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**Proof of Evidence – Planning of Mr John
Collins, MBA, BA(Hons) MRTPI**

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

**APPEAL REF: APP/W2275/Q/23/3333923 &
APP/E2205/Q/23/3334094**



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1 INTRODUCTION

1.1 QUALIFICATIONS

- 1.1.1 My name is John Andrew Collins. I am a Planning Director with DHA Planning based in Maidstone, Kent. I have worked for DHA in that role for approximately 24 years and have worked extensively within the Kent & Medway area during that period.
- 1.1.2 Prior to that time, I was Group Manager - Development Control at Southend on Sea Unitary Borough Council (now a City Council); a post I held for approaching four years, and before that I worked at both a Borough and City Council as well as a Chartered Surveying Practice in Central London.
- 1.1.3 I have a BA. Hons in Town & Country Planning and a Masters in Business Administration and have been a Member of the Royal Town Planning Institute since 1987. In 2020 to 2022 I served on the General Assembly and Education Committee of the RTPI.
- 1.1.4 I am familiar with the appeal site, having been first instructed by the Appellants in early 2024. I have worked extensively in Ashford Borough Council's (ABC) administrative area, including on behalf of the Council on major projects.

1.2 EXECUTIVE SUMMARY

- 1.2.1 This Proof of Evidence (PoE) has been prepared in support of the Appeal(s) (Ref APP/W2275/Q/23/3333923 & APP/E2205/Q/23/3334094) submitted by my client Hodson Developments (Ashford Ltd) (the "Appellant") in respect of Ashford Borough Council (the "Council") and Kent County Council ("KCC") against the failure to determine applications to modify or discharge obligations contained in the S.106 agreement dated 27th 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) regarding the extant development at Land at Chilmington Green, Ashford Road, Great Chart, Ashford, Kent (the "Appeal Site").
- 1.2.2 It is extremely difficult summarising the case presented due to its complexity and the amount of detail provided. In short, the Appellants case is that the nature of the obligations, their timing and scale is prejudicing the viable delivery of the Chilmington Green scheme. The Appellant's have been doing everything in their powers to ensure that they can progress matters but that is simply proving to be extremely challenging without some discharge and modifications occurring. This Appeal seeks to achieve those changes that are necessary to allow all parties to achieve their ambitions for the site.

- 1.2.3 The Appellant submitted an application to ABC on 20th October 2022 to discharge and/or modify multiple obligations pursuant to the s.106 agreement dated 27th February 2017. By October 2023 the application remained undetermined and on 17th October 2023, the Appellant submitted an appeal to the Planning Inspectorate ("PINS") against the Council's non-determination of the application. PINS made the appeal valid on 5th July 2024 and at the same time requested additional documentation from the Appellant. This was submitted by the Appellant and PINS issued the appeal Start Letter on 5th November 2024. This Proof of Evidence should be read alongside the application documents and those submitted at the time of the appeal and subsequently.
- 1.2.4 As further summarised below, a number of factors have adversely affected the delivery and viability of the Development in an acute and critical fashion, including significant planning delays, delays in getting utilities and electricity to the site, reconstitution of the development model and a reduced build rate, as well as the consequences of the uncertainties surrounding nutrient neutrality requirements and the Covid-19 pandemic.
- 1.2.5 The combined effect has been to invalidate many of the cost assumptions on which the s.106 agreement was based. Most, if not all, were outside the Appellant's control.
- 1.2.6 The net effect is that the build rate originally envisaged to be some 300 units per year (as set out in the original Environmental Statement and Planning Statement) is at most some 150 units. The Main Phase 1 (originally expected to complete within 5 years of an earlier start date) is not now expected to be completed until 2031.
- 1.2.7 In short, the s.106 agreement was for a fundamentally different delivery mechanism comprising a consortium of developers, rather than the scenario that has arisen with HD now acting as the sole master developer. As a result, therefore: i) the Appellant seeks a range of modifications and/ or discharge of various obligations under the s.106 agreement; ii) the modifications and/ or discharge of obligations are necessary in order to address critical viability and deliverability challenges that have arisen as a result of a range of circumstances beyond the Appellant's control; and iii) the proposed changes would assist viability and by so doing would enable delivery of the Development and wider scheme.
- 1.2.8 The s.106 Agreement contains numerous and substantial obligations. It distinguishes between 'Positive Planning Obligations to Pay'/'Positive Planning Obligations to Provide and/or Construct' and Negative Planning Obligations. The Positive Planning Obligations require numerous financial contributions to be paid to ABC and KCC.
- 1.2.9 The nature of the changes to the s.106 agreement sought by the Appellant can be summarised as follows:
- (i) Resulting from circumstances outside of the Appellants control that critically present viability/deliverability challenges; and

- (ii) Seeking consequential changes to the s.106 to enable delivery of the development and wider scheme.

1.2.10 The Appellant therefore seeks a range of modifications and/or discharge of various obligations under the s.106 agreement.

1.2.11 In many instances, the Appellant is seeking to defer (rather than remove or avoid) obligations to deliver infrastructure to align with demand and/or making provision dependent upon meeting basic performance criteria or upon actual need. A summary of the current s.106 provisions and a detailed explanation and justification for the changes sought to the s.106 is provided in Section 4 of this PoE.

1.2.12 This Statement seeks to demonstrate through evidence how and where changes are required to ensure the deliverability of the Development so that it can come forward to meet ABC's housing needs.

1.2.13 In seeking to vary modify/amended s.106 obligations there are two key tests:

- (i) Whether the obligation "no longer serves a useful purpose".
- (ii) Whether the relevant obligation "continues to serve a useful purpose but would service that purpose equally well" if it had effect subject to a proposed modification.

1.2.14 ABC have set out in their Statement of Case (SoC) that they believe viability is not a test or consideration under s.106A(6) or section 106B of the Town and Country Planning Act 1990 (as amended) ("TCPA"). ABC state:

"If a development cannot be viably delivered that does not mean that its governing obligations do not serve a useful purpose. That purpose is to regulate the development if it proceeds, and the useful purpose of an obligation is in no sense contingent on the absence of an adverse effect on the delivery of the regulated development..."

Therefore, the fact that the development does not or cannot proceed for viability reasons, has no bearing on the purposes for which the obligations were sought and viability does not bear on any of the four questions which must be considered under section 106A(6)".

1.2.15 KCC have stated the same suggesting that the only mechanism for the changes sought would be through a new planning permission.

- 1.2.16 It is my own position that it is patently clear that viability must be able to be part of the determination of whether or not an obligation serves a useful purpose. If for example an obligation does make a scheme unviable, but the scheme would remain acceptable without the obligation, or indeed if the obligation was delivered in a different way that aided viability, then it is clear that viability must be concluded to bear on the questions to be considered under Section 106 A (6). Legal Submissions will be made on this matter at the Inquiry.
- 1.2.17 Consideration also needs to be given to the effect of each obligation in combination with others beyond just that cumulatively they are not viable. For example, the requirement for a bond by 400 occupations could hold development up indefinitely. In the meantime, there are obligations to make education contributions by specific dates. We are therefore in an extremely unhelpful position whereby development might not be able to proceed, but payments are required to mitigate the impacts that are not taking place. An example of this is monitoring. Hodson Developments have paid £200k in Quality Monitoring costs and only delivered 360 dwellings on site. It is understood there have at most been a handful of "monitoring visits" and in these circumstances it is considered that this arrangement does not serve a useful purpose.
- 1.2.18 In any event, as I explain below with reference to the work of Quod, the scheme is not viable and deliverable with the current s106 drafting and its combination of financial obligations, calculation methodology and timing restrictions in the s.106 that affect viability and deliverability of the scheme.
- 1.2.19 What the Appellant's team have sought to achieve are modifications and deletions that will enable the same scheme to be delivered in a viable way, with the delivery of those community facilities and infrastructure that are necessary to achieve the high quality sustainable environment that all parties are striving to achieve.
- 1.2.20 It is the collective effect of the clauses of the s.106, that do not serve a useful purpose (or could serve the same purposes if modified) because they inhibit the ability of the developer to deliver the project.
- 1.2.21 The Appellant team has demonstrated through the evidence submitted that provided peak debt levels can be reduced in accordance with the variations and deletions requested, the scheme is viable and can be delivered by the Appellant and will ultimately prosper in a way that should, all being well, offer the opportunity in later Review Phases to increase the Affordable Housing provision, whilst ensuring the delivery of all essential infrastructure.

1.3 CONTEXT TO THE APPEAL

- 1.3.1 An Application for outline planning permission was submitted to Ashford Borough Council in August 2012 for the following development:

A mixed-use development comprising:

- Up to 5,750 residential units, in mix of sizes, types and tenures.
- Up to 10,000m² (gross external floorspace) of Class BI use.
- Up to 9,000m² (gross external floorspace) of Class A I to AS uses.
- Education (including a secondary school of up to four primary schools of up to 2.lha each).
- Community Uses (class 01) up to 7,000m² (gross external floorspace).
- Leisure Uses (class 02) up to 6,000m² (gross external floorspace).
- Provision of local recycling facilities.
- Provision of areas of formal and informal open spaces.
- Installation of areas of appropriate infrastructure as required to serve the development.
- Transport infrastructure, including provision of three accesses to the A28, an access to
- Coulter Road/ Cuckoo Lane other connections on the local road network, and a network of
- internal road, footpaths and cycle routes.
- New planting and landscaping.
- Associated groundworks.

1.3.2 ABC resolved to grant outline planning permission at its planning committee meeting on 15th October 2014. However, it was not until a decision dated 6th January 2017 that outline planning permission was actually granted by ABC (Ref: 12/00400/ AS, the "Outline Permission 1").

1.3.3 The s.106 agreement was entered into by Hodson Developments (HD) with ABC and KCC on 27 February 2017 in respect of the Outline Permission (CD1/14). A plan showing the area which has the benefit of the Outline Permission and which is bound by the s.106 agreement was attached at Annex 1. The s.106 agreement was also entered into by other developers with an interest in part of the Site.

1.3.4 I consider it of note that the Core Strategy envisaged 7,000 dwellings and the ambitions for Chilmington Green were modelled on this. However, whilst the

overall scale of development was reduced to 5750 dwellings, the ambitions were not. The loss of 1250 dwellings are a one of the fundamental reasons why the scheme now has the viability issues that it does.

- 1.3.5 Deeds of variation of the s.106 Agreement have been entered into on 29 March 2019 and 13 July 2022 and February 2023. These are provided in CD1/15-17
- 1.3.6 The circumstances that have compounded the issues with the drafting of the s.106 (combination of financial obligations, calculation methodology and timing restrictions) are summarised below:

Planning Delay

- 1.3.7 In addition to the lengthy delay between submission of the application, resolution to grant consent and the issue of the decision notice there have been other further planning delays.
- 1.3.8 An application was submitted by the Appellant to ABC on 20th August 2020 to seek to address viability issues by consequence of the Development not progressing as envisaged by the s.106 agreement. This application requested 55 modifications to the s.106 but was refused by ABC in October 2020. The Appellant challenged the decision by judicial review (CO/ 4435/2020) on the basis that ABC had not had regard to certain evidence submitted in support of the application, including evidence on viability. Permission to proceed with a challenge was granted by the High Court, but the judicial review was settled by a consent order sealed on 23 April 2021.
- 1.3.9 In April 2021, the Appellant submitted a new application under s.106A to ABC and KCC (with some minor changes from its earlier application, including a request for two additional variations). The new application was refused by a letter dated 17 November 2021, with the following summary of the Decision:

"In summary, ABC and KCC agree to 6 of the Requests entirely and agree to 5 of the Requests in part. ABC and KCC do not agree to the other 46 Requests, but in some instances, ABC and KCC have proposed different modifications which Hodson is invited to agree."
- 1.3.10 The Appellant again sought to challenge that decision by judicial review (CO/ 4125 / 2021), which was refused permission.
- 1.3.11 As to the delays caused by the Stodmarsh nutrient neutrality issue the Appellants prepared and submitted an application for a wastewater treatment works (WwTW). That application took over 12 months to be reported to committee and notwithstanding a recommendation that planning permission be granted it was refused. With the nutrient neutrality issue as it is, the Appellants were forced down the Appeal route. Whilst that decision was positive there was nevertheless extensive delays (Appeal decision if provided in CD8/2).

- 1.3.12 Notwithstanding the fact that the WwTW has been granted ABC have not progressed any of the reserved matters applications.
- 1.3.13 It should be noted that alongside the WwTW Appeal the Appellant had negotiated with ABC a scheme of fallowing to enable them to bring forward 357 dwellings in the meantime. This relies upon the use of land in future phases of Chilmington Green to be fallowed. Again, notwithstanding the fact that statutory consultees are satisfied with the proposals they also remain undetermined.
- 1.3.14 It is my opinion that ABC are taking a different approach to Natural England in respect of fallowing, which is further unnecessarily delaying the delivery of housing and further undermining the viability of Chilmington Green. ABC will not agree to the use of fallowing in the absence of confirmation of the ultimate capacity that the WwTP will be able to achieve. This is unduly cautious and restrictive to the progress of the development.
- 1.3.15 Natural England (NE) consider that, provided the land to be fallowed could remain so in perpetuity if the WwTP did not happen, there is no need to have confirmation of details of the preferred long-term solution to achieve nutrient neutrality. In this way it is recognised that the bringing forward of fallowing can ensure the delivery of housing whilst the details, consents and commissioning of a preferred permanent solution are being progressed. HD and NE are agreed that the land to be fallowed would not compromise the ability of Hodson Developments to meet any of its current requirements within Main Phase 1 of Chilmington Green, however, because a lot of the proposed fallow land is where Discovery Park will be brought forward, ABC will not agree to the scheme without an alternative nutrient neutrality solution also being confirmed. ABC's approach overlooks the fact that if the WwTP is not delivered then Chilmington Green will not progress and therefore Discovery Park will also not be progressed. Again ABC are unduly cautious.
- 1.3.16 The applicant has provided ABC with examples of fallowing schemes secured elsewhere, with the support of Natural England and the Local Planning Authority. These are identical to that proposed at Chilmington Green in that they utilised land in future phases that could not come forward until a strategic solution was identified and delivered for fallowing. In these cases, the proposals were secured by simple planning condition(s) and an agreed timeframe by which an alternative solution needed to be brought forward if the fallowing was not to become permanent. In one example, the timeframe was 25 years. However, the Council has taken the view that the only appropriate way to secure the fallowing would be through an additional s106 agreement(s) attached to the Reserved Matters Approval. Consequently, this is introducing yet further cost and delay, which is clearly unnecessary and detrimental to the delivery of Chilmington Green.
- 1.3.17 Due to the wording of conditions 2 and 5 my client has needed to submit further reserved matters applications meaning there are now some 20 plus sitting with ABC. Indeed, Reserved matters applications for a total of 745 dwellings have remained undetermined since their submission in January 2023. It was

accepted at the recent Public Inquiry for Possingham Farm that ABC have not approved any applications at Chilmington Green in the last three year period.

- 1.3.18 The consequential effect of the delay has been an increase in build costs, compounding effects of indexation, increased borrowing costs and significant planning costs long before required.

Application No.1

- 1.3.19 In order to address continued delays and associated issues in progressing the Development, a further application was submitted to ABC and KCC under s.106A on 4th May 2022 (" Application No. 1").
- 1.3.20 The focus of Application No. 1 was the removal of the requirement to present Viability Review Submissions for viability review phases 2, 3 and 4 of the Development. Through Application No. 1, the Appellant proposed the discharge of each of these viability review submissions on the basis that the viability could not support any additional Affordable Housing requirement and that this should be limited accordingly to minimum 10% provision.
- 1.3.21 By letter dated 30th June 2022, and despite having received Application No. 1 some 8 weeks earlier and having failed to raise any concerns as to validation during the determination period, ABC asserted that Application No. 1 was invalid.
- 1.3.22 By letter dated 20th October 2022 sent on its behalf, the Appellant set out its primary position that Application No. 1 was and remained valid, before then setting out the Appellant's position in respect of each alleged flaw. The Appellant requested that ABC proceed to validate Application No. 1 without further delay.

Application No.2

- 1.3.23 Under cover of the same letter dated 20th October 2022, the Appellant submitted to ABC and KCC a further application to discharge and/or modify various obligations under the s.106 agreement, which not only repeated a number of the requests made under Application No. 1 but also requested further modification and/or discharge, as well as providing some of the further information that had been requested by ABC in respect of Application No. 1 (" Application No. 2").
- 1.3.24 Application No. 2 was essential to enable permitted development at this strategically important site to be brought forward. The variations proposed by Application No. 2 are designed to ensure that a deliverable scheme comes forward, creating a positive and lasting legacy for Ashford, consistent with the original Vision for Chilmington Green.
- 1.3.25 Application No. 2 comprised (and was supported by) (together the " Application No. 2 materials"):

- (a) Application No. 2 and Annex A (and Appendices A1 and A2 thereto), which explained the need for the changes and detailed the variations sought (modification and/ or discharge) and the reasons for each;
 - (b) Viability Report dated April 2022 and appendices (prepared by Turner Morum, the "Turner Morum Viability Report") in support of Application No. 1 (as previously submitted) (Annex B), which uses the template set out in a schedule to the s.106 agreement;
 - (c) Explanatory Statement and appendices dated 18 October 2022 (prepared by Quod, with contributions from Vectos in respect of traffic obligations), which provided further justification for the requests made as part of the application;
 - (d) Viability Report prepared by Quod and appendices dated October 2022 (the "Quod Viability Report"), which included new viability (baseline and sensitivity) analyses and which assesses the viability of the whole scheme.
- 1.3.26 The viability reports provide a robust and transparent viability case that the obligations contained within the s.106 agreement are excessive and need to be varied to ensure the viability and deliverability of the Development.
- 1.3.27 The viability reports establish that provided peak debt levels can be reduced in accordance with the variations requested, the scheme can be delivered by the Appellant and will ultimately prosper in a way that will offer the opportunity in later Review Phases to increase the Affordable Housing provision, whilst ensuring the delivery of all essential infrastructure.
- 1.3.28 In many instances, the Appellant is seeking to defer (rather than remove or avoid) obligations to deliver infrastructure to align with demand and/ or making provision dependent upon meeting basic performance criteria or upon actual need and such that the amended obligations would continue to service the intended planning purpose equally well.

The Settlement Agreement

- 1.3.29 The Appellant entered into a settlement agreement with ABC on 10 February 2023 in order to provide ABC with additional time to consider Application No. 2 and, it was hoped, to facilitate modification and/or discharge by agreement. However, no progress was made and the prohibition on lodging an appeal set out in that agreement has expired.
- 1.3.30 Application No. 2 was not therefore determined by ABC within the statutory determination period (as extended).

Non-determination by KCC

- 1.3.31 Under cover of a letter dated 15 August 2023, the Appellant resubmitted Application No. 2 to KCC. However, KCC has failed to determine the application within the statutory time period.

Other matters outside the Appellants Control

- 1.3.32 In addition to the significant planning delays experienced by the Appellant there are a number of other adverse events that have occurred that have affected the delivery of the Development:
- Delays in getting utilities and electricity to the site
 - Reconstitution of the development model and a reduced build rate
 - Delay and uncertainty surrounding nutrient neutrality and the Covid-19 pandemic
 - Significant increases in build costs compared to sales values
- 1.3.33 Combined these have compounded the issues in the drafting of the s.106, which was compiled at a time before any of the above issues occurred or were known about.
- 1.3.34 The consequential effect has been an increase in build costs, compounding effects of indexation and increased borrowing costs.

Summary

- 1.3.35 The combination of financial obligations, calculation methodology and timing restrictions in the s.106 as drafted has negatively affected the viability and deliverability of the Development. These have been further compounded by planning delays, utility delivery delays, nutrient neutrality, Covid-19 and a significant increase in build costs at a time of cooling of the residential market.
- 1.3.36 It is my view that it is no one clause but the collective effect of the clauses of the s.106 that do not serve a useful planning purpose (or would serve the same purpose equally if modified) as currently drafted because it affects the ability of the development to be delivered.
- 1.3.37 The Appellant has demonstrated through the evidence submitted that provided peak debt levels can be reduced in accordance with the variations requested, the scheme can be delivered by the Appellant and will ultimately prosper in a way that will offer the opportunity in later Review Phases to increase the Affordable Housing provision, whilst ensuring the delivery of all essential infrastructure.

- 1.3.38 In many instances, the Appellant is seeking to defer (rather than remove or avoid) obligations to deliver infrastructure to align with demand and/ or making provision dependent upon meeting basic performance criteria or upon actual need and such that the amended obligations would continue to service the intended planning purpose equally well.
- 1.3.39 It is a fact that the majority of infrastructure contained within the original agreement will still be delivered to serve its useful purpose. While it is requested to remove certain obligations, these are in general requested to simplify the process of delivery in order to reduce capital costs. Only where it is considered that facilities do not provide a useful purpose are they requested to be removed in their entirety.

1.4 EVIDENCE GIVEN BY OTHERS

- 1.4.1 In reaching my conclusions, my evidence draws on the expert evidence of:
- Viability by Chris Wheaton of Quod
 - Highways and transport by Ian Dix of SLR Consulting
 - Education by Ben Hunter of EFM Ltd
- 1.4.2 My proof of evidence is further supported by the following suite of appendices:
- Appendix I A Statement of Fact produced by Hodson Developments regarding funding and financing.
 - Appendix II A composite Table of s106 modifications sought including responses from ABC and KCC and my own in turn
 - Appendix III Letter from Man Group evidencing the constraints they have experience trying to deliver affordable housing on the site.
 - Appendix IV Marketing evidence in respect of the commercial floorspace
 - Appendix V Brookbank Cost Reports
 - Appendix VI A letter from SPF a financial broker evidencing the inability for the scheme to be able to secure bonds.
 - Appendix VII Housing Building Federation publication evidencing the national difficulty securing affordable housing associations.
 - Appendix VIII Possingham Appeal Letter

- Appendix IX – Kent County Council commentary publication extract
- Appendix X – Romans Group email

1.5 DOCUMENT STRUCTURE

1.5.1 My evidence is structured as follows:

- Section 2: The Site & Background
- Section 3: The Appellants Case
- Section 4: s.106 Schedule of Proposed Changes
- Section 5: Summary and Planning Balance

2 THE SITE & BACKGROUND

2.1 THE SITE & CONTEXT

- 2.1.1 Chilmington Green is a strategic urban extension located to the south of Ashford town centre that is proposed to deliver up to 5750 homes; a district centre; two local centres; a secondary school; four primary schools; shops; healthcare; sports and leisure facilities; and, significant areas of public open space, including a strategic park. The ambition is for Chilmington Green to be an exemplar Garden Suburb.
- 2.1.2 The Site is bounded to the west by the A28 which is a main arterial road between Tenterden and Ashford, from which access to the M20 (J9) is gained to the north-west of the Site. There is a network of 'C' and unclassified rural roads which run through the Site.
- 2.1.3 The development at Chilmington Green is primarily guided by the Chilmington Green AAP 2013 ("the AAP") which forms part of Ashford's Development Plan. The AAP is supported by a Policies Map (AAP page 129).

2.2 PLANNING POLICY

- 2.2.1 This PoE will refer as necessary to the following policy and guidance in demonstrating that the relevant tests either have or have not been met.
- 2.2.2 The relevant elements of the Development Plan for Ashford are:
- (i) the Ashford Local Plan 2030 (adopted February 2019) (CD4/1)
 - (ii) the Chilmington Green AAP (adopted July 2013) (CD4/2)
- 2.2.3 There are no Neighbourhood Plans relevant to the Site.
- 2.2.4 The Ashford Local Plan sits alongside the Chilmington Green AAP as part of the Development Plan and many of the policies within the AAP are consistent with the policies of the Local Plan which sets out the planning policy for the wider borough. I have referred to both the relevant AAP policies and the aligned Local Plan policies in respect of the proposed modifications where relevant.
- 2.2.5 I am in agreement with the Council that the following policies are of relevance to the Appeal:

Chilmington Green AAP

- CG1 Chilmington Green Development Principles
- CG3 The District Centre and High Street Character Area
- CG8 Meeting the Recreational Needs of Chilmington Green
- CG9 Discovery Park
- CG10 Developing a Community
- CG11 Highways and Access
- CG12 Public Transport
- CG13 Cycling and Walking
- CG16 Indoor Sports & Community Leisure Provision
- CG17 Social and Community Facilities
- CG18 Provision of Affordable Housing
- CG19 Sustainable Design and Construction
- CG20 Sustainable Drainage
- CG21 Ecology
- CG22 Phasing, Delivery and Implementation

- 2.2.6 As I have previously set out, one significant difference of opinion between the parties is whether viability can be a reason for concluding that an obligation does not serve a useful purpose.
- 2.2.7 Policy COM1 of the Local Plan states that infrastructure and facilities required to meet the needs generated by new development will be provided. Other needs will be delivered in liaison with the relevant stakeholders and service providers to ensure that the provision is supplied in a way that meets their requirements and supports sustainability.
- 2.2.8 Policy IMP1 iterates that development shall make provision to meet the additional requirements for infrastructure arising from the development, where it is justified to do so in line with the NPPF and Community Infrastructure Levy Regulations 2010 (CIL Regs).

- 2.2.9 Policy IMP2 states that viability evidence resulting in deficits of contributions may be allowed, and in such an event deferred contributions through 'clawback' clauses in legal agreements will be sought to retrieve funds if the viability of a development improves.
- 2.2.10 Having considered the Council's AAP and the Quality Charter, as well as the adopted Local Plan, it seems to me that the Council's position is at odds with the position expressed in its own documents. While they make clear that viability is an important consideration, and assert that flexibility is essential to ensure delivery, the Council's position seems to have shifted to one where they do not agree with flexibility unless it is in their favour.
- 2.2.11 In respect of viability, it is noted that the AAP at 1.19 -1.24 'Viability' states:

The balance between costs incurred and value created by a development of this scale will vary over time so the net return over as long a period as 25 years is impossible to determine in advance. 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.

This variable link between costs and values has been exaggerated by the recent state of the economy and its impact on the house-building sector. Market conditions since 2008 have been very difficult and opinion varies on how quickly the market will recover and to what level. This is making the early stages of major developments harder to make viable – especially where a cautious view is taken about the longer term market prospects.

To cater for this uncertainty the borough council has adopted a flexible approach elsewhere. This has included re-considering the timing of infrastructure provision; finding cheaper ways to deliver infrastructure; reducing policy requirements and securing other financial help to 'forward fund' infrastructure. In some cases contributions have been deferred to become payable only when development values rise sufficiently to fund the contributions. What is crucial where any such flexibility is exercised is that the impact on the residents who need the infrastructure is kept to the minimum possible.

The starting point for this plan is that all infrastructure contributions justified by the needs arising from the Chilmington Green development will be sought on the normal basis. However, should it be considered that market circumstances indicate that the normal level of infrastructure provision in the initial phase of the development could not be afforded, a site wide viability model will be needed to support any outline planning application. Any viability case will be rigorously tested by independent advisors for the council in order to assess the scale of potential developer contributions that can be delivered in the first phase.

Subsequently, it is expected that separate and updated viability assessments will be carried out in advance of each of the other three main phases of development to take account of economic and market conditions at the time. In all assessments of viability, it will be assumed that the developer consortium has reached a formal equalisation agreement so that the costs of delivering the necessary infrastructure to support the development are spread out between developers and not artificially skewing the viability position within any one phase.

In a situation where a shortfall in the delivery of the infrastructure requirements, including affordable housing, set out in this plan can be justified on viability grounds at any stage in the development, the council will make a decision in conjunction with the relevant service providers to determine the most appropriate balance of infrastructure provision that should be delivered in the prevailing circumstances. The normal approach will be to seek to 'claw back' any deficit in infrastructure provision when the market has improved sufficiently via the council's adopted deferred contributions policy – see Policy CG22".

2.2.12 These principles are captured in Policy CG 22 of the AAP:

POLICY CG22 - PHASING, DELIVERY AND IMPLEMENTATION

"The development of the Chilmington Green area shall be implemented in accordance with the four main phases identified on Figures 18- 21 and the Infrastructure Delivery Plan at Appendix 3, unless it can be demonstrated that

relevant infrastructure is readily available and the development can be adequately serviced.

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 in order to claw back any deficit, should market conditions improve sufficiently.

A degree of overlap between one main phase and another may be acceptable, providing it can be demonstrated that the previous phase of the development has been 'substantially completed'.

Proposals which would deliver unsustainable and isolated development that would require extensive and isolated infrastructure to serve them will not be acceptable".

- 2.2.13 In respect of Chapter 11 of the AAP 'Phasing, Implementation and Quality control' whilst this sets out four broad phases for the development it also clearly states under 'Flexibility within the approach' that:

"Although this section of the AAP clearly indicates a preferred approach to phasing, it is important to ensure that the approach is sufficiently flexible – particularly as the development will take so long to fully build out. The need for plans to be flexible enough to adapt to rapid change is emphasised in the NPPF.

In light of this, it is important to not treat the areas shown under Figures 18 – 21 too rigidly. Although they provide a useful guide as to the areas which could come forward and constitute each 'main' phase of the development, the exact spatial area will be determined through the detailed planning stage (see section B – page 119).

In addition, a degree of overlap between one main phase and another may be acceptable, to allow continuity in the development. Providing the current 'main' phase of the development has been 'substantially completed' – in that the relevant infrastructure has been delivered (as referenced through Appendix 3 of the AAP), or is shortly to be delivered, and most of the development envisaged for that

phase has been completed – then the subsequent 'main' phase of the development could commence.

The precise point at which a 'main' phase would be considered as having been 'substantially completed' should be agreed through the relevant detailed masterplan, for each 'main' phase (see section B).

In addition, there may be exceptional circumstances where the developer wishes to bring forward development located within a later phase to an earlier phase, this will need to be considered against the availability of relevant infrastructure and whether the area in question can be adequately serviced without causing unacceptable impact on the amenities of the existing residents at the time.

Similarly, any delay in the delivery of development from one phase to the next will need to be justified and any impacts appropriately mitigated. At the District Centre for instance, it is not anticipated that the whole of this area will be developed in Phase 1 as some shops and services come forward over the course of the whole development as the resident catchment population increases. As such, the phasing of District Centre itself will need to be flexible to a degree to cater for market pressures to open new shops and services".

2.2.14 Under Infrastructure Phasing the AAP states at 11.35 to 11.37:

"The council's approach to dealing with variations in the viability of the development and its ability to fully deliver all infrastructure requirements at the right time is set out in paragraphs 1.19 – 24 of this AAP. It is acknowledged that a flexible approach may be necessary and, where it can be justified by independent assessment, the deferral of some infrastructure requirements may be considered.

Where this occurs, the application of the council's deferred contributions policy shall seek the subsequent provision of any deferred infrastructure provision, including affordable housing, within the same main phase. If this is not subsequently achieved, then the deferred infrastructure provision shall be provided in the next 'main' phase in addition to the 'normal' requirements of that

phase. If viability concerns remain, a new viability assessment (taking account of previous and future costs and revenues, the 'normal' infrastructure requirements of the next main phase and any outstanding deferred infrastructure requirements) shall be agreed with the council prior to the approval of the first reserved matters for the next main phase of the development and the council's deferred contributions policy re-employed if necessary.

Where this is the case, the council will agree with any relevant service providers (e.g. KCC) which deferred infrastructure should be provided first during that main phase of the development, should any deferred contributions be triggered".

2.2.15 Chapter 12 – Monitoring and review, also states:

"Monitoring the results of the policies contained within this AAP on a regular basis will enable early action to be taken to overcome any barriers to delivery of the Plan's objectives and policies. Borough-wide targets will be broken down and applied to this AAP area, so the contribution to wider targets can be seen on a local scale".

2.2.16 It is my understanding, based on evidence presented at the Possingham Farm Inquiry that ABC have undertaken a review of the Chilmington Green AAP. Notwithstanding the fact that Hodson Developments have made their position clear on viability it is the case that such review was ineffectual with an apparent resistance to change.

The Chilmington Green Quality Charter

2.2.17 The opening paragraphs of the Quality Charter read as follows;

This 'Quality Agreement' has been entered into by the developers at Chilmington Green and Ashford Borough Council. It is not a formal legal agreement but is a statement of intent and a set of practical steps that both parties are committed to. The intention is that these will apply not just to the current developers but also to future house-builders working at Chilmington Green. It will guide progress towards our shared goal of creating a vibrant community and a very special place. The agreement will be reviewed regularly. Any additional development costs arising may need to be reflected in discussions about the overall contributions package so that the project remains viable.

Ashford Local Plan 2030

2.2.18 The following policies are considered relevant.

- SP1 Strategic Objectives
- SP6 Promoting High Quality Design
- HOU1 Affordable Housing
- TRA1 Strategic Transport Schemes
- TRA4 Promoting the local bus network
- TRA5 Planning for Pedestrians
- TRA6 Provision for Cycling
- TRA7 The Road Network and Development
- TRA8 Travel Plans, Assessment and Statements
- ENV1 Biodiversity
- ENV10 Renewable and Low Carbon Energy
- ENV11 Sustainable Design and Construction – Non-residential
- ENV15 Archaeology
- COM1 Meeting the Community's Needs
- COM2 Recreation, Sport, Play and Open Spaces
- COM3 Allotments
- COM4 Cemetery Provision
- IMP1 Infrastructure Provision
- IMP2 Deferred Contributions
- IMP4 Governance of public community space and facilities

2.2.19 The NPPF December 2024 is a material consideration and is referred to as necessary.

- 2.2.20 What is clear from the above is that all of the Ashford Borough Council policies and documents relating to the site acknowledge that viability is a key consideration. In addition, it is clear that the documents referred to acknowledge that flexibility toward the overall contributions package is necessary to ensure the scheme remains viable and deliverable.

2.3 THE PLANNING CONSENT TO WHICH THE S106 RELATES

- 2.3.1 An application for outline planning permission was submitted to Ashford Borough Council in August 2012 for the following development:

- 2.3.2 A mixed-use development ("the Development") comprising:

- Up to 5,750 residential units, in mix of sizes, types and tenures.
- Up to 10,000m² (gross external floorspace) of Class B1 use.
- Up to 9,000m² (gross external floorspace) of Class A1 to A5 uses.
- Education (including a secondary school of up to 2.5ha and up to four primary schools of up to 2.1ha each).
- Community Uses (class 01) up to 7,000m² (gross external floorspace).
- Leisure Uses (class 02) up to 6,000m² (gross external floorspace).
- Provision of local recycling facilities.
- Provision of areas of formal and informal open spaces.
- Installation of areas of appropriate infrastructure as required to serve the development.
- Transport infrastructure, including provision of three accesses to the A28, an access to
- Coulter Road/ Cuckoo Lane other connections on the local road network, and a network of internal road, footpaths and cycle routes.
- New planting and landscaping.
- Associated groundworks.

- 2.3.3 ABC resolved to grant outline planning permission at its planning committee meeting on 15 October 2014.

- 2.3.4 The s.106 agreement was entered into by Appellant with ABC and KCC on 27th February 2017 in respect of the Outline Permission which was accompanied with the outline planning consent for the Development. A plan showing the area which has the benefit of the Outline Permission and which is bound by the s.106 agreement:
- 2.3.5 Deeds of variation of the s.106 Agreement have been entered into on 29 March 2019, 13 July 2022, 10 February 2023 (CD1/15-17).
- 2.3.6 The permission requires the development to be delivered in four key phases as follows:
- Phase 1 – District Centre Phase – community uses include a primary school, community space and c. 1,501 dwellings.
 - Phase 2 – The Central Phase – highway links, primary school and 1,122 dwellings.
 - Phase 3 – The Southern Phase – strategic green link, local centre, primary school and 1,558 dwellings.
 - Phase 4 – The South-eastern phase – second local centre, primary school completion of highway links and 1,570 dwellings.

2.4 CURRENT POSITION OF THE DEVELOPMENT

- 2.4.1 To date, reserved matters approval has been granted for 763 homes, the first primary school and the secondary school. Construction on the development commenced in 2017. 360 homes in Phase 1 have been occupied alongside the first primary school. The secondary school and a further circa 339 homes are currently under construction.
- 2.4.2 Reserved matters applications were submitted in December 2022 and January 2023 for the remainder of the Phase 1 land parcels: - comprising a further 745 dwellings; the district centre; sports facilities; ecological mitigation; flood attenuation and landscaping. The 6th January 2023 was the date by which all reserved matters applications for Phase 1 land parcels had to be submitted in accordance with condition 3 of the Permission. All of these remain undetermined by the Local Planning Authority. Under condition 5 all reserved matters applications for Phase 2 had to be submitted by 6th January 2025. This was duly done. In particular it is important to highlight that the Phase 2 reserved matters applications include all dwellings covered under Viability Review 4 in the s106 agreement. Based upon the rate of housing delivery anticipated by Hodson Developments and set out in the Quod Explanatory Statement, the number of occupations required in order to trigger Viability Review 4 (1800 units) will not be reached for another 4 to 5 years. Until the Viability Review is triggered these applications cannot be determined.

- 2.4.3 In summary, there are Reserved Matters Applications for 1,874 dwellings some of which have already been with the Local Planning Authority for over 2 years and remain undetermined and many more that are likely to remain undetermined for at least another five years due to the provisions within the s106 agreement.

2.5 VIABILITY

- 2.5.1 Quod have now re-run their viability assessment for the site and the following are the key headlines;

- Cashflow – the triggers for s106 financial contributions and works within the s106 agreement have meant that infrastructure and s106 expenditure has grown well ahead of housing delivery.
- Viability – the total infrastructure and s106 costs are £281m (£394m after the finance costs incurred by the Master Developer on s106, infrastructure and fees, excluding land) which compares to the net value created by the delivery of homes and commercial space of £147m. The delivery and sale of homes and commercial space at the site is therefore unable to repay the infrastructure / s106 costs, even before any cost of the land in its existing use or return for the master developer is accounted for. The finance costs add c.40% to the base infrastructure and s106 costs, indicating the scale of impact of the differential between expenditure of these costs and receipts from the sale of development plots.
- Review mechanism – the structure and timescales of the current viability review mechanism are a barrier to engagement of multiple plot developers. The review structure also delays delivery due to the limitations on both the earliest date at which a review can be submitted and the number of homes which can be occupied or commenced prior to its approval.

- 2.5.2 The viability evidence produced by Quod clearly shows that the significant financial burdening and timing/review mechanisms in the s106 demonstrate that the collective obligations of the s106 do not serve a useful purpose as they prevent delivery of the development.

Assumptions made in the viability assessment and assessment for the need for school places

- 2.5.3 One very important matter addressed in the viability evidence of the proportion of flats upon which the assessment of need for school places and viability is to be assessed. The simple reality is that increased parking requirements for houses, the way in which parcels are measured, and the way in which ABC want to see public spaces delivered has impacted on what can be delivered in each phase.

- 2.5.4 At the outset it was envisaged that around 7.3 % of the dwelling units would comprise flats. However, for a combination of reasons, the reality is that the percentage of flats is likely to be around 30%. As would be expected, this has significant implications for viability and the calculation of pupil product for education purposes.
- 2.5.5 In this respect I note that Condition 100 of the host permission only stipulates minimum percentages of 1 and 2 bed flats and a maximum percentages of houses. The precise unit mix therefore remains flexible.

3 THE APPELLANTS CASE

3.1 LEGAL AND POLICY CONTENT

- 3.1.1 Pursuant to s.106 of the Town and Country Planning Act (TCPA) 1990, any person interested in land in the area of a local planning authority may, by agreement or otherwise, enter into a planning obligation which is enforceable by the local planning authority. A planning obligation may inter alia require sums to be paid to the authority on specified dates or periodically.
- 3.1.2 The effect of s.106A (after 30 April 2016) is that modification or discharge of a planning obligation may occur in one of two ways: either (1) by agreement between the appropriate authority (as defined) at any time; or (2) by an application after expiry of the "relevant period". The "relevant period" is five years from the date when the obligation was entered into.
- 3.1.3 Under section 106(6) the two tests which fall to be applied are on a section 106A(3) application are:
- (a) For applications for the discharge of obligations, whether the relevant obligation "no longer serves a useful purpose";
 - (b) For applications for the modification of obligations, whether the relevant obligation "continues to serve a useful purpose but would serve that purpose equally well" if it had effect subject to the proposed modification.
- 3.1.4 In determining an application pursuant to s 106A(3), there are four essential questions (the "Four Questions") to be considered:
- (1) what is the current obligation?
 - (2) what purpose does it fulfil?
 - (3) is it a useful purpose? And if so,
 - (4) would the obligation serve that would the obligation serve that purpose equally well if it had effect subject to the proposed modifications?
- 3.1.5 As this is a case against non-determination my proof seeks to address what I consider most likely to comprise the local planning authority's objections. We have had the benefit of both ABC's and KCC's Statement of case and their summary of comments as contained in Appendix II (and CD2/14). It is clear some progress has been made, but there remain a number of areas in dispute.
- 3.1.6 I do however wish to put on record that the stance of ABC and KCC in this respect is an illustration of how, when flexibility is required (as was envisaged could be the

case in the AAP and Quality Agreement), the LPA's have not engaged positively or proactively to find solutions. This is a matter I return to below.

SUBSTANTIVE CASE FOR THE PROPOSED CHANGES

- 3.1.7 The s.106 Agreement contains numerous and very substantial obligations. It distinguishes between 'Positive Planning Obligations To Pay' / 'Positive Planning Obligations To Provide And / Or Construct' and Negative Planning Obligations. The Positive Planning Obligations require numerous financial contributions to be paid to ABC and KCC.
- 3.1.8 The nature of the changes to the s.106 agreement sought by the Appellant can be summarised as follows:
- Resulting from circumstances outside of the Appellants control that critically present viability/deliverability challenges; and
 - Seeking consequential changes to the s.106 to enable delivery of the development and wider scheme.
- 3.1.9 The Appellant therefore seeks a range of modifications and/ or discharge of various obligations under the s.106 agreement.
- 3.1.10 The combination of financial obligations, calculation methodology and timing restrictions in the s.106 as drafted has negatively affected the viability and deliverability of the Development. These have been further compounded by planning delays, utility delivery delays, nutrient neutrality, Covid-19 and a significant increase in build costs.
- 3.1.11 It is our view that in most cases it is not just the one clause but the collective effect of the clauses of the s.106 that do not serve a useful purpose (or would serve an equal purpose if modified) as currently drafted because it affects the ability of the development to be delivered.
- 3.1.12 It is also the case that ignoring viability, it is clear that some of the obligations do not serve a useful purpose at all and that others can serve the identified useful purpose equally well if delivered via a modified obligation. I have set out below where these scenarios apply.
- 3.1.13 The Appellant has demonstrated through the evidence submitted that provided peak debt levels can be reduced in accordance with the variations requested, the scheme can be delivered by the Appellant and will ultimately prosper in a way that will offer the opportunity in later Review Phases to increase the Affordable Housing provision, whilst ensuring the delivery of all essential infrastructure.
- 3.1.14 In many instances, the Appellant is seeking to defer (rather than remove or avoid) obligations to deliver infrastructure to align with demand and/ or making provision dependent upon meeting basic performance criteria or upon actual need and such

that the amended obligations would continue to serve the intended planning purpose equally well.

- 3.1.15 To summarise therefore, it is the drafting of the s106 together with the circumstances outside of the Appellants control that make the Development unviable and undeliverable. It is not the Development itself that is unviable or undeliverable. The Appellant has provided evidence to support this which demonstrates that through modification of key clauses in the s1.06 which provide flexibility to the calculation methodology and timing of the obligations therein, that the peak debt levels can be reduced, and the retained and amended modifications can continue to serve their useful planning purpose.
- 3.1.16 I have reviewed the relevant Local Development Plan and find this to be entirely compliant with the provisions therein that were expressly incorporated for the situation the Appellant now finds themselves in.
- 3.1.17 The following parts of this section of my PoE provide further details in respect of the issues outside of the applicants control that have compounded the effects of the s.106 clauses as well as key offending clauses themselves which as written make the development unviable and deliverable.
- 3.1.18 As can be seen from the consolidated modifications table in Appendix II, while the Appellant seeks to push back the delivery of many obligations, it is still intended that such obligations will be met. I explain below and in Appendix II why the useful purpose is met equally well for those requests. A large part of the request for the modification is simply to reduce peak debt levels and to ensure that the scheme can be viably delivered. However, for many, it is also the case that pushing back the date of delivery still enables the useful purpose to be met equally well.
- 3.1.19 For some requests the Appellants are asking for the deletion of the obligation. For these requests the Appellants position is that the obligations do not present as useful, as when combined with other obligations they make the scheme so unviable that delivery will inevitably stall.
- 3.1.20 In this respect, I have also looked at whether the obligations concerned are actually necessary to make the development acceptable at all. Clearly if they are not necessary and make the scheme unviable, the common sense conclusion must be that they are not useful at all.

Planning Delays

Delay in issuing the planning permission

- 3.1.21 In addition to the lengthy delay between submission of the application, resolution to grant consent and the issue of the decision notice there have been other further planning delays. It is acknowledged that much of this has been down to the

Stodmarsh Nutrient Neutrality issue, but much is also down to the highly complicated S106 and its very numerous requirements for briefs and consultation with third parties.

- 3.1.22 For example, in respect of Condition 17 of Phase 1, this was submitted in August 2016 but was not validated until March 2017 and not approved until September 2017. If Hodson had been able to start housebuilding in Summer 2017 (as they intended) they would have built/sold more houses before Covid and before Help to Buy was removed, etc. This would have allowed the first houses to start selling houses in Q2 2018. Instead, the first build completion and sale was mid December 2019, three months out from the start of Covid. Unfortunately, ABC has a track record of planning delay, examples of which include the Kingsnorth Appeal against non-determination and Court Lodge application which remains unresolved.
- 3.1.23 One very important principle underlining a number of the requests is therefore to try to simplify the process and remove the current obligations that experience demonstrates present obstacles to delivery of the development. Again, the experience of HD is that such delays cause significant issues with costs of finance while delivering no benefit.
- 3.1.24 The simple reality is that the planning application process provides ample opportunity for consultation and doubling up on processes and requirements is simply not useful. What is evident is that such obligations effectively prevent HD from progressing applications and also serve to stifle HD's ability to take certain matters to Appeal where considered necessary.
- 3.1.25 As to the timeline of applications as referred to, an application was first submitted by the Appellant to ABC on 20th August 2020 to seek to address viability issues by consequence of the Development not progressing as envisaged by the s.106 agreement. This application requested 55 modifications to the s.106 but was refused by ABC in October 2020. The Appellant challenged the decision by judicial review (CO/ 4435/2020) on the basis that ABC had not had regard to certain evidence submitted in support of the application, including evidence on viability. Permission to proceed with a challenge was granted by the High Court, but the judicial review was settled by a consent order sealed on 23 April 2021.
- 3.1.26 In April 2021, the Appellant submitted a new application under s.106A to ABC and KCC (with some minor changes from its earlier application, including a request for two additional variations). The new application was refused by a letter dated 17 November 2021, with the following summary of the Decision:
- "In summary, ABC and KCC agree to 6 of the Requests entirely and agree to 5 of the Requests in part. ABC and KCC do not agree to the other 46 Requests, but in some instances, ABC and KCC have proposed different modifications which Hodson is invited to agree."
- 3.1.27 The Appellant again sought to challenge that decision by judicial review (CO/ 4125 / 2021), which was refused permission.

Application No.1

- 3.1.28 In order to address continued delays and associated issues in progressing the Development, a further application was submitted to ABC and KCC under s.106A on 4th May 2022 (" Application No. 1").
- 3.1.29 The focus of Application No. 1 was the removal of the requirement to present Viability Review Submissions for viability review phases 2, 3 and 4 of the Development. By Application No. 1, the Appellant proposed the discharge of each of these viability review submissions on the basis that the viability could not support any additional Affordable Housing requirement and that this should be limited accordingly to minimum 10% provision.
- 3.1.30 By letter dated 30th June 2022, and despite having received Application No. 1 some 8 weeks earlier and having failed to raise any concerns as to validation during the determination period, ABC asserted that Application No. 1 was invalid.
- 3.1.31 By letter dated 20th October 2022 sent on its behalf, the Appellant set out its primary position that Application No. 1 was and remained valid, before then setting out the Appellant's position in respect of each alleged flaw. The Appellant requested that ABC proceed to validate Application No. 1 without further delay.

Application No.2

- 3.1.32 Under cover of the same letter dated 20th October 2022, the Appellant submitted to ABC and KCC a further application to discharge and/or modify various obligations under the s.106 agreement, which not only repeated a number of the requests made under Application No. 1 but also requested further modification and/or discharge, as well as providing some of the further information that had been requested by ABC in respect of Application No. 1 (" Application No. 2").
- 3.1.33 Application No. 2 was essential to enable permitted development at this strategically important site to be brought forward. The variations proposed by Application No. 2 are designed to ensure that a deliverable scheme comes forward, creating a positive and lasting legacy for Ashford, consistent with the original Vision for Chilmington Green.

The Settlement Agreement

- 3.1.34 The Appellant entered into a settlement agreement with ABC on 10 February 2023 in order to provide ABC with additional time to consider Application No. 2 and, it was hoped, to facilitate modification and/or discharge by agreement. However, no progress was made and the prohibition on lodging an appeal set out in that agreement has expired.

- 3.1.35 Application No. 2 was not therefore determined by ABC within the statutory determination period (as extended).

Non-determination by KCC

- 3.1.36 Under cover of a letter dated 15 August 2023, the Appellant resubmitted Application No. 2 to KCC. However, KCC failed to determine the application within the statutory time period.

Delays associated with services

- 3.1.37 Considerable delays arose in relation to bringing utilities to site; for example, it took two years (and considerable expense) to resolve issues surrounding foul drainage with Southern Water.
- 3.1.38 Due to the delays in the Outline Permission, the electricity capacity applied for Phase 1 had to be forfeited and re-applied for, giving rise to considerable additional expense and delay. The final design and works for securing electricity for Phase 1 of the Development was not budgeted for and entailed taking electricity cables from over 2km from Brookfield Road Primary.

Covid 19

- 3.1.39 A number of Covid-related delays and impacts have occurred, including impacts on construction, borrowing and sales. As to borrowing, for example, the Appellant's revolving facility was placed on hold as a consequence of Covid, meaning that only houses that had already been started could be built out. Total borrowing then fell because of no new starts. New starts only commenced again in July 2020, before a second wave of Covid-19 occurred that again caused borrowing issues. As to sales, the Appellant's selling agent virtually shut down during the first wave, with their representatives in the sales suite being withdrawn and furloughed. Marketing effectively stalled during the first lockdown.
- 3.1.40 Supplies and deliveries also faced difficulties during the first period of the pandemic. Such difficulties gave rise to an up to 10% increase in build costs for that period.

Nutrient Neutrality

- 3.1.41 In July 2020, Natural England ("NE") issued advice to Councils including ABC advising that applications for certain types of development (including housing development) within the Stour River catchment or which discharge to specified wastewater treatment works within the catchment should be the subject of a Habitats Regulations Assessment ("HRA") prior to any decision to grant planning

permission. NE issued this advice because of concerns that discharges within the Stour catchment might have an adverse impact on Stodmarsh (a European designated nature conservation site) through nutrient enrichment.

- 3.1.42 Although most of the Chilmington site lies outside the Stour catchment, foul water from the site is currently discharged to Bybrook which is one of the wastewater treatment works listed in NE's advice.
- 3.1.43 A HRA was not carried out when the Outline Permission was issued because it had been agreed by ABC that it was not required on the basis that the Development would not have a significant effect on any European designated nature conservation sites.
- 3.1.44 This meant that all reserved matters applications were subject to HRA and meeting the requirements of nutrient neutrality. Hodson has since gained planning permission at Appeal for an on-site wastewater treatment works, which will treat the wastewater prior to discharging it a tributary of the River Beult (which lies outside the Stour catchment) (CD8/2).
- 3.1.45 In addition to delay this adds considerable cost to the development anticipated to be around £10M. These costs were not allowed for at the time of the outline planning permission.

Developer reconstitution and access to finance

- 3.1.46 The site was originally promoted by four members of a developer consortium. Initially, it was proposed that the drafting of the s.106 agreement was based on a partitioned agreement where each landowner was only responsible for obligations relating to the land they controlled. Equalisation and roof tariffs were explored, but eventually a form of Escrow was agreed. The complexity of the s.106 agreement meant that it took nearly three years to conclude.
- 3.1.47 Moreover, when the s.106 agreement was being negotiated, the development was modelled on up to 7,000 homes and the relevant parties were a consortium of up to six developers, each planning to build around 60 homes per year, drawing down on land from the landowner incrementally the year before construction. As such, there were no major upfront land costs for any individual party because it was intended that the consortium would split the s.106 and infrastructure costs equally between them.
- 3.1.48 However, on or around September 2016, some 12 weeks from the agreed date for the s.106 agreement to be signed, Hodson took over the land purchases of two of the other three consortium members (with the third member owning only 99 units) and became the sole paying owner under the s.106 agreement. Had Hodson not done so, then the Development would not have come forward at all and would have failed.

- 3.1.49 In effect, Hodson took on a master developer role and, for most practical purposes, sole ownership of the s.106 agreement, which had not been negotiated and/ or drafted on that basis; particularly with regards to exposure to liability for significant upfront costs. This has created considerable challenges in relation to access to finance for a single land owner². The delays summarised above have also added considerable funding costs. See the Hodson Development Statement of Fact in Appendix I for further detail.
- 3.1.50 Further, and in any event, the 'triple locks' in the s.106 agreement are not fit for purpose, as they inappropriately require the Appellant to:
- (a) Secure bonds to guarantee funds well in advance of financial triggers;
 - (b) Deposit funds into a capital account well in advance of financial triggers; and
 - (c) Limit occupations according to Grampian conditions secured in the s.106 agreement (and which Application No. 2 modifies but does not remove).
- 3.1.51 The Appellant's evidence demonstrates that these 'triple locks' were designed for a large consortium of landowners, each bearing a proportion of the financial risk and each paying into a shared capital account to manage the flow of funds between the owners of the obligations and the authorities. It is not possible for the Appellant to secure bonds and forward funding at the required level, primarily as a result of the ongoing viability and delivery challenges. Now that Chilmington Green is being delivered with the Appellant as master developer, such a triple lock mechanism becomes redundant and requires modification to facilitate continued delivery.
- 3.1.52 My own experience of a New Settlement was with the first 10 years of the Kings Hill development in Tonbridge and Malling Borough Council's administrative area. That case involved one master developer but there was the benefit that the landowner was KCC such that not all land had to be bought in one tranche. In addition my experience was that TMBC took a very sensible approach to the high front loading of infrastructure costs. For example, there was no affordable housing within the first 1,000 dwellings and very little in the way of community infrastructure. What was provided in the early stages was a very small toddlers play area, one open space and no community building. The primary school was

² For example, significant borrowing costs have been incurred (over and above those that were assumed for the purposes of the s.106 agreement) due to consolidation of the site under Hodson. In 2005, Hodson bought 36 acres. The rest of the land was optioned by Pentland, Hodson, Barratts and/or owned by Jarvis. Shortly before the s.106 agreement was signed, Pentland and Barratts chose not to proceed with purchasing their options. In order to avoid the scheme collapsing, Hodson held talks with Pentland and Barratt in order to put together a funding package with financiers to enable Hodson to take over the three positions. Part of the transaction provided that Barratts would buy back 500 plots in three tranches (over three parcels of land). Although the first parcel has been completed, Barratts did not complete on the other two because the s.106 agreement operates so as to restrict reserved matters planning before viability provisions have been dealt with.

built as a one form entry albeit the design was able to easily accommodate extensions to provide two form entry.

- 3.1.53 In that case the LPA relied on the fact that the master developer needed to create a postcode that would have a higher value in terms of property sales which all parties knew could only be achieved by high quality place making. Research of the Parish Council's website and a visit to Kings Hill reveals a community that now has community facilities, sports and play facilities, shops and two supermarkets as well as a pub, restaurants and other facilities.
- 3.1.54 These are matters that go to the heart of whether the variations to the obligations serve the useful purposes equally well.

Costs

- 3.1.55 I am aware that Mr Howson of Brookbanks has looked at the specific costs of certain elements of the scheme and how these are impacted by indexation. This work has demonstrated that a modified hub of similar size to the existing hub can be provided for £2m. If the provisions in the S106 are pursued, the costs are £5,152,127 plus indexation from 2014. This takes it to £7,882,754.
- 3.1.56 This is just one example of how indexation is causing viability issues.
- 3.1.57 In respect of primary school 2, Brookbanks have also looked at the figure that would be reached for a school were indexation applied from 2014 and 2018. If the base date for indexation is moved to 2018 the figure provided would be £7.92M. Brookbanks have demonstrated that using a reasonable and realistic range of costs the project would be delivered within that overall budget figure. This therefore evidences the case that it is appropriate to amend the indexation base date from 2014 to 2018.
- 3.1.58 In respect of the Discovery Park Sports Hub, the s106 states that cost should not exceed £4, 976,157 indexed from 2014. Brookbanks have again looked at indexation for this figure from 2018 which would give a current figure of £5,971,388. The report then confirms that using a range of prices the facility can be provided within the proposed amended budget.
- 3.1.59 In respect of the Discovery Park Sports Pitches, the s106 provision states that costs should not exceed £2,782,000 indexed from 2014. Brookbanks have again looked at indexation for this figure from 2018 which would give a current figure of £3,338,400. The report then confirms that using a range of prices the sport pitches can be provided within the proposed amended budget.
- 3.1.60 The detailed reports are provided in Appendix V.

Viability and affordable housing provision

- 3.1.61 Delivery of Chilmington Green has been acutely challenging financially, both in overall and cashflow profile terms. In large part, that has arisen from the unsuitable front loading of infrastructure in circumstances that undermines viability and threatens delivery.
- 3.1.62 In October 2014, the Planning Committee report confirmed that officers, supported by specialist advice, were in agreement that the scheme could provide no more than 10% affordable homes in total. Even at that early stage, it was acknowledged the front-loaded cost profile of the required infrastructure and that viability would only have the potential to improve when the place had become established and sales values grew.
- 3.1.63 The viability review dated May 2022, Turner Morum found that a substantial shortfall against reasonable return targets continued to exist for Review Phases 2, 3 and 4.
- 3.1.64 The inherent viability challenges (some of which are common to all schemes of a similar scale), have been compounded by the challenges to delivery summarised above.
- 3.1.65 The Appellant's evidence demonstrates that a number of particular issues have arisen in light of these viability challenges as follows:
- (1) the limited delivery to date means that sufficient critical mass has not been achieved to secure the targeted 'placemaking' value growth, which in turn means that the originally anticipated appraisal improvements have not yet occurred.
 - (2) The structure of the review mechanism, limiting the timings of submissions, has prevented engagement of a sufficient number and range of developer partners that might otherwise have accelerated housing delivery.
 - (3) The continuation of large-scale infrastructure delivery has increased peak debt and finance costs.
 - (4) The overall scale of infrastructure and s.106 costs are such that the scheme cannot currently deliver a reasonable market return, sufficient to engage housebuilder partners.
 - (5) The current structure of the viability review mechanism has, and will continue to, slow delivery throughout the life of the Development.
- 3.1.66 The Initial Quod Viability Report, Executive Summary confirmed as follows:

"The Chilmington Green development has the potential to be a major contributor to local housing and affordable housing supply. It also has the ability to offer a sustainable new place, supported by extensive new social infrastructure for the use of the new and existing communities. Hodson has delivered c.£35m of infrastructure works and Section 106 contributions to date and completed the first homes at the site. However, the structure of requirements within the section 106 agreement has been a barrier to the large-scale delivery originally envisaged. Change is now required to enable the original masterplan aspirations to be realized.

The specific challenges for the development include:

- Opportunity to engage housebuilder partners - at present the viability review mechanism prevents engagement of the wide range of partners needed to diversify and accelerate housing delivery. This in turn has prevented the critical mass/ placemaking needed to drive sales values.*
- Peak funding required - the timings and scale of infrastructure and Section 106 contributions are not proportionate to the receipts from housing delivery. This creates a level of peak funding which is in excess of that achievable on market terms.*
- Viability - the level of infrastructure and Section 106 costs is such that, even where the land cost paid by Hodson is excluded from the appraisal, the scheme cannot currently deliver a reasonable market return sufficient to engage housebuilder partners.*

This report sets out the viability and cashflow position for the scheme, demonstrating that change must occur to enable it to be delivered. The report is informed by wider analysis by Quod and Vectos, identifying changes to transport and social infrastructure requirements which can support scheme viability whilst still delivering residents appropriate facilities. Overall changes proposed include:

Transport and social infrastructure - adjustments to infrastructure requirements and timings in line with analysis by Quad/ Vectos appended to the Application 2

Explanatory Statement. These changes support overall viability and reduce the peak funding that is required.

Affordable housing - changes to the tenure of affordable homes, reflecting difficulties in securing interest in Extra Care and also a revised tenure mix to support scheme viability.

Review mechanism - amendment to the review mechanism such that this is triggered during the stage of preparation of RMAs. These changes enable more housebuilders to be engaged earlier, accelerating delivery and creating funds to pay for infrastructure delivery."

- 3.1.67 An updated viability report has been prepared by Quod. The conclusion of this report reads as follows;

This report demonstrates the challenges currently facing the Chilmington Green development. The infrastructure requirements of the Section 106 agreement are in excess of that which is viable and are not appropriately aligned to housing delivery. This causes a level of peak funding requirement which cannot be secured in the market. The structure of the viability review mechanism is also a barrier to diversified, accelerated delivery, preventing engagement of plot housebuilder partners and achievement of the critical mass needed to achieve placemaking growth.

The proposed solutions detailed in the Explanatory Statement can unlock delivery at the site, enabling the original Chilmington Green vision to be realised and contributing substantially to local housing supply. As demonstrated within this report, these changes will create a viable and fundable financial model and enable a range of delivery partners to be engaged. The proposed solutions also ensure future value can continue to be captured for additional affordable housing delivery.

- 3.1.68 In short, the infrastructure requirements of the s.106 agreement are not appropriately aligned to actual housing delivery and occupations. This causes a level of peak funding in advance of sales receipts that cannot be secured in the market. Moreover, the structure of the viability review mechanism is also a barrier

to diversified, accelerated delivery, preventing engagement of plot housebuilder partners and achievement of the critical mass needed to achieve placemaking growth. It artificially restricts the bringing forward of different areas of the Development, inhibits the Appellant from entering partnerships/ agreements to increase delivery, working against ensuring value growth and undermining the overall deliverability of the Scheme.

- 3.1.69 The viability position has deteriorated even further since Application No. 2 was submitted; in particular, as a result of higher interest rates (not only in terms of sales, but also finance costs), a substantial fall in residential values and continuing inflation.
- 3.1.70 In light of the above, the Appellant's evidence demonstrates that a solution is required that will unlock large scale delivery in order to return the scheme to the originally envisaged model of development (i.e. high up-front costs funded by accelerated housing delivery and real value creation in excess of inflation). Such a solution can be achieved through urgent modifications to the s.106 agreement that will support;
- (i) accelerated delivery via multiple diversified products / partners; and
 - (ii) land sales and partnerships to pay down early infrastructure costs and reinvest in future infrastructure.
- 3.1.71 One of the key proposed modifications relates to the trigger for issue of Viability Review Submission (which is proposed to be revised) to be submitted each time the cumulative number of dwellings within Reserved Matter approvals to date exceeds the AAP phase sizes (i.e. in practical terms a review occurs every time Reserved Matter approvals for c.500 homes are submitted). The submission may be made no earlier than 12 months in advance of the relevant Reserved Matter approvals this is to allow early agreement of viability/affordable housing and Reserved Matter approvals to design in the relevant tenure mix.
- 3.1.72 Other key elements of the proposed amendments to Schedule 23 and associated definitions are proposed to apply post review phase 4 (with amendments to review phases 2-4 having been proposed as part of Application No. 1, which is subsumed within Application No. 2). The situation is that the proposed modifications are consistent with other large-scale developments, balancing deliverability with appropriate controls.
- 3.1.73 One of the big issues here is that the viability reviews cost significant sums and at present it is inconceivable that they would result in an increase in the justified percentage of affordable homes.
- 3.1.74 The common sense approach therefore is to amend the requirement so that unnecessary work and expense is not incurred.
- 3.1.75 As to other headline matters that will have a big impact on viability, these are as follows;

- (a) Affordable housing tenure mix - amendment of the base mix and review mechanism target to 70/30 affordable rent/ shared ownership.
- (b) Extra care homes - amendment of extra care homes to market housing due to lack of market interest to date in Extra Care holding up the delivery of phases.
- (c) Amendment to consider potential for non-registered providers (with prior approval from ABC) to operate shared ownership tenure homes. This will allow sales of sites and enable investment in infrastructure.
- (d) Review mechanism - amendment to the timings of viability reviews, allowing engagement of a greater range of partners in parallel, accelerating delivery and achieving critical mass.
- (e) Occupation restrictions - amendments to the restrictions on private vs affordable housing occupations, to allow greater flexibility in delivery and improve cashflow (whilst still ensuring all affordable homes are always secured via occupation restrictions for an appropriate number of private homes).

3.1.76 These proposed modifications offer numerous benefits to ABC and the Appellant, including:

- (a) Timely, on-site, additional affordable housing delivery - the review process is undertaken for each phase of development and any resultant additional affordable homes can be incorporated directly within that phase.
- (b) Capture of value uplift - the reviews take place throughout the scheme, ensuring that value growth can be captured for additional affordable housing delivery. Given the cost of preparing Reserved Matter applications and the time limits for implementing these, the Appellant is naturally incentivised to make Reserved Matter applications/ viability reviews only for those areas which can be delivered in the near term.
- (c) Delivery - adjustment of Premature Viability Review Submission limits and linking reviews to Reserved Matter approvals rather than occupations enables the Appellant to enter into more partnerships sooner. This in turn enables a wider range of developers to build a variety of homes, accelerating housing delivery and achieving the critical mass / momentum essential to place making value growth. Realisation of such growth and land receipts will in turn enable more affordable homes and the delivery of the necessary phases of infrastructure.
- (d) Responsiveness to the market- allowing the potential for non-registered providers to (subject to ABC approval) operate shared ownership homes will allow the Appellant to respond to market interest and remain flexible to maximise delivery partner options.

- 3.1.77 Appendix II contains a composite table that details the requests sought and the justification for them, the Council's responses and the Appellants final comments on each request.

Early provision of infrastructure (and in some instance over provision)

- 3.1.78 As the Development has progressed, it has become clear that there are a number of elements of the s.106 agreement that have resulted in unnecessarily early, and in some instances, over provision of certain infrastructure. In short, with the benefit of hindsight the S106 was always too "front loaded" such that the current problems would have occurred irrespective of the covid pandemic, the Russia Ukraine War, increased build costs, flattened house prices and increased interest rates.
- 3.1.79 It is a fact that with these circumstances in place, the front loading and overly cautious requirement for bonds has meant that the development has stalled.
- 3.1.80 As an example the Appellant has been required to pay substantial, and substantially disproportionate, amounts towards frontloaded infrastructure, including a primary school, roads and very substantial facilities and funds for the Community Management Organisation ("CMO"). While in respect of the CMO the intention of the obligations is laudable, a standard Management Company (or indeed Parish Council) would be able to meet requirements at least equally well and at substantially less cost.
- 3.1.81 The Appellant has provided a number of relevant examples in evidence of where such requirements have placed a disproportionate burden upon it and therefore further delayed delivery as a result of creating cashflow issues, including:
- (a) Although the demand for school places has been significantly lower than expected, the Appellant has nevertheless funded and provided primary and secondary school provision in line with previous forecasts of demand and triggers for payment. Indeed, the primary school was fully open and operational despite there only being 100 homes occupied at that stage.
 - (b) A28 improvement works and associated bond. The existing timetable is vastly out of step with actual building trajectory. Schedule 18 requires a bond payment towards works on the A28 once no more than 400 Dwellings have been occupied. However, a bond is not appropriate given the funding structure for those works. In any event, such a bond has ceased to be possible in the financial markets to obtain a bond in the form or kind required by the s.106 agreement. In any event, it would be prohibitively expensive and self-defeating.
 - (c) The operation of the CMO, which faces substantial operational, governance and financial challenges and is failing to provide the essential services that it is required to do under the Framework Agreement.

- 3.1.82 The Appellant's evidence demonstrates that the ongoing burden of this inappropriate front loading is causing further delay, risk and uncertainty around funding and that the alternative varied wording can meet the identified useful purposes equally well. It is no longer possible in the financial markets to obtain a bond in the form or kind required by the s.106 agreement.

3.2 SUMMARY OF CASE

- 3.2.1 To summarise, it is the current drafting of the s106 together with the circumstances outside of the Appellants control that make the Development unviable and undeliverable. It is not the Development itself that is unviable or undeliverable.
- 3.2.2 As noted above, the s.106 as drafted causes a level of peak funding requirement which cannot be secured in the market, and which jeopardises delivery of the scheme as a whole.
- 3.2.3 The Appellant has provided updated viability evidence to support this. The updated work demonstrates that through removal and modification of key clauses in the s106, with flexibility in the calculation methodology and timing of the obligations therein, the peak debt levels can be reduced and with the proposed removals and modifications, the remaining obligations (that are genuinely necessary) can continue to serve their useful purpose equally well to ensure an overall acceptable and viable development.
- 3.2.4 Under section 106(6) the two tests which fall to be applied are:
- For applications for the discharge of obligations, whether the relevant obligation "no longer serves a useful purpose";
 - For applications for the modification of obligations, whether the relevant obligation "continues to serve a useful purpose but would serve that purpose equally well" if it had effect subject to the proposed modification.
- 3.2.5 As I have explained previously, it is my view that it is no one single clause but the collective effect of the clauses of the s.106 that do not serve a useful planning purpose as currently drafted because they collectively affect the ability of the development to be delivered.
- 3.2.6 For example, the 'purpose' of the individual terms of the s.106 Agreement is rendered meaningless if the operation of the s.106 agreement as a whole prevents the development from being delivered. In this instance it must surely be the case that such terms cannot be said to 'continue to serve a useful purpose' if their

combined practical effect is to prevent the development rather than rendering it acceptable in planning terms through mitigation.

- 3.2.7 It seems to me that in a case such as this, there is by necessity, a need for a common sense and reasonable judgements to be made as to whether or not the overall development remains an “acceptable” development that adequately meets its own community infrastructure needs with removed and modified obligations. If that is achievable, it is clear to me that the modifications and where appropriate deletions should be agreed to improve the viability of the scheme and ensure it remains deliverable. That is in the interests of all parties.
- 3.2.8 In making this assessment it is my opinion there will be some modifications that serve the useful purpose equally well. The useful element may arrive a little later, or perhaps in several payments or phases, or indeed in a reduced or a somewhat modified form, but where they will still serve a useful purpose equally well, and help to make the scheme viable, they should be accepted.
- 3.2.9 There are then those obligations that circumstances, context and lessons from the passage of time are demonstrated not to serve a useful purpose. These are such as a requirement to deliver a useful purpose that circumstances and the benefit of hindsight demonstrates would not arise. An example of this is the obligation to deliver a large amount commercial floorspace and to transfer this to the CMO. The original intention was perhaps laudable, but it is now clear that the CMO not only does not have the skills to manage such estate, but very importantly the evidence of BNP Paribas is that it would now be a liability and not a benefit. Furthermore, the delivery by HD of floorspace that is highly unlikely to be attractive to the market is a cost with no tangible benefit.
- 3.2.10 Then there will be those cases where the obligation on its face does serve a useful purpose, but where that useful purpose is not really significant or genuinely necessary to make the development acceptable at all. While I acknowledge this may not appear a basis to remove obligations based on a simple application of the relevant tests, it seems to me, that if such an obligation on its own, or in association with other similar obligations, makes the scheme unviable, then this must surely mean the obligation or obligations do not serve a useful purpose at all. Indeed, to suggest that such an obligation cannot be removed or varied on viability grounds would not be to apply common sense and reasonableness to the situation. Reference to the AAP and Quality Agreement also confirms that such an approach would be contrary to the aims of ensuring that this development can be delivered in a viable way, a matter that was made clear in those documents.
- 3.2.11 Applying common sense, reasonableness and good governance, it is therefore my view that as removal of an obligation where it does not serve a useful purpose is appropriate, and, as where an obligation would serve a useful purpose equally well if it had effect subject to a proposed modification is appropriate, so too is the removal of an obligation that while serving a useful purpose, (albeit not a necessary one), would alone or in combination with others render a scheme unviable.

- 3.2.12 To put it simply, if something is useful but not actually necessary, then it would be foolhardy to refuse to remove an obligation where it would make the delivery of the scheme unviable, and the substantial benefits it brings unachievable. KCC and the Council seem to suggest that the only way to make such changes would be through as new planning application. Again, there can be no clear benefit in this. A new consent would further delay the delivery of the Site and further affect viability of the scheme through extensive costs in doing so.
- 3.2.13 Below, on a clause by clause basis I expand on the justification for each request, where appropriate to do so. I also set out and demonstrated how each proposed removal or modification meets the relevant tests whilst also demonstrating that the proposed changes are consistent with national planning policy and the original vision for the scheme as set out in the Chilmington Green Area Action Plan.
- 3.2.14 The result of the modifications sought is such that it will enable a boost to housing delivery, rapid implementation, diversified delivery and create value which can be captured in the later parts of the scheme for additional affordable housing delivery.
- 3.2.15 The below should be read alongside the application and appeal documents submitted to date, the updated viability report of Quod, Education related evidence of Ben Hunter and Highways and Transport evidence of Mr Ian Dix, as well as the consolidated table of requests (removals and modifications) (Appendix II and CD2/14.

4 S106 – SCHEDULE OF PROPOSED CHANGES

4.1 S106 AGREEMENT

- 4.1.1 As I have set out, while I fully understand the “useful purpose” tests, I consider it important to also make reference to the statutory tests for obligations and planning permissions. This is for the reasons I have explained previously.
- 4.1.2 It is of course fully acknowledged that planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. However, planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms. They must be:
- necessary to make the development acceptable in planning terms;
 - directly related to the development; and
 - fairly and reasonably related in scale and kind to the development.
- 4.1.3 These tests are set out as statutory tests in Regulation 122 (as amended by the 2011 and 2019 Regulations) and as policy tests in the National Planning Policy Framework. These tests apply whether or not there is a levy charging schedule for the area.
- 4.1.4 The same tests appear in paragraph 57 of the NPPF which reads as follows;
- Planning obligations must only be sought where they meet all of the following tests :*
- (a) necessary to make the development acceptable in planning terms;*
- (b) directly related to the development; and*
- (c) fairly and reasonably related in scale and kind to the development.*
- 4.1.5 While I fully accept that these tests are not the basis to assess whether the removal or variation of a S106 obligation is acceptable, in view of the viability case, I have where appropriate considered those proposed to be removed or varied in this context to determine whether particular obligations are necessary to make the overall development acceptable. If they are not and they impact viability in a way such as to hold back the development, my conclusion is that those obligations do not serve a useful purpose.

5 CLAUSE BY CLAUSE CONSIDERATION OF THE REMOVALS AND MODIFICATIONS APPLIED FOR

- 5.1.1 Where the particular removal or modification is adequately addressed by the consolidated table I just state "Please see Appendix II". Otherwise, I set out further justification below that should be read alongside the previously submitted evidence.

Request 1 – Clause 1.1.

- 5.1.2 We understand that the Council are agreeable to a correction to the drafting of the definition, to refer to the correct section of the T&CPA, namely section 91 rather than 56. Please see Appendix II for further detail.

Request 2 – Clause 1.1. Request withdrawn.

- 5.1.3 This request has been removed from the Appeal.

Request 3 – Clause 1.1.

- 5.1.4 The Appellants apply to Modify the said definition to add as 'Paying Owners', Hodson Developments (CG Three) Limited. We understand the Council are agreeable to this request. Please see Appendix II for further detail.

Request 4 – Clause 2.2.

- 5.1.5 The Appellant wishes to Modify Clause 2.2 through the introduction of a new clause 2.2.1A as follows:

"Also, in the event that an Owner shall have completed all of the Dwellings in the area(s) of the Site in which it has an interest and all of those Dwellings shall have been Occupied by a tenant under a lease or shared ownership purchaser, then that Owner shall no longer be bound ... CMO".

- 5.1.6 Clause 2.2 is acknowledged potentially to serve a useful purpose by ensuring that Owners are released from liability upon completion and disposal of their part of the Development, but it fails to take account and provide for the kind of institutional investor, particularly those who deliver long-term affordable housing solutions, who retain an interest in the Site after they have completed their development and all of their Dwellings have been Occupied. The situation that the Appellant finds themselves in is that where a private investor wishes to deliver affordable housing, but they are not either a registered provider or on the Council's approved list of social housing providers, they do not benefit from the same

exemptions as such parties would. This is holding back the ability of investors such as Mann Group who have delivered affordable housing that is not recognised as such. Mann Group had intended to take people from the Council's housing waiting list but as they cannot benefit from the exemption have instead marketed them for private sale. In other words the clause is preventing an increase in the percentage of affordable housing being provided.

- 5.1.7 This is set out in detail in the letter provided by Man Group in Appendix III of this proof.
- 5.1.8 This was an oversight in the original drafting, which was carried out before the dramatic evolution there has been over the last five years of institutional capital investing to develop homes for long term rental or shared ownership schemes, in particular to provide homes for local essential and key workers.
- 5.1.9 As currently drafted clause 2 is acting as a brake on the sale of parts of the site to this type of institutional investors and thereby preventing both accelerated delivery of homes at Chilmington Green and the delivery of a more diverse affordable housing mix catering to the area's broader housing needs.
- 5.1.10 In the circumstances clause 2 will serve its purpose better or at least equally well, as well as the broader aims of the Development, if it is modified as proposed.

Request 5 - Clause 28. Index Linking

- 5.1.11 As I have referred to above, the evidence of Brookbanks demonstrates how the indexation requirements as currently contained in the S106 Agreement exaggerate costs when the costs necessary to deliver the facility based on evidence from Brookbanks cost consultants.
- 5.1.12 The Appellants have looked at three of the facilities to be provided and in each case, amending the base date for indexation to 2018 still provides more than enough capital to deliver the facilities as set out.
- 5.1.13 Please see the Brookbanks Report in Appendix V of this proof and comments above.

Request 6 - Clause 28 Base date for indexation

- 5.1.14 The Appellant applies to Modify clause 28 so as to amend the base date for indexation for the Relevant Index from April 2014 or the second quarter of 2014 as the case may be to August 2018 or the third quarter of 2018 as the case maybe.
- 5.1.15 The said modification to be applied in each sub- clause as appropriate, so as to amend all references to April 2014 or the second quarter of 2014 as specified above.

- 5.1.16 Further, the Appellants request the modification of Clause 28 to include provision as follows:

'Where any Index Linked payment required to be made under this Agreement by virtue of the Indexation results in that payment exceeding the cost of the item for which it is to be paid, the amount payable shall be reduced accordingly and only the amount reduced as aforesaid shall be payable.'

- 5.1.17 The purpose of the index linking was of course to ensure that payments and capital contributions kept step with actual costs over time. However, the indexation date (April 2014) and the Relevant Indices (RPI, BCIS Indices or The Output Prices Index for Non Public Housing Works as the case may be) no longer properly serve this purpose.
- 5.1.18 Rather, as a result of the historical base date and extended period over which payments and values in the s106 Agreement in respect of Phase 1 are now being indexed, the indexation provisions are over inflating the relevant sums. Thus, the indexation provisions are producing payments and contributions in excess of those that would be required to mitigate the impact of the Development.
- 5.1.19 In this respect I refer back to the evidence of Brookbanks which demonstrates that it is entirely inappropriate to use indexation from 2014 as it artificially inflates the costs of delivering the facilities when they are costed at today's date.
- 5.1.20 From this it is clear that indexation from another base date, 2018, more fairly reflects the costs of provision of the facilities as set out.
- 5.1.21 Certainly, if these section 106 payments and capital contributions were calculated at today's date they would be significantly lower than the amounts plus indexation being demanded or falling due. These inflated payments are not only unjustified but are serving materially to undermine the viability of the Development.
- 5.1.22 Accordingly, there can be no doubt that the Appellants are entitled in accordance with the terms of section 106A to the modification of the current indexation provision to provide for a new base date to reduce the distortions and bring the payment more in to line with actual costs.
- 5.1.23 To this end the Appellants propose that all payments and contributions should be rebased to August 2018, the actual commencement of house building on site. This date will not only reduce the cost distortions as aforesaid but fairly and properly makes allowance for the delays in reserved matters approvals for which the Appellants were not responsible.
- 5.1.24 The additional clause to be included ensures that the Indexation provisions serve their purpose better, and certainly equally well, as modified by securing that the Indexation provisions have no greater effect than that which they are properly intended to have.

- 5.1.25 Further, for the avoidance of doubt, these modifications are proposed without prejudice to and in the alternative to any application hereinbelow to discharge or otherwise modify any of the principal obligations to which they relate.

Schedule 1 – Affordable Housing

- 5.1.26 Section 6 of the Explanatory Statement should be consulted for an overview of the current issues and experiences to date with the delivery of affordable housing and viability.

Request 7 - Clause Paras 1.1, 2, 3 and 6 And Clause 1.1, the definition of Registered Provider.

- 5.1.27 The Appellants propose that the obligations at paragraphs 1.1, 2, 3 and 6 be Discharged.
- 5.1.28 Further, to accommodate the provision of AHUs by responsible providers of social housing that have not been approved by the Council as a 'Registered Provider' and to ensure they are not excluded under the s106, the Appellants propose that the definition of Registered Provider be modified to state'... or any other provider of social housing otherwise approved by the Council, such approval not to be unreasonably withheld.'
- 5.1.29 This is consequential to Request 4 and supported by the evidence provided by Man Group in Appendix II.
- 5.1.30 The obligation at paragraph 1.1 and associated obligations at 2, 3 and 6 to provide 70 Extra Care Housing Units in Viability Review Phase One serves no useful purpose because such units are both unnecessary and their cost is undermining the viability of this phase and jeopardising overall delivery. Moreover, the Appellants have been unable to find a provider. The obligation should accordingly be discharged.
- 5.1.31 The financial benefits referred to above and the contribution made by this specific proposal to the viability and deliverability of the Development and ultimately therefore to ensuring that this obligation will serve any useful purpose at all, more than justifies this modification.

Request 8 - Paras 1.2, 4, 5 and 7. Provision of 24 Affordable Housing Units in Phase One - Viability Review 1

- 5.1.32 The Appellants apply to Modify the obligation at 1.2 to provide:
- '1.2 Hodson CG One, Hodson and Chilmington Green Developments covenant with the Council to construct 24 Dwellings within the Hodson CG One and the Chilmington Green Developments Phase One Land as Affordable Housing Units

prior to the date on which the 1000th Dwelling to be Occupied is Occupied [rather than 650th] in accordance with the requirements of paragraphs 4 and 5 below.

4. The Affordable Housing Units referred to at paragraphs 1.2 and 1.3 above shall be provided as Shared Ownership Units....

7. The Owners covenant with the Council not to Occupy more than 1,300 [rather than 650] Dwellings unless and until it is considered that the proposed modification serves the useful planning purpose equally well in that unless the S106 is varied it will not be viable to continue with the development. As a consequence, in the absence of the modification neither private nor affordable can be delivered.

- 5.1.33 The obligation to provide 24 Affordable Housing Units in Viability Review Phase One is acknowledged as potentially serving a useful purpose, but the requirement to do so by the 650 Dwelling will adversely affect the Paying Owner's cashflow and compromise the viability of this Phase I - Viability Review I.
- 5.1.34 There currently already exists Reserved Matters Approvals for 763 dwellings that have been substantially built out. A planning application for Land Parcels D and H will provide 173 units of which 24 will be affordable. This was submitted in January 2022 and is still not determined 3 years later. In this respect it is clear to me that the applicant has been doing everything in its power to bring this forward, including identifying the following of land.
- 5.1.35 Further, in the light of current market conditions and operator response, the obligation to include Affordable Rents is non-viable. It does not therefore serve any useful purpose and should be modified to provide instead for the provision of further Shared Ownership units.
- 5.1.36 The purpose of these provisions can be better or at least equally well served by modifying them as proposed, supporting the Development whilst securing delivery of these units in any event within Phase 1.
- 5.1.37 As can be seen from the Viability Report and the updated viability analysis therein, the cumulative benefit of the s106 modifications/discharges proposed results in a reduction in s106 finance costs from c£135m (excluding land costs) to c£30m (excluding land costs).
- 5.1.38 Further, the cashflow benefit of this specific variation is evidenced at the Explanatory Statement, Appendix 3 Figure 5.2.
- 5.1.39 The financial benefits referred to above and the contribution made by this specific proposal to the viability and deliverability of the Development and ultimately therefore to ensuring that this obligation will serve any useful purpose at all, more than justifying the changes sought to the s106 Agreement.
- 5.1.40 It is considered that the proposed modification serves the useful planning purpose equally well in that unless the S106 is varied it will not be viable to continue with

the development. As a consequence the viability evidence of Quod is key to demonstrating that in the absence of the modification neither private nor affordable can be delivered.

