

**(1) HODSON DEVELOPMENTS (ASHFORD) LIMITED**  
**-AND-**  
**(2) CHILMINGTON GREEN DEVELOPMENTS LIMITED**  
**-AND-**  
**(3) HODSON DEVELOPMENTS (CG ONE) LIMITED**  
**-AND-**  
**(4) HODSON DEVELOPMENTS (CG TWO) LIMITED**  
**-AND-**  
**(5) HODSON DEVELOPMENTS (CG THREE) LIMITED**

**THE APPLICANTS**

**-AND-**

**(1) ASHFORD BOROUGH COUNCIL**  
**-AND**  
**(2) KENT COUNTY COUNCIL**

**THE RESPONDENTS**

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**APPLICATION No.1:  
FIRST APPLICATION TO MODIFY OR DISCHARGE  
A SECTION 106 PLANNING OBLIGATION  
UNDER AN AGREEMENT DATED 27 February 2017  
RELATING TO CHILMINGTON GREEN, ASHFORD ROAD, GREAT CHART  
PURSUANT TO SECTION 106A TOWN & COUNTRY PLANNING ACT 1990  
AND ALL OTHER POWERS SO ENABLING**

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## **1. Introduction**

1.1 This application is made pursuant to section 106A of the T&CPA 1990 (as amended) by the Applicants to the Respondents in respect of the section 106 Agreement dated 27 February 2017 made between the said parties and others ('the s106 Agreement') referred to above, to discharge or modify the obligations contained therein as more particularly set out below.

1.2 The Applicants' reasons for applying for the discharge or modification of each obligation as the case may be are stated below and in the schedule at Annex 1 and supported also by the further independent expert evidence from Turner Morum at Annex 2 to this application.

1.3 The address or location of the land to which the application relates is Chilmington Green, Ashford Road, Great Chart (the site of the Development). A map identifying the land to which the planning obligations the subject of this application relates is annexed hereto at Annex A.

1.4 The names and addresses of the Applicants are as follows:

- (1) Hodson Developments (Ashford) Limited, company registration number 07468189 whose registered address is at Office Suite 9, 55 Park Lane, London W1K 1NA.
- (2) Chilmington Green Developments Limited, (company registration number 09286703) whose registered office is at Office Suite 9 55 Park Lane, London W1K 1NA (“Chilmington Green Developments”).
- (3) Hodson Developments (CG One) Limited, (company registration number 10392676) whose registered office is at Office Suite 9 55 Park Lane, London W1K 1NA.
- (4) Hodson Developments (CG Two) Limited, (company registration number 10392663) whose registered office is at Office Suite 9 55 Park Lane, London W1K 1NA.
- (5) Hodson Developments (CG Three) Limited, (company registration number 10982329) whose registered office is at Office Suite 9 55 Park Lane, London W1K 1NA.

If required, a schedule of the respective freehold interests of each Applicant in the land to which this application relates can be provided upon request.

1.5 This application is limited in scope for the reasons stated below, relating only as it does to Viability Review Phases Two, Three and Four under the s106 Agreement in Main AAP Phase 1 and Main AAP Phase 2 of the Development. For the avoidance of doubt, the Applicants reserve their position to make further applications in respect of all matters within this and subsequent phases as necessary.

## **2. Relevant Background**

2.1 The Applicants are presently in the process, as ABC and KCC have been informed, of preparing another new application under s106A substantially to vary (discharge or modify) the obligations under the s106 Agreement. The intended application (Application No.2) will be based upon a redesigned set of planning obligations to ensure the deliverability of the Chilmington Development both in terms of housing provision and the essential

infrastructure, which is appropriate to the scheme and which mitigates its effects so as to ensure that the scheme remains acceptable in planning terms.

2.2 Importantly, it will be noted that in April 2021 the Applicants, via brokers, went out to the financial market to refinance their debts and provide working capital to invest in the Development to take it forward. After careful work, in October 2021 they managed to obtain a capital funding proposal to achieve this, including the full refinancing of their debt and providing finance to complete the strategic infrastructure and landscaping to the end of Main AAP Phase 2. However, to be clear this is the only offer of funding they have been able to secure and inevitably it is based upon a number of assumptions and conditions, including with regard to the cost of the obligations under the s106 Agreement.

