

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

Rebuttal to Kent County Council Education Proof of Evidence

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BA DipMS

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1 Introduction

- 1.1 My name is Ben James Hunter. My education and experience is discussed in my Education Proof of Evidence dated 14th September 2023.
- 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 The purpose of this Rebuttal document is to respond to the Kent County Council (“KCC”) Proof of Evidence – Primary Education document dated 26th September 2023. For clarity and convenience, I have reproduced the sections that we wish to rebut verbatim, with commentary. I have also included the specific Tables outlined in the three Appendices, again for clarity and convenience.
- 1.6 I welcome KCC submitting evidence and outlining what is required in terms of Education development mitigation. The Proof that they have submitted is technically more a Rebuttal than a standard Proof due to the regular reference to my evidence submitted on 14th September 2023. Regardless, as KCC has now changed the specific level of development mitigation that is required at this very late stage of proceedings, it is necessary to respond in detail to the points raised in their evidence.
- 1.7 What is clear is that KCC has not provided sufficient evidence to demonstrate that planning obligations for additional Primary School Infrastructure and Primary School Land are necessary to make the development acceptable in planning terms, as will be outlined in the section below.
- 1.8 I would be happy to discuss these matters further during the course of the Planning Appeal should the issue of Primary School planning obligations remain unresolved.

2 KCC Education Proof of Evidence

2.1 KCC state in paragraph 2 (page 2) of their Proof of Evidence the following:

Unfortunately, a clerical error in saving the excel document to pdf omitted the Primary Education Assessment from KCC's submission.

2.2 This confirms what was stated in the Ashford Borough Council ("ABC") Planning Committee Report (paragraph 48) (CD1/3): specifically, that KCC has not provided comments in relation to Education since April 2020. It is therefore not unreasonable that due to the considerable time that has passed that these planning obligations are scrutinised, as Education can change considerably over that time period, as new data becomes available.

2.3 Paragraph 2 continues:

The June 2023 assessment is appended as Appendix 1 and was based on the then applicable Kent guidance on s.106 contributions to education. It shows no spare spaces in the relevant planning area (Ashford East Planning Group) and therefore, based on it, this site would be required to contribute the full cost of spaces and land for 154 primary aged pupils. This would need to be at a new primary school as there is no realistic expansion capacity within the Planning Group.

2.4 The submission of KCC's Education Proof is the first time that any new evidence has been made available since the original consultation response in 2020. It is unclear why the June 2023 assessment was not shared following its completion.

2.5 When looking in to this, the "Assessment Summary" table in Appendix 1 shows that there will be a deficit of 43 pupil places by 2031/32, and yet KCC was asking for funding for 154 pupil places. This is clearly excessive, and not consistent with their updated request which is detailed and discussed below.

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Assessment summary											
Detail	2021-22 (A)	2022-23 (A)	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)
Surplus / (deficit) capacity (excluding the expected pupil product from new developments)	115	96	151	174	228	306	347	383	438	422	453
Expected pupil product from new developments	342	342	342	342	342	342	342	342	342	342	342
Surplus / (deficit) capacity including the expected pupil product from new developments	-227	-246	-191	-168	-114	-36	5	41	96	80	111
Expected pupil product from this development	154	154	154	154	154	154	154	154	154	154	154
Surplus / (deficit) capacity including the expected pupil product from new developments and this development	-381	-400	-345	-322	-268	-190	-149	-113	-58	-74	-115
Expected pupil product from this development that on current plans for school provision cannot be accommodated	154	154	154	154	154	154	149	113	58	74	43

Table 1: KCC Appendix 1 Assessment Summary

2.6 Furthermore, as will be discussed throughout this Rebuttal, KCC has applied 100% of the expected child yield of this development to the capacity of the Planning Area from two academic years ago (2021/22) and onwards (the fifth row in yellow in Table 1). This skews the figures, as the development will actually accommodate children within the new houses over time, at an increasing rate as the development builds out. Therefore, the deficit shown in the penultimate row is inflated.

2.7 Paragraph 2 continues:

The new primary school is most likely to be located within the Ashford Local Plan 2030 allocation of Court Lodge S3. The June assessment was based on a generic assessment of child yield of 0.28 pupils per house and 0.07 pupils per flat. The Appellant’s Statement of Case made no criticism of the education contribution required, nor did Ashford Borough Council’s Committee Report of 5 July 2023.

