



ASHFORD
BOROUGH COUNCIL

Chilmington Management Organisation (CMO) & Early Community Development Topic Paper

of the Local Planning Authority in respect of:

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

Appeals by:

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

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

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

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

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- A Additional Statement from the Community Management Organisation
- B Ashford Infrastructure Funding Statement 2020/21
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1.0 Introduction

- 1.1 This Topic Paper is submitted on behalf of the Local Planning Authority – Ashford Borough Council (“the Council”) and concerns the modifications proposed to **Schedules 4 & 5** of the Chilmington Green S.106 Agreement (“the Agreement”) which secures obligations in respect of the Chilmington Management Organisation (the “CMO”) and Early Community Development.
- 1.2 The Chilmington Green Area Action Plan (the “AAP”) identifies *“the importance of delivering and maintaining strong communities at Chilmington Green”*. The AAP highlights that in the past large new housing led developments have been criticised for having a lack of community and activity. Built form and physical design are not enough to deliver a strong and sustainable community – how facilities are managed and maintained over time will be crucial - therefore a sustainable governance arrangement is vital (CD3/1/1, page, 68, paragraphs 8.1 – 8.4).
- 1.3 Policy CG10 of the AAP states that *“in order to help establish a strong community at Chilmington Green, the council supports a community led management arrangement”*. The policy identifies that *“a detailed strategy, supported by a business case, will need to be prepared and agreed with the council which will need to establish the scope of the community governance arrangement, how it will evolve and develop over time, and the long term financial sustainability of the model”* (CD3/1/1, page 71).
- 1.4 Local Plan policy IMP4 – states that proposals that will deliver substantial community space and facilities are required to be supported by a governance strategy. Proposals which adopt a community stewardship model of governance will be supported. (CD4/1 page 315).
- 1.5 The CMO is a ‘community led management arrangement’ / stewardship model as advocated in policy CG10 of the AAP and Local Plan policy IMP4. An additional statement is provided by the CMO, attached as Appendix A to this topic paper, which describes the function of the CMO and how it differs from an estates management company.
- 1.6 Paragraph 3 of Schedule 4 of the Agreement requires that, before the occupation of the first dwelling, the Community Management Organisation for Chilmington Green is created. The CMO was formed as a Company Ltd by Guarantee at Companies House on 1st August 2019. The CMO became a charity in March 2021.
- 1.7 Paragraph 6 of Schedule 4 of the Agreement requires that before any material operation on site is carried out, that the CMO Operating Business Plan be

submitted to the Council for approval. No works of construction vertically above foundation level were permitted until the CMO Operating Business Plan had been approved by the Council in consultation with the Chilmington Green Partnership CMO Working Group (or the CMO if formed) in writing. The CMO Operating Business Plan 2018 - 2038 (the "CMO Business Plan") (CD13/17) was agreed by the Council on 2 August 2018.

1.8 Paragraph 2.2 of the CMO Business Plan summarises the aims of the CMO as being to (CD13/17, Appendix A, page 25):

- i. own, maintain and effectively manage the endowed community land, public open spaces, buildings and facilities
- ii. initiate, coordinate and deliver community development and cultural activities to create and maintain a thriving community
- iii. promote and support environmental and community sustainability.

1.9 Paragraph 8 of Schedule 4 of the Agreement requires a residential charge payment mechanism (the "Rentcharge Deed") to be set up and requires that all freehold owners of dwellings or blocks of dwellings enter into the Rentcharge Deed and pay the required charge to the CMO. The original Rentcharge Deed attached to the Agreement is no longer entirely appropriate and was therefore superseded by revised versions, each approved by the Council in writing as per the definition of "Rentcharge Deed" in the Agreement, as follows (1) in August 2019 to address mortgage lenders' requirements (2) in May 2021 to meet the requirements of the Help To Buy scheme (3) in June 2023 a Rentcharge Deed for blocks of flats was approved.

1.10 An additional statement is provided by the CMO, attached as Appendix A to this topic paper. This statement explains how the modifications proposed by the appellant to the Agreement would impact on the CMO Business Plan and the ability for the CMO to deliver its charitable objectives. The statement also provides a description of how the CMO differs from a standard estate management company.

2.0 The Requirements of the Agreement

2.1 In summary, Schedule 4 requires the following:

- the creation of the Chilmington Green Partnership CMO Working Group.
- the preparation of the CMO Welcome Pack and marketing document and CMO membership application form.

- The creation of the CMO.
- The provision of the CMO's first operating premises.
- The provision of the CMO's second operating premises.
- The preparation of the CMO Operating Business Plan.
- The payment of the Deficit Grant to the CMO.
- The creation of a residential charge payment mechanism.
- The provision of commercial estate and/or cash endowment.
- The payment of the CMO Start up Contribution.

2.2 As identified in Section 1.0 above, the CMO was formed in 2019 - this was preceded by the Chilmington Green Partnership CMO Working Group. Upon creation of the CMO the Chilmington Green Partnership Working Group ceased to function in accordance with Schedule 4, paragraph 15.1 of the Agreement. In addition, the CMO Business Plan was agreed in 2018, and the Rentcharge Deed was established in 2019. The modifications proposed by the appellant do not relate to any of these obligations. This topic paper will therefore not refer to the requirements of these obligations any further (i.e. paragraphs 1, 3, 6 & 8 of Schedule 4 of the Agreement).

2.3 Furthermore, the appellant, on 23 December 2024, (CD2/14, Request 13) agreed to the Council's 'proposed modification by agreement' that the CMO Welcome Pack, marketing document and membership application form could be provided in electronic form, unless a paper copy is required. This topic paper will therefore also not refer to the requirements of this obligation any further (i.e. paragraph 2 of Schedule 4 of the Agreement).

2.4 Schedule 4 also includes obligations relating to how defects will be dealt with and the payment of the Council's legal costs in respect of the provision of the CMO's first and second operating premises and the commercial estate (Schedule 4, paragraphs 4.1.3 & 4.1.4; 5.1.3 & 5.1.4; 9.1.3 & 9.1.4; 11.1.3 & 11.1.4 and 12.1.3 & 12.1.4). The proposed amendments to these obligations are dealt with separately in the 'Ongoing Management and Maintenance' and the 'Delivery/Monitoring/Council's costs' Topic Papers and therefore this Topic Paper does not respond to these proposed modifications to these obligations.

2.5 In detail, the following obligations within Schedule 4 of the Agreement relating to paragraphs 4, 5, 7, 9, 10, 11, 12, 13 and 14, require the following.

The provision of the CMO First Operating Premises (the “First Premises”)

- 2.6 To submit to and have approved by the Council. a Design Brief and Specification (the “DB&S”) for the First Premises no later than any works of construction vertically above foundation level of any dwelling. The total capital cost of the First Premises is stated as £200,000.00 index linked up to the date of the reserved matters approval for the First Premises. This cost includes fees, contingencies, specification and design costs and supervision fees, but excludes the costs of providing access roads and services. The DB&S shall include all the information specified in Schedule 32 of the Agreement and in the Definition of the First Premises (Schedule 4, paragraph 4.1.1 & Definitions, paragraph 1.1)
- 2.7 Before the submission of the DB&S to the Council, the appellant is required to undertake a consultation exercise with the CMO. Before the commencement of the consultation, the appellant is required to agree the details of the proposed consultation with the CMO. The DB&S shall include the consultation responses received from the CMO, including their comments on the costings (Schedule 4, paragraph 4.1.2).
- 2.8 To complete and provide the First Premises in accordance with the relevant reserved matters approval and the DB&S and to grant a lease to the CMO at nil consideration and nil cost to the CMO prior to the first dwelling occupation (Schedule 4, paragraph 4.1.3).
- 2.9 The appellant is also required (1) to pay any Stamp Duty Land Tax that may be owed by the CMO relating to the grant of the lease (2) to provide a health and safety file and operating and maintenance manual/schedules and as built drawings of the First Premises (3) ensure that all conditions attached to the planning permission or approval for reserved matters for the First Premises that are required to be discharged before first occupation/use of the facilities, have been discharged (Schedule 4, paragraph 4.1.3).
- 2.10 The DB&S for the First Premises was submitted to the Council on 17 July 2018 and was approved by the Council on 23 August 2019. Full planning permission was granted for the First Premises on 20 September 2019. Based on evidence of dwelling occupations, the First Premises should have been completed and provided no later than 20 September 2019. The First Premises were in fact provided to the CMO in September 2023.

