

CHILMINGTON GREEN, ASHFORD ROAD, GREAT CHART, TN26 2BQ

S106B APPLICATION TO MODIFY/AMEND THE S106 AGREEMENT DATED 27 FEBRUARY 2017
(AS AMENDED) (PLANNING APPLICATION NUMBER 12/00400/AS)

PINS Ref: APP/W2275/Q/23/3333923 and APP/E2205/Q/23/3334094

Kent County Council – Topic Paper – Schedule 19 Off-Site Pedestrian and Cycle Links

1. INTRODUCTION

1.1 The section 106 agreement dated 27 February 2017 (as amended) (“S106”) [CD1/14 - CD1/16] at Schedule 19 (Off-Site Pedestrian and Cycle Links) currently obligates the Owners (as defined in the S106) to pay £532,000 (plus indexation) in four equal payments as follows:

- £133,000 prior to 1001 Occupations;
- £133,000 prior to 1501 Occupations;
- £133,000 prior to 2001 Occupations; and
- £133,000 prior to 4001 Occupations.

1.2 Schedule 19 (paragraph 2) provides that Kent County Council (“KCC”) will spend of monies towards:

“Constructing two footways either side of Magpie Hall Road to the east of the Site; promotion of national cycle route 18....; improving signage on the footpath/cycleway from the Site through Great Chart to Matalan roundabout; surfacing, widening of Greensands Way; monitoring traffic flow in Bartlets Lane and surfacing works to byway AW245....”

1.3 As set out in Request 94 of the Appellants’ Annex A 106 Modifications Table [CD2/22], the Appellants seek to **discharge** the obligation to provide financial contributions to the KCC for Off-Site Pedestrian and Cycle Links – Four payments of £133,000 (Sch 19 paras 1 and 2 and Schedule 30A-C).

1.4 The Appellants have proposed discharge of these payments on the basis that:

- the contribution negatively impacts the **viability** and deliverability of Main Phase 1, subsequent Phases and ultimately the delivery of the Development as a whole. KCC address the issue of viability in a separate proof of evidence.

- *“Whilst it is acknowledged that payments for off-site pedestrian and cycle links can in principle serve a useful purpose given that the site needs to remain as a sustainable urban extension, **the existing provisions are not fit for purpose and do not serve any useful purpose. None of the specified works have any current utility in terms of benefitting the Development or at all.**”*

The Appellants have provided no evidence to support this assertion.

1.5 It is KCC’s view that the obligation serves a useful purpose, continues to do so and that the Appellants’ application to discharge the obligation should be refused.

2. **PLANNING POLICY CONTEXT**

2.1 The following section sets out the legislative and policy drivers for the provision of KCC’s Public Rights of Way (“PROW”) provision. The legislative context is relevant because it sets out the duties upon and powers available to KCC. The relevant policies are set out in national, local and KCC policy documents, plans and programmes. They are material because they represent the official position of the Government, Ashford Borough Council and KCC as service providers.

2.2 **National Planning Policy Framework (NPPF) 2024 [CD5/1]**

- Open space and recreation – paragraph 105
- Promoting sustainable transport – paragraphs 109, 111 and 117
- Achieving well-designed places – paragraph 135
- Promoting healthy and safe communities – paragraph 96

2.3 **National Planning Practice Guidance [CD5/2]**

- Healthy and Safe Communities.
- Planning Obligations.

2.4 **Local Planning Authority**

2.4.1 Chilmington Green Area Action Plan (Adopted July 2013) [CD4/6]

- Policy CG1 - Chilmington Green Development Principles
- Policy CG13 – Cycling and Walking
- Policy CG15 – Education Provision

2.4.2 Ashford Local Plan 2030 (adopted February 2019) (“Ashford Local Plan”) [CD4/1]

- Policy TRA5 - Planning for Pedestrians
- Policy TRA6 - Provision for Cycling
- Policy ENV5 – Protecting Important Rural Features
- Policy IMP1 - Infrastructure Provision

2.4.3 Ashford Cycling and Walking Strategy 2019-2029 [CD10/1]

2.5 **Kent County Council**

2.5.1 KCC’s policy for seeking s106 contributions to support new developments and ensure that the demands on services are mitigated is set out in its Developer Contributions Guide 2023 [CD4/3] and Technical Appendix 17 Public Rights of Way [CD4/3/17].

