

**Land between Appledore Road and Woodchurch Road, Tenterden**

**Appeal reference: APP/E2205/W/21/3284479**

**Note on delivery on behalf of the Council**

As Ms Humphreys set out in the S106 round table session in relation to the provision of the sports pitches, there are key triggers that are in the S106 that restrict delivery and occupation. The owner cannot commence the outline part of the development (residential element) until paragraphs 2.2 to 2.9 have been complied with in the Sports Facilities Schedule and this restriction is also in the Countryside Open Space Schedule. Further, the owner cannot occupy more than 25% of the dwellings until paragraphs 2.11 to 2.17 of the same schedules are complied with.

These requirements could delay to the delivery of the housing.

Working on the basis the appeal decision is issued in April / May 2022. The appellant would need to carry out the following time critical tasks to be able to commence work on the sports pitches:

- o Purchase land, in particular the purchase of the school sports field, as this is the field through which the site access runs. I understand the sale of this land needs to be agreed by the SoS and requires the school to demonstrate they have sufficient playing field provision remaining to make the loss of the playing field acceptable.
- o Prepare, submit and agree in writing with the LPA the pre-commencement condition relating to sports pitch (that relates to details for conditions 3, 4, 6, 7, 8, 9, 32, 35, 38, 39, 40, 41, 43, 47, 48, and 52)
- o Paragraph 2.1 of the Notices and Monitoring Schedule has been complied with in the s106 that requires the owner to submit their Commencement Notice at least 4 weeks before they intend to commence development.
- o Provision of the access / haul road / access road to the sports pitch to enable work to commence.

It is noted that work on the sports pitches should start in May (see CD 1.7, part 2, Appendices page 24 for the pitch construction programme set out by the Appellant). Footnote 1 to that table confirms *"It is essential that the construction works are only completed under suitable ground and weather conditions to avoid any potential performance –related problems later on"*, from this I understand the start date is critical and weather dependent.

There is a real risk that the developer will be unable to start work on the sports pitches by May 2023, this is only a year post consent and would require a significant amount of work in a short period to reach this point. Some of these tasks can run concurrently, however, if the developer does not have certainty about the purchase the land required to access the site (specifically the school land required for access), I would question how much investment they would make in provision of the detailed information required to discharge conditions.

The risk to delivery are:

1. If the purchase of the school land takes longer than a year to resolve, due to SoS involvement, this could delay condition submission, but in itself could also mean the May starting point is missed and it is another year before work can commence.
2. We understand bedding in can take a year to 18 months, and they appellants programme only allows 12 months. A 6-month delay to the bedding in progress would delay the issue of the final

certificate, which would either by itself or in combination with the above could lead to the delay in the delivery of housing.

3. Delivery is weather dependent at each stage of the progress which could delay the issuing of the Provisional and Final Certificate. The footnote to the delivery timetable for the sports pitches notes in point 1 that *“The date for start of play is highly dependent on weather conditions during the construction phase and growing-in period”* and that *“The precise date for the return to play is highly dependent on the weather conditions that prevail during the construction works and growing-in period. Play/use shall recommence upon approval from the Contract Administrator”* (page 24). The dates in the timetable and S106 are therefore minimums.

### **Delivery timetable**

Working, without prejudice, on the basis that the Appeal is allowed in April / May 2022, the earliest construction can commence is May 2023 but that only gives the Appellant a year to complete the pre-commencement tasks detailed above. In reality, it may be more realistic that work cannot commence until May 2024 due to the pre-commencement tasks taking over a year to complete. As such the following timetable would apply:

- Based on table in CD 1.7 part 2 p.24 which suggest 18 months for pitch construction, (although as noted above this could take two years) the sports pitches Provisional Certificate could be issued October 2024 (or May 2025 if two years is required).
- At this point, under the terms of the S106, construction on the outline can commence, however, occupation is limited to 25% of the dwellings (35.25 homes) until the Final Certificate is issued.
- S106 requires the owner to maintain the pitches for at least 12 months from the pitches being laid out before the final certificate can be issued. At the very earliest this would be October 2025 (but as above could be May 2026).
- In Mr Taylor’s appendices 15 Lichfield’s ‘Start to finish’ Figure 7 provides a build out rate (for sites of 100-499 dwellings in size) of 55 dwelling per annum. On the basis of the appellants evidence in the eight-month period between the issuing of the Final Certificate and the end of the five-year supply period (June 2026) the site could deliver an additional 36.67 dwellings (although if this were May this would reduce to 13.75 dwellings).
- Therefore, in the five-year period 71.92 dwellings could be delivered (which is the 25% (35.25 dwellings) plus the 36.67 dwellings) (or 46 dwellings if bedding in takes longer than anticipated).

Whilst the restriction applies to occupation, it would seem unlikely a developer would ‘complete’ dwellings ahead of this trigger point as they would not be able to be occupied / sold.

On this basis, at best, only half the dwellings would be delivered in the five-year period, reducing the contribution the scheme makes to the shortfall and reducing the benefit.