



ASHFORD
BOROUGH COUNCIL

District Centre Facilities & Public Art Topic Paper

of the Local Planning Authority in respect of:

Land at Chilmington Green, Ashford Road, Great Chart, Ashford, Kent

Appeals by:

Hodson Developments (Ashford) Limited; Chilmington Green Developments Limited;
Hodson Developments (CG ONE) Limited; Hodson Developments (CG TWO)
Limited; and Hodson Developments (CG THREE) Limited.

Against the failure to determine applications to modify or discharge obligations contained in the S.106 agreement dated 27 February 2017 attached to planning permission ref: 12/00400/AS (as amended by a Supplement Agreement dated 29 March 2019 and a deed of variation dated 13 July 2022).

Appeal References: APP/W2275/Q/23/3333923 & APP/E2205/Q/23/3334094

Ashford Borough Council References: AP-90718 & AP-90647

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Appendices

- A Ashford Section 106 Annual Monitoring Report 2016/17
- B Ashford Infrastructure Funding Statement 2023/2024
- C e-mail from NHS Kent and Medway dated 31 January 2025

1.0 Introduction

- 1.1 This Topic Paper is submitted on behalf of the Local Planning Authority - Ashford Borough Council (“the Council”) and concerns the modifications proposed to Schedules 12, 14 and 24 of the Chilmington Green S.106 Agreement (“the Agreement”) which require the Community Hub Building (the “Community Hub”) and the District Centre Facilities to be provided on the Chilmington Green development site (the “Site”) and requires financial payments towards the provision of public art on the Site.
- 1.2 The Community Hub and District Centre Facilities are required to meet the social and community needs of the residents of the Chilmington Green development (the “Development”) based on a total population of circa 13,800.
- 1.3 Policy CG17 of the Chilmington Green Area Action Plan (the “AAP”) (CD3/1/1, page 94) sets out the floorspace requirements for social and community facilities and states that they “*shall be provided in accommodation at the District Centre which may be part of a combined ‘hub’ or in separate facilities in close physical proximity*”.
- 1.4 Policy CG3 of the AAP sets out the floorspace requirements for the District Centre and states that “*a supermarket (indicative capacity 1,650 sqm net convenience floorspace) and a range of shops and services will be provided together with a range of employment units and space for community uses*” (CD3/1/1, page 39).
- 1.5 The AAP identifies a requirement for public art to be provided in the District Centre (CD3/1/1, paragraph 5.24, page 36) and Local Centres (CD3/1/1, paragraph 5.40, page 42). In addition, the Chilmington Green Design Code SPD (CD3/1/6) identifies several opportunities for public art to be provided as part of the Development.
- 1.6 Chapter 11 of the AAP “*sets out the proposed approach to phasing of the Development and how this should relate to the delivery of key infrastructure*” (CD3/1/1, paragraph 11.1, page 110). The AAP continues that “*this approach is informed by the availability of existing infrastructure and the ability to deliver new infrastructure in a cost-effective and viable manner whilst ensuring that development remains sustainable in its own right at all stages – a key principle of this AAP*” (CD3/1/1, paragraph 11.3, page 110).
- 1.7 The Development is to be delivered in four phases – Main AAP Phases 1, 2, 3 & 4. The location of these four phases on the Site are shown in AAP Figures 18-21 (pages 115-118) and they are defined in the Agreement (refer to

Definitions, paragraph 1.1). The number of dwellings in each phase is shown in Table 1 below.

Main AAP Phase	Number of dwellings	Cumulative number of dwellings
1	1501	1501
2	1124	2625
3	1559	4184
4	1566	5750

Table 1: the number of dwellings in each Main AAP Phase.

- 1.8 One of the key principles of the AAP (refer to policies CG1(b) & CG8) is that each phase of the Development is ‘sustainable in its own right’. The AAP states that *“this requires that properly planned infrastructure delivery is achieved alongside the development of new housing and that any significant gaps or shortfalls in provision are avoided”* (CD3/1/1, paragraph 11.30, page 113).
- 1.9 The AAP also states that *“the delivery / funding of infrastructure will be based on a series of ‘triggers’, typically threshold numbers of homes completed. These triggers will help to guarantee that at all stages of the development, sufficient infrastructure will be in place to adequately serve the resident population”* (CD3/1/1, paragraph 4.27, page 29).
- 1.10 The AAP includes an Infrastructure Delivery Plan (the “IDP”) *“which sets out when key infrastructure will need to be delivered and how it is anticipated this will occur”* (CD3/1/1, paragraph 11.33, page 114). The AAP also envisaged that *“the IDP will provide the basis for the Heads of Terms within the Section 106 Agreement for the Development and for the use of planning obligations attached to any grant of outline planning permission to control the implementation of the Development.”* (CD3/1/1, paragraph 11.33, page 114).

2.0 The Requirements of the Agreement

Community Hub

- 2.1 The Community Hub is to be located within the District Centre in the northern part of the Site as identified on Figure 18 of the AAP (page 115), and is defined as follows (Definitions, paragraph 1.1):

“The multi-purpose community leisure building with associated hub space, family and social care facility, youth facility, library access point, community learning facility, police space, outdoor multi-use games area and car parking together with a health centre to be provided under schedule 12 and part of which is available for use by the County Council

or by its nominee approved by the County Council in writing which building has been approved by the Council in accordance with (1) the approved brief and (2) the need for the County Council to have the right to use such space in the terms set out in paragraph 1.4 of Schedule 12 in order to deliver services paid for with contributions under the terms of this Deed”.

2.2 The Community Hub is to provide the following indicative facilities in a single phase (Schedule 12, paragraph 1.1.1):

- multi-purpose community leisure building (0.1 ha) with associated hub space (i.e. lobby, extra toilets, toilets including an 18 sq/m changing place, wheelchair accessible kitchen, reception, café and CMO trust office (0.034 ha)).
- family and social care facility (0.034 ha).
- youth facility (0.016 ha).
- library access point (0.0012 ha).
- community learning facility (0.01ha).
- police space (0.005 ha).
- outdoor multi-use games area (0.08 ha).
- car parking (0.092 ha).
- a health centre comprising a GP surgery for 8 doctors (0.1 ha).

