  - Serviced Land for the onsite Extra Care Facility / Affordable Housing Land.
- 1.12 The cost of delivering these wider benefits as part of the residential development was calculated to be approximately £4,819,517. It should be noted that some of these

benefits are required to facilitate the development (policy on contributions) and sit outside of the defined financial contributions within the s106 dated 22<sup>nd</sup> September 2021. Only the travel plan and Elmton Lane improvements are included in the s106 pot of contributions secured.

- 1.13 The consortium acknowledges in the accompanying application letter that such contributions would be unlikely to be supported by planning committee members. As such, they offered an additional £1,000,000 as a financial contribution in addition to the items above to be delivered on-site. This resulted in an equivalent contribution of £1,118,997 against the remaining s106 financial contribution pot of £7,333,679 including indexation.
- 1.14 The applicant's initial viability assessment was independently assessed by an independent viability expert (CP Viability Ltd) (CPV) on behalf of the Council. Several issues were raised in respect of the information provided and assumptions made by the consortium in the assessment. Discrepancies were raised in respect of the gross development values used for the Persimmon dwellings and the joint venture and individual housebuilder external and abnormal costs, professional fees percentage, marketing costs, finance and developer profit assumptions were not agreed.
- 1.15 Within the representations received, there is reference to the need for the existing affordable housing provisions being upheld. The Council's initial viability assessment makes reference to 10% affordable housing being included within the model. The original obligations, however, include land to be set aside for an extra care facility and / or affordable housing, in lieu of developer provided on-site provision. The agreement does, however, contain provisions to review project viability and deliver additional affordable housing over a threshold in circumstances where a super profit is made.
- 1.16 Having regard to the terms of the original outline permission and associated s106 agreement it was established that full S106 payments of £7,353,709 (£7,408,709 if the land transfer costs referred to in the Savills assessment are included) could be viably made.
- 1.17 The applicant submitted a 'Response to CPV Review' by Savills dated November 2025. The report specifically looked at the key areas of disagreement, namely Gross Development Value (Persimmon dwellings), plot abnormal costs, contingency, professional fees, profit and finance.
- 1.18 In the interest of reaching an agreed position the applicant agreed to adopt the lower quartile build cost rate but reserved their position on this assumption. To come to a swift conclusion on contingency, the applicant also offered up a mid-point of 3.5% as a compromise position.
- 1.19 With regard to plot abnormalities the applicant did not support the approach taken by CPV, and the appointed QS 'Hainstone' to remove all the plot abnormal costs. They did not accept that the costs were accounted for in the external works. Further information was presented from Persimmon, Strata and Stancliffe Homes in relation to their plot abnormal costs. These itemised abnormal costs included works outside of typical external works, including cut and fill, abnormal drainage works, retaining walls,

underbuild, concrete in foundations, substation, specific plot works, elevational uplifts and sewer excavation totalling £5,684,760.