2.8 It is immaterial whether the Appellant’s Statement of Case discusses the Education contribution, as this is dealt with separately utilising the Proof of Evidence dated 14th September 2023. ABC’s Committee Report states clearly that no consultation response has been received post 2020, and thus there was nothing specific to scrutinise and comment on.

2.9 Paragraph 3 (page 2) states:

On 24 August 2023, the Appellant’s Education Consultant (Ben Hunter) met with KCC to discuss Primary and Secondary education provision in the Ashford Borough. Mr Hunter conveyed his opinion that there was surplus primary capacity if one combined the Ashford South and Ashford East planning areas.

- 2.10 It is an accurate statement that EFM met with KCC Education to discuss the issues with the current request for planning obligations, and to establish the evidence from KCC that was lacking due to no consultation response being provided since 2020. However, it was not my “opinion” that there is forecast to be surplus capacity in both the Ashford East and Ashford South Primary Planning Areas, it is the data provided by KCC, and verified by the Department for Education (“DfE”) that is saying that there will be capacity in the Planning Areas at the end of the projection period. This is demonstrated in Table 5 and Table 7 of my Proof of Evidence (page 21 and 22).
- 2.11 Paragraph 3 continues:
- However, it was not until 12 September, following a request made by the County Council, that KCC received any explanation of the Appellant’s case – in the draft education proof of evidence setting out its new case on education contributions.*
- 2.12 We discussed in the meeting of 24th August that the Inspector would have the blue-pencil clause to remove planning obligations if they were not agreed. Therefore, I dispute that this Proof came out-of-the-blue, which appears to be the suggestion. However, regardless of whether KCC were informed or not, the Appellant’s have the right to challenge planning obligations if they are not agreed, and due to the significant amount of time between requests for funding, it is only right that planning obligations are scrutinised to ensure that they meet the tests of Community Infrastructure Levy (“CIL”) 122 (2).
- 2.13 Paragraph 4 (page 3) states:
- Much of the Appellant’s analysis appears to be inconsistent with the methodology for assessing school places under Government and KCC guidance.*
- 2.14 This is not accurate. The Education Proof goes in to detail about Statutory and Policy Matters (Section 3). The Education Act and Best Practice Guidance (CD13/1) of the DfE were followed consistently.
- 2.15 Paragraph 4 continues:

In particular, the analysis strays away from utilizing a single primary school planning group.

- 2.16 KCC is wrong to state that the DfE requires just one Planning Area to be looked at when assessing if planning obligations should be secured. The DfE’s document “securing developer contributions for education” (August 2023) best practice guidance (CD13/1) states the following at paragraph 7:

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

- *The capacity of existing schools that will serve development, taking account of pupil migration across **planning areas** and local authority boundaries.*

- 2.17 That is Planning Areas plural – not singular. There may be many schools within a statutory walking distance that cross multiple Planning Areas, and therefore all should be considered if they could serve the development.

- 2.18 Paragraph 42 of the best practice guidance (CD13/1) states:

*Depending on local admission arrangements and patterns of parental preference, children living in a development might reasonably attend any school within the pupil planning area (**or even an adjoining one in some cases**), and you should not assume that they will all attend a particular school unless there are no likely alternatives.*

- 2.19 This confirms that students can straddle multiple Planning Areas, and it is the statutory safe walking distance that is paramount.

- 2.20 Paragraph 88 of the best practice guidance (CD13/1) states:

When children living in a proposed development might reasonably attend schools in more than one planning area, it may be appropriate to consider the proportion of pupils who are likely to attend schools in each planning area, based on an analysis of current pupil migration.

- 2.21 This further confirms that pupils can utilise more than one Planning Area, and therefore the whole Education landscape should be considered. This is what was

undertaken in the Appellant's Education Proof of Evidence, and I stand-by the assertion that this was the correct course of action.

2.22 Paragraph 4 of KCC's Education Proof continues:

It also looks at existing capacity in individual schools rather than the overall position over the whole planning area. KCC's approach is to use single primary planning groups, which is accepted methodology in Department for Education guidance (DfE) and underpins their capital allocation process.