The provision of the CMO Second Operating Premises (the “Second Premises”)

- 2.11 To submit to and have approved by the Council a Design Brief and Specification (the “DB&S”) for the Second Premises no later than 750 dwelling occupations.

The budget for the Second Premises is stated as £250,000.00 index linked up to the date of the reserved matters approval for the Second Premises. This budget is for fitting out only and does not cover all other costs of providing the Second Premises - including fees, contingencies, specification and design costs, supervision fees, construction costs of the Second Premises itself, the costs of installing services to the Second Premises, access roads to the Second Premises. The DB&S shall include all the information specified in in Schedule 33 of the Agreement and in the Definition of the Second Premises (Schedule 4, paragraph 5.1.1 & Definitions, paragraph 1.1).

- 2.12 Before the submission of the DB&S to the Council, the appellant is required to undertake a consultation exercise with the CMO. The DB&S shall include the consultation responses received from the CMO, including their comments on the costings (Schedule 4, paragraph 5.1.2).
- 2.13 To complete and provide the Second Premises in accordance with the relevant reserved matters approval and the DB&S and to grant a lease to the CMO at nil consideration and nil cost to the CMO no later than 1000 dwelling occupations (Schedule 4, paragraph 5.1.3).
- 2.14 The appellant is also required (1) to pay any Stamp Duty Land Tax that may be owed by the CMO relating to the grant of the lease (2) to provide a health and safety file and operating and maintenance manual/schedules and as built drawings of the Second Premises (3) ensure that all conditions attached to the planning permission or approval for reserved matters for the Second Premises that are required to be discharged before first occupation/use of the facilities, have been discharged (Schedule 4, paragraph 5.1.3).
- 2.15 To date, none of the dwelling occupation triggers relating to the Second Premises referred to above have been reached.

Payment of the Deficit Grant to the CMO

- 2.16 Schedule 4, paragraph 7, requires the payment of a total of £3,350,000 to the Council in ten instalments of £350,000 at 125; 500; 750; 1000; 1250; 1500; 1750; 2000; 2250; 2500 dwelling occupations. The monies received by the Council are to be transferred to the CMO and are to be used as revenue for the CMO and towards the costs incurred by the CMO in carrying out its functions and discharging its responsibilities such as maintaining and managing the facilities provided to it pursuant to the terms of the Agreement and engaging in and facilitating community development activities within the Site (Schedule 4, paragraph 7 and Definitions, paragraph 1.1).

- 2.17 To date, the trigger for the first instalment (no later than 125 dwelling occupations) has been reached. The first instalment of £350,000 was due on or before 21 July 2021. The first instalment was withdrawn from the Developers' Contingency Bank Account – Council on 6 March 2023 under the terms of the Settlement Agreement (CD1/17), however, to date the associated indexation payment has not been paid.

Provision of Commercial Estate: Basic Provision (the "CEBP")

- 2.18 To submit to and have approved by the Council, a Design Brief and Specification (the "DB&S") for the CEBP no later than 750 dwelling occupations. The CEBP shall be no less than 15,000 square feet GIA and up to 20,000 square feet GIA. The total capital cost for the CEBP is stated as £2,921,000 index linked up to the date of the reserved matters approval for the CEBP. This total capital cost includes fees, contingencies, specification and design costs and supervision fees but excludes the costs of providing access roads and services. The DB&S shall include all the information specified in in Schedule 36 of the Agreement and in the Definition of the CEBP (Schedule 4, paragraphs 9.1.1 - 9.1.2 & Definitions, paragraph 1.1).
- 2.19 Before the submission of the DB&S to the Council, the appellant is required to undertake a consultation exercise with the CMO. Before the commencement of the consultation, the appellant is required to agree the details of the proposed consultation with the CMO. The DB&S shall include the consultation responses received from the CMO, including their comments on the costings (Schedule 4, paragraph 9.1.2).
- 2.20 To complete and provide the CEBP in accordance with the relevant reserved matters approval and the DB&S no later than 1500 dwelling occupations (Schedule 4, paragraphs 9.1.3(a) & 9.1.5).
- 2.21 To either (1) if the CEBP is provided as part of a building – grant the CMO a long lease at nil consideration and nil cost to the CMO, or (2) if the CEBP is provided as a whole building – to transfer the freehold interest in the land to the CMO at nil consideration and nil cost to the CMO (Schedule 4, paragraph 9.1.3(b)).
- 2.22 The appellant is also required (1) to pay any Stamp Duty Land Tax that may be owed by the CMO relating to the grant of the lease or freehold (2) to provide a health and safety file and operating and maintenance manual/schedules and as built drawings of the CEBP (3) ensure that all conditions attached to the planning permission or approval for reserved matters for the CEBP that are required to be discharged before first occupation/use of the facilities, have been discharged (Schedule 4, paragraph 9.1.3(c), (d), (e)).

Commercial Estate Marketing Report and Endowment Election

- 2.23 To submit to the Council a Commercial Estate Marketing Report (the “Marketing Report”) no later than 2100 dwelling occupations. The Marketing Report shall (1) assess the performance of the CEBP in terms of yields (2) assess the likely future market for letting the CEBP in terms of likely future yields (3) assess the likely future market for letting further commercial estate and predicted yields (4) recommend the most marketable form location and quantum of further provision of commercial estate over and above the CEBP (Schedule 4, paragraph 10.1 & Definitions, paragraph 1.1).
- 2.24 Within 60 working days of receipt of the Marketing Report, the Council shall advise the appellant (provided that the Council has been informed by the CMO of its decision) whether the CMO chooses to either (1) be provided with the Commercial Estate: Second Tranche and the Commercial Estate: Third Tranche (Option “A”); or (2) be provided with the First Cash Endowment and the Second Cash Endowment (Option “B”) – referred to in the Agreement as the Endowment Election. If the appellant is not notified of the CMO’s decision within 60 working days of receipt of the Marketing Report then the CMO shall be deemed to have elected ‘Option B’.

Provision of Commercial Estate: Second Tranche (the “CEST”)

- 2.25 If the CMO elects ‘Option A’ referred to above – i.e. to be provided with the Commercial Estate: Second Tranche and the Commercial Estate: Third Tranche – the following obligations shall apply.
- 2.26 To submit to and have approved by the Council a Design Brief and Specification (the “DB&S”) for the CEST, no later than 2400 dwelling occupations. The total capital cost of the CEST is stated as £2,190,750 index linked up to the date of the reserved matters approval for the CEST. This cost includes fees, contingencies, specification and design costs and supervision fees, but excludes the costs of providing access roads and services. The DB&S shall include all the information specified in in Schedule 37 of the Agreement and in the Definition of the CEST (Schedule 4, paragraph 11.1.1 - 11.1.2 & Definitions, paragraph 1.1)
- 2.27 Before the submission of the DB&S to the Council, the appellant is required to undertake a consultation exercise with the CMO. Before the commencement of the consultation, the appellant is required to agree the details of the proposed consultation with the CMO. The DB&S shall include the consultation responses received from the CMO, including their comments on the costings (Schedule 4, paragraph 11.1.2).

