

# **Annex A: Schedule of Ashford Borough Council's responses to the proposed modifications – updated 8 January 2025**

N.B: where sub-requests are included under a single request, each sub request is identified using an alphabetical prefix for ease of identification of the Council's response.

## **Reason Key:**

Viability is the sole justification for the proposed change: **DV** = Discharge / **MV** = Modify / **OV** = Other

Viability is part of the justification for the proposed change: **DVp** = Discharge / **MVp** = Modify / **OVp** = Other

Viability is not part of the justification for the proposed change: **D** = Discharge / **M** = Modify / **O** = Other

No.	Obligation	Clause/ Schedule	Proposed Modification or Discharge	Reason	Responsible Party	Decision	Response to change proposed by appellant on 23/12/2024 (if applicable)
<b>Body of the Agreement</b>							
1	Definition of 'Commence (Statutory) the Development'	Clause 1.1	The Applicants apply 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.'	M	ABC & KCC	The existing wording, as part of the obligations to which it relates, continues to serve a useful purpose. It would not serve that useful purpose equally well if it had effect subject to the modification.  The Council disagrees with this request. It is accepted that there is a mistake in the definition - the reference to section 91 should be a reference to section 56. However, there is no justification for the other amendments. The definition uses defined terms and already refers to the planning permission granted under reference 12/00400/AS.  <b>Reject: the definition shall continue to have effect without modification.</b>  <i>Note: the Council would agree to the correction of the reference to the wrong section.</i>	n/a
2	The Definition of CMO	Clause 1.1	Modification deleted from appeal	n/a	n/a	n/a	n/a
3	Definition of 'Paying Owners'	Clause 1.1	The Applicants apply to modify the said definition to add as 'Paying Owners', Hodson Developments (CG Three) Limited.	M	ABC & KCC	The existing wording, as part of the obligations to which it relates, continues to serve a useful purpose. The modification proposed would serve that purpose equally well if it had effect subject to the modification, although s.106A(5) may prevent this modification in any event.	n/a

						<b>Accept: the Council has no objection in principle to the definition having effect subject to the proposed modification, subject to s.106A(5).</b>	
4	Release from liability	Clause 2.2	<p>The Applicants 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.</p> <p>Thus, it is proposed that a new clause 2.2.1A be introduced mirroring clause 2.2.1 but commencing in terms that:</p> <p>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, then that Owner shall no longer be bound ... CMO.'</p>	n/a	ABC & KCC	<p>The Council does not agree that this request is to modify or discharge a planning obligation; thus, it is outside the scope of s.106A and hence of this Appeal. The proposed change to the wording of the Agreement relates to a proposed generic release from an entire range of planning obligations and cannot be progressed through the statutory procedure.</p> <p>Without prejudice to the above, the Council considers that the planning obligations referred to being binding upon all successors in title to the site and parts thereof serves a useful purpose in seeking to ensure that the obligations are fully complied with, whoever is the owner, and avoiding transfers of parts of the site which have as their object or effect (intended or not) the obstruction of enforcement of planning obligations. Enabling various potential owners of parts of the site to have the benefit of blanket exemptions from enforcement would not serve this purpose equally well, as it would incentivise the structuring of ownership and/or transfers so as to result in obligations not being complied with and/or enforced; it would result in piecemeal compliance with obligations across different parts of the site; and it may mean that obligations are never complied with as intended, all of which would be contrary to the public interest</p> <p>The modification of the obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 &amp; CG22 and the National Planning Policy Framework 2023. This conclusion is also consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM1 &amp; IMP1.</p> <p><b>Reject: the clause shall continue to have effect without modification.</b></p>	n/a
5	Index Linking	Clause 28	The Applicants apply to modify the said definition so as to replace all references to 'index linking' in clause 28 to 'Index Linking'	M	ABC & KCC	<p>The existing wording, as part of the obligations to which it relates, continues to serve a useful purpose.</p> <p>Clause 28 sets out the methodology for index linking and the amendment suggested is not required to clarify or correct the drafting. The reason index linking in clause 28 does not refer to the defined term by capitalising is because clause 28 itself describes the process of adjustment. The proposed modification</p>	n/a

						would therefore not serve that useful purpose equally well.  <b>Reject: the definition shall continue to have effect without modification.</b>	
6	Base date for indexation	Clause 28	<p>a. The Applicants apply 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 may be.</p> <p>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.</p> <p>b. Further, the Applicants request the modification of Clause 28 to include provision as follows:</p> <p>‘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.’</p>	M	ABC & KCC	<p>a. The obligation continues to serve a useful purpose. Indexation ensures the value of the contributions agreed when planning permission is granted, and consequently purchasing power, is maintained in the future and therefore the same level of service/infrastructure can be provided. The Council's planning committee resolved to grant planning permission in 2014. The indexation date of 2014 reflects the cost of the planning obligations when the planning committee made their resolution. Amending the indexation date to 2018 would not serve the useful purpose equally well because it would reduce the rate of contributions, reducing the Council's ability to deliver the required services/infrastructure to serve the new community and reduce the quality of facilities the Owners and Paying Owners are required to deliver under their obligations.</p> <p>The applicant states that <i>“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”</i>. However, the applicant provides no evidence to demonstrate that this would be the case.</p> <p>The Council does not agree that the rate of indexation is over-inflating the obligations. It is already evident from discussions with the applicant about the budget identified in the s106 Agreement for Play Space 1 and the appellant's arguments, under Item 25 below relating to the cost of the Natural Green Space, that the budgets identified in the Agreement, index linked in accordance with the Agreement, do not provide sufficient sums to deliver the quality facilities required by the outline planning permission, the Design Code and the applicant's design and access statement. Rather than ‘over-inflating’ the sums as stated by the applicant, the index linking is not keeping pace with the cost of delivering the infrastructure required. Modifying the base date for indexation, as proposed, would undermine the ability to deliver the quality of facilities envisaged for Chilmington Green.</p>	n/a

						<p>b. The additional paragraph would not serve a useful purpose. There is already provision in the Agreement that requires any unspent or uncommitted contribution to be repaid within 10 years of receipt, ref: clause 27.1.3.</p> <p>The discharge or modification of the obligation is contrary to the Chilmington Green Area Action Plan 2013 Policy CG1 and the National Planning Policy Framework 2023. This conclusion is also consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policy SP1.</p> <p><b>Reject: the clause shall continue to have effect without modification.</b></p>	
<b>Schedule 1 – Affordable Housing</b>							
7	Provision of 70 Extra Care Housing Units in Phase One – Viability Review 1	<p>Paras 1.1, 2, 3 and 6</p> <p>And Clause 1.1, the definition of Registered Provider</p>	<p>a. The Applicants propose that the obligations at paragraphs 1.1, 2, 3 and 6 be discharged.</p> <p>b. 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 Applicants 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.'</p>	<p>a. DVp</p> <p>b. M</p>	ABC	<p>a. The provision of affordable housing to meet an identified local need provides for a mixed and balanced community. The size of population proposed at Chilmington Green will include an elderly community with varying care needs which will need to be provided for. This obligation continues to serve a useful purpose because the provision of older persons extra care housing would meet the identified need for this specific type of housing. Its discharge would not serve that useful purpose because it would result in the identified need for this type of housing not being met.</p> <p>The obligation to provide 10% affordable housing in each viability review phase ensures that affordable housing is delivered regularly throughout the development to meet identified local need and to ensure a mixed and balanced community of different tenures is provided. The 70 extra care housing units comprise a proportion of the 10%affordable housing required to be constructed within Viability Review Phase 1. The removal of the requirement to construct the Extra Care Housing in Viability Phase One would result in only 3% AHU (30 dwellings) being provided in Viability Phase One. This would not help to meet identified local need and ensure a mixed and balanced community is delivered.</p> <p>The applicant states that the extra care housing is <i>"unnecessary"</i> and they have been <i>"unable to find a provider"</i>. However, the applicant has not provided any evidence to support these claims.</p> <p>Without prejudice to the Council's position on viability, the applicant has submitted insufficient</p>	n/a

						<p>information to enable the Council to assess the claim that the provision of the Extra Care Housing Units “is undermining the viability of this phase and jeopardising overall delivery”.</p> <p>b. The definition of ‘Registered Provider’ requires a provider of social housing to be registered with the regulator of social housing and to be approved by the Council. This definition continues to serve a useful purpose because it ensures that the social housing provider is known to meet the required regulatory standards for social housing. To modify the definition to allow the affordable housing units to be provided by providers of social housing that are not registered with the regulator of social housing would not serve that useful purpose equally well because the Council would not know whether the provider meets the required standards for social housing.</p> <p>The discharge of the obligation and modification of the definition are contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 &amp; CG18 and the National Planning Policy Framework 2023. This conclusion is also consistent with the Council’s wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 &amp; HOU1.</p> <p><b>Reject: the obligation and definition shall continue to have effect without modification.</b></p> <p><i>Proposed modification by agreement: - the Council considers that modifying this obligation to provide 70 older person’s independent living units at affordable rent level (without extra care) would continue to serve a useful purpose equally well. If the above suggested modification was agreed, then the Council is also willing to agree to modify the delivery trigger from 850 occupations to 1000 occupations as this modification could serve a useful purpose equally well (if necessary) given the delivery of the affordable housing would remain within the middle of Main AAP Phase 1. The Council is willing to discuss this proposed modification by agreement with the appellant</i></p>	
8	Provision of 24 Affordable Housing Units in Phase One – Viability Review	Paras 1.2, 4, 5 and 7	<p>The Applicants apply to modify the obligation at 1.2 to provide:</p> <p>a. ‘1.2 Hodson CG One, Hodson and Chilmington Green Developments covenant with the Council to construct 24 Dwellings within the Hodson CG One and the Chilmington Green Developments</p>	<p>a. MV</p> <p>b. MVp</p> <p>c. MV</p>	ABC	<p>a. The timely delivery of affordable housing is essential to meet an identified local need and deliver a mixed and balanced community. The obligation continues to serve a useful purpose because it ensures that the affordable housing is constructed at the same time as the open market housing. Delaying delivery until the end of Viability Review Phase One (1000 occupations) would not</p>	n/a

			<p>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.</p> <p>b. 4. The Affordable Housing Units referred to at paragraphs 1.2 and 1.3 above shall be provided as Shared Ownership Units....</p> <p>c. 7. The Owners covenant with the Council not to Occupy more than 1,300 [rather than 650] Dwellings unless and until’.</p>			<p>serve that useful purpose equally well because the affordable housing would be brought forward following 100% of the market housing in the phase and would therefore not assist in creating an integrated mixed community.</p> <p>Without prejudice to the Council’s position on viability, the applicant has submitted insufficient information to enable the Council to assess the claim that this obligation <i>“will adversely affect the Paying Owner’s cashflow and compromise the viability of this Phase 1 – Viability Review 1”</i>.</p> <p>Note: In their modification table the applicant proposes to remove the requirement for the affordable housing units to be delivered within the “Hodson Viability Phase One Land”, “Hodson CG One Viability Phase One Land” and the “Chilmington Green Developments Viability Phase One Land” and instead proposes that the affordable housing units are to be delivered within the “Hodson CG One and the Chilmington Green Developments Phase One Land”. The latter not being defined in the Agreement. It is not clear why this change is proposed. This change is not proposed in the amended draft s.106.</p> <p>b. The provision of a mix of affordable housing for affordable rent and shared ownership continues to serve a useful purpose because there is an identified need for both tenures of housing as evidenced in the Ashford Strategic Housing Market Assessment (SHMA). Modification to provide 24 shared ownership units and no units for affordable rent would not meet an identified local need and would therefore not serve that useful purpose equally well. There is an identified need for affordable rented units in the borough.</p> <p>The applicant has provided no evidence to substantiate their claim that <i>“in the light of current market conditions and operator response, the obligation to include Affordable Rents is non-viable”</i>. The current market conditions have not been explained and no evidence has been provided of operator response.</p> <p>c. The timely delivery of affordable housing is essential to meet an identified local need and deliver a mixed and balanced community. The obligation continues to serve a useful purpose because it ensures that the affordable housing is transferred to a registered provider at the same</p>	
--	--	--	---	--	--	---	--

						<p>time as the open market housing. Delaying transfer until 1300 occupations (beyond the end of Viability Review Phase One), would not serve that useful purpose equally well because the affordable housing would be brought into occupation following 100% of the market housing in the phase and would therefore not successfully create an integrated mixed community.</p> <p>Without prejudice to the Council's position on viability, the applicant has submitted insufficient information to enable the Council to assess the claim that this obligation "will adversely affect the Paying Owner's cashflow and compromise the viability of this Phase 1 – Viability Review 1".</p> <p>The modifications are contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 &amp; CG18 and the National Planning Policy Framework 2023. This conclusion is also consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 &amp; HOU1.</p> <p><b>Reject: the obligation shall continue to have effect without modification</b></p>	
9	10% Affordable Housing to be provided in each Viability Review (2 to 10) as a minimum provision	Paragraphs 8, and 14	The Applicants apply for the obligation for this provision to be completed by 75% occupied dwellings within the relevant review phase to be modified to 95% occupied dwellings.	MV	ABC	<p>The timely delivery of affordable housing is essential to meet an identified local need and deliver a mixed and balanced community. The obligation continues to serve a useful purpose because it ensures that the affordable housing is constructed at the same time as the open market housing. Delaying construction until the end of each Viability Review Phase would not serve that useful purpose equally well because the affordable housing would be constructed following the occupation of 95% of the market housing in the phase and therefore would not successfully create an integrated mixed community.</p> <p>Without prejudice to the Council's position on viability, the applicant has submitted insufficient information to enable the Council to assess the claim that this obligation "will adversely affect the Paying Owner's cashflow and compromise the viability of each viability phase".,</p> <p>The modification is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 &amp; CG18 and the National Planning Policy Framework 2023. This conclusion is also consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 &amp; HOU1.</p>	n/a

						<b>Reject: the obligation shall continue to have effect without modification</b>	
10	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	<p>The Applicants apply to modify the Affordable Housing tenure split <del>so as to provide 30% Affordable Rents and 70% Shared Ownership.</del></p> <p>to provide the 10% affordable housing in each Viability Phase with a tenure split of 10% affordable rent and 20% shared ownership</p>	MV	ABC	<p>The specified mix of affordable housing is essential to meet an identified local need and deliver a mixed and balanced community. The obligation continues to serve a useful purpose because there is an identified need for affordable rented housing in the borough as evidenced in the Ashford Strategic Housing Market Assessment (SHMA). The modification to reduce the provision of affordable rented housing to 30% and replace this with shared ownership housing would not serve that useful purpose equally well because it would result in the identified need for affordable rented housing not being met.</p> <p>Without prejudice to the Council's position on viability the applicant has submitted insufficient information to enable the Council to assess the claim that this obligation "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".</p> <p>The modification is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 &amp; CG18 and the National Planning Policy Framework 2023. This conclusion is also consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030, policy SP1.</p> <p><b>Reject: the obligation shall continue to have effect without modification</b></p> <p><i>Proposed modification by agreement: - the Council considers that modifying this obligation to provide 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. The Council is willing to discuss this proposed modification by agreement with the appellant</i></p>	<p>The Council notes the appellant's agreement to the Council's '<i>Proposed modification by agreement</i>'. The Council does, however, acknowledge that the '<i>Proposed modification by agreement</i>' may be ambiguous as it quoted the requirements of Local Plan policy HOU1 which relates to the provision of 30% affordable housing.</p> <p>To clarify and to prevent any ambiguity: - in this instance where the Agreement refers to the provision of 10% affordable housing, the policy HOU1 requirement is more clearly defined as 10% comprising '40% affordable rent and 60% shared ownership.'</p>
<b>Schedule 2 – Carbon Off Setting</b>							
11	Provision of a Building Energy Performance Certificate for each building.  Calculation of carbon off setting contributions	Schedule 2 and 43	<p>The Applicants apply to discharge the whole of Schedule 2 and the obligations therein.</p> <p>Whilst the above is understood to be agreed it will be necessary to give proper effect to this by modifying Schedule 43, to ensure appropriate credit is still included in each Viability Phase Review for the Carbon Off-</p>	D	ABC	<p><u>Building Energy Performance Certificate and Carbon Offsetting Contribution – Residential.</u></p> <p>This obligation continues to serve a useful purpose because it requires the provision of energy efficient homes or, if this cannot be achieved, then payment of an off-setting contribution. However, given that it is now a requirement under Building Regulations to deliver energy efficient homes and the Council can attach Planning Conditions to reserved matters</p>	n/a



	and payment liabilities		setting Savings achieved by other means. The Applicants apply accordingly.			<p>approvals if there are grounds for development to be delivered over and above Building Regulations standards, for example, in respect of household water consumption or the inclusion of a certain type of renewable energy provision, this obligation as proposed to be modified would serve that purpose equally well.</p> <p><b>Accept: the Council has no objection to the obligation being discharged in relation to residential land use.</b></p> <p><u>Building Energy Performance Certificate and Carbon Offsetting Contribution - non – residential.</u></p> <p>This obligation serves no useful purpose.</p> <p>Condition 74 of the outline planning permission for Chilmington Green requires each non-residential building to be carbon neutral and to be constructed to achieve BREEAM (or subsequent equivalent quality assured scheme) overall ‘Excellent’ standard. Therefore, an existing planning condition serves the purpose of this planning obligation.</p> <p><b>Accept: the Council has no objection to the obligation being discharged in relation to non-residential land use.</b></p> <p><i>Note: The applicants have not provided a clear explanation of what is meant by the following statement “it will be necessary to give proper effect to this by modifying Schedule 43, to ensure appropriate credit is still included in each Viability Phase Review for the Carbon Off-setting Savings achieved by other means”. A full explanation of this statement is required to enable the Council to respond to this request.</i></p>	
<b>Schedule 3 – Combined Heat and Power Plant (CHP)</b>							
12	Viability submissions and appraisal for a Combined Heat and Power Plant (CHP) or District Heating Plant (DHP)	Schedule 3	The Applicants apply to discharge the obligations under Schedule 3 save for paragraph 1.3.2. and for the definition of Chilmington Green Carbon Reduction Project to be deleted	D	ABC	<p>This obligation no longer serves a useful purpose.</p> <p>In accordance with Sch 3 para 1.1, prior to the occupation of 200 dwellings, the owners were required to submit to the Council four draft Feasibility/Viability Studies for fact checking and omissions.</p> <p>The Council confirms that they received a letter from Hodson Developments dated 5 April 2019 and accompanying report titled ‘CHP and DHP Feasibility Study for Chilmington Green (Revision A)’ by JS Lewis Ltd, dated April 2019.</p> <p>It is noted that the Feasibility/Viability Studies should have been carried out by an ‘Expert CHP/DHP’ identified in Schedule 3A. JS Lewis Ltd is not listed as an ‘Expert CHP/DHP’ in Schedule 3a.</p>	<p>The Council has no objection to the deletion of the definition of ‘Chilmington Green Carbon Reduction Project’, however, this change is more appropriately reflected in Item 11 above because the definition is only referred to in Schedule 2 of the s.106 and is not referred to in Schedule 3.</p> <p>The Council’s initial concerns about the deletion of the definition was the result of the re-labelling of Schedule 2 as Schedule 3 in the appellant’s tracked changed version of the s.106.</p>

						<p>Para 2 of the Schedule states that ‘the Council covenants with the Owners to provide its comments on the draft Feasibility/Viability Studies within 28 days of receipt.’ The Council acknowledge that this timescale was not met.</p> <p>Notwithstanding that the Feasibility/Viability Studies have not been undertaken by an ‘Expert CHP/DHP’ as required by 1.1 of Schedule 3, the Council agreed, in November 2021, to review the submitted draft Feasibility/Viability Studies for fact checking and omissions. As part of this process, in April 2022, the Council requested further information and clarifications about the applicant’s report. A response was received from the applicant in June 2022.</p> <p>Since 2019 there has been a significant change in Government policy and economic drivers with respect to energy strategy. The focus now is towards a fabric first Passivhaus type specification for individual buildings, augmented by solar photovoltaic and/or solar hot water panels with heating and hot water provided from heat pumps, preferably ground source. This approach allows for greater flexibility as future parcels of land come forward and technology evolves.</p> <p>From the information provided, the Council’s review concluded that the applicant’s position in 2019 was correct for the whole development but marginal for the District Centre. Noting that there is a lack of detail and a number of inaccuracies in the applicant’s 2019 report.</p> <p>Notwithstanding this conclusion, it is the Council’s view that the changes in approach to energy strategy highlighted above, mean the delivery of CHP/DHP for Chilmington Green is no longer the appropriate means to deliver the highly sustainable development envisaged at Chilmington in respect of energy.</p> <p>This view is in accordance with the Chilmington Green Area Action Plan 2013 Policies CG1 &amp; CG19 and the National Planning Policy Framework 2023. This conclusion is also consistent with the Council’s wider approach in other parts of its area: see the Ashford Local Plan 2030, policy SP1.</p> <p><b>Accept: the Council has no objection in principle to the obligation under Schedule 3 being discharged and Schedule 3A deleted.</b></p> <p><i>It is noted that the appellants’ request however would leave Sch. 3, para. 1.3.2 in place, although the appellants’ proposed modified version of the s.106</i></p>	
--	--	--	--	--	--	--	--

						agreement shows the related definition of “Chilmington Green Carbon Reduction Project” being deleted. The deletion of the definition has not been proposed, however, as part of this request, and the retention of para. 1.3.2 makes that deletion inappropriate since the term would still be required.	
<b>Schedule 4 – Community Management Organisation (CMO)</b>							
13	Provision of the CMO welcome pack etc. Paragraph	Paragraph 2.1.2	<p>The Applicants 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.</p> <p><del>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.</del></p>	D	ABC	<p>The obligation continues to serve a useful purpose. It is important that, prior to their occupation of a property, the first purchaser or tenant/occupier is provided with sufficient information about the CMO, its purpose, functions, constitutional structure, membership and the obligation to pay the estate rent charge. The discharge of this obligation would not serve that useful purpose because without this information it would be difficult for the first purchaser or tenant/occupier to make an informed decision about the property they are purchasing/renting. To ensure transparency of information it is important this information is supplied by the Owners.</p> <p>The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 &amp; CG10 and the National Planning Policy Framework 2023. This conclusion is also consistent with the Council’s wider approach in other parts of its area: see the Ashford Local Plan 2030, policies SP1 &amp; IMP4.</p> <p><b>Reject: the obligation shall continue to have effect.</b></p> <p><i>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 Council is willing to discuss this proposed modification by agreement with the appellant because this would serve the purpose of this obligation equally well.</i></p>	The Council notes the appellant’s agreement to the Council’s ‘ <i>Proposed modification by agreement</i> ’ and has no further response to make in respect of this obligation.
14	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 ..’	<p><del>Without prejudice to the Applicants’ 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 Applicants apply to modify the opening clause of 4.1.3 to provide ‘That prior to 350 Dwellings being Occupied: a) the CMO ... etc.</del></p>	M	ABC	<p>The obligation continues to serve a useful purpose. The first dwelling was occupied in September 2019, however the First Premises were not provided to the CMO until September 2023 – four years late. This meant that the CMO had no presence on the site during this time and was not able to work with the Chilmington Green community and build relationships with residents in an effective way. The CMO was not able to begin any on-site community engagement and had to pay for space elsewhere for resident events and meetings such as the AGM. Residents of Chilmington</p>	The Council notes that this modification is now withdrawn by the appellant and has no further response to make in respect of this obligation.