- 1.20 The Council's viability expert in considering abnormal costs in their initial assessment, had not taken into consideration the assessment of the individual housebuilder abnormal costs, instead focussing on the joint venture abnormal costs summary in dismissing these. Hainstone had reviewed the individual housebuilder abnormalities and agreed that some costs were admissible in a separate appraisal. These should have fed into CPVs initial assessment. Paragraph 4.29 of the original CPV appraisal is erroneous in this respect.
- 1.21 In the interests of reaching an agreed position on the remaining areas of disagreement, the applicant offered up 8% for professional fees, 2.85% for marketing and sales fees, 7.25% for finance and 18.5% for profit, noting that higher profits had been accepted for other developments within the district.
- 1.22 With the above assumptions and inclusion of abnormal costs, the applicant maintained that the development remained unviable with the developer contributions offered up.
- 1.23 Accepting the marketing fee adjustment but maintaining its assumptions or making reduced concessions in other areas and adjusting the benchmark land value, the Council's viability expert advised that s106 development contributions of up to £3,500,000 could be viably made with a developer profit of 17.5% on revenue.
- 1.24 Reflecting on the amended viability position, officer's wrote to the applicant's agent to advise, without prejudice to any decision that is ultimately taken on the applications at planning committee that in order to be able to present a case that the obligations in a modified form would continue to serve the original purposes equally well in viability terms and to achieve sustainable development in the round, that the following developer contributions would need to be provided as a minimum:
  - Elmton Lane Contribution - £104,638
  - New School Contribution - £3,528,988
  - Road Network Contribution (per plot) - £335,046
  - Primary Education Contribution - £931,390
- 1.25 The consortium (applicant) agreed to make such contributions, totalling £4,900,062, which would involve a reduction in overall developer profit, with all other financial contributions to be deferred following future viability review in addition to the land to be offered up for the town park, extra care facility / affordable housing and school (with a reduction in land area in the case of the town park and extra care facility / affordable housing land). This was reflected in the amended proposals at this time.
- 1.26 To ensure that this amount is the minimum possible to ensure a viable proposition to a developer, an assessment of overall project viability has been undertaken which considers any super profit made from the phase 1 development that has been carried out and the 1.98 acres of residual residential land which does not form part of the latest approval of reserved matters application (25/00069/REM) to the south of the new school land.

- 1.27 CPV produced a final viability appraisal on behalf of the Council, which reflected on the applicant's rebuttal comments and incorporated within the model the QS accepted abnormal costs for the individual house builders and minimum s106 contributions. They ran models for three scenarios, phase 1, phase 2 and phase 1 and 2 combined (including the residual residential land).
- 1.28 The Phase 1 scenario, with a fixed benchmark land value of £2,290,617 (£75,000 per acre) generates a residual developer profit of 16.87% on revenue. This demonstrates that no super profit has been made in respect of the development already undertaken, which should feed into the assessment of the remaining phases.
- 1.29 The assessment of phase 2, with an allowance for the residual residential land and a benchmark land value of £5,258,288 (£80,000 per acre) generates a residual developer profit of 16.83% on revenue.
- 1.30 Phase 1 and Phase 2 combined with the residual residential land with a fixed benchmark land value of £7,548,905 (£78,414 per acre, which is equivalent to £75,000 per acre generates a residual developer profit of 16.70% on revenue.
- 1.31 It is clear from the outcomes of the independent viability appraisal work undertaken that the remaining development does not meet the accepted viability threshold and falls well below the consortium's suggested profit margin for a development of this nature (20%).
- 1.32 The additional s106 contribution amount of £335,340.78 following deferral of the matter at the planning committee meeting on the 10<sup>th</sup> December 2025 reduces the level of developer profit across phase 2 and phases 1 and 2 to 16.65% and 16.55% on revenue respectively (within no adjustment to benchmark land value).
- 1.33 The reasons for the modifications, in their amended form, are justified in this respect. Without the modifications there is a risk that the remaining development would not be deemed a viable proposition by the consortium and will not come forward.

The impact of the changes to the obligations on the acceptability of the approved development to which they relate

- 1.34 Policy II1: Plan Delivery and the Role of Developer Contributions, states that *"To aid plan delivery, planning obligations will be sought where the implementation of a development would create a need to provide additional or improved infrastructure, amenities or facilities or would exacerbate an existing deficiency. The identification of this need will be assessed on a case-by-case basis but will be guided by the latest version of the Council's Infrastructure Study and Delivery Plan."*
- 1.35 The latest version of the Council's Infrastructure Study and Delivery Plan was published in February 2025 and is based on information provided by infrastructure providers at various points in the year previous. In terms of the local priority for infrastructure provision, Infrastructure Study and Delivery Plan identifies the following general priority hierarchy:

Importance to the Local Plan Strategy	Type of Infrastructure Project
Critical	<ul style="list-style-type: none"> <li>• Road capacity</li> <li>• Utilities</li> <li>• Water</li> <li>• Education - Primary Phase</li> </ul>
Necessary	<ul style="list-style-type: none"> <li>• Cycling and Walking</li> <li>• Green Space - Town Parks</li> <li>• Green Space - Quantitative improvements</li> <li>• Education - Secondary Phase</li> <li>• Health</li> </ul>
Complementary	<ul style="list-style-type: none"> <li>• Green Space - Qualitative improvements</li> <li>• Strategic Green Infrastructure</li> </ul>

1.36 This priority hierarchy provides a general guide to how financial contributions should be prioritised. However, Policy II1 identifies that need will be assessed on a case by case basis but will be guided by the requirements of specific policies elsewhere in the Council's Local Plan. In relation to viability it sets out that *"Where the need for infrastructure and other requirements arising from development is proven to exceed that which can be viably funded through the development, priority will be determined by the District Council based on the importance of the infrastructure and other requirements, to the delivery of the Local Plan."*

1.37 This aspect also needs to be considered against the evidence by way of consultee responses and the evidence arising from the specific circumstances of the application.

1.38 The site is identified in the Local Plan for Bolsover District 2020 as a strategic site allocation – Bolsover North, under Policy SS4. As a strategic site it has a key role in relation to achieving the spatial strategy set out Strategic Policy SS3, which identifies Bolsover as being one of the most sustainable locations with the district. The site makes a significant contribution towards meeting the local housing need for the district.

1.39 As a strategic housing allocation with outline permission the site has a number of specific obligations to deliver. These include:

- Deliver an improved highways links through the re-routing of Welbeck Road through the site to connect with Marlpit Lane.
- Improving the existing local highway network in Bolsover as related to the development.
- Provide for the expansion of primary phase education provision in Bolsover through the relocation of the existing Bolsover Infant and Nursery School to within the site and providing for its expansion as related to the development.
- Provide for the expansion of primary phase education provision in Bolsover

- Deliver an Extra Care / social housing scheme within the site.
- Meet green space standards through the creation of a town park within the site.
- Contribute to the planned Bolsover Town cycle network through the provision of cycling facilities within the site.
- Contributing to the development of the planned wider multi-user trails network through the retention and improving of Elmton Lane as a principal green corridor to the countryside.
- Contributing towards minimising the need to travel by private car through provision of convenient access via sustainable modes of transport to locations of employment and services.

1.40 These requirements were integrated into the original s106 and/or have been incorporated in the design of the development that has come forward on the site.

1.41 The below table compares the proposed developer contribution modifications against the outstanding contributions contained within the original s106. At the time of presenting the request to modify the agreement to planning committee on the 10<sup>th</sup> December 2025 the applicants had not accounted for the primary and secondary school place contributions that had been paid or invoiced in respect of development that had already come forward on phases 1A and 1B in their viability appraisal work. The contribution amounts were also not proportionate to the amount of development that was proposed to come forward (accepting a pro-rata secondary school place contribution requirement), hence the difference in the education contribution amounts in bold in the below table to those reported to planning committee on the 10<sup>th</sup> December 2025. The table also includes the revised offer to provide a secondary school place contribution.

	<b>S106 Current summary of outstanding Financial Requirements</b>	<b>Deed of Variation proposed requirements</b>
Elmton Lane Contribution	£104,638	£104,638
Framework Travel Monitoring Plan	£14,359	
New School Contribution	£3,528,988	£3,528,988
Road Network Contribution (per plot)	£335,046	£335,046
Public Realm Sum	£90,771	
Town Park Commuted Sum	£738,430	
Primary Education Contribution	<b>£712,598.78</b>	<b>£712,598.78</b>
Secondary Education Contribution	<b>£554,138.06</b>	<b>£554,138.06</b>
Town Park – Delivery and maintenance	£647,690	
	<b>£6,726,658.84</b>	<b>£5,235,408.84</b>

1.42 In relation the Infrastructure Study and Delivery Plan, the proposals place an emphasis on meeting the critical and some necessary elements with the provision of land and contributions towards a new school, primary and secondary school place contributions

and road related aspects. Such contributions will not be affected by the proposed modifications, thereby not prejudicing the delivery of key infrastructure notwithstanding other funding streams that may or may not be available in respect of education provision.