- 2.28 To complete and provide the CEST in accordance with the relevant reserved matters approval and the DB&S no later than 3150 dwelling occupations (Schedule 4, paragraphs 11.1.3(a) & 11.1.5).
- 2.29 To either (1) if the CEST is provided as part of a building – grant the CMO a long lease at nil consideration and nil cost to the CMO, or (2) if the CEST is provided as a whole building – to transfer the freehold interest in the land to the CMO at nil consideration and nil cost to the CMO (Schedule 4, paragraph 11.1.3(b)).
- 2.30 The appellant is also required (1) to pay any Stamp Duty Land Tax that may be owed by the CMO relating to the grant of the lease or freehold (2) to provide a health and safety file and operating and maintenance manual/schedules and as built drawings of the CEST (3) ensure that all conditions attached to the planning permission or approval for reserved matters for the CEST that are required to be discharged before first occupation/use of the facilities, have been discharged (Schedule 4, paragraph 11.1.3(c), (d), (e)).

Provision of Commercial Estate: Third Tranche (the “CETT”)

- 2.31 If the CMO elects ‘Option A’ referred to above – i.e. to be provided with the Commercial Estate: Second Tranche and the Commercial Estate: Third Tranche – the following obligations shall apply.
- 2.32 To submit to and have approved by the Council, a Design Brief and Specification (the “DB&S”) for the CETT no later than 3450 dwelling occupations. The total capital cost of the CETT is stated as £2,190,750 index linked up to the date of the reserved matters approval for the CETT. This cost includes fees, contingencies, specification and design costs and supervision fees, but excludes the costs of providing access roads and services. The DB&S shall include all the information specified in in Schedule 37 of the Agreement and in the Definition of the CETT (Schedule 4, paragraph 12.1.1 - 12.1.2 & Definitions, paragraph 1.1).
- 2.33 Before the submission of the DB&S to the Council, the appellant is required to undertake a consultation exercise with the CMO. Before the commencement of the consultation, the appellant is required to agree the details of the proposed consultation with the CMO. The DB&S shall include the consultation responses received from the CMO, including their comments on the costings (Schedule 4, paragraph 12.1.2).
- 2.34 To complete and provide the CETT in accordance with the relevant reserved matters approval and the DB&S no later than 4200 dwelling occupations (Schedule 4, paragraphs 12.1.3(a) & 12.1.5).

- 2.35 To either (1) if the CETT is provided as part of a building – grant the CMO a long lease at nil consideration and nil cost to the CMO, or (2) if the CETT is provided as a whole building – to transfer the freehold interest in the land to the CMO at nil consideration and nil cost to the CMO (Schedule 4, paragraph 12.1.3(b)).
- 2.36 The appellant is also required (1) to pay any Stamp Duty Land Tax that may be owed by the CMO relating to the grant of the lease or freehold (2) to provide a health and safety file and operating and maintenance manual/schedules and as built drawings of the CETT (3) ensure that all conditions attached to the planning permission or approval for reserved matters for the CETT that are required to be discharged before first occupation/use of the facilities, have been discharged (Schedule 4, paragraph 12.1.3(c), (d), (e)).

Payment of Cash Endowment

- 2.37 If the CMO elects 'Option B' referred to above – i.e. to be provided with the First Cash Endowment and the Second Cash Endowment – the following obligations shall apply.
- 2.38 Notify the Council that the 2400th dwelling has been occupied within 10 working days of its occupation and pay the First Cash Endowment of £2,190,750 index linked to the Council, no later than 2425 dwelling occupations (Schedule 4, paragraph 13.1 & 13.2 & Definitions, paragraph 1.1).
- 2.39 Notify the Council that the 3900th dwelling has been occupied within 10 working days of its occupation and pay the First Cash Endowment of £2,190,750.00 index linked to the Council, no later than 3925 dwelling occupations (Schedule 4, paragraph 13.1 & 13.2 & Definitions, paragraph 1.1).
- 2.40 The Council is required to transfer the cash endowments to the CMO within 10 working days of receipt. The cash endowments are to be used for the purposes of creating a medium and/or long term investment to generate income for the CMO (Schedule 4, paragraph 13.3 & Definitions, paragraph 1.1).

Payment of CMO Start up Contribution

- 2.41 Schedule 4, paragraph 14, requires the payment of a total of £150,000 index linked to the Council in two instalments of £75,000 at the commencement (Statutory) of the Development and prior to the first dwelling occupation. (Schedule 4, paragraph 14.1 & 14.2).
- 2.42 The Council is required to use the CMO Start Up Contribution for the purposes of covering the costs incurred by the Council and/or the CMO in creating the

CMO and establishing the CMO as a working organisation including but not limited to paying for the provision and recruitment of staff and provision and purchase of equipment (Schedule 4, paragraph 14.3)

- 2.43 To date, the triggers for both instalments of the CMO Start up Contribution have been reached. The first instalment of £75,000 was due on or before 28 February 2017 and was paid by the Homes and Communities Agency (now Homes England) on 13 June 2017, however, the associated indexation payment has, to date, not been paid. The second instalment of £75,000 was due on or before the 20 September 2019 and was paid by the appellant on 8 October 2019, however, the associated indexation payment has, to date, not been paid
- 2.44 The Council has already transferred to the CMO, the two Start-up payments and the first instalment of the Deficit Grant contribution that have been paid.
- 2.45 The Council's Section 106 Annual Monitoring Report 2017/18 identifies that the first instalment of the Start-up funding was received by the Council. (CD4/17, Appendix B, second page). The Council's Infrastructure Funding Statement 2019/2020 identifies that the second instalment of the Start up funding was received by the Council (CD4/15, pages 11, 13 & 19). Both amounts have been transferred to the CMO in accordance with the Agreement.
- 2.46 The Council's Infrastructure Funding Statement 2022/2023 (identifies that the first instalment of the Deficit Grant was received by the Council. This has been transferred to the CMO in accordance with the Agreement (CD4/16, pages 18 & 42).

Early Community Development

- 2.47 Schedule 5, paragraph 1, requires the payment of a total of £250,000 index linked to the Council in five instalments of £50,000 – the first instalment within six months of the commencement of the Development and the following four instalments on the first, second, third, and fourth anniversaries of the date when the first instalment was paid.
- 2.48 The Council is required to use the monies received for the purpose of community development programme(s) for the residents and future residents of the Development, which may include the cost of dedicated staff and consultants and setting up and running a community website.
- 2.49 To date, the triggers for all five instalments of the early community development contribution have been reached. The first instalment was due on or before 5 December 2017 (i.e. within 6 months of the Commencement of Development) and was paid by the appellant on 3 September 2018. The second instalment

was due on or before the 3 September 2019 and was paid by the appellant on 9 February 2021. The third, fourth and fifth instalments were due on the 3 September 2020, 2021 and 2022 respectively. These three instalments were withdrawn from the Developers' Contingency Bank Account – Council on 6 March 2023 under the terms of the Settlement Agreement (CD1/17). However, to date the indexation payments associated with all five instalments have not been paid.

- 2.50 The Council's Infrastructure Funding Statement 2020/21 (Appendix B) identifies that £50,000 towards early community development was received in the reporting year. The Council's Infrastructure Funding Statement 2021/22 identifies how some of the early community development funding had been spent (Appendix C, page 21).
- 2.51 The Council's Infrastructure Funding Statement 2022/2023 identifies that £22,223.97 of the early community development funding had been spent (CD4/16, page 18) and £41,572.00 was allocated but had not yet been spent (CD4/16, pages 15) in the reporting year.

3.0 The Continuing Purpose

The CMO Operating Premises

- 3.1 The CMO require premises on the Site to fulfil their community and charitable objectives. As the population of the Development grows alongside construction, the CMO's requirements for premises will also grow. A phased approach has been adopted in the Agreement, whereby the CMO would initially occupy temporary premises to meet the needs of up to circa 2400 residents. Following which a second temporary premises would be provided within one of the retail, office or community spaces within the District Centre to serve the needs of up to circa 4320 residents at which point the CMO's permanent premises located within the Community Hub in the District Centre would be provided.
- 3.2 All three premises enable the CMO to have a presence on the Site facilitating the CMO to build relationships with residents in an effective way. The premises also provide the community with access to community space which can also provide an income stream to the CMO.

