



ASHFORD
BOROUGH COUNCIL

Sports Facilities (inc. Strategic Parkland) 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 7 and 10 of the Chilmington Green S.106 Agreement (“the Agreement”) which require the Chilmington Hamlet facilities (the “Hamlet Facilities”) and the Discovery Park sports hub; sports pitches; strategic parkland and strategic playspace (together herein referred to collectively as “the Discovery Park Facilities”) to be provided on the Chilmington Green development site (the “Site”).
- 1.2 Indoor and outdoor sports facilities, strategic parkland and playspace are required to meet the recreational needs of the residents of the Chilmington Green development (the “Development”), based on a total population of circa 13,800. The amount of provision required is set out in Table 2 of the Chilmington Green AAP (the “AAP”) (CD3/1/1, page 57). The amount, in turn, was derived from the Public Green Space and Water Environment SPD (CD3/1/5) and the Sport England Facilities Calculator (in respect of indoor sports provision). The required provision comprises 22.08 hectares of outdoor sports space; 4.14 hectares of strategic park and 6.9 hectares of equipped play space – all to be provided on the Site.
- 1.3 Chapter 11 of the AAP “sets out the proposed approach to phasing of the Development and how this should relate to the delivery of key infrastructure” (paragraph 11.1, page 110). The AAP continues that “this approach is informed by the availability of existing infrastructure and the ability to deliver new infrastructure in a cost-effective and viable manner whilst ensuring that development remains sustainable in its own right at all stages – a key principle of this AAP” (paragraph 11.3, page 110).
- 1.4 The Development is to be delivered in four phases – Main AAP Phases 1, 2, 3 & 4. The location of these four phases on the Site are shown in AAP Figures 18-21 (pages 115-118) and that are defined in the Agreement (refer to Definitions, paragraph 1.1). The number of dwellings in each phase is shown in Table 1 below.

Main AAP Phase	Number of dwellings	Cumulative number of dwellings
1	1501	1501
2	1124	2625
3	1559	4184
4	1566	5750

Table 1: the number of dwellings in each Main AAP Phase

- 1.5 One of the key principles of the AAP (refer to policies CG1(b) & CG8) is that each phase of the Development is 'sustainable in its own right'. The AAP states that *"this requires that properly planned infrastructure delivery is achieved alongside the development of new housing and that any significant gaps or shortfalls in provision are avoided"* (CD3/1/1, paragraph 11.30, page 113).
- 1.6 The AAP also states that *"the delivery / funding of infrastructure will be based on a series of 'triggers', typically threshold numbers of homes completed. These triggers will help to guarantee that at all stages of the development, sufficient infrastructure will be in place to adequately serve the resident population"* (CD3/1/1, paragraph 4.27, page 29).
- 1.7 The AAP includes an Infrastructure Delivery Plan (the "IDP") *"which sets out when key infrastructure will need to be delivered and how it is anticipated this will occur"* (paragraph 11.33, page 114). The AAP also envisaged that *"the IDP will provide the basis for the Heads of Terms within the Section 106 Agreement for the Development and for the use of planning obligations attached to any grant of outline planning permission to control the implementation of the Development."* (CD3/1/1, paragraph 11.33, page 114).

Discovery Park – Background

- 1.8 Discovery Park (the "Park") is identified in the AAP as being a *"new major open space, sports, and recreation facility for Ashford"* (CD3/1/1, paragraph 7.1, page 63). It is envisaged that the Park would *"need to be of sufficient scale and must provide a range of uses which will serve a wider catchment than purely the residents of Chilmington Green. It will need to become a strategic leisure destination in its own right and evolve into an important town wide resource"* (CD3/1/1, paragraph 7.3, page 63). The Park is expected to include the following (CD3/1/1, paragraph 7.17 (page 65):
- 20 ha of sports and playing pitch provision.
 - 4.14 ha of parks and gardens provision.
 - An indoor sports hall with associated facilities and community space.
 - A strategic play space area.
 - Associated car parking for the sports pitches and indoor sports building.
- 1.9 The AAP identifies that an indoor sports building is required that is *"capable of accommodating⁴ badminton courts, changing facilities, a café and*

complementary active uses, as well as 500 sqm of community recreational / meeting space (e.g. dance studio, gym, meeting room, small hall)" (CD3/1/1, paragraph 10.13, page 90).

- 1.10 The appellant will only be responsible for delivering those parts of the Park that relate to either meeting the recreational requirements of the Development or where suitable management arrangements are needed, such as the ecological mitigation (CD3/1/1, paragraph 7.24, page 66). The remaining areas of the Park will need to be delivered by a third party, most likely to be the Council (CD3/1/1, paragraphs 7.24 - 7.25, page 66).
- 1.11 The AAP recognises that a detailed masterplan (the "Masterplan") for the Park needs to be prepared by the Council (CD3/1/1, paragraph 7.5, page 63) and states that the Masterplan "*will need to set out the range of uses proposed to come forward within Discovery Park (including those uses which meet the recreational needs of the development and a range of additional complementary uses)*" (CD3/1/1, paragraph 7.6, page 63).

