

TOWN AND COUNTRY PLANNING ACT 1990
(as amended)

Appeal by Pentland Homes Ltd and Malcolm Jarvis Homes Ltd

**LAND AT POUND LANE, MAGPIE HALL ROAD, BOND LANE, AND
ASHFORD ROAD, KINGSNORTH, KENT**

EDUCATION MATTERS
Education Provision in Kingsnorth, Ashford, Kent

Kent County Council

PROOF OF EVIDENCE

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BA DipMS

PINS Reference: APP/E2205/W/23/3320146

LPA Ref: 15/00856/AS

Date: 14th September 2023

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1 Background

- 1.1 My name is Ben James Hunter. I hold a Bachelor of Arts and Diploma in Management Studies. I have been an Education Consultant for Education Facilities Management Ltd (EFM) since September 2017, and Associate Director of EFM since April 2022. Prior to this I was a Development Management Project Manager for Northamptonshire County Council (as was) from 2012, responsible for negotiating and securing Section 106 planning obligations for Education. Prior to this I was responsible for negotiating, securing and managing Section 106 planning obligations, predominantly Education-related, in an Officer role between 2008 and 2012. The majority of my professional career has been related to the provision of development infrastructure, with a focus on Education infrastructure.
- 1.2 I am experienced in giving evidence for Planning Inquiries including Local Plan Inquiries and Public Examinations. I am therefore aware of the application of the planning system in relation to these matters from both a developer and local authority perspective. I confirm that I understand that notwithstanding my instructions my primary duty is to help achieve the overriding objective by giving objective, unbiased opinion on matters within my expertise.
- 1.3 I am instructed to act for the Appellants in respect of this Appeal.
- 1.4 I confirm that the opinions expressed are my true and professional opinions.
- 1.5 EFM was instructed by Pentland Homes Ltd and Malcolm Jarvis Homes Ltd (**“the Appellants”**) in April 2023. I was appointed to review the Education landscape in order to establish whether harm was likely to be caused by this development proceeding, whether the existing facilities were able to accommodate the expected number of children that will be resident in the new housing, whether there was the ability of the existing facilities to grow should a need for new provision be established, and whether new infrastructure would be required on site to accommodate the children resident.
- 1.6 I was subsequently instructed by the Appellants to prepare this written Proof of Evidence to assist the Inspector in determining whether any harm is likely to arise in Kingsnorth, from an Education perspective, if this development was to receive a positive determination.



- 1.7 The Appellants and Kent County Council (“KCC”) are in agreement in relation to the level of Secondary School Education development mitigation necessary to accommodate the pupils that will be living on this development site. However, as will be outlined throughout this Proof of Evidence, this is not true of Primary School development mitigation, as the current request does not stand-up to scrutiny.

- 1.8 This document will demonstrate the following: a) KCC has not provided an appropriate level of evidence to justify the inclusion of any Primary School related planning obligations within the Section 106 Agreement (whether land or infrastructure contributions), and b) there is demonstrably no Education-related reason to refuse this development application.

- 1.9 If called during the Appeal proceedings, I would be happy to attend in order to further discuss the points raised below.

2 Introduction

2.1 This Appeal relates to an outline planning application (15/00856/AS) made by Pentland Homes Ltd and Malcolm Jarvis Homes Ltd (“the Appellants”) for a development of up to 550 dwellings in a mix of size, type and tenure on land at Pound Lane, Magpie Hall Road, Bond Lane and, Ashford Road, Kingsnorth, Kent.

2.2 The approximate outline of the development site can be seen below in Map 1:



Map 1: Approximate Site Boundary of land At Pound Lane, Magpie Hall Road, Bond Lane, And Ashford Road, Kingsnorth, Kent (via Google Earth)

2.3 The Application was being considered by Ashford Borough Council (“**ABC**”), who are Local Planning Authority (“**LPA**”). The education and children’s services authority for the area is Kent County Council (“**KCC**”). The term Local Education Authority (“**LEA**”) is no longer used by virtue of a 2010 statutory instrument (No. 1158) The Local Education Authorities and Children’s Services Authorities (Integration of Functions) Order 2010.

- 2.4 ABC is not a Community Infrastructure Levy (“CIL”) charging authority. On that basis the securing of Education development mitigation planning obligations is undertaken through Section 106 legal agreement.
- 2.5 This Appeal is due to non-determination on behalf of ABC, following the outline consent granted in 2018. Accordingly, during Appeal proceedings, the level of scrutiny on the requested planning obligations is that much more stringent.
- 2.6 KCC has requested the following in terms of development mitigation related to this Appeal scheme:

| KCC Planning Obligations | Project Detail | Rate per Dwelling |
|--------------------------|--|---|
| Education Land | Financial contribution towards the delivery of the new 2FE Primary School at the Court Lodge site | £590.95 per flat £2363.93 per house |
| Primary Schools | Financial contribution towards the delivery of the new 2FE Primary School at the Court Lodge site | £1134 per flat £4535 per house |
| Secondary Schools | Financial contribution towards new school provision at the Chilmington Green Secondary school or alternative new provision in the planning group | £1172.00 per flat £4687.00 per house |

Table 1: KCC Education Planning Obligation Summary (April 2020)

- 2.7 The ABC Planning Committee Report of 5th July 2023 states the following with regards to the Education request from KCC (paragraph 48):

Kent County Council Development Investment - as set out in the 2018 Report, KCC sought financial contributions from the development towards primary and secondary education, community learning, youth services, libraries and social care. In response to the April 2020 re-consultation, KCC sought contributions to the same

infrastructure and services as set out in 2018, in addition to a contribution to the provision of a materials recovery facility. No comments have been received from KCC in response to the 2022 re-consultation.

- 2.8 What this demonstrates is that the April 2018 request for planning obligations was carried over in to April 2020, and then subsequently no further comments were received from KCC in relation to the re-consultation.
- 2.9 There has been some significant changes to demographics and school projections between 2020 and 2023, which has had a significant impact on the legitimacy of the planning obligation request from a Primary School perspective. As will be discussed in this Proof of Evidence, birth numbers have fallen, and the impact has been a significant change in school projections, in that they are now showing large falls in the number of pupils expected to be living in the Planning Areas closest to this development site. This is discussed in detail throughout this Proof of Evidence.
- 2.10 This Proof of Evidence will demonstrate that the Primary School Education landscape has changed to the point that planning obligations at the rate they currently being requested are no longer CIL Regulation 122 (2) compliant. Firstly, however, this document will outline the Statutory and Policy Matters that govern Education, in order to put the site in to context:

3 Statutory & Policy Matters

3.1 There is a covenant between the State and its populace that has had statutory force for 153 years.¹ Namely that; wherever <my emphasis> a child shall live, who is not otherwise provided for, the State will provide a school in accordance with the statutory arrangement.² The covenant is not caveated by considerations of transience, fixed or temporary abode, nationality, residential status or home education authority and means that however children arrive within an area or are housed within an area, the local authority's statutory duty has to be met and is not a function of planning permission criteria.

3.2 **The Education Act 1996 (as amended) ("EA96"):** The primary Act relating to education is the Education Act 1996, which is; (a) a consolidating Act and (b) an Act amended from time to time by subsequent legislation. Unless otherwise indicated in this Proof as applying to education, all references are to the Education Act 1996 (as amended).

3.3 EA96 (at section 14(1)) states,

A local education authority³ shall secure that sufficient schools for providing – (a) primary education and (b) secondary education... are available for their area.

3.4 Sections 14(2) to 14(6) go on to explain what is meant by sufficient schools and that it includes implicitly that the requirement is for sufficient appropriate school places.