The Deficit Grant and the Start up Contribution

- 3.3 The Deficit Grant Contribution and Start up contributions are necessary to ensure the operation of the CMO given its charitable objectives and function as a non-for-profit community stewardship body and not an estate management

company. Both payments are key components of the CMO Business Plan (CD13/7) which was submitted by the appellant and approved by the Council.

- 3.4 The CMO Business Plan sets out how the CMO will remain viable over the Business Plan period. Section 6.1 provides the financial strategy and model (CD13/7, page 81). Paragraph 6.1.1 identifies seven sources of income, one being *'pump priming and deficit grant support from the developer consortium'*. (CD13/7, page 83). Paragraph 6.1.1 (b) states that *'the developer consortium will provide cash support to the Trust through two principle headings as set out in the S106'*. The two headings referred to are the 'Start up Grant totalling £150,000 (Index Linked) and the Deficit Grant Contribution totalling £3.35m (index linked) (CD13/7, page 89).
- 3.5 Section 6.2 of the CMO Business Plan sets out the 'Income and Expenditure Budgets' (CD13/7, page 98). The fourth paragraph of section 6.2 states that *'over the first 22 years the financial model shows that the Trust is viable due to a combination of Section 106 'deficit grant' and planned timing of the receipt by the Trust of income generating assets and the receipt of the community liabilities.'* (CD13/7, page 99)
- 3.6 Sections 6.2.1 - 6.2.4 of the CMO Business Plan provide a summary of the financial model. This summary indicates the CMO would be reliant on S106 contributions in the early years of the build programme as income generated by the estate rent charge paid by residents would not cover expenditure. This situation was not anticipated to change until a critical mass of dwelling occupations have been achieved and the commercial estate brought forward to provide an income to the CMO.
- 3.7 The Start Up Contribution is essential to enable the CMO to establish in the early years of the construction of the Development, prior to the first residents moving in, and when there are no other sources of income available. The Deficit Grant is then required to ensure the CMO can continue to operate given that the CMO Business Plan shows operating deficits at this stage in the Development.
- 3.8 The degree to which this funding is critical to the CMO was shown by the fact that, when the contributions were not received from the Appellant on time, The CMO had to approach the Council to forward-fund the equivalent sum by way of a loan to the CMO from the Council's own resources, pending the contributions being paid by the appellant.
- 3.9 The planning committee report for the outline planning application identifies that "achieving long term financial sustainability for the proposed CMO is central to

the planning objective of securing and maintaining high quality sense of place and community” (CD6/1, paragraph 334, page 1,201).

- 3.10 This requirement is set out in AAP policy CG10 which states that “an appropriate level of developer contribution will need to be made in line with the approved business case to provide for the arrangement proposed and for community development (especially in the early years), including staff, premises and equipment costs. This support will need to be provided until a local community management body in a form agreed by the council (e.g. a Trust) has been set up and is operationally effective with a firm financial basis (including property and other endowments and a potential resident service charge regime)” (CD3/1/1, page 71).
- 3.11 As explained by the CMO in the Additional Statement (refer to Appendix A, page 7) *“one of the reasons for the Deficit Grant is to replace commuted sums for the maintenance of assets that are handed to the CMO. There are no commuted sums in the S106 for Chilmington because of the way that the totality of the community infrastructure was planned and modelled within the CMO business plan. Rather than calculate individual commuted funds the transfer of assets was considered as a whole and the pressures that created on the CMO business plan managed through deficit funding. If the deficit grant were to be removed then some form of commuted sum would need to be included in the revised S106”*.
- 3.12 Appendix 9 of the planning committee report for the outline planning application (CD6/14) identified commuted sums that would be required for several of the obligations, however, as identified above, a different model was taken forward and these commuted sums were not secured in the Agreement.

Commercial Estate / Cash Endowment

- 3.13 The commercial estate / cash endowment is required to ensure that the CMO is financially viable over the long term to enable it to meet its charitable objectives. As identified above, the CMO Business Plan identifies seven sources of income for the CMO, this includes *“income derived from endowed commercial assets (land, property and/or money)”* (CD13/17, paragraph 6.1.1, page 83). Paragraph 6.1.1 (c) of the CMO Business Plan describes how the endowment of the commercial estate to the CMO is intended to operate and states that the annual income derived from letting of the commercial estate *“is intended for direct application for the furtherance of the Trust’s charitable objectives”* (CD13/17, page 89). Section 7 of the CMO Business Plan provides further detail about how the commercial estate forms part of the CMO Business Plan and states, in the first paragraph, that *“eventually, the income is forecast to be equivalent to about 13% of the Trust’s annual costs including being a*

primary source of funding for its community development work and funded activities. The estate may also act to provide a means of financial security” (CD13/17, page 109).

- 3.14 The option for the CMO to be paid a cash endowment in lieu of the second and third tranche of the commercial estate is also part of the funding principles of the CMO Business Plan. This is “*designed to help manage any risk of lower than anticipated demand and yields than originally forecast at the Section 106 planning stage*”. Following the transfer of the Commercial Estates: Basic Provision to the CMO the CMO would have the option to take on the second and third tranche or alternatively be paid a cash endowment instead. The CMO could then invest the endowment in cash deposits or longer-term investment funds, and/or decide to reinvest cash in the purchase of income generating assets (CD13/17, paragraph 10.1.3, page 130)

Early Community Development

- 3.15 The planning committee report for the outline planning application identified that ‘*a principle of the Chilmington Green development, as expressed in Policy CG1 of the AAP, is that a sustainable development is achieved which generates community cohesion*’ (CD6/1, paragraph 265, page 1.181)
- 3.16 This intention is also expressed in Section 3.3 of the CMO Business Plan which identifies that ‘*a principle objective of the Trust is to build a strong and vibrant community where residents and others who work or use the area, share a strong sense of belonging, pride and commitment to its future and well-being*’. (CD13/17, page 40). Section 3.3.2 of the CMO Business Plan outlines the community development work that the CMO will deliver, such as:
- Creating an engagement programme, to include ‘drop-in’s’ or surgeries with various stakeholders and the CMO’s Trustees.
 - Work with local service providers and residents to identify appropriate early services that bridge the gap before the Community Hub, Health Facility and School e.g. breakfast/afterschool clubs.
 - Create a Community Chest Grant fund (managed by the Community Development Worker) focused on supporting new groups/community activities which meets the needs of the residents and generates participation and stewardship and looks to build local capacity such as volunteering.
 - Deliver specific programmes of activity that support the needs of the disadvantaged, vulnerable and unemployed.

- Explore with residents and stakeholders the 'Chilmington Story' (see Heritage) and incorporate in designs.
- 3.17 Paragraph 8.9 of the AAP highlights that to realise a community led governance arrangement *"help will be needed through developer funding to support community development work, including helping to support local volunteers in establishing groups; making links between these groups; helping to organise activities and venues, alongside the construction of new facilities"* (CD3/1/1, page 69).
- 3.18 Funding at the early stages in building a new community and developing a sense of place is considered crucial to the Garden Community approach underpinning the Chilmington Green development. The importance of funding at an early stage in building a community and developing a sense of place was considered as critical in the evolution of Chilmington Green as a community and to help to balance out the impact of living on a new development site with limited community infrastructure. Community development is also a central cornerstone of the Garden Communities movement with people and place being at the centre of the evolution of new communities. Building homes alone does not generate a sustainable community.
- 3.19 The early community development contributions are intended as a major source of funding to deliver the Chilmington Green Early Community Strategy (CD13/9) (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 CMO Board Position Statement (dated 5 March 2021) provides an update about the community development activities that have taken place following the adoption of the Strategy to 2022 (refer to Appendix D).
- 3.20 It was anticipated that a community development worker would be appointed to support early delivery. However, given the uncertainty about whether all the contributions required by the Agreement would be paid, a decision was taken to apply a different model whereby the Council and CMO commission larger projects to local community organisations who are expert in their field. This has been complemented by smaller projects and programmes which meet neighbourhood need. The Council has safeguarded the S106 funding by matching it with other funding, stretching its longevity and ability to meet resident need over a longer time frame. An example of one of these projects is the 'Creative Placemaking Sprint' a series of creative events that took place between April and November 2022 (refer to the Creative Placemaking Sprint Final Report October 2022 – refer to Appendix E)