2.3 Further, of particular relevance to this application, is the fact that a key element of the financial model for delivering the Development based upon the only currently available funding proposal, is the receipt of sales revenues from a series of land sales within each Phase. In order to facilitate this process and bring in immediate funds to prevent the Development stalling, the Applicants have entered a number of agreements, and are about to conclude others, to sell various parcels of land to other developers. These sales will also enable improved build out rates, that will in turn serve the First Respondent's strategic housing provision targets. Plainly, it is imperative that the conditions are met to achieve these sales.

2.4 One such condition common to all the proposed land sales in each of the relevant Viability Review Phases in Main Phase 1 and 2 the subject of this application, is for a fixed AHU provision that does not exceed 10%. This level of provision is even at this stage in the Development, demonstrably the maximum that can be sustained (as substantiated by Turner Morum's evidence). Equally, and unsurprisingly, it is the maximum level at which incoming developers have been willing to purchase based upon realistic sale prices and their own financial modelling.

2.5 Accordingly, this application (Application No.1) is made immediately to secure ABC's agreement to discharge the obligations to carry out Viability Review Phase Two, Three and Four assessments, and instead to fix the AHU percentage at 10%.

### **3. The Application**

3.1 In the circumstances, the Applicants apply to discharge the obligations under the s106 Agreement to make Viability Review Submissions for Viability Review Phases Two, Three and Four as more specifically set out in Column 4 of the schedule at Annex 1 hereto, for the reasons stated in Column 5 and on the basis of the evidence at Column 6. Not least, the fact that in granting planning permission to Jarvis, the Respondents appear already to have accepted the principle of fixing the Affordable Housing Provision in advance for Review Phase 2 at 10%.

3.2 Further, the Application is supported by the updated independent expert report of Mr Tom Hegan of Turner Morum (see Annex 2 hereto). His report dated 4 May 2022, substantiates that even at this stage the maximum AHU provision for each of the Review Phases the subject of this application (Application No.1) will not exceed the minimum 10% provision stipulated under the section 106 Agreement.

3.3 However, it should be noted that fixing the percentage at 10% in these earlier reviews, does not mean that the scheme cannot 'catch up'. With the existing 'Affordable Housing Cap' of 40%, the remaining phases have the potential to deliver 26% AHU provision by the end of the scheme.

3.4 Nor does this application preclude the variation of subsequent Viability Review Phases to vary the related occupation triggers to bring forward AHU and/or otherwise alter the AHU provision where the viability of that Phase and of the Development more widely supports this.

3.5 Nonetheless, for the avoidance of doubt, this application is made without prejudice to the need to vary the existing s106 Agreement obligations more broadly (including AHU provision) to ensure the viability and deliverability of the Development including the appropriate infrastructure; to be addressed under the proposed Application No.2 currently in preparation.

3.6 Further, whilst Application No.1 is made on the basis of the existing Viability Review Submission template, this is specifically without prejudice also to the Applicants' position that this is already no longer fit for purpose and itself requires amendment.

#### **4. Conclusions**

4.1 The requirement to fix the level of AHU provision at 10% is key to the land sales that have been or are about to be agreed by the Applicants. In turn securing these land sales is an essential component of the business model upon which the only available funding proposals and deliverability of the Development now depend.

4.2 In the circumstances, the Respondents are invited to agree to the variations sought by this application, or otherwise work with the Applicants to find a solution that enables the current land sales on the requisite terms, whilst ultimately ensuring that the AHU provision which the Development can support is provided cumulatively across all Main Phases.

