

106 Modifications Table

DATE: 20 OCTOBER 2022 (UPDATED 25 OCTOBER 2024)

- (1) HODSON DEVELOPMENTS (ASHFORD) LIMITED
- AND-
- (2) CHILMINGTON GREEN DEVELOPMENTS LIMITED
- AND-
- (3) HODSON DEVELOPMENTS {CG ONE} LIMITED
- AND-
- (4) HODSON DEVELOPMENTS (CG Two) LIMITED
- AND-
- (5) HODSON DEVELOPMENTS (CG THREE) LIMITED

THE APPLICANTS

- AND-
- (1) ASHFORD BOROUGH COUNCIL
- AND
- (2) KENT COUNTY COUNCIL

THE RESPONDENTS

APPLICATION No.2: ANNEX A APPLICATION FOR MODIFICATION/DISCHARGE OF
THE SECTION 106 AGREEMENT DATED 27 February 2017 RELATING TO CHILMINGTON GREEN, ASHFORD ROAD, GREAT CHART
PURSUANT TO SECTIONS 106 AND 106A TOWN & COUNTRY PLANNING ACT 1990 AND ALL OTHER POWERS SO ENABLING

(1)	(2)	(3)	(4)	(6) Category	(5)	(6)
Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge applied for by the Applicants	<p>D – Discharged on the basis it is no longer necessary</p> <p>DV – Discharge – no longer necessary/viability</p> <p>M – Modified on the basis that it serves the purpose equally well</p> <p>V - Modified on the basis of viability reasons</p> <p>O – Other. For changes that do not fall into the above categories (i.e. repayment provisions)</p>	<p>The Reasons for applying for the specified Modification or Discharge are detailed below.</p> <p>In every case where the application is to discharge any obligation it is because it serves no useful purpose for the reasons given below.</p> <p>Likewise, where the application is to modify any obligation it is because whilst it continues to serve a useful purpose, for the reason/s given below it would serve that purpose equally well if it had effect subject to the modification specified hereon.</p> <p>Further, in every case also the obligation specific reasons detailed below should in so far as relevant be read with the submission to which this schedule is annexed.</p>	<p>Kent County Council (KCC) Response</p> <ol style="list-style-type: none"> What purpose does the current obligation serve. Does the current obligation serve a useful purpose? and if so; Would the obligation serve that purpose equally well if it had effect subject to the proposed modification (if applicable)? Decision – Accept variation application/Refuse variation application/Further consideration will be given.
1.	Definition of 'Commence (Statutory) the Development'	Clause 1.1	<p>The Applicants apply to modify the said definition to read as follows</p> <p>'The carrying out of a Material Operation (Statutory) pursuant to the planning permission for the Planning Application and any Reserved Matters Application approval and any modification to the planning permission for the Planning Application and any Reserved Matters Application occurring prior to the commencement (statutory) of the Development which would constitute the beginning of the Development for the purpose of section 56 of the Planning Act (as amended) but for non-compliance with any condition of the planning permission for the Planning Application and any modification to the same and related expressions such as</p>	M	<p>To correct the drafting of the definition, to refer to the correct section of the T&CPA, namely section 91 rather than 56.</p> <p>This is understood to be agreed already and the s 106 Agreement should be modified accordingly.</p>	Refer to ABC Response

			"Commenced (Statutory) the Development" "Commencement (Statutory) of the Development" and "Commenced (Statutory) the Development" shall be construed accordingly.'			
2.	Superceded					
3.	Definition of 'Paying Owners'	Clause 1.1	The Applicants apply to modify the said definition to add as 'Paying Owners', Hodson Developments (CG Three) Limited.	M	By increasing the number of paying parties, each jointly and severally liable, the payment covenant is strengthened and the relevant obligations under the s.106 Agreement better served. This is understood to be agreed already and the s106 Agreement should be modified accordingly	Refer to ABC Response
4.	Release from liability	Clause 2.2	<p>The Applicants apply to modify the said release from liability clause to ensure additionally that any housing provider (registered or not) who by purchasing the whole or any part of the land comprised in the Site becomes an Owner or Paying Owner and who develops housing for rental or shared ownership will be released from liability on like terms to those contained in clause 2.2 upon the occupation by a tenant or purchaser (including a shared ownership purchaser or similar) of the last of the homes to be developed on their land.</p> <p>Thus, it is proposed that a new clause 2.2.1A be introduced mirroring clause 2.2.1 but commencing in terms that:</p> <p>2.2.1A Also, in the event that an Owner shall have completed all of the Dwellings in the area(s) of the Site in which it has an interest and all of those Dwellings shall have been Occupied by a tenant under a lease or shared ownership purchaser, then that Owner shall no longer be bound ... CMO.'</p>	O	<p>Clause 2.2 is acknowledged potentially to serve a useful purpose by ensuring that Owners are released from liability upon completion and disposal of their part of the Development, but it fails to take account and provide for the kind of institutional investor, particularly those who deliver long-term affordable housing solutions, who retain an interest in the Site after they have completed their development and all of their Dwellings have been Occupied.</p> <p>This was an oversight in the original drafting, which was carried out before the dramatic evolution that there has been over the last 5 years of institutional capital investing to develop homes for long term rental or shared ownership schemes, in particular to provide homes for local essential and key workers.</p> <p>As currently drafted clause 2 is acting as a brake on the sale of parts of the site to this type of institutional investor and thereby preventing both accelerated delivery of homes at Chilmington Green and the delivery of a more diverse affordable housing mix catering to the area's broader housing needs.</p> <p>In the circumstances clause 2 will serve its purpose better or at least equally well, as well as the broader aims of the Development, if it is modified as proposed.</p>	<p>S106(4) of the Town and Country planning Act 1990 provides that a s106 agreement "<i>may provide that a person shall not be bound by the obligation in respect of any period during which he no longer has an interest in the land</i>". It is not mandated by s106(4) that a s106 agreement <i>must</i> provide a release for persons who no longer have an interest in the land. Moreover, there is no equivalent subsection of s106 contemplating a release for persons who retain an interest in the land, as is proposed by the Application.</p> <p>It is not appropriate to provide a release from liability for any housing provider (registered or not) who becomes an Owner or Paying Owner and who develops housing for rental or shared ownership. All Owners and Paying Owners are liable for their proportion of the planning obligations required to support the development of the community at Chilmington Green. Requests for a release from liability are most appropriately considered on a case-by-case basis.</p> <p>The obligation continues to serve a useful purpose. Its modification would not serve a useful purpose equally well.</p> <p>Reject - shall continue to have effect without modification</p>
5.	Index Linking	Clause 28	The Applicants apply to modify the said definition so as to replace all references to 'index linking' in clause 28 to 'Index Linking'.	M	To correct the drafting of the clause. This is understood to be agreed already and the s106 Agreement should be modified accordingly.	<p>The existing wording, as part of the obligations to which it relates, continue to serve a useful purpose. Its discharge would not serve a useful purpose.</p> <p>Clause 28 sets out the methodology for index linking and the amendment suggested is not required to clarify or correct the drafting. The reason index linking in clause 28 does not refer to the</p>

						<p>defined term by capitalising is because clause 28 itself describes the process of adjustment. This change is not needed.</p> <p>Reject - shall continue to have effect without modification.</p>
6.	Base date for indexation	Clause 28	<p>The Applicants apply to modify clause 28 so as to amend the base date for indexation for the Relevant Index from April 2014 or the second quarter of 2014 as the case may be to August 2018 or the third quarter of 2018 as the case maybe.</p> <p>The said modification to be applied in each sub- clause as appropriate, so as to amend all references to April 2014 or the second quarter of 2014 as specified above.</p> <p>Further, the Applicants request the modification of Clause 28 to include provision as follows:</p> <p>'Where any Index Linked payment required to be made under this Agreement by virtue of the Indexation results in that payment exceeding the cost of the item for which it is to be paid, the amount payable shall be reduced accordingly and only the amount reduced as aforesaid shall be payable.'</p>	M and V	<p>The purpose of the index linking was of course to ensure that payments and capital contributions kept step with actual costs over time. However, the indexation date (April 2014) and the Relevant Indices (RPI, BCIS Indices or The Output Prices Index for Non Public Housing Works as the case may be) no longer properly serve this purpose.</p> <p>Rather, as a result of the historical base date and extended period over which payments and values in the s106 Agreement in respect of Phase 1 are now being indexed, the indexation provisions are over inflating the relevant sums. Thus, the indexation provisions are producing payments and contributions in excess of those that would be required to mitigate the impact of the Development.</p> <p>Certainly, if these section 106 payments and capital contributions were calculated at today's date they would be significantly lower than the amounts plus indexation being demanded or falling due. These inflated payments are not only unjustified but are serving materially to undermine the viability of the Development.</p> <p>Accordingly, there can be no doubt that the Applicants are entitled in accordance with the terms of section 106A to the modification of the current indexation provision to provide for a new base date to reduce the distortions and bring the payment more in to line with actual costs.</p> <p>To this end the Applicants propose that all payments and contributions should be rebased to August 2018, the actual commencement of house building on site. This date will not only reduce the cost distortions as aforesaid but fairly and properly makes allowance for the delays in reserved matters approvals for which the Applicants were not responsible.</p> <p>The additional clause to be included ensures that the Indexation provisions serve their purpose better, and certainly equally well, as modified by securing that the Indexation provisions have no greater effect than that which they are properly intended to have.</p> <p>Further, for the avoidance of doubt, these modifications are proposed without prejudice to and in the alternative to any application hereinbelow to discharge or otherwise modify</p>	<p>Kent County Council (KCC) shared its original heads of terms for the contributions that would be required by KCC with Ashford Borough Council (ABC) as far back as November 2013. At that point in time, KCC requested that indexation be backdated to August 2013, the date at which the County Council assessed and set the section 106 contribution rates for this development. However, draft heads of terms were first shared by the Paying Owners with ABC in April 2014. The earliest date that ABC would accept for indexation to start running from was therefore, April 2014. During the negotiations that followed the planning committee approval of the application for Planning Permission, April 2014 was agreed with the Paying Owners. It then took almost a further 3 years to conclude the Agreement, on 27 February 2017.</p> <p>Indexation is applied to ensure that the rate agreed has the same purchasing power in the future, to enable the same level of service/infrastructure to be provided. Amending the indexation date to 2018 would reduce the rate of contributions in today's terms, decreasing the Local Authority's ability to deliver services and thus place a burden on the public purse.</p> <p>The Appellant asserts that the indexation base date of April 2014 will result in payments and contributions in excess of those that would be required to mitigate the Development. KCC has assessed this claim, looking at the set contributions for Primary School 1 and the Secondary School, indexing these from April 2014 and August 2018 to January 2023. Indexation based at April 2014 does not produce payments and contributions in excess of those that would be required to mitigate the impact of the development, and this is demonstrated in an example calculation set out in Appendix 1. Indexation based at August 2018 would result in contributions insufficient to meet the actual cost of providing infrastructure.</p> <p><u>Application to amend indexation base date:</u></p> <ol style="list-style-type: none"> 1. The obligation (contained in Clause 28.1) serves the purpose of maintaining the purchasing power of the set contribution into the future, enabling it to continue to provide the infrastructure necessary to mitigate the needs of the development. This is to ensure that the costs of infrastructure necessary to serve the development are met by the Development. 2. The obligation continues to serve a useful purpose of maintaining the purchasing power of the contribution. 3. The obligation would not be equally well served if the variation was accepted, as this would result in contributions of reduced

					any of the principal obligations to which they relate.	<p>value, creating a funding gap and failing to mitigate the needs of the development. This would create a burden on the public purse.</p> <p>4.Application to modify the obligation is refused.</p> <p>Application to amend Clause 28 to include provision for reduction in payments, should indexation result in overpayment.</p> <p>As above, KCC is of the view that indexation (with base date of April 2014) will not result in payments in excess of requirement. In addition, Schedule 15 paragraph 48 and 49, Schedule 18A paragraph 6, Schedule 16 paragraph 10 and Schedule 25 paragraph 5.2 all include covenants on the County Council to provide either information relating to the actual cost of infrastructure provision and/or return of unspent monies to the Paying Owners. It is therefore, considered unnecessary to include this amendment.</p> <p>1. The obligation to pay indexation according to Clause 28 serves the purpose of maintaining the purchasing power of the set contribution into the future, enabling it to continue to provide the infrastructure necessary to mitigate the needs of the development</p> <p>2. The obligation continues to serve a useful purpose.</p> <p>3. Schedule 15 paragraph 48 and 49, Schedule 18A paragraph 6, Schedule 16 paragraph 10 and Schedule 25 paragraph 5.2 all include covenants on the County Council to provide either information relating to the actual cost of infrastructure provision and/or return of unspent monies to the Paying Owners. It is therefore, considered unnecessary to include this amendment.</p> <p>4.Application to modify the obligation is refused.</p>
		Schedule 1 - Affordable Housing				Refer to ABC Response
7.	Provision of 70 Extra Care Housing Units in Phase One - Viability Review 1	Paras 1.1, 2, 3 and 6 And Clause 1.1, the definition of Registered Provider	<p>The Applicants propose that the obligations at paragraphs 1.1, 2, 3 and 6 be discharged.</p> <p>Further, to accommodate the provision of AHUs by responsible providers of social housing that have not been approved by the Council as a 'Registered Provider' and to ensure they are not excluded under the s106, the</p>		<p>The obligation at paragraph 1.1 and associated obligations at 2, 3 and 6 to provide 70 Extra Care Housing Units in Viability Review Phase One serves no useful purpose because such units are both unnecessary and their cost is undermining the viability of this phase and jeopardising overall delivery. Moreover, the Applicants have been unable to find a provider. The obligation should accordingly be discharged.</p>	

			Applicants propose that the definition of Registered Provider be modified to state'... or any other provider of social housing otherwise approved by the Council, such approval not to be unreasonably withheld.'		The financial benefits referred to above and the contribution made by this specific proposal to the viability and deliverability of the Development and ultimately therefore to ensuring that this obligation will serve any useful purpose at all, more than justifies this modification.	
8.	Provision of 24 Affordable Housing Units in Phase One - Viability Review 1	Paras 1.2, 4, 5 and 7	<p>The Applicants apply to modify the obligation at 1.2 to provide:</p> <p>'1.2 Hodson CG One, Hodson and Chilmington Green Developments covenant with the Council to construct 24 Dwellings within the Hodson CG One and the Chilmington Green Developments Phase One Land as Affordable Housing Units prior to the date on which the 1000th Dwelling to be Occupied is Occupied [rather than 650th] in accordance with the requirements of paragraphs 4 and 5 below.</p> <p>4. The Affordable Housing Units referred to at paragraphs 1.2 and 1.3 above shall be provided as Shared Ownership Units....</p> <p>7. The Owners covenant with the Council not to Occupy more than 1,300 [rather than 650] Dwellings unless and until'.</p>		<p>The obligation to provide 24 Affordable Housing Units in Viability Review Phase One is acknowledged as potentially serving a useful purpose, but the requirement to do so by the 650 Dwelling will adversely affect the Paying Owner's cashflow and compromise the viability of this Phase I - Viability Review I.</p> <p>Further, in the light of current market conditions and operator response, the obligation to include Affordable Rents is non-viable. It does not therefore serve any useful purpose and should be modified to provide instead for the provision of further Shared Ownership units.</p> <p>The purpose of these provisions can be better or at least equally well served by modifying them as proposed, supporting the Development whilst securing delivery of these units in any event within Phase 1.</p> <p>As can be seen from the Viability Report and the updated viability analysis therein, the cumulative benefit of the s106 modifications/discharges proposed results in a reduction in s106 finance costs from c£135m (excluding land costs) to c£30m (excluding land costs).</p> <p>Further, the cashflow benefit of this specific variation is evidenced at the Explanatory Statement, Appendix 3 Figure 5.2.</p> <p>The financial benefits referred to above and the contribution made by this specific proposal to the viability and deliverability of the Development and ultimately therefore to ensuring that this obligation will serve any useful purpose at all, more than justifying the changes sought to the s106 Agreement.</p>	
9.	10% Affordable Housing to be provided in each Viability Review (2 to 10) as a minimum provision	Paragraphs 8, and 14	The Applicants apply for the obligation for this provision to be completed by 75% occupied dwellings within the relevant review phase to be modified to 95% occupied dwellings.		<p>The said obligation to provide 10% Affordable Housing Units in each Viability Review Phase is acknowledged potentially to serve a useful purpose but the requirement to do so by the 75% occupied dwellings will adversely affect the Paying Owner's cashflow and compromise the viability of each viability phase.</p> <p>The purpose of these provisions can be better or at least equally well served by modifying</p>	

					<p>them as proposed, supporting the Development whilst securing delivery of the 10% AHU's in any event within each phase.</p> <p>Again, as can be seen from the Viability Report and the updated viability analysis therein, the cumulative benefit of the s106 modifications/discharges proposed results in a reduction in s106 costs from c£126m (excluding land costs) to c£20m (excluding land costs). Further, the cashflow benefit of this specific variation is evidenced at the Explanatory Note, Appendix 3 Figure 5.2.</p> <p>These figures clearly demonstrate also that consistent with Application No.1 the 10% provision is the upper limit of what can be sustained and is feasible in at least the first 4 Viability Review Phases.</p> <p>Certainly, the financial benefits referred to above and the contribution made by this specific proposal to the viability and deliverability of the Development and ultimately therefore to ensuring that this obligation will serve any useful purpose at all, more than justifies this modification.</p> <p>It is crucial that a balance is struck between the useful purpose intended to be served by any obligation and the ability to deliver the Development so as that purpose or any aspect of it can be served at all.</p>	
10.	Affordable Housing Unit tenure split 60% Affordable Rents and 40% Shared Ownership, with 5% of units to have Habinteg fixtures and fittings.	Paragraphs 9 and 12.	The Applicants apply to modify the Affordable Housing tenure split so as to provide 30% Affordable Rents and 70% Shared Ownership.		<p>The said obligation to provide AHU's subject to differing tenures is acknowledged potentially to serve a useful purpose but the current allocation solely to Affordable Rent Units and Shared Ownership Units is not sustainable or feasible, adversely affecting the Paying Owner's cashflow and compromising the viability of the current phase and potentially delivery of the overall Development.</p> <p>The purpose of these provisions can be better or at least equally well served by modifying them as proposed, supporting the Development whilst securing delivery of the 10% AHU's in any event within the current phase.</p>	
		Schedule 2 – Carbon Offsetting				Refer to ABC Response
11.	Provision of a Building Energy Performance Certificate for each building.	Schedule 2 and 43	<p>The Applicants apply to discharge the whole of Schedule 2 and the obligations therein.</p> <p>Whilst the above is understood to be agreed it will be necessary to give proper effect to this by credit</p>		<p>This obligation no longer serves a useful purpose and should be discharged.</p> <p>It is understood that this request is agreed by ABC both as to residential and non-residential.</p>	

	Calculation of carbon off setting contributions and payment liabilities.		is still included in each Viability Phase modifying Schedule 43, to ensure appropriate Review for the Carbon Off-setting Savings achieved by other means. The Applicants apply accordingly.			
		Schedule 3 – Combined Heat and Power Plant (CHP)				Refer to ABC Response
12.	Viability submissions and appraisal for a Combined Heat and Power Plant (CHP) or District Heating Plant (DHP)	Schedule 3	The Applicants apply to discharge the obligation under Schedule 3 save for paragraph 1.3.2.		<p>The Feasibility/Viability Studies were formally submitted for fact-checking by the Council on 5 April 2019. In breach of paragraph 2 of Schedule 3 no response was forthcoming from the Council within the requisite 28 days. In the event it was not until only recently in 2022 that any response was received, with the Council requesting further information on the submission.</p> <p>Given the content and conclusions reached in the submitted Feasibility/Viability Studies it is the case now that the CHP/DHP is not Feasible in all Scenarios, so that it should be confirmed now that except for paragraph 1.3.2 the obligations under Schedule 3 shall cease to have any further effect as regards the District Centre.</p>	
Schedule 4 – Community Management Organisation (CMO)					In this regard the Applicants refer to and rely in particular upon section 7 of the Explanatory Statement accompanying this application in addition to the reasons stated below.	Refer to ABC Response
13.	Provision of the CMO welcome pack etc.	Paragraph 2.1.2	The Applicants apply for the obligation to provide a copy of the welcome pack document and other documentation to each first purchaser or tenant/occupier to be discharged.		The provision of this copy documentation no longer serves any useful purpose, to do so is expensive and unnecessary given that the same documentation is readily accessible online.	
14.	Provision of the CMO First Operating Premises, their completion and acceptance	Para 4.1.3, and in particular the opening clause thereof providing 'That no Dwelling shall be Occupied ..'	Without prejudice to the Applicants' primary position that this obligation has been met and in any event has been waived by the Respondents and/or they are estopped from relying thereon, the Applicants apply to modify the opening clause of 4.1.3 to provide 'That prior to 350 Dwellings being Occupied:- a) the CMO .. etc. '		Whilst the Applicants maintain their position regarding compliance, waiver and estoppel, it is acknowledged that these matters are disputed by the Respondents (ABC's Letter of Response dated 16/9/22 refers). Without prejudice to the Applicants' primary position, therefore, but to avoid further controversy and ensure that this obligation continues to serve its intended purpose in terms of delivery of the CMO First Operating Premises rather than none, the Applicants seek to modify the same as claimed.	
15.	Continued maintenance obligations in respect of the CMO	Paragraph 4.1.4	The Applicants apply for the obligations under paragraph 4.1.4 to be discharged.		The First Operating Premises have been completed and ready for CMO occupation since March 2020. However, the CMO deferred occupation due to Covid at that time and has to	

	First Operating Premises				date failed to take up occupation of the same. Given the passage of time it would be unfair to continue to require performance of these obligations, the appropriate time for their performance has now passed and they should no longer properly be regarded as serving a useful purpose.	
16.	Provision of the CMO Second Operating Premises	Para 5.1.1 to 5.1.5 and Sch 29D Item 6	<p>The Applicants apply for these obligations under paragraph 5 and Schedule 29D Item 6 to be discharged.</p> <p>In addition; for all appropriate consequential variations including the discharge of Schedules 33 and 35.</p>		<p>The Applicants position in relation to the CMO Operating Premises is that the First Operating Premises are sufficient and there is no sensible requirement for the Second.</p> <p>The First Operating Premises have been completed and ready for CMO occupation since March 2020. However, the CMO deferred occupation due to Covid at that time and has to date failed to take up occupation of the same. This is partly because the CMO staff prefer still to work from home following a change of working practices apparently brought about by the Covid 19 Pandemic, and partly because the premises are located near to building activity. The building is though in a central location chosen by ABC and the CMO and is more than sufficient for the operating requirements of the CMO on-site.</p> <p>It is proposed therefore that the CMO remains in this building and for any additional space it needs in the longer term to be accommodated in the other community provision including, particularly for temporary needs such as events, the schools.</p> <p>In the circumstances the CMO Second Operating Premises is surplus to CMO requirements and the associated obligations no longer serve any useful purpose and should be discharged.</p> <p>Furthermore, the cost of this provision at £250,000 is materially contributing to the non-viability of Phase 1 and for this reason also can no longer be regarded as serving a useful purpose.</p> <p>The removal of this cost at £250,000 is shown in the Viability Report at Appendix 3, Item ref 5700.2, and forms part of this updated viability analysis justifying each discharge sought.</p>	
17.	Payment of Deficit Grant Contributions	Para 7 and Sch 29A Items 7, 10, 13, 16, 20, 22, 26, 29, 33, 37 and equivalent items in Sch 29B and 29C	The Applicants' application in this regard is to discharge the Deficit Grant Contributions in their entirety.		The Applicants seek the discharge of the Deficit Grant Contributions obligations because they are substantially undermining the viability and deliverability of the Development and do not therefore realistically serve any useful purpose and should be discharged accordingly.	

