



Quod

---

# Chilmington Green

## Application 2

### Explanatory Statement

---

18 OCTOBER 2022

Q220331

# Contents

---

1	Introduction	1
2	Background and context	2
3	Delivery Challenges	9
4	Revised Phasing Schedule	14
5	Summary of Proposed Changes	15
6	Affordable Housing and Viability	22
7	Community Management Organisation	24
8	Community Development	29
9	The District Centre	38
10	Transport Obligations	40
11	Education Contributions	56
12	Monitoring and Quality Payments	61
13	Overview and conclusions	62
	Appendix 1: Planning History	67
	Appendix 2: Phasing Schedule	70
	Appendix 3: Viability Report	71
	Appendix 4: Ashford ATC, Ashford Road; Enclosed Separately	72
	Appendix 5: N03-CS-A28 Junction Assessments - Trigger Points – Complete – Enclosed Separately	73
	Appendix 6: KCC - Highways and Transportation letter	74

# 1 Introduction

---

- 1.1 This Explanatory Statement supports an application pursuant to Section 106A of the Planning Acts to modify the Section 106 agreement accompanying the Chilmington Green Planning Permission (12/00400/AS).
- 1.2 It seeks to make adjustments to obligations in the S106 agreement dated 27 February 2017 ('the S106 agreement'). This Statement provides the background to the proposals, explains what changes are proposed and sets out the reasoning and justification for them on a topic-by-topic basis.
- 1.3 Hodson Developments (Ashford) Limited and others ('Hodson Developments'), the Applicant, Master Developer and signatory to the Section 106 agreement, is committed to delivering Chilmington Green and delivering the homes that Ashford Borough Council (ABC) needs, but it is currently unable to do so without the changes described in this Application and in the accompanying Annex A.
- 1.4 Given the viability and deliverability challenges set out in this Application, a solution is required to unlock large scale delivery and adjust the scheme to ensure the Garden Town model of comprehensive development can come forward (i.e. high up-front costs funded by accelerated housing delivery and real value creation in excess of inflation).
- 1.5 The Government has issued guidance<sup>1</sup> on the use of planning obligations which states that planning obligations can be renegotiated at any point, where the local planning authority and developer wish to do so. Where there is no agreement to voluntarily renegotiate, and the planning obligation predates April 2010 or is over 5 years old, an application may be made to the local planning authority to change the obligation where it "no longer serves a useful purpose" or would continue to serve its useful purpose equally well if modified as proposed. This Explanatory Statement sets out where changes are proposed because the obligations no longer serve a useful purpose or would do so just as well if modified. Separately, it sets out further changes that are required to ensure the viability and deliverability of the development so it can come forward to meet ABC's housing needs.
- 1.6 This suite of documents is referred to as 'Application 2' as it follows 'Application 1' submitted on 4 May 2022 seeking to make minor adjustments to the same S106 agreement primarily in respect of affordable housing provisions in Review Phase 1.
- 1.7 It is accompanied by suggested revised Section 106 clauses at Annex A, as drafted by the Applicant's legal advisers. There are six appendices to this Statement: **Appendix 1: Planning History; Appendix 2: Phasing Schedule; Appendix 3: Viability Report; Appendix 4: Ashford ATC, Ashford Road; Appendix 5: N03-CS-A28 Junction Assessments - Trigger Points – Complete; Appendix 6: KCC - Highways and Transportation letter.**

---

<sup>1</sup> Paragraph: 020 Reference ID: 23b-020-20190315 Revision date: 15 03 2019

## 2 Background and context

---

2.1 This section sets out the following background and contextual information:

- The planning permission
- Current delivery at Chilmington Green
- Overview of delivery challenges
- Overview of financial challenges
- Relevant planning policy
- Relevant nearby applications

### The Planning Permission

2.2 The outline planning consent (ref 12/00400/AS) was approved on 6 January 2017 by Ashford Borough Council (ABC), and the site description is as follows:

*Permission for a Comprehensive Mixed-Use Development comprising:*

- up to 5,750 residential units, in mix of sizes, types and tenures.
- up to 10,000 m<sup>2</sup> (gross external floorspace) of Class B1 use.
- up to 9,000 m<sup>2</sup> (gross external floorspace) of Class A1 to A5 uses.
- Education (including a secondary school of up to 8 ha and up to four primary schools of up to 2.1 ha each).
- Community Uses (class D1) up to 7,000 m<sup>2</sup> (gross external floorspace).
- Leisure Uses (class D2) up to 6,000 m<sup>2</sup> (gross external floorspace).
- Provision of local recycling facilities.
- Provision of areas of formal and informal open spaces.
- Installation of areas of appropriate infrastructure as required to serve the development,
- Transport infrastructure, including provision of three accesses to the A28, an access to Coulter Road/Cuckoo Lane other connections on the local road network, and a network of internal road, footpaths and cycle routes
- New planting and landscaping
- Associated groundworks."

2.3 Appearance, landscaping, layout and scale were reserved for future approval. Details of three accesses on to the A28 and the access to Coulter Road/Cuckoo Lane were not reserved.

2.4 The planning permission was issued over two years after the resolution to grant planning permission at the 15 October 2014 planning committee and 4 years 3 months after the application was submitted in August 2012.

2.5 The Environmental Statement which underpinned the assessments submitted with the application, and in turn informed mitigation which was secured in the S106 agreement, stated that the Proposed Development would be undertaken over a period of approximately 20 years

and was anticipated to commence in 2013/14 (i.e. a number of years before the consent was finally issued). Consistent with these assumptions the Planning Statement accompanying the application (paragraph 6.7) predicted an annual build out of 250-300 homes per year. A revised phasing schedule is set out in Section 4 and **Appendix 2** showing slower and later delivery than previously projected.

- 2.6 When the S106 was first being negotiated, the development was modelled on up to 7,000 homes and the relevant parties were a consortium of five to six developers. They each planned to build around 60 homes a year, drawing down on land from the landowner incrementally the year before construction. As such there were no major upfront land costs included in the decision making. The consortium was due to split the Section 106 costs and infrastructure costs equally between them.
- 2.7 However, on or around September 2016, some 12 weeks out from the agreed date for the Section 106 Agreement to be signed, Hodson Developments took over the land purchases of two of the other three Consortium members (the third member owning only 99 units) and became the sole paying owner under the Section 106. If Hodson Developments had not done so the Development would not have come forward at all and would have failed. At that time, the Section 106 was substantively complete and significant delay for redrafting was not possible. The Section 106 Agreement was signed in December 2016<sup>2</sup>. Hodson Developments therefore took on a master developer role and effectively sole ownership of a Section 106 Agreement that was not drafted on this basis, especially with regard to exposure to liability for the significant upfront costs.

### Current delivery at Chilmington Green

- 2.8 The planning permission has been lawfully implemented, with development having commenced (and been completed) on road access A, B and D within the prescribed timescales. Reserved matters and pre-commencement conditions have also been discharged for the first phases of housing and infrastructure as set out in **Appendix 1**.
- 2.9 In 2017/18 Hodson Developments installed the infrastructure (roads, utilities, drainage and landscaping) to service Phase 1 which will consist of 1,501 homes and community assets including the District Centre and the first Primary School.
- 2.10 **Appendix 1** confirms that Reserved Matters have been granted for 766 of the 1,501 homes anticipated in Phase 1 of the development.
- 2.11 At the time of writing, Hodson Developments has completed the first 117 units at Chilmington Green. A further 98 units have been completed by others.
- 2.12 A Primary School at Chilmington has now opened (in October 2021) funded by Hodson Developments via the S106 and a land transfer for £1.

---

<sup>2</sup> It is dated February 2017 after the end of the JR period.

- 2.13 A Secondary School at Chilmington is opening (in 2024/25) funded by Hodson Developments via the S106 and a land transfer for £1. This has been brought forward via a deed of variation at the request of Kent County Council.

## Relevant Planning Policy

- 2.14 The relevant planning policy for the Site is principally set out within the Chilmington Green Area Action Plan or AAP (adopted July 2013). The introduction to the Ashford Local Plan 2030 (adopted February 2019) confirms that it does not cover the area covered by the AAP.

### Ashford Local Plan 2030

- 2.15 Whilst the Local Plan does not specifically cover the Chilmington Green Area, its housing delivery strategy relies heavily upon it. Table 1 confirms that 2,500 of the 13,544 target (or 19%) of the homes targeted for delivery by 2030 are at Chilmington Green. **Appendix 2** of this Explanatory Statement shows that in practice only around 1,348 homes would be delivered by this point.

### Chilmington Green AAP

- 2.16 The AAP includes a vision and objectives for the site, describes its different character areas and infrastructure requirements and sets out topic-based policies against which development proposals will be assessed.
- 2.17 The AAP plans for up to 5,750 new dwellings at Chilmington Green. It identifies four phases of development but states (at Paragraph 1.15) that the document “*has been drafted with flexibility in mind, so that the detailed planning of the development can react as best as possible to change*”.
- 2.18 Amongst other matters, Policy CG1 (Chilmington Green Development Principles) states that each phase of development will be sustainable in its own right, through the provision of required social and physical infrastructure, both on and off site. Policy CG22 (Phasing, Delivery and Implementation) states as follows:

*The development of the Chilmington Green area shall be implemented in accordance with the four main phases identified on Figures 18- 21 and the Infrastructure Delivery Plan at Appendix 3, unless it can be demonstrated that relevant infrastructure is readily available and the development can be adequately serviced.*

*Should a deficit in the infrastructure provision necessary to serve any main phase of the development be accepted, following an independently assessed viability exercise, then the council will employ its deferred contributions policy in order to claw back any deficit, should market conditions improve sufficiently.*

- 2.19 Chapter 11 of the AAP (Phasing, Implementation and Quality Control) states that, in general terms, the phasing of Chilmington Green should start in the north-west and move to the south-

east of the development area and makes it clear that the initial stages of the development should be served from the A28 to avoid major new road provision and use of rural roads. Paragraph 11.3 states as follows:

*This approach is informed by the availability of existing infrastructure and the ability to deliver new infrastructure in a cost-effective and viable manner whilst ensuring that development remains sustainable in its own right at all stages – a key principle of this AAP, as established through Policy CG1\**

- 2.20 Appendix 3 of the AAP comprises an Infrastructure Delivery Plan (IDP), which identifies the infrastructure expected to be provided as part of each phase of the development and the associated 'trigger' points. Paragraphs 11.30 -11.33 of the AAP state that the Infrastructure Delivery Plan was based on discussions with the county council, various service providers and the developer consortium and based on this understanding the IDP sets out when key infrastructure will need to be delivered.
- 2.21 Appendix 3 of the IDP goes on to provide a combination of standards for provision (e.g. green space and sports pitches) and specific triggers for some elements of provision (e.g. primary & secondary schools, leisure provision, sports provision, bus services, secondary) for each of the four phases.

#### National Planning Policy

- 2.22 The National Planning Policy Framework (NPPF) states that, consistent with Regulation 122(2) of the Community Infrastructure Levy Regulations 2010, planning obligations must only be sought where they meet all of the following tests: 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.
- 2.23 The Government has also issued guidance<sup>3</sup> on the use of planning obligations which states that planning obligations can be renegotiated at any point, where the local planning authority and developer wish to do so. Where there is no agreement to voluntarily renegotiate, and the planning obligation predates April 2010 or is over 5 years old, an application may be made to the local planning authority to change the obligation where it "no longer serves a useful purpose" or would continue to serve a useful purpose in a modified way. This application meets those requirements.

#### Other relevant Planning Background

##### Housing Delivery

- 2.24 The Housing Delivery Test monitors the number of homes delivered in a local planning authority area against the number of homes required in the same area (as prescribed by Government) over a three year period. ABC's Housing Delivery Test results for 2021 were published in January 2022. The results showed that the borough achieved a score of 118%

---

<sup>3</sup> Paragraph: 020 Reference ID: 23b-020-20190315 Revision date: 15 03 2019

over the preceding 3 year period. The 2021 results represent a significant improvement on ABC's 2020 score (90%).

- 2.25 As a result of its previous under-delivery (as shown by the council's 2020 and 2019 housing delivery test results), Housing Delivery Action Plans were published by the Council in June 2020 and June 2021. The Action Plans explored the reasons for under-delivery in the borough and established actions to reduce the risk of under-delivery getting worse and measures the Council intended to take to rectify the position. The measures identified included (but were not limited to) 'Developer / Land Agent workshop' (setting up a general stakeholder working group to include developers and land agents as a means of discussing emerging issues to delivery with local stakeholders) and 'Establish better working practices' (progressing a more collaborative approach with delivery partners to understand the barriers that might exist and what is needed to unlock delivery).
- 2.26 The Council's Housing Delivery Action Plan (June 2021) notes that delivery at Chilmington Green has taken time because of the challenges of securing financial agreements and establishing robust cashflow – which are recognised challenges of developments at this scale. However, it states that housing completions are now coming forward at Chilmington Green and that *"there is little doubt that this scheme can deliver substantial levels of new houses in the short, medium and longer term in a sustainable location which has a robust policy framework supporting delivery"*. To deal with these challenges, the Chilmington Green Delivery and Implementation Board was set up with the expressed intention of, among other things, identifying and securing private **and public sector** investment. This potential to leverage public sector funding should be considered as important context to all the requests that follow in this Report.
- 2.27 The Council is also required to demonstrate a five year housing land supply. ABC's 'Five year housing land supply update July 2021 (2021 – 2026)' states that as of 31<sup>st</sup> July 2021, the Council had a housing land supply of 4.54 years (including a 5% buffer). There is a deficit of 664 dwellings (the total deliverable supply is 6,531 and the five year housing land supply requirement (with 5% buffer) is 7,195). At a March 2022 Appeal (APP/E2205/W/21/3284479) against refusal of a planning application in Tenterden, Ashford, the Inspector concluded that the 5 year supply of housing land was actually 3.5 years. This lower level of housing land supply took into account constraints such as sites affected by the Stour Valley Water Quality Advice being delayed/stalled, demonstrating the overall challenge of housing delivery in the borough and the importance of removing barriers to that housing delivery.
- 2.28 The housing land supply position accounts for the limited housing development expected to come forward at Chilmington Green within the five year period. Tables A3 and A4 state that the five year land supply at Chilmington Green is restricted to 400 dwellings minus the 149 dwellings already completed and that this restriction applies until a bond is entered into for the funding to deliver the A28 road improvements (widening of the A28 Chart Road). The report notes that if the bond is entered into and the infrastructure constraint therefore removed, additional dwellings are deliverable within the five year period.
- 2.29 The delivery of additional dwellings at Chilmington (above the 251 dwellings accounted for between 2021 – 2026) will improve ABC's five year housing land supply position, which is critical to ensuring that speculative applications for residential development (that do not accord with the spatial strategy) are not approved.



## Nearby Applications

- 2.30 ABC's Housing Delivery Action Plan explains that the Chilmington Green development will be a "sustainable urban community" that is underpinned by many of the Garden City principles. The document notes that the emerging developments being planned at Court Lodge and Kingsnorth Green will further extend this sustainable urban community. There are also nearby developments at Kingsnorth Green and Park Farm South East as shown on Figure 1. These applications should be part of a cumulative assessment and should all contribute proportionately to the community infrastructure needs of the development and such potential revenue or other mitigation should be a relevant consideration in assessing this Application.