Dated: 4 May 2022

# Chilmington: 5-Year Application No.1 – Annex 1

## Requests to vary Section 106 (discharge/modification)



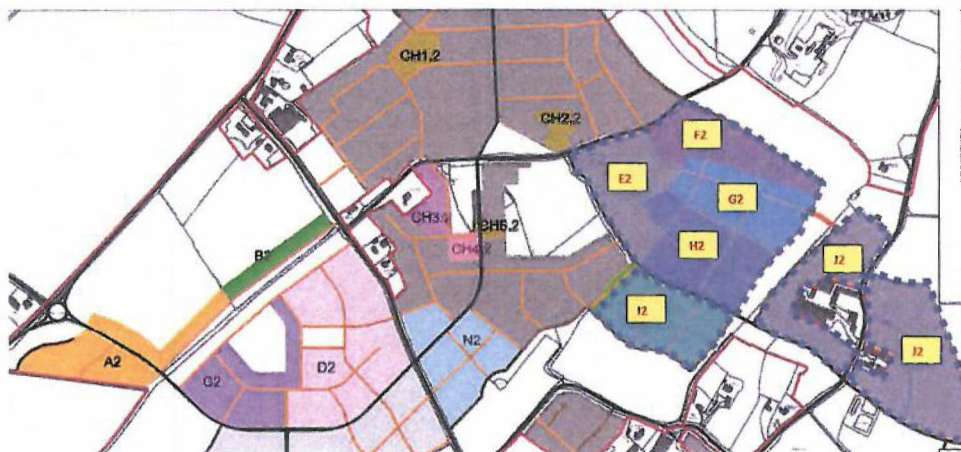
Item	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	Specified Modification or Discharge (The specified modification or discharge applied for below should be taken to include all necessary and consequential amendments to the s106 Agreement)	Reasons for applying for Modification or Discharge:-  Where the application is to discharge any obligation, it is because it serves no useful purpose for the reason/s given below.  Where an application is to modify any obligation, it is because it continues to serve a useful purpose, but for the reason/s given below would serve that purpose equally well if it had effect subject to the modification specified herein.	Hodson Evidence:
	<b>Schedule 23 - Viability</b>				
1	Viability Review Submission for Viability Review Phase Two by 851 Dwelling Occupations	Paras 2.1.1, 3.2 et seq and 3.18.2	The Applicants apply for the obligation to provide a Viability Review Submission for Viability Review Phase Two to be discharged entirely; deleting paragraphs 2.1.1 and 3.18.2 and reference to Viability Review Phase Two in paragraphs 3.2-3.10 and making all other appropriate consequential amendments.	<p>The Applicants propose the discharge of Viability Review Two because it is evident even at this stage that the viability cannot support any additional Affordable Housing and that this should be limited accordingly to 10% provision in relation to these further dwellings in the current Main Phase 1.</p> <p>The provision for a Viability Review Submission at the later date envisaged, accordingly no longer serves any useful purpose.</p> <p>As to the suggestion that it is too early to say, this is rejected. The evidence relied upon (see column 6) shows that this is simply not the case.</p>	<p>The Applicants rely in support of their application to discharge upon the following facts and matters:</p> <p>1) The immediate need to sustain the Development by securing the current proposed land sales based upon 10% AHU provision (as detailed below). The details of the land parcels included in Review Phase Two and the proposed land sales are listed below (and shown in the RHS plan below):</p> <ol style="list-style-type: none"> <li>1. Land Parcel I (145 units) – Sold to Crest Nicholson</li> <li>2. Land Parcels L, M (187 units) – Sold to Ilke Homes</li> <li>3. Land Parcel O (30 units) – Sold to Ilke Homes</li> <li>4. Land Parcels F&amp;G (96 units)</li> <li>5. Land Parcel P - Jarvis (Stage Two) (42 units)</li> </ol> <p><u>Total of 500 units.</u></p> <p>The Applicants have agreed to sell the above land parcels on the basis that the incoming developer will provide 10% affordable housing within each land parcel. This being the only level at which incoming developers were prepared to deal, whilst still achieving realistic sales prices.</p> <p>To be clear, the incoming developers require both certainty regarding the percentage of affordable housing and a maximum of 10% provision, their own commercial viability assessments (consistent with the expert evidence of TM referred to below) dictating that this is the maximum they are prepared to accept.</p>