					<p>The performance over the first years of the CMO has provided the clearest evidence that the proposed structure is not fit for purpose.</p> <p>The CMO has failed to carry out even the most basic of its functions despite grant funding, and it is abundantly obvious now that the nature and scale of the physical endowments and funds to be transferred under the existing obligations are well beyond what can be reasonably and sustainably be managed by this body.</p> <p>The CMO is currently over specified and its scale and complexity is not deliverable for a development of this nature and the time horizons over which it will be built. Based on the experience to date, it will be more appropriate to limit the scope and budget of the CMO to a list of essential services along the lines of a traditional Estate Management model.</p> <p>This will ensure the services can be delivered and managed sustainably without additional external funding.</p> <p>The CMO simply does not and should not require this additional level of funding to deliver the services actually required of it. Indeed, such additional funding it has received to date, has not been spent sensibly nor delivered any material benefits to residents.</p> <p>Rather the CMO should simply rely upon the monies collected under the Rentcharge Deeds and properly manage its accounts to meet its liabilities.</p> <p>Moreover, as stated, the total amount of the DGC in the sum of £3,350,000 to be paid in Phases 1 and 2 is undermining the viability of the Development and cannot be sustained.</p> <p>In the premises the DGC does not realistically serve any useful purpose and these contributions should be discharged in their entirety.</p>	
18.	Superceded					
19.	Provision of Commercial Estate: Basic Provision	Paragraphs 9 and 10 and Schedule 29D Item 14	<p>The Applicants apply to discharge the obligations under paragraphs 9 and 10 to provide the First Tranche Commercial Estate/Cash Endowment and Schedule 29D Item 14.</p> <p>In addition, the Applicants apply for any appropriate consequential variations including the discharge of Schedule 36.</p>		<p>The Applicants seek the discharge of the Commercial Estate: Basic Provision at £2,921,000 because it no longer serves a useful purpose for the reasons referred to under Request 17 above.</p> <p>The essence of the current CMO structure is that it should operate as an independently viable commercial enterprise supported by the Commercial Estate, but this is not realistic. Further, there is little if any market demand for</p>	

					<p>the Commercial Estate and significant issues over its future profitability, potential value for money and viability to support the operations of the CMO in any event. As matters stand, therefore, on any view it is clear that the CE no longer serves a useful purpose.</p> <p>The total capital cost of the Basic Provision in the sum of £2,921,000 even before indexation is undermining the viability of the Development and cannot be sustained. Even if, contrary to the foregoing, the Provision were to be regarded as useful, in practice it is not feasible but self-defeating and useless.</p> <p>The removal of the Basic Provision is shown in the Viability Report, Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5700.4 and forms part of this updated viability analysis justifying the discharge of obligations and modifications sought.</p>	
20.	Provision of Commercial Estate: Second Tranche	Para 11 and Sch 29D Item 24	<p>The Applicants apply to discharge the obligations to provide Second Tranche Commercial Estate under paragraph 11 and Schedule 29D Item 24.</p> <p>In addition, the Applicants apply for any appropriate consequential variations including the discharge of Schedule 37.</p>		<p>The reasons relied upon are as above for the First Tranche (Request 19) .</p> <p>The removal of the Second Tranche is shown in the Viability Report, Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5700.5 and forms part of this updated viability analysis justifying the discharge of obligations and modifications sought.</p>	
21.	Provision of Commercial Estate: Third Tranche	Para 12 and Sch 29D Item 27	<p>The Applicants apply to discharge the obligations to provide the Third Tranche Commercial Estate under paragraph 12 and Schedule 29D Item 27.</p>		<p>The reasons relied upon are as above for the First and Second Tranches.</p> <p>The removal of the Third Tranche is shown in the Viability Report at Appendix 3, Infrastructure (Scenario 2) Line Ref 5700.6 and forms part of this updated viability analysis justifying the discharge of obligations and modifications sought.</p>	
22.	Payment of Cash Endowment	Paragraph 13	<p>The Applicants apply to discharge the obligations under paragraph 13 to pay the First Cash Endowment and the Second Cash Endowment.</p> <p>In the premises there should be no Option A or Option B and all necessary consequential amendments removing reference to these should be made accordingly</p>		<p>Option B (requiring the payment of the First and Second First Cash Endowments) is fundamentally :flawed.</p> <p>The Commercial Estate was proposed to provide the CMO with a long term revenue stream. However, as above, it can already be seen no longer to serve any useful purpose.</p> <p>Further, a one off cash endowment does not have a useful purpose in replacing an asset endowment and it is not appropriate for Section 106 payments to be levied to fund an unspecified alternative investment by the CMO.</p> <p>The mistake by the draftsman was to suppose any symmetry between Option A and Option B. Where Option A and the Commercial Estate: Second and Third Tranches do not</p>	

					<p>proceed, that does not provide any justification for Option B and paying these very significant sums or indeed any sum directly to the CMO.</p> <p>Moreover, as referred to above, the total cost of the First and Second Cash Endowments (in the sum of 2 x £2,190,750) would undermine the viability of the Development and cannot be sustained.</p>	
23.	Payment of CMO Start up Contribution	Paragraph 14	The Applicants apply to discharge these obligations and for the sums already paid to be refunded accordingly.		<p>The Applicants repeat and rely upon the reasons stated above in respect of the other CMO, DGC and CE obligations. In particular, that the funds paid to date have not been spent sensibly nor delivered any material benefits to residents.</p> <p>In reality these obligations have not achieved any useful purpose, should be discharged retrospectively and the wasted contributions refunded.</p> <p>The Viability Report and updated viability evidence in support of this application duly reflect this submission; see the Explanatory Statement Appendix 3: Viability Report (Appendix 3: Infrastructure - Cost Plan, Infrastructure Cost Plan (Scenario 2) Line Ref. 5700.3).</p>	
Schedule 5 - Early Community Development					In this regard the Applicants refer to and rely in particular upon section 8 of the Explanatory Statement accompanying this application in addition to the reasons stated below.	Refer to ABC Response
24.	To pay annual Early Community Development Contributions of £50,000	Paragraph 1.2	The Applicants apply for all past and further payments of ECD Contributions to be discharged.		<p>Notably, the Adopted 2017 - Early Community Development Strategy states (at page 13), 'Within the early year's timeframe it is expected that the existing community (i.e. those living in the Chilmington Hamlet - approximately 70 people/30 dwellings - together with a few scattered dwellings elsewhere) will be joined by a further circa 200 dwellings (circa 480 people) within the Chilmington Development Area, by the end of 2019. The first new residents are expected early 2019.'</p> <p>The payment of the first, second and third ECD contributions was predicated upon this expectation. However, as at January 2020 the occupation level on site was just 30 dwellings (circa 72 people), whilst as at August 2022 some 215 dwellings are occupied (circa 516 people). At these occupancy levels, the payments made are not proportionate to the population on site and therefore not in line with their originally intended purpose (as described at paragraph 2 of Schedule 5) and cannot be justified.</p>	

					<p>Further, whilst it was originally envisaged that Main Phase I would be completed within 5 years, it is not now expected that this phase can be completed until 2031. Given this actual rather than planned housing trajectory and the associated levels of occupancy, the payments due under the existing terms are not proportionate to need in the short term.</p> <p>The first three payments have already been made (£150,000), but is unclear how if at all these monies have been expended in relation to community activity. Moreover, ABC has now, instead of and in substitution for these payments, secured £755,000 in funding from DHLUC for:</p> <ul style="list-style-type: none">• Improved access to, through and around Discovery Park and nearby Coleman's Kitchen woods (upgrading Public Rights of Way)• Promoting active travel and sustainability• The creation of a community space for the local community to meet and hold events• Stodmarsh Nutrient Neutrality Assessment and exploring bio-diversity net gain opportunities• Further community development work and cultural projects• Improving information sharing and communication for local residents• Supporting the growth of the Community Stakeholder Group. <p>In context, therefore, these additional payments no longer serve any useful purpose and should be discharged accordingly, both retrospectively and prospectively with those payments already made duly refunded.</p> <p>The Viability Report and updated viability evidence in support of this application duly reflect this submission; with the first three payments shown in the Explanatory Statement Appendix 3: Viability Report (Appendix 3: Infrastructure Cost Plan, Line Ref. 5700.7) as refunded and the remaining liabilities discharged.</p>	
		Schedule 6 - Natural Green Space				Refer to ABC Response
25.	The obligations to provide Informal/Natural Green Space Facilities	Para 1 et seq.	The Applicants do not seek to reduce the Informal/Natural Green Space but do seek to modify some of the detail of these obligations as referred to below.		Although the Applicants do not seek to reduce their s106 obligations to provide Informal/Natural Green Space Facilities, but it should be noted and is duly recorded here, that the Green Space obligations are proving to be	

					<p>substantially more expensive than is presently allowed for as a cost to the Development at Schedule 29D.</p> <p>Rather than the sums shown there (see items 7, 15, 19 and 21) the true costs are likely to be in the order of £7.5m. The scale of this obligation ought properly to be taken into account when considered the other requests herein, particularly those based primarily or exclusively on viability and the deliverability of the Development.</p>	
26.	The conditions attaching to occupation in each Main Phase	Paras 1.1.5 to 1.1.10	<p>The Applicants seek to discharge or modify these conditions as appropriate to remove amongst other things the obligation to transfer the Green Space Facilities and the powers of veto effectively given to the CMO thereunder, as follows:</p> <p>Paragraph 1.1.5 to be modified to omit the last part of the clause beginning 'and are free from ... a cosmetic nature)'. Paragraph 1.1.8 to be discharged. Paragraphs 1.1.9 and 1.1.10 also to be discharged.</p>		<p>The amendment to paragraph 1.1.5 is justified because there is no useful purpose to be served in the CMO being able to halt the Occupation of Dwellings in each or any of the Main Phases merely because the CMO identifies some Defect in the Green Space Facilities. This is a wholly unnecessary and oppressive provision.</p> <p>Further, in practice the CMO is neither equipped nor competent to be the arbiter of such matters. Rather they should simply be obliged to maintain and/or keep in repair and good condition the Green Space Facilities, by no doubt in practice using third party maintenance contractors.</p> <p>As for paragraph 1.1.8, there is simply no justification for imposing this additional burden upon the Applicants. It is not appropriate for Section 106 payments to be levied to meet transaction costs in this way. In any event, for the reasons stated below, the Applicants propose that the land should not be transferred at all. That to do so is unnecessary.</p> <p>As to the discharge of the transfer obligation under 1.1.9 and 1.1.10 so as these spaces are retained by the Applicants, there is no useful purpose to be served in transferring these assets to the CMO . Indeed, it would be unusual for this to be the case. Moreover, the provision of these spaces as an amenity would be unaffected and the obligations in relation to the same would serve their purpose equally well if varied in this way.</p>	
27.	The 12 months repairing liability following transfer	Paragraph 1.2	The Applicants apply to discharge this obligation.		<p>The clause gives the CMO excessive powers to demand repairs are carried out. Particularly, where, as noted above, in reality the CMO is neither equipped nor competent to be the arbiter of such matters.</p> <p>Moreover, under a normal estate management (Manco) model the CMO should simply be obliged to maintain and/or keep in repair and</p>	

					<p>good condition the Green Space Facilities, by no doubt in practice using third party maintenance contractors.</p> <p>On any view, therefore, the clause fails to serve any useful purpose and should be discharged</p>	
28.	Provision for payment toward the Council's costs	Paragraph 2	The Applicants seek the discharge of this payment obligation		<p>Because providing for payment toward the Council's costs undermines the purpose of the clause (to secure the transfer on appropriate terms), compensating the Council even in cases where it unreasonably refuses approval, which should not the case.</p> <p>The clause does not therefore serve any proper or useful purpose and should be discharged accordingly.</p>	
Schedule 7 – Chilmington Hamlet					In this regard the Applicants refer to and rely in particular upon section 8 of the Explanatory Statement accompanying this application in addition to the reasons stated below.	Refer to ABC Response
29.	Chilmington Hamlet facilities to be provided by 1400 occupations	Para 1.3 and Sch 29D Item 12	<p>The Applicants apply for the following modifications:</p> <p>That paragraph 1.3 be modified to read 'Unless the Council agrees otherwise, not to occupy more than 3,500 Dwellings unless ... '</p> <p>In addition, the Applicants apply for paragraph</p> <p>1.3.1 to be modified to omit the last part of the clause beginning 'and are free from ... a cosmetic nature).</p> <p>Further, the Applicants apply to discharge the obligation to transfer the Facilities, substituting an obligation to grant a lease of the same for a term of 21 years.</p> <p>Thus, the Applicants apply for paragraph 1.3.4 to be discharged and paragraph 1.3.5 to be modified to provide for the Facilities to be transferred to the CMO by way of the grant of a lease in the Facilities for a term of 21 years at a peppercorn ground rent and which (a) shall not secure any service charge in relation to the premises (b) shall be unencumbered (except for any easements or other rights to lay maintain enter report divert renew replace connect to and use any new or existing and proposed</p>		<p>The obligation at paragraphs 1.1 to 1.3 to provide the Chilmington Hamlet facilities, including the obligation to submit the Design Brief, are acknowledged potentially to serve a useful purpose but should be delayed until the facilities are viable (i.e. there are enough people living on the development to make sufficient use of them). Based on the general profile of demand for cricket facilities and the total demand for 2 to meet the needs of the whole development, Chilmington Hamlet is likely to be viable no earlier than 3,500 homes.</p> <p>Further, the current front loading of this community provision, the Hamlet by 1,400 Dwellings and the Community Hub by 1,800 Dwellings, will not only have a significantly detrimental effect on the Paying Owner's cashflow in this initial phase of the Development, but more critically without modification will likely cause the loss of the funding available to the Applicants to carry out the Development at all.</p> <p>Rather, the purpose of these provisions can be better or at least equally well served by modifying them as proposed, supporting the Development whilst securing delivery of these facilities in any event at a relatively early stage in the life of the Development.</p> <p>Certainly, given the level of capital cost here (£1.266m) this is another significant factor in terms of viability and deliverability, justifying the deferment of this obligation to support the ultimate delivery of the entire Development.</p>	

			<p>service media) and subject always to the provisions of this Deed and any conditions to the Planning Permission that apply to the land and (c) shall confer all legal rights and easements over neighbouring and adjacent land that are reasonably necessary and appropriate to enable the demised land to be used for its intended uses and purposes. The form of the said lease to be acceptable to the CMO (its approval of the form not to be unreasonably withheld).</p> <p>And, Paragraph 1.3.6 to be modified to provide that the Owners have served the CMO with an engrossed lease/s (as appropriate) as aforesaid of the land on which the Facilities are located in a form previously approved by the CMO or in the event that the CMO has still not approved the same within 6 weeks of the relevant owner serving the same) in a form previously approved by the Council where the Council's approval of the form of lease proposed by the Owners is not to be unreasonably withheld ... etc.</p> <p>Schedule 29D item 12, to be modified accordingly so that the trigger for payment refers to 3,250 Dwellings</p>		<p>The proposed modification is captured in the updated sensitivity analysis in the Viability Report at Appendix 3 of the Explanatory Statement.</p> <p>As for the modification and/or discharge of paragraphs 1.3.4 to 1.3.6 to provide for the grant of a 21 year lease rather than a freehold transfer, this will not detract from the provision of these Facilities and the obligations will serve their existing purpose equally well if modified as proposed.</p>	
30.	Submission and Approval of Design Brief and Specification by 1,000 occupations	Paras 1.1 and 1.2	<p>The Applicants apply to modify paragraph 1.1 to provide, 'Not to Occupy more than 3,000 Dwellings unless a design brief and specifications for the following indicative facilities and/or facilities of no greater environmental impact as may be approved by the Council (approval not to be unreasonably withheld) ... at Schedule 7A to be provided in Chilmington Hamlet has been approved by the Council with a total capital cost of £1,266,000.00 ... including fees, contingencies, specification and design costs, supervision fees, access roads and service costs ('the Facilities')',</p>		<p>The modification in occupations is proposed for the reasons stated above in respect of the provision of these facilities and is consequential upon that modification.</p> <p>Tie modification of the planned costs to include fees, contingencies, specification and design costs, supervision fees, access costs and service costs, is justified for reasons of viability and deliverability, ensuring that the cost of these Facilities is not so substantial as to undermine the viability of the relevant Main Phases and strike at the very delivery of these assets.</p> <p>The third modification is proposed to reinforce the existing obligation and ensure the purpose of the preceding paragraphs is fulfilled, i.e. the provision of the Chilmington Hamlet facilities at a total cost of £1,266,000.</p>	

			Further, the Applicants apply for the following provision to be added for the avoidance of doubt 'The scope of the said facilities to be altered as may reasonably be required to match the stipulated total capital cost as aforesaid.'			
31.	The provision for consultation with the CMO and stakeholders etc., and approval of the details of the consultation	Paragraph 1.2 and its sub-paragraphs 1.2.1, 1.2.2 and 1.2.3	<p>The Applicants apply to modify paragraph 1.2 and/or discharge aspects of the same as follows:</p> <p>Paragraph 1.1.2 to be modified to omit the requirement to consult the CMO (or its substitute).</p> <p>Paragraph 1.2.2 to be discharged so as to omit the requirement to consult and to obtain approval in respect of the details of the consultation, and</p> <p>Paragraph 1.2.3 to be modified simply to state 'shall include the consultation responses.'</p>		<p>The consultation with the CMO under 1.1.2 is surplus to requirements, given that the Council will have the opportunity already to consult with all interested parties when approving the design brief and specification. This part of the paragraph does not, therefore, serve any useful purpose and should be discharged or modified accordingly.</p> <p>As for 1.2.2, the requirement to consult over the details of the consultation (whether with the CMO or Council) also fails to serve any useful purpose. It unnecessarily complicates what should be a relatively straightforward and simple exercise. 'This obligation should be discharged accordingly.</p> <p>The modification to 1.2.3 is consequential on the foregoing.</p>	
32.	The 12 months repairing obligation following transfer	1.4	The Applicants apply to discharge this obligation in its entirety.		<p>The clause gives the CMO excessive powers to demand repairs are carried out, particularly where, as noted above, in reality the CMO is neither equipped nor competent to be the arbiter of such matters.</p> <p>Further, under a normal Estate Management (Manco) model the CMO should simply be obliged to maintain and/or keep in repair and good condition the Green Space Facilities, by no doubt in practice using third party maintenance contractors.</p> <p>On any view, therefore, the clause fails to serve any useful purpose and should be discharged.</p>	
33.	Provision for payment toward the Council's costs	Paragraph 2	The Applicants apply to discharge this payment obligation.		<p>Because providing for payment toward the Council's costs undermines the purpose of the clause (to secure the transfer on appropriate terms), compensating the Council even in cases where it unreasonably refuses approval, which should not be the case.</p> <p>The clause does not therefore serve any proper or useful purpose and should be discharged accordingly.</p>	
Schedule 8 - Children and Young People's Play Space					In this regard the Applicants refer to and rely in particular upon section 8 of the Explanatory Statement accompanying this application in addition to the reasons stated below.	Refer to ABC Response

34.	The provision of the design brief and specification for the children's and young people's play spaces and/or other facilities	Paragraph 1	<p>The Applicants apply to modify the delivery of the design brief and specification for each play space and/or the other facilities in each Main Phase 1, 2, 3 and 4, by altering the number of Dwellings specified in the unnumbered sub-paragraphs of Paragraph 1.1 from the current 50, 50, 750, 650 and 1150 to 350, 500, 850, 850 and 1350 respectively and to modify the planned costs to include fees and other costs .</p> <p>The Applicants request that paragraph 1.1.1 be modified to read `... and not exceeding a total of £2,585,1.43.00 ... for the play space including fees, contingencies, specification and design costs, supervision fees, access roads and service costs ('the Facilities')'.</p> <p>Further, before 1.1.2, the Applicants apply to insert `The scope of the said Facilities to be altered as agreed with the Council to match the stated capital cost for each of PS1, 2, 4, 5 and 7 and the total capital cost as aforesaid.'</p>		<p>So far as the initial 0.5ha in Main Phase 1 is concerned the practical point arises, that it is not possible to provide this safely until the surrounding construction works are completed.</p> <p>The other play spaces are postponed for the same construction related reasons. Notably, in doing so the delivery of these assets remains substantially in line with policy.</p> <p>Further, given the level of capital cost here (£2.585m) this is another significant factor in terms of viability and deliverability, justifying the deferment of these obligations supports the ultimate delivery of the entire Development. Likewise, the modification of the planned costs to include fees, contingencies, specification and design costs, supervision fees, access costs and service costs, is justified for reasons of viability and deliverability, ensuring that the cost of these Facilities is not so substantial as to undermine the viability of the relevant Main Phases and strike at the very delivery of these assets.</p> <p>The proposed modification is captured in the updated sensitivity analysis in the Viability Report at Appendix 3 of the Explanatory Statement.</p> <p>The added sub-paragraph before 1.1.2 is proposed for the avoidance of doubt, to reinforce the existing obligation and ensure the purpose of the preceding paragraphs is fulfilled, i.e. the provision of each PS[Number] at the cost stated, with the whole provided at a total cost not exceeding that also stated.</p>	
35.	The provision for consultation with the CMO, stakeholders etc. and approval of the details of the consultation	Paragraph 1.1.2	<p>In addition, the Applicants apply to modify paragraph 1.1.2 as follows:</p> <p>To omit the requirement to consult with the CMO and to obtain approval in respect of the details of the consultation, and consequentially,</p> <p>To omit the words 'and in particular the CMO's comments on the costings.'</p>		<p>The consultation with the CMO (or its substitute) under 1.1.2 is surplus to requirements, given that the Council will have the opportunity already to consult with all interested parties when approving the design brief and specification. This part of the paragraph does not, therefore, serve any useful purpose and should be discharged or modified accordingly.</p> <p>As for the requirement to consult over the details of the consultation (whether with the CMO or Council) this also fails to serve any useful purpose. It unnecessarily complicates what should be a relatively straightforward and simple exercise. This part of the obligation (in parenthesis) should be discharged accordingly.</p> <p>The omission of the final clause of 1.1.2 is simply consequential on the foregoing.</p>	

36.	The applicable occupation limits in respect of the provision and construction of each Play Space in the relevant Main Phase	Paragraphs 1.2 and 1.4	The Applicants apply to modify the occupation limits in paragraphs 1.2 and 1.4 from the current 500, 1100 and 1100 to 700, 1200 and 1300 respectively (the first 500 trigger for PS1 and the final 1500 trigger for PS7 in Main Phase 4 to remain unaltered).		The modification in occupations is proposed for the reasons stated above in respect of the provision of the design brief and specification for each of the play spaces and/or other facilities and follows upon those modifications.	
37.	The conditions attaching to occupation in relation to each Play Space in each Main Phase	Paras 1.2.1 to 1.2.6	<p>The Applicants seek to discharge or modify these conditions to remove amongst other things the powers of veto effectively given to the CMO thereunder, as follows:</p> <p>Paragraph 1.2.1 to be modified to omit the last part of the clause beginning 'and are free from ... a cosmetic nature).</p> <p>Further, the Applicants apply to discharge the obligation to transfer the Facilities, substituting an obligation to grant a long lease of the same, being a lease (including a sub-lease) with a term of 125 years at a peppercorn ground rent and which makes the same provisions (a)-(c) as referred to above (see Schedule 7).</p> <p>Thus, the Applicants apply for paragraph 1.2.4 to be discharged and paragraphs 1.2.5-6 to provide instead that the Facilities, are:</p> <p>either</p> <p>to be transferred to the CMO by way of the grant of a lease as aforesaid of the land on which the Facilities are located in a form acceptable to the latter (their approval of the form not to be unreasonably withheld)</p> <p>or</p> <p>where the Owners have served the CMO with an engrossed lease/s (as appropriate) as aforesaid of the land on which the Facilities are located in a form previously approved by the CMO or (in the event that the CM has still not approved the same within 6 weeks of the relevant owner having served the same) in a form previously approved by the</p>		<p>The amendment to paragraph 1.2.1 is justified because there is no useful purpose to be served in the CMO being able to halt the Occupation of Dwellings in each or any of the Main Phases merely because the CMO identifies some Defect in the play spaces and/or other facilities. This is a wholly unnecessary and oppressive provision.</p> <p>Further, in practice the CMO is neither equipped nor competent to be the arbiter of such matters. Rather, they should simply be obliged to maintain and/or keep in repair and good condition the spaces/facilities, by no doubt in practice using third party maintenance contractors.</p> <p>As for the modification and/or discharge of paragraphs 1.2.4 to 1.2.6 to provide for the grant of a long lease rather than a :freehold transfer, this will not detract from the provision of these Facilities and the obligations will serve their existing purpose equally well if modified as proposed.</p>	

			Council (where the Council's approval of the form of lease proposed by the Owners is not to be unreasonably withheld) that is executed ... etc.			
38.	The 12 months repairing liability following transfer	1.3	The Applicants apply to discharge this obligation in its entirety.		<p>The clause gives the CMO excessive powers to demand repairs are carried out, without providing any effective dispute resolution mechanism . Particularly, where, as noted above, in reality the CMO is neither equipped nor competent to be the arbiter of such matters.</p> <p>Further, under a normal Estate Management (Manco) model the CMO should simply be obliged to maintain and/or keep in repair and good condition the Green Space Facilities, by no doubt in practice using third party maintenance contractors.</p> <p>On any view, therefore, the clause fails to serve any useful purpose and should be discharged.</p>	
39.	Provision for payment toward the Council's costs	Paragraph 2	The Applicants apply to discharge this payment obligation.		<p>Because providing for payment toward the Council's costs undermines the purpose of the clause (to secure the transfer on appropriate terms), compensating the Council even in cases where it unreasonably refuses approval, which should not be the case.</p> <p>The clause does not therefore serve any proper or useful purpose and should be discharged accordingly.</p>	
Schedule 9 – Allotments					In this regard the Applicants refer to and rely in particular upon section 9 of the Explanatory Statement accompanying this application.	Refer to ABC Response
40.	Provision of Main Phase 1 Allotments by 1000 Dwelling Occupations	Para 1 and Sched 29D Item 10	<p>The Applicants apply to modify this obligation so that the provision of the Main Phase 1 Allotments is deferred to 1,450 Dwelling Occupations; i.e. paragraph 1.1 should be modified to read `Unless the Council agree otherwise, not to Occupy more than 1,450 Dwellings in Main Phase 1 or ...'</p> <p>Paragraph 1.3 likewise to be modified to refer at sub-paragraph 1.3.1 to 1,450 Dwellings.</p> <p>Schedule 29D item 10, also to be modified accordingly so that the trigger for payment refers to 1450 Dwellings in Main Phase 1.</p>		<p>The obligation to provide the Main Phase 1 allotments is acknowledged potentially to serve a useful purpose but the requirement to do so by the 1000th Dwelling Occupations will adversely affect the Paying Owner's cashflow in Main Phase 1 and compromise the viability of this phase.</p> <p>The purpose of these provisions can be better or at least equally well served by modifying them as proposed supporting the Development whilst securing delivery of these facilities in any event within the same phase as under the existing provisions.</p> <p>The revised trigger is based on the point at which demand for the minimum viable size (20 plots/0.66 ha) of allotment is reached (1,375 homes).</p>	

					The deferment of this cost is captured in the Viability Report at Appendix 3 of the Explanatory Statement and forms part of this revised viability analysis justifying the discharge of obligations and modifications sought	
41.	Provision of Main Phase 2 Allotments by 1000 Dwelling Occupations	Para 1 and Sched 29D Item 11	<p>The Applicants apply to modify this obligation so that the provision of the Main Phase 2 Allotments is deferred to 1,100 Dwelling Occupations; i.e. paragraph 1.1 should be modified to read 'Unless the Council agrees otherwise, not to Occupy ... more than 1,100 Dwellings in Main Phase 2 or ... '</p> <p>Paragraph 1.3 likewise to be modified to refer at sub-paragraph 1.3.2 to 1,100 Dwellings.</p> <p>Schedule 29D item 11, to be modified accordingly so that the trigger for payment refers to 1,325 Dwellings in Main Phase 2.</p>		The Applicants refer to and rely upon the reasons advanced above in relation to Main Phase 1 Allotments.	
42.	Provision of Main Phase 3 Allotments by 1400 Dwelling Occupations	Para 1 and 1.3.3 and Sched 29D Item 18	The Applicants apply for this obligation to be discharged.		<p>The obligation to provide these allotments is unnecessary and represents over provision of such facilities. Moreover, their cost is significant (£322,500) and serving only to undermine the viability and ultimately the deliverability of the Development.</p> <p>The discharge of this cost is captured in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5500.3 and forms part of this revised viability analysis justifying each discharge and modification sought.</p>	
43.	Provision of Main Phase 4 Allotments by 1400 Dwelling Occupations	Para 1 and 1.3.4 and Sched 29D Item 20	The Applicants apply for this obligation to be discharged.		<p>The obligation to provide these allotments is unnecessary and represents over provision of such facilities. Moreover, their cost is significant (£344,896) and serving only to undermine the viability and ultimately the deliverability of the Development.</p> <p>The discharge of this cost is captured in the Viability Report, Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5500.4 and forms part of this revised viability analysis justifying each discharge and modification sought.</p>	
44.	The conditions attached to the provision of the	Paragraphs 1.1.1 to 1.1.6	Firstly, the Applicants apply for the following clause to be added to paragraph 1.1.1 (after '... reserved matters approval'), 'and		The modification to paragraph 1.1.1 is proposed for the avoidance of doubt and to reinforce the existing obligation, that it may better serve its intended purpose to provide Main Phase 1 Allotment and Main Phase 2	