Request 9 - Paragraphs 8, and 14 10% Affordable Housing to be provided in each Viability Review (2 to 10) as a minimum provision

- 5.1.41 The Appellants wishes the obligation for this provision to be Modified such that it is completed by 95% occupied dwellings rather than 75% occupied dwellings within the relevant review phase.
- 5.1.42 The Appellant is not seeking to remove the delivery of 10% affordable housing, but just to shift the point at which it must be delivered. As explained in the viability work of Quod, this helps significantly by reducing peak debt levels. It is all very well ABC stating that the proposed modification is contrary to the AAP but the reality is that without the modification the beneficial purpose of the delivery of affordable housing will not be able to occur. We understand from the House Builders Federation that 17,000 Affordable Homes are currently stalled nationally by a lack of bids from Housing Associations (See Appendix VII).
- 5.1.43 While Ashford BC state that the delay is contrary to the NPPF I do not consider that to be the case.
- 5.1.44 My own experience as Area Planning Officer for Kings Hill, a new settlement in the administrative area of Tonbridge and Malling Borough Council is that in the early years of the development there was no affordable housing at all required. This was due to the high cost of infrastructure. As the scheme grew and as infrastructure was delivered so the delivery of affordable housing increased.
- 5.1.45 Furthermore, my own experience across Kent is that where affordable housing cannot be viably delivered, planning permissions are granted with no affordable housing at all. The approach of the Appellant in this case is that they are remaining committed to 10% provision notwithstanding the significant viability issues.
- 5.1.46 Pushing back the completion date to 95% assists with cash flow, reduces peak debt and assists viability. On the face of it the alternative would be to reduce the percentage of affordable housing to be delivered. The Appellant is clearly doing all they can to avoid going down that route.
- 5.1.47 The purpose of these provisions can be better or at least equally well served by modifying them as proposed, supporting the Development whilst securing delivery of the 10% AHU's in any event within each phase.
- 5.1.48 These figures clearly demonstrate also that consistent with Application No.1 the 10% provision is the upper limit of what can be sustained and is feasible in at least the first 4 Viability Review Phases.

- 5.1.49 Certainly, the financial benefits referred to above and the contribution made by this specific proposal to the viability and deliverability of the Development and ultimately therefore to ensuring that this obligation will serve any useful purpose at all, more than justifies this modification.
- 5.1.50 It is crucial that a balance is struck between the useful purpose intended to be served by any obligation and the ability to deliver the Development so as that purpose or any aspect of it can be served at all.

Request 10 - Paragraphs 9 and 12 Affordable Housing Unit tenure split 60% Affordable Rents and 40% Shared Ownership, with 5% of units to have Habinteg fixtures and fittings.

- 5.1.51 The Council's suggested modification is accepted. Please see Appendix II.

Schedule 2 – Carbon Offsetting

Request 11 - Schedule 2 and 43 Provision of a Building Energy Performance Certificate for each building.

- 5.1.52 It is noted that ABC now agree to the discharge of this obligation.

Schedule 3 – Combined Heat and Power (CHP)

Request 12 – Schedule 3. Viability submissions and appraisal for a Combined Heat and Power Plant (CHP) or District Heating Plant (DHP)

- 5.1.53 We understand that the Council has no objection in principle to the obligation under Schedule 3 being discharged and Schedule 3A deleted.

Schedule 4 – Community Management Organisation (CMO)

- 5.1.54 Section 7 of the Explanatory Statement should be consulted for an overview of the current issues and experience to date with the establishment and operation of the CMO.

Request 13 – Paragraph 2.1.2 Provision of the CMO welcome pack etc.

- 5.1.55 As has been explained, the costs of printing the welcome pack is significant. The reality is that the information is available on-line. Sales Agents acting for house builders can be requested to e-mail documents to new occupiers, but with the

modern IT based social networking there is no longer a need to provide printed welcome packs.

5.1.56 ABC has stated:

"The Council would agree to a modification that allows the documentation to be provided in electronic form, unless the first purchaser or tenant/occupier do not have access to e-mail and/or for another reason require a paper copy in which case the Welcome Pack should be provided in paper form. The Council is willing to discuss this proposed modification by agreement with the appellant because this would serve the purpose of this obligation equally well".

5.1.57 The Appellant is happy to accept the proposed modification from ABC.

Request 14 – Paragraph 4.1.3 Provision of the CMO First Operating Premises, their completion and acceptance

5.1.58 Request 14 has been withdrawn from the Appeal.

Request 15 – Paragraph 4.1.4 Continued maintenance obligations in respect of the CMO First Operating Premises

5.1.59 The Appellants apply for the obligations under paragraph 4.1.4 to be Discharged.

5.1.60 The First Operating Premises have been completed and ready for CMO occupation since March 2020. However, the CMO deferred occupation due to Covid at that time and has to date failed to take up occupation of the same. I understand that the CMO finally signed the lease in Sept 2023 but that they have never occupied the building except in a handful of CMO events since. I suspect the CMO has no aspirations to occupy the CMO building. Given the passage of time it would be unfair to continue to require performance of these obligations, the appropriate time for their performance has now passed and they should no longer properly be regarded as serving a useful purpose.

5.1.61 There is no reason why the building would be likely to deteriorate unduly and even if it did the CMO are receiving funds from residents that it can put towards repairs.

5.1.62 It is simply not adequate to keep referring to the AAP in a situation where the scheme viability has been demonstrated to be a problem. All parties must look to find ways to reduce liabilities for the developer unless genuinely necessary to make the scheme acceptable. With other funding streams available, these should be utilised for maintenance.

5.1.63 The fact that there was a time lag between completion of construction and occupation by the CMO (their decision) is not a reason to keep the maintenance obligation, particularly where viability is affecting delivery and other funding streams are available.

Request 16 – Paragraph 5.1.1 to 5.1.5 and Sch 29D Item 6 Provision of the CMO Second Operating Premises

- 5.1.64 The Appellants apply for these obligations under paragraph 5 and Schedule 29D Item 6 to be Discharged.
- 5.1.65 In addition; for all appropriate consequential variations including the discharge of Schedules 33 and 35.
- 5.1.66 The First Operating Premises have been completed and ready for CMO occupation since March 2020. However, the CMO deferred occupation due to Covid at that time and has to date failed to take up occupation of the same. This is partly because the CMO staff prefer still to work from home following a change of working practices apparently brought about by the Covid 19 Pandemic, and partly because the premises are located near to building activity. The building is in a central location chosen by ABC and the CMO and is more than sufficient for the operating requirements of the CMO on-site.
- 5.1.67 It is proposed therefore that the CMO remains in this building and that a second new premises is not required. It is important to note that HD are seeking the requirement of a second operating premises to be discharged only.
- 5.1.68 The Appellants position in relation to the CMO Operating Premises is that the First Operating Premises are sufficient and there is no sensible requirement for the Second.
- 5.1.69 Furthermore, the cost of this provision at £250,000 is materially contributing to the non-viability of Phase 1 and for this reason also can no longer be regarded as serving a useful purpose.
- 5.1.70 The situation is that there are other facilities that will be available at the Secondary School in the evenings and at weekends as well as in the school holidays. It is appreciated that the Council's ideal position is that the second operating premises is required.
- 5.1.71 It is our position, therefore, that there is no specific need to obligate a designated second CMO Operating Premise.
- 5.1.72 Furthermore, providing a second premise is a risk that over provision will simply place a financial burden on the CMO which would be better spent on renting space as and when needed. That would not serve a useful purpose.

Request 17 – Paragraph 7 and Sc 29A Items 7, 10, 13, 16, 20, 22, 2, 29, 33, 37 an equivalent items in Sch 29B and 29C Payment of Deficit Grant Contributions

- 5.1.73 The Appellants' application in this regard is to Discharge the Deficit Grant Contributions in their entirety.
- 5.1.74 The Appellants' application in this regard is to Discharge the Deficit Grant Contributions in their entirety. The performance over the first years of the CMO has provided the clearest evidence that the proposed structure is not fit for purpose (Statement of Facts produced by HD in Appendix I of this proof). My understanding is that the Deficit Grant has gone to ABC staff via an ABC/CMO contract in the sum of £60k a year. Again, as I understand it, HD pay ABC, who then transfer the money to the CMO who in turn give it back to Ashford.
- 5.1.75 Rather the CMO should simply rely upon the monies collected under the Rentcharge Deeds and properly manage its accounts to meet its liabilities. It is noted that this may require a 'critical mass' of development to be delivered but the alternative is that no development gets delivered.
- 5.1.76 Moreover, as stated, the total amount of the DGC in the sum of £3,350,000 to be paid in Phases 1 and 2 is undermining the viability of the Development and cannot be sustained.
- 5.1.77 My own experience as Area Planning Officer for Kings Hill, a new settlement in the administrative area of TMBC is that it did not involve a CMO or Deficit grant funding.
- 5.1.78 Some 36 years later the site is still managed by Liberty Trust with some facilities operated by a Parish Council set up specifically for the site.
- 5.1.79 The deficit funding is a very large figure, and it would be far preferable for HD to manage the areas until the CMO is of a size that it can take over these responsibilities based on income from resident charges.
- 5.1.80 The simple reality is that this is another sum that as the evidence of Quod demonstrates does not serve a useful purpose because the expenditure would harmfully impact the viability of the scheme.
- 5.1.81 Post Covid the world has changed and we are now all far more skilled on social media and e-communication. Furthermore, the CMO has not taken up occupation of its first designated premises as staff appear to have a preference to work from home. There is no reason why the CMO cannot operate from the existing building, paying for it with the annual rent charge receipts.

Request 18 – Paragraph 8 and Schedule 31 The provision of Rentcharge Deeds in respect of each freehold dwelling

- 5.1.82 This Modification has been deleted from the Appeal.

Request 19 – Paragraphs 9 and 10 and Schedule 29D Item 14. Provision of Commercial Estate: Basic Provision

- 5.1.83 The Appellants apply to Discharge the obligations under paragraphs 9 and 10 to provide the First Tranche Commercial Estate/Cash Endowment and Schedule 29D Item 14.
- 5.1.84 In addition, the Appellants apply for any appropriate consequential variations including the Discharge of Schedule 36.
- 5.1.85 The Appellants seek the discharge of the Commercial Estate (CE): Basic Provision at £2,921,000 because it no longer serves a useful purpose for the reasons referred to under Request 17 above.
- 5.1.86 The essence of the current CMO structure is that it should operate as an independently viable commercial enterprise supported by the Commercial Estate, but this is not realistic. Further, there is little if any market demand for the commercial floorspace and BNP Paribas have now confirmed that there are significant issues over its future profitability, potential value for money and viability to support the operations of the CMO in any event. The CMO have been trying to rent the CMO building out since September 2023, but no one has rented it yet, demonstrating the lack of demand. As matters stand, therefore, on any view it is clear that the CE no longer serves a useful purpose.
- 5.1.87 The total capital cost of the Basic Provision in the sum of £2,921,000 even before indexation is undermining the viability of the Development and cannot be sustained. Even if, contrary to the foregoing, the Provision were to be regarded as useful, in practice it is self-defeating and does not serve a useful purpose.
- 5.1.88 Please see additional evidence from BNP Paribas regarding the lack of financial benefit provided by the commercial estate (see Appendix IV).
- 5.1.89 In any event the provision and the cash endowment will simply result in the CMO being responsible for a liability. While the proposal may have been laudable pre-2017, the market has changed very significantly post covid and there is no realistic prospect of commercial interest in office floorspace in this location.
- 5.1.90 On this basis the need to provide the commercial estate should be removed from the s106.

Request 20 – Paragraph 11 and Schedule 29D Item 24 Provision of Commercial Estate: Second Tranche

- 5.1.91 The Appellants apply to Discharge the obligations to provide Second Tranche Commercial Estate under paragraph 11 and Schedule 29D Item 24.
- 5.1.92 In addition, the Appellants apply for any appropriate consequential variations including the discharge of Schedule 37.
- 5.1.93 The arguments for the discharge of this requirement apply equally to those for Request 20.

Request 21 – Paragraph 12 and Schedule 29D Item 27 Provision of Commercial Estate: Third Tranche

- 5.1.94 The Appellants apply to Discharge the obligations to provide the Third Tranche Commercial Estate under paragraph 12 and Schedule 29D Item 27.
- 5.1.95 The arguments for the discharge of this requirement apply equally to those for Request 19 and 20.

Request 22 – Paragraph 13 Payment of Cash Endowment

- 5.1.96 The Appellants apply to Discharge the obligations under paragraph 13 to pay the First Cash Endowment and the Second Cash Endowment.
- 5.1.97 The Commercial Estate was proposed to provide the CMO with a long term revenue stream. However, as above, it can already be seen to no longer to serve any useful purpose.
- 5.1.98 Further, a one off cash endowment does not have a useful purpose in replacing an asset endowment and it is not appropriate for Section 106 payments to be levied to fund an unspecified alternative investment by the CMO.
- 5.1.99 The mistake by the draftsman was to suppose any symmetry between Option A and Option B. Where Option A and the Commercial Estate: Second and Third Tranches do not proceed, that does not provide any justification for Option B and paying these very significant sums or indeed any sum directly to the CMO.
- 5.1.100 Moreover, as referred to above, the total cost of the First and Second Cash Endowments (in the sum of 2 x £2,190,750) would undermine the viability of the Development and cannot be sustained.
- 5.1.101 It is clear that the CMO is not working effectively as a management model. It is considered that as the Chilmington Green Development grows a standard Parish Council model would be more appropriate with HD managing the assets across the site. This model has been tested at Kings Hill in Kent and has worked very

successfully in developing a community and ensuring the community input is democratic.

- 5.1.102 The payment of such a sizeable sum to the CMO will serve no good purpose and as evidenced by Quod will adversely impact viability. Please see the Quod Viability Report.

Request 23 – Paragraph 14 Payment of CMO Start up Contribution

- 5.1.103 The Appellants apply to Discharge these obligations and for the sums already paid to be refunded accordingly.
- 5.1.104 The Appellants repeat and rely upon the reasons stated above in respect of the other CMO, DGC and CE obligations. In particular, that the funds paid to date have not been spent sensibly nor delivered any material benefits to residents.
- 5.1.105 The payment of such a sizeable sum to the CMO will serve no good purpose and as evidenced by Quod will adversely impact viability. Please see the Quod Viability Report.

Schedule 5 – Early Community Development

- 5.1.106 Section 8 of the Explanatory Statement should be consulted for an overview of the obstacles associated with the community development obligations.

Request 24 – Paragraph 1.2 To pay annual Early Community Development Contributions of £50,000

- 5.1.107 The Appellants apply for all past and further payments of ECD Contributions to be Discharged.
- 5.1.108 Notably, the Adopted 2017 - Early Community Development Strategy states (at page 13), 'Within the early year's timeframe it is expected that the existing community (i.e. those living in the Chilmington Hamlet - approximately 70 people/30 dwellings - together with a few scattered dwellings elsewhere) will be joined by a further circa 200 dwellings (circa 480 people) within the Chilmington Development Area, by the end of 2019. The first new residents are expected early 2019.'
- 5.1.109 The payment of the first, second and third ECD contributions was predicated upon this expectation. However, as at January 2020 the occupation level on site was just 30 dwellings (circa 72 people), whilst as at August 2022 some 215 dwellings are occupied (circa 516 people). At these occupancy levels, the payments made are not proportionate to the population on site and therefore not in line with their originally intended purpose (as described at paragraph 2 of Schedule 5) and cannot be justified.

- 5.1.110 Further, whilst it was originally envisaged that Main Phase I would be completed within 5 years, it is not now expected that this phase can be completed until 2031. Given this actual rather than planned housing trajectory and the associated levels of occupancy, the payments due under the existing terms are not proportionate to need in the short term.
- 5.1.111 The first three payments have already been made (£150,000), but is unclear how if at all these monies have been expended in relation to community activity. Moreover, ABC has now, instead of and in substitution for these payments, secured £755,000 in funding from DHLUC for:
- Improved access to, through and around Discovery Park and nearby Coleman's Kitchen woods (upgrading Public Rights of Way)
 - Promoting active travel and sustainability
 - The creation of a community space for the local community to meet and hold events
 - Stodmarsh Nutrient Neutrality Assessment and exploring bio-diversity net gain opportunities
 - Further community development work and cultural projects
 - Improving information sharing and communication for local residents
 - Supporting the growth of the Community Stakeholder Group.
- 5.1.112 In context, therefore, these additional payments no longer serve any useful purpose and should be discharged accordingly, both retrospectively and prospectively with those payments already made duly refunded.
- 5.1.113 The Viability Report reflects this submission.

Schedule 6 – Natural Green Space

Request 25 – Paragraph 1 et seq. The obligations to provide Informal/Natural Green Space Facilities

- 5.1.114 The Appellants do not seek to reduce the Informal/Natural Green Space but do seek to Modify some of the detail of these obligations.
- 5.1.115 Although the Appellants do not seek to reduce their s106 obligations to provide Informal/Natural Green Space Facilities, it should be noted and is duly recorded here, that the Green Space obligations are proving to be substantially more expensive than is presently allowed for as a cost to the Development at Schedule 29D.

- 5.1.116 Rather than the sums shown there (see items 7, 15, 19 and 21) the true costs are likely to be in the order of £7.5m. The reality is costs for delivery of greenspaces are being shown to be multiples of what was expected or allowed for in the original Arcadis cost plan report. PS1 was costed at £250k but has recently been tendered and costed as £1.2M to deliver. The scale of this obligation ought properly to be taken into account when considered the other requests herein, particularly those based primarily or exclusively on viability and the deliverability of the Development.
- 5.1.117 It should be noted that the £7.5million figure has not been accounted for in the Viability Report.

Request 26 – Paragraphs 1.1.5 to 1.1.10 The conditions attached to occupation in each Main Phase

- 5.1.118 The Appellants seek to Discharge or Modify these conditions as appropriate to remove amongst other things the obligation to transfer the Green Space Facilities and the powers of veto effectively given to the CMO thereunder, as follows:
- Paragraph 1.1.5 to be modified to omit the last part of the clause beginning ‘and are free from ... a cosmetic nature’.
- Paragraph 1.1.8 to be discharged.
- Paragraphs 1.1.9 and 1.1.10 also to be discharged.
- 5.1.119 The amendment to paragraph 1.1.5 is justified because there is no useful purpose to be served in the CMO being able to halt the Occupation of Dwellings in each or any of the Main Phases merely because the CMO identifies some Defect in the Green Space Facilities. This is a wholly unnecessary and oppressive provision.
- 5.1.120 Further, in practice the CMO is neither equipped nor competent to be the arbiter of such matters. Rather they should simply be obliged to maintain and/or keep in repair and good condition the Green Space Facilities, by no doubt in practice using third party maintenance contractors.
- 5.1.121 As for paragraph 1.1.8, there is simply no justification for imposing this additional burden upon the Appellants. It is not appropriate for Section 106 payments to be levied to meet transaction costs in this way. In any event, for the reasons stated below, the Appellants propose that the land should not be transferred at all. That to do so is unnecessary.
- 5.1.122 As to the discharge of the transfer obligation under 1.1.9 and 1.1.10 so as these spaces are retained by the Appellants, there is no useful purpose to be served in transferring these assets to the CMO. Indeed, it would be unusual for this to be the case. Moreover, the provision of these spaces as an amenity would be unaffected and the obligations in relation to the same would serve their purpose equally well if varied in this way.

- 5.1.123 The concerns in respect of the CMO became clear to me in respect of my own involvement in the recent Kingsnorth Public Inquiry. In that case the Appellants were at pains to emphasise to me that they could not possibly accept the Council's request that the CMO take over management of the open areas of that appeal site. They explained that this was because they had experienced delays and found the management arrangements so unduly complicated that they would not accept the Council's suggested requirement. Instead they opted, as did the Inspector, for a standard management company arrangement.

Request 27 – Paragraph 1.2 The 12 months repairing liability following transfer

- 5.1.124 The Appellants apply to Discharge this obligation. As set out above in Request 16 the Appellants do not wish to transfer the spaces to the CMO and therefore they will not be required to repair or maintain them. At the point of handover a conditions survey takes place to agree the current standard at handover, and the CMO should then maintain.
- 5.1.125 Residents pay very expensive rent charges for the repair and maintenance of facilities.
- 5.1.126 On any view, therefore, the clause fails to serve any useful purpose and should be discharged

Request 28 – Paragraph 2 Provision for payment toward the Council's costs

- 5.1.127 The Appellants seek the Discharge of this payment obligation.
- 5.1.128 It is clear that clauses such as this serve no useful purpose as they simply impact on the viability of the scheme. The Council already receive very large scale fees for the consideration of applications and it cannot be right that all liabilities are placed on the developer.

Schedule 7 – Chilmington Hamlet

- 5.1.129 Section 8 of the Explanatory Statement should be consulted for an overview of the obstacles associated with the community development obligations.

Request 29 – Paragraph 1.3 and Schedule 29D Item 12 Chilmington Hamlet facilities to be provided by 1400 occupations

- 5.1.130 The Appellants apply for the following Modifications:

That paragraph 1.3 be modified to read 'Unless the Council agrees otherwise, not to occupy more than 3,500 Dwellings unless ... '

5.1.131 In addition, the Appellants apply for paragraph

1.3.1 to be modified to omit the last part of the clause beginning 'and are free from ... a cosmetic nature).

5.1.132 Further, the Appellants apply to discharge the obligation to transfer the Facilities, substituting an obligation to grant a lease of the same for a term of 21 years.

5.1.133 Thus, the Appellants apply for paragraph 1.3.4 to be discharged and paragraph 1.3.5 to be modified to provide for the Facilities to be transferred to the CMO by way of the grant of a lease in the Facilities for a term of 21 years at a peppercorn ground rent and which (a) shall not secure any service charge in relation to the premises (b) shall be unencumbered (except for any easements or other rights to lay maintain enter report divert renew replace connect to and use any new or existing and proposed service media) and subject always to the provisions of this Deed and any conditions to the Planning Permission that apply to the land and (c) shall confer all legal rights and easements over neighbouring and adjacent land that are reasonably necessary and appropriate to enable the demised land to be used for its intended uses and purposes. The form of the said lease to be acceptable to the CMO (its approval of the form not to be unreasonably withheld).

5.1.134 And, Paragraph 1.3.6 to be modified to provide that the Owners have served the CMO with an engrossed lease/s (as appropriate) as aforesaid of the land on which the Facilities are located in a form previously approved by the CMO or in the event that the CMO has still not approved the same within 6 weeks of the relevant owner serving the same) in a form previously approved by the Council where the Council's approval of the form of lease proposed by the Owners is not to be unreasonably withheld ... etc.

5.1.135 The obligation at paragraphs 1.1 to 1.3 to provide the Chilmington Hamlet facilities, including the obligation to submit the Design Brief, are acknowledged potentially to serve a useful purpose but should be delayed until the facilities are viable (i.e. there are enough people living on the development to make sufficient use of them). Based on the general profile of demand for cricket facilities and the total demand for 2 to meet the needs of the whole development, Chilmington Hamlet is likely to be viable no earlier than 3,500 homes.

5.1.136 In respect of cricket I note the following Cricket Clubs within 10-mile radius from Chilmington Avenue roundabout:

- Ashford Town Cricket Club – 2.9 miles (always welcoming new players)
- Willesborough Cricket Club – 4 miles (get in touch to join)
- Kennington Cricket Club – 4.6 miles (get in touch to join)
- Smarden Cricket Club – 8.2 miles (get in touch to join)

Tenterden Cricket Club – 10.7 miles(get in touch to join – can accommodate players of all levels).

- 5.1.137 Further, the current front loading of this community provision, the Hamlet by 1,400 Dwellings, will not only have a significantly detrimental effect on the Paying Owner's cashflow in this initial phase of the Development, but more critically without modification will likely cause the loss of the funding available to the Appellants to carry out the Development at all.
- 5.1.138 Rather, the purpose of these provisions can be better or at least equally well served by modifying them as proposed, supporting the Development whilst securing delivery of these facilities in any event at a relatively early stage in the life of the Development.
- 5.1.139 Certainly, given the level of capital cost here (£1.266m) this is another significant factor in terms of viability and deliverability, justifying the deferment of this obligation to support the ultimate delivery of the entire Development. The proposed modification is captured in the updated sensitivity analysis in the Viability Report at Appendix 3 of the Explanatory Statement.
- 5.1.140 As for the modification and/or discharge of paragraphs 1.3.4 to 1.3.6 to provide for the grant of a 21 year lease rather than a freehold transfer, this will not detract from the provision of these Facilities and the obligations will serve their existing purpose equally well if modified as proposed.

Request 30 – Paragraphs 1.2 and 1.2 Submission and Approval of Design Brief and Specification by 1,000 occupations

- 5.1.141 The Appellants apply to Modify paragraph 1.1 to provide, 'Not to Occupy more than 3,000 Dwellings unless a design brief and specifications for the following indicative facilities and/or facilities of no greater environmental impact as may be approved by the Council (approval not to be unreasonably withheld) ... at Schedule 7A to be provided in Chilmington Hamlet has been approved by the Council with a total capital cost of £1,266,000.00 ... including fees, contingencies, specification and design costs, supervision fees, access roads and service costs ('the Facilities')',
- 5.1.142 Further, the Appellants apply for the following provision to be added for the avoidance of doubt 'The scope of the said facilities to be altered as may reasonably be required to match the stipulated total capital cost as aforesaid.'
- 5.1.143 The modification in occupations is proposed for the reasons stated above in respect of the provision of these facilities and is consequential upon that modification.
- 5.1.144 At present there is approval for 763 dwellings. Hodson envisage securing planning permission for 173 and 145 dwellings in the next month which would total 1081 dwellings. An application for RMA for the Hamlet facilities was required by January

2023 and has been submitted. To date there has been no comment back from ABC on this. In the case of Play Space 1, a Design Brief and Specification was submitted to ABC in January 2023 as part of a planning application. The Design Brief and Specification has not been approved and consequently, neither is the planning consent. As such, Hodson Developments has great concerns that the current trigger would delay the delivery of housing unnecessarily and through no fault of its own.

- 5.1.145 The modification of the planned costs to include fees, contingencies, specification and design costs, supervision fees, access costs and service costs, is justified for reasons of viability and deliverability, ensuring that the cost of these Facilities is not so substantial as to undermine the viability of the relevant Main Phases and strike at the very delivery of these assets.
- 5.1.146 The third modification is proposed to reinforce the existing obligation and ensure the purpose of the preceding paragraphs is fulfilled, i.e. the provision of the Chilmingham Hamlet facilities at a total cost of £1,266,000.

Request 31 – Paragraph 1.2 and its sub- paragraphs 1.2.1, 1.2.2 and 1.2.3 The provision for consultation with the CMO and stakeholders etc., and approval of the details of the consultation

- 5.1.147 The Appellants apply to Modify paragraph 1.2 and/or discharge aspects of the same as follows:

Paragraph 1.1.2 to be modified to omit the requirement to consult the CMO (or its substitute).

Paragraph 1.2.2 to be discharged so as to omit the requirement to consult and to obtain approval in respect of the details of the consultation, and

Paragraph 1.2.3 to be modified simply to state 'shall include the consultation responses.'

- 5.1.148 The consultation with the CMO under 1.1.2 is surplus to requirements, given that the Council will have the opportunity already to consult with all interested parties when approving the design brief and specification. This part of the paragraph does not, therefore, serve any useful purpose and should be discharged or modified accordingly.
- 5.1.149 As for 1.2.2, the requirement to consult over the details of the consultation (whether with the CMO or Council) also fails to serve any useful purpose. It unnecessarily complicates what should be a relatively straightforward and simple exercise. 'This obligation should be discharged accordingly. It is within the gift and remit for the CMO to undertake further engagement if it considered it necessary, and therefore the obligation that the consultation must be agreed by the CMO is not necessary nor useful as it only slows delivery. As previously stated, the Design

Brief consultation for play space 1 took 3 months to agree and 5 months for the actual consultation to be commenced.

5.1.150 The modification to 1.2.3 is consequential on the foregoing.

Request 32 – Paragraph 1.4 The 12 months repairing obligation following transfer

5.1.151 The Appellants apply to Discharge this obligation in its entirety. The clause gives the CMO excessive powers to demand repairs are carried out, particularly where, as noted above, in reality the CMO is neither equipped nor competent to be the arbiter of such matters.

5.1.152 Further, under a normal Estate Management (Manco) model the CMO should simply be obliged to maintain and/or keep in repair and good condition the Green Space Facilities, by no doubt in practice using third party maintenance contractors.

5.1.153 On any view, therefore, the clause fails to serve any useful purpose and should be discharged.

Request 33 – Provision for payment toward the Council's costs

5.1.154 The Appellants apply to Discharge this payment obligation.

5.1.155 It is clear that clauses such as this serve no useful purpose as they simply impact on the viability of the scheme. The Council already receive very large scale fees for the consideration of applications and it cannot be right that all liabilities are placed on the developer.

Schedule 8 – Children and Young Peoples Play Space

5.1.156 Section 8 of the Explanatory Statement should be consulted for an overview of the obstacles associated with the community development obligations.

Request 34 – Paragraph 1 The provision of the design brief and specification for the children's and young people's play spaces and/or other facilities

5.1.157 The Appellants apply to Modify the delivery of the design brief and specification for each play space and/or the other facilities in each Main Phase 1, 2, 3 and 4, by altering the number of Dwellings specified in the unnumbered sub-paragraphs of Paragraph 1.1 from the current 50, 50, 750, 650 and 1150 to 350, 500, 850, 850 and 1350 respectively and to modify the planned costs to include fees and other costs .

- 5.1.158 The Appellants request that paragraph 1.1.1 be modified to read '... and not exceeding a total of £2,585,143.00 ... for the play space including fees, contingencies, specification and design costs, supervision fees, access roads and service costs ('the Facilities')'.
- 5.1.159 Further, before 1.1.2, the Appellants apply to insert 'The scope of the said Facilities to be altered as agreed with the Council to match the stated capital cost for each of PS1, 2, 4, 5 and 7 and the total capital cost as aforesaid.'
- 5.1.160 The other play spaces are postponed for the same construction related reasons. Notably, in doing so the delivery of these assets remains substantially in line with policy.
- 5.1.161 In respect of Play Space 1, Hodson Developments confirmed to ABC that the cost of delivery to the design spec was in excess of the budget in the s106 (just over £1m vs. £235k as tendered and costed by HD). HD confirmed the costs into ABC in March 2023. In response, ABC confirmed they might be able to secure grant funding. Hodson Developments raised this as an issue with Homes England (HE) around September 2024, who stated that they had confirmed to ABC that they agreed to £400k of funding to be provided to ABC to be used for this purpose.
- 5.1.162 ABC has not addressed this with Hodson. Hodson Developments have still to receive any further information from ABC on this point and therefore this continues to delay delivery of Play Space 1
- 5.1.163 Further, given the level of capital cost here (£2.585m) this is another significant factor in terms of viability and deliverability, justifying the deferment of these obligations supports the ultimate delivery of the entire Development. Likewise, the modification of the planned costs to include fees, contingencies, specification and design costs, supervision fees, access costs and service costs, is justified for reasons of viability and deliverability, ensuring that the cost of these Facilities is not so substantial as to undermine the viability of the relevant Main Phases and strike at the very delivery of these assets.
- 5.1.164 The proposed modification is captured in the updated sensitivity analysis in the Viability Report.

Request 35 – Paragraph 1.1.2 The provision for consultation with the CMO, stakeholders etc. and approval of the details of the consultation

- 5.1.165 The Appellants apply to Modify paragraph 1.1.2 as follows:
- To omit the requirement to consult with the CMO and to obtain approval in respect of the details of the consultation, and consequentially,
- To omit the words 'and in particular the CMO's comments on the costings.'

- 5.1.166 The consultation with the CMO (or its substitute) under 1.1.2 is surplus to requirements, given that the Council will have the opportunity already to consult with all interested parties when approving the design brief and specification. This part of the paragraph does not, therefore, serve any useful purpose and should be discharged or modified accordingly.
- 5.1.167 As for the requirement to consult over the details of the consultation (whether with the CMO or Council) this also fails to serve any useful purpose. It unnecessarily complicates what should be a relatively straightforward and simple exercise. This part of the obligation (in parenthesis) should be discharged accordingly. In the case of play space 1 securing the approval from the CMO of the consultation took initially 2.5 months, but then they wanted additional certainty on the branding prior to the consultation. In short, from initial point of contact with the CMO to the consultation taking place was circa 5 months. This is unnecessary delay and serves no useful purpose. It is within the gift and remit for the CMO to undertake further engagement if it considered it necessary, and therefore the obligation that the consultation must be agreed by CMO is not necessary nor useful as it only slows delivery.
- 5.1.168 As set out above, for example, the experience in seeking approval of the Design Brief and Spec for Play Space 1 is now delaying the delivery of this. It is over two years since the Design Brief was submitted.
- 5.1.169 The omission of the final clause of 1.1.2 is simply consequential on the foregoing.

Request 36 – Paragraphs 1.2 and 1.4 The applicable occupation limits in respect of the provision and construction of each Play Space in the relevant Main Phase

- 5.1.170 The Appellants apply to Modify the occupation limits in paragraphs 1.2 and 1.4 from the current 500, 1100 and 1100 to 700, 1200 and 1300 respectively (the first 500 trigger for PS1 and the final 1500 trigger for PS7 in Main Phase 4 to remain unaltered).
- 5.1.171 The modification in occupations is proposed for the reasons stated above in respect of the provision of the design brief and specification for each of the play spaces and/or other facilities and follows upon those modifications.
- 5.1.172 At the time the application was submitted, the applicant was not concerned about the occupation trigger in respect of play space 1. However, in light of ABC not seeming to make any progress in bringing forward the £400k grant Homes England have confirmed, this is now a major concern, and helps to illustrate why negative obligations on occupations need to be reviewed as there is clear evidence that ABC have for some reason that I am unaware of been unwilling to progress matters in a timely manner. As such the requirement serves no useful purpose.

Request 37 – Paragraphs 1.2.1 to 1.2.6 The conditions attached to occupation in relation to each Play Space in each Main Phase

- 5.1.173 The Appellants seek to Discharge or modify these conditions to remove amongst other things the powers of veto effectively given to the CMO thereunder, as follows:

Paragraph 1.2.1 to be modified to omit the last part of the clause beginning 'and are free from ... a cosmetic nature).

- 5.1.174 Further, the Appellants apply to discharge the obligation to transfer the Facilities, substituting an obligation to grant a long lease of the same, being a lease (including a sub-lease) with a term of 125 years at a peppercorn ground rent and which makes the same provisions (a)-(c) as referred to above (see Schedule 7).

- 5.1.175 Thus, the Appellants apply for paragraph 1.2.4 to be discharged and paragraphs 1.2.5-6 to provide instead that the Facilities, are:

either

to be transferred to the CMO by way of the grant of a lease as aforesaid of the land on which the Facilities are located in a form acceptable to the latter (their approval of the form not to be unreasonably withheld)

or

where the Owners have served the CMO with an engrossed lease/s (as appropriate) as aforesaid of the land on which the Facilities are located in a form previously approved by the CMO or (in the event that the CMO has still not approved the same within 6 weeks of the relevant owner having served the same) in a form previously approved by the Council (where the Council's approval of the form of lease proposed by the Owners is not to be unreasonably withheld) that is executed ... etc.

- 5.1.176 The amendment to paragraph 1.2.1 is justified because there is no useful purpose to be served in the CMO being able to halt the Occupation of Dwellings in each or any of the Main Phases merely because the CMO identifies some Defect in the play spaces and/or other facilities. This is a wholly unnecessary and oppressive provision.

- 5.1.177 Further, in practice the CMO is neither equipped nor competent to be the arbiter of such matters. Rather, they should simply be obliged to maintain and/or keep in repair and good condition the spaces/facilities, by no doubt in practice using third party maintenance contractors.

- 5.1.178 As for the modification and/or discharge of paragraphs 1.2.4 to 1.2.6 to provide for the grant of a long lease rather than a :freehold transfer, this will not detract

from the provision of these Facilities and the obligations will serve their existing purpose equally well if modified as proposed.

Request 38 – Paragraph 1.3 The 12 months repairing liability following transfer

- 5.1.179 The Appellants apply to Discharge this obligation in its entirety.
- 5.1.180 The clause gives the CMO excessive powers to demand repairs are carried out, without providing any effective dispute resolution mechanism. Particularly, where, as noted above, in reality the CMO is neither equipped nor competent to be the arbiter of such matters.
- 5.1.181 Further, under a normal Estate Management (Manco) model the CMO should simply be obliged to maintain and/or keep in repair and good condition the Green Space Facilities, by no doubt in practice using third party maintenance contractors.
- 5.1.182 On any view, therefore, the clause fails to serve any useful purpose and should be discharged.

Request 39 – Paragraph 2 Provision for payment toward the Council's costs

- 5.1.183 The Appellants apply to Discharge this payment obligation. Because providing for payment toward the Council's costs undermines the purpose of the clause (to secure the transfer on appropriate terms), compensating the Council even in cases where it unreasonably refuses approval, which should not be the case.
- 5.1.184 The clause does not therefore serve any proper or useful purpose and should be discharged accordingly.

Schedule 9 Allotments

- 5.1.185 Section 8 of the Explanatory Statement should be consulted for an overview of the obstacles associated with the community development obligations.

Request 40 – Paragraph 1 and Schedule 29D Item D

- 5.1.186 The obligation to provide the Main Phase 1 allotments is acknowledged potentially to serve a useful purpose but the requirement to do so by the 1000th Dwelling Occupations will adversely affect the Paying Owner's cashflow in Main Phase 1 and compromise the viability of this phase.
- 5.1.187 The purpose of these provisions can be better or at least equally well served by modifying them as proposed supporting the Development whilst securing delivery

of these facilities in any event within the same phase as under the existing provisions.

- 5.1.188 The revised trigger is based on the point at which demand for the minimum viable size (20 plots/0.66 ha) of allotment is reached (1,375 homes).

Request 41 – Paragraph 1 and Schedule 29D Provision of Main Phase 2 Allotments by 1000 Dwelling Occupations

- 5.1.189 The Appellants refer to and rely upon the reasons advanced above in relation to Main Phase 1 Allotments.

Request 42 – Paragraph 1 and 1.3.3 and Schedule 29D Item 18 Provision of Main Phase 3 Allotments by 1400 Dwelling Occupations

- 5.1.190 The Appellants apply for this obligation to be Discharged.
- 5.1.191 It is important to note that the Public Green Spaces and Water Environment DPD is now some 12 years old with its evidence base reliant on an open space study that is some 17 years old.
- 5.1.192 The allotments Quantitative Standard at Table 1 is 0.2h per 1000 persons.
- 5.1.193 It is noted that the open spaces study Final Report 2008 was based on only 352 responses to a 3000 household survey. While the report states that allotments had a strong showing, 55% said that there should be the same or less provision. Not one of the PC's consulted said there was a need for increased allotment provision.
- 5.1.194 There appears to be no statistical evidence of a particular need for an increased number of allotment pitches nationally and the national trend since the end of WWII has been a decrease in provision.
- 5.1.195 Based on information from the Council's website it manages 400 allotments with an approximately two year waiting list. This suggests that even with rising population, allotments still become available within a reasonable period.
- 5.1.196 The Ashford Allotment society website makes this clear and states:

"However, plots do come up more quickly than you might fear. Why is that?

First, some people try it for a bit then give up quite quickly, while others drop off the waiting list or change their minds when a plot is offered. This speeds things up"

"At present, you can ask to be put on the waiting list for one particular site, or for any sites. The more options you list, the better chance you have of getting an

allotment quickly. However, if you are offered a plot on a particular site you've asked for, you really must be ready to take it, so think before you fill the form in".

- 5.1.197 As a consequence, it should be recognised that while it is accepted that allotments do serve a useful purpose, the need for them is not pressing or acute and whilst the full provision for the development as per the Public Green Spaces and Water Environment DPD calculation do not meet the calculated requirement therein the development would still provide allotments. Where viability is a concern for a development it is therefore concluded that the provision of such facilities is one of the first items that should be removed.

Request 43 – Paragraph 1 and 1.3.4 and Schedule 29D Item 20 Provision of Main Phase 4 Allotments by 1400 Dwelling Occupations

- 5.1.198 The Appellants refer to and rely upon the reasons advanced above in relation to Main Phase 3 Allotments.

Request 44 – Paragraphs 1.1.1 to 1.1.6 The conditions attached to the provision of the Allotments in each Main Phase

- 5.1.199 Firstly, the Appellants apply to Modify the s.106 to allow the following clause to be added to paragraph 1.1.1 (after '... reserved matters approval'), 'and the planned cost for that Allotment.'
- 5.1.200 Further, the Appellants apply to Discharge the obligation to transfer the Allotment Facilities to the CMO entirely and/or in so far as necessary modify them to provide for these Facilities to be provided pursuant to a renewable licence/s.
- 5.1.201 Thus, the Appellants propose that all of 1.1.4 to 1.1.6 are Discharged and 1.1.4 replaced with a simple obligation that 'the Allotment Facilities have been provided to the CMO by way of renewable bi-annual licence/s (as appropriate) in a form acceptable to the CMO, its approval not to be unreasonably withheld.
- 5.1.202 The reality is that the CMO has not demonstrated itself to be an effective way of delivering management of facilities. The useful purpose of provision can be served equally well if the allotments are not transferred to the CMO.
- 5.1.203 In a situation where HD are reliant on a high quality development delivering increased sales values as the development progresses (As demonstrated by the work of Quod) it is patently obvious that changes to management arrangements are needed to achieve these aims.

Request 45 – Paragraph 1.2 Please see CD The 12 months repairing liability following transfer

- 5.1.204 The Appellants apply to Discharge this obligation in its entirety.

- 5.1.205 The clause gives the CMO excessive powers to demand repairs are carried out, without providing any effective dispute resolution mechanism. Particularly, where, as noted above, in reality the CMO is neither equipped nor competent to be the arbiter of such matters.
- 5.1.206 Further, under a normal estate management (Manco) model the CMO should simply be obliged to maintain and/or keep in repair and good condition the Green Space Facilities, by no doubt in practice using third party maintenance contractors.
- 5.1.207 It is normal practice for allotment holders to pay an annual fee for their allotment. The standard charge in Ashford is £52.50 per 5 perch plot. The CMO would be at Liberty to offer plots at a rent of perhaps up to £80 per annum with requirements for each tenant to look after their plot in accordance with particular rules.
- 5.1.208 The liability for the upkeep of the allotments therefore typically sits with the plot holders. If damage occurs individuals should be responsible for repairs.

Request 46 – Paragraph 2 and 3 Provision for payment toward the Council's costs

- 5.1.209 The Appellants apply to Discharge this payment obligation.
- 5.1.210 It is clear that clauses such as this serve no useful purpose as they simply impact on the viability of the scheme. The Council already receive very large scale fees for the consideration of applications and it cannot be right that all liabilities are placed on the developer.

Schedule 10 – DP3, Discovery Park Sports Hub and Discovery Park Sports Pitches

- 5.1.211 Section 8 of the Explanatory Statement should be consulted for an overview of the obstacles associated with the community development obligations.

Request 47 – Paragraph 2.1 Payment of £20,000 toward masterplanning

- 5.1.212 The Appellants apply for this obligation to be Discharged and for the sum of £20,000 already paid to be refunded.
- 5.1.213 Thus, the Appellants propose that clause 1.1 should be Modified to read as follows:
- 5.1.214 'To prepare a masterplan for the Discovery Park, the Discovery Park Sports Hub, PS6 and the Discovery Park Sports Pitches in consultation with the Council and such others as the Council may decide; and ...'
- 5.1.215 The masterplan should properly and sensibly be prepared by the Appellants in consultation with the Council and other stakeholders. The relevant information for

master planning is better known to the Appellants and it they who should be carrying this out and submitting the same for approval (see Request 53 below).

- 5.1.216 In reality the obligation as existing does not therefore serve any useful purpose and should be discharged accordingly.
- 5.1.217 In this respect I note that notwithstanding the trigger being 400 dwellings, the applicant has already been required to submit two Reserved Matters Applications for DP3 which should have been informed by the Masterplan. As it is, the Appellant is therefore incurring costs to submit RMAs without any clarity of the masterplan. It would in my opinion be preferable if the Appellant is responsible for this process so that the timely preparation of the masterplan can be progressed. In this respect I note that since the first RMA for DP3 was submitted in January 2023, the applicant has received no comment as to how the proposals fit within the masterplan. It is essential that this process is unlocked so that the delays do not continue.
- 5.1.218 It is clear that clauses such as this serve no useful purpose as they simply impact on the viability of the scheme. The Council already receive very large fees for the consideration of applications and it cannot be right that all liabilities are placed on the developer.

Request 48 – Paragraph 2.1 Submission and approval of design briefs and specifications for the Discovery Park Sports Pitches and for the Discovery Park Sports Hub by 1000 Dwelling Occupations

- 5.1.219 The Appellants wishes to Modify this obligation so that the submission approval of the design briefs and specifications should be re-gearred from 1,000 Dwelling Occupations to 2,650 Occupations and to modify the planned costs to include fees and other costs.
- 5.1.220 The obligation to provide these community assets (at a total capital cost of up to £2,782,000.00 + £4,976,157) in stages after some 3200 and 5000 Dwellings is acknowledged potentially to serve a useful purpose subject to requests 49 to 56 below but the requirement to submit the design briefs and specifications by 1,000 is wholly premature.

What serves no useful purpose is to delay the delivery of housing in the event a design brief for facilities that are not due to be delivered for many years later is not approved. Moreover, there is a significant chance that between approval of the design brief and specification, and the time it comes to deliver, costs, requirements etc. may have changed. Moreover, to date it is taking a very long time to get approvals of the design briefs and specifications agreed.

- 5.1.221 Further, the modification of the planned costs to include fees, contingencies, specification and design costs, supervision fees, access costs and service costs, is justified for reasons of viability and deliverability, ensuring that the cost of the Sports Facilities is not so substantial as to undermine the viability of the relevant

Main Phases and strike at the very delivery of these assets. The simple point here is that such provisions are an example of hidden cost related to the obligations of the s106 agreement that have not been captured in any cost plan.

Request 49 – Paragraph 2.1.2 The provision for consultation with the CMO, stakeholders and the public and approval of the details of the consultation

- 5.1.222 The Appellants apply for paragraph 2.1.2 to be Modified to omit the requirement to consult the CMO and omit the requirement to consult and to obtain approval in respect of the details of the consultation and to omit the final clause 'and in particular the CMO's comments on the costings;'
- 5.1.223 The consultation with the CMO under 2.1.2 is surplus to requirements, given that the Council will have the opportunity already to consult with all interested parties when approving the design brief and specification. This part of the paragraph does not, therefore, serve any useful purpose and should be discharged or modified accordingly.
- 5.1.224 As for the requirement to consult over the details of the consultation (whether with the CMO or Council) this also fails to serve any useful purpose. It unnecessarily complicates what should be a relatively straightforward and simple exercise. This part of the obligation (in parenthesis) should be discharged accordingly.
- 5.1.225 In order to avoid ongoing and expensive delays it is essential to modify the obligation as set out. The CMO will still be consulted and able to have an input into the consultation process. However, the CMO do not have the expertise to be a determiner of whether or not the design brief and specification are acceptable.
- 5.1.226 As set out in the evidence of Quod, delays in the discharge of obligations adds to the financial burdens and impacts viability. The modification will therefore serve the "useful purpose" i.e. local public consultation" equally well.

Request 50 – Paragraph 2.2 and 2.8 and Schedule 29D Item 26 The obligations to provide the Sports Facilities (1st Phase)

- 5.1.227 The Appellants wish to Modify the obligation to delay the provision of Sports Facilities in Phase 1 to the occupation of the 3,650th dwelling rather than the 3,200th dwelling. Doing so assists with managing the peak debt of the development.
- 5.1.228 The Appellants submit that given the availability of alternative sports facilities and assets that precede the delivery of this first phase, the re-timing of this obligation is such that it will serve its purpose equally well if modified as proposed.
- 5.1.229 In real terms the limited additional time sought by this modification for the delivery of these facilities being unlikely to have any material or even measurable impact on the experience of owners and occupiers at this stage in the Development.

5.1.230 It is additionally noted that the early delivery of the Secondary School has ensured that indoor and outdoor sports facilities will be available to residents by the time of the opening of the school in 2025. The facilities include outdoor sports pitches, a MUGA and 3 indoor badminton courts, also capable of use for 5-a side, netball, basketball, tennis or cricket nets. There is no up to date evidence that there would be a shortage of facilities arising in the short term.

5.1.231 In this respect I note that there are a significant number of Football Clubs within a 10-mile radius from Chilmington Avenue roundabout. These include;

- Ashford United FC – 3.3 miles (advertising academy trials)
- Kennington Football Club – 3.3 miles (register to join on website)
- Park Farm Rangers FC – 3.6 miles (register on the website)
- South Ashford Football Club – 2.5 miles (website advertising taster session and membership)
- Stanhope and Beaver Rangers FC. – 2.6 miles (facebook page but no website)
- Bromley Green FC – 3.7 miles (register to join on website)
- Pilgrims Football Club - 1.8 miles (Facebook page advertising to get involved)
- Willesborough Athletic FC – 8 miles (register on the website)
- Kennington Juniors FC – 5.2 miles
- Wye Juniors FC – 8.2 miles (contact the club on their website)
- Pluckley FC – 5 miles (advertising players wanted for next season – school years 1-7)
- Smarden & Juniors FC – 8.1 miles (facebook page advertising)
- Brewmaster High Halden FC – 6.7 miles (register on the website)
- Hamstreet Youth Football Club – 6.5 miles (spaces in some teams – can apply on website for youth or mens teams)

5.1.232 I have looked at the website of each club and it is clear that many are still welcoming new players. On the face of it there is no evidence of a shortage of opportunities to play football.

5.1.233 It should be noted that while some cricket clubs across Kent are very much thriving, many are short of players and several have reduced the number of sides

that they run as a consequence. In this respect it seems to me there is no realistic prospect of someone who wants to be able to play sport not being able to do so.

- 5.1.234 In addition, I note that as part of the Kingsnorth development an additional cricket square is to be provided. The prospects of two further cricket clubs in such close proximity to each other has very limited prospect of success without a very significant increase in population in the local area.

Request 51 – Paragraphs 2.3 and 2.8 and Schedule 29D Item 30 The obligations to provide the Discovery Park Sports Facilities (2nd Phase)

- 5.1.235 The Appellants apply to Modify paragraph 2.3 to provide, 'Not to Occupy more than 5,500 [rather than 5000] Dwellings unless. The same argument is put forward as for Request 50 and 51.

Request 52 – Paragraphs 2.6.1, 2.6.2, 2.6.3, 2.6.4 the relevant sub-paragraphs of 2.8 and schedule 29D Items 22, 23, 28 and 31 The obligations to provide DP3 and PS6 and the applicable occupation limits

- 5.1.236 The Appellants apply to Modify the following paragraphs as follows on peak debt and viability grounds:

2.6.1 2650 [rather than 1500] Dwellings unless 1 ha of DP3 has been provided

2.6.2 3500 [rather than 2500] Dwellings unless 0.86 of DP3 has been provided

2.6.3 5000 [rather than 4000] Dwellings unless PS6 and 1.08 ha of DP3 have been provided

2.6.4 5750 [rather than 5500] Dwellings unless 4.42 ha of DP3 has been provided
... '

'2.8 To construct and provide:-

2.8.3 1 ha of DP3 before the Occupation of more than 2650 [rather than 1500] Dwellings in accordance with the requirements of paragraph 2.6.5 of this schedule; and

2.8.4 0.86 ha of DP3 before the Occupation of more than 3500 [rather than 2500] Dwellings in accordance with the requirements of paragraph 2.6.5 of this schedule; and

2.8.5 PS6 and 1.08 ha of DP3 before the Occupation of more than 5000 [rather than 4000] Dwellings in accordance with the requirements of paragraph 2.6.5 of this schedule; and

2.8.6 4.42 ha of DP3 before the Occupation of more than 5750 [rather than 5500] Dwellings in accordance with the requirements of paragraph 2.6.5 of this schedule.

- 5.1.237 It is the case that as Phase 1 is delivered, informal natural green space is being provided for leisure use in addition to the sports facilities at the school which will be available for public use. Leisure and sport provision is therefore being met in the short term.

Request 53 – Paragraph 2.5 The obligation to provide the design brief and specification for DP3 and PS6 etc

- 5.1.238 The Appellants wishes to Modify this obligation so that the submission approval of the design briefs and specifications should be changed from 1,000 Dwelling Occupations to 2,100 Occupations and to modify the planned costs to include fees and other costs.
- 5.1.239 Further, the modification of the planned costs to include fees, contingencies, specification and design costs, supervision fees, access costs and service costs, is justified for reasons of viability and deliverability, ensuring that the cost of the DP3 is not so substantial as to undermine the viability of the relevant Main Phases and strike at the very delivery of these assets.
- 5.1.240 Experience demonstrates that if there is no cap on such fees there is inefficient use of funds and no advancement of delivery. An overall fixed cap will ensure all parties work efficiently.
- 5.1.241 As for the requirement to consult over the details of the consultation (whether with the CMO or Council) this also fails to serve any useful purpose. It unnecessarily complicates what should be a relatively straightforward and simple exercise. This part of the obligation (in parenthesis) should be discharged accordingly.
- 5.1.242 In order to avoid ongoing and expensive delays it is essential to modify the obligation as set out. The CMO will still be consulted and able to have an input into the consultation process. However, the CMO do not have the expertise to be a determiner of whether or not the design brief and specification are acceptable.
- 5.1.243 As set out in the evidence of Quod, delays in the discharge of obligations adds to the financial burdens and impacts viability. The modification will therefore serve the “useful purpose” i.e. local public consultation” equally well.

Request 54 –The various conditions attached to the delivery of each of the first and second phases of the Sports Facilities and the DP3 Paragraphs 2.2.1,2.3.1 and 2.6.5 requiring provision of the relevant facilities in accordance with reserved matters etc. Paragraphs 2.2.4, 2.3.4 and 2.6.8 requiring payment of tax. Paragraphs 2.2.6, 2.3.6 and 2.6.10 dealing with the approval of the relevant transfers.

- 5.1.244 The Appellants apply to Modify the s.106 to allow the following clause to be added to paragraphs 2.2.1, 2.3.1 and 2.6.5 (after'... design briefs and specification'), 'and at a cost not exceeding the total capital cost for these facilities stated above.'
- 5.1.245 Further, the Appellants apply to Discharge the obligations to transfer each of the first phase and second phase of the Sports Facilities and the DP3 so as to substitute an obligation in each case to grant a lease of the same, being a lease (including a sub-lease) with a term of 21 years at a peppercorn ground rent and which makes the same provisions (a)-(c) as referred to above (see Schedule 7).
- 5.1.246 Thus, the Appellants apply for paragraphs 2.2.4-2.2.6, 2.3.4-2.3.6 and 2.6.8-2.6.10 to be discharged and new paragraphs 2.2.4-5, 2.3.4-5 and 2.6.8-9 to provide instead that each phase or the (DP3) Facilities, as the case may be, is:
- either:
- to be transferred to the CMO by way of the grant of a lease as aforesaid of the land on which the phase/Facilities are located in a form acceptable to the latter (their approval of the form not to be unreasonably withheld).
- or:
- where the Owners have served the CMO with an engrossed lease/s (as appropriate) as aforesaid of the land on which the phase/Facilities are located in a form previously approved by the CMO or (in the event that the CMO has still not approved the same within 6 weeks of the relevant owner having served the same) in a form previously approved by the Council (where the Council's approval of the form of lease proposed by the Owners is not to be unreasonably withheld) that is executed ... etc.
- 5.1.247 The modification to paragraphs 2.2.1, 2.3.1 and 2.6.5 are proposed for the avoidance of doubt and to reinforce the existing obligations.

- 5.1.248 As for the modification and/or discharge of paragraphs 2.2.4 to 2.2.6, 2.3.4 to 2.3.6 and 2.6.8 to 2.1.10 to provide for the grant of a long lease rather than a freehold transfer, this will not detract from the provision of these phases and Facilities and the obligations will serve their existing purpose equally well if modified as proposed.
- 5.1.249 There is no necessity to transfer the land in order for it to be made available and managed and maintained by the CMO. Moreover, given the extensive area DP3 covers, and its planned phased delivery, it is critical that it is managed and maintained to a high standard to ensure placemaking is maintained during the delivery and sale of housing. Hodson's experience of working with the CMO to date has not demonstrated competence to do this.
- 5.1.250 This is required because the only way HD can guarantee quality of place making going forward is to have control over it as occurred at Kings Hill.

Request 55 – Paragraphs 2.4 and 2.7 The 12 months repairing liability following the transfer of the second phase of the Sports Facilities and the DP3

- 5.1.251 The Appellants apply to Discharge these obligations such that they are responsible only for any building defects at the time of handover. It is not reasonable and useful where viability is an issue for Hodson's to have a repair liability. Repair is not an obligation that Hodson should be responsible.

Request 56 - The obligation to publish the completed masterplan for the Discovery Park, the Discovery Park Sports Hub, etc. Request 56 – Paragraph 3.4 requiring the masterplan no later than Occupation of the 400th dwelling.

- 5.1.252 With reference to Request 47, the Appellant has paid ABC £20,000 to produce and publish the masterplan. All that I understand that has been produced to date is a conceptual plan. This clearly does not equate to £20,000 and so the Appellant as per request 47 requests that any surplus is returned to the Appellant.
- 5.1.253 Having been paid to produce the Masterplan and with the 400th occupation trigger being too close to being met, it is requested that ABC publish whatever work they have undertaken immediately. The concern here is that the Appellant has already submitted two RMAs for DP3 which should have been informed by the masterplan. It would be completely unacceptable for HD to have to fundamentally review these RMAs now due to the lack of progress ABC has made, particularly since the payment was made in October 2021.

Schedule 11 – Cemeteries

- 5.1.254 Section 8 of the Explanatory Statement should be consulted for an overview of the obstacles associated with the community development obligations.

Request 57 – Payments in respect of cemeteries. Paragraphs 1 and 2.

- 5.1.255 The Appellants apply for all such payments toward Cemeteries to be Discharged.
- 5.1.256 The obligations to make these payments is, the Appellants submit, unnecessary and represents over provision of such facilities given the available off-site facilities. The cost is significant (£800,000) and serving only to undermine the viability and ultimately the deliverability of the Development.
- 5.1.257 The Local Authority understand that there is no statutory obligation for a local authority to provide burial space for its residents, it is deemed normal practice to do so. Once in place, we have an obligation to maintain cemeteries, but we do not have an obligation to provide new sites / provision.
- 5.1.258 The borough does have a privately run Crematorium at Charing. There are some active churchyards allowing burials of coffins and ashes within the borough, but they are usually limited to those residents within the parish prior to their death, limiting their use by the majority. We understand that there are four Council run cemeteries:
- Bybrook Cemetery
 - Canterbury Road Cemetery
 - Tenterden Cemetery
 - Willesborough Cemetery
- 5.1.259 The Table below is taken from the Council’s published cemetery fees for 2023/24.

		Resident	Non-Resident
Depth	Single	£1,479	£5,916
	Single boarded out	£1,752	£7,008
	Double **	£1,624	£6,496
	Triple **	£1,885	£7,540
Oversized coffin*	Single	£2,883	£11,532
	Single boarded out	£3,428	£13,712
	Double **	£3,173	£12,692
	Triple **	£3,695	£14,780
Child	< 5 years old	No fee	£99
	5 – 18 years old	No fee	£328
Ashes	Large plot	£597	£2,388
	Small plot	£435	£1,740
	Additional set interred with another interment	£84	£168

Resident fees refer to whether the deceased was local and not the applicant

5.1.260 On 28th November 2019 the Council presented a report 'Ashford Borough Council cemetery provision: challenges and solutions.

5.1.261 Ashford's Green Space Standards state that cemeteries are required based on the rate of 0.6ha per 1,000 people. This must be incorrect and if the £800,000 obligation is based on this metric, it must be adjusted downwards. Based on publicly available assumptions on death rates and burial rates, including Ashford's own evidence presented to cabinet, the need appears to be more in line with 0.6ha per 10,000 people - without adjusting for the declining rate in burial rates (vs cremation). As set out in Ashford's evidence base, "1 hectare in Ashford would provide 1,680 graves to cover 30 years of new burials". This is for the whole area, not just for Chilmington Green. Need from Chilmington Green is estimated to be 400- 800 graves over 30 years. Ashford's evidence base for the cost of new provision is opaque *but does not appear to justify costs of £800,000 for a 1ha cemetery. Evidence from elsewhere indicates that this would be half that cost*³.

Schedule 12 – Community Hub Building

5.1.262 Section 8 of the Explanatory Statement should be consulted for an overview of the obstacles associated with the community development obligations.

³ A note from Cherwell District Council on Bicester Burial Ground Provision (2017) states that a new cemetery is required to meet the needs of both the existing population and future development in the town. The cost for cemetery provision set out in this note is £428,000 per hectare, which includes purchase of land (assumed to be £50,000 per hectare), drainage, paths, fencing and storage facilities.

Request 58 – Paragraph 1.2 and Schedule 29D Item 17. The obligation to provide a multi-purpose community leisure building and other facilities (the Community Hub Building) by 1,800 Dwellings

5.1.263 The Appellants apply for the following modifications and/or discharge of obligations: That paragraph 1.2 be modified to read 'Unless the Council agrees otherwise, not to Occupy more than 3,250 Dwellings unless:

1.2.1 the Facilities: First Tranche have been provided in accordance with the reserved matters approval and the approved design brief and specification and at a cost which together with the Facilities: Second Tranche does not exceed. the sum of £2m inclusive as stated above ...

1.2.2 all ... the Facilities; First Tranche are located ...

1.2.3 all conditions ... apply to the Facilities: First Tranche ...;'

5.1.264 Further, that the obligations at paragraphs 1.2.5 to 1.2.6 to transfer/grant a Long Leasehold Interest to the CMO of the Facilities (First Tranche) and with them paragraph 1.2.4, should be substituted by an obligation to grant leases to individual tenants e.g . the NHS or Police, on terms acceptable to them. Thus, paragraphs 1.2.4, 1.2.5 and 1.2.6 should be discharged and replaced by new obligation as follows:

'and

1.2.4 the Facilities; First Tranche have been transferred, in so far as required, to the proposed user/s of each by way of lease/s or tenancies (as appropriate) of the same on terms suitable to their intended use and that are acceptable to them.'

1.2.5 The Facilities: First Tranche shall comprise the following:

- a multi-purpose community space of up to 1500 sqm, to include
- a fully stocked and equipped library
- 340 sqm space for police community and social services outreach including family and social care (subject to lease confirmation)
- 400 sqm within the multi-use building of community space to meet the needs of the community and the CMO Trust and to provide ancillary facilities for the MUGA
- a multi-use games area
- up to 500 sqm of GP provision (subject to NHS lease confirmation)

Subject always to such variations in scope as may reasonably be required to ensure that the total cost of £2m is not exceeded.

1.2.6 To construct and provide the Facilities: First Tranche ... more than 3,250 [not 1800] Dwellings.

[That after the above there be inserted new paragraph 1.2A as follows, mirroring the above provisions in the case also of the proposed Facilities: Second Tranche]

1.2A 'Unless the Council agrees otherwise, not to Occupy more than 4,250 Dwellings unless:

1.2A.1 the Facilities: Second Tranche have been provided in accordance with the reserved matters approval and the approved design brief and specification and at a cost which together with the Facilities: First Tranche does not exceed £2m inclusive as stated above ...

1.2A.2 all ... the Facilities: Second Tranche are located ...

1.2A.3 all conditions ... apply to the Facilities: Second Tranche ... ; 'and

1.2A.4 the Facilities; Second Tranche have been transferred, in so far as required, to the proposed user/s of each by way of lease/s or tenancies (as appropriate) of the same on terms suitable to their intended use and that are acceptable to them.'

1.2A.5 The Facilities: Second Tranche shall comprise the following:

- further community space of up to 2500 sqm, to include
- a 1000 sqm community leisure building
- up to 500 sqm of GP provision (subject to NHS lease confirmation)
- additional floor space of up to 200 sqm for identified community needs, including youth provision

Subject always to such variations in scope as may reasonably be required to ensure that the total cost of £2m is not exceeded.

1.2A.6 To construct and provide the Facilities: Second Tranche in accordance with the requirements of paragraph 1.2A.1 of this schedule prior to the Occupation of more than 4,250 Dwellings.

1.2A.7 In respect of each of the Facilities: First and Second Tranche, the right to carry out the requisite building works being reserved always to the Paying Owners [Appellants].

1.2A.8 In respect of each of the Facilities: First and Second Tranche, no building contract shall be entered nor construction begin prior to confirmation of the public service leases, i.e. for Police or GP use.

- 5.1.265 Along with the Chilmington Hamlet facilities (see above), the obligation to provide the Community Hub facilities is acknowledged potentially to serve a useful purpose, except for the community learning space which is surplus to requirements. However, two main issues arise.
- 5.1.266 Firstly, the capital cost up to £5,152,127.00 is excessive and serving only to undermine the viability and ultimately the deliverability of the Development. The current obligation is over-priced and over-specified. If the Appellants carried out this build themselves there would be a significant saving in cost. With any further reduction to £2m capital cost achieved through value engineering the specification and such further alterations thereto as may reasonably be required to ensure this total cost is not exceeded. The Brookbanks Cost Report confirms that the facility can be built for £2m and is included in Appendix V of this proof.
- 5.1.267 Secondly, the provision of the balance of this space (apart from the community learning facility which can be catered for elsewhere) should in any event be phased and where appropriate made subject to lease confirmation, as proposed.
- 5.1.268 Nonetheless, the total space to be provided is still very large see Section 8 of the Explanatory Statement and in particular paragraph 8.18) and as Quod states there much of it is not expected to be needed until much later than the triggers currently set. In these circumstances, as set out in the Explanatory Statement (paragraph 8.29), 'Whilst the challenges of phased construction are acknowledged, for the sake of avoiding mothballed buildings with associated liability and costs, this community provision should be phased and elements delayed until they are needed.' In addition, there should be a clause added to ensure that public service leases will be confirmed prior to triggering the construction works and contracting.
- 5.1.269 Further, as indicated the requirement to provide these facilities by the 1800th Dwelling Occupation will be a cost to Phase 1 and is serving to undermine the viability of this phase and in turn delivery of the Development.
- 5.1.270 Indeed, in terms of viability and deliverability, the current timetable for these assets would not only have a significantly detrimental effect on the Paying Owner's cashflow in the initial phases of the Development, but more critically without modification (going beyond the triggers indicated in the Explanatory Statement) it will likely cause the loss of the funding available to the Appellants to carry out the Development at all.
- 5.1.271 In the circumstances, the purpose of these provisions can be better or at least equally well served by modifying them as proposed, supporting the Development whilst still securing delivery of these facilities when needed in the life of the Development.
- 5.1.272 At Northstowe (South Cambs), an unused wing of the primary school (not needed as the pupil numbers were still low) provided an excellent community centre and nursery facility for three years. The secondary school at that development now

rents out space prior to the new community centre coming forward in a later phase.

- 5.1.273 Alconbury Weald (Huntingdonshire) has used multi-purpose spaces and the primary school for all community activity to date (over five years of delivery and 545 completed homes) and only opened its first dedicated community space in 2021 and does not yet have a secondary school.
- 5.1.274 Early provision of the secondary school at Chilmington Green in 2025 should delay the need for community and sports facilities further. The secondary school has already formally and publicly committed, through its planning application, to facilitate community use of halls and a learning resource centre.
- 5.1.275 The school assets, and their potential community use, should be reflected in the triggers for additional community buildings and sports pitches. The schools are significant community assets and it is now widely recognised by local authorities and school providers alike that shared use of school facilities typically only used for 190 out of 365 days a year, makes sense socially and financially.
- 5.1.276 The schools sports block will have four sports courts, a drama studio and changing facilities. The school will also have three grass pitches and a MUGA all available outside of school hours.
- 5.1.277 As for the proposal to grant individual leases on terms acceptable to the proposed end users of the different facilities (with the Appellants retaining the land on which the facilities are located if the users do not want to take up any lease), this plainly makes sense in practical and market terms, providing the necessary flexibility to secure the delivery of these facilities for the Development.
- 5.1.278 These modified terms accordingly serve the purpose of these obligations better than, or at least equally as well as, the existing terms, which by imposing a freehold transfer or long leasehold interest could actually undermine delivery of these assets in circumstances where such interests are not actually wanted.
- 5.1.279 As for the discharge of paragraph 1.2.4 in any event (and the omission of any equivalent in relation to the Facilities; Second Tranche), this is justified for the reasons already referred to above in respect of similar clauses in, for example, Schedules 8 and 9 above.

Request 59 – Paragraph 1.1. The submission and approval of a design brief and specification for the Community Hub Building

- 5.1.280 The Appellants apply to Modify the planned costs to include fees and other costs and to modify this obligation so that the submission/approval of the design brief and specification for the Facilities: First Tranche and Second Tranche may be split with the former to be re-gearred from 1,400 Dwelling Occupations to 2,850 Occupations and the latter to 3,850 Dwelling Occupations. Hence paragraph 1.1 should read:

'Not to Occupy more than 2,850 Dwellings unless:

1.1.1 a design brief and specification for the Facilities: First Tranche and/or other facilities of no significantly greater environmental impact as may be approved by the Council to be provided in the District Centre has been approved by the Council with a total capital cost that (together with Second Tranche) does not exceed £2m ... including fees, contingencies, specification and design costs, supervision fees, access roads and service costs and the costs of those matters to be done at the Owner's expense referred to below;'

Para 1.1.2 to be modified to refer to the Facilities: First Tranche.

5.1.281 Whilst new paras 1.1A.1 and 1.1A.2 should be inserted in similar terms to 1.1.1 and 1.1.2 above but referring to the Facilities: Second Tranche and with a trigger of 3,850 Dwelling Occupations.

5.1.282 This modification is proposed for the reasons stated at request 59 in respect of the provision of these facilities and consequential upon those modifications

Request 60 – Paragraph 1.1.2 The provision for consultation with the CMO and stakeholders etc. and approval of the details of the consultation

5.1.283 The Appellants apply for paragraph 1.1.2 to be Modified to omit the requirement to consult the CMO and omit the requirement to consult and to obtain approval in respect of the details of the consultation and to omit the final clause 'and in particular the CMO's comments on the costings;'

5.1.284 Please see Appendix II.

Request 61 – Paragraph 1.3 The 12 months repairing liability following the transfer of the Facilities

5.1.285 The Appellants apply to Discharge these obligations such that they are responsible only for any building defects at the time of handover. It is not reasonable and useful where viability is an issue for HD to have a repair liability. Repair is not an obligation that HD should be responsible for.

Request 62 – Paragraph 1.4 The obligation to make designated parts of the Community Hub Building available for use by the County Council in accordance with the booking system agreed between the CMO and the CC

5.1.286 The Appellants wishes to discharge this obligation. Hodson's are under an obligation to transfer to the CMO. It is therefore for the CMO to facilitate the designated parts of the building to KCC under their booking system. ABC have not clarified why this is an obligation should fall on Hodson Developments as after the

transfer, it is entirely within the gift of the CMO. This obligation serves no useful purpose on that basis.

Request 63 – Paragraph 2 Provision for payment toward the Council's costs

- 5.1.287 The Appellants apply to discharge this payment obligation. Providing payment towards the Council's costs undermines the purpose of the clause (to secure the grant on appropriate terms), compensating the Council even in cases where it unreasonably refuses approval, which should not be the case.
- 5.1.288 The clause does not therefore serve any proper or useful purpose and should be discharged accordingly.

Schedule 13 – Local Centre Hubs

Request 64 – Paragraphs 1-3, and 4-6 respectively. The Orchard Village Facilities and the Chilmington Brook Facilities

- 5.1.289 No amendments are sought.

Schedule 14 – District and Local Centres

- 5.1.290 Section 9 of the Explanatory Statement should be consulted for an overview of the current issues/obstacles associated with the District Centre.

Request 65 – Paragraphs 1.1 to 1.5. The obligation to construct and provide the District Centre Facilities in Main Phase 1 and the Orchard Village and Chilmington Brook small Retail Units in Phases 3 and 4 and associated obligations including marketing plans etc.

- 5.1.291 The Appellants apply to Modify the Main Phase 1 District Centre obligations permit a revised scheme for the same, to be the subject of a separate application for planning permission.
- 5.1.292 The obligations at paragraph 1 to provide a District Centre with the facilities indicated under 1.1 no longer serve any useful purpose as drafted. The current retail market is such that the facilities under 1.1 focused as they are on small units is wholly unsustainable. The Appellants have canvassed the market, but there are no operators who will contemplate the present scheme.
- 5.1.293 The Appellants will accordingly make a new planning application for the District Centre facilities on CH1 and CH2. The revised scheme set out in that application will replace that outlined under the provisions of paragraph 1, and these should be modified accordingly to accord with and permit the said revised scheme. Critically

without modification it will jeopardise the very funding available to the Appellants to carry out the Development at all.

- 5.1.294 In the premises, the purpose of these provisions can be better or at least equally well served by modifying them as proposed, supporting the Development whilst still securing delivery of these facilities at an early stage in the life of the Development.

Request 66 – Paragraph 1.1 to 1.5. The submission and approval of a design brief and specification for the District Centre Facilities by 950 Dwelling Occupations

- 5.1.295 Following the Possingham Farm decision this request is withdrawn.

Schedule 15 – Education

- 5.1.296 Section 11 of the Explanatory Statement should be consulted for an overview of the current challenges associated with the Education obligations.

Request 67 – Paragraph 6 and 7 (as amended by the Deed dated 29.3.19). The provision of Bonds to the value of PS1 Contributions 2, 3 and 4

- 5.1.297 For Education matters I defer to the proof of evidence of Mr Ben Hunter.

Request 68 – Paragraph 7 (as amended by the Deed dated 29/3/19). Education Contributions; Primary School 1 Contributions 1 to 4 to the County Council

- 5.1.298 In explanation it is the case that HD have been required to pay indexation based on 2014 costs for contribution 1 for primary school 1. As explained elsewhere in this PoE Brookbanks have demonstrated that this indexation results in a figure that is excessive when compared to actual costs at today's prices. Additionally, KCC requested payment 4 some 18 months after primary school 1 was completed. HD have requested evidence from KCC of expenditure for the school but have not received anything in response to date.

Request 69 – Paragraphs 8, 10, 11, 12 and 14. Education Contributions; Primary School 2 Contributions 1 to 4 to CC

- 5.1.299 For Education matters I defer to the proof of evidence of Mr Ben Hunter.

Request 70 – Paragraph 13 and 14(e). The provision of Bonds to the value of PS2 Contributions 2, 3 and 4

5.1.300 For Education matters I defer to the proof of evidence of Mr Ben Hunter.

Request 71 – Paragraphs 15, 17, 18, 19 and 21. Education Contributions; Primary School 3 Contributions 1 to 4 to CC

5.1.301 For Education matters I defer to the proof of evidence of Mr Ben Hunter.

Request 72 – Paragraphs 20 and 21(e). The provision of Bonds to the value of PS3 Contributions 2, 3 and 4

5.1.302 For Education matters I defer to the proof of evidence of Mr Ben Hunter.

Request 73 – Paragraphs 22, 23, 24, 25, 26 and 28. Education Contributions; Primary School 4 Contributions 1 to 4 to CC

5.1.303 For Education matters I defer to the proof of evidence of Mr Ben Hunter.

Request 74 – Paragraph 27 and 28(d). The provision of Bonds to the value of PS4 Contributions 2, 3 and 4

5.1.304 For Education matters I defer to the proof of evidence of Mr Ben Hunter.

Request 75 – Paragraphs 33 and 35. Stage One Secondary School Site Transfer and Adoptable Access etc.

5.1.305 This request has been removed from the Appeal.

Request 76 – Schedule 15 Part 6, paragraph 42. Provision of Bonds for the Stage One and Two Secondary School Contributions

5.1.1 This request has been removed from the Appeal.

Request 77 – Schedule 15, Part 5. Secondary School Contributions

5.1.1 This request has been removed from the Appeal.

Request 78 – Paragraphs 48 and 49. Provision of an account of education and expenditure and repayment of any surplus

- 5.1.2 Schedule 15A deals with matters relating to the transfer of land to KCC for the provision of schools at Chilmington Green. The current provisions impose several requirements upon the applicant that serve no useful purpose as they are not necessary for the reasonable transfer of land to KCC and/or relate to matters that should reasonably be expected to fall as construction costs under the provision of the school, as they are materially dependent upon the design and specification of the school.

Schedule 15A KCC General Site Transfer Requirements

Request 79 – Paragraph 4. Provision of the site

- 5.1.3 The current requirement of paragraph 4 is for the appellant to transfer a site that is level. The appellant is applying for this paragraph to be modified to the following:
- 5.1.4 “The site to be provided to the County Council in a reasonably level condition. If works require to do this, then they should be undertaken by the owner at the Owner’s cost to an agreed specification and form of works.”
- 5.1.5 As such the appellant is seeking to make the requirements of transfer that the site be reasonably level.
- 5.1.6 The intended purpose of this paragraph is to provide a reasonably level site for the intended user, such that matters such as gradient / slope do not add constraints or abnormal costs for the delivery of the intended use – a school. The proposed modification brings the paragraph in line with this requirement. It serves no useful purpose in requiring the appellant to undertake any additional works that are not necessary for the satisfactory development of the site and are normal requirements / costs for construction once detailed design is completed.

Request 80 – Paragraph 5. Site setting out at handover

- 5.1.7 The current requirement of paragraph 5 requires the site to have been pegged out and fenced prior to the completion of the Transfer. The appellant is applying for the requirement of the site to be fenced to be omitted such that paragraph 5 reads:
- 5.1.8 “The site shall have been clearly pegged out on Site to the satisfaction of the delegated representative of the County Council’s Head of Property using GIS co-ordinates, prior to the completion of the Transfer.”

- 5.1.9 Until the detailed design of the site and the proposed construction method is known the fencing of the site is potentially abortive work as well as a significant cost to the developer. This is a normal requirement that the developer would progress as part of their agreed construction method statement and reflects the position of other land sales that have taken place at Chilmington Green.

Request 81 – Paragraph 7. Construction access

- 5.1.10 The appellant is applying to modify paragraph 7 to avoid any doubt as to its meaning and to support the current purpose of the paragraph as follows:
- 5.1.11 “Prior to site transfer, the Owner is to provide, at their own cost and subject to the County Council’s approval, suitable free and uninterrupted construction access to a suitable location on the site boundary. Haul roads should be constructed to the site boundary, at no cost to the County Council, and maintained prior to transfer to a standard capable of accommodating heavy goods vehicles and other construction traffic.”
- 5.1.12 As can be seen, the proposed modifications serve their intended purpose equally as well and ensure a haul road suitable for construction traffic is provided to the transferred site.

Request 82 – Paragraph 8. Provision of services and utilities on site

- 5.1.13 The appellants are seeking to amend paragraph 8 to ensure that due allowance is made for the practicalities of provision of utilities to the transferred site, whilst continuing to serve its intended purpose better or at least equally well, as follows:
- 5.1.14 “Prior to the site transfer or, if not reasonably practicable within a reasonable time thereof, the Owner shall have provided, at their own cost and subject to County Council approval adopted services and utilities to an agreed location(s) on the site boundary of sufficient capacity and depth to accommodate the maximum potential requirement without mechanical aid upon transfer. The utilities must include fresh water, foul, surface water, gas, electricity and telecommunications. Necessary statutory undertakers’ plant (such as electricity sub-stations or transfer stations) may be located outside of the site boundary and the County Council shall not be liable for any costs (including legal costs) associated with the installation and commissioning of such plant.”
- 5.1.15 The provision of services to the site can sometimes involve significant lead in times which are beyond the ability of the appellant to overcome or influence, especially if the appellant is not provided with the exact requirements in good time prior to transfer. In the event that all the necessary measures have been undertaken by the appellant to secure services in line with the requirements of KCC it serves no useful purpose that the wider development of Chilmington Green should be delayed, by unnecessarily delaying the transfer of the site. The proposed modification therefore continues to serve its purpose equally well by ensuring the

required services are provided to the site, whilst making allowances for the practicalities that can arise in the provision of services.

Request 83 – Paragraph 10. Provision of temporary electricity and water supplies

- 5.1.16 The appellant seeks to discharge the obligation to provide temporary electricity and water supplies to the site from the start of construction, set out in paragraph 10.
- 5.1.17 Any temporary requirements can only be arranged by the school contractor who is occupying the site. This will be informed by their construction methodology and requirements. The obligation therefore serves no useful purpose.

Request 84 – Paragraph 14. The payment of the County Council's legal costs and the costs of any Project Management agreements

- 5.1.18 The appellant seeks to discharge the obligations set out in paragraph 14. There is no justification for imposing these very significant costs (legal costs, surveyors fees, administrative costs, transfer costs, project management costs) upon the appellant in addition to the very significant education contributions. Given the likely level of these costs on the transfer of each site they will materially and adversely affect the viability at each stage and by the same measure the deliverability of the Development. Moreover, costs such as project management costs, have never been reflected in the agreed cost plan for the Development thereby adding further costs to the Development further affecting the viability. The considerable education contributions for the provision of the schools can and should reasonably be expected to cover Project Management costs.
- 5.1.19 As such, this provision cannot be regarded as serving any proper and useful purpose and should be discharged

Other KCC Services

Request 85 – Paragraph 1, 2, 9, 10 and Schedule 30B. Library Services; 4 x £225k contributions

- 5.1.20 The Appellants application in this respect is for these Library Services Contributions to be discharged. Schedule 30B column 2 to be amended accordingly, to remove these payment amounts.
- 5.1.21 Library premises are included already in the Community Hub (under Schedule 12 as amended). This obligation is accordingly surplus to requirements, duplicative and serves no useful purpose. The capital cost of building the library on-site is

already included in the budget for Community Hub. Therefore, additional capital cost is not required.

- 5.1.22 Moreover, the costs here are significant (£900,000) and serving only to undermine the viability and ultimately the deliverability of the Development.

Request 86 – Paragraphs. 3, 4, 9, 10 and Schedule 30A-C. Payment of Youth Services Contributions to KCC

- 5.1.23 The request in this respect is for these Youth Services Contributions to be discharged.
- 5.1.24 Schedules 30A-C also to be modified accordingly to omit the current payments and triggers and replace them as above.
- 5.1.25 As part of the Community Hub provision Hodson are providing up to 200sqm of floorspace for identified community needs, including youth provision (see the Statement of Facts from Hodson Development in Appendix I of this proof).
- 5.1.26 The application to discharge is made because these contributions no longer serve a useful purpose, in as much as there is already ample provision in this regard. These payments accordingly amount to substantial over provision, are surplus to requirements and should be discharged accordingly.
- 5.1.27 Within County Council tax payments there must already be provision for use for Youth Services. All new residents will pay council tax and therefore KCC's Youth Service provision is already addressed.
- 5.1.28 The discharge of these obligations as proposed is shown in the Viability Report and forms part of this updated viability analysis justifying each discharge and modification sought.

Request 87 – Paragraphs 5, 6, 9, 10 and Schedule 30 A-C. Payment of Community Learning Contributions to KCC

- 5.1.29 The Appellants application in this respect is for these Community Learning Contributions to be discharged.
- 5.1.30 Schedules 30A-C also to be modified accordingly to omit the current payments and triggers and replace them.
- 5.1.31 The application to discharge is made because these contributions no longer serve a useful purpose, in as much as there is already ample provision in this regard including the CMO building and the school facilities. These payments accordingly amount to substantial over provision, are surplus to requirements and should be discharged accordingly.

- 5.1.32 Within County Council tax payments there must already be provision for use for Community Learning. All new residents will pay council tax and therefore KCC's Community Learning provision is already addressed.
- 5.1.33 The discharge of these obligations as proposed is shown in the Viability Report and the analysis justifying each discharge and modification sought.

Request 88 – Paragraphs 7, 8,9, 10 and Schedule 30A-C. Payment of Family Social Care Contributions

- 5.1.34 The Appellants application in this respect is for these Family Social Care Contributions to be discharged.
- 5.1.35 Schedules 30A-C also to be modified accordingly to omit the current payments and triggers and replace them.
- 5.1.36 The CMO building will be providing 340sqm of space for police, community and social services outreach including family and social care.
- 5.1.37 The application to discharge is made because these contributions no longer serve a useful purpose, in as much as there is already ample provision in this regard. These payments accordingly amount to substantial over provision, are surplus to requirements and should be discharged accordingly.
- 5.1.38 Within County Council tax payments there must already be provision for use for Social Care Contributions. All new residents will pay council tax and therefore KCC's Social Care Contributions provision is already addressed.
- 5.1.39 The discharge of these obligations as proposed is shown in the Viability Report and the analysis justifying each discharge and modification sought.

Request 89 – Paragraph 10 Provision for repayment of surplus

- 5.1.40 Modification deleted from appeal.

Schedule 17 Ecology

Request 90 – Paragraph 1. Providing for compliance with any mitigation and enhancement strategy approved pursuant to the Planning Permission

- 5.1.41 The Appellants apply to Discharge this paragraph and the sub-paragraphs thereto in their entirety.
- 5.1.42 The provisions of this schedule are unnecessary because the matters to which it refers are fully covered in the CMO framework agreement. The paragraph and its

sub-paragraphs do not therefore serve any useful purpose and should be discharged accordingly.

- 5.1.43 Paragraph 1 principally seeks to enforce matters covered by conditions, except for requiring ecological mitigation land to be transferred to the CMO. The transfer of land to the CMO is not necessary in order for the ecological mitigation to be delivered and maintained. For example, significant portions of ecological land are proposed as managed farmland which the CMO is not experienced in managing. To maintain placemaking quality, it is important for the master developer to maintain control of landscaping as the development is being delivered as this could impact value. Allowing Hodson to manage and maintain ecological mitigation land, which would be required and delivered under the planning condition, serves the purpose as equally as well such that this obligation is not needed.

