

LAND NORTH OF POSSINGHAM FARMHOUSE, ASHFORD ROAD, GREAT CHART, TN26
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APPEAL AGAINST PLANNING REFUSAL OF APPLICATION 22/00571/AS ISSUED BY
ASFORD BOROUGH COUNCIL DATED 13 DECEMBER 2023

PINS Ref: APP/E2205/W/24/3345454

PROOF OF EVIDENCE OF
David Adams
Assistant Director Education (South Kent)
Kent County Council

I, David Adams, of Kent County Council, Kroner House, Eurogate Business Park, Ashford, Kent, TN24 8XU say as follows:

BACKGROUND

1. I am the Assistant Director Education (South Kent) and have been employed by Kent County Council ("**KCC**") since December 1991.
2. I hold a Bachelor of Arts (Honours) degree in geography, and a post-graduate Diploma in Management Studies. I have been responsible for school place planning in different districts of Kent since 2001, with responsibility for Ashford District continuously since 2003, except for the period April 2020 to August 2022 while I was seconded to the posts of Interim Director Education and then Reconnect Programme Director within KCC. Prior to my secondments I held the lead responsibility for KCC's pupil forecasts and production of the Commissioning Plan for Education Provision in Kent.
3. My service undertook an assessment of the original planning application (AS/22/00571) ("**Application**") for the proposed development to determine the additional pupil need generated and whether this could be met within existing infrastructure ("**Education Assessment**"). An updated Education Assessment was conducted following the appeal against refusal to permit the Application to ensure KCC's request is current and remains justified ("**Updated Education Assessment**").
4. The purpose of this statement is to set out the justification for the education contributions sought by KCC following the Updated Education Assessment, and to demonstrate that

these are necessary, directly related and fairly and reasonably related in scale and kind to the proposed development.

5. The facts and matters set out in this proof of evidence are within my own knowledge unless otherwise stated, and I believe them to be true. Where I refer to information supplied by others, the source of the information is identified; facts and matters derived from other sources are true to the best of my knowledge and belief.

RELEVANT POLICY

6. I understand that the documents referred to in my proof will be included in the core documents, so I do not append them and do not set out their contents in detail.
7. KCC is the Statutory Authority responsible for education and is the Strategic Commissioner of Education Provision. It has a duty under s14 of the Education Act 1996 to secure sufficient school places for all pupils within its area. This includes those with special educational needs and disabilities (SEND). KCC's School Commissioning Policy is set out in the "Commissioning Plan for Education Provision in Kent 2024 – 2028" (adopted January 2024).
8. KCC has an adopted Planning Obligations Policy ("KCC's Developer Contributions Guide") (dated July 2023) that makes reference to contribution requests (section 3), Section 106 contributors at (section 5), and to Education matters in Technical Appendices 4-11. A development contributions calculation is contained at Technical Appendix 3.
9. KCC's Commissioning Plan for Education Provision and Developer Contributions Guide do not hold statutory weight, but both should be treated as a material planning consideration when determining applications or as part of any planning appeals. Both set out KCC's policy approach to meeting the future needs of the County's residents, and in the case of new housing developments, how the demand for education services is assessed and any necessary mitigation calculated.
10. The Developer Contributions Guide makes reference to CIL Reg 122 in paragraph 1.4.1.2 in that a planning obligation must be:
 - "a) necessary to make the development acceptable in planning terms
 - b) directly related to the development, and
 - c) fairly and reasonably related in scale and kind to the development."
11. Paragraph 55 of The National Planning Policy Framework (NPPF) (December 2023) sets out that:

“Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.”

12. Paragraph 99 of the NPPF (December 2023) sets out that:

“It is important that a sufficient choice of school places is available to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education. They should:

a) give great weight to the need to create, expand or alter schools through the preparation of plans and decisions on applications; and

b) work with school promoters, delivery partners and statutory bodies to identify and resolve key planning issues before applications are submitted.”