2.0 The requirements of the Agreement

The Hamlet Facilities

- 2.1 The Hamlet facilities are to be located centrally within the Site. The location is identified as land parcel 'S1' on the Chilmington Green Open Space Plan (CD6/13) that was approved as part of the Outline planning permission for the Chilmington Green development (the "Development").
- 2.2 As defined in the Agreement, the Hamlet Facilities will comprise the following (Schedule 7, paragraph 1.1):
- 1 x cricket pitch (1.42 ha).
 - 1 x community pavilion (0.029 ha, including 250 sq/m community use space).
 - 1 x batting cage (0.019 ha).
 - 1 x bowling green (0.16 ha).
 - 2 x tennis courts (0.13 ha)
 - 1 x car park (0.025 ha)
 - 1 x equipment storage facility (0.005 ha)

- 2.3 The Agreement states that the total capital cost to be spent on the Hamlet Facilities is £1,266,000.00 index linked up to the date of the approval of reserved matters for the facilities. This excludes fees, contingencies, specification and design costs, supervision fees, access roads and service costs (Schedule 7, paragraph 1.1).
- 2.4 In summary, Schedule 7 requires the appellant to (1) submit to and have approved by the Council, a Design Brief and Specification (the “DB&S”) for the Chilmington Hamlet facilities no later than 1000 dwelling occupations, and (2) to provide the Hamlet Facilities no later than 1400 dwelling occupations.
- 2.5 In detail, Schedule 7 requires the following:
- i. To submit to and have approved by the Council the DB&S for the Chilmington Hamlet facilities no later than 1000 dwelling occupations. The DB&S shall include all the information specified in Schedule 7A of the Agreement (Schedule 7, paragraph 1.1).
 - ii. Before the submission of the DB&S to the Council, the appellant is required to undertake a consultation exercise with the Chilmington Management Organisation (the “CMO”) and other relevant stakeholders and the public (Schedule 7, paragraph 1.2.1).
 - iii. Before the commencement of the consultation with stakeholders and the public, the appellant is required to submit and have approved by the CMO the details of the proposed consultation exercise, or if not approved by the CMO within six weeks, then seek approval from the Council (Schedule 7, paragraph 1.2.2).
 - iv. The DB&S shall include all consultation responses received, including the CMO’s comments on the costings (Schedule 7, paragraph 1.2.3).
 - v. To provide the Hamlet Facilities on the Site no later than 1400 dwelling occupations in accordance with the reserved matters approval granted for the facilities and the approved DB&S (Schedule 7, paragraphs 1.3, 1.3.1 and 1.5).
 - vi. The appellant is required to ensure that all necessary actions have been taken to ensure that the land on which the Hamlet Facilities are located is free from contamination and pollution and protected species that would prevent or limit the intended use (Schedule 7, paragraph 1.3.2).
 - vii. The appellant is also required to ensure that all conditions attached to the planning permission or approval for reserved matters for the Hamlet

Facilities that are required to be discharged before first occupation/use of the facilities, have been discharged (Schedule 7, paragraphs 1.3 and 1.3.3).

- viii. The Council is required to notify the CMO's director of the approval of the DB&S and the reasons for it (Schedule 7, paragraph 3.2).
- 2.6 Schedule 7 also includes obligations relating to the long-term ownership and management and maintenance of the Hamlet Facilities and payment of the Council's costs (Schedule 7, paragraphs 1.3.4 - 1.3.6; 1.4; 2 and 3). The proposed amendments to these obligations are dealt with separately in the 'Ongoing Management and Maintenance' and the 'Delivery/Monitoring/Council's costs' Topic Papers and therefore this Topic Paper does not respond to these proposed modifications to these obligations.
- 2.7 To date, none of the dwelling occupation triggers for the Hamlet Facilities referred to above have been reached.

The Discovery Park Facilities

- 2.8 Discovery Park is to be provided on the eastern side of the Site. The location is identified as land parcels 'DP1', 'DP2', 'DP3', 'S3' and 'PS6' on the Chilmington Green Open Space Plan (CD6/13) that was approved as part of the Outline planning permission for the Development.
- 2.9 As defined in the Agreement, the Park will comprise the following ('Definitions' paragraph 1.1):
- Discovery Park sports hub – 1.37 ha of facilities to be provided on land parcels 'S3' or 'DP3'.
 - Discovery Park sports pitches – 22.08 ha of sports pitches/courts to be provided on land parcel 'S3'
 - Discovery Park strategic parkland – combined 27.39 ha of land identified as 'DP1' and 'DP2' and 7.44 ha of land identified as 'DP3'.
 - Discovery Park strategic playspace – 1.44ha of play facilities to be provided on land parcel 'PS6'.
- 2.10 The Agreement states that the total capital cost to be spent by the appellant on each of these facilities is as follows:
- Discovery Park Sports hub – £4,976,157.00 index linked (Schedule 10, paragraph 2.1.1).

- Discovery Park Sports pitches – £2,782,000.00 index linked (Schedule 10, paragraph 2.1.1).
- Discovery Park (strategic parkland) ('DP3' only) – £2,056,813.00 index linked (DP1 and DP2 are to be delivered by the Council and therefore are not included in this capital cost) (Schedule 10, paragraph 2.5.1).
- Strategic playspace – £676,837.00 index linked up to the date of the reserved matters approval (Definitions' paragraph 1.1).

2.11 The capital cost excludes fees, contingencies, specification and design costs, supervision fees, access roads and service costs.

2.12 In summary, Schedule 10 requires the appellant to (1) pay £20,000 index linked to the Council no later than when the first dwelling is occupied to prepare a masterplan for Discovery Park, (2) to submit to and have approved by the Council DB&S for the sports hub, sports pitches (together referred to as the 'Sports Facilities' in the Agreement), DP3 and PS6 no later than 1000 dwelling occupations, (3) to provide the Sports Facilities in two phases no later than 3200 and 5000 dwelling occupations respectively, (4) provide the strategic parkland over four phases no later than 1500; 3500; 4000 and 5500 dwelling occupations respectively, and (5) provide the strategic playspace (PS6) no later than 4000 dwelling occupations. In addition, the Council is required to publish the Discovery Park masterplan no later than 400 dwelling occupations.