Schedule 18 and 18A Modic Improvement Works

- 5.1.44 Section 10 of the Explanatory Statement should be consulted for an overview of the current obstacles associated with the Transport obligations.

Request 91 – Schedule 18 Paragraph 1 and Schedule 18A. Provision of a Bond in the form required

- 5.1.45 The Appellants apply for paragraph 1 of Schedule 18 and the obligation to provide a Bond to be discharged. Equally, and consequentially, that under Schedule 18A, Schedule 1 paragraph 7 should be discharged and that paragraph 4 thereof is modified to remove reference to the Bond by the omission of '...in these circumstances or in the event that the Council is able to increase its forward funding provide an amended Bond under clause 7 ... in Annex 2 to this Deed.'
- 5.1.46 The obligation to provide a Bond in respect of the A28 Improvement Works in the total sum of £28,988,800 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. The reality is that this obligation has been rendered redundant and it should be discharged accordingly.
- 5.1.47 Evidence has already been provided to the Council establishing that a Bond cannot be obtained. Nonetheless, the Applicant will provide such further information in this regard as may be required by the Council, confirming the unavailability of the Bond.
- 5.1.48 A letter from SPF evidences the barriers to securing bonds for the development and is provided in Appendix VI of this proof.
- 5.1.49 Moreover, if contrary to the foregoing, it was somehow to be shown contrary to the Appellants' own enquiries and evidence (already provided) that a compliant (Annex 3) form of Bond is obtainable, the likelihood is that this would be at face

value of such a cost as to be prohibitive. An additional financial commitment of this scale would palpably undermine the viability of Main Phase 1 and with it the delivery of the Development. The provision of a Bond is, therefore, self-defeating and cannot be regarded as serving any useful purpose in relation to the Development.

- 5.1.50 The discharge of this cost is captured in the Viability Report and forms a substantial part of this revised viability analysis.

Request 92 – Schedule 18 and Schedule 18A. A28 County Council’s obligation to let a contract

- 5.1.51 Modification deleted from appeal.

Request 93 – Schedule 18A and Annex 2 of the S.278 Agreement therein and Schedule 18, paragraph 2. The Developer’s Payment Covenants and Post-Contract 278 Contributions

- 5.1.52 The Appellants apply for Schedule 18A including the Developer's Covenants under Schedule 1 to pay Pre-Contract Costs and Post-Contract Costs and any shortfalls to be discharged. It is acknowledged that we cannot technically apply to modify the s278 under this Appeal process but understand that case law has confirmed that if the s106 is amended the consequential amendments required to a s278 agreement should be made.
- 5.1.53 The Appellant/Hodson anticipates that if the Inspector agrees that the prohibition on occupation of more than 400 dwellings until a bond has been provided in respect of the A28 improvement works should be removed from the section 106 agreement, KCC will be required to agree to an appropriate modification being made to the section 278 agreement following on the basis of the principles to be derived from the decision of the Court of Appeal in the *Warwickshire v Powergen* case (1998) 75 P & CR 89 (CD12/12). Not only would a refusal to do so be unreasonable, but it would also frustrate the legislative scheme relating to planning and highways, as well as the purpose of that scheme, of which both s.106A and B, as well as s.278 are part. Similarly, KCC and ABC would be required to agree to the termination of the section 278 agreement if the Inspector agrees that Hodson should not be required to contribute to the A28 improvement works.
- 5.1.54 The application to discharge the payment obligations in respect of the A28 is advanced for reasons of viability and deliverability. Such are the costs of these obligations that the burden of payment is undermining the viability of Main Phases 1 and 2 and in turn the deliverability of the development. Most immediately, without discharge the payments required will likely cause the loss of the funding available to the Appellants to carry out the Development at all. In the circumstances these payment obligations cannot sensibly be regarded as serving any useful purpose.

- 5.1.55 The discharge of this cost is captured in the Viability Report and forms a substantial part of this revised viability analysis.

Schedule 19 – Off-site Pedestrian and Cycle Links

Request 94 – Schedule 19, paragraphs 1 and 2, and Schedule 30A-C. Payment of (4 x) instalments of £133,000 for the purposes of off-site pedestrian provision and cycle links

- 5.1.56 The Appellants apply to discharge these payments in their entirety.
- 5.1.57 Whilst it is acknowledged that payments for off-site pedestrian and cycle links can in principle serve a useful purpose given that the site needs to remain as a sustainable urban extension, the existing provisions are not fit for purpose and do not serve any useful purpose. None of the specified works have any current utility in terms of benefitting the Development or at all.
- 5.1.58 The discharge of this cost is captured in the Viability Report and forms a substantial part of this revised viability analysis justifying each discharge and modification sought.
- 5.1.59 Further justification is provided in the evidence of Mr Ian Dix.

Schedule 20- Provision of bus services

Request 95 – Schedule 20, and Schedule 29D Items 1, 13, 25 and 29. Provision of Bus Services

- 5.1.60 The Appellants apply to Modify the bus services provision as follows:

The trigger for provision of a temporary bus stop to serve the first 200 dwellings is currently occupation of 100 dwellings (Paragraphs 1.1 and 1.2). The trigger for the commencement of the bus service is occupation of 100 dwellings (Paragraph 1.3). The Appellant was seeking to push back these triggers to 2,684 occupations subject to confirmation from the operator as to service viability. The Appellant is now proposing to modify paragraphs 1.1 and 1.2 of the agreement so that the obligation to provide the temporary bus stop and commence the bus service will be prior to occupation of 500 dwellings. Paragraph 1.3 would also be modified (exact wording now proposed below). This reflects the s106 agreed for the Possingham Farm development in which the bus service must commence prior to occupation of 100 dwellings on that site.

The trigger for provision of the initial bus related infrastructure for Phase 1 is currently occupation of 200 dwellings (Paragraphs 1.4 and 1.5). The Appellant was seeking to push back this trigger to 2,784 occupations. The trigger for provision of

the subsequent bus priority measures and bus related infrastructure for Phase 1 is currently occupation of 1222 dwellings (Paragraphs 1.6 and 1.7). The Appellant was seeking to push back these triggers to 3,584 occupations.

The Appellant is now proposing to modify the agreement so that there is a single obligation to provide both the initial bus related infrastructure for Phase 1 and the subsequent bus priority measures and bus related infrastructure for Phase 1 prior to occupation of 1222 dwellings.

To this end the Appellant is now seeking to modify paragraphs 1.4 and 1.5, to refer to 1,222 [rather than 200]. Paragraphs 1.6 and 1.7 would remain as drafted in the existing agreement.

The agreement currently requires that the bus service initially runs every 30 minutes to connect with the first train from Ashford International to London St Pancras and the last train back. The current agreement then requires that the frequency of the bus service is increased to every 20 minutes prior to the occupation of 1222 dwellings; to every 13-14 minutes prior to the occupation of 2772 dwellings; and to every 10 minutes prior to the occupation of 4,107 dwellings. The Appellant has been seeking to remove the stipulation regarding the frequency of the initial service to enable the frequency to reflect what operators tender to provide. The Appellant was also seeking to push back the triggers for the increase in frequency to 3,584, 4,784 and 5348 occupations respectively unless (in each case) the bus service operator states that it is not viable to operate the service at that frequency in which the frequency is to be increased to the extent that the operator confirms it is viable to do so.

The Appellant is now proposing that the provisions which stipulate when the frequency of the bus service should increase are deleted and replaced with provisions which enable changes to the frequency of the service to be informed by monitoring of the use of the service, mirroring the approach which was agreed in the section 106 agreement for the Possingham Farm development recently.

5.1.61 To this end the Appellant is now proposing that:

The following definitions are added

Bus Service means a bus service operating between the Site and the town centre/railway station at a frequency of every 30 minutes during Peak Hours and every 60 minutes outside Peak Hours and starting at 0600 and finishing at 2000 on Monday to Sunday

Bus Service Monitoring means monitoring of the Bus Service by carrying out the following monitoring of use of the Bus Service by residents and visitors of the Development which shall as a minimum include the following:

a) carrying out surveys of residents and visitors; and

b) monitoring of the usage of the Bus Service by residents and visitors of the Development

Bus Service Monitoring Period means a period of 10 years starting from the first operation of the Bus Service

Bus Service Monitoring Report means a report setting out the data and information gathered during the Bus Service Monitoring undertaken during the Bus Service Monitoring Review Period which shall include: -

a) data of the usage of the Bus Service by residents and visitors of the Development

b) any feedback received from residents of the Development in respect of the Bus Service

c) where the Bus Service is being significantly over or under utilised a proposed revision to the Bus Service to either increase or reduce its service as appropriate for approval by the County Council together with a timetable for implementing the revised Bus Service.

Bus Service Monitoring Review Period means initially periods of 6 months commencing on the day of the first operation of the Bus Service for a period of two years and thereafter annually on the anniversary of the first operation of the Bus Service

Peak Hours means between 0700-1000 and 1600-.

5.1.62 Further justification is provided in the evidence of Mr Ian Dix.

Request 96 – Schedule 20 Paragraph 1.17. Provision of bus vouchers to each owner

5.1.63 The Appellants apply to Discharge the obligation under paragraph 1.17 to provide bus vouchers.

5.1.64 The application to discharge the provision of £450 worth of bus vouchers to each owner, at a total cost of 2,587,500, is advanced for reasons of viability and deliverability. Such is the level of cost of this obligation that the burden of payment is undermining the viability and in turn the deliverability of the Development. Most immediately, unless discharged the cumulative cost of the current 106 Agreement obligations in Main Phases 1 and 2, will likely cause the loss of the funding available to the Appellants to carry out the Development at all. In the circumstances these payment obligations cannot sensibly be regarded as serving any useful purpose.

5.1.65 The discharge of these obligations as proposed. is shown in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref S 100.6 and forms part of this updated viability analysis justifying each discharge and modification sought.

- 5.1.66 The request for bus vouchers for new residents while seeking subsidies to provide bus services is double counting. Any bus vouchers used would reduce the subsidy needed.
- 5.1.67 The national bus fares cap was introduced on 1st January 2023 (some years after the S106 Agreement was signed) and while the cost of a single fare has risen the cap has been extended to the end of 2025 as part of the Government's commitment to encouraging the use of buses. This has assisted in making all bus services more affordable.
- 5.1.68 It is noted that ABC did not make this request for either the Kingsnorth or Possingham Farm developments.
- 5.1.69 Further justification is provided in the evidence of Mr Ian Dix.

Schedule 21 – Off-site Traffic Calming

Request 97 – Paragraph 1.1

- 5.1.70 The appellant seeks to modify the monitoring obligations as follows:
- 1.1 Not to Occupy on Site more than the following numbers of Dwellings ...
- 1.1.2 2,399
- 1.1.3 5,649

[Omit 1.1.4-1.1.6] Unless (i) monitoring [...] County Council.

Further justification is provided in the evidence of Mr Ian Dix.

Request 98 – Paragraphs 1.2, 1.3, 2.1, 2.2 and Schedule 30A. Traffic Calming payments to CC The current s106 Agreement requires payment of £408,498 (index linked) across two payments. The current triggers are prior to the occupation of the 1,000th unit and the 2,000th unit as set out in paragraphs 1 and

- 5.1.71 The appellant applies for the following modifications to be made:
- Paragraph 1.2 is modified to refer to 'the 2,499th Dwelling on the Site [rather than the 999th]
- Paragraph 1.3 is modified to refer to 'the 5,749th Dwelling on the Site [rather than the 1999th]
- Paragraph 2.1 is modified to refer to 'the 2,500th Dwelling on the Site [rather than the 1000th]

Paragraph 2.2 is modified to refer to 'the 5,750th Dwelling on the site [rather than the 2,000th]

Schedule 30A is similarly modified to reflect the above, so that the relevant payment triggers become 2,499 and 5,749 [rather than 925 and 1,925].

- 5.1.72 Payment in each case to be subject to the deduction of £40,850 in respect of each road (of the 10 locations) where the traffic on that road is not shown to be 10% above predicted levels (i.e. base levels plus traffic growth to the year in question). Subject always to payments also being reduced to reflect reasonable actual costs (where lower than estimated), any other funding and any contributions that have or should have been obtained from other developments whether existing, proposed or future, benefiting from the same off-site traffic calming.
- 5.1.73 Further justification is provided in the evidence of Mr Ian Dix.

Schedule 22 RIF

Request 99 – Schedule 22

- 5.1.74 The Appellants' application is to Discharge the RIF payment obligations under this Schedule.
- 5.1.75 The reality is that the highways works have already been undertaken such that the non-payment of the obligation would not prevent delivery albeit others will need to fund the RIF re-payments.
- 5.1.76 Further justification is provided in the evidence of Mr Ian Dix.

Schedule 23 – Viability

Request 100-102 NC – See column 3 of the Appendix to Annex A h2 d2

- 5.1.77 The Appellants we are seeking to fix viability reviews 2-4 (to the end of Main Phase 2). This is because without fixing the level of affordable housing, it hinders HD's ability to bring forward land sales. Moreover, the timing for the submission of RMAs has now become divorced from the triggers for viability review. Under Condition 3 they were required to submit RMAs for the whole of Main Phase 1 (which is covered by viability review 2) in January 2023. In January 2025 they were required to submit RMAs for all of Main Phase 2 (viability reviews 3 and 4). Even though the Phase 1 applications have been live for 2 years, the submission of the viability review required in order for the applications to be determined is deemed premature. Based upon the anticipated housing trajectory under the current triggers for viability reviews, the required number of occupations to trigger the viability review for some of the RMAs submitted for main phase 2 would not be

reached for almost another five years. As such for the current application the developer is needing to submit RMAs several years ahead of a trigger by which they could actually be determined., As demonstrated by Quod, the development has significant viability challenges such that it is self-evident that the proposal for the first 4 viability reviews can only sustain 10%.

- 5.1.78 Hodson Developments act as the 'Master Developer' at Chilmington, i.e. they service land parcels with strategic infrastructure such as highways, drainage and utilities, etc. for third party house builders to build houses on those land parcels.
- 5.1.79 Hodson Developments model for Chilmington is based on the need to then be able to sell those land parcels as and when they are serviced to cashflow the costs of delivering the development. The money raised from Land Sales is re-invested into the development.
- 5.1.80 As it stands, over 2000 units worth of land is serviced, but they have only sold 279 units worth of land. This land was sold (to Man Group (225 units) and Brookworth Homes (54 units) in 2021. The parcels sold because they already had full planning. HD have not been able to sell land at Chilmington that does not have reserved matters planning.
- 5.1.81 Consequently, since 2019 when the Phase 1 strategic infrastructure which serviced the first 1500 units was completed, Hodson have been seeking to bring forward land sales to help accelerate housing delivery and generate cash flow to help drive forward Chilmington Green forward and to improve the viability.
- 5.1.82 However, due to the viability review mechanisms, the A28 Bond and the unreasonable and unviable S106 infrastructure requirements they have been unable to sell land at Chilmington.
- 5.1.83 With regards to the viability review mechanism, no land sales have been able to progress because Hodson cannot confirm the level of affordable housing the Purchaser will have to provide, and they cannot guarantee that should the land be purchased developers will have their planning applications determined, be able to build houses or occupy those houses.
- 5.1.84 Unless housebuilders or developers can clearly see how they can build and occupy their units they will not purchase land. Potential land purchasers will not transact unless there have certainty and/or the ability to secure planning consent and then certainly on being able to occupy their units.
- 5.1.85 As set out within Hodson's Statement of Facts they have lost the following housebuilders at Chilmington who withdrew because of the planning and s106 restrictions:
- The sale of serviced land for 318 units to Dandara
 - The sale of serviced land for 145 units to Crest Nicholson

- The sale of serviced land for 173 units to Charles Church
 - The sale of serviced land for 628 units to Countryside Properties
 - The sale of serviced land in the District Centre to commercial operators.
 - The sale of serviced land for 1646 units to Man Group
- 5.1.86 This provides clear market evidence that the current viability of the scheme constrained by the drafting and triggers for obligations in the s106 is prohibiting the delivery of the development.
- 5.1.87 The evidence is compelling in this regard.

Request 103 NC - Paragraphs 2.1.4 to 2.1.9

- 5.1.88 The Appellants apply to Modify the Agreement by changing the definition of Premature Viability Review Submission for RP5 to RP10 (see below) and amending Para 2.1 to allow Viability Review Phase Submissions to be made when the cumulative number of dwellings within Reserved Matters Applications (RMAs) to date reach the dwelling numbers specified therein. Thus, each of 2.1.4 to 2.1.9 should be amended as follows:

'2.1 The Owners covenant with the Council as follows ... :

2.1.4 no later than 40 days following the cumulative number of dwellings within RMAs first reaching 2475 dwellings to submit via the Owner's Agent to the Council for the Councils' approval a Viability Review Submission for Viability Review Phase Five and pay a further Viability Review Fee.

2.1.5 no later than 40 days following the cumulative number of dwellings within RMAs first reaching 2975 dwellings to submit via the Owner's Agent to the Council for the Councils' approval a Viability Review Submission for Viability Review Phase Six and pay a further Viability Review Fee

... etc at dwelling intervals equal to those defining the relevant review phase.

- 5.1.89 The existing provisions for VRS's no longer serve a useful purpose. On the contrary they are 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.
- 5.1.90 The ability to submit a viability review should be determined upon the total number of dwellings the RMAs have been submitted for. In this way planning applications can be determined in a timely way and offer the potential to accelerate delivery by the ability of Hodson Developments to sell land. Without confirmation of affordable housing provision HD has been unable to complete on land sales, which

is critical to raise cash in order to fund infrastructure. A viability Review should be completed prior to the submission of an RMA in order to help capture the level and mix of affordable housing agreed with the LPA. If an RMA is not forthcoming within 12 months, there is a review mechanism proposed.

Request 104 - Definition of PVRs d) to i) and paragraph 3.19

- 5.1.91 And the definition of Premature Viability Review Submission should be Modified to:

'Means a Viability Review Submission submitted greater than 12 months in advance of each of the progress stages specified at Schedule 23 paragraph 2.1.1 to 2.1.9. And for the avoidance of doubt any Viability Review Submission which is not followed by the relevant RMA within 12 months shall be re- submitted such that it is no greater than 12 months in advance of the relevant RMA'

And schedule 23 paragraph 3.19 should be amended to delete 'that it receives and, in the event,... ' onwards.

- 5.1.92 For the reasons for the modification are the same as Request 103.

Request 105 - NC Paragraph 1.1, 2.1 and Schedule 29A Item 2. Payment of Public Art Contribution 1

- 5.1.93 The Appellants apply to Discharge this obligation and for the sum of £50,000 already paid to be refunded.
- 5.1.94 The Appellants seek this discharge and refund because it is not apparent how this money has been spent towards the provision of public art in line with paragraph 1.1. Unless and until any substantiation is provided, this obligation cannot therefore be regarded as serving any useful purpose. The Appellant intends to deliver public Art, but in order to ensure high quality placemaking wants to commission works themselves.
- 5.1.95 The Snow Dogs currently located at the Sales Office is an example of Hodson Developments bringing this forward outside of the s106 agreement. This is a significant amount of money that could have significant place making value, which could therefore enhance value and improve viability

Request 106 - Paragraphs 1.2 to 1.6 and 2.2 to 2.6, and Schedule 29A Items 2, 6, 17, 21 etc. Payment of Public Art Contributions 2 to 6

- 5.1.96 The Appellants apply for the following modifications:

Modify 1.2 to provide 'Not to Occupy more than 999 [rather than 99] Dwellings unless £100,000

Modify 1.3 to provide 'Not to Occupy more than 1999 [rather than 999] Dwellings unless £150,000 (one hundred thousand pounds) Index Linked has been spent on the provision of public art within the Site by the Owners in accordance with the brief prepared under 1.1 [rather than to the Council].

Modify 1.4 to provide 'Not to Occupy more than 2999 [rather than 1399] Dwellings unless £150,000 (one hundred thousand pounds) Index Linked has been spent on the provision of public art within the Site by the Owners in accordance with the brief prepared under 1.1 [rather than to the Council].

Modify 1.5 to provide 'Not to Occupy more than 3999 [rather than 2599] Dwellings unless £150,000 (one hundred thousand pounds) Index Linked has been spent on the provision of public art within the Site by the Owners in accordance with the brief prepared under 1.1 [rather than to the Council].

Modify 1.6 to provide 'Not to Occupy more than 4999 [rather than 4099] Dwellings unless £150,000 (one hundred thousand pounds) Index Linked has been spent on the provision of public art within the Site by the Owners in accordance with the brief prepared under 1.1 [rather than to the Council].

Further, to make the following consequential modifications:

Modify 2.2 to spend '£100,000 (one hundred thousand pounds) Index Linked upon the Occupation of the 1,000th Dwelling.

Modify 2.3 to spend '£150,000 (one hundred thousand pounds) Index Linked upon the Occupation of the 2,000th Dwelling.

Modify 2.4 to spend '£150,000 (one hundred thousand pounds) Index Linked upon the Occupation of the 3,000th Dwelling.

Modify 2.5 to spend '£150,000 (one hundred thousand pounds) Index Linked upon the Occupation of the 4,000th Dwelling.

Modify 2.6 to spend '£150,000 (one hundred thousand pounds) Index Linked upon the Occupation of the 5,000th Dwelling.

Together with consequential modifications to Schedule 29A, in particular as follows:

Item 6, to refer to 950 Dwellings

Item 17, to refer to 1959 Dwellings

Item 21, to refer to 2950 Dwellings

Item 17, to refer to 3959 Dwellings

Item 21, to refer to 4950 Dwellings

And equivalent consequential amendments to Schedule 29B as follows:

Item 4, to refer to 1000 Dwellings

Item 14, to refer to 1900 Dwellings

Item 19, to refer to 3000 Dwellings

Item 14, to refer to 4000 Dwellings

Item 19, to refer to 5000 Dwellings

And Schedule 29C as follows:

Item 8, to refer to Occupation of the 1000th Dwelling

Item 18, to refer to Occupation of the 2000th Dwelling

Item 23, to refer to Occupation of the 3000th Dwelling

Item 18, to refer to Occupation of the 4000th Dwelling

Item 23, to refer to Occupation of the 5000th Dwelling

- 5.1.97 Whilst in principle these payments continue potentially to serve a useful purpose, the existing timetable for performance of these obligations is out of step with the actual building trajectory and is undermining the viability of Main Phase One and potentially the Development.
- 5.1.98 Further, the Appellants submit that there is a clear case in terms of securing the provision of public art with these contributions, for streamlining the process by allowing the Appellants themselves to take on the role of acquiring and placing the Public Art. In particular, thereby avoiding any unnecessary administration and resultant wasted expenditure.
- 5.1.99 The purpose of these obligations will actually be better, or at least equally well served, therefore, if they have effect subject to the specified modifications so as to align with progress and presently projected completions and empower the Appellants to deliver the art.
- 5.1.100 The deferment of these payments, such that only the first 2 remain within Main Phases 1 and 2, is reflected in the Viability Report.

Request 107 – Paragraphs 1.7 and 1.8. The obligations relating to installation of the public art and to maintain the same once installed

- 5.1.101 The Appellants apply for these obligations to be Discharged.

- 5.1.102 Hodson Developments are happy to install public art but should not be obligated to maintain the public art, as this should be covered under the CMOs general maintenance of public spaces, where public art is likely to be located. This would be a standard requirement in terms of the agreed maintenance of a park with a statue or sculpture.

Request 108 – Paragraphs 3 and 4. The commissioning, installation of the public art by the Council and associated consultation

- 5.1.103 The Appellants apply for these obligations to be Discharged. This is to reflect that under the proposed modification 107 that Hodson Developments would be commissioning and delivering the public art.

Schedule 25 – Heritage Interpretation

Request 109 – Paragraphs 1 and 4.1 Payment of Archaeological Archiving, Heritage and Archaeologist Contributions

- 5.1.104 The Appellants apply to discharge each of these contributions and for a refund of the monies already paid. Please see Appendix II.

Request 110 – Paragraphs 2, 3, 4.2 and 4.3 and Schedules 30A, 30B and 30C. Payment of Archaeologist Contributions

- 5.1.105 The Appellants apply to discharge the remaining payments under this schedule. Please see Appendix II.
- 5.1.106 It is simply not adequate for KCC to state that they have spent the payments. It is only fair and equitable that they should evidence the payments to HD as part of a standard audit process.
- 5.1.107 The payment of this contribution undermines the viability of the scheme as set out in the evidence of Mr Chis Wheaton.

Schedule 26 – Quality Agreement

- 5.1.108 Section 12 of the Explanatory Statement should be consulted for an overview of the obstacles associated with the monitoring and quality payments.

Request 111 – Paragraphs 1, 2.1, 2.2 and 2.3 to 2.21, and Schedule 29A Items 9, 12, 15, 19, 24 etc., and likewise in Schedule 29B and 29C Item 5, 11, 14 etc. Quality Agreement, payments of £40,000 linked to Occupations and the

payment of £80,000 on the first anniversary and £40,000 on the subsequent nineteen anniversaries

- 5.1.109 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.
- 5.1.110 The relevant line items in Schedules 29A, 29B and 29C should also therefore to be deleted.
- 5.1.111 These payments are surplus to requirements, excessive and more than is necessary to mitigate the impact of the Development.
- 5.1.112 These monies are meant for staff and related costs to monitor the quality of the development, including the Chilmington Green Quality Agreement, Design Code and any other submitted or agreed materials specifications, design briefs, specifications, construction management plans, waste management plan and liaison with the CMO and residents.
- 5.1.113 All the above documents (material specifications etc) are submitted in any event as part of the reserved matters applications or discharge of planning conditions and the planning fee should cover any review. Building Control also attend site. Certainly, the Council have not otherwise undertaken any of these tasks or incurred additional overhead to justify these charges. To date, Hodson Developments has received two letters from the Quality Monitoring Officer. Essentially it is a payment towards an additional resource to monitor any discrepancies on site from the details approved under planning permission. The two letters provided need to be compared against payments totalling £200,000 for a development that has reached circa 360 occupations.
- 5.1.114 In addition, a number of phase of the developed have received design awards, without as set out below any material input from the Council in the role of 'Quality Monitoring. In the Planning Awards 2023 the scheme was 'highly commended' in the award category "Best Housing Scheme (500 homes or more)" and a Bronze Award in the category of "Best Exterior Design" in the What House Awards 2022. What is clear in my view, and those undertaken by others, is that the HD delivery of housing at Chilmington Green is clearly of high quality
- 5.1.115 Furthermore, I note the Inspectors letter dated 30th January 2025 in respect of the Possingham Appeal (Appendix VIII) which states:

"I am part of the Customer Quality Team at the Planning Inspectorate whose role is to deal with post appeal decision issues and correspondence. I am writing to inform you that we have been advised of a drafting error in the Inspector's decision letter issued on 22 November 2024 for the above appeal.

The drafting error relates to the omission of a reference in the decision letter to the Inspector's opinion on the Quality Monitoring Fee.

This will be corrected by the insertion of the following sentence to the end of paragraph 102 of the decision letter.

"Ensuring that development comes forward in accordance with the approved plans and details, is part of the day-to-day functions of a planning department. Accordingly, the Quality Monitoring Fee is not considered to meet the statutory tests".

5.1.116 I cannot see how this should or would apply any differently to this scheme.

5.1.117 In the circumstances these contributions cannot be said to serve any useful purpose and cannot be justified and the sums paid already should be reimbursed.

Schedule 28 – Monitoring Fee

5.1.118 Section 12 of the Explanatory Statement should be consulted for an overview of the obstacles associated with the monitoring and quality payments.

Request 112 – Schedule 28, paragraphs 1, 2.1, 2.2 and 2.3 to 2.21 and Schedule 29A Items 8, 11, 14, 18, 23 etc., and likewise in Schedule 29B and Schedule 29C Items 4, 10, 13, 16 etc. Payment of monitoring fees of £25,000 linked to Occupations and payment of £50,000 on the first anniversary and £25,000 on the subsequent nineteen anniversaries

5.1.119 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).

5.1.120 The relevant line items in Schedules 29A, 29B and 29C should also therefore to be deleted.

5.1.121 Further, the Appellants seek to modify the payments under paragraph 1 and 2.3 to 2.21 to provide for payment of £5,000 [rather than £25,000] subject to a schedule of monitoring activities and of the resource reasonably required.

5.1.122 The Appellants acknowledge that these payments potentially serve a useful purpose, but the contributions are disproportionate in scale.

5.1.123 Certainly, as a minimum paragraphs 2.1 and 2.2 should be discharged and the contributions made to date totalling the sum of £45,000 should be reimbursed (see Appendix 3 of the Viability Report, Infrastructure Cost Plan (Scenario 2) Line Ref 5100.10). Prospectively, the sum of £5000 every 300 homes should more

than suffice and any sums in excess would be surplus and would not serve any useful purpose.

- 5.1.124 In the premises these obligations would serve their purpose equally well if modified as proposed.

Schedule 29 ABC Bank Accounts

Request 113 – Schedule 29, paragraphs 1 and 2, and Clause 1.1 definition of Council minimum balance. The Developers' Contingency Bank Account - Council

- 5.1.125 The Appellants apply for paragraphs 1 and 2 to be Discharged and the definition of Council Minimum Balance to be deleted accordingly.
- 5.1.126 The Council is already sufficiently secured by the covenants provided by the Paying Owners, such that the DCBA - Council serves no useful purpose at all. The account should be closed and the amount held should be paid out to the Paying Owner.
- 5.1.127 The complexity of this arrangement was designed to deal with a large consortium of landowners, each bearing a proportion of the financial risk and each paying into a shared capital account to manage the flow of funds between the owners of the obligations and the Authorities. Hodson Developments cannot, on its own and given the viability and delivery matters set out above, secure bonds and forward funding on this scale.
- 5.1.128 Further, the sums involved are substantially more than are required to mitigate the impact of the Development and are undermining the viability of Main Phase 1 and with it delivery of the Development overall. For these reasons also the account cannot be regarded any longer as serving a useful purpose, it is self-defeating and should be discharged accordingly.
- 5.1.129 The removal of this obligation and re-crediting of the deposited amounts would further reduce pressure on the Development cashflow which has already demonstrated in the Viability Report has an excessive peak debt in the base case. It would also release funds immediately for the delivery of infrastructure to the obvious benefit of the Development.

Request 114 – Schedule 29A, Schedule 29B and Schedule 29C. Payments into Council Contributions Bank Account, Indexation payments, and withdrawals

- 5.1.130 The modifications sought to the tables at Schedules 29A, 29B and 29C (payments into and withdrawals from bank accounts) reflect the changes proposed to the various obligation to make contributions under the section 106 agreement .These

changes have been made to reflect the modifications sought. Please see Hodson Development's Statement of Facts (Appendix I) for further detail.

Request 115 – Paragraph 8. Restriction on withdrawals

- 5.1.131 These changes have been made to reflect the modifications sought. Please see Hodson Development's Statement of Facts (Appendix I) for further detail. There is no proper justification for excluding interest from the provisions for withdrawal.

Request 116 – Schedule 29 paragraphs 9, 10 and 29D The Developers' Capital Bank Account

- 5.1.132 As there is now a single master developer this serves no useful purpose. The requirement to deposit funds into an account to cover the cost of assets to be provided under the agreement (the Developer's Capital Bank Account) fails to serve any useful purpose, in that imposes a wholly unworkable funding regime for the Development. Rather than securing the delivery of the assets for which the sums due to be paid into the account are intended, the requirement to pay the full cost of those assets into an account in advance will undermine that purpose.
- 5.1.133 The usual terms upon which finance is available, allow funds to be drawn down against agreed construction milestones in respect of any given asset. It is not feasible to obtain 100% of the funds in advance and the Councils can rely upon the restrictions on occupation in the agreement to ensure that the assets are provided when required. Please see Hodson Development's Statement of Facts (Appendix I) for further detail.

Schedule 30 KCC Bank Accounts

Request 117 – Schedule 30, paragraphs 1 and 2, and clause 1.1 definition of County Council Minimum Balance (CCMB) The Developers' Contingency Bank Account – County Council

- 5.1.134 The Appellants apply for paragraphs 1 and 2 to be discharged and the definition of CCMB to be deleted accordingly.
- 5.1.135 The County Council is already sufficiently secured by the covenants provided by the Paying Owners, such that the DCBA – County Council serves no useful purpose at all. The account should be closed and the amount held should be paid out to the Paying Owner.
- 5.1.136 The complexity of this arrangement was designed to deal with a large consortium of landowners, each bearing a proportion of the financial risk and each paying into a shared capital account to manage the flow of funds between the owners of the obligations and the Authorities. Hodson Developments cannot, on its own and

given the viability and delivery matters set out above, secure bonds and forward funding on this scale.

- 5.1.137 Further, the sums involved are in any event substantially more than are required to mitigate the impact of the Development and are undermining the viability of Main Phase 1 and with it delivery of the Development overall. For these reasons also the account cannot be regarded any longer as serving a useful purpose, it is self-defeating and should be discharged accordingly.
- 5.1.138 The removal of this obligation and re-crediting of the deposited amounts would further reduce pressure on the Development cashflow which has already demonstrated in the Viability Report has an excessive peak debt in the base case. It would also release funds immediately for the delivery of infrastructure to the obvious benefit of the Development.

Request 118 – Schedule 30A, Schedule 30B and Schedule 30C Payments into County Council Contributions Bank Account, Indexation payments, and Payments into the Developers' Capital Bank Account - County Council

- 5.1.139 The Appellants also apply for the payment schedules contained in each of these Schedules to the Agreement to be modified in accordance with the foregoing as relevant.
- 5.1.140 Further, the payment triggers in Schedule 30A and 30B, should not be earlier than the withdrawal trigger for the same obligation in Schedule 30C. Rather, the payment trigger or withdrawal trigger as the case may be for any given obligation should be modified to whichever is the later.
- 5.1.141 The proposed provision for payment triggers and withdrawal triggers to coincide and to be modified to whichever is the later, removes the otiose provision for payments to be made earlier than is otherwise necessary. The provisions to this effect serve no proper or useful purpose and should be modified/discharged accordingly.

Request 119 - Paragraph 8 Restriction on withdrawals

- 5.1.142 The Appellants apply to modify the obligation by omitting the words '(other than interest)'. Please see Appendix II.

Schedule 34 Heads of Terms For The Lease Of the CMO's First Operating Premises

Request 120 – The terms referred to in Column 4. Heads of Terms For The Lease Of the CMO's First Operating Premises

5.1.143 This obligation has already been satisfied and is removed from the Appeal.

Schedules 39 and 40 Articles of Association of the CMO and the CMO Business Plan

Request 121 - The entire schedules. Articles of Association of the CMO and the CMO Business Plan

5.1.144 The modification is removed from the Appeal.

Request 122 – Viability Review Templates

5.1.145 For the avoidance of doubt, the Appellants reserve their position in respect of Schedule 49, as in the case of all other obligations, to make such further or other applications to discharge or modify as may be appropriate hereafter.

6 CONCLUSION AND FORMAL REQUEST

- 6.1.1 It is clear from the evidence of Quod that flexibility and common sense is required to ensure that ambitions of the Chilmington Green AAP are delivered.
- 6.1.2 It is patently clear that viability must be a consideration as to whether obligations serve a useful purpose and indeed whether modified obligations could serve that purpose equally well.
- 6.1.3 The suite of evidence presented by the Appellants demonstrates how with the discharge of some obligations and the modification of others the scheme can progress to deliver the sustainable urban extension of Chilmington Green as a self-sustaining community. The AAP, Quality Charter and the report to the committee for planning permission all emphasised the need for review and flexibility due to the inevitable challenges presented by front loading of infrastructure in a scheme such as this. The Appellants have shown that flexibility to date.
- 6.1.4 It is clear that the s106 can be modified in a way that delivers the benefits of the scheme and does not prejudice the creation of that sustainable community.
- 6.1.5 We formally request that the Inspector modifies the s106 as requested.

7 STATEMENT OF TRUTH AND DECLARATION

7.1 STATEMENT OF TRUTH

- 7.1.1 I confirm that in so far as the facts stated in my Evidence are within my own knowledge, I have made clear which they are and I believe them to be true, and that the opinions I have expressed represent my true and complete professional opinion.

7.2 DECLARATION

- 7.2.1 I confirm that this Proof of Evidence includes all facts which I regard as being relevant to the opinions which I have expressed and that attention has been drawn to any matter which would affect the validity of those opinions.
- 7.2.2 I confirm that my duty to the Planning Inspector as an Expert Witness overrides any duty to those instructing or paying me, that I have understood this duty and complied with it in giving my evidence impartially and objectively, and that I will continue to comply with that duty as required.
- 7.2.3 I confirm that I am not instructed under any conditional fee arrangement.
- 7.2.4 I confirm that I have no conflicts of interest of any kind.

APPENDIX I – HODSON DEVELOPMENTS STATEMENT OF FACTS

**CASE NO APP/W2275/Q23/33339223
and APP/E2205/Q23/3334094
Land at Chilmington Green, Ashford, Kent**

STATEMENT OF THOMAS HODSON

1. My name is Thomas Hodson and I am a Director of each of the Appellant companies (together **Hodson**). I make this statement in support of parts of Hodson's application (the **Application**) for variation of planning obligations contained in an agreement entered into pursuant to s106 of the Town and Country Planning Act 1990 dated 27 February 2017 (the "**s.106 Agreement**"), which accompanied the Chilmington Green outline planning permission (Ref 12/ 00400 / AS for the development of land at Chilmington Green (**Development**). The land which has the benefit of the Development (**Chilmington**) extends to approximately 1,000 acres. Deeds of variation of the s106 Agreement have been entered into on 29 March 2019 and 13 July 2022 (**Deeds of Variation**). References in the remainder of this document to the s106 agreement are to the agreement as amended by these Deeds of Variation

Introduction

2. Hodson is fully committed to providing a high quality and sustainable development at Chilmington but can only do so if the infrastructure requirements and section 106 contributions are kept to a level which is reasonable and viable. The modifications which Hodson is seeking would enable the Development to proceed with infrastructure which includes three primary schools, secondary school funding, affordable housing, district and local centres with a supermarket, shops, restaurants and cafes, substantial sports facilities (including a large sports hub, pavilion, sports pitches, bowling green and tennis courts); a significant community hub (containing community space and management office, doctors surgery, police and social care space, youth facility, leisure facility, a fully stocked library facility, kitchens and changing rooms, a Sports England size multi-use games area, five other children's large play space areas, internal cycle routes, two allotments, a large park with substantial open space and a subsidised bus service going between the Development and the town centre.
3. In addition to the above infrastructure, we are committed to providing 5,750 well designed new homes with high quality hard and soft landscaping. The standard of new homes can be seen from the new homes already delivered at the Development.

4. Subject to the s106 Agreement being modified, land sales and new homes can be built at Chilmington because there is a market for the Development. Funding will also be provided for the necessary infrastructure to support a high-quality development.
5. Currently, Hodson have submitted applications for approval of reserved matters for 1,874 dwellings which are currently awaiting determination by Ashford Borough Council (**ABC**). Approximately, 750 of those dwellings, including the District Centre and supermarket, were submitted to the Local Authority on 6 January 2023. The remainder of these reserved matters applications were submitted on 6 January 2025, in line with the conditions attached to the planning permission. This is in addition to the 763 dwellings for which reserved matters approval has been granted, of which approximately 360 are occupied and the remainder are under construction and near completion.
6. Chilmington will continue to come forward with Hodson acting as the master developer, as we have been since the start of the Development in February 2017, responsible for installing all the strategic infrastructure, utilities, placemaking and discharging the site-wide s106 planning obligations. At Chilmington, Hodson converts agricultural land into 'oven ready' parcels of fully serviced land for SME to national housebuilders to build new homes on. We believe that what we are doing is essential to help meet the local and national housing supply needs. However, to date, we have serviced land parcels for approximately 2,000 dwellings but only approximately 360 new homes have been occupied. The reasons for this will be explained further in this statement.
7. Hodson envisaged that, due to the size and length of time to deliver the Development, sensible engagement and flexibility would be forthcoming from ABC and Kent County Council. However, to the detriment of the Development, our experience has been that neither ABC nor Kent County Council have engaged positively or proactively to find solutions for the Development.
8. The combination of heavy early financial obligations, infrastructure needs and planning restrictions in the s106 Agreement, has negatively affected the delivery of the Development. These problems have been further compounded by planning delays, utility delivery delays, nutrient neutrality, Covid-19, increased build costs and general micro and macro-economic problems, such as sharp interest rate increases, inflation and a relatively stagnant economy over the past few years.
9. As it stands, the infrastructure requirements of the s.106 Agreement are not aligned to realistic timings from sales receipts from land sales or actual housing delivery. The level of peak funding required should the Development continue without all the requested modifications being allowed, cannot be secured in the market. This is because it exceeds the level of risk that a financial institution will take when they consider their investment and ongoing costs against the overall value and complexity of the Development. As it stands,

due to the Development breaching its peak funding position (on a loan to value basis) Hodson's revolving facility to fund s106 payments and infrastructure was paused by Hodson's current funder in December 2023. Since then, Hodson has been continuing to use its own equity to fund the Development, on top of the very significant equity Hodson has already put into the Development since 2008. However, a Development of this size and scale requires long term funding certainty to move forward. Further re-finance is not possible unless the obligations in the s106 Agreement are modified or discharged as requested.

10. Should the existing planning obligations not be modified or discharged as applied for, so as to allow the Development to move forward, then the Development will stall this year. Existing funding to support the Development and deliver the infrastructure will be lost.

How the Development has Evolved

11. From 2008 to 2017, Chilmington was promoted through the planning process and s106 negotiations by a developer consortium, led by Barratt David Wilson (BDW) and supported by Hodson, Pentland Homes and Jarvis Homes (**Developer Consortium**).
12. BDW had an option with the majority landowner for 55% of Chilmington. That option agreement enabled BDW to draw down the land upon demand and in land parcels which aligned with their reserved matters planning approvals, for a reduced market value payment (the market value took costs of delivery (including s106 infrastructure costs) into consideration). BDW would only draw down the land and pay the landowner when it was ready and at a discounted rate. This arrangement facilitated BDW in cash flowing the Development.
13. Hodson owned and had agreements in place to purchase 32% of the land. Pentland owned 10.5% of land and Jarvis owned 2.5% of land to make up the remainder of the site. The Developer Consortium paid the fees to obtain planning on a % split in line with the percentages above.
14. Throughout the many years of planning the Development, the s106 and infrastructure cost model was based on having a consortium of four developers on site, each contributing to the s106 costs and infrastructure costs. The Planning Statement which accompanied the planning application (CD/6/4) predicted an annual build out of 250-300 homes per year.
15. In accordance with the Ashford Borough Council Core Strategy adopted in 2008, the Development was due to have up to 7,000 dwellings. The original cost modelling for infrastructure and s106 obligations were based on 7,000 units. (I was advised for example by KCC's education officer David Adams in 2023 that the requirement for 4 primary schools was based on an anticipation of 7,000 dwellings).

16. However, I understand from Alan Hodson that at a meeting in ABC's office in 2012, a few months before the planning application for the Development was due to be submitted, Richard Alderton, Head of Planning at ABC, advised the Developer Consortium that due to the local opposition 7,000 dwellings was proving politically difficult for the Members to take forward. The Consortium was told that the Development had to be reduced by 1,250 units or it would not be supported by Members. Consequently, the Developer Consortium agreed to submit a planning application for 5,750 dwellings. However, parts of the infrastructure design and cost modelling were not updated to fairly reflect the reduction of 1,250 dwellings. In October 2014, ABC's Planning Committee passed a resolution to grant outline planning permission for up to 5,750 dwellings subject to the completion of the s106 Agreement.
17. In late 2016, BDW advised the Developer Consortium that it no longer wanted to proceed with the Development. This was due to the overall financial costs and obligations of the anticipated s106 Agreement. Pentland also confirmed the same. Consequently, the Development was at risk of not coming forward at all. I have since been told by a senior BDW employee who was involved in the project that the obligation to pay for the cost of the improvement works to the A28 under the section 278 agreement (which the s106 Agreement required them to enter into) (**A28 Works**) and the obligation to provide the associated bond (**the Bond**) was one of the main reasons why BDW withdrew, among multiple others.
18. In order to allow the planning application for the Development to proceed, in 2017 Hodson purchased BDW and Pentland's land outright, through equity and funding. This significant up-front cost for Hodson was never envisaged during the discussions with ABC and KCC on the s106 agreement or in any modelling in respect of infrastructure requirements or delivery. In addition, Hodson became the party with sole responsibility for paying all the contributions and for the delivery of all the strategic infrastructure required for the Development under the s106 Agreement. No renegotiation or rebasing of the s106 Agreement occurred despite these material changes in circumstance.
19. In 2017, Hodson secured debt funding from Homes England in the sum of £53.8m to assist in purchase of the land and assist in the delivery of strategic infrastructure. In 2022, Hodson paid the debt back. Hodson is currently paying an interest rate of 11.7%.
20. From 2017 to date, Hodson has delivered strategic infrastructure and serviced land parcels in line with our contractual obligations with funders (for example, Homes England required the whole of Phase 1 to be serviced for 1,500 dwellings) and housebuilders.
21. As at January 2025, Hodson has:
 - 21.1 made £12m worth of s106 payments, including for the delivery of a primary school; and

- 21.2 built strategic infrastructure (highways, services, drainage, etc.) to service land for approximately 2,000 dwellings.
22. However, only around 360 units have currently been occupied at Chilmington, of which 135 units have been built and sold by Hodson (average of 50 a year). By comparison, the original development costs model which informed the discussions on the s106 Agreement estimated that 1,900 units would be occupied by December 2024. This is based on 100 units in year 1 (2017) and 300 units from year 2 onwards. The Development is approximately 1,500 occupations behind schedule.

Delays:

23. Considerable delays have arisen since the beginning of the Development.
24. First, it took nearly 2.5 years from receiving a resolution to grant planning permission for the Development (15 October 2014) to receiving outline planning consent (27 February 2017) (**Outline Planning Permission**) because of the delays which occurred in finalising the s106 Agreement. The timescales for Condition 17 (Phase 1 Masterplan) and the first RMA for Chilmington (Land Parcel BCJK) were as follows:

Condition 17 (ref: 12/00400/CONA/AS)

Submitted: 9th August 2016

Validated: 3rd March 2017

Approved: 26th September 2017

RMA for BCJK (ref: 17/01170/AS)

Submitted 2nd August 2017

Validated 26th September 2017

Approved 20th April 2018

25. When the Outline Planning Permission was issued in February 2017, it was assumed that house building would commence on site at the earliest opportunity and dwellings would be occupied in early 2018. This did not happen. Hodson's first reserved matters application for housing was approved in April 2018 and first occupations were achieved in December 2019; nearly two years since the Outline Planning Permission was issued. The delay in obtaining the first reserved matters approval occurred because it took over a year to obtain discharge of condition 17 of the Outline Planning Permission which needed to be discharged before the reserved matters application could be submitted.

26. The Development commenced in Q2 2017 (Access Infrastructure). The last Phase 1 residential occupation is now predicted to occur in 2030/31, 13 years after the Outline Planning Permission was issued.
27. Due to the delays in obtaining the Outline Planning Permission, the electricity capacity applied for the Development had to be forfeited and re-applied for, giving rise to considerable additional expense and delay. The final design and works for securing electricity for Phase 1 of the Development was not budgeted for (because of the additional cost arising from having to forfeit and reapply) and entailed taking electricity cables from over 2km from Brookfield Road Primary.
28. There have also been delays surrounding approval of the foul drainage infrastructure. The original design strategy was to drain the Development to the north of the Development. The first housing was in the north of the Development. However, following consultation with Southern Water and ABC between 2017 and 2019, the strategy was revised and the point of off-site foul water connection was moved to the south of the Development. This resulted in the installation of 2.7km of foul water sewers and a large pumping station.
29. From 2020, several Covid-related delays and impacts have occurred, including impacts on construction, borrowing and sales. During the first covid wave, our selling agent virtually shut down, with their representatives in the sales suite being withdrawn and furloughed. Marketing effectively stalled during the first lockdown. Construction supplies and deliveries also faced difficulties during the first period of the pandemic. Such difficulties gave rise to an increase in build costs for that period.
30. Furthermore, general micro and macro-economic problems, such as sharp interest rate increases, inflation, working practises and a relatively stagnant economy over the past few years have only compounded the problems at Chilmington.
31. In July 2020, Natural England (NE) issued advice to Councils including ABC advising that applications for certain types of Development (including housing development) within the Stour river catchment or which discharge to specified wastewater treatment works within the catchment should be the subject of a Habitats Regulations Assessment (HRA) prior to any decision to grant planning permission. NE issued this advice because of concerns that discharges within the Stour catchment might have an adverse impact on Stodmarsh (a European designated nature conservation site) through nutrient enrichment.
32. Although most of the Chilmington site lies outside the Stour catchment, foul water from the site is currently discharged to Bybrook which is one of the wastewater treatment works listed in NE's advice
33. A HRA was not carried out when the Outline Permission was issued because it had been agreed by ABC that it was not required on the basis that the Development would not have a significant effect on any European designated nature conservation sites. ABC had

announced that it was intending to establish a mitigation scheme which would enable sites like Chilmington to which NE's advice applied to proceed by making a contribution to that scheme. However, ABC subsequently decided not to proceed with its own mitigation scheme. In September 2022, Hodson submitted an Overarching Nutrient Neutrality Assessment and Mitigation Strategy to ABC. This identified that the provision of an onsite wastewater treatment Works, discharging into a tributary of the River Beult (which lies outside the Stour Catchment) would facilitate a strategy for achieving nutrient neutrality at Chilmington Green. In March 2023, ABC wrote to Hodson Developments confirming that it was satisfied with the NNAMS as a way forward for Chilmington Green, subject to the proposals for the WwTW being acceptable. Hodson submitted a planning application for an onsite wastewater treatment works, to ABC on 12 April 2023 and validated on 21 April 2023.

34. The application was presented to ABC's Planning Committee on 13th December 2023 with a recommendation to grant planning consent, subject to conditions. The Planning Committee decided to defer taking a decision on the application to a later meeting. It was envisaged that the application would be reconsidered at ABC's Planning Committee on 19th February 2024 but that did not happen pending resolution of points of clarifications and amendments to the scheme, sought by ABC shortly before the committee date which the Appellant responded to. ABC's planning officers prepared a further report on the planning application to ABC's Planning Committee on 17th April 2024 again with an officer recommendation for approval. However, due to a late representation, ABC decided to further defer the consideration of the planning application. The application was eventually refused by ABC's Planning Committee on 7th May (decision notice issued on 10th May 2024), despite having again been recommended for approval by ABC Planning Officers. Three reasons for refusal were referenced on the decision notice relating to (1) landscape impact, (2) ground and surface water pollution and (3) effects on existing and future residents. Planning permission for the wastewater treatment works was granted on appeal on 19th September 2024 and a partial award of costs was made against ABC. In relation to ABC's reasons for refusal 2 (ground and surface water pollution) the Inspector found that "No convincing evidence was supplied at appeal to justify their position. This was unreasonable behavior." In respect of reason for refusal 3 (effects of existing and future residents) the Inspector found that "The failure to consider conditions, and to not adequately substantiate their reason for refusal with adequate evidence leads me to the view that on the third reason, the Council also acted unreasonably"

In summary, Hodson faced delays in respect of nutrient neutrality, in response to which Hodson came up with an on-site solution, for which it submitted a planning application. The associated planning application then took over 1 year to be determined, eventually resulting in a refusal, despite officer recommendation to approve (twice). Hodson was forced to then

appeal and was faced with ABC defending reasons for refusal in the absence of any adequate evidence, which was found to be unreasonable. Overall, this reflects my experience with ABC, which has been largely obstructive rather than positive and proactive in helping us to deliver much needed homes at Chilmington.

Frustration of Land Sales

35. Hodson has approximately 2,000 dwellings worth of serviced land parcels being marketed by our Agents, Leaders Romans Group, but when offers are accepted and Heads of Terms agreed, purchasers do not proceed with the land purchase because of the obligations in the s106 Agreement.
36. Since 2022, when Hodson sold serviced land for 225 dwellings (which had a reserved matters approval) to Man Group, Hodson has not been able to sell land at Chilmington. The main reasons for this are:
 - 36.1 A28 Bond –it is not possible to acquire a bond for this sum (see further below);
 - 36.2 Viability Reviews 2, 3 and 4 not being determined. If the level of affordable housing required to be provided on a land parcel is not fixed the purchaser will not complete on purchasing land;
 - 36.3 Numerous other obligations in the s106 Agreement being unreasonable and rendering the Development unviable.
37. Between 2022 and 2025, the following housebuilders have withdrawn offers to purchase land parcels as a result of the s106 obligations:
 - 37.1 the sale of serviced land for 318 units to Dandara (I attach as Appendix A an email dated January 2025 from Leaders Romans Group confirming this withdrawal);
 - 37.2 the sale of serviced land for 145 units to Crest Nicholson;
 - 37.3 the sale of serviced land for 173 units to Charles Church;
 - 37.4 the sale of serviced land for 628 units to Countryside Properties;
 - 37.5 the sale of serviced land for 1646 units to Man Group.
38. On large strategic sites like Chilmington, unless housebuilders have more certainty on when they will be able to occupy the dwellings they will construct then they will not purchase land. Consequently, the obligations in the s106 Agreement that ABC and KCC refuse to change, only serve the purpose of frustrating the delivery of the Development, and much needed homes.

Bonds

39. Hodson has tried to source the Bond which is required to be provided to KCC in respect of the A28 Works (£28m) via our brokers, SPF (Savills Private Finance, now Howdens). SPF, who have contacts with all UK based financial institutions, could not obtain a bond without Hodson Developments depositing the same amount (£28m) as security, which is not possible and self-defeating. We also approached Homes England, our previous funders, but Homes England would not provide the Bond because it was too expensive. Our current Funders will also not provide the Bond. Hodson cannot find any financial organisation who will provide the Bond.
40. It has ceased to be possible in the financial markets to obtain bonds of the kind required by the s106 Agreement. Hodson is an SME and it would have to place the entirety of the secured funds on deposit to secure the relevant bonds. That is not possible and if it were to remain a requirement, the scheme could simply not proceed further. I attach as Appendix B a letter from SPF confirming the unavailability of the Bond. I also agree with what John Collins of DHA and Ian Dix of SLR say in their Proofs of Evidence, that even if bonds were available (which for the avoidance of doubt they are not), they do not serve a useful purpose.
41. We have repeatedly informed Kent County Council that this Bond is not available to us in the market. We have also queried the need for the provision of the Bond, given that it is atypical in this context (as to which see Mr Dix's evidence) and does not appear to serve any useful purpose. We have also tried to engage with the Council in respect of possible alternative approaches.
42. Notwithstanding our attempts in these regards, in 2024, KCC's solicitors, wrote to Hodson threatening to enforce the obligation to provide the bond. The letter advised that KCC would seek an injunction to prevent occupation of more than 763 dwellings unless everyone with an interest in the site provides an undertaking to KCC that no more than 763 units will be occupied or brought into residential use until the Bond has been provided. The provision of such an undertaking would have prevented Hodson from contesting the need for the Bond for at least a further five years.

2022 Settlement Agreement:

43. On 7 January 2022, four weeks before the expiry of the five year period from the signing of the s106 Agreement (when applications to vary the s106 Agreement can be made under s106B of the Town and Country Planning Act 1990) Hodson received a letter before claim from Ashford Borough Council to pay £912k of s106 obligations. The letter was sent to all signatories of the s106 Agreement and promoted on ABC's website to the public. Homes England (our funder at the time) was also notified.

44. The Appellant entered into a settlement agreement with ABC on 10 February 2023 (**Settlement Agreement**) which amongst other matters provided ABC with additional time to consider the application which is now the subject of this appeal. Under the Settlement Agreement Hodson agreed to pay to ABC the sum of £817,500 from the £3.1m which Hodson had deposited in an escrow account under the terms of the S106 Agreement in 2017. The idea and impression given at that time was also about trying to reset the relationship in a more positive and proactive way in order to get the Development moving, unfortunately that did not materialise.
45. The payment made was in respect of the contributions required under the s106 Agreement set out in the table below. Hodson's position remains that this payment should not have had to have been made for the reasons set out in the Application and appeal documents.

06/03/2023	Monitoring fee instalment 3	£12,500.00
06/03/2023	Monitoring fee instalment 4	£25,000.00
06/03/2023	Monitoring fee instalment 5	£25,000.00
06/03/2023	Quality Monitoring fee instalment 2	£20,000.00
06/03/2023	Quality Monitoring fee instalment 3	£20,000.00
06/03/2023	Quality Monitoring fee instalment 4	£40,000.00
06/03/2023	Quality Monitoring fee instalment 5	£40,000.00
06/03/2023	Early Community Development instalment 3	£50,000.00
06/03/2023	Early Community Development instalment 4	£50,000.00
06/03/2023	Early Community Development instalment 5	£50,000.00
06/03/2023	Public Art instalment 2	£100,000.00
06/03/2023	Deficit Grant to CMO	£335,000.00
06/03/2023	Unaccounted fund balance	£50,000.00

Jarvis Homes Sales Values :

46. The dwellings constructed by Jarvis Homes (land parcel P, 99 dwellings) are a different product and value to those being constructed by Hodson and the other housebuilders. The Jarvis family lived in Chilmington Green prior to the Development coming forward. They did not have to buy their land (in the traditional way a housebuilder would do so) to deliver their part of the Development. Consequently, Jarvis Homes were able to increase their build specification, and consequently their build costs, in order to achieve a higher specification dwelling which would result in a higher sales price per dwelling. This higher

specification can be evidenced by visually viewing their external build specification and general development layout.

47. This distinguished their product from the products Hodson and BDW were selling at Chilmington. By doing this they were not directly competing with Hodson and BDW at Chilmington in either location or product.
48. Jarvis Homes' dwellings have consequently achieved a higher value than the dwellings sold by Hodson or BDW. I cannot see the Jarvis Homes scenario repeating itself at Chilmington, and thus limited weight should be given to Jarvis Homes achieved sales rates being the normality at Chilmington.

Man Group

49. Man Group acquired land from Hodson with reserved matters approval for 225 dwellings known as Land Parcels B, C and J on 13 July 2022.
50. Man Group intended that most of their dwellings would be built for rental units, delivered at a discount to market rent which would provide much needed additional affordable housing to the local area. I understand that Man Group's objective is to increase the stock of affordable, sustainable and multi-tenure homes in the UK, to supplement the affordable housing that is being provided by the registered providers.
51. The s.106 Agreement was drafted and agreed at a time when it was not anticipated that houses within this scheme would be delivered other than on a traditional "build to sell" model or affordable housing provided by a registered provider. Consequently, the mechanism pursuant to which developers are released from ongoing liability under the s106 agreement once they have completed their part of the Development was drafted in such a way as to enable a developer to be released from liability under the s.106 agreement once they have constructed and sold all of their units. The relevant clause in the agreement states:

"In the event that an Owner shall have parted with the entirety of their interest in the whole or any part of the land comprised in the Site, and shall have no possession of or control over that land, then that Owner shall no longer be bound by covenants to do or not to do anything in, on, over or under that land in which they have parted with the entirety of their interest and retain no possession of or control over".

The clause goes on to provide that:

"the Owner shall remain liable for any antecedent breach of this Deed occurring during the period of his ownership, possession or control of that land".

52. However, this release does not benefit a housebuilder who delivers housing units for rent. In these circumstances, there is never a release from liability under the s.106 Agreement even though the housebuilder will have done precisely the same as the "traditional"

housebuilder (i.e. constructed and “disposed of” all of the units) because the developer will not have parted with the entirety of their interest and will still retain an element of control over that land.

53. Clearly it was not intended that a purchasing party should be liable for obligations in (for example) Phase 3 when they have delivered all their units in Phase 1. The s106 Agreement needs to be updated in line with modern trends in housebuilding and occupation. (I attach as Appendix C a letter from the Man Group confirming the problem which the s106 Agreement presents to their proposed development).

Timing of Viability Reviews:

54. Under the current s106 Agreement, a Premature Viability Review Submission is defined as a submission made as follows:
- 54.1 prior to 40 Working Days after the date on which the 500th Dwelling is occupied for Viability Review Phase 2;
 - 54.2 prior to 40 Working Days after the date on which the 1200th Dwelling is occupied for Viability Review Phase 3;
 - 54.3 prior to 40 Working Days after the date on which the 1800th Dwelling is occupied for Viability Review Phase 4; and
 - 54.4 prior to 40 Working Days after the date on which the 2324th Dwelling to be occupied for Viability Review 5.
55. This approach continues up to the final submission for Viability Review 10 at the occupation of the 4883rd dwelling.
56. However, alongside these obligations, there are several conditions attached to the planning consent that require Reserved Matters Applications to be submitted by a specific date.
- 56.1 Condition 3 required all Reserved Matters Applications for Main Phase 1 to be submitted by 6 January 2023; and
 - 56.2 Condition 5 required all Reserved Matters Applications for Main Phase 2 to be submitted by 6 January 2025.
57. Reserved Matters Applications were submitted in accordance with these conditions.
58. Under the Outline Planning Permission, Main Phase 1 totals 1,501 dwellings and Main Phase 2 totals 1,122 dwellings. As such Reserved Matters Applications have been submitted to take the total number of dwellings at Chilmington Green to 2,623.
59. Due to the deadlines imposed in Condition 3 and 5, there have been live reserved matters applications for all of Main Phase 1 since January 2023 and further reserved matters

applications for all of Main Phase 2 since January 2025. However, as of December 2024, only circa 360 dwellings have been occupied.

60. This has meant that Viability Reviews could not be submitted to agree the affordable housing provision under Viability Review 2 (1000 to 1500 dwellings), Viability Review 3 (1501 to 2,100 dwellings) or Viability Review 4 (2,101 to 2624 dwellings). Without the ability to progress Viability Reviews 2, 3 or 4 these applications cannot be determined, as the level and mix of affordable housing has not been agreed.
61. As such, applications for circa 500 dwellings have been with the Council for over two years without them being determined. A similar situation is now arising for a further 1,122 units in Main Phase 2 which have been submitted but fall into Viability Reviews 3 and 4. The viability review mechanism effectively operates to constrain delivery to a very limited number of units per annum (as to which see Mr Wheaton's evidence) and to only to certain locations of the Development. However, due to the amount of infrastructure delivered to date the Development has opened up and new homes could (and should) be built on the serviced land parcels if only reserved matters approvals can be obtained.
62. Hodson submitted Viability Review 2 (covering for Land Parcels F, G, I, L, M, O (501 units)) to ABC in October 2024 but Faye Tomlinson of ABC has advised that it's a 'premature viability submission' (as defined in the S.106 Agreement) and is not determining it.

Viability Review and Issues with Land Sales

63. As stated above, approximately 2000 units worth of land is serviced, but Hodson has only sold 279 units worth of land. This land was sold to Man Group (225 units) and Brookworth Homes (54 units) in 2021/22. These parcels sold because they already had reserved matters approval. We have not been able to sell land at Chilmington that does not have reserved matters approval.
64. Since 2020/21 when Hodson completed the Phase 1 strategic infrastructure which serviced the first 1,500 units, Hodson has been seeking to bring forward land sales to help accelerate housing delivery and generate cash flow to help drive forward Chilmington forward and to improve viability. However, due to the timing of the viability review mechanisms (and numerous other requirements in the S106 Agreement) Hodson has been unable to sell land at Chilmington.
65. Specifically, in regards to the viability review mechanism, no land sales have been able to progress because Hodson cannot (1) confirm the level or mix of affordable housing that the purchaser will be required to provide (which is key to understanding the value of the land parcel) or (2) guarantee that should they purchase land they will have their reserved matters applications determined.

66. It is my experience that when housebuilders seek board approval to purchase land at Chilmington that has an allocation of affordable housing, the board must have evidence of a formal offer from a Housing Association to accompany the bid proposal, evidencing that the overall financial package is viable and that the agreed land purchase price is at the correct value for their business. Without fixing the % and mix of affordable housing on the land parcel, this cannot be achieved.
67. Furthermore, based upon the housing trajectory set out in Supporting Statement prepared by Quod, the required number of houses in occupation to enable Viability Review 3 to be submitted will not occur earlier than 2027. The level of occupations required for Viability Review 4 will not happen earlier than 2030.
68. Consequently, because of the existing s106 Agreement requirements for the timing of submission of viability reviews, Hodson has provided serviced sites that it is trying to sell. which cannot receive a reserved matters approval until 2027 at the earliest (if in viability review 3) or 2030 at the earliest (if in viability review 4). This makes no sense and serves no purpose except to frustrate the Development and make it even less viable.
69. The structure of the viability review mechanism is a barrier to diversified, accelerated delivery, preventing engagement of plot housebuilder partners. It artificially restricts the bringing forward of different areas of the Development, and inhibits Hodson from entering into agreements to increase delivery, which only serves to undermines the overall deliverability of the Development.

Public Art

70. Hodson seeks to modify the obligations to contribute to public art and refund contributions paid because it is not apparent how this money has been spent towards the provision of public art in line with paragraph 1.1 of the s106 Agreement. Hodson intends to deliver the public art, but in order to ensure high quality placemaking wants to commission works themselves, using local artists who are professionals in creating public art in urban areas.

CMO

71. ABC has stated that the First Premises for the CMO was not provided until September 2023. This is not correct. The First Operating Premises were completed and ready for occupation by the CMO by March 2020. However, due to the Covid 19 Pandemic the CMO deferred its occupation of those premises. The Lease was eventually signed by the CMO in July 2023, three years after the building was completed and ready for occupation.
72. The CMO First Premises remains empty to this day. This is partly because the CMO staff prefer to work from home following a change of working practices brought about by the Covid 19 Pandemic and partly because the building is significantly beyond the CMO's requirement in terms of its size and prestige.

73. The CMO have marketed for rent the First Premises to third parties since Summer 2023. However, no third party has rented from the CMO to date.
74. The CMO's continuing failure to take up the First Operating premises is clearly relevant to whether the CMO Second Operating Premises are required at all, I believe they are not.

The Commercial Estate and the CMO:

75. As well as it being wholly unrealistic to think that the Commercial Estate required under Schedule 4 of the s106 Agreement (the Basic Estate and Second and Third Tranches) could ever be taken on by the CMO, it is absolutely clear, and has been for some time, that the proposed Commercial Estate is not viable.
76. Hodson's own research and experience to date has established that there is little if any market demand for the Commercial Estate (except for the supermarket, which is outside of the Commercial Estate) and significant issues over its future profitability, potential value for money and viability to support the operations of the CMO in any event.
77. Further, as regards the District Centre, Hodson invited tenders but not a single tender could be secured for the kind of retail proposal currently contained in the s106 Agreement. There is no market demand for shop premises of the size dictated by the s106 Agreement in this location, I refer on this issue to the report from BNP Paribas appended to Mr Collins' proof.
78. Similar local sites are vacant following changeover to online shopping activity which has gathered pace in consequence of the Covid 19 pandemic. To construct and gift the Commercial Estate envisaged over a decade ago, in the current market would be irrational. I also point to local initiatives intended to bring such vacant shop premises back into use, the town centre having failed and commercial premises fallen into disrepair and or disuse, having proven themselves unviable. One such initiative has been ABC's own 'Town Centre Reset Action Plan'. I refer to the Kent County Council, Medway Council and Kent's District Council's Commentary in the Kent Property Market Report 2023 which states:

"In order to address the issue of vacant shops in the town centre, Ashford Borough Council launched a Town Centre Business Grant scheme in October 2023. The grants will provide up to £10,000 for successful businesses or landlords to fit out, or make improvements to, empty premises in the town centre which will lead to vacant units being filled and open for business."

The CMO Deficit Grant:

79. The primary substantive obligation of the CMO is the provision and maintenance of accessible green open spaces. From early 2020, Hodson requested that the CMO start maintaining the communal areas.

80. For over three years the CMO failed to maintain open spaces and communal areas on Hodson's parcels at Chilmington Green for no reason, despite residents making payments to the CMO pursuant to rent charge deeds. In July 2023, after a change of leadership within the CMO, the CMO started maintaining part of the Hodson communal areas. This delay in starting the communal maintenance has, amongst other things, caused damage by association to the reputation of Hodson and the other housebuilders. This situation has arisen at least in part because the CMO is not staffed by property management professionals. The CMO Board is chaired by the Deputy Chief Executive of ABC, and the CMO employs three ABC Officers to carry out the operational duties of the CMO (the CMO enters into a yearly financial contract with ABC to use ABC staff to run the CMO). None of these personnel have any property management company experience so far as I am aware. Furthermore, for many years, Hodson has regularly raised concerns that ABC are receiving payment from the CMO for ABC employees (via the s106 payments) which creates a conflict of interest.
81. The CMO has received £485,000 in total from Hodson Developments. I do not believe it to be right that substantial amount of the funds paid by Hodson via the s106 obligations should go to payment of ABC staff, who have no experience of estate maintenance. For example, in the CMO Business Plan April 2021 to April 2022, the CMO's total expenditure was £108,080.98 of which £45,741.20 was spent on the CMO's (ABC's) staffing costs and £57,600 was spent on legal fees. £103,341.12 of the £108,080.98 the CMO had available to it in the 21/22 financial year was spent on two items. Since inception, it is my view that the CMO has wasted enormous sums of money.
82. The CMO receives contributions from residents upon purchase of properties, with further very substantial annual payments received from residents. In addition, loans have been advanced to the CMO by ABC. From 2019 to 2023, none of this money, it would appear, was spent on the key maintenance objectives of the CMO in circumstances where Hodson, were demanding that it meet its key obligations.
83. In July 2023 the CMO started maintaining parts of the communal areas at the Hodson land parcels. However, on numerous occasions, Hodson has had to write to the CMO complaining about the standard of maintenance work and the lack of monitoring of the maintenance sub-contractor.
84. Furthermore, and also of fundamental significance is that it is clear the CMO, does not have the expertise, competence or capacity to take on and manage a commercial real estate portfolio. It is unrealistic to think therefore that the CMO could take on the extensive commercial estate for which provision is made in the s106 Agreement.



Thomas Hodson

5 February 2025

APPENDIX II - S106 TABLE OF MODIFICATIONS INCLUDING JOHN COLLINS COMMENTS

s106 Modifications Table

DATE: February 2025

- (1) HODSON DEVELOPMENTS (ASHFORD) LIMITED
- AND-
- (2) CHILMINGTON GREEN DEVELOPMENTS LIMITED
- AND-
- (3) HODSON DEVELOPMENTS (CG ONE) LIMITED
- AND-
- (4) HODSON DEVELOPMENTS (CG Two) LIMITED
- AND-
- (5) HODSON DEVELOPMENTS (CG THREE) LIMITED
- THE APPLICANTS
- AND-

- (1) ASHFORD BOROUGH COUNCIL
- AND
- (2) KENT COUNTY COUNCIL
- THE RESPONDENTS

APPLICATION No.2: ANNEX A APPLICATION FOR MODIFICATION/DISCHARGE OF
THE SECTION 106 AGREEMENT DATED 27 February 2017 RELATING TO CHILMINGTON GREEN, ASHFORD ROAD, GREAT CHART
PURSUANT TO SECTIONS 106 AND 106A TOWN & COUNTRY PLANNING ACT 1990 AND ALL OTHER POWERS SO ENABLING

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
1. NC	Definition of 'Commence (Statutory) the Development'	Clause 1.1	The Appellant proposes to Modify the said definition to read as follows: 'The carrying out of a Material Operation (Statutory) pursuant to the planning permission for the Planning Application and any Reserved Matters Application approval and any modification to the planning permission for the Planning Application and any Reserved Matters Application occurring prior to the commencement (statutory) of the Development which would constitute the beginning of the Development for the purpose of section 56 of the Planning Act (as amended) but for non-compliance with any condition of the planning permission for the Planning Application and any modification to the same and related expressions such as "Commenced (Statutory) the Development" "Commencement (Statutory)" of the Development" and "Commenced (Statutory) the Development" shall be construed accordingly.'	To correct the drafting of the definition, to refer to the correct section of the T&CPA, namely section 91 rather than 56.	The existing wording, as part of the obligations to which it relates, continues to serve a useful purpose. It would not serve that useful purpose equally well if it had effect subject to the modification. The Council disagrees with this request. It is accepted that there is a mistake in the definition - the reference to section 91 should be a reference to section 56. However, there is no justification for the other amendments. The definition uses defined terms and already refers to the planning permission granted under reference 12/00400/AS. Note: the Council would agree to the correction of the reference to the wrong section.	A correction to the drafting of the definition, to refer to the correct section of the T&CPA, namely section 91 rather than 56 is agreed.
2. NC	The Definition of CMO	Clause 1.1	Modification deleted from appeal			
3. NC	Definition of 'Paying Owners'	Clause 1.1	The Appellants apply to Modify the said definition to add as 'Paying Owners', Hodson Developments (CG Three) Limited.	By increasing the number of paying parties, each jointly and severally liable, the payment covenant is strengthened and the relevant obligations under the s.106 Agreement better served. This is understood to be agreed already and the s106 Agreement should be modified accordingly	The existing wording, as part of the obligations to which it relates, continues to serve a useful purpose. The modification proposed would serve that purpose equally well if it had effect subject to the modification, although s.106A(5) may prevent this modification in any event. Accept: the Council has no objection in principle to the definition having effect subject to the proposed modification, subject to s.106A(5).	Proposed modification is agreed.
4. NC	Release from liability	Clause 2.2	The Appellants apply to Modify the said release from liability clause to ensure additionally that any housing provider (registered or not) who by purchasing the whole or any part of the land comprised in the Site becomes an Owner or Paying Owner	Clause 2.2 is acknowledged potentially to serve a useful purpose by ensuring that Owners are released from liability upon completion and disposal of their part of the Development, but it fails to	The Council does not agree that this request is to modify or discharge a planning obligation; thus, it is outside the scope of s.106A and hence of this Appeal. The proposed change to the wording of the Agreement relates to a proposed generic release from an entire range of planning obligations and cannot be progressed through the statutory procedure.	Please see the evidence from Man Group appended to my Proof of Evidence.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
			and who develops housing for rental or shared ownership will be released from liability on like terms to those contained in clause 2.2 upon the occupation by a tenant or purchaser (including a shared ownership purchaser or similar) of the last of the homes to be developed on their land. Thus, it is proposed that a new clause 2.2.1A be introduced mirroring clause 2.2.1 but commencing in terms that: 2.2.1A Also, in the event that an Owner shall have completed all of the Dwellings in the area(s) of the Site in which it has an interest and all of those Dwellings shall have been Occupied by a tenant under a lease or shared ownership purchaser as then that Owner shall no longer be bound ... CMO.'	take account and provide for the kind of institutional investor, particularly those who deliver long-term affordable housing solutions, who retain an interest in the Site after they have completed their development and all of their Dwellings have been Occupied. This was an oversight in the original drafting, which was carried out before the dramatic evolution that there has been over the last 5 years of institutional capital investing to develop homes for long term rental or shared ownership schemes, in particular to provide homes for local essential and key workers. As currently drafted clause 2 is acting as a brake on the sale of parts of the site to this type of institutional investor and thereby preventing both accelerated delivery of homes at Chilmington Green and the delivery of a more diverse affordable housing mix catering to the area's broader housing needs. In the circumstances clause 2 will serve its purpose better or at least equally well, as well as the broader aims of the Development, if it is modified as proposed.	Without prejudice to the above, the Council considers that the planning obligations referred to being binding upon all successors in title to the site and parts thereof serves a useful purpose in seeking to ensure that the obligations are fully complied with, whoever is the owner, and avoiding transfers of parts of the site which have as their object or effect (intended or not) the obstruction of enforcement of planning obligations. Enabling various potential owners of parts of the site to have the benefit of blanket exemptions from enforcement would not serve this purpose equally well, as it would incentivise the structuring of ownership and/or transfers so as to result in obligations not being complied with and/or enforced; it would result in piecemeal compliance with obligations across different parts of the site; and it may mean that obligations are never complied with as intended, all of which would be contrary to the public interest The modification of the obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 & CG22 and the National Planning Policy Framework 2023. This conclusion is also consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM1 & IMP1. Reject: the clause shall continue to have effect without modification. <u>KCC</u> S106(4) of the Town and Country planning Act 1990 provides that a s106 agreement "may provide that a person shall not be bound by the obligation in respect of any period during which he no longer has an interest in the land". It is not mandated by s106(4) that a s106 agreement must provide a release for persons who no longer have an interest in the land. Moreover, there is no equivalent subsection of s106 contemplating a release for persons who retain an interest in the land, as is proposed by the Application. It is not appropriate to provide a release from liability for any housing provider (registered or not) who becomes an Owner or Paying Owner and who develops housing for rental or shared ownership. All Owners and Paying Owners are liable for their proportion of the planning obligations required to support the development of the community at Chilmington Green. Requests for a release from liability are most appropriately considered on a case-by-case basis. The obligation continues to serve a useful purpose. Its modification would not serve a useful purpose equally well. Reject - shall continue to have effect without modification	

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5. NC	Index Linking	Clause 28	The Appellants apply to Modify the said definition so as to replace all references to 'index linking' in clause 28 to 'Index Linking'.	To correct the drafting of the clause. This is understood to be agreed already and the s106 Agreement should be modified accordingly.	The existing wording, as part of the obligations to which it relates, continues to serve a useful purpose. Clause 28 sets out the methodology for index linking and the amendment suggested is not required to clarify or correct the drafting. The reason index linking in clause 28 does not refer to the defined term by capitalising is because clause 28 itself describes the process of adjustment. The proposed modification would therefore not serve that useful purpose equally well. Reject: the definition shall continue to have effect without modification. <u>KCC</u> The existing wording, as part of the obligations to which it relates, continue to serve a useful purpose. Its discharge would not serve a useful purpose. Clause 28 sets out the methodology for index linking and the amendment suggested is not required to clarify or correct the drafting. The reason index linking in clause 28 does not refer to the defined term by capitalising is because clause 28 itself describes the process of adjustment. This change is not needed. Reject - shall continue to have effect without modification.	Please see the evidence in the Brookbanks Cost Report appended to my Proof of Evidence.
6. NC	Base date for indexation	Clause 28	The Appellant applies to Modify clause 28 so as to amend the base date for indexation for the Relevant Index from April 2014 or the second quarter of 2014 as the case may be to August 2018 or the third quarter of 2018 as the case maybe. The said modification to be applied in each sub- clause as appropriate, so as to amend all references to April 2014 or the second quarter of 2014 as specified above. Further, the Appellants request the modification of Clause 28 to include provision as follows: 'Where any Index Linked payment required to be made under this Agreement by virtue of the Indexation results in that payment exceeding the cost of the item for which it is to be paid, the amount payable shall be reduced accordingly	The purpose of the index linking was of course to ensure that payments and capital contributions kept step with actual costs over time. However, the indexation date (April 2014) and the Relevant Indices (RPI, BCIS Indices or The Output Prices Index for Non Public Housing Works as the case may be) no longer properly serve this purpose. Rather, as a result of the historical base date and extended period over which payments and values in the s106 Agreement in respect of Phase 1 are now being indexed, the indexation provisions are over inflating the relevant sums. Thus, the indexation provisions are producing payments and contributions in excess of	The obligation continues to serve a useful purpose. Indexation ensures the value of the contributions agreed when planning permission is granted, and consequently purchasing power, is maintained in the future and therefore the same level of service/infrastructure can be provided. The Council's planning committee resolved to grant planning permission in 2014. The indexation date of 2014 reflects the cost of the planning obligations when the planning committee made their resolution. Amending the indexation date to 2018 would not serve the useful purpose equally well because it would reduce the rate of contributions, reducing the Council's ability to deliver the required services/infrastructure to serve the new community and reduce the quality of facilities the Owners and Paying Owners are required to deliver under their obligations. The applicant states that "If these section 106 payments and capital contributions were calculated at today's date they would be significantly lower than the amounts plus indexation being demanded or falling due". However, the applicant provides no evidence to demonstrate that this would be the case.	Please see the evidence in the Brookbanks Cost Report appended to my Proof of Evidence.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
			and only the amount reduced as aforesaid shall be payable.'	those that would be required to mitigate the impact of the Development. Certainly, if these section 106 payments and capital contributions were calculated at today's date they would be significantly lower than the amounts plus indexation being demanded or falling due. These inflated payments are not only unjustified but are serving materially to undermine the viability of the Development. Accordingly, there can be no doubt that the Appellants are entitled in accordance with the terms of section 106A to the modification of the current indexation provision to provide for a new base date to reduce the distortions and bring the payment more in to line with actual costs. To this end the Appellants propose that all payments and contributions should be rebased to August 2018, the actual commencement of house building on site. This date will not only reduce the cost distortions as aforesaid but fairly and properly makes allowance for the delays in reserved matters approvals for which the Appellants were not responsible. The additional clause to be included ensures that the Indexation provisions serve their purpose better, and certainly equally well, as modified by securing that the Indexation provisions have no greater effect than that which they are properly intended to have.	The Council does not agree that the rate of indexation is over-inflating the obligations. It is already evident from discussions with the applicant about the budget identified in the s106 Agreement for Play Space 1 and the appellant's arguments, under Item 25 below relating to the cost of the Natural Green Space, that the budgets identified in the Agreement, index linked in accordance with the Agreement, do not provide sufficient sums to deliver the quality facilities required by the outline planning permission, the Design Code and the applicant's design and access statement. Rather than 'over-inflating' the sums as stated by the applicant, the index linking is not keeping pace with the cost of delivering the infrastructure required. Modifying the base date for indexation, as proposed, would undermine the ability to deliver the quality of facilities envisaged for Chilmington Green. b. The additional paragraph would not serve a useful purpose. There is already provision in the Agreement that requires any unspent or uncommitted contribution to be repaid within 10 years of receipt, ref: clause 27.1.3. The discharge or modification of the obligation is contrary to the Chilmington Green Area Action Plan 2013 Policy CG1 and the National Planning Policy Framework 2023. This conclusion is also consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policy SP1. Reject: the clause shall continue to have effect without modification. <u>KCC</u> Kent County Council (KCC) shared its original heads of terms for the contributions that would be required by KCC with Ashford Borough Council (ABC) as far back as November 2013. At that point in time, KCC requested that indexation be backdated to August 2013, the date at which the County Council assessed and set the section 106 contribution rates for this development. However, draft heads of terms were first shared by the Paying Owners with ABC in April 2014. The earliest date that ABC would accept for indexation to start running from was therefore, April 2014. During the negotiations that followed the planning committee approval of the application for Planning Permission, April 2014 was agreed with the Paying Owners. It then took almost a further 3 years to conclude the Agreement, on 27 February 2017. Indexation is applied to ensure that the rate agreed has the same purchasing power in the future, to enable the same level of service/infrastructure to be provided. Amending the indexation date to 2018 would reduce the rate of	

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				Further, for the avoidance of doubt, these modifications are proposed without prejudice to and in the alternative to any application hereinbelow to discharge or otherwise modify any of the principal obligations to which they relate.	contributions in today's terms, decreasing the Local Authority's ability to deliver services and thus place a burden on the public purse. The Appellant asserts that the indexation base date of April 2014 will result in payments and contributions in excess of those that would be required to mitigate the Development. KCC has assessed this claim, looking at the set contributions for Primary School 1 and the Secondary School, indexing these from April 2014 and August 2018 to January 2023. Indexation based at April 2014 does not produce payments and contributions in excess of those that would be required to mitigate the impact of the development, and this is demonstrated in an example calculation set out in Appendix 1. Indexation based at August 2018 would result in contributions insufficient to meet the actual cost of providing infrastructure. Application to amend indexation base date: 1. The obligation (contained in Clause 28.1) serves the purpose of maintaining the purchasing power of the set contribution into the future, enabling it to continue to provide the infrastructure necessary to mitigate the needs of the development. This is to ensure that the costs of infrastructure necessary to serve the development are met by the Development. 2. The obligation continues to serve a useful purpose of maintaining the purchasing power of the contribution. 3. The obligation would not be equally well served if the variation was accepted, as this would result in contributions of reduced value, creating a funding gap and failing to mitigate the needs of the development. This would create a burden on the public purse. 4. Application to modify the obligation is refused. Application to amend Clause 28 to include provision for reduction in payments, should indexation result in overpayment. As above, KCC is of the view that indexation (with base date of April 2014) will not result in payments in excess of requirement. In addition, Schedule 15 paragraph 48 and 49, Schedule 18A paragraph 6, Schedule 16 paragraph 10 and Schedule 25 paragraph 5.2 all include covenants on the County Council to provide either information relating to the actual cost of infrastructure provision and/or return of unspent monies to the Paying Owners. It is therefore, considered unnecessary to include this amendment. 1. The obligation to pay indexation according to Clause 28 serves the purpose of maintaining the purchasing power of the set contribution into the future, enabling it to continue	

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					to provide the infrastructure necessary to mitigate the needs of the development 2. The obligation continues to serve a useful purpose. 3. Schedule 15 paragraph 48 and 49, Schedule 18A paragraph 6, Schedule 16 paragraph 10 and Schedule 25 paragraph 5.2 all include covenants on the County Council to provide either information relating to the actual cost of infrastructure provision and/or return of unspent monies to the Paying Owners. It is therefore, considered unnecessary to include this amendment. 4.Application to modify the obligation is refused.	
Schedule 1 - Affordable Housing						
7. NC	Provision of 70 Extra Care Housing Units in Phase One - Viability Review 1	Paras 1.1, 2, 3 and 6 And Clause 1.1, the definition of Registered Provider	The Appellants propose that the obligations at paragraphs 1.1, 2, 3 and 6 be Discharged. Further, to accommodate the provision of AHUs by responsible providers of social housing that have not been approved by the Council as a 'Registered Provider' and to ensure they are not excluded under the s106, the Appellants propose that the definition of Registered Provider be modified to state'... or any other provider of social housing otherwise approved by the Council, such approval not to be unreasonably withheld.'	The obligation at paragraph 1.1 and associated obligations at 2, 3 and 6 to provide 70 Extra Care Housing Units in Viability Review Phase One serves no useful purpose because such units are both unnecessary and their cost is undermining the viability of this phase and jeopardising overall delivery. Moreover, the Appellants have been unable to find a provider. The obligation should accordingly be discharged. The financial benefits referred to above and the contribution made by this specific proposal to the viability and deliverability of the Development and ultimately therefore to ensuring that this obligation will serve any useful purpose at all, more than justifies this modification.	a. The provision of affordable housing to meet an identified local need provides for a mixed and balanced community. The size of population proposed at Chilmington Green will include an elderly community with varying care needs which will need to be provided for. This obligation continues to serve a useful purpose because the provision of older persons extra care housing would meet the identified need for this specific type of housing. Its discharge would not serve that useful purpose because it would result in the identified need for this type of housing not being met. The obligation to provide 10% affordable housing in each viability review phase ensures that affordable housing is delivered regularly throughout the development to meet identified local need and to ensure a mixed and balanced community of different tenures is provided. The 70 extra care housing units comprise a proportion of the 10%affordable housing required to be constructed within Viability Review Phase 1. The removal of the requirement to construct the Extra Care Housing in Viability Phase One would result in only 3% AHU (30 dwellings) being provided in Viability Phase One. This would not help to meet identified local need and ensure a mixed and balanced community is delivered. The applicant states that the extra care housing is “unnecessary” and they have been “unable to find a provider”. However, the applicant has not provided any evidence to support these claims. Without prejudice to the Council’s position on viability, the applicant has submitted insufficient information to enable the Council to assess the claim that the provision of the Extra Care Housing Units “is undermining the viability of this phase and jeopardising overall delivery”.	Please see the evidence provided by Man Group in Appendix II of my proof of evidence.