					<p>The land within Viability Review Phase Two will include the remaining units within Main AAP Phase 1 that have been approved under outline planning condition 17 (14/00400/CONA/AS). Land parcel boundaries to L, M &amp; O have recently been changed via a non-material amendment that has been approved under application (12/00400/AM09/AS).</p> <p><u>Jarvis Planning Permission (18/00207/AS):</u></p> <p>On 19 July 2019 ABC granted planning permission to Jarvis for 99 units, including 10 affordable units (10%). Yet, under the terms of the s106 (Schedule 1 – Affordable Housing) Jarvis are obligated to provide 6 AHU's within Viability Review One.</p> <p>Further, reference to the two plans above, confirms that the Jarvis planning permission extends to land within Review Phase Two. The LHS plan (above) is an extract from the approved plan included in the s106 Agreement for Viability Review Phase One, and shows the Jarvis site areas in that phase hatched and cross-hatched. The RHS plan shows the remaining AAP Phase 1 Land Parcels (500 units) to be included in Viability Review Phase Two shaded red. The area shown for Land Parcel P (Jarvis) is clearly identified as being within Viability Review Phase Two.</p> <p>The said permission extends across each of these areas and has, therefore, granted Jarvis planning permission for units within Review Phase Two based already upon a 10% maximum Affordable Housing Provision.</p> <p>As stated, the Applicants have now agreed to sell land parcels (I, L, M &amp; O) within Review Phase Two and if Viability Review Phase Two is not discharged this will result in the loss of those receipts, undermining the only way forward for delivery of the Development.</p> <p>4) The non-viability of the Development more generally subject to the existing s106 obligations and the necessity to vary these to ensure the deliverability of the scheme including the appropriate essential infrastructure; to be addressed under the further, second s106A application, in preparation.</p>
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2	<p>Viability Review Submission for Viability Review Phase Three by 1351 Dwelling Occupations</p>	<p>Paras 2.1.2, 3.3 et seq and 3.18.3</p>	<p>The Applicants apply for the obligation to provide a Viability Review Submission for Viability Review Phase Three to be discharged entirely; deleting paragraphs 2.1.2 and 3.18.3 and reference to Viability Review Phase Three in paragraphs 3.3-3.10 and making all other appropriate consequential amendments.</p>	<p>The Applicants propose the discharge of Viability Review Three because it is evident even at this stage that the viability cannot support any additional Affordable Housing and that this should be limited accordingly to 10% provision in relation to these further dwellings in the current Main Phase 1.</p> <p>The provision for a Viability Review Submission at the later date envisaged, accordingly no longer serves any useful purpose.</p>	<p>The Applicants rely in support of their application to discharge upon the following facts and matters:</p> <ol style="list-style-type: none"> <li>1) The immediate need to sustain the Development by securing the current proposed land sales based upon 10% AHU provision (as detailed below). The Applicants have sold the following land parcels (save as indicated) comprising land in Review Phase Three (as shown in the adjacent plan): <ul style="list-style-type: none"> <li>Land Parcel E2 (89 units) Countryside</li> <li>Land Parcel F2 (73 units) Countryside</li> <li>Land Parcel G2 (82 units) Countryside</li> <li>Land Parcel H2 (103 units) Countryside</li> <li>Land Parcel I2 (56 units) Countryside</li> <li>Land Parcel J2 (197 units) Countryside</li> <li><b>Total = 600 units</b></li> </ul> <p>The Applicants have agreed to sell the above land parcels on the basis that the incoming developer will provide 10% affordable housing within each land parcel. This being the only level at which incoming developers were prepared to deal, whilst still achieving realistic sales prices.</p> <p>To be clear, the incoming developer requires both certainty regarding the percentage of affordable housing and a maximum of 10% provision, their own commercial viability assessments (consistent with the expert evidence of TM referred to below) dictating that this is the maximum they are prepared to accept.</p> </li> <li>2) The further expert evidence of Mr T Hegan (see the new report accompanying this application). TM have carried out Viability Review Phase Three in accordance with the terms of the s106 Agreement, with the result that this shows a significant viability deficit for this review.</li> </ol> <p>Given, therefore, that it can clearly be shown at this stage that there is no realistic prospect of ABC securing any Additional Affordable Housing Provision for this Review Period (over and above the 10% minimum), equally it should be determined now that this obligation serves no useful purpose and ought to be discharged.</p> <ol style="list-style-type: none"> <li>3) Further, the Applicants rely upon the fact that ABC has (as explained above) already accepted, in its grant of planning permission to Jarvis, that the level of Additional Affordable Housing Provision for future Viability Review Phases can be fixed in advance.</li> <li>4) The Applicants also rely upon the non-viability of the Development more generally subject to the existing s106 obligations and the necessity to vary</li> </ol>
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REVIEW 3