	Allotments in each Main Phase		<p>the planned cost for that Allotment.'</p> <p>Further, the Applicants apply to discharge the obligation to transfer the Allotment Facilities to the CMO entirely and/or in so far as necessary modify them to provide for these Facilities to be provided pursuant to a renewable licence/s.</p> <p>Thus, the Applicants propose that all of 1.1.4 to 1.1.6 are discharged and 1.1.4 replaced with a simple obligation that 'the Allotment Facilities have been provided to the CMO by way of renewable bi-annual licence/s (as appropriate) in a form acceptable to the CMO, its approval not to be unreasonably withheld.</p>		<p>Allotment in accordance with the agreed budget or may serve that purpose equally well.</p> <p>As for the discharge and/or modification of paragraphs 1.1.4 to 1.1.6 to provide for the grant of a licence rather than a freehold transfer, this will provide additional flexibility in relation to the land use, catering for varying demand for allotments without detracting from the provision of these Facilities where they are wanted. Accordingly, the obligations will serve their existing purpose equally well if modified as proposed.</p> <p>As for paragraph 1.1.4, there is simply no justification for imposing this additional burden upon the Applicants. It is not appropriate for Section 106 payments to be levied to meet transaction costs in this way.</p>	
45.	The 12 months repairing liability following transfer	1.2	The Applicants apply to discharge this obligation in its entirety.		<p>The clause gives the CMO excessive powers to demand repairs are carried out, without providing any effective dispute resolution mechanism .Particularly, where, as noted above, in reality the CMO is neither equipped nor competent to be the arbiter of such matters.</p> <p>Further, under a normal estate management (Manco) model the CMO should simply be obliged to maintain and/or keep in repair and good condition the Green Space Facilities, by no doubt in practice using third party maintenance contractors.</p> <p>On any view, therefore, this paragraph fails to serve any useful purpose and should be discharged.</p>	
46.	Provision for payment toward the Council's costs	Paragraph 2 and 3	The Applicants apply to discharge this payment obligation.		<p>Because providing for payment toward the Council's costs undermines the purpose of the clause (to secure the transfer on appropriate terms), compensating the Council even in cases where it unreasonably refuses approval, which should not be the case.</p> <p>The clause does not therefore serve any proper or useful purpose and should be discharged accordingly.</p>	
Schedule 10 - DP3, Discovery Park Sports Hub and Discovery Park Sports Pitches					In this regard the Applicants refer to and rely in particular upon section 8 of the Explanatory Statement accompanying this application in addition to the reasons stated below.	Refer to ABC Response

47.	Payment of £20,000 toward masterplanning	Paragraph 2.1	<p>The Applicants apply for this obligation to be discharged and for the sum of £20,000 already paid to be refunded.</p> <p>Thus, the Applicants propose that clause 1.1 should read as follows:</p> <p>'To prepare a masterplan for the Discovery Park, the Discovery Park Sports Hub, PS6 and the Discovery Park Sports Pitches in consultation with the Council and such others as the Council may decide; and ...'</p>		<p>The masterplan should properly and sensibly be prepared by the Applicants in consultation with the Council and other stakeholders. The relevant information for masterplanning is better known to the Applicants and it they who should be carrying this out and submitting the same for approval (see Request 53 below).</p> <p>In reality the obligation as existing does not therefore serve any useful purpose and should be discharged accordingly.</p>	
48.	Submission and approval of design briefs and specifications for the Discovery Park Sports Pitches and for the Discovery Park Sports Hub by 1000 Dwelling Occupations	Paragraph 2.1	<p>The Applicants apply to modify this obligation so that the submission approval of the design briefs and specifications should be re-gearred from 1,000 Dwelling Occupations to 2,650 Occupations and to modify the planned costs to include fees and other costs ; i.e. paragraph 2.1 should be modified to read:</p> <p>'Unless the Council agrees otherwise, not to Occupy more than 2,650 Dwellings unless;</p> <p>2.1.1 design briefs and specifications for the Discovery Park Sports Pitches and for the Discovery Park Sports Hub and/or other facilities of no significantly greater impact ... at Schedule 10A have been approved by the Council with a total capital cost of the Discovery Park Sports Pitches not exceeding £2,782,000 (two million seven hundred and eighty two thousand pounds) including fees, contingencies, specification and design costs ... and with a total capital cost of the Discovery Park Sports Hub not exceeding £4,976,157 (four million nine hundred and seventy six thousand one hundred and fifty seven pounds) including fees, contingencies, specification and design costs etc.'</p>		<p>The obligation to provide these community assets (at a total capital cost of up to £2,782,000.00 + £4,976,157) in stages after some 3200 and 5000 Dwellings is acknowledged potentially to serve a useful purpose subject to requests 49 to 56 below but the requirement to submit the design briefs and specifications by 1,000 is wholly premature.</p> <p>Given the present housing trajectory and rate of occupations, modifying the number of occupations by which submission/approval is required from 1,000 to 2,650 will provide a similar and certainly ample lead in time for the delivery of these assets even by the stipulated 3,200 and 5,000 Dwellings (and therefore certainly by the revised 3,650 and 5,500 - see below).</p> <p>Further, the modification of the planned costs to include fees, contingencies, specification and design costs, supervision fees, access costs and service costs, is justified for reasons of viability and deliverability, ensuring that the cost of the Sports Facilities is not so substantial as to undermine the viability of the relevant Main Phases and strike at the very delivery of these assets.</p> <p>' In the premises, Clause 2.1 will therefore serve its purpose equally well and in full if modified as proposed, allowing additional time for this obligation without impacting the ultimate delivery of these assets substantially in accordance with the existing terms of the s106 Agreement.</p>	
49.	The provision for consultation with the CMO, stakeholders and the public and approval of the	Paragraph 2.1.2	<p>In addition, the Applicants apply for paragraph 2.1.2 to be modified to omit the requirement to consult the CMO and omit the requirement to consult and to obtain approval in respect of the</p>		<p>The consultation with the CMO under 2.1.2 is surplus to requirements, given that the Council will have the opportunity already to consult with all interested parties when approving the design brief and specification. This part of the paragraph does not, therefore, serve any</p>	

	details of the consultation		details of the consultation and to omit the final clause 'and in particular the CMO's comments on the costings;'		<p>useful purpose and should be discharged or modified accordingly.</p> <p>As for the requirement to consult over the details of the consultation (whether with the CMO or Council) this also fails to serve any useful purpose. It unnecessarily complicates what should be a relatively straightforward and simple exercise. This part of the obligation (in parenthesis) should be discharged accordingly.</p> <p>The omission of the final clause is consequential on the above.</p>	
50.	The obligations to provide the Sports Facilities (1st Phase)	Para 2.2 and 2.8 and Sched 29D Item 26	<p>The Applicants apply to modify paragraph 2.2 to provide, 'Not to Occupy more than 3,650 [rather than 3,200] Dwellings unless:</p> <p>2.2.1 the first phase of the Sports Facilities has been provided in accordance with the reserved matters approvals and the planned cost for these facilities.</p> <p>2.8 To construct and provide:-</p> <p>2.8.1 The first phase of the Sports Facilities before the Occupation of more than 3,650 rather than 3200 Dwellings in accordance with the requirements of paragraph 2.2.1 of this schedule; ...</p> <p>At Schedule 29D Item 26, the payment trigger likewise to be deferred from 2,800 to 4,000 Dwellings.</p>		<p>The Applicants submit that given the availability of alternative sports facilities and assets that precede the delivery of this first phase, the re-timing of this obligation is such that it will serve its purpose equally well if modified as proposed.</p> <p>In real terms the limited additional time sought by this modification for the delivery of these facilities being unlikely to have any material or even measurable impact on the experience of owners and occupiers at this stage in the Development.</p>	
51.	The obligations to provide the Discovery Park Sports Facilities (2nd Phase)	Para 2.3 and 2.8 and Sched 29D Item 30	<p>The Applicants apply to modify paragraph 2.3 to provide, 'Not to Occupy more than 5,500 [rather than 5000] Dwellings unless:</p> <p>2.3.1 the second phase of the Sports Facilities have been provided in accordance with the reserved matters approvals and the planned cost for these facilities</p> <p>2.8 To construct and provide:-</p> <p>...</p> <p>2.8.2 The second phase of the Sports Facilities prior to the Occupation of 5,500 [rather than 5000] Dwellings in accordance with the requirements of</p>		<p>The Applicants submit that given the extensive provision of sports facilities and assets that precede this delivery of this second phase, the re-timing of this obligation is such that it will serve its purpose equally well if modified as proposed, in real terms the additional time sought by this modification for the delivery of these facilities being unlikely to have any material or even measurable impact on the experience of owners and occupiers at this stage in the Development</p>	

			<p>paragraph 2.3.1 of this schedule; ...</p> <p>At Schedule 29D Item 30, the payment trigger likewise to be deferred from 4,600 to 5,100 Dwellings.</p>			
52.	The obligations to provide DP3 and PS6 and the applicable occupation limits	Paragraphs 2.6.1, 2.6.2, 2.6.3, 2.6.4, the relevant sub-paragraphs of 2.8 and Sched 29D Items 22, 23, 28 and 31	<p>The Applicants apply for the following modifications:</p> <p>Delivery of DP3 in Phase 1 be deferred from 1500 to 2000 Occupations (subsequent phases remain unchanged); i.e. para 2.6 to be modified to read:</p> <p>'Not to Occupy more than:</p> <p>2.6.1 2650 [rather than 1500] Dwellings unless 1 ha of DP3 has been provided</p> <p>2.6.2 3500 [rather than 2500] Dwellings unless 0.86 of DP3 has been provided</p> <p>2.6.3 5000 [rather than 4000] Dwellings unless PS6 and 1.08 ha of DP3 have been provided</p> <p>2.6.4 5750 [rather than 5500] Dwellings unless 4.42 ha of DP3 has been provided ... '</p> <p>'2.8 To construct and provide:-</p> <p>2.8.3 1 ha of DP3 before the Occupation of more than 2650 [rather than 1500] Dwellings in accordance with the requirements of paragraph 2.6.5 of this schedule; and</p> <p>2.8.4 0.86 ha of DP3 before the Occupation of more than 3500 [rather than 2500] Dwellings in accordance with the requirements of paragraph 2.6.5 of this schedule; and</p> <p>2.8.5 PS6 and 1.08 ha of DP3 before the Occupation of more than 5000 [rather than 4000] Dwellings in accordance with the requirements of paragraph 2.6.5 of this schedule; and</p> <p>2.8.6 4.42 ha of DP3 before the Occupation of more than 5750 [rather than 5500] Dwellings in accordance with the requirements of paragraph 2.6.5 of this schedule.</p>		<p>The obligations to provide these areas of DP3 are acknowledged potentially to serve a useful purpose but the requirement to provide the first 1 ha by the 1500th Dwelling Occupation will adversely affect the Paying Owner's cashflow in Main Phase 1 and compromise the viability of this phase. It will also jeopardise the funding presently available and further put at risk the delivery of the Development.</p> <p>The consequential deferment of the remainder of the DP3 provision and PS6 is similarly justified on viability and ultimately deliverability grounds.</p> <p>The purpose of these provisions can be better or at least equally well served by modifying them as proposed, supporting the Development whilst securing delivery of these facilities in any event from Main Phase 2 and thereafter at intervals through the course of the Development similar or shorter to those provided under the existing terms.</p> <p>The deferred requirement to provide DP3 as proposed will result in a cost reduction within Main Phase 1. This specific item is shown in the Viability Report at Appendix 3 at line 5500.29. The cumulative effect of this reduction together with the other discharges/modifications proposed in this application are duly reflected in the said report, in support of the changes sought herein to the s106 Agreement.</p>	

			At Schedule 29D Item 22, the payment triggers likewise to be deferred from 1350 to 1850, from 2,350 to 3,350, from 3,850 to 4,850 and from 5,350 to 5,600 Dwellings respectively.			
53.	The obligation to provide the design brief and specification for DP3 and PS6 etc	Para 2.5	<p>The Applicants apply to modify paragraph 2.5 to provide, 'Not to Occupy more than 2100 [rather than 1000] Dwellings unless:</p> <p>2.5.1 a design brief and specification for DP3 ... at Schedule 10B have been submitted to the Council for approval with a total capital cost of the DP3 not exceeding £2,056,813 (two million and fifty six thousand eight hundred and thirteen pounds) including PS6, fees, contingencies, specification and design costs etc '.</p> <p>In addition, the Applicants apply for paragraph 2.5.2 to be modified to omit the requirement to consult the CMO (or its substitute) and omit the requirement to consult and to obtain approval in respect of the details of the consultation.</p>		<p>These modifications are proposed for the reasons stated above in respect of the provision of these facilities and consequential upon that modification, and for the further reasons below.</p> <p>The modification of the total costs of the Facilities to include PS6, fees, contingencies, specification and design costs, supervision fees, access costs and service costs, is justified for reasons of viability and deliverability, ensuring that the cost of these Facilities is not so substantial as to undermine the viability of the Development and strike at the very delivery of these assets.</p> <p>The requirement to consult over the details of the consultation fails to serve any useful purpose, given that any such consultation should be a relatively straightforward and simple exercise. This element of the obligation should therefore be modified or discharged as appropriate.</p> <p>Likewise, the consultation with CMO is surplus to requirements, given that the Council will have the opportunity already to consult with all interested parties when approving the design brief and specification. Again, therefore, this element of the paragraph serves no useful purpose and should be modified or discharged as appropriate.</p>	
54.	The various conditions attaching to the delivery of each of the first and second phases of the Sports Facilities and the DP3	<p>Paragraphs 2.2.1, 2.3.1 and 2.6.5 requiring provision of the relevant facilities in accordance with reserved matters etc.</p> <p>Paragraphs 2.2.4, 2.3.4 and 2.6.8 requiring payment of tax.</p> <p>Paragraphs 2.2.6, 2.3.6 and 2.6.10 dealing with the approval of the relevant transfers.</p>	<p>The Applicants apply for the following clause to be added to paragraphs 2.2.1, 2.3.1 and 2.6.5 (after'... design briefs and specification'), 'and at a cost not exceeding the total capital cost for these facilities stated above.'</p> <p>Further, the Applicants apply to discharge the obligations to transfer each of the first phase and second phase of the Sports Facilities and the DP3 so as to substitute an obligation in each case to grant a lease of the same, being a lease (including a sub-lease) with a term of 21 years at a peppercorn ground rent and which makes the same provisions</p>		<p>The modification to paragraphs 2.2.1, 2.3.1 and 2.6.5 are proposed for the avoidance of doubt and to reinforce the existing obligations.</p> <p>As for the modification and/or discharge of paragraphs 2.2.4 to 2.2.6, 2.3.4 to 2.3.6 and 2.6.8 to 2.1.10 to provide for the grant of a long lease rather than a freehold transfer, this will not detract from the provision of these phases and Facilities and the obligations will serve their existing purpose equally well if modified as proposed.</p>	

			<p>(a)-(c) as referred to above (see Schedule 7).</p> <p>Thus, the Applicants apply for paragraphs 2.2.4-2.2.6, 2.3.4-2.3.6 and 2.6.8-2.6.10 to be discharged and new paragraphs 2.2.4-5, 2.3.4-5 and 2.6.8-9 to provide instead that each phase or the (DP3) Facilities, as the case may be, is:</p> <p>either:</p> <p>to be transferred to the CMO by way of the grant of a lease as aforesaid of the land on which the phase/Facilities are located in a form acceptable to the latter (their approval of the form not to be unreasonably withheld).</p> <p>or:</p> <p>where the Owners have served the CMO with an engrossed lease/s (as appropriate) as aforesaid of the land on which the phase/Facilities are located in a form previously approved by the CMO or (in the event that the CMO has still not approved the same within 6 weeks of the relevant owner having served the same) in a form previously approved by the Council (where the Council's approval of the form of lease proposed by the Owners is not to be unreasonably withheld) that is executed ... etc.</p>			
55.	The 12 months repairing liability following the transfer of the second phase of the Sports Facilities and the DP3	Paragraphs 2.4 and 2.7	The Applicants apply to discharge these obligations.		<p>The clause gives the CMO excessive powers to demand repairs are carried out, without providing any effective dispute resolution mechanism. Particularly, where, as noted above, in reality the CMO is neither equipped nor competent to be the arbiter of such matters.</p> <p>Further, under a normal Estate Management (Manco) model the CMO should simply be obliged to maintain and/or keep in repair and good condition the Green Space Facilities, by no doubt in practice using third party maintenance contractors.</p> <p>On any view, therefore, the clause fails to serve any useful purpose and should be discharged.</p>	

56.	The obligation to publish the completed masterplan for the Discovery Park, the Discovery Park Sports Hub, etc.	Paragraph 3.4 requiring the masterplan no later than the Occupation of the 4000 th Dwelling	The Applicants apply to modify the obligation to provide that the Applicants will publish the masterplan and to defer publication until Occupation of the 2000 th Dwelling.		<p>Presently, the obligation for the masterplan to be published by the Council serves no useful purpose, because it is inconsistent with the Applicants having to produce the design briefs and specification and the detailed provisions for consultation with stakeholders and approval at that stage by the Council. The obligation should be discharged accordingly.</p> <p>As for deferring the publication, the modification is sought to accord with the modifications to Schedule 10 delivery requested above and for the same reasons.</p>	
Schedule 11 – Cemeteries					In this regard the Applicants refer to and rely in particular upon section 8 of the Explanatory Statement accompanying this application in addition to the reasons stated below.	Refer to ABC Response
57.	Payments in respect of cemeteries	Paras 1 and 2	The Applicants apply for all such payments toward Cemeteries to be discharged.		<p>The obligations to make these payments is, the Applicants submit, unnecessary and represents over provision of such facilities given the available off-site facilities. Indeed as noted in the Explanatory Statement the basis of the provision appears to have been miscalculated (see paragraph 8.15). In any event, their cost is significant (£800,000) and serving only to undermine the viability and ultimately the deliverability of the Development.</p> <p>The discharge of this cost is captured in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5300.9 and forms part of this revised viability analysis justifying each discharge and modification sought.</p>	
Schedule 12 – Community Hub Building					In this regard the Applicants refer to and rely in particular upon section 8 of the Explanatory Statement accompanying this application in addition to the reasons stated below.	Refer to ABC Response
58.	The obligation to provide a multi-purpose community leisure building and other facilities (the Community Hub Building} by 1,800 Dwellings	Para 1.2 and Sch 29D Item 17	<p>The Applicants apply for the following modifications and/or discharge of obligations: That paragraph 1.2 be modified to read `Unless the Council agrees otherwise, not to Occupy more than 3,250 Dwellings unless:</p> <p>1.2.1 the Facilities: First Tranche have been provided in accordance with the reserved matters approval and the approved design brief and specification and at a cost which together with the Facilities:</p>		<p>Along with the Chilmington Hamlet facilities (see above), the obligation to provide the Community Hub facilities is acknowledged potentially to serve a useful purpose, except for the community learning space which is surplus to requirements. However, two main issues arise.</p> <p>Firstly, the capital cost up to £5,152,127.00 is excessive and serving only to undermine the viability and ultimately the deliverability of the Development. The current obligation is over-priced and over-specified. If the Applicants carried out this build themselves there would be a significant saving in cost. With any further</p>	

			<p>Second Tranche does not exceed. the sum of £2m inclusive as stated above ...</p> <p>1.2.2 all ... the Facilities; First Tranche are located ...</p> <p>1.2.3 all conditions ... apply to the Facilities: First Tranche ...;</p> <p>Further, that the obligations at paragraphs 1.2.5 to 1.2.6 to transfer/grant a Long Leasehold Interest to the CMO of the Facilities (First Tranche) and with them paragraph 1.2.4, should be substituted by an obligation to grant leases to individual tenants e.g . the NHS or Police, on terms acceptable to them. Thus, paragraphs 1.2.4, 1.2.5 and 1.2.6 should be discharged and replaced by new obligation as follows:</p> <p>'and</p> <p>1.2.4 the Facilities; First Tranche have been transferred, in so far as required, to the proposed user/s of each by way of lease/s or tenancies (as appropriate) of the same on terms suitable to their intended use and that are acceptable to them.'</p> <p>.</p> <p>1.2.5 The Facilities: First Tranche shall comprise the following:</p> <ul style="list-style-type: none"> - a multi-purpose community space of up to 1500 sqm, to include - a fully stocked and equipped library - 340 sqm space for police community and social services outreach including family and social care (subject to lease confirmation) - 400 sqm within the multi-use building of community space to meet the needs of the community and the CMO Trust and to provide ancillary facilities for the MUGA - a multi-use games area 		<p>reduction to £2m capital cost achieved through value engineering the specification and such further alterations thereto as may reasonably be required to ensure this total cost is not exceeded.</p> <p>Secondly, the provision of the balance of this space (apart from the community learning facility which can be catered for elsewhere) should in any event be phased and where appropriate made subject to lease confirmation, as proposed.</p> <p>Nonetheless, the total space to be provided is still very large see Section 8 of the Explanatory Statement and in particular paragraph 8.18) and as Quod states there much of it is not expected to be needed until much later than the triggers currently set. In these circumstances, as set out in the Explanatory Statement (paragraph 8.29), 'Whilst the challenges of phased construction are acknowledged, for the sake of avoiding mothballed buildings with associated liability and costs, this community provision should be phased and elements delayed until they are needed.' In addition, there should be a clause added to ensure that public service leases will be confirmed prior to triggering the construction works and contracting.</p> <p>Further, as indicated the requirement to provide these facilities by the 1800th Dwelling Occupation will be a cost to Phase 1 and is serving to undermine the viability of this phase and in turn delivery of the Development.</p> <p>Indeed, in terms of viability and deliverability, the current timetable for these assets would not only have a significantly detrimental effect on the Paying Owner's cashflow in the initial phases of the Development, but more critically without modification (going beyond the triggers indicated in the Explanatory Statement) it will likely cause the loss of the funding available to the Applicants to carry out the Development at all.</p> <p>In the circumstances, the purpose of these provisions can be better or at least equally well served by modifying them as proposed, supporting the Development whilst still securing delivery of these facilities when needed in the life of the Development.</p> <p>As for the proposal to grant individual leases on terms acceptable to the proposed end users of the different facilities (with the Applicants retaining the land on which the facilities are located if the users do not want to take up any lease), this plainly makes sense in practical</p>	
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		<p>- up to 500 sqm of GP provision (subject to NHS lease confirmation)</p> <p>Subject always to such variations in scope as may reasonably be required to ensure that the total cost of £2m is not exceeded.</p> <p>1.2.6 To construct and provide the Facilities: First Tranche ... more than 3,250 [not 1800] Dwellings.</p> <p>[That after the above there be inserted new paragraph 1.2A as follows, mirroring the above provisions in the case also of the proposed Facilities: Second Tranche]</p> <p>1.2A 'Unless the Council agrees otherwise, not to Occupy more than 4,250 Dwellings unless:</p> <p>1.2A.1 the Facilities: Second Tranche have been provided in accordance with the reserved matters approval and the approved design brief and specification and at a cost which together with the Facilities: First Tranche does not exceed £2m inclusive as stated above ...</p> <p>1.2A.2 all ... the Facilities: Second Tranche are located ...</p> <p>1.2A.3 all conditions ... apply to the Facilities: Second Tranche ... ; 'and</p> <p>1.2A.4 the Facilities; Second Tranche have been transferred, in so far as required, to the proposed user/s of each by way of lease/s or tenancies (as appropriate) of the same on terms suitable to their intended use and that are acceptable to them.'</p> <p>1.2A.5 The Facilities: Second Tranche shall comprise the following:</p> <ul style="list-style-type: none"> - further community space of up to 2500 sqm, to include - a 1000 sqm community leisure building 		<p>and market terms, providing the necessary flexibility to secure the delivery of these facilities for the Development.</p> <p>These modified terms accordingly serve the purpose of these obligations better than, or at least equally as well as, the existing terms, which by imposing a freehold transfer or long leasehold interest could actually undermine delivery of these assets in circumstances where such interests are not actually wanted.</p> <p>As for the discharge of paragraph 1.2.4 in any event (and the omission of any equivalent in relation to the Facilities; Second Tranche), this is justified for the reasons already referred to above in respect of similar clauses in, for example, Schedules 8 and 9 above.</p> <p>The modifications sought (reduction in cost, split in provision and deferred triggers) so far as they affect costs are captured in the Viability Report at Appendix 3 at 5300.1 and form part of this revised viability analysis justifying each discharge and modification sought.</p>	
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			<p>- up to 500 sqm of GP provision (subject to NHS lease confirmation)</p> <p>- additional floor space of up to 200 sqm for identified community needs, including youth provision</p> <p>Subject always to such variations in scope as may reasonably be required to ensure that the total cost of £2m is not exceeded.</p> <p>1.2A.6 To construct and provide the Facilities: Second Tranche in accordance with the requirements of paragraph 1.2A.1 of this schedule prior to the Occupation of more than 4,250 Dwellings.</p> <p>1.2A.7 In respect of each of the Facilities: First and Second Tranche, the right to carry out the requisite building works being reserved always to the Paying Owners [Applicants].</p> <p>1.2A.8 In respect of each of the Facilities: First and Second Tranche, no building contract shall be entered nor construction begin prior to confirmation of the public service leases, i.e. for Police or GP use.</p> <p>At Schedule 29D Item 17, the payment should be reduced to £2m and split equally (or as appropriate) and the trigger should likewise be split and deferred from 1300 to 3,150 Dwellings and 4,150 Dwellings respectively.</p>			
59.	The submission and approval of a design brief and specification for the Community Hub Building	Para 1.1	<p>The Applicants apply to modify the planned costs to include fees and other costs and to modify this obligation so that the submission/approval of the design brief and specification for the Facilities: First Tranche and Second Tranche may be split with the former to be re-gearred from 1,400 Dwelling Occupations to 2,850 Occupations and the latter to 3,850 Dwelling Occupations. Hence paragraph 1.1 should read:</p>		<p>This modification is proposed for the reasons stated above in respect of the provision of these facilities and consequential upon those modifications.</p>	

			<p>'Not to Occupy more than 2,850 Dwellings unless:</p> <p>1.1.1 a design brief and specification for the Facilities: First Tranche and/or other facilities of no significantly greater environmental impact as may be approved by the Council to be provided in the District Centre has been approved by the Council with a total capital cost that (together with Second Tranche) does not exceed £2m ... including fees, contingencies, specification and design costs, supervision fees, access roads and service costs and the costs of those matters to be done at the Owner's expense referred to below;'</p> <p>Para 1.1.2 to be modified to refer to the Facilities: First Tranche.</p> <p>Whilst new paras 1.1A.1 and 1.1A.2 should be inserted in similar terms to 1.1.1 and 1.1.2 above but referring to the Facilities: Second Tranche and with a trigger of 3,850 Dwelling Occupations.</p>			
60.	The provision for consultation with the CMO and stakeholders etc. and approval of the details of the consultation	Paragraph 1.1.2	<p>In addition, the Applicants apply for paragraph 1.1.2 to be modified to omit the requirement to consult the CMO and omit the requirement to consult and to obtain approval in respect of the details of the consultation and to omit the final clause 'and in particular the CMO's comments on the costings;'</p>		<p>The consultation with the CMO under 2.1.2 is surplus to requirements, given that the Council will have the opportunity already to consult with all interested parties when approving the design brief and specification. This part of the paragraph does not, therefore, serve any useful purpose and should be discharged or modified accordingly.</p> <p>As for the requirement to consult over the details of the consultation (whether with the CMO or Council) this also fails to serve any useful purpose. It unnecessarily complicates what should be a relatively straightforward and simple exercise. This part of the obligation (in parenthesis) should be discharged accordingly.</p> <p>The omission of the final clause is consequential on the above.</p>	