2.5.2 KCC’s Rights of Way Improvement Plan 2018-2028 [CD10/4] is a statutory document produced as a requirement of the Countryside and Rights of way Act 2000 section 60. The plan assesses the extent to which the PROW network meets the present and likely future need to the public in:

- (a) contributing towards more sustainable development;
- (b) delivering active travel options;
- (c) providing opportunities for exercise, leisure and open-air recreation.

3. **PURPOSE**

3.1 **Purpose served by the s106 Obligation**

3.1.1 The obligation secures the payment of a total sum of £532,000 (plus indexation) to provide increased capacity in the PROW network through the construction of new routes and upgrades to existing ones to accommodate the new demand created by the Development. It prevents the Development from coming forwards without those sums being paid beyond the specified triggers to ensure that development does not take place where the impact on the current PROW network would become unacceptable. It is to ensure that the costs of infrastructure necessary to serve the Development are met by the Development.

3.1.2 As an urban extension to Ashford town, the current obligation serves to provide off-site pedestrian and cycle links, enabling those living in the Development to access the wider community and vice versa. This has the effect of making the Development a sustainable urban extension. The specific interventions include:

- construction of two footways either side of Magpie Hall Road to the east of the Site (shown on Appendix 1);
- promotion of national cycle route 18 (shown on Appendices 2 and 3);
- improved signage on the footpath/cycleway from the Site through Great Chart to the Matalan roundabout (shown on Appendix 3);
- surfacing, widening and fencing Greensands Way (shown on Appendix 3);
- monitoring traffic flow in Bartletts Lane which comprises part of national cycle route 18 (currently a quiet lane to Ashford) to assess for the need for additional restrictions for vehicles;
- surfacing works to byway AW245 (shown on Appendix 3, box 7).

3.2 **Why is that purpose useful at the current time?**

3.2.1 The impact of 5,750 new homes will result in an increase of approximately 13800 additional residents. KCC's Rights of Way Improvement Plan 2018-2028 research indicates that approximately 87% of residents of Ashford use the Public Rights of Way Network regularly. It is anticipated that this level of engagement would be reflected across new development in the Borough and a similar percentage of new residents from the Development would use the PROW Network. Increased use on the PROW Network will require improvement works to ensure that routes are of sufficient quality given the change of environment from rural to semi urban and allowing for all weather use. User safety is at risk if improvements are not carried due to route degradation from increased traffic.

The NPPF [CD5/1] continues to advise on the need to promote sustainable transport at paragraphs 109 to 118:

- Paragraph 109 e) identifying and pursuing opportunities to promote walking, cycling and public transport use"
- Paragraph 111 d) provide for attractive and well-designed waling and cycling networks with supporting facilities.

- Paragraph 117 a) give priority first to pedestrian and cycle movements, both within the scheme and neighbouring areas. And at c) create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles.

Department for Transport Note 1/20, Cycle Infrastructure Design [CD10/17] provides considerable detailed guidance on the importance of integrating local cycling and walking links into new development. (Chapter 14).

Early provision encourages the promotion of walking and cycling opportunities and demonstrably gives priority to them. To delay delivery to later phases, or to remove delivery altogether is clearly at odds with the NPPF.

3.2.2 The PROW Network in and surrounding the Development (for example, as shown on drawing 131065/A/84 at Appendix 3) is predominantly rural in nature, running along unsurfaced, rural routes which are not currently accessible to all. The construction of new routes, new surfacing and widening of existing routes to allow all-weather use, and new signage to improve wayfinding (as set out in paragraph 3.2.1) and therefore greater user safety and comfort of use for all¹, will produce sustainable travel options for Active Travel commuting as well as leisure benefits. The new and improved existing routes will create greater connectivity both within the Development and to the greater Ashford area, including new developments in the South of Ashford Garden Community. Such provision supports the outcomes promoted by national and local policies set out above. Early provision of new and upgraded routes assists to promote modal shifts away from vehicle use to more sustainable forms of transport, such as walking and cycling. This is especially important currently as connections from the Development to surrounding neighbourhoods are difficult (or non-existent), with few, safe walking routes, rendering vehicle travel the only option for many. The contribution assists in delivering a sustainable community with active travel/ healthy travel options from and within the Development to schools, transport hubs and the wider facilities that Ashford has to offer as well as providing leisure opportunities.