2.3 The Agreement states that the total capital cost to be spent by the appellant on the Community Hub is £5,152,127.00 index linked up to the date of the reserved matters approval. The capital cost excludes fees, contingencies, specification and design costs, supervision fees, access roads and service costs (Schedule 12, paragraph 1.1.1).

2.4 In summary, Schedule 12 requires the appellant to (1) to submit to and have approved by the Council a Design Brief & Specification (the “DB&S) for the Community Hub no later than 1400 dwelling occupations, (2) to provide the Community Hub no later than 1800 dwelling occupations.

2.5 In detail, Schedule 12 requires the following:

- i. The appellant to submit to and have approved by the Council a DB&S for the Community Hub no later than 1400 dwelling occupations. The DB&S shall include all the information specified in Schedule 12A of the Agreement (Schedule 12, paragraph 1.1.1).
- ii. Before the submission of the DB&S to the Council, the appellant is required to undertake a consultation exercise with the Chilmington Management Organisation (the “CMO”) and other relevant stakeholders and the public (Schedule 12, paragraph 1.1.2).
- iii. Before the commencement of the consultation with stakeholders and the public, the appellant is required to submit and have approved by the CMO the details of the proposed consultation exercise, or if not approved by the CMO within six weeks, then seek approval from the Council (Schedule 12, paragraph 1.1.2).
- iv. The DB&S shall include all consultation responses received, including the CMO’s comments on the costings (Schedule 12, paragraph 1.1.2).
- v. To provide the Community Hub on the Site in a single phase no later than 1800 dwelling occupations in accordance with the reserved matters approval granted for the Community Hub and the approved DB&S (Schedule 12, paragraph 1.2.1 & 1.5).
- vi. The appellant is required to ensure that all necessary actions have been taken to ensure that the land on which the Community Hub is located is free from contamination and pollution and protected species that would prevent or limit the intended use (Schedule 12, paragraph 1.2.2).
- vii. The appellant is also required to ensure that all conditions attached to the planning permission or approval for reserved matters for the Community Hub that are required to be discharged before first occupation/use of the Community Hub, have been discharged (Schedule 12, paragraph 1.2.3).
- viii. To make the Community Hub available for use by the County Council or an approved County Council nominee as a family and social care facility, youth facility, library access point and community learning facility in accordance with an agreed booking system which shall aim to identify all bookings on a yearly basis and may include a minimum and maximum number of booked hours (Schedule 12, paragraph 1.4).
- ix. The Council is required to notify the CMO’s director of the approval of the DB&S and the reasons for it (Schedule 12, paragraph 3.2).

- 2.6 Schedule 12 also includes obligations relating to the long-term ownership and management and maintenance of the Community Hub and payment of the Council's costs (Schedule 12, paragraphs 1.2.4 - 1.2.6; 1.3; 2 and 3.1). The proposed amendments to these obligations are dealt with separately in the 'Ongoing Management and Maintenance' and the 'Delivery/Monitoring/Council's costs' Topic Papers and therefore this Topic Paper does not respond to these proposed modifications to these obligations.
- 2.7 To date, none of the dwelling occupation triggers for the Community Hub referred to above have been reached.

District Centre Facilities

- 2.8 The District Centre is to be located within the northern part of the Site as identified on Figure 18 of the AAP (page 115), and is to provide the following indicative facilities (Schedule 14, paragraph 1.1.1):
- a supermarket (3100 sq/m floorspace).
 - other retail units with a total floorspace of 4595 sq/m (a minimum of five units with none of those units having less than 150 sq/m floorspace at ground floor level).
 - an office building (2610 sq/m floorspace).
 - a public house.
 - a day nursery.
- 2.9 In summary, Schedule 14 requires the appellant to (1) submit to and have approved by the Council, a Design Brief and Specification (the "DB&S") for the District Centre facilities no later than 950 dwelling occupations, and (2) to provide the District Centre Facilities no later than 1250 dwelling occupations.
- 2.10 In detail, Schedule 14 requires the following:
- i. The appellant to submit to and have approved by the Council the DB&S for the District Centre Facilities no later than 950 dwelling occupations. The DB&S shall provide details of all the "*indicative facilities and/or other facilities of no significantly greater environmental impact as may be approved by the Council*" identified in Schedule 14, paragraph 1.1.1.

- ii. Before the submission of the DB&S to the Council, the appellant is required to undertake a consultation exercise with relevant stakeholders and the public (Schedule 14, paragraph 1.1.2).
 - iii. Before the commencement of the consultation with stakeholders and the public, the appellant is required to submit and have approved by the Council the details of the proposed consultation. The DB&S shall include all consultation responses received (Schedule 14, paragraph 1.1.2).
 - iv. To provide the following no later than 1250 dwelling occupations:
 - serviced sites (including corresponding roads and footpaths) for the District Centre Facilities (excluding the Small Retail Units) in accordance with the reserved matters approval granted for these facilities and the approved DB&S (Schedule 14, paragraphs 1.2.1 & 1.4).
 - the Small Retail Units (including corresponding roads and footpaths) in accordance with the reserved matters approval granted for these facilities and the approved DB&S (Schedule 14, paragraphs 1.2.2 & 1.5).
 - the appellant to submit to and have approved by the Council a marketing plan for the District Centre Facilities (Schedule 14, paragraph 1.2.3).
 - v. The appellant is required to market the District Centre Facilities in accordance with the approved marketing plan ((Schedule 14, paragraph 1.3).
- 2.11 To date, none of the dwelling occupation triggers for the District Centre Facilities referred to above have been reached.

