

**S106B APPLICATION TO MODIFY/AMEND THE S106 AGREEMENT DATED 27 FEBRUARY 2017  
(AS AMENDED) (PLANNING APPLICATION NUMBER 12/00400/AS)**

**PINS Ref: APP/W2275/Q/23/3333923 and APP/E2205/Q/23/3334094**

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**Kent County Council – Topic Paper – Schedules 15, 18 and 18A Bonds**

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**1. INTRODUCTION**

1.1 Schedule 15 (Education) of the section 106 agreement dated 27 February 2017 (as amended) [CD1/14 - CD1/16] (“S106”) obligates the Owners as follows:

- **Primary School 1** (paragraph 7(e)) – “Provide a Bond to the value of PS1 Contribution 2 [£2,285,000 Indexed Linked] plus PS1 Contribution 3 [£2,103,200 Index Linked] plus PS1 Contribution 4 [£1,461,800 Index Linked] to the County Council within 12 months of Commencement of Development of the Site.”
- **Primary School 2** (paragraph 14(e)) – “Provide Bonds to the value of PS2 Contribution 2 [£2,000,000 Index Linked] plus PS2 Contribution 3 [£2,000,000 Index Linked] plus PS2 Contribution 4 [£1,850,000 Index Linked] to the County Council on or before:
  - (i) the day falling 30 months after the date of which 900 Dwellings have been Occupied on the Site; or
  - (ii) the day when the 1099<sup>th</sup> Dwelling to be so Occupied on the Site has been Occupied for the first time,whichever is earlier.”
- **Primary School 3** (paragraph 21 (e)) – “Provide Bonds to the value of PS3 Contribution 2 [£2,000,000 Index Linked] plus PS3 Contribution 3 [£2,000,000 Index Linked] plus PS3 Contribution 4 [£1,850,000 Index Linked] to the County Council on or before.

- (i) the day falling 25 months after the date of which 2880 Dwellings have been Occupied on the Site; or
- (ii) the time when the 3149th Dwelling to be so Occupied on the Site has been Occupied for the first time,

whichever is earlier.”

- **Primary School 4** (paragraph 28 (d)) – *“Provide Bonds to the value of PS4 Contribution 2 [£2,025,000 Index Linked] plus PS4 Contribution 3 [£2,000,000 Index Linked] to the County Council on or before;*

- (i) the day falling 21 months after the date of which 4600 Dwellings have been Occupied on the Site; or
- (ii) the time when the 4900<sup>th</sup> Dwelling to be so Occupied on the Site has been Occupied for the first time,

whichever is earlier.”

- **Secondary School** (paragraphs 42 (c) and (d))

- (b) Provide a Bond to the value of Stage Two Secondary Contribution 1 [£500,000 Index Linked] by the date when 3399 Dwellings have been Occupied on the Site; and
- (c) Provide a Bond to the value of Stage Two Secondary Contribution 2 [£4,500,000 Index Linked] plus State Two Secondary Contribution 3 [£6,000,000 Index Linked] plus Stage Two Secondary Contribution 4 [£2,550,000 Index Linked] by the date when 3400 Dwellings have been Occupied on the Site.”

**Schedule 18 (A28 Improvement Works)** obligates the Owners as follows:

- (paragraph 1) - “The Owners covenant with the Council not to Occupy nor bring into residential use any further Dwellings if a total of 400 Dwellings have been Occupied on the Site unless and until the bond [in the sum of £28,988,800] required to be delivered to the County Council pursuant to the S.278 Agreement [dated 27 February 2017] has been delivered to the County Council in the form required by the S.278 Agreement.”

