**Chilmington Green S106B Appeals : Appellants’ Responses to Questions 8- 17 raised by the Planning Inspector.**

**Q8: for KCC**

**Q9: for KCC**

**Q10: for KCC**

**Q11: Schedule 25 payments**

To check whether all payments have been made (KCC suggest that £145,000 has been paid)

*As the Appellants stated at the round table, the Appellants have paid:*

*• Archaeological Archiving Contribution of £40,000 on 27/3/17*

*• Heritage Interpretation Contribution of £60,000 on 27/3/17*

*• Archaeological Contribution 1 of £15,000 on 27/3/17*

*This leaves the following to be paid (if not discharged):*

*• Archaeological Contribution 2 of £15,000 due at 301 occupations.*

*• Archaeological Contribution 3 of £15,000 due at 600 occupations.*

**Q12: Schedule 24 Public Art**

Whether CMO would maintain the public art and how does the current proposed amended text deal with that?

*The modifications at paragraphs 1.7 and 1.8 of Schedule 24 would discharge the requirement for the Owners to maintain the public art; instead, this would fall to the CMO as one of the ‘Essential Activities’ it is required to carry out, as specified at Schedule 3 of the Framework Agreement (Schedule 38 of the s.106 Agreement). Specifically, this requires ‘the maintenance renewal and replacement of the Public Art required pursuant to the terms of the Section 106 agreement and the Planning Permission only’.*

**Q13: Schedule 12 and indexation**

For the parties to agree what is the overall result in respect of indexation, with reference to 27.1 and 27.2 which say ‘where it applies’.

*Clause 27.1 serves to set out the Final Index Value ‘where Index Linking applies, unless otherwise provided…’. Clause 27.2 clearly states that Index Linking applies to Schedules 8 and 12 and sets out the specific provisions for those Schedules. So Indexation clearly applies to Schedule 12.*

**Q14: Approval of Design Brief and Specification- Sports Topic Paper.**

Can Hodson Developments confirm the current building trajectory. What is the anticipated timescale between approval of the Design Brief and Specification and the requirement to deliver facilities as set out in para 6.22 of the Sports Topic Paper.

*The housing trajectory assumed by Hodson Developments is for housing delivery to accelerate to 300 homes per year, facilitating completion by 2048.*

*The proposed modification is to secure the agreement of the Design Brief and Specification by 2,650 occupations and to deliver the first Phase of the Sports Facilities by 3,650 occupations. Assuming a steady delivery rate of 300 per annum, this would equate to 3.3 years (40 months) between approval of the Design Brief and Specification and the requirement to deliver the facility. Hodson Developments considers this ample time to deliver the facility. Importantly, it does not entail a protracted period between the requirement to consult on the design and specification of the facilities with local residents (as part of agreeing the Design Brief and Specification) and the requirement to deliver. Hodson Developments considers this important to maintain community engagement and buy in.*

*The main factor that will influence the time period to deliver the facilities will be the ability to secure Reserved Matters Approval in a timely manner from the Local Planning Authority. This is outside of the control of the Appellant. It should also be noted that under Condition 7 of the outline planning consent that all Reserved Matters Applications (RMA) for Main Phase 3 need to be submitted by January 2030 i.e. less than 5 years’ time. It is therefore highly likely that the need to submit the RMA for the first phase of the Sports Facilities will arrive prior to the trigger to have the Design Brief and Specification for the facilities to be approved and therefore the design of the facilities will be well advanced outside of the specific work on the Design Brief and Specification.*

*Conversely, under the current s106 agreement, the housing trajectory envisages that there will be over 7 years between 1,000 occupations (the point at which the Design Brief and Specification needs to be approved) and 3,200, when the facility needs to be delivered. This is considered far too long a period between first consultation with residents and delivery of the facility. Moreover, the Appellant considers that a negative obligation that prevents further occupation of the Development in the event that a Design Brief and Specification is not agreed for a facility that is not required for at least a further 7 years does not serve a useful purpose.*

**Q15: for Hodson**

Developer’s contribution bank account

Hodson to check the figures at section 8 of Delivery, Monitoring & Council’s Costs Reimbursement Topic Paper (table 8.1)

