



ASHFORD
BOROUGH COUNCIL

Affordable Housing Topic Paper

of the Local Planning Authority in respect of:

Land at Chilmington Green, Ashford Road, Great Chart, Ashford, Kent

Appeals by:

Hodson Developments (Ashford) Limited; Chilmington Green Developments Limited;
Hodson Developments (CG ONE) Limited; Hodson Developments (CG TWO)
Limited; and Hodson Developments (CG THREE) Limited.

Against the failure to determine applications to modify or discharge obligations contained in the S.106 agreement dated 27 February 2017 attached to planning permission ref: 12/00400/AS (as amended by a Supplement Agreement dated 29 March 2019 and a deed of variation dated 13 July 2022).

Appeal References: APP/W2275/Q/23/3333923 & APP/E2205/Q/23/3334094

Ashford Borough Council References: AP-90718 & AP-90647

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1.0 Introduction

- 1.1 This Topic Paper is submitted on behalf of the Local Planning Authority – Ashford Borough Council (“the Council”) and concerns the modifications proposed to Schedules 1 and 23 of the Chilmington Green S.106 Agreement (“the Agreement”) which require affordable housing to be provided on the Chilmington Green development site (the “Site”).
- 1.2 Affordable housing is required to be delivered as part of the Chilmington Green development (the “Development”) to meet the housing needs of the residents of Ashford. Policy CG18 of the Chilmington Green Area Action Plan (the “AAP”) states that the Development *“will aim to provide a total of 30% affordable housing (1,725 units)”* (CD3/1/1, page 97)
- 1.3 Chapter 11 of the AAP *“sets out the proposed approach to phasing of the Development and how this should relate to the delivery of key infrastructure”* (CD3/1/1 paragraph 11.1, page 110). The AAP continues that *“this approach is informed by the availability of existing infrastructure and the ability to deliver new infrastructure in a cost-effective and viable manner whilst ensuring that development remains sustainable in its own right at all stages – a key principle of this AAP”* (CD3/1/1, paragraph 11.3, page 110).
- 1.4 The Development is to be delivered in four phases – Main AAP Phases 1, 2, 3 & 4. The location of these four phases on the Site are shown in AAP figures 18-21 (pages 115-118) and they are defined in the Agreement (refer to Definitions, paragraph 1.1). The number of dwellings in each phase is shown in Table 1 below.

Main AAP Phase	Number of dwellings	Cumulative number of dwellings
1	1501	1501
2	1124	2625
3	1559	4184
4	1566	5750

Table 1: the number of dwellings in each Main AAP Phase.

- 1.5 For the delivery of affordable housing on the Site the Development is divided into ten phases which are identified in the Agreement as Viability Review Phases (the “VRP”). The number of dwellings within each VRP is set out in the Agreement (Definitions, paragraph 1.1) and in Table 2 below. The geographical extent of VRP One was established in the Agreement (refer to Annex 2, drawing 00122 SK68 Rev D5). The geographical extent of all subsequent VRP will be established at specified points during the delivery of the Development via the

submission of a Viability Review Submission for each VRP, including a Viability Review Phase Plan.

- 1.6 As illustrated in Table 2 below, the ten VRP dovetail exactly with the four Main AAP Phases and are consequently an effective means of delivering the amount of affordable housing required by the AAP for each Main Phase in a flexible way through the subdivision of each Main AAP Phase.

Main AAP Phase	Viability Review Phase	Number of Dwellings in VRP	Cumulative number of dwellings
1	1	1000	1000
	2	500	1500
2	3	600	2100
	4	524	2624
3	5	500	3124
	6	500	3624
	7	559	4183
4	8	500	4683
	9	500	5183
	10	567	5750

Table 2: the number of dwellings within each Viability Review Phase

2.0 The Requirements of the Agreement

- 2.1 In summary, Schedule 1 requires (1) the provision of 10% affordable housing within each viability review phase and (2) the provision of additional affordable housing if a viability review establishes that additional affordable housing can be afforded. In summary, Schedule 23 sets out the timescales and procedure under which each viability review (Two to Ten) will take place.