2.13 In detail, Schedule 10 requires the following:

- i. The appellant to pay £20,000 index linked to the Council no later than when the first dwelling is occupied to enable the Council to prepare a masterplan for Discovery Park (Schedule 10, paragraphs 1.1 & 3.3).
- ii. The appellant to submit to and have approved by the Council a DB&S for the sports hub; sports pitches; DP3 and PS6 no later than 1000 dwelling occupations. The DB&S shall include all the information specified in Schedules 10A (sports hub & sports pitches) and 10B (DP3 & PS6) of the Agreement (Schedule 10, paragraphs 2.1, 2.1.1, 2.5 & 2.5.1).
- iii. Before the submission of the DB&S to the Council, the appellant is required to undertake a consultation exercise with the Chilmington Management Organisation (the "CMO") and other relevant stakeholders and the public (Schedule 10, paragraphs 2.1.2 & 2.5.2).
- iv. Before the commencement of the consultation with stakeholders and the public the appellant is required to submit and have approved by the CMO

the details of the proposed consultation exercise, or if not approved by the CMO within six weeks, then seek approval from the Council (Schedule 10 paragraphs 2.1.2 & 2.5.2).

- v. The DB&S shall include all consultation responses received, including the CMO's comments on the costings (Schedule 10, paragraphs 2.1.2 & 2.5.2).
- vi. To provide on the Site of the first phase of the sports hub and sports pitches no later than 3200 dwelling occupations in accordance with the reserved matters approval granted for the facilities and the approved DB&S (Schedule 10, paragraphs 2.2, 2.2.1 & 2.8, 2.8.1).
- vii. To provide on the Site of the second phase of the sports hub and sports pitches no later than 5000 dwelling occupations in accordance with the reserved matters approval granted for the facilities and the approved DB&S (Schedule 10, paragraphs 2.3, 2.3.1 & 2.8, 2.8.2).
- viii. To provide on the Site 1 ha of DP3 no later than 1500 dwelling occupations; a further 0.86 ha of DP3 no later than 2500 occupations; PS6 and a further 1.08 ha of DP3 no later than 4000 occupations and a further 4.42 ha of DP3 no later than 5500 occupations in accordance with the reserved matters approval granted for the facilities and the approved DB&S (Schedule 10, paragraphs 2.6 & 2.61-2.65 & 2.8, 2.8.3-2.8.6).
- ix. The appellant is required to ensure that all necessary actions have been taken to ensure that the land on which the Discovery Park Facilities are located is free from contamination and pollution and protected species that would prevent or limit the intended use (Schedule 10, paragraphs 2.2.2, 2.3.2 & 2.6.6).
- x. The appellant is also required to ensure that all conditions attached to the planning permission or approval for reserved matters for the sports hub and sports pitches that are required to be discharged before the first occupation/use of the facilities have been discharged (Schedule 10, paragraphs 2.2.3, 2.3.3 & 2.6.7).
- xi. The Council is required to notify the CMO's director of the approval of the DB&S and the reasons for it (Schedule 10, paragraph 3 & 3.2).
- xii. The Council is also required to only use the £20,000 index linked for the purpose of masterplanning the Discovery Park Facilities and to publish the masterplan no later than 400 dwelling occupations (Schedule 10, paragraph 3, 3.3 & 3.4).

- 2.14 Schedule 10 also includes obligations relating to the long-term ownership and management and maintenance of the Discovery Park Facilities and payment of the Council's costs (Schedule 10, paragraphs 1.2, 2.2.4-2.2.6, 2.3.4-2.3.6, 2.4, 2.6.8-2.6.10 & 2.7). The proposed amendments to these obligations are dealt with separately in the 'Ongoing Management and Maintenance' and the 'Delivery/Monitoring/Council's costs' Topic Papers and therefore this Topic Paper does not respond to these proposed modifications to these obligations.
- 2.15 To date, only one of the dwelling occupation triggers relating to the Discovery Park Facilities referred to above has been reached. This relates to the obligation to pay £20.000 index linked to the Council no later than when the first dwelling is occupied to prepare a masterplan for Discovery Park. Based on evidence of dwelling occupations the payment was due on 20 September 2019. A payment of £20.000 was made on 8 October 2019, however, to date the associated indexation payment has not been paid. The payment is identified in the Council's Infrastructure Funding Statement 2019/2020 (CD4/15, page 11). The trigger for the publication of the Masterplan (400 dwelling occupations) has not yet been reached.

3.0 The Continuing Purpose

- 3.1 The Agreement secures the timing of the delivery of the Hamlet Facilities and the strategic parkland at Discovery Park (DP3) in accordance with the AAP IDP. However, the timing of the delivery of the Discovery Park sports pitches and sports hub and the strategic playspace (PS6) secured in the Agreement is behind that envisaged in the IDP. The AAP proposes the delivery of the outdoor sports pitches in four phases; the delivery of the indoor sports building at the mid-point of the development - on completion of the 2875th dwelling, and the delivery of PS6 in two phases.
- 3.2 The AAP states that the approach to delivery of the indoor sports building (by occupation of the 2,875th dwelling) will *"ensure that the indoor sports building can come forward at a time where there is a sufficient size of local population to support its provision, helping it to become a focal point for the community and ensure that an ongoing and significant deficiency of dedicated indoor sport provision throughout the build out period is avoided [up to this point the only such facilities will be a two court badminton hall (or equivalent) at the District centre (although this will have a 'community' function as well) and any facilities provided via the secondary school (which will not enjoy unfettered public access (paragraph 10.17, page 90).*
- 3.3 The AAP acknowledges that *"a flexible approach to the phasing and delivery of Discovery Park is needed. It may take many years to evolve to its end state and will include a range of recreational uses, some of which will be required to keep*

pace with the development as they relate to meeting the evolving recreational requirements of the new residents” (paragraph 7.22, page 66).