Public Art

- 2.12 Schedule 24 secures the payment of a total of £750,000.00 (index linked) to the Council in six instalments no later than the number of dwelling occupations specified in the Agreement - refer to Table 2 below (Schedule 24, paragraphs 1 & 2).

Amount payable	Trigger – dwelling occupations
£50,000	commencement
£100,000.00	99
£150,000.00	999
£150,000.00	1399
£150,000.00	2599
£150,000.00	4099

Table 2: Triggers for payment of the public art obligation.

2.13 The Council is required to do the following (Schedule 24, paragraph 3):

- i. to produce a brief for the public art to be delivered on the Site (the “Public Art Brief”).
- ii. to commission and install the public art on the Site in accordance with the Public Art Brief.
- iii. to consult with the developers on the Site and to have due regard to any comments and observations made in respect of the location, theme, artist and type of art under consideration.
- iv. to give full credit to the developers on the Site for their contributions in any advertising, signage or promotional and publicity materials relating to the public art.
- v. to maintain the public art on the Site (including checking for defects upon installation).

2.14 The Council is also required to submit to the owners of the land upon which the public art is to be installed, advance details of the commissioning costs (including administration, consultation, competitions and selection procedures) in respect of that public art and to consider any representations made by the relevant Owner (Schedule 24, paragraph 4).

2.15 The Agreement also requires the developers on the Site to allow the public art to be installed in accordance with the Public Art Brief and the reserved matters approvals granted for the public art (subject to operational requirements; prior appointment being made; compliance with any health and safety requirements; causing as little damage as possible; making good and reinstating any damage caused and installation being solely at the Council’s own risk) (Schedule 24, paragraph 1.7).

- 2.16 The developers are also required to maintain the public art on the Site in accordance with details previously approved by the Council (Schedule 24, paragraph 1.8).
- 2.17 To date, the triggers for the first two payments (no later than commencement and 99 dwelling occupations) have been reached. The first instalment of £50,000 was due on or before 5 June 2017 and was paid by the Homes and Communities Agency (now Homes England) on 28 March 2017 in their capacity as the appellants funder at that time, however, the associated indexation payment has, to date, not been paid.
- 2.18 Based on evidence of dwelling occupations the second instalment of £100,000.00 was due on or before 20 April 2021. The monies to pay the second instalment were withdrawn from the Developers' Contingency Bank Account – Council on 6 March 2023 under the terms of the Settlement Agreement (CD1/17), however, to date the associated indexation payment has not been paid.
- 2.19 The Council's Section 106 Annual Monitoring Report 2016/17 identifies that the first instalment of the Public Art contribution was received by the Council. (Appendix A, page 18). The Council's Infrastructure Funding Statement 2023/2024 identifies that the second instalment of the Public Art contribution was received by the Council. The monies are identified as being allocated but not yet spent. (Appendix B, page 15).

3.0 The Continuing Purpose

Community Hub

- 3.1 The AAP (CD3/1/1) identifies that the following community facilities will be required at the District Centre:
- i. A multi-purpose community leisure building of 1,000 sqm (GIA) (two badminton courts or equivalent) to be completed by 1300 dwelling occupations – refer to AAP policy CG16(B) and IDP).
 - ii. 340 sq. m (net internal) of accommodation for families and social care services – refer to AAP policy CG17.
 - iii. Primary health care accommodation sufficient for at least a 6GP practice and associated primary care services– refer to AAP policy CG17).
- 3.2 The AAP states that the multi-purpose community leisure building “*should be designed in such a way that it can accommodate a range of community uses,*

such as meeting space for various community groups (including faith groups), as well as being suitable in size and height to provide space for indoor, leisure, social and sporting activities, such as aerobics and badminton” (CD3/1/1, paragraph 10.21, page 91).

- 3.3 The AAP also identifies that social and community facilities will be required to meet the needs of the new community, this includes adult education; youth facilities; library provision; family and social care services; primary health services (e.g. GPs); the emergency services; places for worship (CD3/1/1, paragraph 10.24, page 93). The IDP recognises that there should be on-going provision of social and health facilities in line with emerging requirements generated by the development.
- 3.4 The AAP states that flexible space will be required to enable use by different services. In addition, *“the phased delivery of space”* may be required *“where demand for services is likely to build up incrementally over time as development at Chilmington Green progresses, including reserving land to enable the potential for the extension of premises at a later date”* (CD3/1/1, paragraph 10.27, page 93).
- 3.5 The planning committee report for the outline planning application (CD6/1, paragraph 267, page 1.210) identified that the provision of community space was assessed with input from service providers. The consultation responses set out in the report include comments from the Ashford Clinical Commissioning Group and the County Council, who advised that the following would be required to support the new community:
- approx. 8 new GPs, plus supporting nursing and administrative teams would be required to serve the Development.
 - social care facilities (340 sq/m).
 - a library access point (12 sq/m).
 - community learning space (50 sq/m) for two days and two evenings a week.
 - youth facilities (internal and external space).
- 3.6 The NHS (Kent and Medway) has advised that there remains a requirement for health care facilities of the scale (in terms of floorspace) proposed in the Agreement to support the Development. The County Council have also advised that the floorspace proposed in the Agreement to deliver county council

services is still required, albeit this could be provided in a more flexible way with shared use of facilities.

- 3.7 The amount of floorspace required and the triggers for the delivery of the Community Hub are set to ensure that there is sufficient provision of community services and facilities to meet the needs of the residents of the Development. The AAP acknowledges that flexible space may be required, and the phased delivery of the space may be appropriate, however, the delivery of at least part of the Community Hub within the timescales set out within the Agreement remains integral to meeting the social and community needs of the residents of Chilmington Green.