### *Kingsnorth Green*

- 2.31 Outline planning permission (LPA reference 15/00856/AS) was granted (subject to the completion of a S106 Agreement) for the erection of up to 550 dwellings and associated facilities. It is understood that the S106 Agreement has yet to be completed.

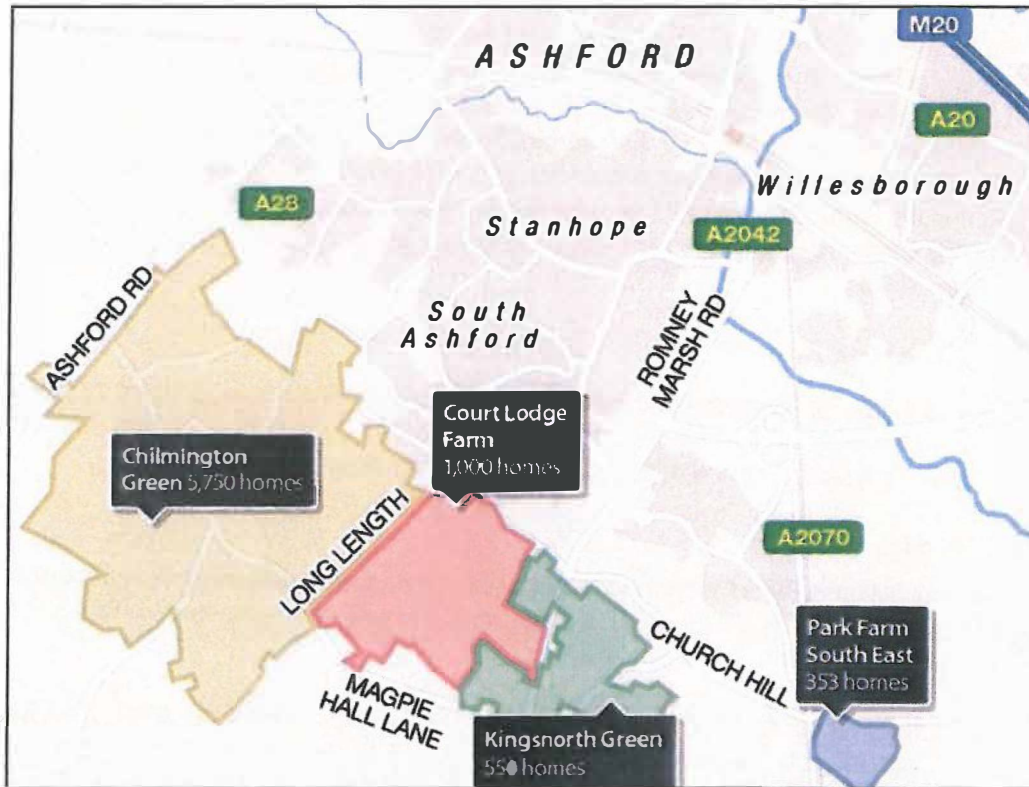
### *Court Lodge*

- 2.32 An application (LPA ref. 18/01822/AS) for full planning permission for the construction of up to 1,000 new homes, a new local centre and other uses was submitted to ABC in December 2018. The description of development is:

*"Construction of up to 1000 new homes (C3), local centre comprising retail uses (up to 450 sqm A1-A5) flexible office space (up to 350 sqm B1) and community facilities including a primary school (2.4ha), a combined community hall and site management suite (up to 650 sqm D1). New means of vehicular accesses onto Pound Lane, Long Length, Magpie Hall Road, new pedestrian and cycle routes laying out of green infrastructure, including allotment gardens and areas of ecological habitats. Drainage infrastructure, earthworks and ancillary infrastructure".*

- 2.33 The application has yet to be presented to ABC's planning committee. Further information relating to the proposals was submitted in April 2022.

Figure 1: Nearby Applications Sites



## 3 Delivery Challenges

---

- 3.1 The delivery challenges fall into three categories:
- a) Access to finance for a single land owner, as opposed to the consortium of signatories for whom the Section 106 was originally drafted. This particularly affects the ability to secure bonds and substantial upfront payments.
  - b) Lessons learned and experiences of the first years of occupation, including lessons learned that inform the proposed strategy for the Community Management Organisation
  - c) Housing delivery to date has been much slower than anticipated with less than 200 homes delivered as of the end of 2021. This represents a fraction of the number projected to have been delivered by this point and adjustments need to be made accordingly.
- 3.2 The shift in timeframe has fundamentally affected the finances of the development, and also allowed time to reflect on the strategic needs of the residents and whether the mitigation proposed in 2012, now ten years ago, is still fit for purpose and still represents the mitigation that is necessary in planning terms, directly related to the development, fair and reasonable in scale and kind<sup>4</sup> and still serves a "useful purpose"<sup>5</sup>.
- 3.3 The sections below set these challenges out in more detail.

### Financial challenges and access to finance

#### *Viability and affordable housing delivery*

- 3.4 Delivery of Chilmington Green has been agreed to be financially challenging both in overall and cashflow profile terms. This has been a consistent theme, acknowledged by both Hodson Developments and Ashford Borough Council and continuing from pre-application discussions to the most recent viability review submissions.
- 3.5 The October 2014 Planning Committee Report confirmed that officers, supported by specialist advice, were in agreement that the scheme could provide no more than 10% affordable homes in total. The report and the 2013 Chilmington Green & Discovery Park AAP acknowledged the front-loaded cost profile of the required infrastructure and that viability would only have the potential to improve when the place had become established and sales values grew.
- 3.6 Most recently, the Turner Morum viability review dated May 2022 indicated that a substantial shortfall against reasonable return targets continues to exist for Review Phases 2, 3 and 4.
- 3.7 The inherent viability challenges (which are to some extent common to all schemes of a similar scale) have been compounded by the challenges to delivery noted in part (c) above. This has resulted in a number of issues for the scheme:

---

<sup>4</sup> As required in law under Regulation 112 of the Community Infrastructure Levy Regulations (2010) (As amended)

<sup>5</sup> Paragraph: 020 Reference ID: 23b-020-20190315 Revision date: 15 03 2019

- The limited delivery to date means that sufficient critical mass has not been achieved to secure the targeted “placemaking” value growth. This means that the originally anticipated appraisal improvements have not yet occurred.
  - The structure of the review mechanism, limiting the timings of submissions, has prevented engagement of a sufficient number and range of developer partners to accelerate housing delivery.
  - The continuation of large-scale infrastructure delivery and financial contributions in excess of housing delivery has increased peak debt and finance costs.
  - The overall scale of infrastructure and Section 106 costs is such that the scheme cannot currently deliver a reasonable market return, sufficient to engage housebuilder partners.
- 3.8 The second point above regarding the review mechanism is of concern as it has, and will continue to, slow delivery throughout the life of the development. This point is illustrated in relation to Viability Review Phase 3 below but is applicable to each future review:
- Earliest submission of Review 3 – 1,200<sup>th</sup> Occupation
  - Number of units within earlier reviews – 1,500
  - Maximum homes which can be designed / planned prior to concluding Review 3 – 300 (i.e. 1,500 less 1,200)
  - Timescales to bring forward further plots post-submission / conclusion of Review 3 (i.e. when resultant affordable housing is known) – say 3 months to conclude the review outcome, 3 months to engage with developers, 12 months to prepare and gain approval to RMAs, 18 months to construct homes = 36 months
  - Maximum annual delivery which can occur due to review process – 100 (i.e. 300 units divided by 36 months)
- 3.9 The delivery of 100 homes per year is not sufficient to create critical mass quickly and substantially increases the financing costs of the up-front infrastructure.
- 3.10 Given the viability challenges set out above, a solution is required to unlock large scale delivery and return the scheme to the originally conceived model of development (i.e. high up-front costs funded by accelerated housing delivery and real value creation in excess of inflation).

#### *Bonds and forward funding*

- 3.11 There are “triple locks” in the Section 106 that require Hodson Developments to:
- Secure bonds to guarantee funds well in advance of financial triggers
  - Deposit funds into a capital account well in advance of financial triggers
  - Limit occupations according to Grampian conditions secured in the Section 106 (and which the application modifies but does not remove).
- 3.12 The complexity of this arrangement was designed to deal with a large consortium of landowners, each bearing a proportion of the financial risk and each paying into a shared capital account to manage the flow of funds between the owners of the obligations and the Authorities. Hodson Developments cannot, on its own and given the viability and delivery matters set out above, secure bonds and forward funding on this scale.

- 3.13 In planning terms, the Grampian conditions on occupations serve to limit development if those conditions are not met, and should provide the security required by the Authorities that Hodson Developments will comply in the timescales required. Now that Chilmington Green is being delivered with Hodson Developments as master developer, such a triple lock mechanism becomes redundant and would not commonly be sought from a single master developer.

### Lessons Learned to date

- 3.14 While delivery of homes has been slower than Hodson Developments or the Authorities intended, the five years since grant of permission has still allowed lessons to be learned that should inform the revisions to the Section 106. These primarily relate to:
- The demand for school places: which has been significantly lower than expected and means that both the peak and the long term average demand for school places from within the site is very likely to be lower than was forecast.
  - The operation of the CMO: which, in its current model, faces substantial operational, governance and financial challenges, is failing to provide the essential services which it is required to do under the Framework Agreement and crucially has not performed for residents.
- 3.15 Further detail on these matters, and the proposed resolution, are set out in the relevant sections of this report and Annex A.

### Delivery timescales

- 3.16 The first delay was in determination of the application which was submitted on 30 August 2012, determined at planning committee October 2014 and the permission issued on 6 January 2017 (four years and four months after it was submitted). The second delay came as two of the joint applicants to the planning application including Barratt who were also involved withdrew, leaving Hodson Developments to progress alone and purchase land upfront. The third, was the Covid 19 Pandemic contributing both to delay on-site and uncertainty. All of these were beyond the control of Hodson Developments.
- 3.17 Despite this, homes were commenced in Autumn 2018 and c.215 are occupied. Alongside these homes, Hodson Developments has paid a substantial, and substantially disproportionate, amount towards front-loaded infrastructure, including a primary school, roads, and facilities and funds for the Community Management Organisation. The primary school was fully open and operational despite having only 100 homes occupied at that stage. The ongoing burden of this front loading is now causing further delay, risk and uncertainty around funding.
- 3.18 As an example, the Secondary School at Chilmington Green (one of the largest single pieces of infrastructure) is due to open in September 2024 (or potentially 2025) when less than 10% of the overall housing is likely to be completed, with only an estimated 1 to 2 forms of entry of children living on-site. The payments for the secondary school are being front loaded to meet the needs of population growth *beyond the development*, despite a Wave Funding loan from the Department of Education being agreed for this purpose. The Wave Funding is acting

as a very short term bridging loan, rather than delaying the Secondary School payments until the minimum viable size<sup>6</sup> will be reached by Chilmington Green residents alone.

- 3.19 Hodson Developments has brought forward this infrastructure and agreed the Deed of Variation to secure the Secondary School payment trigger by 2026 (regardless of the number of children on-site at that time) in good faith and in recognition of the placemaking value of these facilities to their new community. However, there is a limit to the amount of front loading that can reasonably be delivered, and the requirements for the remainder of Phase 1 and for Phase 2 go well beyond a proportionate and deliverable approach.
- 3.20 **Figure 2** compares this phasing with a similar sized and recently approved urban extension in Fareham, Hampshire from an education perspective. It clearly demonstrates how the upfront profile of S106 payments/triggers is very unusual. As explained below, this causes a significant burden on the ability to deliver the development before receipts from the sale of new homes are in place to fund them. It is because of these challenges that the mechanisms such as the Housing Infrastructure Grant were established: “Numerous housing sites all over the country are being held back because the costs of putting in the infrastructure and building the homes are too great<sup>7</sup>.” Additional government funding opportunities should be sought to delay payments so the development is deliverable. The current S106 does not allow this.
- 3.21 Because of these challenges it is critically important to modify the S106 agreement and subsequent sections of this Statement explain why in more detail.

[Figure 2: Chilmington Green and Welbourne comparison \(overleaf\)](#)

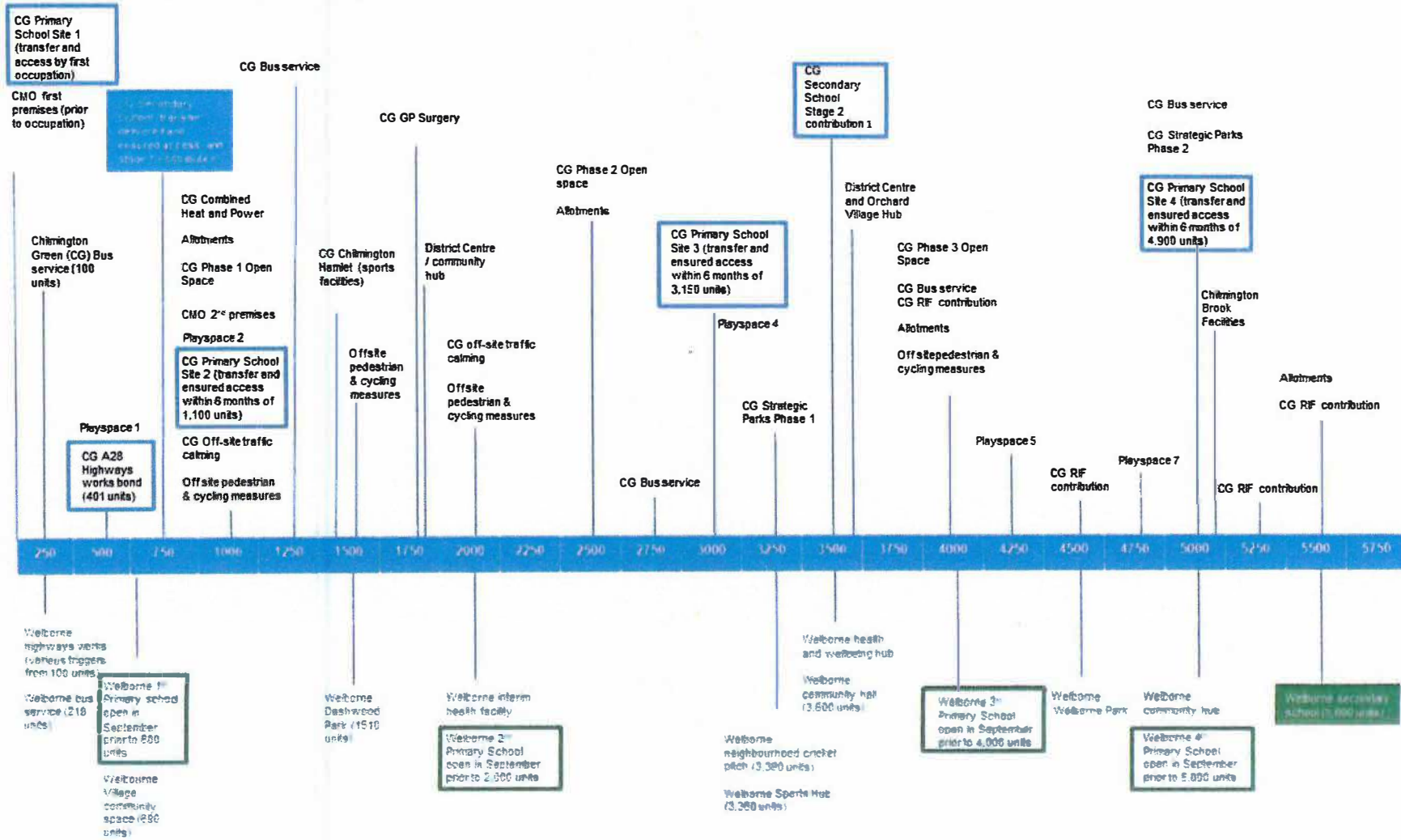
---

<sup>6</sup> Usually 4 forms of entry for secondary provision

<sup>7</sup> DCLG, 2017, An introduction to the Housing Infrastructure Fund

## Chilmington Green, Ashford (up to 5,750 homes approved 2017)

Quod | Chilmington Green S106 Application 2 Explanatory Statement | October 2022



## Welbourne, Fareham (up to 6,000 homes approved 2021)

NB. Figures stated in timeline and annotations are the number of residential units permitted to be occupied before the identified obligations need to be discharged  
 CG Primary School 1 - transfer delivered and ensured access and temporary services provided within 18 months of commencement of development  
 CG Secondary School - only Stage 1 contribution and stage 2 contribution 1 shown. There are four contributions for each stage, which are time-triggered.