- 2.2 In detail, Schedule 1 requires the following

- i. To construct 70 dwellings as extra-care housing units (comprising 28 shared ownership and 42 affordable rent or intermediate affordable housing, if agreed by the Council) on the Hodson/Chilmington Green Developments Viability Phase One Land no later than 850 dwelling occupations. The extra care housing shall be provided as one and/or two bed flats in one or more buildings in a single complex in the District Centre (Schedule 1, paragraph 1.1, 2, 3, 6.1)
- ii. To construct 24 dwellings as affordable housing units on the Hodson/Hodson CG One/ Chilmington Green Developments Viability Phase One Land and to construct 6 dwellings as affordable housing units on the

Jarvis Viability Phase One Land no later than 650 dwelling occupations. The affordable housing units shall comprise 12 shared ownership and 18 affordable rent (or intermediate affordable housing, if agreed by the Council). All this housing shall be provided as two and/or three bed houses, and one shall accommodate Habinteg fixtures and fittings (Schedule 1, paragraph 1.2, 3, 4, 5, 7.1)

- iii. To construct 10% of dwellings as affordable housing in VRP Two to Ten land (inclusive) no later than the occupation of 75% of the dwellings in the relevant VRP. The affordable housing shall comprise 60% affordable rent and 40% shared ownership, except on the VRP Two land which shall be 100% shared ownership. None of the affordable housing units shall comprise of or include extra care housing units and/or other accommodation for older persons and/or accommodation for vulnerable groups of people. 5% of the affordable housing units shall accommodate Habinteg fixtures and fittings. All the houses (not flats) shall be constructed to Lifetime Homes Standards (Schedule 1, paragraph 8, 9, 13, 14).
 - iv. If a viability review in accordance with Schedule 23 identifies that additional affordable housing is to be provided in VRP Two to Ten (inclusive) this affordable housing shall be provided no later than the occupation of 75% of the dwellings in the relevant VRP. The affordable housing shall comprise 60% affordable rent and 40% shared ownership. 5% of the affordable housing units shall accommodate Habinteg fixtures and fittings. All the houses (not flats) shall be constructed to Lifetime Homes Standards (Schedule 1, paragraph 10, 12, 13, 14).
- 2.3 To date, six affordable housing units have been provided on the Jarvis Viability Phase One Land in accordance with Schedule 1, paragraph 1.3, 4 & 5). In addition, a further four affordable housing units have been provided by Jarvis in advance of the provision of 10% affordable housing within VRP Two. All ten affordable homes have been acquired by the Council, which is a registered provider of affordable housing.
- 2.4 The appellant has submitted a reserved matters application for Main AAP Phase 1 land parcels D & H which includes the provision of 24 affordable housing units in accordance with the Agreement (Schedule 1, paragraph 1.2). The appellant has also submitted a reserved matters application for housing within the District Centre on land parcels CH1 and CH2, however, this application does not include the extra care units required by the Agreement (Schedule 1, paragraph 1.1, 2, 3, 6.1) and instead proposes 12 affordable housing units (one, two and three bed flats). Both applications are yet to be determined.

2.5 In detail, Schedule 23 requires the following

- i. The appellant to notify the Council of the number of dwelling occupations listed in Schedule 45, Table 1, Column 2 and to submit an Affordable Housing Information Request at the number of dwelling occupations listed in Schedule 45, Table 1, Column 3 (Schedule 23, paragraph 1.1).
- ii. Within 30 working days of receiving an Affordable Housing Information Request the Council shall respond with an Affordable Housing Information Reply by populating Schedule 47, Table 3 (Schedule 23, paragraph 1.2).
- iii. The appellant shall submit a viability review submission within the timescales set out in Table 3 below (Schedule 23, paragraph 2.1 – 2.1.9).
- iv. The Council shall confirm in writing to the appellant whether it approves or rejects the viability review submission for each VRP within 30 working days of receipt (Schedule 23, paragraph 3.20).
- v. No development can take place on the VRP Two to Ten land (inclusive) unless the Council has confirmed to the appellant that it approves of the content of the viability review submission for the relevant VRP or the third party expert has made a determination on the matter (Schedule 23, paragraphs 3 & 4).
- vi. If a residual surplus is identified in respect of VRP Ten then, no more than 5600 dwellings shall be occupied until the residual surplus is paid to the Council. The Council shall use any residual surplus for the provision of affordable housing within the borough of Ashford (Schedule 23, paragraph 6).
- vii. The Council shall not consider at all and is under no obligation to confirm to the appellant that it rejects a Premature Viability Review Submission that it receives – i.e. a submission made prior to the number of dwellings occupations set out in the second column of Table 3 below. (Schedule 23, paragraph 3.19).