						<p>Green did not have access to a local community room or on-site access to CMO staff. This was detrimental to the development of good community relations. The CMO was also not able to develop income streams from rental of the community space envisaged to be based at the First Premises which restricted the CMO's ability to deliver on its objectives. The modification of this obligation would not in principle serve a useful purpose equally well because it seeks to retrospectively expunge a breach of the S.106 Agreement that has already occurred as a matter of fact. However, since the Council currently understands that the premises have been provided and are in use by CMO, it is seeking to confirm formally with CMO whether the obligation continues to serve a useful purpose.</p> <p>In the meantime, the modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 &amp; CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 policies SP1 &amp; IMP4.</p> <p><b>Reject: the obligation shall continue to have effect without modification.</b></p> <p><i>Note: If the Inspector is minded to agree to this modification, then para 4.1.5 also needs amending to 350 occupations – this has not, however, been applied for and is not reflected in the draft s.106 submitted by the appellant.</i></p>	
15	Continued maintenance obligations in respect of the CMO First Operating Premises	Paragraph 4.1.4	The Applicants apply for the obligations under paragraph 4.1.4 to be discharged.	D	ABC	<p>The obligation continues to serve a useful purpose. The CMO should not have to bear the cost to repair defects that are identified within the time periods stated in the Agreement, and the CMO is not being provided with any alternative means of obtaining remedy for defects, such as collateral warranties and indemnities from the relevant professional team and contractors involved in the construction. It is therefore the sole responsibility of the 'Owners' who provide the premises to ensure the building is of the quality agreed in the Design Brief and Specification and that any defects identified after handover are remedied. This obligation ensures that a building of sufficient quality is delivered to the CMO and that defects are dealt with promptly to enable the CMO to occupy the premises and undertake the operations required of them. It was the Owners responsibility to maintain the building during the</p>	n/a

						<p>period following its construction but prior to handover to the CMO</p> <p>The discharge of this obligation would not serve that useful purpose equally well because it would mean that the CMO would have to bear the costs of rectifying any defects in the building. The fact that there was a time lag between completion of construction and handover is not a reason to discharge this maintenance obligation.</p> <p>The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 &amp; CG10 and the National Planning Policy Framework 2023. This conclusion is also consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030, policies SP1 &amp; IMP4.</p> <p><b>Reject: the obligation shall continue to have effect.</b></p>	
16	Provision of the CMO Second Operating Premises	Para 5.1.1 to 5.1.5 and Sch 29D Item 6	<p>a. The Applicants apply for these obligations under paragraph 5</p> <p>b. and Schedule 29D Item 6 to be discharged.</p> <p>c. In addition, for all appropriate consequential variations including the discharge of Schedules 33 and 35.</p>	<p>a. DVp</p> <p>b. DV</p> <p>c. D</p>	ABC	<p>a. The obligation continues to serve a useful purpose. The Second Premises are necessary to support the growing community and are not surplus to requirements. The First Premises is not centrally located, it has a limited capacity and will not be large enough to serve the growing community if further provision is delayed to 1800 occupations (when the Community Hub is currently to be delivered) or 3250 occupations (as per request 58 below).</p> <p>In addition, the First Premises is a temporary building in construction. It is understood to be a refurbished building designed to last 15-20 years, depending on usage. It is not clear, given the current rate of construction, whether the Community Hub will be delivered before the First Premises reaches the end of its life.</p> <p>Furthermore, the First Premises is located on part of the First Playspace (PS1) Chilmington Square, which will be undersized whilst the First Premises exists. The discharge of this obligation will result in a delay in the provision of sufficiently sized playspace and public space to meet the needs of the growing community.</p> <p>The Second Premises is required to be located in a permanent building designed for retail, office or community use within the District Centre. The applicant suggests any additional space the CMO needs in the longer term can "be accommodated in the other community provision including, particularly for temporary needs such as events,</p>	n/a

						<p>the schools”. However, the applicant proposes to delay the provision of the District Centre to 2700 occupations and The Hamlet Facilities to 3500 occupations therefore there would be no alternative community provision on site for the CMO to use. It may be possible for the schools to be used for some events; however, this would only be possible outside of school use and would be at the discretion of the school and would therefore be of limited use to the CMO who hold events during school hours in addition to evenings and weekends.</p> <p>It is for these reasons that the discharge of this obligation or the use of other community provision, including the schools, would not serve the useful purpose of this obligation equally well</p> <p>Without prejudice to the Council’s position on viability the applicant has submitted insufficient information to enable the Council to assess the claim that this obligation <i>“is materially contributing to the non-viability of Phase 1”</i>.</p> <p>b. Schedule 29D Item 6 (Payment into the “Developers Capital Bank Account – Council) prior to the trigger point for delivery of the CMO Second Operating Premises continues to serve a useful purpose because it ensures that, if the Council is required to remedy a breach of this obligation, the Council can do so as quickly as possible following the breach occurring. The discharge of the obligation to make this payment would result in an unacceptable delay to delivery if there is a breach of the obligation and would therefore not serve that useful purpose equally well.</p> <p>c. The application does not make clear what “all appropriate consequential variations” are intended. However, for Schedules 33 and 35 (which are specified) the submission of a Design Brief and Specification (Schedule 33) continues to serve a useful purpose because this enables the Council to ensure design quality is embedded in the development at an early stage, ensures the scheme to be delivered is of sufficient design quality and safeguards against poor quality development. The Heads of Terms for the Second Operating Premises lease (Schedule 35) also continues to serve a useful purpose because this ensures that a fit for purpose lease is entered into. The deletion of these Schedules (as shown in the amended Agreement submitted by the applicant) would not serve that</p>	
--	--	--	--	--	--	---	--

						<p>useful purpose equally well because the Council could not be assured that design quality would be embedded in the design of the development at an early stage or that a fit for purpose lease is entered into.</p> <p>The discharge of these obligations is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 &amp; CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 policies SP1 &amp; IMP4.</p> <p><b>Reject: the obligation shall continue to have effect.</b></p>	
17	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 Applicants' application in this regard is to discharge the Deficit Grant Contributions in their entirety.	DV	ABC	<p>The obligation continues to serve a useful purpose. Timely delivery of the funds necessary and essential to ensure the sustainability of the CMO and the delivery of its charitable objectives is crucial, noting that the CMO is a not-for-profit stewardship body and not an estate management company. The monies are proportionate and in line with the requirements set out in the agreed CMO Operating Business Plan submitted by the Owners in accordance with Schedule 4, para 1.1.1a)(i).</p> <p>The Business Plan identifies that the monies collected under the Rentcharge Deeds are not sufficient in the early phases of the development to enable the CMO to deliver its charitable objectives. The CMO is intended to operate at a deficit until a critical mass of residents is achieved and the commercial assets come forward, therefore the DGC is required to be paid in the early phases of the development. The applicant has not provided an alternative Business Plan to demonstrate that the CMO would be viable without payment of the DGC.</p> <p>The discharge of this obligation would not serve the useful purpose equally well because the CMO would not be able to deliver its charitable objectives for the reasons set out above. Furthermore, the applicant has not submitted any evidence, in the form of an updated Business Plan, to demonstrate that the discharge of this obligation would serve the useful purpose equally well.</p> <p>Without prejudice to the Council's position on viability the applicant has submitted insufficient information to enable the Council to assess the claim that this obligation is <i>"substantially undermining the viability and deliverability of the Development"</i>.</p> <p>The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policy CG1 &amp;</p>	n/a

						<p>CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council’s wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 &amp; IMP4.</p> <p><b>Reject: the obligation shall continue to have effect.</b></p> <p><i>Note: the Council will not comment on the applicants statements that relate to the CMO structure and performance. These points relate to an independent charitable body and are not material planning matters.</i></p>	
18	The provision of Rentcharge Deeds in respect of each freehold Dwelling	Paragraph 8 and Schedule 31	Modification deleted from appeal	n/a	n/a	n/a	n/a
19	Provision of Commercial Estate: Basic Provision.	Paragraphs 9 and 10 and Sch 29D Item 14.	<p>a. The Applicants apply to discharge the obligations under paragraphs 9 and 10 to provide the First Tranche Commercial Estate/Cash Endowment</p> <p>b. and Schedule 29D Item 14.</p> <p>c. In addition, the Applicants apply for any appropriate consequential variations including the discharge of Schedule 36.</p>	<p>a. DVp</p> <p>b. DV</p> <p>c. D</p>	ABC	<p>a. The obligation continues to serve a useful purpose The Commercial Estate: Basic Provision (CEBP) is an important component of the CMO’s funding and the CMO Operating Business Plan, submitted by the Owners in accordance with Schedule 4, para 1.1.1)a)(i). It is required to make the CMO viable over the long term to enable it to meet its charitable objectives, noting that the CMO is a not-for-profit stewardship body and not an estate management company.</p> <p>The applicant has submitted no evidence to support the statement that “<i>there is little if any 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</i>”.</p> <p>The applicant has not provided an alternative Business Plan to demonstrate that the CMO would be viable without provision of the CEBP.</p> <p>The discharge of this obligation would not serve the useful purpose equally well because without the obligation the CMO would not be able to deliver its charitable objectives. Furthermore, the applicant has not submitted any evidence, in the form of an updated Business Plan, to demonstrate that the discharge of this obligation would serve the useful purpose equally well.</p> <p>Without prejudice to the Council’s position on viability, the applicant has submitted insufficient information to enable the Council to assess the claim that this obligation is “<i>undermining the</i></p>	n/a



						<p><i>viability of the Development and cannot be sustained".</i></p> <p>b. Schedule 29D Item 14 (Payment into the "Developers Capital Bank Account – Council) prior to the trigger point for delivery of the CEBP continues to serve a useful purpose because it ensures that, if the Council is required to remedy a breach of this obligation, the Council can do so as quickly as possible following the breach occurring. The discharge of this obligation to make this payment would result in an unacceptable delay to delivery if there were a breach. Which, in turn, is likely to affect the financial viability of the CMO and would therefore not serve that useful purpose equally well.</p> <p>c. The application does not make clear what "any appropriate consequential variations" are intended. However, Schedule 36 (which is specified) continues to serve a useful purpose because it is intended to ensure that the parameters for the design of the CEBP are agreed by all parties prior to the full design process being undertaken. This provides important clarity and agreement at the earliest stages in the design process to ensure the CEBP is fit for purpose and is of high quality design.</p> <p>The deletion of this Schedule (as shown in the amended Agreement submitted by the applicant) would not serve that useful purpose equally well because the Council could not be assured that the CEBP is fit for purpose and design quality would be embedded in the design of the development at an early stage in the design process.</p> <p>The discharge of these obligations is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 &amp; CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 &amp; IMP4.</p> <p><b>Reject: the obligation shall continue to have effect.</b></p>	
20	Provision of Commercial Estate: Second Tranche	Para 11 and Sch 29D Item 24	<p>a. The Applicants apply to discharge the obligations to provide Second Tranche Commercial Estate under paragraph 11</p> <p>b. and Schedule 29D Item 24.</p> <p>c. In addition, the Applicants apply for any appropriate consequential</p>	<p>a. DVp</p> <p>b. DV</p> <p>c. D</p>	ABC	<p>a. The obligation continues to serve a useful purpose. The Commercial Estate: Second Tranche (CEST) is an important component of the CMO's funding and the CMO Operating Business Plan, submitted by the Owners in accordance with Schedule 4, para 1.1.1a)(i). It is required to make the CMO viable over the long term to enable it to meet its charitable objectives, noting that the CMO is a not-</p>	n/a

			variations including the discharge of Schedule 37.			<p>for-profit stewardship body and not an estate management company and not an estate management company.</p> <p>The applicant has submitted no evidence to support the statement that “there is little if any 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”.</p> <p>The applicant has not provided an alternative Business Plan to demonstrate that the CMO would be viable without provision of the CEST.</p> <p>The discharge of this obligation would not serve the useful purpose equally well because without the obligation the CMO would not be able to deliver its charitable objectives. Furthermore, the applicant has not submitted any evidence, in the form of an updated Business Plan, to demonstrate that the discharge of this obligation would serve the useful purpose equally well.</p> <p>Without prejudice to the Council’s position on viability, the applicant has submitted insufficient information to enable the Council to assess the claim that this obligation is “undermining the viability of the Development and cannot be sustained”.</p> <p>b. Schedule 29D Item 24 (Payment into the “Developers Capital Bank Account – Council) prior to the trigger point for delivery of the CEST continues to serve a useful purpose because it ensures that, if the Council is required to remedy a breach of this obligation, the Council can do so as quickly as possible following the breach occurring. The discharge of this obligation to make this payment would result in an unacceptable delay to delivery if there were a breach. Which, in turn, is likely to affect the financial viability of the CMO and would therefore not serve that useful purpose equally well.</p> <p>c. The application does not make clear what “any appropriate consequential variations” are intended. However, Schedule 37 (which is specified) continues to serve a useful purpose because it is intended to ensure that the parameters for the design of the CEST are agreed by all parties prior to the full design process being undertaken. This provides important clarity and agreement at the earliest stages in the design</p>	
--	--	--	--	--	--	---	--

						<p>process to ensure the CEST is fit for purpose and is of high-quality design.</p> <p>The deletion of this Schedule (as shown in the amended Agreement submitted by the applicant) would not serve that useful purpose equally well because the Council could not be assured that the CEBP is fit for purpose and design quality would be embedded in the design of the development at an early stage in the design process.</p> <p>The discharge of these obligations is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 &amp; CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 &amp; IMP4.</p> <p><b>Reject: the obligation shall continue to have effect.</b></p>	
21	Provision of Commercial Estate: Third Tranche	Para 12 and Sch 29D Item 27	<p>a. The Applicants apply to discharge the obligations to provide the Third Tranche Commercial Estate under paragraph 12</p> <p>b. and Schedule 29D Item 27.</p>	<p>a. DVp</p> <p>b. DV</p>	ABC	<p>a. The obligation continues to serve a useful purpose The Commercial Estate: Third Tranche (CETT) is an important component of the CMO's funding and the CMO Operating Business Plan, submitted by the Owners in accordance with Schedule 4, para 1.1.1)a)(i). It is required to make the CMO viable over the long term to enable it to meet its charitable objectives, noting that the CMO is a not-for-profit stewardship body and not an estate management company and not an estate management company.</p> <p>The application contains no evidence to support the statement that <i>"there is little if any 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"</i>.</p> <p>The applicant has not provided an alternative Business Plan to demonstrate that the CMO would be viable without provision of the CETT.</p> <p>The discharge of this obligation would not serve the useful purpose equally well because without the obligation the CMO would not be able to deliver its charitable objectives. Furthermore, the applicant has not submitted any evidence, in the form of an updated Business Plan, to demonstrate that the discharge of this obligation would serve the useful purpose equally well.</p> <p>Without prejudice to the Council's position on viability, the applicant has submitted insufficient information to enable the Council to assess the</p>	n/a

						<p>claim that this obligation is “undermining the viability of the Development and cannot be sustained”.</p> <p>b. Schedule 29D Item 27 (Payment into the “Developers Capital Bank Account – Council) prior to the trigger point for delivery of the CETT continues to serve a useful purpose because it ensures that, if the Council is required to remedy a breach of this obligation, the Council can do so as quickly as possible following the breach occurring. The discharge of this obligation to make this payment would result in an unacceptable delay to delivery if there were a breach. Which, in turn, is likely to affect the financial viability of the CMO and would therefore not serve that useful purpose equally well.</p> <p>The discharge of these obligations is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 &amp; CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council’s wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 &amp; IMP4.</p> <p><b>Reject: the obligation shall continue to have effect.</b></p>	
22	Payment of Cash Endowment	Paragraph 13	<p>The Applicants apply to discharge the obligations under paragraph 13 to pay the First Cash Endowment and the Second Cash Endowment.</p> <p>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.</p>	DVp	ABC	<p>The obligation continues to serve a useful purpose. The Cash Endowments, to be paid under ‘Option B’ are an important component of the CMO’s funding and the CMO Operating Business Plan, submitted by the Owners in accordance with Schedule 4, para 1.1.1a)(i). They are required to make the CMO viable over the long term to enable it to meet its charitable objectives, noting that the CMO is a not-for-profit stewardship body and not an estate management company.</p> <p>If ‘Option A’ does not proceed then it is appropriate for an alternative obligation in the form of an endowment of a sufficient quantum to be secured in the Agreement to maintain sufficient income for the CMO over the short and long term to enable the CMO to be self-sufficient.</p> <p>The applicant has not provided an alternative Business Plan to demonstrate that the CMO would be viable without payment of the cash endowments.</p> <p>The discharge of this obligation would not serve the useful purpose equally well because without the obligation the CMO would not be able to deliver its charitable objectives. Furthermore, the applicant has not submitted any evidence, in the form of an updated</p>	n/a

						<p>Business Plan, to demonstrate that the discharge of this obligation would serve the useful purpose equally well.</p> <p>Without prejudice to the Council's position on viability, the applicant has submitted insufficient information to enable the Council to assess the claim that this obligation <i>"would undermine the viability of the Development and cannot be sustained"</i>.</p> <p>The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 &amp; CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 &amp; IMP4.</p> <p><b>Reject: the obligation shall continue to have effect.</b></p>	
23	Payment of CMO Start up Contribution	Paragraph 14	<p>a. The Applicants apply to discharge these obligations</p> <p>b. and for the sums already paid to be refunded accordingly</p>	<p>a. DVp</p> <p>b. O</p>	ABC	<p>a. The obligation continues to serve a useful purpose. The payment of the funds necessary and essential to ensure the sustainability of the CMO and the delivery of its charitable objectives is crucial, noting that the CMO is a not-for-profit stewardship body and not an estate management company.</p> <p>The monies collected under the Rentcharge Deeds are not sufficient in the early phases of the development to enable the CMO to deliver its charitable objectives.</p> <p>The CMO is intended to operate at a deficit until a critical mass of residents is achieved and the commercial assets come forward, therefore the Start Up Contribution is required to be paid in the early phases of the development.</p> <p>The monies are proportionate and in line with the requirements set out in the agreed CMO Operating Business Plan submitted by the Owners in accordance with Schedule 4, para 1.1.1a)(i). The Council will demonstrate that the monies paid to date have supported the operation of the CMO.</p> <p>The applicant has not provided an alternative Business Plan to demonstrate that the CMO would be viable without provision of the Start up Contribution.</p> <p>The discharge of this obligation would not serve the useful purpose equally well because without the obligation the CMO would not be able to deliver its charitable objectives. Furthermore, the applicant has not submitted any evidence, in the form of an updated Business Plan, to demonstrate</p>	n/a

						<p>that the discharge of this obligation would serve the useful purpose equally well.</p> <p>Without prejudice to the Council's position on viability, the applicant has submitted insufficient information to enable the Council to assess the claim that this obligation is "<i>substantially undermining the viability and deliverability of the Development</i>".</p> <p>b. The proposed obligation to repay the sums already paid to the Council falls outside of the scope of Section 106B.</p> <p>The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policy CG1 &amp; CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 &amp; IMP4.</p> <p><b>Reject: the obligation shall continue to have effect.</b></p>	
<b>Schedule 5 – Early Community Development</b>							
24	To pay annual Early Community Development Contributions of £50,000	Paragraph 1.2	The Applicants apply for all past and further payments of ECD Contributions to be discharged.	D & O	ABC	<p>Funding at the early stages in building a new community and developing a sense of place is considered as crucial to the Garden Community approach underpinning the Chilmington Green development. This obligation continues to serve a useful purpose because the monies provide for community development programme(s) for the residents and future residents of the development. These monies are separate from the CMO funding and derive from the requirements of the Chilmington Green Quality Charter - which is a statement of intent and a set of practical steps that all the developers at Chilmington Green have committed to.</p> <p>The contributions are intended as a major source of funding to deliver the Chilmington Green Early Community Strategy (with match funding to be provided from other sources) The delivery of the strategy was led by Ashford Borough Council initially, with handover to the CMO soon after its incorporation in August 2019. The Council will demonstrate how the monies already paid have been spent/are proposed to be spent.</p> <p>The discharge of all past and further payments would undermine the Council's and CMO's ability to deliver on early community engagement and therefore the discharge of this obligation would not serve the useful purpose equally well.</p>	n/a

						<p>The proposed obligation to repay the sums already paid to the Council falls outside of the scope of Section 106B.</p> <p>The DHLUC Garden communities funding is additional to and not in substitution for this obligation. The majority of the DHLUC funding is dedicated to small capital improvements, for example public footway/cycleway upgrading, all of which are independent of the early community development work to be delivered by this obligation. The public footway improvements have been provided to enable safer access to the primary school because the streets and associated footpaths that were envisaged to be open when the school opened have not yet been provided by the applicant.</p> <p>The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 &amp; CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 &amp; IMP4.</p> <p><b>Reject; the obligation shall continue to have effect.</b></p>	
<b>Schedule 6 – Natural Green Space</b>							
25	The obligations to provide Informal/Natural Green Space Facilities	Paragraph 1 et seq.	The Applicants 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	MV	ABC	The applicant's statements are noted; however, the applicant has not provided any evidence to support the claim that the <i>"Green Space obligations are proving to be substantially more expensive than is presently allowed for as a cost to the Development at Schedule 29D"</i> . Therefore, the Council has been unable to consider this argument.	n/a
26	The conditions attaching to occupation in each Main Phase	Paras 1.1.5 to 1.1.10	<p>The Applicants 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:</p> <ul style="list-style-type: none"> <li>a. Paragraph 1.1.5 to be modified to omit the last part of the clause beginning 'and are free from ... a cosmetic nature).</li> <li>b. Paragraph 1.1.8 to be discharged.</li> <li>c. Paragraphs 1.1.9 and 1.1.10 also to be discharged.</li> </ul>	<ul style="list-style-type: none"> <li>a. M</li> <li>b. D</li> <li>c. D</li> </ul>	ABC	<ul style="list-style-type: none"> <li>a. On completion of the facilities and handover to the CMO, it is important to ensure the facilities are of sufficient quality and that they contain no defects. This obligation continues to serve a useful purpose because it ensures that facilities of sufficient quality are handed over to the CMO for the benefit of residents. The discharge of this obligation would not serve that useful purpose equally well because it would mean that the CMO would have to bear the costs of rectifying any defects.</li> <li>b. The obligation for the Owners to meet the costs of any SDLT/other tax payable to register the transfer of the land and to cover the CMO's associated legal costs continues to serve a useful purpose because having to pay these costs which would reduce the monies the CMO has available to deliver their charitable objectives and would simply serve the</li> </ul>	n/a

						<p>increase the deficit the CMO operates under. For this reason, the discharge of this obligation would not serve that useful purpose equally well.</p> <p>c. This obligation continues to serve a useful purpose, and its discharge would not serve that useful purpose equally well because the transfer of Natural Green Space to the CMO is an essential part of the approach to community stewardship being delivered at Chilmington Green and detailed in the CMO Operating Business Plan submitted by the Owners. The applicant has not explained how the retention of these assets in their ownership would impact the CMO Business Plan or how the Natural Green Space would be managed and maintained and by whom.</p> <p>The modification and discharge of these obligations is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG8 &amp; CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM2 &amp; IMP4.</p> <p><b>Reject; the obligation shall continue to have effect without modification.</b></p>	
27	The 12 months repairing liability following transfer	Paragraph 1.2	The Applicants apply to discharge this obligation.	D	ABC	<p>This obligation continues to serve a useful purpose because it ensures that any defects are remedied in a timely manner by the Owners who provided the facility. The CMO should not have to bear the cost to repair defects that that are identified within the time periods stated in the Agreement. It should be the responsibility of the 'Owners' who provide the green space to deliver the quality of space agreed in the planning/reserved matters permissions and that any defects identified after handover are remedied. This obligation ensures that green space of sufficient quality is handed over to the CMO and that defects are dealt with promptly to the benefit of the community. The discharge of this obligation would not serve that useful purpose equally well because it would mean that the CMO would have to bear the costs of rectifying any defects and if poor quality facilities are provided there would be no means of remedy.</p> <p>The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG8 &amp; CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see</p>	n/a



						<p>the Ashford Local Plan 2030 Policies SP1, COM2 &amp; IMP4.</p> <p><b>Reject: the obligation shall continue to have effect.</b></p> <p><i>Proposed modification by agreement: - the Council considers that the introduction of a defects dispute resolution provision could meet the statutory test under s.106A(6)(c). The Council is willing to discuss this proposed modification by agreement with the appellant</i></p>	
28	Provision for payment toward the Council's costs	Paragraph 2	The Applicants seek the discharge of this payment obligation	D	ABC	<p>In accordance with para 1.1.10, the Owners can ask the Council to consider a transfer which the developer wishes to use but has not been agreed with the CMO for the required transfer of any asset to the CMO. The payment of the Council's legal costs to consider the transfer serves a useful purpose through enabling the Council to take specialist legal advice upon the wording, and the dispute that has arisen between the developer and CMO, and if appropriate to approve the transfer terms so that the asset transfer can proceed. The discharge of this obligation would not serve this useful purpose equally well because without the Owners payment of the legal costs these costs would fall upon the public purse which would not be appropriate as they arise in connection with the provision and long-term stewardship of mitigation for the impact of the development.</p> <p>The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG8 &amp; CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM2 &amp; IMP4.</p> <p><b>Reject: the obligation shall continue to have effect.</b></p>	n/a
<b>Schedule 7 – Chilmington Hamlet</b>							
29	Chilmington Hamlet facilities to be provided by 1400 occupations	Para 1.3 and Schedule 29D Item 12.	<p>The Applicants apply for the following modifications:</p> <p>a. That paragraph 1.3 be modified to read 'Unless the Council agrees otherwise, not to occupy more than 3,500 Dwellings unless ...'</p> <p>b. In addition, the Applicants 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).</p>	<p>a. MVP</p> <p>b. M</p> <p>c. M</p> <p>d. DV</p>	ABC	<p>a. The obligation continues to serve a useful purpose. The timely provision of sports facilities to serve the new community is essential to good placemaking. The Hamlet facilities are phased ahead of the sports facilities at Discovery Park to ensure sports facilities are provided for residents at an early stage in the development. A delay to these facilities will result in a deficit of facilities in proportion to the number of residents.</p> <p>As referenced in the Quod Explanatory Statement (para 8.41), the Ashford Borough Council Playing Pitch Strategy 2017-2030 (August 2017) sets out</p>	The Council notes that appellant's clarification regarding part 'd' of this request. The Council has no further points to add to its original response.

