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**Kent County Council – Topic Paper – Schedules 30, 30A and 30C KCC Bank Accounts**

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**1. INTRODUCTION**

- 1.1 The section 106 agreement dated 27 February 2017 (as amended) (“S106”) [CD1/14 - CD1/16] obligates the Owners and/or Paying Owners (as applicable) as follows:
- 1.1.1 Schedule 30 (para 1) – to deposit £475,000 into the Developers Contingency Account – County Council and to maintain this as a Minimum Balance until such time as all payments under the S106 have been paid in full.
  - 1.1.2 Schedule 30 (para 3) – to pay the sums specified in Schedule 30A (Column 2) on or before the total number of dwellings specified.
  - 1.1.3 Schedule 30 (para 5) – to pay the indexation payments specified in Schedule 30B (Column 2) on or before the total number of dwellings specified.
- 1.2 Referring to the Appellants’ Annex A 106 Modifications Table [CD2/22] as follows, the Appellants seek:
- 1.2.1 Request 117 – Schedule 30 – discharge of paragraphs 1 and 2, plus deletion of the County Council Minimum Balance (CCBM) Definition. The Appellants further seek discharge of the obligation in its entirety and return of the CCBM.
  - 1.2.2 Request 118 – Schedules 30A, 30B and 30C – payment triggers within these schedules to be modified as per the associated requests made by the Appellants in their Annex A Modifications Table. Schedules 30A and 30B triggers (as per the modifications if agreed by the Inspector) should not be earlier than the corresponding withdrawal triggers in 30C.
  - 1.2.3 Request 119 – Schedule 30 para 8 – deletion of the words ‘(other than interest)’ to provide that KCC cannot withdraw any monies (including interest) from the County Council’s Contributions Bank Account.

1.3 The Appellants have advised:

1.3.1 Request 117, discharge is sought on the basis that:

- (a) *“The County Council is already sufficiently secured by the covenants provided by the Paying Owners, such that the DCBA - County Council [Schedule 30] serves no useful purpose at all.”*
- (b) *a triple lock in the form of Bonds, depositing funds in Schedule 30 to 30C and limits on Occupations – “the Grampian conditions on the occupations serve to limit development if those conditions are not met, and should provide the security require by the Authorities that Hodson Developments will comply in the timescales required”<sup>1</sup>.*
- (c) *“...the sums involved are in any event substantially more than are required to mitigate the impact of the Development and are undermining the viability of Main Phase 1 and with it delivery of the Development overall.”*

1.3.2 Request 118 – *“The proposed provision for payment triggers and withdrawal triggers to coincide and to be modified to whichever is the later, removes the otiose provision for payments to be made earlier than is otherwise necessary. The provisions to this effect serve no proper or useful purpose and should be modified/discharged accordingly.”*

1.3.3 Request 119 - *“There is no proper justification for excluding interest from the provision of withdrawal. The Council should not be entitled to the free use of such sums ...”.*

1.4 KCC address the issue of viability in a separate proof of evidence.

1.5 It is KCC’s view that the obligations continue to serve a useful purpose and that the Appellants’ application to discharge the obligation should be refused.

## 2. **POLICY CONTEXT**

### 2.1 **Kent County Council (KCC)**

KCC’s policy for seeking security of s106 obligations to support new developments and ensure that the demands on services are mitigated is set out in its Developer Contributions Guide 2023 (paras 5.4 and 5.7) [CD4/3].

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<sup>1</sup> Quod Chilmington Green sS106 Application 2 Explanatory Statement October 2022 – para 3.11-3.13s

### 3. **PURPOSE**

#### 3.1 **Purpose served by the s106 obligation**

The purpose of the obligation (Schedule 30, paras 1 and 2) is to require the sum of £475,000 to be deposited in a bank account and for the Minimum Balance to be maintained until such time as all payments under the S106 have been made to KCC. It acts as a financial guarantee to ensure that the Paying Owners fulfil their obligations. It prevents the Development from coming forwards without those sums being paid beyond the specified triggers and therefore ensuring that development does not come forward at levels which would be unacceptable.

