

CHILMINGTON GREEN, ASHFORD ROAD, GREAT CHART, TN26 2BQ

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

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

SUMMARY PROOF OF EVIDENCE OF

David Adams

Kent County Council (“KCC”)

My statement sets out the justification for concluding, where appropriate, that the obligations in the existing S106 dated 27 February 2017 (as amended) (“S106”) [CD1/14 - CD1/16] continue to serve a useful purpose and would not do so (or would not do so equally well) if modified in the way proposed.

- 1) An Education Statement of Common Ground has today been agreed between the parties, which significantly narrows the areas of disagreement. This summary reflects this position and beyond any passing reference, omits areas now agreed between the parties. The areas of disagreement are set out at the end of this summary.
- 2) KCC has been willing to accept an amended manage and monitor approach but that has not been taken up by the Appellant.
- 3) Developers are expected to mitigate the impact of their developments. The availability of public funds does not negate that responsibility. Government Basic Need Funding (BNF) can be used to the minimum extend necessary to make a site viable. However, BNF is only a contribution to the cost of providing new school places. Local authority funding is the final option, necessary to discharge its statutory duty to secure sufficient school places.
- 4) KCC has supported delivery of Chilmington Green “**the Development**”. It secured DfE forward funding to build the secondary school (c£40m), enabling £13.55m of S106 obligations payable by 1st April 2024 to be delayed; now due by 1st March 2031. KCC also agreed to loan the Appellant up to £3.1m to support cashflow and enable them to deliver their obligations to provide utilities and road access to this school. Despite drawing down £2.6m of this funding the Appellant has abandoned the works, which remain incomplete.

Education Assessment

- 5) KCC has assessed “Education Assessment” the need for primary school places generated by the Development and the estimated timing of that demand entering the system. This is included as Appendix A to my main Proof of Evidence.
- 6) The Education Assessment uses:
- An AGREED housing trajectory, with account taken of the 763 units already included in KCC’s pupil forecasts;
 - The housing mix provided by the Appellant in 2011 (The Melton Mix) [CD9/7] which accords with Condition 100 of the Outline Planning Permission **12/00400/AS** – this is 6.96% applicable flats and 92.17% houses; (DISPUTED)
 - An AGREED Pupil Yield Rate (PYR) which is 0.127 pupils per applicable flat and 0.363 per house; and
 - UNDISPUTED pupil forecasts to 2033-34 and school capacities for Ashford South Planning Area. At the end of the 10-year forecast period (2033-34) it is assumed school rolls remain static (DISPUTED).
- 7) Step 4 of the Education Assessment maps out the timings of new schools within the Development and the associated obligation triggers. It does so in three scenarios:
- The appropriate timing of planning for, commissioning and opening of new provision having regard to forecast need (KCC’s proposed modification);
 - The current S106 obligations and triggers; and
 - The Appellant’s proposed modifications.

What the Education Assessment Demonstrates

- 8) The Education Assessment demonstrates:
- the 4,586 applicable dwellings that are not included in KCC’s pupil forecasts would be expected to produce a further 8.1FE of primary school demand (1,709 primary places). This is additional to the places occupied by pupils already living in the development and those needed for pupils contained within KCC’s forecasts;
 - all surplus capacity in primary schools in the Ashford South Planning Area (which includes Chilmington Green Primary School 1) will be filled by 2030-31; and
 - no capacity at Chilmington Green PS1 is benefitting other developments;
 - **by 2048 a deficit of 1,182 places (5.6FE)** would be expected to have amassed. This is not mitigated by a further two 2FE primary schools, which will only provide 840 places. The

obligation to provide a fourth primary school site and the contributions towards 1FE of a 2FE school remains necessary;

- there is scope to delay the timing of Primary School 2, and limited scope to delay the timing of Primary School 3; and
- the Appellant's proposed Modifications relating to the triggers for Primary School 3 are too late. The existing S106 obligations are better matched to the timely delivery of this school.