			<p>c. Further, the Applicants 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.</p> <p>Thus, the Applicants 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 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).</p> <p>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</p>		<p>the amount of cricket pitch provision required for the Chilmington Green development. It is acknowledged that 0.5 cricket squares are required to serve 2,500 homes and a further 0.5 cricket squares for the remaining 3,250 homes.</p> <p>However, it should be noted that the facilities at The Hamlet do not only comprise a cricket pitch and batting cages. The facilities also comprise a community pavilion/community space, tennis courts and a bowling green. It is also likely that the cricket pitch would not only be used for cricket, but for other recreational purposes too. The AAP (para 5.62) states in respect of The Hamlet cricket ground that "This publicly accessible space should be flexibly designed to encourage a range of informal play and recreational activities."</p> <p>The applicant's claim that the Hamlet facilities are "likely to be viable no earlier than 2,300 homes and delay to 3,500 appears proportionate" has not been sufficiently evidenced. The applicant's argument appears to be based solely on the provision of cricket facilities and does not consider the other sports and recreational uses proposed as part of these facilities (it is noted that viable in this case means there are enough people living on the development to make sufficient use of them).</p> <p>In addition, the Quod Explanatory Statement (para 8.41), states that facilities will be available at the schools on site. This is not the case. The first primary school, which is already open, and the secondary school, which is due to open in September 2025 will not provide cricket facilities or a bowling green. The secondary school sports facilities will include three multi-use ball courts and indoor sports facilities. The school has indicated that these facilities could be made available to the community outside the hours of school use. However, this access is likely to be limited given the amount of use the school will require and will be at the discretion of the school. Therefore, regular access by the community to sports facilities at the school will not be possible.</p> <p>The Council does not agree with the statement in the application that the modification would secure "<i>delivery of these facilities in any event at a relatively early stage in the life of the Development</i>". The modification would delay the delivery of the Hamlet facilities until half way through Phase 3 of the development when circa</p>	
--	--	--	---	--	--	--

			<p>not to be unreasonably withheld ... etc.</p> <p>d. <del>Schedule 29D item 12, to be modified accordingly so that the trigger for payment refers to 3,250 Dwellings.</del></p>			<p>60% of the dwellings have been occupied. This is not a “relatively early stage in the life of the Development”.</p> <p>For the reasons set out above, the modification of this obligation would not serve its useful purpose equally well.</p> <p>Without prejudice to the Council’s position on viability, the application contains insufficient information to enable the Council to assess the claim that the provision of the Chilmington Hamlet facilities by 1400 occupations <i>“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 Applicants to carry out the Development at all.”</i></p> <p>b. On completion of the facilities and handover to the CMO, it is important to ensure the facilities are of the quality agreed in the Design Brief and Specification and that they contain no defects. This obligation continues to serve a useful purpose because it ensures that facilities of sufficient quality are handed over to the CMO for the benefit of residents. The discharge of this obligation would not serve that useful purpose equally well because it would mean that the CMO would have to bear the costs of rectifying any defects.</p> <p>c. This obligation continues to serve a useful purpose, its discharge would not serve that useful purpose equally well because the transfer of the Hamlet Facilities to the CMO is an essential part of the approach to community stewardship being delivered at Chilmington Green and detailed in the CMO Operating Business Plan submitted by the Owners. The applicant has not explained how the retention of these assets in their ownership would impact the CMO Business Plan or how the Hamlet Facilities would be managed and maintained and by whom or what would happen at the end of the lease.</p> <p>The obligation for the Owners to meet the costs of any SDLT/other tax payable to register the transfer of the land and to cover the CMO’s associated legal costs. continues to serve a useful purpose because having to pay these costs which would reduce the monies the CMO has available to deliver their charitable objectives and would simply serve the</p>	
--	--	--	--	--	--	--	--

						<p>increase the deficit the CMO operates under. For this reason, the discharge of this obligation would not serve that useful purpose equally well.</p> <p>d. The applicant's modifications table proposes a modification to the trigger for payment set out in Schedule 29D item 12. However, the submitted amended S.106 Agreement proposes that the whole of Schedule 29D is deleted. The applicant should clarify which modification is proposed.</p> <p>Notwithstanding the above, the Council does not agree to the modification to the trigger to deliver the Chilmington Hamlet Facilities by 3500 occupations and consequently does not agree the modification to Schedule 29D item 12 to make payment at 3250 occupations.</p> <p>Furthermore, Schedule 29D Item 12 (Payment into the "Developers Capital Bank Account – Council) prior to the trigger point for delivery of the Hamlet Facilities continues to serve a useful purpose because it ensures that, if the Council is required to remedy a breach of this obligation, the Council can do so as quickly as possible following the breach occurring. The discharge of the obligation would result in an unacceptable delay to delivery if there were a breach of the obligation and would therefore not serve that useful purpose equally well.</p> <p>The modification and discharge of these obligations is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG8, CG10 &amp; CG16 and the National Planning Policy Framework. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 &amp; COM2.</p> <p><b>Reject: the obligation shall continue to have effect without modification.</b></p>	
30	Submission and Approval of Design Brief and Specification by 1,000 occupations	Paras 1.1 and 1.2	a. The Applicants 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 Council (approval not to be unreasonably withheld) ... at Schedule 7A to be provided in Chilmington Hamlet has been	a. M b. MV c. M	ABC	<p>a. This obligation continues to serve a useful purpose. Its modification would not serve that useful purpose equally well. Considering the Council's response to request 29 above, there is no justification to amend the trigger to submit the Design Brief and Specification. The submission of the Design Brief and Speciation within a timely manner enables the Council to ensure design quality is embedded in the development at an early stage. The requirement for the design brief to be 'approved' by the Council prior to 1000 occupations ensures the scheme to be delivered is</p>	n/a

			<p>approved by the Council with a total capital cost of £1,266,000.00.</p> <p>b. ... including fees, contingencies, specification and design costs, supervision fees, access roads and service costs ('the Facilities').</p> <p>c. Further, the Applicants 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.'</p>			<p>of sufficient design quality and safeguards against poor quality development.</p> <p>b. This obligation continues to serve a useful purpose by ensuring that Fees, contingencies, specification and design costs and supervision fees are sufficiently provided for, and do not 'use up' the main construction budget sum. Access roads and service costs are infrastructure costs associated with the wider development. The proposed modification would not serve that useful purpose equally well because including these costs in the total capital cost would reduce the total budget available to deliver the facilities and consequently undermine the ability to deliver the required quality of facilities at The Hamlet.</p> <p>It is already evident from discussions with the applicant about the total capital cost for the first playspace, and the applicant's position with reference to request 25 relating to the cost of the Natural Green Space, that the budgets identified in the Agreement, with the inclusion of index linking and without the inclusion of fees, contingencies, specification and design costs, supervision fees, access roads and service costs, does not provide sufficient budget to deliver the quality facilities required by the outline planning permission, the design code and the applicant's design and access statement. Including the costs stated in this request in the budget identified in the Agreement will undermine further the ability to deliver the quality of facilities envisaged for Chilmington Green.</p> <p>Without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim that the exclusion of fees, contingencies, specification and design costs, supervision fees, access roads and service costs from the total capital cost is undermining <i>"the viability of the relevant Main Phases and strike at the very delivery of these assets"</i>.</p> <p>c. The proposed modification does not serve a useful purpose. Para 1.1 clearly sets out the total cost for The Hamlet Facilities. In addition, Para 1.1 allows for variation in the scope of the facilities to be provided in the bracketed sentence "(unless otherwise agreed by the Council)". The scope of the facilities is to be appropriately agreed through</p>	
--	--	--	---	--	--	--	--

						<p>the submission of the Design Brief and Specification and application for reserved matters.</p> <p>The modification of these obligations is contrary to the Chilmington Green Area Action Plan 2013 Policy CG1, CG8 &amp; CG16 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, SP6 &amp; COM2.</p> <p><b>Reject: the obligation shall continue to have effect without modification.</b></p>	
31	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	<p>The Applicants apply to modify paragraph 1.2 and/or discharge aspects of the same as follows:</p> <p>a. Paragraph 1.1.2 to be modified to omit the requirement to consult the CMO (or its substitute)</p> <p>b. 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</p> <p>c. Paragraph 1.2.3 to be modified simply to state 'shall include the consultation responses.'</p>	<p>a. M</p> <p>b. D</p> <p>c. M</p>	ABC	<p>a. This obligation continues to serve a useful purpose. Its modification would not serve that useful purpose equally well. The CMO is an important stakeholder at Chilmington Green. They will take on the management and maintenance of The Hamlet facilities. It is therefore important that the CMO can input at an early stage in the design process. The value of early consultation is reflected in National Planning Practice Guidance (NPPG) which identifies the benefit of "working collaboratively and openly with interested parties at an early stage to identify, understand and seek to resolve issues associated with a proposed development" (ref: NPPG, para: 001 Reference ID: 20-001-20190315). It is noted that the applicant does not propose to remove the requirement to consult with other relevant stakeholders and the public.</p> <p>b. This obligation continues to serve a useful purpose. Its modification would not serve that useful purpose equally well. The approval of the details of the consultation by the CMO/Council prior to the consultation taking place ensures that the consultation is fit for purpose and involves all necessary parties.</p> <p>c. This obligation continues to serve a useful purpose. Its modification would not serve that useful purpose equally well. The requirement for the Design Brief and Specification to include the CMO's comments on the costings ensures that the CMO can input into the specification and cost of facilities they will own, manage and maintain and raise any concerns at any early stage in the design process and for the Council to be aware of their comments when reviewing the document.</p> <p>The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG8, CG10 &amp; CG16 and the National Planning Policy</p>	n/a

						<p>Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, SP6, COM2 &amp; IMP4.</p> <p><b>Reject: the obligation shall continue to have effect without modification.</b></p>	
32	The 12 months repairing obligation following transfer	Paragraph 1.4	The Applicants apply to discharge this obligation in its entirety	D	ABC	<p>This obligation continues to serve a useful purpose because it ensures that any defects are remedied in a timely manner by the Owners who provided the facility. The CMO should not have to bear the cost to repair defects which occur within the time periods stated in the Agreement. It should be the responsibility of the 'Owners' who provide the Hamlet Facilities to deliver the quality of facilities agreed in the planning /reserved matters permissions and that any defects identified after handover are remedied. This obligation ensures that facilities of sufficient quality are handed over to the CMO and that defects are dealt with promptly to the benefit of the community. The discharge of this obligation would not serve that useful purpose equally well because it would mean that the CMO would have to bear the costs of rectifying any defects and if poor quality facilities are provided there would be no means of remedy.</p> <p>The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG8, CG10 &amp; CG16 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM2 &amp; IMP4.</p> <p><b>Reject; the obligation shall continue to have effect.</b></p>	n/a
33	Provision for payment toward the Council's costs	Paragraph 2	The Applicants apply to discharge this payment obligation.	D	ABC	<p>In accordance with para 1.1.10, the Owners can ask the Council to consider a transfer which the developer wishes to use but has not been agreed with the CMO for the required transfer of any asset to the CMO. The payment of the Council's legal costs to consider the transfer serves a useful purpose through enabling the Council to take specialist legal advice upon the wording, and the dispute that has arisen between the developer and CMO, and if appropriate to approve the transfer terms so that the asset transfer can proceed. The discharge of this obligation would not serve this useful purpose equally well because without the Owners payment of the legal costs these costs would fall upon the public purse which would not be appropriate as they arise in connection with the</p>	n/a

						<p>provision and long-term stewardship of mitigation for the impact of the development.</p> <p>The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG8, CG10 &amp; CG16 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM2 &amp; IMP4.</p> <p><b>Reject: the obligation shall continue to have effect.</b></p>	
<b>Schedule 8 – Children and Young People's Play Space</b>							
34	The provision of the design brief and specification for the children's and young people's play spaces and/or other facilities	Paragraph 1	<p>a. The Applicants 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 subparagraphs 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.</p> <p>b. The Applicants request that paragraph 1.1.1 be modified to read '... and not exceeding a total of £2,585,143.00 ... for the play space including fees, contingencies, specification and design costs, supervision fees, access roads and service costs ('the Facilities')'.</p> <p>c. Further, before 1.1.2, the Applicants 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.'</p>	<p>a. MVP</p> <p>b. MV</p> <p>c. M</p>	ABC	<p>a. This obligation continues to serve a useful purpose. Its modification would not serve a useful purpose equally well. The submission of design briefs in a timely manner prior to the delivery of the playspace enables the Council to ensure design quality is embedded in the development at an early stage, ensures the scheme to be delivered is of sufficient design quality and safeguards against poor quality development.</p> <p>The applicant has provided no evidence to demonstrate how any potential issues concerning the safety of the site and surrounding construction works would impact on their ability to submit the Design Brief &amp; Specification within the required timescales.</p> <p>Without prejudice to the Council's position on viability, it is also not clear how the submission of the Design Brief and Specification within the currently agreed timescales <i>"is another significant factor in terms of viability and deliverability, justifying the deferment of these obligations supports the ultimate delivery of the entire Development"</i>.</p> <p>The trigger for PS1 had occurred by April 2021. The DB&amp;S for PS1 was submitted in January 2023 but, due to on-going discussions about the budget for the playspace, has not yet been agreed.</p> <p>b. This obligation continues to serve a useful purpose by ensuring that Fees, contingencies, specification and design costs and supervision fees are sufficiently provided for, and do not 'use up' the main construction budget sum. Access roads and service costs are infrastructure costs associated with the wider development. The proposed modification would not serve that useful purpose equally well because including these costs in the</p>	n/a



						<p>total capital cost would reduce the total budget available to deliver the facilities and consequently undermine the ability to deliver the required quality of playspace.</p> <p>It is already evident from discussions with the applicant that the budget identified for PS1, without the inclusion of fees, contingencies, specification and design costs, supervision fees, access roads and service costs does not provide sufficient budget to deliver the quality playspace / public space required by the Outline planning permission, the design code and the applicant's design and access statement. Including these costs in the total capital cost will undermine further the ability to deliver the quality of space envisaged for Chilmington Green.</p> <p>Without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim that the exclusion of fees, contingencies, specification and design costs, supervision fees, access roads and service costs from the total capital cost is undermining "the viability of the relevant Main Phases and strike at the very delivery of these assets".</p> <p>c. The proposed modification would not serve the obligation's purpose equally well. The preceding paragraph clearly sets out the total capital cost for each playspace. The scope of the facilities is appropriately agreed through the submission of the Design Brief and Specification and applications for reserved matters.</p> <p>The modification of these obligations is contrary to the Chilmington Green Area Action Plan 2013 Policy CG1 and CG8 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see Ashford Local Plan 2030 Policies SP1, SP6 &amp; COM2.</p> <p><b>Reject: the obligation shall continue to have effect without modification.</b></p>	
35	The provision for consultation with the CMO, stakeholders etc. and approval of the	Paragraph 1.1.2	In addition, the Applicants apply to modify paragraph 1.1.2 as follows:  a. To omit the requirement to consult with the CMO and to obtain approval in respect of the details of the consultation, and consequentially,	a. M  b. M	ABC	<p>a. This obligation continues to serve a useful purpose. Its modification would not serve that useful purpose equally well. The CMO is an important stakeholder at Chilmington Green. They will take on the management and maintenance of the play spaces. It is therefore important that the CMO can input at an early stage in the design process. The value of early consultation is reflected in National</p>	n/a

	details of the consultation		b. To omit the words ‘and in particular the CMO’s comments on the costings.’			<p>Planning Practice Guidance (NPPG) which identifies the benefit of “working collaboratively and openly with interested parties at an early stage to identify, understand and seek to resolve issues associated with a proposed development” (ref: NPPG, para: 001 Reference ID: 20-001-20190315). It is noted that the applicant does not propose to remove the requirement to consult with other relevant stakeholders and the public. The approval of the details of the consultation by the CMO/Council prior to the consultation taking place ensures that the consultation is fit for purpose and involves all necessary parties.</p> <p>b. This obligation continues to serve a useful purpose. Its modification would not serve that useful purpose equally well. The requirement for the Design Brief and Specification to include the CMO’s comments on the costings ensures that the CMO can input into the specification and cost of facilities they will manage and maintain and raise any concerns at any early stage in the design process and for the Council to be aware of their comments when reviewing the document.</p> <p>The modification of these obligations is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG8 &amp; CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council’s wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, SP6, COM2 &amp; IMP4.</p> <p><b>Reject: the obligation shall continue to have effect without modification.</b></p>	
36	The applicable occupation limits in respect of the provision and construction of each Play Space in the relevant Main Phase	Paragraphs 1.2 and 1.4	The Applicants 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).	M	ABC	<p>The obligation continues to serve a useful purpose. Its modification would not serve a useful purpose equally well. Timely provision of play space to serve the needs of the new community is essential to good placemaking. There are no play facilities and a considerable lack of access to play facilities in the development now, to delay provision would be to the detriment of the community.</p> <p>It is evident, especially when visiting the development in the school holidays, that there is a need for playspace to serve Main Phase 1 now. Planning officers have witnessed young children playing on the streets and on land parcels adjacent to their homes not yet brought forward for development. Given this need, it could be argued that the delivery of the playspaces</p>	n/a

						<p>should be brought forward earlier and certainly not delayed.</p> <p>The assertion at para 8.38 of the Quod Explanatory Statement that <i>“the current phasing of the playspace does not align with the land disposal and construction strategy. As currently required, the play areas will be at risk of being undeliverable due to access and construction site safety restrictions”</i> does not reflect the situation on site for phase 1.</p> <p>From the information submitted on land sales for Main Phase 2, there is no reason to think that PS2 could not be delivered by 500 occupations in Main Phase 2, noting that access to PS2 is not reliant on neighbouring development parcels and can be provided from Chilmington Green Lane.</p> <p>There are no indications of proposed delivery timescales for development land parcels within Main Phase 3 and Main Phase 4. Therefore, there is no basis for delaying the delivery of PS4 and PS6 for this reason.</p> <p>Without prejudice to the Council’s position on viability, the application contains insufficient information to enable the Council to assess the claim that <i>“the deferment of these obligations supports the ultimate delivery of the entire Development”</i>.</p> <p>The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 &amp; CG8 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council’s wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 &amp; COM2.</p> <p><b>Reject: the obligation shall continue to have effect without modification.</b></p>	
37	The conditions attaching to occupation in relation to each Play Space in each Main Phase	Paras 1.2.1 to 1.2.6	<p>The Applicants seek to discharge or modify these conditions to remove amongst other things the powers of veto effectively given to the CMO thereunder, as follows:</p> <p>a. Paragraph 1.2.1 to be modified to omit the last part of the clause beginning ‘and are free from ... a cosmetic nature).</p> <p>b. Further, the Applicants apply to discharge the obligation to transfer the Facilities, substituting an obligation to grant a long lease of the same, being a lease (including</p>	<p>a. D</p> <p>b. M</p>	ABC	<p>a. On completion of the facilities and handover to the CMO, it is important to ensure the facilities are of the quality agreed in the Design Brief and Specification and that they contain no defects. This obligation continues to serve a useful purpose because it ensures that facilities of sufficient quality are handed over to the CMO for the benefit of residents. The discharge of this obligation would not serve that useful purpose equally well because it would mean that the CMO would have to bear the costs of rectifying any defects.</p> <p>b. This obligation continues to serve a useful purpose, its discharge would not serve that useful purpose equally well because the transfer of playspace facilities to the CMO is an essential part of the</p>	n/a

			<p>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).</p> <p>Thus, the Applicants apply for paragraph 1.2.4 to be discharged and paragraphs 1.2.5-6 to provide instead that the Facilities, are:</p> <p>either</p> <p>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)</p> <p>or</p> <p>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 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</p>			<p>approach to community stewardship being delivered at Chilmington Green and detailed in the CMO Operating Business Plan submitted by the Owners. The applicant has not explained how the retention of these assets in their ownership would impact the CMO Business Plan or how the Playspaces would be managed and maintained and by whom or what would happen at the end of the lease.</p> <p>The obligation for the Owners to meet the costs of any SDLT/other tax payable to register the transfer of the land and to cover the CMO's associated legal costs serves a useful purpose for the same reasons as above.</p> <p>The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG8 &amp; CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM2 &amp; IMP4.</p> <p><b>The Obligation shall continue to have effect without modification.</b></p>	
38	The 12 months repairing liability following transfer	Paragraph 1.3	The Applicants apply to discharge this obligation in its entirety.	D	ABC	<p>This obligation continues to serve a useful purpose because it ensures that any defects are remedied in a timely manner by the Owners who provided the facility. The CMO should not have to bear the cost to repair defects which occur within the time periods stated in the Agreement. It should be the responsibility of the 'Owners' who provide the playspace facilities to deliver the quality of facilities agreed in the planning /reserved matters permissions and that any defects that occur after handover are remedied. This obligation ensures that facilities of sufficient quality are handed over to the CMO and that defects are dealt with promptly to the benefit of the community. The discharge of this obligation would not serve that useful purpose equally well because it would mean that the</p>	n/a

						<p>CMO would have to bear the costs of rectifying any defects and if poor quality facilities are provided there would be no means of remedy.</p> <p>The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG8 &amp; CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM2 &amp; IMP4.</p> <p><b>Reject: the obligation shall continue to have effect.</b></p> <p><i>Proposed modification by agreement: - the Council considers that the introduction of a defects dispute resolution provision could meet the statutory test under s.106A(6)(c) The Council is willing to discuss this proposed modification by agreement with the appellant.</i></p>	
39	Provision for payment toward the Council's costs	Paragraph 2	The Applicants apply to discharge this payment obligation.	D	ABC	<p>In accordance with para 1.1.10, the Owners can ask the Council to consider a transfer which the developer wishes to use but has not been agreed with the CMO for the required transfer of any asset to the CMO. The payment of the Council's legal costs to consider the transfer serves a useful purpose through enabling the Council to take specialist legal advice upon the wording, and the dispute that has arisen between the developer and CMO, and if appropriate to approve the transfer terms so that the asset transfer can proceed. The discharge of this obligation would not serve this useful purpose equally well because without the Owners payment of the legal costs these costs would fall upon the public purse which would not be appropriate as they arise in connection with the provision and long-term stewardship of mitigation for the impact of the development</p> <p>The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG8 &amp; CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM2 &amp; IMP4.</p> <p><b>Reject: the obligation shall continue to have effect.</b></p>	n/a
<b>Schedule 9 – Allotments</b>							
40	Provision of Main Phase 1 Allotments by	Para 1 and Schedule 29D Item 10	a. The Applicants apply to modify this obligation so that the provision of the Main Phase 1 Allotments is deferred to 1,450 Dwelling	a. MV b. M	ABC	a. The obligation continues to serve a useful purpose. Timely provision of allotments is essential to support community engagement and well-being. The applicant claims that the "The revised trigger is	The Council notes that appellant's clarification regarding part 'b' of this request. The Council has no further points to add to its original response.

