

TOWN AND COUNTRY PLANNING ACT 1990

(as amended)

Section 106B Appeal by Hodson Developments (Ashford) Ltd; Chilmington Green Developments Ltd; Hodson Developments (CG ONE) Ltd; Hodson Developments (CG TWO) Ltd; and Hodson Developments (CG THREE) Ltd

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

EDUCATION MATTERS

Section 106 Planning Obligation Requirements

Kent County Council (“KCC”)

EDUCATION STATEMENT

Ben James Hunter

BA DipMS

PINS Reference:

APP/W2275/Q/23/3333923

APP/E2205/Q/23/3334094

Date: 23rd December 2024

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1 Introduction

- 1.1 My name is Ben James Hunter. I hold a Bachelor of Arts and Diploma in Management Studies. I have been an Education Consultant for Education Facilities Management Ltd (“EFM”) since September 2017, and Associate Director of EFM since April 2022. Prior to this I was a Development Management Project Manager for Northamptonshire County Council (as was) from 2012, responsible for negotiating and securing Section 106 planning obligations for Education. Prior to this I was responsible for negotiating, securing and managing Section 106 planning obligations, predominantly Education-related, in an Officer role between 2008 and 2012. The majority of my professional career has been related to the provision of social infrastructure, with a focus on Education.
- 1.2 I am experienced in giving evidence for planning inquiries including Local Plan Inquiries and Public Examinations. I am therefore aware of the application of the planning system in relation to these matters from both a developer and local authority perspective. I confirm that I understand that notwithstanding my instructions my primary duty is to help achieve the overriding objective by giving objective, unbiased opinion on matters within my expertise.
- 1.3 I am instructed to act for the Appellant in respect of this Appeal.
- 1.4 I am aware that my primary duty is to the Appeal, irrespective of by whom I am instructed. I confirm that the opinions expressed are my true and professional opinions.
- 1.5 EFM was instructed in February 2024. The purpose of our instruction was to review the Education landscape in the vicinity of the Chilmington Green Urban Extension, in order to ascertain whether the quantum of school provision included in the original Section 106 agreement dated 27th February 2017 (“the S106 agreement”) was required in order to accommodate the pupils that will be resident on the development.

2 Background

2.1 This Section 106B Appeal relates to the outline planning consent (ref 12/00400/AS) that was approved on 6th January 2017 by Ashford Borough Council (“ABC”). The site description is as follows:

Permission for a Comprehensive Mixed-Use Development Comprising:

- *Up to 5,750 residential units, in mix of sizes, types and tenures.*
- *Up to 10,000 m2 (gross external floorspace) of Class B1 use.*
- *Up to 9,000 m2 (gross external floorspace) of Class A1 to A5 uses.*
- *Education (including a secondary school of up to 8 ha and up to four primary schools of up to 2.1ha each).*
- *Community Uses {class 01} up to 7,000 m2 (gross external floorspace).*
- *Leisure Uses (class 02) up to 6,000 m2 (gross external floorspace).*
- *Provision of local recycling facilities.*
- *Provision of areas of formal and informal open spaces.*
- *Installation of areas of appropriate infrastructure as required to serve the development.*
- *Transport infrastructure, including provision of three accesses to the A28, an access to Coulter Road/Cuckoo Lane other connections on the local road network, and a network of internal road, footpaths and cycle routes*
- *New planting and landscaping.*
- *Associated groundworks.*

2.2 The approximate outline of the development site can be seen below in Map 1:



Map 1: Approximate Site Boundary

- 2.3 As of the 2023/24 academic year (the previous academic year) Chilmington Green was operating with one Primary School (Chilmington Green Primary School) which was constructed as a Two Form of Entry ("2FE") Primary School. The school opened on a temporary site in 2018, and was moved on the permanent site on Chilmington Green in September 2021.
- 2.4 Chilmington Green Secondary School was open on a temporary site with 120 Year 7 pupils only in September 2023, prior to relocating on to its permanent site within the Chilmington Green development with 180 pupils per Year Group (6FE) in September 2025. This school was brought forward via a Deed of Variation at the request of Kent County Council ("KCC").
- 2.5 Reserved Matters have been granted for 766 of the 1,501 dwellings anticipated in Phase 1 of the development.