¹ The Elementary Education Act 1870 (section 5) thereafter Education Act 1921 (section 17), Education Act 1944 (section 8), Education Act 1996 (section 14)

² The Act actually says, "5. *There shall be provided for every school district a sufficient amount of accommodation in public elementary schools (as hereinafter defined) available for all the children resident in such district for whose elementary education efficient and suitable provision is not otherwise made, and where there is an insufficient amount of such accommodation, in this Act referred to as "public school accommodation," the deficiency shall be supplied in a manner provided by this Act*".

³ The local education authority has since 2010 been somewhat confusingly renamed 'local authority' to take account of the authority incorporating the duties of the children's services authority. For the purposes of clarity throughout this proof the term 'education authority' is used as the generic title to keep a clear separation from the planning authority.

- 3.5 EA96 (at Section 7) imposes a duty on “*every parent of every child of compulsory school age to cause him to receive efficient full-time education either by regular attendance at school or otherwise*”.
- 3.6 Section 14(1), together with s7, derives directly from s5 Education Act 1870 via s17 Education Act 1921 and s8 Education Act 1944. There have been no material changes over time, merely consolidating legislation, changes to school leaving ages and changes to terminology from time to time. It is, thus, a longstanding duty for the Council as successor to the local school boards.
- 3.7 EA 96 Section 11 requires the Education Secretary of State (i.e. the State) to exercise their powers in respect of those bodies in receipt of public funds which carry responsibility for securing school provision for promoting school education. The duty of the education authority (to secure sufficiency of provision) is to enable the State to discharge its responsibilities within the covenant. Thus, the original premise still holds true: for all children of statutory school age, who are not otherwise provided for, **the State provides a school**, <my emphasis> in accordance with the prevailing statutory provisions.
- 3.8 EA96 Section 14 Subsection 3A is a more recent modification to its duty through a requirement for the education authority to exercise its functions under this section with a view to increasing: (a) diversity in the provision of schools, and (b) increasing opportunities for parental choice, and was inserted into Section 14 by Section 2 Education and Inspections Act 2006 with effect from 25th May 2007.
- 3.9 Thus, the duty of the education authority is to enable the State to discharge its responsibilities within the covenant: but, with sufficient headroom to allow for the discharge of its S14 (3A) duties.
- 3.10 The Education Secretary of State has determined that those ‘otherwise provided for’ include those whom provision is made via a Section 106 agreement or the Community Infrastructure Levy. This makes legitimate planning obligations to fund or provide additional school places.
- 3.11 In securing sufficient schools for its area, an Education Authority assesses existing capacity and pupil numbers, data on births and migration, and how parental preferences are manifested. It forecasts (usually with a reasonable degree of

accuracy) the need for additional capacity in each school planning area for the ensuing five years for primary schools and seven years for secondary schools.

- 3.12 The Education Authority then passes this information to the State [currently the Education and Skills Funding Agency (“ESFA”) being the school’s operational arm of the Department for Education (“DfE”)] by way of the School Capacity Returns (“SCAP”) and the State allocates additional school places as and where shown to be necessary. Each additional school place is accompanied by formula driven capital funding associated with that place. This is known as Basic Need funding. Basic Need allocations to an education authority are aggregated into a single capital sum to be dispensed by the education authority to each project according to its needs. In calculating a Basic Need requirement, the ESFA allows a 2% headroom for each age group across the Planning Area to allow for within year incidental movement of pupils (CD13/3).
- 3.13 Basic Need funding on a per-pupil-place basis covers increases in pupil numbers forecast, by the Education Authority, beyond existing and planned capacity, to arise because of rising birth rates, rising survival rates, rising inward migration rates and new housing (except when covered by Section 106 agreements or CIL).
- 3.14 The Basic Need pupil place funding system recognises, that whether or not a Section 106 agreement or a CIL charge has been applied by an LPA to a planning permission, is a matter purely for the LPA. It recognises the duty of the LPA to secure sufficient housing for its population and its growth agenda. The State holds that the ability or not of a planned housing scheme to fund school places necessary should not sway the determination of that application by the LPA. The disapplication of Basic Need provision where there is a Section 106 agreement or CIL charge is simply to avoid double-funding.
- 3.15 **Securing developer contributions for education (April 2019, updated August 2023) (CD13/1):**
- 3.16 In order to provide further clarity to education authorities, the DfE produced and published a Guidance document related to delivering schools to support housing growth under the Education Act 1996. This is a non-statutory guidance document for local authorities planning for education to support housing growth and seeking

associated developer contributions known as securing developer contributions for education. This document states at paragraph 7 the following:

It is important that the impacts of development are adequately mitigated, requiring an understanding of:

- *The education needs arising from development, based on an up-to-date pupil yield factor;*
- *The capacity of existing schools that will serve development, taking account of pupil migration across planning areas and local authority boundaries;*
- *Available sources of funding to increase capacity where required; and*
- *The extent to which developer contributions are required and the degree of certainty that these will be secured at the appropriate time.*

3.17 The non-statutory Guidance is reinforced because it is endorsed by PPG's 007 Reference ID: 23b-007-20190315 and 008 Reference ID: 23b-008-20190315:

What funding is available for education?

Government provides funding to local authorities for the provision of new school places, based on forecast shortfalls in school capacity. There is also a central programme for the delivery of new free schools.

Funding is reduced however to take account of developer contributions, to avoid double funding of new school places. Government funding and delivery programmes do not replace the requirement for developer contributions in principle.

Plan makers and local authorities for education should therefore agree the most appropriate developer funding mechanisms for education, assessing the extent to which developments should be required to mitigate their direct impacts.

The Department for Education has published [guidance for local education authorities on developer contributions for education](#).

Paragraph: 007 Reference ID: 23b-007-20190315

Revision date: 15 03 2019

What contributions are required towards education?

Plans should support the efficient and timely creation, expansion and alteration of high-quality schools. Plans should set out the contributions expected from development. This should include contributions needed for education, based on known pupil yields from all homes where children live, along with other types of infrastructure including affordable housing.

Plan makers and decision makers should consider existing or planned/committed school capacity and whether it is sufficient to accommodate proposed development within the relevant school place planning areas. Developer contributions towards additional capacity may be required and if so this requirement should be set out in the plan. Requirements should include all school phases age 0-19 years, special educational needs (which could involve greater travel distances), and both temporary and permanent needs where relevant (such as school transport costs and temporary school provision before a permanent new school opens).

Plan makers should also consider whether pupils from planned development are likely to attend schools outside of the plan area and whether developer contributions may be required to expand schools outside of the area.

When local authorities forward-fund school places in advance of developer contributions being received, those contributions remain necessary as mitigation for the development.

The Department for Education has published [guidance for local education authorities on developer contributions for education](#).

3.18 KCC has adopted Guidance in relation to Education planning obligations entitled Kent County Council Developer Contributions Guide (2023) (CD13/6). At paragraph 3.2.1, KCC state the following:

KCC will take a consistent approach to assessing the need for developer contributions, but the specific circumstances of each case will be considered on its own merit. For example, this will include assessing the current capacity of KCC infrastructure/services relevant to the development in question, such as school capacities. It will provide evidence that the infrastructure is required (in whole or in part) to serve the proposed development, considering any existing local surplus capacity.

3.19 As discussed in Section 2 of this Proof of Evidence, KCC has not updated their consultation response to take account of existing surplus capacity, or to ascertain whether the request continues to fulfil the tests of CIL Regulation 122. This is contrary to their current adopted Policy, as outlined above.