District Centre Facilities

- 3.8 The AAP identifies that *“the District Centre will be one of the key areas within the development and its design will go a long way to determining how Chilmington Green will be judged by visitors and residents alike. It will become a key destination within the development through the provision of a range of uses, including retail to help serve the everyday needs of the residents, alongside employment, education, health, social and leisure uses”* (CD3/1/1, paragraph 5.1, page 30).
- 3.9 The AAP sets out an indicative quantum of non-residential development that should be provided at the District Centre (CD3/1/1, Table 1, page 33). This includes a supermarket (3100 sq/m GEA); general shops (4595 sq/m GEA); offices (4043 sq/m) and light industrial space (2867 sq/m).
- 3.10 The AAP sets out that the type and scale of employment and retail floorspace required to be provided as part of the Development was informed by the employment and retail background studies which supported the AAP. This was to ensure that the amount of floorspace reflects the level of residential growth envisaged and would not detract from the vitality and viability of Ashford town centre, and other existing centres (CD3/1/1, paragraph 5.8, page 33).
- 3.11 The AAP acknowledges that the needs of residents and the market are likely to vary over the build out period of the Development and that the floorspace figures set out in the AAP are a starting point. Flexibility can be applied over the longer term if that is supported by up-to-date evidence at that time (CD3/1/1, paragraph 5.9, page 34). The quantum of floorspace agreed in the outline planning permission reflects the requirements of the AAP.
- 3.12 Indicating the amount of floorspace required in the Agreement is essential to ensure that premises of an appropriate size to meet the needs of the new community are provided.

- 3.13 The outline planning application for the Development was supported by a retail assessment. The planning committee report for the outline planning application summarises the conclusions of this assessment, stating that “*the amount of retail floorspace proposed, including a supermarket of the size proposed, would promote sustainable shopping patterns by providing a good local main food destination as part of an appropriate day-to-day service and limited comparison-shopping offer, thereby reducing travel distances for future residents*”. The committee report continues that “*the proposal would not lead to any significant adverse impacts in terms of the vitality and viability of Ashford town centre*” (CD6/1, paragraph 248, page 1.175).
- 3.14 The Council commissioned its own independent retail advice as part of its assessment of the planning application, this concluded that the proposal accords with the development plan, but that the Council may wish to limit the size of the retail units to make them less attractive to major comparison goods retailers and therefore more likely to be occupied by local retailers who will serve the needs of the new residents and will not compete with existing shops in Ashford (CD6/1, paragraph 249, page 1.175).
- 3.15 The outline planning permission was granted on the basis that approx. 1000 jobs would be created over the whole development and that a range of employment opportunities would be created. Providing job opportunities close to where people live is a key element of building a sustainable community.
- 2.20 The District Centre is an essential and integral part of the Development that is required to meet the needs of the new community, enabling residents to access the services and facilities they need without having to travel outside of the Chilmington Green area. The timely provision of the District Centre is integral and essential to successful placemaking for a development of the scale proposed.

Public Art

- 3.16 The Design Guidance within the AAP refers to the requirement for public art to be integrated into the public realm in the District Centre (paragraph 5.24) and Local Centres (paragraph 5.40) and the strategic east/west pedestrian/cycle way (paragraph 5.83). The Chilmington Green Design Code SPD (CD3/1/6), also refers to locations where public art would be appropriate.
- 3.17 The Ashford Art and Cultural Industries Strategy Report (2016) (CD4/13) formed part of the evidence based for the Local Plan. The Strategy highlights that the arts and creative industries make a significant contribution to the quality of life of residents of a place Culture can create a sense of place through the expression of local culture and cultural heritage, which is associated with the

creation and maintenance of a strong sense of place and local identity. The arts and creative industries also have a role to play in placemaking, such as through the creation of high-quality public spaces and public art (CD4/13, paragraph 1.2.4 & 1.2.4.1, page 4 & 5).

- 6.1. The financial contribution was calculated based on the Arts Council England 'Arts, Museums and New Development A standard charge approach' (2010). The contribution of £750,000 included a payment of £50,000 to be spent by the Council on producing a public art strategy for the Development. This contribution was spent on producing the 'Creative Chilmington Strategy' (CD4/14) which was adopted by the Chilmington Green Community Management Organisation (the "CMO") in November 2019 and endorsed by Members at the Council's Cabinet meeting on 19 December 2019.
- 3.18 The Creative Chilmington Strategy sets out the ways in which arts, culture and creativity will be integrated within the Development, through proposals to grow local cultural infrastructure, for playful public art and through building opportunities for the growing local community to engage with and take part in creative activities. The Strategy is intended to be delivered over more than 20 years as housing, green space, public realm and community facilities are created. The Strategy sets out how the financial contribution secured in the Agreement is to be allocated and identifies seven projects to be delivered. The delivery of the Strategy is underpinned by the funding secured by the Agreement. The Strategy also highlights that additional funding will need to be secured, such as grants from Arts Council England, to realise the full ambitions of the Strategy.
- 3.19 The second payment of £100,000, secured in March 2023, has not yet been spent, however, the Council is currently working up a brief to commission a specialist public art organisation or consultant to develop, manage and oversee the programme of public art initiatives and installations for Chilmington Green in accordance with the public art strategy. The work is expected to be delivered over a three-year period.

4.0 Relevant Planning Policy & Guidance

- 4.1 Chilmington Green AAP Policy CG1 Chilmington Green Development Principles – identifies that one of the key principles for Chilmington Green is to deliver a vibrant District Centre and that each main phase of the Development will be sustainable in its own right, through the provision of the required social and physical infrastructure, both on-site and off-site (CD3/1/1, page 21).
- 4.2 Chilmington Green AAP Policy CG2 Strategic Development Requirements – states that the Development will be focused around a District Centre that will

provide the majority of retail, employment and community-focused accommodation. The District Centre will become the focal point of the community and be delivered in the first phase of the Development. The form of the District Centre will help to generate a critical mass to support public transport and local services and create a vibrant street-scene. The policy also states that the Development will deliver at least 1000 jobs (CD3/1/1, page 29).

