

LAND NORTH OF POSSINGHAM FARMHOUSE, ASHFORD ROAD, GREAT CHART,  
KENT

APPEAL BY HODSON DEVELOPMENTS LTD

APP/E2205/W/24/3345454

LPA ref. 22/00571/AS

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OPENING SUBMISSIONS  
AND LIST OF APPEARANCES  
ON BEHALF OF ASHFORD BOROUGH COUNCIL

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**Appearances for Ashford Borough Council**

**Advocate:** Hugh Flanagan

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Instructed by T W Mortimer, Solicitor to the Council and Monitoring Officer,  
Ashford Borough Council

**Witnesses:**

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### Opening submissions

1. Ashford Borough Council refused the scheme which is the subject of this appeal for nine reasons as set out in the decision notice dated 14 December 2023. As to those reasons:
  - (a) The Borough Council's evidence will deal with reason 1, which concerns design and character issues, and reason 2, which concerns locational sustainability.
  - (b) Reason 3 (impacts on the highway network and highway safety) is dealt with in the evidence of Kent County Council.
  - (c) Reasons 4 and 5 regarding ecology and drainage have been withdrawn on provision of further information by the Appellant.
  - (d) Reason 6 (heritage) was withdrawn at statement of case stage.
  - (e) Reason 7 concerning resilience against the effects of climate change can be resolved by condition.
  - (f) Reason 8 concerning impact on the Stodmarsh European designated site can now be resolved by a combination of conditions and s.106 obligations following the recent grant of planning permission for the waste water treatment plant ("**WWTP**"). There is not currently agreement, however, over the nature of the conditions and s.106 obligations required. The Council says that a robust mechanism which ties the WWTP to the appeal scheme in perpetuity is necessary, particularly given that the two sites are not connected. Such control is necessary to ensure that there is certainty that the appeal scheme would not adversely affect the Stodmarsh site. That is what is required under reg.63 of the Conservation of Habitats and Species Regulations

2017.<sup>1</sup> The Inspector is now the competent authority for the purposes of reg.63.

(g) Reason 9 concerns the need for appropriate s.106 obligations. There is not currently agreement on the content of the s.106 agreement.

2. A CIL compliance statement has been submitted by the Borough Council dated 27 September 2024 (CD1/9A), in addition to that submitted by the County Council (CD1/9B), for discussion at the roundtable session.
3. In respect of the reasons for refusal on which the Council will call evidence, the Council will say, in summary, that the appeal scheme has fundamental flaws which firmly outweigh the grant of planning permission. First, in terms of design, it sits next to the carefully and comprehensively planned Chilmington Green strategic urban extension, which is intended to be an exemplar garden suburb. The appeal scheme does not respect that masterplanning, and will give rise to an over-dense and urban form of development which will harm character and the setting of Chilmington Green. The over-development also manifests itself in inadequate open space and playspace for future residents of the scheme. Secondly, the scheme provides no day to day services and facilities of its own and is entirely reliant on those which are envisaged to come forward at Chilmington Green, but not only are those services not easily walkable in terms of distance, there is very little in existence at the moment and the timescale for when they might have come forward and connections to them made is significantly uncertain. This is a large, unallocated<sup>2</sup> and unplanned site in what is currently the countryside, brought forward in complete reliance on an urban extension which the Appellant itself is struggling to deliver. Its design is harmful, it is unsustainably located and it should be refused planning permission.

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<sup>1</sup> See e.g. the approach adopted in the recent appeal decision concerning Land north of Brandon Close, Aston Clinton, Buckinghamshire APP/J0405/W/24/3342894 dated 27 September 2024 at paras 44-57 (CD8/4).

<sup>2</sup> With the exception of a small portion of the site at the northern end.

## **The development plan**

4. The development plan, so far as relevant to the appeal, comprises the Ashford Local Plan 2030 (adopted February 2019) and the Chilmington Green Area Action Plan (adopted July 2013). Policy HOU5 – Residential Windfall Development in the Countryside – of the Local Plan is particularly relevant to the appeal scheme.