4.0 Relevant Planning Policy & Guidance

- 4.1 Chilmington Green Area Action Plan CG1(b) Chilmington Green Development Principles – identifies that each main phase of the development will be sustainable in its own right, through the provision of the required social and physical infrastructure, both on-site and off-site (CD3/1/1, page 21).
- 4.2 Chilmington Green AAP Policy CG10 Developing a Community – identifies that “to help establish a strong community at Chilmington Green, the Council supports a community led management arrangement. The policy identifies that a detailed strategy, supported by a business case, will be needed and an appropriate level of developer contribution (CD3/1/1, 2, page 71).
- 4.3 Chilmington Green AAP Policy CG17 Social and Community Facilities – states that the phasing and delivery of social and community facilities and / or funding to support such services shall be agreed with the relevant service providers and included in an appropriate Section 106 Agreement (CD3/1/1, page 94).
- 4.4 Local Plan Policy SP1 Strategic Objectives – seeks to ensure development is supported by the necessary social, community, physical and e-technology infrastructure, facilities and services, with any necessary improvements brought forward in a co-ordinated and timely manner (CD4/1, page 9).
- 4.5 Local Plan Policy SP6 Promoting High Quality Design – requires development proposals to be of high quality design and to demonstrate careful consideration and a positive response to a set of design criteria. Development proposals should show how they have responded positively to the design policy and guidance, including national and local design guidance, and site specific development briefs. Developers are strongly encouraged to participate in the Council’s ‘Quality Monitoring Initiative’ which works to make sure that the approach agreed to design quality when planning permission is given is delivered on site (ref: CD4/1, page 40).
- 4.6 Local Plan Policy COM1 Meeting the Community’s Needs – identifies the requirement for infrastructure and facilities to meet the need generated by new development (C4/1 page 303).
- 4.7 Local Plan Policy IMP1 Infrastructure Provision – seeks the delivery of infrastructure to support new development (CD4/1 page 312).
- 4.8 Local Plan policy IMP4 – states that proposals that will deliver substantial community space and facilities are required to be supported by a governance strategy. Proposals which adopt a community stewardship model of governance will be supported. Should a private management company model

be promoted, then it will need to be established and run in a way that is affordable, gives the residents a key governance role and is focused towards the management of the facilities to be delivered by the development (CD4/1 page 315).

- 4.9 Paragraph 96 of the NPPF identifies the importance of achieving healthy, inclusive, and safe places which promote social interaction to enable and support healthy lifestyles.
- 4.10 Paragraph 98 of the NPPF requires planning decision to plan positively for the provision and use of shared spaces, community facilities (such as meeting places, sports venues, open space) and other local services to enhance the sustainability of communities and residential environments, and, guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs.

5.0 The Proposed Modifications

- 5.1 In summary, the appellant seeks the following modifications to the Agreement.
- 5.2 Delete the requirement to provide the CMO Second Operating Premises and all associated obligations set out in Schedule 4, paragraph 5.
- 5.3 Delete the obligation to pay all ten instalments of the Deficit Grant to the CMO.
- 5.4 Delete the obligation to provide the Commercial Estate: Basic Provision and the Commercial Estate: Second Tranche and Third Tranche; the obligation to submit the Commercial Estate Marketing Report and the obligation to pay the cash endowment and all associated obligations set out in Schedule 4, paragraphs 9, 10, 11, 12 & 13.
- 5.5 Delete the obligation to pay all instalments of the CMO Start up Contribution.
- 5.6 Delete the obligation to pay all instalments of the Early Community Development Contribution.

6.0 Appraisal of the Proposed Modifications

The CMO Operating Premises

- 6.1 The Second Premises are necessary to support the growing community and are not surplus to requirements as claimed by the appellant (CD2/14, request 16). The First Premises is located at the northern end of the Site, close to the A28 - this is not a central location in the context of the number of residents the

First Premises would need to serve if the Second Premises were not provided and the delivery of the Community Hub (within which the permanent CMO Premises is to be located) is provided in accordance with the Agreement or delayed as proposed by the appellant in Request 58.

- 6.2 The Development is to be delivered in four phases – Main AAP Phases 1, 2, 3 & 4. The location of these four phases on the Site are shown in AAP Figures 18-21 (pages 115-118) and are defined in the Agreement (refer to Definitions, paragraph 1.1). The number of dwellings in each phase is shown in Table 1 below.

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

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

- 6.3 The permanent CMO Premises is currently due to be provided within Main AAP Phase 2 of the Development at 1800 dwelling occupations. The modification proposed by the appellant in Request 58 would delay this provision until Main AAP Phase 3 (3250 dwelling occupations). This would result in the CMO having to continue to operate from the First Premises and being remote from a large proportion of the population. The proposed location of the Second Premises within the District Centre and close to proposed services and facilities would ensure that it is accessible to the residents that it is intended to serve.
- 6.4 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 would be delivered before the First Premises reaches the end of its life.
- 6.5 The First Premises also has limited capacity and would not be large enough to serve the growing community if further provision is not made until 1800 occupations (when the Community Hub is currently to be delivered) or 3250 occupations (as per request 58). The First Premises has circa 175 sq/m of floorspace, with two rooms that could be used by the community - a circa 56 sq/m community space with associated kitchen and a circa 28sq/m meeting room. This space would have to serve circa 57% of the population, circa 7,800 residents, of the Development if the Second Premises were not provided.

- 6.6 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 the obligation to provide the Second Premises would result in a delay in the provision of sufficiently sized playspace and public space to meet the needs of the growing community.
- 6.7 The Second Premises is required to be in a permanent building designed for retail, office or community use within the District Centre. The appellant suggests that 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 schools*” (CD2/14, request 16). However, the only alternative community facilities proposed within Main AAP Phase 1 of the Development are the Hamlet Facilities and the applicant proposes to delay the provision of the Hamlet Facilities until 3500 occupations (refer to request 29). Consequently, there would be no alternative community provision on site for the CMO to use. It may be possible for the secondary school 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.
- 6.8 The deletion of the requirement to provide the Second Premises would result in the CMO being unable to fully perform their functions as set out in the CMO Business Plan. It would also result in there being limited community space on the Site for residents to use, especially when considered alongside the delays proposed by the appellant to the delivery of the Hamlet Facilities and the Community Hub. This would be detrimental to community relations and would compromise the ability to deliver a key part of the vision for Chilmington Green (as set out in the AAP) which is to foster “*a strong community that develops a sense of pride and local ownership with the capacity to help manage Chilmington Green on a day to day basis*” (CD4/2, page 19).

Funding to the CMO - Deficit Grant / Start up Contribution / Commercial Estate / Cash Endowment

- 6.9 Deletion of the Start up funding and the Deficit Grant Contribution removes the CMO's main form of funding during the early phases of the Development. The commercial estate / cash endowment is required to ensure that the CMO is financially viable over the long term. The loss of both these sources of funding would undermine the ability of the CMO to function and deliver its Business Plan.
- 6.10 The CMO Business Plan identifies that the monies collected under the Rentcharge Deeds are not sufficient in the early phases of the Development to

enable the CMO to deliver its charitable objectives. The CMO does not currently have any other substantial form of income to cover its operating costs. The payment of the Start up funding and Deficit Grant is necessary and essential to ensure the sustainability of the CMO and the delivery of its charitable objectives.