1.2 Referring to the Appellants' Annex A 106 Modifications Table [CD2/22] as follows, the Appellants seek to discharge the obligation to provide Bonds to Kent County Council ("KCC") for:

- Request 67 – Primary School 1 Contributions 2, 3 and 4
- Request 70 - Primary School 2 Contributions 2, 3 and 4
- Request 72 - Primary School 3 Contributions 2, 3 and 4
- Request 74 - Primary School 4 Contributions 2, 3 and 4
- Request 76 – Secondary Education Stage One and Two Bonds – The Appellants advised in their submission on the 23 December 2024 that they are content to rely on the S106 Deed of Variation dated 13 July 2022<sup>1</sup> and therefore this Request is not considered further.
- Request 91 – A28 Improvement Works

### 1.3 Rationale for Discharge

1.3.1 With regard to the education Bonds (Schedule 15), the Appellants' position is that:

- “The obligation to provide Bonds ... is unnecessary and wholly excessive and duplicative security. There is no proper justification for the 'triple lock' imposed under the s106 obligations.”
- “... it has ceased to be possible in the financial markets to obtain Bonds of the kind required by the s106 Agreement”.
- “... it is necessary for this obligation to be discharged for viability and deliverability reasons ...”.

1.3.2 Concerning the A28 Bond (Schedules 18 and 18A):

- “The obligation to provide a Bond ... 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.”
- “Evidence has already been provided to the [County] Council establishing that a Bond cannot be obtained.”
- “An additional financial commitment of this scale would palpably undermine the viability of the Main Phase 1 and with it the deliverability of the Development”.

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<sup>1</sup> As advised in the Appellants' revised Modifications Table Annex 1 – Provided to PINS on 23 December 2024 (CD2/14).

- 1.3.3 For all Bonds, the Appellants assert that it is necessary to discharge the obligations to provide these due to viability and deliverability reasons. KCC's response to viability is dealt with separately via a Viability Expert Witness and Proof of Evidence.
- 1.3.4 The Appellants have provided no evidence to KCC establishing that a Bond cannot be obtained.
- 1.3.5 KCC's view is that the obligations to provide Bonds continue to serve a useful purpose and that the discharge of these obligations should be refused.

## 2. **POLICY CONTEXT**

- 2.1 The policy context for the requirement of the Education and Highway obligations are set out within the individual Proofs of Evidence.

### 2.2 Kent County Council (KCC)

KCC's policy for seeking Bonds to support new developments and ensure that the demands on services are mitigated is set out in its Developer Contributions Guide 2023 (Section 5) [CD4/3] and Technical Appendix 14: Highways and Transportation (Section 4) [CD4/3/14].

## 3. **PURPOSE**

### 3.1 Purpose served by the s106 obligations

- 3.1.1 The provision for Bonds within Schedules 15, 18 and 18A include non-occupation clauses until Bonds have been provided. This serves to prevent development beyond the specified number of Occupations without guaranteeing the provision of infrastructure necessary to make it acceptable. In the case of education, this provides certainty that additional education places can be provided in line with the increase in pupils on the Development as surety of payment or the ability to call-in the Bond is in place. For highways, it ensures that increases in vehicle movements on the A28 are restricted to an acceptable level until the Bond is provided. The subsequent security of repayment then enables the County Council to enter a construction contract for this infrastructure to be provided to make the Development acceptable in planning terms.
- 3.1.2 Local authorities (LAs) face significant financial risks when forward-funding infrastructure projects in anticipation of s106 contributions. To mitigate these risks, robust security mechanisms are crucial. Bonds provide a vital safeguard, ensuring the local authority receives the promised funds even if the developer encounters

financial difficulties. These bonds act as a financial guarantee, compensating the LAs for any shortfall in s106 payments. This security is paramount for responsible financial management, allowing the LA to proceed with essential infrastructure projects with confidence, knowing that the financial burden will ultimately be shared with the developers who benefit from the improved infrastructure. The S106 included forward funding for Primary and Secondary Education and the A28 Dualling Scheme. This approach was adopted because increased capacity in these service areas was required in advance of KCC receiving full contributions from the Development for these projects. KCC agreed to this because the risk of non-payment by the Appellants was minimised by the provision of a bond.

### 3.2 Why is that purpose useful at the current time?

3.2.1 The provision of Bonds provides security where KCC is forward funding infrastructure. KCC has experienced the necessity for their requirement of security on this Development when dealing with the Appellants. Having been provided with a Bond<sup>2</sup> for Contribution 4<sup>3</sup> of Primary School 1 and received Contributions 1-3<sup>4</sup> (minus indexation on Contributions 2 and 3 which remain outstanding<sup>5</sup>), KCC forward funded the provision of the school, which opened on Site in November 2021. KCC was prepared to do this as it had the necessary security in place in the form of the Bond. However, following invoicing for the remaining Contributions<sup>6</sup> in December 2023, the Paying Owners failed to pay. Following breach of the s106 contract by the Paying Owners concerning non-payment of Primary School 1, Contribution 4, KCC called in the Bond. Payment of Contribution 4 was received from the Bond issuer on 14 May 2024<sup>7</sup>.