## 4 Revised Phasing Schedule

---

### Revised Phasing

- 4.1 Taking into account setbacks to delivery as described in Section 2, above, a revised phasing plan has been prepared and is provided in **Appendix 2**.
- 4.2 Phasing assumptions which align with the Section 106 obligations assumed that house building would commence at the earliest opportunity. It was assumed that the first homes would be occupied in late 2017, approximately 300 homes would be delivered each year, and completion would be around 2036.
- 4.3 In practice the first Reserved Matter approval was given in April 2018 and first occupations did not occur until late 2019. Revised realistic forecasts suggest that housing delivery is expected to accelerate from around 100-125 homes per year in 2020-2024 to around 300 homes after 2028 with final completion by 2048.
- 4.4 This revised phasing schedule has informed and underpinned the proposed changes to the Section 106 triggers for which Hodson Developments now applies.



## 5 Summary of Proposed Changes

---

- 5.1 It is essential to make changes to the S106 agreement and these are summarised in this section of the Explanatory Statement. The full text for every change, including its justification, is included in Annex A.
- 5.2 None of the changes require alterations to the planning permission (approved development or planning conditions) and the changes all relate to the nature, extent, timing and scale of planning obligations in the current S106 agreement.
- 5.3 This application requests the removal of some obligations. For others it is proposed to adjust the scale of contributions, increase the level of capacity testing, review due diligence and proof of demand obligations or delay the trigger points. Any contribution related to amounts within the S106 agreement and adjustments to those amounts have not been index linked to allow comparisons to be made.
- 5.4 Hodson Developments is not intending to and will not withdraw its commitment to meeting the aspirations for comprehensive development that are described in the Area Action Plan, but the scale and timing of the triggers needs to be adjusted, including now those for the Secondary School, to reflect the reality of need and delivery at this stage, informed by the insight gained in the five years since the Section 106 was signed.
- 5.5 Changes that are made are on one of the following bases:
- Lack of useful purpose: the obligations no longer serve a useful purpose in planning terms as the context or need has changed (or for which the purpose is not clear and therefore requires additional definition or explanation to meet the terms of Regulation 122 of the Community Infrastructure Regulations (As Amended) (2010)).
  - Inconsistencies or errors in drafting, which likewise, mean the obligations no longer (or never did) serve a useful purpose.
  - Changes to obligations which, in theory or principle, could serve a useful purpose but need to be amended to ensure the development is deliverable and viable, given the financial challenges explained above.
- 5.6 The table below lists all clauses that are required to change under each of these three justifications. Those that are highlighted in grey have further explanation in this Statement. These are expanded upon beyond Annex A because there is important contextual, policy, legal and other justification which confirms that the obligations no longer serve a useful purpose (in whole or in part).
- 5.7 Annex A provides the full detail of changes requested, including those not described in detail below.

<b>The planning obligation to be modified or discharged</b>	<b>S106 Agreement Reference (Clause/Para)</b>
Definition of 'Commence (Statutory) the Development'	Clause 1.1 (p.20)
Definition of 'Paying Owners'	Clause 1.1 (p.44)
Release from liability	Clauses 2.2
Index Linking	Clause 28 (p.89)
Base date for indexation	Clause 28 (p.89)
<b>Schedule 1 – Affordable Housing</b>	
Provision of 70 Extra Care Housing Units in Phase One – Viability Review 1	Paras 1.1, 2, 3 and 6
Provision of 24 Affordable Housing Units in Phase One – Viability Review 1	Paras 1.2, 4, 5 and 7
10% Affordable Housing to be provided in each Viability Review (2 to 10) as a minimum provision	Paragraphs 8, and 14
Affordable Housing Unit tenure split 60% Affordable Rents and 40% Shared Ownership, with 5% of units to have Habinteg fixtures and fittings	Para 9 and 12
<b>Schedule 2 – Carbon Off Setting</b>	
Provision of a Building Energy Performance Certificate for each building. Calculation of carbon off setting contributions and payment liabilities.	Schedule 2 and 43
<b>Schedule 3 – Combined Heat and Power Plant (CHP)</b>	
Viability submissions and appraisal for a Combined Heat and Power Plant (CHP) or District Heating Plant (DHP)	Schedule 3
<b>Schedule 4 – Community Management Organisation (CMO)</b>	
Provision of the CMO welcome pack etc.	Para 2.1.2
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 ...'
Continued maintenance obligations in respect of the CMO First Operating Premises	Para 4.1.4
Provision of the CMO Second Operating Premises	Para 5.1.1 to 5.1.5 and Sch 29D Item 6
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.
Provision of Commercial Estate: Basic Provision	Paragraphs 9 and 10 and Sch 29D Item 14
Provision of Commercial Estate: Second Tranche	Para 11 and Sch 29D Item 24
Provision of Commercial Estate: Third Tranche	Para 12 and Sch 29D Item 27
Payment of Cash Endowment	Paragraph 13
Payment of CMO Start up Contribution	Paragraph 14

<b>Schedule 5 – Early Community Development</b>	
To pay annual Early Community Development Contributions of £50,000	Para 1.2
<b>Schedule 6 – Natural Green Space</b>	
The obligations to provide Informal/Natural Green Space Facilities	Para 1 et seq.
The conditions attaching to occupation in each Main Phase	Paras 1.1.5 to 1.1.10
The 12 months repairing liability following transfer	Paragraph 1.2
Provision for payment toward the Council's costs	Paragraph 2
<b>Schedule 7 – Chilmington Hamlet</b>	
Chilmington Hamlet facilities to be provided by 1400 occupations	Para 1.3 and Sch 29D Item 12
Submission and Approval of Design Brief and Specification by 1.000 occupations	Paras 1.1 and 1.2
The provision for consultation with the CMO and stakeholders etc. and approval of the details of the consultation	Paragraph 1.2 and its sub-paragraphs 1.2.1, 1.2.2 and 1.2.3
The 12 months repairing obligation following transfer	1.4
Provision for payment toward the Council's costs	Paragraph 2
<b>Schedule 8 – Children and Young People's Play Space</b>	
The provision of the design brief and specification for the children's and young people's play spaces and/or other facilities	Paragraph 1
The provision for consultation with the CMO, stakeholders etc. and approval of the details of the consultation	Paragraph 1.1.2
The applicable occupation limits in respect of the provision and construction of each PS[Number] in the relevant Main Phase	Paragraphs 1.2 and 1.4
The conditions attaching to occupation in relation to each 'PS[Number]' in each Main Phase	Paras 1.2.1 to 1.2.6
The 12 months repairing liability following transfer	1.3
Provision for payment toward the Council's costs	Paragraph 2
<b>Schedule 9 - Allotments</b>	
Provision of Main Phase 1 Allotments by 1000 Dwelling Occupations	Para 1 and Sched 29D Item 10
Provision of Main Phase 2 Allotments by 1000 Dwelling Occupations	Para 1 and Sched 29D Item 11
Provision of Main Phase 3 Allotments by 1400 Dwelling Occupations	Para 1 and Sched 29D Item 18
Provision of Main Phase 4 Allotments by 1400 Dwelling Occupations	Para 1 and Sched 29D Item 20
The conditions attached to the provision of the Allotments in each Main Phase	Paragraphs 1.1.1 to 1.1.6
The 12 months repairing liability following transfer	1.2
Provision for payment toward the Council's costs	Paragraph 2
<b>Schedule 10 – DP3, Discovery Park Sports Hub and Discovery Park Sports Pitches</b>	
Payment of £20,000 toward masterplanning	Paragraph 1.1
Submission and approval of design briefs and specifications for the Discovery Park Sports Pitches and for the Discovery Park Sports Hub by 1000 Dwelling Occupations	Paragraph 2.1

The provision for consultation with the CMO, stakeholders and the public and approval of the details of the consultation	Paragraph 2.1.2
The obligations to provide the Sports Facilities (1 <sup>st</sup> Phase)	Para 2.2 and 2.8 and Sched 29D Item 26
The obligations to provide the Discovery Park Sports Facilities (2 <sup>nd</sup> Phase)	Para 2.3 and 2.8 and Sched 29D Item 30
The obligations to provide DP3 and the applicable occupation limits	Paragraphs 2.6.1, 2.6.2, 2.6.3, 2.6.4, the relevant sub-paragraphs of 2.8 and Sched 29D Items 22, 23, 28 and 31
The obligation to provide the design brief and specification for DP3 etc	Para 2.5
The various conditions attaching to the delivery of each of the first and second phases of the Sports Facilities and the DP3	Paragraphs 2.2.1, 2.3.1 and 2.6.5 requiring provision of the relevant facilities in accordance with reserved matters etc. Paragraphs 2.2.4, 2.3.4 and 2.6.8 requiring payment of tax. Paragraphs 2.2.6, 2.3.6 and 2.6.10 dealing with the approval of the relevant transfers.
The 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 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
<b>Schedule 11 – Cemeteries</b>	
Payments in respect of cemeteries	Paras 1 and 2
<b>Schedule 12 – Community Hub Building</b>	
The obligation to provide a multi-purpose community leisure building and other facilities (the Community Hub Building) by 1,800 Dwellings	Para 1.2 and Sch 29D item 17
The submission and approval of a design brief and specification for the Community Hub Building	Para 1.1
The provision for consultation with the CMO and stakeholders etc. and approval of the details of the consultation	Paragraph 1.1.2
The 12 months repairing liability following the transfer of the Facilities	Paragraph 1.3
The obligation to make 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	Paragraph 1.4
Provision for payment toward the Council's costs	Paragraph 2
<b>Schedule 13 – Local Centre Hubs</b>	
The Orchard Village Facilities and the Chilmington Brook Facilities	Paragraphs 1-3 and 4-6 respectively
<b>Schedule 14 – District and Local Centres</b>	

The obligation to construct and provide the District Centre Facilities in Main Phase 1 and the Orchard Village and Chilmington Brook small Retails Units in Phases 3 and 4 and associated obligations including marketing plans etc.	Paragraphs 1.1 to 1.5
The submission and approval of a design brief and specification for the District Centre Facilities by 950 Dwelling Occupations	Paragraph 1.1
<b>Schedule 15 - Education</b>	
The provision of Bonds to the value of PS1 Contributions 2, 3 and 4	Para 6 and 7(e)
Education Contributions: Primary School 1 Contributions 1 to 4 to the County Council	Para 7 (as amended by the Deed dated 29/3/19)
Education Contributions; Primary School 2 Contributions 1 to 4 to CC	Paras 8, 10, 11, 12 and 14
The provision of Bonds to the value of PS2 Contributions 2, 3 and 4	Para 13 and 14(e)
Education Contributions: Primary School 3 Contributions 1 to 4 to CC	Paras 15, 17, 18, 19 and 21
The provision of Bonds to the value of PS3 Contributions 2, 3 and 4	Para 20 and 21(e)
Education Contributions, Primary School 4 Contributions 1 to 4 to CC	Paras 22, 24, 25, 26 and 28
The provision of Bonds to the value of PS4 Contributions 2, 3 and 4	Para 27 and 28(e)
<b>Stage One Secondary School Site Transfer and Adoptable Access etc.</b>	
Provision of Bonds for the Stage One and Two Secondary School Contributions	Schedule 15, Part 6, Para 42
Secondary School Contributions	Schedule 15 Part 5
Provision of an account of education expenditure and repayment of any surplus	Paragraphs 48 and 49
<b>Schedule 15A – KCC General Site Transfer Requirements</b>	
Provision of the site	Paragraph 4
Site setting out at handover	Paragraph 5
Construction access	Paragraph 7
Provision of services and utilities on site	Paragraph 8
Provision of temporary electricity and water supplies	Paragraph 10
The payment of the County Council's legal costs and the costs of any Project Management agreements	Paragraph 14
<b>Schedule 16 – Other KCC Services</b>	
Library Services, 4 x £225k contributions	Para 1 and 2 and Sch 30B
Payment of Youth Services Contributions to KCC	Paras 3, 4, 9 and Sch 30A-C
Payment of Community Learning Contributions to KCC	Para 5 and 6, and Sch 30A-C
Payment of Family Social Care Contributions	Para 7 and 8 and Sched 30A-C
<b>Schedule 17 - Ecology</b>	
Providing for compliance with any mitigation and enhancement strategy approved pursuant to the Planning Permission	Paragraph 1
<b>Schedules 18 and 18A – A28 Improvement Works</b>	