3.20 KCC’s adopted Guidance discusses how they establish the child yields of new developments within the Technical Appendix 6: Education – Primary and Secondary. This includes the following child yields:

| | Pupil Yield | |
|-----------|----------------------|-------------------------------------|
| | Primary (Mainstream) | Secondary (Mainstream – Years 7-11) |
| Per House | 0.28 | 0.20 |
| Per Flat | 0.07 | 0.05 |

Table 2: KCC Child Yield Multipliers

3.21 Utilising the child yield figures in Table 2 against a development of 550 dwellings you get the following:

- 550 dwellings x 0.28 = 154 Primary School aged children; and

- 550 dwellings x 0.2 = 110 Secondary School aged children.

3.22 Both of these figures can be considered the worst-case scenario, as they do not factor in any flatted development. Furthermore, KCC state the following at paragraph 3.1.2 of Appendix 6:

KCC will not seek contributions from the following:

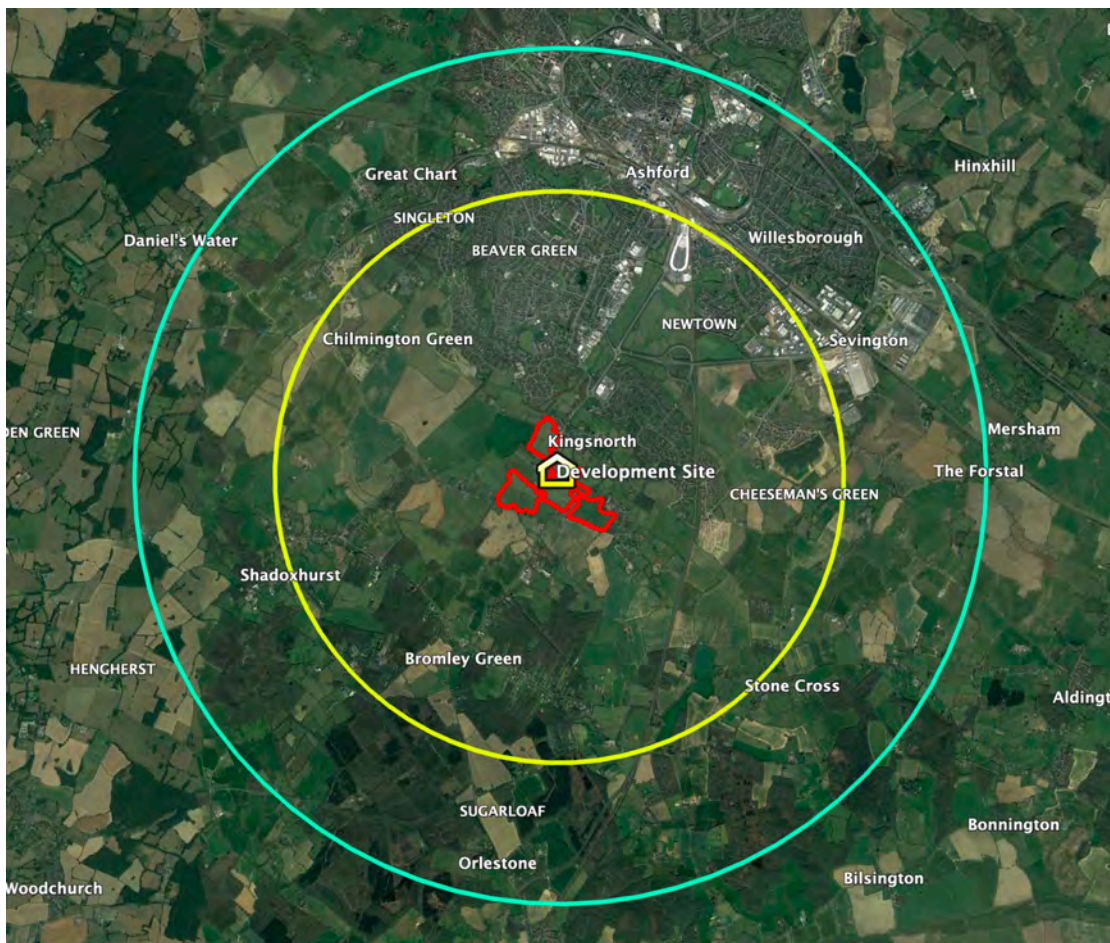
- *One-bed dwellings of less than 56sqm GIA*
- *Homes restricted in perpetuity to persons over 55 years of age*
- *Student accommodation*
- *C2 Dwellings*
- *Sites specifically set aside for transient Gypsy and/or Traveller communities*

3.23 It is the figures of 154 Primary School aged pupils, and 110 Secondary School aged pupils, that will be assessed against the capacity in the remainder of the Proof of Evidence.

3.24 Turning now to the Education landscape in the vicinity of the development site:

4 Primary School Provision

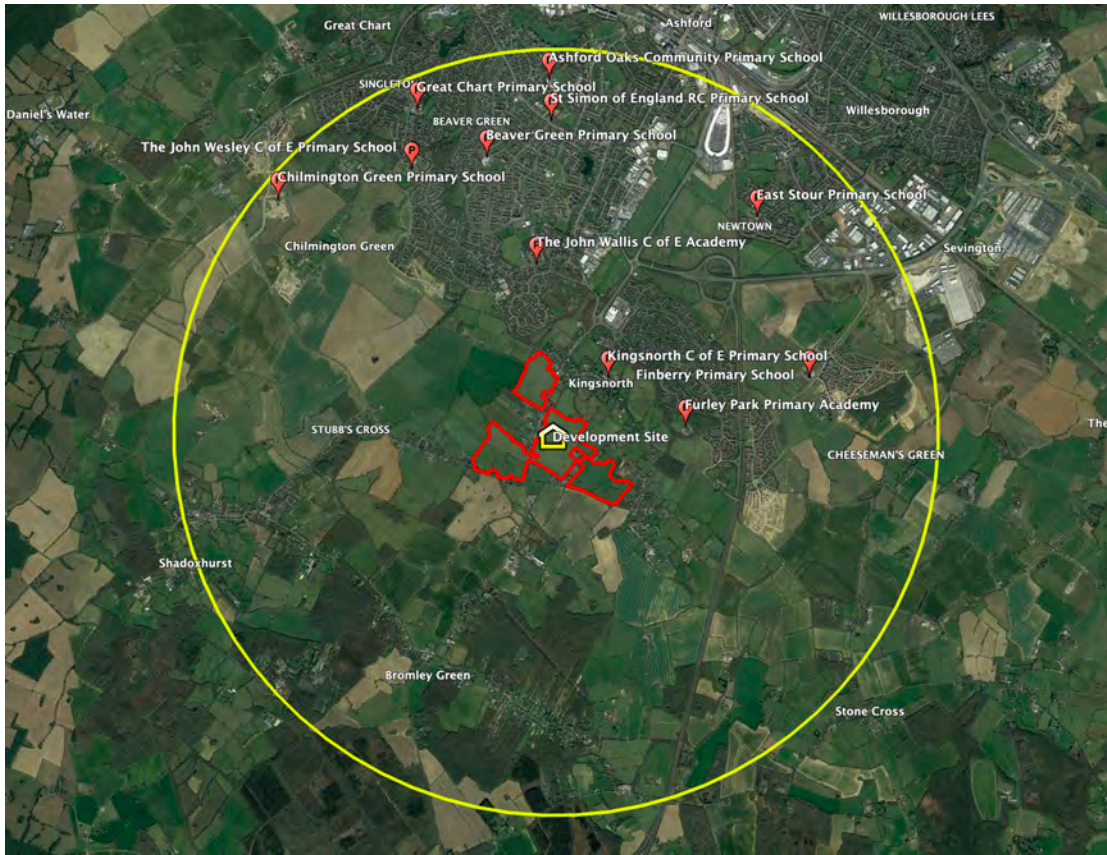
4.1 Schools should be operationally full to meet the financial audit requirement for best value from public assets. This is demonstrative of a properly functioning school system. School funding is predicated on the number of pupils that are on a school’s roll, so it is in the best interest of schools to maximise intake within their capacity. Accordingly, many schools take from a wide catchment area and some enrol over capacity.