3.2.2 This example sets out the continuing purpose of protecting the public purse when forward funding infrastructure on this Development. Without the Bond in place in respect of Primary School 1 Contribution 4, KCC and the public purse would have been £2,096,017.66 out of pocket.

### 3.3 Appellants' Case for Seeking Discharge of the Obligations

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<sup>2</sup> On 29 March 2019

<sup>3</sup> For the value of £1,461,800 plus Indexation

<sup>4</sup> Primary School 1 (PS1) Contribution 1 £150,000, PS1 Contribution 2 £2,285,000, PS1 Contribution 3 £2,103,200

<sup>5</sup> PS1 Contribution 2 Indexation £279,117.09 and PS1 Contribution 3 Indexation £256,909.87

<sup>6</sup> PS1 Contribution 2 Indexation £279,117.09 and PS1 Contribution 3 Indexation £256,909.87 and PS1 Contribution 4 £1,461,800 plus PS1 Contribution 4 Indexation £634,217.66

<sup>7</sup> Contribution 4 £1,461,800 plus PS1 Contribution 4 Indexation £634,217.66

### 3.3.1 Availability of Bonds

In their initial August 2020 request<sup>8</sup> to amend the S106, the Appellants claimed that it was no longer possible to obtain a Bond. However, we note that an ‘on-demand’ Bond (as set out in Schedule 15 of the S106) was provided to KCC by the Appellants 18 months prior to this on 29 March 2019, for Primary School 1 Contribution 4 (£1,461,800 plus indexation)<sup>9</sup>. The Appellants cited the inability to obtain a Bond in their second request<sup>10</sup> to modify the S106. During the Renewal Hearing<sup>11</sup> for this, Mrs Justice Lieven stated in her judgment [CD12/11] that ‘not being able to obtain a bond’ was not reason to discharge its requirement:

*Para 20: “Ground 4 is in respect of bonds which the developers were required to produce in respect of various parts of infrastructure, including at least one new school. The developer said, in its submissions to the Council, that it now could not produce such bonds because they were no longer available to it. When I asked Mr Letman about why, he accepted that is because his client at the relevant time was not a good enough covenant to be given such a bond by the market. Mr Letman suggested that it was irrational in those circumstances for the local planning authorities not to discharge the bonds. I disagree with this argument. It seems to me that where the local planning authorities are **legitimately concerned to ensure** [KCC emphasis], for example, that educational facilities are provided, to simply discharge the bonds in circumstances where the developer no longer is a good enough covenant, is leaving the local authority wide open to the possibility that the developer will not provide the educational facilities, and the local authority will have to pick up the tab. That is why a bond is provided. So there is nothing arguably irrational about continuing to require such bond.”*

3.3.2 Despite claiming three times (including this application), the Appellants have failed to provide any evidence that “*it has ceased to be possible in the financial markets to obtain Bonds of the kind required by the s106 Agreement.*”

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<sup>8</sup> Submitted to Ashford Borough Council on 20 August 2020.

<sup>9</sup> Due to breach of the s106 Agreement, KCC called-in this bond, receiving £2,107,119.94 on 14<sup>th</sup> May 2024.

<sup>10</sup> Submitted to Ashford Borough Council (ABC) on 27 April 2021.