13. The Department for Education (“**DfE**”) published guidance on “Securing Developer Contributions for Education” (August 2023) setting out under paragraph 7:

“It is important that the impacts of development are adequately mitigated, requiring an understanding of:

- The education needs arising from development, based on an up-to-date pupil yield factor;
- The capacity of existing schools that will serve development, taking account of pupil migration across planning areas and local authority boundaries;
- Available sources of funding to increase capacity where required; and
- The extent to which developer contributions are required and the degree of certainty that these will be secured at the appropriate time.”

14. Paragraph 11 of this guidance states “The DfE’s basic need grant, free schools programme and other capital funding do not negate housing developers’ responsibility to mitigate the impact of their development on education. When the DfE central free schools programme is delivering a new school for development, we expect the developer to make an appropriate contribution to the cost of the project, allowing DfE to secure the school site from the local authority on a peppercorn (zero or nominal rent) basis and make use of developer contributions towards construction.”

15. The DfE’s publication School Capacity (SCAP) Survey 2024 – Guide for Local Authorities is also relevant. SCAP is a statutory collection of school capacity, pupil

forecast and planned places data from local authorities. This is used by the DfE to calculate local authorities basic need funding allocations. The data is published. The guidance provides advice about how local authorities should account for expected pupil yield from housing development.

16. Additionally the DfE publishes the “Local Authority Pupil Planning Areas – Guide for Local Authorities – September 2021” with which KCC complies. KCC’s planning group structure was accepted by the DfE in 2018, and continues to be accepted annually via the SCAP process. These planning groups underpin school place planning by KCC, and the DfE. These are used to determine where new school provision is required and how much is needed. The DfE allocate basic need funding according to need within a planning group. Planning groups are used by KCC when assessing developer contributions (KCC’s Developer Contributions Guide – Technical Appendix 6, section 2).
17. KCC has a published SEND Strategy 2021-24 (approved March 2021). Priority Five of this is to ensure children and young people with SEND are included in their local community. This includes being able to be educated in their local community, as far as reasonably practicable and having regard to parental preference.

EDUCATION ASSESSMENT

18. KCC submitted a letter of request for s106 contributions to Ashford Borough Council on 17 May 2022 following its assessment of the impact of Planning Application AS/22/00571 (see Appendix 3 of KCC’s Statement of Case). This assessment predated the adoption of KCC’s Developer Contributions Guide (July 2023). The Education Assessment identified the need for contributions to primary school places, primary school land costs, and secondary school contributions.
19. At 7.7.3 of the Appellant’s Draft Statement of Common Ground – Planning (May 2024) it confirms that a matter of dispute is whether the requested contributions towards primary and secondary school provision are justified. I met with the Appellant and their Education Consultant on 25 July 2024 to discuss the education contributions being sought.
20. In accordance with 5.10.1 of KCC’s Developer Contributions Guide, the Application has been reassessed following the appeal to the Planning Inspectorate. Unlike the previous version of this guide, the version adopted in July 2023 provides for contributions to be sought for SEND places and consequently these have been assessed in the Updated Education Assessment.
21. I provided the Updated Education Assessment to the Appellant’s Education Consultant on 13 August 2024. This shows a continuing need for 86 additional secondary school

places, and a new need for 4.7 additional SEND specialist places. The need for further primary school places is no longer justified as existing schools in the planning group are now forecast to have sufficient capacity to accommodate the 121 pupils expected from this development. Therefore, the request for primary school places and land has been withdrawn. The additional capacity provided by Chilmington Green Primary School, funded by that development but not yet filled by it was reserved for that development.

