106 Modifications Table

DATE: 20 OCTOBER 2022 (UPDATED 25 OCTOBER 2024) (FURTHER UPDATED 23 DECEMBER 2024) (FURTHER UPDATED 2 FEBRUARY 2025)

(FURTHER UPDATED 25 APRIL 2025)

(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

APPLICATION No.2: ANNEX A APPLICATION FOR MODIFICATION/DISCHARGE OF

THE SECTION 106 AGREEMENT DATED 27 February 2017 RELATING TO CHILMINGTON GREEN, ASHFORD ROAD, GREAT CHART

Annotations in column 1

NC = No Change to Version dated 25/10/24

W = Request withdrawn on 23/12/24

A = Amendment sought on 23/12/24

WM = Request withdrawn on 27/03/25

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	Reason for change on 23/12/24 or 27/03/25 (if applicable)
1. NC	Definition of 'Commence (Statutory) the Development'	Clause 1.1	The Appellant proposes to **Modify** the said definition to read as follows: 'The carrying out of a Material Operation (Statutory) pursuant to the planning permission for the Planning Application and any Reserved Matters Application approval and any modification to the planning permission for the Planning Application and any Reserved Matters Application occurring prior to the commencement (statutory) of the Development which would constitute the beginning of the Development for the purpose of section 56 of the Planning Act (as amended) but for non-compliance with any condition of the planning permission for the Planning Application and any modification to the same and related expressions such as "Commenced (Statutory) the Development" "Commencement (Statutory" of the Development" and "Commenced (Statutory) the Development" shall be construed accordingly.'	To correct the drafting of the definition, to refer to the correct section of the T&CPA, namely section 91 rather than 56.	
2. NC	The Definition of CMO	Clause 1.1	Modification deleted from appeal		
3. ~~NC~~ WM	Definition of 'Paying Owners'	Clause 1.1	~~The Appellants apply to **Modify** the said definition to add as 'Paying Owners', Hodson Developments (CG Three) Limited.~~	~~By increasing the number of paying parties, each jointly and severally liable, the payment covenant is strengthened and the relevant~~	The Appellants no longer require this modification.

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				~~obligations under the s.106 Agreement better served.~~ ~~This is understood to be agreed already and the s106 Agreement should be modified accordingly~~	
4. NC	Release from liability	Clause 2.2	The Appellants apply to **Modify** the said release from liability clause to ensure additionally that any housing provider (registered or not) who by purchasing the whole or any part of the land comprised in the Site becomes an Owner or Paying Owner and who develops housing for rental or shared ownership will be released from liability on like terms to those contained in clause 2.2 upon the occupation by a tenant or purchaser (including a shared ownership purchaser or similar) of the last of the homes to be developed on their land. Thus, it is proposed that a new clause 2.2.1A be introduced mirroring clause 2.2.1 but commencing in terms that: 2.2.1A Also, in the event that an Owner shall have completed all of the Dwellings in the area(s) of the Site in which it has an interest and all of those Dwellings shall have been Occupied by a tenant under a lease or shared ownership purchaser as then that Owner shall no longer be bound ... CMO.'	Clause 2.2 is acknowledged potentially to serve a useful purpose by ensuring that Owners are released from liability upon completion and disposal of their part of the Development, but it fails to take account and provide for the kind of institutional investor, particularly those who deliver long-term affordable housing solutions, who retain an interest in the Site after they have completed their development and all of their Dwellings have been Occupied. This was an oversight in the original drafting, which was carried out before the dramatic evolution that there has been over the last 5 years of institutional capital investing to develop homes for long term rental or shared ownership schemes, in particular to provide homes for local essential and key workers.	

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				As currently drafted clause 2 is acting as a brake on the sale of parts of the site to this type of institutional investor and thereby preventing both accelerated delivery of homes at Chilmington Green and the delivery of a more diverse affordable housing mix catering to the area's broader housing needs. In the circumstances clause 2 will serve its purpose better or at least equally well, as well as the broader aims of the Development, if it is modified as proposed.	
5. NC	Index Linking	Clause 28	The Appellants apply to **Modify** the said definition so as to replace all references to `index linking' in clause 28 to `Index Linking'.	To correct the drafting of the clause. This is understood to be agreed already and the s106 Agreement should be modified accordingly.	
6. NC	Base date for indexation	Clause 28	The Appellant applies to **Modify** clause 28 so as to amend the base date for indexation for the Relevant Index from April 2014 or the second quarter of 2014 as the case may be to August 2018 or the third quarter of 2018 as the case maybe. The said modification to be applied in each sub- clause as appropriate, so as to amend all references to April 2014 or the second quarter of 2014 as specified above.	The purpose of the index linking was of course to ensure that payments and capital contributions kept step with actual costs over time. However, the indexation date (April 2014) and the Relevant Indices (RPI, BCIS Indices or The Output Prices Index for Non Public Housing Works as the case may be) no longer properly serve this purpose.	

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			Further, the Appellants request the modification of Clause 28 to include provision as follows: 'Where any Index Linked payment required to be made under this Agreement by virtue of the Indexation results in that payment exceeding the cost of the item for which it is to be paid, the amount payable shall be reduced accordingly and only the amount reduced as aforesaid shall be payable.'	Rather, as a result of the historical base date and extended period over which payments and values in the s106 Agreement in respect of Phase 1 are now being indexed, the indexation provisions are over inflating the relevant sums. Thus, the indexation provisions are producing payments and contributions in excess of those that would be required to mitigate the impact of the Development. Certainly, if these section 106 payments and capital contributions were calculated at today's date they would be significantly lower than the amounts plus indexation being demanded or falling due. These inflated payments are not only unjustified but are serving materially to undermine the viability of the Development. Accordingly, there can be no doubt that the Appellants are entitled in accordance with the terms of section 106A to the modification of the current indexation provision to provide for a new base date to reduce the distortions and bring the	

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				payment more in to line with actual costs. To this end the Appellants propose that all payments and contributions should be rebased to August 2018, the actual commencement of house building on site. This date will not only reduce the cost distortions as aforesaid but fairly and properly makes allowance for the delays in reserved matters approvals for which the Appellants were not responsible. The additional clause to be included ensures that the Indexation provisions serve their purpose better, and certainly equally well, as modified by securing that the Indexation provisions have no greater effect than that which they are properly intended to have. Further, for the avoidance of doubt, these modifications are proposed without prejudice to and in the alternative to any application hereinbelow to discharge or otherwise modify any of the principal obligations to which they relate.	

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Schedule 1 - Affordable Housing					
7. NC	Provision of 70 Extra Care Housing Units in Phase One - Viability Review 1	Paras 1.1, 2, 3 and 6 And Clause 1.1, the definition of Registered Provider	The Appellants propose that the obligations at paragraphs 1.1, 2, 3 and 6 be **Discharged.** Further, to accommodate the provision of AHUs by responsible providers of social housing that have not been approved by the Council as a 'Registered Provider' and to ensure they are not excluded under the s106, the Appellants propose that the definition of Registered Provider be modified to state'... or any other provider of social housing otherwise approved by the Council, such approval not to be unreasonably withheld.'	The obligation at paragraph 1.1 and associated obligations at 2, 3 and 6 to provide 70 Extra Care Housing Units in Viability Review Phase One serves no useful purpose because such units are both unnecessary and their cost is undermining the viability of this phase and jeopardising overall delivery. Moreover, the Appellants have been unable to find a provider. The obligation should accordingly be discharged. The financial benefits referred to above and the contribution made by this specific proposal to the viability and deliverability of the Development and ultimately therefore to ensuring that this obligation will serve any useful purpose at all, more than justifies this modification.	
8. NC	Provision of 24 Affordable Housing Units in Phase One - Viability Review 1	Paras 1.2, 4, 5 and 7	The Appellants apply to **Modify** the obligation at 1.2 to provide: '1.2 Hodson CG One, Hodson and Chilmington Green Developments covenant with the Council to construct 24 Dwellings	The obligation to provide 24 Affordable Housing Units in Viability Review Phase One is acknowledged as potentially serving a useful purpose, but the requirement to do	

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			within the Hodson CG One and the Chilmington Green Developments Phase One Land as Affordable Housing Units prior to the date on which the 1000th Dwelling to be Occupied is Occupied [rather than 650th] in accordance with the requirements of paragraphs 4 and 5 below. 4. The Affordable Housing Units referred to at paragraphs 1.2 and 1.3 above shall be provided as Shared Ownership Units.... 7. The Owners covenant with the Council not to Occupy more than 1,300 [rather than 650] Dwellings unless and until'.	so by the 650 Dwelling will adversely affect the Paying Owner's cashflow and compromise the viability of this Phase I - Viability Review I. Further, in the light of current market conditions and operator response, the obligation to include Affordable Rents is non-viable. It does not therefore serve any useful purpose and should be modified to provide instead for the provision of further Shared Ownership units. The purpose of these provisions can be better or at least equally well served by modifying them as proposed, supporting the Development whilst securing delivery of these units in any event within Phase 1. As can be seen from the Viability Report and the updated viability analysis therein, the cumulative benefit of the s106 modifications/discharges proposed results in a reduction in s106 finance costs from c£135m (excluding land costs) to c£30m (excluding land costs). Further, the cashflow benefit of this specific variation is evidenced at the	

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				Explanatory Statement, Appendix 3 Figure 5.2. The financial benefits referred to above and the contribution made by this specific proposal to the viability and deliverability of the Development and ultimately therefore to ensuring that this obligation will serve any useful purpose at all, more than justifying the changes sought to the s106 Agreement.	
9. NC	10% Affordable Housing to be provided in each Viability Review (2 to 10) as a minimum provision	Paragraphs 8, and 14	The Appellants apply for the obligation for this provision to be **Modified** such that it is completed by 75% occupied dwellings within the relevant review phase to be modified to 95% occupied dwellings.	The said obligation to provide 10% Affordable Housing Units in each Viability Review Phase is acknowledged potentially to serve a useful purpose but the requirement to do so by the 75% occupied dwellings will adversely affect the Paying Owner's cashflow and compromise the viability of each viability phase. The purpose of these provisions can be better or at least equally well served by modifying them as proposed, supporting the Development whilst securing delivery of the 10% AHU's in any event within each phase.	

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				Again, as can be seen from the Viability Report and the updated viability analysis therein, the cumulative benefit of the s106 modifications/discharges proposed results in a reduction in s106 costs from c£126m (excluding land costs) to c£20m (excluding land costs). Further, the cashflow benefit of this specific variation is evidenced at the Explanatory Note, Appendix 3 Figure 5.2. These figures clearly demonstrate also that consistent with Application No.1 the 10% provision is the upper limit of what can be sustained and is feasible in at least the first 4 Viability Review Phases. Certainly, the financial benefits referred to above and the contribution made by this specific proposal to the viability and deliverability of the Development and ultimately therefore to ensuring that this obligation will serve any useful purpose at all, more than justifies this modification. It is crucial that a balance is struck between the useful purpose intended to be served by any obligation and	

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				the ability to deliver the Development so as that purpose or any aspect of it can be served at all.	
10. A	Affordable Housing Unit tenure split 60% Affordable Rents and 40% Shared Ownership, with 5% of units to have Habinteg fixtures and fittings.	Paragraphs 9 and 12.	The Appellants apply to **Modify** the Affordable Housing tenure split ~~so as to provide 30% Affordable Rents and 70% Shared Ownership.~~ to provide the 10% affordable housing in each Viability Phase with a tenure split of 10% affordable rent and 20% shared ownership	The said obligation to provide AHU's subject to differing tenures is acknowledged potentially to serve a useful purpose but the current allocation solely to Affordable Rent Units and Shared Ownership Units is not sustainable or feasible, adversely affecting the Paying Owner's cashflow and compromising the viability of the current phase and potentially delivery of the overall Development. The purpose of these provisions can be better or at least equally well served by modifying them as proposed, supporting the Development whilst securing delivery of the 10% AHU's in any event within the current phase.	The Appellant accepts the compromise suggested in ABC's Statement of Casse that the provision of the 10% affordable housing in each Viability Phase with a tenure split of 10% affordable rent and 20% shared ownership in accordance with Ashford Local Plan policy HOU1 would continue to serve a useful purpose equally well
Schedule 2 – Carbon Offsetting					
11. NC	Provision of a Building Energy Performance	Schedule 2 and 43	The Appellants apply to **Discharge** the whole of Schedule 2 and the obligations therein.	This obligation no longer serves a useful purpose and should be discharged.	

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	Certificate for each building. Calculation of carbon off setting contributions and payment liabilities.		Whilst the above is understood to be agreed it will be necessary to give proper effect to this by credit is still included in each Viability Phase modifying Schedule 43, to ensure appropriate Review for the Carbon Off-setting Savings achieved by other means. The Appellants apply accordingly.	It is understood that this request is agreed by ABC both as to residential and non-residential.	
Schedule 3 – Combined Heat and Power Plant (CHP)					
12. A	Viability submissions and appraisal for a Combined Heat and Power Plant (CHP) or District Heating Plant (DHP)	Schedule 3	The Appellants apply to **Discharge** the obligation under Schedule 3 save for paragraph 1.3.2 and for the definition of Chilmington Green Carbon Reduction Project to be deleted	The Feasibility/Viability Studies were formally submitted for fact-checking by the Council on 5 April 2019. In breach of paragraph 2 of Schedule 3 no response was forthcoming from the Council within the requisite 28 days. In the event it was not until only recently in 2022 that any response was received, with the Council requesting further information on the submission. Given the content and conclusions reached in the submitted Feasibility/Viability Studies it is the case now that the CHP/DHP is not Feasible in all Scenarios, so that it should be confirmed now that except for paragraph 1.3.2 the obligations under Schedule 3 shall cease to have	The definition is not needed

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				any further effect as regards the District Centre.	
Schedule 4 – Community Management Organisation (CMO)				In this regard the Appellants refer to and rely in particular upon section 7 of the Explanatory Statement accompanying this application in addition to the reasons stated below.	
13. A	Provision of the CMO welcome pack etc.	Paragraph 2.1.2	The Appellants apply for ~~the obligation to provide a copy of the welcome pack document and other documentation to each first purchaser or tenant/occupier to be **Discharged.**~~ ~~Proposed modification by agreement: - the Council would agree to~~ a modification that allows the documentation to be provided in electronic form, unless the first purchaser or tenant/occupier do not have access to e-mail and/or for another reason require a paper copy in which case the Welcome Pack should be provided in paper form.	The provision of this copy documentation no longer serves any useful purpose, to do so is expensive and unnecessary given that the same documentation is readily accessible online.	Accept the compromise put forward in ABC's Statement of Case
14. W	Provision of the CMO First Operating Premises, their completion and acceptance	Para 4.1.3, and in particular the opening clause thereof providing 'That no Dwelling shall be Occupied'	~~Without prejudice to the Appellants primary position that this obligation has been met and in any event has been waived by the Respondents and/or they are estopped from relying thereon, the Appellant's apply to **Modify** the opening clause of 4.1.3 to provide 'That prior to 350 Dwellings being Occupied:- a) the CMO .. etc. '~~	Whilst the Appellants maintain their position regarding compliance, waiver and estoppel, it is acknowledged that these matters are disputed by the Respondents (ABC's Letter of Response dated 16/9/22 refers). Without prejudice to the Appellants' primary position,	Obligation has now been satisfied

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				therefore, but to avoid further controversy and ensure that this obligation continues to serve its intended purpose in terms of delivery of the CMO First Operating Premises rather than none, the Appellants seek to modify the same as claimed.	
15. NC	Continued maintenance obligations in respect of the CMO First Operating Premises	Paragraph 4.1.4	The Appellants apply for the obligations under paragraph 4.1.4 to be **Discharged.**	The First Operating Premises have been completed and ready for CMO occupation since March 2020. However, the CMO deferred occupation due to Covid at that time and has to date failed to take up occupation of the same. Given the passage of time it would be unfair to continue to require performance of these obligations, the appropriate time for their performance has now passed and they should no longer properly be regarded as serving a useful purpose.	
16. NC	Provision of the CMO Second Operating Premises	Para 5.1.1 to 5.1.5 and Sch 29D Item 6	The Appellants apply for these obligations under paragraph 5 and Schedule 29D Item 6 to be **Discharged.** In addition; for all appropriate consequential variations including the discharge of Schedules 33 and 35.	The Appellants position in relation to the CMO Operating Premises is that the First Operating Premises are sufficient and there is no sensible requirement for the Second. The First Operating Premises have been completed and ready for CMO occupation since March 2020.	