- 2.6 This Statement will demonstrate that the current S106 agreement is over-providing Primary School provision on site, and that fewer schools are necessary to accommodate the children that will be resident once the development is built out. KCC has stated in their Statement of Case the following (paragraph 85):

KCC will explain why Primary School 4 continues to be required.

- 2.7 This Education Statement will explore the existing and forecast future Education landscape in relation to this development, but first it will discuss the Statutory and Policy Matters that govern Education.

3 Statutory & Policy Matters

3.1 There is a covenant between the State and its populace that has had statutory force for 154 years¹. Namely that; wherever <my emphasis> a child shall live, who is not otherwise provided for, the State will provide a school in accordance with the statutory arrangements, from the State or developers, as appropriate.² The covenant is not caveated by considerations of transience, fixed or temporary abode, nationality, residential status or home education authority, and means that however children arrive within an area (or are housed within an area) the local authority's statutory duty has to be met and is not a function of planning permission criteria.

3.2 **The Education Act 1996 (as amended) ("EA96"):** The primary Act relating to education is the Education Act 1996, which is; (a) a consolidating Act and (b) an Act amended from time to time by subsequent legislation. Unless otherwise indicated in this Proof as applying to education, all references are to the Education Act 1996 (as amended).

3.3 EA96 (at section 14(1)) states,

A local education authority³ shall secure that sufficient schools for providing – (a) primary education and (b) secondary education... are available for their area.

3.4 Sections 14(2) to 14(6) go on to explain what is meant by sufficient schools and that it includes implicitly that the requirement is for sufficient appropriate school places.

¹ The Elementary Education Act 1870 (section 5) thereafter Education Act 1921 (section 17), Education Act 1944 (section 8), Education Act 1996 (section 14)

² The Act actually says, "5. There shall be provided for every school district a sufficient amount of accommodation in public elementary schools (as hereinafter defined) available for all the children resident in such district for whose elementary education efficient and suitable provision is not otherwise made, and where there is an insufficient amount of such accommodation, in this Act referred to as "public school accommodation," the deficiency shall be supplied in a manner provided by this Act".

³ The local education authority has since 2010 been somewhat confusingly renamed 'local authority' to take account of the authority incorporating the duties of the children's services authority. For the purposes of clarity throughout this proof the term 'education authority' is used as the generic title to keep a clear separation from the planning authority.

- 3.5 EA96 (at Section 7) imposes a duty on *“every parent of every child of compulsory school age to cause him to receive efficient full-time education either by regular attendance at school or otherwise”*.
- 3.6 Section 14(1), together with s7, derives directly from s5 Education Act 1870 via s17 Education Act 1921 and s8 Education Act 1944. There have been no material changes over time, merely consolidating legislation, changes to school leaving ages and changes to terminology from time to time. It is, thus, a longstanding duty for the Education Authority as successor to the local school boards.
- 3.7 EA 96 Section 11 requires the Education Secretary of State (i.e. the State) to exercise their powers in respect of those bodies in receipt of public funds which carry responsibility for securing school provision for promoting school education. The duty of the education authority (to secure sufficiency of provision) is to enable the State to discharge its responsibilities within the covenant. Thus, the original premise still holds true: for all children of statutory school age, who are not otherwise provided for, **the State provides a school**, <my emphasis> in accordance with the prevailing statutory provisions.
- 3.8 EA96 Section 14 Subsection 3A is a more recent modification to its duty through a requirement for the education authority to exercise its functions under this section with a view to increasing: (a) diversity in the provision of schools, and (b) increasing opportunities for parental choice, and was inserted into Section 14 by Section 2 Education and Inspections Act 2006 with effect from 25th May 2007.
- 3.9 Thus, the duty of the education authority is to enable the State to discharge its responsibilities within the covenant: but, with sufficient headroom to allow for the discharge of its S14 (3A) duties.
- 3.10 In securing sufficient schools for its area, an Education Authority assesses existing capacity and pupil numbers, data on births and migration, and how parental preferences are manifested. It forecasts (usually with a high degree of accuracy) the need for additional capacity in each school planning area for the ensuing five years for primary schools and seven years for secondary schools.
- 3.11 The Education Authority then passes this information to the State [currently the Education and Skills Funding Agency (**“ESFA”**)] being the school’s operational arm of

the Department for Education (“DfE”) by way of the School Capacity Returns (“SCAP”). The State then allocates additional school places as and where shown to be necessary. Each additional school place is accompanied by central government formula driven capital funding associated with that place. This is known as Basic Need funding. Basic Need allocations to an education authority are aggregated into a single capital sum to be dispensed by the education authority to each project according to its needs.