2.23 Firstly, the Education Proof looks at individual schools **and** the whole Planning Area to give a complete picture. However, the arguments that we have made consistently are related to the capacity of the Planning Area at the end of the projection period when this development is likely to be generating children.

2.24 Secondly, as discussed in paragraphs 2.13 to 2.18 above, the DfE discussed multiple planning areas, and the Education Act discusses schools within statutory walking distance, and does not discuss planning areas at all.

2.25 Paragraph 4 continues:

Our planning groups have been determined following detailed analysis of the flows of pupils within the communities of Kent. This analysis has been scrutinised by the DfE, which has accepted that our planning groups are appropriate building blocks for school place planning and meet the requirements of their guidance. We have had regard to the locations of children attending schools in the planning groups, geographical features which support or inhibit these flows, and geographical sizes. The use of these groups underpins the DfE's capital assessment of our future needs, and more fundamentally, underpins our assessments of the need for developer contributions. The neighbouring planning group of Ashford South is itself subject to significant development. The assessments of need in that area have been conducted solely on that planning group. Further, it is clear from the Ashford Local Plan 2030 policy, that the wider development of Court Lodge (S3), of which this application is a part, is intended to be self-sustaining, instead the development is linked to and with the communities of Ashford East.

2.26 To follow KCC’s argument, which is focusing solely on the Ashford East Planning Area: this Planning Area consists of seven schools with a combined capacity of 2,970 pupil places. By 2026/27, this Planning Area is forecast to have a roll of 2,581, which is 389 spare places. These figures have been scrutinised and published by the DfE, and are the most recent in verified figures available in the public domain (the next publication will be March 2024):

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 2: KCC SCAP Forecasts

2.27 The figures in Table 2 confirm that a request for planning obligations from this development is excessive, as the spare capacity far exceeds the expected child yield of the development.

2.28 It should also be noted that the figures in Table 2 include the child yields of all permitted developments in the Planning Area up to the point that the projections were produced (which would be around September 2022).

2.29 Paragraph 5 (page 3) states:

*Since submitting its Appeal Statement in June 2023, KCC has adopted an update to its Guide on development contributions (20 July 2023). KCC’s education capacity assessments are now based upon “existing cohorts, the pre-school aged population, historic migration patterns and the pupil product of developments already granted planning consent in the area.” It does not take account of planning applications or allocations in the planning area and spare spaces are not deemed to be committed until a planning permission has been granted. This changed approach is currently under further review in order to ensure it is the appropriate approach. However, as things stand at the date of this proof it means that **an education assessment must be carried out immediately prior to the granting of permission** (rather than at the time the planning application is made, or a resolution to grant made), to ensure that **other planning permissions at that date are taken into account and so the number***

of spare, uncommitted education spaces and thus the required contribution is accurate at the point permission is granted.

2.30 The Appellant's Education Proof (paragraph 4.35) anticipated the inclusion of other developments and accordingly included details of how far progressed they are, and whether they already have secured development mitigation which would thus exclude them from the spare capacity calculations. No such evidence has been provided by KCC.

2.31 It should be noted that these exact arguments have been made in recent Planning Appeals and have been found to be unsound by the Inspector. For example, at a 2022 Appeal related to a development of 170 dwellings in Sileby, Leicestershire (CD8/2), the County Council requested Primary School planning obligations in an area that was forecast to have spare capacity at the end of the projection period. The Inspector stated (paragraph 50, page 9):

From the evidence before me, it has not been demonstrated that the development would result in a deficit of primary school places at either the catchment school or the two other nearby schools. Therefore, the Primary Education Contribution is not necessary.

2.32 In this instance the blue-pencil clause was utilised removing Early Years, Primary School, and Primary Transport planning obligations from the Section 106.