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				However, the CMO deferred occupation due to Covid at that time and has to date failed to take up occupation of the same. This is partly because the CMO staff prefer still to work from home following a change of working practices apparently brought about by the Covid 19 Pandemic, and partly because the premises are located near to building activity. The building is though in a central location chosen by ABC and the CMO and is more than sufficient for the operating requirements of the CMO on-site. It is proposed therefore that the CMO remains in this building and for any additional space it needs in the longer term to be accommodated in the other community provision including, particularly for temporary needs such as events, the schools. In the circumstances the CMO Second Operating Premises is surplus to CMO requirements and the associated obligations no longer serve any useful purpose and should be discharged. Furthermore, the cost of this provision at £250,000 is materially	

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				contributing to the non-viability of Phase 1 and for this reason also can no longer be regarded as serving a useful purpose. The removal of this cost at £250,000 is shown in the Viability Report at Appendix 3, Item ref 5700.2, and forms part of this updated viability analysis justifying each discharge sought.	
17. NC	Payment of Deficit Grant Contributions	Para 7 and Sch 29A Items 7, 10, 13, 16, 20, 22, 26, 29, 33, 37 and equivalent items in Sch 29B and 29C	The Appellants' application in this regard is to **Discharge** the Deficit Grant Contributions in their entirety.	The Appellants seek the discharge of the Deficit Grant Contributions obligations because they are substantially undermining the viability and deliverability of the Development and do not therefore realistically serve any useful purpose and should be discharged accordingly. The performance over the first years of the CMO has provided the clearest evidence that the proposed structure is not fit for purpose. The CMO has failed to carry out even the most basic of its functions despite grant funding, and it is abundantly obvious now that the nature and scale of the physical endowments and funds to be	

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				transferred under the existing obligations are well beyond what can be reasonably and sustainability be managed by this body. The CMO is currently over specified and its scale and complexity is not deliverable for a development of this nature and the time horizons over which it will be built. Based on the experience to date, it will be more appropriate to limit the scope and budget of the CMO to a list of essential services along the lines of a traditional Estate Management model. This will ensure the services can be delivered and managed sustainably without additional external funding. The CMO simply does not and should not require this additional level of funding to deliver the services actually required of it. Indeed, such additional funding it has received to date, has not been spent sensibly nor delivered any material benefits to residents. Rather the CMO should simply rely upon the monies collected under the Rentcharge Deeds and properly	

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				manage its accounts to meet its liabilities. Moreover, as stated, the total amount of the DGC in the sum of £3,350,000 to be paid in Phases 1 and 2 is undermining the viability of the Development and cannot be sustained. In the premises the DGC does not realistically serve any useful purpose and these contributions should be discharged in their entirety.	
18.	The provision of Rentcharge Deeds in respect of each freehold dwelling	Paragraph 8 and Schedule 31	Modification deleted from appeal		
19. NC	Provision of Commercial Estate: Basic Provision	Paragraphs 9 and 10 and Schedule 29D Item 14	The Appellants apply to **Discharge** the obligations under paragraphs 9 and 10 to provide the First Tranche Commercial Estate/Cash Endowment and Schedule 29D Item 14. In addition, the Appellants apply for any appropriate consequential variations including the **Discharge** of Schedule 36.	The Appellants seek the discharge of the Commercial Estate: Basic Provision at £2,921,000 because it no longer serves a useful purpose for the reasons referred to under Request 17 above. The essence of the current CMO structure is that it should operate as an independently viable commercial enterprise supported by the Commercial Estate, but this is not realistic. Further, there is little if any	

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				market demand for the Commercial Estate and significant issues over its future profitability, potential value for money and viability to support the operations of the CMO in any event. As matters stand, therefore, on any view it is clear that the CE no longer serves a useful purpose. The total capital cost of the Basic Provision in the sum of £2,921,000 even before indexation is undermining the viability of the Development and cannot be sustained. Even if, contrary to the foregoing, the Provision were to be regarded as useful, in practice it is not feasible but self-defeating and useless. The removal of the Basic Provision is shown in the Viability Report, Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5700.4 and forms part of this updated viability analysis justifying the discharge of obligations and modifications sought.	
20. NC	Provision of Commercial Estate: Second Tranche	Para 11 and Sch 29D Item 24	The Appellants apply to **Discharge** the obligations to provide Second Tranche Commercial Estate under paragraph 11 and Schedule 29D Item 24.	The reasons relied upon are as above for the First Tranche (Request 19) . The removal of the Second Tranche is shown in the Viability Report,	

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			In addition, the Appellants apply for any appropriate consequential variations including the discharge of Schedule 37.	Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5700.5 and forms part of this updated viability analysis justifying the discharge of obligations and modifications sought.	
21. NC	Provision of Commercial Estate: Third Tranche	Para 12 and Sch 29D Item 27	The Appellants apply to **Discharge** the obligations to provide the Third Tranche Commercial Estate under paragraph 12 and Schedule 29D Item 27.	The reasons relied upon are as above for the First and Second Tranches. The removal of the Third Tranche is shown in the Viability Report at Appendix 3, Infrastructure (Scenario 2) Line Ref 5700.6 and forms part of this updated viability analysis justifying the discharge of obligations and modifications sought.	
22. NC	Payment of Cash Endowment	Paragraph 13	The Appellants apply to **Discharge** the obligations under paragraph 13 to pay the First Cash Endowment and the Second Cash Endowment. In the premises there should be no Option A or Option B and all necessary consequential amendments removing reference to these should be made accordingly	Option B (requiring the payment of the First and Second First Cash Endowments) is fundamentally :flawed. The Commercial Estate was proposed to provide the CMO with a long term revenue stream. However, as above, it can already be seen no longer to serve any useful purpose. Further, a one off cash endowment does not have a useful purpose in replacing an asset endowment and it is not appropriate for Section 106 payments to be levied to fund an	

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				unspecified alternative investment by the CMO. The mistake by the draftsperson was to suppose any symmetry between Option A and Option B. Where Option A and the Commercial Estate: Second and Third Tranches do not proceed, that does not provide any justification for Option B and paying these very significant sums or indeed any sum directly to the CMO. Moreover, as referred to above, the total cost of the First and Second Cash Endowments (in the sum of 2 x £2,190,750) would undermine the viability of the Development and cannot be sustained.	
23. NC	Payment of CMO Start up Contribution	Paragraph 14	The Appellants apply to **Discharge** these obligations and for the sums already paid to be refunded accordingly.	The Appellants repeat and rely upon the reasons stated above in respect of the other CMO, DGC and CE obligations. In particular, that the funds paid to date have not been spent sensibly nor delivered any material benefits to residents. In reality these obligations have not achieved any useful purpose, should be discharged retrospectively and the wasted contributions refunded.	

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				The Viability Report and updated viability evidence in support of this application duly reflect this submission; see the Explanatory Statement Appendix 3: Viability Report (Appendix 3: Infrastructure - Cost Plan, Infrastructure Cost Plan (Scenario 2) Line Ref. 5700.3).	
Schedule 5 - Early Community Development				In this regard the Appellants refer to and rely in particular upon section 8 of the Explanatory Statement accompanying this application in addition to the reasons stated below.	
24. NC	To pay annual Early Community Development Contributions of £50,000	Paragraph 1.2	The Appellants apply for all past and further payments of ECD Contributions to be **Discharged.**	Notably, the Adopted 2017 - Early Community Development Strategy states (at page 13), 'Within the early year's timeframe it is expected that the existing community (i.e. those living in the Chilmington Hamlet - approximately 70 people/30 dwellings - together with a few scattered dwellings elsewhere) will be joined by a further circa 200 dwellings (circa 480 people) within the Chilmington Development Area, by the end of 2019. The first new residents are expected early 2019.' The payment of the first, second and third ECD contributions was	

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				predicated upon this expectation. However, as at January 2020 the occupation level on site was just 30 dwellings (circa 72 people), whilst as at August 2022 some 215 dwellings are occupied (circa 516 people). At these occupancy levels, the payments made are not proportionate to the population on site and therefore not in line with their originally intended purpose (as described at paragraph 2 of Schedule 5) and cannot be justified. Further, whilst it was originally envisaged that Main Phase I would be completed within 5 years, it is not now expected that this phase can be completed until 2031. Given this actual rather than planned housing trajectory and the associated levels of occupancy, the payments due under the existing terms are not proportionate to need in the short term. The first three payments have already been made (£150,000), but is unclear how if at all these monies have been expended in relation to community activity. Moreover, ABC has now, instead of and in substitution for these payments,	

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				secured £755,000 in funding from DHLUC for: • Improved access to, through and around Discovery Park and nearby Coleman's Kitchen woods (upgrading Public Rights of Way) • Promoting active travel and sustainability • The creation of a community space for the local community to meet and hold events • Stodmarsh Nutrient Neutrality Assessment and exploring bio-diversity net gain opportunities • Further community development work and cultural projects • Improving information sharing and communication for local residents • Supporting the growth of the Community Stakeholder Group. In context, therefore, these additional payments no longer serve any useful purpose and should be	

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				discharged accordingly, both retrospectively and prospectively with those payments already made duly refunded. The Viability Report and updated viability evidence in support of this application duly reflect this submission; with the first three payments shown in the Explanatory Statement Appendix 3: Viability Report (Appendix 3: Infrastructure Cost Plan, Line Ref. 5700.7) as refunded and the remaining liabilities discharged.	
Schedule 6 - Natural Green Space					
25. NC	The obligations to provide Informal/Natural Green Space Facilities	Para 1 et seq.	The Appellants do not seek to reduce the Informal/Natural Green Space but do seek to **Modify** some of the detail of these obligations as referred to below.	Although the Appellants do not seek to reduce their s106 obligations to provide Informal/Natural Green Space Facilities, but it should be noted and is duly recorded here, that the Green Space obligations are proving to be substantially more expensive than is presently allowed for as a cost to the Development at Schedule 29D. Rather than the sums shown there (see items 7, 15, 19 and 21) the true costs are likely to be in the order of £7.5m. The scale of this obligation	

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				ought properly to be taken into account when considered the other requests herein, particularly those based primarily or exclusively on viability and the deliverability of the Development.	
26. NC	The conditions attaching to occupation in each Main Phase	Paras 1.1.5 to 1.1.10	The Appellants seek to **Discharge or Modify** these conditions as appropriate to remove amongst other things the obligation to transfer the Green Space Facilities and the powers of veto effectively given to the CMO thereunder, as follows: Paragraph 1.1.5 to be modified to omit the last part of the clause beginning 'and are free from … a cosmetic nature)'. Paragraph 1.1.8 to be discharged. Paragraphs 1.1.9 and 1.1.10 also to be discharged.	The amendment to paragraph 1.1.5 is justified because there is no useful purpose to be served in the CMO being able to halt the Occupation of Dwellings in each or any of the Main Phases merely because the CMO identifies some Defect in the Green Space Facilities. This is a wholly unnecessary and oppressive provision. Further, in practice the CMO is neither equipped nor competent to be the arbiter of such matters. Rather they should simply be obliged to maintain and/or keep in repair and good condition the Green Space Facilities, by no doubt in practice using third party maintenance contractors. As for paragraph 1.1.8, there is simply no justification for imposing this additional burden upon the Appellants. It is not appropriate for Section 106 payments to be levied to	

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				meet transaction costs in this way. In any event, for the reasons stated below, the Appellants propose that the land should not be transferred at all. That to do so is unnecessary. As to the discharge of the transfer obligation under 1.1.9 and 1.1.10 so as these spaces are retained by the Appellants, there is no useful purpose to be served in transferring these assets to the CMO . Indeed, it would be unusual for this to be the case. Moreover, the provision of these spaces as an amenity would be unaffected and the obligations in relation to the same would serve their purpose equally well if varied in this way.	
27. NC	The 12 months repairing liability following transfer	Paragraph 1.2	The Appellants apply to **Discharge** this obligation.	The clause gives the CMO excessive powers to demand repairs are carried out. Particularly, where, as noted above, in reality the CMO is neither equipped nor competent to be the arbiter of such matters. Moreover, under a normal estate management (Manco) model the CMO should simply be obliged to maintain and/or keep in repair and	

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				good condition the Green Space Facilities, by no doubt in practice using third party maintenance contractors. On any view, therefore, the clause fails to serve any useful purpose and should be discharged	
28. NC	Provision for payment toward the Council's costs	Paragraph 2	The Appellants seek the **Discharge** of this payment obligation.	Because providing for payment toward the Council's costs undermines the purpose of the clause (to secure the transfer on appropriate terms), compensating the Council even in cases where it unreasonably refuses approval, which should not the case. The clause does not therefore serve any proper or useful purpose and should be discharged accordingly.	
Schedule 7 – Chilmington Hamlet				In this regard the Appellants refer to and rely in particular upon section 8 of the Explanatory Statement accompanying this application in addition to the reasons stated below.	
29. M	Chilmington Hamlet facilities to be provided by 1400 occupations	Para 1.3 and Sch 29D Item 12	The Appellants apply for the following **Modifications:**	The obligation at paragraphs 1.1 to 1.3 to provide the Chilmington Hamlet facilities, including the obligation to submit the Design Brief, are acknowledged potentially to	The request to modify the trigger for payment under Schedule 29D item 12 is inconsistent with the application (item 116) to discharge 29D in its entirety.

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			That paragraph 1.3 be modified to read 'Unless the Council agrees otherwise, not to occupy more than 3,500 Dwellings unless ... ' In addition, the Appellants apply for paragraph 1.3.1 to be modified to omit the last part of the clause beginning 'and are free from ••• a cosmetic nature). Further, the Appellants apply to discharge the obligation to transfer the Facilities, substituting an obligation to grant a lease of the same for a term of 21 years. Thus, the Appellants apply for paragraph 1.3.4 to be discharged and paragraph 1.3.5 to be modified to provide for the Facilities to be transferred to the CMO by way of the grant of a lease in the Facilities for a term of 21 years at a peppercorn ground rent and which (a) shall not secure any service charge in relation to the premises (b) shall be unencumbered (except for any easements or other rights to lay maintain enter report divert renew replace connect to and use any new or existing and proposed service media) and subject always to the provisions of this Deed and any conditions to the Planning Permission that apply to the land and (c) shall confer all legal rights and easements over neighbouring and adjacent land that are reasonably necessary and appropriate to	serve a useful purpose but should be delayed until the facilities are viable (i.e. there are enough people living on the development to make sufficient use of them). Based on the general profile of demand for cricket facilities and the total demand for 2 to meet the needs of the whole development, Chilmington Hamlet is likely to be viable no earlier than 3,500 homes. Further, the current front loading of this community provision, the Hamlet by 1,400 Dwellings and the Community Hub by 1,800 Dwellings, will not only have a significantly detrimental effect on the Paying Owner's cashflow in this initial phase of the Development, but more critically without modification will likely cause the loss of the funding available to the Appellants to carry out the Development at all. Rather, the purpose of these provisions can be better or at least equally well served by modifying them as proposed, supporting the Development whilst securing delivery of these facilities in any event at a	

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			enable the demised land to be used for its intended uses and purposes. The form of the said lease to be acceptable to the CMO (its approval of the form not to be unreasonably withheld). And, Paragraph 1.3.6 to be modified to provide that the Owners have served the CMO with an engrossed lease/s (as appropriate) as aforesaid of the land on which the Facilities are located in a form previously approved by the CMO or in the event that the CMO has still not approved the same within 6 weeks of the relevant owner serving the same) in a form previously approved by the Council where the Council's approval of the form of lease proposed by the Owners is not to be unreasonably withheld ... etc. ~~Schedule 29D item 12, to be modified accordingly so that the trigger for payment refers to 3,250 Dwellings~~	relatively early stage in the life of the Development. Certainly, given the level of capital cost here (£1.266m) this is another significant factor in terms of viability and deliverability, justifying the deferment of this obligation to support the ultimate delivery of the entire Development. The proposed modification is captured in the updated sensitivity analysis in the Viability Report at Appendix 3 of the Explanatory Statement. As for the modification and/or discharge of paragraphs 1.3.4 to 1.3.6 to provide for the grant of a 21 year lease rather than a freehold transfer, this will not detract from the provision of these Facilities and the obligations will serve their existing purpose equally well if modified as proposed.	
30. NC	Submission and Approval of Design Brief and Specification by 1,000 occupations	Paras 1.1 and 1.2	The Appellants apply to **Modify** paragraph 1.1 to provide, `Not to Occupy more than 3,000 Dwellings unless a design brief and specifications for the following indicative facilities and/or facilities of no greater environmental impact as may be approved by	The modification in occupations is proposed for the reasons stated above in respect of the provision of these facilities and is consequential upon that modification.	