Provision of a Bond in the form required	Schedule 18 Para 1 and Schedule 18A
The Developer's Payment Covenants and Post-Contract 278 Contributions	Schedule 18A and Annex 2 of the s278 Agreement therein and Sch 18, para 2.
<b>Schedule 19 - Off-Site Pedestrian and Cycle Links</b>	
Payment of (4x) instalments of £133,000 for the purposes of off-site pedestrian provision and cycle links.	Sch 19, paras 1 and 2, and Sch 30A-C
<b>Schedule 20 – Provision of Bus Services</b>	
Provision of Bus Services	Sch 20, and Sch 29D Items 1, 13, 25 and 29
Provision of bus vouchers to each owner	Sched 20 para 1,17
<b>Schedule 21 – Off-site Traffic Calming</b>	
Traffic Calming payments to CC The current s106 Agreement requires payment of £408,498 (index linked) across two payments. The current triggers are prior to the occupation of the 1,000th unit and the 2,000th unit as set out in paragraphs 1 and	Paras 1.2, 1.3, 2.1 and 2.2 and Sch 30A
<b>Schedule 22 - RIF</b>	
	Sched 22
<b>Schedule 23 - Viability</b>	
	See column 3 of the Appendix to Annex A herewith.
	Definition of PVRS d) to i) and Para 3.19
<b>Schedule 24 – Public Art</b>	
Payment of Public Art Contribution 1	Paragraph 1 and Sch 29A Item 2
Payment of Public Art Contributions 2 to 6	Paragraphs 1 and 6, and Sch 29A Items 2, 6, 17, 21 etc
The obligations relating to installation of the public art and to maintain the same once installed	Paragraphs 1.7 and 1.8
The commissioning, installation of the public art by the Council and associated consultation	Paragraphs 3 and 4
<b>Schedule 25 – Heritage Interpretation</b>	
Payment of Archaeological Archiving, Heritage and Archaeologist Contributions	Paragraphs 1 and 4.1
Payment of Archaeologist Contributions	Paragraphs 4.2 and 4.3, and Schedules 30A, 30B and 30C
<b>Schedule 26 – Quality Agreement</b>	
Quality Agreement, payments of £40,000 linked to Occupations and the payment of £80,000 on the first anniversary and £40,000 on the subsequent nineteen anniversaries	Paras 1, 2.1.2.2 and 2.3 to 2.21, and Sch 29A Items 9, 12, 15, 19, 24 etc. and

	likewise in Schedule 29B and 29C Items 5, 11, 14 etc
<b>Schedule 28 – Monitoring Fee</b>	
Payment of monitoring fees of £25,000 linked to Occupations and payment of £50,000 on the first anniversary and £25,000 on the subsequent nineteen anniversaries	Sch 28, paras 1, 2.1, 2.2 and 2.3 to 2.21 and Sch 29A Items 8, 11, 14, 18, 23, etc. and likewise in Schedule 29B and Schedule 29C Items 4, 10, 13, 16 etc.
<b>Schedule 29 – Bank Accounts</b>	
The Developers' Contingency Bank Account – Council	Sch 29, paragraphs 1 and 2, and clause 1.1 definition of Council Minimum Balance
Payments into Council Contributions Bank Account, Indexation payments, and withdrawals	Sch 29A, Sch 29B and Sch 29C
Restriction on withdrawals	Paragraph 8
The Developers' Capital Bank Account	Schedule 29D
<b>Schedule 30</b>	
The Developers' Contingency Bank Account – County Council	Sch 30, paras 1 and 2, and clause 1.1 definition of County Council Minimum Balance (CCMB)
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
Restriction on withdrawals	Paragraph 8
<b>Schedule 49</b>	
Viability Review Templates	The entire schedule

## 6 Affordable Housing and Viability

6.1 Amendments to the S106 agreement must enable delivery and funding of the scheme.

6.2 In particular, the changes must support (i) accelerated delivery via multiple diversified products / partners and (ii) land sales and partnerships to pay down early infrastructure costs and reinvest in future infrastructure.

6.3 Given the above, a revised viability review mechanism is essential. Amendments to the review mechanism have been developed to ensure:

- The current minimum affordable housing proportion (10%) is maintained.
- The target tenure mix of affordable housing for the review mechanism cap is set at 30/70 affordable rent / shared ownership.
- The prospect of value capture to deliver additional affordable homes is equal to or greater than the current arrangement.

6.4 The following amendment is proposed:

Topic	Current S106 Provision	Revised S106 Provision
Trigger for issue of Viability Review Submission	Submitted in relation to each viability review phase. Submission may not be any earlier than the minimum number of occupations set out in the definition of "Premature Viability Review Submission".	Submitted each time the cumulative number of dwellings within RMAs to date exceeds the AAP phase sizes (i.e. in practical terms a review occurs every time RMAs for c.500 homes are submitted). The submission may be made no earlier than 12 months in advance of the relevant RMA, this is to allow early agreement of viability / affordable housing and RMAs to design in the relevant tenure mix.

6.5 The other key elements of the proposed amendments to Schedule 23 and associated definitions are set below. These changes would apply post review phase 4 (amendments to review phases 2-4 having been dealt with via the separate Application 1). The resultant provisions are consistent with other large scale developments, balancing deliverability with appropriate controls:

- Affordable housing tenure mix – amendment of the base mix and review mechanism target to 30/70 affordable rent / shared ownership.
- Extra care homes.
- Amendment to consider potential for non registered providers (with prior approval from ABC) to operate shared ownership tenure homes.
- Review mechanism – amendment to the timings of viability reviews, allowing engagement of a greater range of partners in parallel, accelerating delivery and achieving critical mass.
- Occupation restrictions – amendments to the restrictions on private vs affordable housing occupations, to allow greater flexibility in delivery and improve cashflow (whilst still



ensuring all affordable homes are always secured via occupation restrictions for an appropriate number of private homes).

6.6 The benefits of the revisions above to ABC and Hodson Developments include:

- Timely, on-site additional affordable housing delivery – the review process is undertaken for each phase of development and any resultant additional affordable homes can be incorporated directly within that phase.
- Capture of value uplift – the reviews take place throughout the scheme, ensuring that value growth can be captured for additional affordable housing delivery. Given the cost of preparing RMA applications and the time limits for implementing these, Hodson Developments is naturally incentivised to make RMAs / viability reviews only for those areas which can be delivered in the near term.
- Delivery – adjustment of Premature Viability Review Submission limits and linking reviews to RMAs rather than occupations enables Hodson Developments to enter into more partnerships sooner. This in turn enables a wider range of developers to build a variety of homes, accelerating housing delivery and achieving the critical mass / momentum essential to place making value growth. Realisation of such growth and land receipts will in turn enable more affordable homes and the delivery of the necessary phases of infrastructure.
- Responsiveness to the market – allowing the potential for non registered providers to (subject to ABC approval) operate shared ownership homes will allow Hodson Developments to respond to market interest and remain flexible to maximise delivery partner options.

6.7 Section 13 of this Explanatory Statement includes an overview of the scheme viability incorporating all proposed changes, together with an indication of the potential additional affordable housing delivery. The separate Viability Report details each change to the Section 106 obligations and the financial implications.

# 7 Community Management Organisation

---

## Current Obligations

- 7.1 The S106 agreement presently requires the establishment of a Community Management Organisation (CMO) with financial and asset endowments. The assets include:
- Two buildings for CMO operations (200sqm and 300 sqm respectively) plus additional dedicated part of the Community Hub for CMO operations
  - Chilmington Hamlet cricket, tennis and associated facilities including clubhouse (297 sqm including 250 sqm of community space)
  - Playspace, open space and allotments
  - Community hub including leisure building (4,382 sqm)
  - Local centre hubs at Chilmington Brook and Orchard Village (600 and 720 sqm)
  - Up to 5,000 sqm of commercial estate
  - Deficit funding and community development funding.
- 7.2 All of the assets are to be built and paid for by Hodson Developments and endowed to the CMO, in principle to provide revenue to supplement the Rentcharges to operate the community facilities and undertake community development.
- 7.3 The CMO should carry out all Essential Services in return for revenues received from Hodson Developments, from assets and from the Estate Rent Charge, according to the specifications of the Framework Agreement.

## Policy Background

- 7.4 Policy CG10 of the AAP states that the council supports a “community led management arrangement in order to help establish a strong community at Chilmington Green<sup>8</sup>”.
- 7.5 The policy leaves the model, structure and approach to this management arrangement open to be developed through the planning process and, while it suggests endowments would be possible, does not set the scale or nature of these.
- 7.6 The supporting text to the policy states that, “*To realise this ambition (in the early years especially) help will be needed through developer funding to support community development work, including helping to support local volunteers in establishing groups; making links between these groups; helping to organise activities and venues, alongside the construction of new facilities*”. It goes on to say, “A range of additional funding streams may also be available such as from the New Homes Bonus, Council Tax payments, income generated by

---

<sup>8</sup> Chilmington Green AAP, 2013, page 69

assets owned by the trust, finance coming from endowments and other government funding sources.”

- 7.7 This policy and its supporting text does not envisage, and does not require, a transfer of assets on the scale being proposed.

## Overview

- 7.8 A CMO on this scale is highly ambitious and, for any recent development, unprecedented. In the Chilmington Green Area Action Plan, ABC itself states, *‘Many examples of such arrangements exist both locally and nationally **(although not at this scale)** [emphasis added]<sup>9</sup>’* Both Hodson Developments and ABC have contributed significant sources, time and energy into trying to develop a ground breaking and innovative approach to the stewardship and governance of this large scale new development. With such a new, almost unique, approach, it is reasonable to expect that some plans will need to change and evolve to reflect learning as the CMO endeavours to take on its role.
- 7.9 Based on the five years of experience since the Section 106 agreement was signed, it is clear that the CMO is overly complex and its reach is too broad, and as such, it has been overburdened by administrative and legal processes at the expense of providing the essential community services it was intended to deliver.
- 7.10 It is currently not able to provide the Essential Services it is contractually required to do under the Framework Agreement. It is subject to challenge (including legal challenge) from the community. It has lost its social licence to operate. Internal divisions that are designed to reduce conflict of interest (e.g. between the CMO and Hodson Developments or between the CMO and ABC) create challenges for effective governance and transparency both for those on the board and for the community.
- 7.11 The context has also not been without external challenges beyond the control of all parties, not least the pandemic which has put a strain on community service provision everywhere, and which has delayed the CMO’s take up of their premises on site. However, the evidence before Hodson Developments is that its challenges extend well beyond the pandemic and the CMO is failing to meet its essential duties including collection of rent charges, maintaining the landscape and use of its first premises.
- 7.12 The CMO is built on the model of the original wave of garden towns, in particular Letchworth Garden City. However, Letchworth has nearly three times the number of homes that Chilmington Green will have at completion, and has over a century of experience and a long established residential and commercial community. Maintaining a sustainable management structure in that context is quite different to starting one from scratch in a development with only 100 homes. Further, managing Letchworth has not been without its significant challenges over that century requiring significant restructuring and an Act of Parliament to finally establish the Heritage Trust.

---

<sup>9</sup> Ashford Borough Council, 2013, Chilmington Green Area Action Plan,

- 7.13 Based on early market testing by Hodson Developments there is significant uncertainty over the future profitability of the Commercial Estate and therefore its potential to offer value for money and viability to support the operations of the CMO.
- 7.14 The scale of the commercial estate proposed is such that its management and operation would be a specific and specialist operation and the current evidence shows that the CMO does not have the organisational capacity for this.
- 7.15 In the circumstances it is apparent that the costs of this asset endowment will outweigh the benefits.
- 7.16 For community development, ABC has now, instead of and in substitution for these payments, secured £755,000 in funding from DLUHC for:
- Improved access to, through and around Discovery Park and nearby Coleman's Kitchen woods (upgrading Public Rights of Way)
  - Promoting active travel and sustainability
  - The creation of a community space for the local community to meet and hold events
  - Stodmarsh Nutrient Neutrality Assessment and exploring bio-diversity net gain opportunities
  - Further community development work and cultural projects
  - Improving information sharing and communication for local residents
  - Supporting the growth of the Community Stakeholder Group.
- 7.17 In this context, additional payments for community development no longer serve any useful purpose and should be discharged accordingly.

### Proposed Amendments

7.18 7.18 - 7.21 superceded

7.19

7.20

7.21



- 
- The additional requirement for the CMO to be consulted on the plans, and especially consultation with the CMO on how it should be consulted, should be removed. It will be within the gift of the authority granted planning permission to consult with whichever stakeholders it considers appropriate. Hodson Developments will undertake all routine and statutory consultation. The need for an additional layer of sign off, particularly on costs, and consultation does not serve a useful purpose.

## 8 Community Development

---

### This section covers:

- Schedule 5 – Early Community Development (see section on CMO where this is covered)
- Schedule 7 – Chilmington Hamlet
- Schedule 8 – Playspace
- Schedule 9 - Allotments
- Schedule 10 – DP3 and Discovery Park Sports Hub
- Schedule 11 – Cemeteries
- Schedule 12 – Community Hub Building
- Schedule 16 – Other KCC services

### Current obligations

#### 8.1 Chilmington Hamlet (**Schedule 7**):

- To have a design brief prior the occupation of 1,000 homes
- To be delivered prior to the occupation of 1,400 homes
- Plus 297sq.m pavilion (incl 250sq.m community space)
- A cricket pitch
- Batting cage
- Bowling green
- Two tennis courts
- Car park Equipment storage facility

#### 8.2 Community Hub (**Schedule 12**):

- to have a design brief prior to the occupation of 1,400 homes
- To be provided prior to the occupation of 1,800 homes.
- Multi-purpose community pavilion (incl Trust office) (indicatively of 1,000sq.m based on 0.1ha)
- Family and social care facility
- Youth facility
- Library (access) point
- Community learning facility
- Police space

- Outdoor multi-use games area
  - Car parking
  - Health centre with GP surgery for 8 doctors (1,000 sq.m)
- 8.3 This adds up to a total of 4,679 sqm of community floorspace (a very large amount) by the time there are 1,800 homes.
- 8.4 In addition, Hodson Developments is required to fund Early Community Development activities through financial obligations of £250,000 (**Schedule 5**) which should be discharged as set out under the section on the CMO.
- 8.5 Payments totalling £1.624m are required for Library Services (£900,000), Youth Services (£239,000), Community Learning (£213,000) and Family and Social Care (£272,000) (in addition to the capital costs of provision already outlined). (**Schedule 16**)
- 8.6 **Schedule 10** requires a design brief to be provided for the Discovery Park Sports Pitches and Hub prior to 1,000 homes and then two phases of delivery at 3,200 homes and 5,000 homes. The Sports Pitches and the Sports Hub capital budget should total £2,782,000 and £4,976,157 respectively. £20,000 has already be triggered (at first occupation) for ABC to masterplan the facility.
- 8.7 £800,000 is required for cemetery provision (**Schedule 11**).
- 8.8 Delivery of the following playspace is required (**Schedule 8**):
- Playspace 1 (50 homes in Main Phase 1)
  - Playspace 2 (50 homes in Main Phase 2),
  - Playspace 4 (750 in Main Phase 3),
  - Playspace 5 (650 in Main Phase 4) and,
  - Playspace 7 (1,150 in Main Phase 4).

## Policy Background

- 8.9 The support text in the AAP states that *“At the District Centre, a multi-purpose community leisure building (minimum 1,000 sqm GIA) is envisaged to reinforce the importance of this destination and generate patronage at different times of the day.”* It goes on to say that *“Community space (250 sqm GIA) is also envisaged as part of the pavilion proposed to complement the cricket pitch, envisaged near the hamlet.”*
- 8.10 The policy itself (CG16 B) requires only 1,200 sqm of indoor sports provision (not including Discovery Park which is dealt with separately).
- 8.11 The supporting text reinforces the need for flexibility, *“This need for flexibility is further reinforced as the end use of such space will be finalised and agreed after consultation with*



*the local residents and clubs, as required by the council. This will ensure that local people can help shape and inform the community spaces that they want in their locality.”*

- 8.12 Policy CG17 only requires 340 sqm for family services and space for 6 GPs. The supporting text and the IDP make general reference to facilities for youth and other social services but do not identify specific resource or space needs.
- 8.13 In total therefore, there is policy justification for up to 2,800 sqm of community and indoor sports floorspace (outside Discovery Park Sports Hub). Policy does not require it to be all front loaded.
- 8.14 Allotments are required based on 0.2ha per 1,000 people with a minimum viable size of 0.66ha per 1,375 homes (Ashford Public Green Space and Water SPD July 2012).
- 8.15 Ashford's Green Space Standards (Ashford Borough Council Local Development Framework: Public Green Spaces & Water Environment SPD) states that cemeteries are required based on the rate of 0.6ha per 1,000 people. This must be incorrect and if the £800,000 obligation is based on this metric, it must be significantly reduced (see below).
- 8.16 While the Local Plan and Area Action Plan support the delivery of libraries, youth space and youth services, community learning and family and social care in general terms there is no clear policy basis for the scale of the obligations proposed under the S106. KCC has a March 2007 guide to planning obligations and a more recent (2021) Growth and Infrastructure Framework, but neither of these provide granular detail on how the scale of the obligations has been calculated for Chilmington Green. The scale of the library contribution (£900,000) appears to include a capital contribution, even though the capital cost of library space is already included in the Community Hub.

