

# **TOWN AND COUNTRY PLANNING ACT 1990**

## **(as amended)**

Section 106B Appeal by Hodson Developments (Ashford) Ltd; Chilmington Green Developments Ltd; Hodson Developments (CG ONE) Ltd; Hodson Developments (CG TWO) Ltd; and Hodson Developments (CG THREE) Ltd

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

**EDUCATION MATTERS**

**Section 106 Planning Obligation Requirements**

**Kent County Council ("KCC")**

**EDUCATION PROOF OF EVIDENCE (CD9/1)**

**Ben James Hunter**

BA DipMS

PINS Reference:

APP/W2275/Q/23/3333923

APP/E2205/Q/23/3334094

Date: 5<sup>th</sup> February 2025

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## 1 Introduction

- 1.1 My name is Ben James Hunter. I hold a Bachelor of Arts and Diploma in Management Studies. I have been an Education Consultant for Education Facilities Management Ltd (“EFM”) since September 2017, and Associate Director of EFM since April 2022. Prior to this I was a Development Management Project Manager for Northamptonshire County Council (as was) from 2012, responsible for negotiating and securing Section 106 planning obligations for Education. Prior to this I was responsible for negotiating, securing and managing Section 106 planning obligations, predominantly Education-related, in an Officer role between 2008 and 2012. The majority of my professional career has been related to the provision of social infrastructure, with a focus on Education.
- 1.2 I am experienced in giving evidence for planning inquiries including Local Plan Inquiries and Public Examinations. I am therefore aware of the application of the planning system in relation to these matters from both a developer and local authority perspective. I confirm that I understand that notwithstanding my instructions my primary duty is to help achieve the overriding objective by giving objective, unbiased opinion on matters within my expertise.
- 1.3 I am instructed to act for the Appellant in respect of this Appeal.
- 1.4 I am aware that my primary duty is to the Appeal, irrespective of by whom I am instructed. I confirm that the opinions expressed are my true and professional opinions.
- 1.5 EFM was instructed in February 2024. The purpose of our instruction was to review the Education landscape in the vicinity of the Chilmington Green Urban Extension, in order to ascertain whether the quantum of school provision included in the original Section 106 agreement dated 27<sup>th</sup> February 2017 (“the S106 agreement”) was required in order to accommodate the pupils that will be resident on the development.
- 1.6 This Proof of Evidence should be read alongside the Education Statement dated 23<sup>rd</sup> December 2024, and the Statement of Common Ground (“SoCG”) for Education dated February 2025.

## 2 Background

- 2.1 This Section 106B Appeal relates to the outline planning consent (ref 12/00400/AS) that was approved on 6<sup>th</sup> January 2017 by Ashford Borough Council (“ABC”) and the Section 106 agreement as amended by a Supplementary Agreement dated 29<sup>th</sup> March 2019 and a deed of variation dated 13<sup>th</sup> July 2022. The background is covered in greater detail in the Education Statement.
- 2.2 Similarly, the Statutory and Policy Matters that govern Education are covered in the Education Statement, and therefore will not be repeated in this Proof of Evidence.
- 2.3 The following trajectory for the development has been utilised by both KCC and the Appellant in relation to the need for bringing forward additional Education provision.

Phases Total (5750 Dwellings)	(Dwellings) Cumulative Total
2022	298
2023	348
2024	473
2025	698
2026	948
2027	1198
2028	1498
2029	1798
2030	2098
2031	2426
2032	2651
2033	2825
2034	2975
2035	3125
2036	3275
2037	3450

Phases Total (5750 Dwellings)	(Dwellings) Cumulative Total
2038	3675
2039	3925
2040	4225
2041	4534
2042	4834
2043	4984
2044	5134
2045	5284
2046	5434
2047	5584
2048	5750