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			the Council (approval mot to be unreasonably withheld) ... at Schedule 7A to be provided in Chilmington Hamlet has been approved by the Council with a total capital cost of £1,266,000.00 ... including fees, contingencies, specification and design costs, supervision fees, access roads and service costs (`the Facilities')',  Further, the Appellants apply for the following provision to be added for the avoidance of doubt `The scope of the said facilities to be altered as may reasonably be required to match the stipulated total capital cost as aforesaid.'	Tie modification of the planned costs to include fees, contingencies, specification and design costs, supervision fees, access costs and service costs, is justified for reasons of viability and deliverability, ensuring that the cost of these Facilities is not so substantial as to undermine the viability of the relevant Main Phases and strike at the very delivery of these assets. The third modification is proposed to reinforce the existing obligation and ensure the purpose of the preceding paragraphs is fulfilled, i.e. the provision of the Chilmington Hamlet facilities at a total cost of £1,266,000.	
31. NC	The provision for consultation with the CMO and stakeholders etc., and approval of the details of the consultation	Paragraph 1.2 and its sub-paragraphs 1.2.1, 1.2.2 and 1.2.3	The Appellants apply to **Modify** paragraph 1.2 and/or discharge aspects of the same as follows: Paragraph 1.1.2 to be modified to omit the requirement to consult the CMO (or its substitute). Paragraph 1.2.2 to be discharged so as to omit the requirement to consult and to obtain approval in respect of the details of the consultation, and	The consultation with the CMO under 1.1.2 is surplus to requirements, given that the Council will have the opportunity already to consult with all interested parties when approving the design brief and specification. This part of the paragraph does not, therefore, serve any useful purpose and should be discharged or modified accordingly. As for 1.2.2, the requirement to consult over the details of the consultation (whether with the CMO	

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			Paragraph 1.2.3 to be modified simply to state 'shall include the consultation responses.'	or Council) also fails to serve any useful purpose. It unnecessarily complicates what should be a relatively straightforward and simple exercise. 'This obligation should be discharged accordingly. The modification to 1.2.3 is consequential on the foregoing.	
32. NC	The 12 months repairing obligation following transfer	1.4	The Appellants apply to **Discharge** this obligation in its entirety.	The clause gives the CMO excessive powers to demand repairs are carried out, particularly where, as noted above, in reality the CMO is neither equipped nor competent to be the arbiter of such matters. Further, under a normal Estate Management (Manco) model the CMO should simply be obliged to maintain and/or keep in repair and good condition the Green Space Facilities, by no doubt in practice using third party maintenance contractors. On any view, therefore, the clause fails to serve any useful purpose and should be discharged.	
33. NC	Provision for payment toward the Council's costs	Paragraph 2	The Appellants apply to **Discharge** this payment obligation.	Because providing for payment toward the Council's costs undermines the purpose of the	

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				clause (to secure the transfer on appropriate terms), compensating the Council even in cases where it unreasonably refuses approval, which should not be the case. The clause does not therefore serve any proper or useful purpose and should be discharged accordingly.	
Schedule 8 - Children and Young People's Play Space				In this regard the Appellants refer to and rely in particular upon section 8 of the Explanatory Statement accompanying this application in addition to the reasons stated below.	
34. NC	The provision of the design brief and specification for the children's and young people's play spaces and/or other facilities	Paragraph 1	The Appellants apply to **Modify** the delivery of the design brief and specification for each play space and/or the other facilities in each Main Phase 1, 2, 3 and 4, by altering the number of Dwellings specified in the unnumbered sub-paragraphs of Paragraph 1.1 from the current 50, 50, 750, 650 and 1150 to 350, 500, 850, 850 and 1350 respectively and to modify the planned costs to include fees and other costs . The Appellants request that paragraph 1.1.1 be modified to read `... and not exceeding a total of £2,585,1.43.00 ... for the play space including fees, contingencies, specification	So far as the initial 0.5ha in Main Phase 1 is concerned the practical point arises, that it is not possible to provide this safely until the surrounding construction works are completed. The other play spaces are postponed for the same construction related reasons. Notably, in doing so the delivery of these assets remains substantially in line with policy. Further, given the level of capital cost here (£2.585m) this is another significant factor in terms of viability and deliverability, justifying the	

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			and design costs, supervision fees, access roads and service costs (`the Facilities')'.  Further, before 1.1.2, the Appellants apply to insert `The scope of the said Facilities to be altered as agreed with the Council to match the stated capital cost for each of PS1, 2, 4, 5 and 7 and the total capital cost as aforesaid.'	deferment of these obligations supports the ultimate delivery of the entire Development. Likewise, the modification of the planned costs to include fees, contingencies, specification and design costs, supervision fees, access costs and service costs, is justified for reasons of viability and deliverability, ensuring that the cost of these Facilities is not so substantial as to undermine the viability of the relevant Main Phases and strike at the very delivery of these assets. The proposed modification is captured in the updated sensitivity analysis in the Viability Report at Appendix 3 of the Explanatory Statement. The added sub-paragraph before 1.1.2 is proposed for the avoidance of doubt, to reinforce the existing obligation and ensure the purpose of the preceding paragraphs is fulfilled, i.e. the provision of each PS[Number] at the cost stated, with the whole provided at a total cost not exceeding that also stated.	

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35. NC	The provision for consultation with the CMO, stakeholders etc. and approval of the details of the consultation	Paragraph 1.1.2	In addition, the Appellants apply to **Modify** paragraph 1.1.2 as follows: To omit the requirement to consult with the CMO and to obtain approval in respect of the details of the consultation, and consequentially, To omit the words 'and in particular the CMO's comments on the costings.'	The consultation with the CMO (or its substitute) under 1.1.2 is surplus to requirements, given that the Council will have the opportunity already to consult with all interested parties when approving the design brief and specification. This part of the paragraph does not, therefore, serve any useful purpose and should be discharged or modified accordingly. As for the requirement to consult over the details of the consultation (whether with the CMO or Council) this also fails to serve any useful purpose. It unnecessarily complicates what should be a relatively straightforward and simple exercise. This part of the obligation (in parenthesis) should be discharged accordingly. The omission of the final clause of 1.1.2 is simply consequential on the foregoing.	
36. NC	The applicable occupation limits in respect of the provision and construction of each Play Space	Paragraphs 1.2 and 1.4	The Appellants apply to **Modify** the occupation limits in paragraphs 1.2 and 1.4 from the current 500, 1100 and 1100 to 700, 1200 and 1300 respectively (the first 500 trigger for PS1 and the final 1500 trigger for PS7 in Main Phase 4 to remain unaltered).	The modification in occupations is proposed for the reasons stated above in respect of the provision of the design brief and specification for each of the play spaces and/or other	

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	in the relevant Main Phase			facilities and follows upon those modifications.	
37. NC	The conditions attaching to occupation in relation to each Play Space in each Main Phase	Paras 1.2.1 to 1.2.6	The Appellants seek to **Discharge** or modify these conditions to remove amongst other things the powers of veto effectively given to the CMO thereunder, as follows: Paragraph 1.2.1 to be modified to omit the last part of the clause beginning 'and are free from ... a cosmetic nature). Further, the Appellants apply to discharge the obligation to transfer the Facilities, substituting an obligation to grant a long lease of the same, being a lease (including a sub-lease) with a term of 125 years at a peppercorn ground rent and which makes the same provisions (a)-(c) as referred to above (see Schedule 7). Thus, the Appellants apply for paragraph 1.2.4 to be discharged and paragraphs 1.2.5-6 to provide instead that the Facilities, are: either to be transferred to the CMO by way of the grant of a lease as aforesaid of the land on which the Facilities are located in a form acceptable to the latter (their approval of the form not to be unreasonably withheld) or	The amendment to paragraph 1.2.1 is justified because there is no useful purpose to be served in the CMO being able to halt the Occupation of Dwellings in each or any of the Main Phases merely because the CMO identifies some Defect in the play spaces and/or other facilities. This is a wholly unnecessary and oppressive provision. Further, in practice the CMO is neither equipped nor competent to be the arbiter of such matters. Rather, they should simply be obliged to maintain and/or keep in repair and good condition the spaces/facilities, by no doubt in practice using third party maintenance contractors. As for the modification and/or discharge of paragraphs 1.2.4 to 1.2.6 to provide for the grant of a long lease rather than a :freehold transfer, this will not detract from the provision of these Facilities and the obligations will serve their existing purpose equally well if modified as proposed.	

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			where the Owners have served the CMO with an engrossed lease/s (as appropriate} as aforesaid of the land on which the Facilities are located in a form previously approved by the CMO or (in the event that the CM has still not approved the same within 6 weeks of the relevant owner having served the same) in a form previously approved by the Council (where the Council's approval of the form of lease proposed by the Owners is not to be unreasonably withheld) that is executed ... etc.		
38. NC	The 12 months repairing liability following transfer	1.3	The Appellants apply to **Discharge** this obligation in its entirety.	The clause gives the CMO excessive powers to demand repairs are carried out, without providing any effective dispute resolution mechanism . Particularly, where, as noted above, in reality the CMO is neither equipped nor competent to be the arbiter of such matters. Further, under a normal Estate Management (Manco) model the CMO should simply be obliged to maintain and/or keep in repair and good condition the Green Space Facilities, by no doubt in practice using third party maintenance contractors.	

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				On any view, therefore, the clause fails to serve any useful purpose and should be discharged.	
39. NC	Provision for payment toward the Council's costs	Paragraph 2	The Appellants apply to **Discharge** this payment obligation.	Because providing for payment toward the Council's costs undermines the purpose of the clause (to secure the transfer on appropriate terms), compensating the Council even in cases where it unreasonably refuses approval, which should not be the case. The clause does not therefore serve any proper or useful purpose and should be discharged accordingly.	
Schedule 9 – Allotments				In this regard the Appellants refer to and rely in particular upon section 9 of the Explanatory Statement accompanying this application.	
40. M	Provision of Main Phase 1 Allotments by 1000 Dwelling Occupations	Para 1 and Sched 29D Item 10	The Appellants apply to **Modify** this obligation so that the provision of the Main Phase 1 Allotments is deferred to 1,450 Dwelling Occupations; i.e. paragraph 1.1 should be modified to read `Unless the Council agree otherwise, not to Occupy more than 1,450 Dwellings in Main Phase 1 or ...'	The obligation to provide the Main Phase 1 allotments is acknowledged potentially to serve a useful purpose but the requirement to do so by the 1000th Dwelling Occupations will adversely affect the Paying Owner's cashflow in Main Phase 1 and compromise the viability of this phase.	The request to modify the trigger for payment under Schedule 29D item 10 is inconsistent with the application (item 116) to discharge 29D in its entirety.

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			Paragraph 1.3 likewise to be modified to refer at sub-paragraph 1.3.1 to 1,450 Dwellings. ~~Schedule 29D item 10, also to be modified accordingly so that the trigger for payment refers to 1450 Dwellings in Main Phase 1~~.	The purpose of these provisions can be better or at least equally well served by modifying them as proposed supporting the Development whilst securing delivery of these facilities in any event within the same phase as under the existing provisions. The revised trigger is based on the point at which demand for the minimum viable size (20 plots/0.66 ha) of allotment is reached (1,375 homes). The deferment of this cost is captured in the Viability Report at Appendix 3 of the Explanatory Statement and forms part of this revised viability analysis justifying the discharge of obligations and modifications sought	
41. M	Provision of Main Phase 2 Allotments by 1000 Dwelling Occupations	Para 1 and Sched 29D Item 11	The Appellants apply to **Modify** this obligation so that the provision of the Main Phase 2 Allotments is deferred to 1,100 Dwelling Occupations; i.e. paragraph 1.1 should be modified to read 'Unless the Council agrees otherwise, not to Occupy ... more than 1,100 Dwellings in Main Phase 2 or ... '	The Appellants refer to and rely upon the reasons advanced above in relation to Main Phase 1 Allotments.	The request to modify the trigger for payment under Schedule 29D item 11 is inconsistent with the application (item 116) to discharge 29D in its entirety.

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			Paragraph 1.3 likewise to be modified to refer at sub-paragraph 1.3.2 to 1,100 Dwellings. ~~Schedule 29D item 11, to be modified accordingly so that the trigger for payment refers to 1,325 Dwellings in Main Phase 2.~~		
42. NC	Provision of Main Phase 3 Allotments by 1400 Dwelling Occupations	Para 1 and 1.3.3 and Sched 29D Item 18	The Appellants apply for this obligation to be **Discharged.**	The obligation to provide these allotments is unnecessary and represents over provision of such facilities. Moreover, their cost is significant (£322,500) and serving only to undermine the viability and ultimately the deliverability of the Development. The discharge of this cost is captured in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5500.3 and forms part of this revised viability analysis justifying each discharge and modification sought.	
43. NC	Provision of Main Phase 4 Allotments by 1400 Dwelling Occupations	Para 1 and 1.3.4 and Sched 29D Item 20	The Appellants apply for this obligation to be **Discharged.**	The obligation to provide these allotments is unnecessary and represents over provision of such facilities. Moreover, their cost is significant (£344,896) and serving only to undermine the viability and	

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				ultimately the deliverability of the Development. The discharge of this cost is captured in the Viability Report, Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5500.4 and forms part of this revised viability analysis justifying each discharge and modification sought.	
44. NC	The conditions attached to the provision of the Allotments in each Main Phase	Paragraphs 1.1.1 to 1.1.6	Firstly, the Appellants apply to **Modify** the s,106 to allow the following clause to be added to paragraph 1.1.1 (after '... reserved matters approval'), 'and the planned cost for that Allotment.' Further, the Appellants apply to **Discharge** the obligation to transfer the Allotment Facilities to the CMO entirely and/or in so far as necessary modify them to provide for these Facilities to be provided pursuant to a renewable licence/s. Thus, the Appellants propose that all of 1.1.4 to 1.1.6 are **Discharged** and 1.1.4 replaced with a simple obligation that 'the Allotment Facilities have been provided to the CMO by way of renewable bi-annual licence/s (as appropriate) in a form acceptable to the CMO, its approval not to be unreasonably withheld.	The modification to paragraph 1.1.1 is proposed for the avoidance of doubt and to reinforce the existing obligation, that it may better serve its intended purpose to provide Main Phase 1 Allotment and Main Phase 2 Allotment in accordance with the agreed budget or may serve that purpose equally well. As for the discharge and/or modification of paragraphs 1.1.4 to 1.1.6 to provide for the grant of a licence rather than a freehold transfer, this will provide additional flexibility in relation to the land use, catering for varying demand for allotments without detracting from the provision of these Facilities where they are wanted. Accordingly, the obligations will serve their	

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				existing purpose equally well if modified as proposed. As for paragraph 1.1.4, there is simply no justification for imposing this additional burden upon the Appellants. It is not appropriate for Section 106 payments to be levied to meet transaction costs in this way.	
45. NC	The 12 months repairing liability following transfer	1.2	The Appellants apply to **Discharge** this obligation in its entirety.	The clause gives the CMO excessive powers to demand repairs are carried out, without providing any effective dispute resolution mechanism .Particularly, where, as noted above, in reality the CMO is neither equipped nor competent to be the arbiter of such matters. Further, under a normal estate management (Manco) model the CMO should simply be obliged to maintain and/or keep in repair and good condition the Green Space Facilities, by no doubt in practice using third party maintenance contractors. On any view, therefore, this paragraph fails to serve any useful purpose and should be discharged.	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	Reason for change on 23/12/24 or 27/03/25 (if applicable)
46. NC	Provision for payment toward the Council's costs	Paragraph 2 and 3	The Appellants apply to **Discharge** this payment obligation.	Because providing for payment toward the Council's costs undermines the purpose of the clause (to secure the transfer on appropriate terms), compensating the Council even in cases where it unreasonably refuses approval, which should not be the case. The clause does not therefore serve any proper or useful purpose and should be discharged accordingly.	
Schedule 10 - DP3, Discovery Park Sports Hub and Discovery Park Sports Pitches				In this regard the Appellants refer to and rely in particular upon section 8 of the Explanatory Statement accompanying this application in addition to the reasons stated below.	
47. ~~NC~~ WM	Payment of £20,000 toward masterplanning	Paragraph 2.1	~~The Appellants apply for this obligation to be **Discharged** and for the sum of £20,000 already paid to be refunded.~~ ~~Thus, the Appellants propose that clause 1.1 should be **Modified** to read as follows:~~ ~~'To prepare a masterplan for the Discovery Park, the Discovery Park Sports Hub, PS6 and the Discovery Park Sports Pitches in consultation with the Council and such others as the Council may decide; and ...'~~	~~The masterplan should properly and sensibly be prepared by the Appellants in consultation with the Council and other stakeholders. The relevant information for masterplanning is better known to the Appellants and it they who should be carrying this out and submitting the same for approval (see Request 53 below).~~ ~~In reality the obligation as existing does not therefore serve any useful~~	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	Reason for change on 23/12/24 or 27/03/25 (if applicable)
				~~purpose and should be discharged accordingly.~~	
48. NC	Submission and approval of design briefs and specifications for the Discovery Park Sports Pitches and for the Discovery Park Sports Hub by 1000 Dwelling Occupations	Paragraph 2.1	The Appellants apply to **Modify** this obligation so that the submission approval of the design briefs and specifications should be re-geared from 1,000 Dwelling Occupations to 2,650 Occupations and to modify the planned costs to include fees and other costs ; i.e. paragraph 2.1 should be modified to read: 'Unless the Council agrees otherwise, not to Occupy more than 2,650 Dwellings unless; 2.1.1 design briefs and specifications for the Discovery Park Sports Pitches and for the Discovery Park Sports Hub and/or other facilities of no significantly greater impact ... at Schedule 10A have been approved by the Council with a total capital cost of the Discovery Park Sports Pitches not exceeding £2,782,000 (two million seven hundred and eighty two thousand pounds) including fees, contingencies, specification and design costs ... and with a total capital cost of the Discovery Park Sports Hub not exceeding £4,976,157 (four million nine hundred and seventy six thousand one hundred and fifty seven pounds) including fees, contingencies, specification and design costs etc.'	The obligation to provide these community assets (at a total capital cost of up to £2,782,000.00 + £4,976,157) in stages after some 3200 and 5000 Dwellings is acknowledged potentially to serve a useful purpose subject to requests 49 to 56 below but the requirement to submit the design briefs and specifications by 1,000 is wholly premature. Given the present housing trajectory and rate of occupations, modifying the number of occupations by which submission/approval is required from 1,000 to 2,650 will provide a similar and certainly ample lead in time for the delivery of these assets even by the stipulated 3,200 and 5,000 Dwellings (and therefore certainly by the revised 3,650 and 5,500 - see below). Further, the modification of the planned costs to include fees, contingencies, specification and design costs, supervision fees, access costs and service costs, is justified for reasons of viability and deliverability,	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	Reason for change on 23/12/24 or 27/03/25 (if applicable)
				ensuring that the cost of the Sports Facilities is not so substantial as to undermine the viability of the relevant Main Phases and strike at the very delivery of these assets. ' In the premises, Clause 2.1 will therefore serve its purpose equally well and in full if modified as proposed, allowing additional time for this obligation without impacting the ultimate delivery of these assets substantially in accordance with the existing terms of the s106 Agreement.	
49. NC	The provision for consultation with the CMO, stakeholders and the public and approval of the details of the consultation	Paragraph 2.1.2	In addition, the Appellants apply for paragraph 2.1.2 to be **Modified** to omit the requirement to consult the CMO and omit the requirement to consult and to obtain approval in respect of the details of the consultation and to omit the final clause 'and in particular the CMO's comments on the costings;'	The consultation with the CMO under 2.1.2 is surplus to requirements, given that the Council will have the opportunity already to consult with all interested parties when approving the design brief and specification. This part of the paragraph does not, therefore, serve any useful purpose and should be discharged or modified accordingly. As for the requirement to consult over the details of the consultation (whether with the CMO or Council) this also fails to serve any useful purpose. It unnecessarily complicates what should be a relatively	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	Reason for change on 23/12/24 or 27/03/25 (if applicable)
				straightforward and simple exercise. This part of the obligation (in parenthesis) should be discharged accordingly. The omission of the final clause is consequential on the above.	
50. M	The obligations to provide the Sports Facilities (1st Phase)	Para 2.2 and 2.8 and Sched 29D Item 26	The Appellants apply to **Modify** paragraph 2.2 to provide, 'Not to Occupy more than 3,650 [rather than 3,200] Dwellings unless: 2.2.1 the first phase of the Sports Facilities has been provided in accordance with the reserved matters approvals and the planned cost for these facilities. 2.8 To construct and provide:- 2.8.1 The first phase of the Sports Facilities before the Occupation of more than 3,650 rather than 3200 Dwellings in accordance with the requirements of paragraph 2.2.1 of this schedule; … ~~At Schedule 29D Item 26, the payment trigger likewise to be deferred from 2,800 to 4,000 Dwellings.~~	The Appellants submit that given the availability of alternative sports facilities and assets that precede the delivery of this first phase, the re-timing of this obligation is such that it will serve its purpose equally well if modified as proposed. 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.	The request to modify the trigger for payment under Schedule 29D item 26 is inconsistent with the application (item 116) to discharge 29D in its entirety.
51. M	The obligations to provide the Discovery Park Sports Facilities (2nd Phase)	Para 2.3 and 2.8 and Sched 29D Item 30	The Appellants apply to **Modify** paragraph 2.3 to provide, 'Not to Occupy more than 5,500 [rather than 5000] Dwellings unless: 2.3.1 the second phase of the Sports Facilities have been provided in accordance	The Appellants submit that given the extensive provision of sports facilities and assets that precede this delivery of this second phase, the re-timing of this obligation is such that it will	The request to modify the trigger for payment under Schedule 29D item 30 is inconsistent with the application (item 116) to discharge 29D in its entirety.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	Reason for change on 23/12/24 or 27/03/25 (if applicable)
			with the reserved matters approvals and the planned cost for these facilities 2.8 To construct and provide:- … 2.8.2 The second phase of the Sports Facilities prior to the Occupation of 5,500 [rather than 5000] Dwellings in accordance with the requirements of paragraph 2.3.1 of this schedule; ... ~~At Schedule 29D Item 30, the payment trigger likewise to be deferred from 4,600 to 5,100 Dwellings.~~	serve its purpose equally well if modified as proposed, in real terms the 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	
52. M	The obligations to provide DP3 and PS6 and the applicable occupation limits	Paragraphs 2.6.1, 2.6.2, 2.6.3, 2.6.4, the relevant sub-paragraphs of 2.8 and Sched 29D Items 22, 23, 28 and 31	The Appellants apply for the following **Modifications:** ~~Delivery of DP3 in Phase 1 be deferred from 1500 to 2000 Occupations (subsequent phases remain unchanged); i.e.~~ para 2.6 to be modified to read: 'Not to Occupy more than: 2.6.1 2650 [rather than 1500] Dwellings unless 1 ha of DP3 has been provided 2.6.2 3500 [rather than 2500] Dwellings unless 0.86 of DP3 has been provided 2.6.3 5000 [rather than 4000] Dwellings unless PS6 and 1.08 ha of DP3 have been provided	The obligations to provide these areas of DP3 are acknowledged potentially to serve a useful purpose but the requirement to provide the first 1 ha by the 1500th Dwelling Occupation will adversely affect the Paying Owner's cashflow in Main Phase 1 and compromise the viability of this phase. It will also jeopardise the funding presently available and further put at risk the delivery of the Development. The consequential deferment of the remainder of the DP3 provision and PS6 is similarly justified on viability and ultimately deliverability grounds.	The text struck through in the second paragraph of the modifications column in inconsistent with the modifications specified to paragraph 2.6 The request to modify the trigger for payment under Schedule 29D item 22 is inconsistent with the application (item 116) to discharge 29D in its entirety.