## Relevant considerations

### Total community floorspace

- 8.17 Community floorspace and open space is essential to providing facilities and services to new residents, and to help bring them together and create a local identity. However, community facilities can also be expensive to manage and maintain and multi-functional space can meet demand for different types of resident uses (children's services, parties and weddings, sports events etc) which take place at different times of the day or week, making many spaces able to "work hard" to meet a range of needs. An excess of community space is both a capital cost to the developer and a long term burden on the future management company or community if the space cannot generate enough return or be cross subsidised through service charges.
- 8.18 The Section 106 currently requires a total floorspace that is well in excess of what the policy requires, without justification for the departure. There are very successful contemporary examples of multi-use community spaces and the flexible use of spaces such as schools to meet community needs in the short and long term. This has benefits for the schools (who can earn a small revenue from rentals) and for the community and/or management company, who do not have the cost and risk burden of under used infrastructure.

- 8.19 At Northstowe (South Cambs), an unused wing of the primary school (not needed as the pupil numbers were still low) provided an excellent community centre and nursery facility for three years. The secondary school at that development now rents out space prior to the new community centre coming forward in a later phase.
- 8.20 Alconbury Weald (Huntingdonshire) has used multi-purpose spaces and the primary school for all community activity to date (over five years of delivery and 545 completed homes) and only opened its first dedicated community space in 2021 and does not yet have a secondary school.
- 8.21 Early provision of the secondary school at Chilmington Green in 2024 or 2025 should delay the need for community and sports facilities further. The secondary school has already formally and publicly committed, through its planning application, to facilitate community use of halls and a learning resource centre.
- 8.22 The school assets, and their potential community use, should be reflected in the triggers for additional community buildings and sports pitches. The schools are significant community assets and it is now widely recognised by local authorities and school providers alike that shared use of school facilities typically only used for 190 out of 365 days a year, makes sense socially and financially.
- 8.23 United Learning has publicly established its intention to allow community use of the facilities; *“The school will be an integral part of this new and growing community, offering its facilities for hire by community groups. The school sports facilities in particular will be a main part of the community resource<sup>10</sup>”*. The Design and Access Statement similarly states, *“The design intends to represent the sympathetic development of the site into a cohesive school that enhances and celebrates its unique character, and provides **facilities the local community can utilise<sup>11</sup>** [emphasis added]”* And goes on to state, *“**Spaces should be adaptable for community use, and as such should foster strong partnerships with local community groups, where pupils can provide a service to others, and with local businesses that can support pupils prepare for future careers and HE destination<sup>12</sup>**”* [Emphasis Added]
- 8.24 The Sports Block, with separate entrance for community use, will have a four court sports hall, Drama Studio, Fitness Studio and changing facilities. This is in addition to the two dining halls, activity studio and main hall. An ICT/resource room has also been designed for public access.
- 8.25 There are three grass pitches, including a senior sized reinforced grass pitch, three MUGA pitches and a running track, with safe community parking and access planned. Use of school facilities out of hours is beneficial to both the school and the community. The school will have in-built management and maintenance programmes and qualified staff who will not put any additional burden on the community or the CMO (or successor).

---

<sup>10</sup> <https://www.chilmingtongreenschool.org.uk/the-building> accessed 08/06/22

<sup>11</sup> Bowmer + Kirkland, Chilmington Green Secondary Academy Design and Access Statement, October 2021, page 4

<sup>12</sup> Ibid. page 9.

- 8.26 Overprovision of facilities in addition to those at the school will compromise the sustainability and viability of all of them by competing for use and rents. Both the school and the management company will intend to generate income from renting facilities to the community – competing for this market will benefit neither party, and could render the management company facilities uncompetitive and unviable in the short to medium term if the school can provide halls, sports and meeting rooms at lower rates.
- 8.27 This resource, and substantial investment should be reflected in delaying the triggers for other community floorspace and sports facilities.
- 8.28 The requirement of 8GPs to be onsite will only be reached when the development is fully occupied; for many years only four, and then six will likely be required. The NHS will not lease a space substantially larger than it requires unless there is a prospect of gaining a commercial income from the unused space which, based on market evidence from Hodson Developments, is not very likely. The same is expected of the police space.
- 8.29 Overall, this space is very large, and much of it is not expected to be needed until much later than this trigger. While the challenges of phased construction are acknowledged, for the sake of avoiding mothballed buildings with associated liability and costs, the consented community provision should be reduced and phased and elements delayed until they are needed.

#### Libraries

- 8.30 The capital cost of building the library on-site is already included in the budget for Community Hub. Therefore, additional capital cost is not required.

#### Allotments

- 8.31 Based on the minimum viable size of allotments – 20 plots meeting the needs of 1,375 homes, the trigger for completion of these allotments should come no earlier than that (and for each further tranche of allotments).
- 8.32 The change proposed is a trigger based on 1,450 homes in Main Phase 1 and 1,100 homes in Main Phase 2 (as well as other modifications for clarity of definition and budget and for deliverability and viability reasons).

#### Cemeteries

- 8.33 Ashford's Green Space Standards state that cemeteries are required based on the rate of 0.6ha per 1,000 people. This must be incorrect and if the £800,000 obligation is based on this metric, it must be adjusted downwards. Based on publicly available assumptions on death rates and burial rates, including Ashford's own evidence presented to cabinet<sup>13</sup>, the need appears to be more in line with 0.6ha per 10,000 people – without adjusting for the declining rate in burial rates (vs cremation). As set out in Ashford's evidence base, "1 hectare in Ashford would provide 1,680 graves to cover 30 years of new burials". This is for the whole area, not just for Chilmington Green. Need from Chilmington Green is estimated to be 400-800 graves over 30 years. Ashford's evidence base for the cost of new provision is opaque

---

<sup>13</sup> Cabinet Meeting, to be held in the Council Chamber, Civic Centre, Ashford Borough Council on Thursday, 28th November, 2019 at 7.00 pm.  
Agenda item 16: Ashford Borough Council Cemetery Provision; Challenges and Solutions, Agenda pack page 241, Paragraph 39.

but does not appear to justify costs of £800,000 for a 1ha cemetery. Evidence from elsewhere indicates that this would be half that cost<sup>14</sup>.

8.34 . superceded

#### Funds for community services

8.35 As set out above, there is no specific policy justification for the amount of financial obligations required for youth services, community learning and family and social care.

8.36 There is currently no clear scope of facilities or services that will be provided through budgets for Youth Services, Community Learning or Social Care. While in principle Hodson Developments recognises these are positive services for the community, in the time that has elapsed since the S106 was drafted, information concerning the scope of these services, including who will be expected to spend this budget, how and when, is no longer clear (if it was ever made so). These services will be funded through the Borough and County general needs funds, so the S106 should make clear what additional gap in provision or mitigation needs to be served to make the development acceptable in planning terms. Therefore in order to meet the requirements of Regulation 122, it is necessary for ABC and KCC to provide a service delivery schedule or resource cost plan that justifies the scale of contributions required, and lists the types of services that will be provided, by who and when. Where this cannot be provided, the obligations cannot serve a useful purpose or be justified under Regulation 122 and should be discharged.

8.37 superceded

#### Playspace

8.38 While Hodson Developments acknowledges that the playspace serves a useful purpose in line with good placemaking and planning policy, 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. Annex A includes amended triggers adjusted to take these matters into account.

#### Discovery Park Sports Pitches and Hub

8.39 £20,000 has already been paid to masterplan the facility and we are informed by Hodson Developments that they are not aware of any progress that has been made. Given the facility will require Reserved Matters Approval, with associated approval process through ABC, and the Reserved Matters process will be led by Hodson Developments, rather than ABC, it seems contradictory and most likely repetitious to have an additional layer of Masterplanning by the ABC. This is therefore not good use of resources and should be discharged.

---

<sup>14</sup> A note from Cherwell District Council on Bicester Burial Ground Provision (2017) states that a new cemetery is required to meet the needs of both the existing population and future development in the town. The cost for cemetery provision set out in this note is £428,000 per hectare, which includes purchase of land (assumed to be £50,000 per hectare), drainage, paths, fencing and storage facilities.

8.40 The submitted Design and Access Statement, states (page 111) that the phasing and amount of sports provision is subject to confirmation on whether the school pitches would be available for “dual use” i.e. for community use. It states that, “*if dual use of school pitches is achieved the quantity of S3 provided will be reduced accordingly*”. It is not clear that the Section 106 obligations have reflected this consideration. Now that the early delivery of the secondary school has been secured, and that the secondary school provider has confirmed that the sports facilities at that school will be accessible to the community, the triggers for the Sports Hub and DP3 Sports Facilities should be reviewed. Annex A indicates a revised trigger of 3,650 homes for phase 1.

### Proposed Amendments

8.41 Hodson Developments proposes, therefore, (without prejudice to further or other amends as are justified and sought for reasons of viability and deliverability as listed in Annex A), that the Section 106 agreement is, as a minimum, amended by:

- Dividing the community floorspace into two phases to facilitate incremental delivery.
- Ensuring that leases/other appropriate legal agreements from the NHS and police are in place prior to triggering the delivery of the relevant floorspace and do not trigger this space absent leases in place.
- Capping the total amount of space needed to 2,800 sqm and rationalising what will be provided and when. The first tranche will support up to 3 GPs and the second tranche will be triggered when the demand for 4GPs can be sustained no earlier than c. 3,500 homes, but could be later to support the full viable use of the facility and draw down of the NHS lease.
- Securing a budget cap of £2m for the whole facility.
- Ensuring that professional fees, contingencies, specification and design costs, supervision fees, access costs and service costs are included in the total budget cap.
- Removing the need for the CMO (or its replacement) to be consulted on the design in a formal, separate process outside the normal planning and reserved matters process.
- Taking account of the provision of school facilities at both the primary and secondary schools in consideration of the need for and trigger for sports facilities at the Sports Hub.
- Delaying the delivery of sports facilities at both Chilmington Hamlet and Discovery Park where provision is available at the schools on site and until the facilities are viable (i.e. there are enough people living on the development to make sufficient use of them). Only one cricket pitch has been identified as being needed to meet the demand for the whole development<sup>15</sup>, so front loading it among the first 1,500 homes is disproportionate. Chilmington Hamlet is likely to be viable no earlier than 2,300 homes and delay to 3,500 appears proportionate based on the ABC, 2017, Playing Pitch Strategy conclusions with respect to cricket demand.
- Removing the need for a community learning centre given the provision of other flexible space and the proposed community use of the learning resources at the Secondary School.

---

<sup>15</sup> ABC, 2017, Playing Pitch Strategy

- Including library services (capital cost, books and equipment) in the specification and budget for the Community Hub and therefore removing the separate schedule.
- Discharge obligation for payments towards cemeteries.
- In the case of youth services, family and social care and adult learning, removing this obligation
- Deferring the trigger for the Main Phase 1 Allotments to 1,450 homes and Main Phase 2 allotments to 1,100 homes in that Phase.
- Changing the playspace triggers to account for the practicalities of construction site access and safety.

## Proposed Triggers

8.42 The trigger for **Chilmington Hamlet** will be:

8.42.1 Not to occupy more than 3,000 homes until the design brief has been submitted.

8.42.2 Not to occupy more than 3,500 homes until Chilmington Hamlet has been provided, to include 250 sqm of floorspace available for community use.

8.43 The trigger for the **Community Hub** will be:

8.43.1 Not to occupy more than 2,850 homes until the design brief has been approved for the first tranche and 3,850 for the second.

8.43.2 Not to occupy more than 3,250 homes until the first tranche of the community space is provided.

8.43.3 Not to occupy more than 4,250 homes until the second tranche of community space is provided.

8.44 The first tranche to include a multi-purpose community space of up to 1,500 sqm, subject to lease confirmation, to include:

8.44.1 340sqm space within multi-use building for police community and social services outreach including family and social care (if lease is provided)

8.44.2 400 sqm within multi-use building of community space to meet the needs of the community and the Trust and to provide ancillary facilities for the MUGA.

8.44.3 A MUGA

8.44.4 Phase 1 of the GP provision – up to 500sqm, subject to NHS lease confirmation.

8.44.5 Library, not to be limited to 100sqm if demand is shown, the cost to include fitout, books and technical equipment to be included.

8.45 Further community floorspace up to a total of 2,500 sqm will be delivered, subject to confirmed leases and management arrangements to include:

8.45.1 The remaining up to 500 sqm of GP provision.

8.45.2 Community leisure building (1,000 sqm)

8.45.3 Additional floorspace of up to 200sqm for identified community needs, including youth provision.

8.46 Remove the need for the community learning space.

8.47 Superseded

## 9 The District Centre

---

9.1 **Schedule 14** sets out the requirements for Local and District Centres.

9.2 There are two issues relevant to Schedule 14:

- The mechanics of the triggers for the RMA and design brief
- The controls on the timing, scale and uses for the district centre.

### *Design brief and reserved matters*

9.3 Under the terms of the Section 106 agreement Hodson Developments is required to produce a design brief (Schedule 14 section 1.1) by 950 dwellings. However, under the planning permission (12/00400/AS) under Condition 3 all Reserved Matters Applications (RMAs) for Phase 1 must be submitted and registered by January 2023.

9.4 Therefore, the design brief obligation becomes redundant because, by the time of the 950 home trigger the RMA would already have to have been submitted. Such a submission will cover any guidance / parameters the design brief would have included. As such the obligation no longer serves a useful purpose as the wider 'mechanics' of the planning permission will render it superfluous.

9.5 The Applicants apply to modify or discharge this obligation to accord with the revised scheme as described below. Further or alternatively, and whatever form the District Centre Facilities are to take, the Applicants apply for the occupation triggers for the design brief and specification is to be delivered by 1,500 (rather than 950) occupations to reflect realistic prospects of having market interest in place.

### *Controls on the timing, scale and use for the district centre*

9.6 The circumstances for local retail have substantially moved on from where the scope and requirements for the district centre was drawn up between 2012 and 2017. The deliverability of local retail is much more challenging and strong retail centres are those that have been flexible to respond to changes in what the market, operators and communities need. Hodson Developments cannot bring forward a District Centre that will not be lettable or sustainable in the long term and the Section 106 must support a more flexible and market-led approach to bringing forward the right amount and type of E class floorspace to serve as the District Centre.

9.7 Hodson Developments requires the very prescriptive controls on the size and characteristics local and District Centres to be removed to allow them to take the opportunity to market and secure a long term, sustainable operator(s).



9.8 Hodson Developments will make a new planning application for the District Centre facilities on CH1 and CH2. The revised scheme, as set out in that application, will determine the scale and nature of the facilities, and will of course be subject to ABC approval. The Section 106 should be modified accordingly and/or in so far as necessary discharged to accord with and permit the revised scheme and its proposed timing. Details of the proposed changes are set out in Annex A.

