



**ASHFORD**  
BOROUGH COUNCIL

## **Ongoing Management & Maintenance Topic Paper**

**of the Local Planning Authority in respect of:**

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

### **Appeals by:**

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

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

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

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

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## **1.0 Introduction**

1.1 This Topic Paper is submitted on behalf of the Local Planning Authority - Ashford Borough Council (“the Council”) and concerns the modifications proposed to Schedules 4, 6, 7, 8, 9, 10, 12 & 17 of the Chilmington Green S.106 Agreement (“the Agreement”) in so far as they relate to the ongoing management and maintenance of the following facilities (herein referred to as the “Community Assets”) to be provided on the Chilmington Green development site (the “Site”):

- CMO first and second operating premises (the “Operating Premises”)
- Commercial estate: basic provision and second/third tranche (the “Commercial Estate”)
- Informal/natural greenspace (the “Greenspace”)
- Hamlet facilities
- Children and young people's play space (the “Playspace”)
- Allotments
- Discovery Park sports facilities, strategic park (DP3) & strategic playspace (PS6) (the “Discovery Park Facilities”)
- Community Hub
- Ecological mitigation and enhancement areas

1.2 It is important that a suitable management and maintenance regime is in place for the Chilmington Green development (the “Development”) to ensure that the Community Assets are appropriately managed and maintained in the long term. This principle is reflected in paragraph 8.4 of the Chilmington Green Area Action Plan (the “AAP”) which identifies that *“how any facilities and uses are maintained and managed over time will be crucial in developing a quality sense of place, and in turn help generate sustained community involvement at Chilmington Green”* (CD3/1/1, page 68).

## **2.0 The Requirements of the Agreement**

2.1 The Agreement requires ownership of the Community Assets to be transferred to the Chilmington Management Organisation (the “CMO”) and includes obligations to ensure that any defects identified in the Community Assets are

remedied by the appellant. The approach taken in the Agreement to the transfer of the Community Assets to the CMO and the remedy of defects is very similar, across all eight schedules identified in paragraph 1.1 above. In more detail, the Agreement requires the following:

#### Transfer of Ownership

- 2.2 A lease to be granted to the CMO for the Operating Premises (Schedule 4, paragraphs 4.1.3 (b), 5.1.3(b)).
- 2.3 A long lease (in the case of part of a building) or the freehold (in the case of a whole building) to be granted to the CMO for the Commercial Estate (Schedule 4, paragraphs 9.1.3(b), 11.1.3(b), 12.1.3(b)).
- 2.4 A long lease or the freehold to be granted to the CMO for the Community Hub. Upon transfer the CMO is to make the Community Hub available for use by the County Council or an approved County Council nominee (Schedule 12, paragraphs 1.2.5 & 1.2.6 & 1.4).
- 2.5 To transfer ownership of the Greenspace; the Hamlet facilities; the Playspace; the allotments; the Discovery Park Facilities and the ecological mitigation and enhancement areas to the CMO (Schedule 6, paragraphs 1.1.9 & 1.1.10; Schedule 7, paragraphs 1.3.5 & 1.3.6; Schedule 8, paragraphs 1.2.5 & 1.2.6; Schedule 9, paragraphs 1.1.5 & 1.1.6; Schedule 10, paragraphs 2.2.5 & 2.2.6 & 2.3.5 & 2.3.6; Schedule 10, paragraphs 2.6.9 & 2.6.10; Schedule 17, paragraph 1.1).

#### Defects

- 2.6 **The Operating Premises / Commercial Estate** – to repair defects (including those of a cosmetic nature) within 3 months of being notified which occur within 3 years (for grass surfaced parts) or within 12 months (for everything else) of the lease / freehold being granted to the CMO (Schedule 4, paragraphs 4.1.4, 5.1.4, 9.1.4, 11.1.4, 12.1.4).
- 2.7 **Greenspace / Playspace / allotments / community hub** – to be free from defects (other than those of a cosmetic nature) when provided and to repair defects (including those that occur prior to transfer to the CMO and defects of a cosmetic nature) within 3 months of being notified, which occur within 12 months of transfer to the CMO (Schedule 6, paragraph 1.2; Schedule 8, paragraph 1.3; Schedule 9, paragraph 1.2; Schedule 12, paragraph 1.3; Schedule 17, paragraph 1.2).