<sup>11</sup> Appellants’ Application to challenge ABC’s determination of Request 2 - Queen’s Bench Division, Royal Courts of Justice, Tuesday 22 March 2022. No.CO/4125/2021 Hodson Developments (Ashford Ltd) & Ors v Ashford Borough Council & Anor - Queen’s Bench Division, Royal Courts of Justice, Tuesday 22 March 2022. No.CO/4125/2021 Judgement

- 3.3.3 KCC has sought guidance from its corporate banker, NatWest concerning the availability of Bonds. Copies of the S106 draft, on-demand Bonds within Schedules 15 and 18A were shared with the bank, to which they have provided the following 'opinion' on 17 December 2024 (Appendix 3):

*"...Having spoken to our Trade Services Bonds and Guarantees Technical Specialists, NatWest has issued both Section 106 and Section 278 guarantees previously. Our Team is not aware of any specific reason that we couldn't issue them if instructed now, subject to our prior review of the proposed wording before confirming and our final Credit approval to proceed."*

- 3.3.4 On 4 December 2024, NatWest explained in its meeting with KCC that bond pricing is risk-based, making it difficult to estimate costs without applicant-specific information. For illustrative purposes, they provided a high-level cost indication for a £30 million bond (similar to the Schedule 18A Bond). Assuming the applicant has good credit, the annual cost could be around 1% of the outstanding bond amount, decreasing as repayments are made. For example, on a 10-year, £30 million repayment schedule, the first year's bond cost would be £300,000. After a £3 million repayment in year one, the second year's cost would be £270,000. This would continue until the bond value reaches zero by year 10.

- 3.3.5 Further to this, KCC has several examples whereby developments have agreed to the provision of on-demand bonds within their s106 agreements, both for education and highway infrastructure. The following **s106 agreements** include a signed bond and draft bonds:

- CA/20/02826 development of land at Sturry/Broad Oak, Canterbury - includes draft bond wording for provision of £8.8m security for the "Sturry Link Road" which KCC would be forward funding the provision of. See Appendix 1 for draft bond wording. The bond remains unfulfilled pending the initiation of construction works. The s106 was signed on 8 March 2021.
- CA/16/00600 – land north and south of New Dover Road, Canterbury, extending north to Canterbury-Dover railway line, west to Nackington Road, and south to A2 – includes draft bond wording to secure £9,818,520 for the Northern Primary School, £9,700,200 for the Southern Primary School and £13,620,000 for the Secondary School should the owners wish to pay these obligations in instalments, as set out in the s106. The owners may provide full contributions upfront in lieu of a bond. See Appendix 2 for draft bond wording. The obligations to provide

bonds are contingent upon the occurrence of the specified triggers which have not yet been met. The s106 was signed on 27 June 2023.

- CA/18/00868 development of land at Broad Oak Farm, Broad Oak, Canterbury, CT2 0QR – **includes a signed bond for provision of £8.8m security** for the “Sturry Link Road”, for which the County Council would be forward funding the construction. A copy of the signed bond, dated 29 April 2021 can be found in Appendix D of Mr Hogben’s proof of evidence.

3.3.6 In addition to bonds provided within s106 agreements, KCC regularly agrees to **s278 works** which are secured via bonds. KCC has several recent examples where a developer has been able to obtain a bond for highway works and the bond security has been given to KCC. Details of these are set out below (the dates are the dates of the execution of the bonds) and copies of all of these agreements can be found in Appendix D of Mr Hogben’s proof of evidence.

- Manston Green, Thanet – Redrow Homes  
Bond towards a New Roundabout to support Manston Green development  
Agreement Signed – 05/06/2023  
Bond value: £2,433,806.22
- Strode Farm, Herne, Canterbury – Vistry / Countryside  
Removal of roundabout at junction of A291 / A299 Thanet Way Slips / The Links, and provision of 2 new Signal Controlled Junctions to provide eastern access to Lower Herne Relief Road  
Agreement Signed – 09/07/2024  
Bond Value - £2,112,220.74
- Wises Lane, Sittingbourne - Barratt David Wilson Homes  
New four arm roundabout - Access to A249  
Agreement Signed – 30/10/2023  
Bond Value - £1,517,258.70

3.3.7 Despite the Appellant’s claim that bonds are unavailable in the market, our recent discussion with NatWest and evidence of recent s106 agreements suggests otherwise. Draft bond wording from other recent s106 agreements demonstrates that developers are willing to consider and agree to bond obligations. While some of the specific bonds in these agreements may not yet have been triggered or

fulfilled, their inclusion within the s106 agreements clearly indicates a willingness to engage with such obligations.