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	Reason for change on 23/12/24 or 27/03/25 (if applicable)
			2.6.4 5750 [rather than 5500] Dwellings unless 4.42 ha of DP3 has been provided ... ' '2.8 To construct and provide:- 2.8.3 1 ha of DP3 before the Occupation of more than 2650 [rather than 1500] Dwellings in accordance with the requirements of paragraph 2.6.5 of this schedule; and 2.8.4 0.86 ha of DP3 before the Occupation of more than 3500 [rather than 2500] Dwellings in accordance with the requirements of paragraph 2.6.5 of this schedule; and 2.8.5 PS6 and 1.08 ha of DP3 before the Occupation of more than 5000 [rather than 4000] Dwellings in accordance with the requirements of paragraph 2.6.5 of this schedule; and 2.8.6 4.42 ha of DP3 before the Occupation of more than 5750 [rather than 5500] Dwellings in accordance with the requirements of paragraph 2.6.5 of this schedule. ~~At Schedule 29D Item 22, the payment triggers likewise to be deferred from 1350 to 1850, from 2,350 to 3,350, from 3,850 to 4,850 and from 5,350 to 5,600 Dwellings respectively.~~	The purpose of these provisions can be better or at least equally well served by modifying them as proposed, supporting the Development whilst securing delivery of these facilities in any event from Main Phase 2 and thereafter at intervals through the course of the Development similar or shorter to those provided under the existing terms. The deferred requirement to provide DP3 as proposed will result in a cost reduction within Main Phase 1. This specific item is shown in the Viability Report at Appendix 3 at line 5500.29. The cumulative effect of this reduction together with the other discharges/modifications proposed in this application are duly reflected in the said report, in support of the changes sought herein to the s106 Agreement.	

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53. NC	The obligation to provide the design brief and specification for DP3 and PS6 etc	Para 2.5	The Appellants apply to **Modify** paragraph 2.5 to provide, 'Not to Occupy more than 2100 [rather than 1000] Dwellings unless: 2.5.1 a design brief and specification for DP3 ... at Schedule 10B have been submitted to the Council for approval with a total capital cost of the DP3 not exceeding £2,056,813 (two million and fifty six thousand eight hundred and thirteen pounds) including PS6, fees, contingencies, specification and design costs etc '. In addition, the Appellants apply for paragraph 2.5.2 to be modified to omit the requirement to consult the CMO (or its substitute) and omit the requirement to consult and to obtain approval in respect of the details of the consultation.	These modifications are proposed for the reasons stated above in respect of the provision of these facilities and consequential upon that modification, and for the further reasons below. The modification of the total costs of the Facilities to include PS6, fees, contingencies, specification and design costs, supervision fees, access costs and service costs, is justified for reasons of viability and deliverability, ensuring that the cost of these Facilities is not so substantial as to undermine the viability of the Development and strike at the very delivery of these assets. The requirement to consult over the details of the consultation fails to serve any useful purpose, given that any such consultation should be a relatively straightforward and simple exercise. This element of the obligation should therefore be modified or discharged as appropriate. Likewise, the consultation with CMO is surplus to requirements, given that the Council will have the opportunity already to consult with all interested	

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				parties when approving the design brief and specification. Again, therefore, this element of the paragraph serves no useful purpose and should be modified or discharged as appropriate.	
54. NC	The various conditions attaching to the delivery of each of the first and second phases of the Sports Facilities and the DP3	Paragraphs 2.2.1, 2.3.1 and 2.6.5 requiring provision of the relevant facilities in accordance with reserved matters etc. Paragraphs 2.2.4, 2.3.4 and 2.6.8 requiring payment of tax. Paragraphs 2.2.6, 2.3.6 and 2.6.10 dealing with the approval of the relevant transfers.	The Appellants apply to **Modify** the s.106 to allow the following clause to be added to paragraphs 2.2.1, 2.3.1 and 2.6.5 (after'... design briefs and specification'), 'and at a cost not exceeding the total capital cost for these facilities stated above.' Further, the Appellants apply to D**ischarge** the obligations to transfer each of the first phase and second phase of the Sports Facilities and the DP3 so as to substitute an obligation in each case to grant a lease of the same, being a lease (including a sub-lease) with a term of 21 years at a peppercorn ground rent and which makes the same provisions (a)-(c) as referred to above (see Schedule 7). Thus, the Appellants apply for paragraphs 2.2.4-2.2.6, 2.3.4-2.3.6 and 2.6.8-2.6.10 to be discharged and new paragraphs 2.2.4-5, 2.3.4-5 and 2.6.8-9 to provide instead that each phase or the (DP3) Facilities, as the case may be, is: either:	The modification to paragraphs 2.2.1, 2.3.1 and 2.6.5 are proposed for the avoidance of doubt and to reinforce the existing obligations. As for the modification and/or discharge of paragraphs 2.2.4 to 2.2.6, 2.3.4 to 2.3.6 and 2.6.8 to 2.1.10 to provide for the grant of a long lease rather than a freehold transfer, this will not detract from the provision of these phases and Facilities and the obligations will serve their existing purpose equally well if modified as proposed.	

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			to be transferred to the CMO by way of the grant of a lease as aforesaid of the land on which the phase/Facilities are located in a form acceptable to the latter (their approval of the form not to be unreasonably withheld). or: where the Owners have served the CMO with an engrossed lease/s (as appropriate) as aforesaid of the land on which the phase/Facilities are located in a form previously approved by the CMO or (in the event that the CMO has still not approved the same within 6 weeks of the relevant owner having served the same) in a form previously approved by the Council (where the Council's approval of the form of lease proposed by the Owners is not to be unreasonably withheld) that is executed ... etc.		
55. NC	The 12 months repairing liability following the transfer of the second phase of the Sports Facilities and the DP3	Paragraphs 2.4 and 2.7	The Appellants apply to **Discharge** these obligations.	The clause gives the CMO excessive powers to demand repairs are carried out, without providing any effective dispute resolution mechanism. Particularly, where, as noted above, in reality the CMO is neither equipped nor competent to be the arbiter of such matters.	

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				Further, under a normal Estate Management (Manco) model the CMO should simply be obliged to maintain and/or keep in repair and good condition the Green Space Facilities, by no doubt in practice using third party maintenance contractors. On any view, therefore, the clause fails to serve any useful purpose and should be discharged.	
56. W	The obligation to publish the completed masterplan for the Discovery Park, the Discovery Park Sports Hub, etc.	Paragraph 3.4 requiring the masterplan no later than the Occupation of the 4000th Dwelling	The Appellants apply to **Modify** the obligation to provide that the Appellants will publish the masterplan and to defer publication until Occupation of the 2000th Dwelling.	Presently, the obligation for the masterplan to be published by the Council serves no useful purpose, because it is inconsistent with the Appellants having to produce the design briefs and specification and the detailed provisions for consultation with stakeholders and approval at that stage by the Council. The obligation should be discharged accordingly. As for deferring the publication, the modification is sought to accord with the modifications to Schedule 10 delivery requested above and for the same reasons.	The Appellant is content for ABC to publish the masterplan
Schedule 11 – Cemeteries				In this regard the Appellants refer to and rely in particular upon section 8	

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				of the Explanatory Statement accompanying this application in addition to the reasons stated below.	
57. NC	Payments in respect of cemeteries	Paras 1 and 2	The Appellants apply for all such payments toward Cemeteries to be **Discharged**.	The obligations to make these payments is, the Appellants submit, unnecessary and represents over provision of such facilities given the available off-site facilities. Indeed as noted in the Explanatory Statement the basis of the provision appears to have been miscalculated (see paragraph 8.15). In any event, their cost is significant (£800,000) and serving only to undermine the viability and ultimately the deliverability of the Development. The discharge of this cost is captured in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5300.9 and forms part of this revised viability analysis justifying each discharge and modification sought.	
Schedule 12 – Community Hub Building				In this regard the Appellants refer to and rely in particular upon section 8 of the Explanatory Statement	

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				accompanying this application in addition to the reasons stated below.	
58. M	The obligation to provide a multi-purpose community leisure building and other facilities (the Community Hub Building} by 1,800 Dwellings	Para 1.2 and Sch 29D Item 17	The Appellants apply for the following **modifications and/or discharge of obligations**: That paragraph 1.2 be modified to read `Unless the Council agrees otherwise, not to Occupy more than 3,250 Dwellings unless: 1.2.1 the Facilities: First Tranche have been provided in accordance with the reserved matters approval and the approved design brief and specification and at a cost which together with the Facilities: Second Tranche does not exceed. the sum of £2m inclusive as stated above … 1.2.2 all ... the Facilities; First Tranche are located ... 1.2.3 all conditions ... apply to the Facilities: First Tranche ...;' Further, that the obligations at paragraphs 1.2.5 to 1.2.6 to transfer/grant a Long Leasehold Interest to the CMO of the Facilities (First Tranche) and with them paragraph 1.2.4, should be substituted by an obligation to grant leases to individual tenants e.g . the NHS or Police, on terms acceptable to them. Thus, paragraphs 1.2.4,	Along with the Chilmington Hamlet facilities (see above), the obligation to provide the Community Hub facilities is acknowledged potentially to serve a useful purpose, except for the community learning space which is surplus to requirements. However, two main issues arise. Firstly, the capital cost up to £5,152,127.00 is excessive and serving only to undermine the viability and ultimately the deliverability of the Development. The current obligation is over-priced and over-specified. If the Appellants carried out this build themselves there would be a significant saving in cost. With any further reduction to £2m capital cost achieved through value engineering the specification and such further alterations thereto as may reasonably be required to ensure this total cost is not exceeded. Secondly, the provision of the balance of this space (apart from the community learning facility which	The request to modify the trigger for payment under Schedule 29D item 17 is inconsistent with the application (item 116) to discharge 29D in its entirety.

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			1.2.5 and 1.2.6 should be discharged and replaced by new obligation as follows: 'and 1.2.4 the Facilities; First Tranche have been transferred, in so far as required, to the proposed user/s of each by way of lease/s or tenancies (as appropriate) of the same on terms suitable to their intended use and that are acceptable to them.' . 1.2.5 The Facilities: First Tranche shall comprise the following: - a multi-purpose community space of up to 1500 sqm, to include - a fully stocked and equipped library - 340 sqm space for police community and social services outreach including family and social care (subject to lease confirmation) - 400 sqm within the multi-use building of community space to meet the needs of the community and the CMO Trust and to provide ancillary facilities for the MUGA - a multi-use games area - up to 500 sqm of GP provision (subject to NHS lease confirmation)	can be catered for elsewhere) should in any event be phased and where appropriate made subject to lease confirmation, as proposed. Nonetheless, the total space to be provided is still very large see Section 8 of the Explanatory Statement and in particular paragraph 8.18) and as Quod states there much of it is not expected to be needed until much later than the triggers currently set. In these circumstances, as set out in the Explanatory Statement (paragraph 8.29), 'Whilst the challenges of phased construction are acknowledged, for the sake of avoiding mothballed buildings with associated liability and costs, this community provision should be phased and elements delayed until they are needed.' In addition, there should be a clause added to ensure that public service leases will be confirmed prior to triggering the construction works and contracting. Further, as indicated the requirement to provide these facilities by the 1800th Dwelling Occupation will be a cost to Phase 1 and is serving to undermine the viability of this phase	

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			Subject always to such variations in scope as may reasonably be required to ensure that the total cost of £2m is not exceeded. 1.2.6 To construct and provide the Facilities: First Tranche ... more than 3,250 [not 1800] Dwellings. [That after the above there be inserted new paragraph 1.2A as follows, mirroring the above provisions in the case also of the proposed Facilities: Second Tranche] 1.2A 'Unless the Council agrees otherwise, not to Occupy more than 4,250 Dwellings unless: 1.2A.1 the Facilities: Second Tranche have been provided in accordance with the reserved matters approval and the approved design brief and specification and at a cost which together with the Facilities: First Tranche does not exceed £2m inclusive as stated above ... 1.2A 2 all ... the Facilities: Second Tranche are located ... 1.2A.3 all conditions ... apply to the Facilities: Second Tranche ... ; 'and 1.2A.4 the Facilities; Second Tranche have been transferred, in so far as required, to the proposed user/s of each by way of lease/s or tenancies (as appropriate) of the same on	and in turn delivery of the Development. Indeed, in terms of viability and deliverability, the current timetable for these assets would not only have a significantly detrimental effect on the Paying Owner's cashflow in the initial phases of the Development, but more critically without modification (going beyond the triggers indicated in the Explanatory Statement) it will likely cause the loss of the funding available to the Appellants to carry out the Development at all. In the circumstances, the purpose of these provisions can be better or at least equally well served by modifying them as proposed, supporting the Development whilst still securing delivery of these facilities when needed in the life of the Development. As for the proposal to grant individual leases on terms acceptable to the proposed end users of the different facilities (with the Appellants retaining the land on which the facilities are located if the users do not want to take up any	

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			terms suitable to their intended use and that are acceptable to them.' 1.2A.5 The Facilities: Second Tranche shall comprise the following: - further community space of up to 2500 sqm, to include - a 1000 sqm community leisure building - up to 500 sqm of GP provision (subject to NHS lease confirmation) - additional floor space of up to 200 sqm for identified community needs, including youth provision Subject always to such variations in scope as may reasonably be required to ensure that the total cost of £2m is not exceeded. 1.2A.6 To construct and provide the Facilities: Second Tranche in accordance with the requirements of paragraph 1.2A.1 of this schedule prior to the Occupation of more than 4,250 Dwellings. 1.2A.7 In respect of each of the Facilities: First and Second Tranche, the right to carry out the requisite building works being reserved always to the Paying Owners [Appellants]. 1.2A.8 In respect of each of the Facilities: First and Second Tranche, no building contract shall be entered nor construction	lease), this plainly makes sense in practical and market terms, providing the necessary flexibility to secure the delivery of these facilities for the Development. These modified terms accordingly serve the purpose of these obligations better than, or at least equally as well as, the existing terms, which by imposing a freehold transfer or long leasehold interest could actually undermine delivery of these assets in circumstances where such interests are not actually wanted. As for the discharge of paragraph 1.2.4 in any event (and the omission of any equivalent in relation to the Facilities; Second Tranche), this is justified for the reasons already referred to above in respect of similar clauses in, for example, Schedules 8 and 9 above. The modifications sought (reduction in cost, split in provision and deferred triggers) so far as they affect costs are captured in the Viability Report at Appendix 3 at 5300.1 and form part of this revised	

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			begin prior to confirmation of the public service leases, i.e. for Police or GP use. ~~At Schedule 29D Item 17, the payment should be reduced to £2m and split equally (or as appropriate) and the trigger should likewise be split and deferred from 1300 to 3,150 Dwellings and 4,150 Dwellings respectively.~~	viability analysis justifying each discharge and modification sought.	
59. NC	The submission and approval of a design brief and specification for the Community Hub Building	Para 1.1	The Appellants apply to **Modify** the planned costs to include fees and other costs and to modify this obligation so that the submission/approval of the design brief and specification for the Facilities: First Tranche and Second Tranche may be split with the former to be re-geared from 1,400 Dwelling Occupations to 2,850 Occupations and the latter to 3,850 Dwelling Occupations. Hence paragraph 1.1 should read: 'Not to Occupy more than 2,850 Dwellings unless: 1.1.1 a design brief and specification for the Facilities: First Tranche and/or other facilities of no significantly greater environmental impact as may be approved by the Council to be provided in the District Centre has been approved by the Council with a total capital cost that (together with Second Tranche) does not exceed £2m ... including fees, contingencies, specification	This modification is proposed for the reasons stated above in respect of the provision of these facilities and consequential upon those modifications.	