- 3.4 During the assessment of the outline planning application, it was acknowledged that delivery of the sports pitches in four phases would not be cost effective and therefore it was agreed that both the sports pitches and sports hub would be delivered in two phases. This means that there would be no sports provision at Discovery Park within the early stages of the Development. Instead, it was proposed that additional facilities would be provided at the Hamlet (a bowling green and tennis courts), albeit that the total amount of facilities at the Hamlet would be less than that envisaged as being required in the AAP (1.79 hectares, instead of 1.85 hectares identified in the AAP). The Agreement also secured the provision of PS6 in a single phase no later than 4000 dwelling occupations.
- 3.5 It was acknowledged by the Council in the planning committee report for the outline planning application that the enhanced sports facilities to be provided at the Hamlet would assist in meeting the demand from the residents of 3200 dwellings (the trigger for the delivery of the first phase of the sports pitches and sports hub at Discovery Park). The planning committee report states that the addition of the facilities at the Hamlet *“ensures that the total outdoor sports allocation is used to create a multi-functional leisure facility that will serve a wider demographic of the community”* (CD6/14, Items 9 & 12).
- 3.6 The methodology for calculating the amount of indoor and outdoor sports facilities, strategic parkland and strategic playspace on the Site is set out in the Public Green Space and Water Environment SPD (CD3/1/5).
- 3.7 The dwelling threshold for the provision of outdoor sports space on a site is 100 dwellings and for playspace it is 415 dwellings. There is no threshold for strategic parkland because in most cases strategic parkland is not to be provided on a development site, and instead a financial contribution is sought (CD3/1/5, Table 2, page 14).
- 3.8 In accordance with the SPD, the provision for outdoor sports space should be made at the level of 1.6 hectares per 1000 population; for playspace at 0.5 hectares per 1000 population, and for strategic parkland at 0.3 hectares per 1000 population (CD3/1/5, Table 1, page 12).
- 3.9 The Ashford Playing Pitch Strategy 2017-2030 (August 2017) (Appendix A) is also relevant. This identifies that the Chilmington Green development will require the following facilities by 2500 dwelling occupations:
- 2 x adult football pitches;

- 1 x junior 11 v 11 pitch;
- 1 junior 9 v 9 pitch;
- 1 mini soccer 7 v 7 pitch;
- 1 mini soccer 5 v 5 pitch;
- 0.5 cricket squares;
- Artificial grass pitch for hockey
- 3G rubber crumb pitch for football training and competition.

- 3.10 The obligation for indoor sports provision is calculated in accordance with the Sport England Sports Facility Calculator. The Ashford Indoor Sports Facility Strategy 2017 (CD4/11) is also relevant. The Strategy identifies that 1.58 badminton courts will be required for the first 2500 dwellings at Chilmington Green and the full development will require 2.05 badminton courts and 0.51 halls (paragraphs 1.42-1.45, pages 19 & 20)
- 3.11 There is no alternative provision in the local area that would be accessible to residents of the Development and that would be able to provide for the needs of the existing local community and the needs generated by the development.
- 3.12 The Ashford Indoor Sports Facility Strategy identifies that the nearest indoor sports facilities to the Site are at the Stour Centre in Ashford town centre (CD4/11, Map 2.3, page 30). The nearest outdoor sport pitch provision is at the Kingsnorth sports pavilion, circa 3km to the south- east of the Site and the Great Chart playing fields, circa 1.5km to the north-east of the Site.
- 3.13 The Ashford Open Space Strategy 2017 (CD4/9) provides details of existing play provision within the borough. Figure 8, page 49 shows the result of the audit of play area quality and illustrates that there is limited play provision near the Site, with some provision close to the eastern boundary, and certainly no existing provision that would be accessible from the whole of the Site.
- 3.14 The triggers for the delivery of The Hamlet Facilities and Discovery Park Facilities on the Site are set to ensure that there is sufficient provision to meet the needs of the residents of the Development in accordance with the quantitative standards identified in the SPD. During the assessment of the outline planning application, the Council acknowledged that flexibility in the delivery of these facilities was required and therefore it was agreed that the delivery of the Discovery Park Facilities could be delayed, with agreement that

enhanced facilities would be provided at the Hamlet. The delivery of the Hamlet Facilities and Discovery Park Facilities within the timescales set out within the Agreement remains integral and essential to meeting the sporting and recreational needs of the residents of Chilmington Green.

4.0 Relevant Planning Policy & Guidance

- 4.1 Chilmington Green AAP Policy CG1(b) Chilmington Green Development Principles – requires each main phase of the development will be sustainable in its own right, through the provision of the required social and physical infrastructure, both on-site and off-site. Part (e) requires “the creation of an integrated and connected network of green spaces and natural habitats, including part of Discovery Park, to help meet the recreational and sporting needs of the development” (CD3/1/1, page 21).
- 4.2 Chilmington Green AAP Policy CG8 Meeting the Recreational Needs of Chilmington Green – requires the Development to “provide public open space provision, based on the parameters and spatial requirements set out within the Public Green Space and Water Environment SPD, in a way that meets the needs of the development as it evolves, to ensure each phase of the development is sustainable in its own right” The policy states that “Sports and playing pitch provision should be largely concentrated (20 ha) at Discovery Park to aid the development of a sports and recreation hub” and strategic parks provision “will be provided within Discovery Park as part of an on-site provision delivered by the development” (CD3/1/1, page 62).
- 4.3 Chilmington Green AAP Policy CG9 Discovery Park – identifies that “land to the east of Chilmington Green is allocated for the creation of a strategic open space, sport and recreational area, currently referred to as Discovery Park”. This policy identifies that “20 ha of sports pitch provision, 4.1 ha of parks and recreational space, a strategic play space area, informal green space, an indoor sports hall and associated car parking” is required. The policy also states that “a masterplan for the whole of Discovery Park, supported by a business plan, shall be prepared by the council in partnership with the developer consortium” (CD3/1/1, page 67).
- 4.4 Chilmington Green AAP Policy CG16 Indoor Sports and Community Leisure Provision – requires the Development to provide an indoor sports hall, capable of accommodating 4 badminton courts, changing facilities, 500 sqm of community space, a café and complementary active uses. The indoor sports hall shall be fully operational prior to the occupation of the 2,875th dwelling and include community leisure provision which should be distributed around the development, including the requirement for 250 sqm (GIA) of community leisure

