

**Legal & Democracy
Solicitor to the Council & Monitoring Officer
T W Mortimer LLB Solicitor**

Ask For Jeremy Baker
E-mail [REDACTED]
Direct Line [REDACTED]

North Star Law Ltd
24 Old Queen Street
London
SW1H 9HP



ASHFORD
BOROUGH COUNCIL

Civic Centre
Tannery Lane
Ashford
Kent TN23 1PL
01233 331111

www.ashford.gov.uk



@ashfordcouncil



AshfordBoroughCouncil

Our Ref DS54-0669-15/JDIB
Your Ref RAB/HOD1123
Date 30 June 2022

Dear Sirs

NOTICE OF INVALID APPLICATION

Re: Agreement made pursuant to s106 of the Town and Country Planning Act 1990 ('the Act') dated 27 February 2017 ('the s106 Agreement').
Proposal: Application (referred to as Application No.1) under s106A by Hodson Developments (Ashford) Limited and others (together referred to as 'Hodson') to discharge and/or modify various of the obligations under the s106 Agreement.
Location: Land at Chilmington Green, Ashford Road, Great Chart, Ashford, Kent.

I refer to your letter and accompanying documentation received, via e-mail, on 4 May 2022, attempting to submit the above application.

Notice is hereby given that the submission is invalid by reason of the following:-

1. The submission does not comply with s.106A(3)(a) of the Act, which requires the modifications sought to the s106 Agreement to be "specified" in any application. The repeated use, in your submission, of phrases such as "all necessary and consequential amendments" and "all other appropriate consequential amendments" demonstrates that very far from all of the purportedly requested amendments have been "specified". As such, it would be impossible for the Council to fully assess your application (if it were valid) owing to the extent of uncertainty over these "appropriate", "necessary" and/or "consequential" amendments that are apparently sought.
2. The submission does not comply with Reg. 3(1)(b) of the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992



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('the Regulations'), which requires the land to which the *application* relates to be specified, together with the nature of the applicant's interest in *that land*. However, the submission erroneously refers to the land to which the *obligation* relates, thus the land to which the *application* relates has not been specified as is required. It appears from the text used that the land to which the application relates is intended to be the whole of the site to which the s106 Agreement applies; the submitted forms however then claim that Hodson are "owners of the freehold interests in the land"; this is not true if the land is indeed the whole of the site to which the s106 Agreement applies, but only if some lesser land were referred to, in which case such land has not been specified. Paras. 1.3 and 1.4 of the submitted document are internally contradictory, and the "plan at Annexe A" which is said to show the land referred to was not annexed to the document either, so the lack of clarity persists with regard to these important matters which the Regulations require to be made clear.

3. There does not appear to have been compliance with Reg. 4 of the Regulations, which requires notice of an application to be served on *any* person against whom the obligation is enforceable. The list of only 7 parties on whom Hodson served such notice omits a number of parties who are included in the much longer list of parties to a proposed Deed of Variation, which Hodson has signed in readiness for completion with KCC and this Council, by reason of the fact that the obligation is enforceable against them; hence it would seem that such parties were entitled to receive notice as well.
4. The submission does not comply with Reg. 3(1)(e) of the Regulations, as it does not contain information which the Council considers necessary to enable it to determine the application (if it were valid). The following further information is required for this purpose:-
 - i. All sales figures (Hodson, BDW & Jarvis); the submission only provides Hodson figures.
 - ii. All build costs (Hodson, BDW & Jarvis); the submission only provides Hodson figures.
 - iii. An explanation of why the submitted 'Summary of Strategic Infrastructure Cost Estimate' (Version 9.1 dated January 2016) differs from the 'Summary of Strategic Infrastructure Cost Estimate' provided with Hodson's previous request to vary various obligations in the s.106 Agreement in 2021.
 - iv. Cashflow assumptions for each of the appraisals submitted.
 - v. Confirmation of the definition of 'costs' used in the appraisals submitted.
 - vi. Evidence of the capital funding proposal and refinancing arrangements referred to in the submission, and details of the assumptions and conditions that this is based upon.
 - vii. Evidence of the agreements entered into / to be entered into by Hodson to sell various parcels of land to other developers, and details of the conditions these agreements are based upon, so far as they relate to the s.106 Agreement.

Therefore, if you wish the submission to be registered as a valid application under s.106A of the Act, please amend and resubmit it as identified above. Until this is received, your submission will remain invalid and no work on it will be undertaken by the Council.

I further advise you that, if the submission were so amended and resubmitted as a valid



application, the submitted viability assessment would (as you would expect) need to be reviewed by the Council's viability consultants. In accordance with the Council's validation checklist 2021, the cost of this review will be met by the applicant. Should further work or negotiations be required, or the submission be later amended or withdrawn, any further fees would be agreed at that time prior to the work being carried out.

Please confirm, when resubmitting any amended application, your agreement to meet the cost of the viability review of £9,576.00 plus VAT, disbursements and travel expenses.

I look forward to hearing from you.

Yours faithfully



Jeremy Baker
Principal Solicitor - Strategic Development