61.	The 12 months repairing liability following the transfer of the Facilities	Paragraph 1.3	The Applicants apply to discharge this obligation.		<p>The clause gives the CMO excessive powers to demand repairs are carried out, without providing any effective dispute resolution mechanism. Particularly, where, as noted above, in reality the CMO is neither equipped nor competent to be the arbiter of such matters.</p> <p>Further, under a normal Estate Management (Manco) model the CMO should simply be obliged to maintain and/or keep in repair and good condition the Green Space Facilities, by no doubt in practice using third party maintenance contractors.</p> <p>On any view, therefore, the clause fails to serve any useful purpose and should be discharged</p>	
62.	The obligation to make designated parts of the Community Hub Building available for use by the County Council in accordance with the booking system agreed between the CMO and the CC	Paragraph 1.4	The Applicants apply to discharge this obligation in its entirety.		The inclusion of this obligation under the s106 Agreement appears to be mistaken. The obligations thereunder are not matters within the power or control of the Applicants. The clause does not therefore serve any useful purpose and should be discharged accordingly.	
63.	Provision for payment toward the Council's costs	Paragraph 2	The Applicants apply to discharge this payment obligation.		<p>Because providing for payment toward the Council's costs undermines the purpose of the clause (to secure the grant on appropriate terms), compensating the Council even in cases where it unreasonably refuses approval, which should not be the case.</p> <p>The clause does not therefore serve any proper or useful purpose and should be discharged accordingly.</p>	
		Schedule 13 - Local Centre Hubs				Refer to ABC Response
64.	The Orchard Village Facilities and the Chilmington Brook Facilities	Paragraphs 1-3 and 4-6 respectively	The Applicants reserve the right to make a further application to discharge or modify these obligations as the case may be.		The Applicants, as in the case of all other obligations not the subject of specific requests to vary in this application, reserve their rights to make a further application in relation to Orchard Village and Chilmington Brook in due course should the need arise.	
Schedule 14 – District and Local Centres					In this regard the Applicants refer to and rely in particular upon section 9 of the Explanatory Statement accompanying this application in addition to the reasons stated below.	Refer to ABC Response
65.	The obligation to construct and	Paragraphs 1.1. to 1.5	The Applicants apply to modify the Main Phase 1 District Centre		The obligations at paragraph 1 to provide a District Centre with the facilities indicated under	

	provide the District Centre Facilities in Main Phase 1 and the Orchard Village and Chilmington Brook small Retails Units in Phases 3 and 4 and associated obligations including marketing plans etc.		obligations permit a revised scheme for the same, to be the subject of a separate application for planning permission and to require that in any event the District Centre facilities are to be provided by no earlier than 2700 [rather than 1250] Occupations.		<p>1.1 no longer serve any useful purpose as drafted. The current retail market is such that the facilities under 1.1 focused as they are on small units is wholly unsustainable. The Applicants have canvassed the market, but there are no operators who will contemplate the present scheme.</p> <p>The Applicants will accordingly make a new planning application for the District Centre facilities on CH1 and CH2. The revised scheme set out in that application will replace that outlined under the provisions of paragraph 1, and these should be modified accordingly to accord with and permit the said revised scheme.</p> <p>Further and in any event whether the District Centre obligations are revised or not the requirement to provide these facilities by 1250 Dwellings is unrealistic and certainly if it were to become necessary for the Applicants to fund all or any part of these Facilities would undermine the viability of Main Phase 1 and with it the deliverability of the Development. If this were to eventuate it would not only have a significantly detrimental effect on the Paying Owner's cashflow in this initial phase of the Development, but more critically without modification it will jeopardise the very funding available to the Applicants to carry out the Development at all.</p> <p>In the premises, the purpose of these provisions can be better or at least equally well served by modifying them as proposed, supporting the Development whilst still securing delivery of these facilities at an early stage in the life of the Development.</p> <p>The Viability Report has accordingly pushed back the commencement/completion of the District Centre in the updated sensitivity model, as can be seen specifically in the cashflow appraisal, and the benefits of this form a part of the overall viability analysis and conclusions in support of the modifications sought.</p> <p>The Applicants, as in the case of all other obligations not the subject of specific requests to vary in this application, reserve their rights to make a further application in relation to the Orchard Village and Chilmington Brook small Retails Units etc. in due course should the need arise.</p>	
66.	The submission and approval of a design brief and specification for the	Paragraph 1.1 to 1.5	The Applicants apply for the occupation triggers in respect of these facilities to be modified, so that the design brief and		<p>This discharge or, alternatively, modification is proposed for the reasons stated above in respect of the provision of these facilities and consequential upon that modification.</p>	

	District Centre Facilities by 950 Dwelling Occupations		specification is to be delivered by 1500 (rather than 950) occupations and the facilities are to be provided by 2700 (rather than 1250 occupations) with paragraph 1.1 modified accordingly.			
Schedule 15 – Education					<p>In this regard the Applicants refer to and rely in particular upon Sections 3 and 11 of the Explanatory Statement accompanying this application in addition to the reasons stated below.</p>	<p>The following section sets out the legislative and policy drivers for the provision of KCC's Education service. The legislative context is relevant because it sets out the duties upon and powers available to KCC. The relevant policies are set out in national, local and KCC policy documents, plans and programmes. They are material because they represent the official position of the Government, Ashford Borough Council and KCC as service providers.</p> <p>KCC is the Statutory Authority responsible for Education and is the Strategic Commissioner of education provision. KCC policy is set out in a number of documents including the Commissioning Plan for Education Provision in Kent 2024-2028 (updated annually).</p> <p>KCC's policy for seeking s106 contributions is set out in its Developer Contributions Guide 2023, plus Technical Appendices 4 and 6.</p> <p>The requirement for Education Provision at Chilmington Green is set out in Policy CG15 of the Chilmington Green Area Action Plan (Adopted July 2013).</p> <p>Policies COM1 ('Meeting the Community's Needs') and IMP1 ('Infrastructure Provision') of the Ashford Local Plan 2030 (adopted February 2019) ("Ashford Local Plan") confirm that the Borough Council will continue to seek financial contributions through the use of s106 Agreements to secure the delivery of infrastructure where it is justified to do so in line with the NPPF and The Community Infrastructure Levy Regulations 2010 (as amended). This refers to infrastructure and facilities required to meet the needs generated by new development such as education and community (including youth).</p> <p>Obligations are compliant with The Department for Education guidance on Securing developer contributions for education dated August 23.</p>
67.	The provision of Bonds to the value of PS1 Contributions 2, 3 and 4	Para 6 and 7(e) (as amended by the Deed dated 29/3/19)	The Applicants apply for the obligation to provide Bonds for these PS1 Contributions to be discharged.	DV and O (ceased to be possible to obtain a Bond)	<p>The obligation to provide Bonds for these Contributions in the total sum of £5,850,000 does not serve any useful purpose and should be discharged. The Applicants rely in this regard upon Sections 3 and 11 of the Explanatory Statement. This is unnecessary and wholly excessive and duplicative security. There is no proper justification for the 'triple lock' imposed under the s106 obligations.</p> <p>Moreover, the Applicants maintain that it has ceased to be possible in the financial markets to obtain Bonds of the kind required by the s106 Agreement. In the premises the reality is that this obligation has been rendered</p>	<p>The Paying Owners have paid PS1 Contributions 1, 2 and 3 to the County Council. However, outstanding payments on PS1 include the outstanding Indexation payable in respect of Contributions 2 and 3, plus payment of Contribution 4 (plus Indexation). Only Contribution 1 has been satisfied in full. Under the Supplemental Deed of Agreement (signed 29 March 2019) these payments became due 78 months from the date of Commencement (5 December 2023). A Bond was entered into on 29 March 2019 PS1 Contribution 4 plus indexation only. Due to non-payment of this contribution, the County Council called upon the Bond for payment, which was received on 14 May 2024.</p> <p>The Applicants have requested to discharge the requirement to provide a Bond in respect of the outstanding PS1 contributions. KCC understands that this is on the following basis and has set out its response below:</p>

					<p>redundant and it should be discharged accordingly.</p> <p>The Applicants have already provided further evidence since first making these requests in support, but nonetheless will, in so far as necessary, provide any further evidence in support if required.</p> <p>Otherwise, if contrary to the Applicants' own enquiries it can be shown by the Respondents that a compliant form of Bond can be found, the likelihood is that this would be at face value or such a cost as to be prohibitive. Any additional financial commitment of this scale would palpably undermine the viability of this Phase and with it the delivery of the Development. In any event therefore the provision of a Bond is self-defeating and cannot be regarded as serving any useful purpose in relation to the Development and should be discharged accordingly.</p> <p>Moreover, it is necessary for this obligation to be discharged for viability and deliverability reasons, specifically that this obligation is likely to jeopardise the funding available to the Applicants to carry out the Development at all.</p>	<p>a) The Applicants note that "it has ceased to be possible in the financial markets to obtain Bonds for the kind required by the s106".</p> <p>KCC has sought specialist opinion regarding the availability of Bonds from its corporate banking provider (NatWest Bank) and is satisfied that these are available on the financial markets in the form set out in the s106. Indeed, the Applicants entered into a Bond of this kind with KCC on 29 March 2019. KCC therefore does not accept that it is no longer possible to obtain similar Bonds.</p> <p>b) The Applicants note that (in their view), the requirement for a Bond "is unnecessary and wholly excessive and duplicative security", on the basis that it creates a 'triple lock' under the S106 Agreement, with two further forms of security provided by the non-occupation restriction within Schedule 15 and provision of a Developer's Contingency Account in Schedule 30.</p> <p>KCC's view is that non-occupation clauses (if enacted) can prevent further occupation of dwellings and provide a deterrent to defaulting on obligations, but as drafted these primarily seek to ensure infrastructure and house building progress in tandem. They do not provide the necessary financial security required when a public body is forward funding provision, to support the development, and entering into build contracts that cannot just be pulled out of without financial penalty. For example, school builds once started cannot be halted and left half-built.</p> <p>KCC is also of the view that the Developer's Contingency Account (Schedule 30) which the Applicants suggest is further protection for KCC, does not provide the level of security required by KCC when entering third party build contracts. Non-occupation clauses do not guarantee that KCC will receive all the contributions for the infrastructure it has forward funded. This is because the s106 does not require the total infrastructure project cost to be deposited prior to KCC entering into the build contract. This is unacceptable and leaves the public purse at significant risk.</p> <p>The non-occupation clauses do not pertain to the school payment triggers, thus do not form a triple lock as suggested. Discharging of bonds removes the only non-occupation clauses with a financial link to funding school provision.</p> <p>c) provision of a Bond undermines the viability and deliverability of Development.</p> <p>The Applicants have not provided the necessary evidence to determine that the provision of Bonds undermines the deliverability of the Development. Proof of viability, however, would not be reason to discharge the requirement for Bond provision and in fact undermines the Applicants ability to make the payments in themselves. Planning permission was granted on the basis that this Development mitigates its impact on education. For KCC to deliver the school, it requires the financial security to do so.</p> <p>KCC does not consider therefore, that the S106 Agreement provides a 'triple lock' which negates the need to provide a Bond.</p>
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						<p>1. The current obligation is to provide a Bond to the value of Primary School 1 Contributions 2, 3 and 4 plus indexation. The purpose of the Bond is to provide financial security for the County Council; ensuring that in the event it does not receive the necessary amounts from the Applicants, it still has the security in order to forward fund the delivery education infrastructure necessary to meet the needs of the Development</p> <p>2. The obligation continues to serve a useful purpose. KCC has built the school and is awaiting outstanding payment of Indexation on Contributions 2, 3 plus the additional late payment interest in line with the S106 Agreement. The proposal in Application Number 68 below clearly demonstrates the importance of a Bond; KCC has in good faith progressed delivery of the necessary infrastructure to support the development and now the Applicants are seeking to renege on the contributions.</p> <p>3. The obligation would not serve the purpose equally well if it had subject to the proposed modification. Infrastructure would be forward funded at considerable risk to the public purse or not funded at all.</p> <p>4. Application refused.</p>
68.	Education Contributions; Primary School 1 Contributions 1 to 4 to the County Council	Para 7 (as amended by the Deed dated 29/3/19)	The Applicants apply for the obligation to pay PS1 Contribution 4 (para 7 (d) and the Indexation payments on previous Contributions (para 7A) to be discharged and for the payments already made to the County Council £8,829.11 (eight thousand eight hundred and twenty nine pounds eleven pence) by way of indexation on PS1 Contribution 1 and the sum of £2,096,017.66 (two million ninety sixty thousand seventeen pounds sixty six pence) already paid to the County Council in respect of PS1 Contribution 4 (including indexation) to be repaid. ¹	DV	<p>The PS 1 Contribution 4 and these very significant indexation payments are undermining the viability of the Development and in turn its deliverability and cannot sensibly therefore be regarded as serving a useful purpose.</p> <p>Further, PS1 is and will be of substantial benefit to the wider Ashford community, as well as to other developments both current and future, and these (such as Court Lodge and Kingsnorth) ought properly to contribute, so obviating these further payments toward PS1 by the Applicants.</p> <p>The discharge of this contribution and the said indexation amounts to reflect the imperative above is shown in the Viability Report and specifically at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5200.2, and forms part of this new viability analysis justifying each discharge and modification sought.</p>	<p>1. The current obligation regarding PS1 Contribution 4 is to pay £1,461,800 plus indexation 78 months from Commencement. The purpose of PS1 Contribution 4 and Indexation is to enable the Development to mitigate the requirement for additional primary education places necessary to meet the needs of its new residents. Indexation enables the original contribution sum to maintain purchasing power in the future. The Department for Education (DfE) Guidance ‘Securing developer contributions for education’ (dated August 2023) para 11 advises: The DfE’s Basic Need grant, free schools programme and other capital funding do not negate housing developers’ responsibility to mitigate the impact of their development on education.</p> <p>2. PS1 has been built using Contributions 1-4 (plus Indexation received on Payment 1), plus large forward funding from the County Council. Contribution 4 continues to serve a useful purpose in repaying the forward funding expended by the County Council. Payment 4 has contributed to the overall build cost of the school and cannot be artificially separated from the other contributions.</p> <p>3. The obligation would not be served equally well if subject to the proposed modification. It would result in a significant proportion of the school provision needed by this development to mitigate its impact being met by the public purse, instead of by the Development, as intended.</p> <p>4. Application refused.</p>

¹ KCC has enforced payment of these amounts since this application was submitted

69.	Education Contributions; Primary School 2 Contributions 1 to 4 to CC	Paras 8, 10, 11, 12 and 14	<p>The Applicants seek a modification to provide for consultation on the need for PS2 and before 1200 Dwellings have been occupied the CC must decide, acting reasonably, whether to proceed or not with PS2 for the purpose of ensuring that it is operational within 3 years.</p> <p>If the decision is not to proceed with PS2 at that stage, the process set out above shall be repeated commencing before the next 300 Dwellings are completed (i.e. details by 1500 Dwellings, consultation and then a decision by 1600 Dwellings etc.) and again as required up until the like process in respect of PS3 is engaged.</p> <p>If the decision is to proceed with PS2, the following paragraphs shall apply, but not otherwise.</p> <p>8. The Owners shall not bring into residential use nor Occupy more than another 100 Dwellings across the whole Site following the decision to proceed unless and until the location ... after the day when the 100 Dwellings as aforesaid have been so first Occupied until the County Council has given its approval under this paragraph (such approval not to be unreasonably withheld).</p> <p>10. The Owners shall deliver a duly executed Transfer ... within 12 months from the date when another 200 Dwellings (including the 100 above) have been first Occupied across the Site following the decision to proceed. No further Dwellings ... beyond 12 months after first Occupation of the 200 Dwellings as aforesaid, unless a duly executed Transfer</p> <p>11. The Owners shall provide an Adoptable Access ... by the date when another 900 Dwellings (including the 200 above) have</p>	M, V	<p>Whilst it is acknowledged that further primary school provision may potentially serve a useful purpose, current modelling based on the Development to date and the experience from PS1 clearly shows that the current occupation and time based triggers may lead to premature delivery, with schools unable to meet their minimum viable size to receive revenue funding and therefore having to be delayed in any case (or opened at risk to Kent CC).</p> <p>For the reasons set out in the Explanatory Statement, Section 11, the Applicants therefore seek to modify the current triggers so as they will be based on need and not merely occupations. The Dwelling numbers used in the proposed modification reflecting the pattern, for the purposes of review and performance following any decision to proceed, the current timetable and intervals for delivery. Modified in this way, it is submitted that the obligations will better serve their purpose or at least serve that purpose equally well.</p> <p>The only exception to the above arises in relation to funding and the payment of PS2 Contributions. It is necessary for these to be deferred as proposed for reasons of viability and deliverability, indeed without modification the current payment timings will likely cause the loss of the funding presently available to the Applicants to carry out the Development at all. The payment intervals calibrated to accord with the existing monthly intervals for payment.</p> <p>These modifications are accordingly necessary to ensure that the obligations continue to serve their intended purpose and for that matter any useful purpose at all.</p>	<p>1. The current obligation provides £6m plus indexation towards the provision of a 2 Form Entry (420 places) primary school to meet the needs of the Development.</p> <p>The obligation is required to ensure that the delivery costs of infrastructure which are necessary to serve the Development are directly and properly met by the Development.</p> <p>2. It continues to serve a useful purpose by providing the funding necessary to build the school to meet the needs of the Development.</p> <p>3. The amendments as proposed would result in a level of forward funding by the County Council which is unacceptable. For example, should Primary School 2 be built and open at 2500 Occupations, according to the Applicants' proposal, KCC would be waiting until 2650 Occupations for the first payment of £150,000. Payments 2, 3 and 4 would be approximately 3, 6 and 9 years after providing the school (assuming housing delivery as advised by the Applicant within the Quod Explanatory Statement 10.22).</p> <p>Whilst there is a level of forward funding expected by KCC within the S106 Agreement, with contributions falling due to a maximum of six year post Bond provision, what is proposed here would result in contributions being made up a minimum of 9 years after it is deemed that additional school places are required. This is wholly inappropriate and would require the public purse to forward fund excessively the infrastructure required by this Development to meet its needs.</p> <p>Forward funding by KCC would either require additional prudential borrowing or funding from its capital budget. The Prudential Code requires (among other things) that borrowing must be affordable and prudential. Increased borrowing costs resulting from the forward funding of infrastructure required to meet the needs of new developments negatively impacts the County Council's revenue budget, decreasing its ability to deliver vital services to Kent residents and businesses. No alternative obligations have been proposed by the Applicant to cover the County Council's increased borrowing costs.</p> <p>The proposed changes to drafting create unacceptable timeframes and uncertainty for necessary elements of the school delivery. For example, KCC makes the decision to proceed with Primary School 2 at 1500 (N) dwellings. At a build rate of 150 dwellings per year, the Applicant would require the school to be operational by 1950 occupations (ensuring it is operational within 3 years). According to the Applicant's proposed modifications, the following would apply:</p> <ul style="list-style-type: none"> - the location of the school would be agreed at 1600 dwellings (N+100) - the land would be transferred at 1850 dwellings (N+200 + 12 months (150 dwellings))

			<p>first been Occupied across the Site following the decision to proceed (or earlier upon the reasonable request of the County Council). No more than another 899 Dwellings as aforesaid shall be brought into residential use</p> <p>12. Subject to PS2 proceeding, then unless and until PS2 Contribution 1 has been paid to the County Council, no more than 2,650 Dwellings shall be brought into residential use nor first Occupied on the Site following the decision to proceed.</p> <p>Paragraph 14(a) to be modified to provide, subject to PS2 proceeding, for payment of PS2 Contribution 1 to the County Council prior to 2,650 Dwellings being first Occupied on the Site, with subsequent Contributions 2, 3 and 4 to be payable at 3,250, 3,850 and 4,350 Occupations respectively.</p>			<p>- an adoptable access would be provided at 2400 dwellings (N+900)</p> <p>This is wholly unacceptable as the provision of necessary elements are considered too late and provide no assurances to the County Council that they would be provided in a timely manner to enable the school to become operational when necessary to meet the needs of the Development. As the Statutory Commissioner of Education Places, KCC must have surety regarding the ability to build and occupy the school site as required to meet its statutory duty. The proposed amendments do not provide this and cannot be agreed.</p> <p>4. Refuse application.</p>
70.	The provision of Bonds to the value of PS2 Contributions 2, 3 and 4	Para 13 and 14(e)	The Applicants apply for the obligation to provide Bonds for these PS2 Contributions to be discharged.	DV	<p>The obligation to provide Bonds for these Contributions in the total sum of £5,850,000 does not serve any useful purpose and should be discharged. The Applicants rely in this regard upon Sections 3 and 11 of the Explanatory Statement. This is unnecessary and wholly excessive and duplicative security. There is no proper justification for the 'triple lock' imposed under the s106 obligations.</p> <p>Moreover, the Applicants continue to maintain that it has ceased to be possible in the financial markets to obtain Bonds of the kind required by the s106 Agreement. In the premises the reality is that this obligation has been rendered redundant and it should be discharged accordingly.</p> <p>The Applicants have already provided further evidence since first making these requests in support but nonetheless will in so far as necessary provide any further evidence in support if required.</p> <p>Otherwise, if contrary to the Applicants' own enquiries it can be shown by the Respondents that a compliant form of Bond can be found, the likelihood is that this would be at face value or such a cost as to be prohibitive. Any additional financial commitment of this scale would palpably undermine the viability of this Phase and with it the delivery of the</p>	<p>The Applicants have requested to discharge the requirement to provide a Bond in respect of PS2 contributions. KCC understands that this is on the following basis and has set out its response below:</p> <p>a) The Applicants note that "it has ceased to be possible in the financial markets to obtain Bonds for the kind required by the s106".</p> <p>KCC has sought specialist opinion regarding the availability of Bonds from its corporate banking provider (NatWest Bank) and is satisfied that these are available on the financial markets in the form set out in the s106. Indeed, the Applicants entered into a Bond of this kind with KCC on 29 March 2019. KCC therefore does not accept that it is no longer possible to obtain similar Bonds.</p> <p>b) The Applicants note that (in their view), the requirement for a Bond "is unnecessary and wholly excessive and duplicative security", on the basis that it creates a 'triple lock' under the S106 Agreement, with two further forms of security provided by the non-occupation restriction within Schedule 15 and provision of a Developer's Contingency Account in Schedule 30.</p> <p>KCC's view is that non-occupation clauses (if enacted) can prevent further occupation of dwellings and provide a deterrent to defaulting on obligations, but as drafted these primarily seek to ensure infrastructure and house building progress in tandem. They do not provide the necessary financial security required when a public body is forward funding provision, to support the development, and entering into build contracts that cannot just be pulled out of without</p>

					<p>Development. In any event therefore the provision of a Bond is self-defeating and cannot be regarded as serving any useful purpose in relation to the Development and should be discharged accordingly</p>	<p>financial penalty. For example, school builds once started cannot be halted and left half-built.</p> <p>KCC is also of the view that the Developer's Contingency Account (Schedule 30) which the Applicants suggest is further protection for KCC, does not provide the level of security required by KCC when entering third party build contracts. Non-occupation clauses do not guarantee that KCC will receive all the contributions for the infrastructure it has forward funded. This is because the s106 does not require the total infrastructure project cost to be deposited prior to KCC entering into the build contract. This is unacceptable and leave the public purse at significant risk.</p> <p>The non-occupation clauses do not pertain to the school payment triggers, thus do not form a triple lock as suggested. Discharging of bonds removes the only non-occupation clauses with a financial link to funding school provision.</p> <p>c) provision of a Bond undermines the viability and deliverability of Development.</p> <p>The Applicants have not provided the necessary evidence to determine that the provision of Bonds undermines the deliverability of the Development. Proof of viability, however, would not be reason to discharge the requirement for Bond provision and in fact undermines the Applicants ability to make the payments in themselves. Planning permission was granted on the basis that this Development mitigates it impact on education. For KCC to deliver the school, it requires the financial security to do so.</p> <p>KCC does not consider therefore, that the S106 Agreement provides a 'triple lock' which negates the need to provide a Bond.</p> <ol style="list-style-type: none"> 1. The current obligation is to provide a Bond to the value of Primary School 2 Contributions 2, 3 and 4 plus indexation. The purpose of the Bond is to provide financial security for the County Council; ensuring that in the event it does not receive the necessary amounts from the Applicants, it still has the security in order to forward fund the delivery education infrastructure necessary to meet the needs of the Development 2. The obligation continues to serve a useful purpose. The negative obligation of preventing further occupation until the Bond has been provided ensures that the appropriate infrastructure is secured without which more development would not be acceptable. 3. The obligation would not serve the purpose equally well if it had subject to the proposed modification. Infrastructure would be forward funded at considerable risk to the public purse or not funded at all. 4. Application refused.
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71.	Education Contributions; Primary School 3 Contributions 1 to 4 to CC	Paras 15, 17, 18, 19 and 21	<p>The Applicants seek a modification to provide for consultation on the need for PS3 and before 3250 Dwellings have been occupied the CC must decide, acting reasonably, whether to proceed or not with PS2 for the purpose of ensuring that it is operational within 3 years.</p> <p>If the decision is not to proceed with PS3, the following paragraphs shall apply, but not otherwise.</p> <p>Paragraphs 15, 17 and 18 to be amended in like terms to paragraphs 8, 10 and 11 above.</p> <p>As to paragraphs 19 and 21, subject to PS3 proceeding, PS3 Contribution I to be paid at 4,500 and subsequent Contributions 2, 3 and 4 at 4,900, 5,300 and 5,700 respectively.</p>	M, V	The Applicants refer to and rely upon the reasons stated above in answer to Request 69.	<p>1. The current obligation provides £6m plus indexation towards the provision of a 2 Form Entry (420 places) primary school to meet the needs of the Development.</p> <p>The obligation is required to ensure that the costs of infrastructure necessary to serve the Development are met by the Development.</p> <p>2. It continues to serve a useful purpose by providing the funding necessary to build the school to meet the needs of the Development.</p> <p>3. The amendments as proposed would result in a level of forward funding by the County Council which is unacceptable. For example, should Primary School 3 be built and open at 4000 Occupations, according to the Applicants' proposal, KCC would be waiting until 4500 Occupations for the first payment of £150,000, potentially two years after opening. Payments 2, 3 and 4 would be approximately 4, 6 and 9 years after providing the school (assuming housing delivery as per 10.22 of the Appellant's QUOD report).</p> <p>Whilst there is a level of forward funding expected by KCC within the s106, with contributions falling due a maximum of six years post Bond provision, what is proposed here would result in contributions being made a minimum of 9 years after it is deemed that additional school places are required. This is wholly inappropriate and would require the public purse to forward fund excessively the infrastructure required by this Development to meet its needs.</p> <p>Forward funding by KCC would either require additional prudential borrowing or funding from its capital budget. The Prudential Code requires (among other things) that borrowing must be affordable and prudential. Increased borrowing costs resulting from the forward funding of infrastructure required to meet the needs of new developments negatively impacts the county council's revenue budget, decreasing its ability to deliver vital services to Kent residents and businesses. No obligations have been proposed by the applicant to cover the county council's increased borrowing costs.</p> <p>As per Modification/Discharge Line 69, the application is deemed to provide the school site and adoptable access too late to meet the needs of the development and without the assurances required that infrastructure will be provided. As the Statutory Commissioner of Education Places, KCC must have surety regarding the ability to build and occupy the school site as required to meet its statutory duty. The proposed amendments do not provide this.</p> <p>4. Refuse application.</p>
72.	The provision of Bonds to the value	Para 20 and 21(e)	The Applicants apply for the obligation to provide Bonds for	DV and O	The Applicants refer to and rely upon the reasons stated above in answer to Request 70.	