- 6.11 As explained by the CMO in the Additional Statement (refer to Appendix A) deleting the Deficit Grant would result in the CMO accumulating a cash deficit of £2,058,660. Without replacing that income, the CMO would not be solvent and would consequently not be able to function (Appendix A, page 7).
- 6.12 The CMO have also advised that *“removing the commercial estate would remove a significant level of income from the business plan. The Financial model shows that by the end of the business plan £694,000 is generated from commercial investments and community assets. To put this into perspective this is approximately 10% of the forecast income for the CMO”* (refer to Appendix A, page 6).
- 6.13 The modifications proposed would ultimately put into the question the ability of the CMO to function as a stewardship body. The appellant states that *“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”*. The appellant suggests that the CMO could do this by simply relying *“upon the monies collected under the Rentcharge Deeds”* (CD2/14, request 17).
- 6.14 The proposal put forward by the appellant fundamentally contradicts the vision for Chilmington Green set out in the AAP. It is too early in the delivery of the Development (with only circa 380 dwellings occupied) to conclude that the model of stewardship agreed when outline planning permission was granted does not work.

Early Community Development

- 6.15 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. The deletion of the Early Community Development Contribution would undermine the ability of the Council and CMO to deliver the activities required to develop community cohesion which was identified as being a principal objective of the CMO Business Plan. If this contribution is not paid then all community development work would cease, which would be contrary to the Council’s aspirations for Chilmington Green.

- 6.16 The sums were negotiated purposely to cover the early years of the Development when it would be more difficult to obtain external funds to support community development.
- 6.17 Chilmington Green forms part of the South Ashford Garden Community. Community development is a central cornerstone of Garden Communities and, during the construction period, is seen as a core mechanism for creating stewardship. There is concern that if the Early Community Development funding is deleted from the Agreement that central government would reconsider the garden community status of the Development – a consequence being that access to further funding would be gone.
- 6.18 Alongside the Garden Community status, the Council can bid for capacity and capital funding to further support the early delivery of infrastructure, housing, community assets and community development. The DHLUC Garden Communities funding, referred to by the appellant (CD2/13, paragraph 7.16) is additional to and not in substitution for any S106 funding or assets to be provided by the developers. The majority of the DHLUC funding has been 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 appellant.
- 6.19 Most of the projects being delivered by the DHLUC funding are not community development projects. Where community development is being delivered as part of this funding, the benefit is to the whole of the Garden Community and existing residents, not just Chilmington Green. The capacity funding has provided a huge positive benefit to the community. Garden Communities funding is not guaranteed year on year and is a diminishing fund over time. Typically, a Garden Community would receive this financial support from central government for up to five years.

Viability

- 6.20 The appellant has stated in several of the requests that relate to the CMO obligations in the Agreement that these obligations “undermine the viability of the Development”. For the reasons set out in the Council’s legal submissions, it is not accepted that viability is relevant to the tests which need to be applied when considering the appeals, the Council’s ‘Viability’ Proof of Evidence will, however, present the Council’s case in respect of the substantive viability issues; therefore, this Topic Paper does not respond to this point.

7.0 Conclusion

- 7.1 The Agreement currently secures the delivery of premises for the CMO on the Site; financial support to the CMO in the early stages of the Development, in part, in lieu of paying commuted sums and the transfer of commercial estate and/or a cash endowment to the CMO.
- 7.2 The provision of the CMO Premises on the Site serves a useful purpose because this will ensure that there is sufficient space on the Site to enable the CMO to deliver benefits to the community as it grows. It will also ensure that the CMO can provide services from a central location on the Site as the Development grows.
- 7.3 The payment of financial contributions and the endowment of commercial estate/cash to the CMO will ensure that the CMO is financially viable in the short and over the long term.
- 7.4 The modifications proposed to the Agreement would not serve that purpose equally well because the deletion of the obligation to provide the CMO Second Premises would result in a deficit of space for the CMO and the community on the Site. The removal of all funding sources to the CMO currently set out in the Agreement would most likely result in the CMO no longer being able to function as a stewardship body and charity which would be detrimental to the residents of the Development and would ultimately mean that the Vision for Chilmington Green set out in the AAP to “*foster a strong community that develops a sense of pride and local ownership*” could not be delivered (CD4/2, page 19).

Appendix A

Additional Statement from the Community Management Organisation

S106 Appeal Additional Statement by the Community Management Organisation

Overview of Governance and Common Vision

The long-term stewardship (i.e. community-led management) of assets was a principle set in the Chilmington Green Area Action Plan. The Section 106 Heads of Terms defined the requirements for bringing forward the stewardship model. To set it up, the local authority invested resources to bring forward CMO in partnership with developers, recognising the holistic value that a stewardship body would bring to the development in the long-term.

To create places which enable people to live healthy and fulfilling lives

Achieving this means providing the spaces, places and infrastructure that people need to live well and which enable the natural world to thrive. It also means empowering people to have a say on how their homes and neighbourhoods are created and managed, providing opportunities for active citizenship. This powerful combination is captured in the concept of long-term stewardship, which is at the heart of creating great places. Long-term stewardship goes beyond the management of places and spaces extending to providing a practical opportunity to create communities that people will be proud to live in and that will stand the test of time.

The Vision and CMO Governance

A vision for stewardship at Chilmington Green was agreed by all partners from the start. Having the principle of stewardship in the Area Action Plan, put the local authority in a good position to ensure that developers understood what the requirements were. The local authority appointed a specialist lawyer to support Section 106 negotiations with the developers, to agree on the governance of CMO and other aspects of the stewardship model. The board of trustees who make the strategic decisions have nominations from:

- developers (up to five nominations)
- local authorities (two nominations)
- voluntary sector (one nomination)
- housing associations (one nomination)
- residents (one nomination in phase one)

Throughout construction, developers have up to 50% of the votes at the board, with the other parties holding the other 50%, but once the last house is sold, the developers vacate their board positions and residents take over. To increase resident representation, a further four residents will be appointed, one for each phase.

The ultimate objective is to have a management organisation that is owned and controlled by its residents standing it apart from Management Companies. The CMO model has been recognised by the Town and Country Planning Association (TCPA) as an example of good practice in its resources model¹.

This collaborative approach involving residents from the outset and ultimately becoming responsible for the stewardship of the assets in their community sets the CMO apart from normal management models and seeks to resolve many of the issues that are commonly seen with management companies at the moment.

Every resident of the Chilmington development is entitled to become a member of the company and receive the following statutory entitlements :

- Whilst Annual General Meetings (AGMs) are open to the public; Members retain voting rights. AGMs are distinct from company board meetings and at least one general meeting must be held annually.
- Members can submit and vote on proposed recommendations
- Members must approve any proposed changes to The Articles or the name of the Trust
- At the Annual General Meeting, Members will receive the Directors' report, the accounts and the auditors' report, and may appoint the Trust's auditors
- All Members can participate in the appointment of the Resident Directors

In addition to the stewardship of the assets the CMO is to generate income to maintain the assets through the rent charge, be endowed with commercial assets and would use these assets to generate an income stream which in turn is a primary source of the funding for community development work.

Community development activities seek to build communities at a local level with an emphasis on social interaction through community events, practical clubs and forums, and leisure activities. These interactions strengthen social ties and ultimately create a cohesive and sustainable community.

Though the primary purpose of the commercial estate is to underpin the charitable objects through its related income, a commercial property interest also opens up options for the Trust to offer space for local residents to work close to their place of residence. Accordingly, with a new community of significant scale, there are good prospects for the Trust to take an active role in promoting local employment and a strong micro economy.

The industry standard service charge model for estate management, has had the following problems:

¹ Online resource: <https://www.tcpa.org.uk/resources/stewardship-case-studies/>

Fluctuating charges

A normal service charge approach will see the management company charge for the estimated cost of the maintenance of the property and landscaping with any overspends billed on the following years bill. In this model residents receive fluctuating bills and find budgeting on this basis difficult. This is as a result of no long term financial plan setting out and providing for expenditure over the longer term which allows for set income collection. The Leasehold Advisory Service cites service charges as the main area of dispute between leaseholders and landlords.

A further significant difference is that the CMO has an obligation to manage assets as set out in its business plan, whereas the normal management company model can if it falls short of funds, perhaps as a result of poor budgeting, stop work altogether until the new budget year. There are many examples across the UK of this happening mid year with the consequence that, for example, landscaped areas stop being maintained.