Map 2: Two- and three-mile radius of the development site (via Google Earth)

4.2 The statutory rules on enrolment are that whilst schools may have a catchment area and ordered criteria for admissions, the rules only apply if the school is oversubscribed. Otherwise, whoever applies is admitted irrespective of where they live. This is known as ‘More Open Enrolment’. It fosters the expression of parental preferences for schools that are not necessarily those closest to home.

- 4.3 KCC operates under a statutory duty (S14 Education Act 1996) 'to secure sufficient schools'. The term 'sufficient' is not defined and thus reliance is placed on the dictionary definition – enough – adequate – not too little and not too much. Thus, as set out above, the normal state for a school is that it is operationally full.
- 4.4 The remainder of this document will be looking at the Education landscape, and discuss the benefits that the development can offer the residents in the new housing, and the wider area.
- 4.5 Because of the statutory requirement (s444 EA 96) to fund or provide transport to and from school when the nearest available school is beyond the statutory walking distance, the standard assessment is to consider all children under 8-years of age within a 2-mile walking distance, and all children 8-years and old within a 3-mile walking distance of the development (see Map 2). The 2 and 3-mile criteria are the distances prescribed in the Education Act beyond which local authorities are required to provide/fund transport where the nearest available school is further away.
- 4.6 It is the intention of the planning system and the provision of state-funded schools that the ideal mode of travel to and from school is walking or cycling. Most Education Authorities don't draw the distinction based on age, and utilise 2-miles for Primary pupils, and 3-miles for Secondary pupils. However, it is also accepted that local authorities have a duty to provide school transport to the nearest available education establishment in the event that places are not available within the distances stated above.
- 4.7 There are eleven independent, state funded, non-selective schools accommodating Primary School aged children within a two-mile radius of the development site. Of these schools, only five are within the statutory two-mile walking distance, and thus only these schools have been considered appropriate capacity for this development. The schools are all within the KCC administrative area, and are organised across two Primary Planning Areas.
- 4.8 The location of the schools in relation to the development site can be seen below in Map 3:



Map 3: Primary Schools in relation to the development site (via Google Earth)

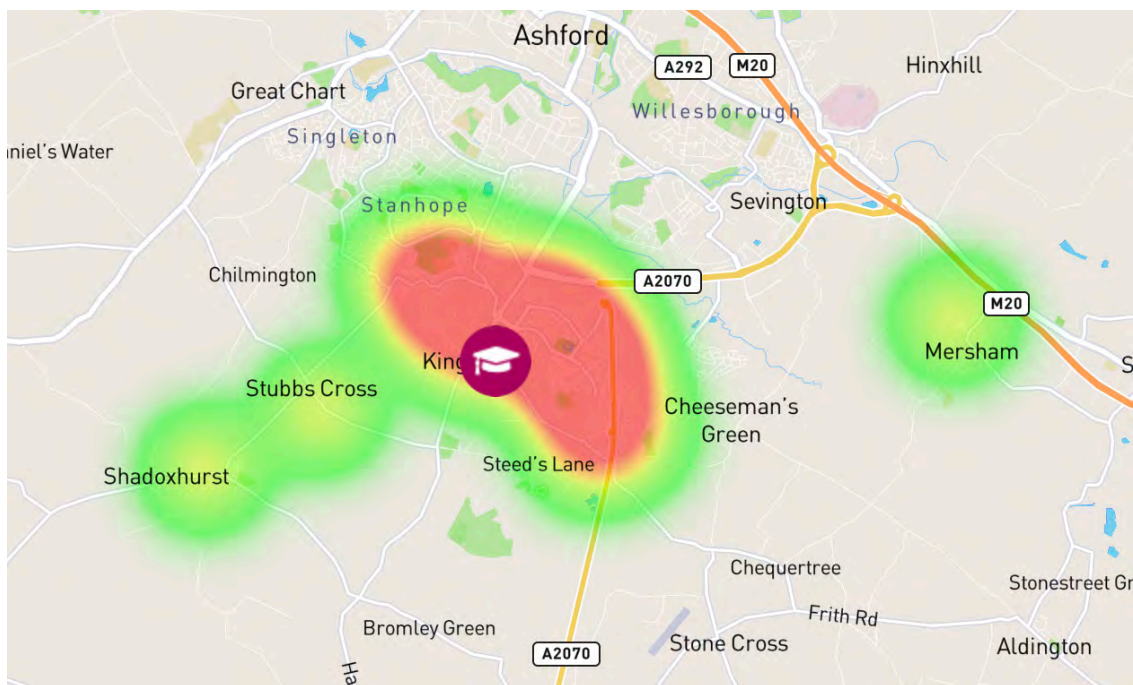
4.9 The latest school roll data in the public domain (2022/23 academic year) for these schools can be seen below in Table 3:

| Primary School Name | Postcode | LA Name | Distance (miles) | Capacity | PAN | NoR | Yr R | Yr 1 | Yr 2 | Yr 3 | Yr 4 | Yr 5 | Yr 6 |
|---------------------------------------|----------|---------|------------------|--------------|------------|--------------|------------|------------|------------|------------|------------|------------|------------|
| Kingsnorth C of E Primary School | TN23 3EF | Kent | 0.7 | 420 | 60 | 420 | 59 | 60 | 60 | 61 | 60 | 68 | 52 |
| The John Wallis C of E Academy | TN23 3HG | Kent | 1.3 | 420 | 60 | 406 | 60 | 59 | 56 | 59 | 54 | 66 | 52 |
| Furley Park Primary Academy | TN23 3PA | Kent | 1.6 | 630 | 90 | 575 | 69 | 71 | 72 | 90 | 89 | 86 | 98 |
| Beaver Green Primary School | TN23 5DA | Kent | 1.9 | 420 | 60 | 420 | 60 | 60 | 60 | 61 | 60 | 63 | 56 |
| The John Wesley C of E Primary School | TN23 5LW | Kent | 1.9 | 450 | 60 | 462 | 61 | 62 | 63 | 62 | 61 | 73 | 80 |
| TOTAL | | | | 2,340 | 330 | 2,283 | 309 | 312 | 311 | 333 | 324 | 356 | 338 |
| Surplus | | | | | | | 21 | 18 | -11 | -33 | -24 | -56 | -38 |
| Available Surplus % | | | | | | | 6% | 5% | -3% | -10% | -7% | -17% | -12% |

Table 3: School Roll (January 2023) (via Open Government License)
PAN = Planned Admission Number; NoR = Number on Roll

4.10 The closest school to the development site, at 0.7 miles walking distance from a mid-point of the proposed new housing, is Kingsnorth Church of England Primary School. This is a Two Form of Entry (two classes of 30 pupils per Year Group – “2FE”) Primary School that, as of the 2022/23 academic year, was full.