	of PS3 Contributions 2, 3 and 4		these PS3 Contributions to be discharged.			<p>The Applicants have requested to discharge the requirement to provide a Bond in respect of PS3 contributions. KCC understands that this is on the following basis and has set out its response below:</p> <p>a) The Applicants note that "it has ceased to be possible in the financial markets to obtain Bonds for the kind required by the s106".</p> <p>KCC has sought specialist opinion regarding the availability of Bonds from its corporate banking provider (NatWest Bank) and is satisfied that these are available on the financial markets in the form set out in the s106. Indeed, the Applicants entered into a Bond of this kind with KCC on 29 March 2019. KCC therefore does not accept that it is no longer possible to obtain similar Bonds.</p> <p>b) The Applicants note that (in their view), the requirement for a Bond "is unnecessary and wholly excessive and duplicative security", on the basis that it creates a 'triple lock' under the S106 Agreement, with two further forms of security provided by the non-occupation restriction within Schedule 15 and provision of a Developer's Contingency Account in Schedule 30.</p> <p>KCC's view is that non-occupation clauses (if enacted) can prevent further occupation of dwellings and provide a deterrent to defaulting on obligations, but as drafted these primarily seek to ensure infrastructure and house building progress in tandem. They do not provide the necessary financial security required when a public body is forward funding provision, to support the development, and entering into build contracts that cannot just be pulled out of without financial penalty. For example, school builds once started cannot be halted and left half-built.</p> <p>KCC is also of the view that the Developer's Contingency Account (Schedule 30) which the Applicants suggest is further protection for KCC, does not provide the level of security required by KCC when entering third party build contracts. Non-occupation clauses do not guarantee that KCC will receive all the contributions for the infrastructure it has forward funded. This is because the s106 does not require the total infrastructure project cost to be deposited prior to KCC entering into the build contract. This is unacceptable and leave the public purse at significant risk.</p> <p>The non-occupation clauses do not pertain to the school payment triggers, thus do not form a triple lock as suggested. Discharging of bonds removes the only non-occupation clauses with a financial link to funding school provision.</p> <p>c) provision of a Bond undermines the viability and deliverability of Development.</p> <p>The Applicants have not provided the necessary evidence to determine that the provision of Bonds undermines the deliverability of the Development. Proof of viability, however, would not be reason to discharge the requirement for Bond provision and in fact undermines the Applicants ability to make the payments in</p>
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						<p>themselves. Planning permission was granted on the basis that this Development mitigates its impact on education. For KCC to deliver the school, it requires the financial security to do so.</p> <p>KCC does not consider therefore, that the S106 Agreement provides a 'triple lock' which negates the need to provide a Bond.</p> <p>1 The current obligation is to provide a Bond to the value of Primary School 3 Contributions 2, 3 and 4 plus indexation. The purpose of the Bond is to provide financial security for the County Council; ensuring that in the event it does not receive the necessary amounts from the Applicants, it still has the security in order to forward fund the delivery education infrastructure necessary to meet the needs of the Development</p> <p>2. The obligation continues to serve a useful purpose. The negative obligation of preventing further occupation until the Bond has been provided ensures that the appropriate infrastructure is secured without which more development would not be acceptable.</p> <p>3. The obligation would not serve the purpose equally well if it had subject to the proposed modification. Infrastructure would be forward funded at considerable risk to the public purse or not funded at all.</p> <p>4. Application refused.</p>
73.	Education Contributions; Primary School 4 Contributions 1 to 4 to CC	Paras 22, 23,24, 25, 26 and 28	The Applicants apply for the PS4 obligations to be discharged.	DV	<p>The requirement for a fourth Primary School was based upon the original proposal for the development of 7,000 dwellings, It is plain even at this stage that this provision is surplus to requirements and cannot sensibly be regarded as serving any useful purpose.</p> <p>That this is the case is only demonstrated and reinforced by the experience in relation to Primary School 1 and the lower than projected level of demand from within the Development for this first school.</p> <p>The PS4 obligations should be discharged accordingly. The discharge of this cost is captured in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5200.5 and forms part of this revised viability analysis justifying each discharge and modification sought.</p>	<p>The Applicants have asserted that the requirement for PS4 is based on the original development proposal of 7000 dwellings. However, KCC's response to the outline planning application on 21 August 2014 is clearly established on the application scheme comprising up to 5750 dwellings. In addition, the argument that PS4 is not necessary, based on the output to date from the Development of primary aged pupils is in KCC's view, premature. The Development has currently occupied less than 400 of the 5750 dwellings permitted under the Outline Planning Permission. To date these occupied units have produced MORE primary pupils than originally expected, in direct contrast to the assertion made.</p> <p>The Applicants further seek to justify the discharge of this obligation by stating that 'single form of entry schools are generally less sustainable and more challenging and expensive to manage and maintain'. The assessment of the outline planning application deemed that 7 forms of entry (FE) was necessary to meet the needs of the Development and it was agreed that this would be delivered via 3No. 2FE Primary Schools and a fourth primary school with the S106 Agreement providing land for a 2FE, but contributions for a 1FE only. The fourth and final primary school has a site allocation of 2.05ha. This is sufficient for the delivery of 2FE. It is KCC's intention that the fourth school will be 2FE, with other developments contributing to the build cost of the additional FE.</p>

						<p>1. The obligation provides a financial contribution of £4.5m plus indexation towards the provision of a 1FE (210 places) Primary School and 2.05Ha of land on which to build the school. The current obligation is required to provide the additional primary education places in direct response to the necessary needs of the Development. The obligation is to ensure that the costs of infrastructure necessary to serve the Development are met by the Development.</p> <p>2. It continues to serve a useful purpose and mitigate against the impact of the Development upon educational services. The mitigation is sought against the Outline Planning Permission for 5750 dwellings. The Applicants' position that this is not needed when only less than 400 dwellings have been occupied is premature and unfounded.</p> <p>3. The obligation would not be served equally well if it was to be subject to proposed modification as the Development would fail to mitigate the demand for primary education places which it will place upon stretched local services; leaving KCC to meet the need, which is unacceptable. The Applicants offer no alternative but only that this obligation should be removed completely which is unacceptable and planning permission would not have been granted on this basis.</p> <p>4. Refuse application.</p>
74.	The provision of Bonds to the value of PS4 Contributions 2, 3 and 4	Para 27 and 28(d)	The Applicants apply for the obligation to provide Bonds for these PS4 Contributions to be discharged.	DV and O	The Applicants refer to and rely upon the reasons stated above in answer to Request 70.	<p>The Applicants have requested to discharge the requirement to provide a Bond in respect of PS4 contributions. KCC understands that this is on the following basis and has set out its response below:</p> <p>a) The Applicants note that "it has ceased to be possible in the financial markets to obtain Bonds for the kind required by the s106".</p> <p>KCC has sought specialist opinion regarding the availability of Bonds from its corporate banking provider (NatWest Bank) and is satisfied that these are available on the financial markets in the form set out in the s106. Indeed, the Applicants entered into a Bond of this kind with KCC on 29 March 2019. KCC therefore does not accept that it is no longer possible to obtain similar Bonds.</p> <p>b) The Applicants note that (in their view), the requirement for a Bond "is unnecessary and wholly excessive and duplicative security", on the basis that it creates a 'triple lock' under the S106 Agreement, with two further forms of security provided by the non-</p>

					<p>occupation restriction within Schedule 15 and provision of a Developer's Contingency Account in Schedule 30.</p> <p>KCC's view is that non-occupation clauses (if enacted) can prevent further occupation of dwellings and provide a deterrent to defaulting on obligations, but as drafted these primarily seek to ensure infrastructure and house building progress in tandem. They do not provide the necessary financial security required when a public body is forward funding provision, to support the development, and entering into build contracts that cannot just be pulled out of without financial penalty. For example, school builds once started cannot be halted and left half-built.</p> <p>KCC is also of the view that the Developer's Contingency Account (Schedule 30) which the Applicants suggest is further protection for KCC, does not provide the level of security required by KCC when entering third party build contracts. Non-occupation clauses do not guarantee that KCC will receive all the contributions for the infrastructure it has forward funded. This is because the s106 does not require the total infrastructure project cost to be deposited prior to KCC entering into the build contract. This is unacceptable and leave the public purse at significant risk.</p> <p>c) provision of a Bond undermines the viability and deliverability of Development.</p> <p>The Applicants have not provided the necessary evidence to determine that the provision of Bonds undermines the deliverability of the Development. Proof of viability, however, would not be reason to discharge the requirement for Bond provision and in fact undermines the Applicants ability to make the payments in themselves. Planning permission was granted on the basis that this Development mitigates it impact on education. For KCC to deliver the school, it requires the financial security to do so.</p> <p>KCC does not consider therefore, that the S106 Agreement provides a 'triple lock' which negates the need to provide a Bond.</p> <p>1.The current obligation is to provide a Bond to the value of Primary School 4 Contributions 2 and 3 plus indexation. The purpose of the Bond is to provide financial security for the County Council; ensuring that in the event it does not receive the necessary amounts from the Applicants, it still has the security in order to forward fund the delivery education infrastructure necessary to meet the needs of the Development</p> <p>2. The obligation continues to serve a useful purpose. The negative obligation of preventing further occupation until the Bond has been provided ensures that the appropriate infrastructure is secured without which more development would not be acceptable.</p> <p>3. The obligation would not serve the purpose equally well if it had subject to the proposed modification. Infrastructure would be</p>
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						<p>forward funded at considerable risk to the public purse or not funded at all.</p> <p>4. Application refused.</p>
75.	Stage One Secondary School Site Transfer and Adoptable Access etc.	Paras 33 and 35	<p>In this regard the Applicants rely upon the recently signed Deed of Variation dated 13 July 2022 subject only to the further discharge/modification sought below.</p> <p>In the event, however, that DfE or KCC funding is not forthcoming, the Applicants reserve their right to make a further application to discharge/modify the Secondary School obligations as appropriate and/or necessary.</p>	M	<p>As noted in column 4, the Applicants remain committed to the recently signed Deed of Variation subject to the further variations sought herein, but reserve their position should the DfE funding, upon which that agreement is predicated and relies, not be forthcoming.</p>	<p>KCC notes that in respect of paragraph 33 of Schedule 15, the Secondary School Site has been transferred to the County Council. However, the transfer has not been completed in accordance with Schedule 15a 'KCC General Site Transfer Requirements' nor paragraph 35 of Schedule 15.</p> <p>Paragraph 35 of Schedule 15 requires the Applicants to provide an Adoptable Access to the Secondary School Site by 1 September 2022 or 1250 Occupations, whichever is soonest.</p> <p>The Deed of Variation (DoV) (signed 13 July 2022 and entered into only three months prior to the Applicants making this S106A application) provides for the Applicants (not including Hodson Developments (CG) Five Ltd) to meet the obligations set out in paragraphs 33 and 35 (above). The DoV does not vary or delete these paragraphs but it provides an alternative mechanism for the Applicants to meet their obligations within the original S106 Agreement, with forward funding being provided by the County Council to the Applicants. Should the funding not be forthcoming, the substance of the obligation remains</p> <p>1. The obligations set out in paragraphs 33 and 35 provide for a serviced, accessible Secondary School Site, which is required to mitigate the needs of the Development for additional Secondary Education places.</p> <p>2. The obligations continue to serve a useful purpose – the need for a serviced, accessible Secondary School Site still remains. The Applicants provide no further explanation as to why the position has changed.</p> <p>3. As set out above, should the Department for Education (DfE) Wave Funding or forward funding of S106 Agreement contributions by KCC not be forthcoming, the requirement to mitigate the need of the Development remains. Therefore, the proposal to discharge the obligations does not serve the purpose equally well.</p> <p>4. Refuse application.</p>
76.	Provision of Bonds for the Stage One and Two Secondary School Contributions	Schedule 15, Part 6, Para 42	In so far as necessary the Applicants apply for the obligation to deliver Bonds for the Stage One and Two Secondary School Contributions to be discharged.	DV and O	<p>Given the terms of the DoV signed 13 July 2022 this is understood to have been agreed already and the s106 Agreement should be correctly modified accordingly.</p> <p>However, if and in so far as necessary, the Applicants refer to and rely upon the reasons stated in support of Request 70 above,</p>	Provision of a 6 Form of Entry (FE) Secondary School is being delivered via the Department for Education's (DfE) Wave Funding Programme. Under this programme, KCC is required to pass s106 contributions obligated to the provision of Chilmington Green Secondary School (once received) to the DfE for the provision of this infrastructure.

					<p>including Sections 3 and 11 of the Explanatory Statement as referred to therein.</p>	<p>It is noted that in agreement with the DfE, the Deed of Variation (signed 13 July 2022) removes the requirement to provide a Bond for Stage One Secondary Education Contributions 1 to 4.</p> <p>The DoV does not vary or delete the requirement for a Bond to the value of the Stage Two Secondary Education Contributions 1-4 (Schedule 15, Part 6). These are separate contributions linked to a separate stage. The Bond in respect of the Stage Two Contributions is still therefore still very much required in order to reduce the risk to the County Council (and DfE) of contributions not being paid for infrastructure which has been forward funded through the public purse.</p> <p>We respond in a similar vain to this request as in 67, 70, 72 and 74</p> <p>a) The Applicants note that "it has ceased to be possible in the financial markets to obtain Bonds for the kind required by the s106".</p> <p>KCC has sought specialist opinion regarding the availability of Bonds from its corporate banking provider (NatWest Bank) and is satisfied that these are available on the financial markets in the form set out in the s106. Indeed, the Applicants entered into a Bond of this kind with KCC on 29 March 2019. KCC therefore does not accept that it is no longer possible to obtain similar Bonds.</p> <p>Bond is to provide financial security for the County Council; ensuring that it will receive the amounts set out in the s106., thus enabling it to deliver education infrastructure necessary to meet the needs of the Development</p> <p>b) The Applicants note that (in their view), the requirement for a Bond "is unnecessary and wholly excessive and duplicative security", on the basis that it creates a 'triple lock' under the S106 Agreement, with two further forms of security provided by the non-occupation restriction within Schedule 15 and provision of a Developer's Contingency Account in Schedule 30.</p> <p>KCC's view is that non-occupation clauses (if enacted) can prevent further occupation of dwellings and provide a deterrent to defaulting on obligations, but as drafted these primarily seek to ensure infrastructure and house building progress in tandem. They do not provide the necessary financial security required when a public body is forward funding provision, to support the development, and entering into build contracts that cannot just be pulled out of without financial penalty. For example, school builds once started cannot be halted and left half-built.</p> <p>KCC is also of the view that the Developer's Contingency Account (Schedule 30) which the Applicants suggest is further protection for KCC, does not provide the level of security required by KCC when entering third party build contracts. Non-occupation clauses do not guarantee that KCC will receive all the contributions for the infrastructure it has forward funded. This is because the s106 does not require the total infrastructure project cost to be deposited prior</p>
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						<p>to KCC entering into the build contract. This is unacceptable and leave the public purse at significant risk.</p> <p>The non-occupation clauses do not pertain to the school payment triggers, thus do not form a triple lock as suggested. Discharging of bonds removes the only non-occupation clauses with a financial link to funding school provision.</p> <p>c) provision of a Bond undermines the viability and deliverability of Development.</p> <p>The Applicants have not provided the necessary evidence to determine that the provision of Bonds undermines the deliverability of the Development. Proof of viability, however, would not be reason to discharge the requirement for Bond provision and in fact undermines the Applicants ability to make the payments in themselves. Planning permission was granted on the basis that this Development mitigates its impact on education. For KCC to deliver the school, it requires the financial security to do so.</p> <p>KCC does not consider therefore, that the S106 Agreement provides a 'triple lock' which negates the need to provide a Bond.</p> <ol style="list-style-type: none"> 1. The current obligation is to provide a Bond to the value of Secondary School Stage Two contributions 2, 3 and 4 plus indexation. The purpose of the Bond is to provide financial security for the County Council; ensuring that in the event it does not receive the necessary amounts from the Applicants, it still has the security in order to forward fund the delivery education infrastructure necessary to meet the needs of the Development 2. The obligation continues to serve a useful purpose. The negative obligation of preventing further occupation until the Bond has been provided ensures that the appropriate infrastructure is secured without which more development would not be acceptable. 3. The obligation would not serve the purpose equally well if it had subject to the proposed modification. Infrastructure would be forward funded at considerable risk to the public purse or not funded at all. 4. Application refused.
77.	Secondary School Contributions	Schedule 15, Part 5	<p>The current s106 Agreement as varied by the Deed of Variation signed on 13 July 2022 provides for a Stage one contribution £13,550,000 index linked.</p> <p>However, for the reasons stated in column 5, the Applicants apply now to vary further the payment obligations under the DoV, to</p>	M V	<p>The further modification of paragraph 37 is justified on the basis that the delivery of the school is being accelerated to benefit the wider community rather than simply mitigating the effects of this Development. Based on the total amount of secondary school places projected, and pro-rated to an average per home, a secondary school of 4 Forms of Entry (the typical minimum viable size) would not actually</p>	<p>The DoV (entered into by the Applicants and KCC) amends the obligations in Schedule 15, paragraphs 41.(a) to 41.(d) to reflect the following payment schedule for Stage One Secondary Payments (£13.55m):</p> <p>The Paying Owners shall:</p> <p>(a) Pay the Stage One Secondary Contribution 1 to the County Council on or before Occupation of 1000 Dwellings on the Site or on or before 1 March 2026 whichever is the earlier date.</p>

			<p>defer repayments to commence from 2000 homes as follows:</p> <p>37. The Paying Owners shall:</p> <p>(a) Pay the Stage One Secondary Contribution 1 to the County Council on or before the date when 2650 Dwellings on the Site have been Occupied.</p> <p>(b) Pay the Stage One Secondary Contribution 2 to the County Council on or before the date when 3125 Dwellings on the Site have been Occupied.</p> <p>(c) Pay the Stage One Secondary Contribution 3 to the County Council on or before the date when 3625 Dwellings on the Site have been Occupied.</p> <p>(d) Pay the Stage One Secondary Contribution 4 to the County Council on or before the date when 4500 Dwellings on the Site have been Occupied.</p> <p>.</p>		<p>be needed by virtue of the Development itself until c. 2,000 homes. The reason to bring forward the delivery of school is to meet wider Ashford needs, as is fully acknowledged both in the Area Action Plan and in recent Cabinet reports regarding the school delivery and funding. It is submitted in the light of the Explanatory Statement from Quod that this acceleration has not been reflected in the DoV properly or indeed at all and that the agreement should be modified accordingly.</p> <p>In addition, the modification is sought for reasons of viability and deliverability, deferring the Contributions to assist further the Applicants' cash flow and in the light also of the delays in delivery (circa 12 months) and the deferred requirement for funds that have already occurred. The deferment of this cost is captured in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2~ Line Ref 5200.1 and forms part of this revised viability analysis justifying each discharge and modification sought.</p> <p>The schools are also significant community assets. As such, it is requested that the school assets, and their community use, be reflected in the triggers for additional community buildings and sports pitches with reference to the Community Hub and Chilmington Hamlet.</p>	<p>(b) Pay the Stage One Secondary Contribution 2 to the County Council within 12 months of the falling due date of the Stage One Secondary Contribution 1 or on or before 1 March 2027 whichever is the earlier date.</p> <p>(c) Pay the Stage One Contribution 3 to the County Council within 24 months of the falling due date of the Stage One Secondary Contribution 1 or on or before 1 March 2028 whichever is the earlier date.</p> <p>(d) Pay the Stage One Contribution 4 to the County Council within 36 months of the falling due date of the Stage One Secondary Contribution 1 or on or before 1 March 2029 whichever is the earlier date.</p> <p>(e) Pay the Stage One Contribution 5 to the County Council within 48 months of the falling due date of the Stage One Secondary Contribution 1 or on or before 1 March 2030 whichever is the earlier date.</p> <p>(f) Pay the Stage One Contribution 6 to the County Council within 60 months of the falling due date of the Stage One Secondary Contribution 1 or on or before 1 March 2031 whichever is the earlier date.</p> <p>The Deed of Variation (DoV) was signed on 13 July 2022, just over three months prior to the Applicant submitting this S106A application in October 2022. Contrary to paragraph 2.13 of the Quod Chilmington Green Application 2 Explanatory Statement (18 October 2022), the DoV was not at the request of KCC nor has KCC brought forward the delivery of the Secondary School. The Applicant requested deferral of Secondary School Contributions. KCC sought to assist the Development by agreeing (with the DfE) to deferment of Stage One Payments only.</p> <p>The contributions continue to have a relevant purpose – the school is currently under construction at Chilmington Green. It is open off-site with 270 pupils on roll across Years 7 and 8. A provisional, on-site opening date of September 2025 has been agreed by the Department for Education.</p> <p>The Applicants propose to amend the payment triggers in order that the Development's requirement for a 4 Form-Entry (FE) Secondary School does not become necessary until c.2000 homes, and that the forward provision of the school is to meet the wider Ashford need. Based on the housing phasing in the QUOD report (10.22) 2000 occupations is expected c2030. At this point, with the current payment triggers, not all Stage 1 contributions are received. At 2000 occupations, the Development is expected to have c370 additional secondary aged pupils). There is no surplus capacity in Ashford secondary schools. New provision is required now to provide places for pupils moving into the development. Delivery of the school is directly linked to the development. KCC has taken action to expand (where feasible) existing secondary schools in the district of Ashford. Further expansions are now not possible.</p> <p>The Applicants propose to defer contributions on the basis of viability and deliverability of the Development but have not provided the necessary evidence to support this. Even if supporting viability information could be provided, it is not a satisfactory reason for</p>
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						<p>KCC to accept deferring these crucial contribution payments. Planning permission was granted on the basis that this Development mitigates its impact on education and this includes providing contributions at the necessary junctures of the Development to provide the required infrastructure to meet the needs at that point in time of the Development.</p> <p><u>In response to the Applicants' request to defer Stage One Secondary Contributions:</u></p> <p>1. The obligation provides financial contributions of £13.55m for Stage One (initial 4 Forms of Entry) of the school's construction. The current obligation serves to provide contributions towards the provision of additional secondary school places necessary to meet the need of the Development. The contribution is required to ensure that the cost of secondary education infrastructure necessary to serve the Development is met by the Development.</p> <p>2. The current obligation continues to serve a useful purpose in providing additional secondary school places at an appropriate time to meet the needs of the Development. The school is currently under construction at Chilmington Green. It is open off-site with 270 pupils on roll across Years 7 and 8. A provisional, on-site opening date of September 2025 has been agreed by the Department for Education.</p> <p>3. The obligation would not serve the purpose equally well if subject to the proposed modification as it will result in the public purse forward funding the necessary infrastructure for a significantly extended period of time before being repaid by the Development (estimated final payment to be 2041 based on assumptions of housing delivery). It is not acceptable for the Development to benefit from significant occupations but to place KCC's finances at risk.</p> <p>4. Refuse application.</p>
78.	Provision of an account of education and expenditure and repayment of any surplus	Paragraphs 48 and 49	<p>The Applicants apply for the existing paragraph 48 to be modified so that the Owner's Agent or the person from whom any contribution was received may apply to the County Council one year following practical completion of a School for an account of the expenditure of the money, such account to be provided within a reasonable time of any such request.</p> <p>Further, for paragraph 49 to be modified to provide for any surplus to be reimbursed forthwith to the persons from whom the contribution was received, and for the remainder of the paragraph</p>		<p>There can be no sensible justification for the County Council to be able to withhold any surplus monies, that have not been applied for the purpose for which they were intended, for more than 1 year following practical completion of a School.</p> <p>Those parts of paragraphs 48 and 49 providing otherwise cannot therefore be regarded as serving any useful purpose and should be modified and/or discharged accordingly.</p> <p>Further or alternatively, in relation to paragraph 49, that Part of the same relevant to any Issuer of a Bond serves no purpose where the Bond obligations are to be discharged in any event (as set out above).</p>	<p><u>KCC's response is in two parts in respect of this request:</u></p> <p><u>Application to Amend Paragraph 48</u></p> <p>The proposed amendment seeks to delete paragraph 48.1 which allows for KCC to hold monies for a period of ten years from the date of receipt of the final instalment in respect of a school before returning any surplus.</p> <p>The amendment assumes that schools will be built out in one Phase, which may not be the case, and that once built there will be no need for any further additions. The County Council may choose to build hybrid schools, for example – a 1FE primary school with core facilities for 2FE, which it then adds a further seven classrooms at a later date, to enlarge the school to 2FE. This may occur in response to budgetary pressures (where it is waiting on</p>

			(beginning `or if the person ...') to be deleted.			<p>100% receipt of development contributions) or to ensure that school place provision matches demand.</p> <p>In addition, paragraph 46 of this schedule enables any surplus Education Contributions to be expended for Educational Purposes. The cost to the county council of providing Primary School 1 is in excess of the s106 contributions paid (and to be paid).</p> <p>1. The current obligation provides for “Prior to the later of ten years from the date of receipt of the final instalment in respect of a School and one year following practical completion of a School”. 10 years serves to provide for sufficient time for the County Council to plan and deliver education places necessary to mitigate the needs of the Development. It should not be for the Applicants to determine how/when this is spent by KCC.</p> <p>2. The current obligation continues to serve a useful purpose as there remains a need for flexibility for how payments should be spent by KCC for the necessary educational services.</p> <p>3. The obligation would not serve the purpose equally well if subject to the proposed modification as it could result in monies being returned prior to total completion of the education project and ahead of potential peak demand for school places.</p> <p>4. Refuse application.</p> <p><u>Application to amend Paragraph 49</u></p> <p>The County Council accepts the amendment of paragraph 49 to read: <i>“In the event that a surplus exists which has neither been expended for Educational Purposes nor contractually committed nor allocated for Educational Purposes, the County Council shall reimburse the balance to the persons from whom the contribution was received.”</i></p> <p>Accept the application.</p> <p>The application to amend paragraph 49 is accepted on the basis that the application to amend paragraph 48 is rejected i.e. the 10 year period in paragraph 48.1 remains.</p>
		Schedule 15A - KCC General Site Transfer Requirements				<p>KCC's policy for seeking s106 contributions is set out in its Developer Contributions Guide 2023, plus Technical Appendices 8 General Transfer Terms and 9 New School Site and Sports Pitches.</p>