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			and design costs, supervision fees, access roads and service costs and the costs of those matters to be done at the Owner's expense referred to below;' Para 1.1.2 to be modified to refer to the Facilities: First Tranche. Whilst new paras 1.1A.1 and 1.1A.2 should be inserted in similar terms to 1.1.1 and 1.1.2 above but referring to the Facilities: Second Tranche and with a trigger of 3,850 Dwelling Occupations.		
60. NC	The provision for consultation with the CMO and stakeholders etc. and approval of the details of the consultation	Paragraph 1.1.2	In addition, the Appellants apply for paragraph 1.1.2 to be **Modified** to omit the requirement to consult the CMO and omit the requirement to consult and to obtain approval in respect of the details of the consultation and to omit the final clause 'and in particular the CMO's comments on the costings;'	The consultation with the CMO under 2.1.2 is surplus to requirements, given that the Council will have the opportunity already to consult with all interested parties when approving the design brief and specification. This part of the paragraph does not, therefore, serve any useful purpose and should be discharged or modified accordingly. As for the requirement to consult over the details of the consultation (whether with the CMO or Council) this also fails to serve any useful purpose. It unnecessarily complicates what should be a relatively straightforward and simple exercise. This part of the obligation (in	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	Reason for change on 23/12/24 or 27/03/25 (if applicable)
				parenthesis) should be discharged accordingly. The omission of the final clause is consequential on the above.	
61. NC	The 12 months repairing liability following the transfer of the Facilities	Paragraph 1.3	The Appellants apply to **Discharge** this obligation.	The clause gives the CMO excessive powers to demand repairs are carried out, without providing any effective dispute resolution mechanism. Particularly, where, as noted above, in reality the CMO is neither equipped nor competent to be the arbiter of such matters. Further, under a normal Estate Management (Manco) model the CMO should simply be obliged to maintain and/or keep in repair and good condition the Green Space Facilities, by no doubt in practice using third party maintenance contractors. On any view, therefore, the clause fails to serve any useful purpose and should be discharged	
62. NC	The obligation to make designated parts of the Community Hub Building available	Paragraph 1.4	The Appellants apply to **Discharge** this obligation in its entirety.	The inclusion of this obligation under the s106 Agreement appears to be mistaken. The obligations thereunder are not matters within the power or control of the Appellants. The clause	

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	for use by the County Council in accordance with the booking system agreed between the CMO and the CC			does not therefore serve any useful purpose and should be discharged accordingly.	
63. NC	Provision for payment toward the Council's costs	Paragraph 2	The Appellants apply to discharge this payment obligation.	Because providing for payment toward the Council's costs undermines the purpose of the clause (to secure the grant on appropriate terms), compensating the Council even in cases where it unreasonably refuses approval, which should not be the case. The clause does not therefore serve any proper or useful purpose and should be discharged accordingly.	
Schedule 13 - Local Centre Hubs					
64. NC	The Orchard Village Facilities and the Chilmington Brook Facilities	Paragraphs 1-3 and 4-6 respectively	The Appellants reserve the right to make a further application to **Discharge** or modify these obligations as the case may be.	The Appellants, as in the case of all other obligations not the subject of specific requests to vary in this application, reserve their rights to make a further application in relation to Orchard Village and Chilmington Brook in due course should the need arise.	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	Reason for change on 23/12/24 or 27/03/25 (if applicable)
Schedule 14 – District and Local Centres				In this regard the Appellants refer to and rely in particular upon section 9 of the Explanatory Statement accompanying this application in addition to the reasons stated below.	
65. M	The obligation to construct and provide the District Centre Facilities in Main Phase 1 and the Orchard Village and Chilmington Brook small Retails Units in Phases 3 and 4 and associated obligations including marketing plans etc.	Paragraphs 1.1. to 1.5	The Appellants apply to **Modify** the Main Phase 1 District Centre obligations permit a revised scheme for the same, to be the subject of a separate application for planning permission ~~and to require that in any event the District Centre facilities are to be provided by no earlier than 2700 [rather than 1250] Occupations.~~	The obligations at paragraph 1 to provide a District Centre with the facilities indicated under 1.1 no longer serve any useful purpose as drafted. The current retail market is such that the facilities under 1.1 focused as they are on small units is wholly unsustainable. The Appellants have canvased the market, but there are no operators who will contemplate the present scheme. The Appellants will accordingly make a new planning application for the District Centre facilities on CH1 and CH2. The revised scheme set out in that application will replace that outlined under the provisions of paragraph 1, and these should be modified accordingly to accord with and permit the said revised scheme. ~~Further and in any event whether the District Centre obligations are revised or not the requirement to provide these facilities by 1250 Dwellings is~~	The Appellant no longer seeks a deferral of the trigger as this would be inconsistent with a condition attached to the planning permission for the Possingham scheme

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				~~unrealistic and certainly if it were to become necessary for the Appellants to fund all or any part of these Facilities would undermine the viability of Main Phase 1 and with it the deliverability of the Development. If this were to eventuate it would not only have a significantly detrimental effect on the Paying Owner's cashflow in this initial phase of the Development, but more critically without modification it will jeopardise the very funding available to the Appellants to carry out the Development at all.~~ In the premises, the purpose of these provisions can be better or at least equally well served by modifying them as proposed, supporting the Development whilst still securing delivery of these facilities at an early stage in the life of the Development. ~~The Viability Report has accordingly pushed back the commencement/completion of the District Centre in the updated sensitivity model, as can be seen specifically in the cashflow appraisal, and the benefits of this form a part of the overall viability analysis and~~	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	Reason for change on 23/12/24 or 27/03/25 (if applicable)
				~~conclusions in support of the modifications sought.~~ The Appellants, as in the case of all other obligations not the subject of specific requests to vary in this application, reserve their rights to make a further application in relation to the Orchard Village and Chilmington Brook small Retails Units etc. in due course should the need arise.	
66. ~~NC~~ WM	The submission and approval of a design brief and specification for the District Centre Facilities by 950 Dwelling Occupations	Paragraph 1.1 to 1.5	~~The Appellants apply for the occupation triggers in respect of these facilities to be **Modified**, so that the design brief and specification is to be delivered by 1500 (rather than 950) occupations and the facilities are to be provided by 2700 (rather than 1250 occupations) with paragraph 1.1 modified accordingly.~~	~~This discharge or, alternatively, modification is proposed for the reasons stated above in respect of the provision of these facilities and consequential upon that modification.~~	The Appellant no longer seeks a deferral of the trigger as this would be inconsistent with a condition attached to the planning permission for the Possingham scheme
Schedule 15 – Education				In this regard the Appellants refer to and rely in particular upon Sections 3 and 11 of the Explanatory Statement accompanying this application in addition to the reasons stated below.	
67. NC	The provision of Bonds to the value of PS1	Para 6 and 7(e) (as amended by the Deed dated 29/3/19)	The Appellants apply for the obligation to provide Bonds for these PS1 Contributions to be **Discharged.**	The obligation to provide Bonds for these Contributions in the total sum of £5,850,000 does not serve any useful purpose and should be	

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	Contributions 2, 3 and 4			discharged. The Appellants rely in this regard upon Sections 3 and 11 of the Explanatory Statement. This is unnecessary and wholly excessive and duplicative security. There is no proper justification for the 'triple lock' imposed under the s106 obligations. Moreover, the Appellants maintain that it has ceased to be possible in the financial markets to obtain Bonds of the kind required by the s106 Agreement. In the premises the reality is that this obligation has been rendered redundant and it should be discharged accordingly. The Appellants have already provided further evidence since first making these requests in support, but nonetheless will, in so far as necessary, provide any further evidence in support if required. Otherwise, if contrary to the Appellants' own enquiries it can be shown by the Respondents that a compliant form of Bond can be found, the likelihood is that this would be at face value or such a cost as to be prohibitive. Any additional financial commitment of this scale	

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				would palpably undermine the viability of this Phase and with it the delivery of the Development. In any event therefore the provision of a Bond is self-defeating and cannot be regarded as serving any useful purpose in relation to the Development and should be discharged accordingly. Moreover, it is necessary for this obligation to be discharged for viability and deliverability reasons, specifically that this obligation is likely to jeopardise the funding available to the Appellants to carry out the Development at all.	
68. NC	Education Contributions; Primary School 1 Contributions 1 to 4 to the County Council	Para 7 (as amended by the Deed dated 29/3/19)	The Appellants apply for the obligation to pay PS1 Contribution 4 (para 7 (d) and the Indexation payments on previous Contributions (para 7A) to be **Discharged** and for the payments already made to the County Council £8,829.11 (eight thousand eight hundred and twenty nine pounds eleven pence) by way of indexation on PS1 Contribution 1 and the sum of £2,096,017.66 (two million ninety sixty thousand seventeen pounds sixty six pence) already paid to the County Council in respect of PS1	The PS 1 Contribution 4 and these very significant indexation payments are undermining the viability of the Development and in turn its deliverability and cannot sensibly therefore be regarded as serving a useful purpose. Further, PS1 is and will be of substantial benefit to the wider Ashford community, as well as to other developments both current and future, and these (such as Court Lodge and Kingsnorth) ought properly to contribute, so obviating	

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			Contribution 4 (including indexation) to be repaid.[1]	these further payments toward PS1 by the Appellants. The discharge of this contribution and the said indexation amounts to reflect the imperative above is shown in the Viability Report and specifically at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5200.2, and forms part of this new viability analysis justifying each discharge and modification sought.	
69. NC	Education Contributions; Primary School 2 Contributions 1 to 4 to CC	Paras 8, 10, 11, 12 and 14	The Appellants seek a **modification** to provide for consultation on the need for PS2 and before 1200 Dwellings have been occupied the CC must decide, acting reasonably, whether to proceed or not with PS2 for the purpose of ensuring that it is operational within 3 years. If the decision is not to proceed with PS2 at that stage, the process set out above shall be repeated commencing before the next 300 Dwellings are completed (i.e. details by 1500 Dwellings, consultation and then a decision by 1600 Dwellings etc.) and again as required up until the like process in respect of PS3 is engaged.	Whilst it is acknowledged that further primary school provision may potentially serve a useful purpose, current modelling based on the Development to date and the experience from PS1 clearly shows that the current occupation and time based triggers may lead to premature delivery, with schools unable to meet their minimum viable size to receive revenue funding and therefore having to be delayed in any case (or opened at risk to Kent CC). For the reasons set out in the Explanatory Statement, Section 11,	

[1] KCC has enforced payment of these amounts since this application was submitted

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			If the decision is to proceed with PS2, the following paragraphs shall apply, but not otherwise. 8. The Owners shall not bring into residential use nor Occupy more than another l 00 Dwellings across the whole Site following the decision to proceed unless and until the location ... after the day when the 100 Dwellings as aforesaid have been so first Occupied until the County Council has given its approval under this paragraph (such approval not to be unreasonably withheld). 10. The Owners shall deliver a duly executed Transfer ... within 12 months from the date when another 200 Dwellings (including the 100 above) have been first Occupied across the Site following the decision to proceed. No further Dwellings ... beyond 12 months after first Occupation of the 200 Dwellings as aforesaid, unless a duly executed Transfer .... 11. The Owners shall provide an Adoptable Access ... by the date when another 900 Dwellings (including the 200 above) have first been Occupied across the Site following the decision to proceed (or earlier upon the reasonable request of the County Council). No more than another 899 Dwellings as aforesaid shall be brought into residential use	the Appellants therefore seek to modify the current triggers so as they will be based on need and not merely occupations. The Dwelling numbers used in the proposed modification reflecting the pattern, for the purposes of review and performance following any decision to proceed, the current timetable and intervals for delivery. Modified in this way, it is submitted that the obligations will better serve their purpose or at least serve that purpose equally well. The only exception to the above arises in relation to funding and the payment of PS2 Contributions. It is necessary for these to be deferred as proposed for reasons of viability and deliverability, indeed without modification the current payment timings will likely cause the loss of the funding presently available to the Appellants to carry out the Development at all. The payment intervals calibrated to accord with the existing monthly intervals for payment. These modifications are accordingly necessary to ensure that the obligations continue to serve their	

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			12. Subject to PS2 proceeding, then unless and until PS2 Contribution 1 has been paid to the County Council, no more than 2,650 Dwellings shall be brought into residential use nor first Occupied on the Site following the decision to proceed. Paragraph 14(a) to be modified to provide, subject to PS2 proceeding, for payment of PS2 Contribution 1 to the County Council prior to 2,650 Dwellings being first Occupied on the Site, with subsequent Contributions 2, 3 and 4 to be payable at 3,250, 3,850 and 4,350 Occupations respectively.	intended purpose and for that matter any useful purpose at all.	
70. NC	The provision of Bonds to the value of PS2 Contributions 2, 3 and 4	Para 13 and 14(e)	The Appellants apply for the obligation to provide Bonds for these PS2 Contributions to be **Discharged.**	The obligation to provide Bonds for these Contributions in the total sum of £5,850,000 does not serve any useful purpose and should be discharged. The Appellants rely in this regard upon Sections 3 and 11 of the Explanatory Statement. This is unnecessary and wholly excessive and duplicative security. There is no proper justification for the 'triple lock' imposed under the s106 obligations. Moreover, the Appellants continue to maintain that it has ceased to be possible in the financial markets to obtain Bonds of the kind required by the s106 Agreement. In the premises	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	Reason for change on 23/12/24 or 27/03/25 (if applicable)
				the reality is that this obligation has been rendered redundant and it should be discharged accordingly. The Appellants have already provided further evidence since first making these requests in support but nonetheless will in so far as necessary provide any further evidence in support if required. Otherwise, if contrary to the Appellants' own enquiries it can be shown by the Respondents that a compliant form of Bond can be found, the likelihood is that this would be at face value or such a cost as to be prohibitive. Any additional financial commitment of this scale would palpably undermine the viability of this Phase and with it the delivery of the Development. In any event therefore the provision of a Bond is self-defeating and cannot be regarded as serving any useful purpose in relation to the Development and should be discharged accordingly	
71. NC	Education Contributions; Primary School 3	Paras 15, 17, 18, 19 and 21	The Appellants seek a **modification** to provide for consultation on the need for PS3 and before 3250 Dwellings have been occupied the CC must decide, acting	The Appellants refer to and rely upon the reasons stated above in answer to Request 69.	