Table 1: Agreed Housing Trajectory

- 2.4 From a housing mix perspective, KCC has stated that they have been calculating need on the basis of 92% houses and 7% eligible flats. This is based on what KCC understand to be the current planning permission. This forms the basis for their original assessment, and which KCC refers to in the SoCG as “The Melton Mix”.
- 2.5 However, following discussions with the Appellant, it is clearly evident that The Melton Mix is not what is actually being delivered, because the densities required on site cannot be delivered through this approach. Instead, a housing mix that consists of an average of 74% houses and 26% apartments is a much more accurate reflection of what is being delivered on site. This housing mix is supported through the wording of Condition 100, and the Reserved Matters applications for Phases 1 and 2 of Chilmington Green, making it clearly the appropriate mix to utilise in any assessments.
- 2.6 Based on the actual housing mix being delivered, rather than a “worst-case scenario” mix that does not reflect what is actually being seen on the ground, the picture changes considerably. It is on this basis, that the calculations need to be based on what is actually being delivered, that it is evident that the 74/26 houses to flats ratio

is the correct approach. This impacts the timings of provision and when it needs to come forward, and therefore the adjusted housing mix will be discussed throughout the Proof of Evidence, as this is actually evidence based. The Melton Mix does not reflect the housing mix being delivered.

- 2.7 This change to the approach makes a significant difference in terms of the expected child yield of the development, which has required the need for the modifications in order to ensure that the approach to Education development mitigation is consistent with what is actually being delivered.
- 2.8 The remainder of my evidence will focus on the proposed modifications related to Education, why they are necessary, and why the current drafting does not serve a useful purpose in light of the updated information.

### 3 Schedule 15 – Education

3.1 **Request number 67, 70, 72, 74:** The provision of Bonds to the value of PS1, PS2, PS3 and PS4 Contributions 2, 3 and 4 respectively.

3.2 In my experience, I do not recall having seen the requirement for a Bond relating to Education within a S106 when there are already planning obligations secured within the agreement.

3.3 The Department for Education’s best practice guidance (August 2023) (CD9/6) states:

*We recommend that planning obligations or other mechanisms provide detail on how local authorities intend to step in and deliver the school if developer delivery falls through but the school is still required. Longstop clauses should ensure that the land for the school is transferred early enough for the local authority to intervene and provide the school at the right time. In these situations, the planning obligation should also require financial contributions to be made in lieu of the ‘in kind’ provision of the school by the developer, making use of review mechanisms where necessary to respond to changing circumstances. Even in cases where a planning obligation is silent on this subject, Section 106(6) of The Town and Country Planning Act 1990 provides that the local authority may enter land to carry out works required by a Section 106 agreement where the developer is in default. However, where a risk of non-delivery is identified, we recommend that specific planning obligations are secured to mitigate that risk (for example through performance bonds).*

3.4 What the above demonstrates is that the only reference to Bonds in the best practice guidance is in relation to developer delivery of schools. However, that is not the case with Chilmington Green, as KCC is responsible for delivering the schools, with planning obligations coming from the Appellant at appropriate junctures. The Appellant has made all payments in respect of Education that are due.

3.5 My understanding is that KCC believes the Bonds still serve a useful purpose, as they provide KCC with a surety of funding to be able to forward fund the school build costs. I would state that the trigger points in the Section 106 already achieve this. Furthermore, the bond is counter-productive if it impacts development viability.

- 3.6 Mr Collins and Mr Wheaton will comment further on the financial and viability implications of requesting these Bonds.
- 3.7 It is for these reasons that I do not see that Bonds serve a useful purpose.
- 3.8 **Request number 68:** Primary School 1 Contributions 1 to 4 to the County Council.
- 3.9 This is in relation to development viability. Mr Collins and Mr Wheaton will comment on the financial and viability implications of these contributions.
- 3.10 **Request number 69:** Education Contributions; Primary School 2 Contributions 1 to 4 to the County Council.
- 3.11 As the SoCG details, due to the significant number of spare places across the Ashford South Primary Planning Area, and the falling births numbers across Ashford, it is no longer necessary to deliver Primary School 2 at the trigger points detailed in the original S106 agreement.
- 3.12 KCC has confirmed that moving the payment of PS2 Contribution 1 to 2,650 occupations is acceptable based on their trajectory. This is true whether referring to the Melton Mix, or more importantly, the trajectory model based on what the development is actually delivering, which is shown below:





Primary - Year R surplus/deficit capacity if no further action is taken

Planning Group name	2022-23 capacity	2022-23 (A)	2023-24 (F)	2024-25 (F)	2025-26 (F)	2026-27 (F)	2027-28 (F)	2028-29 (F)	2029-30 (F)	2030-31 (F)	2031-32 (F)	2032-33 (F)	2032-33 capacity
Chilham	15	4	2	5	6	4	4	4	4	4	4	4	15
Challock and Charing	50	3	3	4	-3	-3	-3	-3	-4	-4	-4	-4	50
Ashford North	450	2	79	59	50	82	81	77	73	70	67	64	450
Ashford Rural East	80	21	13	16	13	8	8	8	8	8	8	8	80
Ashford East	420	66	91	45	89	58	57	55	52	50	47	45	420
Ashford South	390	32	90	93	92	108	111	112	112	113	114	115	390
Ashford Rural West	80	-3	4	2	-6	-8	-7	-6	-5	-5	-4	-2	80
Hamstreet and Woodchurch	71	8	5	4	7	3	3	1	0	0	-1	-1	71
Tenterden North	65	6	3	3	4	2	2	2	2	3	3	4	65
Tenterden South	94	11	8	-2	7	13	14	14	15	16	16	17	94
<b>Ashford</b>	<b>1,715</b>	<b>150</b>	<b>297</b>	<b>229</b>	<b>259</b>	<b>267</b>	<b>270</b>	<b>264</b>	<b>258</b>	<b>254</b>	<b>250</b>	<b>249</b>	<b>1,715</b>

Table 3: Reception Year Projections (via KCC)

- 3.15 KCC is stating in their trajectory models that the schools in the Ashford South Primary Planning Area will have a combined roll of 1,963 by the 2033/23 academic year, against a capacity of 2,730 pupil places. This is spare capacity of 767 places, or 3.6FE across all Year Groups.
- 3.16 As KCC has confirmed that it is appropriate to look at the whole Planning Area when ascertaining whether planning obligations are necessary, and whether new infrastructure provision needs to be delivered, it is clear that the evidence demonstrates that there is no dispute between the Appellant and KCC with regards to this modification, and that the current drafting of the Section 106 no longer serves a useful purpose due to the change in circumstances regarding pupil numbers across this part of Ashford. On that basis, the modification should be accepted.
- 3.17 **Request number 71:** Education Contributions; Primary School 3 Contributions 1 to 4 to the County Council.
- 3.18 The modification seeks to move the agreement for the need to commence with PS3 until 3,250 dwellings, and then the payments for the school in line with the payments for PS2.

- 3.19 In the alternative Education Assessment that is based on what the development is actually delivering, KCC states that the need to establish when PS3 is actually required is at 3,600 occupations:

2040-41	4,534	-493	Adoptable access 6 months before opening c4250 occupations. PS3 opening c 4400 occupations
2039-40	4,225	-401	Within 3 months of transfer of site either pay PS3 Contribution 2 (£2m) plus bond for payments 3 and 4 or make all payments and no bond
2038-39	3,925	-325	PS3 site transferred 12 months after KCC decision to proceed
2037-38	3,675	-257	Before 3600 occupations Hodson provide information (completions and development pipeline) and the proposed location of PS3. KCC to respond with details of need. KCC to consult on need for PS3, following which it will decide whether to proceed. Hodson to provide PS3 Contribution 1 within 3 months of KCC's decision to proceed (£150,000)

Table 4: Alternative Education Assessment (PS3)

- 3.20 Whereas the Melton Mix details this as being required before 3,150 dwellings:

2038-39	3,925	-455	Adoptable access 6 months before opening c3700 occupations. PS3 opening c 3850 occupations
2037-38	3,675	-376	Within 3 months of transfer of site either pay PS3 Contribution 2 (£2m) plus bond for payments 3 and 4 or make all payments and no bond
2036-37	3,450	-315	PS3 site transferred 12 months after KCC decision to proceed
2035-36	3,275	-262	Before 3150 occupations Hodson provide information (completions and development pipeline) and the proposed location of PS3. KCC to respond with details of need. KCC to consult on need for PS3, following which it will decide whether to proceed. Hodson to provide PS3 Contribution 1 within 3 months of KCC's decision to proceed (£150,000)