- 3.12 Basic Need funding on a per-pupil-place basis covers increases in pupil numbers forecast, by the Education Authority, beyond existing and planned capacity, to arise because of rising birth rates, rising survival rates, rising inward migration rates and new housing (except when covered by Section 106 agreements or CIL).
- 3.13 The Basic Need pupil place funding system recognises, that whether or not a Section 106 agreement or a CIL charge has been applied by an LPA to a planning permission, is a matter purely for the LPA. It recognises the duty of the LPA to secure sufficient housing for its population and its growth agenda. The State holds that the ability or not of a planned housing scheme to fund school places necessary should not sway the determination of that application by the LPA. The disapplication of Basic Need provision where there is a Section 106 agreement or CIL charge is simply to avoid double-funding.
- 3.14 **Securing developer contributions for education (August 2023):**
- 3.15 In order to provide further clarity to education authorities, the DfE produced and published two Best Practice Guidance documents related to delivering schools to support housing growth under the Education Act 1996. These are non-statutory Guidance documents for local authorities planning for education to support housing growth and seeking associated developer contributions. The first is related specifically to securing developer contributions for education.
- 3.16 The Guidance document is clear that (paragraph 7, page 8):

It is important that the impacts of development are adequately mitigated, requiring an understanding of:

- *The education needs arising from development, based on up-to-date pupil yield factors.*
- *The capacity of existing schools that will serve development, taking account of pupil migration across planning areas and local authority boundaries.*
- *Available sources of funding to increase capacity where required.*
- *The extent to which developer contributions are required and the degree of certainty that these will be secured at the appropriate time.*

3.17 Turning now to KCC's adopted Policy:

3.18 **Local Authority Policies:**

3.19 KCC has an adopted document entitled Developer Contributions Guide dated 2023. This document states KCC's adopted Guidance discusses how they establish the child yields of new developments within the Technical Appendix 6: Education – Primary and Secondary. This includes the following child yields:

	Pupil Yield	Pupil Yield
	Primary (Mainstream)	Secondary (Mainstream – Years 7-11)
Per House	0.28	0.20
Per Flat	0.07	0.05

Table 1: KCC Child Yield Multipliers

3.20 These figures will be utilised to inform the child yield calculations in the rest of this Statement.

3.21 Turning now to the Education landscape in the vicinity of the development site:

4 Primary Education

- 4.1 Schools should be operationally full to meet the financial audit requirement for best value from public assets. This is demonstrative of a properly functioning school system. School funding is predicated on the number of pupils that are on a school's roll, so it is in the best interest of schools to maximise intake within their capacity. Accordingly, many schools take from a wide catchment area and some enrol over capacity.
- 4.2 The statutory rules on enrolment are that whilst schools may have a catchment area and ordered criteria for admissions, the rules only apply if the school is oversubscribed. Otherwise, whoever applies is admitted irrespective of where they live. This is known as 'More Open Enrolment'. It fosters the expression of parental preferences for schools that are not necessarily those closest to home.
- 4.3 KCC operates under a statutory duty (S14 Education Act 1996) 'to secure sufficient schools'. The term 'sufficient' is not defined and thus reliance is placed on the dictionary definition – enough – adequate – not too little and not too much. Thus, as set out above, the normal state for a school is that it is operationally full.
- 4.4 KCC have stated in relation to a Planning Appeal in Ashford in September 2023 the following:

*Much of the Appellant's analysis appears to be inconsistent with the methodology for assessing school places under Government and KCC guidance. In particular, the analysis strays away from utilizing a single primary school planning group. It also looks at existing capacity in individual schools rather than the overall position over the whole planning area. **KCC's approach is to use single primary planning groups, which is accepted methodology in Department for Education guidance (DfE) and underpins their capital allocation process.** Our planning groups have been determined following detailed analysis of the flows of pupils within the communities of Kent. This analysis has been scrutinised by the DfE, which has accepted that our planning groups are appropriate building blocks for school place planning and meet the requirements of their guidance. [my emphasis]*

4.5 To be consistent with the methodology of KCC as detailed above by David Adams (Assistant Director of Education for KCC) this Education Statement will focus on the schools within the Ashford South Primary Planning Area, as this is the Planning Area in which Chilmington Green resides.