The Estate Rent charge at Chilmington, is a legally binding covenant that each and subsequent residential property owners (the freeholder) must complete before occupation. Estate Rent charges are governed by the Rent Charges Act (1977)

The charge for Rent Charge Deed is set on the number of bedrooms a property has. The charge for RCD1 is capped and increases by RPI (retail price index) each year. The CMO has the ability to charge up to this cap and informs residents of its intentions in February/March each year when it bills residents for the new financial year. The CMO cannot charge above the capped amount. Therefore, the RCD cap provides residents with protection from spiralling bills, which is a positive attribute when compared to Service Charges.

The CMO has a long term responsibility for the management of the assets on the estate and so with the rent charge cap it needs to plan over the longer term to manage the lifecycle costs of the development. The cap on rent charge deeds presents a challenge that it needs to work within, this is explored in more detail later.

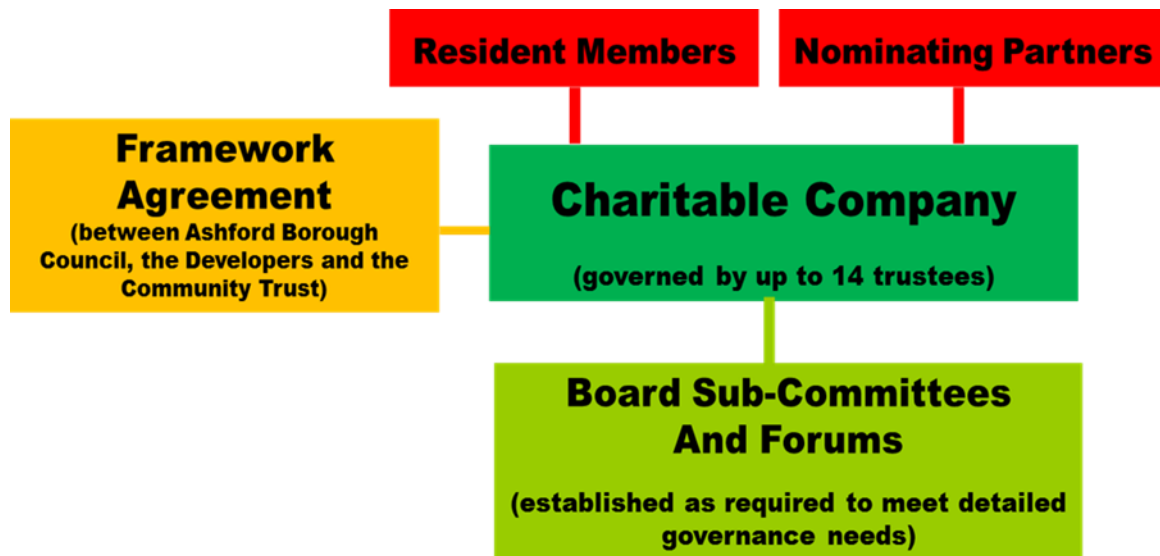
The advantages of the CMO Model

The industry norm of a service charge model is run by an external management company which residents have little or no control over. Management companies are often changed with no inclusion of residents' feedback.

With external management companies, residents can feel excluded and not consulted on the standards that are applied to the maintenance of their built environment.

At Chilmington the model of a charitable limited company was chosen as it provides a sufficiently robust, but dynamic organisation structure with the necessary legal framework for the ownership of assets and responsibility for resources. Further,

through its legal obligations and management ethos it also ensures strong management and accountability for service delivery and demonstrable public benefit. The governance of the Community Trust will operate at four levels:



In establishing the above structure, the long term aim of the original business plan is for the Board of Trustees to comprise in the main of Resident Directors, representing the various phases of the development. This format is significantly different to the normal management company and puts governance and accountability firmly in the hands of the residents of Chilmington Green.

Challenging the Trustees – Annual General Meeting

The Trust holds an AGM each year which residents attend and Trust Directors can be questioned on the Trust's financial status and other resident issues. This accountability is fundamentally lacking in service charge models.

The AGM is one of the key means by which the Trustees can report on progress over the previous twelve months to its members (the residents). An Annual Report from the Board is a requirement, along with a report of its strategy for the future. The AGM will receive the annual report and accounts and will be the time when resident Directors are appointed (subject to detailed rules to be worked up by the Trustees). AGMs are also opportunities for resident members to put forward their own resolutions, subject again to detailed rules.

In addition to this the Resident Trustee holds residents' forums with groups of residents from each area (Lakes, Gate, Hamlet, BDW) of the development. This has proved to be an excellent way to engage with residents and give them more oversight of the decision making in the CMO. However, there is an ambition to extend the Resident membership of the board but this is difficult to do given the controls built into the CMO's Articles.

Sinking Fund

One of the fundamental differences between a Service Charge and a Rent Charge is the provision of a sinking fund in the Rent Charge model.

One important point to note is that in the S106 there is no provision for a commuted sum to be passed over to the management organisation with the transferred assets when they transfer. So the CMO needs to plan the lifecycle costs of these assets within its business plan.

To achieve long term stewardship of assets this simply means that they are looked after properly in perpetuity, and this cannot be achieved without a commitment to provision for their repair and replacement.

The Estate Rent charge is treated as Restricted Funds (for charity law and accounting purposes). Principally, this is to comply with the arrangements for ring-fencing the Estate Rent charge to Essential Activities as referred to in the Section 106 Agreement and Estate Rent charge deeds.

Within the Restricted Fund, a proportion of annual Estate Rent charges is allocated and held for future purposes within a Sinking Fund. The Sinking Fund is managed in accordance with a usage and investment policy agreed by the Trust and managed separately from its unrestricted reserves.

This provision for a Sinking Fund sets the Charitable Trust apart from the normal Management Company model and one of the reasons for this is the Trust will be responsible for the management and maintenance of large areas of publicly accessible open space; the S106 requires the management of some 27.6 hectares across the development. These public spaces include cycleways, play areas, sustainable drainage features, sports facilities, woodlands and ecological areas.

S106B - Challenges to the Business Plan

The CMO has been asked to assess how the proposed changes will impact upon its ability to deliver its charitable objectives. At the formation of the CMO the Council and Developer formulated a detailed financial model for the CMO over a long period of time.

This took into account:

- the housing trajectory allowing the CMO to forecast the numbers of properties that it would be charging a rent charge on for each year of the plan.
- The build out rate and adoption of the community assets and open spaces in the masterplan.
- The adoption of the commercial estate and associated income
- The replacement and lifecycle costs of the community assets

This model formed the basis upon which:

- the initial rent charge cap was set.
- The level of deficit funding required during the construction phases.

This model was completed by the developer and LPA and formed the business plan that was submitted and approved by the Council in accordance with the s.106, Schedule 4, paragraph.6 (CD13/7, Pg 186). This would need to be remodelled as part of any assessment of the impact of the proposed changes on the CMO's viability.

The S106 amendment is seeking to change a number of the variables within this model, and it is accepted that the housing trajectory will also need to change. This financial model needs to be rebuilt based on the outcomes of any negotiation over the provision of community assets to understand the implication for the CMO's business model. For example:

- Removing the commercial estate would remove a significant level of income from the business plan. The Financial model shows that by the end of the business plan £694,000 is generated from commercial investments and community assets. To put this into perspective this is approximately 10% of the forecast income for the CMO and the total forecast for Landscape services in the same year is £2.3m or the forecast cost of Leisure facilities is £745,000 and Community Facilities is £508,000. This is the equivalent of approximately £120 per household and this loss of income would need to be recovered from reducing standards in estate management services or charged to home owners above the rent charge cap.
- Removing the need to provide some of the community assets will lower CMO costs and lower the expenditure in the financial model. It is more difficult to assess the impact on the CMO of this because, on the face of it, this should remove cost from the business plan and mean that the Rent Charge Income has to subsidise less activity. However, the issue with this is the impact that this will have on the community that we build in the development and the place that Chilmington becomes. The removal of facilities will mean that the residents who would have used these facilities and who have purchased their homes in the expectation of the facilities being provided will have to go elsewhere for them and that will create impact with more journeys out of the development with its associated impacts but also impact on the cohesion of the community that is developed.
- Removing the deficit grant. The implication of this is fairly clear in the cash flow model which shows that in the first 12 years of operation without the deficit funding the CMO would accumulate a cash deficit of £2,058,660. Without replacing that income, the CMO would not be solvent and would cease to trade.