## 10 Transport Obligations

---

- 10.1 Transport obligations have also been reviewed in light of the revised development phasing schedule and advice from KCC to Hodson Developments (April 2021). We have also given consideration to local policy including the Ashford Local Plan 2030 (2019), the Chilmington Green Action Area Plan (2013) and Ashford Borough Council's Infrastructure Development Plan (2018).
- 10.2 The impact of neighbouring developments on the local and strategic road network has also been reviewed where they may affect the S106 obligations.
- 10.3 Within the S106 Agreement there are five schedules related to transport obligations that are dealt with in this statement:
- Schedule 18 – A28 Improvement Works
  - Schedule 19 – Off-Site Pedestrian and Cycle Links
  - Schedule 20 – Provision of bus services
  - Schedule 21 – Off-Site Traffic Calming
  - Schedule 22 – RIF
- 10.4 S106 Schedule 18 and 22 are no longer considered to fulfil a useful purpose and this section explains the reasoning. Where appropriate, Schedules 19, 20 and 21 are updated to reflect recent advice from KCC and work that has been undertaken to reconsider the requirements in these schedules in current circumstances.

### LEP Funding

- 10.5 The decision by the Southeast Local Enterprise Partnership (SELEP) Accountability Board to grant Local Growth Funding for the A28 Chart Road Improvement scheme was made on the 12 September 2016.
- 10.6 KCC secured total funding of £10.2m from the LEP for the scheme, of which £3,881,665 has been paid and a further £6,318,355 is available.

### Current Position

- 10.7 Since the submission of the Chilmington Green development, ABC has adopted the current Local Plan (February 2019).
- 10.8 Paragraph 2.23 states that:

*there remain critical constraints to strategic growth in the short term at both M20 Junction 10 and along the A28 corridor to the west of the town that directly impacts upon the scale of development that can be safely accommodated on the strategic highway network.\**

- 10.9 It goes on to state, at Paragraph 8.24, that:

"The scheme will cater for the development at Chilmington Green, providing for improved capacity and safety in this area and relieve congestion and journey times "

10.10 Paragraph 8.25 clarifies the current funding position:

*"The business case was approved at the South East Local Enterprise Partnership's board in February 2016 and Local Government Funding of £10.2 million has been approved for release. The remaining £23m funding cost of the scheme is being provided for by Kent County Council and the development consortium for Chilmington Green."*

10.11 Whilst it is acknowledged that works are required in connection to the Chilmington Green development, Paragraph 2.23 clearly recognises the need for works to bring forward development along the A28 corridor. This is the case even without the Chilmington Green development.

10.12 In terms of the works at M20 Junction 9 and the Drovers roundabout the following is stated:

*"Some Section 106 Agreements have been secured for developer contributions to refund the expenditure on these improvements but there is scope for the proposed allocation at Eureka Park in this Plan to also make a proportionate financial contribution to aid this repayment. The Council will also consider whether any further significant development proposals that would rely on the capacity at Junction 9 and / or the Drovers roundabout should also make a proportionate financial contribution."*

10.13 The above suggests ABC recognise the need for several developments to contribute to the works at M20 Junction 9 and the Drovers roundabout.

**Chilmington Green Area Action Plan (2013)**

10.14 The need for flexibility is noted in the Chilmington Green Area Action Plan (AAP).

10.15 As the Chilmington Green development is likely to take at least 25 years to fully build out, the AAP has been drafted with flexibility in mind, so that the detailed planning of the development can react as best as possible to change – for example in national and local policy, market demand and consumer preferences, design requirements, technological innovations, etc.

10.16 Policy CG11 on Highways and Access refers to the need for funding for the A28 improvements and associated works:

10.16.1 funding to a level to be agreed by the borough and county councils, towards the delivery of a set of off-site improvements to the A28 corridor;

10.16.2 funding to a level to be agreed by the borough and county councils towards the repayment of the forward funding arrangements that delivered the improvements to the A28 Drovers roundabout and M20 Junction 9;

10.17 This policy also states that development may be permitted if it can be demonstrated that there is sufficient highway capacity on the A28:

10.17.1 The occupation of development at Chilmington Green may be restricted by condition and / or planning obligation unless it can be demonstrated that sufficient off-site highway capacity on the A28, or any other primary or secondary links or junctions within the adjacent parts of the urban road network, is available to accommodate any additional traffic generated by the development (based on achieving at least a 'nil detriment' position).

### Funding

- 10.18 The Southeast England Development Agency (SEEDA) approved (March 2010) (Regional Infrastructure Fund) RIF Funding to be allocated to Kent County Council (KCC). RIF funding relates to funding for the full cost of delivering major highway improvements at M20 J9 and Drovers Roundabout. £8.1m was allocated for the M20 J9 works and £7m for improvements to Drovers Roundabout.
- 10.19 A key condition of RIF funding is that it must be paid back using a combination of S106 and future tariff or Community Infrastructure Levy arrangements.
- 10.20 The latest Ashford Infrastructure Delivery Plan (2017) shows the most recent position with regards to funding. The cost of the works is £15.1m with £9.6m left to pay. As of 2017, there was an expected funding gap of £3.8 million. There is no information available online with regard to the current funding position.

### Development Phasing

- 10.21 Current forecasts indicate that the Chilmington Green development will be delivered later and more slowly than predicted at the application stage. The phasing of the Chilmington Green development assumed in the original S106 is shown in Table 10.2.

Table 10.1: Chilmington Green Phasing Assumed within Original S106

Phase	Time Scale	Units Built
Phase 1	2017 - 2022	1501
Phase 2	2022 - 2026	1124
Phase 3	2026 - 2031	1559
Phase 4	2031 - 2036	1566
Total		5750

- 10.22 The actual housing completions and future housing trajectory is set out in Table 10.3.

Table 10.2: Actual Chilmington Green Phasing as of 2022

Phase	Time Scale	Units Built
Phase 1	2019 - 2031	1501
Phase 2	2024 - 2033	1124
Phase 3	2031 - 2042	1559
Phase 4	2037 - 2048	1566
Total		5750

10.23 As a result, the S106 transport schedules need to be revisited and modified with the schedule payments pushed back in time due to:

- The revised phasing of Chilmington Green;
- Advice from KCC to Hodson Developments (April 2022)
- To reflect changes which have occurred since consent was granted; and
- To take account of the impact of neighbouring developments on the local and strategic road network.

## Background Traffic Impact

10.24 The originally agreed triggers were based on a defined number of dwellings. The impact of development traffic at each phase was assumed to require mitigation. The combination of forecast background traffic and phased development traffic determined when a contribution was required to carry out mitigating works.

10.25 Traffic growth assumed within the original application was based on forecasts from 2017 using 2013 data. These forecasts of background traffic growth are considerably higher than what is shown in more recent surveys undertaken in 2022. This is due to the use of a historic version of the Trip End Model Presentation Program (TEMPro) software. The most recent version of TEMPPro (7.2c) assumes a lower level of background traffic growth than earlier versions. TEMPPro version 6.2 is the earliest version currently available and as such has been used to understand the forecast level of traffic assumed within the original planning application.

10.26 To assess the change in background traffic, forecasted future year traffic is compared using 2013 ATC data on the A28 with recent 2022 ATC data. The A28 is a major trunk road connecting to Junction 9 of the M20 and is therefore an appropriate location to assess changes in background traffic.

10.27 Based on the originally assumed phasing, Table 10.4 provides a breakdown of total traffic on the A28 between 2017 and 2036 using TEMPPro 6.2. Development traffic has been estimated using the daily trip rates within the approved Chilmington Green Transport Assessment (TA).

10.28 Based on the revised phasing in Table 10.3, Table 10.5 provides a breakdown of total traffic on the A28 between 2022 and 2048 using TEMPPro 7.2c. Table 10.5 is informed by ATC surveys which were undertaken along the A28 corridor in the week commencing the 13th of May 2022. The raw ATC data is provided at **Appendix 4** of this Explanatory Statement.

10.29 A comparison of total traffic on the A28 in Tables 10.4 and 10.5 reveals much lower levels of traffic than originally forecast in 2017. The impact of lower levels of background traffic on the triggers for schedules 18, 21 and 22 are considered below.

Table 10.3: Chilmington Green 2017 Forecast Total Traffic on A28 (Original Phasing)

Phases Total	Background Traffic (Daily)	(Dwellings) Cumulative Total	Development Trips	Total Trips on A28
2017	13,077	50	239	13316
2018	13,410	350	1670	15080
2019	13,744	650	3102	16846
2020	14,081	950	4533	18614
2021	14,420	1250	5965	20385
2022	14,750	1601	7640	22390
2023	15,083	1901	9072	24155
2024	15,417	2201	10503	25920
2025	15,755	2501	11935	27689
2026	16,079	2675	12765	28844
2027	16,389	2975	14197	30585
2028	16,702	3275	15628	32330
2029	17,016	3575	17060	34075
2030	17,330	3875	18492	35822
2031	17,647	4234	20205	37852
2032	17,974	4534	21636	39610
2033	18,302	4834	23068	41370
2034	18,631	5134	24499	43131
2035	18,963	5434	25931	44894
2036	-	5750	27439	-

Table 10.4: Chilmington Green 2022 Forecast Total Traffic on A28 (2022 Phasing)

Phases Total (5750 Dwellings)	(Dwellings) Cumulative Total	Development Trips	Total Trips on A28
2022	298	434	14369
2023	348	673	14785
2024	473	1269	15557
2025	698	2343	16808
2026	948	3536	18165
2027	1198	4729	19524
2028	1498	6161	21121
2029	1798	7592	22717
2030	2098	9024	24316
2031	2426	10589	26054
2032	2651	11663	27299
2033	2825	12493	28301
2034	2975	13209	29187
2035	3125	13925	30074
2036	3275	14640	30942
2037	3450	15476	31923

Phases Total (5750 Dwellings)	(Dwellings) Cumulative Total	Development Trips	Total Trips on A28
2038	3675	16549	33143
2039	3925	17742	34481
2040	4225	19174	36059
2041	4534	20648	37667
2042	4834	22080	39235
2043	4984	22796	40089
2044	5134	23512	40942
2045	5284	24227	41795
2046	5434	24943	42639
2047	5584	25659	43483
2048	5750	26451	44404

### Schedule 18 Impact

10.30 Schedule 18 requires a bond payment towards works on the A28 once no more than 400 dwellings have been occupied. However, a bond is not appropriate given the funding structure for the A28 works.

10.31 It was previously accepted that there is a need to improve the A28 as a result of additional traffic from the proposed development as a scheme to mitigate the impact of the proposed development, but it is not the role of a development scheme to provide funding certainty for a local authority who is implementing a highway improvement scheme.

10.32 KCC would like to recover the current SELEP funding that remains in place of £2.756m if Chilmington Green does not progress. However, no works have been undertaken and if the Chilmington Green development does not proceed then there would be no impact to be mitigated. Any bond requirement should accordingly be discharged, and indeed it is understood to be the case that this is accepted in principle by KCC.

### Phasing of A28 Improvement Works

10.33 The proposed A28 works comprise improvements at:

- Tank Roundabout;
- Louden Way junction (inc. signals); and
- Matalan Roundabout.

10.34 Vectos undertook junction modelling at each of the locations listed to demonstrate how the Chilmington Green masterplan site could be phased to deliver a proportion of dwellings before certain trigger points determine that off-site highway works on the A28 are required.

10.35 The results are summarised in **Appendix 5** of this Explanatory Statement and establish that as a result of the junction assessments for the future year phases, the following number of dwellings would trigger the need for capacity improvements at the locations listed:

- Louden Way – after the delivery of 1,500 dwellings (26% of total development);

- Matalan roundabout - after the delivery of 2,000 dwellings (34.8% of total development); and
  - Tank roundabout - after the delivery of 2,500 dwellings (43.5% of total development).
- 10.36 Phasing the works on the A28 in this manner ensures the free flow of traffic on the A28 corridor until works are realistically required to improve capacity to maintain free flow conditions.
- 10.37 This work shows that the triggers can be pushed further back into the progress of the development.
- 10.38 In response to Hodson Developments, KCC had provided the following update on costs for the A28 works:
- |  |             |
|--|-------------|
| ▪ Total cost of the works                | £22,861,939 |
| ▪ Paid to date (LEP/Hodson Developments) | £4,185,165  |
| ▪ Net Cost                               | £18,677,224 |
| ▪ Additional LEP Funding                 | £6,318,335  |
| ▪ Residual Funding Needed                | £12,358,889 |
- 10.39 The impact of neighbouring developments and the resulting revised Schedule 18 is set out in the subsections that follow.
- 10.40 Looking at other development proposals in the area, one that has not yet achieved planning consent is Court Lodge. This is a development of 1,000 residential units which would lead to additional traffic on the A28. In the AM peak the Court Lodge scheme would generate additional traffic on the A28 that is 12.58% in the AM peak and 11.49% in the PM peak. The AM peak figure has therefore been used. Kingsnorth Green (550 units) is also still pending planning permission.

## Schedule 20 Impact

### *Bus Services*

- 10.41 The main reasons to review the proposed provision of bus services are current market conditions and the actual building trajectory which, together, mean that the proposed services are unviable and unsustainable.
- 10.42 In particular, the current proposed level of the subsidies and the timing of their payment would only serve to undermine the viability of both the individual phases of development and the overall development and its delivery, with obvious consequences in terms of the delivery of housing.
- 10.43 In reviewing the bus services, there needs to be a balance struck between continuing to ensure that the Development is accessible by all modes of transport and is sustainable in transport terms against the realities of the current economic conditions and changes in travel behaviour. The Development needs to be connected to the town centre and railway station by bus, but the services provided need to be viable and sustainable for the longer term reflecting potential levels of use.