- 4.3 Chilmington Green AAP Policy CG3 The District Centre Character Area – identifies that the District Centre will include a supermarket (indicative capacity 1,650 sqm net convenience floorspace), a range of shops and services and a range of employment units and space for community uses. The role of the District Centre is to provide a range of services which meet the everyday needs of residents as the development evolves. The policy also sets out the requirement for a detailed design strategy for the District Centre to be agreed (CD3/1/1, page 39).
- 4.4 Chilmington Green AAP Policy CG16 Indoor Sports and Community Leisure Provision – requires the provision of a single multi purpose community leisure building of 1,000 sqm (GIA) at the District Centre (two badminton courts or equivalent). The policy identifies that the multi-purpose community leisure building will need to be designed in a way that allows for a variety of uses, ranging from bespoke community space to accommodating a number of indoor sport and leisure based activities. The policy also states that the precise design, management and specification of each area of community space will need to be agreed with the council, in consultation with the local community and parish council so it can incorporate a variety and range of community activities (CD3/1/1, page 92).
- 4.5 Chilmington Green AAP Policy CG17 Social and Community Facilities – requires social and community facilities to be provided at the District Centre, this may be part of a combined community ‘hub’ or in separate facilities in close physical proximity. Specifically, the following is identified as being required: 340 sq. m (net internal) of accommodation for families and social care services and primary health care accommodation sufficient for at least a 6GP practice and associated primary care services. The policy identifies that the phasing and delivery of social and community facilities and / or funding to support such services shall be agreed with the relevant service providers and included in an appropriate Section 106 Agreement (CD3/1/1, page 94).
- 4.6 Chilmington Green AAP Policy CG22 Phasing, Delivery and Implementation – sets out measures to ensure an appropriate quality of development is achieved at detailed design stage and how the delivery of the Development will be monitored to ensure that the quality aspirations established within the AAP are delivered and maintained (CD3/1/1, page 124).

- 4.7 Local Plan Policy SP1 Strategic Objectives – seeks to ensure development is supported by the necessary social, community, physical and e-technology infrastructure, facilities and services, with any necessary improvements brought forward in a co-ordinated and timely manner (CD4/1 page 9).
- 4.8 Local Plan Policy SP6 Promoting High Quality Design – requires development proposals to be of high quality design and to demonstrate careful consideration and a positive response to a set of design criteria. Development proposals should show how they have responded positively to the design policy and guidance, including national and local design guidance, and site specific development briefs. Developers are strongly encouraged to participate in the Council's 'Quality Monitoring Initiative' which works to make sure that the approach agreed to design quality when planning permission is given is delivered on site. Specific reference is made to contributions that can be made to public spaces by public art (ref: CD4/1 page 40).
- 4.9 Local Plan Policy COM1 Meeting the Community's Needs – sets out the requirement for infrastructure and facilities to meet the need generated by new development, including community facilities and arts provision (CD4/1 page 303).
- 4.10 Local Plan Policy IMP1 Infrastructure Provision – seeks the delivery of infrastructure to support new development (CD4/1 page 312).
- 4.11 Paragraph 98 of the NPPF sets out that planning decision should (a) provide the "social, recreational and cultural facilities and services the community needs". Specifically, "to plan positively for the provision and use of shared spaces, community facilities (such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments" (b) take into account and support the delivery of local strategies to improve health, social and cultural well-being for all sections of the community."

5.0 The Proposed Modifications

- 5.1 In summary, the appellant seeks the following modifications to the Agreement.

Community Hub

- 5.2 To modify the amount of internal floorspace (including external MUGA) to be provided from 3462 sq/m to up to 4000 sq/m and modify the scope of the space to be provided to identify less space for specific uses and instead provide multi-

functional space and remove the requirement to provide car parking (CD2/14, request No.58).

- 5.3 To delay the timescale within which the DB&S for the Community Hub shall be submitted to and be approved by the Council (currently no later than 1400 dwelling occupations) and to split this process into two phases (tranches) – the first tranche no later than 2850 dwelling occupations and the second tranche no later than 3850 dwelling occupations (CD2/14, request No.59).
- 5.4 To discharge the obligation for the DB&S for the Community Hub to include the information contained in Schedule 12A of the Agreement (CD2/14, request No 59).
- 5.5 To reduce the total capital cost of the Community Hub from £5,152,127.00 to £2,000,000 (first and second tranche combined). To remove the requirement for the total capital cost to be index linked and to allow the total capital cost to include “fees, contingencies, specification and design costs, supervision fees, access roads and service costs” (CD2/14, request No.59).
- 5.6 To discharge the obligation for the CMO to be consulted on the DB&S; for the CMO to agree the details of the consultation exercise or for the Council to approve the details if the CMO does not respond, and, for the DB&S to include the CNO’s comments on the costings (CD2/14, request No.60).
- 5.7 To discharge the requirement for designated parts of the Community Hub to be made available for use by the County Council or an organisation approved by the County Council as a family and social care facility, youth facility, library access point and community learning facility (CD2/14, request No.62).
- 5.8 To delay the delivery of the Community Hub from no later than 1800 dwelling occupations to no later than 3250 dwelling occupations (first tranche) and no later than 4250 dwelling occupations (second tranche) (CD2/14, request No.58).
- 5.9 To include new obligations (1) to reserve the right to carry out required building works to the appellant. (2) to state that no building contract shall be entered into nor construction begin prior to confirmation of the public service leases for the facilities. (3) to allow the appellant to continue dwelling occupations past the triggers in the Agreement if the appellant has been unable to enter into an agreement with an occupier for the grant of a lease of the facility¹.

¹ These three requests are not included in the appellants proposed modifications table CD2/14, but is included in the appellants revised version of the Agreement updated 2 February 2025 (CD2/21).

- 5.10 To remove the requirement for the Council to notify the CMO's director of the approval of the DB&S and the reasons for it².