space to be provided at the pavilion proposed to serve the cricket pitch at the Hamlet.

- 4.5 Chilmington Green AAP Policy CG22 Phasing, Delivery and Implementation – states that the Development shall be implemented in accordance with the four main phases identified on Figures 18- 21 of the AAP and the Infrastructure Delivery Plan at Appendix 3, unless it can be demonstrated that relevant infrastructure is readily available and the development can be adequately serviced. This policy also sets out measures to ensure an appropriate quality of development is achieved at detailed design stage and how the delivery of the Development will be monitored to ensure that the quality aspirations established within the AAP are delivered and maintained (CD3/1/1, page 124).
- 4.6 Local Plan Policy SP1 Strategic Objectives – seeks to ensure development is supported by the necessary social, community, physical and e-technology infrastructure, facilities and services, with any necessary improvements brought forward in a co-ordinated and timely manner (CD4/1, page 9).
- 4.7 Local Plan Policy SP6 Promoting High Quality Design – requires development proposals to be of high quality design and to demonstrate careful consideration and a positive response to a set of design criteria. Development proposals should show how they have responded positively to the design policy and guidance, including national and local design guidance, and site specific development briefs. Developers are strongly encouraged to participate in the Council’s ‘Quality Monitoring Initiative’ which works to make sure that the approach agreed to design quality when planning permission is given is delivered on site (ref: CD4/1 page 40).
- 4.8 Local Plan Policy COM1 Meeting the Community’s Needs – identifies the requirement for infrastructure and facilities to meet the need generated by new development, including sports facilities (CD4/1, page 303).
- 4.9 Local Plan Policy COM2 Recreation, Sport, Play, and Open Spaces – seeks the development of recreation, sport, play, and open spaces provision consistent with the standards established in the Public Green Spaces and Water Environment SPD (CD4/1, page 307-308). In relation to indoor and outdoor sports, Local Plan Policy COM2 supersedes the Public Green Spaces and Water Environment SPD, such that the level and type of provision is ascertained from the Sport England Calculator.
- 4.10 Local Plan Policy IMP1 Infrastructure Provision – seeks the delivery of infrastructure to support new development (CD4/1, page 312).

- 4.11 Public Green Spaces and Water Environment SPD 2012 – green spaces and the water environment provide multi-functional spaces, including strategic parks, which have significant health, environmental, economic and social benefits for those who live, work and enjoy recreational facilities within the Borough (CD3/1/5).
- 4.12 The Ashford Open Space Strategy 2017 (CD4/9) formed part of the evidence base for the Local Plan. The quantitative standards for playspace and allotment provision identified as being required in the Open Space Strategy, remain the same as the standards set out in the Public Green Spaces and Water Environment SPD 2012.
- 4.13 Paragraph 96 of the NPPF identifies the importance of achieving healthy, inclusive, and safe places which promote social interaction to enable and support healthy lifestyles, with specific reference made to sports facilities.
- 4.14 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.
- 4.15 Paragraph 103 of the NPPF identifies the importance of access to a network of high-quality open spaces and opportunities for sport and physical activity for the health and well-being of communities and stresses the need for “robust and up-to-date assessments of the need for open space, sport and recreational facilities”.

5.0 The Proposed Modifications

- 5.1 In summary, the appellant seeks the following modifications to the Agreement.

The Hamlet Facilities

- 5.2 To delay the requirement for the DB&S for the Hamlet Facilities to be approved by the Council from no later than 1000 dwelling occupations to no later than 3000 dwelling occupations and to insert the clause that “approval not be unreasonably withheld” (CD2/14, request No.30).
- 5.3 To allow the total capital cost of the Hamlet Facilities to include “fees, contingencies, specification and design costs, supervision fees, access roads and service costs” and to insert a clause to allow the scope of the Hamlet Facilities to be altered to match the total capital cost (CD2/14, request No.30).

- 5.4 To discharge the obligation for the CMO to be consulted on the DB&S; for the CMO to agree the details of the consultation exercise or for the Council to approve the details if the CMO does not respond, and, for the DB&S to include the CNO's comments on the costings (CD2/14, request No.31).
- 5.5 To delay the delivery of the Hamlet Facilities from no later than 1400 dwelling occupations to no later than 3500 dwelling occupations (C2/14, request No.29).
- 5.6 To discharge the requirement for the Hamlet Facilities to be free from any defects when the facilities are provided (CD2/14, request No.29).