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	Contributions 1 to 4 to CC		reasonably, whether to proceed or not with PS2 for the purpose of ensuring that it is operational within 3 years. If the decision is not to proceed with PS3, the following paragraphs shall apply, but not otherwise. Paragraphs 15, 17 and 18 to be amended in like terms to paragraphs 8, 10 and 11 above. As to paragraphs 19 and 21, subject to PS3 proceeding, PS3 Contribution I to be paid at 4,500 and subsequent Contributions 2, 3 and 4 at 4,900, 5,300 and 5,700 respectively.		
72. NC	The provision of Bonds to the value of PS3 Contributions 2, 3 and 4	Para 20 and 21(e)	The Appellants apply for the obligation to provide Bonds for these PS3 Contributions to be **Discharged.**	The Appellants refer to and rely upon the reasons stated above in answer to Request 70.	
73. NC	Education Contributions; Primary School 4 Contributions 1 to 4 to CC	Paras 22, 23,24, 25, 26 and 28	The Appellants apply for the PS4 obligations to be **Discharged.**	The requirement for a fourth Primary School was based upon the original proposal for the development of 7,000 dwellings, It is plain even at this stage that this provision is surplus to requirements and cannot sensibly be regarded as serving any useful purpose. That this is the case is only demonstrated and reinforced by the experience in relation to Primary	

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				School 1 and the lower than projected level of demand from within the Development for this first school. The PS4 obligations should be discharged accordingly. The discharge of this cost is captured in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5200.5 and forms part of this revised viability analysis justifying each discharge and modification sought.	
74. NC	The provision of Bonds to the value of PS4 Contributions 2, 3 and 4	Para 27 and 28(d)	The Appellants apply for the obligation to provide Bonds for these PS4 Contributions to be **Discharged.**	The Appellants refer to and rely upon the reasons stated above in answer to Request 70.	
75. W	Stage One Secondary School Site Transfer and Adoptable Access etc.	Paras 33 and 35	In this regard the Appellants rely upon the recently signed Deed of Variation dated 13 July 2022 subject only to the further **discharge/modification** sought below. In the event, however, that DfE or KCC funding is not forthcoming, the Appellants reserve their right to make a further application to discharge/modify the Secondary School obligations as appropriate and/or necessary.	As noted in column 4, the Appellants remain committed to the recently signed Deed of Variation subject to the further variations sought herein, but reserve their position should the DfE funding, upon which that agreement is predicated and relies, not be forthcoming.	Appellant is content to rely on the Deed of Variation dated 13 July 2022

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	Reason for change on 23/12/24 or 27/03/25 (if applicable)
76. W	Provision of Bonds for the Stage One and Two Secondary School Contributions	Schedule 15, Part 6, Para 42	In so far as necessary the Appellants apply for the obligation to deliver Bonds for the Stage One and Two Secondary School Contributions to be **Discharged.**	Given the terms of the DoV signed 13 July 2022 this is understood to have been agreed already and the s106 Agreement should be correctly modified accordingly. However, if and in so far as necessary, the Appellants refer to and rely upon the reasons stated in support of Request 70 above, including Sections 3 and 11 of the Explanatory Statement as referred to therein.	Appellant is content to rely on the Deed of Variation dated 13 July 2022
77. W	Secondary School Contributions	Schedule 15, Part 5	The current s106 Agreement as varied by the Deed of Variation signed on 13 July 2022 provides for a Stage one contribution £13,550,000 index linked. However, for the reasons stated in column 5, the Appellants apply now to **modify** further the payment obligations under the DoV, to defer repayments to commence from 2000 homes as follows: 37. The Paying Owners shall: (a) Pay the Stage One Secondary Contribution 1 to the County Council on or before the date when 2650 Dwellings on the Site have been Occupied. (b) Pay the Stage One Secondary Contribution 2 to the County Council on or	The further modification of paragraph 37 is justified on the basis that the delivery of the school is being accelerated to benefit the wider community rather than simply mitigating the effects of this Development. Based on the total amount of secondary school places projected, and pro-rated to an average per home, a secondary school of 4 Forms of Entry (the typical minimum viable size) would not actually be needed by virtue of the Development itself until c. 2,000 homes. The reason to bring forward the delivery of school is to meet wider Ashford needs, as is fully acknowledged both in the Area	Appellant is content to rely on the Deed of Variation dated 13 July 2022

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	Reason for change on 23/12/24 or 27/03/25 (if applicable)
			before the date when 3125 Dwellings on the Site have been Occupied. (c) Pay the Stage One Secondary Contribution 3 to the County Council on or before the date when 3625 Dwellings on the Site have been Occupied. (d) Pay the Stage One Secondary Contribution 4 to the County Council on or before the date when 4500 Dwellings on the Site have been Occupied. .	Action Plan and in recent Cabinet reports regarding the school delivery and funding. It is submitted in the light of the Explanatory Statement from Quod that this acceleration has not been reflected in the DoV properly or indeed at all and that the agreement should be modified accordingly. In addition, the modification is sought for reasons of viability and deliverability, deferring the Contributions to assist further the Appellants' cash flow and in the light also of the delays in delivery (circa 12 months) and the deferred requirement for funds that have already occurred. The deferment of this cost is captured in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2~ Line Ref 5200.1 and forms part of this revised viability analysis justifying each discharge and modification sought. The schools are also significant community assets. As such, it is requested that the school assets, and their community use, be reflected in the triggers for additional community buildings and sports pitches with	

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				reference to the Community Hub and Chilmington Hamlet.	
78. NC	Provision of an account of education and expenditure and repayment of any surplus	Paragraphs 48 and 49	The Appellants apply for the existing paragraph 48 to be **modified** so that the Owner's Agent or the person from whom any contribution was received may apply to the County Council one year following practical completion of a School for an account of the expenditure of the money, such account to be provided within a reasonable time of any such request. Further, for paragraph 49 to be modified to provide for any surplus to be reimbursed forthwith to the persons from whom the contribution was received, and for the remainder of the paragraph (beginning `or if the person ...') to be deleted.	There can be no sensible justification for the County Council to be able to withhold any surplus monies, that have not been applied for the purpose for which they were intended, for more than 1 year following practical completion of a School. Those parts of paragraphs 48 and 49 providing otherwise cannot therefore be regarded as serving any useful purpose and should be modified and/or discharged accordingly. Further or alternatively, in relation to paragraph 49, that Part of the same relevant to any Issuer of a Bond serves no purpose where the Bond obligations are to be discharged in any event (as set out above).	
Schedule 15A - KCC General Site Transfer Requirements					
79. NC	Provision of the site	Paragraph 4	The Appellants apply for this paragraph to be **modified** to state as follows: The site to be provided to the County Council in a reasonably level condition. If works are required to do ...	The current wording of the paragraph is ambiguous. It should be amended to achieve is original purpose, to provide a reasonably level site for the intended user.	

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80. NC	Site setting out at handover	Paragraph 5	The Appellants apply for the s.106 to be **modified** so that the reference to 'and fenced' is omitted.	The obligation to fence is surplus to requirements, it is already covered under the build costs and accordingly this provision is duplicative and serves no useful purpose.	
81. NC	Construction access	Paragraph 7	The Appellants apply for paragraph 7 to be **modified** by inserting after the words 'Haul Roads to be constructed' the words 'to the site boundary', and after the words 'and maintained' the words 'prior to transfer'.	For the avoidance of doubt and in support of the existing provisions and their current purpose.	
82. NC	Provision of services and utilities on site	Paragraph 8	The Appellants apply for paragraph 8 to be **modified** by inserting after the words 'Prior to the site transfer' the words 'or, if not reasonably practicable, within a reasonable time thereof'…' Further, the requirement that statutory undertakers' plant `shall' be located outside of the site boundary should be modified to `may'.	These modifications are requested to make due allowance for the practicalities of provision and ensure that the paragraph does in fact serve its purpose in practice. The modifications will secure, therefore, that the paragraph actually serves its intended purpose better or at least equally well.	
83. NC	Provision of temporary electricity and water supplies	Paragraph 10	The Appellants apply to **discharge** this obligation.	It is not possible for the Appellants to provide these services, only the school contractor who is occupying the site can make these arrangements. The obligation does not in practice therefore serve any useful purpose and should be discharged	

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84. NC	The payment of the County Council's legal costs and the costs of any Project Management agreements	Paragraph 14	The Appellants apply to **discharge** this obligation.	There is simply no justification for imposing the burden of these very significant costs upon the Appellants in addition to the education contributions referred to above. It is not appropriate for Section 106 payments to be levied to meet legal and transaction costs in this way nor for the County Councils' own project management costs to be recouped as provided. Further, given the likely level of these costs on the transfer of each site they will materially and adversely affect viability at each stage and by the same measure the deliverability of the Development. On any view, therefore, this provision cannot be regarded as serving any proper and useful purpose and should be discharged accordingly.	
Schedule 16 - Other KCC Services				In this regard the Appellants refer to and rely in particular upon section 8 of the Explanatory Statement accompanying this application in addition to the reasons stated below.	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	Reason for change on 23/12/24 or 27/03/25 (if applicable)
85. NC	Library Services; 4 x £225k contributions	Para 1, 2, 9 ,10 and Sch 30B	The Appellants application in this respect is for these Library Services Contributions to be **discharged.** Schedule 30B column 2 to be amended accordingly, to remove these payment amounts.	A fully stocked and equipped library is included already in the Community Hub (under Schedule 12 as amended This obligation is accordingly surplus to requirements, duplicative and serves no useful purpose. Moreover, the costs here are significant (£900,000) and serving only to undermine the viability and ultimately the deliverability of the Development. In accordance with the Appellants' case hereunder, the discharge of these obligations as proposed is shown in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5300.10 (second 5300.1) and forms part of this updated viability analysis justifying each discharge and modification sought.	
86. NC	Payment of Youth Services Contributions to KCC	Paras 3, 4, 9 ,10 and Sch 30A-C	The Appellants application in this respect is for these Youth Services Contributions to be **discharged.** Schedules 30A-C also to be **modified** accordingly to omit the current payments and triggers and replace them as above.	The application to discharge is made because these contributions no longer serve a useful purpose, inasmuch as there is already ample provision in this regard. These payments accordingly amount to substantial over provision, are	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	Reason for change on 23/12/24 or 27/03/25 (if applicable)
				surplus to requirements and should be discharged accordingly. The discharge of these obligations as proposed is shown in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2} Line Ref 5400.1 and forms part of this updated viability analysis justifying each discharge and modification sought.	
87. NC	Payment of Community Learning Contributions to KCC	Para 5 , 6,9,10 and Sch 30A-C	The Appellants application in this respect is for these Community Leaming Contributions to be **discharged.** Schedules 30A-C also to be **modified** accordingly to omit the current payments and triggers and replace them as above.	The application to discharge is made because these contributions no longer serve a useful purpose, inasmuch as there is already ample provision in this regard. These payments accordingly amount to substantial over provision, are surplus to requirements and should be discharged accordingly. The discharge of these obligations as proposed is shown in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5300.11 and forms part of this updated viability analysis justifying each discharge and modification sought.	

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88. NC	Payment of Family Social Care Contributions	Para 7, 8, 9,10 and Sched 30A-C	The Appellants application in this respect is for these Family Social Care Contributions to be **discharged.** Schedules 30A-C also to be **modified** accordingly to omit the current payments and triggers and replace them as above.	The application to discharge is made because these contributions no longer serve a useful purpose, in as much as there is already ample provision in this regard. These payments accordingly amount to substantial over provision, are surplus to requirements and should be discharged accordingly. The discharge of these obligations as proposed is shown in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5300.22 and forms part of this updated viability analysis justifying each discharge and modification sought.	
89. NC	Provision for repayment of surplus	Paragraph 10	Modification deleted from appeal		
Schedule 17 – Ecology					
90. NC	Providing for compliance with any mitigation and enhancement	Paragraph 1	The Appellants apply to **Discharge** this paragraph and the sub-paragraphs thereto in their entirety.	The provisions of this schedule are unnecessary because the matters to which it refers are fully covered in the CMO framework agreement .The	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	Reason for change on 23/12/24 or 27/03/25 (if applicable)
	strategy approved pursuant to the Planning Permission			paragraph and its sub-paragraphs do not therefore serve any useful purpose and should be discharged accordingly.	
Schedules 18 and 18A – Modic Improvement Works				NOTE: The Appellants primary application herein is under s106A to vary the terms of Schedules 18 and 18A of the s106 Agreement incorporating the terms of the s.278 Agreement, in accordance with the discharges/modifications proposed (in column (4)) and for the reasons stated (in this column (5)) below under this heading. The Appellants in so far as necessary hereby apply separately to Kent County Council in its capacity as highways authority to vary the terms conditions and obligations of the completed s.278 Agreement in accordance with the said discharges/ modifications and for the reasons stated. Further, in the relation to the latter application, the Appellants apply also herein under paragraph 2 of Schedule 18 and in so far as necessary for the prior written consent of the Council to vary the completed s.278 Agreement in	

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				accordance with the said modifications or otherwise as determined or agreed. In relation to these Schedules 18 and 18A the Appellants refer to and rely in particular upon section 10 of the Explanatory Statement accompanying this application in addition to the reasons stated below.	
91. NC	Provision of a Bond in the form required	Schedule 18 Para 1 and Schedule 18A	The Appellants apply for paragraph 1 of Schedule 18 and the obligation to provide a Bond to be **discharged.** Equally, and consequentially .that under Schedule 18A, Schedule 1 paragraph 7 should be discharged and that paragraph 4 thereof is modified to remove reference to the Bond by the omission of `..in these circumstances or in the event that the Council is able to increase its forward funding provide an amended Bond under clause 7 ... in Annex 2 to this Deed.' Further, that consequential **modifications** be made to the Council's obligations (under Schedule 18A), varying 5.1 to omit reference to the Bond and omitting clauses 5.4, 5.10, 5.11 and clauses 8 (Release of Bond) and 12.	The obligation to provide a Bond in respect of the A28 Improvement Works in the total sum of £28,988,800 no longer serves any useful purpose and should be discharged because it has ceased to be possible in the financial markets to obtain a Bond in the form or of the `on-demand' kind required by the s106 Agreement. In the premises the reality is that this obligation has been rendered redundant and it should be discharged accordingly. Evidence has already been provided to the Council establishing that a Bond cannot be obtained. Nonetheless, the Applicant will provide such further information in this regard as may be required by the	

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				Council, confirming the unavailability of the Bond. Moreover, if contrary to the foregoing, it were somehow to be shown contrary to the Appellants' own enquiries and evidence (already provided) that a compliant (Annex 3) form of Bond is obtainable, the likelihood is that this would be at face value or such a cost as to be prohibitive. An additional financial commitment of this scale would palpably undermine the viability of Main Phase 1 and with it the delivery of the Development. The provision of a Bond is, therefore, self-defeating and cannot be regarded as serving any useful purpose in relation to the Development. The discharge of this cost is captured in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5100.2b and forms a substantial part of this revised viability analysis justifying each discharge and modification sought.	
92. NC	A28 County Council's	Schedule 18 and Schedule 18A	Modification deleted from appeal		

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	Reason for change on 23/12/24 or 27/03/25 (if applicable)
	obligation to let a contract				
93. NC	The Developer's Payment Covenants and Post-Contract 278 Contributions	Schedule 18A and Annex 2 of the s.278 Agreement therein and Sch 18, para 2	The Appellants apply for Schedule 18A including the Developer's Covenants under Schedule 1 to pay Pre-Contract Costs and Post-Contract Costs and any shortfalls to be **discharged.**	The application to discharge the payment obligations in respect of the A28 is advanced for reasons of viability and deliverability. Such. are the costs of these obligations that the burden of payment is undermining the viability of Main Phases 1 and 2 and in turn the deliverability of the development. Most immediately, without discharge the payments required will likely cause the loss of the funding available to the Appellants to carry out the Development at all. In the circumstances these payment obligations cannot sensibly be regarded as serving any useful purpose. The discharge of this cost is captured in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2~ Line Ref 5100.2a and forms a substantial part of this revised viability analysis.	
Schedule 19 – Off-Site Pedestrian and Cycle Links				In this regard the Appellants refer to and rely in particular upon section 10	

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				of the Explanatory Statement accompanying this application in addition to the reasons stated below.	
94. NC	Payment of (4 x) instalments of £133,000 for the purposes of off-site pedestrian provision and cycle links	Sch 19, paras 1 and 2, and Sch 30A-C	The Appellants apply to **discharge** these payments in their entirety. .	Whilst it is acknowledged that payments for off-site pedestrian and cycle links can in principle serve a useful purpose given that the site needs to remain as a sustainable urban extension, the existing provisions are not fit for purpose and do not serve any useful purpose. None of the specified works have any current utility in terms of benefitting the Development or at all. The discharge of this cost is captured in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5100.3 and forms a substantial part of this revised viability analysis justifying each discharge and modification sought.	
Schedule 20 – Provision of Bus Services				In this regard the Appellants refer to and rely in particular upon section 10 of the Explanatory Statement accompanying this application in addition to the reasons stated below.	