Viability Review Phase	Premature Viability Review submission ¹ (dwelling occupations)	Trigger for submission of each Viability Review Submission (dwelling occupations)
2	500	851
3	1200	1351
4	1800	1951
5	2324	2475
6	2824	2975
7	3324	3475
8	3883	4034
9	4383	4534
10	4883	5034

Table 3: Triggers for a viability review submission and premature viability review submission

3.0 The Continuing Purpose

- 3.1 Local Plan Chapter 6 (CD4/1, pages 197-226) describes how the Ashford Strategic Housing Market Assessment (SHMA) 2014 (CD4/7) established that around 50% of all future dwellings delivered in the borough should be affordable, to meet the full objectively assessed affordable housing need. However, as part of the Local Plan, it is assessed that this figure is unlikely to be delivered mainly due to the housing market's inability to deliver it.
- 3.2 Whole plan viability testing was carried out to support the Local Plan which tested various levels of affordable housing requirements. The adopted Local Plan policy has been set at a level that is considered deliverable in terms of viability when tested alongside all other policies in the Local Plan, balanced against the need to maximize potential affordable housing delivery to meet the identified need.
- 3.3 The viability evidence supporting the Local Plan demonstrated variation in the viability of residential development across the borough and consequently the Local Plan identifies different levels of affordable housing requirements for different areas. This is identified in Map 2 of the Local Plan (CD4/1, page 198).
- 3.4 The Council currently has 255 households living in temporary accommodation and circa 1800 applicants on the Housing Register. There is therefore clear need for additional affordable housing within the borough.
- 3.5 The obligation to provide 10% affordable housing in each VRP ensures that affordable housing is delivered regularly throughout the Development to meet

¹ The Premature Viability Review submission period ends 40 working days after the number of dwelling occupations listed (Definitions, paragraph 1.1).

identified local need and to ensure a mixed and balanced community of different tenures is provided. There is an identified need for both affordable rent and shared ownership tenure housing within the borough, as identified in the SHMA, consequently there is a need for both tenures of housing as part of the Development. The timely delivery of the affordable housing, no later than when 75% of the market housing within the relevant VRP is delivered, is necessary to ensure that the affordable housing is fully integrated into the Development and residents of the affordable housing are not 'left to the end' of each VRP, thereby ensuring that an integrated mixed community is created.

- 3.6 **Extra care housing** – given the size of the Development, it is likely that this will include an elderly community with varying care needs which will need to be provided for. Kent County Council's 'Accommodation with Care & Support Market Position Statement 2021-2026 (CD4/8, pages 12-14) states that an increase in demand is expected for both residential and nursing care in line with population increases and people living longer with more complex conditions. The County Council anticipate that by 2031 an additional 72 units of accommodation will be required in Ashford, if the identified demand for accommodation up to 2026 is achieved. The Position Statement also identifies the benefits of purpose built accommodation, stating that "*purpose-built accommodation ensures that the specific needs of individual residents can be met more easily, as the accommodation has been designed and built with those needs in mind*" (CD4/8, page 16).
- 3.7 The provision of older persons extra care housing would meet the identified need for this specific type of housing. Without this provision the identified need for this type of housing would not be met. The Agreement specifically prevents extra care housing from being provided within the 10% affordable housing provision within VRP Two to Ten (inclusive) which would therefore rule out the provision of extra care units within future phases of the Development (Schedule 1, paragraph 9). The Agreement does allow for extra care housing to be provided in VRP Two to Ten if it is established via a viability review submission that additional affordable housing can be provided (Schedule 1, paragraph 11). However, the appellant's proposed modification to delete VRP Two to Five (inclusive) would rule out the provision of extra care housing within the early Main AAP Phases of the Development meaning that the opportunity (subject to viability) for the Development to contribute to the County Council's identified need by 2031 would be lost.
- 3.8 Furthermore, the 70 extra care housing units comprise a proportion of the 10% affordable housing required to be constructed within VRP One. The removal of the requirement to construct the extra care housing in VRP One and its replacement with market housing would result in only 3% affordable housing units (30 dwellings) being provided in VRP One. This would not help to meet

the need for affordable housing in the borough or ensure a mixed and balanced community is delivered.