The Discovery Park Facilities

- 5.7 To discharge the obligation for the Council to prepare the Discovery Park masterplan and replace it with an obligation for the appellant to prepare the masterplan (CD2/14, request No.47).
- 5.8 To delay the requirement for the DB&S for the sports pitches and sports hub to be approved by the Council from no later than 1000 dwelling occupations to no later than 2650 dwelling occupations (CD2/14, request No.48).
- 5.9 To remove the requirement for the total capital cost of the sports pitches and sports hub to be index linked and to allow the total capital cost to include "fees, contingencies, specification and design costs, supervision fees, access roads and service costs" (CD2/14, request No.48).
- 5.10 To discharge the obligation for the CMO to be consulted on the DB&S; for the CMO to agree the details of the consultation exercise or for the Council to approve the details if the CMO does not respond, and, for the DB&S to include the CNO's comments on the costings (CD2/14, request No.49).
- 5.11 To delay the delivery of the first phase of the sports pitches and sports hub from no later than 3200 dwelling occupations to no later than 3650 dwelling occupations (CD2/14, request No.50).
- 5.12 To delay the delivery of the second phase of the sports pitches and sports hub from no later than 5000 dwelling occupations to no later than 5500 dwelling occupations (CD2/14, request No.51).
- 5.13 To delay the requirement for the DB&S for the strategic parkland (DP3) and the strategic playspace (PS6) to be approved by the Council from no later than 1000 dwelling occupations to require the DB&S to be submitted to the Council for approval no later than 2100 dwelling occupations (CD2/14, request No.53).

- 5.14 To remove the requirement for the total capital cost of DP3 to be index linked and to allow the total capital cost to include “the cost of PS6, plus fees, contingencies, specification and design costs, supervision fees, access roads and service costs” (CD2/14, request No.53).
- 5.15 To discharge the obligation for the CMO to be consulted on the DB&S; for the CMO to agree the details of the consultation exercise or for the Council to approve the details if the CMO does not respond, and, for the DB&S to include the CNO’s comments on the costings (CD2/14, request No.53).
- 5.16 To delay delivery of DP3 from no later than 1500; 3500; 4000 and 5500 dwelling occupations respectively to no later than 2650; 3500; 5000 and 5750 respectively, and to delay the delivery of PS6 from no later than 4000 occupations to no later than 5000 occupations (CD2/14, request No.52).
- 5.17 To delay the publication of the Discovery Park masterplan from no later than 400 dwelling occupations to no later than 2000 dwelling occupations (CD2/14, request No.56).

6.0 Appraisal of the Proposed Modifications

- 6.1 The appellant acknowledges that the obligation to provide the Hamlet Facilities and the Discovery Park Facilities, including the obligation to submit a DB&S, potentially serve a useful purpose. However, the appellant seeks to delay the delivery of the Hamlet Facilities until they claim they would be viable, i.e. there are enough people living on the Development to make sufficient use of them. The appellant specifically refers to the provision of cricket facilities and claims that the cricket facilities are “*likely to be viable no earlier than 3500 dwelling occupations*”.
- 6.2 The Ashford Borough Council Playing Pitch Strategy 2017-2030 (August 2017) sets out the amount of cricket pitch provision required for the Chilmington Green development - 0.5 cricket squares are required to serve 2,500 homes and a further 0.5 cricket squares for the remaining 3,250 homes.
- 6.3 However, the Hamlet facilities do not only comprise a cricket pitch and batting cages. The facilities also comprise a community pavilion, tennis courts and a bowling green. It is also likely that the cricket pitch would not only be used for cricket, but for other recreational purposes too. The AAP (CD3/1/1, paragraph 5.62) states in respect of The Hamlet cricket ground that “*this publicly accessible space should be flexibly designed to encourage a range of informal play and recreational activities.*”

- 6.4 The appellant's argument that the Hamlet facilities are "*likely to be viable no earlier than 2,300 homes and delay to 3,500 appears proportionate*" appears to be based solely on the provision of cricket facilities and does not consider the other sports and recreational uses proposed as part of these facilities.
- 6.5 The appellant's argument also does not appear to take account of the delay to the provision of the Discovery Park facilities agreed when planning permission was granted, which was justified on the basis that sports facilities would be delivered at the Hamlet no later than 1400 dwelling occupations.
- 6.6 The Ashford Open Space Strategy 2017 (CD4/9, paragraph 4.12, page 34) identifies that there is an under supply of strategic parks within the borough. The Local Plan identifies plans to improve, extend and provide significant pieces of strategic park, including Discovery Park on the Site. The Strategy is reflected through Local Plan Policy COM2 which seeks to secure the provision of on-site measures and/or off-site financial contributions targeted towards the sports and recreation hubs identified in the Local Plan. The Open Space Strategy highlights that "*it will be important to ensure this expected provision is delivered in a timely and appropriate manner*" (paragraph 4.12, page 34).
- 6.7 The appellant claims that sufficient provision will instead be available at the schools on site to meet the needs of residents before the Hamlet Facilities and the Discovery Park Facilities are provided (CD2/13, paragraphs 8.40 and 8.41). This is not the case. The first primary school, which is already open to students, is not open for community use. The secondary school, which is due to open in September 2025, will not provide cricket facilities or a bowling green.
- 6.8 The secondary school does intend to be open for community use outside the hours of school use and intends to make the following facilities available to the community: - natural turf pitches; MUGA and the indoor sports areas and facilities comprising a four-court sports hall; drama studio; classroom space (with IT provision); school hall and dance studio. However, these facilities will not be available to serve the community during school use hours and would not be of sufficient size to serve the residents of up to 3500 dwellings. The following community opening hours are proposed (refer to discharge of planning condition application OTH/2024/1997).

	Indoor Facilities	Outdoor Facilities ¹
Term Time	Mon – Fri: 18:00 – 22:00 Sat & Sun: 0800 – 22:00	Mon – Fri: Daylight hours after 18:00 Sat & Sun: 0800 – Daylight hours
School Holidays	Mon – Sun: 08:00– 22:00	Mon – Sun: 08:00 – Daylight hours

¹ The School may restrict the use of grassed sports areas to protect them to fit in with the school requirement.