4.6 The schools within the Ashford South Primary Planning Area can be seen in the Map below:



Map 2: Ashford South Planning Area Primary Schools

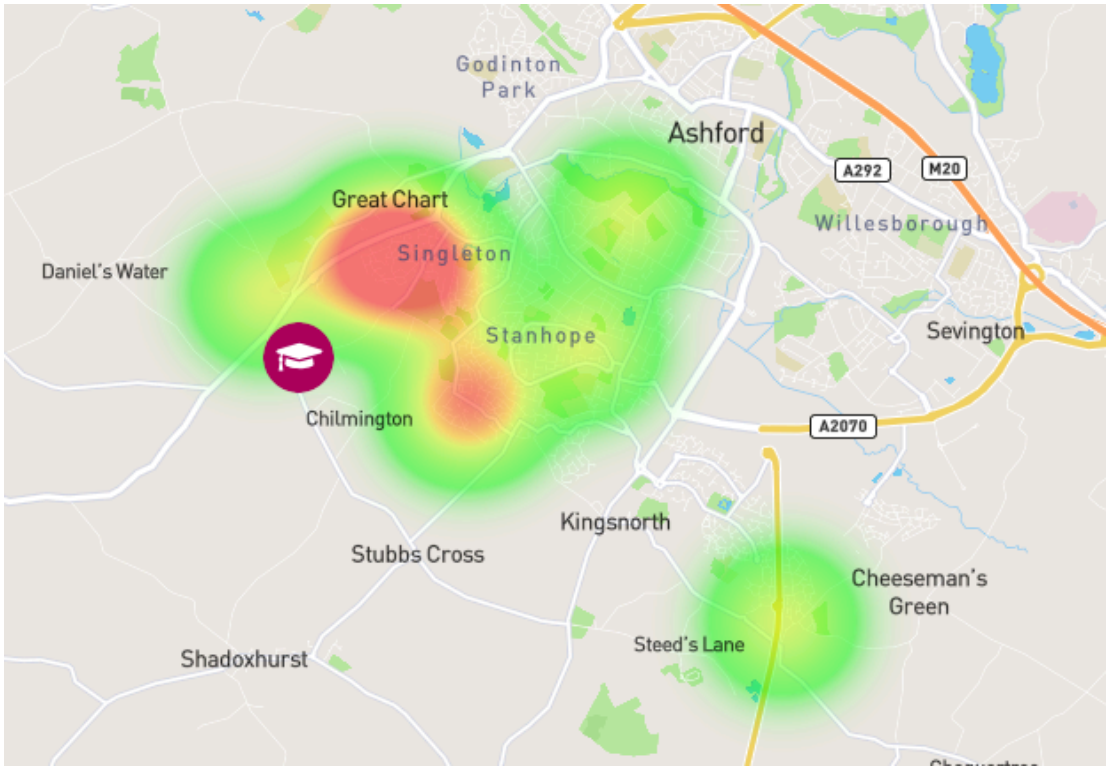
4.7 The latest roll data for the schools discussed above can be seen in the Table below:

Primary School Name	LA Name	Capacity	PAN	NoR	Yr R	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Yr 6
Chilmington Green Primary School	Kent	420	60	206	38	35	42	30	30	19	12
St Simon of England RC Primary School	Kent	210	30	207	28	30	30	30	30	30	29
The John Wesley C of E VA Primary School	Kent	450	60	453	53	61	62	65	62	60	90
Great Chart Primary School	Kent	420	60	423	60	59	61	60	62	60	61
Beaver Green Primary School	Kent	420	60	409	47	60	60	61	61	60	60
Ashford Oaks Community Primary School	Kent	420	60	407	48	60	60	60	59	60	60
The John Wallis C of E Academy	Kent	420	60	405	49	60	57	60	59	58	62
TOTAL		2,760	390	2,510	323	365	372	366	363	347	374
Surplus					67	25	18	24	27	43	16
Available Surplus %					17%	6%	5%	6%	7%	11%	4%