- 3.9 **Viability review mechanism** – the AAP identifies that “*typically, major housing development tends to have heavily front loaded costs - especially the main elements of new infrastructure (utilities, access roads, extra off-site highway capacity, etc). It then becomes relatively more profitable at the later stages when values have become established and most of the infrastructure is in place*” (CD3/1/1, Page 10, paragraph 1.19). The committee report for the outline planning application explains “the whole scheme can just support a total of 10% affordable housing (if all other infrastructure needs are met)” but it was also identified that “*on present costs/returns the later phases of the development are viable*” (CD6/1, page 1.221, paragraph 408).
- 3.10 It was therefore agreed when the outline planning permission was granted that the amount of affordable housing would be fixed at 10% for the first 1000 dwellings. Scheme viability would then be assessed at nine specified points during the delivery of the Development to ascertain whether additional affordable housing could be provided.
- 3.11 The review of viability to enable the delivery of necessary affordable housing, should it prove viable through the life of the Development, is necessary and essential to ensure the planning obligations required are delivered in full as far as possible to mitigate the impacts of the Development.

4.0 Relevant planning Policy & Guidance

- 4.1 Chilmington Green AAP Policy CG1 Chilmington Green Development Principles – requires the Development to include a mix and range of house types and a varied housing offer to meet the changing needs of the residents (CD3/1/1, page 21).
- 4.2 Chilmington Green AAP Policy CG18 Provision of Affordable Housing – states that the Development will aim to provide a total of 30% affordable housing (1,725 units) with a tenure split of 60% affordable rent and 40% other forms. Each main phase shall meet these requirements unless a robust and transparent viability case proving this is not possible is accepted by the Council, in which case the policy may be applied with flexibility in line with the Council’s deferred contributions policy where at least 10% affordable housing is delivered in any main phase and no less than 30% of affordable housing in any main phase is within the affordable rented sector. If the deferred contributions policy does not result in a main phase meeting the ‘normal’ requirements, subsequent main phases of the development shall be expected to ‘claw back’ any reduced provision up to a maximum of 40% of housing in any main phase of the

development being 'affordable'. The policy also requires supported housing schemes of a size to be agreed with the Council at the District Centre or Local Centre (CD3/1/1, page 97).

- 4.3 Chilmington Green AAP Policy CG22 Phasing, Delivery and Implementation – states that should a deficit in the infrastructure provision necessary to serve any main phase of the development be accepted, following an independently assessed viability exercise, then the Council will employ its deferred contributions policy to claw back any deficit, should market conditions improve sufficiently (CD3/1/1, page 124).
- 4.4 Local Plan Policy SP1 Strategic Objectives – includes the objective to provide a mix of housing types and sizes to meet the changing housing needs of the Borough, including affordable homes (CD4/1, page 9).
- 4.5 Local Plan Policy HOU1 Affordable Housing – requires the provision of affordable housing on-site for all schemes promoting 10 dwellings or more and sets out the different levels of provision sought across different areas of the borough. In accordance with this policy, an affordable housing contribution of 30%, comprising 10% affordable/socially rented accommodation and 20% affordable home ownership products, including a minimum of 10% shared ownership, would be required for the Site if a planning application was assessed against Policy HOU1. (CD4/1, page 200-201).
- 4.6 Local Plan Policy HOU14 Accessibility Standards – requires that at least 20% of all 'new build' homes are built in compliance with building regulations part M4 (2) as a minimum standard; and in 'new build' properties which are affordable, a maximum of 7.5% of wheelchair accessible homes complying with building regulations part M4 (3b) will be required (CD4/1, page 219).
- 4.7 Local Plan Policy HOU18 Providing a Range and Mix of Dwelling Types and Sizes – states that development proposals of 10 or more dwellings will be required to deliver a range and mix of dwelling types and sizes to meet local needs. The specific range and mix of dwellings to be provided should be informed by proportionate evidence that is robust, up to date and provides an assessment of need (CD4/1, page 226).
- 4.8 Local Plan Policy IMP2 Flexibility, Viability and Deferred Contributions – states that where a deficit in infrastructure contribution has been deemed acceptable, the Council will require the applicant to agree a deferred contributions approach, to claw back as much of any deficit as possible, should market conditions improve significantly. For larger schemes, where a deficit has been deemed acceptable and a proposal is to be phased over time, or where the opportunity exists to do so, the applicant will agree with the Council a

programme or method of re-evaluating the viability of the scheme, to capture changes in circumstances (CD4/1, page 313).