3.2.3 The contribution towards improvements to the pedestrian and cycle network serves a vital purpose in ensuring the sustainability and connectivity of the Development. With a significant increase in residents anticipated, upgrading the PROW network is crucial for user safety and to accommodate increased traffic. These improvements, including new routes, surfacing, and signage, promote active travel, aligning with national and local planning policies that prioritize walking and cycling. By creating

¹ As per the Department for Transport's Inclusive Mobility – A guide to Best Practice on Access to Pedestrian and Transport Infrastructure December 2021

safe and accessible routes, the contribution facilitates modal shift away from car dependency, enhances connectivity within the development and the wider Ashford area, and provides essential access to key amenities and leisure opportunities, ultimately fostering a healthier and more sustainable community.

- 3.2.4 Even absent of the Development, improvements to Public Rights of Way and cycling and walking infrastructure in the area would be of benefit to the wider Ashford community and visitors. Delivery would be in line with the objectives of the Rights of Way Improvement Plan 2018-28 [CD10/4] and the Active Travel Strategy.

3.3 Would the obligation serve that purpose equally well if it had effect subject to the proposed modification?

- 3.3.1 No modification is proposed. It follows that the useful purpose served by the obligation will no longer be met.
- 3.3.2 Discharging the obligation to make payments will result in no payment of contributions and hence no provision of off-site pedestrian and cycle links, both in the early stages and across the long-term delivery of the Development. The PROW infrastructure necessary to make this Development acceptable in planning terms will not be delivered. This is contrary to National and Regional Policy stated in KCC's Rights of Way Improvement Plan (ROWIP) [CD10/4] and Ashford Local Plan Policies TRA5, TRA6, & ENV5 [CD4/1]. The resulting removal of works to the upgrade and/or construct Rights of Ways, cycle routes and other related works to the public rights of way networks, will increase the already significant impact on the residents of Chilmington Green – through the increased degradation of existing routes (by increased use) and increased vehicular movements brought about by a lack of modal shift to sustainable transport. The above policies require commitment to Active Travel, connectivity of the Development to existing developments such as Singleton and Great Chart, sustainable transport, and the protection of and enhancement of the local area rural character. Discharging the obligation would be contrary to these requirements.
- 3.3.3 The KCC has already experienced the negative consequences of the Owners' failure to fulfil their obligations. This has resulted in significant disruptions and additional costs for the public purse.
- 3.3.4 For instance, Condition 35 of the Outline Planning Permission mandated the construction and implementation of footpaths and walkways prior to the construction of each school within the Development. This crucial requirement was not met, severely impacting residents. Specifically, new residents of the Development were unable to safely walk to Primary School 1, forcing them to rely solely on vehicles for

access. To address this critical safety issue, KCC was compelled to fund crucial improvements to Public Rights of Way (PROWs) AW240 and AW219 and a new section of footway along Mock Lane out of its own budget, incurring unnecessary expenditure.

3.3.5 Furthermore, the Owners have demonstrated a pattern of non-payment for temporary closures of PROWs² to facilitate necessary construction works. This behaviour has compelled KCC's PROW and Access department to suspend all future closure approvals until all outstanding payments are received. This delay has inevitably disrupted the construction schedule and compromised the safety and usability of the PROW network, creating significant inconvenience for the public.

3.3.6 As set out above, the purpose of the Off-Site Pedestrian Provision and Cycle Link Contributions are useful now and therefore the purpose cannot be equally well served by discharging the requirement for payment.