District Centre Facilities

- 5.11 To delay the timescale within which the DB&S for the District Centre shall be submitted to and be approved by the Council from 950 dwelling occupations to 1500 dwelling occupations (CD2/14, request No.66).
- 5.12 To insert a new clause that requires the DB&S to have regard to any reserved matters approval or alternative planning permission which may have been granted for the District Centre facilities in Main Phase 1) (CD2/14, request 65)
- 5.13 To delete the floorspace requirements for the supermarket; small retail units and office building and the requirement for there to be at least five small retail units with a floorspace greater than 150 sq/m (CD2/14, request 65)

Public Art

- 5.14 To delete the payment of the public art contributions to the Council and instead to require the appellant to provide public art within the Site in accordance with the timescales and the total cost set out in Table 3 below (CD2/14, requests 105 & 106).
- 5.15 To delete the obligation for the appellant to allow the public art to be installed within the Site by the Council (CD2/14, request 107).
- 5.16 To delete the obligation for the appellant to maintain the public art within the Site (CD2/14, request 107).
- 5.17 To delete the obligation for the Council to spend the monies received to produce a brief for the public art within the Site; to commission the public art in accordance with the brief; to consult the land owners and to have due regard to any comments and observations they may have about the public art; to provide and maintain the public art; to give full credit to the appellant for their contributions in any advertising, etc; to submit to the land owners details of the commissioning costs in respect of the public art and to consider any representations they make (CD2/14, request 108).

² This request was not included in the appellants proposed modifications table CD2/14, but is included in the appellants revised version of the Agreement updated 2 February 2025 (CD2/21).

Current Trigger (dwelling occupations)	Contribution	Proposed Trigger (dwelling occupations)	Contribution
Commencement	£50,000	999	£100,000
99	£100,000	1999	£150,000
999	£150,000	2999	£150,000
1399	£150,000	3999	£150,000
2599	£150,000	4999	£150,000
4099	£150,000	n/a	n/a
Total	£750,000		£700,000

Table 3: Proposed modifications to public art contributions

6.0 Appraisal of the Proposed Modifications

Community Hub

- 6.1 The appellant acknowledges that community space is essential to providing facilities and services to new residents (CD2/13, paragraph 8.17) and that the obligation potentially serves a useful purpose (except for the community learning space which in the appellant's view is surplus to requirements) (CD2/14, request 58).
- 6.2 The purpose of the Community Hub is to provide a home and central focus for the community and timely provision is pivotal to the success of the Development. Delaying provision until 56% of dwellings are occupied and then at that point only providing approximately a third of the provision required would result in a large proportion of the community (up to 56%) having no access to health and social facilities on Site. These residents would have to travel to other locations in the borough for their health and social needs, if in fact there is provision available elsewhere, which is unlikely given the need identified for provision on-site. The appellant has provided no evidence to support their claim that much of the facilities are *"not expected to be needed until much later than the triggers currently set"* (CD2/14, request 58).
- 6.3 It is the appellant's view that *"the Section 106 currently requires a total floorspace that is well in excess of what the policy requires, without justification for the departure"* (CD2/13, paragraph 8.18). As outlined in Section 3.0 above, the size of the Community Hub and the facilities to be provided within it was justified in the planning committee report for the outline planning application for the Development. In addition, the NHS and County Council has confirmed that the floorspace proposed in the Agreement is still required to support the Development.

- 6.4 In any event, the changes proposed in the appellant's S106 Agreement with Proposed Modifications table (CD2/14, request 58) do not appear to reduce the size of the Community Hub or change the type of facilities that would be provided within it (except for community learning space which is proposed to be removed). Instead, the proposed modifications would provide more flexible space, in two tranches and the delivery of the facility would be later than that currently required and subject to leases being secured from future occupiers.
- 6.5 The NHS (Kent and Medway) have advised that they cannot support the appellant's proposal to delay the provision of the health facilities and split its delivery into two phases. They advise that *"operationally for the delivery of healthcare services phasing the delivery would not be appropriate. In practical terms delivering healthcare to 10,200 people in 500sq/m which would need to include all supporting infrastructure in the first phase (i.e. waiting room, reception, WCs, clean & dirty utility rooms) limiting the amount of clinical room capacity available, would be very difficult"* (refer to Appendix C).
- 6.6 The appellant is of the view that the capital cost of up to circa £5 million *"is excessive"* and that *"if the Appellants carried out this build themselves there would be a significant saving in cost"* (CD2/14, request 58). This figure was calculated based on the estimated cost of such facilities at the time planning permission was granted. The infrastructure cost plan submitted by the appellant in support of the outline planning permission (CD6/15) identifies the cost of the Community Hub to be circa £5 million – this is the appellant's figure. In addition, it is the appellant who is required to construct the Community Hub under the current terms of the Agreement, and there is already provision within the Agreement (under paragraph 1.1.1) for the appellant to deliver the Community Hub at a lower cost if it can be demonstrated that this is possible. There is therefore no justification for the total capital cost identified in the Agreement to be amended.
- 6.7 Furthermore, the Council is aware that construction costs have increased since the outline planning permission was granted. This is a point made by the appellant elsewhere in their appeal in respect of the cost of the informal/natural greenspace and in discussions with the Council outside of this appeal with respect to the cost of the first Playspace (PS1). This point is also made by the NHS who state that any reduction in the costs associated with delivery of the community hub *"raises serious concerns regarding deliverability of the proposed facility"* (refer to Appendix C).
- 6.8 The appellant claims that early provision of the Chilmington Green secondary school should delay the need for community facilities further (CD2/13, paragraph 8.21). It is the intention that the secondary school would be open for community use outside the hours of school use and that the following facilities

would be available: - natural turf pitches; MUGA and the indoor sports areas and facilities comprising a sports hall; drama studio; classroom space (with IT provision); school hall and dance studio. Apart from classroom space, which could be utilised for community meetings, the facilities at the secondary school would not be suitable for the uses and facilities to be provided at the Community Hub. For example, the County Council has advised that a large proportion of community learning take places during daytime (school) hours, and it is preferable to deliver community learning outside of a school setting. Therefore, the early provision of the secondary school provides no justification to delay the provision of the Community Hub.