- 10.44 Since grant of planning consent there have been substantial changes to travel patterns with a lasting effect of the Covid lockdowns being that more people are working from home for at least part of the week and therefore travelling less. This is especially true of office based workers travelling from locations such as Chilmington Green to London by bus and then by train.
- 10.45 The S106 requires an increasing frequency of service from the Development to the railway station and train centre running from the first train from Ashford to London until the last train from London to Ashford. This would be running bus services for 18 hours a day. Across this period there needs to be consideration of what services it would be viable to run and in line with existing bus services on the network around Ashford this would be different frequencies of services at different times of the day to reflect demand.
- 10.46 Any new bus services should be viable to provide a service not only when it commences, but also for the longer term. The proposed changes to the S106 seek to offer bus services when there are more homes on-site to ensure that the services will be viable. There is no benefit in operating higher frequency services than needed and which would need a subsidy only for such services to be greatly reduced or to cease to operate when the subsidy period ends.
- 10.47 The proposed approach is to achieve a market led solution through working with bus operators to provide a viable self-sustainable bus service through an open tender process, to ensure that appropriate connections to the railway station and town centre are provided at a level that is viable in both the short and longer term. The frequency of those initial services to be revisited at suitable milestones, with a view to increasing frequency over time in line with demand and viability, with greater demand of course allowing more buses to be provided at a higher frequency.
- 10.48 In the light of the above Hodson Developments is seeking the following changes:
- To provide a temporary bus stop on the site and a bus service between the site and town centre/railway station to connect with trains between Ashford and London later in the development - prior to the occupation of the 2,684 dwellings .
  - Tenders would be invited from bus operators for different options for providing this service. If no viable option can be identified, then tenders for alternative bus service options would be sought.
  - To provide the identified initial bus infrastructure on the Development Site for Main Phase 1 prior to the occupation of the 2,784 dwellings
  - To provide the identified subsequent bus infrastructure on the Development Site for Main Phase 1 and to review bus services with a view to increasing bus services during peak times to at least every 20 minutes, subject to an operator confirming this level of frequency is viable, prior to the occupation of the 3,584 dwellings
  - To provide the identified subsequent bus infrastructure on the Development Site for Main Phase 2 and to review bus services with a view to increasing bus services during peak times to at least every 13-14 minutes, subject to an operator confirming this level of frequency is viable, prior to the occupation of the 4,784 dwellings

- To provide the identified subsequent bus infrastructure on the Development Site for Main Phase 3 and to review bus services with a view to increasing bus services during peak times to at least every 10 minutes, subject to an operator confirming this level of frequency is viable, prior to the occupation of the 5,348 dwellings
- To provide the identified subsequent bus infrastructure on the Development Site for Main Phase 4 prior to the occupation of the 5,500 dwellings

### *Bus Vouchers*

10.49 The proposed provision of bus vouchers has been reviewed in the light of the implications of viability and deliverability for the Development. This is a very significant cost to the Development and its effects in terms of viability and deliverability are dealt with (by others) elsewhere in this submission. However, in transport planning terms the provision of vouchers would appear to run contrary to the principle above of a viable and self-sustainable bus service. Given that it is proposed to provide dedicated bus services for Chilmington then the provision of bus vouchers could also be considered as double counting.

10.50 It is therefore sought that this requirement is removed from the S106 Agreement.

### **Schedule 21 Impact**

10.51 In light of the work undertaken above on the traffic growth that has occurred in the area which has been lower than forecast for a variety of reasons including the longer lasting impacts of Covid lockdowns on traffic flows which are only just returning to pre-pandemic levels and the lasting impacts on the working patterns of those who do not need to travel to work every day each week, the triggers for any payments need to be deferred.

10.52 In addition to this, any contributions should only become payable where the measures for which they are intended are actually required. This can be assessed through the monitoring that is required by the S106 Agreement, the first element of modelling having been undertaken already to establish the baseline position i.e. before the occupation of the 1st dwelling.

10.53 Given that there are 9 roads and the total contribution is £408,498, each contribution of £45,389 per road should only become payable where traffic on that road is more than 10% above predicted levels (base levels plus traffic growth to the year in question). This is to ensure that contributions are not wasted but actually serve the purpose for which they are intended, i.e. to mitigate a potential impact that has actually occurred. The 10% criteria for increases in traffic being material is consistent with the IEMA Guidelines on assessing the environmental implications of traffic in sensitive areas when there is a 10% increase.

10.54 Superseded

10.55 In the premises, the relevant obligations will serve their purpose equally well if modified as proposed.

10.56 There are proposed changes to the triggers for the monitoring to tie this in with the payment for any contributions needed. It is proposed that this is prior to the occupation of 100 less dwellings than the triggers for the payments to allow sufficient time for the monitoring to be undertaken and the results analysed so it can be identified whether a payment is needed.

10.57 The proposed triggers and payments are:

**Table 10.6: Schedule 21 Payments**

Number of Dwellings	Amount Payable
2,499	£45,389 with respect to an increase greater than 10% on any of the identified roads
5,749	£45,389 with respect to an increase greater than 10% on any of the identified roads

10.58 There will only be one payment for each identified road and the total contribution payable will not exceed £408,498.

### **Schedule 22 Impact**

10.59 superceded

10.60 superceded

10.61 .superceded

## Schedule 19 Impact

10.62 Schedule 19 is in relation to payments for off-site pedestrian and cycle improvement works. The wording of Schedule 19 is replicated below:

*...The County Council covenants with the Paying Owners to spend the monies received only on constructing two footways either side of Magpie Hall Road to the east of the Site (as indicatively shown as annotated and highlighted pink together with other unrelated works on the attached drawing 131065/A/25 rev B); promotion of national cycle route 18 (including but not limited to as indicatively shown on the attached drawing 131065/A/102) and the following as indicatively shown on the attached drawing 131065/A/84: improving signage on the footpath/cycleway from the Site through Great Chart to the Matalan roundabout; surfacing, widening and fencing Greensands Way; monitoring traffic flow in Bartlets Lane and surfacing works to byway AW245 (mistakenly referred to as 'Signage of Byway' on the drawing).*

10.63 10.63-10.68 superceded

10.64

- 
- 
- 
- 
- 
- 

10.65

10.66

10.67

10.68

#### Neighbouring Development Contributions

- 10.69 This section of the Explanatory Statement considers the traffic impact of neighbouring developments relative to Chilmington Green. An appropriate and proportionate level of contribution should be requested based on the traffic impact of other developments at locations identified for mitigation.
- 10.70 As mentioned above, consideration has been given to the developments that have come forward since the approval of the Chilmington Green Development and how they may affect the S106 obligations.

#### Court Lodge Development – 18/01822/AS

- 10.71 Since the submission of the Chilmington Green application, the Court Lodge development (refer to Figure 4.1) has been submitted. The application (Ref: 18/01822/AS) was submitted in 2018 for 1,000 homes.
- 10.72 This application has been reviewed as part of this Explanatory Statement due to its proximity to, and future impact on, the A28.
- 10.73 Planning application 18/01822/AS is yet to be approved however comments from highways officers are available on the planning portal. Comments from KCC highways dated 14th June 2021 suggests a Grampian condition to limit the site to 500 dwellings until the A28 associated with the Chilmington Green development works are completed. It is mentioned that:

*"To date the applicant has not agreed to this suggested Grampian condition but it is required in order to prevent severe congestion along the A28 corridor prior to the delivery of the A28 dualling works by the Chilmington Green development."*

10.74 The above suggests that delivery of the above scheme is largely reliant on the Chilmington Green Development to come forward due to congestion issues on the A28 corridor. There is a clear appreciation from KCC that the impact of the Court Lodge will exacerbate the existing congestion issues on the A28 corridor.

#### Court Lodge Traffic Generation and Distribution

##### A28 Impact

10.75 According to the development traffic distribution undertaken within the Court Lodge Transport Assessment (TA), circa 43% of trips have been assigned to the A28.

10.76 Using the trip rates from the submitted TA the peak hour trips on A28 corridor generated by the Court Lodge development are shown in Table 10.10.

Table 10.10: Court Lodge Trip Generation

	AM Peak 08:00 – 09:00			PM Peak 17:00 – 18:00		
	In	Out	Total	In	Out	Total
Total	184	387	571	312	188	500
43%	79	166	246	134	81	215

10.77 Table 10.10 suggests the Court Lodge development would generate 246 two-way vehicle trips in the AM peak hour and 215 two-way vehicle trips in the evening peak hour. This level of traffic will have a material impact on the A28 corridor.

10.78 In comparison, the distribution undertaken in the Chilmington Green Transport Assessment assigns 74% of trips to the A28. The peak hour Chilmington Green development vehicle trips on the A28 forecast are shown in Table 10.11.

Table 10.11: Chilmington Green Trip Generation

	AM Peak 08:00 – 09:00			PM Peak 17:00 – 18:00		
	In	Out	Total	In	Out	Total
Total	1024	1619	2643	1486	1041	2527
74%	758	1198	1956	1100	770	1870

10.79 The Chilmington Green development was forecast to generate 1,956 and 1,870 vehicle movements in the AM and PM peak periods on the A28 corridor. This level of traffic required Chilmington Green to contribute £23m to the improvement works along the A28 corridor.

10.80 The above tables show that in the AM peak the Court Lodge scheme would generate additional traffic on the A28 that is 12.58% in the AM peak and 11.49% in the PM peak. The AM peak figure has therefore been used.

10.81 It is therefore considered appropriate that 12.58% of the proposed funding of the A28 improvement works is contributed by the Court Lodge development. This equates to a figure of circa £1.555m (index linked) which should be paid by Court Lodge development. Development at Kingsnorth (550 homes) should also be considered.

#### *M20 Junction 9 / Drivers Roundabout Impact*

10.82 The RIF contribution agreed for Chilmington Green was £5.6m based on:

- £4,150 per trip contribution towards Drivers Roundabout
- £5,259 per trip contribution towards the M20 Junction 9 improvements.

10.83 A review of the Court Lodge TA suggest that the development will generate an additional 85 and 106 additional two-way movements on Junction 9 of the M20. These trips will also pass-through Drivers Roundabout. Based on the agreed RIF per trip contributions listed above the Court Lodge development should be expected to contribute a total sum of circa £1.8m.

### **Proposed Revised Schedules 18 and 22**

#### *Schedule 18*

10.84 The total cost of the works required beyond LEP funding is £12,358,889 according to KCC. The funding that should be secured from Court Lodge (12.58%) is £1,554,748. Taking this into account gives the residual funding value of £10,804,141. This assumes no other funding has become or will become available which should also be taken into account and reduce this residual accordingly either in the short term or permanently. The Applicant requests that ABC and KCC provide evidence in this respect.

10.85 10.85 -10:87 Superceded

10.86

---

---

10.87

- 10.88 payments that have been made in association with other planning consents for development which would increase traffic at the Drovers Way roundabout or M20 J9 that may mean this level of funding is not needed. For example, in association with the Court Lodge development a contribution of £1,797,119 should be secured.
- 10.89 As the RIF was to recover funding that had been expended only the total should be recovered and then no further funding should be sought. Information was requested from ABC to establish the level of funding that remains to be recovered, but no response was received.

### Summary

- 10.90 This section of the Statement sets out the current transport related Section 106 obligations and associated triggers. These have then been reviewed with regard to the current build-out programme (which is slower than the original programme) and changes which have occurred since consent was granted on 6<sup>th</sup> January 2017. Changes to the transport related obligations have been suggested where are deemed appropriate based on the above.
- 10.91 Transport obligations have also been reviewed in light of the revised development phasing schedule and advice Kent County Council (KCC) to Hodson Developments (April 21). Consideration has also been given to local policy including the Ashford Local Plan 2030 (2019) and the Chilmington Green Action Area Plan (2013). Ashford Borough Council's Infrastructure Development Plan (2018) has also been reviewed.
- 10.92 It is clearly the case that any bond requirement for Schedule 18 is not appropriate due to the funding structure and should be removed.



10.93 - 10.93 - 10.95 superceded

10.94

10.95

10.96 So far, one neighbouring development has come forward, namely Court Lodge. The Court Lodge development relies upon funding from the Chilmington Green development on the A28 corridor due to congestion issues it (Court Lodge) will cause. The Court Lodge Development trip generation is circa 12.58% in the AM peak and 11.49% in the PM peak of the Chilmington Green Development trip generation. It is therefore considered appropriate that 12.58% of the proposed funding of the A28 improvement works is contributed by the Court Lodge development.

10.97 A review of the Court Lodge TA suggests that the development will generate an additional 85 and 106 additional two-way movements on Junction 9 of the M20. These trips will also pass-through Drivers Roundabout. Based on the agreed RIF per trip contributions the Court Lodge development should be expected to contribute a total sum of circa £1.8m.

10.98 The Court Lodge and Kingsnorth developments are examples of what has changed since the Development was granted planning consent. These are only two proposed development schemes and a review of the planning obligations across the board due is needed.

10.99 Schedule 20 should be amended in the light of the potential impacts of viability and deliverability of bus services and bus vouchers. This will also take into account the changes in bus travel due to the Covid lockdown which have changed the travel patterns of those likely to use bus services, especially those who would use the bus to travel for office work in London.

# 11 Education Contributions

---

## Current Obligations

### *Primary school provision*

- 11.1 The Section 106 agreement currently expects four primary schools to come forward, with payments at set intervals determined by occupation of homes with a bond for the total, indexed capital cost of each school; required to be secured well in advance of the payment triggers.
- 11.2 The first primary school (PS1) has been delivered, paid for and is operational. The first payment for PS2 is due at 899 homes and the Bond for the full PS2 amount is due no later than 1,099 homes.
- 11.3 Triggers and Bonds for PS3 and PS4 are triggered thereafter, at set times based on occupations.

### *Secondary School provision*

- 11.4 The recently signed Deed of Variation dated 13 July 2022 triggers the requirement to bring forward the secondary school to opening at 2024 or 2025, with the first payment by Hodson Developments no later than 2026, regardless of occupations (although infrastructure will be required before that).
- 11.5 Hodson Developments will also pay back KCC for the £3.1m required to service the site, at interest of 3 percentage points above base rate.

## Context

### *Findings in the ES*

- 11.6 The ES Addendum (2013) confirmed that KCC indicated a need for:
  - 4 primary schools each on a 2.05 hectare site, 3 of these schools to be 2 forms of entry (FE), with the fourth a 1FE "built with facilities ready for additional classrooms to provide a 2FE if required due to increased pupil demand".
  - 6FE secondary school, with sixth form provision, on an 8ha site.
- 11.7 It stated that, "*the number of secondary school pupils from the Proposed Development is forecast to add up to 1,116 (the equivalent of between five and six forms of entry<sup>16</sup>). A 6FE secondary school with sixth form can accommodate 1,150 pupils. The secondary school within the Proposed Development will come on stream in Phase 2 once there is sufficient*

---

<sup>16</sup> Assuming this number refers to academic years 7-13

demand (see indicative phasing plan Figure A3.13). There is anticipated to be sufficient capacity within existing secondary schools to accommodate children in the interim.”

11.8 The ES Addendum goes on to state that:

*“Monitoring of the pupil rolls will be required throughout the development as requirements may change due to housing numbers, mix and the timing of delivery.”*

#### *Commentary on ES conclusions*

- 11.9 Hodson Developments acknowledges that it is no longer the case there is sufficient capacity in existing secondary schools to meet the needs of development (or indeed the Basic Need) for Ashford.
- 11.10 It considers the proposed monitoring approach should have been, and now should be, incorporated into the Section 106 agreement, so that school payments are not triggered without demonstrable need.
- 11.11 Based on the total amount of secondary school places projected, and pro-rated to an average per home, a secondary school of 4 Forms of Entry (the typical minimum viable size) would not be needed until c. 2,000 homes. The reason to bring forward the delivery of the school is to meet wider Ashford needs, as is fully acknowledged both in the Area Action Plan (as set out below) and in recent Cabinet reports regarding the school delivery and funding<sup>17</sup>.

### **Policy Background**

- 11.12 The Area Action Plan requires (Policy CG15) four primary schools (in the form of three two-form entry schools, and an additional one-form entry school in the latter stages of the development) and a minimum 8 ha site for the provision of a new 6 form entry secondary school with associated sixth-form facilities.
- 11.13 With respect to primary provision, the AAP goes on to state in the supporting text: “The requirement for the delivery of each primary school **will be dictated primarily by the progress of development** at Chilmington Green as it is principally locally generated needs that will be met” (emphasis added).
- 11.14 It states that, “When the secondary school facilities are needed will be mainly dependent on the anticipated pupils passing through the primary schools across Ashford. [...] It will need to respond to demand generated for places **within the wider town.**” (emphasis added).