4. **CONCLUSION**

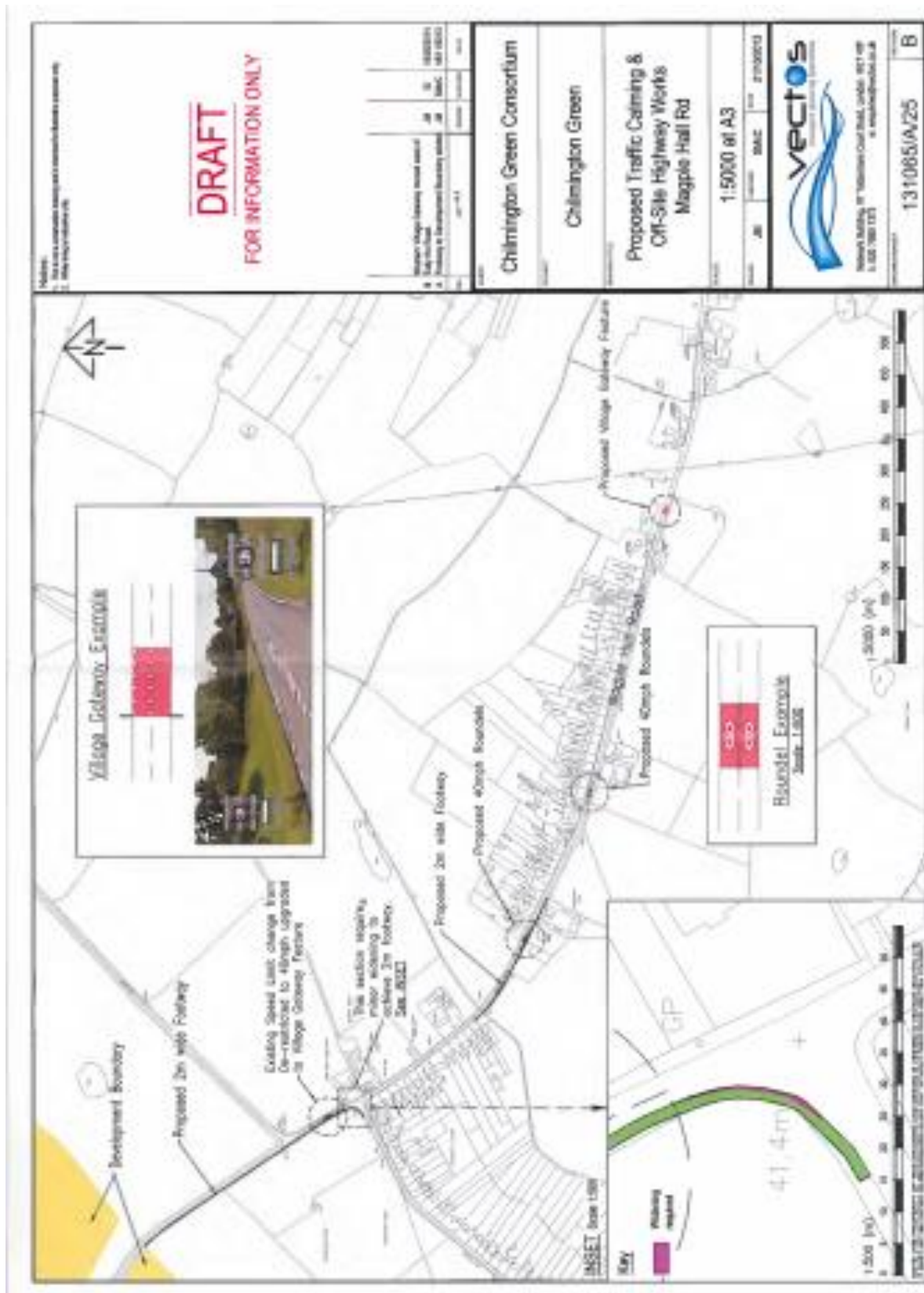
4.1 In conclusion, the S106 obligation to contribute £532,000 (plus indexation) towards off-site pedestrian and cycle links serves a vital and ongoing purpose. It ensures that the significant infrastructure demands generated by the 5,750-home development are adequately addressed. By funding improvements to the public rights of way network, the obligation promotes sustainable travel options, enhances the safety and accessibility of the development, and mitigates the environmental impact of increased traffic.

4.2 Discharging this obligation would have severe consequences. It would directly undermine the delivery of essential infrastructure, compromise the development's sustainability, and contravene key planning policies. Furthermore, the developer's history of non-compliance with existing S106 obligations, including the failure to provide adequate pedestrian access to schools, highlights the importance of enforcing these commitments to ensure the long-term well-being of the community.