*The Council has set out it’s understanding of the amounts that the Appellant is seeking reimbursement of in table 8.1, which is set out below, together with the relevant modification.*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| *Schedule / paragraph in the modified Agreement*  | *Obligation*  | *Amount paid*  | *Amount proposed to be refunded*  | *Modification Reference and Appellants’ Response*  |
| *Schedule 4* *new paragraph 6.6*  | *CMO Start-up Funding*  | *£150,000*  | *£168,369.91*  | *Request 23 states “The Appellants apply to Discharge these obligations and for the sums already paid to be refunded accordingly.”* *The amended text in paragraph 6.6 states “The Council covenants with the Paying Owners to pay back to the Paying Owners the two CMO Start Up Contributions amounting to £168,369.91 (…) already paid to the Council within 28 days.**Hodson accounts confirm the First Instalment CMO Start Up Contribution of £77,874.00 was made on 17/02/2017 and a further payment – CMO start up instalment 2 was made on 04/10/2021 totalling £75,000. As such a total of £152,847 has been paid. However, the Appellants will accept that £150,000 is the appropriate reimbursement figure in order to reach an agreed position*  |
| *Schedule 5* *new paragraph 1*  | *Early Community Development*  | *£250,000*  | *£212,847.14*  | *Request 24, which states “The Appellants apply for all past and further payments of ECD Contributions to be discharged.**The amended text in paragraph 1 states “The Council covenants with the Paying Owners to pay back to the Paying Owners the sum of £212,847 (…)already paid to the Council.**Hodson accounts confirm the following payments have been made:**30/08/2018 Early Community Development (6 months from commencement) £50,000**15/01/2021 Early Community Development (6 months from commencement) £50,000**06/03/2023 Early Community Development instalment 3, 4 and 5 was drawn down from ESCROW totalling £150,000.**As such a total of £250,000 has been paid.*  |
| *Schedule 10* *New paragraph 2.8*  | *Discovery Park masterplan*  | *£20,000*  | *£20,000*  | *Request 47 states “The Appellants apply for this obligation to be Discharged and for the sum of £20,000 already paid to be refunded.”* *The amended text in paragraph 2.8 states “The Council covenants with the Paying Owners to pay back to the Paying Owners the sum of £20,000 (…) already paid to the Council for the preparation of a masterplan for the Discovery Park …”**Hodson accounts confirm a payment of £20,000 was made on 04/10/2021 Masterplanning Discovery Park and Sports Hub and Pitches.**CD14/17 confirms the Appellant is no longer pursuing request 47.* |
| *Schedule 24* *New Paragraph 3* | *Public Art*  | *£150,000*  | *£169,672.12*  | *Request 105 states “The Appellants apply to Discharge this obligation and for the sum of £50,000 ( typographical error should be £150,000 as stated by the Council ) already paid to be refunded.* *The amended text in paragraph 3 states “The Council covenants with the Owners to pay back to the Paying Owners the sum of £169,672.12 (…) towards Public Art already paid to the Council prior to Commencement within 28 days.”**Hodson accounts confirms the following payments were made:**17/03/2017 Public Art Contribution 1 £50,000**06/03/2023 Public Art contribution 2 £100,000 withdrawn from ESCROW.**As such a total of £150,000 has been paid.* |
| *Schedule 26**New Paragraph 1* | *Quality Agreement* | *£200,000* | *£157,297.30* | *Request 111 states “The Appellants 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.**The amended text to paragraph 1 states “The Council covenants with the Paying Owners to pay back to the Paying Owners the sum of £157,297.30 (…) being the Quality Agreement payments already paid to the Council within 28 days.**Hodson accounts confirm the following payments were made:**30/08/2018 Quality Agreement (Commencement + 12 months) Contribution £80,000**06/03/2023 Quality Monitoring fee instalments 2 to 5 totalling £120,000 was withdrawn from ESCROW.**As such a total of £200,000 has been paid.* |
| *Schedule 28**New Paragraph 5* | *Monitoring Fee* | *£125,000* | *£110,810.80* | *Request 112 states “The Appellants 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”**New paragraph 5 states “The Council covenants with the Paying Owners to pay back to the Paying Owners the sum of £110,810.80 (…) being the monitoring payments triggered on the anniversary of Commencement of the Development already paid to the Council within 28 days.**Hodson accounts confirms the following payments were made:**30/08/2018 Monitoring Fee (Commencement + 12 months\_ Contribution £50,000**20/02/202 Monitoring Fee instalment 2 £12,500**06/03/2023 Monitoring Fee instalments 3 to 5 totalling £62,500 was withdrawn from ESCROW.**As such a total of £125,000 has been paid.* |

*The Appellants will provide updated versions of the composite S106 with proposed modifications (CD 2/20) and the Annex A table ( CD 2/22) to incorporate these corrections and the modifications/corrections submitted on 27 March 2025*

Q16: for all parties

Settlement agreement, Clause 2.2

With reference to Delivery, Monitoring & Council’s Costs Reimbursement Topic paper, para 2.9

An invitation to parties to come back on that issue

*The Appellants do not agree that the suspension of the obligation to top up the balance in the Developers Contingency Bank Account – Council (by paying in £817,500) has lapsed. It is clear that the intention of Clause 2.2 of the Settlement Agreement was to continue the suspension of the obligation to top up to allow the issue of whether the obligation should be discharged to be considered at an appeal. ABC is not entitled to rely on the fact that it did not issue a decision on the Appellant’s application and the expiry of the long stop date in clause 2.2 when it acted unlawfully in declining to validate the application and then delayed the progression of the appeal by arguing unsuccessfully that it was invalid.*

*In any event however, the Appellants are seeking the discharge of the obligation to maintain the Developers Contingency Bank Account – Council ( and to maintain a minimum balance in the account) ( modification 113)*

Q17: for Hodson

What is the current balance in the Developers Contingency Bank Account?

*1. The balance in the KCC Contingency Bank Account is £475,000 (no withdrawals since depositing in 2017);*

*2. The balance in the ABC Contingency Bank Account is £2,149,402 (Original figure of £2,966,902 less £817,500 deducted in March 2023 as part of ABC/HD 10 Feb 2023 Settlement Agreement).*