2.33 The same arguments were utilised at a Planning Appeal in Birmingham in 2019 (CD8/1) – this time in relation to Secondary School capacity, but very much the same scenario as is detailed in this Appeal. By the end of the forecast period, there was forecast to be sufficient spare capacity in the Secondary phase to accommodate the pupils on the development. The Inspector stated the following (page 68, paragraph 12.18):

In total, these schools have 548 surplus places compared to the overall requirement of 168 places to meet the needs likely to be generated by the proposal. Some of this spare capacity may be taken up by population growth and the needs generated by other residential development in the area but the Council has not demonstrated that there will be insufficient capacity to provide the 168 places required. Accordingly, I conclude that there is no justification for payment of the Secondary School

Contribution. That proposed obligation does not meet the relevant tests and it would not be appropriate to take such an obligation into account in the determination of the appeal.

2.34 This demonstrates clearly that there has to be a demonstrable deficit forecast that would be made worse by development for planning obligations to be considered necessary to make the development acceptable in planning terms. As has been consistently outlined in both the Appellant’s Education Proof, and this Rebuttal, KCC had not met this threshold.

2.35 Paragraph 6 (page 4) states:

If but only if the generic yield of 0.28 primary pupils per house were to be used, the result of the application of this new approach for the appeal site can be seen in Appendix 2 (although it is an understatement of the current need for reasons which are addressed below).

2.36 The inclusion of three Appendices with the Education Proof of Evidence, all of which show conflicting evidence, is confusing, as each tells a different story using different data. However, what is clear is that if Appendix 2 is to be trusted, then there is no justification for planning obligations because there is spare capacity in the Planning Area consistently from 2027/28 onwards, at which point this development is expected to be accommodating pupils:

Assessment summary											
Ashford East planning group*											
Detail	2022-23 (A)	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)	2032-33 (F)
Surplus / (deficit) capacity (excluding the expected pupil product from new developments)	-51	48	29	95	135	187	234	245	220	228	181
Expected pupil product from new developments	0	0	0	0	0	0	0	0	0	0	0
Surplus / (deficit) capacity including the expected pupil product from new developments	-51	48	29	95	135	187	234	245	220	228	181
Expected pupil product from this development	154	154	154	154	154	154	154	154	154	154	154
Surplus / (deficit) capacity including the expected pupil product from new developments and this development	-205	-106	-125	-59	-19	33	80	91	66	74	27
Expected pupil product from this development that on current plans for school provision cannot be accommodated	154	106	125	59	19	0	0	0	0	0	0

Table 3: KCC Appendix 2 Assessment Summary

2.37 What is also confusing about Table 3 (Appendix 2) – and this is true of all of KCC’s Appendices as touched upon previously – is that they have assumed 100% of the child yield of the development (154 pupils) every year from the previous academic year (2022/23) onwards (the fourth row of Table 3 in yellow). This is a

misrepresentation of the data. This development is expected to generate the 154 pupils when fully built out. It didn't generate 154 pupils in the previous academic year, nor will it this academic year, nor the next academic year. The child yield will come forward gradually, growing as the development builds out. This makes all of the Appendices unreliable, as they assume a maximum child yield from this development before it has even put a spade in the ground.

2.38 Paragraph 7 (page 4) states:

In accordance with DfE guidance Appendix 2 has "committed" the unoccupied capacity that a developer has paid for to mitigate their development with permission. This can be seen in respect of the new Finberry Primary School.

2.39 Appendix 2 of KCC's Evidence does include Court Lodge in the final Table, in spite of the fact that this development is due to deliver a Primary School, and fully mitigate its impact. It therefore should not be included in arguments about capacity. Appendix 2 shows surplus, not a deficit, and yet it has been provided as evidence that planning obligations are justified. This is not CIL Regulation 122 (2) compliant.

2.40 Paragraph 8 (page 4) states:

On the generic yield and without any of the other necessary adjustments shown in the footnotes to Appendix 2, it shows a deficit of places with a need for 125 places to be mitigated at the beginning of the assessment period. This reduces to 19 places at 2026/7, before going into a surplus.

2.41 Thus, full planning obligations are unjustified and excessive when relying on this evidence. If there is a surplus of places forecast, there is no justification for planning obligations to grow the area. This was demonstrated in the two previously referenced Planning Appeals (CD8/1 and CD8/2).

2.42 Paragraph 9 (page 4) states:

The use of the generic yield figure however, is not appropriate. KCC's Guide allows for site specific pupil yields to be worked up for large-scale, strategic developments and garden communities, of which this development is both.