- 2.8 **The Hamlet facilities / the Discovery Park Facilities** – to repair defects (including those that occur prior to transfer to the CMO and defects of a cosmetic nature) within 3 months of being notified, which occur within (for grass surfaced parts) 3 years or (for everything else) 12 months of the transfer to the CMO (Schedule 7, paragraph 1.4; Schedule 10, paragraph 2.4 & 2.7).

### 3.0 The Continuing Purpose

- 3.1 The transfer of the Community Assets to the CMO is an essential part of the approach to community stewardship being delivered at Chilmington Green. This approach is clearly expressed in the AAP. Paragraph 3.7 of the AAP states that ensuring that there is an appropriate ‘community management vehicle’ or delivery body to manage the community’s assets, such as open space and community facilities, is a priority” (CD3/1/1, page 19). The AAP also identifies that “research has shown that communities favour a ‘community led management approach’ as it ensures local residents retain a strong and consistent voice over the management of their local assets, and also generates significant added value in terms of the quality of public realm, space and built form delivered in an area as money can effectively be ring-fenced for such purposes” (CD3/1/1, paragraph 8.7, page 69).
- 3.2 The freehold owners of properties on the Site are required by the Agreement to pay an annual rentcharge to the CMO to contribute to the management and maintenance of the Community Assets (Schedule 4, paragraph 8). Paragraph 8.10 of the AAP identifies that *‘to support the delivery of a community trust type model, it is likely that new residents at Chilmington Green will be required to pay a reasonable service charge to contribute to the funding needed to guarantee a high standard of maintenance now and in the future and deliver the added value alluded to above. Proposals will need to demonstrate that suitable legal arrangements are in place to ensure that a reasonable service charge will be paid in perpetuity and will remain enforceable’* (CD3/1/1, page 69).
- 3.3 Part 1 of Schedule 1 of the Rentcharge Deed 2021 (CD13/8) identifies all the estate services to be paid for by the Rentcharge Deed, which are as follows:
- i. Maintenance management repair and renewal or replacement of the Management Areas.
  - ii. Maintenance and management repair and renewal or replacement of sustainable urban drainage features within the Estate.

- iii. Maintenance and management repair and renewal or replacement of sport facilities play spaces and other recreational areas managed farmland woodland and ecology areas within the Estate.
  - iv. Maintenance repair and renewal or replacement of allotments within the Estate (not including the plots which are let or held under licence by individual allotment holders).
  - v. Maintenance management repair and renewal or replacement of the Community Buildings.
- 3.4 Details of the annual rent charge are set out in the CMO Residents Guide (CD13/10)
- 3.5 The transfer of the Community Assets to the CMO is necessary to ensure that they are managed, maintained and utilised for community benefit. The transfer of ownership to the CMO means that the Community Assets will be maintained as such in perpetuity in accordance with the CMO's charitable objectives, which are to:
- “promote the benefit of the residents of the area of benefit without distinction of sex, sexual orientation, race, or of political religious or other opinions by associating together with the said residents, the local authorities, voluntary and other organisations, with a common effort to (CD13/7, Appendix C, page 156):*
- *provide and maintain accessible green open spaces;*
  - *promote the conservation, protection, management, maintenance and improvement of the physical and natural environment; and*
  - *provide facilities in the interests of social welfare for education, recreation, mental and physical health and wellbeing and leisure time occupation with the object of improving the conditions of life for the said inhabitants;*
  - *the advancement of community development and citizenship for the public benefit in the area of benefit, by the promotion of good citizenship and volunteering by encouraging local people to take an active interest in the civic, cultural and social welfare of the community.”*
- 3.6 The CMO's ownership will ensure that the Community Assets are managed and maintained for the benefit of the community in perpetuity and as a registered charity, charity law will apply to the acquisition, management and sale of assets.

- 3.7 Regarding 'defects' the CMO should not have to bear the cost to repair defects that are identified within the time periods stated in the Agreement. The CMO does not have any alternative means of obtaining remedy for defects, such as collateral warranties and indemnities from the relevant professional team and contractors involved in the construction. It is therefore the sole responsibility of the appellant who will provide the Community Assets to ensure they are of the quality agreed in the Design Brief and Specification and that any defects identified after handover are remedied. This obligation ensures that Community Assets are of sufficient quality when they are transferred to the CMO and that defects are dealt with promptly to enable the CMO to undertake the management and maintenance responsibilities required of them.