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95. A	Provision of Bus Services	Sch 20, and Sch 29D Items 1, 13, 25 and 29	The Appellants apply to Modify the bus services provision as follows to provide for tenders to be invited and the commencement and level of service to be in accordance with the availability of an operator and confirmation from the operator as to service viability without reliance on any subsidies. The Appellants apply also, therefore, for the Discharge of all bus subsidies. The Appellants apply for paragraphs 1 and 2 to be modified as follows: Paragraphs 1.1 and 1.2 to refer to 2,684 500 Dwellings [rather than 100 and 200] Paragraph 1.3, to refer to 2,684 Dwellings [rather than 100] and to be amended to reflect that the provision is dependent upon confirmation from the operator as to service viability Paragraphs 1.4 and 1.5, to refer to 2,784 Dwellings [rather than 200]. Paragraphs 1.6 and 1.7, to refer to 3,584 Occupations [rather than 1,222]. The trigger for provision of a temporary bus stop to serve the first 200 dwellings is currently occupation of 100 dwellings (Paragraphs 1.1 and 1.2) . The trigger for the commencement of the bus service is	~~The central reason for the modifications in service and discharge of subsidies that are proposed is that the bus services as currently provided for in the s106 Agreement cannot be provided within Main Phase 1 or subsequent Phases as they are wholly unviable and unsustainable.~~ ~~As regards the services, given the actual building trajectory and rate of completions the stated level of service would be far in excess of what is required by the Development for many years and equally will be unviable for many years.~~ ~~In addition, the related infrastructure costs and the timing and amount of the subsidies required are wholly unsustainable and will only serve to undermine the viability of Main Phase 1, subsequent Phases and ultimately the delivery of the Development as a whole.~~ ~~In the premises the purpose of the obligations to provide a bus service and bus infrastructure will only be served, or will at least be equally well served, if the proposed modifications~~	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	Reason for change on 23/12/24 or 27/03/25 (if applicable)
			occupation of 100 dwellings (Paragraph 1.3). The Appellant was seeking to push back these triggers to 2,684 occupations subject to confirmation from the operator as to service viability . The Appellant is now proposing to modify paragraphs 1.1 and 1.2 of the agreement so that the obligation to provide the temporary bus stop and commence the bus service will be prior to occupation of 500 dwellings. Paragraph 1.3 would also be modified (exact wording now proposed below). This reflects the s106 agreed for the Possingham Farm development in which the bus service must commence prior to occupation of 100 dwellings on that site. The trigger for provision of the initial bus related infrastructure for Phase 1 is currently occupation of 200 dwellings (Paragraphs 1.4 and 1.5) . The Appellant was seeking to push back this trigger to 2,784 occupations. The trigger for provision of the subsequent bus priority measures and bus related infrastructure for Phase 1 is currently occupation of 1222 dwellings (Paragraphs 1.6 and 1.7) . The Appellant was seeking to push back these triggers to 3,584 occupations. The Appellant is now proposing to modify the agreement so that there is a single obligation	~~to the sub-paragraphs of Paragraph 1 are made.~~ ~~For the reasons set out above the Applicant seeks approval/consent now under the express terms of paragraphs 1.3, 1.4 and 1.8 to a substantially reduced level of service and to increased numbers of Dwellings as detailed in the proposed modifications.~~ ~~Moreover, such is the level of subsidies presently payable under Paragraph 2, that they are wholly unsustainable and likely to jeopardise the funding available to the Appellants to carry out the Development at all. The subsidies do not therefore realistically serve any useful purpose and should be discharged accordingly~~. The ~~additional~~ changes ~~-~~to 1.10 correct what appears to be a drafting error and certainly an unjustified inconsistency with paragraph 1.6 and the provisions relating to Main Phase 1. ~~The modifications to and discharge of these obligations as proposed is shown in the Viability Report at Appendix 3, Infrastructure Cost Plan~~	

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			to provide both the initial bus related infrastructure for Phase 1 and the subsequent bus priority measures and bus related infrastructure for Phase 1 prior to occupation of 1222 dwellings. To this end the Appellant is now seeking to modify paragraphs 1.4 and 1.5, to refer to 1,222 [rather than 200]. Paragraphs 1.6 and 1.7 would remain as drafted in the existing agreement. The agreement currently requires that the bus service initially runs every 30 minutes to connect with the first train from Ashford International to London St Pancras and the last train back. The current agreement then requires that the frequency of the bus service is increased to every 20 minutes prior to the occupation of 1222 dwellings; to every 13-14 minutes prior to the occupation of 2772 dwellings; and to every 10 minutes prior to the occupation of 4,107 dwellings The Appellant has been seeking to remove the stipulation regarding the frequency of the initial service to enable the frequency to reflect what operators tender to provide. . The Appellant was also seeking to push back the triggers for the increase in frequency to 3,584, 4,784 and 5348 occupations respectively unless (in each case) the bus	~~(Scenario 2) Line Ref 5100.4 and forms part of this updated viability analysis justifying each modification sought.~~ ~~Nonetheless, and without prejudice to the foregoing, if an operator can be identified who is ready willing and able to commence services (without subsidy) at any earlier stage than requested, the Appellants would of course willingly work with them to achieve this.~~	

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			service operator states that it is not viable to operate the service at that frequency in which the frequency is to be increased to the extent that the operator confirms it is viable to do so. The Appellant is now proposing that the provisions which stipulate when the frequency of the bus service should increase are deleted and replaced with provisions which enable changes to the frequency of the service to be informed by monitoring of the use of the service , mirroring the approach which was agreed in section 106 agreement for the Possingham Farm development recently. To this end the Appellant is now proposing that : The following definitions are added Bus Service means a bus service operating between the Site and the town centre/railway station at a frequency of every 30 minutes during Peak Hours and every 60 minutes outside Peak Hours and starting at 0600 and finishing at 2000 on Monday to Sunday Bus Service Monitoring means monitoring of the Bus Service by carrying out the following monitoring of use of the Bus Service by residents and visitors of the Development		

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			which shall as a minimum include the following: a) carrying out surveys of residents and visitors; and b) monitoring of the usage of the Bus Service by residents and visitors of the Development Bus Service Monitoring Period means a period of 25 years starting from the first operation of the Bus Service Bus Service Monitoring Report means a report setting out the data and information gathered during the Bus Service Monitoring undertaken during the Bus Service Monitoring Review Period which shall include:- a) data of the usage of the Bus Service by residents and visitors of the Development b) any feedback received from residents of the Development in respect of the Bus Service c) where the Bus Service is being significantly over or under utilised a proposed revision to the Bus Service to either increase or reduce its service as appropriate for approval by the County Council together with a		

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			timetable for implementing the revised Bus Service Bus Service Monitoring Review Period means initially periods of 6 months commencing on the day of the first operation of the Bus Service for a period of two years and thereafter annually on the anniversary of the first operation of the Bus Service Peak Hours means between 0700-1000 and 1600-1900 Paragraph 1.3 is amended to read as follows: Not to Occupy more than 500 Dwellings until the Bus Service has started operating. In the event the Owners have used a tender approved by the Council (which may include a requirement to tender for different service options), but no bids are successful, the Council will consent to the Owners tendering for an alternative service instead. In that case, the level of service described above shall be construed accordingly shall be in accordance with the successful bid (if any). Alternatively or in addition, the Council may consent in writing to the Owners Occupying a greater number of Dwellings than specified above (consent not to be unreasonably withheld).		

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			Paragraphs 1.8 , 1.11, 1.14 and 2 are deleted and replaced with the following : (i) In order to monitor the effectiveness of the Bus Service the Owners shall during the Bus Service Monitoring Period carry out the Bus Service Monitoring. (ii) During the Bus Service Monitoring Period the Owners shall prepare and submit to the County Council for approval a Bus Service Monitoring Report by not later than 28 days after the end of each Bus Service Monitoring Review Period. (iii) Prior to the submission of a report referred to in paragraph (ii) the Owners shall agree the structure of that report with the County Council. (iv) If any Bus Service Monitoring Report includes a proposal for a revised Bus Service for approval by the County Council if approved the Owners shall implement the revised Bus Service as approved so that it is in place and operational in accordance with the timetable set out in the approved Bus Service Monitoring Report. The requests for modification of paragraphs 1.9, 1.12, 1.13, 1.15 and 1.16) are withdrawn as is the request to modify the trigger in paragraph 1.10)		

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			The request for deletion of the maintenance obligation (paragraph 1.18) is withdrawn Paragraph 1.8 to be modified to read 'Not to Occupy more than 3,584 Dwellings until the bus service has been reviewed by the Owners with the operator with a view to increasing the frequency of service to at least every 20 minutes". This will apply only in so far as the operator confirms it is viable to do so. Paragraphs 1.9 and 1.10, to refer to 4,784 Occupations [rather than 2,722]. Paragraph 1.10 also to include, as in the case of Main Phase 1, the following provision ' ... and any property so specified has been transferred at nil consideration and nil cost to the specified body.' Paragraph 1.11 to be modified to read 'Not to Occupy more than 4,784 Dwellings until the bus service has been reviewed by the Owners with the Operator with a view to increasing the frequency of service to at least every 13-		

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			14 minutes." This will apply only in so far as the operator confirms it is viable to do so. Paragraphs 1.12 and 1.13, to refer to 5,348 Occupations [rather than 4,107]. Paragraph 1.14 to be modified to read 'Not to Occupy more than 5,348 Dwellings until the bus service has been reviewed by the Owners with the operator with a view to increasing the frequency of service to at least every 10 minutes. This will apply only in so far as the operator confirms it is viable to do so. Paragraphs 1.15 and 1.16, to refer to 5,500 Occupations [rather than 5,000]. Paragraph 1.18 to be omitted in accordance with the modification to paragraph 1.10 above providing for the transfer of any property to the specified body. Paragraph 2 to be modified so that the Owner is not required to subsidise the bus service and likewise Items 1, 13, 25 and 29 of Schedule 29D to be discharged.		
96. NC	Provision of bus vouchers to each owner	Sched 20 para 1.17	Further, the Appellants apply to **Discharge** the obligation under paragraph 1.17 to provide bus vouchers.	The application to discharge the provision of £450 worth of bus vouchers to each owner, at a total cost of 2,587,500, is advanced for reasons of viability and deliverability. Such is the level of cost of this obligation that the burden of	

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				payment is undermining the viability and in turn the deliverability of the Development. Most immediately, unless discharged the cumulative cost of the currents 106 Agreement obligations in Main Phases 1 and 2, will likely cause the loss of the funding available to the Appellants to carry out the Development at all. In the circumstances these payment obligations cannot sensibly be regarded as serving any useful purpose. The discharge of these obligations as proposed. is shown in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref S 100.6 and forms part of this updated viability analysis justifying each discharge and modification sought	
Schedule 21 – Off-site Traffic Calming				In this regard the Appellants refer to and rely in particular upon section 10 of the Explanatory Statement accompanying this application in addition to the reasons stated below.	
97. NC	Traffic monitoring	Para 1.1	The Appellants apply to modify the monitoring obligations as follows:	These modifications are proposed to simplify the obligations and to gear them more immediately to the payment obligations. The obligations	

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			1.1 Not to Occupy on Site more than the following numbers of Dwellings ... 1.1.2 2,399 1.1.3 5,649 [Omit 1.1.4-1.1.6] Unless (i) monitoring ... County Council.	will on this basis serve their intended purpose better, or at least equally well, if modified as proposed.	
98. NC	Traffic Calming payments to CC The current s106 Agreement requires payment of £408,498 (index linked) across two payments. The current triggers are prior to the occupation of the 1,000th unit and the 2,000th unit as set out in paragraphs 1 and	Paras 1.2, 1.3, 2.1 and 2.2 and Sch 30A	The Appellants apply for the following **modifications** to be made: Paragraph 1.2 is modified to refer to 'the 2,499th Dwelling on the Site [rather than the 999th] Paragraph 1.3 is modified to refer to 'the 5,749th Dwelling on the Site [rather than the 1999th] Paragraph 2.1 is modified to refer to 'the 2,500th Dwelling on the Site [rather than the 1000th] Paragraph 2.2 is modified to refer to 'the 5,750th Dwelling on the site [rather than the 2,000th] Schedule 30A is similarly modified to reflect the above, so that the relevant payment triggers become 2,499 and 5,749 [rather than 925 and 1,925]. Payment in each case to be subject to the deduction of £40,850 in respect of each road	These modifications to further defer the payment obligations in this regard recognise the longer lasting impacts of Covid lockdowns on traffic flows which are only just returning to pre-pandemic levels and the lasting impacts on the working pattens of those who do not need to travel to work every day each week. The deferment of the payments also assists the viability of the scheme, in turn its deliverability and thus the utility of these obligations at all.. Equally, KCC's agreement in this regard to defer the obligations to 1500 and 2500 Dwellings is acknowledged and will be relied upon in support of these further adjustments. In addition, however, the Appellants request that Provision be made for the contributions only to become	

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			(of the 10 locations) where the traffic on that road is not shown to be 10% above predicted levels (i.e. base levels plus traffic growth to the year in question). Subject always to payments also being reduced to reflect reasonable actual costs (where lower than estimated), any other funding and any contributions that have or should have been obtained from other developments whether existing, proposed or future, benefiting from the same off-site traffic calming.	payable where the measures for which they are intended are actually required. Given that there are 10 locations and the total contribution is £408,498, each contribution of £40,850 should only become a able where traffic on that road is more than 10% above predicted levels (base levels plus traffic growth to the year in question). This is to ensure that contributions are not wasted but actually serve the purpose for which they are intended. The deferment of these payment is captured in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2), Line Refs 5100.7 & 8 and forms a part of this revised viability analysis justifying each discharge and modification sought. In the premises, the relevant obligations will serve their purpose equally well if modified as proposed.	
Schedule 22 - RIF				In this regard the Appellants refer to and rely in particular upon section 10 of the Explanatory Statement accompanying this application in addition to the reasons stated below.	

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99. NC		Sched 22	The Appellants' application is to **Discharge** the RIF payment obligations under this Schedule.	The application to discharge the RIF payments is advanced for reasons of viability and deliverability. Such is the level of cost of this obligation that the burden of payment is undermining the viability and in turn the deliverability of the Development. In these circumstances these payment obligations cannot sensibly be regarded as serving any useful purpose and ought to be discharged. The discharge of these obligations as proposed is shown in the Viability		

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				Report at Appendix 3, Infrastructure (Scenario 2) Line Ref 5100.1 and forms part of this updated viability analysis justifying each discharge and modification sought.	
Schedule 23 – Viability			Without prejudice to the validity of Application No.1 and the continuing requirement for that application to be determined by the Respondents, requests 1, 2 and 3 therein are repeated here as requests 100, 101 and 102 of this application.	Application 1 is accordingly reproduced at Appendix A2 hereto and the reasons stated therein duly relied upon as stated below.	
100 – 102 NC		See column 3 of the Appendix to Annex A h2 d2 2	See column 4 of Appendix A2 herewith. *Note – some new drafting has been added in order to put those changes into effect (essentially to provide a mechanism which will enable ABC to specify the make up of the fixed 10% AH in each of viability phases 2, 3 and 4 as this is currently achieved through the viability review mechanism process .*	See columns 5 and 6 of Appendix A2 herewith.	
103. NC	Schedule 23	Paras 2.1.4 to 2.1.9	The Appellants apply to **Modify** the Agreement by changing the definition of Premature Viability Review Submission for RP5 to RP10 (see below) and amending Para 2.1 to allow Viability Review Phase Submissions to be made when the cumulative number of dwellings within Reserved Matters Applications (RMAs) to date reach the dwelling numbers specified	The existing provisions for VRS's no longer serve a useful purpose. On the contrary they are artificially restricting bringing forward different areas of the Development, inhibiting the Appellants from entering partnerships/agreements to increase delivery, working against ensuring	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	Reason for change on 23/12/24 or 27/03/25 (if applicable)
			therein. Thus, each of 2.1.4 to 2.1.9 should be amended as follows, '2.1 The Owners covenant with the Council as follows ... : 2.1.4 no later than 40 days following the cumulative number of dwellings within RMAs first reaching 2475 dwellings to submit via the Owner's Agent to the Council for the Councils' approval a Viability Review Submission for Viability Review Phase Five and pay a further Viability Review Fee. 2.1.5 no later than 40 days following the cumulative number of dwellings within RMAs first reaching 2975 dwellings to submit via the Owner's Agent to the Council for the Councils' approval a Viability Review Submission for Viability Review Phase Six and pay a further Viability Review Fee ... etc at dwelling intervals equal to those defining the relevant review phase.	value growth and undermining the overall deliverability of the Scheme. The proposed modifications will yield the benefits described at paragraphs 6.3-6.7 of the Explanatory Statement and accordingly better serve the intended purpose of the Viability Review mechanism within the Agreement. The modifications tying Viability Review Submissions to RMA's rather than Dwelling Occupations and allowing a 12 month window (plus 40 days) for submissions to be made. In support of these modifications the Appellants refer to and rely in particular upon Section 3 (paragraphs 3.4 to 3.10) and Section 6 of the Explanatory Statement.	
104. NC		Definition of PVRS d) to i) and Para 3.19	And the definition of Premature Viability Review Submission should be **Modified** to: 'Means a Viability Review Submission submitted greater than 12 months in advance of each of the progress stages specified at Schedule 23 paragraph 2.1.1 to 2.1.9. And for the avoidance of doubt any Viability Review Submission which is not	For the reasons stated above in relation to Request 103.	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	Reason for change on 23/12/24 or 27/03/25 (if applicable)
			followed by the relevant RMA within 12 months shall be re- submitted such that it is no greater than 12 months in advance of the relevant RMA' And schedule 23 paragraph 3.19 should be amended to delete 'that it receives and in the event... ' onwards.		
Schedule 24 - Public Art					
105. NC	Payment of Public Art Contribution 1	Paragraph 1.1, 2.1 and Sch 29A Item 2	The Appellants apply to **Discharge** this obligation and for the sum of £~~50,000~~150,000 already paid to be refunded.	The Appellants seek this discharge and refund because it is not apparent how this money has been spent towards the provision of public art in line with paragraph 1.1. Unless and until any substantiation is provided, this obligation cannot therefore be regarded as serving any useful purpose. The discharge of this obligation as proposed is shown in the Viability Report at Appendix 3, Infrastructure (Scenario 2) Line Ref 5300.13 and forms part of this updated viability analysis justifying each discharge and modification sought.	
106. NC	Payment of Public Art Contributions 2 to 6	Paragraphs 1.2 to 1.6 and 2.2 to 2.6, and Sch 29A	The Appellants apply for the following **modifications**:	Whilst in principle these payments continue potentially to serve a useful purpose, the existing timetable for performance of these obligations is	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	Reason for change on 23/12/24 or 27/03/25 (if applicable)
		Items 2, 6, 17, 21 etc	Modify 1.2 to provide 'Not to Occupy more than 999 [rather than 99] Dwellings unless £100,000 (one hundred thousand pounds) Index Linked has been spent on the provision of public art within the Site by the Owners in accordance with the brief prepared under 1.1 [rather than to the Council]. Modify 1.3 to provide 'Not to Occupy more than 1999 [rather than 999] Dwellings unless £150,000 (one hundred thousand pounds) Index Linked has been spent on the provision of public art within the Site by the Owners in accordance with the brief prepared under 1.1 [rather than to the Council]. Modify 1.4 to provide 'Not to Occupy more than 2999 [rather than 1399] Dwellings unless £150,000 (one hundred thousand pounds) Index Linked has been spent on the provision of public art within the Site by the Owners in accordance with the brief prepared under 1.1 [rather than to the Council]. Modify 1.5 to provide 'Not to Occupy more than 3999 [rather than 2599] Dwellings unless £150,000 (one hundred thousand pounds) Index Linked has been spent on the provision of public art within the Site by the Owners in accordance with the brief prepared under 1.1 [rather than to the Council].	out of step with the actual building trajectory and is undermining the viability of Main Phase One and potentially the Development. Further, the Appellants submit that there is a clear case in terms of securing the provision of public art with these contributions, for streamlining the process by allowing the Appellants themselves to take on the role of acquiring and placing the Public Art. In particular, thereby avoiding any unnecessary administration and resultant wasted expenditure. The purpose of these obligations will actually be better, or at least equally well served, therefore, if they have effect subject to the specified modifications so as to align with progress and presently projected completions and empower the Appellants to deliver the art. The deferment of these payments, such that only the first 2 remain within Main Phases 1 and 2, is reflected in the Viability Report at Appendix 3, Infrastructure (Scenario 2) Line Ref 5300.13. and forms part of this updated overall viability	