- 6.9 The Council has already indicated in its Statement of Case (CD3/1) that it may be more appropriate to provide more flexible / multi-purpose space at the Community Hub and for the building(s) to be delivered in two phases. However, it is essential for the first phase of the Community Hub to be delivered no later than 1800 dwelling occupations. Later delivery would result in a deficit of facilities in proportion to the number of residents of the Development and would directly impact upon the sustainability objectives of the Development and undermine the basis upon which planning permission was granted.
- 6.10 The appellant's proposed new clauses 1.2A.8 and 1.3 could result in a significant delay in the construction of the Community Hub or even no delivery of the Community Hub at all. For example, if the appellant refuses to grant a lease or offers leases on unreasonable terms so as not to fulfil this obligation, and/or enters into some leases but not others, then the whole construction could be delayed. Equally, being allowed to continue occupations without delivering the Community Hub provides no incentive for the appellants to comply with their obligations.

District Centre Facilities

- 6.11 The appellant indicates that they intend to submit a separate planning application for land parcels CH1 and CH2 within the District Centre (CD2/14, request 65), although from the proposed modified text submitted it is evident that the appellant does not intend to remove the obligation to provide the District Centre from the Agreement, as previously indicated. The obligation to provide the District Centre therefore remains.
- 6.12 The appellant states that the deletion of the specified floorspace requirements for the supermarket; small retail units and office building (CD2/14, request 65) is required because there is no market demand for premises of the size indicated in the Agreement. However, the appellant has not provided any evidence to substantiate their claim. In addition, the planning effects of smaller or larger premises within the District Centre were not tested or assessed in the

Environmental Statement submitted in support of the outline planning application for the Development. If different size premises were now proposed this could undermine the vitality and viability of Ashford town centre.

- 6.13 Deleting reference to the amount of floorspace required would undermine the sustainability of the development and the basis upon which planning permission was granted. This would allow retail premises of a larger or smaller size to be provided which could either (1) be too small to meet the needs of residents who then have to travel elsewhere for their day to day needs or (2) could provide space that is so large that it is no longer only meeting the needs of the residents of Chilmington Green but becomes a destination to shop competing with Ashford town centre.
- 6.14 Regarding office space, the outline planning permission was granted on the basis that a range of employment opportunities would be created as part of the Development. Providing job opportunities close to where people live is a key element of building a sustainable community. Removing reference to the amount of office floorspace required would allow premises of a larger or smaller size to be provided which would either not meet the needs of residents or provide premises so large that it results in many people commuting to the Site from a wide area.

Design Brief and Specifications

- 6.15 The appellant proposes to delay the timescales within which the DB&S for the Community Hub and District Centre are required to be submitted. The importance of developing a design brief for the District Centre, including the Community Hub, is identified in the AAP.
- 6.16 AAP paragraph 5.23, (CD3/1/1, page 36) states that “*although most of the District Centre, and a number of services, will be delivered early on in the development lifecycle, it is likely that the full build out of the District Centre and all of its services will come forward in phases and will not be complete until the latter phases of the development*”.
- 6.17 In addition, AAP paragraph 5.24 (CD3/1/1, page 36) states that “a detailed design strategy for the whole District Centre will need to be agreed with the council before detailed planning permission is granted or reserved matters are approved for this area. This will set out the mix, scale and distribution of uses and the detailed approach to the centre’s design and phasing.
- 6.18 The submission of DB&S within a timely manner enables the Council to ensure design quality is embedded in the development at an early stage and safeguards against poor quality development. The DB&S needs to be agreed

in good time prior to commencement of construction to enable contracts to be let, etc. A delay to the agreement of the DB&S is unlikely to allow sufficient time to enable the facilities to be delivered by the required deadline.

- 6.19 When outline planning permission was granted it was envisaged that the DB&S for the Community Hub should be completed no later than 1100 dwelling occupations, with construction of the Community Hub commencing no later than 1300 dwelling occupations to enable construction to be completed by 1800 dwelling occupations (CD6/14, Item 14).
- 6.20 The Agreement currently allows 700 dwelling occupations to take place once the DB&S has been agreed but prior to the completion of construction of the Community Hub. The appellant has advised that *“housing delivery is expected to accelerate from around 100-125 homes per year in 2020-2024 to around 300 homes after 2028 with final completion by 2048”* (CD2/13, paragraph 4.3). Based on the appellants expected housing delivery per annum this equates to a timescale of circa two years to let contracts and construct the Community Hub, which the Council considers is sufficient time. The modifications proposed would reduce the number of occupations that can occur between the trigger for the approval of the DB&S and the trigger for the delivery of the Community Hub to 400 dwelling occupations. Based on the appellants expected housing delivery per annum this equates to a timescale of circa one year which the Council considers is insufficient time to let contracts and complete construction. A delay to the agreement of the DB&S is unlikely to allow sufficient time to enable the facilities to be delivered by the required deadline.
- 6.21 Furthermore, splitting the submission of the DB&S for the Community Hub into two phases and removing the requirement for the DB&S to provide all the details identified in Schedule 12A of the Agreement would make it impossible to design the Community Hub as a whole and would result in the piecemeal design of a single land parcel, where it would not be possible to understand how or whether phase two will work with phase one.
- 6.22 Removing index linking from the total capital cost of the Community Hub would undermine the ability to deliver the facilities required and that are of the right quality. Indexation ensures the value of the contributions agreed when planning permission is granted, and consequently purchasing power, is maintained in the future and therefore the same level of service/infrastructure can be provided. The total capital cost was calculated based on the cost of delivering the Community Hub at the time that the costs were calculated when outline planning permission was granted. Costs have since risen and therefore the proposed modification to remove indexation would reduce the ability to deliver the quality of facilities that are required.