#### **4.0 Relevant Planning Policy & Guidance**

- 4.1 Chilmington Green Area Action Plan Policy CG10 Developing a Community – identifies that in order to help establish a strong community at Chilmington Green, the council supports a community led management arrangement (CD3/1/1, page 71).
- 4.2 Local Plan policy IMP4 Governance of public community space and facilities – 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).
- 4.3 Public Green Spaces and Water Environment SPD – identifies that having delivered green spaces and water features as part of a development, it is important that the quality of that provision is maintained. Making suitable and viable arrangements for the management and long-term maintenance of local facilities is essential to ensuring their continued availability to local residents and reducing the potential risk on the public purse (CD3/1/5, paragraph 8.6, page 29)
- 4.4 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:

- i. Delete in their entirety the obligations to provide the CMO Second Operating Premises and the Commercial Estate and consequently the obligations to grant a leasehold/freehold to the CMO (CD2/14, request 19, 20 & 21).
- ii. Delete the obligation to transfer the Greenspace and ecological mitigation and enhancement areas to the CMO (CD2/14, request 26 & 90).
- iii. Delete the obligation to transfer the Hamlet facilities and the Playspace to the CMO and replace this with an obligation to grant a 21-year lease to the CMO (CD2/14, request 29, 37).
- iv. Delete the obligation to transfer the Discovery Park Facilities to the CMO and replace this with an obligation to grant a lease to the CMO (CDX2/14, request 54).
- v. Delete the obligation to transfer the allotments to the CMO and replace this with an obligation to provide the CMO with renewable bi-annual licences (CD2/14, request 44).
- vi. Delete the obligation to transfer the Community Hub to the CMO and replace this with an obligation to grant leases or tenancies to each proposed user (CD2/14, request 58).
- vii. Delete the obligation for the Greenspace and the Hamlet Facilities; to be free from any defects when provided (CD2/14, request 26).
- viii. Delete all the obligations that require any defects identified in the Community Assets to be remedied by the appellant (CD2/14, request 15; 27; 32; 38; 45; 55; 61; 90).

## **6.0 Appraisal of the Proposed Modifications**

6.1 As outlined above, the transfer of the Community Assets to the CMO is an essential part of the approach to community stewardship being delivered at Chilmington Green. The appellant's proposed modifications would see the Community Assets either retained in the appellant's ownership (in the case of the Greenspace and ecological mitigation enhancement areas) or leases/tenancies would be granted to the CMO or others (in the case of the Community Hub). However, the appellant has not explained how, in any of



these scenarios, the Community Assets would be managed and maintained in perpetuity in accordance with the outline planning permission.

- 6.2 The residents of the Development are required to pay a rentcharge to the CMO to contribute to the cost of managing and maintaining the Community Assets. However, if the CMO are no longer involved in the management and maintenance or they are only involved for a limited period of time, for example the 21 year leases proposed by the appellant, then the residents will be paying a Rentcharge to an organisation that is unable to use these monies as they are required to because the CMO would no longer have an interest in the Community Assets.
- 6.3 Furthermore, the appellant is currently required to ensure that defects are remedied within an agreed timescale. The deletion of these obligations would mean that there is no requirement for the appellant to ensure the Community Facilities are free from defects and consequently the CMO or any other party who is required to undertake the management and maintenance of the Community Assets because of the proposed modifications to the Agreement, would have to bear the costs of rectifying any defects.
- 6.4 The proposed modifications would result in the Community Assets being provided in accordance with the Agreement without there being any obligation to manage and maintain them in perpetuity. The CMO has accountability to residents through their right to appoint/remove residents' directors, question the CMO Board and auditors at AGMs. The appellant, in retaining ownership of the Community Assets, would not be subject to any of this accountability. This is likely to result in the decline of the Community Assets with residents having no clear form of recourse, to the detriment of the Development and the Chilmington Green community.

## **7.0 Conclusion**

- 7.1 The Agreement currently secures the management and maintenance of the Community Assets in perpetuity via their transfer to the CMO.
- 7.2 These obligations serve a useful purpose because they will ensure that the Community Assets are appropriately managed and maintained in perpetuity and, due to the way the CMO operates being a non-for-profit stewardship body and not an estate management company, the residents of the Development and the Council will have a clear avenue to seek redress if the Community Assets are not being properly managed. This approach is essential to good placemaking for a development the size of Chilmington Green.

- 7.3 The modifications proposed to the Agreement would not serve that purpose equally well because they would result in there being no obligation for the Community Assets to be managed and maintained and there would be no clear avenue for residents or the Council to seek redress for this.