- 6.9 The AAP (paragraph 6.23) acknowledges that there may be scope for community use of school facilities, stating that *“if applicants can demonstrate that, once the school is in active use, its sports pitches will be able to actually contribute to meeting the needs of the residents of Chilmington Green, then this could be taken into account when planning the latter stages of the development. If justified, this would result in a consequential reduction of the total spatial recreational requirement for sports pitches at Discovery Park”*. Paragraph 6.24 continues that *“In order for this to apply, applicants will need to demonstrate that secondary school facilities are publically available. That said, it is likely that secondary school facilities will not equate to an exact spatial comparison. School provision, by its nature, is only available in non-school hours and when school clubs do not want to use the facilities.”*
- 6.10 The AAP therefore does allow some flexibility in the scope of the facilities to be provided at Discovery Park once the school is in active use and it has been established that the school facilities are publicly available and can meet some of the recreational needs of residents. However, the AAP does not allow for the delivery of the Discovery Park Facilities to be delayed. Potential future provision at the secondary school does not consequently justify a delay in the provision of the Hamlet Facilities and Discovery Park Facilities.
- 6.11 The Council does not agree with the appellant's statements when referring to the Hamlet Facilities, that the modification would secure *“delivery of these facilities in any event at a relatively early stage in the life of the Development”* or that the when referring to the Discovery Park Facilities that *“in real terms the limited additional time sought by this modification for the delivery of these facilities being unlikely to have any material or even measurable impact on the experience of owners and occupiers at this stage in the Development”* (CD2/14, requests 29 & 50).
- 6.12 The modifications would delay the delivery of the Hamlet facilities until halfway through Phase 3 of the Development when circa 60% of the dwellings have been occupied, with the first phase of the Discovery Park Facilities not provided until 63% of the dwellings have been occupied. This is not a “relatively early stage in the life of the Development”. These delays in the provision of the facilities would have a material and measurable impact on residents and would be detrimental to the successful placemaking for a development of the scale proposed.
- 6.13 Alongside the modifications proposed for the Community Hub in the District Centre, 56% of the Development (3250 dwellings) would be occupied before any fully accessible sports facilities are provided for residents. The earliest provision being the multi-use games area at the Community Hub.

- 6.14 Consequently, the delay in the delivery of the Hamlet Facilities and the Discovery Park Facilities will result in a deficit of facilities in proportion to the number of residents of the Development.

Discovery Park Masterplan

- 6.15 The appellant states that the Discovery Park masterplan (the “Masterplan”) *“should properly and sensibly be prepared by the Appellants in consultation with the Council and other stakeholders”*. Their reasoning for this change is that the *“relevant information for masterplanning is better known to the Appellants”* (CD2/14, request 47).
- 6.16 The AAP states that “the Discovery Park Masterplan will need to set out the range of uses proposed to come forward within Discovery Park (including those uses which meet the recreational needs of the development and a range of additional complementary uses), the proposed location of these uses and how they will interact to ensure compatibility, alongside establishing, in detail, how Discovery Park will be phased and delivered over time” (paragraph 7.6, page 63).
- 6.17 The Council is best placed to produce and publish the Masterplan because the appellants are only responsible for delivering a small portion of the Park. The total area of the Park is 34.83 hectares; however, the appellant is only required to deliver 7.44 hectares. Most of the Park (27.39 hectares) is to be delivered by another party, most likely to be the Council. This responsibility is clearly stated in Schedule 10, paragraph 2.5.1 of the Agreement. The Council are also most likely to be included in the development of the Park over the long term. It is therefore appropriate for the Council to co-ordinate the development of the Masterplan in collaboration with all stakeholders, including the community.
- 6.18 The Council has already undertaken a substantial amount of work on the Masterplan, in accordance with their obligations in the Agreement, including consultation with residents, local groups and project partners. Unfortunately, some aspects of the work, for example undertaking ecological appraisals, have not been completed to date as these actions require access onto the appellant’s land which has been requested but denied. If the appellant has information that is relevant for the masterplanning, as they state, then it would be beneficial to all parties for the appellant to share this with the Council. The Council is working towards publishing the masterplan no later than 400 occupations as required by the Agreement.

Design Briefs and Specifications

- 6.19 The modification proposed to the timescale for the submission of the DB&S for the Hamlet Facilities is proposed to keep step with the modifications proposed by the appellant for the delivery of the Hamlet Facilities. The appellant states that this proposed modification is “*consequential upon that modification*”.
- 6.20 The appellant states that the timescales for the submission of the DB&S for the Discovery Park facilities is “*wholly premature*”. The appellant is of the view that modifying the trigger for submission to and approval by the Council to 2,650 dwelling occupations “*will provide a similar and certainly ample lead in time for the delivery of these assets*”. The appellant argues that this trigger would be appropriate if the Discovery Park facilities were to be delivered no later than 3,200 and 5,000 dwelling occupations as currently required by the Agreement.
- 6.21 The submission and approval of the DB&S within a timely manner enables the Council to ensure design quality is embedded in the development at an early stage. The requirement for the design brief to be ‘approved’ by the Council prior to 1000 occupations ensures the scheme to be delivered is of sufficient design quality and safeguards against poor quality development. It also ensures that sufficient time is given to consultation with residents and stakeholders because this consultation must happen before the DB&S is approved by the Council.
- 6.22 When outline planning permission was granted, it was envisaged that construction on the first phase of the Discovery Park facilities would need to commence by 2200 occupations to enable the facilities to be completed by 3200 occupations (CD6/14, Item 12). The DB&S needs to be agreed in good time prior to commencement of construction of the first phase to enable contracts to be let, etc. The Agreement currently allows 2200 dwelling occupations to take place once the DB&S has been agreed but prior to the completion of construction of the first phase. The appellant has advised that “*housing delivery is expected to accelerate from around 100-125 homes per year in 2020-2024 to around 300 homes after 2028 with final completion by 2048*” (CD1/37 paragraph 4.3). Based on the appellants expected housing delivery per annum this equates to a timescale of circa seven years for contracts to be let and construction on the first phase completed, which the Council considers is sufficient time. The modifications proposed would reduce the number of occupations that can occur between the trigger for the approval of the DB&S and the trigger for the delivery of the Discovery Park Facilities to 1000 dwelling occupations. Based on the appellants expected housing delivery per annum this equates to a timescale of circa three years which the Council considers is insufficient time. A delay to the agreement of the DB&S is unlikely to allow sufficient time to enable the facilities to be delivered by the required deadline.