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			Modify 1.6 to provide 'Not to Occupy more than 4999 [rather than 4099] Dwellings unless £150,000 (one hundred thousand pounds) Index Linked has been spent on the provision of public art within the Site by the Owners in accordance with the brief prepared under 1.1 [rather than to the Council]. Further, to make the following consequential modifications: Modify 2.2 to spend '£100,000 (one hundred thousand pounds) Index Linked upon the Occupation of the 1,000th Dwelling. Modify 2.3 to spend '£150,000 (one hundred thousand pounds) Index Linked upon the Occupation of the 2,000th Dwelling. Modify 2.4 to spend '£150,000 (one hundred thousand pounds) Index Linked upon the Occupation of the 3,000th Dwelling. Modify 2.5 to spend '£150,000 (one hundred thousand pounds) Index Linked upon the Occupation of the 4,000th Dwelling. Modify 2.6 to spend '£150,000 (one hundred thousand pounds) Index Linked upon the Occupation of the 5,000th Dwelling. Together with consequential modifications to Schedule 29A, in particular as follows: Item 6, to refer to 950 Dwellings	analysis justifying each discharge and modification sought.	

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			Item 17, to refer to 1959 Dwellings Item 21, to refer to 2950 Dwellings Item 17, to refer to 3959 Dwellings Item 21, to refer to 4950 Dwellings And equivalent consequential amendments to Schedule 29B as follows: Item 4, to refer to 1000 Dwellings Item 14, to refer to 1900 Dwellings Item 19, to refer to 3000 Dwellings Item 14, to refer to 4000 Dwellings Item 19, to refer to 5000 Dwellings And Schedule 29C as follows: Item 8, to refer to Occupation of the 1000th Dwelling Item 18, to refer to Occupation of the 2000th Dwelling Item 23, to refer to Occupation of the 3000th Dwelling Item 18, to refer to Occupation of the 4000th Dwelling Item 23, to refer to Occupation of the 5000th Dwelling		

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107. NC	The obligations relating to installation of the public art and to maintain the same once installed	Paragraphs 1.7 and 1.8	The Appellants apply for these obligations to be **Discharged.**	For the reason stated above it is proposed that the Appellants take on responsibility for the installation of the public art, paragraph 1.7 therefore no longer serves any useful purpose and should be discharged. As for paragraph 1.8, it is wholly inappropriate and unfair to impose upon the Owners a continuing obligation to repair the public art. Once installed this should properly be maintained by the CMO. The s106 should not be used to impose such continuing obligations. In the premises paragraph 1.8 should not be treated as serving any proper or useful purpose and should be discharged accordingly.	
108. NC	The commissioning, installation of the public art by the Council and associated consultation	Paragraphs 3 and 4	The Appellants apply for these obligations to be **Discharged.**	As above, the Appellants submit that there is a clear case in terms of securing the provision of public art for the Appellants themselves to take on the role of acquiring and placing the Public Art. In particular, thereby avoiding any unnecessary administration and resultant wasted expenditure of the kind that has been apparent to date.	

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				Accordingly, these provisions do not actually serve any useful purpose and should be discharged accordingly:	
Schedule 25 – Heritage Interpretation					
109. NC	Payment of Archaeological Archiving, Heritage and Archaeologist Contributions	Paragraphs 1 and 4.1	The Appellants apply to **discharge** each of these contributions and for a refund of the monies already paid.	The discharge and refund of the Archaeological Archiving contribution is justified because there is no archiving, other than that carried out by Hodson's consultant and this contribution serves no useful purpose. The Heritage contribution overlaps with PP Condition 97, is duplicative and serves no useful purpose. The Archaeologist Contribution again serves no useful purpose, given that the Appellants employ a consultant archaeologist directly. These obligations should be discharged and the money already paid refunded accordingly. The discharge of these payments as proposed is shown in the Viability Report at Appendix 3, Infrastructure (Scenario 2) Line Ref 5300.8 and forms part of this updated viability	

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				analysis justifying each discharge and modification sought.	
110. NC	Payment of Archaeologist Contributions	Paragraphs 2, 3, 4.2 and 4.3, and Schedules 30A, 30B and 30C	The Appellants apply to **discharge** the remaining payments under this schedule.	The Development now being well beyond the initial three year period envisaged for the funding of a community archaeologist, it is submitted that there is no utility in any further payments being made and that this obligation should be discharged accordingly. The discharge of these payments, is shown in the Viability Report at Appendix 3 -line item 5300.15, and forms part of his updated viability analysis justifying each discharge and modification sought.	
Schedule 26 – Quality Agreement				In this regard the Appellants refer to and rely in particular Upon section 12 of the Explanatory Statement accompanying this application in addition to the reasons stated below.	
111. NC	Quality Agreement, payments of £40,000 linked to Occupations and the payment of £80,000 on the	Paras 1, 2.1, 2.2 and 2.3 to 2.21, and Sch 29A Items 9, 12, 15, 19, 24 etc. and likewise in Schedule 29B and	The Appellants apply for paragraphs 1, 2.1, 2.2 and 2.3 to 2.21 and the payments therein to be **Discharged** (without prejudice to the contention that properly construed the payments at 2.1 and 2.2 are not due in any event in addition to the payments under	These payments are surplus to requirements, grossly excessive and more than is necessary to mitigate the impact of the Development. As the Explanatory Statement notes, these amounts are not justified given	

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	first anniversary and £40,000 on the subsequent nineteen anniversaries	29C Items 5, 11, 14 etc	paragraphs 1 and 2.3 to 2.21) and for payments already made to be refunded. The relevant line items in Schedules 29A, 29B and 29C should also therefore to be deleted.	the parallel payments for monitoring etc. These monies are meant for staff and related costs to monitor the quality of the development, including the Chilmington Green Quality Agreement, Design Code and any other submitted or agreed materials specifications, design briefs, specifications, construction management plans, waste management plan and liaison with the CMO and residents. All the above documents (material specifications etc) are submitted in any event as part of the reserved matters applications or discharge of planning conditions and the planning fee should cover any review. Building Control also attend site. Certainly, the Council have not otherwise undertaken any of these tasks or incurred additional overhead to justify these charges. In the circumstances these contributions cannot be said to serve any useful purpose and cannot be justified and the sums paid already should be reimbursed.	

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				(see the Viability Report, Appendix 3, Infrastructure (Scenario 2) Line Ref 5300.16)	
Schedule 28 – Monitoring Fee				In this regard the Appellants refer to and rely in particular upon section 12 of the Explanatory Statement accompanying this application in addition to the reasons stated below.	
112. NC	Payment of monitoring fees of £25,000 linked to Occupations and payment of £50,000 on the first anniversary and £25,000 on the subsequent nineteen anniversaries	Sch 28, paras 1, 2.1, 2.2 and 2.3 to 2.21 and Sch 29A Items 8, 11, 14, 18, 23, etc. and likewise in Schedule 29B and Schedule 29C Items 4, 10, 13, 16 etc.	The Appellants apply for paragraph 2.2 and the anniversary payments thereunder to be deleted and these obligations **Discharged** and for payments already made to be refunded (without prejudice to the contention that properly construed the payments at 2.1 and 2.2 are not due in any event in addition to the payments under paragraphs 1 and 2.3 to 2.21). The relevant line items in Schedules 29A, 29B and 29C should also therefore to be deleted. Further, the Appellants seek to modify the payments under paragraph 1 and 2.3 to 2.21 to provide for payment of £5,000 [rather than £25,000] subject to a schedule of monitoring activities and of the resource reasonably required.	The Appellants acknowledge that these payments potentially serve a useful purpose, but the contributions are disproportionate in scale. Certainly, as a minimum paragraphs 2.1 and 2.2 should be discharged and the contributions made to date totalling the sum of £45,000 should be reimbursed (see Appendix 3 of the Viability Report, Infrastructure Cost Plan (Scenario 2) Line Ref 5100.10). Prospectively, the sum of £5000 every 300 homes should more than suffice and any sums in excess would be surplusage and would not serve any useful purpose. In the premises these obligations would serve their purpose equally well if modified as proposed.	

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				Further, the reduction in these payments is duly taken into account in the Viability Report, see Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5100.10 (second 5100.1), and forms part of this overall updated viability analysis justifying each discharge and modification sought.	
Schedule 29 - ABC Bank Accounts					
113. NC	The Developers' Contingency Bank Account - Council	Sch 29, paragraphs 1 and 2, and clause 1.1 definition of Council Minimum Balance	The Appellants apply for paragraphs 1 and 2 to be **Discharged** and the definition of Council Minimum Balance to be deleted accordingly.	The Council is already sufficiently secured by the covenants provided by the Paying Owners, such that the DCBA - Council serves no useful purpose at all. The account should be closed and the amount held should be paid out to the Paying Owner. In support the Appellants refer to and rely in particular upon Section 3 (paragraphs 3.11 to 3.13) of the Explanatory Statement. Further, the sums involved are substantially more than are required to mitigate the impact of the Development and are undermining the viability of Main Phase 1 and with it delivery of the Development overall. For these reasons also the account cannot be regarded any	

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				longer as serving a useful purpose, it is self-defeating and should be discharged accordingly. The removal of this obligation and re-crediting of the deposited amounts would further reduce pressure on the Development cashflow which as already demonstrated in the Viability Report has an excessive peak debt in the base case. It would also release funds immediately for the delivery of infrastructure to the obvious benefit of the Development.	
114. NC	Payments into Council Contributions Bank Account, Indexation payments, and withdrawals	Sch 29A, Sch 29B and Sch 29C	The Appellants also apply for the payment schedules contained in each of these Schedules to the Agreement to be **Modified** in accordance with the foregoing as relevant. Further, the payment trigger in Schedule 29A and 29B, including those **modified** as above, should not be earlier than the withdrawal trigger for the same obligation in Schedule 29C. Rather, the payment trigger or withdrawal trigger as the case may be for any given obligation should be modified to whichever is the later.	For the reasons stated above in relation to each of the relevant individual obligations. The proposed provision for payment triggers and withdrawal triggers to coincide and to be modified to whichever is the later removes the otiose provision for payments to be made earlier than is otherwise necessary. The provisions to this effect serve no proper or useful purpose and should be modified/discharged accordingly.	

Request No.	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	The Modification or Discharge sought by the Appellant	The Reasons for applying for the specified Modification or Discharge.	Reason for change on 23/12/24 or 27/03/25 (if applicable)
115. NC	Restriction on withdrawals	Paragraph 8	The Appellants apply to **modify** the obligation by omitting the words '(other than interest).	There is no proper justification for excluding interest from the provisions for withdrawal. The Council should not be entitled to the free use of such sums. Rather the purpose of the obligation would be better, or at least equally well, served if modified as proposed.	
116. NC	The Developers' Capital Bank Account	Schedule 29 paras 9 and 10 and 29D	The Appellants apply to **Discharge** paras 9 and 10 and Schedule 29D.	The Developer's Capital Bank Account fails to serve any useful purpose, in that imposes a wholly unworkable funding regime for the Development. Rather than securing the delivery of the assets for which the sums due to be paid into the account are intended, the requirement to pay the full cost of those assets into an account in advance will undermine that purpose. The usual terms upon which finance is available, allow funds to be drawn down against agreed construction milestones in respect of any given asset; it is not feasible to obtain 100% of the funds in advance.	

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				In the premises the entire Schedule and all associated provisions should be discharged.	
Schedule 30 - KCC Bank Accounts					
117. NC	The Developers' Contingency Bank Account – County Council	Sch 30, paras 1 and 2, and clause 1.1 definition of County Council Minimum Balance (CCMB)	The Appellants apply for paragraphs 1 and 2 to be **discharged** and the definition of CCMB to be deleted accordingly.	The County Council is already sufficiently secured by the covenants provided by the Paying Owners, such that the DCBA - County Council serves no useful purpose at all. The account should be closed and the amount held should be paid out to the Paying Owner. In support the Appellants refer to and rely in particular upon Section 3 (paragraphs 3.11 to 3.13) of the Explanatory Statement. Further, the sums involved are in any event substantially more than are required to mitigate the impact of the Development and are undermining the viability of Main Phase 1 and with it delivery of the Development overall. For these reasons also the account cannot be regarded any longer as serving a useful purpose, it is self-defeating and should be discharged accordingly.	

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				The removal of this obligation and re-crediting of the deposited amounts would further reduce pressure on the Development cashflow which as already demonstrated in the Viability Report has an excessive peak debt in the base case. It would also release funds immediately for the delivery of infrastructure to the obvious benefit of the Development.	
118. NC	Payments into County Council Contributions Bank Account, Indexation payments, and Payments into the Developers' Capital Bank Account - County Council	Sch 30A, Sch 30B and Sch 30C	The Appellants also apply for the payment schedules contained in each of these Schedules to the Agreement to be **modified** in accordance with the foregoing as relevant. Further, the payment triggers in Schedule 30A and 30B, including those modified as above, should not be earlier than the withdrawal trigger for the same obligation in Schedule 30C. Rather, the payment trigger or withdrawal trigger as the case may be for any given obligation should be modified to whichever is the later.	For the reasons stated above in relation to each of the relevant individual obligations. The proposed provision for payment triggers and withdrawal triggers to coincide and to be modified to whichever is the later, removes the otiose provision for payments to be made earlier than is otherwise necessary. The provisions to this effect serve no proper or useful purpose and should be modified/discharged accordingly.	
119. NC	Restriction on withdrawals	Paragraph 8	The Appellants apply to **modify** the obligation by omitting the words '(other than interest)'	There is no proper justification for excluding interest from the provisions for withdrawal. The Council should not be entitled to the free use of such sums. Rather the purpose of the obligation would be	NC

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				better, or at least equally well, served if modified as proposed.	
Schedule 34					
120. W	Heads of Terms For The Lease of the CMO's First Operating Premises	The Terms referred to in column 4	~~The Appellants apply for the following **modifications** to the stated Heads of Terms:~~ ~~Under 4. Term,~~ ~~- at 4.1, the lease will be for a term of 2 years with an option for the tenant to extend the lease until completion of new premises in the Community Hub.~~ ~~- at 4.4 reference to the CMO's Second Operating Premises to be modified to refer to the Community Hub.~~ ~~Under 9. Use, at 9.1 it should be stated that the property can only be used as a Chilmington community facility.~~	The reference to the Community Hub reflects the discharge of the CMO Second Operating Premises above. Whilst, the option to extend would ensure the CMO First Operating Premises remained available whilst required. The reference to Chilmington at paragraph 9.1 is plainly appropriate and the premises ought not to be used otherwise.	This obligation has already been satisfied
Schedules 39 and 40					
121. NC	Articles of Association of the CMO and the CMO Business Plan	The entire schedules	Modification deleted from appeal		
Schedule 49					

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122. NC	Viability Review Templates	The entire schedule	For the avoidance of doubt, the Appellants reserve their position in respect of Schedule 49, as in the case of all other obligations, to make such further or other applications to **discharge or modify** as may be appropriate hereafter.	The reservation does no more than state the Appellants' entitlement in any event, but is restated for the avoidance of doubt. The point, however, is made with reference specifically to Schedule 49 given that it is already evident that the viability template is not fit for purpose and needs updating in any event. In the first instance the Appellants would wish to discuss the issues arising in respect of the same with the Respondents and seek agreement upon the modifications required. If the issues arising cannot be resolved in collaboration with the Respondents, the Appellants would mean to make a further dedicated application in this regard.	

Summary report: Litera Compare for Word 11.5.0.74 Document comparison done on 26/04/2025 18:09:39	
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