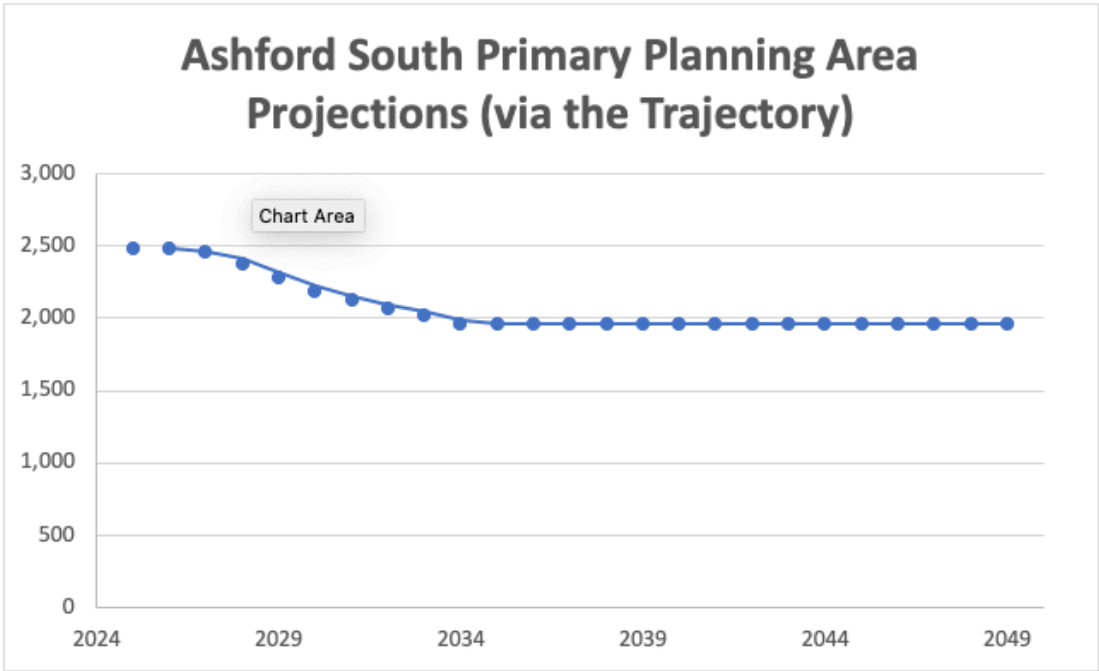
Table 5: The Melton Mix (PS3)

- 3.21 It would be detrimental to the Education landscape, and a poor use of public funds, to deliver PS3 close to the opening of PS2, as this would equate to over-provision, and would draw future applicants away from more established facilities. What is evident is that due to the agreed position between KCC and the Appellant that the trigger point for PS2 needs to be moved to reflect the current and projected capacity across Ashford South, the same is true of PS3.
- 3.22 On that basis, there is very little between KCC and the Appellant in terms of the timing of this provision. In fact, based on the actual housing mix being seen in Phases 1 and 2, the decision on when the school needs to come forward should be pushed back even further to 3,600 dwellings, according to KCC's assessment.
- 3.23 Based on the above, it is evident that the current drafting of the Section 106 no longer serves a useful purpose due to the change in circumstances regarding pupil numbers across this part of Ashford. On that basis, the modification should be accepted.
- 3.24 **Request number 73:** Education Contributions; Primary School 4 Contributions 1 to 4 to the County Council.
- 3.25 According to KCC, a flat/apartment has a child yield that is 35% of that of that of a house. Therefore, if you are increasing the number of flats by over 300%, then the number of children expected to be on site comes down proportionately, and significantly.
- 3.26 KCC is relying on assumptions that fundamentally change the trend in pupil numbers forecast in order to justify the inclusion of PS4 in the Section 106 agreement. It is clear from the spreadsheets of pupil projections that an assumption has been made that numbers will stay the same as 2033/34, and not fall any further, which is a complete turnaround of the projections for the ten years that precede them:

Beyond scope for KCC forecasts - have assumed that forecast rolls remain the same.																
2033-34	2034-35	2035-36	2036-37	2037-38	2038-39	2039-40	2040-41	2041-42	2042-43	2043-44	2044-45	2045-46	2046-47	2047-48	2048-49	
310	Assume remains as 2033-34															
304																
210																
339																
311																
325																
164																
705	756	808	859	919	997	1,082	1,186	1,292	1,395	1,446	1,498	1,549	1,601	1,652	1,709	
162	162	162	162	162	162	162	162	162	162	162	162	162	162	162	162	
2,829	2,881	2,932	2,984	3,044	3,121	3,207	3,310	3,416	3,519	3,571	3,622	3,674	3,725	3,777	3,834	
2,887	2,939	2,992	3,045	3,106	3,185	3,272	3,378	3,486	3,591	3,644	3,696	3,749	3,801	3,854	3,912	
-157	-209	-262	-315	-376	-455	-542	-648	-756	-861	-914	-966	-1,019	-1,071	-1,124	-1,182	
Deficit of places in Ashford South																

Table 6: KCC Projection Assumptions

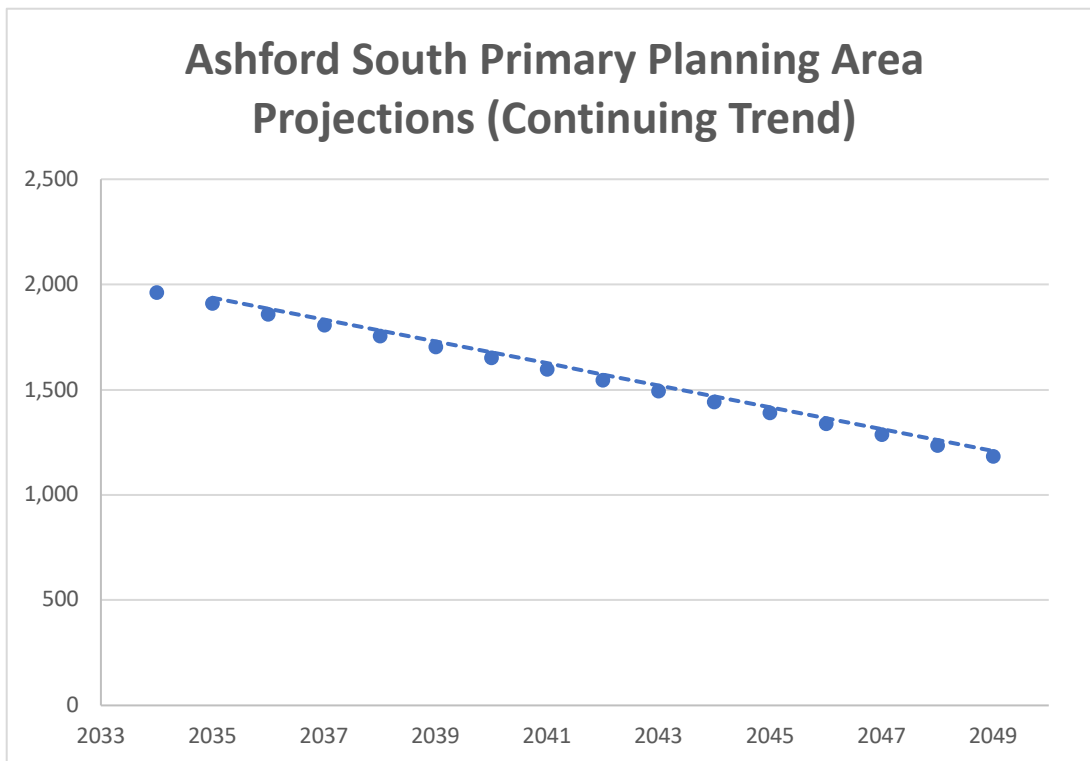
3.27 KCC have therefore based their projections on the scenario where pupil numbers across Ashford South Planning Area schools will fall year-on-year, and then flatline from 2034/35 onwards. This looks like this:



Graph 1: KCC Projection Assumptions

3.28 However, if pupil numbers continue to fall in the Ashford South Planning Area at the same rate that they are forecast to do between 2024/25 and 2033/34, then by 2049 there will only be 1,183 pupils in the Planning Area. This does not only remove the need for PS4, but it also leaves significant surplus capacity in the system after PS3 is delivered.

- 3.29 To explain the Graph below, there were 2,504 pupils in the Ashford South Planning Area Schools in 2023/24. By 2033/34, KCC is forecasting that this will fall to 1,963. This is 541 fewer children over the ten year period, or an average loss of 54 pupils per academic year. This is represented below in the continuation of the current trend, should that continue in to the 2040's:



Graph 2: Ashford South Projection Trend Continuation

- 3.30 The difference between the KCC assessment and the above projection which works on the basis of a continued downward trend in pupil numbers (which will follow the trend rather than fundamentally change the trend that KCC is relying on) is 780 pupils. This means that if this is the eventuality, that the Melton Mix will mean 402 pupils (i.e. PS3 is not required) and under the adjusted mix (which is based on what is actually expected to be delivered) PS3 is not required, and PS2 only needs to be a 1FE, and not a 2FE.

- The Melton Mix =  $1,182 - 780 = 402$  pupils (1.9FE); and
- Alternative Education Assessment =  $956 - 780 = 176$  pupils (0.8FE).

- 3.31 It is agreed in the SoCG that ONS birth numbers for Ashford are forecast to rise during the 2030's and 40's, albeit at district level. However, ONS heavily caveat these forecasts when they say:

*National population projections are not forecasts and do not attempt to predict potential changes in international migration. Migration assumptions do not directly account for recent and future policy or economic changes. Demographic assumptions for future fertility, mortality and migration are based on observed demographic trends.*

- 3.32 The problem with ONS projections comes down to fertility. Since 2010, the ONS has been persistently forecasting that fertility would remain stable. In fact, fertility has fallen dramatically to, in 2023, the lowest levels since 1977. This has significant implications for planning of school places in the UK.

- 3.33 On the basis of the above, the assertion that PS4 is needed is clearly excessive, and does not correspond with KCC's own evidence. On the contrary, the above calls in to question the continued requirement for PS3, let alone PS4.

- 3.34 Assuming that KCC are correct in the alternative education assessment, and that the Ashford South Primary Planning Area will be 956 pupils over capacity by 2048/49, which is 4.55FE (cell AG65 of the spreadsheet), the question then arises as to whether 0.55FE, or 116 pupils, is sufficient to open a new school. What is very clear is that the answer to this is no.

- 3.35 The DfE states in their best practice guidance (CD9/6) the following:

*Many local authorities find the best approach is to open a school at the stage in the development where there is expected to be a viable number of pupils to admit into Reception (which varies but can be around 20 pupils), adding one new year group each academic year until all seven year groups are in place.*

- 3.36 The assumption above is that a new school opens at the point of a development where there are 20 Reception aged pupils, and the development continues to grow, so the school fills beyond that tipping point, to at least 1FE, and ideally larger. Based

on KCC's assessment, Chilmington Green will be fully built out, with the tipping point for opening a new school never having been reached. Clearly, on that basis, PS4 no longer serves a useful purpose.