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					b. The definition of 'Registered Provider' requires a provider of social housing to be registered with the regulator of social housing and to be approved by the Council. This definition continues to serve a useful purpose because it ensures that the social housing provider is known to meet the required regulatory standards for social housing. To modify the definition to allow the affordable housing units to be provided by providers of social housing that are not registered with the regulator of social housing would not serve that useful purpose equally well because the Council would not know whether the provider meets the required standards for social housing. The discharge of the obligation and modification of the definition are contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 & CG18 and the National Planning Policy Framework 2023. This conclusion is also consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 & HOU1. Reject: the obligation and definition shall continue to have effect without modification. Proposed modification by agreement: - the Council considers that modifying this obligation to provide 70 older person's independent living units at affordable rent level (without extra care) would continue to serve a useful purpose equally well. If the above suggested modification was agreed, then the Council is also willing to agree to modify the delivery trigger from 850 occupations to 1000 occupations as this modification could serve a useful purpose equally well (if necessary) given the delivery of the affordable housing would remain within the middle of Main AAP Phase 1. The Council is willing to discuss this proposed modification by agreement with the appellant.	
8. NC	Provision of 24 Affordable Housing Units in Phase One - Viability Review 1	Paras 1.2, 4, 5 and 7	The Appellants apply to Modify the obligation at 1.2 to provide: '1.2 Hodson CG One, Hodson and Chilmington Green Developments covenant with the Council to construct 24 Dwellings within the Hodson CG One and the Chilmington Green Developments Phase One Land as Affordable Housing Units prior to the date on which the 1000th Dwelling to be Occupied is Occupied [rather than 650th] in accordance with the requirements of paragraphs 4 and 5 below. 4. The Affordable Housing Units referred to at paragraphs 1.2 and 1.3	The obligation to provide 24 Affordable Housing Units in Viability Review Phase One is acknowledged as potentially serving a useful purpose, but the requirement to do so by the 650 Dwelling will adversely affect the Paying Owner's cashflow and compromise the viability of this Phase I - Viability Review I. Further, in the light of current market conditions and operator response, the obligation to include Affordable Rents is non-	a. The timely delivery of affordable housing is essential to meet an identified local need and deliver a mixed and balanced community. The obligation continues to serve a useful purpose because it ensures that the affordable housing is constructed at the same time as the open market housing. Delaying delivery until the end of Viability Review Phase One (1000 occupations) would not serve that useful purpose equally well because the affordable housing would be brought forward following 100% of the market housing in the phase and would therefore not assist in creating an integrated mixed community. Without prejudice to the Council's position on viability, the applicant has submitted insufficient information to enable the Council to assess the claim that this obligation "will adversely affect the Paying Owner's cashflow and	It is considered that the proposed modification serves the useful planning purpose equally well in that unless the S106 is varied it will not be viable to continue with the development. As a consequence the viability evidence of Quod is key to demonstrating that in the absence of the modification neither private nor affordable can be delivered. The actions of the developer in securing a permission for a wastewater treatment works demonstrate their commitment to delivering the development. Flexibility from all parties is required to ensure the development can continue in a viable way.

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			above shall be provided as Shared Ownership Units.... 7. The Owners covenant with the Council not to Occupy more than 1,300 [rather than 650] Dwellings unless and until'.	viable. It does not therefore serve any useful purpose and should be modified to provide instead for the provision of further Shared Ownership units. The purpose of these provisions can be better or at least equally well served by modifying them as proposed, supporting the Development whilst securing delivery of these units in any event within Phase 1. As can be seen from the Viability Report and the updated viability analysis therein, the cumulative benefit of the s106 modifications/discharges proposed results in a reduction in s106 finance costs from c£135m (excluding land costs) to c£30m (excluding land costs). Further, the cashflow benefit of this specific variation is evidenced at the Explanatory Statement, Appendix 3 Figure 5.2. The financial benefits referred to above and the contribution made by this specific proposal to the viability and deliverability of the Development and ultimately therefore to ensuring that this obligation will serve any useful purpose at all, more than justifying the changes sought to the s106 Agreement.	compromise the viability of this Phase 1 – Viability Review 1”. Note: In their modification table the applicant proposes to remove the requirement for the affordable housing units to be delivered within the “Hodson Viability Phase One Land”, “Hodson CG One Viability Phase One Land” and the “Chilmington Green Developments Viability Phase One Land” and instead proposes that the affordable housing units are to be delivered within the “Hodson CG One and the Chilmington Green Developments Phase One Land”. The latter not being defined in the Agreement. It is not clear why this change is proposed. This change is not proposed in the amended draft s.106. b. The provision of a mix of affordable housing for affordable rent and shared ownership continues to serve a useful purpose because there is an identified need for both tenures of housing as evidenced in the Ashford Strategic Housing Market Assessment (SHMA). Modification to provide 24 shared ownership units and no units for affordable rent would not meet an identified local need and would therefore not serve that useful purpose equally well. There is an identified need for affordable rented units in the borough. The applicant has provided no evidence to substantiate their claim that “in the light of current market conditions and operator response, the obligation to include Affordable Rents is non- viable”. The current market conditions have not been explained and no evidence has been provided of operator response. c. The timely delivery of affordable housing is essential to meet an identified local need and deliver a mixed and balanced community. The obligation continues to serve a useful purpose because it ensures that the affordable housing is transferred to a registered provider at the same time as the open market housing. Delaying transfer until 1300 occupations (beyond the end of Viability Review Phase One), would not serve that useful purpose equally well because the affordable housing would be brought into occupation following 100% of the market housing in the phase and would therefore not successfully create an integrated mixed community. Without prejudice to the Council’s position on viability, the applicant has submitted insufficient information to enable the Council to assess the claim that this obligation “will adversely affect the Paying Owner’s cashflow and compromise the viability of this Phase 1 – Viability Review 1”. The modifications are contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 & CG18 and the National Planning Policy Framework 2023. This conclusion is also	

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					consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 & HOU1. Reject: the obligation shall continue to have effect without modification	
9. NC	10% Affordable Housing to be provided in each Viability Review (2 to 10) as a minimum provision	Paragraphs 8, and 14	The Appellants apply for the obligation for this provision to be Modified such that it is completed by 75% occupied dwellings within the relevant review phase to be modified to 95% occupied dwellings.	The said obligation to provide 10% Affordable Housing Units in each Viability Review Phase is acknowledged potentially to serve a useful purpose but the requirement to do so by the 75% occupied dwellings will adversely affect the Paying Owner's cashflow and compromise the viability of each viability phase. The purpose of these provisions can be better or at least equally well served by modifying them as proposed, supporting the Development whilst securing delivery of the 10% AHU's in any event within each phase. Again, as can be seen from the Viability Report and the updated viability analysis therein, the cumulative benefit of the s106 modifications/discharges proposed results in a reduction in s106 costs from c£126m (excluding land costs) to c£20m (excluding land costs). Further, the cashflow benefit of this specific variation is evidenced at the Explanatory Note, Appendix 3 Figure 5.2. These figures clearly demonstrate also that consistent with Application No.1 the 10% provision is the upper limit of what can be sustained and is feasible in at least the first 4 Viability Review Phases.	The timely delivery of affordable housing is essential to meet an identified local need and deliver a mixed and balanced community. The obligation continues to serve a useful purpose because it ensures that the affordable housing is constructed at the same time as the open market housing Delaying construction until the end of each Viability Review Phase would not serve that useful purpose equally well because the affordable housing would be constructed following the occupation of 95% of the market housing in the phase and therefore would not successfully create an integrated mixed community. Without prejudice to the Council's position on viability, the applicant has submitted insufficient information to enable the Council to assess the claim that this obligation "will adversely affect the Paying Owner's cashflow and compromise the viability of each viability phase"., The modification is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 & CG18 and the National Planning Policy Framework 2023. This conclusion is also consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 & HOU1. Reject: the obligation shall continue to have effect without modification	The Appellant is not seeking to remove the delivery of 10% affordable housing, but just to shift the point at which it must be delivered. As explained in the viability work of Quod, this helps significantly by reducing peak debt levels. It is all very well ABC stating that the proposed modification is contrary to the AAP but the reality is that without the modification the beneficial purpose of the delivery of affordable housing will not be able to occur. While Ashford BC state that the delay is contrary to the NPPF I do not consider that to be the case. My own experience as Area Planning Officer for Kings Hill, a new settlement in the administrative area of TMBC is that in the early years of the development there was no affordable housing at all required. This was due to the high cost of infrastructure. As the scheme grew and as infrastructure was delivered so the delivery of affordable housing increased. Furthermore my own experience across Kent is that where affordable housing cannot be viably delivered, planning permissions are granted with no affordable housing at all. The approach of the Appellant in this case is that they are remaining committed to 10% provision notwithstanding the significant viability issues. Pushing back the completion date to 95% assists with cash flow, reduces peak debt and assists viability. On the face of it the alternative would be to reduce the percentage of affordable housing to be delivered. The Appellant is clearly doing all they can to avoid going down that route.

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				Certainly, the financial benefits referred to above and the contribution made by this specific proposal to the viability and deliverability of the Development and ultimately therefore to ensuring that this obligation will serve any useful purpose at all, more than justifies this modification. It is crucial that a balance is struck between the useful purpose intended to be served by any obligation and the ability to deliver the Development so as that purpose or any aspect of it can be served at all.		
10. A	Affordable Housing Unit tenure split 60% Affordable Rents and 40% Shared Ownership, with 5% of units to have Habinteg fixtures and fittings.	Paragraphs 9 and 12.	The Appellants apply to Modify the Affordable Housing tenure split ~~so as to provide 30% Affordable Rents and 70% Shared Ownership.~~ to provide the 10% affordable housing in each Viability Phase with a tenure split of 10% affordable rent and 20% shared ownership	The said obligation to provide AHU's subject to differing tenures is acknowledged potentially to serve a useful purpose but the current allocation solely to Affordable Rent Units and Shared Ownership Units is not sustainable or feasible, adversely affecting the Paying Owner's cashflow and compromising the viability of the current phase and potentially delivery of the overall Development. The purpose of these provisions can be better or at least equally well served by modifying them as proposed, supporting the Development whilst securing delivery of the 10% AHU's in any event within the current phase.	The specified mix of affordable housing is essential to meet an identified local need and deliver a mixed and balanced community. The obligation continues to serve a useful purpose because there is an identified need for affordable rented housing in the borough as evidenced in the Ashford Strategic Housing Market Assessment (SHMA). The modification to reduce the provision of affordable rented housing to 30% and replace this with shared ownership housing would not serve that useful purpose equally well because it would result in the identified need for affordable rented housing not being met. Without prejudice to the Council's position on viability the applicant has submitted insufficient information to enable the Council to assess the claim that this obligation "is not sustainable or feasible, adversely affecting the Paying Owner's cashflow and compromising the viability of the current phase and potentially delivery of the overall Development". The modification is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 & CG18 and the National Planning Policy Framework 2023. This conclusion is also consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030, policy SP1. Reject: the obligation shall continue to have effect without modification Proposed modification by agreement: - the Council considers that modifying this obligation to provide the 10% affordable housing in each Viability Phase with a tenure split of 10% affordable rent and 20% shared ownership in	The Appellant accepts the compromise suggested in ABC's Statement of Case that the provision of the 10% affordable housing in each Viability Phase with a tenure split of 10% affordable rent and 20% shared ownership in accordance with Ashford Local Plan policy HOU1 would continue to serve a useful purpose equally well.

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					accordance with Ashford Local Plan policy HOU1 would continue to serve a useful purpose equally well. The Council is willing to discuss this proposed modification by agreement with the appellant.	
Schedule 2 – Carbon Offsetting						
11. NC	Provision of a Building Energy Performance Certificate for each building. Calculation of carbon off setting contributions and payment liabilities.	Schedule 2 and 43	The Appellants apply to Discharge the whole of Schedule 2 and the obligations therein. Whilst the above is understood to be agreed it will be necessary to give proper effect to this by credit is still included in each Viability Phase modifying Schedule 43, to ensure appropriate Review for the Carbon Off-setting Savings achieved by other means. The Appellants apply accordingly.	This obligation no longer serves a useful purpose and should be discharged. It is understood that this request is agreed by ABC both as to residential and non-residential.	Building Energy Performance Certificate and Carbon Offsetting Contribution – Residential. This obligation continues to serve a useful purpose because it requires the provision of energy efficient homes or, if this cannot be achieved, then payment of an off-setting contribution. However, given that it is now a requirement under Building Regulations to deliver energy efficient homes and the Council can attach Planning Conditions to reserved matters approvals if there are grounds for development to be delivered over and above Building Regulations standards, for example, in respect of household water consumption or the inclusion of a certain type of renewable energy provision, this obligation as proposed to be modified would serve that purpose equally well. Accept: the Council has no objection to the obligation being discharged in relation to residential land use. Building Energy Performance Certificate and Carbon Offsetting Contribution - non – residential. This obligation serves no useful purpose. Condition 74 of the outline planning permission for Chilmington Green requires each non-residential building to be carbon neutral and to be constructed to achieve BREEAM (or subsequent equivalent quality assured scheme) overall 'Excellent' standard. Therefore, an existing planning condition serves the purpose of this planning obligation. Accept: the Council has no objection to the obligation being discharged in relation to non-residential land use. Note: The applicants have not provided a clear explanation of what is meant by the following statement "it will be necessary to give proper effect to this by modifying Schedule 43, to ensure appropriate credit is still included in each Viability Phase Review for the Carbon Off-setting Savings achieved by other means". A full explanation of this statement is required to enable the Council to respond to this request.	It is noted that ABC now agree to the discharge of this obligation for residential and commercial properties.
Schedule 3 – Combined Heat and Power Plant (CHP)						
12. A	Viability submissions and appraisal for a Combined Heat	Schedule 3	The Appellants apply to Discharge the obligation under Schedule 3 save for paragraph 1.3.2 and for the definition of Chilmington Green	The Feasibility/Viability Studies were formally submitted for fact-checking by the Council on 5 April 2019.	This obligation no longer serves a useful purpose. In accordance with Sch 3 para 1.1, prior to the occupation of 200 dwellings, the owners were required to submit to the	It is agreed that discharge is appropriate.

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	and Power Plant (CHP) or District Heating Plant (DHP)		Carbon Reduction Project to be deleted	In breach of paragraph 2 of Schedule 3 no response was forthcoming from the Council within the requisite 28 days. In the event it was not until only recently in 2022 that any response was received, with the Council requesting further information on the submission. Given the content and conclusions reached in the submitted Feasibility/Viability Studies it is the case now that the CHP/DHP is not Feasible in all Scenarios, so that it should be confirmed now that except for paragraph 1.3.2 the obligations under Schedule 3 shall cease to have any further effect as regards the District Centre.	Council four draft Feasibility/Viability Studies for fact checking and omissions. The Council confirms that they received a letter from Hodson Developments dated 5 April 2019 and accompanying report titled 'CHP and DHP Feasibility Study for Chilmington Green (Revision A)' by JS Lewis Ltd, dated April 2019. It is noted that the Feasibility/Viability Studies should have been carried out by an 'Expert CHP/DHP' identified in Schedule 3A. JS Lewis Ltd is not listed as an 'Expert CHP/DHP' in Schedule 3a. Para 2 of the Schedule states that 'the Council covenants with the Owners to provide its comments on the draft Feasibility/Viability Studies within 28 days of receipt.' The Council acknowledge that this timescale was not met. Notwithstanding that the Feasibility/Viability Studies have not been undertaken by an 'Expert CHP/DHP' as required by 1.1 of Schedule 3, the Council agreed, in November 2021, to review the submitted draft Feasibility/Viability Studies for fact checking and omissions. As part of this process, in April 2022, the Council requested further information and clarifications about the applicant's report. A response was received from the applicant in June 2022. Since 2019 there has been a significant change in Government policy and economic drivers with respect to energy strategy. The focus now is towards a fabric first Passivhaus type specification for individual buildings, augmented by solar photovoltaic and/or solar hot water panels with heating and hot water provided from heat pumps, preferably ground source. This approach allows for greater flexibility as future parcels of land come forward and technology evolves. From the information provided, the Council's review concluded that the applicant's position in 2019 was correct for the whole development but marginal for the District Centre. Noting that there is a lack of detail and a number of inaccuracies in the applicant's 2019 report. Notwithstanding this conclusion, it is the Council's view that the changes in approach to energy strategy highlighted above, mean the delivery of CHP/DHP for Chilmington Green is no longer the appropriate means to deliver the highly sustainable development envisaged at Chilmington in respect of energy. This view is in accordance with the Chilmington Green Area Action Plan 2013 Policies CG1 & CG19 and the National Planning Policy Framework 2023. This conclusion is also	

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					consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030, policy SP1. Accept: the Council has no objection in principle to the obligation under Schedule 3 being discharged and Schedule 3A deleted. It is noted that the appellants' request however would leave Sch. 3, para. 1.3.2 in place, although the appellants' proposed modified version of the s.106 agreement shows the related definition of "Chilmington Green Carbon Reduction Project" being deleted. The deletion of the definition has not been proposed, however, as part of this request, and the retention of para. 1.3.2 makes that deletion inappropriate since the term would still be required.	
Schedule 4 – Community Management Organisation (CMO)				<u>In this regard the Appellants refer to and rely in particular upon section 7 of the Explanatory Statement accompanying this application in addition to the reasons stated below.</u>		
13. A	Provision of the CMO welcome pack etc.	Paragraph 2.1.2	The Appellants apply for ~~the obligation to provide a copy of the welcome pack document and other documentation to each first purchaser or tenant/occupier to be~~ Discharged. ~~Proposed modification by agreement: – the Council would agree to~~ a modification that allows the documentation to be provided in electronic form, unless the first purchaser or tenant/occupier do not have access to e-mail and/or for another reason require a paper copy in which case the Welcome Pack should be provided in paper form.	The provision of this copy documentation no longer serves any useful purpose, to do so is expensive and unnecessary given that the same documentation is readily accessible online.	The obligation continues to serve a useful purpose. It is important that, prior to their occupation of a property, the first purchaser or tenant/occupier is provided with sufficient information about the CMO, its purpose, functions, constitutional structure, membership and the obligation to pay the estate rent charge. The discharge of this obligation would not serve that useful purpose because without this information it would be difficult for the first purchaser or tenant/occupier to make an informed decision about the property they are purchasing/renting. To ensure transparency of information it is important this information is supplied by the Owners. The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 & CG10 and the National Planning Policy Framework 2023. This conclusion is also consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030, policies SP1 & IMP4. Reject: the obligation shall continue to have effect. Proposed modification by agreement: – the Council would agree to a modification that allows the documentation to be provided in electronic form, unless the first purchaser or tenant/occupier do not have access to e-mail and/or for another reason require a paper copy in which case the	As has been explained, the costs of printing the welcome pack is significant. The reality is that the information is available on-line. Sales Agents acting for House builders can be requested to e-mail documents to prospective new occupiers, but with the modern IT based social networking there is no longer a need to provide printed welcome packs. The proposed ABC modification is agreed.

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					Welcome Pack should be provided in paper form. The Council is willing to discuss this proposed modification by agreement with the appellant because this would serve the purpose of this obligation equally well.	
14. W	Provision of the CMO First Operating Premises, their completion and acceptance	Para 4.1.3, and in particular the opening clause thereof providing 'That no Dwelling shall be Occupied'	~~Without prejudice to the Appellants primary position that this obligation has been met and in any event has been waived by the Respondents and/or they are estopped from relying thereon, the Appellant's apply to Modify the opening clause of 4.1.3 to provide 'That prior to 350 Dwellings being Occupied: a) the CMO ... etc.'~~	Whilst the Appellants maintain their position regarding compliance, waiver and estoppel, it is acknowledged that these matters are disputed by the Respondents (ABC's Letter of Response dated 16/9/22 refers). Without prejudice to the Appellants' primary position, therefore, but to avoid further controversy and ensure that this obligation continues to serve its intended purpose in terms of delivery of the CMO First Operating Premises rather than none, the Appellants seek to modify the same as claimed.	The obligation continues to serve a useful purpose. The first dwelling was occupied in September 2019, however the First Premises were not provided to the CMO until September 2023 – four years late. This meant that the CMO had no presence on the site during this time and was not able to work with the Chilmington Green community and build relationships with residents in an effective way. The CMO was not able to begin any on-site community engagement and had to pay for space elsewhere for resident events and meetings such as the AGM. Residents of Chilmington Green did not have access to a local community room or on-site access to CMO staff. This was detrimental to the development of good community relations. The CMO was also not able to develop income streams from rental of the community space envisaged to be based at the First Premises which restricted the CMO's ability to deliver on its objectives. The modification of this obligation would not in principle serve a useful purpose equally well because it seeks to retrospectively expunge a breach of the S.106 Agreement that has already occurred as a matter of fact. However, since the Council currently understands that the premises have been provided and are in use by CMO, it is seeking to confirm formally with CMO whether the obligation continues to serve a useful purpose. In the meantime. the modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 & CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 policies SP1 & IMP4. Reject: the obligation shall continue to have effect without modification. Note: If the Inspector is minded to agree to this modification, then para 4.1.5 also needs amending to 350 occupations – this has not, however, been applied for and is not reflected in the draft s.106 submitted by the appellant.	Request 14 has been withdrawn from the Appeal.
15. NC	Continued maintenance obligations in respect of the CMO First Operating Premises	Paragraph 4.1.4	The Appellants apply for the obligations under paragraph 4.1.4 to be Discharged .	The First Operating Premises have been completed and ready for CMO occupation since March 2020. However, the CMO deferred occupation due to Covid at that time and has to date failed to take up occupation of the same. Given	The obligation continues to serve a useful purpose. The CMO should not have to bear the cost to repair defects that are identified within the time periods stated in the Agreement, and the CMO is not being provided with any alternative means of obtaining remedy for defects, such as collateral warranties and indemnities from the relevant professional team and contractors involved in the construction. It is therefore the sole responsibility of the 'Owners' who provide	There is no reason why the building would be likely to deteriorate unduly and even if it did the CMO are receiving funds from residents that it can put towards repairs. It is simply not adequate to keep referring to the AAP in a situation where the scheme viability has been

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				the passage of time it would be unfair to continue to require performance of these obligations, the appropriate time for their performance has now passed and they should no longer properly be regarded as serving a useful purpose.	the premises to ensure the building is of the quality agreed in the Design Brief and Specification and that any defects identified after handover are remedied. This obligation ensures that a building of sufficient quality is delivered to the CMO and that defects are dealt with promptly to enable the CMO to occupy the premises and undertake the operations required of them. It was the Owners responsibility to maintain the building during the period following its construction but prior to handover to the CMO The discharge of this obligation would not serve that useful purpose equally well because it would mean that the CMO would have to bear the costs of rectifying any defects in the building. The fact that there was a time lag between completion of construction and handover is not a reason to discharge this maintenance obligation. The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 & CG10 and the National Planning Policy Framework 2023. This conclusion is also consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030, policies SP1 & IMP4. Reject: the obligation shall continue to have effect.	demonstrated to be a problem. All parties must look to find ways to reduce liabilities for the developer unless genuinely necessary to make the scheme acceptable. With other funding streams available, these should be utilised for maintenance.
16. NC	Provision of the CMO Second Operating Premises	Para 5.1.1 to 5.1.5 and Sch 29D Item 6	The Appellants apply for these obligations under paragraph 5 and Schedule 29D Item 6 to be Discharged. In addition; for all appropriate consequential variations including the discharge of Schedules 33 and 35.	The Appellants position in relation to the CMO Operating Premises is that the First Operating Premises are sufficient and there is no sensible requirement for the Second. The First Operating Premises have been completed and ready for CMO occupation since March 2020. However, the CMO deferred occupation due to Covid at that time and has to date failed to take up occupation of the same. This is partly because the CMO staff prefer still to work from home following a change of working practices apparently brought about by the Covid 19 Pandemic, and partly because the premises are located near to building activity. The building is though in a central location chosen by ABC and the CMO and is more than sufficient for the operating	a. The obligation continues to serve a useful purpose. The Second Premises are necessary to support the growing community and are not surplus to requirements. The First Premises is not centrally located, it has a limited capacity and will not be large enough to serve the growing community if further provision is delayed to 1800 occupations (when the Community Hub is currently to be delivered) or 3250 occupations (as per request 58 below). In addition, the First Premises is a temporary building in construction. It is understood to be a refurbished building designed to last 15-20 years, depending on usage. It is not clear, given the current rate of construction, whether the Community Hub will be delivered before the First Premises reaches the end of its life. Furthermore, the First Premises is located on part of the First Playspace (PS1) Chilmington Square, which will be undersized whilst the First Premises exists. The discharge of this obligation will result in a delay in the provision of sufficiently sized playspace and public space to meet the needs of the growing community. The Second Premises is required to be located in a permanent building designed for retail, office or community use within the District Centre. The applicant suggests any additional space the CMO needs in the longer term can "be accommodated in the other community provision including, particularly for temporary needs such as events, the	It is important to note that HD are seeking the requirement of a second operating premises to be discharged. That is not the permanent facility. The situation is that there are other facilities that will be available at the Secondary School in the evenings and at weekend as well as in the school holidays. With the District Centre now coming forward in a shorter timescale due to the Possingham Farm decision, there will be facilities available. In addition, and as explained there is a risk that over provision will simply place a financial burden on the CMO which would be better spent on renting space as and when needed until delivery of the permanent facility. My opinion is that this requirement is not necessary and based on the viability case should therefore be removed to enable the viability of the scheme to be improved. While the Council seek to argue this and other similar requests for discharge are contrary to the AAP I do not accept that contention. Flexibility is needed to ensure the scheme can be delivered.

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				requirements of the CMO on-site. It is proposed therefore that the CMO remains in this building and for any additional space it needs in the longer term to be accommodated in the other community provision including, particularly for temporary needs such as events, the schools. In the circumstances the CMO Second Operating Premises is surplus to CMO requirements and the associated obligations no longer serve any useful purpose and should be discharged. Furthermore, the cost of this provision at £250,000 is materially contributing to the non-viability of Phase 1 and for this reason also can no longer be regarded as serving a useful purpose. The removal of this cost at £250,000 is shown in the Viability Report at Appendix 3, Item ref 5700.2, and forms part of this updated viability analysis justifying each discharge sought.	schools". However, the applicant proposes to delay the provision of the District Centre to 2700 occupations and The Hamlet Facilities to 3500 occupations therefore there would be no alternative community provision on site for the CMO to use. It may be possible for the schools to be used for some events; however, this would only be possible outside of school use and would be at the discretion of the school and would therefore be of limited use to the CMO who hold events during school hours in addition to evenings and weekends. It is for these reasons that the discharge of this obligation or the use of other community provision, including the schools, would not serve the useful purpose of this obligation equally well. Without prejudice to the Council's position on viability the applicant has submitted insufficient information to enable the Council to assess the claim that this obligation "is materially contributing to the non-viability of Phase 1". b. Schedule 29D Item 6 (Payment into the "Developers Capital Bank Account – Council) prior to the trigger point for delivery of the CMO Second Operating Premises continues to serve a useful purpose because it ensures that, if the Council is required to remedy a breach of this obligation, the Council can do so as quickly as possible following the breach occurring. The discharge of the obligation to make this payment would result in an unacceptable delay to delivery if there is a breach of the obligation and would therefore not serve that useful purpose equally well. c. The application does not make clear what "all appropriate consequential variations" are intended. However, for Schedules 33 and 35 (which are specified) the submission of a Design Brief and Specification (Schedule 33) continues to serve a useful purpose because this enables the Council to ensure design quality is embedded in the development at an early stage, ensures the scheme to be delivered is of sufficient design quality and safeguards against poor quality development. The Heads of Terms for the Second Operating Premises lease (Schedule 35) also continues to serve a useful purpose because this ensures that a fit for purpose lease is entered into. The deletion of these Schedules (as shown in the amended Agreement submitted by the applicant) would not serve that useful purpose equally well because the Council could not be assured that design quality would be embedded in the design of the development at an early stage or that a fit for purpose lease is entered into. The discharge of these obligations is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 & CG10 and the National Planning Policy Framework 2023.	

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					This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 policies SP1 & IMP4. Reject: the obligation shall continue to have effect.	
17. NC	Payment of Deficit Grant Contributions	Para 7 and Sch 29A Items 7, 10, 13, 16, 20, 22, 26, 29, 33, 37 and equivalent items in Sch 29B and 29C	The Appellants' application in this regard is to Discharge the Deficit Grant Contributions in their entirety.	The Appellants seek the discharge of the Deficit Grant Contributions obligations because they are substantially undermining the viability and deliverability of the Development and do not therefore realistically serve any useful purpose and should be discharged accordingly. The performance over the first years of the CMO has provided the clearest evidence that the proposed structure is not fit for purpose. The CMO has failed to carry out even the most basic of its functions despite grant funding, and it is abundantly obvious now that the nature and scale of the physical endowments and funds to be transferred under the existing obligations are well beyond what can be reasonably and sustainably be managed by this body. The CMO is currently over specified and its scale and complexity is not deliverable for a development of this nature and the time horizons over which it will be built. Based on the experience to date, it will be more appropriate to limit the scope and budget of the CMO to a list of essential services along the lines of a traditional Estate Management model. This will ensure the services can be delivered and managed sustainably without additional external funding.	The obligation continues to serve a useful purpose. Timely delivery of the funds necessary and essential to ensure the sustainability of the CMO and the delivery of its charitable objectives is crucial, noting that the CMO is a not-for-profit stewardship body and not an estate management company. The monies are proportionate and in line with the requirements set out in the agreed CMO Operating Business Plan submitted by the Owners in accordance with Schedule 4, para 1.1.1a)(i). The Business Plan identifies that the monies collected under the Rent charge Deeds are not sufficient in the early phases of the development to enable the CMO to deliver its charitable objectives. The CMO is intended to operate at a deficit until a critical mass of residents is achieved and the commercial assets come forward, therefore the DGC is required to be paid in the early phases of the development. The applicant has not provided an alternative Business Plan to demonstrate that the CMO would be viable without payment of the DGC. The discharge of this obligation would not serve the useful purpose equally well because the CMO would not be able to deliver its charitable objectives for the reasons set out above. Furthermore, the applicant has not submitted any evidence, in the form of an updated Business Plan, to demonstrate that the discharge of this obligation would serve the useful purpose equally well. Without prejudice to the Council's position on viability the applicant has submitted insufficient information to enable the Council to assess the claim that this obligation is "substantially undermining the viability and deliverability of the Development". The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policy CG1 & CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 & IMP4. Reject: the obligation shall continue to have effect. Note: the Council will not comment on the applicants statements that relate to the CMO structure and performance. These points relate to an independent charitable body and are not material planning matters.	My experience of Kings Hill did not involve a CMO or Deficit grant funding. Some 36 years later the site is still managed by Liberty Trust with some facilities operated by a Parish Council set up specifically for the site. The deficit funding is a very large figure, and it would be far preferable for HD to manage the areas until the CMO is of a size that it can take over these responsibilities based on income from resident charges. The simple reality is that this is another sum that as the evidence of Quod demonstrates does not serve a useful purpose because the expenditure would harmfully impact the viability of the scheme.

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				The CMO simply does not and should not require this additional level of funding to deliver the services actually required of it. Indeed, such additional funding it has received to date, has not been spent sensibly nor delivered any material benefits to residents. Rather the CMO should simply rely upon the monies collected under the Rentcharge Deeds and properly manage its accounts to meet its liabilities. Moreover, as stated, the total amount of the DGC in the sum of £3,350,000 to be paid in Phases 1 and 2 is undermining the viability of the Development and cannot be sustained. In the premises the DGC does not realistically serve any useful purpose and these contributions should be discharged in their entirety.		
18.	The provision of Rentcharge Deeds in respect of each freehold dwelling	Paragraph 8 and Schedule 31	Modification deleted from appeal			
19. NC	Provision of Commercial Estate: Basic Provision	Paragraphs 9 and 10 and Schedule 29D Item 14	The Appellants apply to Discharge the obligations under paragraphs 9 and 10 to provide the First Tranche Commercial Estate/Cash Endowment and Schedule 29D Item 14. In addition, the Appellants apply for any appropriate consequential variations including the Discharge of Schedule 36.	The Appellants seek the discharge of the Commercial Estate: Basic Provision at £2,921,000 because it no longer serves a useful purpose for the reasons referred to under Request 17 above. The essence of the current CMO structure is that it should operate as an independently viable commercial enterprise supported by the Commercial Estate, but this is not realistic. Further, there is little if any market demand for the	a. The obligation continues to serve a useful purpose The Commercial Estate: Basic Provision (CEBP) is an important component of the CMO's funding and the CMO Operating Business Plan, submitted by the Owners in accordance with Schedule 4, para 1.1.1)a)(i). It is required to make the CMO viable over the long term to enable it to meet its charitable objectives, noting that the CMO is a not- for-profit stewardship body and not an estate management company. The applicant has submitted no evidence to support the statement that "there is little if any market demand for the Commercial Estate and significant issues over its future profitability, potential value for money and viability to support the operations of the CMO in any event".	Please see additional evidence from BNP Paribas regarding the lack of financial benefit provided by the commercial estate. This particular provision and the cash endowment will simply result in the CMO being responsible for a liability. While the proposal may have been laudable pre-2017, the market has changed very significantly post covid and there is limited prospect of commercial interest in this location. In the circumstances it is best to work to achieve a different model for site management with the Estate remaining with HD and being managed by it.

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				Commercial Estate and significant issues over its future profitability, potential value for money and viability to support the operations of the CMO in any event. As matters stand, therefore, on any view it is clear that the CE no longer serves a useful purpose. The total capital cost of the Basic Provision in the sum of £2,921,000 even before indexation is undermining the viability of the Development and cannot be sustained. Even if, contrary to the foregoing, the Provision were to be regarded as useful, in practice it is not feasible but self-defeating and useless. The removal of the Basic Provision is shown in the Viability Report, Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5700.4 and forms part of this updated viability analysis justifying the discharge of obligations and modifications sought.	The applicant has not provided an alternative Business Plan to demonstrate that the CMO would be viable without provision of the CEBP. The discharge of this obligation would not serve the useful purpose equally well because without the obligation the CMO would not be able to deliver its charitable objectives. Furthermore, the applicant has not submitted any evidence, in the form of an updated Business Plan, to demonstrate that the discharge of this obligation would serve the useful purpose equally well. Without prejudice to the Council's position on viability, the applicant has submitted insufficient information to enable the Council to assess the claim that this obligation is "undermining the viability of the Development and cannot be sustained". b. Schedule 29D Item 14 (Payment into the "Developers Capital Bank Account – Council) prior to the trigger point for delivery of the CEBP continues to serve a useful purpose because it ensures that, if the Council is required to remedy a breach of this obligation, the Council can do so as quickly as possible following the breach occurring. The discharge of this obligation to make this payment would result in an unacceptable delay to delivery if there were a breach. Which, in turn, is likely to affect the financial viability of the CMO and would therefore not serve that useful purpose equally well. c. The application does not make clear what "any appropriate consequential variations" are intended. However, Schedule 36 (which is specified) continues to serve a useful purpose because it is intended to ensure that the parameters for the design of the CEBP are agreed by all parties prior to the full design process being undertaken. This provides important clarity and agreement at the earliest stages in the design process to ensure the CEBP is fit for purpose and is of high quality design. The deletion of this Schedule (as shown in the amended Agreement submitted by the applicant) would not serve that useful purpose equally well because the Council could not be assured that the CEBP is fit for purpose and design quality would be embedded in the design of the development at an early stage in the design process. The discharge of these obligations is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 & CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 & IMP4.	As HD are dependent on placemaking to deliver the increased sales values, there is no basis to conclude that HD will not manage its estate properly.

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					Reject: the obligation shall continue to have effect.	
20. NC	Provision of Commercial Estate: Second Tranche	Para 11 and Sch 29D Item 24	The Appellants apply to Discharge the obligations to provide Second Tranche Commercial Estate under paragraph 11 and Schedule 29D Item 24. In addition, the Appellants apply for any appropriate consequential variations including the discharge of Schedule 37.	The reasons relied upon are as above for the First Tranche (Request 19) . The removal of the Second Tranche is shown in the Viability Report, Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5700.5 and forms part of this updated viability analysis justifying the discharge of obligations and modifications sought.	a. The obligation continues to serve a useful purpose. The Commercial Estate: Second Tranche (CEST) is an important component of the CMO's funding and the CMO Operating Business Plan, submitted by the Owners in accordance with Schedule 4, para 1.1.1)a)(i). It is required to make the CMO viable over the long term to enable it to meet its charitable objectives, noting that the CMO is a not- for-profit stewardship body and not an estate management company and not an estate management company. The applicant has submitted no evidence to support the statement that "there is little if any market demand for the Commercial Estate and significant issues over its future profitability, potential value for money and viability to support the operations of the CMO in any event". The applicant has not provided an alternative Business Plan to demonstrate that the CMO would be viable without provision of the CEST. The discharge of this obligation would not serve the useful purpose equally well because without the obligation the CMO would not be able to deliver its charitable objectives. Furthermore, the applicant has not submitted any evidence, in the form of an updated Business Plan, to demonstrate that the discharge of this obligation would serve the useful purpose equally well. Without prejudice to the Council's position on viability, the applicant has submitted insufficient information to enable the Council to assess the claim that this obligation is "undermining the viability of the Development and cannot be sustained". b. Schedule 29D Item 24 (Payment into the "Developers Capital Bank Account – Council) prior to the trigger point for delivery of the CEST continues to serve a useful purpose because it ensures that, if the Council is required to remedy a breach of this obligation, the Council can do so as quickly as possible following the breach occurring. The discharge of this obligation to make this payment would result in an unacceptable delay to delivery if there were a breach. Which, in turn, is likely to affect the financial viability of the CMO and would therefore not serve that useful purpose equally well. c. The application does not make clear what "any appropriate consequential variations" are intended. However, Schedule 37 (which is specified) continues to serve a useful purpose because it is intended to ensure that the parameters for the design of the CEST are agreed by all parties prior to the full design process being undertaken.	See 19 above.

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					This provides important clarity and agreement at the earliest stages in the design process to ensure the CEST is fit for purpose and is of high-quality design. The deletion of this Schedule (as shown in the amended Agreement submitted by the applicant) would not serve that useful purpose equally well because the Council could not be assured that the CEBP is fit for purpose and design quality would be embedded in the design of the development at an early stage in the design process. The discharge of these obligations is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 & CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 & IMP4. Reject: the obligation shall continue to have effect.	
21. NC	Provision of Commercial Estate: Third Tranche	Para 12 and Sch 29D Item 27	The Appellants apply to Discharge the obligations to provide the Third Tranche Commercial Estate under paragraph 12 and Schedule 29D Item 27.	The reasons relied upon are as above for the First and Second Tranches. The removal of the Third Tranche is shown in the Viability Report at Appendix 3, Infrastructure (Scenario 2) Line Ref 5700.6 and forms part of this updated viability analysis justifying the discharge of obligations and modifications sought.	a. The obligation continues to serve a useful purpose The Commercial Estate: Third Tranche (CETT) is an important component of the CMO's funding and the CMO Operating Business Plan, submitted by the Owners in accordance with Schedule 4, para 1.1.1)a)(i). It is required to make the CMO viable over the long term to enable it to meet its charitable objectives, noting that the CMO is a not- for-profit stewardship body and not an estate management company and not an estate management company. The application contains no evidence to support the statement that "there is little if any market demand for the Commercial Estate and significant issues over its future profitability, potential value for money and viability to support the operations of the CMO in any event". The applicant has not provided an alternative Business Plan to demonstrate that the CMO would be viable without provision of the CETT. The discharge of this obligation would not serve the useful purpose equally well because without the obligation the CMO would not be able to deliver its charitable objectives. Furthermore, the applicant has not submitted any evidence, in the form of an updated Business Plan, to demonstrate that the discharge of this obligation would serve the useful purpose equally well. Without prejudice to the Council's position on viability, the applicant has submitted insufficient information to enable the Council to assess the claim that this obligation is "undermining the viability of the Development and cannot be sustained". b. Schedule 29D Item 27 (Payment into the "Developers Capital Bank Account – Council) prior to the trigger point for	See 19 above.

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					delivery of the CETT continues to serve a useful purpose because it ensures that, if the Council is required to remedy a breach of this obligation, the Council can do so as quickly as possible following the breach occurring. The discharge of this obligation to make this payment would result in an unacceptable delay to delivery if there were a breach. Which, in turn, is likely to affect the financial viability of the CMO and would therefore not serve that useful purpose equally well. The discharge of these obligations is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 & CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 & IMP4. Reject: the obligation shall continue to have effect.	
22. NC	Payment of Cash Endowment	Paragraph 13	The Appellants apply to Discharge the obligations under paragraph 13 to pay the First Cash Endowment and the Second Cash Endowment. In the premises there should be no Option A or Option B and all necessary consequential amendments removing reference to these should be made accordingly	Option B (requiring the payment of the First and Second First Cash Endowments) is fundamentally :flawed. The Commercial Estate was proposed to provide the CMO with a long term revenue stream. However, as above, it can already be seen no longer to serve any useful purpose. Further, a one off cash endowment does not have a useful purpose in replacing an asset endowment and it is not appropriate for Section 106 payments to be levied to fund an unspecified alternative investment by the CMO. The mistake by the draftsman was to suppose any symmetry between Option A and Option B. Where Option A and the Commercial Estate: Second and Third Tranches do not proceed, that does not provide any justification for Option B and paying these very significant sums or indeed any sum directly to the CMO.	The obligation continues to serve a useful purpose. The Cash Endowments, to be paid under 'Option B' are an important component of the CMO's funding and the CMO Operating Business Plan, submitted by the Owners in accordance with Schedule 4, para 1.1.1a)(i). They are required to make the CMO viable over the long term to enable it to meet its charitable objectives, noting that the CMO is a not-for-profit stewardship body and not an estate management company. If 'Option A' does not proceed then it is appropriate for an alternative obligation in the form of an endowment of a sufficient quantum to be secured in the Agreement to maintain sufficient income for the CMO over the short and long term to enable the CMO to be self- sufficient. The applicant has not provided an alternative Business Plan to demonstrate that the CMO would be viable without payment of the cash endowments. The discharge of this obligation would not serve the useful purpose equally well because without the obligation the CMO would not be able to deliver its charitable objectives. Furthermore, the applicant has not submitted any evidence, in the form of an updated Business Plan, to demonstrate that the discharge of this obligation would serve the useful purpose equally well. Without prejudice to the Council's position on viability, the applicant has submitted insufficient information to enable the Council to assess the claim that this obligation "would undermine the viability of the Development and cannot be sustained". The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 &	It is clear that the CMO is not working effectively as a management model. It is considered that as the Chilmington Green Development grows a standard Parish Council model would be more appropriate with HD managing the assets across the site. This model has been tested at Kings Hill in Kent and has worked very successfully in developing a community and ensuring the community input is democratic. The payment of such a sizeable sum to the CMO will serve no good purpose and as evidenced by Quod will adversely impact viability.

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				Moreover, as referred to above, the total cost of the First and Second Cash Endowments (in the sum of 2 x £2,190,750) would undermine the viability of the Development and cannot be sustained.	CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 & IMP4. Reject: the obligation shall continue to have effect.	
23. NC	Payment of CMO Start up Contribution	Paragraph 14	The Appellants apply to Discharge these obligations and for the sums already paid to be refunded accordingly.	The Appellants repeat and rely upon the reasons stated above in respect of the other CMO, DGC and CE obligations. In particular, that the funds paid to date have not been spent sensibly nor delivered any material benefits to residents. In reality these obligations have not achieved any useful purpose, should be discharged retrospectively and the wasted contributions refunded. The Viability Report and updated viability evidence in support of this application duly reflect this submission; see the Explanatory Statement Appendix 3: Viability Report (Appendix 3: Infrastructure - Cost Plan, Infrastructure Cost Plan (Scenario 2) Line Ref. 5700.3).	a. The obligation continues to serve a useful purpose. The payment of the funds necessary and essential to ensure the sustainability of the CMO and the delivery of its charitable objectives is crucial, noting that the CMO is a not-for-profit stewardship body and not an estate management company. The monies collected under the Rent charge Deeds are not sufficient in the early phases of the development to enable the CMO to deliver its charitable objectives. The CMO is intended to operate at a deficit until a critical mass of residents is achieved and the commercial assets come forward, therefore the Start Up Contribution is required to be paid in the early phases of the development. The monies are proportionate and in line with the requirements set out in the agreed CMO Operating Business Plan submitted by the Owners in accordance with Schedule 4, para 1.1.1a)(i). The Council will demonstrate that the monies paid to date have supported the operation of the CMO. The applicant has not provided an alternative Business Plan to demonstrate that the CMO would be viable without provision of the Start up Contribution. The discharge of this obligation would not serve the useful purpose equally well because without the obligation the CMO would not be able to deliver its charitable objectives. Furthermore, the applicant has not submitted any evidence, in the form of an updated Business Plan, to demonstrate that the discharge of this obligation would serve the useful purpose equally well. Without prejudice to the Council's position on viability, the applicant has submitted insufficient information to enable the Council to assess the claim that this obligation is "substantially undermining the viability and deliverability of the Development". b. The proposed obligation to repay the sums already paid to the Council falls outside of the scope of Section 106B. The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policy CG1 & CG10 and the National Planning Policy Framework 2023. This	See 22 above

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					conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 & IMP4. Reject: the obligation shall continue to have effect.	
Schedule 5 - Early Community Development				<u>In this regard the Appellants refer to and rely in particular upon section 8 of the Explanatory Statement accompanying this application in addition to the reasons stated below.</u>		
24. NC	To pay annual Early Community Development Contributions of £50,000	Paragraph 1.2	The Appellants apply for all past and further payments of ECD Contributions to be Discharged .	Notably, the Adopted 2017 - Early Community Development Strategy states (at page 13), 'Within the early year's timeframe it is expected that the existing community (i.e. those living in the Chilmington Hamlet - approximately 70 people/30 dwellings - together with a few scattered dwellings elsewhere) will be joined by a further circa 200 dwellings (circa 480 people) within the Chilmington Development Area, by the end of 2019. The first new residents are expected early 2019.' The payment of the first, second and third ECD contributions was predicated upon this expectation. However, as at January 2020 the occupation level on site was just 30 dwellings (circa 72 people), whilst as at August 2022 some 215 dwellings are occupied (circa 516 people). At these occupancy levels, the payments made are not proportionate to the population on site and therefore not in line with their originally intended purpose (as described at paragraph 2 of Schedule 5) and cannot be justified.	Funding at the early stages in building a new community and developing a sense of place is considered as crucial to the Garden Community approach underpinning the Chilmington Green development. This obligation continues to serve a useful purpose because the monies provide for community development programme(s) for the residents and future residents of the development. These monies are separate from the CMO funding and derive from the requirements of the Chilmington Green Quality Charter - which is a statement of intent and a set of practical steps that all the developers at Chilmington Green have committed to. The contributions are intended as a major source of funding to deliver the Chilmington Green Early Community Strategy (with match funding to be provided from other sources) The delivery of the strategy was led by Ashford Borough Council initially, with handover to the CMO soon after its incorporation in August 2019. The Council will demonstrate how the monies already paid have been spent/are proposed to be spent. The discharge of all past and further payments would undermine the Council's and CMO's ability to deliver on early community engagement and therefore the discharge of this obligation would not serve the useful purpose equally well. The proposed obligation to repay the sums already paid to the Council falls outside of the scope of Section 106B. The DHLUC Garden communities funding is additional to and not in substitution for this obligation. The majority of the DHLUC funding is dedicated to small capital improvements, for example public footway/cycleway upgrading, all of which are independent of the early community development work to be delivered by this obligation. The public footway improvements have been provided to enable safer access to the primary school because the streets and associated footpaths that were envisaged to be open when the school opened have not yet been provided by the applicant.	See my PoE.

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				Further, whilst it was originally envisaged that Main Phase I would be completed within 5 years, it is not now expected that this phase can be completed until 2031. Given this actual rather than planned housing trajectory and the associated levels of occupancy, the payments due under the existing terms are not proportionate to need in the short term. The first three payments have already been made (£150,000), but is unclear how if at all these monies have been expended in relation to community activity. Moreover, ABC has now, instead of and in substitution for these payments, secured £755,000 in funding from DHLUC for: • Improved access to, through and around Discovery Park and nearby Coleman's Kitchen woods (upgrading Public Rights of Way) • Promoting active travel and sustainability • The creation of a community space for the local community to meet and hold events • Stodmarsh Nutrient Neutrality Assessment and exploring bio-diversity net gain opportunities • Further community development work and cultural projects • Improving information sharing and	The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 & CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 & IMP4. Reject; the obligation shall continue to have effect.	

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				communication for local residents Supporting the growth of the Community Stakeholder Group. In context, therefore, these additional payments no longer serve any useful purpose and should be discharged accordingly, both retrospectively and prospectively with those payments already made duly refunded. The Viability Report and updated viability evidence in support of this application duly reflect this submission; with the first three payments shown in the Explanatory Statement Appendix 3: Viability Report (Appendix 3: Infrastructure Cost Plan, Line Ref. 5700.7) as refunded and the remaining liabilities discharged.		
Schedule 6 - Natural Green Space						
25. NC	The obligations to provide Informal/Natural Green Space Facilities	Para 1 et seq.	The Appellants do not seek to reduce the Informal/Natural Green Space but do seek to Modify some of the detail of these obligations as referred to below.	Although the Appellants do not seek to reduce their s106 obligations to provide Informal/Natural Green Space Facilities, but it should be noted and is duly recorded here, that the Green Space obligations are proving to be substantially more expensive than is presently allowed for as a cost to the Development at Schedule 29D. Rather than the sums shown there (see items 7, 15, 19 and 21) the true costs are likely to be in the order of £7.5m. The scale of this obligation ought properly to be taken into account when considered the other requests herein, particularly those based	The applicant's statements are noted; however, the applicant has not provided any evidence to support the claim that the "Green Space obligations are proving to be substantially more expensive than is presently allowed for as a cost to the Development at Schedule 29D". Therefore, the Council has been unable to consider this argument.	See my PoE.

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				primarily or exclusively on viability and the deliverability of the Development.		
26. NC	The conditions attaching to occupation in each Main Phase	Paras 1.1.5 to 1.1.10	The Appellants seek to Discharge or Modify these conditions as appropriate to remove amongst other things the obligation to transfer the Green Space Facilities and the powers of veto effectively given to the CMO thereunder, as follows: Paragraph 1.1.5 to be modified to omit the last part of the clause beginning 'and are free from ... a cosmetic nature)'. Paragraph 1.1.8 to be discharged. Paragraphs 1.1.9 and 1.1.10 also to be discharged.	The amendment to paragraph 1.1.5 is justified because there is no useful purpose to be served in the CMO being able to halt the Occupation of Dwellings in each or any of the Main Phases merely because the CMO identifies some Defect in the Green Space Facilities. This is a wholly unnecessary and oppressive provision. Further, in practice the CMO is neither equipped nor competent to be the arbiter of such matters. Rather they should simply be obliged to maintain and/or keep in repair and good condition the Green Space Facilities, by no doubt in practice using third party maintenance contractors. As for paragraph 1.1.8, there is simply no justification for imposing this additional burden upon the Appellants. It is not appropriate for Section 106 payments to be levied to meet transaction costs in this way. In any event, for the reasons stated below, the Appellants propose that the land should not be transferred at all. That to do so is unnecessary. As to the discharge of the transfer obligation under 1.1.9 and 1.1.10 so as these spaces are retained by the Appellants, there is no useful purpose to be served in transferring these assets to the CMO. Indeed, it would be unusual for this to be the case. Moreover, the provision of these spaces as an amenity	a. On completion of the facilities and handover to the CMO, it is important to ensure the facilities are of sufficient quality and that they contain no defects. This obligation continues to serve a useful purpose because it ensures that facilities of sufficient quality are handed over to the CMO for the benefit of residents. The discharge of this obligation would not serve that useful purpose equally well because it would mean that the CMO would have to bear the costs of rectifying any defects. b. The obligation for the Owners to meet the costs of any SDLT/other tax payable to register the transfer of the land and to cover the CMO's associated legal costs continues to serve a useful purpose because having to pay these costs which would reduce the monies the CMO has available to deliver their charitable objectives and would simply serve to increase the deficit the CMO operates under. For this reason, the discharge of this obligation would not serve that useful purpose equally well. c. This obligation continues to serve a useful purpose, and its discharge would not serve that useful purpose equally well because the transfer of Natural Green Space to the CMO is an essential part of the approach to community stewardship being delivered at Chilmington Green and detailed in the CMO Operating Business Plan submitted by the Owners. The applicant has not explained how the retention of these assets in their ownership would impact the CMO Business Plan or how the Natural Green Space would be managed and maintained and by whom. The modification and discharge of these obligations is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG8 & CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM2 & IMP4. Reject; the obligation shall continue to have effect without modification.	See my PoE.

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				would be unaffected and the obligations in relation to the same would serve their purpose equally well if varied in this way.		
27. NC	The 12 months repairing liability following transfer	Paragraph 1.2	The Appellants apply to Discharge this obligation.	The clause gives the CMO excessive powers to demand repairs are carried out. Particularly, where, as noted above, in reality the CMO is neither equipped nor competent to be the arbiter of such matters. Moreover, under a normal estate management (Manco) model the CMO should simply be obliged to maintain and/or keep in repair and good condition the Green Space Facilities, by no doubt in practice using third party maintenance contractors. On any view, therefore, the clause fails to serve any useful purpose and should be discharged	This obligation continues to serve a useful purpose because it ensures that any defects are remedied in a timely manner by the Owners who provided the facility. The CMO should not have to bear the cost to repair defects that that are identified within the time periods stated in the Agreement. It should be the responsibility of the 'Owners' who provide the green space to deliver the quality of space agreed in the planning/reserved matters permissions and that any defects identified after handover are remedied. This obligation ensures that green space of sufficient quality is handed over to the CMO and that defects are dealt with promptly to the benefit of the community. The discharge of this obligation would not serve that useful purpose equally well because it would mean that the CMO would have to bear the costs of rectifying any defects and if poor quality facilities are provided there would be no means of remedy. The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG8 & CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM2 & IMP4. Reject: the obligation shall continue to have effect. Proposed modification by agreement: - the Council considers that the introduction of a defects dispute resolution provision could meet the statutory test under s.106A(6)(c). The Council is willing to discuss this proposed modification by agreement with the appellant.	See my PoE.
28. NC	Provision for payment toward the Council's costs	Paragraph 2	The Appellants seek the Discharge of this payment obligation.	Because providing for payment toward the Council's costs undermines the purpose of the clause (to secure the transfer on appropriate terms), compensating the Council even in cases where it unreasonably refuses approval, which should not the case. The clause does not therefore serve any proper or useful	In accordance with para 1.1.10, the Owners can ask the Council to consider a transfer which the developer wishes to use but has not been agreed with the CMO for the required transfer of any asset to the CMO. The payment of the Council's legal costs to consider the transfer serves a useful purpose through enabling the Council to take specialist legal advice upon the wording, and the dispute that has arisen between the developer and CMO, and if appropriate to approve the transfer terms so that the asset transfer can proceed. The discharge of this obligation would not serve this useful purpose equally well because without the Owners payment of the legal costs these costs would fall upon the public purse which would not be appropriate as they arise in connection with the provision and long-term	It is clear that clauses such as this serve no useful purpose as they simply impact on the viability of the scheme. The Council already receive very large scale fees for the consideration of applications and it cannot be right that all liabilities are placed on the developer.

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				purpose and should be discharged accordingly.	stewardship of mitigation for the impact of the development. The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG8 & CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM2 & IMP4. Reject: the obligation shall continue to have effect.	
Schedule 7 – Chilmington Hamlet				<u>In this regard the Appellants refer to and rely in particular upon section 8 of the Explanatory Statement accompanying this application in addition to the reasons stated below.</u>		
29. M	Chilmington Hamlet facilities to be provided by 1400 occupations	Para 1.3 and Sch 29D Item 12	The Appellants apply for the following Modifications: That paragraph 1.3 be modified to read 'Unless the Council agrees otherwise, not to occupy more than 3,500 Dwellings unless ... ' In addition, the Appellants apply for paragraph 1.3.1 to be modified to omit the last part of the clause beginning 'and are free from ••• a cosmetic nature). Further, the Appellants apply to discharge the obligation to transfer the Facilities, substituting an obligation to grant a lease of the same for a term of 21 years. Thus, the Appellants apply for paragraph 1.3.4 to be discharged and paragraph 1.3.5 to be modified to provide for the Facilities to be transferred to the CMO by way of the grant of a lease in the Facilities for a term of 21 years at a peppercorn ground rent and which (a) shall not secure any service charge in relation to the premises (b) shall be unencumbered (except for any easements or other rights to lay maintain enter report divert renew replace connect to and use any new	The obligation at paragraphs 1.1 to 1.3 to provide the Chilmington Hamlet facilities, including the obligation to submit the Design Brief, are acknowledged potentially to serve a useful purpose but should be delayed until the facilities are viable (i.e. there are enough people living on the development to make sufficient use of them). Based on the general profile of demand for cricket facilities and the total demand for 2 to meet the needs of the whole development, Chilmington Hamlet is likely to be viable no earlier than 3,500 homes. Further, the current front loading of this community provision, the Hamlet by 1,400 Dwellings and the Community Hub by 1,800 Dwellings, will not only have a significantly detrimental effect on the Paying Owner's cashflow in this initial phase of the Development, but more critically without modification will likely cause the loss of the funding available to the	a. The obligation continues to serve a useful purpose. The timely provision of sports facilities to serve the new community is essential to good placemaking. The Hamlet facilities are phased ahead of the sports facilities at Discovery Park to ensure sports facilities are provided for residents at an early stage in the development. A delay to these facilities will result in a deficit of facilities in proportion to the number of residents. As referenced in the Quod Explanatory Statement (para 8.41), the Ashford Borough Council Playing Pitch Strategy 2017-2030 (August 2017) sets out the amount of cricket pitch provision required for the Chilmington Green development. It is acknowledged that 0.5 cricket squares are required to serve 2,500 homes and a further 0.5 cricket squares for the remaining 3,250 homes. However, it should be noted that the facilities at The Hamlet do not only comprise a cricket pitch and batting cages. The facilities also comprise a community pavilion/community space, tennis courts and a bowling green. It is also likely that the cricket pitch would not only be used for cricket, but for other recreational purposes too. The AAP (para 5.62) states in respect of The Hamlet cricket ground that "This publicly accessible space should be flexibly designed to encourage a range of informal play and recreational activities." The applicant's claim that the Hamlet facilities are "likely to be viable no earlier than 2,300 homes and delay to 3,500 appears proportionate" has not been sufficiently evidenced. The applicant's argument appears to be based solely on the provision of cricket facilities and does not consider the other sports and recreational uses proposed as part of these facilities (it is noted that viable in this case means there are	See my PoE.

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			or existing and proposed service media) and subject always to the provisions of this Deed and any conditions to the Planning Permission that apply to the land and (c) shall confer all legal rights and easements over neighbouring and adjacent land that are reasonably necessary and appropriate to enable the demised land to be used for its intended uses and purposes. The form of the said lease to be acceptable to the CMO (its approval of the form not to be unreasonably withheld). And, Paragraph 1.3.6 to be modified to provide that the Owners have served the CMO with an engrossed lease/s (as appropriate) as aforesaid of the land on which the Facilities are located in a form previously approved by the CMO or in the event that the CMO has still not approved the same within 6 weeks of the relevant owner serving the same) in a form previously approved by the Council where the Council's approval of the form of lease proposed by the Owners is not to be unreasonably withheld ... etc. ~~Schedule 29D item 12, to be modified accordingly so that the trigger for payment refers to 3,250 Dwellings~~	Appellants to carry out the Development at all. Rather, the purpose of these provisions can be better or at least equally well served by modifying them as proposed, supporting the Development whilst securing delivery of these facilities in any event at a relatively early stage in the life of the Development. Certainly, given the level of capital cost here (£1.266m) this is another significant factor in terms of viability and deliverability, justifying the deferment of this obligation to support the ultimate delivery of the entire Development. The proposed modification is captured in the updated sensitivity analysis in the Viability Report at Appendix 3 of the Explanatory Statement. As for the modification and/or discharge of paragraphs 1.3.4 to 1.3.6 to provide for the grant of a 21 year lease rather than a freehold transfer, this will not detract from the provision of these Facilities and the obligations will serve their existing purpose equally well if modified as proposed.	enough people living on the development to make sufficient use of them). In addition, the Quod Explanatory Statement (para 8,41), states that facilities will be available at the schools on site. This is not the case. The first primary school, which is already open, and the secondary school, which is due to open in September 2025 will not provide cricket facilities or a bowling green. The secondary school sports facilities will include three multi-use ball courts and indoor sports facilities. The school has indicated that these facilities could be made available to the community outside the hours of school use. However, this access is likely to be limited given the amount of use the school will require and will be at the discretion of the school. Therefore, regular access by the community to sports facilities at the school will not be possible. The Council does not agree with the statement in the application that the modification would secure "delivery of these facilities in any event at a relatively early stage in the life of the Development". The modification would delay the delivery of the Hamlet facilities until half way through Phase 3 of the development when circa 60% of the dwellings have been occupied. This is not a "relatively early stage in the life of the Development". For the reasons set out above, the modification of this obligation would not serve its useful purpose equally well. Without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim that the provision of the Chilmington Hamlet facilities by 1400 occupations "will not only have a significantly detrimental effect on the Paying Owner's cashflow in this initial phase of the Development, but more critically without modification will likely cause the loss of the funding available to the Applicants to carry out the Development at all." b. On completion of the facilities and handover to the CMO, it is important to ensure the facilities are of the quality agreed in the Design Brief and Specification and that they contain no defects. This obligation continues to serve a useful purpose because it ensures that facilities of sufficient quality are handed over to the CMO for the benefit of residents. The discharge of this obligation would not serve that useful purpose equally well because it would mean that the CMO would have to bear the costs of rectifying any defects. c. This obligation continues to serve a useful purpose, its discharge would not serve that useful purpose equally well because the transfer of the Hamlet Facilities to the CMO	

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					is an essential part of the approach to community stewardship being delivered at Chilmington Green and detailed in the CMO Operating Business Plan submitted by the Owners. The applicant has not explained how the retention of these assets in their ownership would impact the CMO Business Plan or how the Hamlet Facilities would be managed and maintained and by whom or what would happen at the end of the lease. The obligation for the Owners to meet the costs of any SDLT/other tax payable to register the transfer of the land and to cover the CMO's associated legal costs. continues to serve a useful purpose because having to pay these costs which would reduce the monies the CMO has available to deliver their charitable objectives and would simply serve the increase the deficit the CMO operates under. For this reason, the discharge of this obligation would not serve that useful purpose equally well. d. The applicant's modifications table proposes a modification to the trigger for payment set out in Schedule 29D item 12. However, the submitted amended S.106 Agreement proposes that the whole of Schedule 29D is deleted. The applicant should clarify which modification is proposed. Notwithstanding the above, the Council does not agree to the modification to the trigger to deliver the Chilmington Hamlet Facilities by 3500 occupations and consequently does not agree the modification to Schedule 29D item 12 to make payment at 3250 occupations. Furthermore, Schedule 29D Item 12 (Payment into the "Developers Capital Bank Account – Council) prior to the trigger point for delivery of the Hamlet Facilities continues to serve a useful purpose because it ensures that, if the Council is required to remedy a breach of this obligation, the Council can do so as quickly as possible following the breach occurring. The discharge of the obligation would result in an unacceptable delay to delivery if there were a breach of the obligation and would therefore not serve that useful purpose equally well. The modification and discharge of these obligations is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG8, CG10 & CG16 and the National Planning Policy Framework. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 & COM2. Reject: the obligation shall continue to have effect without modification.	

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30. NC	Submission and Approval of Design Brief and Specification by 1,000 occupations	Paras 1.1 and 1.2	The Appellants apply to Modify paragraph 1.1 to provide, 'Not to Occupy more than 3,000 Dwellings unless a design brief and specifications for the following indicative facilities and/or facilities of no greater environmental impact as may be approved by the Council (approval not to be unreasonably withheld) ... at Schedule 7A to be provided in Chilmington Hamlet has been approved by the Council with a total capital cost of £1,266,000.00 ... including fees, contingencies, specification and design costs, supervision fees, access roads and service costs ('the Facilities')', Further, the Appellants apply for the following provision to be added for the avoidance of doubt 'The scope of the said facilities to be altered as may reasonably be required to match the stipulated total capital cost as aforesaid.'	The modification in occupations is proposed for the reasons stated above in respect of the provision of these facilities and is consequential upon that modification. Tie modification of the planned costs to include fees, contingencies, specification and design costs, supervision fees, access costs and service costs, is justified for reasons of viability and deliverability, ensuring that the cost of these Facilities is not so substantial as to undermine the viability of the relevant Main Phases and strike at the very delivery of these assets. The third modification is proposed to reinforce the existing obligation and ensure the purpose of the preceding paragraphs is fulfilled, i.e. the provision of the Chilmington Hamlet facilities at a total cost of £1,266,000.	a. This obligation continues to serve a useful purpose. Its modification would not serve that useful purpose equally well. Considering the Council's response to request 29 above, there is no justification to amend the trigger to submit the Design Brief and Specification. The submission of the Design Brief and Speciation within a timely manner enables the Council to ensure design quality is embedded in the development at an early stage. The requirement for the design brief to be 'approved' by the Council prior to 1000 occupations ensures the scheme to be delivered is of sufficient design quality and safeguards against poor quality development. b. This obligation continues to serve a useful purpose by ensuring that Fees, contingencies, specification and design costs and supervision fees are sufficiently provided for, and do not 'use up' the main construction budget sum. Access roads and service costs are infrastructure costs associated with the wider development. The proposed modification would not serve that useful purpose equally well because including these costs in the total capital cost would reduce the total budget available to deliver the facilities and consequently undermine the ability to deliver the required quality of facilities at The Hamlet. It is already evident from discussions with the applicant about the total capital cost for the first playspace, and the applicant's position with reference to request 25 relating to the cost of the Natural Green Space, that the budgets identified in the Agreement, with the inclusion of index linking and without the inclusion of fees, contingencies, specification and design costs, supervision fees, access roads and service costs, does not provide sufficient budget to deliver the quality facilities required by the outline planning permission, the design code and the applicant's design and access statement. Including the costs stated in this request in the budget identified in the Agreement will undermine further the ability to deliver the quality of facilities envisaged for Chilmington Green. Without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim that the exclusion of fees, contingencies, specification and design costs, supervision fees, access roads and service costs from the total capital cost is undermining "the viability of the relevant Main Phases and strike at the very delivery of these assets". c. The proposed modification does not serve a useful purpose. Para 1.1 clearly sets out the total cost for The Hamlet Facilities. In addition, Para 1.1 allows for variation in the scope of the facilities to be provided in the bracketed sentence "(unless otherwise agreed by the Council)". The	See my PoE.

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					scope of the facilities is to be appropriately agreed through the submission of the Design Brief and Specification and application for reserved matters. The modification of these obligations is contrary to the Chilmington Green Area Action Plan 2013 Policy CG1, CG8 & CG16 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, SP6 & COM2. Reject: the obligation shall continue to have effect without modification.	
31. NC	The provision for consultation with the CMO and stakeholders etc., and approval of the details of the consultation	Paragraph 1.2 and its sub-paragraphs 1.2.1, 1.2.2 and 1.2.3	The Appellants apply to Modify paragraph 1.2 and/or discharge aspects of the same as follows: Paragraph 1.1.2 to be modified to omit the requirement to consult the CMO (or its substitute). Paragraph 1.2.2 to be discharged so as to omit the requirement to consult and to obtain approval in respect of the details of the consultation, and Paragraph 1.2.3 to be modified simply to state 'shall include the consultation responses.'	The consultation with the CMO under 1.1.2 is surplus to requirements, given that the Council will have the opportunity already to consult with all interested parties when approving the design brief and specification. This part of the paragraph does not, therefore, serve any useful purpose and should be discharged or modified accordingly. As for 1.2.2, the requirement to consult over the details of the consultation (whether with the CMO or Council) also fails to serve any useful purpose. It unnecessarily complicates what should be a relatively straightforward and simple exercise. 'This obligation should be discharged accordingly. The modification to 1.2.3 is consequential on the foregoing.	a. This obligation continues to serve a useful purpose. Its modification would not serve that useful purpose equally well. The CMO is an important stakeholder at Chilmington Green. They will take on the management and maintenance of The Hamlet facilities. It is therefore important that the CMO can input at an early stage in the design process. The value of early consultation is reflected in National Planning Practice Guidance (NPPG) which identifies the benefit of "working collaboratively and openly with interested parties at an early stage to identify, understand and seek to resolve issues associated with a proposed development" (ref: NPPG, para: 001 Reference ID: 20-001-20190315). It is noted that the applicant does not propose to remove the requirement to consult with other relevant stakeholders and the public. b. This obligation continues to serve a useful purpose. Its modification would not serve that useful purpose equally well. The approval of the details of the consultation by the CMO/Council prior to the consultation taking place ensures that the consultation is fit for purpose and involves all necessary parties. c. This obligation continues to serve a useful purpose. Its modification would not serve that useful purpose equally well. The requirement for the Design Brief and Specification to include the CMO's comments on the costings ensures that the CMO can input into the specification and cost of facilities they will own, manage and maintain and raise any concerns at any early stage in the design process and for the Council to be aware of their comments when reviewing the document. The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG8, CG10 & CG16 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, SP6, COM2 & IMP4.	The doubling up of consultation simply results in unnecessary and costly delays. There is no evidence that the CMO have the commercial expertise to determine whether or not the facilities are appropriate and it would be better to free up the process to speed up delivery and save on costs of finance arising from delay.

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					Reject: the obligation shall continue to have effect without modification.	
32. NC	The 12 months repairing obligation following transfer	1.4	The Appellants apply to Discharge this obligation in its entirety.	The clause gives the CMO excessive powers to demand repairs are carried out, particularly where, as noted above, in reality the CMO is neither equipped nor competent to be the arbiter of such matters. Further, under a normal Estate Management (Manco) model the CMO should simply be obliged to maintain and/or keep in repair and good condition the Green Space Facilities, by no doubt in practice using third party maintenance contractors. On any view, therefore, the clause fails to serve any useful purpose and should be discharged.	This obligation continues to serve a useful purpose because it ensures that any defects are remedied in a timely manner by the Owners who provided the facility. The CMO should not have to bear the cost to repair defects which occur within the time periods stated in the Agreement. It should be the responsibility of the 'Owners' who provide the Hamlet Facilities to deliver the quality of facilities agreed in the planning /reserved matters permissions and that any defects identified after handover are remedied. This obligation ensures that facilities of sufficient quality are handed over to the CMO and that defects are dealt with promptly to the benefit of the community. The discharge of this obligation would not serve that useful purpose equally well because it would mean that the CMO would have to bear the costs of rectifying any defects and if poor quality facilities are provided there would be no means of remedy. The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG8, CG10 & CG16 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM2 & IMP4. Reject; the obligation shall continue to have effect.	See my PoE.
33. NC	Provision for payment toward the Council's costs	Paragraph 2	The Appellants apply to Discharge this payment obligation.	Because providing for payment toward the Council's costs undermines the purpose of the clause (to secure the transfer on appropriate terms), compensating the Council even in cases where it unreasonably refuses approval, which should not be the case. The clause does not therefore serve any proper or useful purpose and should be discharged accordingly.	In accordance with para 1.1.10, the Owners can ask the Council to consider a transfer which the developer wishes to use but has not been agreed with the CMO for the required transfer of any asset to the CMO. The payment of the Council's legal costs to consider the transfer serves a useful purpose through enabling the Council to take specialist legal advice upon the wording, and the dispute that has arisen between the developer and CMO, and if appropriate to approve the transfer terms so that the asset transfer can proceed. The discharge of this obligation would not serve this useful purpose equally well because without the Owners payment of the legal costs these costs would fall upon the public purse which would not be appropriate as they arise in connection with the provision and long-term stewardship of mitigation for the impact of the development. The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG8, CG10 & CG16 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM2 & IMP4.	

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					Reject: the obligation shall continue to have effect.	
Schedule 8 - Children and Young People's Play Space				<u>In this regard the Appellants refer to and rely in particular upon section 8 of the Explanatory Statement accompanying this application in addition to the reasons stated below.</u>		
34. NC	The provision of the design brief and specification for the children's and young people's play spaces and/or other facilities	Paragraph 1	The Appellants apply to Modify the delivery of the design brief and specification for each play space and/or the other facilities in each Main Phase 1, 2, 3 and 4, by altering the number of Dwellings specified in the unnumbered sub-paragraphs of Paragraph 1.1 from the current 50, 50, 750, 650 and 1150 to 350, 500, 850, 850 and 1350 respectively and to modify the planned costs to include fees and other costs . The Appellants request that paragraph 1.1.1 be modified to read '... and not exceeding a total of £2,585,143.00 ... for the play space including fees, contingencies, specification and design costs, supervision fees, access roads and service costs ('the Facilities')'. Further, before 1.1.2, the Appellants apply to insert 'The scope of the said Facilities to be altered as agreed with the Council to match the stated capital cost for each of PS1, 2, 4, 5 and 7 and the total capital cost as aforesaid.'	So far as the initial 0.5ha in Main Phase 1 is concerned the practical point arises, that it is not possible to provide this safely until the surrounding construction works are completed. The other play spaces are postponed for the same construction related reasons. Notably, in doing so the delivery of these assets remains substantially in line with policy. Further, given the level of capital cost here (£2.585m) this is another significant factor in terms of viability and deliverability, justifying the deferment of these obligations supports the ultimate delivery of the entire Development. Likewise, the modification of the planned costs to include fees, contingencies, specification and design costs, supervision fees, access costs and service costs, is justified for reasons of viability and deliverability, ensuring that the cost of these Facilities is not so substantial as to undermine the viability of the relevant Main Phases and strike at the very delivery of these assets. The proposed modification is captured in the updated sensitivity analysis in the	a. This obligation continues to serve a useful purpose. Its modification would not serve a useful purpose equally well. The submission of design briefs in a timely manner prior to the delivery of the playspace enables the Council to ensure design quality is embedded in the development at an early stage, ensures the scheme to be delivered is of sufficient design quality and safeguards against poor quality development. The applicant has provided no evidence to demonstrate how any potential issues concerning the safety of the site and surrounding construction works would impact on their ability to submit the Design Brief & Specification within the required timescales. Without prejudice to the Council's position on viability, it is also not clear how the submission of the Design Brief and Specification within the currently agreed timescales "is another significant factor in terms of viability and deliverability, justifying the deferment of these obligations supports the ultimate delivery of the entire Development". The trigger for PS1 had occurred by April 2021. The DB&S for PS1 was submitted in January 2023 but due to on-going discussions about the budget for the playspace, has not yet been agreed. b. This obligation continues to serve a useful purpose by ensuring that Fees, contingencies, specification and design costs and supervision fees are sufficiently provided for, and do not 'use up' the main construction budget sum. Access roads and service costs are infrastructure costs associated with the wider development. The proposed modification would not serve that useful purpose equally well because including these costs in the total capital cost would reduce the total budget available to deliver the facilities and consequently undermine the ability to deliver the required quality of playspace. It is already evident from discussions with the applicant that the budget identified for PS1, without the inclusion of fees, contingencies, specification and design costs, supervision fees, access roads and service costs does not provide sufficient budget to deliver the quality playspace / public	See my PoE.

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				Viability Report at Appendix 3 of the Explanatory Statement. The added sub-paragraph before 1.1.2 is proposed for the avoidance of doubt, to reinforce the existing obligation and ensure the purpose of the preceding paragraphs is fulfilled, i.e. the provision of each PS[Number] at the cost stated, with the whole provided at a total cost not exceeding that also stated.	space required by the Outline planning permission, the design code and the applicant's design and access statement. Including these costs in the total capital cost will undermine further the ability to deliver the quality of space envisaged for Chilmington Green. Without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim that the exclusion of fees, contingencies, specification and design costs, supervision fees, access roads and service costs from the total capital cost is undermining "the viability of the relevant Main Phases and strike at the very delivery of these assets". c. The proposed modification would not serve the obligation's purpose equally well. The preceding paragraph clearly sets out the total capital cost for each playspace. The scope of the facilities is appropriately agreed through the submission of the Design Brief and Specification and applications for reserved matters. The modification of these obligations is contrary to the Chilmington Green Area Action Plan 2013 Policy CG1 and CG8 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see Ashford Local Plan 2030 Policies SP1, SP6 & COM2. Reject: the obligation shall continue to have effect without modification.	
35. NC	The provision for consultation with the CMO, stakeholders etc. and approval of the details of the consultation	Paragraph 1.1.2	In addition, the Appellants apply to Modify paragraph 1.1.2 as follows: To omit the requirement to consult with the CMO and to obtain approval in respect of the details of the consultation, and consequentially, To omit the words 'and in particular the CMO's comments on the costings.'	The consultation with the CMO (or its substitute) under 1.1.2 is surplus to requirements, given that the Council will have the opportunity already to consult with all interested parties when approving the design brief and specification. This part of the paragraph does not, therefore, serve any useful purpose and should be discharged or modified accordingly. As for the requirement to consult over the details of the consultation (whether with the CMO or Council) this also fails to serve any useful purpose. It unnecessarily complicates what should be a relatively straightforward and simple exercise. This part of the	This obligation continues to serve a useful purpose. Its modification would not serve that useful purpose equally well. The CMO is an important stakeholder at Chilmington Green. They will take on the management and maintenance of the play spaces. It is therefore important that the CMO can input at an early stage in the design process. The value of early consultation is reflected in National Planning Practice Guidance (NPPG) which identifies the benefit of "working collaboratively and openly with interested parties at an early stage to identify, understand and seek to resolve issues associated with a proposed development" (ref: NPPG, para: 001 Reference ID: 20-001-20190315). It is noted that the applicant does not propose to remove the requirement to consult with other relevant stakeholders and the public. The approval of the details of the consultation by the CMO/Council prior to the consultation taking place ensures that the consultation is fit for purpose and involves all necessary parties. b. This obligation continues to serve a useful purpose. Its modification would not serve that useful purpose equally well. The requirement for the Design Brief and Specification to include the CMO's comments on the costings ensures that	See my PoE.