- 6.23 In addition, it is necessary to ensure that fees, contingencies, specification and design costs and supervision fees are sufficiently provided for, and do not ‘use up’ the main construction budget sum. Access roads and service costs are infrastructure costs associated with the wider development. Including these costs in the total capital cost would reduce the total budget available to deliver the facilities. and consequently, undermine the ability to deliver the required quality of facilities at The Hamlet and Discovery Park.
- 6.24 Removing index linking from the total capital cost would also undermine the ability to deliver the facilities required and that are of the right quality. Indexation ensures the value of the contributions agreed when planning permission is granted, and consequently purchasing power, is maintained in the future and therefore the same level of service/infrastructure can be provided. The total capital cost was calculated based on the cost of delivering these facilities at the time that the costs were calculated when outline planning permission was granted. Costs have since risen and therefore the proposed modification to remove indexation would reduce the ability to deliver the quality of facilities that are required.
- 6.25 It is already evident from discussions with the applicant about the total capital cost for the first playspace, and the applicant’s position with reference to request 25 relating to the cost of the Natural Green Space, that the budgets identified in the Agreement, with the inclusion of index linking and without the inclusion of fees, contingencies, specification and design costs, supervision fees, access roads and service costs, do not provide sufficient budget to deliver the quality facilities required by the outline planning permission, the Chilmington Green Design Code and the Design and Access Statement submitted by the appellant in support of the outline planning application. Including these costs in the budget identified in the Agreement for the total capital cost will undermine further the ability to deliver the quality of facilities envisaged for Chilmington Green.
- 6.26 On completion of the facilities and handover to the CMO, it is important to ensure the facilities are of the quality agreed in the DB&S and that they contain no defects. This obligation ensures that facilities of sufficient quality are handed over to the CMO for the benefit of residents. The discharge of the obligation to require the facilities to be free from defects would mean that the CMO would have to bear the costs of rectifying any defects, with the costs ultimately falling upon residents.
- 6.27 The appellant states that consultation with the CMO is “*surplus to requirements*” and consulting the CMO on the proposed consultation strategy “*unnecessarily complicates what should be a relatively straightforward and simple exercise*”. The CMO is an important stakeholder at Chilmington Green. They will take on

the management and maintenance of The Hamlet facilities and the Discovery Park facilities. It is therefore important that the CMO can input at an early stage in the design process. It should be in the appellant's own interest to ensure that the CMO is fully engaged in discussions about the facilities proposed so that the CMO is able to maintain those facilities to a high standard to the benefit of the Development. The value of early consultation is reflected in National Planning Practice Guidance (NPPG) which identifies the benefit of "working collaboratively and openly with interested parties at an early stage to identify, understand and seek to resolve issues associated with a proposed development" (ref: NPPG, para: 001 Reference ID: 20-001-20190315). It is noted that the applicant does not propose to remove the requirement to consult with other relevant stakeholders and the public.

- 6.28 In addition, the approval of the details of the consultation strategy by the CMO/Council prior to the consultation taking place ensures that the consultation is fit for purpose and involves all necessary parties. The CMO are best placed to advise on the consultation strategy given their close relationship with residents of the Development and other local groups.
- 6.29 Furthermore, the requirement for the DB&S to include the CMO's comments on the costings ensures that the CMO can input into the specification and cost of facilities they will own, manage and maintain and raise any concerns at any early stage in the design process and for the Council to be aware of their comments when reviewing the document.

Viability

- 6.30 The appellant has stated in several of the requests that relate to the Hamlet Facilities and Discovery Park Facilities that the obligations in the Agreement will have a significantly detrimental effect on their cashflow and will likely cause the loss of the funding to carry out the Development at all.
- 6.31 For the reasons set out in the Council's legal submissions, it is not accepted that viability is relevant to the tests which need to be applied when considering the appeals, the Council's 'Viability' Proof of Evidence will, however, present the Council's case in respect of the substantive viability issues; therefore, this Topic Paper does not respond to this point.

7.0 Conclusion

- 7.1 The Agreement currently secures the delivery of sports and recreational facilities at the Hamlet and Discovery Park, alongside associated obligations relating to the submission of Design Briefs and Specifications for the facilities and the preparation of a masterplan for Discovery Park.

- 7.2 The obligations serve a useful purpose because they will ensure that the sport and recreational needs of the residents of the Chilmington Green development and support their health and wellbeing are met in a timely manner. The provision of sports and recreational facilities is also essential to good placemaking for a development the size of Chilmington Green.
- 7.3 The modifications proposed to the obligations would not serve that purpose equally well because a delay in the provision of the Hamlet Facilities and Discovery Park facilities would result in a deficit of sport and recreational facilities in proportion to the number of residents of the Development and there is insufficient existing alternative provision in the local area to meet this shortfall.