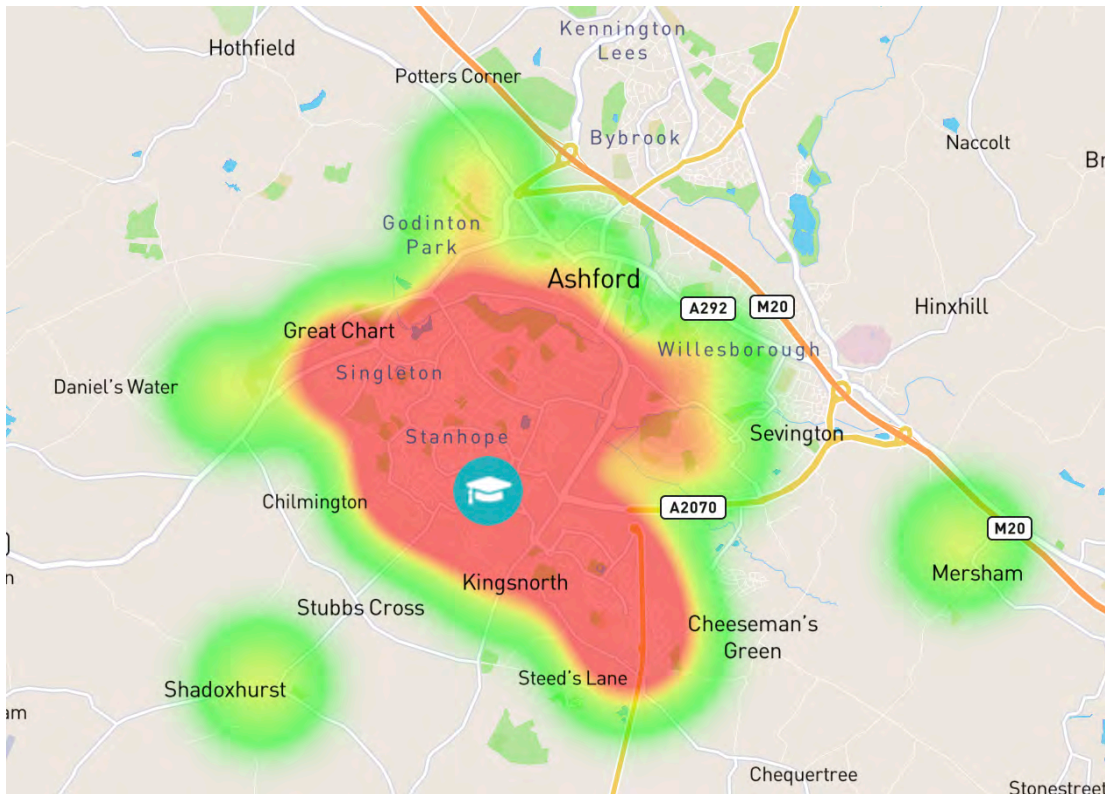
4.11 However, this school is maintaining its high roll numbers by drawing pupils from a wide geographical area, including pupils from Shadoxhurst to the west, which is over three miles from the school, and Mersham to the east, which is over four miles from the school. On that basis, there is likely to be more capacity at the school for local children than is immediately obvious due to the admissions criteria of the school, which utilises the distance between the child’s permanent home address and the school when allocating places:



Map 4: Kingsnorth C of E Primary School Catchment Area Heat Map (via schoolguide.co.uk)

4.12 The second closest school to the development site is The John Wallis C of E Academy. This is a 2FE Primary School, that operates as an “all-through” facility, in that the Primary School aged pupils are automatically accepted in to Year 7 at Secondary transfer at the Secondary phase of the school, on an adjacent site. This school is 1.3 miles walking distance from the development site, and as of the 2022/23 academic year was full.

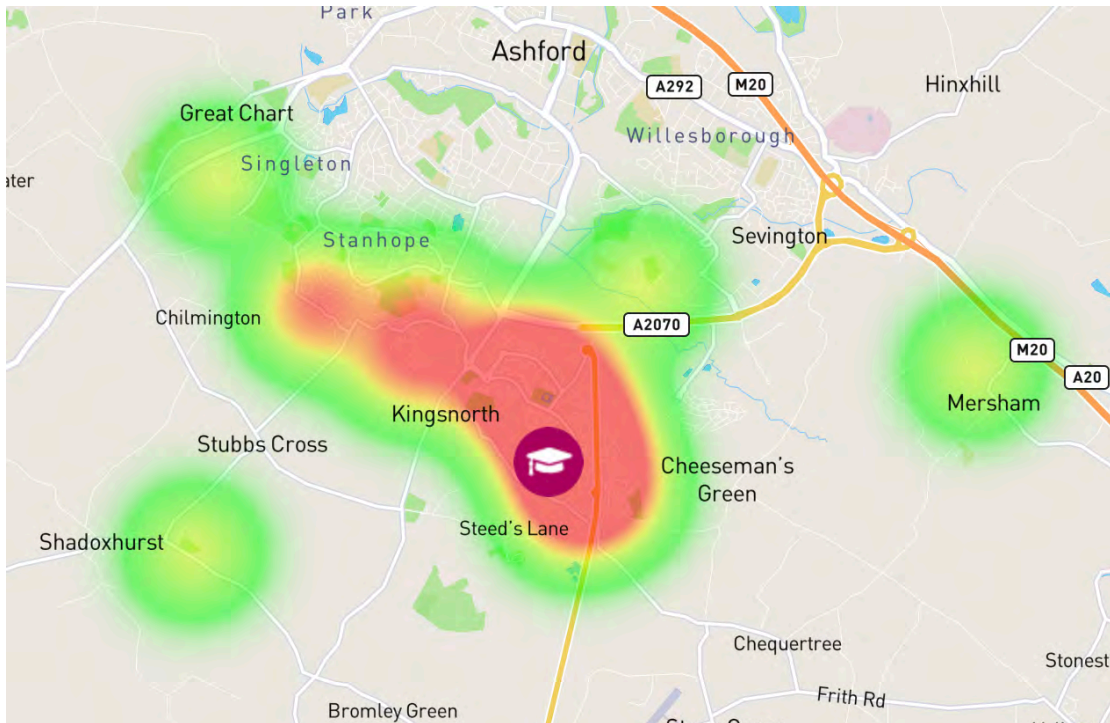
4.13 This school draws pupils from the south of Ashford, as shown in the Map below:



Map 5: The John Wallis C of E Academy catchment Area Heat Map

- 4.14 The third closest school to the development site, at 1.6 miles walking distance, is Furley Park Primary Academy. This is a 3FE facility that, as of the 2022/23 academic year, only accepted 69 pupils in to Reception out of 90 spaces, which is almost the entirety of this development’s Reception child yield. Reception Year also has the lowest roll number than any other across the school, suggesting falling rolls. Only Year 3 and Year 6 were at capacity.

- 4.15 When looking at the area that this school draws pupils from, it is from wide geographical area, and this development is well within the area that the school accepts students from.



Map 6: Furley Park Primary Academy Catchment Area Heat Map

- 4.16 The remaining two schools are right on the periphery of the “acceptable walking distances” parameter, and were full, as of the 2022/23 academic year.
- 4.17 What the above demonstrates is that there is currently surplus capacity at a school that will serve this development that has not been taken in to account in calculating the appropriate planning obligation from this development. This is contrary to the adopted Policy of KCC discussed in Section 3 of this Proof of Evidence which states that *[KCC] will provide evidence that the infrastructure is required (in whole or in part) to serve the proposed development, considering any existing local surplus capacity.*
- 4.18 However, this is not the whole story. When the Department for Education assess whether funding is necessary to expand an area via its Basic Need allocations (see Section 3 of this Proof of Evidence) it looks at the future rolls of the schools through its School Capacity (“SCAP”) Projections. This development will not be accommodating pupils on site for at least one to two years following a positive determination, so it will be necessary to ascertain what the capacity is forecast to look like in the future.