2.43 The figure of 154 pupils has been used consistently in relation to this development, and any deviation from this approach is new to the Appellant, and as highlighted below, is clearly inappropriate.

2.44 Paragraph 9 continues:

Evidence available to KCC now shows that large new housing estates in Ashford specifically have much higher yields than developments generally. KCC’s analysis showed a pupil yield of 0.34 in the Repton Park development in 2017, in 2020 it found new houses in Ashford (between 2014-19) had a PPR of 0.33. The DfE’s recent pupil product ratio data shows a 0.363 ratio from housing in the borough (2020-21) and 0.377 county-wide.

2.45 The evidence from the DfE on child yields in mainstream Primary Schools in the ABC administrative area can be seen below. This shows an average of 0.22 Primary School aged pupils per dwelling between the academic years of 2010/11 and 2021/22. The latest data (2021/22) shows an average of 0.28 pupils per dwelling, which is consistent with KCC’s adopted Policy, and demonstrates that the higher yield that KCC now wishes to implement is excessive:

Year	LocalAuthority	EducationPhase	EducationType	TenureType	HousingType	NumberOfBedrooms	NumberOfPupils	NumberOfCompletedProperties	PupilYield
2010/11	Ashford	Primary	Mainstream	All	All	All	1	11	0.090909091
2011/12	Ashford	Primary	Mainstream	All	All	All	21	106	0.198113208
2012/13	Ashford	Primary	Mainstream	All	All	All	41	322	0.127329193
2013/14	Ashford	Primary	Mainstream	All	All	All	70	418	0.167464115
2014/15	Ashford	Primary	Mainstream	All	All	All	109	531	0.20527307
2015/16	Ashford	Primary	Mainstream	All	All	All	239	901	0.265260821
2016/17	Ashford	Primary	Mainstream	All	All	All	418	1695	0.24660767
2017/18	Ashford	Primary	Mainstream	All	All	All	581	2131	0.272641952
2018/19	Ashford	Primary	Mainstream	All	All	All	745	2607	0.285769083
2019/20	Ashford	Primary	Mainstream	All	All	All	912	3164	0.288242731
2020/21	Ashford	Primary	Mainstream	All	All	All	1058	3619	0.292345952
2021/22	Ashford	Primary	Mainstream	All	All	All	1270	4587	0.276869414

Table 4: Ashford Average Child Yield – Primary Mainstream (via the DfE)

2.46 For the KCC area as a whole, the average was also 0.22 pupils per dwelling between 2008/09 and 2021/22. The average for 2021/22 was 0.29 pupils per dwelling. Again, this is closer to the adopted child yield of KCC rather than the higher child yield that KCC now wishes to utilise (which, again, has not been evidenced for the Inspector to scrutinise).

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Year	LocalAuthority	EducationPhase	EducationType	TenureType	HousingType	NumberofBedrooms	NumberofPupils	NumberofCompletedProperties	PupilYield
2008/09	Kent	Primary	Mainstream	All	All	All	6	58	0.103448276
2009/10	Kent	Primary	Mainstream	All	All	All	67	694	0.096541787
2010/11	Kent	Primary	Mainstream	All	All	All	210	1866	0.112540193
2011/12	Kent	Primary	Mainstream	All	All	All	522	3399	0.153574581
2012/13	Kent	Primary	Mainstream	All	All	All	1034	5614	0.184182401
2013/14	Kent	Primary	Mainstream	All	All	All	1726	8066	0.213984627
2014/15	Kent	Primary	Mainstream	All	All	All	2562	10691	0.239640819
2015/16	Kent	Primary	Mainstream	All	All	All	3595	13871	0.259173816
2016/17	Kent	Primary	Mainstream	All	All	All	5086	18886	0.269300011
2017/18	Kent	Primary	Mainstream	All	All	All	6846	23982	0.285464098
2018/19	Kent	Primary	Mainstream	All	All	All	8468	29338	0.288635899
2019/20	Kent	Primary	Mainstream	All	All	All	10102	34761	0.290613043
2020/21	Kent	Primary	Mainstream	All	All	All	11803	39200	0.301096939
2021/22	Kent	Primary	Mainstream	All	All	All	13550	46013	0.294481994

Table 5: Kent Average Child Yield – Primary Mainstream (via DfE)

2.47 On the basis of the figures taken directly from the work published by the DfE in August 2023, it is unclear where the inflated numbers utilised by KCC are coming from. There has been no evidence presented which show why the child yield of KCC should deviate from their adopted Policy.

