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Date 10 April 2025  
Your ref  
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By email only to [mharnett@fladgate.com](mailto:mharnett@fladgate.com)

Dear Mr Harnett

**Chilmington Green, Ashford Road, Great Chart ("the Site")**

**Comprehensive mixed use development under planning permission (12/00400/AS) (as amended) ("the Development")**

We write further to your letter dated 3 September 2024 on behalf of Hodson Developments (Ashford) Limited and its associated companies ("**Hodson**").

In response to the matters raised in your letter, please note the following:

**1 CORRESPONDENCE TO DATE**

- 1.1 We act for Ashford Borough Council ("**ABC**") and Kent County Council ("**KCC**") (the "**Councils**"). Birketts LLP now act for KCC on matters relating to the Site but not in connection with the enforcement of paragraph 1 of Schedule 18 of an agreement entered into under section 106 of the Town and Country Planning Act 1990 dated 27 September 2017 (as amended) ("**the S106 Agreement**").

**2 PROPOSED CLAIM FOR A PERMANENT INJUNCTION**

- 2.1 We understand since our letter dated 1 August 2024, the current level of occupations is around 392. It is not disputed that the breach only comes into effect if the Bond for the A28 Works is not delivered before the occupation of more than 400 dwellings. However, you will be fully aware that obligations under Section 106 of the Town and Country Planning Act 1990 (as amended) (as set out in the S106 Agreement) run with the Site, and every person with an interest in the Site is bound. This is regardless of whether an interested person is carrying out the development of the Site or is directly responsible for any breach of the S106 Agreement. Therefore, given that the Hodson Entities were either parties to the S106 Agreement or successors in title, they are bound by its terms and ought to be in a position to be able to confirm the number of occupations on Site (and, in turn, whether any triggers in the agreement have been reached).
- 2.2 An application to amend the S106 Agreement was submitted to the Councils, and the inquiry is scheduled to recommence on 14 April 2025. However, all obligations in the S106 Agreement remain in place and are enforceable unless or until they are varied or removed. The law does not permit landowners/developers to evade enforcement of planning obligations by lodging such applications.
- 2.3 We understand that to date your client has not put forward any concrete proposals to the Councils in respect of the delivery of the Bond for the A28 Works (or other means to deliver the A28 works).

### **3 CURRENT POSITION AND UNDERTAKING**

#### **3.1 The Councils maintain that:**

3.1.1 Occupation beyond 400 dwellings without the delivery of the Bond for the A28 Works would be a breach of paragraph 1 of Schedule 18 of the S106 Agreement;

3.1.2 Securing the A28 Works is fundamental to the acceptability of the development of the Site upon which planning permission was granted. Permission was only granted for the Development subject to the obligations in the S106 Agreement (including the S278 agreement referred to in it). Without the provisions of the S106 Agreement (and in particular, the obligations to secure the delivery of the A28 Works in the manner they set out) and not to occupy more than 400 units until the Bond had been provided), planning permission would not have been granted; and

3.1.3 Breach of paragraph 1 of Schedule 18 of the S106 Agreement will be enforceable.

#### **3.2 To avoid legal action at this stage, the Councils will accept an Undertaking from your client in the form set out at **Annex 1** of this letter. If your client fails to provide the Undertaking in the attached form, then both Councils will instruct their legal team to commence High Court proceedings for an injunction to prevent more than 400 dwellings from being occupied on the Site. Notwithstanding this letter, the Councils reserve all of their rights and remedies.**

#### **3.3 Therefore, please provide the signed Undertaking in the attached form by no later than **2 May 2025**.**

Yours sincerely

A large black rectangular box redacting the signature of the sender.