	1000 Dwelling Occupations		<p>Occupations; i.e. paragraph 1.1 should be modified to read 'Unless the Council agrees otherwise, not to Occupy more than 1,450 Dwellings in Main Phase 1 or ...'</p> <p>Paragraph 1.3 likewise to be modified to refer at sub-paragraph 1.3.1 to 1,450 Dwellings.</p> <p><del>b. Schedule 29D item 10, also to be modified accordingly so that the trigger for payment refers to 1450 Dwellings in Main Phase 1.</del></p>			<p>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 Council do not agree that it is appropriate to delay the provision of allotments until demand meets the minimum viable size. There will be demand prior to this, with demand increasing as residents move into the development.</p> <p>The Public Green Spaces and Water Environment SPD 2012 provides, in Table 5, page 24, that allotments should be "Laid out to agreed specification before completion of 400<sup>th</sup> dwelling". The Council has therefore already agreed, as part of the planning permission, to delay provision significantly within Phase 1. A further delay would be contrary to the purpose of the obligation and not serve it equally well.</p> <p>Without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim that the provision of the Main Phase 1 Allotment by 1000 occupations "<i>will adversely affect the Paying Owner's cashflow in Main Phase 1 and compromise the viability of this phase</i>".</p> <p>b. The applicant's modifications table proposes a modification to the trigger for payment set out in Schedule 29D item 10. However, the submitted amended S.106 Agreement proposes that the whole of Schedule 29D is deleted. The applicant should clarify which modification is proposed.</p> <p>Notwithstanding the above, payment into the "Developers Capital Bank Account – Council" prior to the trigger point for delivery of the allotments continues to serve a useful purpose because it ensures that, if the Council is required to remedy a breach of this obligation, the Council can do so as quickly as possible following the breach occurring. Payment at the same time as the obligation is to be complied with, as proposed in the modifications table, is too late and will result in an unacceptable delay to delivery. It would not serve the purpose of the obligation equally well.</p> <p>Furthermore, the discharge of the obligation would also result in an unacceptable delay to delivery if there is a breach of the obligation and would therefore not serve that useful purpose equally well.</p>	
--	---------------------------	--	---	--	--	--	--

						<p>The modification of the obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 &amp; CG8 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 &amp; COM3 and the Public Green Spaces and Water Environment SPD 2012.</p> <p><b>Reject – the obligation shall continue to have effect without modification.</b></p> <p><i>Note: there is a typographical error in the Agreement. The "Main Phase 1 Allotment" is to be provided on land parcels "A1+A2" on the plan OPA06R rev. P2 at Annex 3 of the Agreement. This location accords with the phasing set out in the AAP and the provision as agreed in the Phase 1 Masterplan.</i></p> <p><i>It was also agreed as part of the Phase 1 Masterplan that allotment "A5" will also form part of the "Main Phase 1 Allotment" and this will be delivered on part of the site identified as land parcel "A7" on plan OPA06R rev. P2.</i></p>	
41	Provision of Main Phase 2 Allotments by 1000 Dwelling Occupations	Para 1 and Schedule 29D Item 11	<p>a. The Applicants 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 ...'</p> <p>Paragraph 1.3 likewise to be modified to refer at sub-paragraph 1.3.2 to 1,100 Dwellings.</p> <p><del>b. Schedule 29D item 11, to be modified accordingly so that the trigger for payment refers to 1,325 Dwellings in Main Phase 2.</del></p>	<p>a. MV</p> <p>b. M</p>	ABC	<p>a. The obligation continues to serve a useful purpose</p> <p>Timely provision of allotments is essential to support community engagement and well-being. The Council do not agree that it is appropriate to delay the provision of allotments until demand meets the minimum viable size. There will be demand prior to this, with demand increasing as residents move into the development.</p> <p>The Public Green Spaces and Water Environment SPD 2012 provides, in Table 5, page 24, that allotments should be "Laid out to agreed specification before completion of 400<sup>th</sup> dwelling". The Council has therefore already agreed, as part of the planning permission, to delay provision significantly within Phase 2. A further delay would be contrary to the purpose of the obligation and not serve it equally as well.</p> <p>Without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim that "the provision of the Main Phase 2 Allotment by 1000 occupations will adversely affect the Paying Owner's cashflow in Main Phase 2 and compromise the viability of this phase."</p> <p>b. The applicant's modifications table proposes a modification to the trigger for payment set out in Schedule 29D item 11. However, the submitted</p>	The Council notes that appellant's clarification regarding part 'b' of this request. The Council has no further points to add to its original response.

						<p>amended S.106 Agreement proposes that the whole of Schedule 29D is deleted. The applicant should clarify which modification is proposed.</p> <p>Notwithstanding the above, payment into the “Developers Capital Bank Account – Council” prior to the trigger point for delivery of the allotments continues to serve a useful purpose because it ensures that, if the Council is required to remedy a breach of this obligation, the Council can do so as quickly as possible following the breach occurring</p> <p>Payment at 1,325 occupations, after the trigger for delivery of the allotments has been reached, as proposed in the modifications table, is too late and will result in an unacceptable delay to delivery. It would not serve the purpose of the obligation equally well.</p> <p>Furthermore, the discharge of the obligation would also result in an unacceptable delay to delivery if there is a breach of the obligation and would therefore not serve that useful purpose equally well.</p> <p>The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 &amp; CG8 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council’s wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 &amp; COM3 and the Public Green Spaces and Water Environment SPD 2012.</p> <p><b>Reject – the obligation shall continue to have effect without modification.</b></p> <p><i>Note: there is a typographical error in the Agreement. The "Main Phase 2 Allotment" is to be provided on land parcel “A6+A4” on plan OPA06R rev. P2 at Annex 3 of the Agreement. This location accords with the phasing set out in the AAP and the provision as proposed in the Phase 2 Masterplan.</i></p>	
42	Provision of Main Phase 3 Allotments by 1400 Dwelling Occupations	Para 1 and 1.3.3 and Schedule 29D Item 18	The Applicants apply for this obligation to be discharged.	DVp	ABC	<p>The obligation continues to serve a useful purpose. Its discharge would not serve that useful purpose. The provision of allotments is essential to support community engagement and well-being. In accordance with the Chilmington Green Area Action Plan 2013. The development should provide at least 2.76 ha of allotments. The proportion required in Phase 3 is 0.72 ha. This accords with the provision required in new developments across the borough as set out in the Public Green Spaces and Water Environment SPD 2012.</p>	n/a



						<p>The application contains no evidence to substantiate the applicant's claim that <i>"The obligation to provide these allotments is unnecessary and represents over provision of such facilities"</i>. There is currently a waiting list for allotments locally and there is no evidence to suggest that the future residents of the Chilmington Green development would not want allotments.</p> <p>Without prejudice to the Council's position on viability, <i>the application contains insufficient information to enable the Council to assess the claim that the provision of the Main Phase 3 Allotment is "serving only to undermine the viability and ultimately the deliverability of the Development"</i>.</p> <p>The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 &amp; CG8 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 &amp; COM3 and the Public Green Spaces and Water Environment SPD 2012.</p> <p><b>Reject – the obligation shall continue to have effect.</b></p> <p><i>Note: there is a typographical error in the Agreement. The "Main Phase 3 Allotment" is to be provided on land parcel "A7" on plan OPA06R rev. P2 at Annex 3 of the Agreement. This location accords with the phasing set out in the AAP.</i></p>	
43	Provision of Main Phase 4 Allotments by 1400 Dwelling Occupations	Paragraph 1 and 1.3.4 and Schedule 29D Item 20	The Applicants apply for this obligation to be discharged.	DVp	ABC	<p>The obligation continues to serve a useful purpose. Its discharge would not serve that useful purpose. The provision of allotments is essential to support community engagement and well-being. In accordance with the Chilmington Green Area Action Plan 2013. The development should provide at least 2.76 ha of allotments. The proportion required in Phase 4 is 0.77 ha. This accords with the provision required in new developments across the borough as set out in the Public Green Spaces and Water Environment SPD 2012.</p> <p>The application contains no evidence to substantiate the applicant's claim that <i>"The obligation to provide these allotments is unnecessary and represents over provision of such facilities"</i>. There is currently a waiting list for allotments locally and there is no evidence to suggest that the future residents of the Chilmington Green development would not want allotments</p> <p>Without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim that the provision of the Main Phase 4 Allotment is "serving</p>	n/a

						<p>only to undermine the viability and ultimately the deliverability of the Development”.</p> <p>The request to discharge this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 &amp; CG8 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council’s wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 &amp; COM3 and the Public Green Spaces and Water Environment SPD 2012.</p> <p><b>Reject – the obligation shall continue to have effect.</b></p> <p><i>Note: there is a typographical error in the Agreement. The "Main Phase 4 Allotment" is to be provided on land parcel "A3" on plan OPA06R rev. P2 at Annex 3 of the Agreement. This location accords with the phasing set out in the AAP.</i></p>	
44	The conditions attached to the provision of the Allotments in each Main Phase	Paragraphs 1.1.1 to 1.1.6	<p>a. Firstly, the Applicants apply for the following clause to be added to paragraph 1.1.1 (after ‘... reserved matters approval’), ‘and the planned cost for that Allotment.’</p> <p>b. Further, the Applicants 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.</p> <p>Thus, the Applicants 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.</p>	<p>a. M</p> <p>b. M</p>	ABC	<p>a. This obligation continues to serve a useful purpose. The definitions set out the total cost for each allotment. Referring to the planned cost in para 1.1.1 would not serve that useful purpose equally well and would result in duplication.</p> <p>b. This obligation continues to serve a useful purpose, its discharge would not serve that useful purpose equally well because the transfer of the allotment facilities to the CMO is an essential part of the approach to community stewardship being delivered at Chilmington Green and detailed in the CMO Operating Business Plan submitted by the Owners. The applicant has not explained how the retention of these assets in their ownership would impact the CMO Business Plan or how the allotments would be managed and maintained and by whom.</p> <p>The obligation for the Owners to meet the costs of any SDLT/other tax payable to register the transfer of the land and to cover the CMO’s associated legal costs continues to serve a useful purpose because having to pay these costs which would reduce the monies the CMO has available to deliver their charitable objectives and would simply serve the increase the deficit the CMO operates under. For this reason, the discharge of this obligation would not serve that useful purpose equally well.</p> <p>It is not clear what it meant in the applicant’s statement “<i>It will also provide additional flexibility in relation to land use, catering for varying demand</i></p>	n/a

						<p><i>for allotments without detracting from the provision of these Facilities where they are wanted"</i></p> <p>The request to modify these obligations is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG8 &amp; CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM3 &amp; IMP4.</p> <p><b>Reject - shall continue to have effect without modification</b></p>	
45	The 12 months repairing liability following transfer	Paragraph 1.2	The Applicants apply to discharge this obligation in its entirety.	D	ABC	<p>This obligation continues to serve a useful purpose because it ensures that any defects are remedied in a timely manner by the Owners who provided the facility. The CMO should not have to bear the cost to repair defects which occur within the time periods stated in the Agreement. It should be the responsibility of the 'Owners' who provide the allotment facilities to deliver the quality of facilities agreed in the planning /reserved matters permissions and that any defects that occur after handover are remedied. This obligation ensures that facilities of sufficient quality are handed over to the CMO and that defects are dealt with promptly to the benefit of the community. The discharge of this obligation would not serve that useful purpose equally well because it would mean that the CMO would have to bear the costs of rectifying any defects and if poor quality facilities are provided there would be no means of remedy.</p> <p>The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG8 &amp; CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM3 &amp; IMP4.</p> <p><b>Reject – the obligation shall continue to have effect.</b></p> <p><i>Proposed modification by agreement: - the Council considers that the introduction of a defects dispute resolution provision could meet the statutory test under section 106A(6)(c). The Council is willing to discuss this proposed modification by agreement with the appellant</i></p>	n/a
46	Provision for payment toward the Council's costs	Paragraph 2 and 3	The Applicants apply to discharge this payment obligation.	D	ABC	<p>In accordance with para 1.1.10, the Owners can ask the Council to consider a transfer which the developer wishes to use but has not been agreed with the CMO for the required transfer of any asset to the CMO. The</p>	n/a

						<p>payment of the Council's legal costs to consider the transfer serves a useful purpose through enabling the Council to take specialist legal advice upon the wording, and the dispute that has arisen between the developer and CMO, and if appropriate to approve the transfer terms so that the asset transfer can proceed. The discharge of this obligation would not serve this useful purpose equally well because without the Owners payment of the legal costs these costs would fall upon the public purse which would not be appropriate as they arise in connection with the provision and long-term stewardship of mitigation for the impact of the development</p> <p>The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG8 &amp; CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM3 &amp; IMP4.</p> <p><b>Reject – this obligation shall continue to have effect.</b></p>	
<b>Schedule 10 – DP3, Discovery Park Sports Hub and Discovery Park Sports Pitches</b>							
47	Payment of £20,000 toward masterplanning	Paragraph 1.1	<p>a. The Applicants apply for this obligation to be discharged</p> <p>b. and for the sum of £20,000 already paid to be refunded.</p> <p>Thus, the Applicants propose that clause 1.1 should read as follows:</p> <p>‘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 ...’</p>	<p>a. D</p> <p>b. O</p>	ABC	<p>a. This obligation continues to serve a useful purpose because the applicants are only responsible for delivering a portion of Discovery Park. The remaining areas of Discovery Park will need to be delivered by a third party, most likely to be the council who will also be involved in the development of the Park over the long term. It is therefore appropriate for the Council to co-ordinate the development of the masterplan in collaboration with all stakeholders, including the community. The discharge of this obligation and the modification to require the applicant to prepare the masterplan would not serve that useful purpose equally well.</p> <p>The Council has undertaken a substantial amount of work on the Discovery Park Masterplan, in accordance with their obligations in the Agreement, including consultation with residents, local groups and project partners. The Council is working towards publishing the masterplan before 400 occupations as required by the Agreement. The Council will demonstrate how the contribution paid has been/is proposed to be spent.</p> <p>Unfortunately, some aspects of the work, for example undertaking ecological appraisals, have not been completed to date as these actions</p>	n/a

						<p>require access onto the applicant's land which has been requested but denied.</p> <p>b. The proposed obligation to repay the sums already paid to the Council falls outside of the scope of Section 106B.</p> <p>The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policy CG1, CG9 &amp; CG16 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, SP6 &amp; COM2.</p> <p><b>Reject – the obligation shall continue to have effect without modification</b></p>	
48	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	<p>a. The Applicants apply to modify this obligation so that the submission/approval of the design briefs and specifications should be re-gearred from 1,000 Dwelling Occupations to 2,650 Occupations</p> <p>b. 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;</p> <p>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. ...'</p>	<p>a. M</p> <p>b. MV</p>	ABC	<p>a. This obligation continues to serve a useful purpose. The submission of the design brief and specification in a timely manner enables the Council to ensure design quality is embedded in the development at an early stage and safeguards against poor quality development. It is envisaged that Phase 1 construction would commence by 2200 occupations to enable it to be completed by 3200 occupations. The Design Brief and Specification needs to be agreed in good time prior to commencement of construction of the Phase 1 facilities to enable contracts to be let, etc. A delay to the agreement of the Design Brief and Specification is unlikely to allow sufficient time to enable the facilities to be delivered by the required deadline. The applicant has not demonstrated that their proposed delay would provide sufficient time. The proposed modification would therefore not serve the useful purpose equally well.</p> <p>b. This obligation continues to serve a useful purpose. Removing index linking from the total capital cost of both the Discovery Park Sports Pitches and the Discovery Park Sports Hub would undermine the ability to deliver the facilities required and that are of the right quality. Indexation ensures the value of the contributions agreed when planning permission is granted, and consequently purchasing power, is maintained in the future and therefore the same level of service/infrastructure can be provided. The total capital cost was calculated based on the cost of delivering these facilities at the time outline planning permission was granted. Costs have since risen and therefore the proposed modification to remove indexation would not serve that useful purpose equally well</p>	n/a

						<p>because it would reduce the ability of the Owners and Paying Owners to deliver the quality of facilities that are required.</p> <p>Fees, contingencies, specification and design costs and supervision fees should not 'use up' the main construction budget sum. Access roads and service costs are infrastructure costs associated with the wider development. The proposed modification would not serve that useful purpose equally well because including these costs in the total capital cost would reduce the total budget available to deliver the facilities and consequently undermine the ability to deliver the required quality of facilities.</p> <p>It is already evident from discussions with the applicant about the total capital cost for Play Space 1 and the applicant's position with reference to request 25 relating to the cost of the Natural Green Space, that the budgets identified in the Agreement, with the inclusion of index linking and without the inclusion of fees, contingencies, specification and design costs, supervision fees, access roads and service costs does not provide sufficient budget to deliver the quality facilities required by the outline planning permission, the design code and the applicant's design and access statement. Including the costs, stated in this request, in the budget identified in the Agreement will undermine further the ability to deliver the quality of facilities envisaged for Chilmington Green.</p> <p>Without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim that the exclusion of fees, contingencies, specification and design costs, supervision fees, access roads and service costs from the total capital cost and the inclusion of indexation is undermining <i>"the viability of the relevant Main Phases and strike at the very delivery of these assets"</i>.</p> <p>The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG9 &amp; CG16 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 &amp; SP6.</p>	
--	--	--	--	--	--	--	--

						<b>Reject – this objection shall continue to have effect without modification.</b>	
49	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 Applicants apply for paragraph 2.1.2 to be modified  a. to omit the requirement to consult the CMO and  b. omit the requirement to consult and to obtain approval in respect of the details of the consultation and  c. to omit the final clause ‘and in particular the CMO’s comments on the costings;’	a. M b. M c. M		<p>a. This obligation continues to serve a useful purpose. Its modification would not serve that useful purpose equally well. The CMO is an important stakeholder at Chilmington Green. They will take on the management and maintenance of the sports pitches and sports hub. It is therefore important that the CMO can input at an early stage in the design process. The value of early consultation is reflected in National Planning Practice Guidance (NPPG) which identifies the benefit of “working collaboratively and openly with interested parties at an early stage to identify, understand and seek to resolve issues associated with a proposed development” (ref: NPPG, para: 001 Reference ID: 20-001-20190315). It is noted that the applicant does not propose to remove the requirement to consult with other relevant stakeholders and the public.</p> <p>b. This obligation continues to serve a useful purpose. Its modification would not serve that useful purpose equally well. The approval of the details of the consultation by the CMO/Council prior to the consultation taking place ensures that the consultation is fit for purpose and involves all necessary parties.</p> <p>c. This obligation continues to serve a useful purpose. Its modification would not serve that useful purpose equally well. The requirement for the Design Brief and Specification to include the CMO’s comments on the costings ensures that the CMO can input into the specification and cost of facilities that they will manage and maintain and raise any concerns they may have, at an early stage in the design process and for the Council to be aware of their comments when reviewing the document.</p> <p>The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 &amp; CG10 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council’s wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 &amp; IMP4.</p> <p><b>Reject – the obligation shall continue to have effect without modification.</b></p>	n/a
50	The obligations to provide the	Paragraph 2.2 and 2.8	a. The Applicants apply to modify paragraph 2.2 to provide, ‘Not to	a. M b. DV	ABC	<p>a. This obligation continues to serve a useful purpose, The timely provision of sport and recreation facilities to meet the needs of the new community</p>	The Council notes that appellant’s clarification regarding part ‘b’ of this

	Sports Facilities (1st Phase)	and Schedule 29D Item 26	<p>Occupy more than 3,650 [rather than 3,200] Dwellings unless:</p> <p>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.</p> <p>2.8 To construct and provide:-</p> <p>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; ...</p> <p>b. <del>At Schedule 29D Item 26, the payment trigger likewise to be deferred from 2,800 to 4,000 Dwellings</del></p>			<p>is essential to good placemaking. The delivery of the Discovery Park sports facilities is integral to meeting the sporting, recreational and health needs of the residents of Chilmington Green and wider South Ashford</p> <p>The proposed modification would not serve that useful purpose equally well because the delay in the delivery of these facilities (alongside any delay in delivery of the Chilmington Hamlet facilities and the Community Hub) will result in a deficit of facilities in proportion to the number of residents. The Ashford Borough Council Playing Pitch Strategy 2017-2030 (August 2017) identifies that the Chilmington Green development will require the following facilities by 2500 dwelling occupations:</p> <p>2 x adult football pitches;</p> <p>1 x junior 11 v 11 pitch;</p> <p>1 junior 9 v 9 pitch;</p> <p>1 mini soccer 7 v 7 pitch;</p> <p>1 mini soccer 5 v 5 pitch;</p> <p>0.5 cricket squares;</p> <p>Artificial grass pitch for hockey</p> <p>3G rubber crumb pitch for football training and competition</p> <p>This requirement, the meeting of which is the purpose of the obligation, will not be met with the modifications proposed.</p> <p>The applicant states that “given the availability of alternative sports facilities and assets that precede the delivery of the first phase, the re-timing of this obligation .....will serve its purpose equally well if modified as proposed”.</p> <p>This will not be the case as this modification, alongside those proposed for The Hamlet facilities and Community Hub; would result in 56% of the development (3250 dwellings) being occupied before any sports facilities are provided for residents. The earliest provision being the multi-use games area at the Community Hub.</p> <p>The Quod Explanatory Statement (para 8.40) argues that the triggers for the Sports Facilities should be reviewed because sports facilities are to be provided at the secondary school which will be accessible to the community. The secondary school</p>	request. The Council has no further points to add to its original response.
--	-------------------------------	--------------------------	---	--	--	--	---