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				obligation (in parenthesis) should be discharged accordingly. The omission of the final clause of 1.1.2 is simply consequential on the foregoing.	the CMO can input into the specification and cost of facilities they will manage and maintain and raise any concerns at any early stage in the design process and for the Council to be aware of their comments when reviewing the document. The modification of these obligations is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG8 & CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, SP6, COM2 & IMP4. Reject: the obligation shall continue to have effect without modification.	
36. NC	The applicable occupation limits in respect of the provision and construction of each Play Space in the relevant Main Phase	Paragraphs 1.2 and 1.4	The Appellants apply to Modify the occupation limits in paragraphs 1.2 and 1.4 from the current 500, 1100 and 1100 to 700, 1200 and 1300 respectively (the first 500 trigger for PS1 and the final 1500 trigger for PS7 in Main Phase 4 to remain unaltered).	The modification in occupations is proposed for the reasons stated above in respect of the provision of the design brief and specification for each of the play spaces and/or other facilities and follows upon those modifications.	The obligation continues to serve a useful purpose. Its modification would not serve a useful purpose equally well. Timely provision of play space to serve the needs of the new community is essential to good placemaking. There are no play facilities and a considerable lack of access to play facilities in the development now, to delay provision would be to the detriment of the community. It is evident, especially when visiting the development in the school holidays, that there is a need for playspace to serve Main Phase 1 now. Planning officers have witnessed young children playing on the streets and on land parcels adjacent to their homes not yet brought forward for development. Given this need, it could be argued that the delivery of the playspaces should be brought forward earlier and certainly not delayed. The assertion at para 8.38 of the Quod Explanatory Statement that "the current phasing of the playspace does not align with the land disposal and construction strategy. As currently required, the play areas will be at risk of being undeliverable due to access and construction site safety restrictions" does not reflect the situation on site for phase 1. From the information submitted on land sales for Main Phase 2, there is no reason to think that PS2 could not be delivered by 500 occupations in Main Phase 2, noting that access to PS2 is not reliant on neighbouring development parcels and can be provided from Chilmington Green Lane. There are no indications of proposed delivery timescales for development land parcels within Main Phase 3 and Main Phase 4. Therefore, there is no basis for delaying the delivery of PS4 and PS6 for this reason. Without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim that "the deferment of these	See my PoE.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
					obligations supports the ultimate delivery of the entire Development". The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 & CG8 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 & COM2. Reject: the obligation shall continue to have effect without modification.	
37. NC	The conditions attaching to occupation in relation to each Play Space in each Main Phase	Paras 1.2.1 to 1.2.6	The Appellants seek to Discharge or modify these conditions to remove amongst other things the powers of veto effectively given to the CMO thereunder, as follows: Paragraph 1.2.1 to be modified to omit the last part of the clause beginning 'and are free from ... a cosmetic nature). Further, the Appellants apply to discharge the obligation to transfer the Facilities, substituting an obligation to grant a long lease of the same, being a lease (including a sub-lease) with a term of 125 years at a peppercorn ground rent and which makes the same provisions (a)-(c) as referred to above (see Schedule 7). Thus, the Appellants apply for paragraph 1.2.4 to be discharged and paragraphs 1.2.5-6 to provide instead that the Facilities, are: either to be transferred to the CMO by way of the grant of a lease as aforesaid of the land on which the Facilities are located in a form acceptable to the latter (their approval of the form not to be unreasonably withheld) or where the Owners have served the CMO with an engrossed lease/s (as appropriate) as aforesaid of the land on which the Facilities are located in a form previously approved by the CMO or (in the event that the CM has still not approved the same within 6	The amendment to paragraph 1.2.1 is justified because there is no useful purpose to be served in the CMO being able to halt the Occupation of Dwellings in each or any of the Main Phases merely because the CMO identifies some Defect in the play spaces and/or other facilities. This is a wholly unnecessary and oppressive provision. Further, in practice the CMO is neither equipped nor competent to be the arbiter of such matters. Rather, they should simply be obliged to maintain and/or keep in repair and good condition the spaces/facilities, by no doubt in practice using third party maintenance contractors. As for the modification and/or discharge of paragraphs 1.2.4 to 1.2.6 to provide for the grant of a long lease rather than a :freehold transfer, this will not detract from the provision of these Facilities and the obligations will serve their existing purpose equally well if modified as proposed.	a. On completion of the facilities and handover to the CMO, it is important to ensure the facilities are of the quality agreed in the Design Brief and Specification and that they contain no defects. This obligation continues to serve a useful purpose because it ensures that facilities of sufficient quality are handed over to the CMO for the benefit of residents. The discharge of this obligation would not serve that useful purpose equally well because it would mean that the CMO would have to bear the costs of rectifying any defects. b. This obligation continues to serve a useful purpose, its discharge would not serve that useful purpose equally well because the transfer of playspace facilities to the CMO is an essential part of the approach to community stewardship being delivered at Chilmington Green and detailed in the CMO Operating Business Plan submitted by the Owners. The applicant has not explained how the retention of these assets in their ownership would impact the CMO Business Plan or how the Playspaces would be managed and maintained and by whom or what would happen at the end of the lease. The obligation for the Owners to meet the costs of any SDLT/other tax payable to register the transfer of the land and to cover the CMO's associated legal costs serves a useful purpose for the same reasons as above. The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG8 & CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM2 & IMP4. The Obligation shall continue to have effect without modification.	See my PoE.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
			weeks of the relevant owner having served the same) in a form previously approved by the Council (where the Council's approval of the form of lease proposed by the Owners is not to be unreasonably withheld) that is executed ... etc.			
38. NC	The 12 months repairing liability following transfer	1.3	The Appellants apply to Discharge this obligation in its entirety.	The clause gives the CMO excessive powers to demand repairs are carried out, without providing any effective dispute resolution mechanism . Particularly, where, as noted above, in reality the CMO is neither equipped nor competent to be the arbiter of such matters. Further, under a normal Estate Management (Manco) model the CMO should simply be obliged to maintain and/or keep in repair and good condition the Green Space Facilities, by no doubt in practice using third party maintenance contractors. On any view, therefore, the clause fails to serve any useful purpose and should be discharged.	This obligation continues to serve a useful purpose because it ensures that any defects are remedied in a timely manner by the Owners who provided the facility. The CMO should not have to bear the cost to repair defects which occur within the time periods stated in the Agreement. It should be the responsibility of the 'Owners' who provide the playspace facilities to deliver the quality of facilities agreed in the planning /reserved matters permissions and that any defects that occur after handover are remedied. This obligation ensures that facilities of sufficient quality are handed over to the CMO and that defects are dealt with promptly to the benefit of the community. The discharge of this obligation would not serve that useful purpose equally well because it would mean that the CMO would have to bear the costs of rectifying any defects and if poor quality facilities are provided there would be no means of remedy. The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG8 & CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM2 & IMP4. Reject: the obligation shall continue to have effect.	See my PoE.
39. NC	Provision for payment toward the Council's costs	Paragraph 2	The Appellants apply to Discharge this payment obligation.	Because providing for payment toward the Council's costs undermines the purpose of the clause (to secure the transfer on appropriate terms), compensating the Council even in cases where it unreasonably refuses approval, which should not be the case. The clause does not therefore serve any proper or useful purpose and should be discharged accordingly.	In accordance with para 1.1.10, the Owners can ask the Council to consider a transfer which the developer wishes to use but has not been agreed with the CMO for the required transfer of any asset to the CMO. The payment of the Council's legal costs to consider the transfer serves a useful purpose through enabling the Council to take specialist legal advice upon the wording, and the dispute that has arisen between the developer and CMO, and if appropriate to approve the transfer terms so that the asset transfer can proceed. The discharge of this obligation would not serve this useful purpose equally well because without the Owners payment of the legal costs these costs would fall upon the public purse which would not be appropriate as they arise in connection with the provision and long-term stewardship of mitigation for the impact of the development The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG8	See my PoE.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
					& CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM2 & IMP4. Reject: the obligation shall continue to have effect.	
Schedule 9 – Allotments				In this regard the Appellants refer to and rely in particular upon section 9 of the Explanatory Statement accompanying this application.		
40. M	Provision of Main Phase 1 Allotments by 1000 Dwelling Occupations	Para 1 and Sched 29D Item 10	The Appellants apply to Modify this obligation so that the provision of the Main Phase 1 Allotments is deferred to 1,450 Dwelling Occupations; i.e. paragraph 1.1 should be modified to read 'Unless the Council agree otherwise, not to Occupy more than 1,450 Dwellings in Main Phase 1 or ...' Paragraph 1.3 likewise to be modified to refer at sub-paragraph 1.3.1 to 1,450 Dwellings. ~~Schedule 29D item 10, also to be modified accordingly so that the trigger for payment refers to 1450 Dwellings in Main Phase 1.~~	The obligation to provide the Main Phase 1 allotments is acknowledged potentially to serve a useful purpose but the requirement to do so by the 1000th Dwelling Occupations will adversely affect the Paying Owner's cashflow in Main Phase 1 and compromise the viability of this phase. The purpose of these provisions can be better or at least equally well served by modifying them as proposed supporting the Development whilst securing delivery of these facilities in any event within the same phase as under the existing provisions. The revised trigger is based on the point at which demand for the minimum viable size (20 plots/0.66 ha) of allotment is reached (1,375 homes). The deferment of this cost is captured in the Viability Report at Appendix 3 of the Explanatory Statement and forms part of this revised viability analysis justifying the discharge of obligations and modifications sought	a. The obligation continues to serve a useful purpose. Timely provision of allotments is essential to support community engagement and well-being. The applicant claims that the "The revised trigger is based on the point at which demand for the minimum viable size (20 plots/0.66 ha) of allotment is reached (1,375 homes". The Council do not agree that it is appropriate to delay the provision of allotments until demand meets the minimum viable size. There will be demand prior to this, with demand increasing as residents move into the development. The Public Green Spaces and Water Environment SPD 2012 provides, in Table 5, page 24, that allotments should be "Laid out to agreed specification before completion of 400th dwelling". The Council has therefore already agreed, as part of the planning permission, to delay provision significantly within Phase 1. A further delay would be contrary to the purpose of the obligation and not serve it equally well. Without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim that the provision of the Main Phase 1 Allotment by 1000 occupations "will adversely affect the Paying Owner's cashflow in Main Phase 1 and compromise the viability of this phase". b. The applicant's modifications table proposes a modification to the trigger for payment set out in Schedule 29D item 10. However, the submitted amended S.106 Agreement proposes that the whole of Schedule 29D is deleted. The applicant should clarify which modification is proposed. Notwithstanding the above, payment into the "Developers Capital Bank Account – Council" prior to the trigger point for delivery of the allotments continues to serve a useful purpose because it ensures that, if the Council is required to remedy a breach of this obligation, the Council can do so as quickly as possible following the breach occurring. Payment	It is important to note that the Public Green Spaces and Water Environment DPD is now some 12 years old with its evidence base reliant on an open space study that is some 17 years old. The allotments Quantitative Standard at Table 1 is 0.2h per 1000 persons. It is noted that the open spaces study Final Report 2008 was based on only 352 responses to a 3000 household survey. While the report states that allotments had a strong showing, 55% said that there should be the same or less provision. Not one of the PC's consulted said there was a need for increased allotment provision. There appears to be no statistical evidence of a particular need for an increased number of allotment pitches nationally and the national trend since the end of WWII has been a decrease in provision. Based on information from the Council's website it manages 400 allotments with an approximately 2 year waiting list. This suggests that even with rising population, allotments still become available within a reasonable period. The Ashford Allotment holders web-site makes clear that At present, you can ask to be put on the waiting list for one particular site, or for any sites. The more options you list, the better chance you have of getting an allotment quickly. However, if you are offered a plot on a particular site you've asked for, you really must be ready to take it, so think before you fill the form in. As a consequence it should be recognised that while it is accepted that allotments do serve a useful purpose, the need for them is not pressing or acute. Where

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
					at the same time as the obligation is to be complied with, as proposed in the modifications table, is too late and will result in an unacceptable delay to delivery. It would not serve the purpose of the obligation equally well. Furthermore, the discharge of the obligation would also result in an unacceptable delay to delivery if there is a breach of the obligation and would therefore not serve that useful purpose equally well. The modification of the obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 & CG8 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 & COM3 and the Public Green Spaces and Water Environment SPD 2012. Reject – the obligation shall continue to have effect without modification. Note: there is a typographical error in the Agreement. The "Main Phase 1 Allotment" is to be provided on land parcels "A1+A2" on the plan OPA06R rev. P2 at Annex 3 of the Agreement. This location accords with the phasing set out in the AAP and the provision as agreed in the Phase 1 Masterplan. It was also agreed as part of the Phase 1 Masterplan that allotment "A5" will also form part of the "Main Phase 1 Allotment" and this will be delivered on part of the site identified as land parcel "A7" on plan OPA06R rev. P2.	viability is a concern for a development it is therefore concluded that the provision of such facilities is one of the first items that should be removed.
41. M	Provision of Main Phase 2 Allotments by 1000 Dwelling Occupations	Para 1 and Sched 29D Item 11	The Appellants apply to Modify this obligation so that the provision of the Main Phase 2 Allotments is deferred to 1,100 Dwelling Occupations; i.e. paragraph 1.1 should be modified to read 'Unless the Council agrees otherwise, not to Occupy ... more than 1,100 Dwellings in Main Phase 2 or ... ' Paragraph 1.3 likewise to be modified to refer at sub-paragraph 1.3.2 to 1,100 Dwellings. ~~Schedule 29D item 11, to be modified accordingly so that the trigger for payment refers to 1,325 Dwellings in Main Phase 2.~~	The Appellants refer to and rely upon the reasons advanced above in relation to Main Phase 1 Allotments.	a. The obligation continues to serve a useful purpose Timely provision of allotments is essential to support community engagement and well-being. The Council do not agree that it is appropriate to delay the provision of allotments until demand meets the minimum viable size. There will be demand prior to this, with demand increasing as residents move into the development. The Public Green Spaces and Water Environment SPD 2012 provides, in Table 5, page 24, that allotments should be "Laid out to agreed specification before completion of 400th dwelling". The Council has therefore already agreed, as part of the planning permission, to delay provision significantly within Phase 2. A further delay would be contrary to the purpose of the obligation and not serve it equally as well. Without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim that "the provision of the Main Phase 2 Allotment by 1000 occupations will adversely affect	See 40.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
					the Paying Owner's cashflow in Main Phase 2 and compromise the viability of this phase." b. The applicant's modifications table proposes a modification to the trigger for payment set out in Schedule 29D item 11. However, the submitted amended S.106 Agreement proposes that the whole of Schedule 29D is deleted. The applicant should clarify which modification is proposed. Notwithstanding the above, payment into the "Developers Capital Bank Account – Council" prior to the trigger point for delivery of the allotments continues to serve a useful purpose because it ensures that, if the Council is required to remedy a breach of this obligation, the Council can do so as quickly as possible following the breach occurring Payment at 1,325 occupations, after the trigger for delivery of the allotments has been reached, as proposed in the modifications table, is too late and will result in an unacceptable delay to delivery. It would not serve the purpose of the obligation equally well. Furthermore, the discharge of the obligation would also result in an unacceptable delay to delivery if there is a breach of the obligation and would therefore not serve that useful purpose equally well. The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 & CG8 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 & COM3 and the Public Green Spaces and Water Environment SPD 2012. Reject – the obligation shall continue to have effect without modification. Note: there is a typographical error in the Agreement. The "Main Phase 2 Allotment" is to be provided on land parcel "A6+A4" on plan OPA06R rev. P2 at Annex 3 of the Agreement. This location accords with the phasing set out in the AAP and the provision as proposed in the Phase 2 Masterplan.	
42. NC	Provision of Main Phase 3 Allotments by 1400 Dwelling Occupations	Para 1 and 1.3.3 and Sched 29D Item 18	The Appellants apply for this obligation to be Discharged .	The obligation to provide these allotments is unnecessary and represents over provision of such facilities. Moreover, their cost is significant (£322,500) and serving only to undermine the viability and ultimately the	The obligation continues to serve a useful purpose. Its discharge would not serve that useful purpose. The provision of allotments is essential to support community engagement and well-being. In accordance with the Chilmington Green Area Action Plan 2013. The development should provide at least 2.76 ha of allotments. The proportion required in Phase 3 is 0.72 ha. This accords with the provision required in new developments across the borough	See 40.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
				deliverability of the Development. The discharge of this cost is captured in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5500.3 and forms part of this revised viability analysis justifying each discharge and modification sought.	as set out in the Public Green Spaces and Water Environment SPD 2012. The application contains no evidence to substantiate the applicant's claim that "The obligation to provide these allotments is unnecessary and represents over provision of such facilities". There is currently a waiting list for allotments locally and there is no evidence to suggest that the future residents of the Chilmington Green development would not want allotments. Without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim that the provision of the Main Phase 3 Allotment is "serving only to undermine the viability and ultimately the deliverability of the Development". The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 & CG8 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 & COM3 and the Public Green Spaces and Water Environment SPD 2012. Reject – the obligation shall continue to have effect. Note: there is a typographical error in the Agreement. The "Main Phase 3 Allotment" is to be provided on land parcel "A7" on plan OPA06R rev. P2 at Annex 3 of the Agreement. This location accords with the phasing set out in the AAP.	
43. NC	Provision of Main Phase 4 Allotments by 1400 Dwelling Occupations	Para 1 and 1.3.4 and Sched 29D Item 20	The Appellants apply for this obligation to be Discharged .	The obligation to provide these allotments is unnecessary and represents over provision of such facilities. Moreover, their cost is significant (£344,896) and serving only to undermine the viability and ultimately the deliverability of the Development. The discharge of this cost is captured in the Viability Report, Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5500.4 and forms part of this revised viability analysis justifying each discharge and modification sought.	The obligation continues to serve a useful purpose. Its discharge would not serve that useful purpose. The provision of allotments is essential to support community engagement and well-being. In accordance with the Chilmington Green Area Action Plan 2013. The development should provide at least 2.76 ha of allotments. The proportion required in Phase 4 is 0.77 ha. This accords with the provision required in new developments across the borough as set out in the Public Green Spaces and Water Environment SPD 2012. The application contains no evidence to substantiate the applicant's claim that "The obligation to provide these allotments is unnecessary and represents over provision of such facilities". There is currently a waiting list for allotments locally and there is no evidence to suggest that the future residents of the Chilmington Green development would not want allotments Without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim that the provision of the Main	See 40.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
					Phase 4 Allotment is "serving only to undermine the viability and ultimately the deliverability of the Development". The request to discharge this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 & CG8 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 & COM3 and the Public Green Spaces and Water Environment SPD 2012. Reject – the obligation shall continue to have effect. Note: there is a typographical error in the Agreement. The "Main Phase 4 Allotment" is to be provided on land parcel "A3" on plan OPA06R rev. P2 at Annex 3 of the Agreement. This location accords with the phasing set out in the AAP.	
44. NC	The conditions attached to the provision of the Allotments in each Main Phase	Paragraphs 1.1.1 to 1.1.6	Firstly, the Appellants apply to Modify the s.106 to allow the following clause to be added to paragraph 1.1.1 (after '... reserved matters approval'), 'and the planned cost for that Allotment.' Further, the Appellants apply to Discharge the obligation to transfer the Allotment Facilities to the CMO entirely and/or in so far as necessary modify them to provide for these Facilities to be provided pursuant to a renewable licence/s. Thus, the Appellants propose that all of 1.1.4 to 1.1.6 are Discharged and 1.1.4 replaced with a simple obligation that 'the Allotment Facilities have been provided to the CMO by way of renewable bi-annual licence/s (as appropriate) in a form acceptable to the CMO, its approval not to be unreasonably withheld.	The modification to paragraph 1.1.1 is proposed for the avoidance of doubt and to reinforce the existing obligation, that it may better serve its intended purpose to provide Main Phase 1 Allotment and Main Phase 2 Allotment in accordance with the agreed budget or may serve that purpose equally well. As for the discharge and/or modification of paragraphs 1.1.4 to 1.1.6 to provide for the grant of a licence rather than a freehold transfer, this will provide additional flexibility in relation to the land use, catering for varying demand for allotments without detracting from the provision of these Facilities where they are wanted. Accordingly, the obligations will serve their existing purpose equally well if modified as proposed. As for paragraph 1.1.4, there is simply no justification for imposing this additional burden upon the Appellants. It is not appropriate for Section 106 payments to be levied to	a. This obligation continues to serve a useful purpose. The definitions set out the total cost for each allotment. Referring to the planned cost in para 1.1.1 would not serve that useful purpose equally well and would result in duplication. b. This obligation continues to serve a useful purpose, its discharge would not serve that useful purpose equally well because the transfer of the allotment facilities to the CMO is an essential part of the approach to community stewardship being delivered at Chilmington Green and detailed in the CMO Operating Business Plan submitted by the Owners. The applicant has not explained how the retention of these assets in their ownership would impact the CMO Business Plan or how the allotments would be managed and maintained and by whom. The obligation for the Owners to meet the costs of any SDLT/other tax payable to register the transfer of the land and to cover the CMO's associated legal costs continues to serve a useful purpose because having to pay these costs which would reduce the monies the CMO has available to deliver their charitable objectives and would simply serve the increase the deficit the CMO operates under. For this reason, the discharge of this obligation would not serve that useful purpose equally well. It is not clear what it meant in the applicant's statement "It will also provide additional flexibility in relation to land use, catering for varying demand for allotments without detracting from the provision of these Facilities where they are wanted" The request to modify these obligations is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG8 & CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider	The reality is that the CMO has not demonstrated itself to be an effective way of delivering management of facilities. The useful purpose of provision can be served equally well if the allotments are not transferred to the CMO. In a situation where HD are reliant on a high quality development delivering increased sales values as the development progresses (As demonstrated by the work of Quod) it is patently obvious that changes to management arrangements are needed to achieve these aims.

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				meet transaction costs in this way.	approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM3 & IMP4. Reject - shall continue to have effect without modification	
45. NC	The 12 months repairing liability following transfer	1.2	The Appellants apply to Discharge this obligation in its entirety.	The clause gives the CMO excessive powers to demand repairs are carried out, without providing any effective dispute resolution mechanism .Particularly, where, as noted above, in reality the CMO is neither equipped nor competent to be the arbiter of such matters. Further, under a normal estate management (Manco) model the CMO should simply be obliged to maintain and/or keep in repair and good condition the Green Space Facilities, by no doubt in practice using third party maintenance contractors. On any view, therefore, this paragraph fails to serve any useful purpose and should be discharged.	This obligation continues to serve a useful purpose because it ensures that any defects are remedied in a timely manner by the Owners who provided the facility. The CMO should not have to bear the cost to repair defects which occur within the time periods stated in the Agreement. It should be the responsibility of the 'Owners' who provide the allotment facilities to deliver the quality of facilities agreed in the planning /reserved matters permissions and that any defects that occur after handover are remedied. This obligation ensures that facilities of sufficient quality are handed over to the CMO and that defects are dealt with promptly to the benefit of the community. The discharge of this obligation would not serve that useful purpose equally well because it would mean that the CMO would have to bear the costs of rectifying any defects and if poor quality facilities are provided there would be no means of remedy. The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG8 & CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM3 & IMP4. Reject – the obligation shall continue to have effect. Proposed modification by agreement: - the Council considers that the introduction of a defects dispute resolution provision could meet the statutory test under section 106A(6)(c). The Council is willing to discuss this proposed modification by agreement with the appellant.	It is normal practice for allotment holders to pay an annual fee for their allotment. The standard charge in Ashford is £52.50 per 5 perch plot. The CMC would be at Liberty to offer plots at a rent of perhaps up to £80 per annum with requirements for each tenant to look after their plot in accordance with particular rules.
46. NC	Provision for payment toward the Council's costs	Paragraph 2 and 3	The Appellants apply to Discharge this payment obligation.	Because providing for payment toward the Council's costs undermines the purpose of the clause (to secure the transfer on appropriate terms), compensating the Council even in cases where it unreasonably refuses approval, which should not be the case. The clause does not therefore serve any proper or useful purpose and should be discharged accordingly.	In accordance with para 1.1.10, the Owners can ask the Council to consider a transfer which the developer wishes to use but has not been agreed with the CMO for the required transfer of any asset to the CMO. The payment of the Council's legal costs to consider the transfer serves a useful purpose through enabling the Council to take specialist legal advice upon the wording, and the dispute that has arisen between the developer and CMO, and if appropriate to approve the transfer terms so that the asset transfer can proceed. The discharge of this obligation would not serve this useful purpose equally well because without the Owners payment of the legal costs these costs would fall upon the public purse which would not be appropriate	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
					as they arise in connection with the provision and long-term stewardship of mitigation for the impact of the development The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG8 & CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM3 & IMP4. Reject – this obligation shall continue to have effect.	
Schedule 10 - DP3, Discovery Park Sports Hub and Discovery Park Sports Pitches				<u>In this regard the Appellants refer to and rely in particular upon section 8 of the Explanatory Statement accompanying this application in addition to the reasons stated below.</u>		
47. NC	Payment of £20,000 toward masterplanning	Paragraph 2.1	The Appellants apply for this obligation to be Discharged and for the sum of £20,000 already paid to be refunded. Thus, the Appellants propose that clause 1.1 should be Modified to read as follows: 'To prepare a masterplan for the Discovery Park, the Discovery Park Sports Hub, PS6 and the Discovery Park Sports Pitches in consultation with the Council and such others as the Council may decide; and ...'	The masterplan should properly and sensibly be prepared by the Appellants in consultation with the Council and other stakeholders. The relevant information for masterplanning is better known to the Appellants and it they who should be carrying this out and submitting the same for approval (see Request 53 below). In reality the obligation as existing does not therefore serve any useful purpose and should be discharged accordingly.	a. This obligation continues to serve a useful purpose because the applicants are only responsible for delivering a portion of Discovery Park. The remaining areas of Discovery Park will need to be delivered by a third party, most likely to be the council who will also be involved in the development of the Park over the long term. It is therefore appropriate for the Council to co- ordinate the development of the masterplan in collaboration with all stakeholders, including the community. The discharge of this obligation and the modification to require the applicant to prepare the masterplan would not serve that useful purpose equally well. The Council has undertaken a substantial amount of work on the Discovery Park Masterplan, in accordance with their obligations in the Agreement, including consultation with residents, local groups and project partners. The Council is working towards publishing the masterplan before 400 occupations as required by the Agreement. The Council will demonstrate how the contribution paid has been/is proposed to be spent. Unfortunately, some aspects of the work, for example undertaking ecological appraisals, have not been completed to date as these actions require access onto the applicant's land which has been requested but denied. b. The proposed obligation to repay the sums already paid to the Council falls outside of the scope of Section 106B. The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policy CG1, CG9 & CG16 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider	See my PoE.

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					approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, SP6 & COM2. Reject – the obligation shall continue to have effect without modification	
48. NC	Submission and approval of design briefs and specifications for the Discovery Park Sports Pitches and for the Discovery Park Sports Hub by 1000 Dwelling Occupations	Paragraph 2.1	The Appellants apply to Modify this obligation so that the submission approval of the design briefs and specifications should be re-g geared from 1,000 Dwelling Occupations to 2,650 Occupations and to modify the planned costs to include fees and other costs ; i.e. paragraph 2.1 should be modified to read: 'Unless the Council agrees otherwise, not to Occupy more than 2,650 Dwellings unless; 2.1.1 design briefs and specifications for the Discovery Park Sports Pitches and for the Discovery Park Sports Hub and/or other facilities of no significantly greater impact ... at Schedule 10A have been approved by the Council with a total capital cost of the Discovery Park Sports Pitches not exceeding £2,782,000 (two million seven hundred and eighty two thousand pounds) including fees, contingencies, specification and design costs ... and with a total capital cost of the Discovery Park Sports Hub not exceeding £4,976,157 (four million nine hundred and seventy six thousand one hundred and fifty seven pounds) including fees, contingencies, specification and design costs etc.'	The obligation to provide these community assets (at a total capital cost of up to £2,782,000.00 + £4,976,157) in stages after some 3200 and 5000 Dwellings is acknowledged potentially to serve a useful purpose subject to requests 49 to 56 below but the requirement to submit the design briefs and specifications by 1,000 is wholly premature. Given the present housing trajectory and rate of occupations, modifying the number of occupations by which submission/approval is required from 1,000 to 2,650 will provide a similar and certainly ample lead in time for the delivery of these assets even by the stipulated 3,200 and 5,000 Dwellings (and therefore certainly by the revised 3,650 and 5,500 - see below). Further, the modification of the planned costs to include fees, contingencies, specification and design costs, supervision fees, access costs and service costs, is justified for reasons of viability and deliverability, ensuring that the cost of the Sports Facilities is not so substantial as to undermine the viability of the relevant Main Phases and strike at the very delivery of these assets. ' In the premises, Clause 2.1 will therefore serve its purpose equally well and in full if modified as proposed,	a. This obligation continues to serve a useful purpose. The submission of the design brief and specification in a timely manner enables the Council to ensure design quality is embedded in the development at an early stage and safeguards against poor quality development. It is envisaged that Phase 1 construction would commence by 2200 occupations to enable it to be completed by 3200 occupations. The Design Brief and Specification needs to be agreed in good time prior to commencement of construction of the Phase 1 facilities to enable contracts to be let, etc. A delay to the agreement of the Design Brief and Specification is unlikely to allow sufficient time to enable the facilities to be delivered by the required deadline. The applicant has not demonstrated that their proposed delay would provide sufficient time. b. This obligation continues to serve a useful purpose. Removing index linking from the total capital cost of both the Discovery Park Sports Pitches and the Discovery Park Sports Hub would undermine the ability to deliver the facilities required and that are of the right quality. Indexation ensures the value of the contributions agreed when planning permission is granted, and consequently purchasing power, is maintained in the future and therefore the same level of service/infrastructure can be provided. The total capital cost was calculated based on the cost of delivering these facilities at the time outline planning permission was granted. Costs have since risen and therefore the proposed modification to remove indexation would not serve that useful purpose equally well because it would reduce the ability of the Owners and Paying Owners to deliver the quality of facilities that are required. Fees, contingencies, specification and design costs and supervision fees should not 'use up' the main construction budget sum. Access roads and service costs are infrastructure costs associated with the wider development The proposed modification would not serve that useful purpose equally well because including	It is additionally noted that the early delivery of the Secondary School has ensured that indoor and outdoor sports facilities will be available to residents. Further commentary is contained in my PoE, based on research of local football and cricket clubs as well as my own 45-year knowledge of playing cricket in Kent, including within Ashford in the Kent League.

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				allowing additional time for this obligation without impacting the ultimate delivery of these assets substantially in accordance with the existing terms of the s106 Agreement.	these costs in the in the total capital cost would reduce the total budget available to deliver the facilities and consequently undermine the ability to deliver the required quality of facilities. It is already evident from discussions with the applicant about the total capital cost for Play Space 1 and the applicant's position with reference to request 25 relating to the cost of the Natural Green Space, that the budgets identified in the Agreement, with the inclusion of index linking and without the inclusion of fees, contingencies, specification and design costs, supervision fees, access roads and service costs does not provide sufficient budget to deliver the quality facilities required by the outline planning permission, the design code and the applicant's design and access statement. Including the costs, stated in this request, in the budget identified in the Agreement will undermine further the ability to deliver the quality of facilities envisaged for Chilmington Green. Without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim that the exclusion of fees, contingencies, specification and design costs, supervision fees, access roads and service costs from the total capital cost and the inclusion of indexation is undermining "the viability of the relevant Main Phases and strike at the very delivery of these assets". The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG9 & CG16 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 & SP6. Reject – this obligation shall continue to have effect without modification.	
49. NC	The provision for consultation with the CMO, stakeholders and the public and approval of	Paragraph 2.1.2	In addition, the Appellants apply for paragraph 2.1.2 to be Modified to omit the requirement to consult the CMO and omit the requirement to consult and to obtain approval in respect of the details of the consultation and to omit the final	The consultation with the CMO under 2.1.2 is surplus to requirements, given that the Council will have the opportunity already to consult with all interested parties when approving the design	a. This obligation continues to serve a useful purpose. Its modification would not serve that useful purpose equally well. The CMO is an important stakeholder at Chilmington Green. They will take on the management and maintenance of the sports pitches and sports hub. It is therefore important that the CMO can input at an early stage in the design process. The value of early consultation is reflected	In order to avoid ongoing and expensive delays it is essential to modify the obligation as set out. The CMO will still be consulted and able to have an input into the consultation process. However, the CMO do not have the expertise to be a determiner of whether or not the design brief and specification are acceptable.

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	the details of the consultation		clause 'and in particular the CMO's comments on the costings;'	brief and specification. This part of the paragraph does not, therefore, serve any useful purpose and should be discharged or modified accordingly. As for the requirement to consult over the details of the consultation (whether with the CMO or Council) this also fails to serve any useful purpose. It unnecessarily complicates what should be a relatively straightforward and simple exercise. This part of the obligation (in parenthesis) should be discharged accordingly. The omission of the final clause is consequential on the above.	in National Planning Practice Guidance (NPPG) which identifies the benefit of "working collaboratively and openly with interested parties at an early stage to identify, understand and seek to resolve issues associated with a proposed development" (ref: NPPG, para: 001 Reference ID: 20-001-20190315). It is noted that the applicant does not propose to remove the requirement to consult with other relevant stakeholders and the public. b. This obligation continues to serve a useful purpose. Its modification would not serve that useful purpose equally well. The approval of the details of the consultation by the CMO/Council prior to the consultation taking place ensures that the consultation is fit for purpose and involves all necessary parties. This obligation continues to serve a useful purpose. Its modification would not serve that useful purpose equally well. The requirement for the Design Brief and Specification to include the CMO's comments on the costings ensures that the CMO can input into the specification and cost of facilities that they will manage and maintain and raise any concerns they may have, at an early stage in the design process and for the Council to be aware of their comments when reviewing the document. The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 & CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 & IMP4. Reject – the obligation shall continue to have effect without modification.	As set out in the evidence of Quod, delays in the discharge of obligations adds to the financial burdens and impacts viability. The modification will therefore serve the "useful purpose" i.e. local public consultation" equally well.
50. M	The obligations to provide the Sports Facilities (1st Phase)	Para 2.2 and 2.8 and Sched 29D Item 26	The Appellants apply to Modify paragraph 2.2 to provide, 'Not to Occupy more than 3,650 [rather than 3,200] Dwellings unless: 2.2.1 the first phase of the Sports Facilities has been provided in accordance with the reserved matters approvals and the planned cost for these facilities. 2.8 To construct and provide:- 2.8.1 The first phase of the Sports Facilities before the Occupation of more than 3,650 rather than 3200 Dwellings in accordance with the requirements of paragraph 2.2.1 of this schedule; ...	The Appellants submit that given the availability of alternative sports facilities and assets that precede the delivery of this first phase, the re-timing of this obligation is such that it will serve its purpose equally well if modified as proposed. In real terms the limited additional time sought by this modification for the delivery of these facilities being unlikely to have any material or even measurable impact on the experience of owners and	a. This obligation continues to serve a useful purpose, The timely provision of sport and recreation facilities to meet the needs of the new community is essential to good placemaking. The delivery of the Discovery Park sports facilities is integral to meeting the sporting, recreational and health needs of the residents of Chilmington Green and wider South Ashford The proposed modification would not serve that useful purpose equally well because the delay in the delivery of these facilities (alongside any delay in delivery of the Chilmington Hamlet facilities and the Community Hub) will result in a deficit of facilities in proportion to the number of residents. The Ashford Borough Council Playing Pitch Strategy 2017-2030 (August 2017) identifies that the Chilmington Green development will require the following facilities by 2500 dwelling occupations:	It is additionally noted that the early delivery of the Secondary School has ensured that indoor and outdoor sports facilities will be available to residents. Further commentary is contained in my PoE, based on research of local football and cricket clubs as well as my own 45 year knowledge of playing cricket in Kent, including within Ashford in the Kent League. It is concluded that the proposed modification will provide the purpose equally well. There is no evidential basis to conclude that the pushing back of the triggers for provision will not serve the useful purpose equally well. The reality is that many local sports clubs are looking for new members to maintain participation levels. There is therefore existing capacity which can alongside the new

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			~~At Schedule 29D Item 26, the payment trigger likewise to be deferred from 2,800 to 4,000 Dwellings.~~	occupiers at this stage in the Development.	2 x adult football pitches; 1 x junior 11 v 11 pitch; 1 junior 9 v 9 pitch; 1 mini soccer 7 v 7 pitch; 1 mini soccer 5 v 5 pitch; 0.5 cricket squares; Artificial grass pitch for hockey 3G rubber crumb pitch for football training and competition This requirement, the meeting of which is the purpose of the obligation, will not be met with the modifications proposed. The applicant states that "given the availability of alternative sports facilities and assets that precede the delivery of the first phase, the re-timing of this obligation will serve its purpose equally well if modified as proposed". This will not be the case as this modification, alongside those proposed for The Hamlet facilities and Community Hub; would result in 56% of the development (3250 dwellings) being occupied before any sports facilities are provided for residents. The earliest provision being the multi- use games area at the Community Hub. The Quod Explanatory Statement (para 8.40) argues that the triggers for the Sports Facilities should be reviewed because sports facilities are to be provided at the secondary school which will be accessible to the community. The secondary school will include sports facilities, with the intention that these will be available to the public outside the hours of school use. However, these facilities will not be available to serve the community during school use hours and in any event will not be of sufficient size to serve the community of up to 3250 dwellings. The additional clause to para 2.2.1 (ref; "planned cost for these facilities" would not serve a useful purpose because the cost of the facilities is clearly stated in the preceding paragraph 2.1.1 and would result in duplication. b. The applicant's modifications table proposes a modification to the trigger for payment set out in Schedule 29D item 26. However, the submitted amended S.106 Agreement proposes that the whole of Schedule 29D is deleted. The applicant should clarify which modification is proposed. Notwithstanding the above, payment into the "Developers Capital Bank Account – Council" prior to the trigger point for delivery of the sports facilities continues to serve a useful purpose because it ensures that, if the Council is required to	Secondary School facilities allow a pushing back of the provision at CG.

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					remedy a breach of this obligation, the Council can do so as quickly as possible following the breach occurring Payment at 4000 occupations, after the trigger for delivery of the sports facilities has been reached, as proposed in the modifications table, is too late and will result in an unacceptable delay to delivery. It would not serve the purpose of the obligation equally well. Furthermore, the discharge of the obligation would also result in an unacceptable delay to delivery if there is a breach of the obligation and would therefore not serve that useful purpose equally well. The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG9 & CG16 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 & COM2. Reject – the obligation shall continue to have effect without modification.	
51. M	The obligations to provide the Discovery Park Sports Facilities (2nd Phase)	Para 2.3 and 2.8 and Sched 29D Item 30	The Appellants apply to Modify paragraph 2.3 to provide, 'Not to Occupy more than 5,500 [rather than 5000] Dwellings unless: 2.3.1 the second phase of the Sports Facilities have been provided in accordance with the reserved matters approvals and the planned cost for these facilities 2.8 To construct and provide:- ... 2.8.2 The second phase of the Sports Facilities prior to the Occupation of 5,500 [rather than 5000] Dwellings in accordance with the requirements of paragraph 2.3.1 of this schedule; ... ~~At Schedule 29D Item 30, the payment trigger likewise to be deferred from 4,600 to 5,100 Dwellings.~~	The Appellants submit that given the extensive provision of sports facilities and assets that precede this delivery of this second phase, the re-timing of this obligation is such that it will serve its purpose equally well if modified as proposed, in real terms the additional time sought by this modification for the delivery of these facilities being unlikely to have any material or even measurable impact on the experience of owners and occupiers at this stage in the Development	a. The timely provision of sport and recreation facilities to meet the needs of the new community is essential to good placemaking. The delivery of the Discovery Park sports facilities is integral to meeting the sporting, recreational and health needs of the residents of Chilmington Green and wider South Ashford. The obligation to provide the second phase of the sports facilities by 5000 occupations continues to serve a useful purpose because it ensures that the growing population at Chilmington Green and the wider population of South Ashford, including residents of proposed neighbouring developments are provided with sufficient sports facilities to meet their needs. Delaying delivery until 5500 occupations (alongside any delay in delivery of the Chilmington Hamlet facilities and the Community Hub) would not serve that useful purpose equally well and will result in a deficit of facilities in proportion to the number of residents. There could also be a risk that the second phase is never brought forward. b) The applicant's modifications table proposes a modification to the trigger for payment set out in Schedule 29D item 30. However, the submitted amended S.106 Agreement proposes that the whole of Schedule 29D is deleted. The applicant should clarify which modification is proposed.	It is additionally noted that the early delivery of the Secondary School has ensured that indoor and outdoor sports facilities will be available to residents. Further commentary is contained in my PoE, based on research of local football and cricket clubs as well as my own 45-year knowledge of playing cricket in Kent, including within Ashford in the Kent League. It is concluded that the proposed modification will provide the purpose equally well. There is no evidential basis to conclude that the pushing back of the triggers for provision will not serve the useful purpose equally well. The reality is that many local sports clubs are looking for new members to maintain participation levels. There is therefore existing capacity which can alongside the new Secondary School facilities allow a pushing back of the provision at CG.

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					Notwithstanding the above, payment into the "Developers Capital Bank Account – Council" prior to the trigger point for delivery of the sports facilities continues to serve a useful purpose because it ensures that, if the Council is required to remedy a breach of this obligation, the Council can do so as quickly as possible following the breach occurring. Payment at 5100 occupations, is too late and will result in an unacceptable delay to delivery. It would not serve the purpose of the obligation equally well. Furthermore, the discharge of the obligation would also result in an unacceptable delay to delivery if there were a breach of the obligation and would therefore not serve that useful purpose equally well. The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG9 & CG16 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 & COM2. Reject – the obligation shall continue to have effect without modification.	
52. M	The obligations to provide DP3 and PS6 and the applicable occupation limits	Paragraphs 2.6.1, 2.6.2, 2.6.3, 2.6.4, the relevant sub-paragraphs of 2.8 and Sched 29D Items 22, 23, 28 and 31	The Appellants apply for the following Modifications: ~~Delivery of DP3 in Phase 1 be deferred from 1500 to 2000 Occupations (subsequent phases remain unchanged); i.e. para 2.6 to be modified to read:~~ 'Not to Occupy more than: 2.6.1 2650 [rather than 1500] Dwellings unless 1 ha of DP3 has been provided 2.6.2 3500 [rather than 2500] Dwellings unless 0.86 of DP3 has been provided 2.6.3 5000 [rather than 4000] Dwellings unless PS6 and 1.08 ha of DP3 have been provided 2.6.4 5750 [rather than 5500] Dwellings unless 4.42 ha of DP3 has been provided ... ' '2.8 To construct and provide:- 2.8.3 1 ha of DP3 before the Occupation of more than 2650	The obligations to provide these areas of DP3 are acknowledged potentially to serve a useful purpose but the requirement to provide the first 1 ha by the 1500th Dwelling Occupation will adversely affect the Paying Owner's cashflow in Main Phase 1 and compromise the viability of this phase. It will also jeopardise the funding presently available and further put at risk the delivery of the Development. The consequential deferment of the remainder of the DP3 provision and PS6 is similarly justified on viability and ultimately deliverability grounds. The purpose of these provisions can be better or at least equally well served by modifying them as proposed,	a. This obligation continues to serve a useful purpose. The timely provision of strategic park and play facilities to meet the needs of the new community is essential to good placemaking. The delivery of DP3 and PS6 is integral to meeting the recreational and health needs of the residents of Chilmington Green and wider South Ashford. A delay in delivery of these facilities (alongside any delay in delivery of the Chilmington Hamlet facilities, the Discovery Park sports facilities and the other play spaces) would not serve that useful purpose equally well because it would have a significant impact on local provision and result in a deficit of facilities in proportion to the number of residents. There could also be a risk that the final phase is never brought forward. Without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim that the timing of this obligation "will adversely affect the Paying Owner's cashflow in Main Phase 1 and compromise the viability of this phase. It will also jeopardise the funding presently available and further put at risk the delivery of the Development" b. The applicant's modifications table proposes a modification to the trigger for payment set out in Schedule	It is additionally noted that the early delivery of the Secondary School has ensured that indoor and outdoor sports facilities will be available to residents. Further commentary is contained in my PoE, based on research of local football and cricket clubs as well as my own 45-year knowledge of playing cricket in Kent, including within Ashford in the Kent League. It is concluded that the proposed modification will provide the purpose equally well. There is no evidential basis to conclude that the pushing back of the triggers for provision will not serve the useful purpose equally well. The reality is that many local sports clubs are looking for new members to maintain participation levels. There is therefore existing capacity which can alongside the new Secondary School facilities allow a pushing back of the provision at CG.

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			[rather than 1500] Dwellings in accordance with the requirements of paragraph 2.6.5 of this schedule; and 2.8.4 0.86 ha of DP3 before the Occupation of more than 3500 [rather than 2500] Dwellings in accordance with the requirements of paragraph 2.6.5 of this schedule; and 2.8.5 PS6 and 1.08 ha of DP3 before the Occupation of more than 5000 [rather than 4000] Dwellings in accordance with the requirements of paragraph 2.6.5 of this schedule; and 2.8.6 4.42 ha of DP3 before the Occupation of more than 5750 [rather than 5500] Dwellings in accordance with the requirements of paragraph 2.6.5 of this schedule. ~~At Schedule 29D Item 22, the payment triggers likewise to be deferred from 1350 to 1850, from 2,350 to 3,350, from 3,850 to 4,850 and from 5,350 to 5,600 Dwellings respectively.~~	supporting the Development whilst securing delivery of these facilities in any event from Main Phase 2 and thereafter at intervals through the course of the Development similar or shorter to those provided under the existing terms. The deferred requirement to provide DP3 as proposed will result in a cost reduction within Main Phase 1. This specific item is shown in the Viability Report at Appendix 3 at line 5500.29. The cumulative effect of this reduction together with the other discharges/modifications proposed in this application are duly reflected in the said report, in support of the changes sought herein to the s106 Agreement.	29D item 22. However, the submitted amended S.106 Agreement proposes that the whole of Schedule 29D is deleted. The applicant should clarify which modification is proposed. Notwithstanding the above, payment into the "Developers Capital Bank Account – Council" prior to the trigger point for delivery of the sports facilities continues to serve a useful purpose because it ensures that, if the Council is required to remedy a breach of this obligation, the Council can do so as quickly as possible following the breach occurring. The delay in payment proposed is too late and will result in an unacceptable delay to delivery. It would not serve the purpose of the obligation equally well. Furthermore, the discharge of the obligation would also result in an unacceptable delay to delivery if there is a breach of the obligation and would therefore not serve that useful purpose equally well. The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG9 & CG16 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 & COM2. Reject – the obligation shall continue to have effect without modification. Note: the second para of this request in the modifications table (beginning "Delivery of DP3....") contradicts the modifications set out in the subsequent paragraphs. It is assumed that the content of the second para is an error. The Council responds in relation to the content of the subsequent paragraphs 1.	
53. NC	The obligation to provide the design brief and specification for DP3 and PS6 etc	Para 2.5	The Appellants apply to Modify paragraph 2.5 to provide, 'Not to Occupy more than 2100 [rather than 1000] Dwellings unless: 2.5.1 a design brief and specification for DP3 ... at Schedule 10B have been submitted to the Council for approval with a total capital cost of the DP3 not exceeding £2,056,813 (two million and fifty six thousand eight hundred and thirteen pounds) including PS6, fees, contingencies, specification and design costs etc '. In addition, the Appellants apply for paragraph 2.5.2 to be modified to	These modifications are proposed for the reasons stated above in respect of the provision of these facilities and consequential upon that modification, and for the further reasons below. The modification of the total costs of the Facilities to include PS6, fees, contingencies, specification and design costs, supervision fees, access costs and service costs, is justified for reasons of viability and deliverability, ensuring that the cost of these	a. This obligation continues to serve a useful purpose. Submission of design briefs within a timely manner enables the Council to ensure design quality is embedded in the development at an early stage. and safeguards against poor quality development. The Design Brief and Specification needs to be agreed in good time prior to commencement of construction of Phase 1 to enable contracts to be let, etc. A delay to the agreement of the Design Brief and Specification is unlikely to allow sufficient time to enable the facilities to be delivered by the required deadline. The applicant has not demonstrated that their proposed delay would provide sufficient time. The proposed modification would therefore not serve the useful purpose equally well The requirement to index link the obligation continues to serve a useful purpose. Removing index linking from the	If it is assumed that the date for provision can be agreed to be pushed back as requested, it is clear that the same can be said for the Design Brief. The inclusion of , fees, contingencies, specification and design costs, supervision fees, access costs and service costs, is justified for reasons of viability and deliverability. Experience demonstrates that if there is no cap on such fees there is inefficient use of funds and no advancement of delivery. An overall fixed cap will ensure all parties work efficiently.

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			omit the requirement to consult the CMO (or its substitute) and omit the requirement to consult and to obtain approval in respect of the details of the consultation.	Facilities is not so substantial as to undermine the viability of the Development and strike at the very delivery of these assets. The requirement to consult over the details of the consultation fails to serve any useful purpose, given that any such consultation should be a relatively straightforward and simple exercise. This element of the obligation should therefore be modified or discharged as appropriate. Likewise, the consultation with CMO is surplus to requirements, given that the Council will have the opportunity already to consult with all interested parties when approving the design brief and specification. Again, therefore, this element of the paragraph serves no useful purpose and should be modified or discharged as appropriate.	total capital cost would undermine the ability to deliver the facilities required and that are of the right quality. Indexation ensures the value of the contributions agreed when planning permission is granted, and consequently purchasing power, is maintained in the future and therefore the same level of service/infrastructure can be provided. The total capital cost was calculated based on the cost of delivering these facilities at the time outline planning permission was granted. Costs have since risen and therefore the proposed modification to remove indexation would not serve that useful purpose equally well because it would reduce the ability of the Owners and Paying Owners to deliver the quality of facilities that are required Fees, contingencies, specification and design costs and supervision fees should not 'use up' the main construction budget sum. Access roads and service costs are infrastructure costs associated with the wider development. The proposed modification would not serve that useful purpose equally well because including these costs in the in the total capital cost would reduce the total budget available to deliver the facilities and consequently would undermine the ability to deliver the required high-quality facilities. It is already evident from discussions with the applicant about the total capital cost for Play Space 1 and the applicant's position with reference to request 25 relating to the cost of the Natural Green Space, that the budgets identified in the Agreement, with the inclusion of index linking and without the inclusion of fees, contingencies, specification and design costs, supervision fees, access roads and service costs do not provide sufficient budget to deliver the quality facilities required by the outline planning permission, the design code and the applicant's design and access statement. Including the costs, stated in this request, in the budget identified in the Agreement will undermine further the ability to deliver the quality of facilities envisaged for Chilmington Green. Without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim that the exclusion of fees, contingencies, specification and design costs, supervision fees, access roads and service costs from the total capital cost and the inclusion of indexation is undermining "the viability of the Development and strike at the very delivery of these assets". b. This obligation continues to serve a useful purpose. Its modification would not serve that useful purpose equally well. The CMO is an important stakeholder at Chilmington Green. They will take on the management and maintenance of the DP3 and PS6. It is therefore important that the CMO	

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					can input at an early stage in the design process. The value of early consultation is reflected in National Planning Practice Guidance (NPPG) which identifies the benefit of "working collaboratively and openly with interested parties at an early stage to identify, understand and seek to resolve issues associated with a proposed development" (ref: NPPG, para: 001 Reference ID: 20-001-20190315). It is noted that the applicant does not propose to remove the requirement to consult with other relevant stakeholders and the public. This obligation continues to serve a useful purpose. Its modification would not serve that useful purpose equally well. The approval of the details of the consultation by the CMO/Council prior to the consultation taking place ensures that the consultation is fit for purpose and involves all necessary parties. The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG9 & CG16 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, SP6 & COM2 Reject – the obligation shall continue to have effect without modification.	
54. NC	The various conditions attaching to the delivery of each of the first and second phases of the Sports Facilities and the DP3	Paragraphs 2.2.1, 2.3.1 and 2.6.5 requiring provision of the relevant facilities in accordance with reserved matters etc. Paragraphs 2.2.4, 2.3.4 and 2.6.8 requiring payment of tax. Paragraphs 2.2.6, 2.3.6 and 2.6.10 dealing with the approval of the relevant transfers.	The Appellants apply to Modify the s.106 to allow the following clause to be added to paragraphs 2.2.1, 2.3.1 and 2.6.5 (after'... design briefs and specification'), 'and at a cost not exceeding the total capital cost for these facilities stated above.' Further, the Appellants apply to Discharge the obligations to transfer each of the first phase and second phase of the Sports Facilities and the DP3 so as to substitute an obligation in each case to grant a lease of the same, being a lease (including a sub-lease) with a term of 21 years at a peppercorn ground rent and which makes the same provisions (a)-(c) as referred to above (see Schedule 7). Thus, the Appellants apply for paragraphs 2.2.4-2.2.6, 2.3.4-2.3.6 and 2.6.8-2.6.10 to be discharged and new paragraphs 2.2.4-5, 2.3.4-5 and 2.6.8-9 to provide instead that	The modification to paragraphs 2.2.1, 2.3.1 and 2.6.5 are proposed for the avoidance of doubt and to reinforce the existing obligations. As for the modification and/or discharge of paragraphs 2.2.4 to 2.2.6, 2.3.4 to 2.3.6 and 2.6.8 to 2.1.10 to provide for the grant of a long lease rather than a freehold transfer, this will not detract from the provision of these phases and Facilities and the obligations will serve their existing purpose equally well if modified as proposed.	a. The additional clause would not serve a useful purpose because the cost of the facilities is clearly stated in paragraphs 2.1.1 and 2.5.1 and would result in duplication. b. This obligation continues to serve a useful purpose, its discharge would not serve that useful purpose equally well because the transfer of the Discovery Park facilities to the CMO is an essential part of the approach to community stewardship being delivered at Chilmington Green and detailed in the CMO Operating Business Plan submitted by the Owners. The applicant has not explained how the retention of these assets in their ownership would impact the CMO Business Plan or how the facilities would be managed and maintained and by whom or what would happen at the end of the lease. The obligation for the Owners to meet the costs of any SDLT/other tax payable to register the transfer of the land and to cover the CMO's associated legal costs continues to serve a useful purpose because having to pay these costs which would reduce the monies the CMO has available to deliver their charitable objectives and would simply serve the increase the deficit the CMO operates under. For this reason, the discharge of this obligation would not serve that useful purpose equally well.	See my PoE.

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			each phase or the (DP3) Facilities, as the case may be, is: either: to be transferred to the CMO by way of the grant of a lease as aforesaid of the land on which the phase/Facilities are located in a form acceptable to the latter (their approval of the form not to be unreasonably withheld). or: where the Owners have served the CMO with an engrossed lease/s (as appropriate) as aforesaid of the land on which the phase/Facilities are located in a form previously approved by the CMO or (in the event that the CMO has still not approved the same within 6 weeks of the relevant owner having served the same) in a form previously approved by the Council (where the Council's approval of the form of lease proposed by the Owners is not to be unreasonably withheld) that is executed ... etc.		The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG9, CG10 & CG16 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM2 & IMP4. Reject – the obligation shall continue to have effect without modification.	
55. NC	The 12 months repairing liability following the transfer of the second phase of the Sports Facilities and the DP3	Paragraphs 2.4 and 2.7	The Appellants apply to Discharge these obligations.	The clause gives the CMO excessive powers to demand repairs are carried out, without providing any effective dispute resolution mechanism. Particularly, where, as noted above, in reality the CMO is neither equipped nor competent to be the arbiter of such matters. Further, under a normal Estate Management (Manco) model the CMO should simply be obliged to maintain and/or keep in repair and good condition the Green Space Facilities, by no doubt in practice using third party maintenance contractors. On any view, therefore, the clause fails to serve any	This obligation continues to serve a useful purpose because it ensures that any defects are remedied in a timely manner by the Owners who provided the facility. The CMO should not have to bear the cost to repair defects which occur within the time periods stated in the Agreement. It should be the responsibility of the 'Owners' who provide the Discovery Park facilities to deliver the quality of facilities agreed in the planning /reserved matters permissions and that any defects that occur after handover are remedied. This obligation ensures that facilities of sufficient quality are handed over to the CMO and that defects are dealt with promptly to the benefit of the community. The discharge of this obligation would not serve that useful purpose equally well because it would mean that the CMO would have to bear the costs of rectifying any defects and if poor quality facilities are provided there would be no means of remedy. The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG8, CG10 and CG16 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider	See my PoE.

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				useful purpose and should be discharged.	approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM2 & IMP4. Reject – the obligation shall continue to have effect. Proposed modification by agreement: - the Council considers that the introduction of a defects dispute resolution provision could satisfy the statutory test under s.106A(6)(c)l. The Council is willing to discuss this proposed modification by agreement with the appellant	
56. W	The obligation to publish the completed masterplan for the Discovery Park, the Discovery Park Sports Hub, etc.	Paragraph 3.4 requiring the masterplan no later than the Occupation of the 400 th Dwelling	The Appellants apply to Modify the obligation to provide that the Appellants will publish the masterplan and to defer publication until Occupation of the 2000 th Dwelling.	Presently, the obligation for the masterplan to be published by the Council serves no useful purpose, because it is inconsistent with the Appellants having to produce the design briefs and specification and the detailed provisions for consultation with stakeholders and approval at that stage by the Council. The obligation should be discharged accordingly. As for deferring the publication, the modification is sought to accord with the modifications to Schedule 10 delivery requested above and for the same reasons.	This obligation continues to serve a useful purpose. As set out in the Council's response to Request 47, the Council is the most appropriate organisation to complete the masterplan It therefore follows that the Council should publish the masterplan it has completed. The modification proposed would therefore not serve that useful purpose equally well. In addition, the publication of the masterplan by 400 occupations continues to serve a useful purpose because it would allow sufficient time for the masterplan to inform the Design Briefs and Specifications and future reserved matters applications for the facilities. A delay in publication until 2000 occupations would be too late to inform the design of the facilities, therefore the modification proposed would therefore not serve that useful purpose equally well. The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG9 & CG16 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, SP6 & COM2. Reject – the obligation shall continue to have effect without modification.	With reference to Request 47, the Appellant has paid ABC £20,000 to produce and publish the masterplan. All that I understand that has been produced to date is a conceptual plan. This clearly does not equate to £20,000 and so the Appellant as per request 47 requests that any surplus is returned to the Appellant. Having been paid to produce the Masterplan and with the 400th occupation trigger being too close to being met, it is requested that ABC publish whatever work they have undertaken immediately. The concern here is that the Appellant has already submitted two RMAs for DP3 which should have been informed by the masterplan. It would be completely unacceptable for HD to have to fundamentally review these RMAs now due to the lack of progress ABC has made, particularly since the payment was made in October 2021.
Schedule 11 – Cemeteries				In this regard the Appellants refer to and rely in particular upon section 8 of the Explanatory Statement accompanying this application in addition to the reasons stated below.		
57. NC	Payments in respect of cemeteries	Paras 1 and 2	The Appellants apply for all such payments toward Cemeteries to be Discharged .	The obligations to make these payments is, the Appellants submit, unnecessary and represents over provision of such facilities given the available off-site facilities. Indeed as noted in the Explanatory Statement the	This obligation continues to serve a useful purpose. There currently remains a requirement for cemetery provision in South Ashford to meet the needs of the development as set out in the report to the Council's Cabinet dated 28 November 2019 titled 'Ashford Borough Council Cemetery Provision; Challenges and Solutions' therefore the discharge of this obligation would not serve that useful purpose. The applicant has provided no evidence to support their claim	Please see PoE.

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				basis of the provision appears to have been miscalculated (see paragraph 8.15). In any event, their cost is significant (£800,000) and serving only to undermine the viability and ultimately the deliverability of the Development. The discharge of this cost is captured in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5300.9 and forms part of this revised viability analysis justifying each discharge and modification sought.	that "the obligations to make these payments is....unnecessary and represents over provision of such facilities". Without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim that the cost of the obligation is "serving only to undermine the viability and ultimately the deliverability of the development". The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 & CG8 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 & COM4. Reject – the obligation shall continue to have effect. Potential modification by agreement: the Council acknowledges that the requirement for cemeteries may change in the future and consequently there may be scope to modify this obligation at a future date.	
Schedule 12 – Community Hub Building				<u>In this regard the Appellants refer to and rely in particular upon section 8 of the Explanatory Statement accompanying this application in addition to the reasons stated below.</u>		
58. M	The obligation to provide a multi-purpose community leisure building and other facilities (the Community Hub Building) by 1,800 Dwellings	Para 1.2 and Sch 29D Item 17	The Appellants apply for the following modifications and/or discharge of obligations: That paragraph 1.2 be modified to read 'Unless the Council agrees otherwise, not to Occupy more than 3,250 Dwellings unless: 1.2.1 the Facilities: First Tranche have been provided in accordance with the reserved matters approval and the approved design brief and specification and at a cost which together with the Facilities: Second Tranche does not exceed. the sum of £2m inclusive as stated above ... 1.2.2 all ... the Facilities; First Tranche are located ... 1.2.3 all conditions ... apply to the Facilities: First Tranche ...;'	Along with the Chilmington Hamlet facilities (see above), the obligation to provide the Community Hub facilities is acknowledged potentially to serve a useful purpose, except for the community learning space which is surplus to requirements. However, two main issues arise. Firstly, the capital cost up to £5,152,127.00 is excessive and serving only to undermine the viability and ultimately the deliverability of the Development. The current obligation is over-priced and over-specified. If the Appellants carried out this build themselves there would be a significant saving in cost.	a. The obligation to provide the community hub by 1800 dwelling occupation continues to serve a useful purpose. The purpose of the Community Hub is to provide a home and central focus for the community, timely provision is pivotal to the success of the community. Delaying provision until 56% of dwellings are occupied and then at that point only providing a proportion of the provision required would not serve that useful purpose equally well because it would result in a large proportion of the community (up to 56%) having no access to health, social and recreational facilities on site, who would have to travel to other locations in the borough for their health, social and recreational needs, if in fact there is provision available elsewhere, which is unlikely given the need identified for provision on-site, directly impacting on the sustainability objectives of the Chilmington Green development and undermining the basis upon which planning permission was granted. The applicant has provided no evidence to support their claim that much of the facilities are "not expected to be needed until much later than the triggers currently set".	See my PoE including The Brookbanks Cost Report confirms that the facility can be built for £2m and is included in Appendix V of this proof.

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			Further, that the obligations at paragraphs 1.2.5 to 1.2.6 to transfer/grant a Long Leasehold Interest to the CMO of the Facilities (First Tranche) and with them paragraph 1.2.4, should be substituted by an obligation to grant leases to individual tenants e.g . the NHS or Police, on terms acceptable to them. Thus, paragraphs 1.2.4, 1.2.5 and 1.2.6 should be discharged and replaced by new obligation as follows: 'and 1.2.4 the Facilities; First Tranche have been transferred, in so far as required, to the proposed user/s of each by way of lease/s or tenancies (as appropriate) of the same on terms suitable to their intended use and that are acceptable to them.' . 1.2.5 The Facilities: First Tranche shall comprise the following: - a multi-purpose community space of up to 1500 sqm, to include - a fully stocked and equipped library - 340 sqm space for police community and social services outreach including family and social care (subject to lease confirmation) - 400 sqm within the multi-use building of community space to meet the needs of the community and the CMO Trust and to provide ancillary facilities for the MUGA - a multi-use games area - up to 500 sqm of GP provision (subject to NHS lease confirmation) Subject always to such variations in scope as may reasonably be required to ensure that the total cost of £2m is not exceeded. 1.2.6 To construct and provide the Facilities: First Tranche ... more than 3,250 [not 1800] Dwellings.	With any further reduction to £2m capital cost achieved through value engineering the specification and such further alterations thereto as may reasonably be required to ensure this total cost is not exceeded. Secondly, the provision of the balance of this space (apart from the community learning facility which can be catered for elsewhere) should in any event be phased and where appropriate made subject to lease confirmation, as proposed. Nonetheless, the total space to be provided is still very large see Section 8 of the Explanatory Statement and in particular paragraph 8.18) and as Quod states there much of it is not expected to be needed until much later than the triggers currently set. In these circumstances, as set out in the Explanatory Statement (paragraph 8.29), 'Whilst the challenges of phased construction are acknowledged, for the sake of avoiding mothballed buildings with associated liability and costs, this community provision should be phased and elements delayed until they are needed.' In addition, there should be a clause added to ensure that public service leases will be confirmed prior to triggering the construction works and contracting. Further, as indicated the requirement to provide these facilities by the 1800th Dwelling Occupation will be a cost to Phase 1 and is serving to undermine the viability of	Without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim that " to provide these facilities by the 1800th Dwelling Occupation will be a cost to Phase 1 and is serving to undermine the viability of this phase and in turn delivery of the Development." and "the current timetable for these assets would not only have a significantly detrimental effect on the Paying Owner's cashflow in the initial phases of the Development, but more critically without modification (going beyond the triggers indicated in the Explanatory Statement) it will likely cause the loss of the funding available to the Applicants to carry out the Development at all." b. The obligation for the total capital cost of the community hub to not exceed £5,152,127.00 index linked continues to serve a useful purpose. This figure was calculated based on the estimated cost of such facilities at the time planning permission was granted. The applicant has not provided any evidence to support their claim that "the capital cost up to £5,152,127.00 is excessive" and that the "current obligation is over-priced and over-specified". The proposed modification would not serve that useful purpose equally well because it would not provide sufficient funds for the Community Hub that is required to serve the Chilmington Green community to be built. It is also noted that the Agreement states that the capital cost shall 'not exceed' £5,152,127.00 index linked, which indicates that there is already provision within the Agreement for the applicant to deliver the Community Hub at a lower cost if it can be demonstrated that this is possible. The obligation for the total capital cost to be index linked continues to serve a useful purpose. Removing index linking from the total capital cost would undermine the ability to deliver the facilities required and that are of the right quality. Indexation ensures the value of the contributions agreed when planning permission is granted, and consequently purchasing power, is maintained in the future and therefore the same level of service/infrastructure can be provided. The total capital cost was calculated based on the cost of delivering these facilities at the time outline planning permission was granted. Costs have since risen and therefore the proposed modification to remove indexation would not serve that useful purpose equally well because it would reduce the ability of the Owners and Paying Owners to deliver the quality of facilities that are required. The obligation to exclude fees, contingencies, specification and design costs, supervision fees, access roads and service costs from the total capital cost specified continues to serve a useful purpose by ensuring that Fees, contingencies, specification and design costs and supervision fees, are	

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			[That after the above there be inserted new paragraph 1.2A as follows, mirroring the above provisions in the case also of the proposed Facilities: Second Tranche] 1.2A 'Unless the Council agrees otherwise, not to Occupy more than 4,250 Dwellings unless: 1.2A.1 the Facilities: Second Tranche have been provided in accordance with the reserved matters approval and the approved design brief and specification and at a cost which together with the Facilities: First Tranche does not exceed £2m inclusive as stated above ... 1.2A.2 all ... the Facilities: Second Tranche are located ... 1.2A.3 all conditions ... apply to the Facilities: Second Tranche ... ; 'and 1.2A.4 the Facilities; Second Tranche have been transferred, in so far as required, to the proposed user/s of each by way of lease/s or tenancies (as appropriate) of the same on terms suitable to their intended use and that are acceptable to them.' 1.2A.5 The Facilities: Second Tranche shall comprise the following: - further community space of up to 2500 sqm, to include - a 1000 sqm community leisure building - up to 500 sqm of GP provision (subject to NHS lease confirmation) - additional floor space of up to 200 sqm for identified community needs, including youth provision Subject always to such variations in scope as may reasonably be required to ensure that the total cost of £2m is not exceeded. 1.2A.6 To construct and provide the Facilities: Second Tranche in	this phase and in turn delivery of the Development. Indeed, in terms of viability and deliverability, the current timetable for these assets would not only have a significantly detrimental effect on the Paying Owner's cashflow in the initial phases of the Development, but more critically without modification (going beyond the triggers indicated in the Explanatory Statement) it will likely cause the loss of the funding available to the Appellants to carry out the Development at all. In the circumstances, the purpose of these provisions can be better or at least equally well served by modifying them as proposed, supporting the Development whilst still securing delivery of these facilities when needed in the life of the Development. As for the proposal to grant individual leases on terms acceptable to the proposed end users of the different facilities (with the Appellants retaining the land on which the facilities are located if the users do not want to take up any lease), this plainly makes sense in practical and market terms, providing the necessary flexibility to secure the delivery of these facilities for the Development. These modified terms accordingly serve the purpose of these obligations better than, or at least equally as well as, the existing terms, which by imposing a freehold transfer or long leasehold interest could actually undermine delivery of these	sufficiently provided for, and do not 'use up' the main construction budget sum. Access roads and service costs are infrastructure costs associated with the wider development The proposed modification to include these costs in the total capital cost would not serve that useful purpose equally well because including these costs would reduce the total budget available to deliver the facilities and consequently would undermine the ability to deliver the required a high quality of facilities. It is already evident from discussions with the applicant about the total capital cost for Play Space 1 and the applicant's position with reference to request 25 relating to the cost of the Natural Green Space, that the budgets identified in the Agreement, with the inclusion of index linking and without the inclusion of fees, contingencies, specification and design costs, supervision fees, access roads and service costs does not provide sufficient budget to deliver the quality facilities required by the outline planning permission, the design code and the applicant's design and access statement. Including the costs, stated in this request, in the budget identified in the Agreement will undermine further the ability to deliver the quality of facilities envisaged for Chilmington Green. Without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim that the capital cost is "serving only to undermine the viability and ultimately the deliverability of the Development" The additional clause to para 1.2.1 would not serve a useful purpose because the cost of the facilities is clearly stated in the preceding paragraph 1.1.1 and would result in duplication c. This obligation continues to serve a useful purpose, its discharge would not serve that useful purpose equally well because the transfer of the Community Hub to the CMO is an essential part of the approach to community stewardship being delivered at Chilmington Green and detailed in the CMO Operating Business Plan submitted by the Owners. The applicant has not explained how the retention of these assets in their ownership and their lease to the individual tenants would impact the CMO Business Plan or how the facilities would be managed and maintained and by whom The obligation for the Owners to meet the costs of any SDLT/other tax payable to register the transfer of the land and to cover the CMO's associated legal costs. continues to serve a useful purpose because having to pay these costs would reduce the monies the CMO has available to deliver their charitable objectives and would simply serve the increase the	

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			accordance with the requirements of paragraph 1.2A.1 of this schedule prior to the Occupation of more than 4,250 Dwellings. 1.2A.7 In respect of each of the Facilities: First and Second Tranche, the right to carry out the requisite building works being reserved always to the Paying Owners [Appellants]. 1.2A.8 In respect of each of the Facilities: First and Second Tranche, no building contract shall be entered nor construction begin prior to confirmation of the public service leases, i.e. for Police or GP use. ~~At Schedule 29D Item 17, the payment should be reduced to £2m and split equally (or as appropriate) and the trigger should likewise be split and deferred from 1300 to 3,150 Dwellings and 4,150 Dwellings respectively.~~	assets in circumstances where such interests are not actually wanted. As for the discharge of paragraph 1.2.4 in any event (and the omission of any equivalent in relation to the Facilities; Second Tranche), this is justified for the reasons already referred to above in respect of similar clauses in, for example, Schedules 8 and 9 above. The modifications sought (reduction in cost, split in provision and deferred triggers) so far as they affect costs are captured in the Viability Report at Appendix 3 at 5300.1 and form part of this revised viability analysis justifying each discharge and modification sought.	deficit the CMO operates under. For this reason, the discharge of this obligation would not serve that useful purpose equally well. d. The provision of the amount of floorspace specified in the Agreement continues to serve a useful purpose because this is the amount of floorspace required to meet the needs of the residents of the Chilmington Green development at set out in the Chilmington Green AAP. The applicant has not provided any evidence to support their claim that the Agreement "currently requires a total floor space that is well in excess of what the policy requires, without justification for departure" (Quod Explanatory Statement, para 8.18). The proposed modification would not serve that useful purpose equally well because it would not provide the amount of floorspace required to meet the needs of the development. e. The proposed new clause does not serve a useful purpose because it is not relevant to planning. The Paying Owners are the landowners and therefore will determine who undertakes the building works. This does not have to be stated in the Agreement f. The proposed new clause does not serve a useful purpose because it is not practical and would only serve to delay construction if, for example, one or more public service leases are entered into, but others are not. It is not reasonable and would not serve the purpose equally well to delay construction of the whole facility because one public service lease has not been entered into. The further additional clause under para 1.3 would also not serve a useful purpose because it would allow the Owners to continue occupations without delivering the Community Hub. The Owners would be able to deny to grant a lease and/or offer leases on unreasonable terms so as not to fulfil this obligation. g. The applicant's modifications table proposes a modification to the trigger for payment set out in Schedule 29D item 17. However, the submitted amended S.106 Agreement proposes that the whole of Schedule 29D is deleted. The applicant should clarify which modification is proposed. Notwithstanding the above, payment into the "Developers Capital Bank Account – Council" prior to the trigger point for delivery of the facilities continues to serve a useful purpose because it ensures that, if the Council is required to remedy a breach of this obligation, the Council can do so as quickly as possible following the breach occurring	

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					Payment at 3,150 occupations and 4,150 occupations is too late and will result in an unacceptable delay to delivery. It would not serve the purpose of the obligation equally well. Furthermore, the discharge of the obligation would also result in an unacceptable delay to delivery if there is a breach of the obligation and would therefore not serve that useful purpose equally well. The modifications of these obligations is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG10 & CG17 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM1 & IMP4. Reject – shall continue to have effect without modification. Note: it is noted that the applicant now proposes to provide a “full stocked and equipped library”. However, the Agreement requires the provision of a library access point. Proposed modification by agreement: the Council acknowledges that it may be more appropriate to deliver the Community Hub in two phases, however, the first phase should be delivered at 1800 occupations. The Council also acknowledges that providing more flexible / multi-purpose space, and referring to the facilities as such in the Agreement would serve a useful purpose equally well. The Council is willing to discuss these proposed modifications by agreement with the appellant.	
59. NC	The submission and approval of a design brief and specification for the Community Hub Building	Para 1.1	The Appellants apply to Modify the planned costs to include fees and other costs and to modify this obligation so that the submission/approval of the design brief and specification for the Facilities: First Tranche and Second Tranche may be split with the former to be re-gearred from 1,400 Dwelling Occupations to 2,850 Occupations and the latter to 3,850 Dwelling Occupations. Hence paragraph 1.1 should read: 'Not to Occupy more than 2,850 Dwellings unless: 1.1.1 a design brief and specification for the Facilities: First Tranche and/or other facilities of no significantly greater environmental impact as may be approved by the Council to be provided in the District	This modification is proposed for the reasons stated above in respect of the provision of these facilities and consequential upon those modifications.	a. The obligation for the total capital cost to be index linked continues to serve a useful purpose. Removing index linking from the total capital cost would undermine the ability to deliver the facilities required and that are of the right quality. Indexation ensures the value of the contributions agreed when planning permission is granted, and consequently purchasing power, is maintained in the future and therefore the same level of service/infrastructure can be provided. The total capital cost was calculated based on the cost of delivering these facilities at the time outline planning permission was granted. Costs have since risen and therefore the proposed modification to remove indexation would not serve that useful purpose equally well because it would reduce the ability of the Owners and Paying Owners to deliver the quality of facilities that are required. The obligation to exclude fees, contingencies, specification and design costs, supervision fees, access roads and service costs from the total capital cost specified continues to serve a useful purpose by ensuring that Fees, contingencies, specification and design costs and supervision fees, are	See my PoE.

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			Centre has been approved by the Council with a total capital cost that (together with Second Tranche) does not exceed £2m ... including fees, contingencies, specification and design costs, supervision fees, access roads and service costs and the costs of those matters to be done at the Owner's expense referred to below;' Para 1.1.2 to be modified to refer to the Facilities: First Tranche. Whilst new paras 1.1A.1 and 1.1A.2 should be inserted in similar terms to 1.1.1 and 1.1.2 above but referring to the Facilities: Second Tranche and with a trigger of 3,850 Dwelling Occupations.		sufficiently provided for, and do not 'use up' the main construction budget sum. Access roads and service costs are infrastructure costs associated with the wider development The proposed modification to include these costs in the total capital cost would not serve that useful purpose equally well because including these costs would reduce the total budget available to deliver the facilities and consequently would undermine the ability to deliver the required a high quality of facilities. It is already evident from discussions with the applicant about the total capital cost for Play Space 1 and the applicant's position with reference to request 25 relating to the cost of the Natural Green Space, that the budgets identified in the Agreement, with the inclusion of index linking and without the inclusion of fees, contingencies, specification and design costs, supervision fees, access roads and service costs do not provide sufficient budget to deliver the quality facilities required by the outline planning permission, the design code and the applicant's design and access statement. Including the costs, stated in this request, in the budget identified in the Agreement will undermine further the ability to deliver the quality of facilities envisaged for Chilmington Green. Without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim that the capital cost is "serving only to undermine the viability and ultimately the deliverability of the Development". b. The obligation to submit a Design Brief and Specification within the timescale set out in the Agreement continues to serve a useful purpose. The submission of the Design Brief and Speciation within a timely manner enables the Council to ensure design quality is embedded in the development at an early stage and safeguards against poor quality development. The Design Brief and Specification needs to be agreed in good time prior to commencement of construction to enable contracts to be let, etc. A delay to the agreement of the Design Brief and Specification is unlikely to allow sufficient time to enable the facilities to be delivered by the required deadline. The applicant has not demonstrated that their proposed delay would provide sufficient time. The proposed modification would therefore not serve the useful purpose equally well. Furthermore, the submission of a single Design Brief & Specification for the whole Community Hub continues to serve a useful purpose because it ensures that the design of the Community Hub is considered and designed as one and that it will be fit for purpose and of good quality design in its entirety. Splitting the submission of the Design Brief & Specification into two phases, as the applicant proposes,	

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					would not serve that useful purpose equally well because it would result in the piecemeal design of a single land parcel, where it would not be possible to understand how or whether phase 2 will work with phase 1. The modification to the last clause under para 1.1.1, to remove the requirement for the list of particulars in Schedule 12A to be included in the Design Brief and Specification is not agreed. It is important to be clear about the level of detail required in the Design Brief and Specification. The removal of this obligation would result in ambiguity about what is required and would not serve the purpose of ensuring clarity equally well. The purpose of the insertion, in para 1.1.1 and 1.1A.1, of "and the costs of those matters to be done at the Owner's expense referred to below" is not clear. The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG9 & CG17 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, SP6 & COM2. Reject – the obligation shall continue to have effect without modification.	
60. NC	The provision for consultation with the CMO and stakeholders etc. and approval of the details of the consultation	Paragraph 1.1.2	In addition, the Appellants apply for paragraph 1.1.2 to be Modified to omit the requirement to consult the CMO and omit the requirement to consult and to obtain approval in respect of the details of the consultation and to omit the final clause 'and in particular the CMO's comments on the costings;'	The consultation with the CMO under 2.1.2 is surplus to requirements, given that the Council will have the opportunity already to consult with all interested parties when approving the design brief and specification. This part of the paragraph does not, therefore, serve any useful purpose and should be discharged or modified accordingly. As for the requirement to consult over the details of the consultation (whether with the CMO or Council) this also fails to serve any useful purpose. It unnecessarily complicates what should be a relatively straightforward and simple exercise. This part of the obligation (in parenthesis) should be discharged accordingly.	a. This obligation continues to serve a useful purpose. Its modification would not serve that useful purpose equally well. The CMO is an important stakeholder at Chilmington Green. They will take on the management and maintenance of the Community Hub. It is therefore important that the CMO can input at an early stage in the design process. The value of early consultation is reflected in National Planning Practice Guidance (NPPG) which identifies the benefit of "working collaboratively and openly with interested parties at an early stage to identify, understand and seek to resolve issues associated with a proposed development" (ref: NPPG, para: 001 Reference ID: 20-001-20190315). It is noted that the applicant does not propose to remove the requirement to consult with other relevant stakeholders and the public. b. This obligation continues to serve a useful purpose. Its modification would not serve that useful purpose equally well. The approval of the details of the consultation by the CMO/Council prior to the consultation taking place ensures that the consultation is fit for purpose and involves all necessary parties.	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
				The omission of the final clause is consequential on the above.	c. This obligation continues to serve a useful purpose. Its modification would not serve that useful purpose equally well. The requirement for the Design Brief and Specification to include the CMO's comments on the costings ensures that the CMO can input into the specification and cost of facilities that they will manage and maintain and raise any concerns they may have, at any early stage in the design process and for the Council to be aware of their comments when reviewing the document. The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policy CG1, CG10 & CG17 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM1 & IMP4. Reject – the obligation shall continue to have effect without modification.	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
61. NC	The 12 months repairing liability following the transfer of the Facilities	Paragraph 1.3	The Appellants apply to Discharge this obligation.	The clause gives the CMO excessive powers to demand repairs are carried out, without providing any effective dispute resolution mechanism. Particularly, where, as noted above, in reality the CMO is neither equipped nor competent to be the arbiter of such matters. Further, under a normal Estate Management (Manco) model the CMO should simply be obliged to maintain and/or keep in repair and good condition the Green Space Facilities, by no doubt in practice using third party maintenance contractors. On any view, therefore, the clause fails to serve any useful purpose and should be discharged	This obligation continues to serve a useful purpose because it ensures that any defects are remedied in a timely manner by the Owners who provided the facility. The CMO should not have to bear the cost to repair defects which occur within the time periods stated in the Agreement. It should be the responsibility of the 'Owners' who provide the Community Hub to deliver the quality of facilities agreed in the planning/reserved matters permissions and that any defects that occur after handover are remedied. This obligation ensures that facilities of sufficient quality are handed over to the CMO and that defects are dealt with promptly to the benefit of the community. The discharge of this obligation would not serve that useful purpose equally well because it would mean that the CMO would have to bear the costs of rectifying any defects and if poor quality facilities are provided there would be no means of remedy. The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG10 & CG17 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1. COM1 & IMP4. Reject – the obligation shall continue to have effect. Proposed modification by agreement: - the Council considers that the introduction of a defects dispute resolution provision could satisfy the statutory test under section 106A(6)(c). The Council is willing to discuss this proposed modification by agreement with the appellant	See my PoE.
62. NC	The obligation to make designated parts of the Community Hub Building available for use by the County Council in accordance with the booking system agreed between the CMO and the CC	Paragraph 1.4	The Appellants apply to Discharge this obligation in its entirety.	The inclusion of this obligation under the s106 Agreement appears to be mistaken. The obligations thereunder are not matters within the power or control of the Appellants. The clause does not therefore serve any useful purpose and should be discharged accordingly.	The inclusion of this obligation is not mistaken as the applicant suggests. This obligation will ultimately fall to the CMO as the future successor in title of the Community Hub. This is identified in clause 2.9 of the Agreement (Release from Liability). This obligation continues to serve a useful purpose because it ensures that the Community Hub provides the community facilities that it is envisaged to provide to meet the needs of the local community. The County Council is the provider of some of the facilities (family and social care; youth; community learning and libraries) to be provided in the Community Hub or nominates organisations that are on its approved lists to provide these services on their behalf. The proposed modification would not serve that useful purpose equally well because if the County Council or their nominated organisations were not able to use the Community Hub then it would be more difficult for the required services to be provided to residents. The request to discharge this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG10	See my PoE.