- 6.23 In addition, it is necessary to ensure that fees, contingencies, specification and design costs and supervision fees are sufficiently provided for, and do not 'use up' the main construction budget sum. Access roads and service costs are infrastructure costs associated with the wider development. Including these costs in the total capital cost would reduce the total budget available to deliver the facilities. and consequently, undermine the ability to deliver the required quality of facilities at the Community Hub.
- 6.24 It is already evident from discussions with the applicant about the total capital cost for the first playspace (PS1) and the applicant's position with reference to request 25 relating to the cost of the Natural Green Space, that the budgets identified in the Agreement, with the inclusion of index linking and without the inclusion of fees, contingencies, specification and design costs, supervision fees, access roads and service costs, does not provide sufficient budget to deliver the quality facilities required by the outline planning permission, the Chilmington Green Design Code SPD and the Design and Access Statement submitted by the appellant in support of the outline planning application. Including these costs in the budget identified in the Agreement for the total capital cost will undermine further the ability to deliver the quality of facilities envisaged for Chilmington Green.
- 6.25 The amendment proposed to delay the deadline for the approval of the DB&S for the District Centre to no later than 1500 dwelling occupations makes no sense alongside the changes made to Schedule 14 by the appellant on 23 December 2024 which require the District Centre facilities to be completed by 1250 dwelling occupations.

Public Art

- 6.26 The Agreement requires this first instalment of this contribution (£50,000) to be spent "*for the purpose of a preparing a brief for the provision of public art within the Site (including delivery methods, timetables for delivery and possible locations)*" (Schedule 24, paragraph 1.1). This is exactly what the contribution has been spent on. Therefore, the Council has fulfilled its obligations under clause 1.1. Paragraph 1.1 does not require the first instalment of the contribution to be spent on the provision of public art on the Site as claimed by the applicant (CD2/14, request 105)
- 6.27 The appellant states, when referring to the payments set out in Schedule 24. Paragraphs 1.2-1.6 (totalling £700,000), that "*whilst in principle these payments continue potentially to serve a useful purpose, the existing timetable for performance of these obligations is out of step with the actual building trajectory*". The appellants are also of the view that they should acquire and place the public art on the Site, stating that this would 'streamline the process'

and avoid “any unnecessary administration and resultant wasted expenditure” (CD2/14, request 106).

- 6.28 The payment triggers, which are based on the number of dwelling occupations, aligns with the timetable for the delivery of the Public Art Strategy. It is therefore not clear why the appellant is of the view that the timetable for the performance of these obligations (delivery of the public art strategy) is out of step with the building trajectory. Delaying the payments would prevent the delivery of the Strategy within the timescales of dwelling occupations currently envisaged.
- 6.29 The appellant has not confirmed whether, if they took on the responsibility of delivering the public art, they would continue to follow the Creative Chilmington Strategy or whether they would develop an alternative Strategy. The Creative Chilmington Strategy does not just include the installation of objects of public art on the site but involves building opportunities for the growing community to engage with and take part in creative activities. It appears that the appellant only proposes to provide public art within the Site which is not the full intended purpose of the public art contributions or the public art strategy. The appellant’s proposal would reduce the scope of the public arts strategy for the Development which would be detrimental to the community.

7.0 Conclusion

- 7.1 The Agreement currently ensures the delivery of the Community Hub, the District Centre facilities on the Site, along with associated obligations relating to the submission of Design Briefs and Specifications. The Agreement also secures the financial payments to be spend on the production and delivery of the Creative Chilmington Strategy which supports community engagement.
- 7.2 The obligations serve a useful purpose because they ensure that the social, health and day to day retail needs of the residents of the Chilmington Green development are met in a timely manner. They also ensure that job opportunities are provided close to where people live. The provision of the Community Hub and District Centre in a timely manner is essential to ensuring that the Development is sustainable and that residents are not reliant on having to travel outside of the Development to meet their day-to-day needs. The obligations are also fundamental to good placemaking for a development the size of Chilmington Green
- 7.3 The modifications proposed to be obligations would not serve that purpose equally well because a delay in the provision of the facilities would result in a deficit of social, health and retail facilities and employment opportunities in proportion to the number of residents of the Development and there is insufficient existing alternative provision in the local area to meet this shortfall.

Appendix C

e-mail from NHS Kent and Medway dated 31 January 2025

Faye Tomlinson

From: Faye.Tomlinson@ashford.gov.uk
Subject: RE: re: Chilmington Green, Ashford, S.106 Agreement Appeal

From: BURCHELL, Alison (NHS KENT AND MEDWAY ICB - 910 [REDACTED])
Sent: 31 January 2025 16:17
To: Faye Tomlinson <Faye.Tomlinson@ashford.gov.uk>
Cc: L [REDACTED]
9 [REDACTED]
Subject: RE: re: Chilmington Green, Ashford, S.106 Agreement Appeal

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Hi Faye

Following our discussion earlier in the week please find below the key points in response the question regarding the impact of the proposed change to the obligation *"To delay the delivery of the GP facility from the currently required 1800 dwelling occupations and instead to split its delivery into two phases - phase 1 (up to 500sqm) to be delivered no later than 3250 dwelling occupations and phase 2 (up to 500sqm) to be delivered no later than 4250 dwelling occupations "*

- NHS Kent and Medway cannot support the proposed delay and phasing proposed to the obligation.
- Operationally for the delivery of healthcare services phasing the delivery would not be appropriate. In practical terms delivering healthcare to 10,200 people in 500m2 which would need to include all supporting infrastructure in the first phase (ie waiting room, reception, WCs, clean & dirty utility rooms) limiting the amount of clinical room capacity available, would be very difficult.
- We understand the developer has also proposed a reduction to the costs associated with delivery of the community hub, including the healthcare facility. NHS Kent and Medway is aware that construction costs have increased therefore any reduction raises serious concerns regarding deliverability of the proposed facility.

Please let us know if a further discussion is required next week.

Kind Regards

Alison

Alison Burchell
Deputy Director
Primary Care Strategy, Estates and Transformation