### 3.3.8 Triple Lock

For the education Bonds contained in Schedule 15, the Appellants argue that Bonds are “*unnecessary, wholly excessive and duplicative security. There is no proper justification for the 'triple lock' imposed under the s106 obligations.*” The three forms of security that they refer to are:

- Non-occupation clauses
- Bonds
- Developers’ Contingency Bank Account – County Council in Schedule 30

3.3.9 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.

3.3.10 The non-occupation clauses do not pertain to the school payment obligations which are subject to a Bond. They are tied to the provision of the Bond for Primary Schools 1-4. Thus, non-occupation clauses 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.

3.3.11 The Developer’s Contingency Account (Schedule 30), which the Appellants suggest is further protection for KCC, does not provide the level of security required by KCC when entering third party build contracts. The minimum security balance for this account is £475,000 and KCC has no power to demand that money unilaterally or priority on it when calling for payment. In respect of Primary Schools 1-3, Contributions 2, 3 and 4 and Primary School 4 Contributions 2 and 3 (which are subject to Bond cover), these are not deposited into this account and therefore, do not constitute a triple lock as the Appellants have claimed.

3.3.12 It is KCC's view that Bonds continue to serve a useful purpose for the following reasons:

- **Security for Public Funds:** Bonds provide security for public funds when the County Council is forward funding infrastructure. This is wholly legitimate given the scale of the investment required and where KCC has concerns regarding the Appellants' ability to ensure payments. In the absence of a Bond for Primary School 1 Contribution 4, the public purse would have been out of pocket by £2,096,017.66.
- **Guarantees Completion of Infrastructure:** Bonds help ensure that essential infrastructure gets built. If the developer fails to meet their obligations, the Bond can be called in to cover the costs of completing the infrastructure.
- **Widely Available:** Contrary to the Appellants' claim, bonds are still available in the financial markets and KCC has provided evidence of this through Mr Hogben's proof. NatWest, KCC's corporate banker, has confirmed their willingness to issue bonds subject to their review and approval process.
- **Common Practice:** Several recent section 106 agreements include provisions for on-demand Bonds, demonstrating that developers are prepared to consider and agree to such obligations.

In light of these points, Bonds remain a necessary tool to protect public funds and ensure the completion of essential infrastructure projects.

3.4 Would the obligations serve that purpose equally well if they had effect subject to the proposed modification?

- 3.4.1 No modification is proposed. The Appellants are seeking to discharge the obligation to provide all Bonds contained within Schedules 15 and 18/18a to KCC [CD2/22].
- 3.4.2 If the obligations are discharged, the useful purpose of providing security of funds and ensuring that infrastructure necessary to meet the needs of the development is delivered will not be served at all. As set out above the purpose of the provision of bonds are useful now and therefore the purpose cannot be equally well served by discharging the requirement.

#### 4. **CONCLUSION**

- 4.1 In conclusion, the Appellants' requests to discharge the Bond obligations within Schedules 15 and 18/18A of the S106 agreement should be refused. The provision of these bonds serves a crucial and demonstrably useful purpose: safeguarding public funds and ensuring the timely delivery of essential education and highway infrastructure necessitated by the development. The Appellants' claims of Bond unavailability are unsubstantiated, contradicted by evidence of recent bond agreements and KCC's discussions with NatWest. Furthermore, the "triple lock" argument presented by the Appellants misrepresents the function of the non-occupation clauses and the Developer's Contingency Account, neither of which provides equivalent security to the bonds, especially in forward-funding scenarios. The recent call-in of the Primary School 1 Contribution 4 Bond underscores the critical financial protection these instruments provide. Discharging these obligations would remove vital security for public investment and jeopardise the delivery of necessary infrastructure, ultimately undermining the sustainable and acceptable development of the site. Therefore, the Bond obligations remain necessary and appropriate to mitigate risk and ensure project completion for the benefit of the community.

**APPENDIX 1 - CA/20/02826 DEVELOPMENT OF LAND AT STURRY/BROAD OAK,  
CANTERBURY – DRAFT BOND WORDING**

**Appendix 1  
Draft Bond**

The Kent County Council

County Hall

Maidstone

Kent

ME14 1XQ

Dear Sir/Madam,

On demand performance bond No: [NUMBER] dated [DATE]

Land at Sturry/Broad Oak, Sturry

Section 106 Agreement dated [ ]

1 We understand that:

(i) you have entered into a Section 106 Agreement (Agreement), dated [DATE] with (amongst others) X (**Developer**) in relation to the comprehensive development of the above-referenced land pursuant to a planning permission dated [ ] as granted by Canterbury City Council under reference number CA/17/01383; and

(ii) under the Agreement you require an on demand Bond in respect of the Developer's performance of its obligations in Schedules [X] of the Agreement.