- 4.9 Affordable Housing SPD – this references the previous Development Plan and to that extent is not relevant to the application of current affordable housing targets. However, it contains a significant level of supporting information about matters such as design and quality standards, the integration of affordable housing into a scheme and alternatives to on-site provision, etc., and is, therefore, a relevant document (CD3/1/4).
- 4.10 Paragraph 63 of the NPPF advises that the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies.
- 4.11 Paragraph 64 of the NPPF continues that where a need for affordable housing is identified, planning policies should specify the type of affordable housing required (including the minimum proportion of Social Rent homes required), and expect it to be met on-site unless off-site provision or an appropriate financial contribution in lieu can be robustly justified; and the agreed approach contributes to the objective of creating mixed and balanced communities.
- 4.12 Paragraph 66 of the NPPF states that where major development involving the provision of housing is proposed, planning policies and decisions should expect that the mix of affordable housing required meets identified local needs, across social rent, other affordable housing for rent and affordable home ownership tenures.

5.0 The Proposed Modifications

- 5.1 In summary, the appellant seeks the following modifications to Schedule 1 of the Agreement.
 - i. Delete the requirement to construct 70 dwellings as extra-care housing units (CD2/14, Request 7)
 - ii. Delay the construction of the 24 affordable housing units on the Hodson/Hodson CG One/ Chilmington Green Developments Viability Phase One Land from no later than 650 dwelling occupations to no later than 1000 dwelling occupations and to provide all 24 affordable housing units as shared ownership units (CD2/14, Request 8).
 - iii. Provide all 6 affordable housing units on the Jarvis Viability Phase One Land as shared ownership units (CD2/14, Request 8).

- iv. Delay the construction and provision of the 24 affordable housing units on the Hodson/Hodson CG One/ Chilmington Green Developments Viability Phase One Land and the 6 affordable housing units on the Jarvis Viability Phase One Land from no later than 650 dwelling occupations to no later than 1300 dwelling occupations (CD2/14, Request 8).
- v. Delay the provision of the 10% affordable dwellings in VRP Two to Ten land (inclusive) from no later than the occupation of 75% of the dwellings in the relevant VRP to no later than 95% of the dwellings in the relevant VRP. To change the tenure split of this housing from 60% affordable rent and 40% shared ownership to 33% affordable rent and 67% shared ownership. To delete the requirement for all the affordable units in VRP Two to be shared ownership units (CD2/14, Request 9 & 10).
- vi. If a viability review in accordance with Schedule 23 identifies that additional affordable housing is to be provided in VRP Five to Ten (inclusive) to delay the provision of this affordable housing from no later than the occupation of 75% of the dwellings in the relevant VRP to no later than the provision of 95% of the dwellings in the relevant VRP. To change the tenure split of this additional affordable housing from 60% affordable rent and 40% shared ownership to 33% affordable rent and 67% shared ownership².

5.2 In summary, the appellant seeks the following modifications to Schedule 23 of the Agreement.

- i. Delete the requirement for each viability review submission to be submitted no later than the number of dwelling occupations specified and replace this with the requirement to submit a viability review submission no later than 40 days following which the cumulative number of dwellings within reserved matters applications reaches the number specified, as set out in Table 4 below (CD2/14, Request 103).

Viability Review Phase	Trigger for submission of each Viability Review Submission (cumulative number of dwellings within reserved matters submissions)
5	2475
6	2975
7	3475
8	4034
9	4534
10	5034

² This request was not included in the appellants proposed modifications table CD2/14, but is included in the appellants revised version of the Agreement updated 2 February 2025 (CD2/21).