- 1.43 The modifications would now not rely on DfE capital funding to deliver the secured school places based on a pro-rata assessment of needs arising from the development, which the County Council support.
- 1.44 Significant deferred contributions would include the public realm sum and the contribution towards the delivery and maintenance of a new town park. With regard to the delivery of the new town park, there is an allowance within the agreed external costs that the development will provide an equipped play area on the land. The requirement to provide site landscaping to ensure appropriate biodiversity mitigation and a pedestrian route through the park to provide good connectivity through the site will ensure that the main structure of the park is provided. The land will also be transferred to the District Council for £1, which will facilitate its delivery, future development and maintenance, which could be funded in part by additional Council Tax income. Given that the number of dwellings proposed has reduced from 950 dwellings to 811 dwellings, the revised area of 3.76ha exceeds the Local Plan green space requirements set out in the Table at Local Plan paragraph 8.32, Policy ITCR5: Green Space and Play Provision. With the other green space of 2.84 ha a total of 6.6ha of green space will be provided, which meets the policy requirement.
- 1.45 The provision of 0.8 ha of land for an extra care facility would continue to meet the requirements for a 70-unit care facility.
- 1.46 The development proposed as part of application code ref. 25/00069/REM includes uplift to building design (included in abnormal costs) to deliver successful place and high-quality design, which negates the requirement for the public realm enhancement / design uplift contribution.
- 1.47 With the proposed modifications to the s106 it would remain the case that the development approved under application code ref. 14/00080/OUTEA would continue to deliver sustainable development that is important to meeting the housing needs and growth ambitions of the district and satisfy the relevant provisions of the development plan and national planning policy.

Whether the obligations serve a useful purpose and if so, whether the changes would serve that purpose equally well

- 1.48 Planning obligations are entered into provide infrastructure to support the development of an area. Regulation 122 of The Community Infrastructure Levy Regulations 2010 requires that a s106 obligation must meet 3 legal tests:
  - (i) necessary to make the development acceptable in planning terms
  - (ii) directly related to the development
  - (iii) fairly and reasonably related in scale and kind to the development.

1.49 The purpose which the obligations fulfil is to ensure that the development delivers policy compliant infrastructure, including highway improvements, land for a town park, new infant and nursery school, extra care facility and / or affordable housing, public realm enhancements and contributions towards education provision.

1.50 This purpose is clearly a useful one. At the time planning permission was granted, the initial obligations entered into were necessary to ensure that the development complied with the development plan and mitigating any impacts it had, benefiting local communities and supporting the provision of local infrastructure. Clear policy requirements and evidence supported these at the time and continue to do so.

1.51 The proposed modifications to the obligations would facilitate the delivery of housing to meet the district's housing needs, whilst delivering all of the critical and some necessary infrastructure required to meet development plan policy and the Councils Infrastructure Study and Delivery Plan (2025) and the requirements of the County Council in respect of education contributions. The deferral of other necessary infrastructure would not unacceptability impact on the town, to the extent that the development could be construed as not delivering sustainable development or complying with the relevant provisions of the development plan or national planning policy. The proposed modifications to the agreement would serve the purposes of the original obligations equally well in this regard.

### Conclusion

1.52 The Bolsover North site is one of the most sustainable locations in the district. It is a strategic land allocation in the District Council's Local Plan and the Local Planning Authority is keen to see the site come forward and contribute towards the delivery of sustainable development to meet identified housing needs and the infrastructure necessary to achieve this.

1.53 The Written Ministerial Statement "Building the homes we need," 30th July 2024, underlines the importance the Government places on housing delivery and acknowledges that the nation is in the middle of the most acute housing crisis in living memory. It highlights the vital role that decisions play in delivering housing and the need to build new homes.