2.48 Paragraph 9 continues:

The nearby development of Park Farm had a pupil yield of 0.35 across the development (houses). It is, therefore, considered appropriate to adopt a child yield here of 0.363 per house which means the correct yield here is 200 primary aged pupils. That needs to be applied across the assessment: (1) the future yields from committed development which has not yet been built out should be calculated on the basis of 0.363; and (2) the number of spaces committed for the remaining Finberry development should also be so calculated. Point (1) has not yet been carried through in appendix 3 attached but this will be updated as soon as possible, however Appendix 3 highlights that for Finberry alone, this under “mitigation” will be 80 on the housing numbers included in the forecasts.

2.49 The first time that the Appellants were aware of the change in request for Planning Obligations, and a deviation from adopted Policy, was the submission of the Proof of Evidence. Furthermore, the child yield of 0.363 is unevidenced, whereas this Rebuttal has shown the actual child yields in both Ashford and across Kent in data taken directly from the DfE in August 2023.

2.50 Paragraph 10 (page 5) states:

Adopting the correct yield leads to the position in Appendix 3, meaning that with the correct (higher) pupil yield, the requirement from this site would be 237 places at the peak in 2024-25. However, in the following years the deficit progressively reduces, but increases again at the end of the forecast period to a deficit of 99 places.

Assessment summary	Ashford East planning group										
Detail	2022-23 (A)	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)	2032-33 (F)
Surplus / (deficit) capacity (excluding the expected pupil product from new developments)	-51	53	43	122	169	226	261	260	223	228	181
Expected pupil product from new developments	80	80	80	80	80	80	80	80	80	80	80
Surplus / (deficit) capacity including the expected pupil product from new developments	-131	-27	-37	42	89	146	181	180	143	148	101
Expected pupil product from this development	200	200	200	200	200	200	200	200	200	200	200
Surplus / (deficit) capacity including the expected pupil product from new developments and this development	-331	-227	-237	-158	-110	-54	-19	-20	-56	-52	-99
Expected pupil product from this development that on current plans for school provision cannot be accommodated	200	200	200	158	110	54	19	20	56	52	99

Table 6: KCC Appendix 3 Assessment Summary

2.51 What is confusing about Appendix 3 (Table 6) is that, again, KCC has assumed a 100% child yield from the development from before the point the development starts, rather than assuming the actual fact that the child yield will increase over time as the development builds out.

2.52 Also, whereas the child yield utilised has risen (from 154 pupils to 200 pupils) the number of pupil places to fund has fallen from 154 to 99.

- Appendix 1 (Table 1) showed a **deficit of 43 pupils in 2032/33**, and yet KCC was requesting funding for 154 pupil places;
- Appendix 2 (Table 3) showed a **surplus of 27 places in 2032/33**, and yet KCC was requesting funding for 154 pupil places;
- Appendix 3 (Table 6) showed a **deficit of 99 places in 2032/33**, and now KCC is requesting funding for 99 pupil places.

2.53 The above shows a lack of consistency by KCC, and a large number of datasets all telling a very different story.

2.54 Paragraph 11 (page 5) states:

*The position **as of now** is that KCC acknowledges that this application would not be required to mitigate for the total number of pupils (200) created by this development. Whilst there is a demonstratable [sic] deficit of 158 places at 2025/26, it is not expected that full pupil yield will have been produced at that point to warrant contributions of this level. There is, however, a deficit showing at the end of the assessment period which requires mitigation for 99 pupils in the form of build and land contributions.*

2.55 KCC recognise in this statement that applying a full pupil yield from the development at day 1 (technically before day 1) is excessive, and yet all of their evidence Tables continue to do so. If they recognise that this is inappropriate, it is unclear why they insist on continuing to utilise it. By doing so, it artificially inflates the expected number of places across the Planning Area.