Table 4: Appellant's proposed triggers for viability review submissions

- ii. Change the definition of 'Premature Viability Review Submission' to mean that this is a Viability Review Submission submitted greater than 12 months in advance of each of the progress stages specified in Table 4 above and that any Viability Review Submission which is not followed by the submission of the relevant Reserved Matters Application within 12 months shall be resubmitted (CD2/14, Request 104).
- 5.3 The appellant also proposes to delete the requirements to undertake viability reviews within the early phases of the Development (CD2/14, Request 101 - 102). However, it is not clear from the modified version of the Agreement, submitted on 21 January 2025, how many VRP the appellant is now proposing and which VRP would no longer to be the subject of a viability review submission. The following proposed amendments are contradictory:
- i. Schedule 1, new paragraph 10 and 12 - indicates that VRP Two, Three, Four and Five are proposed to be deleted.
 - ii. Schedule 23, new paragraph 2.1 - indicates that there would only be a viability review undertaken for VRP Five – Ten (inclusive) and not VRP Two – Four (Inclusive).
 - iii. Schedule 23, new paragraph 2.2 – indicates that there would be no obligation for a viability review in VRP One, Two and Three.

6.0 Appraisal of the Proposed Modifications

- 6.1 The appellant acknowledges that the provision of affordable housing potentially serves a useful purpose but that the provision of affordable rent tenure within VRP One is "*in the light of current market conditions and operator response*" non-viable. The appellant has not explained what these 'current market conditions' are or what the 'operator response' has been. The Council currently has 255 households living in temporary accommodation and circa 1800 applicants on the Housing Register. There is therefore clear need for affordable rent tenure within the borough and consequently there is no justification for removing the requirement to provide this tenure from VRP One and replacing it with 100% shared ownership units. For this reason, there is also no justification for delaying the construction of the affordable housing in VRP One until 1000 dwellings are occupied and delaying delivery (by transfer to a registered provider of affordable housing) until 1300 dwellings are occupied. There is a need for this affordable housing now.

- 6.2 The proposal to provide all the affordable housing units within VRP One as shared ownership is also problematic because the six affordable housing units on the Jarvis Viability Phase One Land have already been provided as a mix of affordable rent and shared ownership (CD2/14, Request 8).
- 6.3 The appellant states that the modifications would maintain the current minimum affordable housing proportion of 10% (CD2/13, paragraph 6.3), however, this would not be the case in VRP One. This is because the deletion of the requirement to provide extra care housing would result in only 30 affordable dwellings out of a total provision of 1000 dwellings being provided in VRP One which equates to a 3% affordable housing provision. Furthermore, delaying the delivery (by transfer to a registered provider of affordable housing) of the 30 affordable dwellings until 1300 dwellings are occupied, would mean that zero affordable dwellings would be provided within VRP One because VRP One only comprises 1000 dwellings. The modifications proposed by the appellant would result in there being no affordable housing delivered in VRP One, contrary to the appellant's statement.
- 6.4 The timely delivery of the affordable housing in VRP Two to Ten is also essential to meet the local need identified above and to deliver a mixed and balanced community. Delaying delivery of the affordable housing until 95% of the dwellings in each VRP are occupied could result in a significant delay to the delivery of the affordable housing, with between 100 and 120 additional market dwellings allowed to be occupied before the affordable housing is provided (depending on the VRP).
- 6.5 The Council has proposed a modification by agreement that the tenure split of the affordable housing to be provided on the Site could reflect the requirements of Local Plan policy HOU1. There has been some ambiguity about what this split would be when a below policy requirement of affordable housing is to be provided. The appellant in their revised draft of the Agreement, updated 21 January 2025, has set this out as 33% affordable rent and 67% shared ownership. The Council agrees that the 33%/67% split reflects policy HOU1.
- 6.6 **Extra care housing** – the applicant states that the extra care housing is “unnecessary” and they have been “unable to find a provider”. However, the appellant has not provided any evidence to support these claims. As evidenced in Section 3.0 above, there is a need for extra care housing for older persons in the borough.
- 6.7 The Agreement would retain the opportunity to provide extra care housing in future phases of the Development if a viability review submission concludes that it is viable to do so. However, this would only be an option and not a requirement and with the appellants proposed modifications to delete VRP Two

to Four/Five (inclusive) would rule out the provision of extra care housing within the early Main AAP Phases of the Development meaning that the opportunity (subject to viability) for the Development to contribute to the County Council's identified need by 2031 would be lost. The Agreement also specifically prevents extra care housing from being provided within the initial 10% affordable housing provision. Consequently, it is highly unlikely that the proposed modifications would result in extra care housing being provided as part of the Development at all despite there being a clear need.