Table 2: School Roll Data (January 2024)

PAN = Planned Admission Number; NoR = Number on Roll

- 4.8 The Table above demonstrates that the seven schools within the Ashford South Primary Planning Area had, as of the previous academic year, 220 spare places, which is 8% surplus capacity. The highest proportion of spare capacity is focused in Reception Year, which had 67 spare places, or 17% surplus capacity. This demonstrates that rolls at these schools are falling, in spite of a consistent build programme across Ashford.
- 4.9 The latest home location data of Chilmington Green Primary shows that the pupils are attending this school from across the west of Ashford, which demonstrates that there is movement across the area between the schools based on parental preference:



Map 3: Chilmington Green Primary School Catchment Area Heat Map (via schoolguide.co.uk)

4.10 When looking forward, the seven schools that form the Primary – Ashford South Planning Area that have a combined capacity of 2,760 pupil places, are shown in the Table below:

Primary Planning Area	School Name	Time Period	Primary Capacity	Secondary Capacity
8860106	Chilmington Green Primary School	202122	420	0
8860106	St Simon of England Roman Catholic Primary	202122	210	0
8860106	The John Wesley Church of England Methodist	202122	450	0
8860106	Great Chart Primary School	202122	420	0
8860106	Beaver Green Primary School	202122	420	0
8860106	Ashford Oaks Community Primary School	202122	420	0
8860106	The John Wallis Church of England Academy	202122	420	1370

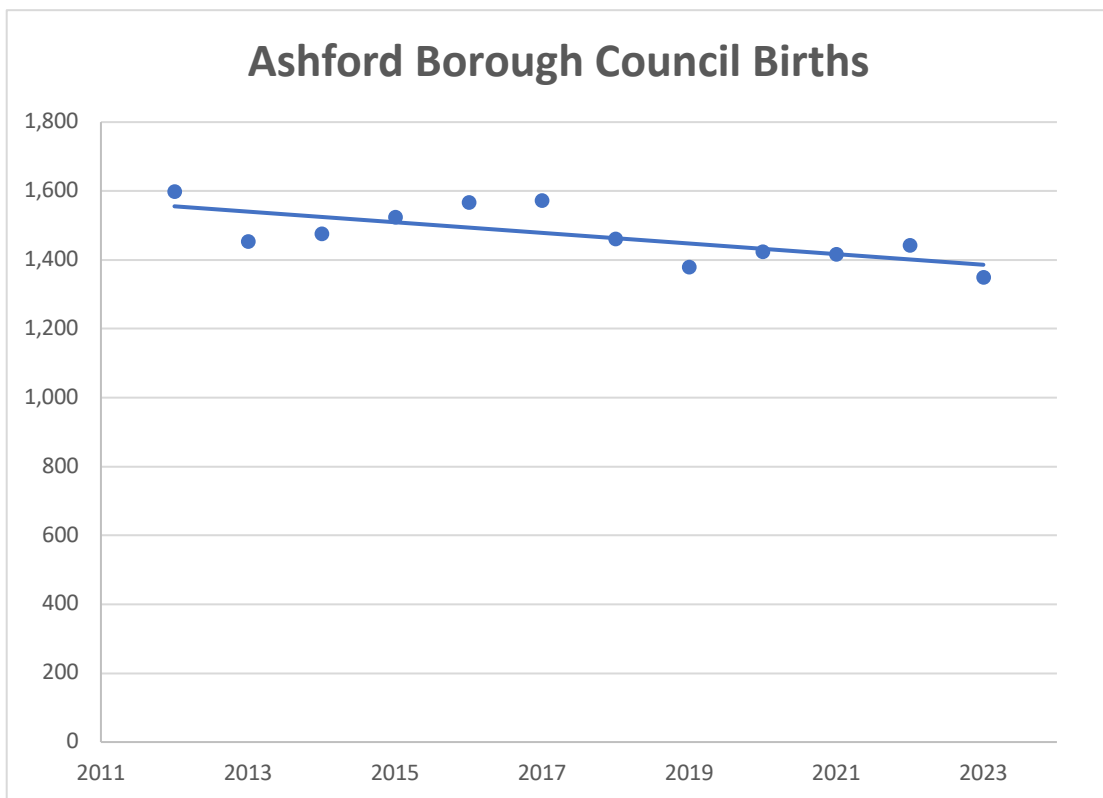
Table 3: Ashford South Primary Planning Area Schools