79.	Provision of the site	Paragraph 4	<p>The Applicants apply for this paragraph to be modified to state as follows:</p> <p>The site to be provided to the County Council in a reasonably level condition. If works are required to do ...</p>	M	<p>The current wording of the paragraph is ambiguous. It should be amended to achieve its original purpose, to provide a reasonably level site for the intended user.</p>	<p>The financial contributions agreed are predicated on the site provided being to a level required by the County Council. If the obligation is amended, the cost burden of addressing any site issues moves from the Applicants to KCC. Such amendment would require a corresponding increase in contributions to meet any abnormal conditions.</p> <p>1. The current obligation serves to provide a school site to the County Council's levels which can accommodate buildings and playing surfaces, without the requirement to deal with abnormal site conditions and the increased build costs that result.</p> <p>2. The current obligation continues to serve a useful purpose of ensuring that an appropriate site is provided, that does not incur abnormal costs for the County Council and can facilitate the school buildings and external areas, including sports pitches</p> <p>3. The obligation would not serve the purpose equally well if subject to the proposed modification, as it presents a potential cost burden to the County Council, which would not be met by any further contributions by the Applicants pursuant to the S106 Agreement as the Applicants would be fully relieved from their liability.</p> <p>4. Refuse application.</p>
80.	Site setting out at handover	Paragraph 5	<p>The Applicants apply for the reference to 'and fenced' to be omitted.</p>	M	<p>The obligation to fence is surplus to requirements, it is already covered under the build costs and accordingly this provision is duplicative and serves no useful purpose.</p>	<p>The financial contributions agreed are predicated on the site provided being fenced to the required standard to safeguard pupils. The cost of fencing the site is not built into the agreed S106 contribution. If the obligation is amended, the cost burden of providing fencing moves from the Applicants to the County Council. There would need to be an increase in the contributions accordingly.</p> <p>1. The current obligation serves to provide a school site which is fenced, providing appropriate safeguarding to pupils, as well as preventing ingress from trespass and fly tipping for example.</p> <p>2. The current obligation continues to serve a useful purpose for the reasons noted above which remain.</p> <p>3. The obligation would not serve the purpose equally well if subject to the proposed modification, as it would present a cost burden to the County Council, which should be met by the Applicants.</p> <p>4. Refuse application.</p>

81.	Construction access	Paragraph 7	The Applicants apply for paragraph 7 to be modified by inserting after the words 'Haul Roads to be constructed' the words 'to the site boundary', and after the words 'and maintained' the words 'prior to transfer'.	M	For the avoidance of doubt and in support of the existing provisions and their current purpose.	<p><u>KCC's response is in two parts in respect of this request:</u></p> <p><u>Site Boundary Wording</u></p> <p>The Applicants' proposed amendment to modify paragraph 7 by inserting after the words 'Haul Roads to be constructed' the words 'to the site boundary' is accepted.</p> <p>Accept amendment.</p> <p><u>Addition of the words 'prior to transfer'</u></p> <p>Inclusion of the words 'prior to transfer' is unacceptable, as this would mean that the Owner is only required to maintain the haul road prior to transfer of the school site and not throughout the construction period of the school. This would leave the County Council at risk of maintaining a haul route – the cost of which has not been factored into the S106 contributions. The County Council has experience of developers providing haul routes which degrade during use and becoming unfit for purpose.</p> <p>1. The current obligation serves to provide a maintained haul route to the school for construction traffic, enabling the building of the school and provision of education places to meet the needs of the Development.</p> <p>2. The current obligation continues to serve a useful purpose as set out above.</p> <p>3. The obligation would not serve the purpose equally well if subject to the proposed modification, as it could result in additional costs to the County Council to maintain a haul route which subsequently degrades during use throughout the period of construction of the school. KCC has prior experience of this occurring.</p> <p>4. Refuse application.</p>
82.	Provision of services and utilities on site	Paragraph 8	<p>The Applicants apply for paragraph 8 to be modified by inserting after the words 'Prior to the site transfer' the words 'or, if not reasonably practicable, within a reasonable time thereof...'</p> <p>Further, the requirement that statutory undertakers' plant 'shall' be located outside of the site boundary should be modified to 'may'.</p>	M	<p>These modifications are requested to make due allowance for the practicalities of provision and ensure that the paragraph does in fact serve its purpose in practice.</p> <p>The modifications will secure, therefore, that the paragraph actually serves its intended purpose better or at least equally well.</p>	<p>KCC's response is in two parts in respect of this request:</p> <p>I. Provision of services:</p> <p>The Applicants are responsible for provision of adopted services and utilities to the boundaries of the school sites. The County Council cannot, in the event of default by the Applicant, reasonably deliver that infrastructure, which would require it to come across the Applicants' or third party land, and connect in to the infrastructure controlled by the Applicants.</p>

					<p>The inclusion of the words, 'or, if not reasonably practicable, within a reasonable time thereof' creates uncertainty for the delivery and eventual opening of the schools required to meet the educational needs of the new residents. As is evidenced by the complex delivery of infrastructure to the secondary school site (currently in the early stages of site preparation), delaying delivery of service connections until after transfer is a wholly unsatisfactory circumstance. The County Council has experience of the Applicants not providing temporary services upon transfer of the Primary School 1 site and incurring costs of electricity generation and providing water bowsers to enable construction of the school.</p> <p>The statutory undertakers' plant will serve wider development than the school. This needs, therefore, to remain in land controlled by the Applicant.</p> <p><u>Application to amend paragraph 8 by inserting after the words 'Prior to the site transfer' the words 'or, if not reasonably practicable, within a reasonable time thereof ...'</u></p> <p>1. The current obligation serves to provide a properly serviced school site, ultimately providing additional education places to meet the need of the Development.</p> <p>2. The current obligation continues to serve a useful purpose to ensure that the site is fit for its intended purpose.</p> <p>3. The obligation would not serve the purpose equally well if subject to the proposed modification for the reasons noted above.</p> <p>4. Refuse application.</p> <p>ii. Statutory undertakers' plant:</p> <p><u>Application to amend paragraph 8 - by the requirement that statutory undertakers' plant 'shall' be located outside of the site boundary should be modified to 'may'.</u></p> <p>1. The current obligation serves to provide a serviced school site, ultimately enabling the provision additional education places to meet the need of the Development.</p> <p>2. The current obligation continues to serve a useful purpose.</p> <p>3. The obligation would not serve the purpose equally well if subject to the proposed modification.</p> <p>4. Refuse application.</p>
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83.	Provision of temporary electricity and water supplies	Paragraph 10	The Applicants apply to discharge this obligation.	M	<p>It is not possible for the Applicants to provide these services, only the school contractor who is occupying the site can make these arrangements.</p> <p>The obligation does not in practice therefore serve any useful purpose and should be discharged</p>	<p>Application 82 (above) seeks to enable the Applicant to deliver services to the school sites after transfer and at an unspecified date. This modification seeks to remove the requirement to provide temporary water and electricity provision, while 69 and 71 above seek to require the County Council to deliver an operational school within 3 years of deciding to proceed. None of the changes being sought by the Applicant support the delivery of this key education infrastructure necessary to meet the needs of the development. If agreed, cumulatively this would make it impossible to deliver schools.</p> <p>Previous experience of delivering Primary School 1, where the Applicants failed to provide any temporary services on site led to increased construction costs and delays to the opening of the school. The Applicants have asserted that it is not possible for them to provide temporary services and it is only the school contractor who can do so. KCC has significant experience of delivering school builds on sites provided within new developments. Developers have complied with the transfer requirements, providing temporary services to the school site boundary by the following means:</p> <p>Water –</p> <ul style="list-style-type: none"> - Bowsers/Tanks – replenished when required - Temporary pumped supply from nearest water main - Bottled water for staff - Serviced welfare unit <p>Electricity –</p> <ul style="list-style-type: none"> - Installation of generators - Temporary supply from nearest sub-station <p>1. The current obligation serves to provide temporary services to the school site, to enable construction of the school and ultimately provision of additional education places to meet the needs of the Development.</p> <p>2. The current obligation continues to serve a useful purpose.</p> <p>3. The obligation would not serve the purpose equally well if subject to the proposed modification. This should not be for KCC to resolve and falls entirely within the Applicants' ability. It would otherwise result in potentially large costs for KCC or even not being able to deliver the necessary temporary services.</p> <p>4. Refuse application.</p>

84.	The payment of the County Council's legal costs and the costs of any Project Management agreements	Paragraph 14	The Applicants apply to discharge this obligation.	M	<p>There is simply no justification for imposing the burden of these very significant costs upon the Applicants in addition to the education contributions referred to above. It is not appropriate for Section 106 payments to be levied to meet legal and transaction costs in this way nor for the County Councils' own project management costs to be recouped as provided.</p> <p>Further, given the likely level of these costs on the transfer of each site they will materially and adversely affect viability at each stage and by the same measure the deliverability of the Development.</p> <p>On any view, therefore, this provision cannot be regarded as serving any proper and useful purpose and should be discharged accordingly.</p>	<p>1. The provision of land is required to mitigate the needs of the Development i.e., to enable the provision of additional education spaces. The transfer of land to the County Council will incur costs (legal fees, project management and Land Registry etc.) which should be met by the Development in its mitigation of education provision. The current obligation serves to meet these costs.</p> <p>2. The current obligation serves a useful purpose. This is a completely standard obligation that KCC would impose on other developers of similar schemes.</p> <p>3. The obligation would not be served equally well if subject to the proposed modification as it would result in an increased burden on the public purse which should be met by the Development in its mitigation of education places to serve the new population, including KCC's associated costs in respect of this.</p> <p>4. Refuse application.</p>
Schedule 16 - Other KCC Services					<p>In this regard the Applicants refer to and rely in particular upon section 8 of the Explanatory Statement accompanying this application in addition to the reasons stated below.</p>	<p>The following section sets out the legislative and policy drivers for the provision of KCC's Community Services. The legislative context is relevant because it sets out the duties upon and powers available to KCC. The relevant policies are set out in national, local and KCC policy documents, plans and programmes. They are material because they represent the official position of the Government, Ashford Borough Council and KCC as service providers.</p> <p>The requirement for Social and Community Facilities is set out in Policy CG17 of the Chilmington Green Area Action Plan (Adopted July 2013).</p> <p>Policies COM1 ('Meeting the Community's Needs') and IMP1 ('Infrastructure Provision') of the Ashford Local Plan 2030 (adopted February 2019) ("Ashford Local Plan") confirm that the Borough Council will continue to seek financial contributions through the use of s106 Agreements to secure the delivery of infrastructure where it is justified to do so in line with the NPPF and The Community Infrastructure Levy Regulations 2010 (as amended). This refers to infrastructure and facilities required to meet the needs generated by new development such as education and community (including youth).</p> <p>KCC's policy for seeking s106 contributions to support new developments and ensure that the demands on services are mitigated is set out in its Developer Contributions Guide 2023.</p>
85.	Library Services; 4 x £225k contributions	Para 1, 2, 9 ,10 and Sch 30B	The Applicants application in this respect is for these Library Services Contributions to be discharged.	DV	A fully stocked and equipped library is included already in the Community Hub (under Schedule 12 as amended This obligation is accordingly surplus to requirements, duplicative and serves no useful purpose.	KCC has a statutory duty under the Public Libraries and Museums Act 1964 to provide a comprehensive and efficient library service for everyone working, living, or studying in the area.

			<p>Schedule 30B column 2 to be amended accordingly, to remove these payment amounts.</p>		<p>Moreover, the costs here are significant (£900,000) and serving only to undermine the viability and ultimately the deliverability of the Development.</p> <p>In accordance with the Applicants' case hereunder, the discharge of these obligations as proposed is shown in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5300.10 (second 5300.1) and forms part of this updated viability analysis justifying each discharge and modification sought.</p>	<p>KCC's library policies are contained in Framing Kent's Future, Our Council Strategy 2022-2026 and the Libraries, Registration and Archives Strategy 2019-22.</p> <p>The County Council's policy for seeking s106 library contributions is set out in its Developer Contributions Guide 2023 plus Technical Appendix 16. The Development is expected to create an additional 583 library users who will place an additional burden and cannot be accommodated within existing services/resources.</p> <p>The Applicants have proposed that the Library Services Contribution is surplus to requirements and duplicative, as 'a fully stocked and equipped library is included already in the Community Hub'.</p> <p>Currently, Schedule 12 - Community Hub Building includes provision for a library access point of 0.0012ha or 12 sqm. Library access points typically include: 2-3 No. shelves of book stock, 1No. PC, RFID technology to enable self-service visits (drop off and booking out of stock) and access to Wi-Fi. To put this provision into perspective, KCC Tier 5 libraries, which are generally located in small villages and suburban communities operate from facilities of 80 sqm (minimum).</p> <p>The proposed library access point is set to be part of a network of library infrastructure serving the Development, including the existing libraries at Ashford Gateway, Stanhope and Bockhanger. The s106 defines the Library Services Contribution ".....to expand the library service capacity Serving the Development and in particular at the library access point in the Community Hub Building....". Expansion of existing library services will be included in this offer.</p> <p>Schedule 12 is currently required to provide a 12 sqm Library Access Point within the Community Hub Building. The Applicants' proposal to discharge the obligation to contribute £900,000 would leave the Development served by a library access space only. This would include fixtures and fittings, but no equipment, resources or expertise of the Statutory Library Service; effectively a physical space without library resources and therefore, not fit for purpose as it would not be delivering statutory library services.</p> <p>The Applicants' proposal to amend Schedule 12, sets out provision of a fully stocked and equipped library at 3250 Occupations. However, there are no details regarding this provision – size of space, fittings & fixtures, equipment and resources. . Furthermore, the proposal lacks any information regarding the long-term costs associated with maintaining and expanding the library, such as acquiring new books, replacing aging equipment, and accommodating the increasing demand from a growing population. It cannot be deemed therefore, that the proposal negates the need for full contributions to be paid to the County Council to fulfil its statutory function as Library Authority.</p> <p>The Applicants have applied for this amendment on the basis that the obligation undermines the viability and deliverability of the Development. KCC has been unable to establish this as correct, as the Applicants have not provided the necessary evidence to do so.</p>
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						<p>1. The obligation is to <i>"expand the library service capacity Serving the Development and in particular at the library access point in the Community Hub Building but excluding infrastructure"</i>. The current obligation serves to provide increased capacity in the library service (both within the Development and within library facilities serving the Development) to accommodate the new demand created by the Development. It is to ensure that the costs of infrastructure necessary to serve the Development are met by the Development.</p> <p>2. The current obligation continues to serve a useful purpose of providing additional on and off-site library services to meet the growing population as a result of the Development.</p> <p>3. The obligation would not serve the purpose equally well if subject to the proposed modification, as it would result in the Development failing to mitigate the increased demand on library services.</p> <p>4. Refuse application</p>
86.	Payment of Youth Services Contributions to KCC	Paras 3, 4, 9 ,10 and Sch 30A-C	<p>The Applicants application in this respect is for these Youth Services Contributions to be discharged.</p> <p>Schedules 30A-C also to be amended accordingly to omit the current payments and triggers and replace them as above.</p>	DV	<p>The application to discharge is made because these contributions no longer serve a useful purpose, inasmuch as there is already ample provision in this regard. These payments accordingly amount to substantial over provision, are surplus to requirements and should be discharged accordingly.</p> <p>The discharge of these obligations as proposed is shown in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2} Line Ref 5400.1 and forms part of this updated viability analysis justifying each discharge and modification sought.</p>	<p>KCC has a statutory duty to provide Youth Services under section 507B of the Education Action 1996. Access to good quality Youth Services is essential to ensure equal opportunities and support for all young people across the county, preventing them from engaging in harmful behaviour and leading them towards a positive future.</p> <p>The County Council's policy for seeking s106 library contributions is set out in its Developer Contributions Guide 2023 plus Technical Appendix 15. The Development will give rise to approximately 1610 young people, of which, Youth Services would target 25%, creating approximately 403 additional Youth clients which cannot be accommodated within the existing service provision.</p> <p>The Applicants assert that there is already 'ample provision in this regards' but provide no evidence to support this.</p> <p>The Applicants have applied for this amendment on the basis that the obligation undermines the viability and deliverability of the Development. At this stage, KCC has been unable to establish this as correct, as the Applicants have not provided the necessary evidence.</p> <p><u>Discharge of Obligations:</u></p> <p>1. The Youth Services obligation provides a financial contribution for <i>"the provision by the County Council or its nominees of youth services Serving the Development but excluding the provision of infrastructure."</i> The current obligation serves the purpose of providing additional capacity within the Youth Service to meet the needs of the growing population resulting from this development. This is necessary to ensure that the Development has the infrastructure required to make it acceptable in planning terms. Access to good quality Youth Services is essential to ensure equal opportunities and support for all young people across the county,</p>

						<p>preventing them from engaging in harmful behaviour and leading them towards a positive future.</p> <p>2. The current obligation continues to serve a useful purpose, providing financial contributions to enable the expansion of the Youth Service to meet the needs of the new population.</p> <p>3. The obligation would not serve the purpose equally well if subject to the proposed discharge of obligations, as it would result in insufficient provision of Youth Services to meet the needs of the new population as the Development builds out.</p> <p>4. Refuse application.</p>
87.	Payment of Community Learning Contributions to KCC	Para 5 , 6,9,10 and Sch 30A-C	<p>The Applicants application in this respect is for these Community Learning Contributions to be discharged.</p> <p>Schedules 30A-C also to be amended accordingly to omit the current payments and triggers and replace them as above.</p>		<p>The application to discharge is made because these contributions no longer serve a useful purpose, inasmuch as there is already ample provision in this regard. These payments accordingly amount to substantial over provision, are surplus to requirements and should be discharged accordingly.</p> <p>The discharge of these obligations as proposed is shown in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5300.11 and forms part of this updated viability analysis justifying each discharge and modification sought.</p>	<p>KCC provides community learning and skills (CLS) facilities and services in line with Framing Kent's Future – Our Council Strategy 2022/2026 (Priority 1 – Levelling UP Kent and Priority 2 – Infrastructure For Communities).</p> <p>The County Council's policy for seeking s106 library contributions is set out in its Developer Contributions Guide 2023 plus Technical Appendix 2. The growth in population resulting from this Development will create 285 additional adult learners, requiring further infrastructure to meet this demand. The Applicants are proposing to delete this obligation, ultimately contributing to an unsustainable development (along with the discharge of other Schedule 16 obligation) and place increased strain on existing resources which cannot be accommodated.</p> <p>The Applicants have applied for this amendment on the basis that the obligation undermines the viability and deliverability of the Development. KCC has been unable to establish this as correct, as the Applicants have not provided the necessary evidence.</p> <p><u>Discharge of Obligations:</u></p> <p>1. The obligation is for the provision and subsidy of new adult learning classes Serving the Development. The obligations serve a useful purpose of providing additional capacity within the Community Learning and Skills Service to meet the needs of the growing population resulting from this development.</p> <p>2. The current obligation continues to serve a useful purpose, providing financial contributions to enable expansion of the Community Learning service to meet the needs of the growing population.</p> <p>3. The obligation would not serve the purpose equally well if subject to the proposed discharge of obligations, as it would result in no increase in Community Learning capacity to meet the needs of the new Development.</p> <p>4. Refuse application.</p>

88.	Payment of Family Social Care Contributions	Para 7, 8, 9,10 and Sched 30A-C	<p>The Applicants application in this respect is for these Family Social Care Contributions to be discharged.</p> <p>Schedules 30A-C also to be amended accordingly to omit the current payments and triggers and replace them as above.</p>	DV	<p>The application to discharge is made because these contributions no longer serve a useful purpose, in as much as there is already ample provision in this regard. These payments accordingly amount to substantial over provision, are surplus to requirements and should be discharged accordingly.</p> <p>The discharge of these obligations as proposed is shown in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5300.22 and forms part of this updated viability analysis justifying each discharge and modification sought.</p>	<p>KCC is the Statutory Authority for Adult and Children's Social Services in Kent. The County Council's policy for seeking s106 contributions is set out in its Developer Contributions Guide 2023 plus Technical Appendix 1 Adult Social Care and Technical Appendix 15 Integrated Children's Services.</p> <p>KCC is required to comply with statutory guidance issued by the UK Government entitled 'Working together to safeguard children' which requires KCC to safeguard and promote the welfare of children, to assess their needs and provide help through inter-agency working from pre-birth to 19 years (or up to 25 for young people with additional needs).</p> <p>The growth in population resulting from this Development will create more children, young people, and adults with social care needs, requiring additional infrastructure to provide this. KCC's assessment calculates that there would be an additional 531 adult clients and approximately 387 Children's Services clients and their families/carers. The Applicants are proposing to delete this contribution, ultimately contributing to an unsustainable development (along with the proposal to discharge other obligation proposals within Schedule 16).</p> <p>The Applicants assert that there is already 'ample provision in this regards' but provide no evidence to support this. The number of children, young people and adults requiring social care support is increasing year-on-year. The UK is an ageing society: 25% of the population people will be over 65 by 2050, up from 19% in 2019². Disability among working-age adults has also increased to 19%, up from 15% in 2010/11³. This means more people with complex needs requiring support from the health and social care system. This includes young people with learning and physical disabilities who are moving from Children's to Adult Services, often with significant support requirements. A reduction in contributions would result in the Development failing to mitigate its needs.</p> <p>The Applicants have applied for this amendment on the basis that the obligation undermines the viability and deliverability of the Development. KCC has been unable to establish this as correct, as the Applicants have not provided the necessary evidence.</p> <p><u>Discharge of Obligations:</u></p> <p>1. The obligation provides a financial contribution towards Family Social Care. 'Family Social Care' is not a defined term within the s106 agreement but relates to the social care services to be provided for children, young people and adults through the Family Social Care Contribution payable by the Applicants. The obligation serves a useful purpose in providing additional capacity within Social Care Services to meet the needs of the growing population resulting from this Development.</p> <p>2. The current obligation continues to serve a useful purpose for the reasons noted above. Demand for these services is only</p>
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² 'Meeting housing demand' House of Lords, Built Environment Committee 1st Report of Session 2021-2022

³ Key facts and figures about adult social care, The King's Fund 2 July 2021

						<p>increasing and it is completely reasonable for the Development to contribute towards such services given its own impact.</p> <p>3. The obligation would not serve the purpose equally well if subject to the proposed discharge of obligations, as it would result in no increase in Family Social Care capacity to meet the needs of the new Development.</p> <p>4. Refuse application.</p>
89.	Superseded					
		Schedule 17 – Ecology				Refer to ABC Response
90.	Providing for compliance with any mitigation and enhancement strategy approved pursuant to the Planning Permission	Paragraph 1	The Applicants apply to discharge this paragraph and the sub-paragraphs thereto in their entirety.		The provisions of this schedule are unnecessary because the matters to which it refers are fully covered in the CMO framework agreement. The paragraph and its sub-paragraphs do not therefore serve any useful purpose and should be discharged accordingly.	
Schedules 18 and 18A – Modic Improvement Works					<p>NOTE: The Applicants primary application herein is under s106A to vary the terms of Schedules 18 and 18A of the s106 Agreement incorporating the terms of the s.278 Agreement, in accordance with the discharges/modifications proposed (in column (4)) and for the reasons stated (in this column (5)) below under this heading.</p> <p>The Applicants in so far as necessary hereby apply separately to Kent County Council in its capacity as highways authority to vary the terms conditions and obligations of the completed s.278 Agreement in accordance with the said discharges/ modifications and for the reasons stated.</p> <p>Further, in the relation to the latter application, the Applicants apply also herein under paragraph 2 of Schedule 18 and in so far as necessary for the prior written consent of the Council to vary the completed s.278 Agreement in accordance with the said modifications or otherwise as determined or agreed.</p> <p>In relation to these Schedules 18 and 18A the Applicants refer to and rely in particular upon section 10 of the Explanatory Statement accompanying this application in addition to the reasons stated below.</p>	<p>Under the Highways Act 1980, KCC is the Highway Authority for Kent, responsible for managing and maintaining all adopted roads in the county.</p> <p>KCC's policy for seeking s106 Highways and Transportation contributions is set out in its Developer Contributions Guide 2023, plus Technical Appendix 14.</p> <p>The requirement for Highways and Access is set out in Policy CG11 of the Chilmington Green Area Action Plan (Adopted July 2013)</p> <p>Ashford Local Plan (2030) Adopted February 2019 – the policy for the A28 Dualling Scheme is set out under Policy TRA1 – Strategic Transport Schemes</p>

91.	Provision of a Bond in the form required	Schedule 18 Para 1 and Schedule 18A	<p>The Applicants apply for paragraph 1 of Schedule 18 and the obligation to provide a Bond to be discharged. Equally, and consequentially .that under Schedule 18A, Schedule 1 paragraph 7 should be discharged and that paragraph 4 thereof is modified to remove reference to the Bond by the omission of `..in these circumstances or in the event that the Council is able to increase its forward funding provide an amended Bond under clause 7 ... in Annex 2 to this Deed.'</p> <p>Further, that consequential amendments be made to the Council's obligations (under Schedule 18A), varying 5.1 to omit reference to the Bond and omitting clauses 5.4, 5.10, 5.11 and clauses 8 (Release of Bond) and 12.</p>	DV and O	<p>The obligation to provide a Bond in respect of the A28 Improvement Works in the total sum of £28,988,800 no longer serves any useful purpose and should be discharged because it has ceased to be possible in the financial markets to obtain a Bond in the form or of the `on-demand' kind required by the s106 Agreement. In the premises the reality is that this obligation has been rendered redundant and it should be discharged accordingly.</p> <p>Evidence has already been provided to the Council establishing that a Bond cannot be obtained. Nonetheless, the Applicant will provide such further information in this regard as may be required by the Council, confirming the unavailability of the Bond.</p> <p>Moreover, if contrary to the foregoing, it were somehow to be shown contrary to the Applicants' own enquiries and evidence (already provided) that a compliant (Annex 3) form of Bond is obtainable, the likelihood is that this would be at face value or such a cost as to be prohibitive. An additional financial commitment of this scale would palpably undermine the viability of Main Phase 1 and with it the delivery of the Development. The provision of a Bond is, therefore, self-defeating and cannot be regarded as serving any useful purpose in relation to the Development.</p> <p>The discharge of this cost is captured in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5100.2b and forms a substantial part of this revised viability analysis justifying each discharge and modification sought.</p>	<p>The Applicants have requested to discharge the requirement to provide a Bond in respect of the A28 Improvement Works. KCC understands that this is on the following basis and has set out its response below: a) The Applicants consider that 'it has ceased to be possible in the financial markets to obtain Bonds for the kind required by the s106'.</p> <p>KCC has sought specialist opinion regarding the availability of Bonds from its corporate banking provider (NatWest Bank) and is satisfied that these are available on the financial markets in the form set out in the s106. Indeed, the Applicants entered into a Bond of this kind with KCC on 29 March 2019 and so KCC does not accept that it is no longer possible to obtain similar Bonds</p> <p>b) The Applicants note that (in their view), the provision of a Bond undermines the viability and deliverability of Development.</p> <p>The applicant has not provided the necessary evidence to determine that the provision of Bonds undermines the deliverability of the Development.</p> <p>The structure of the Agreement is to allow contributions for the essential infrastructure to be made as the development is being built out. It is therefore the duty of a prudent public authority to ensure that sufficient surety is available for works that it is essentially forward funding. Consequently, the provision for Bonds continue to serve a useful purpose which would not be met if those requirements were removed.</p> <p>The reason a Bond in respect of the highway contributions is required is because KCC will be providing the works in advance of S278 payments required from the Paying Owners. A draft section 278 Highways Act 1980 agreement is appended at Schedule 18A of the Agreement, with Annex 2 setting out the payments due. From this, the Paying Owners are benefitting from the forward funding provided by KCC. As a public authority, KCC has a duty to protect the public purse and act with fiscal responsibly. A Bond is required to secure the payment of public expenditure and remains a requirement before KCC can enter into a build contract. The Bond is required to ensure that in the event the Applicants do not make the necessary payments as specified in the S106 Agreement KCC is able to rely on the Bond to recover the necessary costs. Where infrastructure projects are required to be forward funded, it is necessary to have a Bond so that KCC is properly protected and does not have to suffer any losses in the event the Applicants do not properly comply with the obligations.</p> <p>1.The obligation to fully fund (including the provision of adequate security through the Bond) the A28 Chart Road Dualling Scheme serves a useful purpose of providing increased capacity on the highway, with the resulting need arising from this development site. The requirement to provide a Bond is in place to protect the public purse, as KCC would be forward funding this work (including borrowing costs) in order to ensure that the project is complete within the timescales required.</p> <p>2. The obligation continues to serve a useful purpose. The covenant set out in Schedule 18, paragraph 1 prevents the occupation of more than 400 dwellings until a Bond is delivered to the County Council. This ensures that the appropriate infrastructure can be secured without which more Development would not be</p>
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						<p>acceptable. The negative occupation trigger alone does not provide KCC with enough protection.</p> <p>3.The obligation would not serve the purpose equally well if amended as set out, as it would create a severe financial risk to the County Council if it was to forward fund the project without any recourse from the Development, which is wholly unacceptable. Discharge of the obligation would result in failure to deliver the A28 Dualling Scheme and the Chilmington Green development would result in a severe highway impact on the existing A28 corridor.</p> <p>4.The application to discharge the obligation to provide a Bond is refused.</p>
92.	Superceded					
93.	The Developer's Payment Covenants and Post-Contract 278 Contributions	Schedule 18A and Annex 2 of the s.278 Agreement therein and Sch 18, para 2	The Applicants apply for Schedule 18A including the Developer's Covenants under Schedule 1 to pay Pre-Contract Costs and Post-Contract Costs and any shortfalls to be discharged.	DV	<p>The application to discharge the payment obligations in respect of the A28 is advanced for reasons of viability and deliverability. Such are the costs of these obligations that the burden of payment is undermining the viability of Main Phases 1 and 2 and in turn the deliverability of the development. Most immediately, without discharge the payments required will likely cause the loss of the funding available to the Applicants to carry out the Development at all. In the circumstances these payment obligations cannot sensibly be regarded as serving any useful purpose.</p> <p>The discharge of this cost is captured in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2~ Line Ref 5100.2a and forms a substantial part of this revised viability analysis.</p>	<p>Application to discharge obligation to pay pre and post contract fees</p> <p>At the time of the Outline Planning Application, the A28 was already experiencing congestion at peak times. Recent traffic count data of the A28 corridor undertaken by KCC confirms that this continues to be the case, with significant capacity issues along the A28 corridor in both the AM and PM peaks, causing significant queuing and delays for drivers.</p> <p>The development of 5750 dwellings will put considerably more traffic on a heavily congested network in the peak hour periods resulting in a severe traffic impact and this will be further evidenced by the County Council as part of the proof of evidence of the highway witness. The County Council undertook traffic survey data in April 2023 for the A28 corridor and compares queue data from April 2023 with those from 2013 that were submitted as part of the Chilmington Green planning application. The traffic survey data demonstrates that overall queuing at the three junctions along the A28 corridor has increased significantly. It is considered that traffic conditions on the study network in 2023 are more congested than was the case in 2013 and the subsequent years when the A28 Chart Road improvement scheme was conceived.</p> <p>The Explanatory Statement under paragraph 10.25 quotes an older version of TEMPro, 7.2c. The current version of 8.1.</p> <p>The use of ATC data as quoted in paragraph 10.26 of the Explanatory Statement is not considered appropriate as it does not give any indication of queuing and delay along the A28 corridor.</p> <p>The Explanatory Statement is incorrect in paragraph 10.33 when it discusses phasing of the A28 dualling scheme. Phasing of the scheme is not considered acceptable to the County Council and is not in line with the agreed Section 106 Agreement for the site. Furthermore, the current proposal is for complete discharge of the A28 scheme and not delivering the scheme in phases.</p> <p>The proposal to discharge the obligation to pay for the works, would leave the public purse to meet the cost of increased capacity. This is wholly unacceptable and will result in unsustainable development with a severe impact upon the capacity of the A28 corridor. The Application would not have been granted on this basis.</p>