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					& CG17 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM1 & IMP4. Reject – the obligation shall continue to have effect	
63. NC	Provision for payment toward the Council's costs	Paragraph 2	The Appellants apply to discharge this payment obligation.	Because providing for payment toward the Council's costs undermines the purpose of the clause (to secure the grant on appropriate terms), compensating the Council even in cases where it unreasonably refuses approval, which should not be the case. The clause does not therefore serve any proper or useful purpose and should be discharged accordingly.	In accordance with para 1.1.10, the Owners can ask the Council to consider a transfer which the developer wishes to use but has not been agreed with the CMO for the required transfer of any asset to the CMO. The payment of the Council's legal costs to consider the transfer serves a useful purpose through enabling the Council to take specialist legal advice upon the wording, and the dispute that has arisen between the developer and CMO, and if appropriate to approve the transfer terms so that the asset transfer can proceed. The discharge of this obligation would not serve this useful purpose equally well because without the Owners payment of the legal costs these costs would fall upon the public purse which would not be appropriate as they arise in connection with the provision and long-term stewardship of mitigation for the impact of the development The request to discharge this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG10 & CG17 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM1 & IMP4. Reject – the obligation shall continue to have effect.	See my PoE.
Schedule 13 - Local Centre Hubs						
64. NC	The Orchard Village Facilities and the Chilmington Brook Facilities	Paragraphs 1-3 and 4-6 respectively	The Appellants reserve the right to make a further application to Discharge or modify these obligations as the case may be.	The Appellants, as in the case of all other obligations not the subject of specific requests to vary in this application, reserve their rights to make a further application in relation to Orchard Village and Chilmington Brook in due course should the need arise.	The Council notes the applicant's position.	
Schedule 14 – District and Local Centres				<u>In this regard the Appellants refer to and rely in particular upon section 9 of the Explanatory Statement accompanying this application in addition to the reasons stated below.</u>		

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
65. M	The obligation to construct and provide the District Centre Facilities in Main Phase 1 and the Orchard Village and Chilmington Brook small Retails Units in Phases 3 and 4 and associated obligations including marketing plans etc.	Paragraphs 1.1. to 1.5	The Appellants apply to Modify the Main Phase 1 District Centre obligations permit a revised scheme for the same, to be the subject of a separate application for planning permission ~~and to require that in any event the District Centre facilities are to be provided by no earlier than 2700 [rather than 1250] Occupations.~~	The obligations at paragraph 1 to provide a District Centre with the facilities indicated under 1.1 no longer serve any useful purpose as drafted. The current retail market is such that the facilities under 1.1 focused as they are on small units is wholly unsustainable. The Appellants have canvased the market, but there are no operators who will contemplate the present scheme. The Appellants will accordingly make a new planning application for the District Centre facilities on CH1 and CH2. The revised scheme set out in that application will replace that outlined under the provisions of paragraph 1, and these should be modified accordingly to accord with and permit the said revised scheme. Further and in any event whether the District Centre obligations are revised or not the requirement to provide these facilities by 1250 Dwellings is unrealistic and certainly if it were to become necessary for the Appellants to fund all or any part of these Facilities would undermine the viability of Main Phase 1 and with it the deliverability of the Development. If this were to eventuate it would not only have a significantly detrimental effect on the Paying Owner's cashflow in this initial phase of the Development, but more critically without modification it will jeopardise the very funding available to the Appellants to carry out the Development at all.	a. This obligation continues to serve a useful purpose. The District Centre is an essential part of the outline permission to meet the needs of the new community, enabling residents to access the services and facilities they need without having to travel outside of the Chilmington Green area. Removing the obligation to provide the District Centre would not serve that useful purpose equally well because it would mean that there would be no certainty that the District Centre would be provided and consequently could result in an unsustainable development, with residents having to travel elsewhere to access services and facilities. Whilst the applicant states that the District Centre would be "the subject of a separate application for planning permission", the applicant does not propose a new obligation to ensure this separate application is submitted, nor provide any indication of what type of development this separate application would propose. There is therefore no guarantee that the District Centre would be brought forward. The applicant states in their reasoned justification that "The current retail market is such that the facilities under 1.1 focused as they are on small units is wholly unsustainable". The applicant also advises "having gone into the market and invited tenders for that, not a single tender could be secured for the kind of retail proposal currently contained in the Agreement. There is no market demand for shop premises of the size dictated by the section 106 Agreement in this location" (ref: Appendix A1, para 4.3). The applicant has not provided any evidence to substantiate these claims that there is no market demand for the type of District Centre facilities proposed in the Agreement. b. This obligation continues to serve a useful purpose. The timely provision of local facilities to meet the needs of the new community is essential to good placemaking and provides the centre / hub of the community. Delaying delivery until 2700 occupations, within Phase 3 of the development, when 46% of the dwellings are occupied, would not serve that useful purpose equally well because this would mean that nearly half the population of the Chilmington Green development (46%) would have to travel to other centres in the borough to access the facilities and services they need which would undermine the sustainability objectives of the Chilmington Green development and the basis upon which planning permission was granted The Council also notes that as part of the recent planning Inquiry for appeal ref: APP/E2205/W/24/3345454 – Possingham Farm, the applicant proposed that the	See my PoE.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
				In the premises, the purpose of these provisions can be better or at least equally well served by modifying them as proposed, supporting the Development whilst still securing delivery of these facilities at an early stage in the life of the Development. The Viability Report has accordingly pushed back the commencement/completion of the District Centre in the updated sensitivity model, as can be seen specifically in the cashflow appraisal, and the benefits of this form a part of the overall viability analysis and conclusions in support of the modifications sought. The Appellants, as in the case of all other obligations not the subject of specific requests to vary in this application, reserve their rights to make a further application in relation to the Orchard Village and Chilmington Brook small Retails Units etc. in due course should the need arise.	supermarket at Chilmington Green would be delivered prior to first occupation of any dwelling at Possingham Farm. This appeal was allowed subject to conditions requiring the supermarket to be provided prior to first occupation at Possingham Farm and the Chilmington Green District Centre facilities to be provided prior to 328 occupations. The propositions made by the applicant at the Possingham Farm Inquiry do not align with the proposal to delay provision in this appeal. Without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim that provision by "1250 Dwellings is unrealistic and certainly if it were to become necessary for the Applicants to fund all or any part of these Facilities would undermine the viability of Main Phase 1 and with it the deliverability of the Development. If this were to eventuate it would not only have a significantly detrimental effect on the Paying Owner's cashflow in this initial phase of the Development, but more critically without modification it will jeopardise the very funding available to the Applicants to carry out the Development at all." c. The proposed Agreement also includes the removal of all references to the amount of floorspace required for the supermarket, other retail units and office building – these changes are not described in the applicant's modifications table and no justification has been provided for this modification. Stating the amount of floorspace required continues to serve a useful purpose because it is important to ensure that premises of an appropriate size to meet the needs of the new sustainable community are provided. Planning permission was granted based on a retail assessment which concluded that the amount of retail floorspace proposed would promote sustainable shopping patterns by providing a good local main food destination as part of an appropriate day-to-day service and limited comparison-shopping offer, thereby reducing travel distances for future residents and not leading to any significant adverse impacts in terms of the vitality and viability of Ashford town centre. Removing reference to the amount of retail floorspace required would not serve that useful purpose equally well because it would allow premises of a larger or smaller size to be provided which would either not meet the needs of residents who then have to travel elsewhere for their day to day needs or provide space that is so large that it is no longer only meeting the needs of the residents of Chilmington Green but becomes a destination to shop completing with Ashford town centre. This would	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
					undermine the sustainability of the development and the basis upon which planning permission was granted. Planning permission was granted on the basis that approx. 1000 jobs would be created over the whole development and that a range of employment opportunities would be created. Providing job opportunities close to where people live is a key element of building a sustainable community. Removing reference to the amount of office floorspace required would not serve that useful purpose equally well because it would allow premises of a larger or smaller size to be provided which would either not meet the needs of residents or provide premises so large that it results in many people commuting to the site from a wide area. This would undermine the sustainability of the development and the basis upon which planning permission was granted. The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG3 & CG22 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 & COM1. Reject – the obligation shall continue to have effect without modification. Note: the application contains insufficient information to enable the Council to assess the claim that "if it were to become necessary for the Applicants to fund all or any part of these Facilities would undermine the viability of Main Phase 1 and with it the deliverability of the Development".	
66. NC	The submission and approval of a design brief and specification for the District Centre Facilities by 950 Dwelling Occupations	Paragraph 1.1 to 1.5	The Appellants apply for the occupation triggers in respect of these facilities to be Modified , so that the design brief and specification is to be delivered by 1500 (rather than 950) occupations and the facilities are to be provided by 2700 (rather than 1250 occupations) with paragraph 1.1 modified accordingly.	This discharge or, alternatively, modification is proposed for the reasons stated above in respect of the provision of these facilities and consequential upon that modification.	This obligation continues to serve a useful purpose. The obligation to submit a Design Brief and Specification within the timescale set out in the Agreement continues to serve a useful purpose. The submission of the Design Brief and Speciation within a timely manner enables the Council to ensure design quality is embedded in the development at an early stage and safeguards against poor quality development. The Design Brief and Specification needs to be agreed in good time prior to commencement of construction to enable contracts to be let, etc. A delay to the agreement of the Design Brief and Specification is unlikely to allow sufficient time to enable the facilities to be delivered by the required deadline. The applicant has not demonstrated that their proposed delay would provide sufficient time. The proposed modification would therefore not serve the useful purpose equally well. The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG3 & CG22 and the National Planning Policy Framework	Following the Possingham Farm decision this request is withdrawn.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
					2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 & COM1. Reject – the obligation shall continue to have effect without modification	
Schedule 15 – Education				<u>In this regard the Appellants refer to and rely in particular upon Sections 3 and 11 of the Explanatory Statement accompanying this application in addition to the reasons stated below.</u>		
67. NC	The provision of Bonds to the value of PS1 Contributions 2, 3 and 4	Para 6 and 7(e) (as amended by the Deed dated 29/3/19)	The Appellants apply for the obligation to provide Bonds for these PS1 Contributions to be Discharged .	The obligation to provide Bonds for these Contributions in the total sum of £5,850,000 does not serve any useful purpose and should be discharged. The Appellants rely in this regard upon Sections 3 and 11 of the Explanatory Statement. This is unnecessary and wholly excessive and duplicative security. There is no proper justification for the 'triple lock' imposed under the s106 obligations. Moreover, the Appellants maintain that it has ceased to be possible in the financial markets to obtain Bonds of the kind required by the s106 Agreement. In the premises the reality is that this obligation has been rendered redundant and it should be discharged accordingly. The Appellants have already provided further evidence since first making these requests in support, but nonetheless will, in so far as necessary, provide any further evidence in support if required. Otherwise, if contrary to the Appellants' own enquiries it can be shown by the	KCC The Paying Owners have paid PS1 Contributions 1, 2 and 3 to the County Council. However, outstanding payments on PS1 include the outstanding Indexation payable in respect of Contributions 2 and 3, plus payment of Contribution 4 (plus Indexation). Only Contribution 1 has been satisfied in full. Under the Supplemental Deed of Agreement (signed 29 March 2019) these payments became due 78 months from the date of Commencement (5 December 2023). A Bond was entered into on 29 March 2019 PS1 Contribution 4 plus indexation only. Due to non-payment of this contribution, the County Council called upon the Bond for payment, which was received on 14 May 2024. The Applicants have requested to discharge the requirement to provide a Bond in respect of the outstanding PS1 contributions. KCC understands that this is on the following basis and has set out its response below: a) The Applicants note that "it has ceased to be possible in the financial markets to obtain Bonds for the kind required by the s106". KCC has sought specialist opinion regarding the availability of Bonds from its corporate banking provider (NatWest Bank) and is satisfied that these are available on the financial markets in the form set out in the s106. Indeed, the Applicants entered into a Bond of this kind with KCC on 29 March 2019. KCC therefore does not accept that it is no longer possible to obtain similar Bonds. b) The Applicants note that (in their view), the requirement for a Bond "is unnecessary and wholly excessive and duplicative security", on the basis that it creates a 'triple lock' under the S106 Agreement, with two further forms of security provided by the non-occupation restriction within Schedule 15 and provision of a Developer's Contingency Account in Schedule 30.	Please see the proof of evidence of Mr Ben Hunter.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
				Respondents that a compliant form of Bond can be found, the likelihood is that this would be at face value or such a cost as to be prohibitive. Any additional financial commitment of this scale would palpably undermine the viability of this Phase and with it the delivery of the Development. In any event therefore the provision of a Bond is self-defeating and cannot be regarded as serving any useful purpose in relation to the Development and should be discharged accordingly. Moreover, it is necessary for this obligation to be discharged for viability and deliverability reasons, specifically that this obligation is likely to jeopardise the funding available to the Appellants to carry out the Development at all.	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. KCC is also of the view that the Developer's Contingency Account (Schedule 30) which the Applicants suggest is further protection for KCC, does not provide the level of security required by KCC when entering third party build contracts. Non-occupation clauses do not guarantee that KCC will receive all the contributions for the infrastructure it has forward funded. This is because the s106 does not require the total infrastructure project cost to be deposited prior to KCC entering into the build contract. This is unacceptable and leaves the public purse at significant risk. The non-occupation clauses do not pertain to the school payment triggers, thus 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. c) provision of a Bond undermines the viability and deliverability of Development. The Applicants have not provided the necessary evidence to determine that the provision of Bonds undermines the deliverability of the Development. Proof of viability, however, would not be reason to discharge the requirement for Bond provision and in fact undermines the Applicants ability to make the payments in themselves. Planning permission was granted on the basis that this Development mitigates its impact on education. For KCC to deliver the school, it requires the financial security to do so. KCC does not consider therefore, that the S106 Agreement provides a 'triple lock' which negates the need to provide a Bond. 1. The current obligation is to provide a Bond to the value of Primary School 1 Contributions 2, 3 and 4 plus indexation. The purpose of the Bond is to provide financial security for the County Council; ensuring that in the event it does not receive the necessary amounts from the Applicants, it still has the security in order to forward fund the delivery education infrastructure necessary to meet the needs of the Development	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC’s (unless specifically noted at KCC’s) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
					2. The obligation continues to serve a useful purpose. KCC has built the school and is awaiting outstanding payment of Indexation on Contributions 2, 3 plus the additional late payment interest in line with the S106 Agreement. The proposal in Application Number 68 below clearly demonstrates the importance of a Bond; KCC has in good faith progressed delivery of the necessary infrastructure to support the development and now the Applicants are seeking to renege on the contributions. 3. The obligation would not serve the purpose equally well if it had subject to the proposed modification. Infrastructure would be forward funded at considerable risk to the public purse or not funded at all. 4. Application refused.	
68. NC	Education Contributions; Primary School 1 Contributions 1 to 4 to the County Council	Para 7 (as amended by the Deed dated 29/3/19)	The Appellants apply for the obligation to pay PS1 Contribution 4 (para 7 (d) and the Indexation payments on previous Contributions (para 7A) to be Discharged and for the payments already made to the County Council £8,829.11 (eight thousand eight hundred and twenty nine pounds eleven pence) by way of indexation on PS1 Contribution 1 and the sum of £2,096,017.66 (two million ninety sixty thousand seventeen pounds sixty six pence) already paid to the County Council in respect of PS1 Contribution 4 (including indexation) to be repaid.¹	The PS 1 Contribution 4 and these very significant indexation payments are undermining the viability of the Development and in turn its deliverability and cannot sensibly therefore be regarded as serving a useful purpose. Further, PS1 is and will be of substantial benefit to the wider Ashford community, as well as to other developments both current and future, and these (such as Court Lodge and Kingsnorth) ought properly to contribute, so obviating these further payments toward PS1 by the Appellants. The discharge of this contribution and the said indexation amounts to reflect the imperative above is shown in the Viability Report and specifically at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5200.2, and forms part of this new viability analysis justifying each discharge and modification sought.	KCC 1. The current obligation regarding PS1 Contribution 4 is to pay £1,461,800 plus indexation 78 months from Commencement. The purpose of PS1 Contribution 4 and Indexation is to enable the Development to mitigate the requirement for additional primary education places necessary to meet the needs of its new residents. Indexation enables the original contribution sum to maintain purchasing power in the future. The Department for Education (DfE) Guidance ‘Securing developer contributions for education’ (dated August 2023) para 11 advises: The DfE’s Basic Need grant, free schools programme and other capital funding do not negate housing developers’ responsibility to mitigate the impact of their development on education. 2. PS1 has been built using Contributions 1-4 (plus Indexation received on Payment 1), plus large forward funding from the County Council. Contribution 4 continues to serve a useful purpose in repaying the forward funding expended by the County Council. Payment 4 has contributed to the overall build cost of the school and cannot be artificially separated from the other contributions. 3. The obligation would not be served equally well if subject to the proposed modification. It would result in a significant proportion of the school provision needed by this development to mitigate its impact being met by the public purse, instead of by the Development, as intended. 4. Application refused.	In explanation it is the case that HD have been required to pay indexation based on 2014 costs for contribution 1 for primary school 1. As explained elsewhere in this PoE Brookbanks have demonstrated that this indexation results in a figure that is excessive when compared to actual costs at todays prices. Additionally, KCC requested payment 4 some 18 months after primary school 1 was completed. HD have requested evidence from KCC of expenditure for the school but have not received anything in response to date.

¹ KCC has enforced payment of these amounts since this application was submitted

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69. NC	Education Contributions; Primary School 2 Contributions 1 to 4 to CC	Paras 8, 10, 11, 12 and 14	The Appellants seek a modification to provide for consultation on the need for PS2 and before 1200 Dwellings have been occupied the CC must decide, acting reasonably, whether to proceed or not with PS2 for the purpose of ensuring that it is operational within 3 years. If the decision is not to proceed with PS2 at that stage, the process set out above shall be repeated commencing before the next 300 Dwellings are completed (i.e. details by 1500 Dwellings, consultation and then a decision by 1600 Dwellings etc.) and again as required up until the like process in respect of PS3 is engaged. If the decision is to proceed with PS2, the following paragraphs shall apply, but not otherwise. 8. The Owners shall not bring into residential use nor Occupy more than another 1 00 Dwellings across the whole Site following the decision to proceed unless and until the location ... after the day when the 100 Dwellings as aforesaid have been so first Occupied until the County Council has given its approval under this paragraph (such approval not to be unreasonably withheld). 10. The Owners shall deliver a duly executed Transfer ... within 12 months from the date when another 200 Dwellings (including the 100 above) have been first Occupied across the Site following the decision to proceed. No further Dwellings ... beyond 12 months after first Occupation of the 200 Dwellings as aforesaid, unless a duly executed Transfer 11. The Owners shall provide an Adoptable Access ... by the date when another 900 Dwellings (including the 200 above) have first been Occupied across the Site following the decision to proceed (or earlier upon the reasonable request	Whilst it is acknowledged that further primary school provision may potentially serve a useful purpose, current modelling based on the Development to date and the experience from PS1 clearly shows that the current occupation and time based triggers may lead to premature delivery, with schools unable to meet their minimum viable size to receive revenue funding and therefore having to be delayed in any case (or opened at risk to Kent CC). For the reasons set out in the Explanatory Statement, Section 11, the Appellants therefore seek to modify the current triggers so as they will be based on need and not merely occupations. The Dwelling numbers used in the proposed modification reflecting the pattern, for the purposes of review and performance following any decision to proceed, the current timetable and intervals for delivery. Modified in this way, it is submitted that the obligations will better serve their purpose or at least serve that purpose equally well. The only exception to the above arises in relation to funding and the payment of PS2 Contributions. It is necessary for these to be deferred as proposed for reasons of viability and deliverability, indeed without modification the current payment timings will likely cause the loss of the funding presently available to the Appellants to carry out the	KCC 1. The current obligation provides £6m plus indexation towards the provision of a 2 Form Entry (420 places) primary school to meet the needs of the Development. The obligation is required to ensure that the delivery costs of infrastructure which are necessary to serve the Development are directly and properly met by the Development. 2. It continues to serve a useful purpose by providing the funding necessary to build the school to meet the needs of the Development. 3. The amendments as proposed would result in a level of forward funding by the County Council which is unacceptable. For example, should Primary School 2 be built and open at 2500 Occupations, according to the Applicants' proposal, KCC would be waiting until 2650 Occupations for the first payment of £150,000. Payments 2, 3 and 4 would be approximately 3, 6 and 9 years after providing the school (assuming housing delivery as advised by the Applicant within the Quod Explanatory Statement 10.22). Whilst there is a level of forward funding expected by KCC within the S106 Agreement, with contributions falling due to a maximum of six year post Bond provision, what is proposed here would result in contributions being made up a minimum of 9 years after it is deemed that additional school places are required. This is wholly inappropriate and would require the public purse to forward fund excessively the infrastructure required by this Development to meet its needs. Forward funding by KCC would either require additional prudential borrowing or funding from its capital budget. The Prudential Code requires (among other things) that borrowing must be affordable and prudential. Increased borrowing costs resulting from the forward funding of infrastructure required to meet the needs of new developments negatively impacts the County Council's revenue budget, decreasing its ability to deliver vital services to Kent residents and businesses. No alternative obligations have been proposed by the Applicant to cover the County Council's increased borrowing costs. The proposed changes to drafting create unacceptable timeframes and uncertainty for necessary elements of the school delivery. For example, KCC makes the decision to proceed with Primary School 2 at 1500 (N) dwellings. At a build rate of 150 dwellings per year, the Applicant would require the school to be operational by 1950 occupations (ensuring it is operational within 3 years). According to the	Please see the proof of evidence of Mr Ben Hunter.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
			of the County Council). No more than another 899 Dwellings as aforesaid shall be brought into residential use 12. Subject to PS2 proceeding, then unless and until PS2 Contribution 1 has been paid to the County Council, no more than 2,650 Dwellings shall be brought into residential use nor first Occupied on the Site following the decision to proceed. Paragraph 14(a) to be modified to provide, subject to PS2 proceeding, for payment of PS2 Contribution 1 to the County Council prior to 2,650 Dwellings being first Occupied on the Site, with subsequent Contributions 2, 3 and 4 to be payable at 3,250, 3,850 and 4,350 Occupations respectively.	Development at all. The payment intervals calibrated to accord with the existing monthly intervals for payment. These modifications are accordingly necessary to ensure that the obligations continue to serve their intended purpose and for that matter any useful purpose at all.	Applicant's proposed modifications, the following would apply: - the location of the school would be agreed at 1600 dwellings (N+100) - the land would be transferred at 1850 dwellings (N+200 + 12 months (150 dwellings) - an adoptable access would be provided at 2400 dwellings (N+900) This is wholly unacceptable as the provision of necessary elements are considered too late and provide no assurances to the County Council that they would be provided in a timely manner to enable the school to become operational when necessary to meet the needs of the Development. As the Statutory Commissioner of Education Places, KCC must have surety regarding the ability to build and occupy the school site as required to meet its statutory duty. The proposed amendments do not provide this and cannot be agreed. 4. Refuse application.	
70. NC	The provision of Bonds to the value of PS2 Contributions 2, 3 and 4	Para 13 and 14(e)	The Appellants apply for the obligation to provide Bonds for these PS2 Contributions to be Discharged .	The obligation to provide Bonds for these Contributions in the total sum of £5,850,000 does not serve any useful purpose and should be discharged. The Appellants rely in this regard upon Sections 3 and 11 of the Explanatory Statement. This is unnecessary and wholly excessive and duplicative security. There is no proper justification for the 'triple lock' imposed under the s106 obligations. Moreover, the Appellants continue to maintain that it has ceased to be possible in the financial markets to obtain Bonds of the kind required by the s106 Agreement. In the premises the reality is that this obligation has been rendered redundant and it	KCC The Applicants have requested to discharge the requirement to provide a Bond in respect of PS2 contributions. KCC understands that this is on the following basis and has set out its response below: a) The Applicants note that "it has ceased to be possible in the financial markets to obtain Bonds for the kind required by the s106". KCC has sought specialist opinion regarding the availability of Bonds from its corporate banking provider (NatWest Bank) and is satisfied that these are available on the financial markets in the form set out in the s106. Indeed, the Applicants entered into a Bond of this kind with KCC on 29 March 2019. KCC therefore does not accept that it is no longer possible to obtain similar Bonds. b) The Applicants note that (in their view), the requirement for a Bond "is unnecessary and wholly excessive and duplicative security", on the basis that it creates a 'triple lock' under the S106 Agreement, with two further forms of security provided by the non-occupation restriction within Schedule 15 and provision of a Developer's Contingency Account in Schedule 30.	Please see the proof of evidence of Mr Ben Hunter.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
				should be discharged accordingly. The Appellants have already provided further evidence since first making these requests in support but nonetheless will in so far as necessary provide any further evidence in support if required. Otherwise, if contrary to the Appellants' own enquiries it can be shown by the Respondents that a compliant form of Bond can be found, the likelihood is that this would be at face value or such a cost as to be prohibitive. Any additional financial commitment of this scale would palpably undermine the viability of this Phase and with it the delivery of the Development. In any event therefore the provision of a Bond is self-defeating and cannot be regarded as serving any useful purpose in relation to the Development and should be discharged accordingly	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. KCC is also of the view that the Developer's Contingency Account (Schedule 30) which the Applicants suggest is further protection for KCC, does not provide the level of security required by KCC when entering third party build contracts. Non-occupation clauses do not guarantee that KCC will receive all the contributions for the infrastructure it has forward funded. This is because the s106 does not require the total infrastructure project cost to be deposited prior to KCC entering into the build contract. This is unacceptable and leave the public purse at significant risk. The non-occupation clauses do not pertain to the school payment triggers, thus 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. c) provision of a Bond undermines the viability and deliverability of Development. The Applicants have not provided the necessary evidence to determine that the provision of Bonds undermines the deliverability of the Development. Proof of viability, however, would not be reason to discharge the requirement for Bond provision and in fact undermines the Applicants ability to make the payments in themselves. Planning permission was granted on the basis that this Development mitigates it impact on education. For KCC to deliver the school, it requires the financial security to do so. KCC does not consider therefore, that the S106 Agreement provides a 'triple lock' which negates the need to provide a Bond. 1. The current obligation is to provide a Bond to the value of Primary School 2 Contributions 2, 3 and 4 plus indexation. The purpose of the Bond is to provide financial security for the County Council; ensuring that in the event it does not receive the necessary amounts from the Applicants, it still has the security in order to forward fund the delivery education infrastructure necessary to meet the needs of the Development	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
					2. The obligation continues to serve a useful purpose. The negative obligation of preventing further occupation until the Bond has been provided ensures that the appropriate infrastructure is secured without which more development would not be acceptable. 3. The obligation would not serve the purpose equally well if it had subject to the proposed modification. Infrastructure would be forward funded at considerable risk to the public purse or not funded at all. 4.Application refused.	
71. NC	Education Contributions; Primary School 3 Contributions 1 to 4 to CC	Paras 15, 17, 18, 19 and 21	The Appellants seek a modification to provide for consultation on the need for PS3 and before 3250 Dwellings have been occupied the CC must decide, acting reasonably, whether to proceed or not with PS2 for the purpose of ensuring that it is operational within 3 years. If the decision is not to proceed with PS3, the following paragraphs shall apply, but not otherwise. Paragraphs 15, 17 and 18 to be amended in like terms to paragraphs 8, 10 and 11 above. As to paragraphs 19 and 21, subject to PS3 proceeding, PS3 Contribution 1 to be paid at 4,500 and subsequent Contributions 2, 3 and 4 at 4,900, 5,300 and 5,700 respectively.	The Appellants refer to and rely upon the reasons stated above in answer to Request 69.	KCC 1. The current obligation provides £6m plus indexation towards the provision of a 2 Form Entry (420 places) primary school to meet the needs of the Development. The obligation is required to ensure that the costs of infrastructure necessary to serve the Development are met by the Development. 2. It continues to serve a useful purpose by providing the funding necessary to build the school to meet the needs of the Development. 3. The amendments as proposed would result in a level of forward funding by the County Council which is unacceptable. For example, should Primary School 3 be built and open at 4000 Occupations, according to the Applicants' proposal, KCC would be waiting until 4500 Occupations for the first payment of £150,000, potentially two years after opening. Payments 2, 3 and 4 would be approximately 4, 6 and 9 years after providing the school (assuming housing delivery as per 10.22 of the Appellant's QUOD report). Whilst there is a level of forward funding expected by KCC within the s106, with contributions falling due a maximum of six years post Bond provision, what is proposed here would result in contributions being made a minimum of 9 years after it is deemed that additional school places are required. This is wholly inappropriate and would require the public purse to forward fund excessively the infrastructure required by this Development to meet its needs. Forward funding by KCC would either require additional prudential borrowing or funding from its capital budget. The Prudential Code requires (among other things) that borrowing must be affordable and prudential. Increased borrowing costs resulting from the forward funding of infrastructure required to meet the needs of new	Please see the proof of evidence of Mr Ben Hunter.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
					developments negatively impacts the county council's revenue budget, decreasing its ability to deliver vital services to Kent residents and businesses. No obligations have been proposed by the applicant to cover the county council's increased borrowing costs. As per Modification/Discharge Line 69, the application is deemed to provide the school site and adoptable access too late to meet the needs of the development and without the assurances required that infrastructure will be provided. As the Statutory Commissioner of Education Places, KCC must have surety regarding the ability to build and occupy the school site as required to meet its statutory duty. The proposed amendments do not provide this. 4. Refuse application.	
72. NC	The provision of Bonds to the value of PS3 Contributions 2, 3 and 4	Para 20 and 21(e)	The Appellants apply for the obligation to provide Bonds for these PS3 Contributions to be Discharged .	The Appellants refer to and rely upon the reasons stated above in answer to Request 70.	KCC The Applicants have requested to discharge the requirement to provide a Bond in respect of PS3 contributions. KCC understands that this is on the following basis and has set out its response below: a) The Applicants note that "it has ceased to be possible in the financial markets to obtain Bonds for the kind required by the s106". KCC has sought specialist opinion regarding the availability of Bonds from its corporate banking provider (NatWest Bank) and is satisfied that these are available on the financial markets in the form set out in the s106. Indeed, the Applicants entered into a Bond of this kind with KCC on 29 March 2019. KCC therefore does not accept that it is no longer possible to obtain similar Bonds. b) The Applicants note that (in their view), the requirement for a Bond "is unnecessary and wholly excessive and duplicative security", on the basis that it creates a 'triple lock' under the S106 Agreement, with two further forms of security provided by the non-occupation restriction within Schedule 15 and provision of a Developer's Contingency Account in Schedule 30. 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.	Please see the proof of evidence of Mr Ben Hunter.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
					KCC is also of the view that the Developer's Contingency Account (Schedule 30) which the Applicants suggest is further protection for KCC, does not provide the level of security required by KCC when entering third party build contracts. Non-occupation clauses do not guarantee that KCC will receive all the contributions for the infrastructure it has forward funded. This is because the s106 does not require the total infrastructure project cost to be deposited prior to KCC entering into the build contract. This is unacceptable and leave the public purse at significant risk. The non-occupation clauses do not pertain to the school payment triggers, thus 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. c) provision of a Bond undermines the viability and deliverability of Development. The Applicants have not provided the necessary evidence to determine that the provision of Bonds undermines the deliverability of the Development. Proof of viability, however, would not be reason to discharge the requirement for Bond provision and in fact undermines the Applicants ability to make the payments in themselves. Planning permission was granted on the basis that this Development mitigates it impact on education. For KCC to deliver the school, it requires the financial security to do so. KCC does not consider therefore, that the S106 Agreement provides a 'triple lock' which negates the need to provide a Bond. 1 The current obligation is to provide a Bond to the value of Primary School 3 Contributions 2, 3 and 4 plus indexation. The purpose of the Bond is to provide financial security for the County Council; ensuring that in the event it does not receive the necessary amounts from the Applicants, it still has the security in order to forward fund the delivery education infrastructure necessary to meet the needs of the Development 2. The obligation continues to serve a useful purpose. The negative obligation of preventing further occupation until the Bond has been provided ensures that the appropriate infrastructure is secured without which more development would not be acceptable. 3. The obligation would not serve the purpose equally well if it had subject to the proposed modification. Infrastructure would be forward funded at considerable risk to the public purse or not funded at all.	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
					4. Application refused.	
73. NC	Education Contributions; Primary School 4 Contributions 1 to 4 to CC	Paras 22, 23,24, 25, 26 and 28	The Appellants apply for the PS4 obligations to be Discharged .	The requirement for a fourth Primary School was based upon the original proposal for the development of 7,000 dwellings, It is plain even at this stage that this provision is surplus to requirements and cannot sensibly be regarded as serving any useful purpose. That this is the case is only demonstrated and reinforced by the experience in relation to Primary School 1 and the lower than projected level of demand from within the Development for this first school. The PS4 obligations should be discharged accordingly. The discharge of this cost is captured in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5200.5 and forms part of this revised viability analysis justifying each discharge and modification sought.	KCC The Applicants have asserted that the requirement for PS4 is based on the original development proposal of 7000 dwellings. However, KCC's response to the outline planning application on 21 August 2014 is clearly established on the application scheme comprising up to 5750 dwellings. In addition, the argument that PS4 is not necessary, based on the output to date from the Development of primary aged pupils is in KCC's view, premature. The Development has currently occupied less than 400 of the 5750 dwellings permitted under the Outline Planning Permission. To date these occupied units have produced MORE primary pupils than originally expected, in direct contrast to the assertion made. The Applicants further seek to justify the discharge of this obligation by stating that 'single form of entry schools are generally less sustainable and more challenging and expensive to manage and maintain'. The assessment of the outline planning application deemed that 7 forms of entry (FE) was necessary to meet the needs of the Development and it was agreed that this would be delivered via 3No. 2FE Primary Schools and a fourth primary school with the S106 Agreement providing land for a 2FE, but contributions for a 1FE only. The fourth and final primary school has a site allocation of 2.05ha. This is sufficient for the delivery of 2FE. It is KCC's intention that the fourth school will be 2FE, with other developments contributing to the build cost of the additional FE. 1. The obligation provides a financial contribution of £4.5m plus indexation towards the provision of a 1FE (210 places) Primary School and 2.05Ha of land on which to build the school. The current obligation is required to provide the additional primary education places in direct response to the necessary needs of the Development. The obligation is to ensure that the costs of infrastructure necessary to serve the Development are met by the Development. 2. It continues to serve a useful purpose and mitigate against the impact of the Development upon educational services. The mitigation is sought against the Outline Planning Permission for 5750 dwellings. The Applicants' position that this is not needed when only less than 400 dwellings have been occupied is premature and unfounded. 3. The obligation would not be served equally well if it was to be subject to proposed modification as the Development would fail to mitigate the demand for primary education places which it will place upon stretched local services; leaving KCC to meet the need, which is unacceptable. The	Please see the proof of evidence of Mr Ben Hunter.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
					Applicants offer no alternative but only that this obligation should be removed completely which is unacceptable and planning permission would not have been granted on this basis. 4. Refuse application.	
74. NC	The provision of Bonds to the value of PS4 Contributions 2, 3 and 4	Para 27 and 28(d)	The Appellants apply for the obligation to provide Bonds for these PS4 Contributions to be Discharged .	The Appellants refer to and rely upon the reasons stated above in answer to Request 70.	KCC The Applicants have requested to discharge the requirement to provide a Bond in respect of PS4 contributions. KCC understands that this is on the following basis and has set out its response below: a) The Applicants note that "it has ceased to be possible in the financial markets to obtain Bonds for the kind required by the s106". KCC has sought specialist opinion regarding the availability of Bonds from its corporate banking provider (NatWest Bank) and is satisfied that these are available on the financial markets in the form set out in the s106. Indeed, the Applicants entered into a Bond of this kind with KCC on 29 March 2019. KCC therefore does not accept that it is no longer possible to obtain similar Bonds. b) The Applicants note that (in their view), the requirement for a Bond "is unnecessary and wholly excessive and duplicative security", on the basis that it creates a 'triple lock' under the S106 Agreement, with two further forms of security provided by the non- occupation restriction within Schedule 15 and provision of a Developer's Contingency Account in Schedule 30. 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. KCC is also of the view that the Developer's Contingency Account (Schedule 30) which the Applicants suggest is further protection for KCC, does not provide the level of security required by KCC when entering third party build contracts. Non-occupation clauses do not guarantee that KCC will receive all the contributions for the infrastructure it has forward funded. This is because the s106 does not require the total infrastructure project cost to be deposited prior to KCC entering into the build contract. This is unacceptable and leave the public purse at significant risk.	Please see the proof of evidence of Mr Ben Hunter.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
					c) provision of a Bond undermines the viability and deliverability of Development. The Applicants have not provided the necessary evidence to determine that the provision of Bonds undermines the deliverability of the Development. Proof of viability, however, would not be reason to discharge the requirement for Bond provision and in fact undermines the Applicants ability to make the payments in themselves. Planning permission was granted on the basis that this Development mitigates it impact on education. For KCC to deliver the school, it requires the financial security to do so. KCC does not consider therefore, that the S106 Agreement provides a 'triple lock' which negates the need to provide a Bond. 1.The current obligation is to provide a Bond to the value of Primary School 4 Contributions 2 and 3 plus indexation. The purpose of the Bond is to provide financial security for the County Council; ensuring that in the event it does not receive the necessary amounts from the Applicants, it still has the security in order to forward fund the delivery education infrastructure necessary to meet the needs of the Development 2. The obligation continues to serve a useful purpose. The negative obligation of preventing further occupation until the Bond has been provided ensures that the appropriate infrastructure is secured without which more development would not be acceptable. 3. The obligation would not serve the purpose equally well if it had subject to the proposed modification. Infrastructure would be forward funded at considerable risk to the public purse or not funded at all. 4. Application refused.	
75. W	Stage One Secondary School Site Transfer and Adoptable Access etc.	Paras 33 and 35	In this regard the Appellants rely upon the recently signed Deed of Variation dated 13 July 2022 subject only to the further discharge/modification sought below. In the event, however, that DfE or KCC funding is not forthcoming, the Appellants reserve their right to make a further application to discharge/modify the Secondary School obligations as appropriate and/or necessary.	As noted in column 4, the Appellants remain committed to the recently signed Deed of Variation subject to the further variations sought herein, but reserve their position should the DfE funding, upon which that agreement is predicated and relies, not be forthcoming.	KCC KCC notes that in respect of paragraph 33 of Schedule 15, the Secondary School Site has been transferred to the County Council. However, the transfer has not been completed in accordance with Schedule 15a 'KCC General Site Transfer Requirements' nor paragraph 35 of Schedule 15. Paragraph 35 of Schedule 15 requires the Applicants to provide an Adoptable Access to the Secondary School Site by 1 September 2022 or 1250 Occupations, whichever is soonest. The Deed of Variation (DoV) (signed 13 July 2022 and entered into only three months prior to the Applicants making this S106A application) provides for the Applicants (not including Hodson Developments (CG) Five Ltd) to meet	This request has been removed from the Appeal.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
					the obligations set out in paragraphs 33 and 35 (above). The DoV does not vary or delete these paragraphs but it provides an alternative mechanism for the Applicants to meet their obligations within the original S106 Agreement, with forward funding being provided by the County Council to the Applicants. Should the funding not be forthcoming, the substance of the obligation remains 1. The obligations set out in paragraphs 33 and 35 provide for a serviced, accessible Secondary School Site, which is required to mitigate the needs of the Development for additional Secondary Education places. 2. The obligations continue to serve a useful purpose – the need for a serviced, accessible Secondary School Site still remains. The Applicants provide no further explanation as to why the position has changed. 3. As set out above, should the Department for Education (DfE) Wave Funding or forward funding of S106 Agreement contributions by KCC not be forthcoming, the requirement to mitigate the need of the Development remains. Therefore, the proposal to discharge the obligations does not serve the purpose equally well. 4. Refuse application.	
76. W	Provision of Bonds for the Stage One and Two Secondary School Contributions	Schedule 15, Part 6, Para 42	In so far as necessary the Appellants apply for the obligation to deliver Bonds for the Stage One and Two Secondary School Contributions to be Discharged .	Given the terms of the DoV signed 13 July 2022 this is understood to have been agreed already and the s106 Agreement should be correctly modified accordingly. However, if and in so far as necessary, the Appellants refer to and rely upon the reasons stated in support of Request 70 above, including Sections 3 and 11 of the Explanatory Statement as referred to therein.	KCC ~~Provision of a 6 Form of Entry (FE) Secondary School is being delivered via the Department for Education's (DfE) Wave Funding Programme. Under this programme, KCC is required to pass s106 contributions obligated to the provision of Chilmington Green Secondary School (once received) to the DfE for the provision of this infrastructure.~~ ~~It is noted that in agreement with the DfE, the Deed of Variation (signed 13 July 2022) removes the requirement to provide a Bond for Stage One Secondary Education Contributions 1 to 4.~~ ~~The DoV does not vary or delete the requirement for a Bond to the value of the Stage Two Secondary Education Contributions 1-4 (Schedule 15, Part 6). These are separate contributions linked to a separate stage. The Bond in respect of the Stage Two Contributions is still therefore still very much required in order to reduce the risk to the County Council (and DfE) of contributions not being paid for infrastructure which has been forward funded through the public purse.~~ ~~We respond in a similar vain to this request as in 67, 70, 72 and 74~~	This request has been removed from the Appeal.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
					a) The Applicants note that "it has ceased to be possible in the financial markets to obtain Bonds for the kind required by the s106". KCC has sought specialist opinion regarding the availability of Bonds from its corporate banking provider (NatWest Bank) and is satisfied that these are available on the financial markets in the form set out in the s106. Indeed, the Applicants entered into a Bond of this kind with KCC on 29 March 2019. KCC therefore does not accept that it is no longer possible to obtain similar Bonds. Bond is to provide financial security for the County Council; ensuring that it will receive the amounts set out in the s106., thus enabling it to deliver education infrastructure necessary to meet the needs of the Development b) The Applicants note that (in their view), the requirement for a Bond "is unnecessary and wholly excessive and duplicative security", on the basis that it creates a 'triple lock' under the S106 Agreement, with two further forms of security provided by the non-occupation restriction within Schedule 15 and provision of a Developer's Contingency Account in Schedule 30. 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. KCC is also of the view that the Developer's Contingency Account (Schedule 30) which the Applicants suggest is further protection for KCC, does not provide the level of security required by KCC when entering third party build contracts. Non-occupation clauses do not guarantee that KCC will receive all the contributions for the infrastructure it has forward funded. This is because the s106 does not require the total infrastructure project cost to be deposited prior. to KCC entering into the build contract. This is unacceptable and leave the public purse at significant risk. The non-occupation clauses do not pertain to the school payment triggers, thus 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.	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
					~~e) provision of a Bond undermines the viability and deliverability of Development.~~ The Applicants have not provided the necessary evidence to determine that the provision of Bonds undermines the deliverability of the Development. Proof of viability, however, would not be reason to discharge the requirement for Bond provision and in fact undermines the Applicants ability to make the payments in themselves. Planning permission was granted on the basis that this Development mitigates its impact on education. For KCC to deliver the school, it requires the financial security to do so. KCC does not consider therefore, that the S106 Agreement provides a 'triple lock' which negates the need to provide a Bond. 1. The current obligation is to provide a Bond to the value of Secondary School Stage Two contributions 2, 3 and 4 plus indexation. The purpose of the Bond is to provide financial security for the County Council; ensuring that in the event it does not receive the necessary amounts from the Applicants, it still has the security in order to forward fund the delivery education infrastructure necessary to meet the needs of the Development 2. The obligation continues to serve a useful purpose. The negative obligation of preventing further occupation until the Bond has been provided ensures that the appropriate infrastructure is secured without which more development would not be acceptable. 3. The obligation would not serve the purpose equally well if it had subject to the proposed modification. Infrastructure would be forward funded at considerable risk to the public purse or not funded at all. 4. Application refused.	
77. W	Secondary School Contributions	Schedule 15, Part 5	The current s106 Agreement as varied by the Deed of Variation signed on 13 July 2022 provides for a Stage one contribution £13,550,000 index linked. However, for the reasons stated in column 5, the Appellants apply now to modify further the payment obligations under the DoV, to defer repayments to commence from 2000 homes as follows:- 37. The Paying Owners shall:-	The further modification of paragraph 37 is justified on the basis that the delivery of the school is being accelerated to benefit the wider community rather than simply mitigating the effects of this Development. Based on the total amount of secondary school places projected, and pro-rated to an average per home, a secondary school of 4 Forms of Entry (the typical	KCC The DoV (entered into by the Applicants and KCC) amends the obligations in Schedule 15, paragraphs 41.(a) to 41.(d) to reflect the following payment schedule for Stage One Secondary Payments (£13.55m):- The Paying Owners shall:- (a) Pay the Stage One Secondary Contribution 1 to the County Council on or before Occupation of 1000 Dwellings on the Site or on or before 1 March 2026 whichever is the earlier date. (b) Pay the Stage One Secondary Contribution 2 to the County Council within 12 months of the falling due	This request has been removed from the Appeal.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
			~~(a) — Pay the Stage One Secondary Contribution 1 to the County Council on or before the date when 2650 Dwellings on the Site have been Occupied.~~ ~~(b) — Pay the Stage One Secondary Contribution 2 to the County Council on or before the date when 3125 Dwellings on the Site have been Occupied.~~ ~~(c) — Pay the Stage One Secondary Contribution 3 to the County Council on or before the date when 3625 Dwellings on the Site have been Occupied.~~ ~~(d) — Pay the Stage One Secondary Contribution 4 to the County Council on or before the date when 4500 Dwellings on the Site have been Occupied.~~ -	minimum viable size) would not actually be needed by virtue of the Development itself until c. 2,000 homes. The reason to bring forward the delivery of school is to meet wider Ashford needs, as is fully acknowledged both in the Area Action Plan and in recent Cabinet reports regarding the school delivery and funding. It is submitted in the light of the Explanatory Statement from Quod that this acceleration has not been reflected in the DoV properly or indeed at all and that the agreement should be modified accordingly. In addition, the modification is sought for reasons of viability and deliverability, deferring the Contributions to assist further the Appellants' cash flow and in the light also of the delays in delivery (circa 12 months) and the deferred requirement for funds that have already occurred. The deferment of this cost is captured in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2 – Line Ref 5200.1 and forms part of this revised viability analysis justifying each discharge and modification sought. The schools are also significant community assets. As such, it is requested that the school assets, and their community use, be reflected in the triggers for additional community buildings and sports pitches with reference to the Community Hub and Chilmington Hamlet.	~~date of the Stage One Secondary Contribution 1 or on or before 1 March 2027 whichever is the earlier date.~~ ~~(c) (c) Pay the Stage One Contribution 3 to the County Council within 24 months of the falling due date of the Stage One Secondary Contribution 1 or on or before 1 March 2028 whichever is the earlier date.~~ ~~(d) (d) Pay the Stage One Contribution 4 to the County Council within 36 months of the falling due date of the Stage One Secondary Contribution 1 or on or before 1 March 2029 whichever is the earlier date.~~ ~~(e) (e) Pay the Stage One Contribution 5 to the County Council within 48 months of the falling due date of the Stage One Secondary Contribution 1 or on or before 1 March 2030 whichever is the earlier date.~~ ~~(f) (f) Pay the Stage One Contribution 6 to the County Council within 60 months of the falling due date of the Stage One Secondary Contribution 1 or on or before 1 March 2031 whichever is the earlier date.~~ The Deed of Variation (DoV) was signed on 13 July 2022, just over three months prior to the Applicant submitting this S106A application in October 2022. Contrary to paragraph 2.13 of the Quod Chilmington Green Application 2 Explanatory Statement (18 October 2022), the DoV was not at the request of KCC nor has KCC brought forward the delivery of the Secondary School. The Applicant requested deferral of Secondary School Contributions. KCC sought to assist the Development by agreeing (with the DfE) to deferment of Stage One Payments only. The contributions continue to have a relevant purpose – the school is currently under construction at Chilmington Green. It is open off site with 270 pupils on roll across Years 7 and 8. A provisional, on-site opening date of September 2025 has been agreed by the Department for Education. The Applicants propose to amend the payment triggers in order that the Development's requirement for a 4 Form-Entry (FE) Secondary School does not become necessary until c.2000 homes, and that the forward provision of the school is to meet the wider Ashford need. Based on the housing phasing in the QUOD report (10.22) 2000 occupations is expected c2030. At this point, with the current payment triggers, not all Stage 1 contributions are received. At 2000 occupations, the Development is expected to have c370 additional secondary aged pupils). There is no surplus capacity in Ashford secondary schools. New provision is required now to provide places for pupils moving into the development. Delivery of the school is directly linked to the development. KCC has taken action to	

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					expand (where feasible) existing secondary schools in the district of Ashford. Further expansions are now not possible. The Applicants propose to defer contributions on the basis of viability and deliverability of the Development but have not provided the necessary evidence to support this. Even if supporting viability information could be provided, it is not a satisfactory reason for KCC to accept deferring these crucial contribution payments. Planning permission was granted on the basis that this Development mitigates its impact on education and this includes providing contributions at the necessary junctures of the Development to provide the required infrastructure to meet the needs at that point in time of the Development. In response to the Applicants' request to defer Stage One Secondary Contributions:- 1. The obligation provides financial contributions of £13.55m for Stage One (initial 4 Forms of Entry) of the school's construction. The current obligation serves to provide contributions towards the provision of additional secondary school places necessary to meet the need of the Development. The contribution is required to ensure that the cost of secondary education infrastructure necessary to serve the Development is met by the Development. 2. The current obligation continues to serve a useful purpose in providing additional secondary school places at an appropriate time to meet the needs of the Development. The school is currently under construction at Chilmington Green. It is open off-site with 270 pupils on roll across Years 7 and 8. A provisional, on-site opening date of September 2025 has been agreed by the Department for Education. 3. The obligation would not serve the purpose equally well if subject to the proposed modification as it will result in the public purse forward funding the necessary infrastructure for a significantly extended period of time before being repaid by the Development (estimated final payment to be 2041 based on assumptions of housing delivery). It is not acceptable for the Development to benefit from significant occupations but to place KCC's finances at risk. 4. Refuse application.	
78. NC	Provision of an account of education and expenditure and repayment of any surplus	Paragraphs 48 and 49	The Appellants apply for the existing paragraph 48 to be modified so that the Owner's Agent or the person from whom any contribution was received may apply to the County Council one year following practical completion of a School for an account of the expenditure of the money, such account to be provided	There can be no sensible justification for the County Council to be able to withhold any surplus monies, that have not been applied for the purpose for which they were intended, for more than 1 year	KCC KCC's response is in two parts in respect of this request: Application to Amend Paragraph 48 The proposed amendment seeks to delete paragraph 48.1 which allows for KCC to hold monies for a period of ten years from the date of receipt of the final instalment in respect of a school before returning any surplus.	Please see the proof of evidence of Mr Ben Hunter.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
			within a reasonable time of any such request. Further, for paragraph 49 to be modified to provide for any surplus to be reimbursed forthwith to the persons from whom the contribution was received, and for the remainder of the paragraph (beginning 'or if the person ...') to be deleted.	following practical completion of a School. Those parts of paragraphs 48 and 49 providing otherwise cannot therefore be regarded as serving any useful purpose and should be modified and/or discharged accordingly. Further or alternatively, in relation to paragraph 49, that Part of the same relevant to any Issuer of a Bond serves no purpose where the Bond obligations are to be discharged in any event (as set out above).	The amendment assumes that schools will be built out in one Phase, which may not be the case, and that once built there will be no need for any further additions. The County Council may choose to build hybrid schools, for example – a 1FE primary school with core facilities for 2FE, which it then adds a further seven classrooms at a later date, to enlarge the school to 2FE. This may occur in response to budgetary pressures (where it is waiting on 100% receipt of development contributions) or to ensure that school place provision matches demand. In addition, paragraph 46 of this schedule enables any surplus Education Contributions to be expended for Educational Purposes. The cost to the county council of providing Primary School 1 is in excess of the s106 contributions paid (and to be paid). 1. The current obligation provides for "Prior to the later of ten years from the date of receipt of the final instalment in respect of a School and one year following practical completion of a School". 10 years serves to provide for sufficient time for the County Council to plan and deliver education places necessary to mitigate the needs of the Development. It should not be for the Applicants to determine how/when this is spent by KCC. 2. The current obligation continues to serve a useful purpose as there remains a need for flexibility for how payments should be spent by KCC for the necessary educational services. 3. The obligation would not serve the purpose equally well if subject to the proposed modification as it could result in monies being returned prior to total completion of the education project and ahead of potential peak demand for school places. 4. Refuse application. Application to amend Paragraph 49 The County Council accepts the amendment of paragraph 49 to read: "In the event that a surplus exists which has neither been expended for Educational Purposes nor contractually committed nor allocated for Educational Purposes, the County Council shall reimburse the balance to the persons from whom the contribution was received." Accept the application. The application to amend paragraph 49 is accepted on the basis that the application to amend paragraph 48 is rejected i.e. the 10 year period in paragraph 48.1 remains.	
Schedule 15A - KCC General Site Transfer Requirements						

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
79. NC	Provision of the site	Paragraph 4	The Appellants apply for this paragraph to be modified to state as follows: The site to be provided to the County Council in a reasonably level condition. If works are required to do ...	The current wording of the paragraph is ambiguous. It should be amended to achieve its original purpose, to provide a reasonably level site for the intended user.	KCC The financial contributions agreed are predicated on the site provided being to a level required by the County Council. If the obligation is amended, the cost burden of addressing any site issues moves from the Applicants to KCC. Such amendment would require a corresponding increase in contributions to meet any abnormal conditions. 1. The current obligation serves to provide a school site to the County Council's levels which can accommodate buildings and playing surfaces, without the requirement to deal with abnormal site conditions and the increased build costs that result. 2. The current obligation continues to serve a useful purpose of ensuring that an appropriate site is provided, that does not incur abnormal costs for the County Council and can facilitate the school buildings and external areas, including sports pitches 3. The obligation would not serve the purpose equally well if subject to the proposed modification, as it presents a potential cost burden to the County Council, which would not be met by any further contributions by the Applicants pursuant to the S106 Agreement as the Applicants would be fully relieved from their liability. 4. Refuse application.	Please see my PoE.
80. NC	Site setting out at handover	Paragraph 5	The Appellants apply for the s.106 to be modified so that the reference to 'and fenced' is omitted.	The obligation to fence is surplus to requirements, it is already covered under the build costs and accordingly this provision is duplicative and serves no useful purpose.	KCC The financial contributions agreed are predicated on the site provided being fenced to the required standard to safeguard pupils. The cost of fencing the site is not built into the agreed S106 contribution. If the obligation is amended, the cost burden of providing fencing moves from the Applicants to the County Council. There would need to be an increase in the contributions accordingly. 1. The current obligation serves to provide a school site which is fenced, providing appropriate safeguarding to pupils, as well as preventing ingress from trespass and fly tipping for example. 2. The current obligation continues to serve a useful purpose for the reasons noted above which remain. 3. The obligation would not serve the purpose equally well if subject to the proposed modification, as it would present a cost burden to the County Council, which should be met by the Applicants. 4. Refuse application.	Please see my PoE.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
81. NC	Construction access	Paragraph 7	The Appellants apply for paragraph 7 to be modified by inserting after the words 'Haul Roads to be constructed' the words 'to the site boundary', and after the words 'and maintained' the words 'prior to transfer'.	For the avoidance of doubt and in support of the existing provisions and their current purpose.	KCC KCC's response is in two parts in respect of this request: Site Boundary Wording The Applicants' proposed amendment to modify paragraph 7 by inserting after the words 'Haul Roads to be constructed' the words 'to the site boundary' is accepted. Accept amendment. Addition of the words 'prior to transfer' Inclusion of the words 'prior to transfer' is unacceptable, as this would mean that the Owner is only required to maintain the haul road prior to transfer of the school site and not throughout the construction period of the school. This would leave the County Council at risk of maintaining a haul route – the cost of which has not been factored into the S106 contributions. The County Council has experience of developers providing haul routes which degrade during use and becoming unfit for purpose. 1. The current obligation serves to provide a maintained haul route to the school for construction traffic, enabling the building of the school and provision of education places to meet the needs of the Development. 2. The current obligation continues to serve a useful purpose as set out above. 3. The obligation would not serve the purpose equally well if subject to the proposed modification, as it could result in additional costs to the County Council to maintain a haul route which subsequently degrades during use throughout the period of construction of the school. KCC has prior experience of this occurring. 4. Refuse application.	Please see my PoE.
82. NC	Provision of services and utilities on site	Paragraph 8	The Appellants apply for paragraph 8 to be modified by inserting after the words 'Prior to the site transfer' the words 'or, if not reasonably practicable, within a reasonable time thereof'... Further, the requirement that statutory undertakers' plant 'shall' be located outside of the site boundary should be modified to 'may'.	These modifications are requested to make due allowance for the practicalities of provision and ensure that the paragraph does in fact serve its purpose in practice. The modifications will secure, therefore, that the paragraph actually serves its intended purpose better or at least equally well.	KCC KCC's response is in two parts in respect of this request: I. Provision of services: The Applicants are responsible for provision of adopted services and utilities to the boundaries of the school sites. The County Council cannot, in the event of default by the Applicant, reasonably deliver that infrastructure, which would require it to come across the Applicants' or third party land, and connect in to the infrastructure controlled by the Applicants. The inclusion of the words, 'or, if not reasonably practicable, within a reasonable time thereof' creates uncertainty for the delivery and eventual opening of the schools required to meet the educational needs of the new residents. As is	Please see my PoE.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
					evidenced by the complex delivery of infrastructure to the secondary school site (currently in the early stages of site preparation), delaying delivery of service connections until after transfer is a wholly unsatisfactory circumstance. The County Council has experience of the Applicants not providing temporary services upon transfer of the Primary School 1 site and incurring costs of electricity generation and providing water bowsers to enable construction of the school. The statutory undertakers' plant will serve wider development than the school. This needs, therefore, to remain in land controlled by the Applicant. Application to amend paragraph 8 by inserting after the words 'Prior to the site transfer' the words 'or, if not reasonably practicable, within a reasonable time thereof ...' 1. The current obligation serves to provide a properly serviced school site, ultimately providing additional education places to meet the need of the Development. 2. The current obligation continues to serve a useful purpose to ensure that the site is fit for its intended purpose. 3. The obligation would not serve the purpose equally well if subject to the proposed modification for the reasons noted above. 4. Refuse application. ii. Statutory undertakers' plant: Application to amend paragraph 8 - by the requirement that statutory undertakers' plant 'shall' be located outside of the site boundary should be modified to 'may'. 1. The current obligation serves to provide a serviced school site, ultimately enabling the provision additional education places to meet the need of the Development. 2. The current obligation continues to serve a useful purpose. 3. The obligation would not serve the purpose equally well if subject to the proposed modification. 4. Refuse application.	
83. NC	Provision of temporary electricity and water supplies	Paragraph 10	The Appellants apply to discharge this obligation.	It is not possible for the Appellants to provide these services, only the school contractor who is occupying the site can make these arrangements.	<u>KCC</u> Application 82 (above) seeks to enable the Applicant to deliver services to the school sites after transfer and at an unspecified date. This modification seeks to remove the requirement to provide temporary water and electricity provision, while 69 and 71 above seek to require the County Council to deliver an operational school within 3 years of	Please see my PoE.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
				The obligation does not in practice therefore serve any useful purpose and should be discharged	deciding to proceed. None of the changes being sought by the Applicant support the delivery of this key education infrastructure necessary to meet the needs of the development. If agreed, cumulatively this would make it impossible to deliver schools. Previous experience of delivering Primary School 1, where the Applicants failed to provide any temporary services on site led to increased construction costs and delays to the opening of the school. The Applicants have asserted that it is not possible for them to provide temporary services and it is only the school contractor who can do so. KCC has significant experience of delivering school builds on sites provided within new developments. Developers have complied with the transfer requirements, providing temporary services to the school site boundary by the following means: Water –Bowzers/Tanks – replenished when required Temporary pumped supply from nearest water main Bottled water for staff Serviced welfare unit Electricity –Installation of generators Temporary supply from nearest sub-station 1. The current obligation serves to provide temporary services to the school site, to enable construction of the school and ultimately provision of additional education places to meet the needs of the Development. 2. The current obligation continues to serve a useful purpose. 3. The obligation would not serve the purpose equally well if subject to the proposed modification. This should not be for KCC to resolve and falls entirely within the Applicants' ability. It would otherwise result in potentially large costs for KCC or even not being able to deliver the necessary temporary services. 4. Refuse application.	
84. NC	The payment of the County Council's legal costs and the costs of any Project Management agreements	Paragraph 14	The Appellants apply to discharge this obligation.	There is simply no justification for imposing the burden of these very significant costs upon the Appellants in addition to the education contributions referred to above. It is not appropriate for Section 106 payments to be levied to meet legal and transaction costs in this way nor for the County Councils'	KCC 1. The provision of land is required to mitigate the needs of the Development i.e., to enable the provision of additional education spaces. The transfer of land to the County Council will incur costs (legal fees, project management and Land Registry etc.) which should be met by the Development in its mitigation of education provision. The current obligation serves to meet these costs.	Please see my PoE.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
				own project management costs to be recouped as provided. Further, given the likely level of these costs on the transfer of each site they will materially and adversely affect viability at each stage and by the same measure the deliverability of the Development. On any view, therefore, this provision cannot be regarded as serving any proper and useful purpose and should be discharged accordingly.	2. The current obligation serves a useful purpose. This is a completely standard obligation that KCC would impose on other developers of similar schemes. 3. The obligation would not be served equally well if subject to the proposed modification as it would result in an increased burden on the public purse which should be met by the Development in its mitigation of education places to serve the new population, including KCC's associated costs in respect of this. 4. Refuse application.	
Schedule 16 - Other KCC Services				In this regard the Appellants refer to and rely in particular upon section 8 of the Explanatory Statement accompanying this application in addition to the reasons stated below.		
85. NC	Library Services; 4 x £225k contributions	Para 1, 2, 9 ,10 and Sch 30B	The Appellants application in this respect is for these Library Services Contributions to be discharged. Schedule 30B column 2 to be amended accordingly, to remove these payment amounts.	A fully stocked and equipped library is included already in the Community Hub (under Schedule 12 as amended This obligation is accordingly surplus to requirements, duplicative and serves no useful purpose. Moreover, the costs here are significant (£900,000) and serving only to undermine the viability and ultimately the deliverability of the Development. In accordance with the Appellants' case hereunder, the discharge of these obligations as proposed is shown in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5300.10 (second 5300.1) and forms part of this updated viability analysis justifying	KCC KCC has a statutory duty under the Public Libraries and Museums Act 1964 to provide a comprehensive and efficient library service for everyone working, living, or studying in the area. KCC's library policies are contained in Framing Kent's Future, Our Council Strategy 2022-2026 and the Libraries, Registration and Archives Strategy 2019-22. The County Council's policy for seeking s106 library contributions is set out in its Developer Contributions Guide 2023 plus Technical Appendix 16. The Development is expected to create an additional 583 library users who will place an additional burden and cannot be accommodated within existing services/resources. The Applicants have proposed that the Library Services Contribution is surplus to requirements and duplicative, as 'a fully stocked and equipped library is included already in the Community Hub'. Currently, Schedule 12 - Community Hub Building includes provision for a library access point of 0.0012ha or 12 sqm. Library access points typically include: 2-3 No. shelves of book stock, 1No. PC, RFID technology to enable self-service visits (drop off and booking out of stock) and access to Wi-	Please see my PoE.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
				each discharge and modification sought.	Fi. To put this provision into perspective, KCC Tier 5 libraries, which are generally located in small villages and suburban communities operate from facilities of 80 sqm (minimum). The proposed library access point is set to be part of a network of library infrastructure serving the Development, including the existing libraries at Ashford Gateway, Stanhope and Bockhanger. The s106 defines the Library Services Contribution ".....to expand the library service capacity Serving the Development and in particular at the library access point in the Community Hub Building....". Expansion of existing library services will be included in this offer. Schedule 12 is currently required to provide a 12 sqm Library Access Point within the Community Hub Building. The Applicants' proposal to discharge the obligation to contribute £900,000 would leave the Development served by a library access space only. This would include fixtures and fittings, but no equipment, resources or expertise of the Statutory Library Service; effectively a physical space without library resources and therefore, not fit for purpose as it would not be delivering statutory library services. The Applicants' proposal to amend Schedule 12, sets out provision of a fully stocked and equipped library at 3250 Occupations. However, there are no details regarding this provision – size of space, fittings & fixtures, equipment and resources. Furthermore, the proposal lacks any information regarding the long-term costs associated with maintaining and expanding the library, such as acquiring new books, replacing aging equipment, and accommodating the increasing demand from a growing population. It cannot be deemed therefore, that the proposal negates the need for full contributions to be paid to the County Council to fulfil its statutory function as Library Authority. The Applicants have applied for this amendment on the basis that the obligation undermines the viability and deliverability of the Development. KCC has been unable to establish this as correct, as the Applicants have not provided the necessary evidence to do so. 1. The obligation is to "expand the library service capacity Serving the Development and in particular at the library access point in the Community Hub Building but excluding infrastructure". The current obligation serves to provide increased capacity in the library service (both within the Development and within library facilities serving the Development) to accommodate the new demand created by the Development. It is to ensure that the costs of infrastructure necessary to serve the Development are met by the Development.	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
					2. The current obligation continues to serve a useful purpose of providing additional on and off-site library services to meet the growing population as a result of the Development. 3. The obligation would not serve the purpose equally well if subject to the proposed modification, as it would result in the Development failing to mitigate the increased demand on library services. 4. Refuse application	
86. NC	Payment of Youth Services Contributions to KCC	Paras 3, 4, 9 ,10 and Sch 30A- C	The Appellants application in this respect is for these Youth Services Contributions to be discharged. Schedules 30A-C also to be modified accordingly to omit the current payments and triggers and replace them as above.	The application to discharge is made because these contributions no longer serve a useful purpose, inasmuch as there is already ample provision in this regard. These payments accordingly amount to substantial over provision, are surplus to requirements and should be discharged accordingly. The discharge of these obligations as proposed is shown in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5400.1 and forms part of this updated viability analysis justifying each discharge and modification sought.	KCC KCC has a statutory duty to provide Youth Services under section 507B of the Education Action 1996. Access to good quality Youth Services is essential to ensure equal opportunities and support for all young people across the county, preventing them from engaging in harmful behaviour and leading them towards a positive future. The County Council's policy for seeking s106 library contributions is set out in its Developer Contributions Guide 2023 plus Technical Appendix 15. The Development will give rise to approximately 1610 young people, of which, Youth Services would target 25%, creating approximately 403 additional Youth clients which cannot be accommodated within the existing service provision. The Applicants assert that there is already 'ample provision in this regards' but provide no evidence to support this. The Applicants have applied for this amendment on the basis that the obligation undermines the viability and deliverability of the Development. At this stage, KCC has been unable to establish this as correct, as the Applicants have not provided the necessary evidence. Discharge of Obligations: 1. The Youth Services obligation provides a financial contribution for "the provision by the County Council or its nominees of youth services Serving the Development but excluding the provision of infrastructure." The current obligation serves the purpose of providing additional capacity within the Youth Service to meet the needs of the growing population resulting from this development. This is necessary to ensure that the Development has the infrastructure required to make it acceptable in planning terms. Access to good quality Youth Services is essential to ensure equal opportunities and support for all young people across the county, preventing them from engaging in harmful behaviour and leading them towards a positive future. 2. The current obligation continues to serve a useful purpose, providing financial contributions to enable the	In is noted that there is provision for 200 sq. m. of floorspace within the Community Hub that can be made available for youth provision. This space will be available for use by KCC youth service staff and as such the request is double counting. In any event, within the KCC element of Council Tax, there must already be provision for use for Youth Services.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
					expansion of the Youth Service to meet the needs of the new population. 3. The obligation would not serve the purpose equally well if subject to the proposed discharge of obligations, as it would result in insufficient provision of Youth Services to meet the needs of the new population as the Development builds out. 4. Refuse application.	
87. NC	Payment of Community Learning Contributions to KCC	Para 5 , 6,9,10 and Sch 30A-C	The Appellants application in this respect is for these Community Learning Contributions to be discharged. Schedules 30A-C also to be modified accordingly to omit the current payments and triggers and replace them as above.	The application to discharge is made because these contributions no longer serve a useful purpose, inasmuch as there is already ample provision in this regard. These payments accordingly amount to substantial over provision, are surplus to requirements and should be discharged accordingly. The discharge of these obligations as proposed is shown in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5300.11 and forms part of this updated viability analysis justifying each discharge and modification sought.	KCC KCC provides community learning and skills (CLS) facilities and services in line with Framing Kent's Future – Our Council Strategy 2022/2026 (Priority 1 – Levelling UP Kent and Priority 2 – Infrastructure For Communities). The County Council's policy for seeking s106 library contributions is set out in its Developer Contributions Guide 2023 plus Technical Appendix 2. The growth in population resulting from this Development will create 285 additional adult learners, requiring further infrastructure to meet this demand. The Applicants are proposing to delete this obligation, ultimately contributing to an unsustainable development (along with the discharge of other Schedule 16 obligation) and place increased strain on existing resources which cannot be accommodated. The Applicants have applied for this amendment on the basis that the obligation undermines the viability and deliverability of the Development. KCC has been unable to establish this as correct, as the Applicants have not provided the necessary evidence. Discharge of Obligations: 1. The obligation is for the provision and subsidy of new adult learning classes Serving the Development. The obligations serve a useful purpose of providing additional capacity within the Community Learning and Skills Service to meet the needs of the growing population resulting from this development. 2. The current obligation continues to serve a useful purpose, providing financial contributions to enable expansion of the Community Learning service to meet the needs of the growing population. 3. The obligation would not serve the purpose equally well if subject to the proposed discharge of obligations, as it would result in no increase in Community Learning capacity to meet the needs of the new Development. 4. Refuse application.	Please see my PoE.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
88. NC	Payment of Family Social Care Contributions	Para 7, 8, 9,10 and Sched 30A-C	The Appellants application in this respect is for these Family Social Care Contributions to be discharged. Schedules 30A-C also to be modified accordingly to omit the current payments and triggers and replace them as above.	The application to discharge is made because these contributions no longer serve a useful purpose, in as much as there is already ample provision in this regard. These payments accordingly amount to substantial over provision, are surplus to requirements and should be discharged accordingly. The discharge of these obligations as proposed is shown in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5300.22 and forms part of this updated viability analysis justifying each discharge and modification sought.	KCC KCC is the Statutory Authority for Adult and Children's Social Services in Kent. The County Council's policy for seeking s106 library contributions is set out in its Developer Contributions Guide 2023 plus Technical Appendix 1 Adult Social Care and Technical Appendix 15 Integrated Children's Services. KCC is required to comply with statutory guidance issued by the UK Government entitled 'Working together to safeguard children' which requires KCC to safeguard and promote the welfare of children, to assess their needs and provide help through inter-agency working from pre-birth to 19 years (or up to 25 for young people with additional needs). The growth in population resulting from this Development will create more children, young people, and adults with social care needs, requiring additional infrastructure to provide this. KCC's assessment calculates that there would be an additional 531 adult clients and approximately 387 Children's Services clients and their families/carers. The Applicants are proposing to delete this contribution, ultimately contributing to an unsustainable development (along with the proposal to discharge other obligation proposals within Schedule 16). The Applicants assert that there is already 'ample provision in this regards' but provide no evidence to support this. The number of children, young people and adults requiring social care support is increasing year-on-year. The UK is an ageing society: 25% of the population people will be over 65 by 2050, up from 19% in 2019. Disability among working-age adults has also increased to 19%, up from 15% in 2010/11. This means more people with complex needs requiring support from the health and social care system. This includes young people with learning and physical disabilities who are moving from Children's to Adult Services, often with significant support requirements. A reduction in contributions would result in the Development failing to mitigate its needs. The Applicants have applied for this amendment on the basis that the obligation undermines the viability and deliverability of the Development. KCC has been unable to establish this as correct, as the Applicants have not provided the necessary evidence. Discharge of Obligations: 1. The obligation provides a financial contribution towards Family Social Care. 'Family Social Care' is not a defined term within the s106 agreement but relates to the social care services to be provided for children, young people and adults through the Family Social Care Contribution payable	Please see my PoE.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
					by the Applicants. The obligation serves a useful purpose in providing additional capacity within Social Care Services to meet the needs of the growing population resulting from this Development. 2. The current obligation continues to serve a useful purpose for the reasons noted above. Demand for these services is only increasing and it is completely reasonable for the Development to contribute towards such services given its own impact. 3. The obligation would not serve the purpose equally well if subject to the proposed discharge of obligations, as it would result in no increase in Family Social Care capacity to meet the needs of the new Development. 4. Refuse application.	
89. NC	Provision for repayment of surplus	Paragraph 10	Modification deleted from appeal			Request removed from the Appeal.
Schedule 17 – Ecology						
90. NC	Providing for compliance with any mitigation and enhancement strategy approved pursuant to the Planning Permission	Paragraph 1	The Appellants apply to Discharge this paragraph and the sub-paragraphs thereto in their entirety.	The provisions of this schedule are unnecessary because the matters to which it refers are fully covered in the CMO framework agreement .The paragraph and its sub-paragraphs do not therefore serve any useful purpose and should be discharged accordingly.	This obligation continues to serve a useful purpose. Its discharge would not serve a useful purpose. The transfer of the ecological enhancement areas to the CMO is an essential part of the approach to community stewardship being delivered at Chilmington Green and detailed in the CMO Operating Business Plan submitted by the Owners. The applicant has not explained how the retention of these assets in their ownership would impact the CMO Business Plan or how the Natural Green Space would be managed and maintained and by whom. The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG10 and CG21 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, ENV1 & IMP4. Reject – the obligation shall continue to have effect without modification	Please see my PoE.
Schedules 18 and 18A – Modic Improvement Works				NOTE: The Appellants primary application herein is under s106A to vary the terms of Schedules 18 and 18A of the		

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				s106 Agreement incorporating the terms of the s.278 Agreement, in accordance with the discharges/modifications proposed (in column (4)) and for the reasons stated (in this column (5)) below under this heading. The Appellants in so far as necessary hereby apply separately to Kent County Council in its capacity as highways authority to vary the terms conditions and obligations of the completed s.278 Agreement in accordance with the said discharges/ modifications and for the reasons stated. Further, in the relation to the latter application, the Appellants apply also herein under paragraph 2 of Schedule 18 and in so far as necessary for the prior written consent of the Council to vary the completed s.278 Agreement in accordance with the said modifications or otherwise as determined or agreed. In relation to these Schedules 18 and 18A the Appellants refer to and rely in particular upon section 10 of the Explanatory Statement accompanying this application in addition to the reasons stated below.		
91. NC	Provision of a Bond in the form required	Schedule 18 Para 1 and Schedule 18A	The Appellants apply for paragraph 1 of Schedule 18 and the obligation to provide a Bond to be discharged . Equally, and consequentially .that under Schedule 18A, Schedule 1 paragraph 7 should be discharged and that paragraph 4 thereof is modified to remove reference to the Bond by the omission of '..in these	The obligation to provide a Bond in respect of the A28 Improvement Works in the total sum of £28,988,800 no longer serves any useful purpose and should be discharged because it has ceased to be possible in the financial markets to obtain a	KCC The Applicants have requested to discharge the requirement to provide a Bond in respect of the A28 Improvement Works. KCC understands that this is on the following basis and has set out its response below: a) The Applicants consider that 'it has ceased to be possible in the financial markets to obtain Bonds for the kind required by the s'106'.	Please see my PoE including Appendix VI.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
			circumstances or in the event that the Council is able to increase its forward funding provide an amended Bond under clause 7 ... in Annex 2 to this Deed.' Further, that consequential modifications be made to the Council's obligations (under Schedule 18A), varying 5.1 to omit reference to the Bond and omitting clauses 5.4, 5.10, 5.11 and clauses 8 (Release of Bond) and 12.	Bond in the form or of the 'on-demand' kind required by the s106 Agreement. In the premises the reality is that this obligation has been rendered redundant and it should be discharged accordingly. Evidence has already been provided to the Council establishing that a Bond cannot be obtained. Nonetheless, the Applicant will provide such further information in this regard as may be required by the Council, confirming the unavailability of the Bond. Moreover, if contrary to the foregoing, it were somehow to be shown contrary to the Appellants' own enquiries and evidence (already provided) that a compliant (Annex 3) form of Bond is obtainable, the likelihood is that this would be at face value or such a cost as to be prohibitive. An additional financial commitment of this scale would palpably undermine the viability of Main Phase 1 and with it the delivery of the Development. The provision of a Bond is, therefore, self-defeating and cannot be regarded as serving any useful purpose in relation to the Development. The discharge of this cost is captured in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5100.2b and forms a substantial part of this revised viability analysis justifying each discharge and modification sought.	KCC has sought specialist opinion regarding the availability of Bonds from its corporate banking provider (NatWest Bank) and is satisfied that these are available on the financial markets in the form set out in the s106. Indeed, the Applicants entered into a Bond of this kind with KCC on 29 March 2019 and so KCC does not accept that it is no longer possible to obtain similar Bonds b) The Applicants note that (in their view), the provision of a Bond undermines the viability and deliverability of Development. The applicant has not provided the necessary evidence to determine that the provision of Bonds undermines the deliverability of the Development. The structure of the Agreement is to allow contributions for the essential infrastructure to be made as the development is being built out. It is therefore the duty of a prudent public authority to ensure that sufficient surety is available for works that it is essentially forward funding. Consequently, the provision for Bonds continue to serve a useful purpose which would not be met if those requirements were removed. The reason a Bond in respect of the highway contributions is required is because KCC will be providing the works in advance of S278 payments required from the Paying Owners. A draft section 278 Highways Act 1980 agreement is appended at Schedule 18A of the Agreement, with Annex 2 setting out the payments due. From this, the Paying Owners are benefitting from the forward funding provided by KCC. As a public authority, KCC has a duty to protect the public purse and act with fiscal responsibly. A Bond is required to secure the payment of public expenditure and remains a requirement before KCC can enter into a build contract. The Bond is required to ensure that in the event the Applicants do not make the necessary payments as specified in the S106 Agreement KCC is able to rely on the Bond to recover the necessary costs. Where infrastructure projects are required to be forward funded, it is necessary to have a Bond so that KCC is properly protected and does not have to suffer any losses in the event the Applicants do not properly comply with the obligations. 1.The obligation to fully fund (including the provision of adequate security through the Bond) the A28 Chart Road Dualling Scheme serves a useful purpose of providing increased capacity on the highway, with the resulting need arising from this development site. The requirement to provide a Bond is in place to protect the public purse, as KCC would be forward funding this work (including borrowing costs) in order to ensure that the project is complete within the timescales required.	

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					2. The obligation continues to serve a useful purpose. The covenant set out in Schedule 18, paragraph 1 prevents the occupation of more than 400 dwellings until a Bond is delivered to the County Council. This ensures that the appropriate infrastructure can be secured without which more Development would not be acceptable. The negative occupation trigger alone does not provide KCC with enough protection. 3.The obligation would not serve the purpose equally well if amended as set out, as it would create a severe financial risk to the County Council if it was to forward fund the project without any recourse from the Development, which is wholly unacceptable. Discharge of the obligation would result in failure to deliver the A28 Dualling Scheme and the Chilmington Green development would result in a severe highway impact on the existing A28 corridor. 4.The application to discharge the obligation to provide a Bond is refused.	
92. NC	A28 County Council's obligation to let a contract	Schedule 18 and Schedule 18A	Modification deleted from appeal			
93. NC	The Developer's Payment Covenants and Post-Contract 278 Contributions	Schedule 18A and Annex 2 of the s.278 Agreement therein and Sch 18, para 2	The Appellants apply for Schedule 18A including the Developer's Covenants under Schedule 1 to pay Pre-Contract Costs and Post-Contract Costs and any shortfalls to be discharged .	The application to discharge the payment obligations in respect of the A28 is advanced for reasons of viability and deliverability. Such. are the costs of these obligations that the burden of payment is undermining the viability of Main Phases 1 and 2 and in turn the deliverability of the development. Most immediately, without discharge the payments required will likely cause the loss of the funding available to the Appellants to carry out the Development at all. In the circumstances these payment obligations cannot sensibly be regarded as serving any useful purpose. The discharge of this cost is captured in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2- Line Ref 5100.2a	KCC Application to discharge obligation to pay pre and post contract fees At the time of the Outline Planning Application, the A28 was already experiencing congestion at peak times. Recent traffic count data of the A28 corridor undertaken by KCC confirms that this continues to be the case, with significant capacity issues along the A28 corridor in both the AM and PM peaks, causing significant queuing and delays for drivers. The development of 5750 dwellings will put considerably more traffic on a heavily congested network in the peak hour periods resulting in a severe traffic impact and this will be further evidenced by the County Council as part of the proof of evidence of the highway witness. The County Council undertook traffic survey data in April 2023 for the A28 corridor and compares queue data from April 2023 with those from 2013 that were submitted as part of the Chilmington Green planning application. The traffic survey data demonstrates that overall queuing at the three junctions along the A28 corridor has increased significantly. It is considered that traffic conditions on the study network in 2023 are more congested than was the case in 2013 and the subsequent years when the A28 Chart Road improvement scheme was conceived.	Please see my PoE.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
				and forms a substantial part of this revised viability analysis.	The Explanatory Statement under paragraph 10.25 quotes an older version of TEMPro, 7.2c. The current version of 8.1. The use of ATC data as quoted in paragraph 10.26 of the Explanatory Statement is not considered appropriate as it does not give any indication of queuing and delay along the A28 corridor. The Explanatory Statement is incorrect in paragraph 10.33 when it discusses phasing of the A28 dualling scheme. Phasing of the scheme is not considered acceptable to the County Council and is not in line with the agreed Section 106 Agreement for the site. Furthermore, the current proposal is for complete discharge of the A28 scheme and not delivering the scheme in phases. The proposal to discharge the obligation to pay for the works, would leave the public purse to meet the cost of increased capacity. This is wholly unacceptable and will result in unsustainable development with a severe impact upon the capacity of the A28 corridor. The Application would not have been granted on this basis. 1. The current obligation serves a useful purpose of mitigating the need for increased highways capacity due to increased trip movements resulting directly from the Development. 2. The obligation continues to serve a useful purpose as the works to the A28 are necessary to mitigate the highways capacity impact as a result of the Development. 3. The purpose would be not equally well served with the proposed discharge of the obligation, as it would result in unsustainable impact upon the public highway without any mitigation. It is not acceptable for KCC to have to use public spending to meet the demand for and financial cost of increased highways capacity as a result of the Development. 4. The application is refused.	
Schedule 19 – Off-Site Pedestrian and Cycle Links				In this regard the Appellants refer to and rely in particular upon section 10 of the Explanatory Statement accompanying this application in addition to the reasons stated below.		
94. NC	Payment of (4 x) instalments of £133,000 for the purposes of off-site pedestrian	Sch 19, paras 1 and 2, and Sch 30A-C	The Appellants apply to discharge these payments in their entirety.	Whilst it is acknowledged that payments for off-site pedestrian and cycle links can in principle serve a useful purpose given that the site needs to remain as a sustainable urban extension, the existing provisions are not	KCC Currently the S106 Agreement obligates payments at 1000, 1500, 1999 and 3999 Occupations. KCC rejects the application to discharge these payments, as it does not provide off-site pedestrian and cycle links in the early stages of Development. This is contrary to National (NPPF) and Regional Policy stated in KCC's Rights of Way Improvement	Please see the evidence of Mr Dix.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
	provision and cycle links			fit for purpose and do not serve any useful purpose. None of the specified works have any current utility in terms of benefitting the Development or at all. The discharge of this cost is captured in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5100.3 and forms a substantial part of this revised viability analysis justifying each discharge and modification sought.	Plan (ROWIP) and Ashford Local Plan Policies TRA5, TRA6, & ENV5. The resulting delay to the upgrading and/or construction of Rights of Ways, cycle routes and other related works to the public rights of way networks, will only increase the already significant impact on the residents of Chilmington Green. For example, due to the appellants lack of works to establish early pedestrian/cycling routes through Phase 1, KCC and Ashford Borough Council have had to fund upgrades to existing PROW routes (as well as new routes) to enable Chilmington families to access the new Chilmington Primary School. All of the above policies require commitment to Active Travel, connectivity of the development to existing developments such as Singleton and Great Chart, sustainable transport, and the protection of and enhancement of the local area rural character. Discharging the obligation would be contrary to these requirements. The current issue of pedestrian access to Chilmington Primary School (both within and external to the Development) is a prime example, whereby KCC was required to step-in and fund improvement works due to the lag in timescales of the development. The off-road provision was not met by the time the primary school opened in November 2021 and so KCC has had to fund upgrades to the existing PROW's and also the provision of a new footway along Mock Lane to link to the Primary School. The benefit of active travel connectivity across both the Development and to the wider area into Ashford town is of immense significance, creating sustainable travel routes, reducing reliance on cars and providing opportunities for health and wellbeing. 1. As an urban extension to Ashford town, the current obligation serves to provide off-site pedestrian and cycle links (as per National Planning Policy Framework requirements), enabling those living in the Development to access the wider community and vice versa. It is impractical to suggest that the Development would be secluded and not require access to the wider local area. 2. The current obligation continues to serve a useful purpose for the reasons noted above in order to ensure that the Development is a proper urban extension to Ashford town and provides sustainable transport means. 3. The obligation would not serve the purpose equally well if subject to the proposed modification. The Development would become secluded without such off-site links, or, KCC would be required to fund these using public funds which is simply not acceptable.	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
					4. The application is refused.	
Schedule 20 – Provision of Bus Services				In this regard the Appellants refer to and rely in particular upon section 10 of the Explanatory Statement accompanying this application in addition to the reasons stated below.		
95. A	Provision of Bus Services	Sch 20, and Sch 29D Items 1, 13, 25 and 29	The Appellants apply to Modify the bus services provision as follows to ~~provide for tenders to be invited and the commencement and level of service to be in accordance with the availability of an operator and confirmation from the operator as to service viability without reliance on any subsidies.~~ The Appellants apply also, therefore, for the Discharge of all bus subsidies. The Appellants apply for paragraphs 1 and 2 to be modified as follows: Paragraphs 1.1 and 1.2 to refer to 2,684 – 500 Dwellings [rather than 100 and 200] Paragraph 1.3, to refer to 2,684 Dwellings [rather than 100] and to be amended to reflect that the provision is dependent upon confirmation from the operator as to service viability Paragraphs 1.4 and 1.5, to refer to 2,784 Dwellings [rather than 200]. Paragraphs 1.6 and 1.7, to refer to 3,584 Occupations [rather than 1,222]. The trigger for provision of a temporary bus stop to serve the first 200 dwellings is currently occupation of 100 dwellings (Paragraphs 1.1 and 1.2) . The trigger for the commencement of the bus service is occupation of 100 dwellings (Paragraph 1.3). The Appellant was seeking to push back these triggers to 2,684 occupations subject to confirmation from the operator as to	~~The central reason for the modifications in service and discharge of subsidies that are proposed is that the bus services as currently provided for in the s106 Agreement cannot be provided within Main Phase 1 or subsequent Phases as they are wholly unviable and unsustainable.~~ As regards the services, given the actual building trajectory and rate of completions the stated level of service would be far in excess of what is required by the Development for many years and equally will be unviable for many years. In addition, the related infrastructure costs and the timing and amount of the subsidies required are wholly unsustainable and will only serve to undermine the viability of Main Phase 1, subsequent Phases and ultimately the delivery of the Development as a whole. ~~In the premises the purpose of the obligations to provide a bus service and bus infrastructure will only be served, or will at least be equally well served, if the proposed modifications to the sub-paragraphs of Paragraph 1 are made.~~ For the reasons set out above the Applicant seeks	a. This obligation continues to serve a useful purpose. Early provision of bus services is essential to resident's adoption of sustainable patterns of travel at an early stage in the development. The proposed modification would not serve a useful purpose equally well because, if the bus service is delayed, the community would have to rely on the private motor vehicle to meet their day-to-day transport needs, resulting in a car dominated and unsustainable community. It is essential to provide the bus service at a point before travel patterns and behaviour become established by residents. The timing of delivery of the bus service was agreed based on achieving the minimum 20% public transport mode share for trips to and from the site required to avoid an unacceptable impact on the local highway network (refer to AAP Policy CG12). The policy acknowledges that the bus service will not initially be commercially viable and as such will require subsidy from the developers until sufficient patronage is reached. Planning permission was granted on the basis that the bus service would not be viable and self- sustainable in the early years of the development, consequently a subsidy was required and secured. The applicant's proposal to now remove all subsidy and only deliver a bus service that is viable and self- sustainable is contrary to the premise upon which the planning permission was granted. The applicant has not provided any information to demonstrate what impact the modifications would have on trip rates to and from the development, the impact on modal share, and the impact on the local highway network. Nor has the applicant provided any details of tender responses from bus service providers. Delaying the provision of the initial bus service until 46% of the dwellings are occupied, the provision of a high frequency bus service (every 20 minutes) and bus priority measures until 62% of dwellings are occupied, and consequently delaying the provision of all further bus obligations, will result in a car dominated environment with	Please see the evidence of Mr Dix.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
			service viability . The Appellant is now proposing to modify paragraphs 1.1 and 1.2 of the agreement so that the obligation to provide the temporary bus stop and commence the bus service will be prior to occupation of 500 dwellings. Paragraph 1.3 would also be modified (exact wording now proposed below). This reflects the s106 agreed for the Possingham Farm development in which the bus service must commence prior to occupation of 100 dwellings on that site. The trigger for provision of the initial bus related infrastructure for Phase 1 is currently occupation of 200 dwellings (Paragraphs 1.4 and 1.5) . The Appellant was seeking to push back this trigger to 2,784 occupations. The trigger for provision of the subsequent bus priority measures and bus related infrastructure for Phase 1 is currently occupation of 1222 dwellings (Paragraphs 1.6 and 1.7) . The Appellant was seeking to push back these triggers to 3,584 occupations. The Appellant is now proposing to modify the agreement so that there is a single obligation to provide both the initial bus related infrastructure for Phase 1 and the subsequent bus priority measures and bus related infrastructure for Phase 1 prior to occupation of 1222 dwellings. To this end the Appellant is now seeking to modify paragraphs 1.4 and 1.5, to refer to 1,222 [rather than 200]. Paragraphs 1.6 and 1.7 would remain as drafted in the existing agreement. The agreement currently requires that the bus service initially runs every 30 minutes to connect with the first train from Ashford International to London St Pancras and the last	~~approval/consent now under the express terms of paragraphs 1.3, 1.4 and 1.8 to a substantially reduced level of service and to increased numbers of Dwellings as detailed in the proposed modifications.~~ ~~Moreover, such is the level of subsidies presently payable under Paragraph 2, that they are wholly unsustainable and likely to jeopardise the funding available to the Appellants to carry out the Development at all. The subsidies do not therefore realistically serve any useful purpose and should be discharged accordingly.~~ The additional changes to 1.10 correct what appears to be a drafting error and certainly an unjustified inconsistency with paragraph 1.6 and the provisions relating to Main Phase 1. ~~The modifications to and discharge of these obligations as proposed is shown in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5100.4 and forms part of this updated viability analysis justifying each modification sought.~~ ~~Nonetheless, and without prejudice to the foregoing, if an operator can be identified who is ready willing and able to commence services (without subsidy) at any earlier stage than requested, the Appellants would of course willingly work with them to achieve this.~~	much higher vehicle trip rates than originally estimated within the Transport Assessment. The Agreement already contains provision, in paras 1.3 and 1.8, to address the circumstances whereby no tender bids are successful and an alternative service may be required. Consequently, the modifications to para 1.3, in this respect, are not necessary. The Council also notes that as part of the recent planning Inquiry for appeal ref: APP/E2205/W/24/3345454 – Possingham Farm which is located adjacent to the Chilmington Green site and relies on the facilities and services to be provided at Chilmington Green, the applicant proposed that a bus service would be provided prior to 100 occupations at Possingham Farm. This appeal was allowed and the bus service secured via S106. The proposition made by the applicant at the Possingham Farm Inquiry that a bus service could be provided to serve 100 occupations at Possingham Farm do not align with their proposal to delay provision of the bus service at Chilmington Green due to it being unviable at that level of occupations. Without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim that "the related infrastructure costs and the timing and amount of the subsidies required are wholly unsustainable and will only serve to undermine the viability of Main Phase 1, subsequent Phases and ultimately the delivery of the Development as a whole". In addition, that the level of subsidies "are wholly unsustainable and likely to jeopardise the funding available to the Applicants to carry out the Development at all." b. Payment into the "Developers Capital Bank Account – Council" prior to the trigger point for delivery of the bus services continues to serve a useful purpose because it ensures that, if the Council is required to remedy a breach of this obligation, the Council can do so as quickly as possible following the breach occurring. The discharge of the obligation would result in an unacceptable delay to delivery if there were a breach of the obligation and would therefore not serve that useful purpose equally well. The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 & CG12 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 & TRA4. Reject – the obligation shall continue to have effect without modification.	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
			train back. The current agreement then requires that the frequency of the bus service is increased to every 20 minutes prior to the occupation of 1222 dwellings; to every 13-14 minutes prior to the occupation of 2772 dwellings; and to every 10 minutes prior to the occupation of 4,107 dwellings The Appellant has been seeking to remove the stipulation regarding the frequency of the initial service to enable the frequency to reflect what operators tender to provide. . The Appellant was also seeking to push back the triggers for the increase in frequency to 3,584, 4,784 and 5348 occupations respectively unless (in each case) the bus service operator states that it is not viable to operate the service at that frequency in which the frequency is to be increased to the extent that the operator confirms it is viable to do so. The Appellant is now proposing that the provisions which stipulate when the frequency of the bus service should increase are deleted and replaced with provisions which enable changes to the frequency of the service to be informed by monitoring of the use of the service , mirroring the approach which was agreed in section 106 agreement for the Possingham Farm development recently. To this end the Appellant is now proposing that : The following definitions are added Bus Service means a bus service operating between the Site and the town centre/railway station at a frequency of every 30 minutes during Peak Hours and every 60 minutes outside Peak Hours and starting at 0600 and finishing at 2000 on Monday to Sunday Bus Service Monitoring means monitoring of the Bus Service by		Proposed modification by agreement: the inclusion of "... and any property so specified has been transferred at nil consideration and nil cost to the specified body." is agreeable in principle subject to ensuring satisfactory terms of transfer and payment of all costs arising, however, the Council considers that this is more appropriately included at the end of paras 1.9 and 1.15, plus para 1.12 and not paras 1.10 and 1.18 as stated by the applicant.	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
			carrying out the following monitoring of use of the Bus Service by residents and visitors of the Development which shall as a minimum include the following: a) carrying out surveys of residents and visitors; and b) monitoring of the usage of the Bus Service by residents and visitors of the Development Bus Service Monitoring Period means a period of 25 years starting from the first operation of the Bus Service Bus Service Monitoring Report means a report setting out the data and information gathered during the Bus Service Monitoring undertaken during the Bus Service Monitoring Review Period which shall include:- a) data of the usage of the Bus Service by residents and visitors of the Development b) any feedback received from residents of the Development in respect of the Bus Service c) where the Bus Service is being significantly over or under utilised a proposed revision to the Bus Service to either increase or reduce its service as appropriate for approval by the County Council together with a timetable for implementing the revised Bus Service Bus Service Monitoring Review Period means initially periods of 6 months commencing on the day of the first operation of the Bus Service for a period of two years and thereafter annually on the anniversary of the first operation of the Bus Service Peak Hours means between 0700-1000 and 1600-1900			