4.11 KCC is forecasting a significant fall in pupil numbers across these schools by the 2027/28 academic year, so that by that period the schools are expected to have a combined roll of 2,245 pupils, which will be 515 spare places:

LA name	Year	Planning Area Code	Planning Area Name	Planning Area Phase	nc Year Group	Pupil Foreca...
Kent	202223	8860106	Primary - Ashford South	Primary	Primary total	2514
Kent	202324	8860106	Primary - Ashford South	Primary	Primary total	2460
Kent	202425	8860106	Primary - Ashford South	Primary	Primary total	2404
Kent	202526	8860106	Primary - Ashford South	Primary	Primary total	2376
Kent	202627	8860106	Primary - Ashford South	Primary	Primary total	2304
Kent	202728	8860106	Primary - Ashford South	Primary	Primary total	2245

Table 4: KCC SCAP Forecasts

4.12 This fall in pupil numbers is not an anomaly, and is being seen across England due to falling birth numbers. When looking specifically at Ashford's administrative area, births were down 16% in 2023 from the peak in 2012, which is impacting Primary School numbers and forecasts:



Graph 1: ABC Birth Numbers per Annum

4.13 The falling birth numbers is being seen predominantly in the entry Year Group (Reception Year) which is demonstrating that the number of Reception Year pupils is expected to fall considerably in the coming years, so that by the 2032/33 academic year, there are expected to be 115 spare places in Reception Year, which is over

3.8FE's worth of spare places. It should be noted that these projections include the child yield of the approved Reserved Matters element of the Chilmington Green development:

Primary - Year R surplus/deficit capacity if no further action is taken

Planning Group name	2022-23 capacity	2022-23 (A)	2023-24 (F)	2024-25 (F)	2025-26 (F)	2026-27 (F)	2027-28 (F)	2028-29 (F)	2029-30 (F)	2030-31 (F)	2031-32 (F)	2032-33 (F)	2032-33 capacity
Chilham	15	4	2	5	6	4	4	4	4	4	4	4	15
Challock and Charing	50	3	3	4	-3	-3	-3	-3	-4	-4	-4	-4	50
Ashford North	450	2	79	59	50	82	81	77	73	70	67	64	450
Ashford Rural East	80	21	13	16	13	8	8	8	8	8	8	8	80
Ashford East	420	66	91	45	89	58	57	55	52	50	47	45	420
Ashford South	390	32	90	93	92	108	111	112	112	113	114	115	390
Ashford Rural West	80	-3	4	2	-6	-8	-7	-6	-5	-5	-4	-2	80
Hamstreet and Woodchurch	71	8	5	4	7	3	3	1	0	0	-1	-1	71
Tenterden North	65	6	3	3	4	2	2	2	2	3	3	4	65
Tenterden South	94	11	8	-2	7	13	14	14	15	16	16	17	94
Ashford	1,715	150	297	229	259	267	270	264	258	254	250	249	1,715

Table 5: Reception Year Projections (via KCC)

- 4.14 Across all of the Ashford Primary Planning Areas, there are forecast to be over 8FE's worth of spare capacity in Reception Year by the early 2030's.
- 4.15 KCC has outlined that the new Primary School on Chilmington Green (the second Primary School) will be required post 2031, as per KCC's Commissioning Plan for Education 2024 to 2028.