						<p>will include sports facilities, with the intention that these will be available to the public outside the hours of school use. However, these facilities will not be available to serve the community during school use hours and in any event will not be of sufficient size to serve the community of up to 3250 dwellings.</p> <p>The additional clause to para 2.2.1 (ref; “planned cost for these facilities” would not serve a useful purpose because the cost of the facilities is clearly stated in the preceding paragraph 2.1.1 and would result in duplication.</p> <p>b. The applicant’s modifications table proposes a modification to the trigger for payment set out in Schedule 29D item 26. However, the submitted amended S.106 Agreement proposes that the whole of Schedule 29D is deleted. The applicant should clarify which modification is proposed.</p> <p>Notwithstanding the above, payment into the “Developers Capital Bank Account – Council” prior to the trigger point for delivery of the sports facilities continues to serve a useful purpose because it ensures that, if the Council is required to remedy a breach of this obligation, the Council can do so as quickly as possible following the breach occurring</p> <p>Payment at 4000 occupations, after the trigger for delivery of the sports facilities has been reached, as proposed in the modifications table, is too late and will result in an unacceptable delay to delivery. It would not serve the purpose of the obligation equally well.</p> <p>Furthermore, the discharge of the obligation would also result in an unacceptable delay to delivery if there is a breach of the obligation and would therefore not serve that useful purpose equally well.</p> <p>The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG9 &amp; CG16 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council’s wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 &amp; COM2.</p> <p><b>Reject – the obligation shall continue to have effect without modification.</b></p>	
--	--	--	--	--	--	--	--

51	The obligations to provide the Discovery Park Sports Facilities (2nd Phase)	Paragraph 2.3 and 2.8 and Schedule 29D Item 30	<p>The Applicants apply to modify paragraph 2.3 to provide, 'Not to Occupy more than 5,500 [rather than 5000] Dwellings unless:</p> <p>a. 2.3.1 the second phase of the Sports Facilities have been provided in accordance with the reserved matters approvals and the planned cost for these facilities</p> <p>2.8 To construct and provide:-</p> <p>...</p> <p>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; ....</p> <p>b. <del>At Schedule 29D Item 30, the payment trigger likewise to be deferred from 4,600 to 5,100 Dwellings.</del></p>	<p>a. M</p> <p>b. M</p>	ABC	<p>a. The timely provision of sport and recreation facilities to meet the needs of the new community is essential to good placemaking. The delivery of the Discovery Park sports facilities is integral to meeting the sporting, recreational and health needs of the residents of Chilmington Green and wider South Ashford.</p> <p>The obligation to provide the second phase of the sports facilities by 5000 occupations continues to serve a useful purpose because it ensures that the growing population at Chilmington Green and the wider population of South Ashford, including residents of proposed neighbouring developments are provided with sufficient sports facilities to meet their needs. Delaying delivery until 5500 occupations (alongside any delay in delivery of the Chilmington Hamlet facilities and the Community Hub) would not serve that useful purpose equally well and will result in a deficit of facilities in proportion to the number of residents. There could also be a risk that the second phase is never brought forward.</p> <p>b. The applicant's modifications table proposes a modification to the trigger for payment set out in Schedule 29D item 30. However, the submitted amended S.106 Agreement proposes that the whole of Schedule 29D is deleted. The applicant should clarify which modification is proposed.</p> <p>Notwithstanding the above, payment into the "Developers Capital Bank Account – Council" prior to the trigger point for delivery of the sports facilities continues to serve a useful purpose because it ensures that, if the Council is required to remedy a breach of this obligation, the Council can do so as quickly as possible following the breach occurring</p> <p>Payment at 5100 occupations, is too late and will result in an unacceptable delay to delivery. It would not serve the purpose of the obligation equally well.</p> <p>Furthermore, the discharge of the obligation would also result in an unacceptable delay to delivery if there were a breach of the obligation and would therefore not serve that useful purpose equally well.</p> <p>The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG9 &amp; CG16 and the National Planning Policy</p>	The Council notes that appellant's clarification regarding part 'b' of this request. The Council has no further points to add to its original response.
----	---	--	---	-------------------------	-----	--	---

						<p>Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 &amp; COM2.</p> <p><b>Reject – the obligation shall continue to have effect without modification.</b></p>	
52	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 Schedule 29D Items 22, 23, 28 and 31	<p>The Applicants apply for the following modifications:</p> <p>a. <del>Delivery of DP3 in Phase 1 be deferred from 1500 to 2000 Occupations (subsequent phases remain unchanged);</del> i.e. para 2.6 to be modified to read:</p> <p>‘Not to Occupy more than:</p> <p>2.6.1 2650 [rather than 1500] Dwellings unless 1 ha of DP3 has been provided</p> <p>2.6.2 3500 [rather than 2500] Dwellings unless 0.86 of DP3 has been provided</p> <p>2.6.3 5000 [rather than 4000] Dwellings unless PS6 and 1.08 ha of DP3 have been provided</p> <p>2.6.4 5750 [rather than 5500] Dwellings unless 4.42 ha of DP3 has been provided</p> <p>...</p> <p>’ ... ‘2.8 To construct and provide:-</p> <p>...</p> <p>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</p> <p>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</p> <p>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</p>	<p>a. MV</p> <p>b. DV</p>	ABC	<p>a. This obligation continues to serve a useful purpose. The timely provision of strategic park and play facilities to meet the needs of the new community is essential to good placemaking. The delivery of DP3 and PS6 is integral to meeting the recreational and health needs of the residents of Chilmington Green and wider South Ashford.</p> <p>A delay in delivery of these facilities (alongside any delay in delivery of the Chilmington Hamlet facilities, the Discovery Park sports facilities and the other play spaces) would not serve that useful purpose equally well because it would have a significant impact on local provision and result in a deficit of facilities in proportion to the number of residents. There could also be a risk that the final phase is never brought forward.</p> <p>Without prejudice to the Council's position on viability, <i>the application contains insufficient information to enable the Council to assess the claim that the timing of this obligation “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”</i></p> <p>b. The applicant's modifications table proposes a modification to the trigger for payment set out in Schedule 29D item 22. However, the submitted amended S.106 Agreement proposes that the whole of Schedule 29D is deleted. The applicant should clarify which modification is proposed.</p> <p>Notwithstanding the above, payment into the “Developers Capital Bank Account – Council” prior to the trigger point for delivery of the sports facilities continues to serve a useful purpose because it ensures that, if the Council is required to remedy a breach of this obligation, the Council can do so as quickly as possible following the breach occurring.</p> <p>The delay in payment proposed is too late and will result in an unacceptable delay to delivery. It</p>	The Council notes that appellant's clarification regarding parts 'a' and 'b' of this request. The Council has no further points to add to its original response.

			<p>requirements of paragraph 2.6.5 of this schedule; and</p> <p>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.</p> <p><del>b. 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.</del></p>			<p>would not serve the purpose of the obligation equally well.</p> <p>Furthermore, the discharge of the obligation would also result in an unacceptable delay to delivery if there is a breach of the obligation and would therefore not serve that useful purpose equally well.</p> <p>The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG9 &amp; CG16 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 &amp; COM2.</p> <p><b>Reject – the obligation shall continue to have effect without modification.</b></p> <p><i>Note: the second para of this request in the modifications table (beginning "Delivery of DP3....") contradicts the modifications set out in the subsequent paragraphs. It is assumed that the content of the second para is an error. The Council responds in relation to the content of the subsequent paragraphs.</i></p>	
53	The obligation to provide the design brief and specification for DP3 and PS6 etc	Paragraph 2.5	<p>a. The Applicants apply to modify paragraph 2.5 to provide, 'Not to Occupy more than 2100 [rather than 1000] Dwellings unless:</p> <p>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. ...'.</p> <p>b. In addition, the Applicants 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.</p>	<p>a. MV</p> <p>b. M</p>	ABC	<p>a. This obligation continues to serve a useful purpose. Submission of design briefs within a timely manner enables the Council to ensure design quality is embedded in the development at an early stage. and safeguards against poor quality development. The Design Brief and Specification needs to be agreed in good time prior to commencement of construction of Phase 1 to enable contracts to be let, etc. A delay to the agreement of the Design Brief and Specification is unlikely to allow sufficient time to enable the facilities to be delivered by the required deadline. The applicant has not demonstrated that their proposed delay would provide sufficient time. The proposed modification would therefore not serve the useful purpose equally well</p> <p>The requirement to index link the obligation continues to serve a useful purpose. Removing index linking from the total capital cost would undermine the ability to deliver the facilities required and that are of the right quality. Indexation ensures the value of the contributions agreed when planning permission is granted, and consequently purchasing power, is maintained in the future and therefore the same level of service/infrastructure can be provided. The total capital cost was calculated based on the cost of</p>	n/a

						<p>delivering these facilities at the time outline planning permission was granted. Costs have since risen and therefore the proposed modification to remove indexation would not serve that useful purpose equally well because it would reduce the ability of the Owners and Paying Owners to deliver the quality of facilities that are required</p> <p>Fees, contingencies, specification and design costs and supervision fees should not ‘use up’ the main construction budget sum. Access roads and service costs are infrastructure costs associated with the wider development. The proposed modification would not serve that useful purpose equally well because including these costs in the in the total capital cost would reduce the total budget available to deliver the facilities and consequently would undermine the ability to deliver the required high-quality facilities.</p> <p>It is already evident from discussions with the applicant about the total capital cost for Play Space 1 and the applicant’s position with reference to request 25 relating to the cost of the Natural Green Space, that the budgets identified in the Agreement, with the inclusion of index linking and without the inclusion of fees, contingencies, specification and design costs, supervision fees, access roads and service costs do not provide sufficient budget to deliver the quality facilities required by the outline planning permission, the design code and the applicant’s design and access statement. Including the costs, stated in this request, in the budget identified in the Agreement will undermine further the ability to deliver the quality of facilities envisaged for Chilmington Green.</p> <p>Without prejudice to the Council’s position on viability, the application contains insufficient information to enable the Council to assess the claim that the exclusion of fees, contingencies, specification and design costs, supervision fees, access roads and service costs from the total capital cost and the inclusion of indexation is undermining “<i>the viability of the Development and strike at the very delivery of these assets</i>”.</p> <p>b. This obligation continues to serve a useful purpose. Its modification would not serve that useful purpose equally well. The CMO is an important stakeholder at Chilmington Green. They will take on the management and maintenance of the DP3</p>	
--	--	--	--	--	--	---	--

						<p>and PS6. It is therefore important that the CMO can input at an early stage in the design process. The value of early consultation is reflected in National Planning Practice Guidance (NPPG) which identifies the benefit of “working collaboratively and openly with interested parties at an early stage to identify, understand and seek to resolve issues associated with a proposed development” (ref: NPPG, para: 001 Reference ID: 20-001-20190315). It is noted that the applicant does not propose to remove the requirement to consult with other relevant stakeholders and the public.</p> <p>This obligation continues to serve a useful purpose. Its modification would not serve that useful purpose equally well. The approval of the details of the consultation by the CMO/Council prior to the consultation taking place ensures that the consultation is fit for purpose and involves all necessary parties.</p> <p>The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG9 &amp; CG16 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council’s wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, SP6 &amp; COM2</p> <p><b>Reject – the obligation shall continue to have effect without modification.</b></p>	
54	The various conditions attaching to the delivery of each of the first and second phases of the Sports Facilities and the DP3	<p>Paragraphs 2.2.1, 2.3.1 and 2.6.5 requiring provision of the relevant facilities in accordance with reserved matters etc.</p> <p>Paragraphs 2.2.4, 2.3.4 and 2.6.8 requiring payment of tax.</p> <p>Paragraphs 2.2.6, 2.3.6 and 2.6.10 dealing with</p>	<p>a. The Applicants apply for 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.’</p> <p>b. Further, the Applicants apply to discharge 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).</p>	<p>a. M</p> <p>b. M</p>	ABC	<p>a. The additional clause would not serve a useful purpose because the cost of the facilities is clearly stated in paragraphs 2.1.1 and 2.5.1 and would result in duplication.</p> <p>b. This obligation continues to serve a useful purpose, its discharge would not serve that useful purpose equally well because the transfer of the Discovery Park facilities to the CMO is an essential part of the approach to community stewardship being delivered at Chilmington Green and detailed in the CMO Operating Business Plan submitted by the Owners. The applicant has not explained how the retention of these assets in their ownership would impact the CMO Business Plan or how the facilities would be managed and maintained and by whom or what would happen at the end of the lease.</p> <p>The obligation for the Owners to meet the costs of any SDLT/other tax payable to register the transfer of the land and to cover the CMO’s associated legal costs continues to serve a useful purpose because having to pay these costs which would reduce the</p>	n/a

		the approval of the relevant transfers.	<p>Thus, the Applicants 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:</p> <p>either</p> <p>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)</p> <p>or</p> <p>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.</p>			<p>monies the CMO has available to deliver their charitable objectives and would simply serve the increase the deficit the CMO operates under. For this reason, the discharge of this obligation would not serve that useful purpose equally well.</p> <p>The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG9, CG10 &amp; CG16 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM2 &amp; IMP4.</p> <p><b>Reject – the obligation shall continue to have effect without modification.</b></p>	
55	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 Applicants apply to discharge these obligations.	D	ABC	<p>This obligation continues to serve a useful purpose because it ensures that any defects are remedied in a timely manner by the Owners who provided the facility. The CMO should not have to bear the cost to repair defects which occur within the time periods stated in the Agreement. It should be the responsibility of the 'Owners' who provide the Discovery Park facilities to deliver the quality of facilities agreed in the planning /reserved matters permissions and that any defects that occur after handover are remedied. This obligation ensures that facilities of sufficient quality are handed over to the CMO and that defects are dealt with promptly to the benefit of the community. The discharge of this obligation would not serve that useful purpose equally well because it would mean that the CMO would have to bear the costs of rectifying any</p>	n/a

						<p>defects and if poor quality facilities are provided there would be no means of remedy.</p> <p>The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG8, CG10 and CG16 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM2 &amp; IMP4.</p> <p><b>Reject – the obligation shall continue to have effect.</b></p> <p><i>Proposed modification by agreement: - the Council considers that the introduction of a defects dispute resolution provision could satisfy the statutory test under s.106A(6)(c)l. The Council is willing to discuss this proposed modification by agreement with the appellant</i></p>	
56	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 400th Dwelling	The Applicants apply to modify the obligation to provide that the Applicants will publish the masterplan and to defer publication until Occupation of the 2000th Dwelling.	M	ABC	<p>This obligation continues to serve a useful purpose. As set out in the Council's response to Request 47, the Council is the most appropriate organisation to complete the masterplan It therefore follows that the Council should publish the masterplan it has completed. The modification proposed would therefore not serve that useful purpose equally well.</p> <p>In addition, the publication of the masterplan by 400 occupations continues to serve a useful purpose because it would allow sufficient time for the masterplan to inform the Design Briefs and Specifications and future reserved matters applications for the facilities. A delay in publication until 2000 occupations would be too late to inform the design of the facilities, therefore the modification proposed would therefore not serve that useful purpose equally well.</p> <p>The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG9 &amp; CG16 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, SP6 &amp; COM2.</p> <p><b>Reject – the obligation shall continue to have effect without modification.</b></p>	The Council notes that this modification is now withdrawn by the appellant and that the appellant is 'content for ABC to publish the masterplan'. However, further clarification is needed from the appellant because no change is proposed to the associated request 47 where the appellant proposes to amend paragraph 2.1 to require the Paying Owners to prepare the masterplan. Is it the case that the appellant still proposes that the Paying Owners prepare the masterplan for the Council to then publish or is further amendment required to request 47?
<b>Schedule 11 – Cemeteries</b>							
57	Payments in respect of cemeteries	Paragraphs 1 and 2	The Applicants apply for all such payments toward Cemeteries to be discharged.	DVp	ABC	<p>This obligation continues to serve a useful purpose. There currently remains a requirement for cemetery provision in South Ashford to meet the needs of the development as set out in the report to the Council's Cabinet dated 28 November 2019 titled 'Ashford</p>	n/a



						<p>Borough Council Cemetery Provision; Challenges and Solutions’ therefore the discharge of this obligation would not serve that useful purpose. The applicant has provided no evidence to support their claim that “<i>the obligations to make these payments is....unnecessary and represents over provision of such facilities</i>”.</p> <p>Without prejudice to the Council’s position on viability, the application contains insufficient information to enable the Council to assess the claim that the cost of the obligation is “serving only to undermine the viability and ultimately the deliverability of the development”.</p> <p>The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 &amp; CG8 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council’s wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 &amp; COM4.</p> <p><b>Reject – the obligation shall continue to have effect.</b></p> <p><i>Potential modification by agreement: the Council acknowledges that the requirement for cemeteries may change in the future and consequently there may be scope to modify this obligation at a future date.</i></p>	
<b>Schedule 12 – Community Hub Building</b>							
58	The obligation to provide a multi-purpose community leisure building and other facilities (the Community Hub Building) by 1,800 Dwellings	Paragraph 1.2 and Sch 29D item 17	<p>a. The Applicants 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:</p> <p>1.2.1 the Facilities: First Tranche have been provided in accordance with the reserved matters approval and the approved design brief and specification</p> <p>b. and at a cost which together with the Facilities: Second Tranche does not exceed the sum of £2m inclusive as stated above ...</p> <p>1.2.2 all ... the Facilities: First Tranche are located ...</p> <p>1.2.3 all conditions ... apply to the Facilities: First Tranche ...;’</p>	<p>a. MV</p> <p>b. MV</p> <p>c. M</p> <p>d. M</p> <p>e. M</p> <p>f. M</p> <p>g. M</p>	ABC	<p>a. The obligation to provide the community hub by 1800 dwelling occupation continues to serve a useful purpose. The purpose of the Community Hub is to provide a home and central focus for the community, timely provision is pivotal to the success of the community. Delaying provision until 56% of dwellings are occupied and then at that point only providing a proportion of the provision required would not serve that useful purpose equally well because it would result in a large proportion of the community (up to 56%) having no access to health, social and recreational facilities on site, who would have to travel to other locations in the borough for their health, social and recreational needs, if in fact there is provision available elsewhere, which is unlikely given the need identified for provision on-site, directly impacting on the sustainability objectives of the Chilmington Green development and undermining the basis upon which planning permission was granted. The applicant has provided no evidence to support their claim that much of the facilities are “<i>not expected to be needed until much later than the triggers currently set</i>”.</p>	The Council notes that appellant’s clarification regarding part ‘g’ of this request. The Council has no further points to add to its original response.

			<p>c. 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, 1.2.5 and 1.2.6 should be discharged and replaced by new obligation as follows:</p> <p>‘and</p> <p>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.’</p> <p>d. 1.2.5 The Facilities: First Tranche shall comprise the following:</p> <ul style="list-style-type: none"> <li>- a multi-purpose community space of up to 1500 sqm, to include</li> <li>- a fully stocked and equipped library</li> <li>- 340 sqm space for police community and social services outreach including family and social care (subject to lease confirmation)</li> <li>- 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</li> <li>- a multi-use games area</li> <li>- up to 500sqm of GP provision (subject to NHS lease confirmation)</li> </ul>			<p>Without prejudice to the Council’s position on viability, the application contains insufficient information to enable the Council to assess the claim that “ <i>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 and in turn delivery of the Development.</i>” and “<i>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 Applicants to carry out the Development at all.</i>”</p> <p>b. The obligation for the total capital cost of the community hub to not exceed £5,152,127.00 index linked continues to serve a useful purpose. This figure was calculated based on the estimated cost of such facilities at the time planning permission was granted. The applicant has not provided any evidence to support their claim that “<i>the capital cost up to £5,152,127.00 is excessive</i>” and that the “<i>current obligation is over-priced and over-specified</i>”. The proposed modification would not serve that useful purpose equally well because it would not provide sufficient funds for the Community Hub that is required to serve the Chilmington Green community to be built. It is also noted that the Agreement states that the capital cost shall ‘not exceed’ £5,152,127.00 index linked, which indicates that there is already provision within the Agreement for the applicant to deliver the Community Hub at a lower cost if it can be demonstrated that this is possible.</p> <p>The obligation for the total capital cost to be index linked continues to serve a useful purpose. Removing index linking from the total capital cost would undermine the ability to deliver the facilities required and that are of the right quality. Indexation ensures the value of the contributions agreed when planning permission is granted, and consequently purchasing power, is maintained in the future and therefore the same level of service/infrastructure can be provided. The total capital cost was calculated based on the cost of delivering these facilities at the time outline planning permission was granted. Costs have since risen and therefore the proposed modification to remove indexation would not serve that useful</p>	
--	--	--	--	--	--	---	--

			<p>Subject always to such variations in scope as may reasonably be required to ensure that the total cost of £2mn is not exceeded.</p> <p>1.2.6 To construct and provide the Facilities: First Tranche ... more than 3,250 [not 1800] Dwellings.</p> <p>[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]</p> <p>1.2A 'Unless the Council agrees otherwise, not to Occupy more than 4,250 Dwellings unless:</p> <p>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 £2mn inclusive as stated above ...</p> <p>1.2A.2 all ... the Facilities: Second Tranche are located...</p> <p>1.2A.3 all conditions ... apply to the Facilities: Second Tranche ...; 'and</p> <p>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 terms suitable to their intended use and that are acceptable to them.'</p> <p>1.2A.5 The Facilities: Second Tranche shall comprise the following:</p> <ul style="list-style-type: none"> <li>- further community space of up to 2500 sqm, to include</li> <li>- a 1000 sqm community leisure building</li> </ul>		<p>purpose equally well because it would reduce the ability of the Owners and Paying Owners to deliver the quality of facilities that are required.</p> <p>The obligation to exclude fees, contingencies, specification and design costs, supervision fees, access roads and service costs from the total capital cost specified continues to serve a useful purpose by ensuring that Fees, contingencies, specification and design costs and supervision fees, are sufficiently provided for, and do not 'use up' the main construction budget sum. Access roads and service costs are infrastructure costs associated with the wider development The proposed modification to include these costs in the total capital cost would not serve that useful purpose equally well because including these costs would reduce the total budget available to deliver the facilities and consequently would undermine the ability to deliver the required a high quality of facilities.</p> <p>It is already evident from discussions with the applicant about the total capital cost for Play Space 1 and the applicant's position with reference to request 25 relating to the cost of the Natural Green Space, that the budgets identified in the Agreement, with the inclusion of index linking and without the inclusion of fees, contingencies, specification and design costs, supervision fees, access roads and service costs does not provide sufficient budget to deliver the quality facilities required by the outline planning permission, the design code and the applicant's design and access statement. Including the costs, stated in this request, in the budget identified in the Agreement will undermine further the ability to deliver the quality of facilities envisaged for Chilmington Green.</p> <p>Without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim that the capital cost is <i>"serving only to undermine the viability and ultimately the deliverability of the Development"</i></p> <p>The additional clause to para 1.2.1 would not serve a useful purpose because the cost of the facilities is clearly stated in the preceding paragraph 1.1.1 and would result in duplication</p>	
--	--	--	---	--	---	--