## **Chilmington Green**

5. Chilmington Green (“CG”) is a strategic urban extension for the south of Ashford town centre that is proposed to deliver, when it is built out, up to 5750 homes alongside social infrastructure and facilities. It is being developed in large part by the Appellant in the present appeal.
6. The CG AAP has been adopted to guide the detailed planning of the CG AAP area and forms part of the Ashford development plan. The AAP when adopted in July 2013 envisaged full delivery by 2038. Outline planning permission was granted for CG on 6 January 2017. The Appellant now estimates full delivery of CG will not be until 2048 (see Overall Masterplan at CD13-5). Delivery at CG has been subject to significant delays. As of 31 July 2024, over seven and half years after the grant of outline planning permission for 5750 homes, only 360 homes had been occupied.<sup>3</sup> Reserved matters approval has been granted for 763 homes in total, the first primary school and the secondary school. Based on past delivery rates, the Council’s recent 5YHLS statement anticipates only a further deliverable supply of 327 from Chilmington Green over the period 2024 – 2029 (CD14-6, p.27), i.e. still under the 763 for which reserved matters permission has been granted.
7. The Appellant was a signatory to a s.106 agreement dated 27 February 2017 in respect of CG. It contains various triggers for the delivery of infrastructure at CG, based on the occupation of numbers of dwellings. The Appellant is now

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<sup>3</sup> Faye Tomlinson proof para. 5.14.

seeking to vary the s.106 agreement to delete obligations and / or to move triggers back. So, for example, the trigger for delivery for the district centre would be pushed back from 1250 occupations in the currently worded s.106 agreement to 2700 occupations, and the floorspace size requirement for the proposed supermarket in the district centre would be deleted.<sup>4</sup> The changes are sought on, inter alia, viability grounds. The Appellant is currently pursuing an appeal under s.106B of the Town and Country Planning Act 1990 in respect of the variations sought (ref. APP/WW275/Q23/3333923 and 3334094). An ‘exploratory meeting’ was held on 24 September 2024 in respect of the appeal by the appointed Inspector, but no start letter has yet been issued.

### **Reason for refusal 1**

8. The appeal site is unallocated, with the exception of a small portion of the site at the northern end which falls within the AAP boundary, which the Council refers to in its evidence as ‘the overlap land’. The appeal scheme proposes no housing on the overlap land, only an access road. The overlap land is proposed for housing, greenspace and highway works under the 2017 outline planning permission. The remainder of the appeal site adjoins, but is outside, the AAP boundary.
9. The AAP provides a comprehensive and carefully planned approach to development across the AAP site. Development is focused around a district centre, to the north of the AAP area, that is to provide the majority of retail, employment and community-focused floorspace. Two local centres in the south and east of the AAP area are to serve the everyday needs of their respective neighbourhoods. A four phase approach is adopted: first the district centre phase, then the central phase, then the southern phase, and finally the south-eastern phase.
10. The Chilmington Green Design Code was adopted as a Supplementary Planning Document (“**SPD**”) in 2016 to further guide design matters at CG. Amongst

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<sup>4</sup> Faye Tomlinson proof para 5.13; CD15/14, Sch. 14, para. 1.1 and 1.2 (pdf p.170).

other matters, it defines five character areas: Chilmington Rise to the north which includes the district centre; Orchard Village which occupies much of the south and south west of the area, and in which the overlap land lies; Chilmington Brook to the south east; The Hamlet in the centre; and Brisley Farm Edge to the east.

11. The CG outline planning permission granted in 2017 required the CG development to be carried out in accordance with parameter plans including concerning residential density, storey heights, and building typology (condition 14, CD15/3). The outline planning permission also required all reserved matters applications to accord with the Design Code (condition 39).
12. Given the location of the appeal scheme adjoining and in the immediate setting of CG, it is essential that the appeal scheme coheres with and respects the design approach which has been adopted at CG, and which is mandated by both the CG outline planning permission and adopted development plan policy in the AAP.
13. The appeal scheme does not do this. The failings are significant and multiple.
14. The density of development proposed is well in excess of what has been planned and is required for (1) the overlap land, (2) the finger of development in CG closest to the appeal site, and (3) the CG area more widely. Similarly, the height of the development significantly exceeds that adopted for the nearest areas of CG. Linked to both excessive height and density are the dwelling typologies in the appeal scheme, which do not align with the design approach at CG.
15. The Council will say that the result of these issues is development that will not respect its countryside context. It is important to recognise that the appeal scheme sits as a finger of development extending south of Ashford into the open countryside, exposed on three out of four sides: the open countryside along its long western boundary beyond the A28, the open countryside on its

southern boundary, and the natural open space proposed as part of the CG area on its long eastern boundary.