#### 3.2 **Why is that purpose useful at the current time?**

3.2.1 The account and Minimum Balance acts as a safety net for KCC. By maintaining a Minimum Balance, should the Paying Owners default on their obligation, KCC can withdraw funds directly.

3.2.2 Although the current account arrangements have limitations (requiring Hodson Developments to agree withdrawal), it provides an asset which is available to the KCC. It reduces the risk of KCC having to pursue costly legal action to recover unpaid contributions. This is a far simpler route to enforcement and therefore serves a useful purpose.

3.2.3 The Appellants argue that paras 1 and 2 should be discharged and the Minimum Balance returned, on the basis that there is a 'triple lock' in place and that Grampian conditions limiting the occupation of dwellings is sufficient security. KCC disputes this for the following reasons:

- (a) The obligations to be paid into the account (Schedule 30A&B) and withdrawn (Schedules 30C) do not include those that are secured via Bond (e.g. Primary School 2 Contributions 2, 3 & 4).
- (b) Grampian conditions have not proven sufficient motivation for the Paying Owners to comply with their obligations, with several breaches of the S106 Agreement taking place to date. For example, despite KCC invoicing for Youth Services Contribution <sup>12</sup> (Schedule 16, para 3.1) it remains outstanding and should have been paid on the 4<sup>th</sup> anniversary of Commencement. The Owners have continued to Occupy dwellings in breach of the S106. KCC is unable to withdraw the sum from the account until 500 Occupations. Due to this appeal, KCC has not taken enforcement

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<sup>2</sup> See KCC Topic Paper – Schedule 16 Other KCC Services, in which the 'useful purpose' of this contribution is set out.

action to date but will seek to do so and will seek to withdraw the sum when 500 Occupations is reached.

3.2.4 While the current account arrangement has some limitations, it provides a readily available financial safeguard for KCC against potential defaults by the Paying Owners. The "triple lock" and Grampian conditions, as argued by the Appellants, have proven insufficient to ensure compliance, as demonstrated by the ongoing breaches of the S106, including the outstanding Youth Services Contribution. Therefore, the account and Minimum Balance obligation continue to serve a vital and useful purpose, mitigating the risk of financial loss to KCC and offering a simpler, more direct route to recovering owed contributions than costly legal action.

3.3 Would the obligations serve that purpose equally well if they had effect subject to the proposed modification?

3.3.1 Concerning Request 117 – The discharge of paras 1 and 2 would significantly reduce the level of security available to KCC, increasing the risk of non-payment. Consequently, the useful purpose would not be met.

3.3.2 As set out above the purpose of paragraphs 1 and 2 are useful now and therefore the purpose cannot be equally well served by discharging the requirement for the Minimum Payment to be maintained.

3.3.3 Request 118 – Subject to paragraphs 1 and 2 of Schedule 30 being maintained KCC does not object to request 118 and the alignment of principle sum payments.

3.3.4 Request 119 – KCC does not object to request 119. It is accepted that interest would be used for the purpose set out within Schedule 30C.

4. **CONCLUSION**

The S106 obligation requiring a £475,000 deposit and maintaining a minimum balance in the Developers Contingency Account serves a useful purpose by providing KCC with a financial guarantee to ensure the Paying Owners fulfil their obligations. This security mechanism is particularly crucial in light of past breaches, such as the outstanding Youth Services Contribution, demonstrating that existing safeguards, including Grampian conditions, have proven insufficient to ensure compliance. Discharging this obligation would significantly diminish KCC's security, increasing the risk of non-payment and hindering their ability to effectively mitigate the impacts of development and deliver promised community benefits. Therefore, maintaining the current S106 provisions is essential to safeguard the public interest and ensure the successful implementation of the Development.