			<p>- up to 500sqm of GP provision (subject to NHS lease confirmation)</p> <p>- additional floor space of up to 200 sqm for identified community needs, including youth provision</p> <p>Subject always to such variations in scope as may reasonably be required to ensure that the total cost of £2mn is not exceeded.</p> <p>1.2A6 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.</p> <p>e. 1.2A7 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 [Applicants].</p> <p>f. 1.2A8 In respect of each of the Facilities: First and Second Tranche, no building contract shall be entered nor construction begin prior to confirmation of the public service leases, i.e. for Police or GP use.</p> <p>g. <del>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.</del></p>			<p>c. This obligation continues to serve a useful purpose, its discharge would not serve that useful purpose equally well because the transfer of the Community Hub to the CMO is an essential part of the approach to community stewardship being delivered at Chilmington Green and detailed in the CMO Operating Business Plan submitted by the Owners. The applicant has not explained how the retention of these assets in their ownership and their lease to the individual tenants would impact the CMO Business Plan or how the facilities would be managed and maintained and by whom</p> <p>The obligation for the Owners to meet the costs of any SDLT/other tax payable to register the transfer of the land and to cover the CMO's associated legal costs. continues to serve a useful purpose because having to pay these costs would reduce the monies the CMO has available to deliver their charitable objectives and would simply serve the increase the deficit the CMO operates under. For this reason, the discharge of this obligation would not serve that useful purpose equally well.</p> <p>d. The provision of the amount of floorspace specified in the Agreement continues to serve a useful purpose because this is the amount of floorspace required to meet the needs of the residents of the Chilmington Green development at set out in the Chilmington Green AAP. The applicant has not provided any evidence to support their claim that the Agreement <i>"currently requires a total floor space that is well in excess of what the policy requires, without justification for departure"</i> (Quod Explanatory Statement, para 8.18). The proposed modification would not serve that useful purpose equally well because it would not provide the amount of floorspace required to meet the needs of the development.</p> <p>e. The proposed new clause does not serve a useful purpose because it is not relevant to planning. The Paying Owners are the landowners and therefore will determine who undertakes the building works. This does not have to be stated in the Agreement</p> <p>f. The proposed new clause does not serve a useful purpose because it is not practical and would only serve to delay construction if, for example, one or more public service leases are entered into, but others are not. It is not reasonable and would not serve the purpose equally well to delay construction of the whole facility because one</p>	
--	--	--	--	--	--	---	--

						<p>public service lease has not been entered into. The further additional clause under para 1.3 would also not serve a useful purpose because it would allow the Owners to continue occupations without delivering the Community Hub. The Owners would be able to deny to grant a lease and/or offer leases on unreasonable terms so as not to fulfil this obligation.</p> <p>g. The applicant's modifications table proposes a modification to the trigger for payment set out in Schedule 29D item 17. However, the submitted amended S.106 Agreement proposes that the whole of Schedule 29D is deleted. The applicant should clarify which modification is proposed.</p> <p>Notwithstanding the above, payment into the "Developers Capital Bank Account – Council" prior to the trigger point for delivery of the facilities continues to serve a useful purpose because it ensures that, if the Council is required to remedy a breach of this obligation, the Council can do so as quickly as possible following the breach occurring</p> <p>Payment at 3,150 occupations and 4,150 occupations is too late and will result in an unacceptable delay to delivery. It would not serve the purpose of the obligation equally well.</p> <p>Furthermore, the discharge of the obligation would also result in an unacceptable delay to delivery if there is a breach of the obligation and would therefore not serve that useful purpose equally well.</p> <p>The modifications of these obligations is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG10 &amp; CG17 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM1 &amp; IMP4.</p> <p><b>Reject – shall continue to have effect without modification.</b></p> <p><i>Note: it is noted that the applicant now proposes to provide a "full stocked and equipped library". However, the Agreement requires the provision of a library access point.</i></p> <p><i>Proposed modification by agreement: the Council acknowledges that it may be more appropriate to deliver the Community Hub in two phases, however, the first phase should be delivered at 1800 occupations.</i></p>	
--	--	--	--	--	--	---	--

						<i>The Council also acknowledges that providing more flexible / multi-purpose space, and referring to the facilities as such in the Agreement would serve a useful purpose equally well. The Council is willing to discuss these proposed modifications by agreement with the appellant.</i>	
59	The submission and approval of a design brief and specification for the Community Hub Building	Paragraph 1.1	<p>The Applicants apply to</p> <p>a. modify the planned costs to include fees and other costs and</p> <p>b. 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-gearred from 1,400 Dwelling Occupations to 2,850 Occupations and the latter to 3,850 Dwelling Occupations. Hence paragraph 1.1 should read:</p> <p>Not to Occupy more than 2,850 Dwellings unless:</p> <p>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 £2mn ... including fees, contingencies, specification 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;</p> <p>Para 1.1.2 to be modified to refer to the Facilities: First Tranche.</p> <p>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.</p>	<p>a. MV</p> <p>b. M</p>	ABC	<p>a. The obligation for the total capital cost to be index linked continues to serve a useful purpose. Removing index linking from the total capital cost would undermine the ability to deliver the facilities required and that are of the right quality. Indexation ensures the value of the contributions agreed when planning permission is granted, and consequently purchasing power, is maintained in the future and therefore the same level of service/infrastructure can be provided. The total capital cost was calculated based on the cost of delivering these facilities at the time outline planning permission was granted. Costs have since risen and therefore the proposed modification to remove indexation would not serve that useful purpose equally well because it would reduce the ability of the Owners and Paying Owners to deliver the quality of facilities that are required.</p> <p>The obligation to exclude fees, contingencies, specification and design costs, supervision fees, access roads and service costs from the total capital cost specified continues to serve a useful purpose by ensuring that Fees, contingencies, specification and design costs and supervision fees, are sufficiently provided for, and do not 'use up' the main construction budget sum. Access roads and service costs are infrastructure costs associated with the wider development The proposed modification to include these costs in the total capital cost would not serve that useful purpose equally well because including these costs would reduce the total budget available to deliver the facilities and consequently would undermine the ability to deliver the required a high quality of facilities.</p> <p>It is already evident from discussions with the applicant about the total capital cost for Play Space 1 and the applicant's position with reference to request 25 relating to the cost of the Natural Green Space, that the budgets identified in the Agreement, with the inclusion of index linking and without the inclusion of fees, contingencies, specification and design costs, supervision fees, access roads and service costs do not provide</p>	n/a

						<p>sufficient budget to deliver the quality facilities required by the outline planning permission, the design code and the applicant's design and access statement. Including the costs, stated in this request, in the budget identified in the Agreement will undermine further the ability to deliver the quality of facilities envisaged for Chilmington Green.</p> <p>Without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim that the capital cost is "serving only to undermine the viability and ultimately the deliverability of the Development".</p> <p>b. The obligation to submit a Design Brief and Specification within the timescale set out in the Agreement continues to serve a useful purpose. The submission of the Design Brief and Speciation within a timely manner enables the Council to ensure design quality is embedded in the development at an early stage and safeguards against poor quality development. The Design Brief and Specification needs to be agreed in good time prior to commencement of construction to enable contracts to be let, etc. A delay to the agreement of the Design Brief and Specification is unlikely to allow sufficient time to enable the facilities to be delivered by the required deadline. The applicant has not demonstrated that their proposed delay would provide sufficient time. The proposed modification would therefore not serve the useful purpose equally well.</p> <p>Furthermore, the submission of a single Design Brief &amp; Specification for the whole Community Hub continues to serve a useful purpose because it ensures that the design of the Community Hub is considered and designed as one and that it will be fit for purpose and of good quality design in its entirety. Splitting the submission of the Design Brief &amp; Specification into two phases, as the applicant proposes, would not serve that useful purpose equally well because it would result in the piecemeal design of a single land parcel, where it would not be possible to understand how or whether phase 2 will work with phase 1.</p> <p>The modification to the last clause under para 1.1.1, to remove the requirement for the list of particulars in Schedule 12A to be included in the Design Brief and Specification is not agreed. It is</p>	
--	--	--	--	--	--	--	--

						<p>important to be clear about the level of detail required in the Design Brief and Specification. The removal of this obligation would result in ambiguity about what is required and would not serve the purpose of ensuring clarity equally well.</p> <p>The purpose of the insertion, in para 1.1.1 and 1.1A.1, of “<i>and the costs of those matters to be done at the Owner’s expense referred to below</i>” is not clear.</p> <p>The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG9 &amp; CG17 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council’s wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, SP6 &amp; COM2</p> <p><b>Reject – the obligation shall continue to have effect without modification.</b></p>	
60	The provision for consultation with the CMO and stakeholders etc. and approval of the details of the consultation	Paragraph 1.1.2	<p>In addition, the Applicants apply for paragraph 1.1.2 to be modified</p> <p>a. to omit the requirement to consult the CMO and</p> <p>b. omit the requirement to consult and to obtain approval in respect of the details of the consultation and</p> <p>c. to omit the final clause ‘and in particular the CMO’s comments on the costings;’</p>	<p>a. M</p> <p>b. M</p> <p>c. M</p>	ABC	<p>a. This obligation continues to serve a useful purpose. Its modification would not serve that useful purpose equally well. The CMO is an important stakeholder at Chilmington Green. They will take on the management and maintenance of the Community Hub. It is therefore important that the CMO can input at an early stage in the design process. The value of early consultation is reflected in National Planning Practice Guidance (NPPG) which identifies the benefit of “working collaboratively and openly with interested parties at an early stage to identify, understand and seek to resolve issues associated with a proposed development” (ref: NPPG, para: 001 Reference ID: 20-001-20190315). It is noted that the applicant does not propose to remove the requirement to consult with other relevant stakeholders and the public.</p> <p>b. This obligation continues to serve a useful purpose. Its modification would not serve that useful purpose equally well. The approval of the details of the consultation by the CMO/Council prior to the consultation taking place ensures that the consultation is fit for purpose and involves all necessary parties.</p> <p>c. This obligation continues to serve a useful purpose. Its modification would not serve that useful purpose equally well. The requirement for the Design Brief and Specification to include the CMO’s comments on the costings ensures that the CMO can input into the specification and cost of facilities</p>	n/a



						<p>that they will manage and maintain and raise any concerns they may have, at any early stage in the design process and for the Council to be aware of their comments when reviewing the document.</p> <p>The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policy CG1, CG10 &amp; CG17 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM1 &amp; IMP4.</p> <p><b>Reject – the obligation shall continue to have effect without modification.</b></p>	
61	The 12 months repairing liability following the transfer of the Facilities	Paragraph 1.3	The Applicants apply to discharge this obligation.	D	ABC	<p>This obligation continues to serve a useful purpose because it ensures that any defects are remedied in a timely manner by the Owners who provided the facility. The CMO should not have to bear the cost to repair defects which occur within the time periods stated in the Agreement. It should be the responsibility of the 'Owners' who provide the Community Hub to deliver the quality of facilities agreed in the planning /reserved matters permissions and that any defects that occur after handover are remedied. This obligation ensures that facilities of sufficient quality are handed over to the CMO and that defects are dealt with promptly to the benefit of the community. The discharge of this obligation would not serve that useful purpose equally well because it would mean that the CMO would have to bear the costs of rectifying any defects and if poor quality facilities are provided there would be no means of remedy.</p> <p>The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG10 &amp; CG17 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1. COM1 &amp; IMP4.</p> <p><b>Reject – the obligation shall continue to have effect.</b></p> <p><i>Proposed modification by agreement: - the Council considers that the introduction of a defects dispute resolution provision could satisfy the statutory test under section 106A(6)(c). The Council is willing to discuss this proposed modification by agreement with the appellant</i></p>	n/a
62	The obligation to make	Paragraph 1.4	The Applicants apply to discharge this obligation in its entirety.	D	ABC	<p>The inclusion of this obligation is not mistaken as the applicant suggests. This obligation will ultimately fall to</p>	n/a

	designated parts of the Community Hub Building available for use by the County Council in accordance with the booking system agreed between the CMO and the CC					<p>the CMO as the future successor in title of the Community Hub. This is identified in clause 2.9 of the Agreement (Release from Liability).</p> <p>This obligation continues to serve a useful purpose because it ensures that the Community Hub provides the community facilities that it is envisaged to provide to meet the needs of the local community. The County Council is the provider of some of the facilities (family and social care; youth; community learning and libraries) to be provided in the Community Hub or nominates organisations that are on its approved lists to provide these services on their behalf. The proposed modification would not serve that useful purpose equally well because if the County Council or their nominated organisations were not able to use the Community Hub then it would be more difficult for the required services to be provided to residents.</p> <p>The request to discharge this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG10 &amp; CG17 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, COM1 &amp; IMP4.</p> <p><b>Reject – the obligation shall continue to have effect.</b></p>	
63	Provision for payment toward the Council's costs	Paragraph 2	The Applicants apply to discharge this payment obligation.	D	ABC	<p>In accordance with para 1.1.10, the Owners can ask the Council to consider a transfer which the developer wishes to use but has not been agreed with the CMO for the required transfer of any asset to the CMO. The payment of the Council's legal costs to consider the transfer serves a useful purpose through enabling the Council to take specialist legal advice upon the wording, and the dispute that has arisen between the developer and CMO, and if appropriate to approve the transfer terms so that the asset transfer can proceed. The discharge of this obligation would not serve this useful purpose equally well because without the Owners payment of the legal costs these costs would fall upon the public purse which would not be appropriate as they arise in connection with the provision and long-term stewardship of mitigation for the impact of the development</p> <p>The request to discharge this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG10 &amp; CG17 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see</p>	n/a

						the Ashford Local Plan 2030 Policies SP1, COM1 & IMP4.  <b>Reject – the obligation shall continue to have effect.</b>	
<b>Schedule 13 – Local Centre Hubs</b>							
64	The Orchard Village Facilities and the Chilmington Brook Facilities	Paragraphs 1-3 and 4-6 respectively	The Applicants reserve the right to make a further application to discharge or modify these obligations as the case may be.	n/a	ABC	The Council notes the applicant's position.	n/a
<b>Schedule 14 – District and Local Centres</b>							
65	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	<p>a. The Applicants apply to modify the Main Phase 1 District Centre obligations to permit a revised scheme for the same, to be the subject of a separate application for planning permission.</p> <p><del>b. And to require that in any event the District Centre facilities are to be provided by no earlier than 2700 [rather than 1250] Occupations</del></p>	<p>a. M</p> <p>b. MV</p>	ABC	<p>a. This obligation continues to serve a useful purpose. The District Centre is an essential part of the outline permission to meet the needs of the new community, enabling residents to access the services and facilities they need without having to travel outside of the Chilmington Green area. Removing the obligation to provide the District Centre would not serve that useful purpose equally well because it would mean that there would be no certainty that the District Centre would be provided and consequently could result in an unsustainable development, with residents having to travel elsewhere to access services and facilities.</p> <p>Whilst the applicant states that the District Centre would be “<i>the subject of a separate application for planning permission</i>”, the applicant does not propose a new obligation to ensure this separate application is submitted, nor provide any indication of what type of development this separate application would propose. There is therefore no guarantee that the District Centre would be brought forward.</p> <p>The applicant states in their reasoned justification that “<i>The current retail market is such that the facilities under 1.1 focused as they are on small units is wholly unsustainable</i>”. The applicant also advises “<i>having gone into the market and invited tenders for that, not a single tender could be secured for the kind of retail proposal currently contained in the Agreement. There is no market demand for shop premises of the size dictated by the section 106 Agreement in this location</i>” (ref: Appendix A1, para 4.3). The applicant has not provided any evidence to substantiate these claims that there is no market demand for the type of District Centre facilities proposed in the Agreement.</p>	The Council notes that part ‘b’ of this request is now withdrawn by the appellant. The Council has no further points to add to its original response.

					<p>b. This obligation continues to serve a useful purpose. The timely provision of local facilities to meet the needs of the new community is essential to good placemaking and provides the centre / hub of the community. Delaying delivery until 2700 occupations, within Phase 3 of the development, when 46% of the dwellings are occupied, would not serve that useful purpose equally well because this would mean that nearly half the population of the Chilmington Green development (46%) would have to travel to other centres in the borough to access the facilities and services they need which would undermine the sustainability objectives of the Chilmington Green development and the basis upon which planning permission was granted</p> <p>The Council also notes that as part of the recent planning Inquiry for appeal ref: APP/E2205/W/24/3345454 – Possingham Farm, the applicant proposed that the supermarket at Chilmington Green would be delivered prior to first occupation of any dwelling at Possingham Farm. This appeal was allowed subject to conditions requiring the supermarket to be provided prior to first occupation at Possingham Farm and the Chilmington Green District Centre facilities to be provided prior to 328 occupations. The propositions made by the applicant at the Possingham Farm Inquiry do not align with the proposal to delay provision in this appeal.</p> <p>Without prejudice to the Council’s position on viability, the application contains insufficient information to enable the Council to assess the claim that provision by <i>“1250 Dwellings is unrealistic and certainly if it were to become necessary for the Applicants 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 Applicants to carry out the Development at all.”</i></p> <p>c. The proposed Agreement also includes the removal of all references to the amount of floorspace required for the supermarket, other retail units and office building – these changes are not described in the applicant’s modifications table</p>	
--	--	--	--	--	--	--

						<p>and no justification has been provided for this modification.</p> <p>Stating the amount of floorspace required continues to serve a useful purpose because it is important to ensure that premises of an appropriate size to meet the needs of the new sustainable community are provided.</p> <p>Planning permission was granted based on a retail assessment which concluded that the amount of retail floorspace proposed would promote sustainable shopping patterns by providing a good local main food destination as part of an appropriate day-to-day service and limited comparison-shopping offer, thereby reducing travel distances for future residents and not leading to any significant adverse impacts in terms of the vitality and viability of Ashford town centre. Removing reference to the amount of retail floorspace required would not serve that useful purpose equally well because it would allow premises of a larger or smaller size to be provided which would either not meet the needs of residents who then have to travel elsewhere for their day to day needs or provide space that is so large that it is no longer only meeting the needs of the residents of Chilmington Green but becomes a destination to shop completing with Ashford town centre. This would undermine the sustainability of the development and the basis upon which planning permission was granted.</p> <p>Planning permission was granted on the basis that approx. 1000 jobs would be created over the whole development and that a range of employment opportunities would be created. Providing job opportunities close to where people live is a key element of building a sustainable community. Removing reference to the amount of office floorspace required would not serve that useful purpose equally well because it would allow premises of a larger or smaller size to be provided which would either not meet the needs of residents or provide premises so large that it results in many people commuting to the site from a wide area. This would undermine the sustainability of the development and the basis upon which planning permission was granted.</p> <p>The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG3 &amp; CG22 and the National Planning Policy</p>	
--	--	--	--	--	--	---	--

						<p>Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 &amp; COM1.</p> <p><b>Reject – the obligation shall continue to have effect without modification.</b></p> <p><i>Note: the application contains insufficient information to enable the Council to assess the claim that “if it were to become necessary for the Applicants 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”.</i></p>	
66	The submission and approval of a design brief and specification for the District Centre Facilities by 950 Dwelling Occupations	Paragraph 1.1	The Applicants 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.	M	ABC	<p>This obligation continues to serve a useful purpose. The obligation to submit a Design Brief and Specification within the timescale set out in the Agreement continues to serve a useful purpose. The submission of the Design Brief and Speciation within a timely manner enables the Council to ensure design quality is embedded in the development at an early stage and safeguards against poor quality development. The Design Brief and Specification needs to be agreed in good time prior to commencement of construction to enable contracts to be let, etc. A delay to the agreement of the Design Brief and Specification is unlikely to allow sufficient time to enable the facilities to be delivered by the required deadline. The applicant has not demonstrated that their proposed delay would provide sufficient time. The proposed modification would therefore not serve the useful purpose equally well.</p> <p>The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG3 &amp; CG22 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 &amp; COM1.</p> <p><b>Reject – the obligation shall continue to have effect without modification</b></p>	n/a
<b>Schedule 15 – Education</b>							
67	The provision of Bonds to the value of PS1 Contributions 2, 3 and 4	Para 6 and 7(e) (as amended by the Deed dated 29/3/19)	The Applicants apply for the obligation to provide Bonds for these PS1 Contributions to be discharged.		KCC	Refer to KCC response	n/a
68	Education Contributions; Primary School 1 Contributions	Para 7 (as amended by the Deed	The Applicants apply for the obligation to pay PS1 Contribution 4 (para 7 (d) and the Indexation payments on previous Contributions (para 7A) to be		KCC	Refer to KCC response	n/a

	1 to 4 to the County Council	dated 29/3/19)	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 Contribution 4 (including indexation) to be repaid.				
69	Education Contributions; Primary School 2 Contributions 1 to 4 to CC	Paras 8, 10, 11, 12 and 14	<p>The Applicants 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.</p> <p>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.</p> <p>If the decision is to proceed with PS2, the following paragraphs shall apply, but not otherwise.</p> <p>8. The Owners shall not bring into residential use nor Occupy more than another 100 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).</p> <p>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.</p>		KCC	Refer to KCC response	n/a

			<p>No further Dwellings ... beyond 12 months after first Occupation of the 200 Dwellings as aforesaid, unless a duly executed Transfer ....</p> <p>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 ....</p> <p>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.</p> <p>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.</p>				
70	The provision of Bonds to the value of PS2 Contributions 2, 3 and 4	Para 13 and 14(e)	The Applicants apply for the obligation to provide Bonds for these PS2 Contributions to be discharged.		KCC	Refer to KCC response	n/a
71	Education Contributions; Primary School 3 Contributions 1 to 4 to CC	Paras 15, 17, 18, 19 and 21	<p>The Applicants seek a modification to provide for consultation on the need for PS3 and before 3250 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.</p> <p>If the decision is not to proceed with PS3, the following paragraphs shall apply, but not otherwise.</p>		KCC	Refer to KCC response	n/a



			<p>Paragraphs 15, 17 and 18 to be amended in like terms to paragraphs 8, 10 and 11 above.</p> <p>As to paragraphs 19 and 21, subject to PS3 proceeding, PS3 Contribution 1 to be paid at 4,500 and subsequent Contributions 2, 3 and 4 at 4,900, 5,300 and 5,700 respectively.</p>				
72	The provision of Bonds to the value of PS3 Contributions 2, 3 and 4	Para 20 and 21(e)	The Applicants apply for the obligation to provide Bonds for these PS3 Contributions to be discharged.		KCC	Refer to KCC response	n/a
73	Education Contributions; Primary School 4 Contributions 1 to 4 to CC	Paras 22, 23, 24, 25, 26 and 28	The Applicants apply for the PS4 obligations to be discharged.		KCC	Refer to KCC response	n/a
74	The provision of Bonds to the value of PS4 Contributions 2, 3 and 4	Para 27 and 28(d)	The Applicants apply for the obligation to provide Bonds for these PS4 Contributions to be discharged		KCC	Refer to KCC response	n/a
75	Stage One Secondary School Site Transfer and Adoptable Access etc	Paras 33 and 35	<p>In this regard the Applicants rely upon the recently signed Deed of Variation dated 13 July 2022 subject only to the further discharge/modification sought below.</p> <p>In the event, however, that DfE or KCC funding is not forthcoming, the Applicants reserve their right to make a further application to discharge/modify the Secondary School obligations as appropriate and/or necessary.</p>		KCC	Refer to KCC response	Refer to KCC response
76	Provision of Bonds for the Stage One and Two Secondary School Contributions	Schedule 15, Part 6, Para 42	In so far as necessary the Applicants apply for the obligation to deliver Bonds for the Stage One and Two Secondary School Contributions to be discharged.		KCC	Refer to KCC response	Refer to KCC response
77	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:		KCC	Refer to KCC response	Refer to KCC response

			<p>A Stage one contribution £13,550,000 index linked.</p> <p>However, for the reasons stated in column 5, the Applicants apply now to vary further the payment obligations under the DoV, to defer repayments to commence from 2000 homes as follows:</p> <p>37. The Paying Owners shall:</p> <p>(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.</p> <p>(b) Pay the Stage One Secondary Contribution 2 to the County Council on or before the date when 3125 Dwellings on the Site have been Occupied.</p> <p>(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.</p> <p>(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.</p>				
78	Provision of an account of education expenditure and repayment of any surplus	Paragraphs 48 and 49	<p>The Applicants 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.</p> <p>Further, for paragraph 49 to be modified to provide for any surplus to be reimbursed forthwith to the person/s from whom the contribution was received, and for the remainder of the paragraph (beginning 'or if the person ...') to be deleted.</p>		KCC	Refer to KCC response	n/a