2.56 Paragraph 12 (page 5) states:

The text in bold, set out in paragraph 5 however, is important. There are currently multiple sites awaiting permission – all of which have at least as good a claim to the spare spaces as this application. Details of these are included in Appendix 3 under the section “Expected pupil product from new developments within the following applications.” This indicates a further demand of 444 pupils when the 0.363 PPR is applied. Should any of these be granted planning permission before the decision on this appeal, the resultant effect would be reduced or no spare capacity being available for the appellant, giving rise to an increased need for contributions from this application. If any other site in the planning group is granted permission before this application, KCC will reassess and provide the Planning Inspector with this new assessment.

2.57 KCC has opted to deviate from their adopted child yield multipliers (which as discussed makes the child yield excessive when compared to actual child yields shown in Tables 4 and 5 of this Rebuttal) to state that the remaining developments coming forward will generate 444 pupil places, ignoring the fact that Court Lodge is delivering a 2FE (420 place) Primary School on site, so the actual impact on spare capacity, assuming that all of the developments receive planning permission (which is far from guaranteed), is much lower.

- 2.58 Additionally, why is KCC utilising a higher child yield that is *for large-scale, strategic developments and garden communities* (paragraph 9 of KCC's Education Proof) if not all of the development's fulfil this criteria? Again, there is a lack of consistency. It seems that a higher child yield has been introduced to try and make the situation look worse than it is, ignoring some important factors such as new provision being delivered on sites, and actual adopted KCC Policy.
- 2.59 Paragraphs 13-17 (pages 5-8) of KCC's Education Proof discuss the level of contribution that is being requested. The Appellant's case is that, regardless of the costs, there is forecast to be sufficient capacity in the Ashford East Planning Area (see Table 2) to accommodate the entirety of this development's child yield (at 154 or 200 pupils) with capacity to spare. This is utilising data evaluated by the DfE, and published in the public domain. This makes planning obligations in their entirety excessive at any level.
- 2.60 Table 4 (page 8) discusses the appropriateness of school sites to be able to expand. This information is superfluous as the intention of KCC was always to help fund the school on the Court Lodge site. However, what is evident is that if the Court Lodge development did not come forward, there would be no need for a new school at all because of the forecast spare capacity and falling rolls.
- 2.61 Paragraph 18 (page 9) states:
- Similar points apply for all existing schools; over the years as Ashford Town has grown, the schools have been expanded to their maximum. It would be detrimental to any of these schools and their communities to impose an expansion to meet the needs of the applicant's development.*
- 2.62 Again, this statement does not alter any of the findings of the Appellant's Education Proof or this Rebuttal.

3 Summary and Conclusion

- 3.1 KCC has introduced at this very late stage of proceedings: a) a new child yield that deviates from their adopted Policy and suggests that the Appeal Site will generate more pupils than previously anticipated (200 rather than 154); and b) a new and reduced number of places to fund, in spite of the increased child yield.
- 3.2 The information outlined above in this Rebuttal has demonstrated that this new and unevidenced increase in child yield is excessive when comparing it to actual child yields in Ashford and Kent respectively. The ABC administrative area has seen an average of 0.22 pupils per academic year since 2010/11, with 0.28 in the most recent year for which data is available from the DfE (2021/22). The wider KCC area has seen similar figures. This demonstrates that KCC's adopted child yield is fair and appropriate, and the higher rate introduced during these Appeal proceedings is excessive.
- 3.3 KCC had previously not provided an Education consultation response since 2020 (as per the ABC Committee Report) (CD1/3). KCC has subsequently been inconsistent with their approach to planning obligations, as shown in Appendices 1-3, which all show a different surplus/deficit of pupils at the end of the projection period. KCC has previously requested 100% of the lower child yield of this development in planning obligations, but is currently requesting 50% of a higher child yield. It is for this reason that an Education Proof and Rebuttal was clearly warranted.
- 3.4 It is clear from the evidence in the Appellant's Education Proof, and this Rebuttal, that KCC has not adequately demonstrated that harm would occur if this development did not provide planning obligations for additional Primary School infrastructure and land provision. On that basis, the conclusion remains that the blue-pencil clause should be enacted with regards to the Primary School related planning obligations.
- 3.5 I would be happy to discuss these points further during the Appeal proceedings.