22. The Updated Education Assessment demonstrates that, based on the indicative housing mix provided within the Application, the proposed development would produce 86 secondary school aged pupils, none of whom could be provided for within the forecast secondary school capacity available to KCC to place pupils. Importantly, the Updated Education Assessment demonstrates how planned new secondary school capacity, funded by the Chilmington Green development (AS/12/00400) to mitigate the needs of that development has been taken in to account and “reserved” for that development, and not made available to this Application. This is in line with DfE guidance - Securing Developer Contributions 2023 (Para 66) – this capacity “*does not represent an available surplus for other developments assessing their impact and mitigation.*”
23. Further, it shows that the proposed development would produce 4.7 pupils requiring SEND specialist school places. Paragraph 3.2.1 of Technical Appendix 7 of KCC’s Developer Contributions Guide sets out “*Both nationally and within Kent, the number of children and young people with an EHCP is increasing every year. SEND infrastructure in Kent is currently at capacity, so KCC will seek contributions from all housing proposals that meet the threshold to mitigate this new demand.*” In order to confirm this statement, the Updated Education Assessment illustrates that across Kent, as at May 2024, there were 2079 more pupils requiring specialist SEND provision than the state maintained sector had capacity to accommodate. 303 of these pupils were placed in state maintained specialist SEND provisions taking them 4.1% over their capacity. Locally in Ashford Borough there were six more pupils on the rolls of these provisions than their combined capacity (1% over capacity). The remaining 1776 pupils were placed in independent specialist provision because of the lack of spaces in state funded provision. As the Appellant has accepted the SEND contributions requested are justified, and CIL compliant, I will not expand further on this item (Statement of Common Ground – Education).

Request for secondary contributions

24. The Updated Education Assessment shows:
- (a) a deficit of places is forecast throughout the next 10 years, reaching a peak of -871 places in 2029-30;

(b) this deficit exists before the pupil yield from any proposed new developments contained in the assessment is considered, that yield being 486 pupil places (including the 86 pupils from the Application site);

25. The request for secondary contributions remains contested by the Appellant. At the heart of the disagreement is how the capacity of Chilmington Green Secondary School is being accounted for and whether it should be available to the Appellant.
26. Chilmington Green Secondary School opened in temporary accommodation in September 2023, with 120 year 7 pupils only. The permanent buildings are currently being constructed by the Department for Education (DfE) at a cost of c£40m. Each year, a new year 7 cohort will be admitted, thus its capacity will come on line progressively over a seven year period, with the full 900 places for pupils of statutory school age (year 7-11) being available from September 2029. It will also have capacity for 240 sixth form students.
27. Chilmington Green development has outline consent for 5750 dwellings. Its s106 agreement provides for a serviced secondary school site to be transferred at nil cost to the County Council and, over time, contributions of £22.5m plus indexation. The County Council has taken possession of the site and passed this to the DfE. It will pass over to the DfE the s106 financial contributions when these are received. Please note the Appellant is separately seeking modification of this s106 agreement – see paragraph 37 below.
28. The assessed secondary education need for Chilmington Green was 1080 pupil places. The contributions of £22.5m are to provide 900 pupil places, meaning the development is only mitigating 83% of the demand it is expected to generate. Whilst not fully mitigating its impact, it does not change the fact that these contributions are being provided to mitigate the impact of that development.
29. The DfE guidance - Securing Developer Contributions 2023 (Para 66) states – *“If a new school opens in a single phase below its full capacity while it awaits pupils moving to the development, this does not represent an available surplus for other developments assessing their own impact and mitigation unless circumstances have changed for the original development, such as a redesign of later phases which will give rise to fewer pupils than previously planned.”* KCC is clear that this paragraph applies to Chilmington Green Secondary School, and has therefore sought to ensure the capacity being funded by this development is not given away to another. It is irrelevant that the lead developer for Chilmington Green is the same in this case, the fundamental principle applies as they remain different developments.