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			Paragraph 1.3 is amended to read as follows: Not to Occupy more than 500 Dwellings until the Bus Service has started operating. In the event the Owners have used a tender approved by the Council (which may include a requirement to tender for different service options), but no bids are successful, the Council will consent to the Owners tendering for an alternative service instead. In that case, the level of service described above shall be construed accordingly shall be in accordance with the successful bid (if any). Alternatively or in addition, the Council may consent in writing to the Owners Occupying a greater number of Dwellings than specified above (consent not to be unreasonably withheld). Paragraphs 1.8 , 1.11, 1.14 and 2 are deleted and replaced with the following : (i) In order to monitor the effectiveness of the Bus Service the Owners shall during the Bus Service Monitoring Period carry out the Bus Service Monitoring. (ii) During the Bus Service Monitoring Period the Owners shall prepare and submit to the County Council for approval a Bus Service Monitoring Report by not later than 28 days after the end of each Bus Service Monitoring Review Period. (iii) Prior to the submission of a report referred to in paragraph (ii) the Owners shall agree the structure of that report with the County Council. (iv) If any Bus Service Monitoring Report includes a proposal for a revised Bus Service for approval by the County Council if approved the Owners shall implement the revised Bus Service as approved so that it is in place and operational in accordance with the timetable set			

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			out in the approved Bus Service Monitoring Report. The requests for modification of paragraphs 1.9, 1.12, 1.13, 1.15 and 1.16) are withdrawn as is the request to modify the trigger in paragraph 1.10) The request for deletion of the maintenance obligation (paragraph 1.18) is withdrawn ~~Paragraph 1.8 to be modified to read 'Not to Occupy more than 3,584 Dwellings until the bus service has been reviewed by the Owners with the operator with a view to increasing the frequency of service to at least every 20 minutes". This will apply only in so far as the operator confirms it is viable to do so.~~ ~~Paragraphs 1.9 and 1.10, to refer to 4,784 Occupations [rather than 2,722].~~ Paragraph 1.10 also to include, as in the case of Main Phase 1, the following provision ' ... and any property so specified has been transferred at nil consideration and nil cost to the specified body.' ~~Paragraph 1.11 to be modified to read 'Not to Occupy more than 4,784 Dwellings until the bus service has been reviewed by the Owners with the Operator with a view to increasing the frequency of service to at least every 13-14 minutes." This will apply only in so far as the operator confirms it is viable to do so.~~ ~~Paragraphs 1.12 and 1.13, to refer to 5,348 Occupations [rather than 4,107].~~			

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
			Paragraph 1.14 to be modified to read 'Not to Occupy more than 5,348 Dwellings until the bus service has been reviewed by the Owners with the operator with a view to increasing the frequency of service to at least every 10 minutes. This will apply only in so far as the operator confirms it is viable to do so. Paragraphs 1.15 and 1.16, to refer to 5,500 Occupations [rather than 5,000]. Paragraph 1.18 to be omitted in accordance with the modification to paragraph 1.10 above providing for the transfer of any property to the specified body. Paragraph 2 to be modified so that the Owner is not required to subsidise the bus service and likewise Items 1, 13, 25 and 29 of Schedule 29D to be discharged.			
96. NC	Provision of bus vouchers to each owner	Sched 20 para 1.17	Further, the Appellants apply to Discharge the obligation under paragraph 1.17 to provide bus vouchers.	The application to discharge the provision of £450 worth of bus vouchers to each owner, at a total cost of 2,587,500, is advanced for reasons of viability and deliverability. Such is the level of cost of this obligation that the burden of payment is undermining the viability and in turn the deliverability of the Development. Most immediately, unless discharged the cumulative cost of the current 106 Agreement obligations in Main Phases 1 and 2, will likely cause the loss of the funding available to the Appellants to carry out the Development at all. In the circumstances these payment obligations cannot sensibly be regarded as serving any useful purpose. The discharge of these obligations as proposed. is shown in the Viability Report	This obligation continues to serve a useful purpose. Its discharge would not serve that useful purpose equally well. Incentives to encourage patronage of the bus service are essential to resident's adoption of sustainable patterns of travel when they move into the development to meet the minimum 20% public transport mode share for trips to and from the development required to avoid an unacceptable impact on the local highway network (refer to AAP Policy CG12). Planning permission was subsequently granted on that basis The applicant's proposal to discharge this obligation and only deliver a bus service that is viable and self-sustainable, without the provision of incentives in the form of bus vouchers, is contrary to the premise upon which the planning permission was granted for the reasons set out in the Council's response to Request 95. Without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim that this obligation is "undermining the viability and in turn the deliverability of the Development". The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 & CG12 and the National Planning Policy Framework 2023.	Please see the evidence of Mr Dix.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
				at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref S 100.6 and forms part of this updated viability analysis justifying each discharge and modification sought	This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 & TRA4. Reject – the obligation shall continue to have effect. Proposed modification by agreement: the Council acknowledges that providing subsidised travel in the form of bus vouchers to residents in the latter phases of the development may not serve a useful purpose because the proposed bus service would be established and operating at a frequency that is likely to be attractive to residents without subsidy. The Council is therefore willing to consider a modification to stop the provision of bus vouchers when the development reaches a specified number of occupations to be agreed.	
Schedule 21 – Off-site Traffic Calming				<u>In this regard the Appellants refer to and rely in particular upon section 10 of the Explanatory Statement accompanying this application in addition to the reasons stated below.</u>		
97. M	Traffic monitoring	Para 1.1	The Appellants apply to modify the monitoring obligations as follows: 1.1 Not to Occupy on Site more than the following numbers of Dwellings ... 1.1.2 2,399 1.1.3 5,649 [Omit 1.1.4-1.1.6] Unless (i) monitoring ... County Council.	These modifications are proposed to simplify the obligations and to gear them more immediately to the payment obligations. The obligations will on this basis serve their intended purpose better, or at least equally well, if modified as proposed.	KCC say the modifications are substantial. Further, they say that the new arguments that there neither traffic monitoring nor traffic calming payments serve a useful purpose would need to be consulted upon. There is also not enough time to carry out further consultation without impairing the inquiry timetable. It follows that they should not be accepted on both substantive and procedural grounds: see R (Holborn Studios Ltd) v Hackney LBC [2017] EWHC 2823 (Admin). If the Appellants wish to seek discharge of these obligations the correct route for them to do so is to apply afresh to KCC.	Please see the evidence of Mr Dix.
98. M	Traffic Calming payments to CC The current s106 Agreement requires payment of £408,498 (index linked) across two payments. The current triggers are	Paras 1.2, 1.3, 2.1 and 2.2 and Sch 30A	The Appellants apply for the following modifications to be made: Paragraph 1.2 is modified to refer to 'the 2,499th Dwelling on the Site [rather than the 999th] Paragraph 1.3 is modified to refer to 'the 5,749th Dwelling on the Site [rather than the 1999th]	These modifications to further defer the payment obligations in this regard recognise the longer lasting impacts of Covid lockdowns on traffic flows which are only just returning to pre-pandemic levels and the lasting impacts on the working patterns of those who do not need to	KCC say the modifications are substantial. Further, they say that the new arguments that there neither traffic monitoring nor traffic calming payments serve a useful purpose would need to be consulted upon. There is also not enough time to carry out further consultation without impairing the inquiry timetable. It follows that they should not be accepted on both substantive and procedural grounds: see R (Holborn Studios Ltd) v Hackney LBC [2017] EWHC 2823 (Admin). If the Appellants wish to seek discharge of these obligations the correct route for them to do so is to apply afresh to KCC.	Please see the evidence of Mr Dix.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
	prior to the occupation of the 1,000 th unit and the 2,000 th unit as set out in paragraphs 1 and		Paragraph 2.1 is modified to refer to 'the 2,500th Dwelling on the Site [rather than the 1000th] Paragraph 2.2 is modified to refer to 'the 5,750th Dwelling on the site [rather than the 2,000th] Schedule 30A is similarly modified to reflect the above, so that the relevant payment triggers become 2,499 and 5,749 [rather than 925 and 1,925]. Payment in each case to be subject to the deduction of £40,850 in respect of each road (of the 10 locations) where the traffic on that road is not shown to be 10% above predicted levels (i.e. base levels plus traffic growth to the year in question). Subject always to payments also being reduced to reflect reasonable actual costs (where lower than estimated), any other funding and any contributions that have or should have been obtained from other developments whether existing, proposed or future, benefiting from the same off-site traffic calming.	travel to work every day each week. The deferment of the payments also assists the viability of the scheme, in turn its deliverability and thus the utility of these obligations at all.. Equally, KCC's agreement in this regard to defer the obligations to 1500 and 2500 Dwellings is acknowledged and will be relied upon in support of these further adjustments. In addition, however, the Appellants request that Provision be made for the contributions only to become payable where the measures for which they are intended are actually required. Given that there are 10 locations and the total contribution is £408,498, each contribution of £40,850 should only become a able where traffic on that road is more than 10% above predicted levels (base levels plus traffic growth to the year in question). This is to ensure that contributions are not wasted but actually serve the purpose for which they are intended. The deferment of these payment is captured in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2), Line Refs 5100.7 & 8 and forms a part of this revised viability analysis justifying each discharge and modification sought. In the premises, the relevant obligations will serve their purpose equally well if modified as proposed.		
Schedule 22 - RIF				In this regard the Appellants refer to and rely in particular		

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
				upon section 10 of the Explanatory Statement accompanying this application in addition to the reasons stated below.		
99. NC		Sched 22	The Appellants' application is to Discharge the RIF payment obligations under this Schedule.	The application to discharge the RIF payments is advanced for reasons of viability and deliverability. Such is the level of cost of this obligation that the burden of payment is undermining the viability and in turn the deliverability of the Development. In these circumstances these payment obligations cannot sensibly be regarded as serving any useful purpose and ought to be discharged. The discharge of these obligations as proposed is shown in the Viability Report at Appendix 3, Infrastructure (Scenario 2) Line Ref 5100.1 and forms part of this updated viability analysis justifying each discharge and modification sought.	This obligation continues to serve a useful purpose. Its discharge would not serve a useful purpose. Contributions to the RIF (Regional Infrastructure Fund) are required, in accordance with AAP Policy CG11, to provide funding to a level to be agreed towards the repayment of the forward funding arrangements that delivered the improvements to the A28 Drovers roundabout and M20 Junction 9 that were required to make the development acceptable. This forward funding is still required to be repaid and therefore this obligation continues to serve a useful purpose to enable the forward funding to be repaid. Without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim that "Such is the level of cost of this obligation that the burden of payment is undermining the viability and in turn the deliverability of the Development" The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policy CG11 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policy TRA1. Reject – the obligation shall continue to have effect.	
Schedule 23 – Viability			Without prejudice to the validity of Application No.1 and the continuing requirement for that application to be determined by the Respondents, requests 1, 2 and 3 therein are repeated here as requests 100, 101 and 102 of this application.	Application 1 is accordingly reproduced at Appendix A2 hereto and the reasons stated therein duly relied upon as stated below.		
100 – 102 NC		See column 3 of the Appendix to Annex A h2 d2 2	See column 4 of Appendix A2 herewith. <i>Note – some new drafting has been added in order to put those changes into effect (essentially to provide a mechanism which will enable ABC to specify the make up of the fixed 10% AH in each of viability phases 2, 3 and 4 as this is currently achieved</i>	See columns 5 and 6 of Appendix A2 herewith.	100. This obligation continues to serve a useful purpose. The review of viability to enable the delivery of necessary infrastructure (affordable housing), should it prove viable through the life of the development, is essential to ensure the planning obligations required by the development are delivered in full as far as possible. Planning permission was granted without the full, plan led, levels of developer contributions to fully mitigate the impact of the development and on the basis that this would be reviewed at an appropriate stage in the development. The discharge of this obligation would not serve that useful purpose	Please see my PoE and the Hodson Statement of Facts in Appendix I.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
			<i>through the viability review mechanism process .</i>		equally well because it is too early in the delivery of the development to determine that there is insufficient viability within the scheme to deliver the policy complaint level of affordable housing. The Agreement established that the earliest point that it would be appropriate to establish this would be at 500 occupations. The applicant has not explained why, in their view, they think there should not be a Viability Review Submission for Viability Review Phase 2. The fact that the applicant has chosen to agree to sell land parcels based on a maximum provision of 10% affordable housing, with both the applicant and the incoming developers in full knowledge that a viability review was required to determine the level of affordable housing to be provided following 500 occupations, is no justification for this obligation to be discharged. In addition, without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim that "the viability cannot support any additional Affordable Housing". The Council does not agree with the applicant's claim that "ABC have already accepted the principle that the maximum sustainable Affordable Housing Provision in Viability Review Phase Two can be fixed at 10%" with reference to planning permission granted to Jarvis at The Hamlet. The grant of planning permission at The Hamlet is not relevant to the principle of whether there should be a Viability Review Submission for Viability Review Phase 2. The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 & CG18 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, HOU1 & IMP2. Reject – the obligation shall continue to have effect. Note: In accordance with the Main Phase 1 Masterplan, Viability Review Phase 2 should also include land parcel CH2, and the 6 dwellings approved on Land Parcel F under ref: 18/00911/AS. 101 This obligation continues to serve a useful purpose. The review of viability to enable the delivery of necessary infrastructure (affordable housing), should it prove viable through the life of the development, is essential to ensure the planning obligations required by the development are delivered in full as far as possible. Planning permission was granted without the full, plan led, levels of developer	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
					contributions to fully mitigate the impact of the development and on the basis that this would be reviewed at an appropriate stage in the development. The discharge of this obligation would not serve that useful purpose equally well because it is too early in the delivery of the development to determine that there is insufficient viability within the scheme to deliver the policy complaint level of affordable housing. The Agreement established that the earliest point that it would be appropriate to establish this would be at 1200 occupations. The applicant has not explained why, in their view, they think there should not be a Viability Review Submission for Viability Review Phase 3. The fact that the applicant has chosen to agree to sell land parcels based on a maximum provision of 10% affordable housing, with both the applicant and the incoming developers in full knowledge that a viability review was required to determine the level of affordable housing to be provided following 1200 occupations, is no justification for the Council to consider a premature viability submission. In addition, without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim "that it can clearly be shown at this stage that there is no realistic prospect of ABC securing any Additional Affordable Housing Provision for this Review Period (over and above the 10% minimum)". The Council do not agree with the applicant's claim that "ABC have already accepted the principle that the maximum sustainable Affordable Housing Provision in Viability Review Phase Two can be fixed at 10%" with reference to planning permission granted to Jarvis at The Hamlet. The grant of planning permission at The Hamlet is not relevant to the principle of whether there should be a Viability Review Submission for Viability Review Phase 2. The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 & CG18 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, HOU1 & IMP2. Reject – the obligation shall continue to have effect. 102 This obligation continues to serve a useful purpose. The review of viability to enable the delivery of necessary infrastructure (affordable housing), should it prove viable through the life of the development, is essential to ensure the planning obligations required by the development are delivered in full as far as possible. Planning permission was	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
					granted without the full, plan led, levels of developer contributions to fully mitigate the impact of the development and on the basis that this would be reviewed at an appropriate stage in the development. The discharge of this obligation would not serve that useful purpose equally well because it is too early in the delivery of the development to determine that there is insufficient viability within the scheme to deliver the policy complaint level of affordable housing. The Agreement established that the earliest point that it would be appropriate to establish this would be at 1800 occupations. The applicant has not explained why, in their view, they think there should not be a Viability Review Submission for Viability Review Phase 4. The fact that the applicant has chosen to agree to sell land parcels based on a maximum provision of 10% affordable housing, with both the applicant and the incoming developers in full knowledge that a viability review was required to determine the level of affordable housing to be provided following 1800 occupations, is no justification for the Council to consider a premature viability submission. In addition, without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim "that it can clearly be shown at this stage that there is no realistic prospect of ABC securing any Additional Affordable Housing Provision for this Review Period (over and above the 10% minimum)". The Council do not agree with the applicant's claim that "ABC have already accepted the principle that the maximum sustainable Affordable Housing Provision in Viability Review Phase Two can be fixed at 10%" with reference to planning permission granted to Jarvis at The Hamlet. The grant of planning permission at The Hamlet is not relevant to the principle of whether there should be a Viability Review Submission for Viability Review Phase 2. The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 & CG18 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, HOU1 & IMP2. Reject – the obligation shall continue to have effect.	
103. NC	Schedule 23	Paras 2.1.4 to 2.1.9	The Appellants apply to Modify the Agreement by changing the definition of Premature Viability Review Submission for RP5 to RP10 (see below) and amending Para 2.1 to allow Viability Review Phase	The existing provisions for VRS's no longer serve a useful purpose. On the contrary they are artificially restricting bringing forward different areas of the Development,	This obligation continues to serve a useful purpose. The review of viability to enable the delivery of necessary infrastructure (affordable housing), should it prove viable through the life of the development, is essential to ensure the planning obligations required by the development are delivered in full as far as possible. Planning permission was	Please see my PoE.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
			Submissions to be made when the cumulative number of dwellings within Reserved Matters Applications (RMAs) to date reach the dwelling numbers specified therein. Thus, each of 2.1.4 to 2.1.9 should be amended as follows, '2.1 The Owners covenant with the Council as follows ... : 2.1.4 no later than 40 days following the cumulative number of dwellings within RMAs first reaching 2475 dwellings to submit via the Owner's Agent to the Council for the Councils' approval a Viability Review Submission for Viability Review Phase Five and pay a further Viability Review Fee. 2.1.5 no later than 40 days following the cumulative number of dwellings within RMAs first reaching 2975 dwellings to submit via the Owner's Agent to the Council for the Councils' approval a Viability Review Submission for Viability Review Phase Six and pay a further Viability Review Fee ... etc at dwelling intervals equal to those defining the relevant review phase.	inhibiting the Appellants from entering partnerships/agreements to increase delivery, working against ensuring value growth and undermining the overall deliverability of the Scheme. The proposed modifications will yield the benefits described at paragraphs 6.3-6.7 of the Explanatory Statement and accordingly better serve the intended purpose of the Viability Review mechanism within the Agreement. The modifications tying Viability Review Submissions to RMA's rather than Dwelling Occupations and allowing a 12 month window (plus 40 days) for submissions to be made. In support of these modifications the Appellants refer to and rely in particular upon Section 3 (paragraphs 3.4 to 3.10) and Section 6 of the Explanatory Statement.	granted without the full, plan led, levels of developer contributions to fully mitigate the impact of the development and on the basis that this would be reviewed at an appropriate stage in the development. The modification proposed would not serve that useful purpose equally well because it would result in viability review submissions at too early a stage in the delivery of the relevant phase of the development to determine that there is insufficient viability within the scheme to deliver the required affordable housing. 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. The applicants state that this modification will yield benefits, however, there is unlikely to be any benefit to the delivery of affordable housing if a review was undertaken within too early a timescale within the life of the development. The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 & CG18 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, HOU1 & IMP2. Reject – the obligation shall continue to have effect without modification.	
104. NC		Definition of PVRS d) to i) and Para 3.19	And the definition of Premature Viability Review Submission should be Modified to: 'Means a Viability Review Submission submitted greater than 12 months in advance of each of the progress stages specified at Schedule 23 paragraph 2.1.1 to 2.1.9. And for the avoidance of doubt any Viability Review Submission which is not followed by the relevant RMA within 12 months shall be re- submitted such that it is no greater than 12 months in advance of the relevant RMA'	For the reasons stated above in relation to Request 103.	a. The definition continues to serve a useful purpose. The review of viability to enable the delivery of necessary infrastructure (affordable housing), should it prove viable through the life of the development, is essential to ensure the planning obligations required by the development are delivered in full as far as possible. Planning permission was granted without the full, plan led, levels of developer contributions to fully mitigate the impact of the development and on the basis that this would be reviewed at an appropriate stage in the development. The modification proposed would not serve that useful purpose equally well because it would result in viability review submissions at too early a stage in the delivery of the relevant phase of the development to determine that there is insufficient viability within the scheme to deliver the	See 103.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
			And schedule 23 paragraph 3.19 should be amended to delete 'that it receives and in the event...' onwards.		required affordable housing. 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. The applicants state that this modification will yield benefits, however, there is unlikely to be any benefit to the delivery of affordable housing if a review was undertaken within too early a timescale within the life of the development b. The obligation continues to serve a useful purpose because it provides clarity, for the avoidance of doubt, that the no-occupation clause remains applicable even when a premature viability review submission is submitted. Deleting this obligation would not serve that useful purpose equally well because it would result in ambiguity. The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 & CG18 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, HOU1 & IMP2. Reject – the obligation shall continue to have effect without modification.	
Schedule 24 - Public Art						
105. NC	Payment of Public Art Contribution 1	Paragraph 1.1, 2.1 and Sch 29A Item 2	The Appellants apply to Discharge this obligation and for the sum of £50,000 already paid to be refunded.	The Appellants seek this discharge and refund because it is not apparent how this money has been spent towards the provision of public art in line with paragraph 1.1. Unless and until any substantiation is provided, this obligation cannot therefore be regarded as serving any useful purpose. The discharge of this obligation as proposed is shown in the Viability Report at Appendix 3, Infrastructure (Scenario 2) Line Ref 5300.13	a. This obligation continues to serve a useful purpose. Para 1.1 requires the contribution to be paid "for the purpose of a preparing a brief for the provision of public art within the Site (including delivery methods, timetables for delivery and possible locations)". This is exactly what the contribution has been spent on. The public art contribution has been spent to produce the 'Creative Chilmington Strategy' (the Chilmington Green Public Art Strategy). Therefore, the Council has fulfilled its obligations under clause 1.1. It is noted that para 1.1 does not require the contribution to be spent on the provision of public art as claimed by the applicant. The discharge of this obligation would not serve that useful purpose equally well because the public art strategy has already been produced and without it there would be no plan determining how the public art contributions will be	Please see my PoE.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
				and forms part of this updated viability analysis justifying each discharge and modification sought.	spent and how arts, culture and creativity will be integrated within the development. b. The proposed obligation to repay the sums already paid to the Council falls outside of the scope of Section 106B. The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policy CG1 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, IMP1 & COM1. Reject – the obligation shall continue to have effect.	
106. NC	Payment of Public Art Contributions 2 to 6	Paragraphs 1.2 to 1.6 and 2.2 to 2.6, and Sch 29A Items 2, 6, 17, 21 etc	The Appellants apply for the following modifications: Modify 1.2 to provide 'Not to Occupy more than 999 [rather than 99] Dwellings unless £100,000 (one hundred thousand pounds) Index Linked has been spent on the provision of public art within the Site by the Owners in accordance with the brief prepared under 1.1 [rather than to the Council]. Modify 1.3 to provide 'Not to Occupy more than 1999 [rather than 999] Dwellings unless £150,000 (one hundred thousand pounds) Index Linked has been spent on the provision of public art within the Site by the Owners in accordance with the brief prepared under 1.1 [rather than to the Council]. Modify 1.4 to provide 'Not to Occupy more than 2999 [rather than 1399] Dwellings unless £150,000 (one hundred thousand pounds) Index Linked has been spent on the provision of public art within the Site by the Owners in accordance with the brief prepared under 1.1 [rather than to the Council]. Modify 1.5 to provide 'Not to Occupy more than 3999 [rather than 2599] Dwellings unless £150,000 (one hundred thousand pounds) Index Linked has been spent on the provision of public art within the Site by the Owners in accordance with the	Whilst in principle these payments continue potentially to serve a useful purpose, the existing timetable for performance of these obligations is out of step with the actual building trajectory and is undermining the viability of Main Phase One and potentially the Development. Further, the Appellants submit that there is a clear case in terms of securing the provision of public art with these contributions, for streamlining the process by allowing the Appellants themselves to take on the role of acquiring and placing the Public Art. In particular, thereby avoiding any unnecessary administration and resultant wasted expenditure. The purpose of these obligations will actually be better, or at least equally well served, therefore, if they have effect subject to the specified modifications so as to align with progress and presently projected completions and empower the Appellants to deliver the art. The deferment of these payments, such that only the	This obligation (payment triggers) continues to serve a useful purpose. The timing of the obligations is in-line with the timetable for the delivery of the Public Art Strategy. Delaying the obligations as proposed would not serve that useful purpose equally well because this delay would prevent the timely delivery of the Strategy. Without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim that this obligation is "undermining the viability of Main Phase One and potentially the Development". This obligation (public art to be delivered by the Council) continues to serve a useful purpose because the public art strategy does not just include the installation of objects of public art on the site but involves building opportunities for the growing community to engage with and take part in creative activities. The proposed modification would not serve that useful purpose equally well because the applicant only proposes to provide public art within the site which is not the full purpose of the public art contributions or the public art strategy. The Council do not agree with the applicant's submission that "there is a clear case.... for streamlining the process by allowing the Applicants themselves to take on the role of acquiring and placing the Public Art." The applicant also claims that their proposal would avoid "unnecessary administration and resultant wasted expenditure", however, they have not provided any evidence of this. The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policy CG1 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, IMP1 & COM1.	Please see my PoE.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
			brief prepared under 1.1 [rather than to the Council]. Modify 1.6 to provide 'Not to Occupy more than 4999 [rather than 4099] Dwellings unless £150,000 (one hundred thousand pounds) Index Linked has been spent on the provision of public art within the Site by the Owners in accordance with the brief prepared under 1.1 [rather than to the Council]. Further, to make the following consequential modifications: Modify 2.2 to spend '£100,000 (one hundred thousand pounds) Index Linked upon the Occupation of the 1,000th Dwelling. Modify 2.3 to spend '£150,000 (one hundred thousand pounds) Index Linked upon the Occupation of the 2,000th Dwelling. Modify 2.4 to spend '£150,000 (one hundred thousand pounds) Index Linked upon the Occupation of the 3,000th Dwelling. Modify 2.5 to spend '£150,000 (one hundred thousand pounds) Index Linked upon the Occupation of the 4,000th Dwelling. Modify 2.6 to spend '£150,000 (one hundred thousand pounds) Index Linked upon the Occupation of the 5,000th Dwelling. Together with consequential modifications to Schedule 29A, in particular as follows: Item 6, to refer to 950 Dwellings Item 17, to refer to 1959 Dwellings Item 21, to refer to 2950 Dwellings Item 17, to refer to 3959 Dwellings Item 21, to refer to 4950 Dwellings And equivalent consequential amendments to Schedule 29B as follows:	first 2 remain within Main Phases 1 and 2, is reflected in the Viability Report at Appendix 3, Infrastructure (Scenario 2) Line Ref 5300.13. and forms part of this updated overall viability analysis justifying each discharge and modification sought.	Reject – the obligation shall continue to have effect without modification. Proposed modification by agreement: the Council would consider modifying the agreement to enable the payments to be more evenly spaced across the delivery of the development.	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
			Item 4, to refer to 1000 Dwellings Item 14, to refer to 1900 Dwellings Item 19, to refer to 3000 Dwellings Item 14, to refer to 4000 Dwellings Item 19, to refer to 5000 Dwellings And Schedule 29C as follows: Item 8, to refer to Occupation of the 1000th Dwelling Item 18, to refer to Occupation of the 2000th Dwelling Item 23, to refer to Occupation of the 3000th Dwelling Item 18, to refer to Occupation of the 4000th Dwelling Item 23, to refer to Occupation of the 5000th Dwelling			
107. NC	The obligations relating to installation of the public art and to maintain the same once installed	Paragraphs 1.7 and 1.8	The Appellants apply for these obligations to be Discharged.	For the reason stated above it is proposed that the Appellants take on responsibility for the installation of the public art, paragraph 1.7 therefore no longer serves any useful purpose and should be discharged. As for paragraph 1.8, it is wholly inappropriate and unfair to impose upon the Owners a continuing obligation to repair the public art. Once installed this should properly be maintained by the CMO. The s106 should not be used to impose such continuing obligations. In the premises paragraph 1.8 should not be treated as serving any proper or useful purpose and should be discharged accordingly.	a. Paragraph 1.7 – Public Art Installation This obligation continues to serve a useful purpose. Its discharge would not serve a useful purpose. As set out under request 106 above, the Council is best placed to commission and deliver the public art. Therefore, this obligation ensures that the Owners allow public art to be installed on site. The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policy CG1 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, IMP1 & COM1. Reject – the obligation shall continue to have effect. b. Paragraph 1.8 – Public Art Maintenance This obligation continues to serve a useful purpose. Its discharge would not serve a useful purpose. It is appropriate to be clear in the Agreement about who will maintain the installed public art. Discharging this obligation will remove this clarity. Reject – the obligation shall continue to have effect. Proposed modification by agreement: the applicant suggests that the obligation to maintain the public art should be passed to the CMO. It is agreed that the CMO would be best placed to maintain the public art. The CMO Business Plan acknowledges that the CMO will be asked to	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
					take on the management and maintenance responsibility for Public Art.	
108. NC	The commissioning, installation of the public art by the Council and associated consultation	Paragraphs 3 and 4	The Appellants apply for these obligations to be Discharged .	As above, the Appellants submit that there is a clear case in terms of securing the provision of public art for the Appellants themselves to take on the role of acquiring and placing the Public Art. In particular, thereby avoiding any unnecessary administration and resultant wasted expenditure of the kind that has been apparent to date. Accordingly, these provisions do not actually serve any useful purpose and should be discharged accordingly:	The existing wording, as part of the obligations to which it relates, continues to serve a useful purpose. Its discharge would not serve a useful purpose. As set out under Request 106 above, the Council is best placed to commission and deliver the public art. Therefore, these paragraphs clearly set out the Councils obligations in this regard. The applicant has provided no evidence to substantiate their claim that the discharge of this obligation would avoid "any unnecessary administration and resultant wasted expenditure of the kind that has been apparent to date." The proposed obligation to repay the sums already paid to the Council falls outside of the scope of Section 106B. The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policy CG1 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, IMP1 & COM1. Reject – the obligation shall continue to have effect.	
Schedule 25 – Heritage Interpretation						
109. NC	Payment of Archaeological Archiving, Heritage and Archaeologist Contributions	Paragraphs 1 and 4.1	The Appellants apply to discharge each of these contributions and for a refund of the monies already paid.	The discharge and refund of the Archaeological Archiving contribution is justified because there is no archiving, other than that carried out by Hodson's consultant and this contribution serves no useful purpose. The Heritage contribution overlaps with PP Condition 97, is duplicative and serves no useful purpose. The Archaeologist Contribution again serves no useful purpose, given that the Appellants employ a consultant archaeologist directly. These obligations should be discharged and the money already paid refunded accordingly.	KCC The Applicant has advised that the discharge of obligations and return of contributions is required due to the obligation's negative impact on the viability of the Development. The Applicant, however, has not provided sufficient information and evidence to enable the County Council to establish this as correct. Archaeological Archiving The Applicant has asserted that the discharge and return of the Archaeological Archiving contribution is justified because there is no archiving, other than that carried out by Hodson Developments Ltd's consultant, and this contribution serves no useful purpose. In response KCC notes the following: 1. The obligation provides a financial contribution towards archaeological archiving and storage (artefacts, photographs, documents, reports) arising from community excavation on the site. This obligation has been paid in full and committed for expenditure. The Applicants could have raised their concerns prior to making such payment.	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
				The discharge of these payments as proposed is shown in the Viability Report at Appendix 3, Infrastructure (Scenario 2) Line Ref 5300.8 and forms part of this updated viability analysis justifying each discharge and modification sought.	2. The contribution serves a useful purpose inasmuch as the community archaeology work to be carried out will produce an archaeological archive. This is part of Chilmington's heritage and needs appropriate archiving to ensure that findings are available for future generations. This is standard good practice and underpinned by the Chartered Institute for Archaeologists guidance (https://www.archaeologists.net/selection-toolkit). The archiving provided for by this obligation does not form part of the work covered by the archaeological consultant which is handled by the archaeological conditions attached to the planning consent (the 'professional' work). The Applicants' consultant is only responsible for the professional work, not the community work. There is, therefore, no overlap. The spend would involve the materials recovered by the community work being prepared for archiving and then deposited in a suitable store. The materials are then stored for c. 30 years. 3. The obligation could not be met if the proposed modification were accepted as this would remove all funds already received and committed by KCC and therefore, the work of the community archaeologist in archiving community finds will not be possible. 4. Refuse application. Heritage Interpretation The Applicant asserts that the discharge and return of the Heritage Interpretation Contribution is justified on the basis that it duplicates planning permission Condition 97. In response 1. The obligation is to provide a financial contribution for the purpose of interpreting for the community, artefacts, archaeological finds, photographs, documents, reports etc., arising from the community work, enabling new residents to understand their surroundings now and in the past. The obligation has been paid in full and has been committed for expenditure. The Applicants could have raised their concerns prior to making such payment. 2. The contribution serves a useful purpose interpreting the Development's heritage for current and future residents. The heritage interpretation does not form part of the work covered by the archaeological consultant which is handled by Condition 97. The Applicants' consultant is only responsible for the professional work, not the community work. There is, therefore, no overlap. 3. The obligation could not be met if the proposed modification were accepted as this would remove all funds	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
					and therefore, the ability to carry out heritage interpretation for the community. 4. Refuse application. Archaeologist Contribution is dealt with below.	
110. NC	Payment of Archaeologist Contributions	Paragraphs 2, 3, 4.2 and 4.3, and Schedules 30A, 30B and 30C	The Appellants apply to discharge the remaining payments under this schedule.	The Development now being well beyond the initial three year period envisaged for the funding of a community archaeologist, it is submitted that there is no utility in any further payments being made and that this obligation should be discharged accordingly. The discharge of these payments, is shown in the Viability Report at Appendix 3 -line item 5300.15, and forms part of his updated viability analysis justifying each discharge and modification sought.	KCC This obligation has been paid in full and following competitive tendering a contract was issued to AOC Archaeology Group to carry out the work, ending in February 2027. The work is now well underway and several community engagement events have already been held. Other events have been booked and several projects are in preparation, volunteers are being recruited and links forged with local relevant stakeholders. A report on progress has been prepared by AOC and is available. The Applicant advises that "the Development now being well beyond the initial three year period envisaged for the funding of a community archaeologist, it is submitted that there is no utility in any further payments being made and that this obligation should be discharged accordingly." However, the s106 provides for funds to spent within 10 years of receipt the contribution before unspent contributions should be returned (Schedule 25, para 5.2). Contributions have been committed for expenditure, with a three year programme of community archaeology work underway. Should contributions not be spent within the timeframe, they will returned as per the s106. The Applicants have advised that the discharge of this obligation and return of contributions is required due to the obligation's negative impact on the viability of the Development. The Applicants, however, have not provided sufficient information and evidence to enable the County Council to establish this as correct. The Applicant has not provided the necessary evidence to determine that the provision of this obligation undermines the deliverability of the Development. Proof of viability, however, would not be reason to discharge the requirement. Planning permission was granted on the basis that this Development mitigates it impact on community archaeology and heritage interpretation. Application to discharge obligation: 1. The obligation provides funding for the employment of a community archaeologist for a period of three years. The current obligation serves the purpose of employing a community archaeologist to reveal the heritage of the development to new residents, helping them integrate into the existing south Ashford community and study aspects of	Please see my PoE.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
					the heritage that the professional work required under Planning Condition will not address. 2. The contribution serves a useful purpose inasmuch as without it would not be possible to carry out the actions at all. The new community would have no opportunity to study its own past, no understanding of how it relates to the wider heritage of south Ashford, no opportunity for further study or for forming a legacy community archaeology group. 3. The proposed discharge of the obligation would result in repayment of the contribution sums and thus prevent the community archaeology project from happening at all. The County Council has committed funds to deliver this project and this prevents a financial risk to the public purse. Discharge of the obligation presents missed opportunities for community engagement, education, building community cohesion and a sense of connection to the past for new residents. 4. Refuse application	
Schedule 26 – Quality Agreement				In this regard the Appellants refer to and rely in particular Upon section 12 of the Explanatory Statement accompanying this application in addition to the reasons stated below.		
111. NC	Quality Agreement, payments of £40,000 linked to Occupations and the payment of £80,000 on the first anniversary and £40,000 on the subsequent nineteen anniversaries	Paras 1, 2.1, 2.2 and 2.3 to 2.21, and Sch 29A Items 9, 12, 15, 19, 24 etc. and likewise in Schedule 29B and 29C Items 5, 11, 14 etc	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 relevant line items in Schedules 29A, 29B and 29C should also therefore to be deleted.	These payments are surplus to requirements, grossly excessive and more than is necessary to mitigate the impact of the Development. As the Explanatory Statement notes, these amounts are not justified given the parallel payments for monitoring etc. These monies are meant for staff and related costs to monitor the quality of the development, including the Chilmington Green Quality Agreement, Design Code and any other submitted or agreed materials specifications, design briefs, specifications, construction management plans, waste management	a. This obligation continues to serve a useful purpose. The quality agreement payments provide the Council with the appropriate resource to ensure the development is delivered at the design quality envisaged to the benefit of the local community and to deliver on the Garden Community principles. The Council has recruited a 'Quality Monitoring Officer' to meet the Council's obligations in respect of Schedule 26, Para 4. The discharge of this obligation would not serve that purpose equally well because the Council would not have the financial resource to maintain the Quality monitoring Officer role. It is evident from the work undertaken by the Council's Quality Monitoring Officer to date that some elements of the Chilmington Green development are not being delivered in accordance with the design quality proposed on the approved drawings It is not clear what the applicant means by their statement "without prejudice to the contention that properly construed the payments at 2.1 and 2.2 are not due in any event".	As far as HD are aware, there have only been two visits in the last three years and these were by a Building Control officer. The AAP makes clear that Quality Monitoring is discretionary. The scheme is being delivered to a high standard, witnessed by awards for individual units and placemaking. In view of the viability issue it is clear the obligation serves no useful purpose.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
				plan and liaison with the CMO and residents. All the above documents (material specifications etc) are submitted in any event as part of the reserved matters applications or discharge of planning conditions and the planning fee should cover any review. Building Control also attend site. Certainly, the Council have not otherwise undertaken any of these tasks or incurred additional overhead to justify these charges. In the circumstances these contributions cannot be said to serve any useful purpose and cannot be justified and the sums paid already should be reimbursed. (see the Viability Report, Appendix 3, Infrastructure (Scenario 2) Line Ref 5300.16)	b. The proposed obligation to repay the sums already paid to the Council falls outside of the scope of Section 106B. The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 & CG22 and the National Planning Policy Framework 2024. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 & SP6. Reject – the obligation shall continue to have effect. Proposed modification by agreement: the Council acknowledges that the two different payment regimes set out in paragraph 1 & 2 of the schedule could be simplified into one payment regime which would serve the useful purpose of the obligation equally well.	
Schedule 28 – Monitoring Fee				In this regard the Appellants refer to and rely in particular upon section 12 of the Explanatory Statement accompanying this application in addition to the reasons stated below.		
112. NC	Payment of monitoring fees of £25,000 linked to Occupations and payment of £50,000 on the first anniversary and £25,000 on the subsequent nineteen anniversaries	Sch 28, paras 1, 2.1, 2.2 and 2.3 to 2.21 and Sch 29A Items 8, 11, 14, 18, 23, etc. and likewise in Schedule 29B and Schedule 29C Items 4, 10, 13, 16 etc.	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). The relevant line items in Schedules 29A, 29B and 29C should also therefore to be deleted.	The Appellants acknowledge that these payments potentially serve a useful purpose, but the contributions are disproportionate in scale. Certainly, as a minimum paragraphs 2.1 and 2.2 should be discharged and the contributions made to date totalling the sum of £45,000 should be reimbursed (see Appendix 3 of the Viability Report, Infrastructure Cost Plan (Scenario 2) Line Ref 5100.10). Prospectively, the sum of £5000 every 300	a. This obligation continues to serve a useful purpose. The payments provide the Council with the appropriate resource to monitor the S106 agreement and planning conditions to ensure compliance over the lifetime of the development. The contributions are proportionate to the scale and nature of the development. The discharge of some of the obligations to pay and modification to reduce the level of payments remaining would not serve that purpose equally well and instead would result in insufficient funds to enable the Council to properly monitor the S106 Agreement and planning conditions. It is not clear what the applicant means by their statement “without prejudice to the contention that properly construed the payments at 2.1 and	Please see my PoE.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
			Further, the Appellants seek to modify the payments under paragraph 1 and 2.3 to 2.21 to provide for payment of £5,000 [rather than £25,000] subject to a schedule of monitoring activities and of the resource reasonably required.	homes should more than suffice and any sums in excess would be surplusage and would not serve any useful purpose. In the premises these obligations would serve their purpose equally well if modified as proposed. Further, the reduction in these payments is duly taken into account in the Viability Report, see Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5100.10 (second 5100.1), and forms part of this overall updated viability analysis justifying each discharge and modification sought.	2.2 are not due in any event". b. The proposed obligation to repay the sums already paid to the Council falls outside of the scope of Section 106B. The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 & CG22 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policy IMP1. Reject – the obligation shall continue to have effect without modification. Proposed modification by agreement: the Council acknowledges that the two different payment regimes set out in paragraph 1 & 2 of the schedule could be simplified into one payment regime which would serve the useful purpose of the obligation equally well.	
Schedule 29 - ABC Bank Accounts						
113. NC	The Developers' Contingency Bank Account - Council	Sch 29, paragraphs 1 and 2, and clause 1.1 definition of Council Minimum Balance	The Appellants apply for paragraphs 1 and 2 to be Discharged and the definition of Council Minimum Balance to be deleted accordingly.	The Council is already sufficiently secured by the covenants provided by the Paying Owners, such that the DCBA - Council serves no useful purpose at all. The account should be closed and the amount held should be paid out to the Paying Owner. In support the Appellants refer to and rely in particular upon Section 3 (paragraphs 3.11 to 3.13) of the Explanatory Statement. Further, the sums involved are substantially more than are required to mitigate the impact of the Development and are undermining the viability of Main Phase 1 and with it delivery of the Development overall. For these reasons also the account cannot be regarded any longer as serving a useful purpose, it is self-defeating	This obligation continues to serve a useful purpose. These payments provide the Council with security of funding to provide for the timely delivery of infrastructure to support the development. The Paying Owners non-payment of financial obligations due within the Agreement to date, has required the Council to seek the funds due from the Developers' Contingency Bank Account – Council to ensure the required community infrastructure is delivered. This demonstrates that the obligation continues to serve a useful purpose. The Council does not agree that it is sufficiently secured by the paying owners covenants because the time it can take to pursue enforcement action against non- compliance with a S106 is such that any non- compliance would cause significant delays in the provision of infrastructure necessary to make the development acceptable. The bank account enables the Council to step in and provide this infrastructure sooner that would be possible otherwise if a breach occurs. The Council does not agree with the applicant that the sums are "substantially more than are required to mitigate the impact of the Development'. The sums are the amounts required to deliver the necessary infrastructure and are equal to the sums due to be paid by the applicant. Without prejudice to the Council's position on viability, the application contains insufficient information to enable the	See PoE and Appendix I.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
				and should be discharged accordingly. The removal of this obligation and re-crediting of the deposited amounts would further reduce pressure on the Development cashflow which as already demonstrated in the Viability Report has an excessive peak debt in the base case. It would also release funds immediately for the delivery of infrastructure to the obvious benefit of the Development.	Council to assess the claim that this obligation is "undermining the viability of Main Phase One and with it delivery of the Development overall". The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policy CG22 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policy IMP1. Reject – the obligation shall continue to have effect.	
114. NC	Payments into Council Contributions Bank Account, Indexation payments, and withdrawals	Sch 29A, Sch 29B and Sch 29C	The Appellants also apply for the payment schedules contained in each of these Schedules to the Agreement to be Modified in accordance with the foregoing as relevant. Further, the payment trigger in Schedule 29A and 29B, including those modified as above, should not be earlier than the withdrawal trigger for the same obligation in Schedule 29C. Rather, the payment trigger or withdrawal trigger as the case may be for any given obligation should be modified to whichever is the later.	For the reasons stated above in relation to each of the relevant individual obligations. The proposed provision for payment triggers and withdrawal triggers to coincide and to be modified to whichever is the later removes the otiose provision for payments to be made earlier than is otherwise necessary. The provisions to this effect serve no proper or useful purpose and should be modified/discharged accordingly.	a. This payment schedules 29A, 29B & 29C continue to serve a useful purpose given the Council's responses to the proposed modifications above. The modifications proposed to schedules 29A, 29B & 29C would not serve a useful purpose equally well because the payment schedules would be out of step with the obligations given that the related proposed modifications are not agreed. b. The payment triggers in Schedule 29A and 29B being earlier than the withdrawal trigger in Schedule 29C continues to serve a useful purpose because it provides the Council with security of funding to enable the timely delivery of infrastructure to support the development. The timing of the payments is intended to ensure that there is no delay to the availability of the funds to provide the infrastructure in question at the relevant trigger-point and to avoid the uncertainty and upfront cost to the public purse of having to commence enforcement action. The proposed modification would not serve that useful purpose equally well because the security of funding provided by the current payment triggers would be removed. The requested modification is contrary to the Chilmington Green Area Action Plan 2013 Policy CG22 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policy IMP1. Reject – the payment schedules continue to have effect without modification	Please see my PoE and Appendix I.
115. NC	Restriction on withdrawals	Paragraph 8	The Appellants apply to modify the obligation by omitting the words '(other than interest).	There is no proper justification for excluding interest from the provisions for withdrawal. The Council should not be entitled to the free use of such sums. Rather the purpose of the	The existing wording, as part of the obligations to which it relates, continues to serve a useful purpose because it provides clarity about when interest accrued in the bank account can be withdrawn. The proposed modification would not serve that useful purpose equally well because it would be unclear when interest could be withdrawn from	Please see my PoE and Appendix I.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
				obligation would be better, or at least equally well, served if modified as proposed.	the account. This would result in the interest being held permanently in the account as it would be a breach of Sch. 29 para. 8 for the Council to withdraw it. The applicants do not propose any alternative text setting out what is to happen to the interest if the words "other than interest" are removed. Reject – the obligation shall continue to have effect without modification.	
116. NC	The Developers' Capital Bank Account	Schedule 29 paras 9 and 10 and 29D	The Appellants apply to Discharge paras 9 and 10 and Schedule 29D.	The Developer's Capital Bank Account fails to serve any useful purpose, in that imposes a wholly unworkable funding regime for the Development. Rather than securing the delivery of the assets for which the sums due to be paid into the account are intended, the requirement to pay the full cost of those assets into an account in advance will undermine that purpose. The usual terms upon which finance is available, allow funds to be drawn down against agreed construction milestones in respect of any given asset; it is not feasible to obtain 100% of the funds in advance. In the premises the entire Schedule and all associated provisions should be discharged.	This obligation continues to serve a useful purpose. Its discharge would not serve a useful purpose. These payments provide the Council with security of funding to provide for the timely delivery of infrastructure to support the development. The Paying Owners non-payment of financial obligations due within the Agreement to date, has required the Council to seek the funds due from the Developers' Contingency Bank Account – Council to ensure the required community infrastructure is delivered. This demonstrates that this obligation continues to serve a useful purpose. The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policy CG22 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policy IMP1. Reject – the obligation shall continue to have effect	Please see my PoE and Appendix I.
Schedule 30 - KCC Bank Accounts						
117. NC	The Developers' Contingency Bank Account – County Council	Sch 30, paras 1 and 2, and clause 1.1 definition of County Council Minimum Balance (CCMB)	The Appellants apply for paragraphs 1 and 2 to be discharged and the definition of CCMB to be deleted accordingly.	The County Council is already sufficiently secured by the covenants provided by the Paying Owners, such that the DCBA - County Council serves no useful purpose at all. The account should be closed and the amount held should be paid out to the Paying Owner. In support the Appellants refer to and rely in particular upon	KCC Deletion of Paragraphs 1 and 2, plus definition of Developer's Contingency Bank Account – County Council. Minimum Balance Paragraph 1 – the Appellant has met the requirements, depositing the Minimum Balance of £475,000 and maintaining this amount in the account. The Appellant applies to discharge this obligation on the basis that County Council is already sufficiently secured by the covenants provided by the Paying Owners.	Please see my PoE and Appendix I.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
				Section 3 (paragraphs 3.11 to 3.13) of the Explanatory Statement. Further, the sums involved are in any event substantially more than are required to mitigate the impact of the Development and are undermining the viability of Main Phase 1 and with it delivery of the Development overall. For these reasons also the account cannot be regarded any longer as serving a useful purpose, it is self-defeating and should be discharged accordingly. The removal of this obligation and re-crediting of the deposited amounts would further reduce pressure on the Development cashflow which as already demonstrated in the Viability Report has an excessive peak debt in the base case. It would also release funds immediately for the delivery of infrastructure to the obvious benefit of the Development.	Under the s106, the County Council is responsible for the provision of significant infrastructure on and off-site (e.g., Primary and Secondary Schools, A28 Improvement Works). To do so requires financial security. Whilst the s106 includes non-occupation clauses within some schedules, this is not considered sufficient security for KCC. The Appellant has also applied to discharge the requirement to provide Bonds within Schedules 15 and 18, which further calls into question the appropriateness of discharging this requirement and consequential loss of security for the County Council. KCC does not consider, therefore, that there is sufficient security provided. The Appellant has not provided the necessary evidence to determine that the provision of the Contingency Bank Account undermines the deliverability of the Development. Proof of viability, however, would not be reason to discharge the requirement for this. Planning permission was granted on the basis that this Development mitigates its impact on infrastructure necessary to meet the needs of Development. For KCC to deliver infrastructure necessary to meet the needs of the development, it requires the financial security to do so – especially where the Applicants' have applied to discharge the requirements to provide Bonds. 1. The purpose of the obligation is to provide a form of financial security to the County Council to enable provision of infrastructure necessary to meet the needs of the Development, in the event that the Appellant does not meet its financial obligations under the s106. 2.The obligation continues to serve a useful purpose of providing a form of surety. 3.The obligation would not be equally well met if subject to the discharge as it would remove a form of surety. 4.Refuse application	
118. NC	Payments into County Council Contributions Bank Account, Indexation payments, and Payments into the Developers' Capital Bank Account - County Council	Sch 30A, Sch 30B and Sch 30C	The Appellants also apply for the payment schedules contained in each of these Schedules to the Agreement to be modified in accordance with the foregoing as relevant. Further, the payment triggers in Schedule 30A and 30B, including those modified as above, should not be earlier than the withdrawal trigger for the same obligation in Schedule 30C. Rather, the payment trigger or withdrawal trigger as the case may	For the reasons stated above in relation to each of the relevant individual obligations. The proposed provision for payment triggers and withdrawal triggers to coincide and to be modified to whichever is the later, removes the otiose provision for payments to be made earlier than is otherwise necessary. The provisions to this effect serve no proper or	KCC The Appellant asserts that payments into the contingency bank account (as set out in Schedules 30A and 30B) undermine the viability of Main Phase 1 and the Development overall. The Appellant has not provided the necessary evidence to establish this as correct. The Appellant has applied for Schedule 30B payment schedule (indexation) to align with Schedule 30C. This is already the case. Schedule 30C sets out the Occupation numbers, upon which withdrawals may take place. These are in line with the Occupation triggers set out in the relevant subject schedules. The Appellant's application to align schedule 30A	Please see my PoE and Appendix I.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
			be for any given obligation should be modified to whichever is the later.	useful purpose and should be modified/discharged accordingly.	payments to those set out in 30C would therefore, result in payments into the account at the same time as they are due to be paid to the County Council. Payments into the contingency account 75 Occupations (as set out in Schedule 30A) earlier than the withdrawal date (Schedule 30C) establish a level of security for KCC, knowing that monies will be available for payment of obligations. This does not negate the need for Bonds however, where KCC requires a greater level of security, knowing that when entering a build contract, all financial obligations will be met. 1. The purpose of Schedule 30A is to provide financial security to the County Council in the event that the Applicants do not meet its financial obligations under the s106. 2. The obligation continues to serve a useful purpose. 3.The obligation of providing financial security would not be equally well met if subject to the modification as it would result in payments to the contingency bank account at the same time as pay is due to the County Council. This is detrimental to the level of financial security established in the original s106. 4.Refuse application	
119. NC	Restriction on withdrawals	Paragraph 8	The Appellants apply to modify the obligation by omitting the words 'other than interest'	There is no proper justification for excluding interest from the provisions for withdrawal. The Council should not be entitled to the free use of such sums. Rather the purpose of the obligation would be better, or at least equally well, served if modified as proposed.	KCC 1. The current wording allows the County Council to withdraw interest from the Bank Account. The Appellant does not propose any alternative text setting out what is to happen to the interest if the words "other than interest" are removed. This would result in the interest being held permanently in the account as it would be a breach of Sch. 30 para. 8 for the County Council to withdraw it. 2 The existing wording, as part of the obligations to which it relates, continues to serve a useful purpose. 3 Its modification would not serve a useful purpose equally well. 4 Refuse application.	
Schedule 34						
120. W	Heads of Terms For The Lease of the CMO's First Operating Premises	The Terms referred to in column 4	The Appellants apply for the following modifications to the stated Heads of Terms:- Under 4. Term,	The reference to the Community Hub reflects the discharge of the CMO Second Operating Premises above. Whilst, the option to extend would ensure the CMO First	The existing wording, as part of the obligations to which it relates, continues to serve a useful purpose. Its modification would not serve a useful purpose equally well. a. Refer to the Council's response to request 16	This obligation has already been satisfied and is removed from the Appeal.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	ABC's (unless specifically noted at KCC's) response to the proposed Modification or Discharge Sought	The Appellants response to ABC/KCC and reason for change on 23/12/24 (if applicable)
			~~—at 4.1, the lease will be for a term of 2 years with an option for the tenant to extend the lease until completion of new premises in the Community Hub.~~ ~~—at 4.4 reference to the CMO's Second Operating Premises to be modified to refer to the Community Hub.~~ ~~Under 9. Use, at 9.1 it should be stated that the property can only be used as a Chilmington community facility.~~	Operating Premises remained available whilst required. The reference to Chilmington at paragraph 9.1 is plainly appropriate and the premises ought not to be used otherwise.	above: b. ——— Refer to the Council's response to request 16 above: The existing wording continues to serve a useful purpose and is sufficiently clear. The inclusion of the word 'Chilmington' would not serve that useful purpose equally well. Reject — the obligation shall continue to have effect without modification.	
Schedules 39 and 40						
121. NC	Articles ——— of Association of the CMO and the ——— CMO Business Plan	The ——— entire schedules	Modification deleted from appeal			
Schedule 49						
122. NC	Viability Review Templates	The entire schedule	For the avoidance of doubt, the Appellants reserve their position in respect of Schedule 49, as in the case of all other obligations, to make such further or other applications to discharge or modify as may be appropriate hereafter.	The reservation does no more than state the Appellants' entitlement in any event, but is restated for the avoidance of doubt. The point, however, is made with reference specifically to Schedule 49 given that it is already evident that the viability template is not fit for purpose and needs updating in any event. In the first instance the Appellants would wish to discuss the issues arising in respect of the same with the Respondents and seek agreement upon the modifications required. If the issues arising cannot be resolved in collaboration with the Respondents, the Appellants would mean to make a further dedicated application in this regard.	The applicant's position is noted.	

APPENDIX III - LETTER FROM MAN GROUP

Hodson Developments (Ashford) Limited

Suite 9, 55 Park Lane,
London W1K 1NA

31 January 2025

Dear Sirs,

Application to vary the s.106 agreement dated 27 February 2017 (as varied) relating to the development known as Chilmington Green, Ashford, Kent

As you will be aware, fund entities managed by Man Global Private Markets (UK) Limited acquired the land at Chilmington Green, known as Land Parcels B, C, and J, through their fund entities – Habitare Homes Limited, In Place (CG) Limited, and In Place (CG) LP – on 13 July 2022. You have asked us to outline why the current s.106 agreement is preventing us from delivering much-needed affordable housing.

Our objective in investing in Chilmington Green was to work collaboratively with the local authorities to deliver a mix of homes for affordable rent and shared ownership. This partnership was intended to address local housing needs by increasing the supply of much needed high-quality, affordable housing. Importantly, as a socially responsible institutional investor, we were intending to deliver substantially more affordable housing than was currently set out in the s106 agreement (by switching homes intended for market sale to affordable housing). However, this goal is currently unachievable due to the restrictive drafting of the s.106 agreement.

1. The current s.106 Agreement only supports two types of housing delivery

The s.106 agreement was drafted for a different market context. At the time, it was not anticipated that homes in this scheme might be delivered through alternative models such as **build-to-rent** or the provision of **additional affordable housing** provided by an institutional investor beyond the required percentage. Instead, the agreement in practice only allows for two delivery models:

1. Affordable housing provided by a registered provider in line with the s.106 percentage requirements; and
2. Traditional "build-to-sell" units.

This outdated approach creates significant barriers to housing delivery in Ashford and slows the rate of delivery at Chilmington Green. Specifically:

1. **It prevents the delivery of additional affordable housing.** Registered Providers are unable to deliver Homes England grant-funded affordable homes beyond the minimum percentage set out in the agreement; and
2. **It excludes build-to-rent housing.** Institutional investors seeking to deliver build-to-rent homes cannot do so under the current agreement.

These restrictions have serious social consequences for the local area. Families in Ashford will miss out on access to good-quality, affordably priced homes for affordable and social rent, shared ownership, and private rent.

2. Release Mechanism Issues

The release mechanism in the s.106 agreement is similarly outdated and restrictive. It was designed solely for traditional "build-to-sell" developments, where a developer is released from liability after constructing and selling all units. The relevant clause (2.2.1) states:

"In the event that an Owner shall have parted with the entirety of their interest in the whole or any part of the land comprised in the Site, and shall have no possession of or control over that land, then that Owner shall no longer be bound by covenants to do or not to do anything in, on, over or under that land in which they have parted with the entirety of their interest and retain no possession of or control over."

While this mechanism works for traditional "build-to-sell" developments, it does not apply to:

1. **Institutional investors delivering homes for rent (build-to-rent housing); nor**
2. **Registered providers delivering additional affordable housing beyond the minimum s.106 requirements.**

In these cases, even when investors or Registered Providers have completed the same activities as traditional housebuilders – i.e., constructing and "disposing of" all units – they are not eligible for release. This is because they retain some control over the land for the purposes of rental or management and such land does not fall under the definition of "Affordable Housing Land" given the need to rely upon grant funding. As a result, investors and Registered Providers remain liable under the agreement, even after fulfilling their role in delivering housing.

It is acknowledged that the s.106 agreement looks to exclude the liability of Registered Providers for "Positive Planning Obligations to Pay", but this only applies to a scenario where the Registered Provider has acquired an interest in the site that "comprises entirely" land used for affordable housing as defined within the s.106 agreement, as opposed to additional affordable housing beyond that which the s. 106 agreement prescribes (such as we intended).

It is evident the agreement was not intended to leave investors or Registered Providers liable for obligations in later phases (e.g., Phase 3) after they have completed and delivered homes in earlier phases (e.g., Phase 1).

As an investor in Chilmington Green, we strongly prefer to deliver additional affordable housing on the site, both for rent and shared ownership. Achieving this goal would require the implementation of the proposed solution outlined below. We believe this approach would benefit the community in Ashford and Kent, positively contributing to the housing market while also reducing the local authority's reliance on temporary accommodation. However, if the current Section 106 agreement is not amended, we may be left with no choice but to sell the homes at market prices.

3. Proposed Solution

We support Hodson Developments' request to revise the release provisions in the s.106 agreement. Specifically, based on our investment model we recommend:

1. **Equitable Treatment:** Investors and Registered Providers delivering additional affordable housing (beyond the minimum s.106 requirement) should be treated the same as traditional housebuilders who are building for sale. Once all dwellings have been constructed and occupied, they should be released from future liability under the agreement.
2. **Recognition of Benefits:** These changes would not disadvantage the Council compared to the current "build-to-sell" model. Instead, they would provide significant benefits, including:
 - **Increased housing delivery** and faster build-out rates;
 - **Greater choice of tenure** for residents, including affordable rent and shared ownership
 - **Reduced need for families in temporary accommodation;** and
 - **Progress toward government housing targets,** including the goal of increasing affordable housing delivery.

We believe that the disparity in treatment between traditional build-for-sale developers and long-term investors such as ourselves, including Registered Providers, does not serve a valid planning purpose and was not the original intention. We respectfully request that the Inspector amends the Section 106 agreement to exclude such parties from the "Positive Planning Obligations to Pay."

Yours faithfully,

A solid black rectangular box used to redact the signature and name of the authorized signatory.

Both as authorised signatory
For and on behalf of
Man Global Private Markets (UK) Limited

APPENDIX IV - MARKETING EVIDENCE FROM BNP PARIBAS

To Whom it May Concern

BNP Paribas Real Estate
5 Aldermanbury Square
London EC2V 7BP

Tel: Gavin Redrupp
07876 455 343
Email: gavin.redrupp@bnpparibas.com

By Email Only

4th February 2025

Dear Sirs,

CHILMINGTON GREEN, ASHFORD

Strutt & Parker, and more recently BNP PRE, have been providing professional property advice to Hodson Developments since 2017 regarding the commercial components of the Chilmington Green project. During that time, we have continually explored commercial occupier demand for the proposed district centre and engaged with parties who have expressed interest in establishing a presence within the district centre.

During the period that we have been involved with the Chilmington Green project, no noteworthy interest has been received from occupiers seeking B1 office space. In our opinion, this reflects the level of market demand for large office spaces in the region. It also provides evidence that the location of the proposed district centre at Chilmington Green is not a suitable location for large scale, new office accommodation as it does not fulfil the requirements of modern office occupiers.

In order for a new business park development to be economically viable, in the current market conditions of high build costs and high yields, a significant pre-let would be required. During our time working on the Chilmington Green project, we have not seen evidence that such a pre-let would be achievable. Furthermore, based on experience gained from marketing another land parcel in the region, for large scale B1 use development, we do not foresee occupier demand being forthcoming.

Yours sincerely,



GAVIN REDRUPP

APPENDIX V - BROOKBANK COST REPORTS

Community Hub, Chilmington

Costs Review
Expert Report

Hodson Developments

January 2025

Document Control Sheet

Document Title	Community Hub, Chilmington - Costs Review Expert Report
Document Ref	BCR01 DRAFT
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Thomas Hodson – Hodson Developments	1					

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1 Introduction

- 1.1** I, David Howson of Brookbanks have been instructed by Hodson Developments to provide an expert review of the proposed development costs for the provision of a community hub at the Chilmington development near Ashford in Kent. The community hub is to be provided as part of the S106 obligations included in the planning consent.
 - 1.2** I am Senior Associate Commercial Director at Brookbanks, a specialist technical, environmental, highways, commercial management and project management construction consultant. I have over 35 years' experience as a chartered quantity surveyor and over 20 years' experience dealing with the cost planning and viability of development sites in addition to implementing building projects across a wide range of sites throughout the UK.
 - 1.3** This report is prepared in support of an appeal on the proposed S106 costs for the Community Hub Hodson Developments have presented their costs for construction as £1,898,539.85.
 - 1.4** I understand that the proposed S106 modification sets out that the community hub costs should not exceed £2,000,000.00.
 - 1.5** I have independently reviewed all information made available to me by the parties and all the cost items have undergone a quantity and rates review to arrive at a fair and reasonable assessment of all costs, based on my experience of working on similar projects. I have prepared a Cost Summary to summarise my findings included in section 5.
-

2 S106 Scope Review

Design Specification and Requirements

	S106 Requirement (sqm)	Proposed Design (sqm)	Difference
Library (fully stocked and equipped)	TBC	69	-
Police Community & Social Services Outreach	340	340	-
CMO	400	400	-
Multi-Use Games Area (MUGA)	TBC	647	-
GP	Up to 1,000	730	270
Community Leisure	1,000	1,000	-
Youth Facility	200	220	20
Changing Room / WC / Kitchen	-	137	137

S106 Requirements

- 2.1** The above table summarises the requirements of the modified S106 agreement detailed under Schedule 12 Paragraphs 1.2.5 and 1.2A.5. Reviewing the proposed design the stated area requirements with the exception of the library, MUGA and ancillary facilities which have no set area requirements however the areas provided are in line with standards provision e.g. Sport England guidance. All the area requirements have been provided in the proposed design with additional ancillary areas being provided for the community hub and MUGA in the form WC, Changing Rooms and Kitchen spaces.
- 2.2** Under paragraph 1.2.5 the requirement for the library is specified as *“a fully stocked and equipped library”* however the specification provided does not indicate that this space is to be fully fitted and stocked, but simply finished with decorated walls and ceilings including heating, small power and lighting. The furnishing and stocking of this space I would estimate to be in the order of £20,000 allowing for library bookcases and a selection of books to the usable wall space shown.
- 2.3** I have reviewed the proposed design specification and area requirements; I confirm these are all in line with the modified S106 requirements with exception of the library space which would require fully fitting out as detailed in 2.2.

3 Costs Review

Bills of Quantities – Groundworks

Element	Cost	Brookbank Cost Adjustment	Comments
Foundations	£42,020.56	-	Quantities correct and rates substantiated
Substructure	£27,726.76	£8,229.90	No materials included for damp course, insulation, cavity trays and closers
Ground Floor Slab	£75,947.00	-	Quantities correct and rates substantiated
Storm Water Drainage	£14,987.79	-	Quantities correct and rates substantiated
Foul Water Drainage	£11,732.60	-	Quantities correct and rates substantiated

Foundations

- 3.1** The foundations costs provided have been based on an assumed structural design pending detailed design. The costed design is based on a traditional load bearing masonry with 1000mm deep 750mm wide mass concrete foundations strip foundations formed with clay master sheets. The quantities allow strip foundations to all external and internal walls and the material rates have been based on quotes provided by local suppliers. This approach is in line with best practice in light of the good ground conditions already encountered across the development where no piling or abnormal foundations have been required.

Substructure

- 3.2** The substructure design is based on load bearing masonry cavity wall of facing brick work and blockwork inner 900mm high bearing on the strip foundations. The costs provided have been based on this design and allow facing bricks at £350 per thousand which would provide a basic finish. The quantities are correct, and the material rates provided have been substantiated. The labour rates included are comparable with market testing and benchmarking. However there has been no allowance included for a damp proof course, cavity insulation, trays or closers which would be required under building regulations we estimate this would be an additional cost of £8,229.90.

Ground Floor Slab

- 3.3** The costs have allowed for constructing the ground floor slab in beam and block with 150mm deep beams which is a traditional construction method and commonly used under current building regulations. The quantities are correct, and the materials costs have been based on a quotation provided by Floorspan and Travis Perkins which align with Brookbanks benchmarking. A labour cost for 4 men and 8 weeks will be sufficient to install the ground floor slab allowing for all preparatory works.

Storm Water Drainage

- 3.4** There is no design for the storm water design however the costs have allowed for standard construction of 110mm diameter pipe with accompanying manholes to receive any surface water run off from the roof and hard landscaped areas. The quantities allowed are sufficient to connect to all the rainwater downpipes and gullies to drain the landscaping. The materials prices are in line with the quotations provided and the labour included will be sufficient to install these materials.

Foul Water Drainage

- 3.5** The foul water drainage system has not been designed however the cost allowance allow for manholes and 110mm diameter pipe runs to service the proposed toilet and kitchen areas and connect to existing foul drainage services at the boundary of the site. The materials prices are in line with the quotations provided and the labour included will be sufficient to install these materials.

Bills of Quantities – Superstructure

Element	Cost	Brookbank Cost Adjustment	Comments
Materials	£163,438.91	-	Quantities correct and rates substantiated
Precast Concrete Floors & Stairs	£178,039.32	-	Quantities correct and costs sufficient
Structural Steel	£53,820.00	-	Quantities correct and costs sufficient
Bricklayers	£137,800.00	-	Quantities correct and costs sufficient
Scaffolding	£72,032.81	-	Quantities correct and costs sufficient
Mansafe	£8,505.27	-	Quantities correct and costs sufficient
Roof Coverings	£99,277.20	-	Quantities correct and costs sufficient
Roof truss installation	£6,500.00	-	Labour allowance sufficient
External Windows & Doors	£150,807.82	-	Quantities correct and cost sufficient
External Mastic	£5,074.66	-	Quantities correct and cost sufficient

Materials

- 3.6** The materials are allowed are based on a load bearing masonry super structure based on brickwork external cavity walls with windows and doors and a single ply membrane roof coverings and associated rainwater installations.
- 3.7** I have checked the quantities of bricks and blocks allowed for the external cavity wall which are correct. The blockwork has all been based on 10N blocks, for both external and internal walls, which would be structurally sufficient to support the proposed precast concrete floors proposed. The materials cost for the blocks are based on a local Travis Perkins. Similarly, the mortar has been allowed for the masonry walls based on silo mortar which is common for larger projects and the most cost effective method.
- 3.8** The 100mm cavity insulation has been included for the all the external cavity walls allowed in the superstructure and the costs are based on a quotation from Encon which is in line with other suppliers available. The specification of the insulation is compliant with building regulations.
- 3.9** Steel lintels have been allowed for each of the external windows and doors shown on the plans at an average cost of £142.30 which is substantiated with Keystone quotation provided.
- 3.10** Concrete lintels have been included for each of the internal doors within the blockwork walls shown on the proposed plans which is correct. The supply cost of these lintels is based on a quotation from the local Travis Perkins and is in line with current market pricing.
- 3.11** The roof structure materials costs have allowed for a timber flat roof structure covering the entire roof area and the rate allowed is based on a quote from supplier Howarth Timber. The rates allowed is in line with our cost benchmarking and market testing.
- 3.12** The quantity of rain water goods materials have been allowed to provide drainage to the proposed flat roof design. The materials costs are not based on a specific quote however these are sufficient for the items.

Precast Concrete Floors and Stairs

- 3.13** Precast concrete floors and stairs have been allowed for the construction of the first floor which is suitable for the multi purpose uses planned. The rate allowed of £115.46/m² is not based on a quotation however this does sit within our benchmarking range of £100-135/m². The quantity allowed align with the first floor area in the proposed plans.

Structural Steel

- 3.14** Whilst there is no structural design at present however structural steel to support the first floor structure of precast planks would be required and has been included in the costs. The quantity allowed is sufficient to support the first floor and the costs allowed equate to the £3,500 per tonne which is high for standard sections but would allow for these to be adapted to non standard steel beams once the detailed design is completed.
-

Bricklayers

- 3.15** Bricklayer labour and sundry costs have been allowed for all of the external and internal masonry walls. The rates allowed for brickwork at £55/m² and block at £35/m² both benchmark well with recent tenders received.

Scaffolding

- 3.16** A five lift birdcage scaffold has been included to the entire structure to enable the construction of the building, along with 4nr loading bars and 3nr haki staircases. The cost allowance included for the scaffolding is sufficient to supply these based on recent tenders received.

Mansafe

- 3.17** Due to the flat roof design a man safe system will be required for maintenance and the allowance of £8,505.27 which aligns with our cost range of between £5,000 and £10,000.

Roof Coverings

- 3.18** Roof coverings have been allowed for as a warm roof which includes insulation on top of the roof and to the entire roof structure. The cost allowance is for the supply and installation of a membrane covering which equates to £64/m² which should be sufficient for a basic specification roof, assuming no green roofs or PV panels are required which would need further enhancements. These requirements would need to be confirmed once an architect is appointed.

Roof truss installation

- 3.19** Roof truss installation labours costs would be sufficient to install the roof structure materials noted earlier in this report.

External windows and doors

- 3.20** External windows and doors have been specified to match the existing development and the supply and install cost allowed equates to an average cost of £391/m². This rate aligns with our benchmarked costs

External Mastic

- 3.21** External mastic has been allowed for all the external movement joints, windows and doors. The rate of £4.75/m is sufficient to provide this mastic.
-

Bills of Quantities – Internal Fit Out

Element	Cost	Brookbank Cost Adjustment	Comments
Drylining (materials)	£21,495.16	-	Quantities correct and rates substantiated
Door Linings	£336.00	-	Quantities correct and rates substantiated
Internal Fire Doors	£5,220.00	-	Quantities correct and rates substantiated
Ironmongery	£3,021.30	-	Quantities correct and rates substantiated
Sanitaryware	£4,727.00	-	Quantities correct and rates substantiated
Changing Rooms	£1,261.60	-	Quantities correct and rates substantiated
Electric Radiators	£5,693.44	-	Quantities correct and rates substantiated
Paint Supplies	£3,000.00	-	Quantities correct and rates substantiated
Floor Screed	£86,691.24	-	Quantities correct and rates substantiated
Carpentry 2 nd Fix Labour	£4,000.00	-	Quantities correct and rates substantiated
Fire Stopping	£24,500.00	-	Quantities correct and rates substantiated
Sprinklers	£40,000.00	-	Allowance of £15/m2 is lower than £25-35/m2 normally expected.
Internal Mastic	£6,409.66	-	Quantities correct and rates substantiated
Drylining (labour)	£16,000.00	£6,400.00	Allowed rate for dryliners labour is low would expect to be £280 per day not £200
Dry Riser	£3,175.00	-	Quantities correct allowance reasonable
Plumbing & Heating	£25,000.00	-	Allowance only allows for WC, Changing and Kitchen and capped supplies to other rooms
Electrical Installations	£41,800.00	-	Allowance for only basic small power and lighting, emergency lighting and fire/smoke detection

Door Entry	£10,000.00	-	Allowance sufficient for DDA compliance
Lift	£20,000.00	-	Sufficient allow for basic platform lift for DDA compliance
Stair Balustrading	£4,600.00	-	Quantities correct and rates substantiated
Automatic Opening Vent	£20,000.00	-	Quantities correct and rates substantiated
Kitchen Installation	£2,500.00	£5,000.00	The allowance is only sufficient for a basic sink tea point would expect a domestic grade kitchen
Builder's Clean	£1,800.00	-	Quantities correct and rates substantiated
Flooring	£13,196.70	£4,144.00	Communal corridor areas not included these would require flooring.
Painting and Decorating	£8,500.00	-	Quantities correct and rates substantiated
Snagging	£3,729.27	-	Allowance equates to 1% of cost which would be sufficient for snagging works
Library Fit Out & Stock	-	£20,000.00	Allowance for bookcases and stock

Drylining (materials)

- 3.22** Plasterboard materials for 12mm plasterboard wall lining and 15mm plasterboard ceilings along with tape and jointing. This would be provided to the communal corridor areas, toilets, kitchen, youth facility, library and CMO areas only. The quantity allowed is correct and the rates have been based on a quotation provided from Encon which is in line with current market supply rates.

Door linings

- 3.23** The costs and quantities provided are correct and in line with current market rates.

Internal Fire Doors

- 3.24** The costs are in line with current market rates and the number of doors is correct

Ironmongery

- 3.25** The costs and quantities provided are correct and in line with current market rates.

Sanitaryware

- 3.26** Commercial grade sanitaryware has been allowed for the toilets and changing rooms along associated cubicles, wash hand basins and ancillary items. The costs are based current market prices.

Changing Rooms

- 3.27** The supply of 8nr lockers and 2nr benches for the changing rooms have been included which have been based on current market rates which are in line with current market rates.

Electric Radiators

- 3.28** Supply costs have been allowed for 16nr 600mm wall panels have been allowed to the toilets, kitchen and changing rooms in lieu of a heating system these are based on a Stelrad product.

Paint Supplies

- 3.29** An allowance of £3,000 has been allowed for the supplies of paint to finish the toilets, changing, kitchen, library and communal areas which is sufficient for trade paint supplies.

Floor Screed

- 3.30** Floor screed including insulation, membrane and sundries has been allowed for all floor areas based on existing quotes at £28.11/m² this is with the normal range of screed costs of between £25-55/m² depending on the specification.

Carpentry Installation 2nd Fix

- 3.31** Labour costs have been allowed for all the fire doors, linings and other items which are sufficient to install these items.

Fire Stopping

- 3.32** The lump sum allowance is sufficient for fire stopping to the services, walls and doors.

Sprinklers (if required)

- 3.33** An allowance based on £15/m² for the entire building for the supply and installation of sprinklers, however our benchmarking indicates this would in the range of £25-35/m². This would indicate a potential shortfall of between £37,000 and £68,000. However, given the building is 2 storeys and not designed to be open plan it would not generally require sprinklers, so we have not included an adjustment.

Internal Mastic

- 3.34** Internal mastic has been allowed for all the windows and doors, wet floors and rooms being fitted out such as the kitchen and library. The rate of £4.75/m is sufficient to provide this mastic and aligns with current market rates

Drylining (labour)

- 3.35** An allowance of £200 per day for a total of 80 days has been included which in terms of time is sufficient however recently received sub-contractor day rates would indicate a figure of £280 per day would be required. Therefore, we have included an uplift of £6,400 for this increase in the day rate.
-

Dry Riser

- 3.36** An allowance of £3,175 for the 1nr dry riser currently proposed which is in line with our benchmarking.

Plumbing and heating

There is a provisional allowance of £25,000 for the supplying and installing the pipework and above ground drainage to the WCs Kitchen and a capped pipework to the rooms as well as installing rainwater installations. The allowance would be sufficient for a basic installation with a central boiler and hot water plant. This would exclude areas such as the GP, Leisure and Police areas which would need to be fitted out by these tenants.

Electrical installations

- 3.37** The cost allowance based on 1st fix wiring to all rooms and the 2nd fix electrical wiring and life safety (fire) systems for the fitted out areas such as Kitchen, Toilets, CMO and Youth facilities. This allowance equates to £48/m² which is within benchmarked cost allowances.

Door Entry

- 3.38** This allowance is for automatic door opening to allow for disabled access and would be sufficient to adapt the proposed doors (door costs covered elsewhere).

Lift

- 3.39** An allowance of £20,000 has been included for the proposed lift shown on the plans this would be sufficient to provide a platform lift to first floor level for disabled access and DDA compliance.

Stair Balustrading

- 3.40** The costs and quantities provided are correct and in line with current market rates.

Automatic Opening Vents

- 3.41** This allowance provides both smoke detection to the communal areas along with automatic opening vents to the stair cores and opening windows to the corridors. The allowance is within normal benchmark allowance and would be sufficient to provide a standard system to meet building regulations.

Kitchen Installation

- 3.42** The allowance £2,500 for a kitchen installation would only be sufficient to supply and install a small tea point which would be insufficient for the community use which would require a domestic specification kitchen which would be £7,500.

Builders Clean

- 3.43** This allowance is in line with market quotations received.

Flooring

- 3.44** Whilst the vinyl flooring rate of £16/m² is sufficient to provide a good quality contract vinyl flooring, however the quantities allowed for do not include for the communal corridors which would require a floor finish, and we have allowed an adjustment for to allow for flooring to these.
-

Painting and decorating

- 3.45** This allowance is the labour cost for decorating and is sufficient for the number of areas required.

Snagging

- 3.46** This allowance equates to 1% of the value of the internal works and is a contingency for any defects in the internal works.

Library Fit Out and Stock

- 3.47** As highlighted in Section 1.0 of this report, no allowance had been made for the library bookcases and stock, and we would estimate this to be in the order of £20,000.

Bills of Quantities – External Works

Element	Cost	Brookbank Cost Adjustment	Comments
Hard Landscaping	£103,341.03	£2,953.11	Concrete edging measure low adjusted
Soft landscaping	£19,118.48	-£400	4nr Tilia Cordata Greenspire trees are £375 each not £475 each
Multi Use Games Area (MUGA)	£65,011.00	-	MUGA specification in line with Sports England
Bollard Lights	£8,326.00	£1,200	Electrician rate should be £300 per day

Hard Landscaping

- 3.48** Generally, the materials and labour allowed are correct and in line with market rates. Arithmetically the costs are correct.
- 3.49** The concrete edging measure is low compared to the proposed design being 248m versus the 155m allowed. The cost adjustment is for this shortfall based on the materials and labour rates provided.

Soft Landscaping

- 3.50** The quantities and rates are correct with exception of the rate for the 4nr Tilia Cordata Greenspire Trees which Palmstead has quoted a supply price of £375 each not the £475 each included. This equates to a reduction of £400 in this cost.

Multi Use Games Area (MUGA)

- 3.51** The cost breakdown provides for a basic MUGA in line with Sports England specification. However, the number of 2.5m fence panels required is stated as 37nr whilst the costs allow for 45nr however following measurement of the proposed plans the perimeter is 112m which means 45nr is correct. The cost allowance totals £65,011.00 which is significantly below the Sports England cost guidance figure which is £186,529.00 however as the costs and specification provided is sufficient no cost adjustment has been made.

Bollard Lights

- 3.52** Bollard lights are not shown on the drawings however they would be required given the lack of external lighting sources thus the allowance of 12nr 900mm bollard lights is reasonable as are the cost allowance for the materials. The labour costs are low for a qualified electrician, and we would expect these to be in the order of £300 per day in lieu of the £200 per day allowed.

Bills of Quantities – Professional Fees

Element	Cost	Brookbank Cost Adjustment	Comments
Professional Fees	£65,000.00	-	No quotes provided, 4% of construction cost

Fees

- 3.53** There are already proposed outline plans which could be used for planning purposes. Further design work would be required to provide sufficient design information for the works i.e. a set of working construction drawings. The Architects allowance of £25,000 is reasonable to provide the above working drawings whilst the other allowances would also be sufficient to provide structural, civils and services designs to construct from.

Bills of Quantities – Preliminaries Costs

Element	Cost	Brookbank Cost Adjustment	Comments
Site Management	£97,000.00	-	Site manager and telehandler operator allowed
Site Compound	£29,660.00	-	Offices, Welfare and Mortar Silos
Plant Hire	£49,490.00	-	Allowances sufficient for works to be carried out and rates as per CW Plant hire quote

Site Management

- 3.54** The site management costs have allowed for a programme of 52 weeks in totals with a full time site manager for the entire duration. Alongside this there is an allowance for a full time plant operator for the telehandler for 40 weeks for the distribution of materials during the superstructure and fit out works. This aligns with programme durations noted. The personnel weekly rates are on the low side however these do not include for any overheads and profits.

Site Compound

- 3.55** The site compound costs are included for the entire 52 week programme duration. There are allowances for toilets, site office, canteen and storage units and delivery and stacking costs are included in line with the CW Plant quotation rates provided which appear reasonable and in line with other projects. There are 20nr skips provided for waste which again are in line with market rates.

Plant Hire

- 3.56** There is a breakdown of the plant hire which has not been included in the works costs in the previous sections the plant rates are in line with the CW plant hire rates provided whilst the durations show also align with the work element durations i.e. the groundworks duration is circa 15 weeks when the 13 tonne excavator and 6" water pump are on allowed. Equally there is general plant allowance for small tools and plant.
- 3.57** Fuel costs have been allowed for in with 1,500 litres per month for the first 6 months when plant hire, and use is greatest tapering off to 750 litres per month in the latter 6 months when plant use should reduce

Bills of Quantities – Contingency

Element	Cost	Brookbank Cost Adjustment	Comments
Contingency 2%	£37,226.27	-	Reasonable for proposed development

Contingency

- 3.58** The costs have allowed for an overall allowance of 2% on the total cost of construction works, fees and preliminaries of £1,861,313.58. This allowance is reasonable given the level of detail provided in the proposed designs.