16. A separate symptom of this overdevelopment is inadequate playspace and informal natural greenspace on site. The amount of development proposed, plus areas agreed to be necessary for ecological mitigation and infrastructure, do not leave room for adequate policy-compliant open space.

## **Reason for refusal 2**

17. Policy at all levels is clear that development should not be brought forward in isolation from the infrastructure, of all forms, which is needed to support it. In respect of CG, the AAP explains:

*“one of the key principles of the AAP is that each phase of the development of Chilmington Green is sustainable in its own right. This requires that properly planned infrastructure delivery is achieved alongside the development of new housing and that any significant gaps or shortfalls in provision are avoided.”* (para. 11.30, CD7-3)

18. The Council will say that the appeal scheme is clearly not locationally sustainable.
19. The scheme provides no day-to-day services or facilities on site, despite being a large development of 650 homes, and being nearly 1km from its southern to northern tip. It is put forward as relying entirely on the facilities and services planned for CG, but that does not make the site sustainable. The services currently existing or soon to exist principally comprise a primary school, a temporary community facility in a single storey temporary building of 170sqm, and a secondary school due to open in 2025. The primary school and temporary community facility are not within easy walking distance and in any event there are currently no safe, convenient and all weather walking and cycling routes to these facilities.

20. Further facilities are planned for the future, particularly in the CG district centre and local centres, but the timing of these is highly uncertain. Their delivery is tied to triggers based on dwelling occupations in the CG s.106, but the triggers will only be met if the dwellings to be built and occupied. As explained above, that has happened only very slowly so far. Further, even if matters do proceed in a timely manner, the trigger points are still potentially very many years away.
21. An additional important matter is that the Appellant's position as set out in detail in the s.106B appeal is that the triggers should be pushed back significantly. The Appellant is pursuing the s.106B to try to achieve this. That significantly exacerbates what is already an unacceptable position in respect of sustainability.
22. The Appellant appears to suggest that Grampian conditions based on the delivery of certain facilities and sustainable links to them solve the problem. They do not. Those facilities are located well beyond anything that might be termed a walkable neighbourhood for the appeal site. The delivery and timing of the facilities is also highly uncertain and would not meet the test for a condition. The currently non-existent links to them would need to pass through or alongside development parcels which may be being developed for years to come, which brings into question their feasibility and attractiveness. On any assessment, the appeal scheme is not locationally sustainable.

### **Benefits and planning balance**

23. The Borough Council recognises the social and economic benefits of new market and affordable housing. The Council is currently unable to demonstrate a five year supply of housing land: the position in the recently published Five Year Housing Land Supply Update 2024-2029 is 4.39 years (CD14-6). It should be noted, however, that the latest Housing Delivery Test result for the Borough was 107%, i.e. it was passed.



24. Further, the Appellant's recognition that even on its case the appeal scheme would need to be subject to Grampian conditions relating to the prior delivery of infrastructure which is uncertain in timescale places into significant doubt the scale of contribution (indeed if any) which it can be reliably said that the appeal scheme would actually make to the 5YHLS position. The fact that the scheme is in outline with reserved matters approval needing to be obtained (with the standard time limits for applying for reserved matters approval and then commencing development of 3 years and 2 years respectively) compounds this issue.

25. The social and environmental disbenefits set out above in respect of reasons for refusal 1 and 2 are extensive and carry significant weight. Overall the Borough Council will say that the wide-ranging and significant harms arising from this scheme significantly and demonstrably outweigh any planning benefits. There is conflict with the development plan as a whole and other material considerations are insufficient to outweigh the conflict and harms, such that planning permission should be refused.

### **Conclusion**

26. For all the above reasons the Borough Council will in due course invite the Inspector to dismiss the appeal.

**HUGH FLANAGAN**

**8 October 2024**

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