Schedule 15A – KCC General Site Transfer Requirement							
79	Provision of the site	Paragraph 4	The Applicants 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 ...		KCC	Refer to KCC response	n/a
80	Site setting out at handover	Paragraph 5	The Applicants apply for the reference to 'and fenced' to be omitted.		KCC	Refer to KCC response	n/a
81	Construction access	Paragraph 7	The Applicants 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'.		KCC	Refer to KCC response	n/a
82	Provision of services and utilities on site	Paragraph 8	The Applicants 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'.		KCC	Refer to KCC response	n/a
83	Provision of temporary electricity and water supplies	Paragraph 10	The Applicants apply to discharge this obligation.		KCC	Refer to KCC response	n/a
84	The payment of the County Council's legal costs and the costs of any Project Management agreements	Paragraph 14	The Applicants apply to discharge this obligation.		KCC	Refer to KCC response	n/a
Schedule 16 – Other KCC Services							
85	Library Services, 4 x £225k contributions	Paragraph 1, 2, 9, 10 and Schedule 30B	The Applicants 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.		KCC	Refer to KCC response	n/a

86	Payment of Youth Services Contributions to KCC	Paragraphs 3, 4, 9, 10 and Schedule 30A-C	The Applicants application in this respect is for these Youth Services Contributions to be discharged.  Schedules 30A-C also to be amended accordingly to omit the current payments and triggers and replace them as above.		KCC	Refer to KCC response	n/a
87	Payment of Community Learning Contributions to KCC	Paragraphs 5, 6, 9, 10 and Schedule 30A-C	The Applicants application in this respect is for these Community Learning Contributions to be discharged.  Schedules 30A-C also to be amended accordingly to omit the current payments and triggers and replace them as above.		KCC	Refer to KCC response	n/a
88	Payment of Family Social Care Contributions	Paragraph 7, 8, 9, 10 and Schedule 30A-C	The Applicants application in this respect is for these Family Social Care Contributions to be discharged.  Schedules 30A-C also to be amended accordingly to omit the current payments and triggers and replace them as above.		KCC	Refer to KCC response	n/a
89	Provision for repayment of surplus	Paragraph 10	Modification deleted from appeal	n/a	n/a	n/a	n/a
<b>Schedule 17 – Ecology</b>							
90	Providing for compliance with any mitigation and enhancement strategy approved pursuant to the Planning Permission	Paragraph 1	The Applicants apply to discharge this paragraph and the sub-paragraphs thereto in their entirety.	D	ABC	<p>This obligation continues to serve a useful purpose. Its discharge would not serve a useful purpose.</p> <p>The transfer of the ecological enhancement areas to the CMO is an essential part of the approach to community stewardship being delivered at Chilmington Green and detailed in the CMO Operating Business Plan submitted by the Owners. The applicant has not explained how the retention of these assets in their ownership would impact the CMO Business Plan or how the Natural Green Space would be managed and maintained and by whom.</p> <p>The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1, CG10 and CG21 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, ENV1 &amp; IMP4.</p> <p><b>Reject – the obligation shall continue to have effect without modification</b></p>	n/a

Schedules 18 and 18A – A28 Improvement Works							
91	Provision of a Bond in the form required	Schedule 18 Para 1 and Schedule 18A	<p>The Applicants 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.’</p> <p>Further, that consequential amendments 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.</p>		ABC	This is an obligation addressed to the Borough Council, however, the works (set out in Schedule 18A) are to be undertaken by the County Council as Local Highway Authority. The Borough Council therefore defers to KCC’s response.	n/a
92	A28 County Council’s obligation to let a contract	Schedule 18 and Schedule 18A	Modification deleted from appeal	n/a	n/a	n/a	n/a
93	The Developer’s Payment Covenants and Post-Contract 278 Contributions	Schedule 18A and Annex 2 of the s278 Agreement therein and Schedule 18, para 2.	The Applicants 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.		KCC	Refer to KCC response	n/a
Schedule 19 - Off-Site Pedestrian and Cycle Links							
94	Payment of (4x) instalments of £133,000 for the purposes of off-site pedestrian provision and cycle links	Schedule 19, paras 1 and 2, and Schedule 30A-C	The Applicants apply to discharge these payments in their entirety.		ABC / KCC	This is an obligation to both the Borough Council and the County Council, however, the works would be undertaken by the County Council. Therefore, the Borough Council defers to KCC’s response	n/a
Schedule 20 – Provision of Bus Services							
95	Provision of Bus Services	Schedule 20, and Schedule 29D Items 1, 13, 25 and 29	<p>a. The Applicants apply to modify the bus services provision to provide for tenders to be invited and the commencement and level of service to be in accordance with</p> <p>a. MV b. DV</p>		ABC	a. This obligation continues to serve a useful purpose. Early provision of bus services is essential to resident’s adoption of sustainable patterns of travel at an early stage in the development. The proposed modification would not serve a useful	The Council remains of the view that early provision of the bus service is essential and continues to serve a useful purpose. Delaying the provision of the temporary bus stop and commencement of the bus

			<p>the availability of an operator and confirmation from the operator as to service viability without reliance on any subsidies.</p> <p>The Applicants apply also, therefore, for the discharge of all bus subsidies.</p> <p>The Applicants apply for paragraphs 1 and 2 to be modified as follows:</p> <p>Paragraphs 1.1 and 1.2 to refer to 2,684 Dwellings [rather than 100 and 200]</p> <p>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</p> <p>Paragraphs 1.4 and 1.5, to refer to 2,784 Dwellings [rather than 200].</p> <p>Paragraphs 1.6 and 1.7, to refer to 3,584 Occupations [rather than 1,222]</p> <p>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 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</p>		<p>purpose equally well because, if the bus service is delayed, the community would have to rely on the private motor vehicle to meet their day-to-day transport needs, resulting in a car dominated and unsustainable community. It is essential to provide the bus service at a point before travel patterns and behaviour become established by residents.</p> <p>The timing of delivery of the bus service was agreed based on achieving the minimum 20% public transport mode share for trips to and from the site required to avoid an unacceptable impact on the local highway network (refer to AAP Policy CG12). The policy acknowledges that the bus service will not initially be commercially viable and as such will require subsidy from the developers until sufficient patronage is reached.</p> <p>Planning permission was granted on the basis that the bus service would not be viable and self-sustainable in the early years of the development, consequently a subsidy was required and secured. The applicant's proposal to now remove all subsidy and only deliver a bus service that is viable and self-sustainable is contrary to the premise upon which the planning permission was granted.</p> <p>The applicant has not provided any information to demonstrate what impact the modifications would have on trip rates to and from the development, the impact on modal share, and the impact on the local highway network. Nor has the applicant provided any details of tender responses from bus service providers.</p> <p>Delaying the provision of the initial bus service until 46% of the dwellings are occupied, the provision of a high frequency bus service (every 20 minutes) and bus priority measures until 62% of dwellings are occupied, and consequently delaying the provision of all further bus obligations, will result in a car dominated environment with much higher vehicle trip rates than originally estimated within the Transport Assessment.</p> <p>The Agreement already contains provision, in paras 1.3 and 1.8, to address the circumstances whereby no tender bids are successful and an alternative service may be required. Consequently, the modifications to para 1.3, in this respect, are not necessary.</p> <p>The Council also notes that as part of the recent planning Inquiry for appeal ref:</p>	<p>service until 500 occupations would not serve a useful purpose equally well because it still remains that 500 households would have to rely on the private motor vehicle to meet their day-to-day transport needs. The appellant states that the change to the trigger now proposed "reflects the s106 agreed for the Possingham Farm development". However, it clearly does not as the s106 for the Possingham Farm development requires a bus service to commence prior to 100 occupations at Possingham Farm, whereas the appellant is seeking to delay the commencement of the bus service to serve the residents of Chilmington Green until 500 occupations. The appellant has agreed that a bus service is necessary to serve the residents of the Possingham Farm development from 100 occupations but has provided no justification why a later trigger of 500 occupations would be acceptable for the residents of Chilmington Green.</p> <p>The phasing of the delivery of the Phase 1 initial bus related infrastructure prior to 200 occupations and the Phase 1 subsequent bus related infrastructure prior to 1222 occupations continues to serve a useful purpose because the amount of bus infrastructure provided would increase in-line with the increase in the number of residents. Delaying provision of the Phase 1 initial bus related infrastructure to 1222 occupations would not serve a useful purpose equally well because it would result in up to 1222 households having to use a single temporary bus stop at the northern end of the site adjacent to Access A off the A28. This temporary bus stop would not be within a 400 metre walking distance from all of the 1222 households that it would have to serve.</p> <p>The obligation to increase the frequency of the bus service in stages during the construction of the development from every 30 mins to every 10 mins continues to serve a useful purpose because it ensures that as the occupation of the</p>
--	--	--	--	--	--	---

			<p>Possingham Farm development in which the bus service must commence prior to occupation of 100 dwellings on that site.</p> <p>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.</p> <p>The Appellant is now proposing to modify the agreement so that there is a single obligation 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.</p> <p>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.</p> <p>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</p>		<p>APP/E2205/W/24/3345454 – Possingham Farm which is located adjacent to the Chilmington Green site and relies on the facilities and services to be provided at Chilmington Green, the applicant proposed that a bus service would be provided prior to 100 occupations at Possingham Farm. This appeal was allowed and the bus service secured via S106. The proposition made by the applicant at the Possingham Farm Inquiry that a bus service could be provided to serve 100 occupations at Possingham Farm do not align with their proposal to delay provision of the bus service at Chilmington Green due to it being unviable at that level of occupations.</p> <p>Without prejudice to the Council’s position on viability, the application contains insufficient information to enable the Council to assess the claim that <i>“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”</i>. In addition, that the level of subsidies <i>“are wholly unsustainable and likely to jeopardise the funding available to the Applicants to carry out the Development at all.”</i></p> <p>b. Payment into the “Developers Capital Bank Account – Council” prior to the trigger point for delivery of the bus services continues to serve a useful purpose because it ensures that, if the Council is required to remedy a breach of this obligation, the Council can do so as quickly as possible following the breach occurring. The discharge of the obligation would result in an unacceptable delay to delivery if there were a breach of the obligation and would therefore not serve that useful purpose equally well.</p> <p>The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 &amp; CG12 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council’s wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 &amp; TRA4.</p> <p><b>Reject – the obligation shall continue to have effect without modification.</b></p> <p><i>Proposed modification by agreement: the inclusion of “... and any property so specified has been transferred at nil consideration and nil cost to the specified body.”</i></p>	<p>development increases so does the provision of the bus service to enable the development to achieve the minimum 20% public transport mode share for trips to and from the site required to avoid an unacceptable impact on the local highway network. The removal of the obligation to increase the frequency of the bus service as the development is constructed and replacing it with the provision of a bus service with 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 with any future increase in frequency being determined only by bus service monitoring would not serve a useful purpose equally well because the frequency of the bus service is likely to influence its patronage. An hourly/half hourly service is likely to be less popular and consequently less likely to be used than a service every ten minutes. The appellants proposal would therefore compromise the ability of the development to achieve the minimum 20% public transport mode share for trips to and from the site. The approach agreed for the Possingham Farm development is not appropriate for the Chilmington Green development given the significant difference in the scale of these developments – 666 and 5750 households respectively.</p> <p>The bus service monitoring period of 25 years from the first operation of the Bus Service would not serve a useful purpose because, based on the current rate of construction, the monitoring period is likely to end prior to the completion of construction of the development.</p>
--	--	--	---	--	--	---



			<p>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 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.</p> <p>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.</p> <p>To this end the Appellant is now proposing that:</p> <p>The following definitions are added</p> <p><b>Bus Service</b> 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</p> <p><b>Bus Service Monitoring</b> 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 which shall as a minimum include the following:</p>		<p><i>is agreeable in principle subject to ensuring satisfactory terms of transfer and payment of all costs arising, however, the Council considers that this is more appropriately included at the end of paras 1.9 and 1.15, plus para 1.12 and not paras 1.10 and 1.18 as stated by the applicant.</i></p>	
--	--	--	--	--	---	--



			<p>carrying out surveys of residents and visitors;</p> <p>And</p> <p>b) monitoring of the usage of the Bus Service by residents and visitors of the Development</p> <p><b>Bus Service Monitoring Period</b> means a period of 25 years starting from the first operation of the Bus Service</p> <p><b>Bus Service Monitoring Report</b> 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:-</p> <p>a) data of the usage of the Bus Service by residents and visitors of the Development</p> <p>b) any feedback received from residents of the Development in respect of the Bus Service</p> <p>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 timetable for implementing the revised Bus Service</p> <p><b>Bus Service Monitoring Review Period</b> 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</p> <p><b>Peak Hours</b> means between 0700-1000 and 1600-1900</p> <p>Paragraph 1.3 is amended to read as follows:</p>				
--	--	--	---	--	--	--	--

			<p>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).</p> <p>Paragraphs 1.8, 1.11, 1.14 and 2 are deleted and replaced with the following:</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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</p>				
--	--	--	---	--	--	--	--

			<p>that it is in place and operational in accordance with the timetable set out in the approved Bus Service Monitoring Report.</p> <p>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)</p> <p>The request for deletion of the maintenance obligation (paragraph 1.18) is withdrawn</p> <p><del>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.'</del></p> <p><del>Paragraphs 1.9 and 1.10, to refer to 4,784 Occupations [rather than 2,722]</del></p> <p>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.'</p> <p><del>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 13-14 minutes. This will apply only in so far as the operator confirms it is viable to do so.'</del></p> <p><del>Paragraphs 1.12 and 1.13, to refer to 5,348 Occupations [rather than 4,107]</del></p> <p><del>Paragraph 1.14 to be modified to read 'Not to Occupy more than 5,348 Dwellings until the bus</del></p>				
--	--	--	---	--	--	--	--

			<p>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 but only in so far as the operator confirms it is viable to do so.'</p> <p>Paragraphs 1.15 and 1.16, to refer to 5,500 Occupations [rather than 5,000].</p> <p>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.</p> <p>b. 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.</p>				
96	Provision of bus vouchers to each owner	Schedule 20 paragraph 1.17	Further, the Applicants apply to discharge the obligation under paragraph 1.17 to provide bus vouchers.	DV	ABC	<p>This obligation continues to serve a useful purpose. Its discharge would not serve that useful purpose equally well. Incentives to encourage patronage of the bus service are essential to resident's adoption of sustainable patterns of travel when they move into the development to meet the minimum 20% public transport mode share for trips to and from the development required to avoid an unacceptable impact on the local highway network (refer to AAP Policy CG12). Planning permission was subsequently granted on that basis</p> <p>The applicant's proposal to discharge this obligation and only deliver a bus service that is viable and self-sustainable, without the provision of incentives in the form of bus vouchers, is contrary to the premise upon which the planning permission was granted for the reasons set out in the Council's response to Request 95.</p> <p>Without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim that this obligation is "<i>undermining the viability and in turn the deliverability of the Development</i>".</p> <p>The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 &amp; CG12 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's</p>	n/a

					<p>wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 &amp; TRA4.</p> <p><b>Reject – the obligation shall continue to have effect.</b></p> <p><i>Proposed modification by agreement: the Council acknowledges that providing subsidised travel in the form of bus vouchers to residents in the latter phases of the development may not serve a useful purpose because the proposed bus service would be established and operating at a frequency that is likely to be attractive to residents without subsidy. The Council is therefore willing to consider a modification to stop the provision of bus vouchers when the development reaches a specified number of occupations to be agreed.</i></p>	
<b>Schedule 21 – Off-site Traffic Calming</b>						
97	Traffic monitoring	Paragraph 1.1	<p>The Applicants apply to discharge the obligations to make these payments <del>modify the monitoring obligations as follows:</del></p> <p><del>1.1 Not to Occupy on Site more than the following numbers of Dwellings ...</del></p> <p><del>1.1.2 2,399</del></p> <p><del>1.1.3 5,649</del></p> <p><del>[Omit 1.1.4-1.1.6]</del></p> <p><del>Unless (i) monitoring ... County Council.</del></p>	ABC / KCC	<p>This is an obligation to both the Borough Council and the County Council, however, the works would be undertaken by the County Council as Local Highway Authority. Therefore, the Borough Council defers to KCC’s response</p>	<a href="#">Refer to KCC response</a>
98	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	Paragraphs 1.2, 1.3, 2.1 and 2.2 and Schedule 30A	<p>The Applicants apply for the obligation to make these payments to be discharged <del>following modifications to be made:</del></p> <p><del>Paragraph 1.2 is modified to refer to ‘the 2,499th Dwelling on the Site [rather than the 999th]</del></p> <p><del>Paragraph 1.3 is modified to refer to ‘the 5,749th Dwelling on the Site [rather than the 1999th]</del></p> <p><del>Paragraph 2.1 is modified to refer to ‘the 2,500th Dwelling on the Site [rather than the 1000th]</del></p> <p><del>Paragraph 2.2 is modified to refer to ‘the 5,750th Dwelling on the Site [rather than the 2000th]</del></p> <p><del>Schedule 30A is similarly modified to reflect the above, so that the relevant</del></p>	ABC / KCC	<p>This is an obligation to both the Borough Council and the County Council, however, the works would be undertaken by the County Council as Local Highway Authority. Therefore, the Borough Council defers to KCC’s response.</p>	<a href="#">Refer to KCC response</a>

			<p>payment triggers become 2,499 and 5,749 [rather than 925 and 1925].</p> <p>Payment in each case to be subject to the deduction of £40,850 in respect of each road (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.</p>				
<b>Schedule 22 – RIF</b>							
99		Schedule 22	The Applicants' application is to discharge the RIF payment obligations under this Schedule.	DV	ABC	<p>This obligation continues to serve a useful purpose. Its discharge would not serve a useful purpose.</p> <p>Contributions to the RIF (Regional Infrastructure Fund) are required, in accordance with AAP Policy CG11, to provide funding to a level to be agreed towards the repayment of the forward funding arrangements that delivered the improvements to the A28 Drovers roundabout and M20 Junction 9 that were required to make the development acceptable. This forward funding is still required to be repaid and therefore this obligation continues to serve a useful purpose to enable the forward funding to be repaid.</p> <p>Without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim that <i>"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"</i></p> <p>The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policy CG11 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policy TRA1.</p> <p><b>Reject – the obligation shall continue to have effect.</b></p>	n/a
<b>Schedule 23 – Viability</b>							
		See column 3 of the Appendix to	See column 4 of Appendix A2 herewith. Note – some new drafting has been added in order to put those changes				

		Annex A h2 d2 2 herewith.	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.				
100	Viability Review Submission for Viability Review Phase Two by 851 Dwelling Occupations	Paras 2.1.1, 3.2 et seq and 3.18.2	The Applicants apply for the obligation to provide a Viability Review Submission for Viability Review Phase Two to be discharged entirely; deleting paragraphs 2.1.1 and 3.18.2 and reference to Viability Review Phase Two in paragraphs 3.2-3.10 and making all other appropriate consequential amendments.	DV	ABC	<p>This obligation continues to serve a useful purpose. The review of viability to enable the delivery of necessary infrastructure (affordable housing), should it prove viable through the life of the development, is essential to ensure the planning obligations required by the development are delivered in full as far as possible. Planning permission was granted without the full, planned, levels of developer contributions to fully mitigate the impact of the development and on the basis that this would be reviewed at an appropriate stage in the development. The discharge of this obligation would not serve that useful purpose equally well because it is too early in the delivery of the development to determine that there is insufficient viability within the scheme to deliver the policy complaint level of affordable housing. The Agreement established that the earliest point that it would be appropriate to establish this would be at 500 occupations.</p> <p>The applicant has not explained why, in their view, they think there should not be a Viability Review Submission for Viability Review Phase 2.</p> <p>The fact that the applicant has chosen to agree to sell land parcels based on a maximum provision of 10% affordable housing, with both the applicant and the incoming developers in full knowledge that a viability review was required to determine the level of affordable housing to be provided following 500 occupations, is no justification for this obligation to be discharged.</p> <p>In addition, without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim that <i>"the viability cannot support any additional Affordable Housing"</i>.</p> <p>The Council does not agree with the applicant's claim that <i>"ABC have already accepted the principle that the maximum sustainable Affordable Housing Provision in Viability Review Phase Two can be fixed at 10%"</i> with reference to planning permission granted to Jarvis at The Hamlet. The grant of planning permission at The Hamlet is not relevant to the principle of whether there</p>	n/a

						<p>should be a Viability Review Submission for Viability Review Phase 2.</p> <p>The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 &amp; CG18 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, HOU1 &amp; IMP2.</p> <p><b>Reject – the obligation shall continue to have effect.</b></p> <p><i>Note: In accordance with the Main Phase 1 Masterplan, Viability Review Phase 2 should also include land parcel CH2, and the 6 dwellings approved on Land Parcel F under ref: 18/00911/AS.</i></p>	
101	Viability Review Submission for Viability Review Phase Three by 1351 Dwelling Occupations	Paras 2.1.2, 3.3 et seq and 3.18.3	The Applicants apply for the obligation to provide a Viability Review Submission for Viability Review Phase Three to be discharged entirely; deleting paragraphs 2.1.2 and 3.18.3 and reference to Viability Review Phase Three in paragraphs 3.3-3.10 and making all other appropriate consequential amendments.	D V	ABC	<p>This obligation continues to serve a useful purpose. The review of viability to enable the delivery of necessary infrastructure (affordable housing), should it prove viable through the life of the development, is essential to ensure the planning obligations required by the development are delivered in full as far as possible. Planning permission was granted without the full, planned, levels of developer contributions to fully mitigate the impact of the development and on the basis that this would be reviewed at an appropriate stage in the development.</p> <p>The discharge of this obligation would not serve that useful purpose equally well because it is too early in the delivery of the development to determine that there is insufficient viability within the scheme to deliver the policy complaint level of affordable housing. The Agreement established that the earliest point that it would be appropriate to establish this would be at 1200 occupations.</p> <p>The applicant has not explained why, in their view, they think there should not be a Viability Review Submission for Viability Review Phase 3.</p> <p>The fact that the applicant has chosen to agree to sell land parcels based on a maximum provision of 10% affordable housing, with both the applicant and the incoming developers in full knowledge that a viability review was required to determine the level of affordable housing to be provided following 1200 occupations, is no justification for the Council to consider a premature viability submission.</p> <p>In addition, without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim <i>"that it can clearly be shown at this stage that there is</i></p>	n/a