Excluded items

Overheads and Profits

- 3.59** No allowance has been made for main contractor overheads and profits which would typically be in the order of 6% in addition to the total costs excluding contingency which would total £111,678.81. It is assumed Hodson Developments will be self delivering the community hub building at cost and therefore no adjustment has been made.

4 Cost Summary

Cost Summary

Element	Cost	Brookbank Cost Adjustment	Adjusted Cost	Comments
Groundworks	£172,414.71	£8,229.90	£180,644.61	No materials included for damp course, insulation,
Superstructure	£875,295.99	-	£875,295.99	
Internal Fit Out	£376,656.37	£35,544.00	£412,200.37	Drylining labour increase, kitchen fit out increase and corridor flooring. Library fit out and stock
External Works	£195,796.51	£3,753.11	£199,549.62	Edging quantity adjustment
Professional Fees	£65,000.00	-	£65,000.00	No quotes provided, 4% of construction cost
Preliminaries	£176,150.00	-	£176,150.00	11% of construction costs typically range from 10-15%
Contingency	£37,226.27	-	£37,226.27	2% Contingency included.
TOTAL COSTS	£1,898,539.85	£47,527.01	£1,946,066.86	4% overall increase

4.1 The above table summarises the adjustments made during the cost analysis

4.2 In summary whilst there are a number of adjustments made to the construction proposed costs these represent only a 2% increase (excluding contingency). Whilst we recommend the contingency allowance is 5% this is only a safeguard against risks which will be borne out during the design development and construction phases. The overall adjusted total cost including contingency is 4% higher than the proposed costs and I feel that the proposed designs could be constructed for £1,946,066.86.

5 Declaration

Statement of Truth

- 5.1** I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

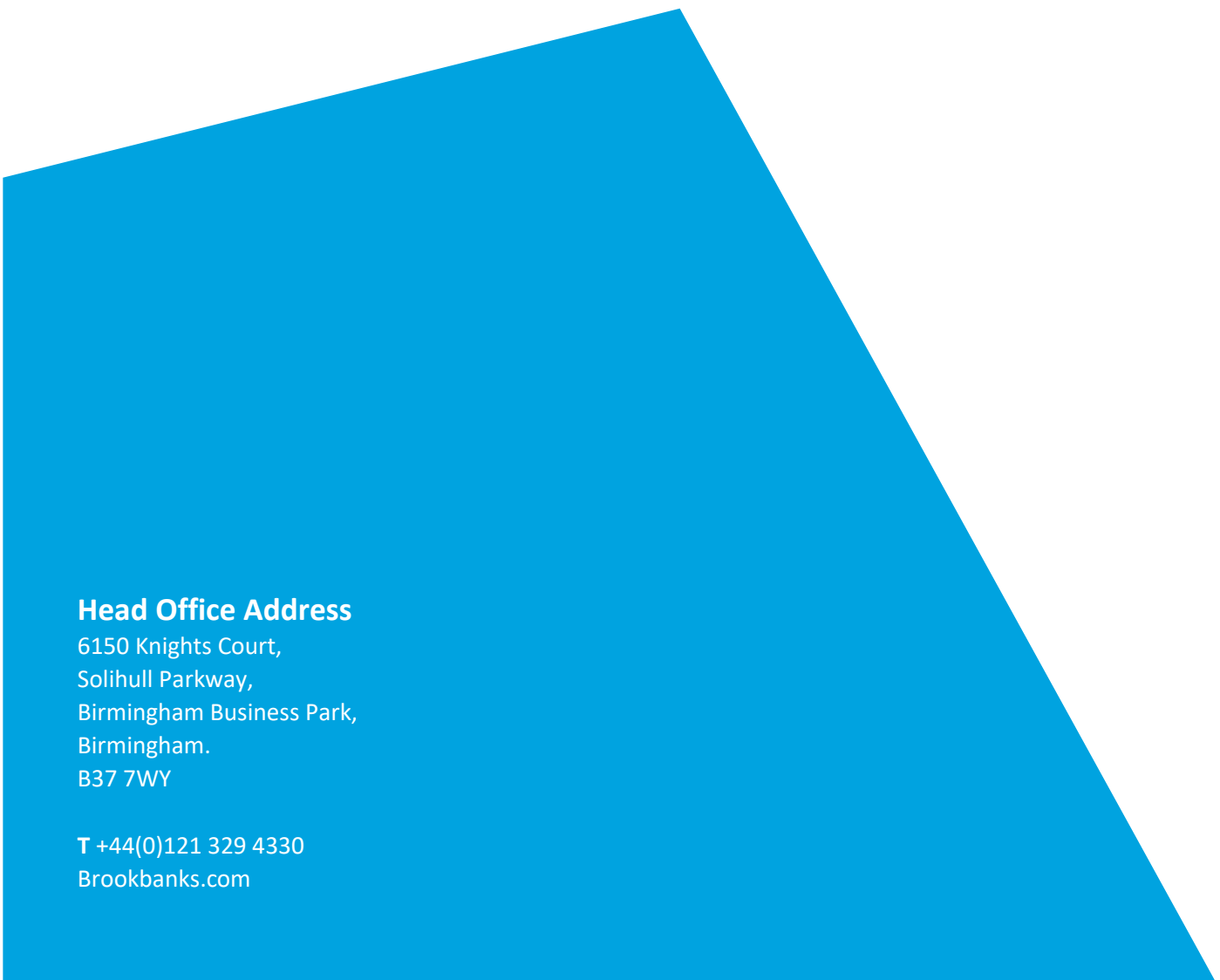
Declaration

- 5.2** I confirm that my report has drawn attention to all material facts which are relevant and have affected my professional opinion.
- 5.3** I confirm that I understand and have complied with my duty to the Independent Expert as an expert witness which overrides any duty to those instructing or paying me, that I have given my evidence impartially and objectively, and that I will continue to comply with that duty as required.
- 5.4** I confirm that I am not instructed under any conditional or other success based fee arrangement.
- 5.5** I confirm that I have no conflicts of interest.
- 5.6** I confirm that I am aware of and have complied with the requirements of the rules, protocols and directions of the Independent Expert.
- 5.7** I confirm that my report complies with the requirements of RICS – Royal Institution of Chartered Surveyors, as set down in the RICS practice statement Surveyors acting as expert witnesses.

Signed.....

David Howson BSc (Hons) MRICS

Dated.....



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Primary School, Chilmington

Costs Review
Expert Report

Hodson Developments

February 2025

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1 Introduction

- 1.1** I, David Howson of Brookbanks have been instructed by Hodson Developments to provide an expert review of the proposed development costs for the provision of a Primary School at the Chilmington development near Ashford in Kent. A Primary School is to be provided as part of the S106 obligations included in the planning consent.
- 1.2** I am Senior Associate Commercial Director at Brookbanks, a specialist technical, environmental, highways, commercial management and project management construction consultant. I have over 15 years' experience as a chartered quantity surveyor and over 20 years' dealing with the cost planning and viability of development sites in addition to implementing building projects across a wide range of sites throughout the UK.
- 1.3** This report is prepared in support of an appeal on the proposed S106 costs for the Primary School. Hodson Developments have presented their intended Primary School 2 design and specification for cost review. It is based on the following Chilmington Green Primary School 1 planning design drawings that have been downloaded from the Ashford Borough Council Planning Portal:

GDM Architects:

- GROUND FLOOR PLAN - PRIMARY SCHOOL - VIA KCC P101 REV P2
- FIRST FLOOR PLAN - PRIMARY SCHOOL - VIA KCC P102 REV P2
- ROOF PLAN - PRIMARY SCHOOL - VIA KCC P103 REV P2
- ELEVATIONS (SHEET 1) - PRIMARY SCHOOL - VIA KCC P201 REV P2
- ELEVATIONS (SHEET 2) - PRIMARY SCHOOL - VIA KCC P202 REV P2
- P301 P2 Sections
- SITE PLAN - P002 P6

Considine Civil + Structural Engineers:

- 2340 CON 00 XX DR C 1510 P02 Drainage Layout sheet 1 of 3
- 2340 CON 00 XX DR C 1511 P02 Drainage Layout sheet 2 of 3
- 2340 CON 00 XX DR C 1512 P02 Drainage Layout 3 of 3
- 2340 CON 00 XX DR C 1513 P02 Manhole Schedule
- 2340 CON 00 XX DR C 1530 P01 Typical Drainage Details Sheet 1
- 2340 CON 00 XX DR C 1531 P02 Typical Drainage Details Sheet 2
- 2340 CON 00 XX DR C 1540 P01 Typical Construction Details
- 3939 P004_P1 Electric Vehicle Charging Spaces plan

- 1.4** I understand that in the Chilmington s106, the Primary School 1 and Primary School 2 Definitions are the same:

Primary School 1 - "means a primary school In Main phase 1 capable once built of offering two form entry to 420 children between the ages of 4 and 11 and a further 26 places for early years provision".

This definition mirrors the definition for Primary School 2:

Primary School 2 - "means a primary school In Main phase 2 capable once built of offering two form entry to 420 children between the ages of 4 and 11 and a further 26 places for early years provision".

- 1.5** It is entirely reasonable therefore to use the Primary School 1 designs as the maximum design required for Primary School 2.
 - 1.6** I understand that the S106 sets out that the Primary School 2 costs should not exceed £6,000,000 index linked to 2014.
 - 1.7** I understand Hodson Developments propose to modify this cost by moving the base indexation to start in 2018 thus increasing the maximum costs to deliver Primary School 2 to £7,920,000 ("the modified s106 cost").
 - 1.8** I have independently reviewed all information made available to me by the parties and all the cost items have undergone a quantity and rates review to arrive at a fair and reasonable assessment of all costs, based on my experience of working on similar projects. I have prepared a Cost Summary to summarise my findings included in section 5.
-

2 S106 Scope Review

Design Specification and Requirements

	S106 Requirement (school places)	Proposed Design (school places)	Difference
Children aged 4-11	420	420	-
Early Years Provision	26	26	-

S106 Requirements

- 2.1** The above table summarises the requirements of the S106 agreement which states as follows for Primary School 2 “means a primary school In Main phase 2 capable once built of offering two form entry to 420 children between the ages of 4 and 11 and a further 26 places for early years provision”. This definition mirrors the definition for Primary School 1 which was designed and built during Main Phase 1 of the development under the S106 and offers 420 children and 26 early years school places. The base costs for both Primary School 1 and 2 (and 3) are the same on the development.
- 2.2** Primary School 2 will therefore be built to the same design and specification as Primary School 1 and therefore will provide a primary school offering 420 children and 26 early years school places along with a grass football pitch, two tennis courts and an ecology zone (or similar).
- 2.3** I have reviewed the proposed design specification and S106 requirements; I confirm the design is in line with the S106 requirements.

3 Costs Review

Bills of Quantities Review

Element	Cost	Cost £/m ²	Comments
Groundworks	£208,675.89	£83	Traditional strip foundations with concrete ground slab and drainage costs based on supplier quotes and labour allowances
Superstructure	£1,316,935.01	£523	Traditional masonry façade with cladding and aluminium windows rates substantiated
Internals	£2,723,656.20	£1,083	Fit out specification in line with current school design rates substantiated
Externals	£661,919.34	£263	Provision of play area and ancillary parking included rates substantiated
Professional Fees	£65,000.00	£26	1.3% of construction cost consider this is reasonable to revise existing designs
Preliminaries	£201,015.00	£80	Programme 64wks which is reasonable for a traditional build has included required welfare, management plant and labour within the costs
Contingency	£103,544.03	£41	2% of construction cost is reasonable as design already developed and ground conditions are good
TOTAL COSTS	£5,280,745.47	£2,099	Rates within BCIS and Brookbanks cost benchmarking costs.

Proposed Cost Review

- 3.1** Hodson Developments have provided a detailed Bills of Quantities breakdown for their forecast construction costs for the proposed Primary School 2 design (based on the Primary School 1 design), which is based on recent 2024/25 tender rates from their suppliers and a detailed take off of the quantities in the design proposals (see Appendix B).

- 3.2** Hodson Developments propose to build the school traditionally and have allowed for the all the key components to achieve this and substantiating their cost with supplier quotes, tender rates and labour breakdowns. The costs allow for a programme of 64 weeks which is achievable and realistic for this method of construction. The table above summarises the cost review undertaken and, based on the internal area of 2,516m², this equates to a cost of £2,099/m² which is within both the BCIS and Brookbanks benchmarking cost ranges discussed later in the report and the overall cost of £5,280,75.47 is within the “modified S106 cost” of £7,920,000.

Building Cost Information Service

BCIS[®]

£/M2 STUDY

Description: Rate per m² gross internal floor area for the building Cost including prelims.

Last updated: 25-Jan-2025 08:09

Rebased to Kent (109; sample 256)

MAXIMUM AGE OF RESULTS: DEFAULT PERIOD

Building function (Maximum age of projects)	£/m ² gross internal floor area						Sample
	Mean	Lowest	Lower quartiles	Median	Upper quartiles	Highest	
New build							
712.8 Primary Schools - mixed facilities (15)	2,880	1,060	2,352	2,936	3,404	4,786	73

Average Prices

- 3.3** The Building Cost Information Service (BCIS) provides the UK’s leading cost data service for construction costs offering an Average Prices service that provides cost data on a variety building functions constructed in the UK. The table above summarises the cost data on Primary School projects from the BCIS cost database rebased to Kent Q1 2025 pricing levels in £/m² on gross internal area. This shows the cost of a Primary School with mixed facilities such as the proposed design have been built for a cost range of between £1,060/m² to £4,786/m² with the average (mean) cost being £2,880/m². The proposed maximum cost of £7,920,000 would equate to £3,148/m² based on the proposed design which is towards the higher end of the cost range.

Order of cost estimate

- 3.4** The BCIS online service also provides an early cost advice calculator for reviewing the build cost of a proposed development whilst allowing cost for the abnormal costs. Reviewing the plans and making adequate allowances for these excluded costs I have prepared an order of cost estimate based on the average cost £2,880/m² this totals a cost of £7,740,000 (see appendix A) which is within the proposed S106 cost of £7,920,000.

Project	Southwark, London	Preston Park, London	Hendon, London
Gross Internal Floor Area	2,477m ²	1,937m ²	2,141m ²
Total cost £/m ² Total cost (Q1 2025 rebase)	£2,379/m ²	£2,156/m ²	£1,722/m ²

BCIS benchmarked projects

- 3.5** Analysing the average price cost information further I have reviewed the BCIS sample data used and looking at the 73 sample projects it is possible to select comparable projects in terms of both size and location. The table above shows three projects close in size and location to the Primary School in Kent on the edge of Greater London (albeit these locations would be expected to generate higher costs per square metre due to their location). These projects are all primary schools ranging in size from 1,937-2,477m² compared to the proposed 2,516m² and because of their location these range in cost from £1,722-£2,379/m², substantially lower than the proposed maximum £3,146/m².

Comparable Projects

Project	Sherford, Plymouth	Arnhem Wharf, London
Gross Internal Floor Area	2,290m ²	1,300m ²
Total cost £/m ² Total cost (Q1 2025 rebase)	£2,777/m ²	£2,563 /m ²

Further project benchmarking

- 3.6** Brookbanks have experience of several developments across the UK involving the construction of schools under S106 agreements. In reviewing the proposed design and costs I have reviewed the costs of recently completed comparable Primary School projects Brookbanks has been involved with which are summarised in the table above. These examples range in cost from £2,563 to £2,777/m² which again are within the proposed maximum cost of £3,146/m².

4 Cost Summary

Cost Summary

- 4.1** Hodson Developments has provided a detailed costing of the proposed design which totals £5,280,745.47 which equates to £2,099/m² based on the gross internal floor area of 2,516m². The review of these costs has confirmed these are reasonable for a traditionally constructed load bearing masonry school and the construction programme of 64 weeks is realistic. These costs are within benchmarked cost ranges of the BCIS and Brookbanks and demonstrate the proposed design is within the modified S106 budget of £7,920,000, which would result from commencing indexation from 2018.
- 4.2** This costs review has demonstrated there is a possible range of cost for Primary School 2 (PS2). The most comparable projects from the BCIS i.e. those in Greater London show this range to be between £1,722 to £2,379/m² which equates £4.3m to £6m at 1Q 2025 price levels which is within the £7.92m proposed budget.
- 4.3** Then looking at further comparable primary school costs such as Brookbanks projects the range is £2,563/m² to £2,777/m² or £6.45m to £6.98m to 1Q 2025 price levels which again is within the £7.92m budget.
- 4.4** In summary this cost review has revealed the most comparable cost data clearly shows that the proposed designs for Primary School 2 are in line with the S106 requirement and can be constructed at today's costs within the £7,920,000 modified budget (i.e. £6m plus indexation, with a 2018 indexation base date).

5 Declaration

Statement of Truth

- 5.1 I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Declaration

- 5.2 I confirm that my report has drawn attention to all material facts which are relevant and have affected my professional opinion.
- 5.3 I confirm that I understand and have complied with my duty to the Independent Expert as an expert witness which overrides any duty to those instructing or paying me, that I have given my evidence impartially and objectively, and that I will continue to comply with that duty as required.
- 5.4 I confirm that I am not instructed under any conditional or other success based fee arrangement.
- 5.5 I confirm that I have no conflicts of interest.
- 5.6 I confirm that I am aware of and have complied with the requirements of the rules, protocols and directions of the Independent Expert.
- 5.7 I confirm that my report complies with the requirements of RICS – Royal Institution of Chartered Surveyors, as set down in the RICS practice statement Surveyors acting as expert witnesses.

Signed.....

David Howson BSc (Hons) MRICS

Dated.....

| Appendix A BCIS Order of Cost Estimate

Order of cost estimate

Title

//

Works cost estimate

	Variable	Rate	Cost, £
Facilitating works estimate			£ 0
Building estimate	2516 m2	x £ 2642 / m2	£ 6,647,272
Select alternative location	Kent (109; sample 256)		£ 7,245,526
External works			£ 270000
Adjustments and additions			£ 0
Difference between source data and current scheme			£ 0
Works cost estimate (sub total A) = £ 7,515,526			
Adjustment for the effect of Covid-19			
Adjustment for the effect of Covid-19			£ 0
Adjusted works cost estimate (sub total A1)			£7,515,526
Project/design fees and other development costs			
Project/design team fees	@ 2 %		£ 150,311
Other development/project costs estimate			£ 0
Project/design fees and other development costs (sub total B) = £ 150,311			
Base cost estimate			Base cost estimate A1 + B = (sub total C) = £ 7,665,837
Risk allowance estimate			
Design development risks estimate			£ 0
Construction risks estimate			£ 76650
Employers change risk estimate			£ 0
Employers other risks estimate			£ 0
sub total D = £ 76,650			
Cost limit (excluding inflation)			C + D = sub total E = £ 7,742,487
Tender inflation estimate			
☒ No date adjustment ☐ Adjust to 4Q 2018 (330; sample 85) ▼			
Cost limit (firm price tender)			E + G = sub total H = £ 7,742,487
Construction inflation estimate			
This will not ▼ be a fluctuating price contract? If proposed project is to be let on a firm price basis, then no further adjustment for inflation during the construction period is required.			
Total deductions and allowances			sub total I = £ 0

	Variable	Rate	Cost, £
Cost limit (including inflation)			H + I = £ 7,740,000

| Appendix B Primary School 2 Bill of Quantities

Primary School 2 Bill of Quantities (at Q4 2024 and Q1 2025 rates)

Costs in summary are as follows:

Groundworks	£	208,675.89
Superstructure	£	1,316,935.01
Internals	£	2,723,656.20
Externals	£	661,919.34
Fees	£	65,000.00
Prelims	£	201,015.00
Contingency - 2%	£	103,544.03
Total Costs	£	5,280,745.47

Primary School 2 - Foundations & Substructure

Foundations

Concrete	1x0.75x374	280 m3	£106.00	m3	£	29,680.00
Clay master	75mm thick 1.2x2.4 sheet	514 m	£	6.06	m	£ 3,114.84
Labour 4 men 3 weeks @ £200 per day						£ 12,000.00

Comments

Readymix concrete GEN3 - rate taken from Stewart Brothers dated 07/11/24 - Appendix 1
Rate taken from Scott Parnell quote 306636 - Appendix 21

Substructure

External Blockwork -	234x0.9	210 m2	£	11.85	m2	£	2,488.50
Internal Blockwork	140x0.9	126 m2	£	11.85	m2	£	1,493.10
External Brickwork Facing	234x0.525	123 m2	£	21.00	m2	£	2,583.00
Internal Brick	234x0.075	18 m2	£	13.92	m2	£	250.56
Internal Brick	140x0.150	21 m2	£	13.92	m2	£	292.32
Lean mix concrete external wall	234x0.150x0.400	14.04 m3	£100.00	m3	£	1,404.00	
Mortar	blocks	4 ton	£125.00	ton	£	500.00	
	bricks	10 ton	£125.00	ton	£	1,250.00	
Labour - Brickwork		162 m2	£	55.00	m2	£	8,910.00
Labour - Blockwork		336 m2	£	35.00	m2	£	11,760.00

10N concrete block rate taken from Travis perkins quote 0108Q836990 - Appendix 2
10N concrete block rate taken from Travis perkins quote 0108Q836990 - Appendix 2
Facing bricks £350.00 per Thousand
10N concrete block rate taken from Travis perkins quote 0108Q836990 - Appendix 2
10N concrete block rate taken from Travis perkins quote 0108Q836990 - Appendix 2
Readymix concrete GEN1 - => rate taken from Stewart Brothers dates 07/11/24 - Appendix 1
approx 1 tonne for 1200 blocks
approx 1 tonne for 1000 bricks

Brickwork rate of £55/m2.
Blockwork rate of £35/m2.

Ground Floor Slab

Block and Beam	150mm deep beams	1490 m2	£	28.50	m2	£	42,465.00
DPC	150mm Visqueen Zedex DPC 20m	26 roll	£	8.60	ea	£	223.60
Labour 4 men 8 weeks @£200 per day						£	32,000.00

Rate taken from Floorspan quote Q88557/REV2 821.53m2 supply only and blocks 741m2 rate from Travis
Perkins quote 0108Q836990 - Appendix 3 and 2
150mm Visqueen Zedex DPC 20m

Drainage

Internal Foul Drainage

110mm pipe 6m lengths	19 no	£	21.52	ea	£	408.88
110mm 90deg bends	26 no	£	2.58	ea	£	67.08
bends D/S	30 no	£	2.58	ea	£	77.40
Labour 4 men 3 days	12 days	£200.00	ea	£	2,400.00	

Rate used from Scott Parnell quotation 310189 02/12/24 - Appendix 4

External Foul Drainage

150mm pipe 6m lengths	32 no	£	45.65	ea	£	1,460.80
460mm chambers 150mm channel	17 no	£	28.26	ea	£	480.42
460mm chambers 100mm channel	7 no	£	28.26	ea	£	197.82
chamber risers 17@0.86 and 7@1.2	108 no	£	21.19	ea	£	2,288.52
110mm 45deg bends	15 no	£	7.61	ea	£	114.15
bends D/S	30 no	£	7.61	ea	£	228.30
Labour 4 men 2 weeks	40 days	£200.00	ea	£	8,000.00	

Rate used from Scott Parnell quotation 310189 02/12/24 - Appendix 4

External Stormwater Drainage

150mm pipe 6m lengths	47 no	£	45.65	ea	£	2,145.55
150mm pipe 6m lengths	18 no	£	21.52	ea	£	387.36
460mm chambers 110mm channel	10 no	£	28.26	ea	£	282.60
chamber risers 0.84m c/w seal	40 no	£	21.19	ea	£	847.60
chamber cover 450x450	10 no	£	19.02	ea	£	190.20
110mm 90deg bends	36 no	£	3.66	ea	£	131.76
Y bends D/S 150x150x110	34 no	£	13.04	ea	£	443.36
150mm bends D/S	24 no	£	7.61	ea	£	182.64
110mm bends D/S	72 no	£	2.58	ea	£	185.76
Labour 4 men 3 weeks	60 days	£200.00	ea	£	12,000.00	

Rate used from Scott Parnell quotation 310189 02/12/24 - Appendix 4

External Stormwater Drainage to Carpark

150mm pipe 6m lengths	19 no	£	45.65	ea	£	867.35
460mm chambers 150mm channel	5 no	£	28.26	ea	£	141.30
chamber risers 1.2m c/w seal	28 no	£	21.19	ea	£	593.32
Yard gullies	2 no	£	90.60	ea	£	181.20
Y bends D/S 150x150x110	2 no	£	13.04	ea	£	26.08
Labour 4 men 1 week	20 days	£200.00	ea	£	4,000.00	

Aggregate for all Drainage & Externals

10mm Shingle	256 ton	£	28.00	ton	£	7,168.00
Ballast	176 ton	£	25.00	ton	£	4,400.00
cement	1408 bag	£	5.94	ea	£	8,363.52

Rate taken from Scott Parnell quote 298804 - Appendix 9

£ 208,675.89

Primary School 2 - Superstructure										
Materials										
External Brick - Less -	windows and doors	1304	m2						Facing Bricks £350.00 per Thousand	
		313.51	m2							
		990.49	m2							
		x60	59429.4	No	£	350.00	£	20,800.29		
External Block Less -	windows and doors	1304	m2						10N concrete block rate taken from Travis perkins quote 0108Q836990 - Appendix 2	
		313.51	m2							10N concrete block rate taken from Travis perkins quote 0108Q836990 - Appendix 2
Internal Block	total m2	990.49	m2	£	11.85	£	11,737.31		10N concrete block rate taken from Travis perkins quote 0108Q836990 - Appendix 2	
		GF 279x3.306 100m block	922	m2	£	11.85	£	10,925.70		10N concrete block rate taken from Travis perkins quote 0108Q836990 - Appendix 2
		GF 113x3.306 215mm block	747	m2	£	11.85	£	8,851.95		10N concrete block rate taken from Travis perkins quote 0108Q836990 - Appendix 2
		FF 237x3.306 100mm block	783	m2	£	11.85	£	9,278.55		10N concrete block rate taken from Travis perkins quote 0108Q836990 - Appendix 2
Silo Mortar	FF 110x3.306 215mm block	727	m2	£	11.85	£	8,614.95		10N concrete block rate taken from Travis perkins quote 0108Q836990 - Appendix 2	
		Bricks	60	ton	£	125.00	£	7,500.00		approx 1 tonne for 1000 bricks (figures rounded up to nearest full loads)
		Blocks	28	ton	£	125.00	£	3,500.00		approx 1 tonne for 1200 blocks (figures rounded up to nearest full loads)
Cavity Insulation	100mm recitcel for partfill cavity	990.49	m2	£	12.00	£	11,885.88		Recticel 100mm ridged sheet for 150mm partfill cavity rate used from email quote from Encon highlighted - Appendix 5	
Steel Lintels	94no 150mm steel cavity lintels	1	set	£	9,769.06	£	9,769.06		Rate's used from Keystone quote OPP-258390-001 for 150mm wide cavity lintels Less 85% from price list - Appendix 6	
Concrete Lintels	100x140x2700	13	no	£	60.24	£	783.12		As per Travis Perkins quote 0108Q85229 - Appendix 22	
Concrete Lintels	100x140x1350	92	no	£	30.13	£	2,771.96		As per Travis Perkins quote 0108Q85229 - Appendix 22	
Roof	Flat roof with falls	1490	m2	£	50.00	£	74,500.00		Rate taken from Howarth timber quote B42479B 19/12/24 - Appendix 7	
Rain water Goods	65mm square black down pipes 4m long	120	m	£	3.30	£	396.00		Marley 68mm box hopper	
		Box hoppers	15	no	£	55.00	£	825.00		
		Brackets to fix down pipe	120	no	£	0.60	£	72.00		
		Down pipe joints	22	no	£	0.95	£	20.90		
Sub Contract										
PCC Floors & Stairs				£	125,158.64				Per m2 rate of £115.46. Floor area of 1,084m2. Includes for PCC Stairs.	
Structural Steel				£	98,670.00				Central Steels to carry first floor planks & ceiling - 286m @ £300/m. Labour - 15% of material cost	
Bricklayers (Labour & Sundry items)				£	200,409.10				External Brickwork 990.49m2, External Blockwork 990.49m2, Internal Blockwork 3,179m2. Brickwork rate of £55/m2.	
Rainscreen Cladding				£	186,473.00				Blockwork rate of £35/m2.	
Scaffolding				£	68,856.27				Per m2 rate of £350 (supply & install). Total area of 532.78m2	
Manisafe				£	8,505.27				5 lift scaffold allowed for including birdcage scaffold, lift shaft scaffolding, temporary handrail to stairwells, scaffold to stairwell ceilings, 4no loading bays & 3no haki stairs	
Roof Coverings				£	95,929.33				Based on rates from 2D. Floor / roof area is 1474m2, approximately 3 times the area of Block C2/A3	
Aluminium Copings				£	19,001.45				Primary School has a roof area of 1490m2.	
Installation of Roof Trusses				£	6,500.00				296m at £58.41/m & 19 corners at £90.11 each.	
									2 weeks 3 men + sundries	
									58no windows 3.3m x 1.125m @ £2,148.80; 10no windows 4.2m x 0.8m @ £1,944.77; 12no windows 3.3m x 0.45m @ £859.52; 1no window 2.4m x 1.125m @ £1,562.76; 4no windows 1.085m x 1.085m @ £681.38 each; 3no windows 1.5m x 1.125m @ £976.73 each; 2no windows 3.3m x 3.34m @ £6,379.53; 4no windows 2.175m x 0.5m @ £629.45; 17no doors with top light 3.3m x 1.125m @ £2,148.80 each; 5no doors with top light 3.3m x 1.8m @ £3,438.08 each; entrance door 7.775m x 3.6m @ £16,200.61	
Aluminium Windows & Doors				£	246,808.28				£4.75/LM - 140LM for expansion joints, 1,016LM to windows & doors	
External Mastic				£	5,491.00				162sqm at £450/sqm	
Glass External Canopy				£	72,900.00					
				£	1,316,935.01					

Primary School 2 - Internals

Materials

Drylining	12mm wall PB and 15mm Ceilings, c/w tape and jointing	7895 m2	£	9.20	£	72,634.00
Door Linings	13 double doors 92 single doors linings	105 no	£	24.00	£	2,520.00
	10 pair Glazed doors 23no glazed single doors 3 pair blank doors					
Internal Fire Doors	69no single doors	1 set	£	15,946.50	£	15,946.50
Ironmongery	Ironmongery for above doors	1 set	£	7,480.66	£	7,480.66
Paint / Decoration	Undercoat & covercoat, Plus caulk, filler, sandpaper etc	1 item	£	12,000.00	£	12,000.00

Comments

Rate used from Encon email. All rooms both GF and FF all walls and ceilings - Appendix 11
105/300mm wide door linings

18G glazed oak FD30 and Oak veneer FD 30 doors
Hinges, door handles, push plates, fire strips, overhead closers, fire signs, locks
Crown White Paint allowed for to walls & ceilings

Sub Contract

Screeding			£	72,355.14		
2nd Fix Carpentry - Labour Only			£	24,000.00		
Firestopping			£	61,250.00		
Internal Mastix			£	8,464.50		
Drylining (Labour Only)			£	48,000.00		
Dry Riser			£	3,175.00		

Total floor area of 2,574m2 on ground and first floor combined. Rate of £28.11/m2 as per 2D. 75mm (1:4 Mix) Fibre-Reinforced Screed, 500g Separating Membrane, 150mm Ecotherm Insulation with 25mm Upstand to external walls, 1200g DPM. Inc. 6mm IsoRubber to 1st floor
Labour to install door linings, fire doors, ironmongery, toilet cubicles - 4 men 6 weeks @ £200 per day
Fire stopping to service penetrations passing communal doors and riser cupboards; mastic sealing heads of plasterboard walls in communal areas;
Mastic to the windows & doors (1,016LM), 766m of internal mastic to all rooms. Rate of £4.75/LM
Drylining including tape and jointing to all areas. 8 weeks 6 men @ £200 per day.
1no dry riser allowed for

Plumbing & Heating			£	681,554.51		

Includes supply & installation of plant room fit out as well as the heating installation throughout the school, WC's fit out, sinks in each class room as well as the sick bay & cloakroom adjacent to the PE Store. Also includes installation of rainwater goods.

Electrical & Lighting			£	544,000.00		
Door Entry			£	80,000.00		
Lift			£	20,000.00		
Stair Balustrading			£	4,600.00		
Balustrading to Walkway above Entrance Lobby			£	1,125.00		

The costs also allow for air conditioning/heating throughout the school.
Door Entry to all doors leading to external areas on the ground floor & to corridor doors on the ground & first floor
1no lift only for 2 storeys
Rate of £225/m. 2no stair cores, 8m to each stair core, plus guard rail to the windows in the stair core
5m wide, 1.2m high. Rate of £225/m

AOV			£	20,000.00		
Builder's Clean			£	5,000.00		
Heavy Duty Vinyl Flooring			£	41,184.00		
Painting & Decorating			£	26,400.00		

Automatic roof vents to 2no stair core, Window AOV's located on first floor corridor & smoke detection system throughout communal area

Internal Fit Out to all rooms			£	945,000.00		
Snagging			£	26,966.89		

Total floor area of 2,574m2. Rate of £16/m2
Labour only to paint all areas including the stair balustrading

Allowance of £750 per pupil for IT & £1,500 per pupil for furniture, fittings & equipment (including school kitchen). Based on 420 pupils
1% allowance of the internal costs

£ 2,723,656.20

Primary School 2 - External Works

Hard Landscaping

Hard Surface Play Court 1599m2

Geotextile Terram 1000	4.5x100m rolls	4 rolls	£ 120.00	£ 480.00	
Marshall's MM380	80m2 rolls	6 rolls	£ 130.00	£ 780.00	
150mm perforated pipe	250m - 50m rolls	5 no	£ 85.00	£ 425.00	
150mm pipe	42m	7 no	£ 35.73	£ 250.11	Current supply & install rate
Hydro Brake	Manhole 515	1 no	£ 2,739.98	£ 2,739.98	Current supply & install rate
Bagged head wall	with Non return valve	1 no	£ 2,000.00	£ 2,000.00	Current supply & install rate
Clean Stone	0.35x1600 560m3 Plus 93m3 for trench	979 ton	£ 28.00	£ 27,412.00	
30mm open graded wearing open binder		120 ton	£ 104.00	£ 12,480.00	Rate taken from Scott Pamell quote 448769 - Appendix 8
concrete paving slabs	1.8x1.8m spill way	200 ton	£ 104.00	£ 20,800.00	Rate taken from Scott Pamell quote 448769 - Appendix 8
Labour - 4 men 3 weeks		3.24 m2	£ 15.35	£ 49.73	
White Lining		60 day	£ 200.00	£ 12,000.00	
		1 item	£ 1,500.00	£ 1,500.00	1 no visit allowed for £600 per panel (2.5m length), 223 panels required. Labour £100 per panel to fit.
Fence to Perimeter of MUGA & Perimeter of School Boundary		223 item	£ 700.00	£ 156,100.00	

Parking courts.

Block Paving	400+639 1039m2 80mm thick blocks	1039 m2	£ 28.30	£ 29,403.70	
Clean crushed stone	5mm sized stone 0.05x1039	77 ton	£ 28.00	£ 2,156.00	
115mm AC20	Dense binder course	298 ton	£ 79.00	£ 23,542.00	
Clean angular sotne	300mm deep 4-20mm stone	467 ton	£ 28.00	£ 13,076.00	
Geotextile Terram 1000	4.5x100m rolls	3 rolls	£ 120.00	£ 360.00	
Marshall's MM380	80m2 rolls	2 rolls	£ 130.00	£ 260.00	
Clean angular sotne	deep 4-20mm stone	35 ton	£ 28.00	£ 980.00	
Core drilling	100 dia holes	940 no	£ 18.00	£ 16,920.00	
Labour - 4 men 4 weeks		80 days	£ 200.00	£ 16,000.00	

Access Road.

30mm AC 10	564/13.33	42 ton	£ 104.00	£ 4,368.00	Rate as per Brett email 23/01/25 - Appendix 10
60mm AC20	564/6.66	85 ton	£ 79.00	£ 6,715.00	Rate as per Brett email 23/01/25 - Appendix 10
100mm AC32	564/4	141 ton	£ 78.00	£ 10,998.00	Rate as per Brett email 23/01/25 - Appendix 10
260mm Type 1	564*0.260	320 ton	£ 17.05	£ 5,456.00	
Labour - 4 men 2 weeks		40 days	£ 200.00	£ 8,000.00	

Tarmac Paved Area.

Type 1	2319x0.200	1020 ton	£ 17.05	£ 17,391.00	
Binder course	70mm thick 2319/5.7	407 ton	£ 79.00	£ 32,153.00	Rate as per Brett email 23/01/25 - Appendix 10
Wearing course	25mm thick 2319/16	145 ton	£ 104.00	£ 15,080.00	Rate as per Brett email 23/01/25 - Appendix 10
Labour - 4 men 6 weeks		120 days	£ 200.00	£ 24,000.00	

Kerbs

Kerbs - 914mm long	HB2 half battered kerbs 914mm	405 no	£ 7.62	£ 3,086.10	Rate taken from Scott Pameell quote 280871 - Appendix 20
Edgings - 914mm long	150x50x914mm flat top	636 no	£ 3.08	£ 1,958.88	Rate taken from Scott Pameell quote 280871 - Appendix 20
Labour - 4 men 4 weeks		80 days	£ 200.00	£ 16,000.00	

Labour - reduce dig for all externals - 4 men 2 weeks		40 days	£ 200.00	£ 8,000.00	
Labour - install type 1 for all externals - 4 men 2 weeks		40 days	£ 200.00	£ 8,000.00	

Soft Landscaping

Topsoil & grass seeded		3165 m2	£ 28.00	£ 88,620.00	Areas adjacent to the school building to be topsoiled & grass seeded
Grass seeded only		9000 m3	£ 3.50	£ 31,500.00	The sports pitch is currently an open field and therefore no need to topsoil. We have allowed to rotavate and grass seed only
Trees	Tilia Cordata Greenspire	15 no	£ 375.00	£ 5,625.00	As per quote from Palmstead 90829 - Appendix 18
Hedging	English laurels 100-125cm	174 no	£ 11.50	£ 2,001.00	58m allowed 3 per 1m- As per quote from Palmstead 93928 - Appendix 19
Landscaping Bark	1 ton bulk bags	5 bag	£ 69.00	£ 345.00	
Labour - 4 men 2 weeks		40 days	£ 200.00	£ 8,000.00	

Bollard Lights

50mm electric duct for bollard lighting		1000 m	£ 3.07	£ 3,070.00	
Installation of bollard base		12 EA	£ 150.00	£ 1,800.00	
Bollards					
900mm high bollards c/w bolt down fixing		12 EA	£ 88.00	£ 1,056.00	
Labour Costs - 4 men 3 days		12 days	£ 200.00	£ 2,400.00	

EV Charging

Supply & install of car chargers, including all ducting & bollard bases		5 EA	£ 2,500.00	£ 12,500.00	

Cycle Shelter

Supply & Install Shelter for 9 bikes, including base		1 no	£ 3,000.00	£ 3,000.00	

Refuse Store

Supply & Install Closeboard fence 1.8m high		24 m	£ 54.66	£ 1,311.84	
Double Gate		1 EA	£ 250.00	£ 250.00	

£ 661,919.34

Primary School 2 - Fees

Architect	£	25,000.00
Structural Engineer	£	10,000.00
Civil Engineer	£	15,000.00
M&E	£	5,000.00
Other	£	10,000.00
	£	<u>65,000.00</u>

Primary School 2 - Prelims

Site Management

Site Manager	64 wk	£1,250.00 wk	£ 80,000.00
Telehandler	40 wk	£ 800.00 wk	£ 32,000.00

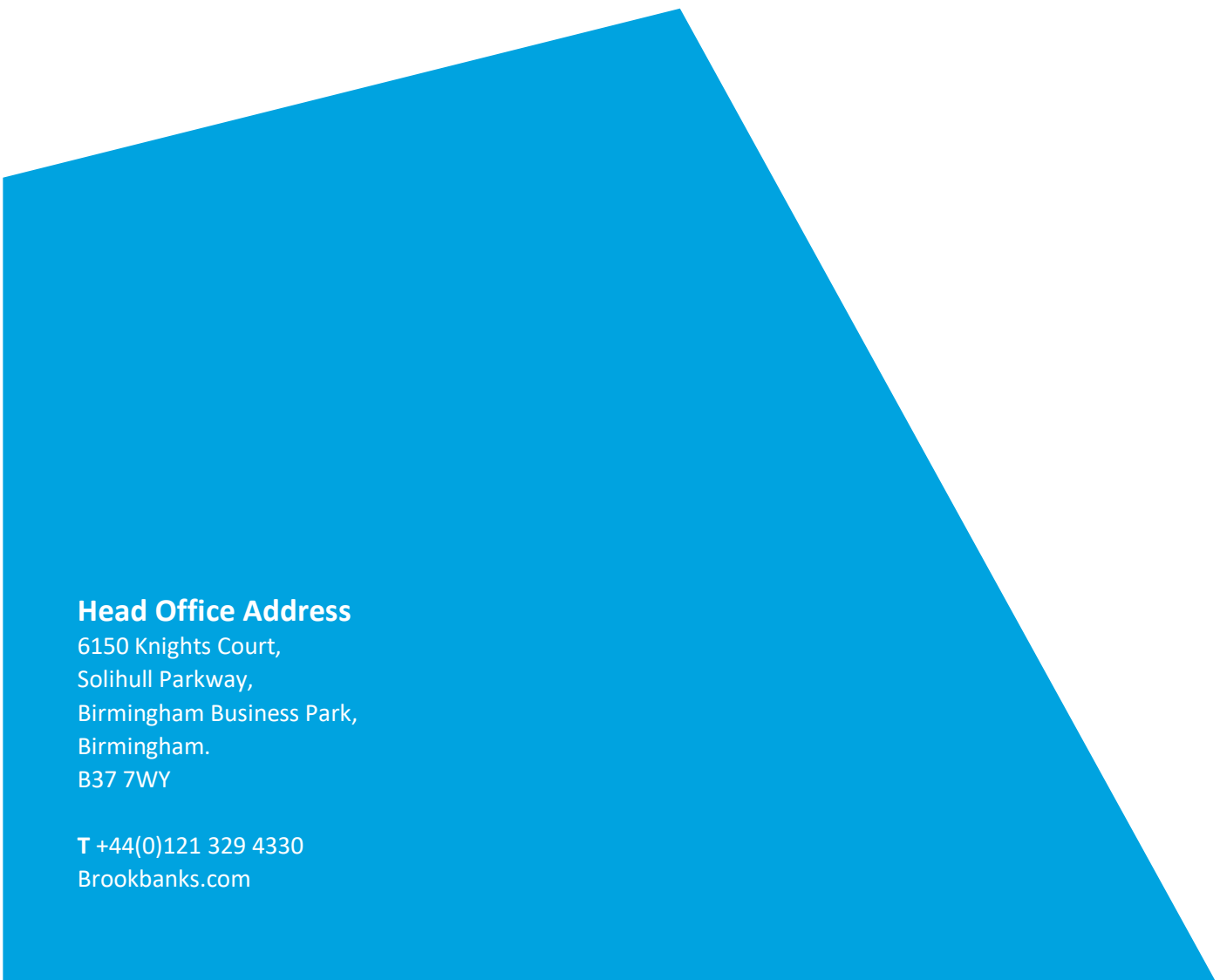
Compound Setup

1 no	Silo base cost / setup	1 no		£ 1,800.00	Single silo base 4x3m
1 set	of signages for site set up	1 no	£ 500.00 EA	£ 500.00	
1 week	HD labour 3 men 1weeks	3 men	£ 200.00 wk	£ 3,000.00	
	Electrician to connect site compound to TBS			£ 600.00	
80 wk	Water & Electric Running Costs	64 wk	100 wk	£ 6,400.00	
1 no	24ft Canteen / Drying room	64 wk	£ 45.00 per week	£ 2,880.00	As per quote from CW Plant 11-002025 - Appendix 13
1 no	Toilet block 12x12	64 wk	£ 65.00 per week	£ 4,160.00	As per quote from CW Plant 11-002025 - Appendix 13
2 no	20ft storage units	64 wk	£ 20.00 per week	£ 2,560.00	As per quote from CW Plant 11-002025 - Appendix 13
1 no	Transport	1 no	£1,500.00 no	£ 1,500.00	As per quote from CW Plant 11-002025 - Appendix 13
1 no	24ft Office Unit	64 wk	£ 45.00 per week	£ 2,880.00	As per quote on emial from CW Plant 08/01/25 - Appendix 12
1 no	Stairs & Landing	64 wk	£ 10.00 per week	£ 640.00	As per quote on emial from CW Plant 08/01/25 - Appendix 12
2 no	Transport each way	2 no	£ 250.00 no	£ 500.00	As per quote on emial from CW Plant 08/01/25 - Appendix 12
1 no	Stacking Charge	1 no	£ 150.00 no	£ 150.00	As per quote on emial from CW Plant 08/01/25 - Appendix 12
1 no	Unstacking Charge	1 no	£ 150.00 no	£ 150.00	As per quote on emial from CW Plant 08/01/25 - Appendix 12
2 no	Silos (move existing ones)		FOC		CPI silo more FOC
30 ea	12 yd Skips	30 ea	£ 280.00 ea	£ 8,400.00	

Plant Hire

1 no	14m telehandler	52 wk	£ 280.00 per week	£ 14,560.00	
1 no	13 ton digger	10 wk	£ 440.00 per week	£ 4,400.00	As per quote on emial from CW Plant 16/08/24 - Appendix 14
1 no	3 ton digger	20 wk	£ 195.00 per week	£ 3,900.00	As per quote on email from CW Plant 25/06/24 - Appendix 16
1 no	6 ton dumper truck	30 wk	£ 140.00 per week	£ 4,200.00	As per quote on emial from CW Plant 16/08/24 - Appendix 14
1 no	6" water pump	10 wk	£ 280.00 per week	£ 2,800.00	As per quote on emial from CW Plant 27/11/24 - Appendix 15
1 no	provisional sum for general plant	64 wk	£ 40.00 per week	£ 2,560.00	
1 no	Fuel 1500lt per month (£1.30 per lt)	6 months	£1,950.00 per month	£ 11,700.00	
1 no	Fuel 750lt per month (£1.30 per lt)	9 months	£ 975.00 per month	£ 8,775.00	

£ 201,015.00



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Sports Hub and Pitches, Chilmington

Costs Review
Expert Report

Hodson Developments

February 2025

Document Control Sheet

Document Title	Sports Hub and Pitches, Chilmington - Costs Review Expert Report
Document Ref	SHPCR01
Project Name	Sports Hub and Pitches, Chilmington
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1 Introduction

- 1.1** I, David Howson of Brookbanks have been instructed by Hodson Developments to provide an expert review of the proposed development costs for the provision of a Sports Hub and Pitches at the Chilmington development near Ashford in Kent. The Sports Hubs and Sports Pitches are to be provided as part of the S106 obligations included in the planning consent.
 - 1.2** I am Senior Associate Commercial Director at Brookbanks, a specialist technical, environmental, highways, commercial management and project management construction consultant. I have over 15 years' experience as a chartered quantity surveyor and over 20 years' dealing with the cost planning and viability of development sites in addition to implementing building projects across a wide range of sites throughout the UK.
 - 1.3** This report is prepared in support of an appeal on the proposed modified S106 costs for the Sports Hub and Sports Pitches. I understand that the scope of works of specification of the Sports Hub and Sports Pitches are not being modified.
 - 1.4** I understand that the S106 sets out that the Discovery Park Sports Hub costs should not exceed £4,976,157 index linked to 2014 base indexation (i.e. plus indexation from 2014). I understand Hodson Developments propose to modify this cost by moving the base indexation to start in 2018, thus increasing the cost to £5,971,388.
 - 1.5** I understand that the S106 sets out that the Discovery Park Sports Pitches costs should not exceed £2,782,000 index linked to 2014 base indexation (i.e. plus indexation from 2014). I understand Hodson Developments propose to modify this cost by moving the base indexation to start in 2018, thus increasing the cost to £3,338,400.
 - 1.6** I have independently reviewed all information made available to me by the parties and all the cost information provided has undergone a quantity and rates review to arrive at a fair and reasonable assessment of all costs, based on my experience of working on similar projects. I have prepared a Cost Summary to summarise my findings included in section 5.
-

2 S106 Scope Review

Design Specification and Requirements

	S106 Requirement facilities	Proposed Design	Difference
Discovery Park Sports Hub	1.37 ha	1.37ha	-
Community rooms	Included above	Included above	-
Sport and Physical Recreation	Included above	Included above	-
Specialist Facilities	Included above	Included above	-
Core Space (reception, toilets, offices, etc)	Included above	Included above	-
Discovery Park Sports Pitches	22.08 ha	22.08 ha	-

S106 Requirements

- 2.1 The above table summarises the requirements of the S106 agreement which states as follows for Discovery Park Sports Hub “The 1.37 ha of facilities to be provided on the land marked “S3” or “DP3” on the attached plan numbered OPA06R rev. P2 at Annex 3 of this Deed” and under detail requirements “spaces to be included community rooms, sport and physical recreation, specialist facilities, core spaces (reception, toilets, offices, etc).”
- 2.2 Under the S106 Discovery Park Sports Pitches requirements are defined as “22.08 ha of sports pitches/courts provided on the land marked “S3” on the plan numbered OPA06R rev. P2 at Annex 3 of this Deed”
- 2.3 Hodson Developments proposes to provide the above requirements as per the S106 agreement.

3 Costs Review

Sports Hub - Building Cost Information Service



£/M2 STUDY

Description: Rate per m2 gross internal floor area for the building Cost including prelims.

Last updated: 25-Jan-2025 08:09

Rebased to Kent (109; sample 256)

MAXIMUM AGE OF RESULTS: DEFAULT PERIOD

Building function (Maximum age of projects)	£/m ² gross internal floor area						Sample	
	Mean	Lowest	Lower quartiles	Median	Upper quartiles	Highest		
New build								
562.1 Sports centres/recreational centres								
Generally (20)	2,295	1,173	1,853	2,153	2,557	4,371	28	
Up to 500m2 GFA (20)	2,847	1,931	-	2,543	-	4,371	4	
500 to 2000m2 GFA (20)	2,417	1,553	2,026	2,407	2,787	3,736	16	
Over 2000m2 GFA (20)	1,775	1,173	1,490	1,838	2,126	2,243	8	

Average Prices

- 3.1** The Building Cost Information Service (BCIS) provides the UK's leading cost data service for construction costs offering an Average Prices service that provides cost data on a variety building functions constructed in the UK. The table above summarises the cost data on Sports centres/recreational centres projects from the BCIS cost database rebased to Kent Q1 2025 pricing levels in £/m² on gross internal area. The table above also shows the cost of a Sports centres/recreational centres such as the proposed Sports Hub (being over 2,000m²) have been built for a cost range of between £1,775/m² to £2,243/m² with the average (mean) cost being £1,775/m². Using this average cost of £1,775/m² and the proposed maximum cost of £5,971,388 this would mean a Sports Hub facility with a gross internal floor area of over 3,000m² could be built within the proposed budget which allowing for external car parking and external ancillary sports facilities could all be accommodated within the allotted 1.37ha (13,700m²) site. The average gross internal floor area of a sports facilities based on the BCIS sampled projects is around 2,000m² with only 10% being above 3,000m².

Order of cost estimate

- 3.2** The BCIS online service also provides an early cost advice calculator for reviewing the build cost of a proposed development whilst allowing cost for the abnormal costs. Using this calculator I have prepared an order of cost estimate based on the average cost £/m² this totals cost of £5,810,000 (see appendix A) this is within the proposed S106 cost of £5,971,388.

	Redbridge Sports Centre, London	Sports Centre, Peebles	Sports Centre and Grandstand
Gross Internal Floor Area	4,692m ²	1,801m ²	2,685m ²
Total cost £/m ² (rebased to 1Q 2025)	£1,107/m ²	£1,726/m ²	£1,071/m ²

BCIS benchmarked projects

- 3.3** Analysing the average price cost information further I have reviewed the BCIS sample data used and looking at the sampled projects it is possible to select comparable projects in terms of proposed requirements of the proposed Sports Hub in Kent. These projects are all Sports Centres ranging in size from 1,801-4,692m², compared to the 3,000m² proposed budget would allow accommodate, and these range in cost from £1,071 to £1,726/m².

Comparable Projects

Project	Sports Hub, Fareham	Sports Hall, Houghton Barton
Gross Internal Floor Area	1,116m ²	998m ²
Total cost £/m ² (rebased to Q1 2025)	£1,257 /m ²	£1,819/m ²

Further project benchmarking

- 3.4** Brookbanks have experience of the construction of sports facilities across the UK. In reviewing the proposed the costs I have reviewed the costs of other comparable projects which are summarised in the table above. These costs have been adjusted for location factors and inflation. The average cost of these facilities being £1,538/m² it is also worth noting that these are smaller facilities and the BCIS average prices data shows the average cost of smaller facilities is higher.

Sports England – Indoor Sport Facilities

Facility	Sports Halls 12 Court	Indoor Bowls Centre	Tennis Centre
Gross Internal Floor Area	3,064m ²	2,500m ²	2,138m ²
Total cost £/m ² (rebased to Q1 2025)	£1,784/m ²	£1,426/m ²	£1,379/m ²

Facilities Cost Guidance

- 3.5** Sports England regularly publishes independent cost guidance on community sports facilities based on typical schemes funded through the Lottery and where applicable developed in accordance with Sports England design guidance. The latest guidance was published in 3Q 2024 and the above table summarises the key facilities comparable to the proposed sports hub rebased at present day 1Q 2025 price levels using BCIS All-in TPI. These again demonstrate that common sport facilities and hall usually cost between £1,379/m² and £1,784/m² which would on the basis of 3,000m² indoor facility equate to £4,137,000 to £5,352,000.

Sports England – Sports Pitches

Facility	Natural Turf Pitch Senior Football Pitch	Cricket natural turf pitch	Tennis Courts (6 nr, macadam incl. fencing and lighting)
Area	7,420m ²	20,649m ²	3,456m ²
Total cost (rebased to Q1 2025)	£112,000	£363,000	£585,000

Facilities Cost Guidance

- 3.6** Sports England facility cost guidance also includes sports pitches and courts so using this guidance we have summarised these in the above table. To demonstrate what the proposed budget of £3,338,400 could provide on the allocated 22.08 ha site we have used the Sport England guidance to provide a worked examples below of how the site could be used.

In the example below 16 nr turfed pitches and tarmac tennis courts totalling 11.61 ha are provided (allowing for ancillary uses such as car parks, run off spaces, spectator areas, etc) at £2,454,000 which totals £884,400 or 26% less than the proposed cost of £3,338,400:

- 4nr Football Senior Pitches (2.97 ha) = £448,000
 - 2nr Cricket Pitches (4.13 ha)= £726,000
 - 6nr Tennis Courts (0.35 ha) = £585,000
 - 4nr Rugby Union Pitches (4.16 ha) = £695,000
- Total cost £2,454,000**

4 Cost Summary

Cost Summary

- 4.1** The cost analysis undertaken in this report has demonstrated that typically a Sport Hub would be around 2-3,000m² in gross internal area and cost between from £1,775/m² to £2,243/m² if based on the BCIS average prices and sampled projects. However, looking at the most comparable projects from the BCIS this range reduces to between £1,071 to £ 1,726/m² which equates £3,213,000 to £5,178,000 which is within the proposed S106 budget £5,971,388 which would result when indexation commenced at 2018 base.
- 4.2** Then looking at the proposed budget of £3,338,400 for the provision of Sports Pitches and Courts proposed on the 22.08 ha site at Discovery park there are a number of types of courts and pitches which could be provided on site to meet local community needs comfortably within the budget as the example in 3.6 demonstrates. This is based on the Sports England Facilities Cost Guidance which is an industry recognised source of sports facilities cost data for providing these facilities in accordance with Sports England design guidance. In the absence of any specific design requirements in the S106 in this case these costs clearly show a variety of pitches and courts could accommodated and construction within the proposed S106 budget which would result when indexation commenced at 2018 base.
- 4.3** In summary this cost review has confirmed that the proposed modified S106 budgets as outlined in section 1.4 and 1.5 (with indexation commencing in 2018) totalling £9.3m, when compared with current cost data, industry recognised cost guidance and recent project costs, would be sufficient to construct the Sports Hub and Pitches in line with the current S106 requirements.

5 Declaration

Statement of Truth

- 5.1 I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Declaration

- 5.2 I confirm that my report has drawn attention to all material facts which are relevant and have affected my professional opinion.
- 5.3 I confirm that I understand and have complied with my duty to the Independent Expert as an expert witness which overrides any duty to those instructing or paying me, that I have given my evidence impartially and objectively, and that I will continue to comply with that duty as required.
- 5.4 I confirm that I am not instructed under any conditional or other success based fee arrangement.
- 5.5 I confirm that I have no conflicts of interest.
- 5.6 I confirm that I am aware of and have complied with the requirements of the rules, protocols and directions of the Independent Expert.
- 5.7 I confirm that my report complies with the requirements of RICS – Royal Institution of Chartered Surveyors, as set down in the RICS practice statement Surveyors acting as expert witnesses.

Signed.....

David Howson BSc (Hons) MRICS

Dated.....

| Appendix A BCIS Order of Cost Estimate

Order of cost estimate

Title

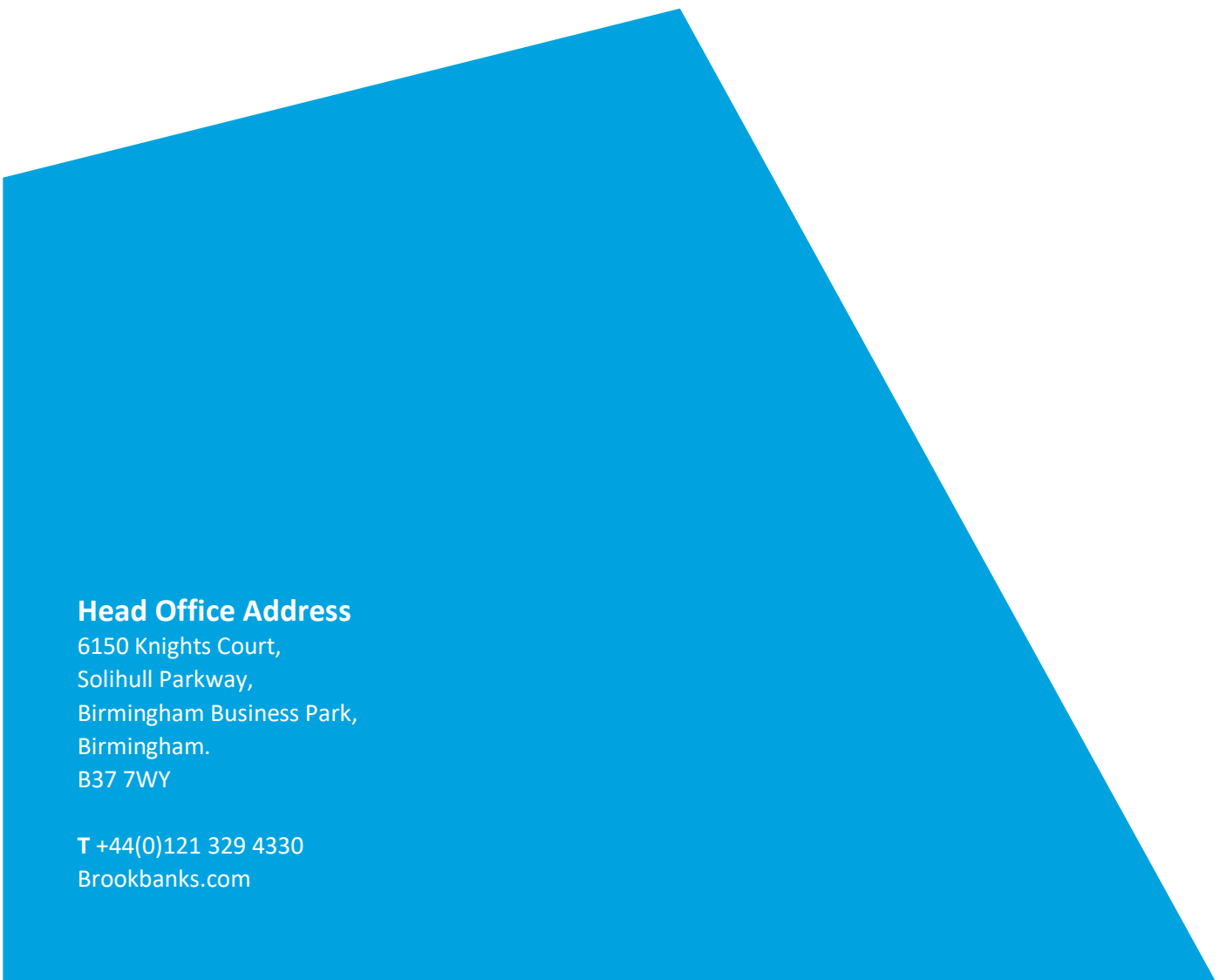
Chilmington Sports Hub

/

Works cost estimate

	Variable	Rate	Cost, £
Facilitating works estimate			£ 5000
Building estimate	3000 m2	x £ 1629 / m2	£ 4,887,000
Select alternative location	Kent (109; sample 256)		£ 5,326,830
External works			£ 320000
Adjustments and additions			£ 0
Difference between source data and current scheme			£ 0
Works cost estimate (sub total A) = £ 5,651,830			
Adjustment for the effect of Covid-19			
Adjustment for the effect of Covid-19			£ 0
Adjusted works cost estimate (sub total A1)			£5,651,830
Project/design fees and other development costs			
Project/design team fees	@ 2 %		£ 113,037
Other development/project costs estimate			£ 0
Project/design fees and other development costs (sub total B) = £ 113,037			
Base cost estimate			Base cost estimate A1 + B = (sub total C) = £ 5,764,867
Risk allowance estimate			
Design development risks estimate			£ 50000
Construction risks estimate			£ 0
Employers change risk estimate			£ 0
Employers other risks estimate			£ 0
sub total D = £ 50,000			
Cost limit (excluding inflation)			C + D = sub total E = £ 5,814,867
Tender inflation estimate			
☒ No date adjustment ☐ Adjust to 1Q 2025 (403; forecast) ▼			
Cost limit (firm price tender)			E + G = sub total H = £ 5,814,867
Construction inflation estimate			
This will not ▼ be a fluctuating price contract? If proposed project is to be let on a firm price basis, then no further adjustment for inflation during the construction period is required.			
Total deductions and allowances			sub total I = £ 0

	Variable	Rate	Cost, £
Cost limit (including inflation)			H + I = £ 5,810,000



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APPENDIX VI - SPF LETTER IN RESPECT OF BONDS

30th January 2025

Alan Hodson
Hodson Developments Limited
Office Suite 9
55 Park Lane
London
W1K 1NA



**PRIVATE
CLIENTS**

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CEO

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Dear Mr Hodson,

RE: CHILMINGTON GREEN

I am writing to you specifically around the ability to secure a bond for the A28, but for context felt it might be useful to provide a brief overview of the funding on Chilmington since we were first engaged in 2012.

SPF Private Clients (SPF) was first mandated in 2012 and secured funding with Castle Trust and Blackrock to secure the various parcels of optioned land. This facility was a land loan against the entire site with the benefit of outline planning.

Subsequently, in 2017, we re-financed with Titlestone, Homes England and Close Brothers with an additional facility from Zorin to enable housebuilding to commence and infrastructure to be delivered.

Upon expiry of the above facilities, in 2022, the borrowing has been re-financed to Cheyne Capital alongside an ongoing facility with Zorin.

Throughout the various funding exercises, we have been unable to secure bonds apart from a small bond issued by Close Brothers but supported by an equivalent amount of cash. A bond is only available to you if the actual funds (at equivalent amount) are placed in account as supporting security.

SPF was acquired by the global insurance broker, Howden, in 2022. I have also discussed the issue of bonds with their real estate and construction teams to source a solution. However, in the absence of you depositing the equivalent amount of cash as supporting security there is no bond market open to you.

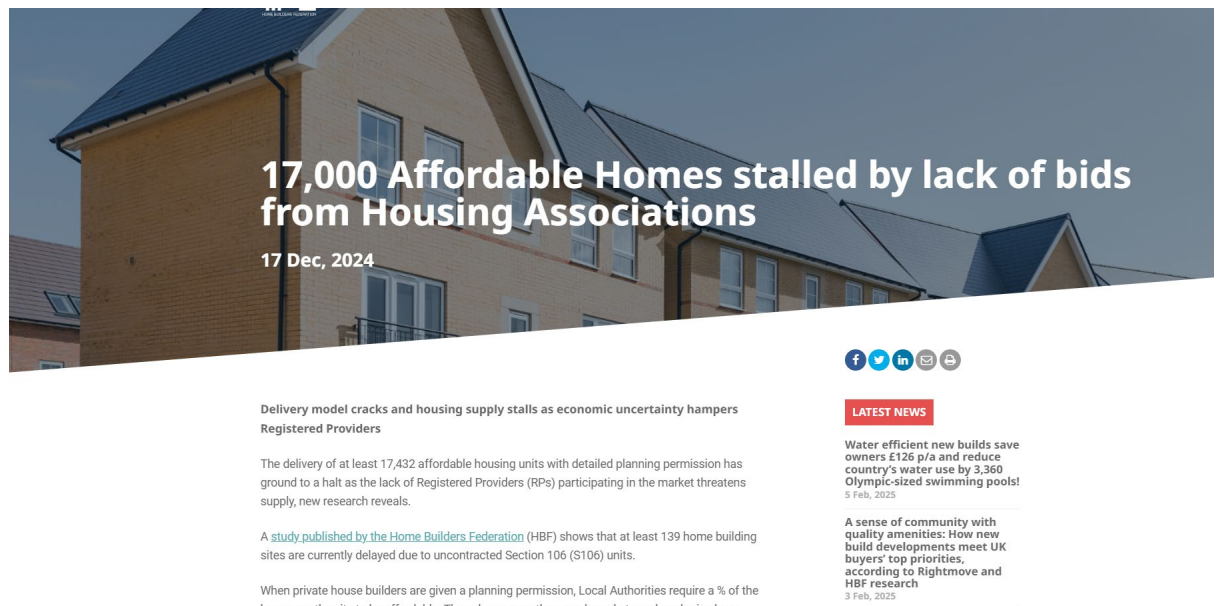
I remain available to continue funding discussions as required but am unable to provide any further help in your search for a bond for the A28.

Yours sincerely



Mark Harris
CEO

APPENDIX VII - HBF ARTICLE ON HOUSING ASSOCIATIONS



Delivery model cracks and housing supply stalls as economic uncertainty hampers Registered Providers

The delivery of at least 17,432 affordable housing units with detailed planning permission has ground to a halt as the lack of Registered Providers (RPs) participating in the market threatens supply, new research reveals.

A [study published by the Home Builders Federation](#) (HBF) shows that at least 139 home building sites are currently delayed due to uncontracted Section 106 (S106) units.

When private house builders are given a planning permission, Local Authorities require a % of the homes on the site to be affordable. These homes are then purchased at a reduced price by a Registered Provider. This

affordable housing delivery model now accounts for around 44% of all new Affordable Homes that are being delivered. Yet, recent years have seen a gradual reduction in the number of RPs actively bidding for S106 Affordable Homes, as a result of the 'perfect storm' of economic and policy challenges facing the affordable housing sector.

The [*Bid Farewell report*](#) finds 136 sites across the country are currently delayed, forcing developers to re-evaluate the pace and direction of their building programmes. This poses a serious threat to the future of their businesses and overall housing output.

Without a contracted 106 deal, small builders are often unable to secure the development finance to start a development, whilst larger sites can be stalled because the planning permission requires the affordable element of the site to be delivered by a certain trigger point. As a result, both private and affordable housing delivery is being slowed or stalled.

Many factors lead to uncontracted affordable homes but, if left unaddressed, this issue will lead to further delays, therefore jeopardising the housing pipeline and undermining Government's target of delivering 1.5 million homes during this Parliament.

The Home Builders Federation is calling for housing associations to be put on a firm financial footing to enable them to confidently take on the affordable housing delivered by home builders. It also calls for greater flexibility to be built into the process behind the delivery of Affordable Homes.

Neil Jefferson, Chief Executive at the Home Builders Federation,
said: *"The lack of Registered Providers in the market to take on the affordable*

APPENDIX VIII – POSSINGHAM FARM LETTER



The Planning Inspectorate

3H, Hawk Wing
Temple Quay House
2 The Square
Bristol, BS1 6PN

Customer Services: 0303 444 5000
e-mail: haluk.aysu@planninginspectorate.gov.uk

Mrs Lucy Wilford
DHA Planning
Eclipse Park
Sittingbourne
Kent
ME14 3EN

Our Ref: APP/E2205/W/24/3345454

Sent by e-mail.

Date: 30 January 2025

Dear Mrs Wilford,

Town and Country Planning Act 1990

Appeal by Hodson Developments Ltd

Site Address: Land north of Possingham Farmhouse, Ashford Road, Great Chart, TN26 3BQ

I am part of the Customer Quality Team at the Planning Inspectorate whose role is to deal with post appeal decision issues and correspondence. I am writing to inform you that we have been advised of a drafting error in the Inspector's decision letter issued on 22 November 2024 for the above appeal.

The drafting error relates to the omission of a reference in the decision letter to the Inspector's opinion on the Quality Monitoring Fee.

This will be corrected by the insertion of the following sentence to the end of paragraph 102 of the decision letter.

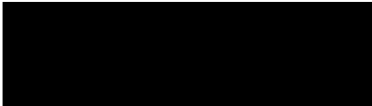
"Ensuring that development comes forward in accordance with the approved plans and details, is part of the day-to-day functions of a planning department. Accordingly, the Quality Monitoring Fee is not considered to meet the statutory tests".

In circumstances where a typographical or drafting error does not affect the reasoning of the decision, Part 5 of the Planning and Compulsory Purchase Act 2004 (as amended) does allow us to issue a corrected decision letter. In the interests of clarity and accuracy we are considering issuing a corrected decision letter under these powers. Any reissued corrected decision letter will carry a fresh date and will replace (and be subject to the same provisions as) the original decision letter in all respects.

Should you have any comments on this matter then I would be grateful if you could reply by 06 February 2025. If I do not hear from you by that date, I shall assume that you have no comments to make.

I have written to the Council in similar terms. Please contact me if you have any queries.

Yours sincerely



Customer Team

APPENDIX IX – KENT COUNTY COUNCIL COMMENTARY PUBLICATION

Infrastructure and Regeneration
Continued

East Kent

ASHFORD

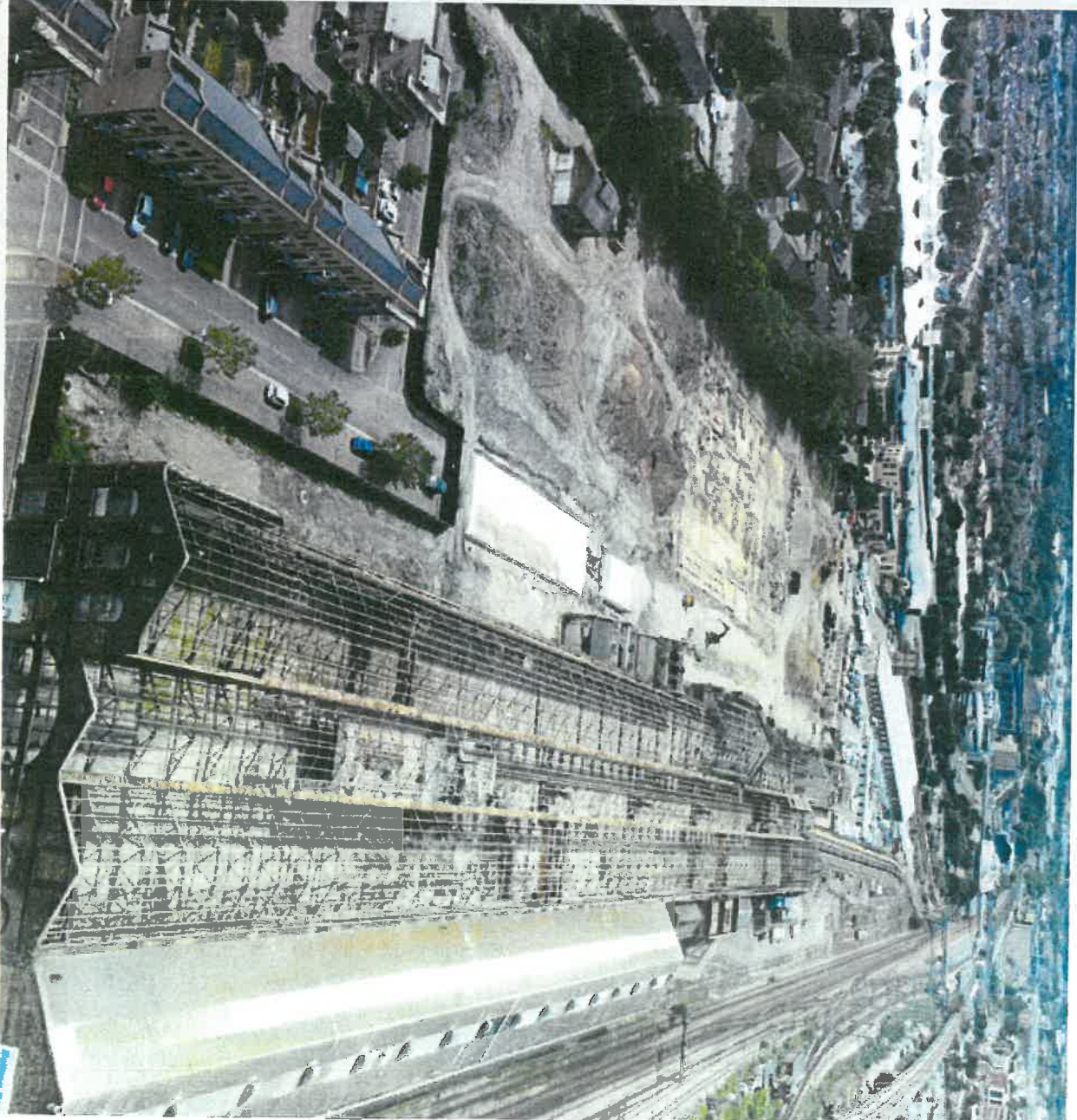
Local Plan review

The borough council has begun the process for reviewing the current Local Plan adopted in 2019. The new Local Plan will need to take account of changes to the NPPF but will also seek to support further commercial and employment developments on allocated sites. As such, the council has issued a Call for Sites in September 2023, to identify areas which could be considered for residential and commercial development. The review is in its early stages with additional work taking place over the coming years with a view to submission to the Secretary of State in 2025-26.

Nutrient neutrality

The council continues to respond to the various issues that have arisen from the need for new housing and other developments to achieve nutrient neutrality, due to the deterioration of Stodmarsh Lakes. Since Natural England issued their advice in July 2020, planning applications for up to 10,000 new homes located within the River Stour catchment and/or which discharge foul water into the catchment have not been able to progress, unless they can achieve nutrient neutrality.

The council has been working on ways to unlock the situation and deliver long term solutions. In July, the Leader of the Council, Cllr Noel Overden, met with the Prime Minister's special advisers to discuss government support in finding a national solution. The council welcomes the government's aspiration to address the issue in relation to the planning implications for residential developments.



Site for proposed Ashford International Studios.

CREDIT: ASHFORD BOROUGH COUNCIL

Town Centre Reset

High streets up and down the country are facing many challenges with the after-effects of the pandemic, the cost-of-living crisis, ongoing financial uncertainty and the growing competition of online shopping. The council understands the challenges that our town centre residents, businesses, users and community groups face. Town centres are facing considerable change influenced by wider economic, environment and social changes. It is vital that we continue to invest in carefully thought-through ideas and solutions for the benefit of all.

The Town Centre Reset, including the revitalisation of our High Street, is a 'Super 6' project and a key priority in our Corporate Plan 2022-24. It identifies a number of areas that require improvement and intervention, prioritised to focus available resources over the next few years. Projects within the Town Centre Reset Action Plan include the delivery of Ashford Unframed, a street art trail which took shape in the town centre in the spring, with many blank walls and building surfaces being transformed into high quality mural paintings. Artists included the world renowned and local resident Mr. Dooodle, the celebrated Alex Chinneck and Charley Peters as well as Ashford Snowdog artist Danielle Williamson and students from Ashford College.

In order to address the issue of vacant shops in the town centre, Ashford Borough Council launched a Town Centre Business Grant scheme in October 2023. The grants will provide up to £10,000 for successful businesses or landlords to fit out, or make improvements to, empty premises in the town centre which will lead to vacant units being filled and open for business.

Development Update

Ashford International Studios – Newtown Works
Plans are gathering pace to deliver an exciting film studios-led £250m investment and regeneration project on the former Newtown Railway Works site. This mixed-use development seeks to deliver TV and film studios with associated production spaces, dedicated film school, residential units, commercial space and a hotel. Much of the enabling work has been achieved over the last year since the successful bid by the council for £14.7m in Levelling Up Funding. The new studios at the derelict site will bring significant benefits to Ashford in terms of investment and job creation.



CREDIT: HOLLAWAY STUDIOS/BROMPTON BICYCLE

Proposal for Brompton Bicycle factory, Ashford.

The UK film and TV sector is growing. The British Film Institute forecasts the requirement for 10,000 new employees in this sector over the next five years, and Lambert Smith Hampton have forecast the need for 2.3 million ft² (213,677m²) of new studio space over the next 15 years. Ashford International Development Company (AIDC) has been working to secure interest from the film and TV industry for an operator, and have engaged with a number of leading studio operators. They would work alongside the East Kent College Group's facilities to deliver the film school and develop a curriculum and training programmes. This would support the development of the local workforce, providing the talent required by the studio operator and the production companies renting the studio space.

Brompton Factory

The application for a revolutionary new factory continues to proceed through the planning process. It is envisaged this would deliver a £100m investment for the area and potential for up to 4,000 jobs for the local economy. The UK's largest bicycle manufacturer announced last year that it had chosen Ashford as the company's global headquarters, following a national search with a pledge to work with universities and colleges to build local skills.

Details of how the factory will be constructed within a 100 acre (40.46ha) floodplain, will also provide an opportunity to restore the wetland and promote walking and cycling for the community in this unique, natural setting in the heart of Ashford. The innovative scheme would house a world class production facility and HQ, and by 2028, the company expects to employ over 1,500 staff. Once fully operational, the proposed development could result in further jobs being supported locally, including supply chain jobs, jobs supported by the spending of staff and the factory operation itself.

Ashford College expansion

The extension of Ashford College is complete having started in 2022 following the takeover of the college by the EKC Group in 2020 and their successful bid for funding from the government's Post-16 Capacity Fund. Known as Phase 2, the new wing will house classrooms and laboratories for Business, Information Technology, and Engineering. These facilities create a renewed focus on such up-and-coming fields and allows 250 more students each year to access the high quality education offered at the College.

Infrastructure and Regeneration
Continued

The scheme includes an Engineering Hub, which will highlight the role engineering can play in creating solutions to climate change and promoting decarbonisation. The extension will also be key in delivering the new T Level qualifications, which are equivalent to three A Levels and provide learners with work experience as part of their training. Requiring the latest equipment and technology, the courses will benefit from the new facilities offered by Phase 2's completion.

Waterbrook Phase 2

The site is a 130 acre (52.6ha) mixed commercial/residential land holding close to Junction 10/10A of the M20 at Ashford.

With Phase 1 now completed and seeing the delivery of 16 new industrial units alongside the International Truck Stop and a new Jaguar Land Rover centre, Phase 2 is again on the market. The Phase 2 site totals 17.5 acres (7.08ha) and benefits from all mains services and is accessed via a new estate road. The site had received planning consent for the construction of an 120,000ft² (11,148m²) distribution unit which was not implemented. It is primed ready for development with outline planning consent for B1, B2, B8 35,000ft² (3,252m²) to 290,000ft² (26,942m²). Waterbrook Phase 2 is being marketed by Knight Frank and Sibley Pares.

Entralon Gate

One of the last allocated sites for industrial development in the borough is being brought forward by Entralon Capital. The site is situated on Orbital Park with Junction 10 of the M20 less than a mile away and provides direct access to the M25 and national motorway network to the north east and the Channel Tunnel and Dover port to the south.

Entralon Gate is a 54,000ft² (5,012m²) development consisting of five employment units comprising a mix of B1, B2, B8 uses.



CREDIT: ASHFORD BC/EAST KENT COLLEGE

Expansion of Ashford College.

The units benefit from 3 Phase electricity, EPC B rating and minimum eaves of 27ft (8.2m). Additionally each unit has natural internal light, landscaping, cycle parking and EV charging points. Entralon Gate is being marketed by Sibley Pares.

Kent Wool Growers

The former Kent Wool Growers site, between the town centre and the railway station, was bought by the council's Housing Development team. The 2.97 acre (1.2ha) site offers an opportunity to create a vibrant community at the gateway to the town. Work is underway to shape a proposal that is likely to include mixed-use homes, commercial space, a community hub and substantial areas of green space.

Bordered by the Great Stour river to the east, the site is part of the Commercial Quarter, which includes the Connect38 office building, International House and The Coachworks. Historically known as the Tanyard, it had been used as a tannery from the 17th Century. The site includes the remains of the Grade 2 listed Whist House dating back to 1707. The scheme could include a number of one, two and three bed apartments and four bed townhouses, parking bays concealed in undercrofts beneath gardens, a community and cultural hub and communal courtyards. Further design work is being carried out on the scheme before a public consultation in early 2024, ahead of an application later in the year.

The Triangle

This is a striking development, comprising 143 apartments, overlooking the River Stour and neighbouring Victoria Park. Located directly opposite the leisure centre in Elwick Place, the development is only a 12 minute walk from Ashford International. A collection of one, two, and three bed apartments, all feature delightfully modern interiors, communal rooftops, landscaped courtyards, underground parking, bicycle storage and plug-in electric vehicle charging stations. This development, scheduled for completion by the end of 2023 is being developed by Kings Crescent Homes.

Henwood

A proposed net zero-carbon, short-stay accommodation development. Like all local authorities, the council has a duty to house homeless people within the borough. The proposal features 23 units as temporary homes for those people who have found themselves homeless. These would be provided as a 'safety net' and 'stepping stone' until individuals or households are able to move on to more permanent accommodation.

APPENDIX X – ROMANS GROUP EMAIL

From: [REDACTED]
To: [REDACTED]
Subject: Chilmington Green Update
Date: 30 January 2025 10:31:02
Attachments: [image601350.jpg](#)
[image915736.jpg](#)
[image931814.png](#)
[image717383.png](#)

Dear Tom,

I have just tried to call you and have you left a voicemail. I wanted to let you know the disappointing news that unfortunately following a call today with [REDACTED] from Dandara, they are formally withdrawing from the purchase of parcels L,M,N and O at Chilmington Green following an internal review meeting this morning.

Dandara's internal legal advocate has been through the contract and has found multiple issues that mean that they cannot proceed which has resulted in them withdrawing. On the call they referred to the issues as 'insurmountable' and are 'not Dandara issues' and that the same issues that will most likely arise with any other housebuilder through the DD exercise. The key points from the conversation were:

- They referred to the s278 works, occupation restrictions and lack of guarantee that these works will be done. It is their review that these need to be resolved if any parcel is ever going to be sold and that this will prevent/delay the roll out of the whole scheme;
- Even if the Inspector approves the appeal it will still take a long unspecified time to resolve as it will require a deed of variation to the s106 to be agreed and signed. What happens if the appeal isn't allowed? Who pays the bond?;
- Dandara's offer was based on a pre-sale delivering SFH and private sale units. The SFH provider has shown serious nervousness about legal and planning issues A28 bond, planning contributions and occupation restrictions.
- They have concerns around planning conditions (mentioned condition 17)
- In summary they said that the component points are insurmountable as their legal report highlighted 'multiple layers of dissatisfaction' so they have decided that there is no point in moving forward as nothing can be done to speed up or influence the process;

This is obviously massively disappointing news and we were all hoping to get a sale to Dandara agreed by the end of the month.

Once digested, we can discuss the way forward. I am concerned that Dandara's message is not the first time that we have heard housebuilders highlight reservations about s106 obligations, occupation triggers and concerns over the bond/s278 works and I feel that these issues will need to be addressed before we progress.

Kind regards,

Ian



Ian Barnett MRTPI MRICS
National Land Director





At Leaders Romans Group we have made a pledge to become carbon neutral by 2030. It is extremely important to us to embrace sustainability. In order to achieve this, we have already implemented several changes to our business.

Correspondence Address: Crowthorne House, Nine Mile Ride, Wokingham, Berkshire, RG40 3GZ - Registered Address: Crowthorne House, Nine Mile Ride, Wokingham, Berkshire, RG40 3GZ. Registered in England 2161874. | At the Leaders Romans Group we take your data privacy seriously and invite you to view our privacy notice. | The information in this email is confidential and intended for the sole use of the addressee. Leaders Romans Group accept no legal responsibility for the content of the message, the contents or opinions contained within this e-mail are solely those of the sender and do not necessarily represent those of Leaders Romans Group or its subsidiaries unless otherwise specifically stated. If you have received this message in error please return it to the sender. Leaders Romans Group may monitor the content of email sent and received via its network for the purposes of ensuring compliance with its policies and procedures. We advise you to carry out your own virus check before opening any attachment as we cannot accept liability for any damage sustained as a result of any software viruses.