						<p>1. The current obligation serves a useful purpose of mitigating the need for increased highways capacity due to increased trip movements resulting directly from the Development.</p> <p>2. The obligation continues to serve a useful purpose as the works to the A28 are necessary to mitigate the highways capacity impact as a result of the Development.</p> <p>3. The purpose would be not equally well served with the proposed discharge of the obligation, as it would result in unsustainable impact upon the public highway without any mitigation. It is not acceptable for KCC to have to use public spending to meet the demand for and financial cost of increased highways capacity as a result of the Development.</p> <p>4. The application is refused.</p>
Schedule 19 – Off-Site Pedestrian and Cycle Links					<p>In this regard the Applicants refer to and rely in particular upon section 10 of the Explanatory Statement accompanying this application in addition to the reasons stated below.</p>	<p>The following section sets out the legislative and policy drivers for the provision of KCC's services. The legislative context is relevant because it sets out the duties upon and powers available to KCC. The relevant policies are set out in national, local and KCC policy documents, plans and programmes. They are material because they represent the official position of the Government and KCC as service providers.</p> <p>KCC is the Local Transport Authority for Kent (Transport Act 2000). Policies and measures to actively promote alternatives to car-based travel, as well as improving the safety, accessibility, sustainability and efficiency of Kent's highway and transport networks are set out in its Local Transport Plan for Kent (LTP) and Active Travel Strategy. These will be applied to new developments as appropriate. The LTP is currently under review to align with evolving UK transport policies and to meet KCC's commitment to Carbon Neutral.</p> <p>KCC's policy for seeking s106 Highways and Transportation contributions is set out in its Developer Contributions Guide 2023, plus Technical Appendix 14.</p> <p>The requirement for Cycling and Walking is set out in Policy CG13 of the Chilmington Green Area Action Plan (Adopted July 2013).</p> <p>Ashford Local Plan (2030) Adopted February 2019 – the policy for the A28 Dualling Scheme is set out under Policy TRA5 – Planning for Pedestrians, Policy TRA6 – Provision for Cycling and ENV5 – Protecting Important Rural Features</p>
94.	Payment of (4 x) instalments of £133,000 for the purposes of off-site pedestrian provision and cycle links	Sch 19, paras 1 and 2, and Sch 30A-C	The Applicants apply to discharge these payments in their entirety.	DV	<p>Whilst it is acknowledged that payments for off-site pedestrian and cycle links can in principle serve a useful purpose given that the site needs to remain as a sustainable urban extension, the existing provisions are not fit for purpose and do not serve any useful purpose. None of the specified works have any current utility in terms of benefitting the Development or at all.</p> <p>The discharge of this cost is captured in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5100.3 and forms a substantial part of this revised viability</p>	<p>Currently the S106 Agreement obligates payments at 1000, 1500, 1999 and 3999 Occupations. KCC rejects the application to discharge these payments, as it does not provide off-site pedestrian and cycle links in the early stages of Development. This is contrary to National (NPPF) and Regional Policy stated in KCC's Rights of Way Improvement Plan (ROWIP) and Ashford Local Plan Policies TRA5, TRA6, & ENV5.</p> <p>The resulting delay to the upgrading and/or construction of Rights of Ways, cycle routes and other related works to the public rights of way networks, will only increase the already significant impact on the residents of Chilmington Green. For example, due to the appellants lack of works to establish early pedestrian/cycling routes through Phase 1, KCC and Ashford Borough Council have had to fund upgrades to existing PRoW routes (as well as new routes) to</p>

					analysis justifying each discharge and modification sought.	<p>enable Chilmington families to access the new Chilmington Primary School.</p> <p>All of the above policies require commitment to Active Travel, connectivity of the development to existing developments such as Singleton and Great Chart, sustainable transport, and the protection of and enhancement of the local area rural character. Discharging the obligation would be contrary to these requirements.</p> <p>The current issue of pedestrian access to Chilmington Primary School (both within and external to the Development) is a prime example, whereby KCC was required to step-in and fund improvement works due to the lag in timescales of the development. The off-road provision was not met by the time the primary school opened in November 2021 and so KCC has had to fund upgrades to the existing PROW's and also the provision of a new footway along Mock Lane to link to the Primary School.</p> <p>The benefit of active travel connectivity across both the Development and to the wider area into Ashford town is of immense significance, creating sustainable travel routes, reducing reliance on cars and providing opportunities for health and wellbeing.</p> <p>1. As an urban extension to Ashford town, the current obligation serves to provide off-site pedestrian and cycle links (as per National Planning Policy Framework requirements), enabling those living in the Development to access the wider community and vice versa. It is impractical to suggest that the Development would be secluded and not require access to the wider local area.</p> <p>2. The current obligation continues to serve a useful purpose for the reasons noted above in order to ensure that the Development is a proper urban extension to Ashford town and provides sustainable transport means.</p> <p>3. The obligation would not serve the purpose equally well if subject to the proposed modification. The Development would become secluded without such off-site links, or, KCC would be required to fund these using public funds which is simply not acceptable.</p> <p>4. The application is refused.</p>
Schedule 20 – Provision of Bus Services					In this regard the Applicants refer to and rely in particular upon section 10 of the Explanatory Statement accompanying this application in addition to the reasons stated below.	Refer to ABC Response
95.	Provision of Bus Services	Sch 20, and Sch 29D Items 1, 13, 25 and 29	<p>The Applicants apply to modify the bus services provision to provide for tenders to be invited and the commencement and level of service to be in accordance with the availability of an operator and confirmation from the operator as to service viability without reliance on any subsidies.</p> <p>The Applicants apply also, therefore, for the discharge of all bus subsidies.</p>		<p>The central reason for the modifications in service and discharge of subsidies that are proposed is that the bus services as currently provided for in the s106 Agreement cannot be provided within Main Phase 1 or subsequent Phases as they are wholly unviable and unsustainable.</p> <p>As regards the services, given the actual building trajectory and rate of completions the stated level of service would be far in excess of what is required by the Development for many years and equally will be unviable for many years.</p>	

			<p>The Applicants apply for paragraphs 1 and 2 to be modified as follows:</p> <p>Paragraphs 1.1 and 1.2 to refer to 2,684 Dwellings [rather than 100 and 200]</p> <p>Paragraph 1.3, to refer to 2,684 Dwellings [rather than 100] and to be amended to reflect that the provision is dependent upon confirmation from the operator as to service viability</p> <p>Paragraphs 1.4 and 1.5, to refer to 2,784 Dwellings [rather than 200].</p> <p>Paragraphs 1.6 and 1.7, to refer to 3,584 Occupations [rather than 1,222].</p> <p>Paragraph 1.8 to be modified to read 'Not to Occupy more than 3,584 Dwellings until the bus service has been reviewed by the Owners with the operator with a view to increasing the frequency of service to at least every 20 minutes". This will apply only in so far as the operator confirms it is viable to do so.</p> <p>Paragraphs 1.9 and 1.10, to refer to 4,784 Occupations [rather than 2,722].</p> <p>Paragraph 1.10 also to include, as in the case of Main Phase 1, the following provision ' ... and any property so specified has been transferred at nil consideration and nil cost to the specified body.'</p> <p>Paragraph 1.11 to be modified to read 'Not to Occupy more than 4,784 Dwellings until the bus service has been reviewed by the Owners with the Operator with a view to increasing the frequency of service to at least every 13-14 minutes." This will apply only in so far as the operator confirms it is viable to do so.</p> <p>Paragraphs 1.12 and 1.13, to refer to 5,348 Occupations [rather than 4,107].</p> <p>Paragraph 1.14 to be modified to read 'Not to Occupy more than</p>		<p>In addition, the related infrastructure costs and the timing and amount of the subsidies required are wholly unsustainable and will only serve to undermine the viability of Main Phase 1, subsequent Phases and ultimately the delivery of the Development as a whole.</p> <p>In the premises the purpose of the obligations to provide a bus service and bus infrastructure will only be served, or will at least be equally well served, if the proposed modifications to the sub-paragraphs of Paragraph 1 are made.</p> <p>For the reasons set out above the Applicant seeks approval/consent now under the express terms of paragraphs 1.3, 1.4 and 1.8 to a substantially reduced level of service and to increased numbers of Dwellings as detailed in the proposed modifications.</p> <p>Moreover, such is the level of subsidies presently payable under Paragraph 2, that they are wholly unsustainable and likely to jeopardise the funding available to the Applicants to carry out the Development at all. The subsidies do not therefore realistically serve any useful purpose and should be discharged accordingly.</p> <p>The additional changes to 1.10 and 1.18 correct what appears to be a drafting error and certainly an unjustified inconsistency with paragraph 1.6 and the provisions relating to Main Phase 1.</p> <p>The modifications to and discharge of these obligations as proposed is shown in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5100.4 and forms part of this updated viability analysis justifying each modification sought.</p> <p>Nonetheless, and without prejudice to the foregoing, if an operator can be identified who is ready willing and able to commence services (without subsidy) at any earlier stage than requested, the Applicants would of course willingly work with them to achieve this.</p>	
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			<p>5,348 Dwellings until the bus service has been reviewed by the Owners with the operator with a view to increasing the frequency of service to at least every 10 minutes. This will apply only in so far as the operator confirms it is viable to do so.</p> <p>Paragraphs 1.15 and 1.16, to refer to 5,500 Occupations [rather than 5,000].</p> <p>Paragraph 1.18 to be omitted in accordance with the modification to paragraph 1.10 above providing for the transfer of any property to the specified body.</p> <p>Paragraph 2 to be modified so that the Owner is not required to subsidise the bus service and likewise Items 1, 13, 25 and 29 of Schedule 29D to be discharged.</p>			
96.	Provision of bus vouchers to each owner	Sched 20 para 1.17	Further, the Applicants apply to discharge the obligation under paragraph 1.17 to provide bus vouchers.		<p>The application to discharge the provision of £450 worth of bus vouchers to each owner, at a total cost of 2,587,500, is advanced for reasons of viability and deliverability. Such is the level of cost of this obligation that the burden of payment is undermining the viability and in turn the deliverability of the Development. Most immediately, unless discharged the cumulative cost of the current 106 Agreement obligations in Main Phases 1 and 2, will likely cause the loss of the funding available to the Applicants to carry out the Development at all. In the circumstances these payment obligations cannot sensibly be regarded as serving any useful purpose.</p> <p>The discharge of these obligations as proposed. is shown in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref S 100.6 and forms part of this updated viability analysis justifying each discharge and modification sought</p>	
Schedule 21 – Off-site Traffic Calming					<p>In this regard the Applicants refer to and rely in particular upon section 10 of the Explanatory Statement accompanying this application in addition to the reasons stated below.</p>	<p>The following section sets out the legislative and policy drivers for the provision of KCC's Highways and Transportation service. The legislative context is relevant because it sets out the duties upon and powers available to KCC. The relevant policies are set out in national, local and KCC policy documents, plans and programmes. They are material because they represent the official position of the Government, Ashford Borough Council and KCC as service providers.</p> <p>Under the Highways Act 1980, KCC is the Highway Authority for Kent, responsible for managing and maintaining all adopted roads in the county.</p>

						<p>KCC's policy for seeking s106 Highways and Transportation contributions is set out in its Developer Contributions Guide 2023, plus Technical Appendix 14.</p> <p>The requirement for Highways and Access is set out in Policy CG11 of the Chilmington Green Area Action Plan (Adopted July 2013)</p>
97.	Traffic monitoring	Para 1.1	<p>The Applicants apply to modify the monitoring obligations as follows:</p> <p>1.1 Not to Occupy on Site more than the following numbers of Dwellings ...</p> <p>1.1.2 2,399</p> <p>1.1.3 5,649</p> <p>[Omit 1.1.4-1.1.6]</p> <p>Unless (i) monitoring ... County Council.</p>	M	<p>These modifications are proposed to simplify the obligations and to gear them more immediately to the payment obligations. The obligations will on this basis serve their intended purpose better, or at least equally well, if modified as proposed.</p>	<p>The Applicants have not provided up-to-date traffic counts required for the roads set out in the S106 Agreement pursuant to paragraph 1.1.(i).</p> <p>In respect of this application, the Applicants have also not provided predicted traffic flows at the proposed, amended trigger points for these contributions based upon up-to-date trip rates, assignment and distribution on the local highway network. These are required as a necessity for KCC to be able to assess this application request.</p> <p>1. The current obligation serves to provide traffic monitoring data to support the appropriate provision of Off-Site Traffic Calming measures necessary to meet the needs of increased traffic movements created by the Development. Without providing such data, KCC cannot form a in respect of traffic increases as a result of the Development as it continues to be occupied. The suggested points in time are too far apart to meaningfully review and respond appropriately.</p> <p>2. The current obligation continues to serve a useful purpose as it is necessary for KCC to collate and review this data to understand what calming measures are necessary in response to increased traffic from the Development as occupations continue.</p> <p>3. The obligation would not serve the purpose equally well if subject to the proposed modification, as it not based on up-to-date traffic monitoring. The Applicants have failed to comply with paragraph 1.1.1. The proposed amendments to the triggers would be far too late for KCC to respond to any increased demand and allows the Appellants to significantly occupy the Development without providing the appropriate mitigation. The previous triggers were staggered to ensure that mitigation is progressive. .</p> <p>4. Refuse application.</p>
98.	<p>Traffic Calming payments to CC</p> <p>The current s106 Agreement requires payment of £408,498 (index linked) across two payments. The current triggers are prior to the occupation of the 1,000th unit and the 2,000th unit as set out in paragraphs 1 and</p>	Paras 1.2, 1.3, 2.1 and 2.2 and Sch 30A	<p>The Applicants apply for the following modifications to be made:</p> <p>Paragraph 1.2 is modified to refer to 'the 2,499th Dwelling on the Site [rather than the 999th]</p> <p>Paragraph 1.3 is modified to refer to 'the 5,749th Dwelling on the Site [rather than the 1999th]</p> <p>Paragraph 2.1 is modified to refer to 'the 2,500th Dwelling on the Site [rather than the 1000th]</p> <p>Paragraph 2.2 is modified to refer to 'the 5,750th Dwelling on the site [rather than the 2,000th]</p>	VM	<p>These modifications to further defer the payment obligations in this regard recognise the longer lasting impacts of Covid lockdowns on traffic flows which are only just returning to pre-pandemic levels and the lasting impacts on the working pattens of those who do not need to travel to work every day each week.</p> <p>The deferment of the payments also assists the viability of the scheme, in turn its deliverability and thus the utility of these obligations at all.. Equally, KCC's agreement in this regard to defer the obligations to 1500 and 2500 Dwellings is acknowledged and will be relied upon in support of these further adjustments.</p> <p>In addition, however, the Applicants request that Provision be made for the contributions</p>	<p>The applicant has not provided up-to-date traffic counts required for the roads set out in paragraph 1.1.(i), together with predicted traffic flows at the proposed, amended trigger points for these contributions based upon up-to-date trip rates, assignment and distribution. These are required for KCC to be able to assess this application.</p> <p>The Applicants have advised that deferring the contributions is required due to the obligation's negative impact on the viability of the Development. The Applicants, however, have not provided sufficient information and evidence to enable the County Council to establish this as correct. In any event, it should not be for KCC to mitigate the Development's impact as without the Applicants providing the payments at the relevant point, KCC would be required to forward fund the off-site traffic calming measures.</p>

			<p>Schedule 30A is similarly modified to reflect the above, so that the relevant payment triggers become 2,499 and 5,749 [rather than 925 and 1,925].</p> <p>Payment in each case to be subject to the deduction of £40,850 in respect of each road (of the 10 locations) where the traffic on that road is not shown to be 10% above predicted levels (i.e. base levels plus traffic growth to the year in question). Subject always to payments also being reduced to reflect reasonable actual costs (where lower than estimated), any other funding and any contributions that have or should have been obtained from other developments whether existing, proposed or future, benefiting from the same off-site traffic calming.</p>		<p>only to become payable where the measures for which they are intended are actually required. Given that there are 10 locations and the total contribution is £408,498, each contribution of £40,850 should only become a able where traffic on that road is more than 10% above predicted levels (base levels plus traffic growth to the year in question). This is to ensure that contributions are not wasted but actually serve the purpose for which they are intended.</p> <p>The deferment of these payment is captured in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2), Line Refs 5100.7 & 8 and forms a part of this revised viability analysis justifying each discharge and modification sought.</p> <p>In the premises, the relevant obligations will serve their purpose equally well if modified as proposed.</p>	<p>The Applicants have asserted that deferment of contributions recognises the long-term impacts of Covid and working patterns. In response to this, based upon available Department for Transport data, KCC notes that traffic levels have reverted to pre-Pandemic levels.</p> <p>The Applicants have also asserted that the contribution should be split evenly across the ten roads mentioned in the schedule.</p> <p>In response, several roads identified in para 1.1.(i) have significantly higher traffic levels due to their road classification and geometry than others such as:</p> <ul style="list-style-type: none"> (i) Through Great Chart village (Ashford Road and The Street) (j) Magpie Hall Road (k) Tally Ho Road (l) Woodchurch Road <p>The contributions should in the main be directed towards these roads where traffic calming measures would be most effective. It is therefore inappropriate to say that the funding should be evenly split accordingly as that does not reflect the reality of the traffic levels across the roads.</p> <p>The Applicants have requested that other developments in the vicinity of the Site make contributions towards the Off-Site Traffic Calming measures set out in this schedule.</p> <p>In response, whilst this is not for the Applicants to determine, KCC has required that the proposed development site of Court Lodge will be funding the part closure of Long Length to vehicular traffic, as well as-introducing traffic calming measures to Pound Lane. Further, the development application of Kingsnorth Green is required to also promote the closure of Pound Lane to vehicular traffic at the junction with Riverside Close as a result of a new vehicle route that they are promoting through their site onto Ashford Road. - These developments are making their own proportionate contributions towards traffic-calming measures.</p> <ol style="list-style-type: none"> 1. The current obligation serves to provide contributions to support the appropriate provision of off-site traffic calming measures necessary to meet the needs of increased traffic movements created by the Development. 2. The current obligation continues to serve a useful purpose. The traffic calming measures are specific to the Development. It is not appropriate for other surrounding developments to mitigate against the impact of this scheme. 3. The obligation would not serve the purpose equally well if subject to the proposed modification, as it not based on up-to-date traffic monitoring and may result in the obligations being delivered too late in the Development to meet the need. It would also leave uncertainty as to whether the contributions will be payable – the Applicants are suggesting only paying where it can be shown that the measures are required. This leaves too much uncertainty and unfairly places the burden on KCC. 4. Refuse application.
Schedule 22 - RIF					In this regard the Applicants refer to and rely in particular upon section 10 of the Explanatory	Refer to ABC Response

					Statement accompanying this application in addition to the reasons stated below.	
99.		Sched 22	The Applicants' application is to discharge the RIF payment obligations under this Schedule.		<p>The application to discharge the RIF payments is advanced for reasons of viability and deliverability. Such is the level of cost of this obligation that the burden of payment is undermining the viability and in turn the deliverability of the Development. In these circumstances these payment obligations cannot sensibly be regarded as serving any useful purpose and ought to be discharged.</p> <p>The discharge of these obligations as proposed is shown in the Viability Report at Appendix 3, Infrastructure (Scenario 2) Line Ref 5100.1 and forms part of this updated viability analysis justifying each discharge and modification sought.</p>	
Schedule 23 – Viability			Without prejudice to the validity of Application No.1 and the continuing requirement for that application to be determined by the Respondents, requests 1, 2 and 3 therein are repeated here as requests 100, 101 and 102 of this application.		Application 1 is accordingly reproduced at Appendix A2 hereto and the reasons stated therein duly relied upon as stated below.	Refer to ABC Response
100 - 102		See column 3 of the Appendix to Annex A h2 d2 2 erewith.	<p>See column 4 of Appendix A2 herewith.</p> <p><i>Note – some new drafting has been added in order to put those changes into effect (essentially to provide a mechanism which will enable ABC to specify the make up of the fixed 10% AH in each of viability phases 2, 3 and 4 as this is currently achieved through the viability review mechanism process .</i></p>		See columns 5 and 6 of Appendix A2 herewith.	
103.	Schedule 23	Paras 2.1.4 to 2.1.9	The Applicants apply to modify the Agreement by changing the definition of Premature Viability Review Submission for RP5 to RP10 (see below) and amending Para 2.1 to allow Viability Review Phase Submissions to be made when the cumulative number of dwellings within Reserved Matters Applications (RMAs) to date reach the dwelling numbers specified therein. Thus, each of 2.1.4 to 2.1.9 should be amended as follows,		<p>The existing provisions for VRS's no longer serve a useful purpose. On the contrary they are artificially restricting bringing forward different areas of the Development, inhibiting the Applicants from entering partnerships/agreements to increase delivery, working against ensuring value growth and undermining the overall deliverability of the Scheme.</p> <p>The proposed modifications will yield the benefits described at paragraphs 6.3-6.7 of the Explanatory Statement and accordingly better serve the intended purpose of the Viability Review mechanism within the Agreement. The modifications tying Viability Review</p>	

			<p>'2.1 The Owners covenant with the Council as follows ... :</p> <p>2.1.4 no later than 40 days following the cumulative number of dwellings within RMAs first reaching 2475 dwellings to submit via the Owner's Agent to the Council for the Councils' approval a Viability Review Submission for Viability Review Phase Five and pay a further Viability Review Fee.</p> <p>2.1.5 no later than 40 days following the cumulative number of dwellings within RMAs first reaching 2975 dwellings to submit via the Owner's Agent to the Council for the Councils' approval a Viability Review Submission for Viability Review Phase Six and pay a further Viability Review Fee</p> <p>... etc at dwelling intervals equal to those defining the relevant review phase.</p>		<p>Submissions to RMA's rather than Dwelling Occupations and allowing a 12 month window (plus 40 days) for submissions to be made.</p> <p>In support of these modifications the Applicants refer to and rely in particular upon Section 3 (paragraphs 3.4 to 3.10) and Section 6 of the Explanatory Statement.</p>	
104.		Definition of PVRS d) to i) and Para 3.19	<p>And the definition of Premature Viability Review Submission should be amended to:</p> <p>'Means a Viability Review Submission submitted greater than 12 months in advance of each of the progress stages specified at Schedule 23 paragraph 2.1.1 to 2.1.9. And for the avoidance of doubt any Viability Review Submission which is not followed by the relevant RMA within 12 months shall be re- submitted such that it is no greater than 12 months in advance of the relevant RMA'</p> <p>And schedule 23 paragraph 3.19 should be amended to delete 'that it receives and in the event... ' onwards.</p>		For the reasons stated above in relation to Request 103.	
Schedule 24 - Public Art						Refer to ABC Response
105.	Payment of Public Art Contribution 1	Paragraph 1.1, 2.1 and Sch 29A Item 2	The Applicants apply to discharge this obligation and for the sum of £50,000 already paid to be refunded.		The Applicants seek this discharge and refund because it is not apparent how this money has been spent towards the provision of public art in line with paragraph 1.1. Unless and until any substantiation is provided, this obligation cannot therefore be regarded as serving any useful purpose.	