4.19 **School Capacity (“SCAP”) Projections**

4.20 The closest school to this development, as well as the third, sixth, and ninth closest schools to the development site, are grouped together with three additional schools to form the Primary – Ashford East Planning Area. The schools have a combined capacity of 2,970 pupil places:

| Primary Planning A... | Secondary Planni... | School Name | Time Period | School Places |
|-----------------------|---------------------|---|-------------|---------------|
| 8860105 | z | East Stour Primary School | 202122 | 420 |
| 8860105 | z | Willesborough Junior School | 202122 | 510 |
| 8860105 | z | Kingsnorth Church of England Primary School | 202122 | 420 |
| 8860105 | z | Willesborough Infant School | 202122 | 360 |
| 8860105 | z | Finberry Primary School | 202122 | 420 |
| 8860105 | z | Mersham Primary School | 202122 | 210 |
| 8860105 | z | Furley Park Primary Academy | 202122 | 630 |

Table 4: Primary – Ashford East Planning Area Schools

4.21 According to the most recent SCAP Projections, which were verified by the DfE and published in the public domain in March 2023, and include the child yield of all developments approved within the area up to the point that the projections were produced (around September 2022), by the 2026/27 academic year (at which point this development is expected to be accommodating pupils within the houses) the Ashford East Primary Planning Area is forecast to have 389 spare places, due to forecast falling roll numbers. This number of spare places far exceeds the child yield of this development:

| LA name | Year | Planning Area Code | Planning Area Name | Planning Area Phase | nc Year Group | Pupil Forecast and ... |
|---------|--------|--------------------|------------------------|---------------------|---------------|------------------------|
| Kent | 202122 | 8860105 | Primary - Ashford East | Primary | Primary total | 2703 |
| Kent | 202223 | 8860105 | Primary - Ashford East | Primary | Primary total | 2681 |
| Kent | 202324 | 8860105 | Primary - Ashford East | Primary | Primary total | 2645 |
| Kent | 202425 | 8860105 | Primary - Ashford East | Primary | Primary total | 2652 |
| Kent | 202526 | 8860105 | Primary - Ashford East | Primary | Primary total | 2630 |
| Kent | 202627 | 8860105 | Primary - Ashford East | Primary | Primary total | 2581 |

Table 5: KCC SCAP Forecasts

4.22 The second, fourth, fifth, seventh, eighth, tenth, and eleventh closest schools to the development site are grouped together to form the Primary – Ashford South Area Planning Area. The schools have a combined capacity of 2,730 pupil places:

| Primary Planning A... | Secondary Planni... | School Name | Time Period | School Places |
|-----------------------|---------------------|---|-------------|---------------|
| 8860106 | z | Chilmington Green Primary School | 202122 | 420 |
| 8860106 | z | St Simon of England Roman Catholic Primary | 202122 | 210 |
| 8860106 | z | The John Wesley Church of England Methodist | 202122 | 450 |
| 8860106 | z | Great Chart Primary School | 202122 | 420 |
| 8860106 | z | Beaver Green Primary School | 202122 | 420 |
| 8860106 | z | Ashford Oaks Community Primary School | 202122 | 420 |
| 8860106 | 8861301 | The John Wallis Church of England Academy | 202122 | 1790 |

Table 6: Primary – Ashford South Planning Area Schools

4.23 In the 2021/22 academic year, the schools had a combined roll of 2,467, which was 263 spare places. However, by the 2026/27 academic year, the roll is expected to fall to 2,393, which means that there is expected to be 337 spare places, which exceeds the child yield of this development:

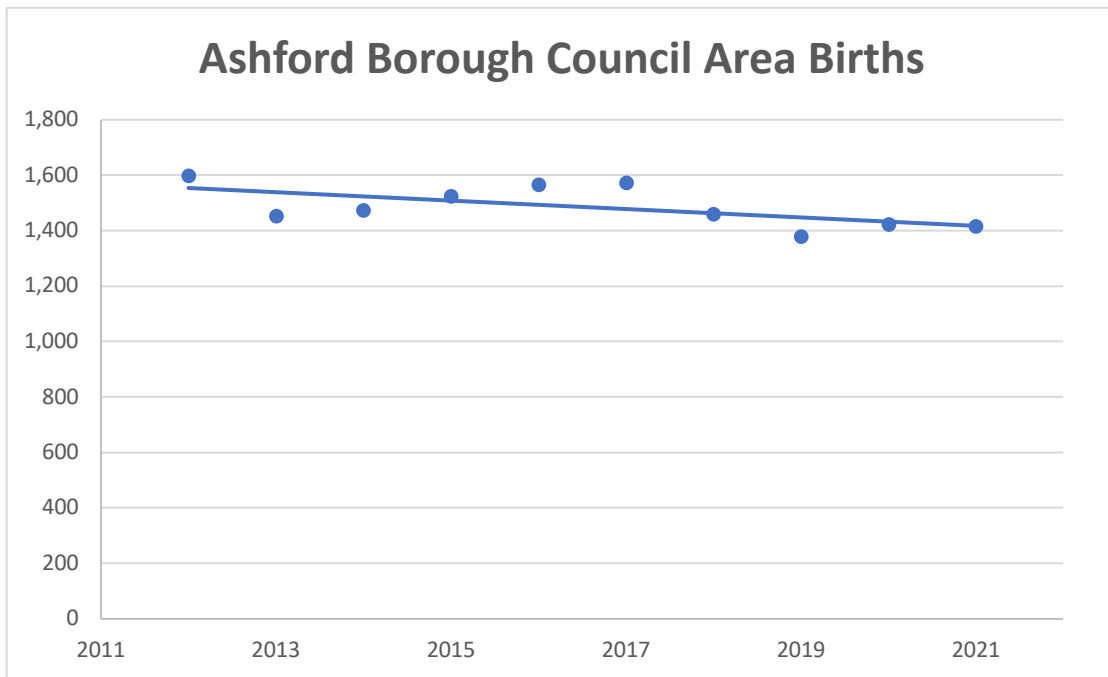
| LA name | Year | Planning Area Code | Planning Area Name | Planning Area Phase | nc Year Group | Pupil Forecast and ... |
|---------|--------|--------------------|-------------------------|---------------------|---------------|------------------------|
| Kent | 202122 | 8860106 | Primary - Ashford South | Primary | Primary total | 2467 |
| Kent | 202223 | 8860106 | Primary - Ashford South | Primary | Primary total | 2465 |
| Kent | 202324 | 8860106 | Primary - Ashford South | Primary | Primary total | 2460 |
| Kent | 202425 | 8860106 | Primary - Ashford South | Primary | Primary total | 2431 |
| Kent | 202526 | 8860106 | Primary - Ashford South | Primary | Primary total | 2411 |
| Kent | 202627 | 8860106 | Primary - Ashford South | Primary | Primary total | 2393 |

Table 7: KCC SCAP Forecasts

4.24 This means that the two Primary Planning Areas that contain schools which will directly serve this development site are forecast to have a combined 726 spare places, which is the child yield of 2,593 dwellings prior to the schools being full. This shows two things: 1) the DfE will not be allocating any funding to these areas to expand provision because there is no Business Case to do so, and 2) there is significantly more spare capacity than the entirety of this development’s child yield at the point the development will accommodate school aged children.

4.25 This development is forecast to generate a maximum of 154 Primary School aged pupils (as discussed in Section 3 of this Proof of Evidence). This is 21% of the number of spare places that will be located within the two Primary Planning Areas that contain schools that could serve this development. This means that the request for both Primary Infrastructure and Primary School Land fails the tests of CIL Regulation 122 (2), as it cannot be said that planning obligations are necessary to make the development acceptable in planning terms.

4.26 The fall in pupil numbers is not surprising. In 2021 there were 1,415 births in the ABC administrative area, compared to 1,597 in 2012. This is a reduction of over 11% in 9 years, as shown below. Births are falling as a trend:



Graph 1: ABC Administrative Area Births

4.27 Turning now to discuss the neighbouring developments of Chilmington Green (5,750 homes) and Court Lodge (950 homes), that with this development form the Ashford Garden Community:

4.28 **Chilmington Green:** This development is forecast to generate a maximum of 1,610 Primary School pupils, based on the child yield as outlined in Section 3 of this Proof of Evidence. The Section 106 for Chilmington Green includes land and funding for four 2FE Primary Schools, which is 1,680 pupil places. This means that the development is building in spare capacity to the area, thus further reducing the justification for full planning obligations from this development.