One of the reasons for the deficit grant is to replace commuted sums for the maintenance of assets that are handed to the CMO. There are no commuted sums in the S106 for Chilmington because of the way that the totality of the community infrastructure was planned and modelled within the CMO business plan. Rather than calculate individual commuted funds, the transfer of assets was considered as a whole and the pressures that created on the CMO business plan managed through deficit funded. If the deficit grant were to be removed, then some form of commuted sum would need to be included in the revised S106.

- The S106 provides for community assets to be transferred to the ownership of the CMO and therefore into the ownership of its members, the residents. The S106 revisions propose to change this by converting this to a lease to the management organisation. There is a lack of clarity over the terms of the lease, but the proposal is for this to be a lease for 21 years. One important aspect that is unclear is how this proposal secures the assets in the long term for the community – what will happen at the end of the lease to ensure that these assets remain available for the community in the long term? Will the use of a lease rather than ownership inhibit best value use of the asset as decisions on use cannot be based on the longer term?

Finally, without being provided with funding for Community Development or the ability to raise income for the same, such as through the operation of commercial estate the CMO would not be able to provide this service and likely lose their Charitable status. This would then impact on a number of areas of the business plan such as receiving business rates relief.

Challenge of unpicking the current arrangement

It is worth considering the challenge that unpicking the current arrangement will present on the development going forwards.

- The CMO is formed and operating as an independent legal body. It is a registered charity. Changes to its terms of business will need to be done through the appropriate legal frameworks, internal governance processes and with the agreement of the charities commission.
- There are approximately 400 occupations and another 200-300 properties completed and ready to occupy so roughly 10% of the total for the development. These properties are set up with rent charges due to the CMO. If the management of the assets of the estate is changed to a new management company then there will be:

- no mechanism for charging the existing properties for the costs of managing the wider community assets that sit with another management company [without the consent of those residents].
- The owners of the properties will be required to pay a rent charge to an organisation that is not going to have the wider community assets transferred to it and whose charitable objects are for the whole estate.
- The community Cabin has been leased to the CMO for 20 years. If an alternative Management Organisation were to be introduced the CMO would need to surrender its lease for the community building to the new organisation. However this would need to be done at a market value – who pays for this?
- The intention is for a Chilmington Parish Council to be established that is co-terminus with the development so that residents do not have to pay a rent charge and a precept for a parish which is primarily operating in a different area. Any new arrangements will need to consider the interaction with new and existing parish councils.

These challenges would present an unnecessary distraction to the challenge of delivering the development and both the developer and the LPA would need to devote time and resources to this process. This could be better used delivering a quality development. The CMO strongly supports retention of the existing structures.

Closing remarks

This statement set out to cover the impacts of the changes on the CMO business plan and to outline the differentiating factors between the CMO model and a standard estate management company.

The paper above has sought to explain the key aspects of the CMO model, this is a model that has been used within the TCPA in their stewardship toolkit² as an example of best practice and is seeking to address some of the issues that the sector has with Management Companies, however to achieve those benefits the development needs to be completed and the CMO develop to maturity.

The implications to the CMO of removing the financial contributions are significant and would cause the CMO to address a question of its solvency in the medium term.

The CMO was set up to serve the development and its residents to support a high quality built environment. If the nature of that environment changes the CMO will

² Online resource: <https://www.tcpa.org.uk/resources/stewardship-case-studies/>

need to change but to achieve that requires a more in depth iterative process that considers each change and the corresponding impact on the business plan and appropriate strategies needed to accommodate them and achieve the objectives for the development.

Appendix D

CMO Board Position Statement dated 5 March 2021

Chilmington Green

Building a Community at Chilmington - An Early Community Development Strategy

January 2018 – December 2022

Foreword

It is anticipated that the audience for this Foreword is residents, stakeholders and partners (including delivery partners) and funders.

There has always been an aspiration to build a strong, resilient and sustainable community at Chilmington Green and that the work to support this needed to begin at the earliest point. A common understanding that the new community should be integrated with the existing community, brought forward ambitions to start community development even before the first residents arrived. Therefore in 2017, the early community development strategy was written and adopted by Ashford Borough Council (ABC) with the aspiration to pass on the delivery of the strategy to the Chilmington Management Organisation (CMO) when incorporated and that early delivery would be undertaken utilising s106 funding provided by the developers.

Adopted by Ashford Borough Council in late 2017, there was strong agreement amongst key partners and stakeholders that early community development which supported the interim period when there was construction, but no residents on site, to the early pioneers taking up residence (up to about 100 homes), required a focus on specific priorities, distinct from when a greater number of residents were living at Chilmington Green.

Community action began with a project involving Janetka Platun, an artist in residence, who worked with the Chilmington Green Primary School and a number of local residents. The 'Welcome to Here' project saw the creation of a welcome gift for local people which had strong links to the heritage of the site. The early project fitted with the strategy's ambition to build community through working alongside existing communities and make best use of existing facilities and activities. It is proposed the project will progress in 2021/22 with further creative engagement.

In December 2019, the CMO Board agreed that they would oversee the community development strategy, working with the council to coordinate action. However, the number of residents moving in has not been as swift as was expected. The principles and actions within the strategy still stand. Community development activity has therefore slowed to keep pace with resident numbers and to ultimately safeguard the s106 funding provided for this purpose. It was agreed by the partners that the term of the strategy should be extended to reflect the slower pace of housing delivery to December 2022.

In 2019, Chilmington Green together with Court Lodge and Kingsnorth Green became South of Ashford Garden Community (SAGC) and received garden community designation from central government. Garden community status recognises the commitment of local authorities and their partners to building communities for the long term, where placemaking

and quality are important aspects of design and delivery. The significance of this status is important to community building and emphasises the importance of early community development at Chilmington Green and the wider garden community in providing a sustainable and vibrant community for the long term. The CMO (and its partners) with its key role in delivering community development are central to success.

With the impact of Covid-19, 2020 was an incredibly difficult year and community action had to pause. The Chilmington Community Cabin (first premises) has been delayed in handover and interaction with new residents has been limited due to social distancing requirements. The CMO has built and maintained contact with residents through director-residents surgeries, newsletters, door knocking and the CMO website. Action in 2021/22 will need to be flexible to utilise virtual or other tools to manage any social distancing requirements but will look at delivering opportunities in a timely and beneficial way such as opening the Community Cabin to provide a space for residents to use for local meetings or family events.

The economic impact of the pandemic means the CMO will need to consider further support to enhance residents' wellbeing. A new community development action plan for 2021/22 details how the CMO and partners can work with the community, identify their needs and deliver projects that bring people and partners together to shape their community. The SAGC Community Stakeholder Group (alongside the CMO) will help input, lead and deliver projects such as creating new local community groups, through start-up funding, as well as promoting those that exist in the wider community and supporting volunteer action. The action plan includes the need to ensure residents have the opportunity to comment on new community infrastructure coming forward, such as the first play space, due to be open at the occupation of the 250th dwelling.

The CMO is determined to make Chilmington Green a wonderful place to live, work and play and is clear that 2021 is the first year in which we will make real strides towards building a strong, resilient and healthy community in which local people have a voice and can play an active part.

To compliment this, the CMO will be looking to recruit the first resident director trustee in the spring, ensuring local residents are involved in the governance and decision making of their stewardship body.

Whether you be a resident, strategic partner/stakeholder or prospective purchaser, we welcome you to Chilmington Green and look forward to meeting you soon.

Alison Breese

Lead Board Member for Community Development
Chilmington Management Organisation

SallyAnne Logan

Chief Executive
Chilmington Management Organisation

5th March, 2021