2. In consideration of your entering into the Agreement, we [NAME AND ADDRESS OF BANK] irrevocably and unconditionally promise to pay, as primary obligor, to you on your first written demand an amount or amounts not exceeding in aggregate [MAXIMUM AMOUNT OF BOND] (**Bond Amount**) provided that your demand complies with the provisions of this Bond.

3. The Bond Amount shall reduce in accordance with the equivalent amount of the Sturry Link Road Contribution which is paid to you from time to time pursuant to the Agreement.

4. This Bond shall expire upon payment in full of the Sturry Link Road Contribution (as defined in the Agreement) (**Expiry**).

5. Your demand under this Bond must be received at this office before Expiry and must be in the form set out in Annex A to this Bond that:

- (a) states the Developer has failed to comply with the Agreement in accordance with its terms and conditions;
- (b) states, as a result of such failure, the amount claimed is due to you;
- (c) specifies in what respects the Developer has so failed; and
- (d) specifies the amount claimed.

We shall accept such demand as evidence, for the purposes of this Bond alone, that the amount claimed is due to you under this Bond.

6. On Expiry, this Bond shall become null and void, whether returned to us for cancellation or not, and any demand received after Expiry shall be ineffective.
7. This Bond is personal to you and is not transferable or assignable.
8. This Bond does not give rise to any rights of any third parties under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Bond.
9. This Bond and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with, the law of England.
10. The courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Bond or its subject matter or formation.

Yours faithfully,

For and on behalf of  
[ISSUING BANK]

#### ANNEX A

##### Form of Demand

TO: [ISSUING BANK]

Re: [INSERT DETAILS OF BOND]

Dear Sir/Madam,

We refer to the bond, particulars of which are set out above (Bond). Capitalised terms used, but not defined, in this demand are defined in the Bond.

The Developer has failed to comply with the Agreement in accordance with its terms and conditions in the following respects:

[INSERT BRIEF DETAILS OF THE BREACH]

As a result of such failure, the sum due to us is [£][INSERT].

We hereby demand payment from you of the said sum of [£][INSERT] under the terms of this Bond representing the amount due to us in respect of the Developer's failure to comply with the Agreement.

The sum demanded does not exceed the Bond Amount set out in clause 2 of the Bond and is issued before Expiry.

Payment of the above sum should be made to the following account:

[INSERT]

Yours faithfully,

[SIGNATURE]

[Director OR Company secretary] of the Beneficiary

**APPENDIX 2 - CA/16/00600 – LAND NORTH AND SOUTH OF NEW DOVER ROAD, CANTERBURY, EXTENDING NORTH TO CANTERBURY-DOVER RAILWAY LINE, WEST TO NACKINGTON ROAD, AND SOUTH TO A2 – DRAFT BOND WORDING**

## **Appendix C: Draft Bond**

The Kent County Council  
County Hall  
Maidstone  
Kent  
ME14 1XQ

Dear Sir/Madam,

**On demand performance bond No: [NUMBER] dated [DATE]  
Land north and south of New Dover Road, Canterbury  
Section 106 Agreement dated [●]**