Planned Commissioning – Ashford

Planning Group	By 2024-25	By 2025-26	By 2026-27	By 2027-28	Between 2028-31	Post 2031
Ashford East					2FE of new provision at Court Lodge	
Ashford North					2FE New provision at Conningbrook Park	
Charing					0.3FE Charing CEPS	
Hamstreet and Woodchurch					0.5FE Hamstreet Primary Academy	
Ashford South						2FE of new provision at Chilmington Green
Ashford North Non-Selective		Additional 2FE (60 places) Chilmington Green				2FE Expansion of Chilmington Green

Table 6: Planned Commissioning – Ashford

4.16 The question then arises as to whether there is a continued need for total four Primary Schools on this development (an additional three more after the construction of Chilmington Green Primary School, which as discussed is open on site and accommodating children). What is evident is that based on the significant spare capacity in the system, and the growing number of places forecast in the coming years, that there is no longer the requirement for this level of provision.

4.17 To demonstrate this: based on 5,750 units, the original assessed need was for up to 7 Forms of Entry of Primary School need, which is 1,470 Primary School places. This assumes broadly 500 non-child generating dwellings (the assumption is that this is based on 500 one-bedroom dwellings, or 8.7% one bedroom dwellings) and assuming that 100% of the dwellings will be houses. This is calculated as the following:

- $(5,750 - 500) \times 0.28 = 1,470$ pupil places (7FE)

4.18 However, Chilmington Green is expected to deliver a significant number of flats in order to achieve the required densities. This flatted development will include buildings that are 3-4 storeys. The current anticipated ratio of houses and flats is expected to be two thirds houses, and one third flats. This has, according to KCC's child yield Policy discussed in paragraph 3.19, a significant impact on the number of pupils that the site is expected to accommodate.

4.19 To demonstrate this, when looking at the entire allocation:

- Of the 5,750 dwellings in total, one third will be flats (1,917 flats) and two thirds will be houses (3,833 houses);
- Assuming that 100% of these dwellings will be two bedroom dwellings or higher (this is clearly not the case but to demonstrate the worst-case scenario) you get the following:
 - $1,917 \times 0.07 = 134$ Primary School pupils;
 - $3,833 \times 0.28 = 1,073$ Primary School pupils;
 - TOTAL = $1,073 + 134 = 1,207$ Pupil places (5.7 Forms of Entry).

4.20 This is significantly lower than the currently planned 7FE in the S106 agreement. This is prior to factoring in spare capacity, and one bedroom dwellings, the latter of which will bring down the expected yield of the development even further.

4.21 As the development has already delivered a 2FE Primary School on site (Chilmington Green Primary School) then the calculation leaves 3.6FE needed to accommodate the child yield of Chilmington Green, prior to the deduction of one bedroom dwellings, and surplus capacity. Again, this is significantly less than an additional 5FE as per the current agreement.

- 4.22 There is also the neighbouring development (Approved at Appeal in 2024) of Possingham Farm to consider. KCC have indicated that this development of 655 dwellings will have a Primary School child yield, when adjusted for one bedroom dwellings and flatted development, of 120 Primary School aged pupils, or 0.57FE. KCC did not request any Primary School planning obligations from this development due to the considerable existing and forecast spare capacity within the Ashford South Planning Area. The child yield of this development will therefore need to be deducted from the surplus capacity forecast in Ashford South Primary Planning Area.
- 4.23 When deducting the total child yield of Possingham Farm from the spare capacity forecast across Ashford South Primary Planning Area, there are expected to be 395 spare places in the Ashford South Planning Area by the 2027/28 academic year (515 spare places minus the Possingham Farm child yield of 120 pupils). 395 pupil places is 1.9FE.
- 4.24 When deducting this spare capacity of 395 places from the 1,193 pupils that the total development is expected to accommodate, the total child yield comes down to:
- $1,207 - 395 = 812$ pupils or 3.9FE.
- 4.25 This, again, is significantly less than the 7FE's worth of Primary School provision that is currently embedded in the S106 agreement.
- 4.26 This raises the question that is central to this Appeal from an Education perspective: do the Education planning obligations embedded in the S106 agreement still serve a useful purpose?
- 4.27 It is clearly demonstrable that 7FE's worth of Primary School provision in total is excessive, and not reflective of the best evidence available as of this review. On that basis, it cannot be said to serve a useful purpose. The spare capacity currently and forecast supports the assertion that the removal of one Primary School from the S106 is necessary. If this was being decided now as a new application, it would not be considered to fulfil the tests of Community Infrastructure Levy ("CIL") Regulation 122 (2) (i.e. directly related in scale and kind to the development). However, as this Appeal looks at whether the obligation serves a useful purpose, it cannot be said to do so if the spare capacity is expected to far outstrip the need for new provision.