						<p><i>no realistic prospect of ABC securing any Additional Affordable Housing Provision for this Review Period (over and above the 10% minimum)”.</i></p> <p>The Council do not agree with the applicant’s claim that “ABC have already accepted the principle that the maximum sustainable Affordable Housing Provision in Viability Review Phase Two can be fixed at 10%” with reference to planning permission granted to Jarvis at The Hamlet. The grant of planning permission at The Hamlet is not relevant to the principle of whether there should be a Viability Review Submission for Viability Review Phase 2.</p> <p>The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 &amp; CG18 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council’s wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, HOU1 &amp; IMP2.</p> <p><b>Reject – the obligation shall continue to have effect.</b></p>	
102	Viability Review Submission for Viability Review Phase Four by 1951 Dwelling Occupations	Paras 2.1.3, 3.4 et seq and 3.18.4	The Applicants apply for the obligation to provide a Viability Review Submission for Viability Review Phase Four to be discharged deleting paragraphs 2.1.3 and 3.18.4 and reference to Viability Review Phase Four in paragraphs 3.4-3.10 and making all other appropriate consequential amendments.	DV	ABC	<p>This obligation continues to serve a useful purpose. The review of viability to enable the delivery of necessary infrastructure (affordable housing), should it prove viable through the life of the development, is essential to ensure the planning obligations required by the development are delivered in full as far as possible. Planning permission was granted without the full, plan led, levels of developer contributions to fully mitigate the impact of the development and on the basis that this would be reviewed at an appropriate stage in the development.</p> <p>The discharge of this obligation would not serve that useful purpose equally well because it is too early in the delivery of the development to determine that there is insufficient viability within the scheme to deliver the policy complaint level of affordable housing. The Agreement established that the earliest point that it would be appropriate to establish this would be at 1800 occupations.</p> <p>The applicant has not explained why, in their view, they think there should not be a Viability Review Submission for Viability Review Phase 4.</p> <p>The fact that the applicant has chosen to agree to sell land parcels based on a maximum provision of 10% affordable housing, with both the applicant and the incoming developers in full knowledge that a viability review was required to determine the level of affordable housing to be provided following 1800</p>	n/a

						<p>occupations, is no justification for the Council to consider a premature viability submission.</p> <p>In addition, without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim <i>"that it can clearly be shown at this stage that there is no realistic prospect of ABC securing any Additional Affordable Housing Provision for this Review Period (over and above the 10% minimum)"</i>.</p> <p>The Council do not agree with the applicant's claim that <i>"ABC have already accepted the principle that the maximum sustainable Affordable Housing Provision in Viability Review Phase Two can be fixed at 10%"</i> with reference to planning permission granted to Jarvis at The Hamlet. The grant of planning permission at The Hamlet is not relevant to the principle of whether there should be a Viability Review Submission for Viability Review Phase 2.</p> <p>The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 &amp; CG18 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, HOU1 &amp; IMP2.</p> <p><b>Reject – the obligation shall continue to have effect.</b></p>	
103	Schedule 23	Paras 2.1.4 to 2.1.9	<p>The Applicants 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 therein. Thus, each of 2.1.4 to 2.1.9 should be amended as follows,</p> <p>'2.1 The Owners covenant with the Council as follows ...:</p> <p>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.</p>	M	ABC	<p>This obligation continues to serve a useful purpose. The review of viability to enable the delivery of necessary infrastructure (affordable housing), should it prove viable through the life of the development, is essential to ensure the planning obligations required by the development are delivered in full as far as possible. Planning permission was granted without the full, plan led, levels of developer contributions to fully mitigate the impact of the development and on the basis that this would be reviewed at an appropriate stage in the development.</p> <p>The modification proposed would not serve that useful purpose equally well because it would result in viability review submissions at too early a stage in the delivery of the relevant phase of the development to determine that there is insufficient viability within the scheme to deliver the required affordable housing. Reserved matters applications can be submitted many years before dwellings are occupied, given the timescale required to determine the applications, start and then complete construction on-site. Within the time lag between the submission of reserved matters applications and occupations on site the inputs by</p>	n/a

			<p>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</p> <p>... etc at dwelling intervals equal to those defining the relevant review phase.</p>			<p>which a viability review is undertaken could have changed significantly, for example, sales values could have increased. Also, noting that the timescale for the submission of reserved matters applications is determined via conditions attached to the Outline planning permission.</p> <p>The applicants state that this modification will yield benefits, however, there is unlikely to be any benefit to the delivery of affordable housing if a review was undertaken within too early a timescale within the life of the development.</p> <p>The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 &amp; CG18 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, HOU1 &amp; IMP2.</p> <p><b>Reject – the obligation shall continue to have effect without modification.</b></p>	
104		<p>Definition of PVRS d) to i) and Paragraph 3.19</p>	<p>a. And the definition of Premature Viability Review Submission should be amended to:</p> <p>‘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 followed by the relevant RMA within 12 months shall be resubmitted such that it is no greater than 12 months in advance of the relevant RMA’</p> <p>b. And schedule 23 paragraph 3.19 should be amended to delete ‘that it receives and in the event...’ onwards.</p>	<p>a. M</p> <p>b. D</p>		<p>a. The definition continues to serve a useful purpose. The review of viability to enable the delivery of necessary infrastructure (affordable housing), should it prove viable through the life of the development, is essential to ensure the planning obligations required by the development are delivered in full as far as possible. Planning permission was granted without the full, plan led, levels of developer contributions to fully mitigate the impact of the development and on the basis that this would be reviewed at an appropriate stage in the development.</p> <p>The modification proposed would not serve that useful purpose equally well because it would result in viability review submissions at too early a stage in the delivery of the relevant phase of the development to determine that there is insufficient viability within the scheme to deliver the required affordable housing. Reserved matters applications can be submitted many years before dwellings are occupied, given the timescale required to determine the applications, start and then complete construction on-site. Within the time lag between the submission of reserved matters applications and occupations on site the inputs by which a viability review is undertaken could have changed significantly, for example, sales values could have increased. Also, noting that the timescale for the submission of reserved matters</p>	n/a

						<p>applications is determined via conditions attached to the Outline planning permission.</p> <p>The applicants state that this modification will yield benefits, however, there is unlikely to be any benefit to the delivery of affordable housing if a review was undertaken within too early a timescale within the life of the development</p> <p>b. The obligation continues to serve a useful purpose because it provides clarity, for the avoidance of doubt, that the no-occupation clause remains applicable even when a premature viability review submission is submitted. Deleting this obligation would not serve that useful purpose equally well because it would result in ambiguity.</p> <p>The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 &amp; CG18 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, HOU1 &amp; IMP2.</p> <p><b>Reject – the obligation shall continue to have effect without modification.</b></p>	
<b>Schedule 24 – Public Art</b>							
105	Payment of Public Art Contribution 1	Paragraph 1.1, 2.1 and Sch 29A Item 2	<p>a. The Applicants apply to discharge this obligation</p> <p>b. and for the sum of £50,000 already paid to be refunded.</p>	<p>a. D</p> <p>b. O</p>	ABC	<p>a. This obligation continues to serve a useful purpose. Para 1.1 requires the contribution to be paid “for the purpose of a preparing a brief for the provision of public art within the Site (including delivery methods, timetables for delivery and possible locations)”. This is exactly what the contribution has been spent on. The public art contribution has been spent to produce the ‘Creative Chilmington Strategy’ (the Chilmington Green Public Art Strategy). Therefore, the Council has fulfilled its obligations under clause 1.1. It is noted that para 1.1 does not require the contribution to be spent on the provision of public art as claimed by the applicant.</p> <p>The discharge of this obligation would not serve that useful purpose equally well because the public art strategy has already been produced and without it there would be no plan determining how the public art contributions will be spent and how arts, culture and creativity will be integrated within the development.</p> <p>b. The proposed obligation to repay the sums already paid to the Council falls outside of the scope of Section 106B.</p>	n/a

						<p>The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policy CG1 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, IMP1 &amp; COM1.</p> <p><b>Reject – the obligation shall continue to have effect.</b></p>	
106	Payment of Public Art Contributions 2 to 6	Paragraphs 1.2 to 1.6 and 2.2 to 2.6, and Sch 29A Items 2, 6, 17, 21 etc	<p>The Applicants apply for the following modifications:</p> <p>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].</p> <p>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].</p> <p>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].</p> <p>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].</p> <p>Modify 1.6 to provide 'Not to Occupy more than 4999 [rather than 4099]</p>	MVp	ABC	<p>This obligation (payment triggers) continues to serve a useful purpose. The timing of the obligations is in-line with the timetable for the delivery of the Public Art Strategy. Delaying the obligations as proposed would not serve that useful purpose equally well because this delay would prevent the timely delivery of the Strategy.</p> <p>Without prejudice to the Council's position on viability, the application contains insufficient information to enable the Council to assess the claim that this obligation is <i>"undermining the viability of Main Phase One and potentially the Development"</i>.</p> <p>This obligation (public art to be delivered by the Council) continues to serve a useful purpose because the public art strategy does not just include the installation of objects of public art on the site but involves building opportunities for the growing community to engage with and take part in creative activities. The proposed modification would not serve that useful purpose equally well because the applicant only proposes to provide public art within the site which is not the full purpose of the public art contributions or the public art strategy.</p> <p>The Council do not agree with the applicant's submission that "there is a clear case.... for streamlining the process by allowing the Applicants themselves to take on the role of acquiring and placing the Public Art."</p> <p>The applicant also claims that their proposal would avoid "unnecessary administration and resultant wasted expenditure", however, they have not provided any evidence of this.</p> <p>The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policy CG1 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, IMP1 &amp; COM1.</p> <p><b>Reject – the obligation shall continue to have effect without modification.</b></p>	n/a

			<p>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].</p> <p>Further, to make the following consequential modifications:</p> <p>Modify 2.2 to spend '£100,000 (one hundred thousand pounds) Index Linked upon the Occupation of the 1000th Dwelling.</p> <p>Modify 2.3 to spend '£150,000 (one hundred thousand pounds) Index Linked upon the Occupation of the 2000th Dwelling.</p> <p>Modify 2.4 to spend '£150,000 (one hundred thousand pounds) Index Linked upon the Occupation of the 3000th Dwelling.</p> <p>Modify 2.5 to spend '£150,000 (one hundred thousand pounds) Index Linked upon the Occupation of the 4000th Dwelling.</p> <p>Modify 2.6 to spend '£150,000 (one hundred thousand pounds) Index Linked upon the Occupation of the 5000th Dwelling.</p> <p>Together with consequential modifications to Schedule 29A, in particular as follows:</p> <p>Item 6, to refer to 950 Dwellings</p> <p>Item 17, to refer to 1959 Dwellings</p> <p>Item 21, to refer to 2950 Dwellings</p> <p>Item 17, to refer to 3959 Dwellings</p> <p>Item 21, to refer to 4950 Dwellings</p> <p>And equivalent consequential amendments to Schedule 29B as follows:</p> <p>Item 4, to refer to 1000 Dwellings</p> <p>Item 14, to refer to 1900 Dwellings</p>			<p><i>Proposed modification by agreement: the Council would consider modifying the agreement to enable the payments to be more evenly spaced across the delivery of the development.</i></p>	
--	--	--	--	--	--	--	--

			<p>Item 19, to refer to 3000 Dwellings</p> <p>Item 14, to refer to 4000 Dwellings</p> <p>Item 19, to refer to 5000 Dwellings</p> <p>And Schedule 29C as follows:</p> <p>Item 8, to refer to Occupation of the 1000th Dwelling</p> <p>Item 18, to refer to Occupation of the 2000th Dwelling</p> <p>Item 23, to refer to Occupation of the 3000th Dwelling</p> <p>Item 18, to refer to Occupation of the 4000th Dwelling</p> <p>Item 23, to refer to Occupation of the 5000th Dwelling</p>				
107	The obligations relating to installation of the public art and to maintain the same once installed	Paragraphs 1.7 and 1.8	The Applicants apply for these obligations to be discharged.	D	ABC	<p>a. Paragraph 1.7 – Public Art Installation</p> <p>This obligation continues to serve a useful purpose. Its discharge would not serve a useful purpose.</p> <p>As set out under request 106 above, the Council is best placed to commission and deliver the public art. Therefore, this obligation ensures that the Owners allow public art to be installed on site.</p> <p>The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policy CG1 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council’s wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, IMP1 &amp; COM1.</p> <p><b>Reject – the obligation shall continue to have effect.</b></p> <p>b. Paragraph 1.8 – Public Art Maintenance</p> <p>This obligation continues to serve a useful purpose. Its discharge would not serve a useful purpose.</p> <p>It is appropriate to be clear in the Agreement about who will maintain the installed public art. Discharging this obligation will remove this clarity.</p> <p><b>Reject – the obligation shall continue to have effect.</b></p> <p><i>Proposed modification by agreement: the applicant suggests that the obligation to maintain the public art should be passed to the CMO. It is agreed that</i></p>	n/a

						<i>the CMO would be best placed to maintain the public art. The CMO Business Plan acknowledges that the CMO will be asked to take on the management and maintenance responsibility for Public Art.</i>	
108	The commissioning, installation of the public art by the Council and associated consultation	Paragraphs 3 and 4	The Applicants apply for these obligations to be discharged.	D	ABC	<p>The existing wording, as part of the obligations to which it relates, continues to serve a useful purpose. Its discharge would not serve a useful purpose.</p> <p>As set out under Request 106 above, the Council is best placed to commission and deliver the public art. Therefore, these paragraphs clearly set out the Councils obligations in this regard.</p> <p>The applicant has provided no evidence to substantiate their claim that the discharge of this obligation would avoid “any unnecessary administration and resultant wasted expenditure of the kind that has been apparent to date.”</p> <p>The proposed obligation to repay the sums already paid to the Council falls outside of the scope of Section 106B.</p> <p>The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policy CG1 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council’s wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1, IMP1 &amp; COM1.</p> <p><b>Reject – the obligation shall continue to have effect.</b></p>	n/a
<b>Schedule 25 – Heritage Interpretation</b>							
109	Payment of Archaeological Archiving, Heritage and Archaeologist Contributions	Paragraphs 1 and 4.1	The Applicants apply to discharge each of these contributions and for a refund of the monies already paid.		KCC	Refer to KCC response	n/a
110	Payment of Archaeologist Contributions	Paragraphs 2, 3, 4.2 and 4.3, and Schedules 30A, 30B and 30C	The Applicants apply to discharge the remaining payments under this schedule.		KCC	Refer to KCC response	n/a
<b>Schedule 26 – Quality Agreement</b>							
111	Quality Agreement, payments of £40,000 linked to Occupations	Paras 1, 2.1,2.2 and 2.3 to 2.21, and Schedule 29A Items 9,	The Applicants 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	a. D b. O	ABC	a. This obligation continues to serve a useful purpose. The quality agreement payments provide the Council with the appropriate resource to ensure the development is delivered at the design quality envisaged to the benefit of the local community	n/a



	and the payment of £80,000 on the first anniversary and £40,000 on the subsequent nineteen anniversaries	12, 15, 19, 24 etc. and likewise in Schedule 29B	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) and for payments already made to be refunded. The relevant line items in Schedules 29A, 29B and 29C should also therefore to be deleted.			<p>and to deliver on the Garden Community principles. The Council has recruited a 'Quality Monitoring Officer' to meet the Council's obligations in respect of Schedule 26, Para 4. The discharge of this obligation would not serve that purpose equally well because the Council would not have the financial resource to maintain the Quality monitoring Officer role. It is evident from the work undertaken by the Council's Quality Monitoring Officer to date that some elements of the Chilmington Green development are not being delivered in accordance with the design quality proposed on the approved drawings</p> <p>It is not clear what the applicant means by their statement "<i>without prejudice to the contention that properly construed the payments at 2.1 and 2.2 are not due in any event</i>".</p> <p>b. The proposed obligation to repay the sums already paid to the Council falls outside of the scope of Section 106B.</p> <p>The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 &amp; CG22 and the National Planning Policy Framework 2024. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policies SP1 &amp; SP6.</p> <p><b>Reject – the obligation shall continue to have effect.</b></p> <p><i>Proposed modification by agreement: the Council acknowledges that the two different payment regimes set out in paragraph 1 &amp; 2 of the schedule could be simplified into one payment regime which would serve the useful purpose of the obligation equally well.</i></p>	
<b>Schedule 28 – Monitoring Fee</b>							
112	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	Schedule 28, paras 1, 2.1, 2.2 and 2.3 to 2.21 and Schedule 29A Items 8, 11, 14, 18, 23, etc. and likewise in Schedule 29B and Schedule 29C Items 4, 10, 13, 16 etc.	<p>The Applicants 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).</p> <p>The relevant line items in Schedules 29A, 29B and 29C should also therefore to be deleted.</p>	a. D & M b. O	ABC	<p>a. This obligation continues to serve a useful purpose. The payments provide the Council with the appropriate resource to monitor the S106 agreement and planning conditions to ensure compliance over the lifetime of the development. The contributions are proportionate to the scale and nature of the development.</p> <p>The discharge of some of the obligations to pay and modification to reduce the level of payments remaining would not serve that purpose equally well and instead would result in insufficient funds to enable the Council to properly monitor the S106 Agreement and planning conditions.</p>	n/a

			Further, the Applicants 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.			<p>It is not clear what the applicant means by their statement “without prejudice to the contention that properly construed the payments at 2.1 and 2.2 are not due in any event”.</p> <p>b. The proposed obligation to repay the sums already paid to the Council falls outside of the scope of Section 106B.</p> <p>The modification of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policies CG1 &amp; CG22 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council’s wider approach in other parts of its area: see the Ashford Local Plan 2030 Policy IMP1.</p> <p><b>Reject – the obligation shall continue to have effect without modification.</b></p> <p><i>Proposed modification by agreement: the Council acknowledges that the two different payment regimes set out in paragraph 1 &amp; 2 of the schedule could be simplified into one payment regime which would serve the useful purpose of the obligation equally well.</i></p>	
<b>Schedule 29 – ABC Bank Accounts</b>							
113	The Developers’ Contingency Bank Account – Council	Schedule 29, paragraphs 1 and 2, and clause 1.1 definition of Council Minimum Balance	The Applicants apply for paragraphs 1 and 2 to be discharged and the definition of Council Minimum Balance to be deleted accordingly.	D V	ABC	<p>This obligation continues to serve a useful purpose. These payments provide the Council with security of funding to provide for the timely delivery of infrastructure to support the development. The Paying Owners non-payment of financial obligations due within the Agreement to date, has required the Council to seek the funds due from the Developers’ Contingency Bank Account – Council to ensure the required community infrastructure is delivered. This demonstrates that the obligation continues to serve a useful purpose.</p> <p>The Council does not agree that it is sufficiently secured by the paying owners covenants because the time it can take to pursue enforcement action against non-compliance with a S106 is such that any non-compliance would cause significant delays in the provision of infrastructure necessary to make the development acceptable. The bank account enables the Council to step in and provide this infrastructure sooner that would be possible otherwise if a breach occurs.</p> <p>The Council does not agree with the applicant that the sums are “<i>substantially more than are required to mitigate the impact of the Development</i>’. The sums are the amounts required to deliver the necessary</p>	n/a

						<p>infrastructure and are equal to the sums due to be paid by the applicant.</p> <p>Without prejudice to the Council's position on viability, <i>the application contains insufficient information to enable the Council to assess the claim that this obligation is "undermining the viability of Main Phase One and with it delivery of the Development overall"</i>.</p> <p>The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policy CG22 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policy IMP1.</p> <p><b>Reject – the obligation shall continue to have effect.</b></p>	
114	Payments into Council Contributions Bank Account, Indexation payments, and withdrawal	Sch 29A, Sch 29B and Sch 29C	<p>a. The Applicants 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.</p> <p>b. 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.</p>	<p>a. M</p> <p>b. M</p>	ABC	<p>a. This payment schedules 29A, 29B &amp; 29C continue to serve a useful purpose given the Council's responses to the proposed modifications above. The modifications proposed to schedules 29A, 29B &amp; 29C would not serve a useful purpose equally well because the payment schedules would be out of step with the obligations given that the related proposed modifications are not agreed.</p> <p>b. The payment triggers in Schedule 29A and 29B being earlier than the withdrawal trigger in Schedule 29C continues to serve a useful purpose because it provides the Council with security of funding to enable the timely delivery of infrastructure to support the development. The timing of the payments is intended to ensure that there is no delay to the availability of the funds to provide the infrastructure in question at the relevant trigger-point and to avoid the uncertainty and upfront cost to the public purse of having to commence enforcement action. The proposed modification would not serve that useful purpose equally well because the security of funding provided by the current payment triggers would be removed.</p> <p>The requested modification is contrary to the Chilmington Green Area Action Plan 2013 Policy CG22 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policy IMP1.</p> <p><b>Reject – the payment schedules continue to have effect without modification.</b></p>	n/a

115	Restriction on withdrawals	Paragraph 8	The Applicants apply to modify the obligation by omitting the words 'other than interest'	M	ABC	<p>The existing wording, as part of the obligations to which it relates, continues to serve a useful purpose because it provides clarity about when interest accrued in the bank account can be withdrawn. The proposed modification would not serve that useful purpose equally well because it would be unclear when interest could be withdrawn from the account. This would result in the interest being held permanently in the account as it would be a breach of Sch. 29 para. 8 for the Council to withdraw it.</p> <p>The applicants do not propose any alternative text setting out what is to happen to the interest if the words "other than interest" are removed.</p> <p><b>Reject – the obligation shall continue to have effect without modification.</b></p>	n/a
116	The Developers' Capital Bank Account	Schedule 29 paras 9 and 10 and 29D	The Applicants apply to discharge para 9 and 10 and Schedule 29D.	D	ABC	<p>This obligation continues to serve a useful purpose. Its discharge would not serve a useful purpose.</p> <p>These payments provide the Council with security of funding to provide for the timely delivery of infrastructure to support the development. The Paying Owners non-payment of financial obligations due within the Agreement to date, has required the Council to seek the funds due from the Developers' Contingency Bank Account – Council to ensure the required community infrastructure is delivered. This demonstrates that this obligation continues to serve a useful purpose.</p> <p>The discharge of this obligation is contrary to the Chilmington Green Area Action Plan 2013 Policy CG22 and the National Planning Policy Framework 2023. This conclusion is consistent with the Council's wider approach in other parts of its area: see the Ashford Local Plan 2030 Policy IMP1.</p> <p><b>Reject – the obligation shall continue to have effect.</b></p>	n/a
<b>Schedule 30 – KCC Bank Accounts</b>							
117	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 Applicants apply for paragraphs 1 and 2 to be discharged and the definition of CCMB to be deleted accordingly		KCC	Refer to KCC response	n/a

118	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 Applicants 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.		KCC	Refer to KCC response	n/a
119	Restriction on withdrawals	Paragraph 8	The Applicants apply to modify the obligation by omitting the words '(other than interest)		KCC	Refer to KCC response	n/a
<b>Schedule 34</b>							
120	Heads of Terms For The Lease of the CMO's First Operating Premises	The Terms referred to in column 4	<del>The Applicants apply for the following modifications to the stated Heads of Terms:</del>  <del>Under 4. Term,</del>  <del>a. 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</del>  <del>b. at 4.4 reference to the CMO's Second Operating Premises to be modified to refer to the Community Hub.</del>  <del>c. Under 9. Use, at 9.1 it should be stated that the property can only be used as a Chilmington community facility.</del>	M	ABC	The existing wording, as part of the obligations to which it relates, continues to serve a useful purpose. Its modification would not serve a useful purpose equally well.  a. Refer to the Council's response to request 16 above.  b. Refer to the Council's response to request 16 above.  The existing wording continues to serve a useful purpose and is sufficiently clear. The inclusion of the word 'Chilmington' would not serve that useful purpose equally well.  <b>Reject – the obligation shall continue to have effect without modification.</b>	The Council notes that this modification is now withdrawn by the appellant and has no further response to make in respect of this obligation.
<b>Schedule 39 and 40</b>							
121	Articles of Association of the CMO and the CMO Business Plan	The entire schedules	Modification deleted from appeal	n/a	n/a	n/a	n/a
<b>Schedule 49</b>							
122	Viability Review Templates	The entire schedule	For the avoidance of doubt, the Applicants reserve their position in respect of Schedule 49, as in the case of all other obligations, to make such	n/a	ABC	The applicant's position is noted.	n/a

			further or other applications to discharge or modify as may be appropriate hereafter.				
--	--	--	---	--	--	--	--