30. The pupil forecasts presented in the Updated Education Assessment contain the expected pupil yield from 766 dwellings in Chilmington Green that have either been completed or have reserved matters planning permission. Our approach conforms with the DfE's School Capacity (SCAP) Survey 2024 guidance, which states at page 27 *"Your pupil forecasts should only include expected pupil yields from housing developments that have a high probability of being delivered within the time frame of the forecasts. In most cases such developments will have full planning permission. If you believe a development that does not have full planning permission will proceed and will yield pupils within the forecast's timeframe, we expect that development to be present in the relevant planning authorities latest five year land supply."* This means 4,984 dwellings in Chilmington Green are not included in our pupil forecasts. These homes are covered by an outline consent.
31. The October 2023 school census shows that 54 children (in year groups 7-11) live in the new homes in Chilmington Green and attend a state funded secondary school. A further 20 pupils are in year 6 and therefore will be in secondary schools in September 2024. The December 2023 Council Tax records show 320 properties in Chilmington Green as occupied. Accounting for those pupils in year 11 who move in to sixth form in September 2024, this data indicates 68 pupils from 320 dwellings will be in state funded secondary schools in September 2024. If this pupil yield rate continues, 5750 dwellings will produce 1,222 pupils in years 7-11. Any suggestion that Chilmington Green is not, or will not, produce the pupils to fill 900 secondary school places is therefore, misguided.
32. This means that the school places that are to be funded by the Chilmington Green development, that are currently being forward funded by the DfE, need to be reserved for that development. The places are not surplus and not available to other developments. These are unfilled by the development that is funding them, but has not yet generated the full demand. Accordingly 847 places have been reserved for Chilmington Green's remaining 4,984 dwellings through out the forecast period.
33. Discussion with the Appellant indicates there are three strands to their argument. First, that Chilmington Green Secondary School will exist and it will fill because the national school admissions process of "more open enrolment" means in a practical sense that places cannot be reserved. Second, the pupil yield from new homes in Chilmington Green will come forward slowly, therefore places will exist in the timeframe in which Possingham Farm is built out. As the developer of Chilmington Green and thus the future funder of the school, Hodson should be able to access this built capacity to support the needs of Possingham Farm. These needs will have passed through the system before all the places are required for Chilmington Green. Finally, KCC's Kent Commissioning Plan for Education Provision 2024-28 indicates there will be surplus

capacity in non-selective schools in the Ashford North Non-selective planning group, therefore the need is contested.

34. The full capacity of Chilmington Green Secondary School will become operational over seven years. Admissions regulations will require the school to admit pupils up to its published admissions number. As new housing is occupied locally, the intake area will contract, displacing pupils who live further away. It is at this point KCC and the Appellant disagree. The Appellant's contention is that as Chilmington Green will take many years to build out, and that the pupil yield from Possingham Farm will have passed through the system before all the places funded by Chilmington Green are required by it. This assertion misses a number of fundamental points.

34.1 One, those displaced pupils will need alternative provision, which does not exist. The Updated Education Assessment demonstrates a deficit of 871 places in the planning group in 2028-29. This deficit exceeds the capacity being reserved for Chilmington Green (847 places). It does not include any pupil yield from the 4,984 dwellings in Chilmington Green that the secondary school capacity is being reserved for. It does not include any pupil yield from Possingham Farm or from any other new development contained in the Updated Education Assessment.

34.2 Two, that Chilmington Green has outline consent and can bring forward reserved matters applications at any point, for any number of its remaining dwellings. Once approved, the pupil yield from that consented housing will be added to our forecasts and the number of reserved places at the secondary school will be reduced accordingly. On 20 October 2022 the Appellant wrote to KCC regarding their appeal to modify the s106 agreement for the Chilmington Green development. This included a report by their consultant Quod (dated 18 October 2022), paragraph 10.22 of which contains a table (10.2) entitled "Actual Chilmington Green Phasing as of 2022". This states Phase 1 (2019-2031) 1501 units built, Phase 2 (2024-2033) 1124 units built. This is 2,625 units, to be built within our forecasting period, of which only the yield from 766 are in the forecasts.

34.3 Three, once built Possingham Farm will continue, in perpetuity, to generate a demand for access to secondary school provision.

34.4 Four, other developments are being assessed for their impact and are contributing to the future expansion of Chilmington Green secondary and other schools. Whilst these developments may be utilising built capacity at Chilmington Green secondary school in the short term, they are paying for the future spaces that will be implemented.