					The discharge of this obligation as proposed is shown in the Viability Report at Appendix 3, Infrastructure (Scenario 2) Line Ref 5300.13 and forms part of this updated viability analysis justifying each discharge and modification sought.	
106.	Payment of Public Art Contributions 2 to 6	Paragraphs 1.2 to 1.6 and 2.2 to 2.6, and Sch 29A Items 2, 6, 17, 21 etc	<p>The Applicants apply for the following modifications:</p> <p>Modify 1.2 to provide 'Not to Occupy more than 999 [rather than 99] Dwellings unless £100,000 (one hundred thousand pounds) Index Linked has been spent on the provision of public art within the Site by the Owners in accordance with the brief prepared under 1.1 [rather than to the Council].</p> <p>Modify 1.3 to provide 'Not to Occupy more than 1999 [rather than 999] Dwellings unless £150,000 (one hundred thousand pounds) Index Linked has been spent on the provision of public art within the Site by the Owners in accordance with the brief prepared under 1.1 [rather than to the Council].</p> <p>Modify 1.4 to provide 'Not to Occupy more than 2999 [rather than 1399] Dwellings unless £150,000 (one hundred thousand pounds) Index Linked has been spent on the provision of public art within the Site by the Owners in accordance with the brief prepared under 1.1 [rather than to the Council].</p> <p>Modify 1.5 to provide 'Not to Occupy more than 3999 [rather than 2599] Dwellings unless £150,000 (one hundred thousand pounds) Index Linked has been spent on the provision of public art within the Site by the Owners in accordance with the brief prepared under 1.1 [rather than to the Council].</p> <p>Modify 1.6 to provide 'Not to Occupy more than 4999 [rather than 4099] Dwellings unless £150,000 (one hundred thousand pounds) Index Linked has been spent on the provision of public</p>		<p>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 and is undermining the viability of Main Phase One and potentially the Development.</p> <p>Further, the Applicants submit that there is a clear case in terms of securing the provision of public art with these contributions, for streamlining the process by allowing the Applicants themselves to take on the role of acquiring and placing the Public Art. In particular, thereby avoiding any unnecessary administration and resultant wasted expenditure.</p> <p>The purpose of these obligations will actually be better, or at least equally well served, therefore, if they have effect subject to the specified modifications so as to align with progress and presently projected completions and empower the Applicants to deliver the art.</p> <p>The deferment of these payments, such that only the first 2 remain within Main Phases 1 and 2, is reflected in the Viability Report at Appendix 3, Infrastructure (Scenario 2) Line Ref 5300.13. and forms part of this updated overall viability analysis justifying each discharge and modification sought.</p>	

			<p>art within the Site by the Owners in accordance with the brief prepared under 1.1 [rather than to the Council].</p> <p>Further, to make the following consequential modifications:</p> <p>Modify 2.2 to spend '£100,000 (one hundred thousand pounds) Index Linked upon the Occupation of the 1,000th Dwelling.</p> <p>Modify 2.3 to spend '£150,000 (one hundred thousand pounds) Index Linked upon the Occupation of the 2,000th Dwelling.</p> <p>Modify 2.4 to spend '£150,000 (one hundred thousand pounds) Index Linked upon the Occupation of the 3,000th Dwelling.</p> <p>Modify 2.5 to spend '£150,000 (one hundred thousand pounds) Index Linked upon the Occupation of the 4,000th Dwelling.</p> <p>Modify 2.6 to spend '£150,000 (one hundred thousand pounds) Index Linked upon the Occupation of the 5,000th Dwelling.</p> <p>Together with consequential modifications to Schedule 29A, in particular as follows:</p> <p>Item 6, to refer to 950 Dwellings</p> <p>Item 17, to refer to 1959 Dwellings</p> <p>Item 21, to refer to 2950 Dwellings</p> <p>Item 17, to refer to 3959 Dwellings</p> <p>Item 21, to refer to 4950 Dwellings</p> <p>And equivalent consequential amendments to Schedule 29B as follows:</p> <p>Item 4, to refer to 1000 Dwellings</p> <p>Item 14, to refer to 1900 Dwellings</p>			
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			<p>Item 19, to refer to 3000 Dwellings</p> <p>Item 14, to refer to 4000 Dwellings</p> <p>Item 19, to refer to 5000 Dwellings</p> <p>And Schedule 29C as follows:</p> <p>Item 8, to refer to Occupation of the 1000th Dwelling</p> <p>Item 18, to refer to Occupation of the 2000th Dwelling</p> <p>Item 23, to refer to Occupation of the 3000th Dwelling</p> <p>Item 18, to refer to Occupation of the 4000th Dwelling</p> <p>Item 23, to refer to Occupation of the 5000th Dwelling</p>			
107.	The obligations relating to installation of the public art and to maintain the same once installed	Paragraphs 1.7 and 1.8	The Applicants apply for these obligations to be discharged.		<p>For the reason stated above it is proposed that the Applicants take on responsibility for the installation of the public art, paragraph 1.7 therefore no longer serves any useful purpose and should be discharged.</p> <p>As for paragraph 1.8, it is wholly inappropriate and unfair to impose upon the Owners a continuing obligation to repair the public art. Once installed this should properly be maintained by the CMO.</p> <p>The s106 should not be used to impose such continuing obligations. In the premises paragraph 1.8 should not be treated as serving any proper or useful purpose and should be discharged accordingly.</p>	
108.	The commissioning, installation of the public art by the Council and associated consultation	Paragraphs 3 and 4	The Applicants apply for these obligations to be discharged.		<p>As above, the Applicants submit that there is a clear case in terms of securing the provision of public art for the Applicants themselves to take on the role of acquiring and placing the Public Art. In particular, thereby avoiding any unnecessary administration and resultant wasted expenditure of the kind that has been apparent to date.</p> <p>Accordingly, these provisions do not actually serve any useful purpose and should be discharged accordingly:</p>	
Schedule 25 – Heritage Interpretation						<p>The following section sets out the legislative and policy drivers for the provision of KCC’s Heritage and Archaeology service. The legislative context is relevant because it sets out the duties upon and powers available to KCC. The relevant policies are set out in national, local and KCC policy documents, plans and programmes. They are material because they represent the official position of the Government, Ashford Borough Council and KCC as service providers.</p>

						<p>The National Planning Policy Framework (NPPF) recognises the importance of archaeological assets under paragraph 189, which states: 'Heritage assets range from sites and buildings of local historic value to those of the highest significance, such as World Heritage Sites which are internationally recognised to be of Outstanding Universal Value. These assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.'</p> <p>KCC's policy for seeking s106 contributions is set out in its Developer Contributions Guide 2023, plus Technical Appendix 13</p>
109.	Payment of Archaeological Archiving, Heritage and Archaeologist Contributions	Paragraphs 1 and 4.1	The Applicants apply to discharge each of these contributions and for a refund of the monies already paid.	DV	<p>The discharge and refund of the Archaeological Archiving contribution is justified because there is no archiving, other than that carried out by Hodson's consultant and this contribution serves no useful purpose.</p> <p>The Heritage contribution overlaps with PP Condition 97, is duplicative and serves no useful purpose.</p> <p>The Archaeologist Contribution again serves no useful purpose, given that the Applicants employ a consultant archaeologist directly.</p> <p>These obligations should be discharged and the money already paid refunded accordingly.</p> <p>The discharge of these payments as proposed is shown in the Viability Report at Appendix 3, Infrastructure (Scenario 2) Line Ref 5300.8 and forms part of this updated viability analysis justifying each discharge and modification sought.</p>	<p>The Applicant has advised that the discharge of obligations and return of contributions is required due to the obligation's negative impact on the viability of the Development. The Applicant, however, has not provided sufficient information and evidence to enable the County Council to establish this as correct.</p> <p><u>Archaeological Archiving</u></p> <p>The Applicant has asserted that the discharge and return of the Archaeological Archiving contribution is justified because there is no archiving, other than that carried out by Hodson Developments Ltd's consultant, and this contribution serves no useful purpose.</p> <p>In response KCC notes the following:</p> <ol style="list-style-type: none"> 1. The obligation provides a financial contribution towards archaeological archiving and storage (artefacts, photographs, documents, reports) arising from community excavation on the site. This obligation has been paid in full and committed for expenditure. The Applicants could have raised their concerns prior to making such payment. 2. The contribution serves a useful purpose inasmuch as the community archaeology work to be carried out will produce an archaeological archive. This is part of Chilmington's heritage and needs appropriate archiving to ensure that findings are available for future generations. This is standard good practice and underpinned by the Chartered Institute for Archaeologists guidance (https://www.archaeologists.net/selection-toolkit). The archiving provided for by this obligation does not form part of the work covered by the archaeological consultant which is handled by the archaeological conditions attached to the planning consent (the 'professional' work). The Applicants' consultant is only responsible for the professional work, not the community work. There is, therefore, no overlap. The spend would involve the materials recovered by the community work being prepared for archiving and then deposited in a suitable store. The materials are then stored for c. 30 years.

						<p>3. The obligation could not be met if the proposed modification were accepted as this would remove all funds already received and committed by KCC and therefore, the work of the community archaeologist in archiving community finds will not be possible.</p> <p>4. Refuse application.</p> <p><u>Heritage Interpretation</u></p> <p>The Applicant asserts that the discharge and return of the Heritage Interpretation Contribution is justified on the basis that it duplicates planning permission Condition 97.</p> <p>In response</p> <p>1. The obligation is to provide a financial contribution for the purpose of interpreting for the community, artefacts, archaeological finds, photographs, documents, reports etc., arising from the community work, enabling new residents to understand their surroundings now and in the past. The obligation has been paid in full and has been committed for expenditure. The Applicants could have raised their concerns prior to making such payment.</p> <p>2. The contribution serves a useful purpose interpreting the Development's heritage for current and future residents. The heritage interpretation does not form part of the work covered by the archaeological consultant which is handled by Condition 97. The Applicants' consultant is only responsible for the professional work, not the community work. There is, therefore, no overlap.</p> <p>3. The obligation could not be met if the proposed modification were accepted as this would remove all funds and therefore, the ability to carry out heritage interpretation for the community.</p> <p>4. Refuse application.</p> <p>Archaeologist Contribution is dealt with below.</p>
110.	Payment of Archaeologist Contributions	Paragraphs 2, 3, 4.2 and 4.3, and Schedules 30A, 30B and 30C	The Applicants apply to discharge the remaining payments under this schedule.	DV	<p>The Development now being well beyond the initial three year period envisaged for the funding of a community archaeologist, it is submitted that there is no utility in any further payments being made and that this obligation should be discharged accordingly.</p> <p>The discharge of these payments, is shown in the Viability Report at Appendix 3 -line item 5300.15, and forms part of his updated viability analysis justifying each discharge and modification sought.</p>	<p>This obligation has been paid in full and following competitive tendering a contract was issued to AOC Archaeology Group to carry out the work, ending in February 2027. The work is now well underway and several community engagement events have already been held. Other events have been booked and several projects are in preparation, volunteers are being recruited and links forged with local relevant stakeholders. A report on progress has been prepared by AOC and is available.</p> <p>The Applicant advises that <i>“the Development now being well beyond the initial three year period envisaged for the funding of a community archaeologist, it is submitted that there is no utility in any further payments being made and that this obligation should be discharged accordingly.”</i> However, the s106 provides for funds to spent within 10 years of receipt the contribution before unspent contributions should be returned (Schedule 25, para 5.2).</p>

						<p>Contributions have been committed for expenditure, with a three year programme of community archaeology work underway. Should contributions not be spent within the timeframe, they will be returned as per the s106.</p> <p>The Applicants have advised that the discharge of this obligation and return of contributions is required due to the obligation's negative impact on the viability of the Development. The Applicants, however, have not provided sufficient information and evidence to enable the County Council to establish this as correct. The Applicant has not provided the necessary evidence to determine that the provision of this obligation undermines the deliverability of the Development. Proof of viability, however, would not be reason to discharge the requirement. Planning permission was granted on the basis that this Development mitigates its impact on community archaeology and heritage interpretation.</p> <p><u>Application to discharge obligation:</u></p> <p>1. The obligation provides funding for the employment of a community archaeologist for a period of three years. The current obligation serves the purpose of employing a community archaeologist to reveal the heritage of the development to new residents, helping them integrate into the existing south Ashford community and study aspects of the heritage that the professional work required under Planning Condition will not address.</p> <p>2. The contribution serves a useful purpose inasmuch as without it would not be possible to carry out the actions at all. The new community would have no opportunity to study its own past, no understanding of how it relates to the wider heritage of south Ashford, no opportunity for further study or for forming a legacy community archaeology group.</p> <p>3. The proposed discharge of the obligation would result in repayment of the contribution sums and thus prevent the community archaeology project from happening at all. The County Council has committed funds to deliver this project and this prevents a financial risk to the public purse. Discharge of the obligation presents missed opportunities for community engagement, education, building community cohesion and a sense of connection to the past for new residents.</p> <p>4. Refuse application</p>
Schedule 26 – Quality Agreement					In this regard the Applicants refer to and rely in particular Upon section 12 of the Explanatory Statement accompanying this application in addition to the reasons stated below.	Refer to ABC Response

111.	Quality Agreement, payments of £40,000 linked to Occupations and the payment of £80,000 on the first anniversary and £40,000 on the subsequent nineteen anniversaries	Paras 1, 2.1, 2.2 and 2.3 to 2.21, and Sch 29A Items 9, 12, 15, 19, 24 etc. and likewise in Schedule 29B and 29C Items 5, 11, 14 etc	<p>The Applicants apply for paragraphs 1, 2.1, 2.2 and 2.3 to 2.21 and the payments therein to be discharged (without prejudice to the contention that properly construed the payments at 2.1 and 2.2 are not due in any event in addition to the payments under paragraphs 1 and 2.3 to 2.21) and for payments already made to be refunded.</p> <p>The relevant line items in Schedules 29A, 29B and 29C should also therefore to be deleted.</p>		<p>These payments are surplus to requirements, grossly excessive and more than is necessary to mitigate the impact of the Development. As the Explanatory Statement notes, these amounts are not justified given the parallel payments for monitoring etc.</p> <p>These monies are meant for staff and related costs to monitor the quality of the development, including the Chilmington Green Quality Agreement, Design Code and any other submitted or agreed materials specifications, design briefs, specifications, construction management plans, waste management plan and liaison with the CMO and residents.</p> <p>All the above documents (material specifications etc) are submitted in any event as part of the reserved matters applications or discharge of planning conditions and the planning fee should cover any review. Building Control also attend site. Certainly, the Council have not otherwise undertaken any of these tasks or incurred additional overhead to justify these charges.</p> <p>In the circumstances these contributions cannot be said to serve any useful purpose and cannot be justified and the sums paid already should be reimbursed.</p> <p>(see the Viability Report, Appendix 3, Infrastructure (Scenario 2) Line Ref 5300.16)</p>	
Schedule 28 – Monitoring Fee					In this regard the Applicants refer to and rely in particular upon section 12 of the Explanatory Statement accompanying this application in addition to the reasons stated below.	Refer to ABC Response
112.	Payment of monitoring fees of £25,000 linked to Occupations and payment of £50,000 on the first anniversary and £25,000 on the subsequent nineteen anniversaries	Sch 28, paras 1, 2.1, 2.2 and 2.3 to 2.21 and Sch 29A Items 8, 11, 14, 18, 23, etc. and likewise in Schedule 29B and Schedule 29C Items 4, 10, 13, 16 etc.	<p>The Applicants apply for paragraph 2.2 and the anniversary payments thereunder to be deleted and these obligations discharged and for payments already made to be refunded (without prejudice to the contention that properly construed the payments at 2.1 and 2.2 are not due in any event in addition to the payments under paragraphs 1 and 2.3 to 2.21).</p> <p>The relevant line items in Schedules 29A, 29B and 29C should also therefore to be deleted.</p> <p>Further, the Applicants seek to modify the payments under paragraph 1 and 2.3 to 2.21 to</p>		<p>The Applicants acknowledge that these payments potentially serve a useful purpose, but the contributions are disproportionate in scale.</p> <p>Certainly, as a minimum paragraphs 2.1 and 2.2 should be discharged and the contributions made to date totalling the sum of £45,000 should be reimbursed (see Appendix 3 of the Viability Report, Infrastructure Cost Plan (Scenario 2) Line Ref 5100.10). Prospectively, the sum of £5000 every 300 homes should more than suffice and any sums in excess would be surplusage and would not serve any useful purpose.</p> <p>In the premises these obligations would serve their purpose equally well if modified as proposed.</p> <p>Further, the reduction in these payments is duly taken into account in the Viability Report,</p>	

			provide for payment of £5,000 [rather than £25,000] subject to a schedule of monitoring activities and of the resource reasonably required.		see Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5100.10 (second 5100.1), and forms part of this overall updated viability analysis justifying each discharge and modification sought.	
Schedule 29 - ABC Bank Accounts						Refer to ABC Response
113.	The Developers' Contingency Bank Account - Council	Sch 29, paragraphs 1 and 2, and clause 1.1 definition of Council Minimum Balance	The Applicants apply for paragraphs 1 and 2 to be discharged and the definition of Council Minimum Balance to be deleted accordingly.		<p>The Council is already sufficiently secured by the covenants provided by the Paying Owners, such that the DCBA - Council serves no useful purpose at all. The account should be closed and the amount held should be paid out to the Paying Owner.</p> <p>In support the Applicants refer to and rely in particular upon Section 3 (paragraphs 3.11 to 3.13) of the Explanatory Statement.</p> <p>Further, the sums involved are substantially more than are required to mitigate the impact of the Development and are undermining the viability of Main Phase 1 and with it delivery of the Development overall. For these reasons also the account cannot be regarded any longer as serving a useful purpose, it is self-defeating and should be discharged accordingly.</p> <p>The removal of this obligation and re-crediting of the deposited amounts would further reduce pressure on the Development cashflow which as already demonstrated in the Viability Report has an excessive peak debt in the base case. It would also release funds immediately for the delivery of infrastructure to the obvious benefit of the Development.</p>	
114.	Payments into Council Contributions Bank Account, Indexation payments, and withdrawals	Sch 29A, Sch 29B and Sch 29C	<p>The Applicants also apply for the payment schedules contained in each of these Schedules to the Agreement to be modified in accordance with the foregoing as relevant.</p> <p>Further, the payment trigger in Schedule 29A and 29B, including those modified as above, should not be earlier than the withdrawal trigger for the same obligation in Schedule 29C. Rather, the payment trigger or withdrawal trigger as the case may be for any given obligation should be modified to whichever is the later.</p>		<p>For the reasons stated above in relation to each of the relevant individual obligations.</p> <p>The proposed provision for payment triggers and withdrawal triggers to coincide and to be modified to whichever is the later removes the otiose provision for payments to be made earlier than is otherwise necessary. The provisions to this effect serve no proper or useful purpose and should be modified/discharged accordingly.</p>	

115.	Restriction on withdrawals	Paragraph 8	The Applicants apply to modify the obligation by omitting the words '(other than interest)'. 		There is no proper justification for excluding interest from the provisions for withdrawal. The Council should not be entitled to the free use of such sums. Rather the purpose of the obligation would be better, or at least equally well, served if modified as proposed.	
116.	The Developers' Capital Bank Account	Schedule 29 paras 9 and 10 and 29D	The Applicants apply to discharge paras 9 and 10 and Schedule 29D.		<p>The Developer's Capital Bank Account fails to serve any useful purpose, in that imposes a wholly unworkable funding regime for the Development.</p> <p>Rather than securing the delivery of the assets for which the sums due to be paid into the account are intended, the requirement to pay the full cost of those assets into an account in advance will undermine that purpose.</p> <p>The usual terms upon which finance is available, allow funds to be drawn down against agreed construction milestones in respect of any given asset; it is not feasible to obtain 100% of the funds in advance.</p> <p>In the premises the entire Schedule and all associated provisions should be discharged.</p>	
Schedule 30 - KCC Bank Accounts						
117.	The Developers' Contingency Bank Account – County Council	Sch 30, paras 1 and 2, and clause 1.1 definition of County Council Minimum Balance (CCMB)	The Applicants apply for paragraphs 1 and 2 to be discharged and the definition of CCMB to be deleted accordingly.	M and V	<p>The County Council is already sufficiently secured by the covenants provided by the Paying Owners, such that the DCBA - County Council serves no useful purpose at all. The account should be closed and the amount held should be paid out to the Paying Owner.</p> <p>In support the Applicants refer to and rely in particular upon Section 3 (paragraphs 3.11 to 3.13) of the Explanatory Statement.</p> <p>Further, the sums involved are in any event substantially more than are required to mitigate the impact of the Development and are undermining the viability of Main Phase 1 and with it delivery of the Development overall. For these reasons also the account cannot be regarded any longer as serving a useful purpose, it is self-defeating and should be discharged accordingly.</p> <p>The removal of this obligation and re-crediting of the deposited amounts would further reduce pressure on the Development cashflow which as already demonstrated in the Viability Report has an excessive peak debt in the base case. It would also release funds immediately for the delivery of infrastructure to the obvious benefit of the Development.</p>	<p><u>Deletion of Paragraphs 1 and 2, plus definition of Developer's Contingency Bank Account – County Council. Minimum Balance</u></p> <p>Paragraph 1 – the Appellant has met the requirements, depositing the Minimum Balance of £475,000 and maintaining this amount in the account.</p> <p>The Appellant applies to discharge this obligation on the basis that County Council is already sufficiently secured by the covenants provided by the Paying Owners.</p> <p>Under the s106, the County Council is responsible for the provision of significant infrastructure on and off-site (e.g., Primary and Secondary Schools, A28 Improvement Works). To do so requires financial security. Whilst the s106 includes non-occupation clauses within some schedules, this is not considered sufficient security for KCC. The Appellant has also applied to discharge the requirement to provide Bonds within Schedules 15 and 18, which further calls into question the appropriateness of discharging this requirement and consequential loss of security for the County Council. KCC does not consider, therefore, that there is sufficient security provided.</p>

						<p>The Appellant has not provided the necessary evidence to determine that the provision of the Contingency Bank Account undermines the deliverability of the Development. Proof of viability, however, would not be reason to discharge the requirement for this. Planning permission was granted on the basis that this Development mitigates its impact on infrastructure necessary to meet the needs of Development. For KCC to deliver infrastructure necessary to meet the needs of the development, it requires the financial security to do so – especially where the Applicants' have applied to discharge the requirements to provide Bonds.</p> <ol style="list-style-type: none"> 1. The purpose of the obligation is to provide a form of financial security to the County Council to enable provision of infrastructure necessary to meet the needs of the Development, in the event that the Appellant does not meet its financial obligations under the s106. 2. The obligation continues to serve a useful purpose of providing a form of surety. 3. The obligation would not be equally well met if subject to the discharge as it would remove a form of surety. 4. Refuse application
118.	Payments into County Council Contributions Bank Account, Indexation payments, and Payments into the Developers' Capital Bank Account - County Council	Sch 30A, Sch 30B and Sch 30C	<p>The Applicants also apply for the payment schedules contained in each of these Schedules to the Agreement to be modified in accordance with the foregoing as relevant.</p> <p>Further, the payment triggers in Schedule 30A and 30B, including those modified as above, should not be earlier than the withdrawal trigger for the same obligation in Schedule 30C. Rather, the payment trigger or withdrawal trigger as the case may be for any given obligation should be modified to whichever is the later.</p>		<p>For the reasons stated above in relation to each of the relevant individual obligations.</p> <p>The proposed provision for payment triggers and withdrawal triggers to coincide and to be modified to whichever is the later, removes the otiose provision for payments to be made earlier than is otherwise necessary. The provisions to this effect serve no proper or useful purpose and should be modified/discharged accordingly.</p>	<p>The Appellant asserts that payments into the contingency bank account (as set out in Schedules 30A and 30B) undermine the viability of Main Phase 1 and the Development overall. The Appellant has not provided the necessary evidence to establish this as correct.</p> <p>The Appellant has applied for Schedule 30B payment schedule (indexation) to align with Schedule 30C. This is already the case.</p> <p>Schedule 30C sets out the Occupation numbers, upon which withdrawals may take place. These are in line with the Occupation triggers set out in the relevant subject schedules. The Appellant's application to align schedule 30A payments to those set out in 30C would therefore, result in payments into the account at the same time as they are due to be paid to the County Council.</p> <p>Payments into the contingency account 75 Occupations (as set out in Schedule 30A) earlier than the withdrawal date (Schedule 30C) establish a level of security for KCC, knowing that monies will be available for payment of obligations. This does not negate the need for Bonds however, where KCC requires a greater level of security, knowing that when entering a build contract, all financial obligations will be met.</p> <ol style="list-style-type: none"> 1. The purpose of Schedule 30A is to provide financial security to the County Council in the event that the Applicants do not meet its financial obligations under the s106. 2. The obligation continues to serve a useful purpose.

						<p>3. The obligation of providing financial security would not be equally well met if subject to the modification as it would result in payments to the contingency bank account at the same time as pay is due to the County Council. This is detrimental to the level of financial security established in the original s106.</p> <p>4. Refuse application</p>
119.	Restriction on withdrawals	Paragraph 8	The Applicants apply to modify the obligation by omitting the words ‘(other than interest)’		There is no proper justification for excluding interest from the provisions for withdrawal. The Council should not be entitled to the free use of such sums. Rather the purpose of the obligation would be better, or at least equally well, served if modified as proposed.	<p>1. The current wording allows the County Council to withdraw interest from the Bank Account.</p> <p>The Appellant does not propose any alternative text setting out what is to happen to the interest if the words “other than interest” are removed.</p> <p>This would result in the interest being held permanently in the account as it would be a breach of Sch. 30 para. 8 for the County Council to withdraw it.</p> <p>2 The existing wording, as part of the obligations to which it relates, continues to serve a useful purpose.</p> <p>3 Its modification would not serve a useful purpose equally well.</p> <p>4 Refuse application.</p>
Schedule 34						Refer to ABC Response
120.	Heads of Terms For The Lease of the CMO's First Operating Premises	The Terms referred to in column 4	<p>The Applicants apply for the following modifications to the stated Heads of Terms:</p> <p>Under 4. Term,</p> <ul style="list-style-type: none"> - at 4.1, the lease will be for a term of 2 years with an option for the tenant to extend the lease until completion of new premises in the Community Hub. - at 4.4 reference to the CMO's Second Operating Premises to be modified to refer to the Community Hub. <p>Under 9. Use, at 9.1 it should be stated that the property can only be used as a Chilmington community facility.</p>		<p>The reference to the Community Hub reflects the discharge of the CMO Second Operating Premises above. Whilst, the option to extend would ensure the CMO First Operating Premises remained available whilst required.</p> <p>The reference to Chilmington at paragraph 9.1 is plainly appropriate and the premises ought not to be used otherwise.</p>	
Schedules 39 and 40						Refer to ABC Response
121.	Superceded					
Schedule 49						Refer to ABC Response
122.	Viability Review Templates	The entire schedule	For the avoidance of doubt, the Applicants reserve their position in respect of Schedule 49, as in		The reservation does no more than state the Applicants' entitlement in any event, but is restated for the avoidance of doubt. The point,	

			<p>the case of all other obligations, to make such further or other applications to discharge or modify as may be appropriate hereafter.</p>		<p>however, is made with reference specifically to Schedule 49 given that it is already evident that the viability template is not fit for purpose and needs updating in any event.</p> <p>In the first instance the Applicants would wish to discuss the issues arising in respect of the same with the Respondents and seek agreement upon the modifications required. If the issues arising cannot be resolved in collaboration with the Respondents, the Applicants would mean to make a further dedicated application in this regard.</p>	
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