- 6.8 **Viability review mechanism** – the appellant seeks to remove the requirement to undertake a viability review for VRP Two, Three and Four (albeit as outlined above, their proposal is not totally clear) and proposes to change the timescales within which a viability review will take place.
- 6.9 The Council is of the view that it is too early in the delivery of the Development for it to be established that only 10% affordable housing provision can be afforded in VRP Two, Three and Four. The Agreement currently states that the earliest point that it would be appropriate to establish this would be at 500, 1200 and 1800 dwelling occupations respectively. The deletion of VRP Two, Three and Four would result in circa 46% of the Development (2624 dwellings) being constructed with only 10% provision of affordable housing – or 263 affordable dwellings. This number would be further reduced to 193 if the proposal to delete the requirement to provide 70 extra care units was included in the figures.
- 6.10 The appellant states that the current viability review mechanism in the Agreement is “*artificially restricting bringing forward different areas of the Development, inhibiting the Appellants from entering partnerships/agreements to increase delivery, working against ensuring value growth and undermining the overall deliverability of the Scheme*” (CD2/14, request 103). However, no evidence of these challenges the appellant states that they have encountered has been provided and consequently it is not clear what, if any, obstacles the Agreement is creating.
- 6.11 The Council is of the view that the proposed alternative triggers for a viability review submission would mean that a viability review would be submitted at too early a stage in the delivery of the relevant VRP to determine that there is insufficient viability within the scheme to deliver the required affordable housing.
- 6.12 Reserved matters applications can be submitted many years before dwellings are occupied, given the timescale required to determine the applications, start and then complete construction on-site. Within the time lag between the submission of reserved matters applications and occupations on site the inputs by which a viability review is undertaken could have changed significantly, for example, sales values could have increased. Also, noting that the timescale for

the submission of reserved matters applications is determined via conditions attached to the Outline planning permission.

- 6.13 The appellant has, in January 2025, submitted all their reserved matters applications for land parcels in Main AAP Phase 2. This is to comply with Condition 5 of the outline planning permission which required all reserved matters submissions for Main AAP Phase 2 to be submitted no later than the 6 January 2025 (CD6/3). This means that the appellant has submitted reserved matters applications for a total of 2625 dwellings (Main AAP Phases 1 and 2 combined). Under the appellant's proposed modification, the viability review submission for VRP Five should now be submitted because the cumulative total number of dwellings in reserved matters submissions is now more than 2475 - the appellant's proposed trigger for submission. If a viability review is submitted now, it could only be based on the costs associated with the circa 370 dwellings currently complete and occupied. This would not provide an accurate reflection of the costs associated with construction and the sales values likely to be achieved many years into the future of the Development.

Viability

- 6.14 The primary reason put forward by the appellant for the modifications proposed to the affordable housing obligations is that the timescales for the delivery of the obligations and the tenure mix required are 'adversely affecting their cashflow and compromising the viability of the Development'.
- 6.15 For the reasons set out in the Council's legal submissions, it is not accepted that viability is relevant to the tests which need to be applied when considering the appeals, the Council's 'Viability' Proof of Evidence will, however, present the Council's case in respect of the substantive viability issues; therefore, this Topic Paper does not respond to this point.

7.0 Conclusion

- 7.1 The Agreement currently secures the delivery of a minimum of 10% affordable housing across ten phases of the Development and requires the viability of the Development to be reviewed at nine stages throughout the delivery of the Development to ascertain whether additional affordable housing can be provided to achieve a policy compliant development.
- 7.2 The obligations serve a useful purpose because they will ensure that affordable housing to meet the needs of the community will be provided in a timely manner and a mixed and balanced community will be established. The provision of affordable housing within the Development is also essential to good placemaking for a development the size of Chilmington Green.

- 7.3 The modifications proposed to the obligations would not serve that purpose equally well because a reduction in the amount of affordable housing to be provided on the Site and a delay in the delivery of affordable housing that would be provided would result in a deficit in the provision of affordable housing relative to need and a development where affordable housing is not well integrated with the market housing.