1.54 Clear reasons for modifying the obligations contained within the original agreement dated 22<sup>nd</sup> September 2022 namely, to facilitate high quality development that makes full and effective use of the site and ensures project viability have been established.

1.55 Following independent review of the consortium's viability position and assessment of the abnormal costs presented by a QS, it has been established that the remaining development would not be viable with a 17.5% profit on revenue (which is considered to be a reasonable level of profit at this stage in the build out). Where development fails to meet viability thresholds there is a risk that it will not come forward / is seen as too great a risk by a developer(s).

1.56 It has, however, been established that the remaining development is able to provide developer contributions in excess of the travel plan and Elmton Lane road improvements

contributions and £1m towards the other planning obligations, amounting to circa £1,118,997 originally offered up by the consortium (excluding the land for a town park, primary school and an extra care facility / affordable housing).

1.57 Following negotiations with officers and the County Council the consortium have agreed to make contributions totalling £5,235,408.84 in addition to providing the land for a town park (3.6ha), an extra care facility / affordable housing (0.8ha) and primary school. This results in the consortium taking a hit on developer profit to be able to deliver sustainable growth in Bolsover.

1.58 The s106 dated 22nd September 2021 can only be modified with the mutual agreement of all parties, as the relevant period of 5 years set out in S106A of the Town and Country Planning Act (1990) has not yet passed since the original agreement was completed. Whilst the District Council could choose not to agree to modify the original s106, it is clear through viability testing that the proposed development is not a viable proposition with the current development contributions. The proposed modifications include contributions above an agreed viability threshold to ensure the delivery of all critical infrastructure and contributions to towards both primary and secondary school places to satisfy and secure the agreement of the County Council to the changes and would facilitate the delivery of housing to meet the district's housing needs. The deferral of the other additional infrastructure identified would not unacceptability impact on the town, to the extent that the development could be construed as not delivering sustainable development. The modifications to the developer contributions proposed would continue to serve the purposes of the original obligations equally well in this regard and ensure that high quality, planned development comes forward. It is recommended that the Local Planning Authority agree to modify the obligations on this basis.

## **RECOMMENDATION**

That the Local Planning Authority agree to modify the s106 agreement dated 22nd September 2021 to secure £5,235,408.84 (plus any further indexation where relevant) towards the following:

- Elmton Lane Contribution - £104,638
- New School Contribution - £3,528,988
- Road Network Contribution (per plot) - £335,046
- Primary Education Contribution - £712,598.78
- Secondary Education Contribution - £554,138.06

and to reduce the town park land area to 3.6ha and the extra care facility land to 0.8ha and extend the current clawback provisions / periods and scope of the contributions in favour of the education authority (land and financial contributions), with all other outstanding financial contributions to be deferred following viability review at an appropriate stage(s) in the future build out.

## **Equalities Statement**

*Section 149 of the Equality Act 2010 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination and*

*advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (i.e., “the Public Sector Equality Duty”).*

*In this case, there is no evidence to suggest that the proposals would have any direct or indirect negative impacts on any person with a protected characteristic or any group of people with a shared protected characteristic. The proposals would secure the critical developer contributions necessary to deliver sustainable development in the short term. Other infrastructure will be provided through other funding streams or through deferred contribution payments, where viability allows.*

### **Human Rights Statement**

*The specific Articles of the European Commission on Human Rights (‘the ECHR’) relevant to planning include Article 6 (Right to a fair and public trial within a reasonable time), Article 8 (Right to respect for private and family life, home and correspondence), Article 14 (Prohibition of discrimination) and Article 1 of Protocol 1 (Right to peaceful enjoyment of possessions and protection of property).*

*It is considered that assessing the effects that a proposal will have on individuals and weighing these against the wider public interest is an inherent part of the decision-making process. In carrying out this ‘balancing exercise’ in the above report, officers are satisfied that the potential for these proposals to affect any individual’s (or any group of individuals’) human rights has been addressed proportionately and in accordance with the requirements of the ECHR.*