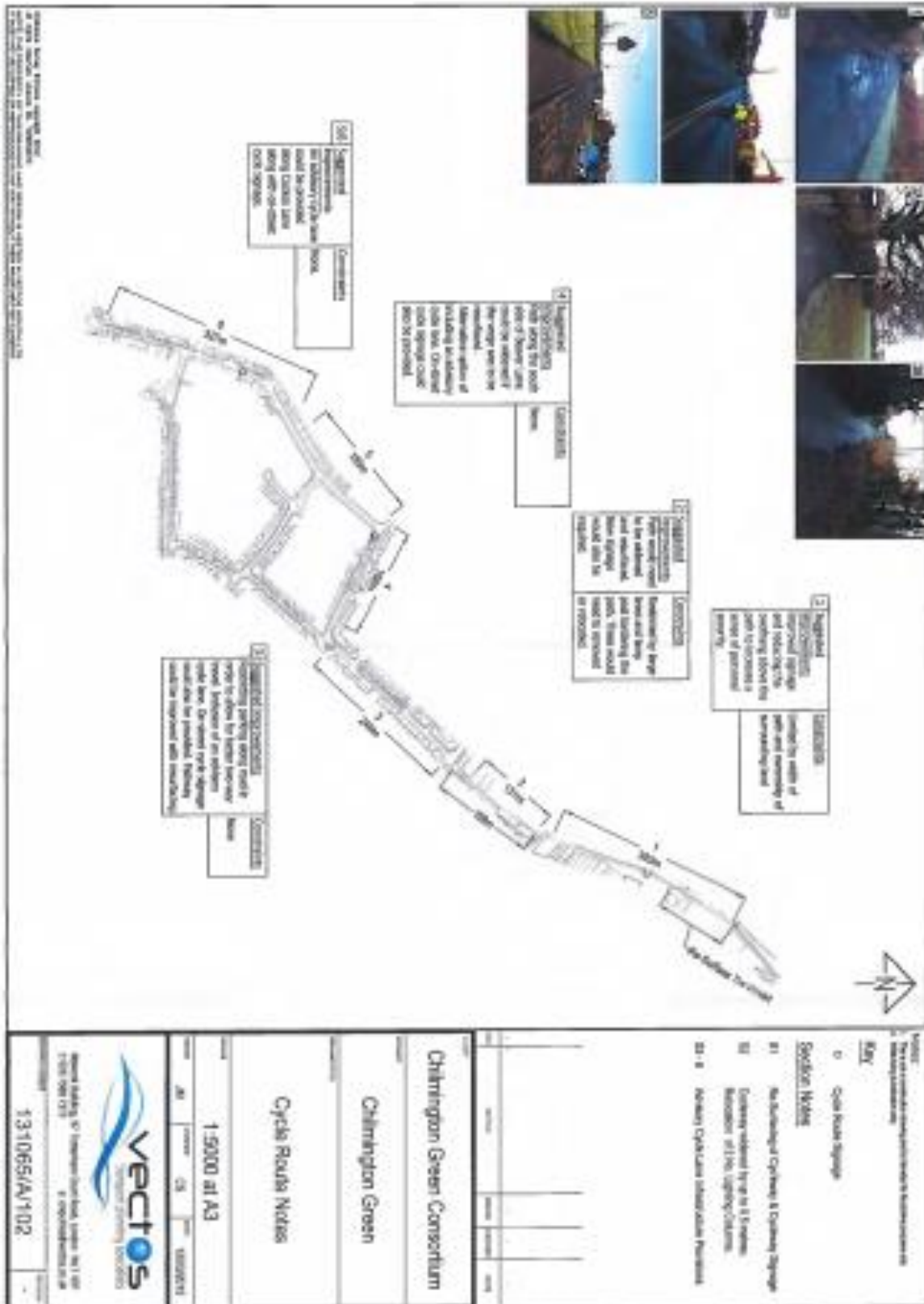
4.3 Therefore, KCC strongly opposes the discharge of this S106 obligation and urges the Planning Inspectorate to refuse Request 94.

² Road Traffic Regulation Act 1984 section 14(i) temporary closure of Public Rights of Way. These are required to enable developments to progress safely. KCC is able to recharge the costs incurred in processing necessary orders.

APPENDIX 1



APPENDIX 2



APPENDIX 3