					these to ensure the deliverability of the scheme including the appropriate essential infrastructure; to be addressed under the further, second s106A application, in preparation.
3	Viability Review Submission for Viability Review Phase Four by 1951 Dwelling Occupations	Paras 2.1.3, 3.4 et seq and 3.18.4	<p>The Applicants apply for the obligation to provide a Viability Review Submission for Viability Review Phase Four to be discharged deleting paragraphs 2.1.3 and 3.18.4 and reference to Viability Review Phase Four in paragraphs 3.4-3.10 and making all other appropriate consequential amendments.</p> <p><b>REVIEW 4</b></p> 	<p>The Applicants propose the discharge of Viability Review Four because it is evident even at this stage that the viability cannot support any additional Affordable Housing and that this should be limited accordingly to 10% provision in relation to these further dwellings.</p> <p>The provision for a Viability Review Submission at the later date envisaged, accordingly no longer serves any useful purpose.</p>	<p>The Applicants rely in support of their application to discharge upon the following facts and matters:</p> <p>1) The immediate need to sustain the Development by securing the current proposed land sales based upon 10% AHU provision (as detailed below). The Applicants have sold the following land parcels comprising land in Review Phase Four and are close to concluding agreements for the remaining parcels (as shown in the adjacent plan):</p> <p>Land Parcel I2 (26 units) Countryside  Land Parcel N2 (104 units) Dandara Homes  Land Parcel C2 (99 units) TBC  Land Parcel D2 (184 units) TBC  Land Parcel A2 (51 units) Chelmden (an original owner)  Land Parcel B2 (13 units) TBC  Land Parcels CH (47 units) TBC  <u>Total = 524 units</u></p> <p>The Applicants have agreed to sell the above land parcels on the basis that the incoming developer will provide 10% affordable housing within each land parcel. This being the only level at which incoming developers were prepared to deal, whilst still achieving realistic sales prices.</p> <p>Further, the TBC parcels in respect of which sale agreements are close to being agreed, are all expected to be concluded on the like basis.</p> <p>To be clear, the incoming developers require both certainty regarding the percentage of affordable housing and a maximum of 10% provision, their own commercial viability assessments (consistent with the expert evidence of TM referred to below) dictating that this is the maximum they are prepared to accept.</p>

					<p>2) The further expert evidence of Mr T Hegan (see the new report accompanying this application). TM have carried out Viability Review Phase Four in accordance with the terms of the s106 Agreement, with the result that this shows a significant viability deficit for this review.</p> <p>Given, therefore, that it can clearly be shown at this stage that there is no realistic prospect of ABC securing any Additional Affordable Housing Provision for this Review Period (over and above the 10% minimum), equally it should be determined now that this obligation serves no useful purpose and ought to be discharged.</p> <p>3) Further, the Applicants rely upon the fact that ABC has (as explained above) already accepted, in its grant of planning permission to Jarvis, that the level of Additional Affordable Housing Provision for future Viability Review Phases can be fixed in advance.</p> <p>4) The Applicants also rely upon the non-viability of the Development more generally subject to the existing s106 obligations and the necessity to vary these to ensure the deliverability of the scheme including the appropriate essential infrastructure; to be addressed under the further, second s106A application, in preparation</p>
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