Placemaking Role of Schools

- 9) Beyond simply providing school places, the primary schools also serve a vital placemaking function within the Development, acting as community anchors. This is explicitly recognised in the Chilmington Green Area Action Plan. The Appellant's Explanatory Statement also recognises this. The primary education obligations support the timely and efficient delivery of schools to enable these to fulfil that purpose. The proposed modifications undermine this placemaking function.

Impact of the Modifications

- 10) The modifications seek to move financial burdens from the developer to KCC. This would impact negatively on KCC's wider services. BNF will not cover the gap. BNF is not received sufficiently far in advance to forward fund the build of a new school. KCC would need to find capital funding either from budgets, such as school maintenance, or by borrowing. The revenue costs of borrowing would reduce KCC's capacity to provide essential services to its residents.
- 11) KCC is already forward funding the Development's education infrastructure. The Appellant's proposed modifications, including delaying contribution payments and removing bonds, would significantly extend the repayment timeframe, placing undue financial risk on KCC.
- 12) All current education obligations continue to serve a useful function:
- Primary School 1 has been built and costs incurred. It will meet demand from the Development. Modifications 67 and 68 (discharge) are unacceptable.
 - Bonds provide surety for forward funding which eases the Appellant's cashflow and helps deliver the Development. The bond for Primary School 1 was called in following non-payment. Modifications 70, 72 and 74 (discharge) are unacceptable.
 - Primary Schools 2 and 3 continue to be needed. While KCC supports a "Monitor and Manage" process, Modifications 69 and 71 are flawed. The mechanism lacks time-bound obligations for the Appellant, undermining the process's effectiveness. A "Monitor and Manage" process should be based on projected pupil yield, establishing clear trigger points for infrastructure delivery, with regular reassessments to determine if adjustments are

necessary. The proposed timings of financial payments unacceptably extend the period of KCC forward funding. Primary School 3 could not be delivered in time to meet demand.

- Primary School 4 remains necessary. Modification 73 is unacceptable.
- Indexation ensures contributions remain sufficient to deliver the necessary infrastructure. The modification to rebase the start point from which indexation is calculated does not serve this purpose equally well, as the value will be reduced.
- KCC has a defined period in which to spend education contributions received. This ensures places can be provided as required (to discharge KCC's statutory duty), the timing of which may not align with when funding is received. Modification 78 misguidedly assumes all demand is met 1-year after practical completion of a school. It undermines delivery of KCC's statutory duty.
- School sites remain necessary; thus, site transfer requirements continue to be necessary. Modifications 79, 80, 81, 82 and 83 reduce the Appellant's obligations and push unfunded costs to KCC. Modifications 82 and 83 in particular threaten the effective delivery of necessary schools.
- Legal and administrative costs will be incurred by KCC when dealing with site transfers. Modification 84 to discharge the obligation to pay these costs is unacceptable.

Disagreement Between the Parties

13) There are two issues:

The housing mix used in the Education Assessment – The Appellant provided an alternative housing mix on 31st January 2025 [CD9/14]. KCC's position is that the S106b modifications do not change Condition 100 of the Outline Planning Permission [CD6/3], thus it remains correct in principle to assess against that planning condition. There is no related S73 application to change this Condition. However, to assist the Inspector understand the impact we have produced an "Alternative Education Assessment" using the Appellant's housing mix (see Appendix C of my main Proof of Evidence). KCC remains opposed to using this assessment.

Whether it is correct to assume in the Education Assessment that the forecast rolls of schools will remain as at 2033-34 for the period 2034-49 - It is AGREED between the parties that:

- KCC produces 10-year pupil forecasts. It is not possible to forecast at planning area level beyond this point.
- The Office for National Statistics (ONS) subnational population forecasts (to 2043) [Cd9/15] indicate birth numbers will increase in Ashford during the 2030's and 2040's, the build period for this Development.

- 14) KCC's position is - ONS evidence clearly shows the current trend in births is expected to change, which will increase future school rolls. As neither KCC nor the Appellant can forecast how school rolls will change post 2034, the assumption that rolls will remain static is generous to the Appellant given the ONS evidence. The Appellant considers the current declining roll trend should be continued.

STATEMENT OF TRUTH

I believe that the facts stated within this proof of evidence are true.

Signed:

PRINT NAME: David Adams

Date: 5th February 2025