- 1 We understand that: (i) you have entered into a Section 106 Agreement (Agreement), dated [DATE] with (amongst others) Corinthian Mountfield Limited (**Developer**) in relation to the comprehensive development of the above-referenced land pursuant to a planning permission dated [●] as granted by Canterbury City Council under reference number CA/16/00600; and (ii) under the Agreement you require an on demand Bond in respect of the Developer's performance of its obligations in Schedule 10 and Schedule 11 of the Agreement.
- 2 In consideration of your entering into the Agreement, we [NAME AND ADDRESS OF BANK] irrevocably and unconditionally promise to pay, as primary obligor, to you on your first written demand an amount or amounts not exceeding in aggregate [MAXIMUM AMOUNT OF BOND] (**Bond Amount**) provided that your demand complies with the provisions of this Bond.
- 3 The Bond Amount shall reduce in accordance with the equivalent amount of the Primary Education Contribution and/or the Secondary School Contribution which is paid to you from time to time pursuant to the Agreement.
- 4 This Bond shall expire upon payment in full of the Primary Education Contribution and the Secondary School Contribution (as defined in the Agreement) (**Expiry**).
- 5 Your demand under this Bond must be received at this office before Expiry and must be in the form set out in Annex A to this Bond that:
  - (a) states the Developer has failed to comply with the Agreement in accordance with its terms and conditions;
  - (b) states, as a result of such failure, the amount claimed is due to you;
  - (c) specifies in what respects the Developer has so failed; and
  - (d) specifies the amount claimed.We shall accept such demand as evidence, for the purposes of this Bond alone, that the amount claimed is due to you under this Bond.
- 6 On Expiry, this Bond shall become null and void, whether returned to us for cancellation or not, and any demand received after Expiry shall be ineffective.
- 7 This Bond is personal to you and is not transferable or assignable.

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- 8 This Bond does not give rise to any rights of any third parties under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Bond.
- 9 This Bond and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with, the law of England.
- 10 The courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Bond or its subject matter or formation.

Yours faithfully,

.....  
For and on behalf of  
[ISSUING BANK]

#### **Annex A: [Form of Demand]**

##### **Form of Demand**

TO: [ISSUING BANK]

Re: [INSERT DETAILS OF BOND]

Dear Sir/Madam,

We refer to the bond, particulars of which are set out above (Bond). Capitalised terms used, but not defined, in this demand are defined in the Bond.

The Developer has failed to comply with the Agreement in accordance with its terms and conditions in the following respects:

[INSERT BRIEF DETAILS OF THE BREACH]

As a result of such failure, the sum due to us is [£][INSERT].

We hereby demand payment from you of the said sum of [£][INSERT] under the terms of this Bond representing the amount due to us in respect of the Developer's failure to comply with the Agreement.

The sum demanded does not exceed the Bond Amount set out in Clause 2 of the Bond and is issued before Expiry.

Payment of the above sum should be made to the following account:

[INSERT]

Yours faithfully,

[SIGNATURE]

[Director **OR** Company secretary] of the Beneficiary

## APPENDIX 3 – EMAIL TO KCC FROM NATWEST BANK

**From:** Hernaman, Mark (Sales & Specialist Businesses, CPB ) [REDACTED]  
**Sent:** 17 December 2024 12:03  
**To:** Victoria Thistlewood - GT GC <[REDACTED]>; Beard, Vicky (L&SE Corporate) <[REDACTED]>; Valji, Monika (London & South East, Corporate Banking) <[REDACTED]>  
**Cc:** Cath Head - CED F <[REDACTED]>; Jian, Maggie (Trade Finance, Working Capital Sales) <[REDACTED]>  
**Subject:** Kent County Council. Sect 106 and Sect 278 Guarantees. General Enquiry for NatWest

Hi Vicky,

I am sorry to be late back.

NatWest is fully arm's length and is not party to the transaction you mentioned to Vicky Monika and myself in our recent call and allude to you in your below 11:38 email of today.

In our Teams call, you asked Vicky Monika and myself, if, all things being equal, NatWest would be able to issue for its Guarantee Applicant customer Sect.106 and or Sect 278 Guarantees. Having spoken to our Trade Services Bonds and Guarantees Technical Specialists, NatWest has issued both Section 106 and Section 278 guarantees previously. Our Team is not aware of any specific reason that we couldn't issue them if instructed now, subject to our prior review of the proposed wording before confirming and our final Credit approval to proceed.

Thanks

Kind regards

Mark

Mark Hernaman  
Working Capital Sales Manager



[REDACTED]  
Working Capital Sales 3<sup>rd</sup> Floor, 250 Bishopsgate London EC2M 4AA

The information classification of this email is Confidential unless otherwise stated.

### Application Forms:

Bank Guarantee / Standby Letters of Credit: <https://app.trade-guarantee.natwest.com/natwest/>  
Import Letters of Credit: <https://app.import-letter-of-credit.natwest.com>