4.28 Delivering new Primary School infrastructure provision will have a detrimental impact on the existing Primary Education landscape. Parents are drawn to new provision, and are prepared to travel further to ensure that their child experiences school within a new school (Map 3 demonstrates this). Therefore, when you open a new school, this will negatively impact the least popular school(s) in the area, as parents will elect to send their children to new schools over more established provision. These less popular schools then receive less funding from the DfE, which impacts their ability to run effectively.

4.29 KCC has stated the following in their Statement of Case (paragraph 86):

KCC is however, open to incorporation of a monitor and manage mechanism which would enable timings and triggers to be pushed back if and when appropriate. As the Statutory Education Authority, KCC wishes to see school places delivered in line with the demand for them. It does not have the resources to forward fund schools that are not required, nor does it wish to threaten the viability of other schools through the over provision of pupil places. There remains the need for formal triggers, long-stop dates and obligations to provide certainty for both parties from which they can plan. The mechanism as drafted by the Appellant is not satisfactory and KCC will engage with the Appellants to seek to agree an alternative mechanism without prejudice to its case that no modification or discharge is justified under s.106B(6).

4.30 This is not sufficient. If the evidence demonstrates clearly that the amount of provision imbedded in the S106 agreement exceeds the child yield of the site, then it is only right that this is rectified, and the total quantum of school infrastructure is brought in to line with the best evidence available at the time of the review.

4.31 The current S106 raises an important question about whether it would serve a useful purpose to require a) land, and b) financial contributions towards the construction of a new Primary School which is demonstrably unnecessary. As it has been discussed, over-provision is bad for the education landscape, as it means the less popular schools suffer from fewer applications. A new school that risks standing empty, but will still be required to be managed, staffed, heated, and insured., or a new school that draws pupils away from other more established facilities, and thus undermines the Planning Area.

4.32 KCC fails to mention that the default position for new schools is that they are Academies, and authorisation for their establishment rests not with KCC but the Regional Director acting for the Education Secretary of State. The Regional Director's criteria includes operational financial security (which the Regional Director provides). Thus, on the forecast evidence from KCC, the Regional Director will not permit the establishment of the 4th school. All this does is blight land and take funding away from the project.

4.33 Related to this is an issue that cannot be underestimated; that is that funding schools and providing land that is not necessary fundamentally undermines the ability of the scheme to deliver housing that funds the later stages of development. Simply put, providing unnecessary infrastructure over housing reduces the ability to fund future development. This is why pushing triggers backwards, so that funding is paid over the course of many years, will not be a benefit.

4.34 As detailed by KCC in their Statement of Case at paragraph 32 (page 10), we are told by Case Law that there are four questions that are required to be answered that I will discuss below:

(1) What is the purpose of the current obligation?

4.35 The purpose of the obligation is to provide a sufficient number of schools to serve the Ashford South Primary Planning Area, and specifically the children who will be living on Chilmington Green as it builds out.

(2) What purpose does it fulfil?

4.36 The purpose it fulfils is ensuring that the number of schools that were expected to be required are provided in line with the build out of the development. This includes land and financial contributions towards the physical infrastructure.

(3) Is it a useful purpose?

4.37 As this Education Statement has outlined, the inclusion of 4 Primary Schools instead of 3 Primary Schools will actually have a detrimental impact on the education

landscape, as well as the development's ability to fund future development. It cannot be said that there is evidence that there is a requirement for this level of provision.

(4) If so, would the obligation serve that purpose equally well if it had effect subject to the proposed modification?

- 4.38 The reduction in the S106 agreement from 4 schools to 3 is necessary as the current obligation no longer serves a useful purpose because of the spare capacity and falling births.

Signed:

A solid black rectangular box used to redact the signature.

Ben Hunter

Associate Director – Education and Social Infrastructure
EFM

23rd December 2024