4.29 As this development is fully mitigating its impact, whilst also building in spare capacity to the area, the forecast future spare capacity in the Kingsnorth Primary area cannot be allocated to pupils of this development, as that would be double-counting.

- 4.30 **Court Lodge:** This development has yet to receive planning permission, and thus does not have a signed Section 106 agreement. However, what should be noted is that KCC has requested land for a 2FE Primary School at nil cost from this development. Were KCC to receive this, it would be in public ownership, and thus it would be inappropriate to request funding towards something that had already been received in its entirety for no cost. Once land is owned by KCC they cannot charge anyone to acquire it. This means that the request for funding towards Primary School Land does not fulfil the tests of CIL Regulation 122.
- 4.31 The consultation response to the Court Lodge development (dated 20th May 2020) (CD13/4) states the following:
- A **Primary School site of 2.05ha** is required to accommodate a school capable of being expanded to 2 Forms of Entry in accordance with KCC policy. The Site should be transferred to KCC in accordance with the attached General Site Transfer Requirements (Appendix 4) and Site Service Requirements (Appendix 5), with a Licence for early access to allow County Surveyor site investigations prior to transfer and **provided at nil cost**.*
- 4.32 As discussed, if KCC are successful in acquiring the land at nil cost, then the request for contributions towards Land Costs are clearly excessive, and do not fulfil the tests of CIL Regulation 122, as once land is owned by KCC they cannot charge anyone to acquire it.
- 4.33 The final point to make in relation to Court Lodge is that the development has yet to receive a positive determination, and has no signed Section 106 agreement. If the site does not come forward at an appropriate juncture, then KCC would have to consider alternative mitigation options. The point that this Proof outlines is that when the Appeal site is building out and generating pupils, KCC forecasts that there will be more than sufficient capacity to accommodate the pupils generated, making planning obligations unnecessary to make the development acceptable in planning terms. On that basis, they should be struck from the Section 106 agreement.
- 4.34 KCC produced a Commissioning Plan for Education Provision in Kent (2023-2027) (CD13/5) which states the following for Ashford East:

Ashford East Planning Group

Although forecasts suggest a significant level of surplus places across the forecast period (17.2% surplus capacity across Year R 2031-32). The level of surplus places will reduce as existing, permitted and allocated sites come forward. This included: Finberry, Waterbrook, New Town Works, Park Farm, Court Lodge and Willesborough Lees.

The Local Plan makes provision for a new 2FE primary school to be incorporated into the 'Court Lodge' development area, to meet the longer-term primary education needs driven by that development. As the masterplan for the development is still in progress, we would not expect the new primary school to be available until the latter half of this decade.

- 4.35 This confirms the significant (KCC's word) spare capacity in the Planning Area that this development will be located in. To discuss the specific housing developments referenced which are expected to take up spare capacity:
- i. **Finberry:** this development was opened in June 2014, and included a Primary School (Finberry Primary School) that opened in 2017. The development is significantly advanced, and the child yield of the development will be included in the projections discussed in Table 4. There is a potential in the Local Plan for an additional 300 dwellings (Policy S14);
 - ii. **Waterbrook:** Waterbrook Park is a 130-acre mixed commercial/residential land holding. Phase 1 is complete and is fully operational. Phase 2 has outline planning for B1, B2, and B8. There are no residential units at present therefore the child yield of the development is expected to be zero. The Local Plan details a potential 350 dwellings (Policy S16);
 - iii. **Newtown Works:** This is a TV and Film production space project including a hotel, restaurant and car park. There are 300 apartments in the Grade II listed locomotive sheds, that are expected to have a very low child yield due to the type of dwelling that is being delivered. Assuming a worst-case scenario of 300 two-bedroom plus apartments, the child yield would be

expected to be 21 Primary School aged children (see Section 3 of this Proof) (Policy S6);

- iv. **Park Farm:** The site south east of Bridgefield is proposed for residential development with an indicative capacity of 325 dwellings (Policy S14);
- v. **Court Lodge:** As discussed above, this development is delivering a new Primary school, and therefore cannot be assigned spare capacity due to double-counting; and
- vi. **Willesborough Lees:** The site south east of the William Harvey Hospital is allocated for residential development with an indicative capacity of 220 dwellings (Policy S17). However, this is now a build complete site with only one house left to sell; as such, their child yield will be included in Table 7 and adding this again would be double-counting.

4.36 Each of the developments outlined above will have to mitigate their impact based on the school data at the time they come forward. Whilst these are sites allocated in the Local Plan, there is no guarantee that they will come forward, and some of them may come forward late in the Local Plan period. You cannot reserve school capacity for developments that may or may not come forward.

4.37 However, what should be noted is that the combined child yield of Finberry (300 dwellings), Waterbrook (350 dwellings), Newtown Works (300 apartments), Park Farm (325 dwellings), and Kingsnorth Green (550 dwellings) is a maximum (prior to the removal of any non-child-generating dwellings) of 448 Primary School aged children, or 64 per Year Group.

4.38 KCC state that there are 420 places per Year Group in Ashford East (see the Table below), and that by 2031/32 there will be 72 spare places in Reception. If the whole planning area has a capacity of 2,940 pupil places, and over 17% spare capacity, then the entirety of the child yields of the developments discussed above could be accommodated without the need for expansion:

Primary - Year R surplus/deficit capacity if no further action is taken

| Planning Group name | 2021-22 capacity | 2021-22 (A) | 2022-23 (F) | 2023-24 (F) | 2024-25 (F) | 2025-26 (F) | 2026-27 (F) | 2027-28 (F) | 2028-29 (F) | 2029-30 (F) | 2030-31 (F) | 2031-32 (F) | 2031-32 capacity |
|--------------------------|------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|------------------|
| Chilham | 15 | 1 | 1 | 1 | 4 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 15 |
| Challock and Charing | 50 | 3 | 2 | 1 | 0 | -5 | -9 | -5 | -5 | -6 | -6 | -9 | 50 |
| Ashford North | 450 | 39 | -23 | 65 | 45 | 33 | 27 | 24 | 19 | 13 | 8 | 4 | 450 |
| Ashford Rural East | 80 | 6 | 16 | 8 | 13 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 80 |
| Ashford East | 420 | 52 | 31 | 90 | 42 | 89 | 86 | 84 | 82 | 78 | 75 | 72 | 420 |
| Ashford South | 390 | 29 | 48 | 86 | 85 | 79 | 74 | 72 | 69 | 65 | 59 | 54 | 390 |
| Ashford Rural West | 80 | 4 | -4 | 4 | 1 | -8 | -8 | -7 | -6 | -5 | -5 | -4 | 80 |
| Hamstreet and Woodchurch | 71 | 11 | 14 | 10 | 8 | 12 | 11 | 11 | 10 | 9 | 8 | 7 | 71 |
| Tenterden North | 65 | 8 | -1 | 2 | 1 | 4 | 4 | 4 | 4 | 4 | 5 | 6 | 65 |
| Tenterden South | 94 | 13 | 6 | 10 | 0 | 12 | 12 | 13 | 13 | 14 | 14 | 15 | 94 |
| Ashford | 1,715 | 166 | 91 | 277 | 199 | 232 | 215 | 211 | 200 | 187 | 175 | 163 | 1,715 |

Table 8: Spare Capacity across Ashford Schools

- 4.39 This further demonstrates that planning obligations are excessive and not necessary to make the development acceptable in planning terms. If any one of the developments discussed in paragraph 4.34 do not come forward, then there is forecast to be more spare capacity throughout the Planning Area. If they all come forward at once the schools are expected to be close to full, but not over-capacity.
- 4.40 On the basis of the above, planning obligations for Primary School Infrastructure and Primary School Land Costs should be struck from the Section 106 agreement due to the lack of evidence for their requirement.
- 4.41 Finally, to discuss the Secondary School phase:

5 Secondary School Provision

5.1 There are four state-funded, non-selective, non-fee-charging, independent schools accommodating Secondary School aged children that could directly serve this development. The schools are organised across two Secondary Planning Areas, all within the KCC administrative area.