**Bevan Brittan LLP**

**ANNEX 1**  
**UNDERTAKING**

**Definitions:**

**Ashford Borough Council** of International House, Dover Place, Ashford, Kent TN23 1HU;

**A28 Works** means the strategic county highway works being substantially in the form shown in the Jacobs scheme/Amey scheme for highway improvements on the A28 in Ashford (drawing no.4300588/000/01 Rev 0 dated 19 July 2017) and such other works which are necessarily ancillary and may be required by Kent County Council under the Section 278 Agreement;

**Bond** means a executed legal instrument from a surety (such surety to be satisfactory to Kent County Council, and approved in writing by Kent County Council) for the amount and in the form set out in the draft Section 278 Agreement at **Enclosure 2**;

**Dwellings** means the residential dwellings (whether flats, maisonettes, houses or any other type of self-contained residential accommodation for an individual or a household including live/work units and another building that comprises one unit of such residential accommodation and other use) constructed pursuant to the Planning Permission and “**Dwelling**” shall be construed accordingly;

**Hodson Entities** includes the following companies:

- (a) Hodson Developments (Ashford) Limited (Company Registration Number 07468189);
- (b) Hodson Developments (CG One) Limited (Company Registration Number 10392676);
- (c) Hodson Developments (CG Two) Limited (Company Registration Number 10392663);
- (d) Hodson Developments (CG Three) Limited (Company Registration Number 10982329);
- (e) Hodson Developments (CG Five) Limited (Company Registration Number 12895724); and
- (f) Chilmington Green Developments Limited (Company Registration Number 09286703);

**Kent County Council** of Sessions House County Hall Maidstone ME14 1XQ;

**Occupy** means the occupation of a Dwelling for the first time whether or not it subsequently remains occupied and/or for any period of time thereafter other than for occupation for the purposes of its construction, fitting out, security, or repair, and which shall include facilitating, suffering, encouraging, assisting or permitting such occupation and “**Occupation**” shall be construed accordingly;

**Planning Permission** means the outline planning permission dated 6 January 2017 granted by Ashford Borough Council under reference number 12/00400/AS or any amendment thereto or substitution therefor or planning permission granted pursuant to any subsequent planning application which has the effect of varying amending duplicating or in substitution for the planning permission granted pursuant to the Planning Permission or whole or partial substitution thereof;

**S106 Agreement** means the agreement dated 27 February 2017 entered into under Section 106 of the Town and Country Planning Act 1990 by (1) Hodson Developments (Ashford) Limited and others, (2) Ashford Borough Council and (3) Kent County Council (as varied);

**S106 Variation** means the variation to the S106 Agreement substantially in the form at **Enclosure 1**;

**Section 278 Agreement** means an agreement under the Highways Act 1980 substantially in the form attached at **Enclosure 2** to enable the A28 Works and Bond for the A28 Works to be delivered;

**Site** means all the land outlined red on the Site Plan; and

**Site Plan** means drawing number OPA01R5 rev P1 at Annex 1 of the S106 Agreement.

- 1 We, the Hodson Entities together undertake to Kent County Council and Ashford Borough Council:
  - 1.1 not to Occupy, permit or allow the Occupation of more than 400 Dwellings on the Site (for the avoidance of doubt, this is a collective restriction of no more than 400 Dwellings on the Site, whether by the Hodson Entities or other parties with an interest in the Site) in accordance with the occupation restriction set out paragraph 1 of Schedule 18 of the S106 Agreement until:
    - 1.1.1 The S106 Variation has been entered into by the Hodson Entities and all other parties with an interest in the Site with the Councils (**Enclosure 1**); and
    - 1.1.2 The Section 278 Agreement has been entered into by the Hodson Entities with Kent County Council (**Enclosure 2**);
  - 1.2 Not to Occupy, permit or allow the Occupation of more than 763 Dwellings on the Site for the avoidance of doubt, this is a collective restriction of no more than 763 Dwellings on the Site, whether by the Hodson Entities or other parties with an interest in the Site) until the Bond for the A28 Works has been delivered to Kent County Council; and
  - 1.3 To provide biweekly updates to Kent County Council and Ashford Borough Council in respect of the number of Dwellings Occupied on Site.
- 2 This Undertaking shall be binding and enforceable by Kent County Council and/or Ashford Borough Council (or jointly by Kent County Council and Ashford Borough Council) against the Hodson Entities (jointly and severally).
- 3 Kent County Council and Ashford Borough Council reserve their right to refer to this Undertaking (and any breach of the same) as part of any application for an injunction in the High Court.

## **Enclosures**

**Enclosure 1 – S106 Variation**

**Enclosure 2 – Section 278 Agreement**