- 34.5 Five, the appellant via their Chilmington Green development is due to make their first payment towards the cost of Chilmington Green Secondary School by March 2026, with their final payment on or before occupation of the 5700th dwelling. Their development has consent for up to 5750 dwellings. In the meantime, it is the taxpayer forward funding the school building costs. The appellant's argument that they should benefit from their funding of the school to offset the need generated by their Possingham Farm development misses the point they are due to make ten payments over the lifetime of the Chilmington Green development towards these costs.
35. Importantly, the assertion misses the point that the total mitigation required for the remaining 4,984 units to be built at Chilmington Green (847 places) and that required for Possingham Farm (86 places) totals 933 places. The appellant is seeking to only pay for the 847 places being reserved for Chilmington Green. The Appellant is offsetting spaces required for Chilmington Green for spaces needed for Possingham Fam when both are required. The appellant is trying to use the same spaces twice to mitigate the needs of different developments.
36. The Ashford section of the Kent Commissioning Plan for Education Provision 2024-28 (Page 36) does forecast a small surplus of year 7 places in the Ashford North Non-selective planning group until 2029-30, increasing to 144 places in 2030-31. This plan serves a different function to KCC's developer contribution assessments. As can be seen from the "Planned Commissioning" table on Page 39 the detail is on the places which need to be commissioned in the next four years. This aligns with KCC's capital planning which sees a rolling three year funding allocation from the DfE. In line with DfE requirements the forecasts only contain pupil yield from extant permissions included in the five year HLA. The schools' capacity data used includes the progressive increase in spaces at Chilmington Green Secondary School. This is unsurprising as the DfE is forward funding it. It does not include the 4,984 dwellings in Chilmington Green which are to be built and will need secondary school places. It also does not include the 486 pupils contained in the Updated Education Assessment from proposed developments.
37. It is important to note that the Appellant has submitted an appeal under s106B of the Town and Country Planning Act 1990 seeking to modify and discharge a significant number of their planning obligations contained within the s106 agreement for Chilmington Green. Amongst the variations being sought is the discharging of £8.95m of contributions towards the secondary school. It seems incongruous that the Appellant is arguing in this appeal that their development should benefit from the infrastructure another of its sites is funding, whilst simultaneously running a separate appeal to be relieved of making that full financial commitment.

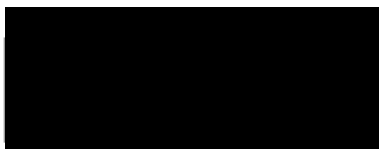
PROPOSED PROVISION OF ADDITIONAL EDUCATION CAPACITY

38. The DfE guidance Securing Developer Contributions for Education (Para 47) recommends that a preferred and contingency school expansion project is identified in a planning obligation to enable local authorities to respond to changing circumstances and new information. In respect of SEND provision paragraph 29 of this guide states: *“While you can pool contributions towards a new classroom in a special school or SEN unit at a mainstream school, it is equally valid to seek contributions for school building alterations that increase a school’s capacity to cater for children with SEN, such as additional space for sensory rooms, facilities to teach independent living skills or practical teaching space.”*
39. Consequently, KCC has proposed that:
- (a) Secondary provision be made through adding further places to the new secondary school at Chilmington Green and/or the provision of a secondary school extension project or projects for the existing secondary schools in the district. Based on the outcome of the above assessment a Secondary Education Contribution of **£5,587.19 per applicable house and £1,396.80 per applicable flat** is required towards the provision of additional places.
 - (b) A proportionate contribution of **£559.83 per applicable house and £139.96 per applicable flat** is required to mitigate the impact from this development through the provision of additional SEND places and/or additional SEND facilities to serve the needs of the development within the District.

STATEMENT OF TRUTH

40. I believe that the facts stated within this proof of evidence are true.

Signed:



PRINT NAME: David Adams

Date: 10 September 2024