5.2 The location of the schools in relation to the development site can be seen below:



Map 7: Schools within a Three-Mile Radius of the Development Site (via Google Earth)

5.3 The latest school roll data in the public domain (2022/23 academic year) for these schools can be seen below:

| Secondary School Name | Postcode | LA Name | Distance (miles) | Capacity | PAN | NoR 7-11 | Yr 7 | Yr 8 | Yr 9 | Yr 10 | Yr 11 | Post 16 |
|------------------------------------|----------|---------|------------------|--------------|------------|--------------|------------|------------|------------|------------|------------|------------|
| The John Wallis School | TN23 3HG | Kent | 1.3 | 1,300 | 210 | 1,181 | 268 | 233 | 235 | 239 | 206 | 122 |
| The North School | TN24 8AL | Kent | 3 | 1,265 | 215 | 1,128 | 239 | 236 | 233 | 219 | 201 | 136 |
| The Norton Knatchbull School | TN24 0QL | Kent | 3 | 1,380 | 210 | 1,001 | 186 | 210 | 213 | 205 | 187 | 251 |
| Highworth Grammar School for Girls | TN24 8UD | Kent | 3.6 | 1,500 | 210 | 1,089 | 209 | 217 | 220 | 221 | 222 | 453 |
| TOTAL | | | | 5,445 | 845 | 4,399 | 902 | 896 | 901 | 884 | 816 | 962 |
| Surplus | | | | | | | -57 | -51 | -56 | -39 | 29 | |
| Available Surplus % | | | | | | | -7% | -6% | -7% | -5% | 3% | |

Table 9: School Roll Data (January 2022) (via Open Government License)

PAN = Planned Admission Number; NoR = Number on Roll

5.4 As of the 2022/23 academic year, the schools were collectively 174 pupil places over capacity.

5.5 The John Wallis Academy and The North School are grouped with two additional schools to form the Secondary Non-Selective – Ashford Planning Area. The schools have a combined capacity of 4,860 pupil places:

| Secondary Planning Area | School Name | Time Period | Secondary Capacity |
|-------------------------|---|-------------|--------------------|
| 8861301 | Wye School | 202122 | 600 |
| 8861301 | Towers School and Sixth Form Centre | 202122 | 1625 |
| 8861301 | The John Wallis Church of England Academy | 202122 | 1370 |
| 8861301 | The North School | 202122 | 1265 |

Table 10: Secondary NS – Ashford Planning Area Schools

5.6 In the 2021/22 academic year, the schools were full. By the 2028/29 academic year, they are forecast to be 481 places over capacity:

| LA name | Year | Planning Area Code | Planning Area Name | Planning Area Phase | no Year Group | Pupil Forecast and ... |
|---------|--------|--------------------|------------------------|---------------------|-----------------|------------------------|
| Kent | 202122 | 8861301 | Secondary NS - Ashford | Secondary | Secondary total | 4471 |
| Kent | 202223 | 8861301 | Secondary NS - Ashford | Secondary | Secondary total | 4737 |
| Kent | 202324 | 8861301 | Secondary NS - Ashford | Secondary | Secondary total | 5011 |
| Kent | 202425 | 8861301 | Secondary NS - Ashford | Secondary | Secondary total | 5155 |
| Kent | 202526 | 8861301 | Secondary NS - Ashford | Secondary | Secondary total | 5198 |
| Kent | 202627 | 8861301 | Secondary NS - Ashford | Secondary | Secondary total | 5270 |
| Kent | 202728 | 8861301 | Secondary NS - Ashford | Secondary | Secondary total | 5318 |
| Kent | 202829 | 8861301 | Secondary NS - Ashford | Secondary | Secondary total | 5341 |

Table 11: KCC SCAP Forecasts

5.7 The two selective Grammar Schools form their own Planning Area, and have a capacity of 2,880 pupil places:

| Secondary Planning Area | School Name | Time Period | Secondary Capacity |
|-------------------------|------------------------------|-------------|--------------------|
| 8861401 | Highworth Grammar School | 202122 | 1500 |
| 8861401 | The Norton Knatchbull School | 202122 | 1380 |

Table 12: Secondary SG – Ashford Planning Area Schools

5.8 Whilst these schools had a small number of spare places in 2021/22, they are forecast to be over capacity by 2028/29. It should also be noted that these schools are not considered to be appropriate capacity for this development due to their selective admissions status:

| LA name | Year | Planning Area Code | Planning Area Name | Planning Area Phase | nc Year Group | Pupil Forecast and ... |
|---------|--------|--------------------|------------------------|---------------------|-----------------|------------------------|
| Kent | 202122 | 8861401 | Secondary SG - Ashford | Secondary | Secondary total | 2787 |
| Kent | 202223 | 8861401 | Secondary SG - Ashford | Secondary | Secondary total | 2835 |
| Kent | 202324 | 8861401 | Secondary SG - Ashford | Secondary | Secondary total | 2863 |
| Kent | 202425 | 8861401 | Secondary SG - Ashford | Secondary | Secondary total | 2906 |
| Kent | 202526 | 8861401 | Secondary SG - Ashford | Secondary | Secondary total | 2898 |
| Kent | 202627 | 8861401 | Secondary SG - Ashford | Secondary | Secondary total | 2906 |
| Kent | 202728 | 8861401 | Secondary SG - Ashford | Secondary | Secondary total | 2895 |
| Kent | 202829 | 8861401 | Secondary SG - Ashford | Secondary | Secondary total | 2904 |

Table 13: KCC SCAP Forecasts

5.9 There is a further Secondary School coming forward on the Chilmington Green development. However, this is opening at 4FE (600 places), growing to 6FE (900 places). The school has the ability to grow to 8FE (1,200 places). A development of 5,750 pupils would be expected to accommodate 1,150 Secondary School aged children, so the school at 8FE would only build in 50 spare places. These places are expected to be taken by pupils already in the system, as the schools are expected to be over capacity by 2028/29.

5.10 On the basis of the above, the Appellant is satisfied that the tests of CIL Regulation 122 (2) have been fulfilled, and have subsequently agreed to the planning obligation requested.

6 Summary and Conclusion

- 6.1 I was instructed by the Appellants to prepare this written Proof of Evidence to assist the Inspector in determining whether any harm is likely to arise in Kingsnorth, from an Education perspective, if this development was to receive a positive determination. The outcomes of my research have been that there is forecast to be more than sufficient surplus capacity in Primary Schools that will serve this development when pupils are expected to be located on site. On that basis, Primary School Infrastructure and Primary School Land contributions are not necessary to make the development acceptable in planning terms.
- 6.2 Birth numbers are falling across the Ashford administrative area, which has resulted in fewer numbers of children working through the Early Years phase into the Primary School phase. There is forecast to be sufficient surplus capacity for the pupils of this development, even when factoring in other developments coming forward in the Ashford area. Accordingly, Primary School Infrastructure and Land Contributions should be struck from the Section 106 Agreement.
- 6.3 I will be happy to discuss this further during the Appeal proceedings.