- 3.37 116 pupils is 16-17 pupil per Year Group, which is not considered enough to justify opening a new school. The minimum number is usually 140 pupils, or 20 per Year Group. Therefore, if there is circa 0.5FE's worth of pupils that need to be accommodated, this is much better dealt with through either bulge classes, an expansion of existing provision, or temporary measures, if they are even needed at all. It does not demonstrate that an entire new 2FE school is required. Therefore, the inclusion of a new 2FE school (which PS4 is expected to be) clearly no longer serves a useful purpose.
- 3.38 What should also be highlighted is the significant difference between how many dwellings will fill PS2 (2,127 based on the housing delivery detailed in Table 1, between 2031/32 and 2040/41) and how many dwellings will fill PS3 (1,209 based on the housing delivery detailed in Table 1, between 2040/41 and 2046/47). PS2 is therefore expected to take 10 years to fill, whereas PS3 (which is the same size school) is expected to take 7 years to fill. There is clearly a discrepancy here.
- 3.39 On the basis of the above, the Appellant is clearly correct to include the modification that PS4 is no longer required, because PS4 no longer serves a useful purpose. It cannot be said that the cost of building and operating a school which is not required serves a useful purpose. The modification should therefore be accepted.
- 3.40 **Request numbers 75-77:** Stage One Secondary School Site Transfer and Adoptable Access, Provision of Bonds, and Secondary School Contributions.
- 3.41 In all three of these cases, the Appellant is content to rely on the Deed of Variation dated 13<sup>th</sup> July 2022, and thus no further modifications are necessary.
- 3.42 **Schedule 15A – KCC General Site Transfer Requirements**
- 3.43 **Request number 78:** this is related to the provision of an account of expenditure, and a repayment of any surplus.



3.44 Paragraph 9 on page 9 of the DfE's best practice guidance (CD9/6) states:

*Local authorities are expected to use all the funding received by way of planning obligations, as set out in individual agreements, for a period of at least 10 years from the date of last payment, in order to make development acceptable in planning terms. Agreements should normally include clauses stating when and how the funds will be used and allow for their return after an agreed period if they are not used.*

3.45 The repayment of planning obligations that are unused is standard practice. In order for the Appellant to be confident that their funding has been utilised, KCC should – as a public body – share the cost breakdown with the payee of the contributions, and return any funding unutilised. This should be uncontroversial. The Appellant has a right to know how the funding has been utilised to ensure that it fulfils the tests of CIL Regulation 122 (2). On that basis, the modification should be accepted.

3.46 **Request numbers 79-83:** these are related to the transfer of the school sites to KCC. This is covered by Mr Collins in his Proof of Evidence.

## 4 Summary and Conclusions

- 4.1 I have considered the Bond in the S106 agreement (requests 67, 70, 72, and 74) and find that there is no basis for its continued inclusion. It does not serve a useful purpose, and is outside the realms of what is usually necessary when agreeing planning obligations, which is that payments are made at appropriate trigger points. The DfE only discusses Bonds in their best practice guidance (CD9/6) in relation to developer delivery of schools, making this highly irregular. The Bond is counter-productive if it impacts development viability.
- 4.2 In terms of the movement of the trigger points for PS2 and PS3 (requests 69 and 71 respectively), this is appropriate based on the updated housing mix consistent with the Reserved Matters applications and submissions, and Condition 100, which confirms that the schools are not required at the current triggers within the application. KCC confirms this is their assessments. On that basis, the modifications should be accepted.
- 4.3 PS4 is clearly and demonstrably unnecessary (request 73), and can only be justified on the assumptions made by KCC regarding school projections fundamentally altering, in that the significant fall in pupil numbers forecast will end, and will instead level out. If the trends continue as they have been then not only is PS4 unnecessary, but so is PS3, regardless of which assessment is utilised.
- 4.4 It should also be highlighted that PS4 cannot be sustained at the level suggested by KCC in their alternative assessment (i.e. 16 pupils per Year Group). At this number of pupils, it is not a new school that would be required, but in the worst-case scenario an expansion to an existing school. This further demonstrates the inappropriateness of continuing to require PS4 within the agreement. It does not serve a useful purpose. On that basis, the modification for discharging PS4 should also be accepted.
- 4.5 The remaining Educational elements will be dealt with by Mr Collins and Mr Wheaton in their Evidence.



Signed:

A large black rectangular box redacting the signature of Ben Hunter.

**Ben Hunter**

Associate Director – Education and Social Infrastructure

EFM

5<sup>th</sup> February 2025