---

<sup>17</sup> KCC, Children and Young People’s Education Cabinet Committee—09 March 2021; KCC Cabinet, DECISION NO:21/00014

## Proposed approach

- 11.15 It is reasonable and expected that a development of this scale would seek to meet all, or the vast majority, of its school needs on-site in the long term, and for that to be paid for by the Developer including the transfer of land at nil or nominal cost. Hodson Developments is not challenging that expectation.
- 11.16 Schools are one of the largest infrastructure costs for a new development. The exact timing of school need is also typically very uncertain, and highly sensitive to build out rate, housing type and tenure as well as demographic changes or characteristics beyond developer control. Many of these specific details are not known, and cannot be forecast with great accuracy, at the time of signing a S106. Delivering schools up front is a benefit for communities, public authorities and developers alike, although this needs to be balanced with their substantial capital cost and the management and financial burden (to the authority and school operator) of operating a school that is substantially below capacity.
- 11.17 Chilmington Green already has a fully operational two form of entry primary school (which opened when there were only around 100 occupations,) and will have a six form of entry secondary school open in 2024 or 2025. These facilities will be substantial community assets, contributing to sustainable commuting patterns, placemaking and the primary school still has only 23 (of a potential 60) children on the roll in Reception.
- 11.18 The Secondary School will largely serve children from outside Chilmington Green and this is openly acknowledged by KCC. The triggers for further payments from Hodson Developments are imminent, but are not needed for the development to progress.
- 11.19 It is proposed that further payments are delayed until need from within the site demonstrably shows further school places are needed, and that the substantial front loading of school facilities (including sports facilities, halls etc) is reflected in the triggers by delaying the need for additional community space. Further detail on how this would work is set out below.

## Proposed changes and justification

### Proposed changes

- 11.20 Both primary and secondary provision has been front loaded. There are good reasons for this and all stakeholders see the clear benefits to this development, to Ashford, and to Kent of this early delivery. It has, and will continue to, facilitate sustainable travel patterns for Chilmington Green residents (rather than creating a pattern of pupil commuting in early years) and has ensured that Kent County Council does not lose its Wave Funding allocation from Department for Education (which is time limited).
- 11.21 It is important to remember that Chilmington Green's obligations for school provision (as with all mitigation) should be proportionate to scale of impact generated by the development and its future residents. Hodson Developments is realistic that it is not practical to limit the school admissions to children from within the site (this would not be possible given the way school admissions to maintained schools are arranged) but reasonable measures should be taken to ensure that Hodson Developments does not bring forward and pay for significant numbers of school places that are only for the purposes of meeting Kent's basic needs for the wider

community, or for the needs of neighbouring developments. This would be in contravention of the limitations on planning obligations specified in Regulation 122<sup>18</sup>.

11.22 There are changes proposed to ensure that the development continues to be deliverable:

- The primary school triggers are proposed to be modified to reflect triggers based on need (from within the development) rather than triggers based on numbers of homes. Given the slow take-up of the current primary school (and the associated operational cost and risk burden on both Kent and United Learning Trust), it is both reasonable and advantageous to take a cautious approach to opening the next school. Backstops can be agreed to provide KCC with the assurances of delivery (including funding in time for design and contracting), while ensuring for all parties that primary school payments are not triggered before they are needed. This will require a revised approach to the Section 106 setting in place the framework for a “monitor and manage” approach based on actual and projected pupil numbers and actual projected build out rate, to be monitored periodically over time, with set trigger points when decisions should be made as to when schools are required.
- The decision to bring forward additional primary school places must be made on the basis of need generated from within Chilmington Green and an audit of that need must be taken into account in decision making. Capital costs for places to meet needs of children from elsewhere should be met through KCC basic needs funding or Section 106 from other sites.
- The primary school payments should be delayed in recognition of the substantial burden that these costs put on the early phases of development and bridging loans from KCC, the DfE, Homes England or other relevant party should be facilitated.
- The primary school payments should be delayed in recognition of the substantial burden that these costs put on the early phases of development and the Wave Funding bridging loans should facilitate later pay back of the loan.
- The fourth and final primary school obligation should be discharged. Based on experience to date, the school will not be needed. Based on the total number of homes and the build out rate which is much slower than initially planned for, both the peak and the long term average will be lower than forecast. Single form of entry schools are generally less sustainable and more challenging and expensive to manage and maintain. Peak demand for school provision in a new development may be relatively short term, created by “baby boom” of new families in the area and options to temporarily expand one of the other three primary schools should be the preferred option, if any additional places are needed, which seems unlikely based on experience to date.
- The requirement for Bonds is proposed to be removed. Hodson Developments is an SME who is not able to raise bonds as required, without sufficient liquid security. Further, the requirement for Bonds currently requires the primary payments to be secured well in advance of need, in some cases up to six years. While we understand the desire for KCC to have assurance of the funding stream, other appropriate safeguards (Section 106

---

<sup>18</sup> Of the Community Infrastructure Levy Regulations 2010 As Amended.

triggers and Grampian conditions) are in place that do not have an unnecessarily early financial liability which is, in effect, acting as a block on the Development progressing.

- Secondary school payback of the Wave Funding loan should be capped at the amount required to mitigate the school needs of Chilmington Green, with any additional to be met by basic needs funding.

### Proposed Heads of Terms

11.23 A process to monitor and manage primary school demand, and the need for primary school provision to be delivered will be agreed including:

- 
- 
- Agreed backstops and timeframes within which decisions must be made, in order to ensure funding and site servicing for schools is delivered in a timely manner ahead of projected need (e.g. number of years ahead of school target opening date that the funds and site need to be transferred) but not before so.
- Agreed triggers for payments that ensure Main Phases 1 and 2 remain viable and deliverable, with bridging loans to secure any shortfall.
- Removal of the requirement for PS4, which is not required in line with the child yield expectations and child yield to date.
- Each primary school will be delivered in response to demand (front loaded only to the extent that it is required to ensure time for planning and construction). The fourth and final primary school is unlikely to be required to meet demand being generated from within the site, when adjusted for any significant net inflow of children from off-site going to school within Chilmington Green.
- For viability and deliverability reasons and in recognition that the Secondary School is being brought forward to meet the needs of children from outside the development, a further variation to the Secondary School DoV is now sought to defer the first repayment towards the secondary school Wave Funding school to 2,650 homes and delay the transport infrastructure trigger to May 2024, as set out in Annex A.

## 12 Monitoring and Quality Payments

---

### Quality Payments

- 12.1 Schedule 26 (Quality Agreement) and Schedule 28 (Monitoring Fee) of the S106 require payments of £40,000 and £25,000 respectively for every 300 homes delivered. Part 4 of Schedule 26 states that the Council shall use the monies for staff and related costs to monitor the quality of the Development (including the Quality Agreement, Design Code and other submitted materials). Part 4 of Schedule 28 states that the monies will be used for monitoring compliance with the S106 agreement and planning conditions.
- 12.2 This is a substantial ongoing cost for the delivery of the project which has established design principles in the outline permission and where planning application fees are required to be submitted with reserved matters applications and will help to cover the costs of processing planning applications. Hodson Developments seeks to reduce these amounts to ensure that they meet the tests in Regulation 122.

### Quality Agreement

- 12.3 Hodson Developments acknowledges the importance of ensuring Chilmington Green meets the quality expectations of its stakeholders. However, the costs sought under the Quality Agreement include items that are not distinguishable from costs that ABC will seek at pre-application stage (planning application fees or monitoring costs sought under schedule 27 and 28 of the s106 agreement). This additional cost is therefore not justified.

### Monitoring

- 12.4 **Schedule 28** requires fees adding in total to £475,000 for monitoring of obligations.
- 12.5 Regulation 122 allows costs for monitoring to be secured through a Section 106:
- provided—*
- (a) the sum to be paid fairly and reasonably relates in scale and kind to the development;*
- and*
- (b) the sum to be paid to the authority does not exceed the authority's estimate of its cost of monitoring the development over the lifetime of the planning obligations which relate to that development."*
- 12.6 It is not clear, based on the Section 106, based on any supporting evidence provided to date, and based on the monitoring activity that the LPA has undertaken to date, that this amount meets these tests.
- 12.7 ABC should provide a cost and resource plan to justify all monitoring fees (including those that have already been paid, to be credited if they cannot be justified). Based on a reasonable scope of monitoring activity and based on the level of activity to date, Hodson Developments seeks 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.

## 13 Overview and conclusions

---

### Serving a Useful Purpose

- 13.1 The S106 agreement obligations for Chilmington Green have been thoroughly reviewed to consider whether they serve a useful purpose.
- 13.2 As set out in preceding sections, many of the transport and social infrastructure obligations will only serve a useful purpose if they are modified. Circumstances have changed since obligations were first agreed. Housing delivery at Chilmington Green started later and has proceeded more slowly than originally predicted and updated analysis shows that many obligations should be scaled back or rephased. The changes described in this Statement can be made without conflicting with current planning policies, principally contained in the Chilmington Green Area Action Plan.
- 13.3 In determining planning applications, policy and statute<sup>19</sup> provide that planning obligations can only be imposed if they are necessary to make development acceptable in planning terms, directly relate to the development, and fairly and reasonably related in scale and kind to the development. Similar guiding principles have informed the proposed changes sought herein to the S106 obligations.

### Delivery

- 13.4 As well as ensuring that the obligations are more tailored to the current and future position at Chilmington Green, the overall package of changes to the S106 will also have an important role in reducing the risks to the delivery of this strategically important development and ensuring that it delivers the high quality place which planning policy is seeking to secure. It will help to enable the continuing establishment of new communities, build on progress to date and will reduce the financial burden to the project and help to address the challenges of high upfront infrastructure and S106 costs.
- 13.5 From a strategic housing delivery perspective, it will help to assure and accelerate housing delivery. Currently, the Council does not have a 5 year housing land supply, creating a presumption in favour of granting planning permission which also makes it susceptible to piecemeal speculative development through appeal.
- 13.6 This shortage has the potential to worsen as Natural England's advice continues to create uncertainty for major housing development in ABC's borough, pending final agreement on a mitigation strategy for new housing in the Stour Catchment to demonstrate nutrient neutrality. The Council's *'Five year housing land supply update'* 2021 notes that for sites currently waiting for the borough mitigation strategy, whilst a delay of 3 years for delivery of housing which is ready for occupation has been factored into calculations, further delay is highly likely. The document anticipates that planning permission will be granted for the strategic wetlands in summer 2022 and that the wetlands will be fully operational by Autumn 2024. However, it

---

<sup>19</sup> NPPF (July 2021) paragraph 57 and Regulation 122 (2) of the Community Infrastructure Regulations 2010 (as amended)



is understood that a planning application is yet to be submitted for the strategic wetlands. Should the delivery of this strategic mitigation take longer than anticipated the occupation restrictions may need to stay in place for longer.

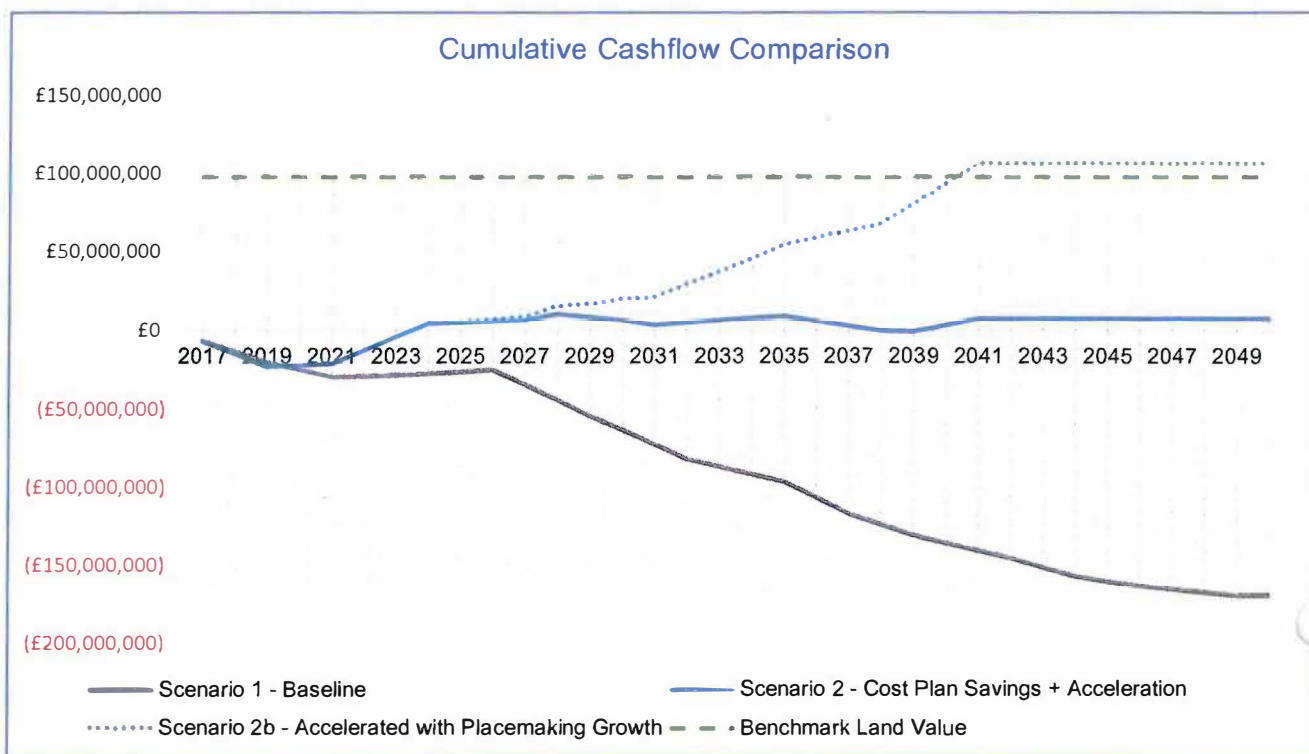
### Other schemes

- 13.7 As housing delivery at Chilmington Green has been delayed other development proposals have come forward. Following the approval of Chilmington Green, various other developments have been proposed including up to 1,000 new homes at Court Lodge (18/01822/AS) and up to 550 new homes at Kingsnorth (LPA 15/00856/AS).
- 13.8 It is important that each of these schemes commits proportionately to transport, social infrastructure and other requirements, taking into account the anticipated delivery timescales and infrastructure requirements at Chilmington Green. Obligations which require Chilmington Green to, in effect, subsidise infrastructure for those developments will not meet a useful purpose and would not be fairly and reasonably related to the scale and kind of development proposed at Chilmington Green. Accordingly, none of these applications should be determined until their S106 obligations have been reviewed having regard to overall infrastructure requirements including the up to date position at Chilmington Green. At the very least any S106 agreement related to other developments should include a 'fallback' type clause to ensure they contribute or deliver infrastructure if they rely upon something which has yet to be delivered at Chilmington Green.

### Viability

- 13.9 The changes to infrastructure timings and details together with the revised viability review mechanism proposed herein are intended to ensure delivery of the scheme. Combined with the further and other variations (discharge/modifications) sought on viability/deliverability grounds, the changes will:
- Create a fundable cashflow and peak debt that will deliver infrastructure at the necessary times but not excessively in advance of this.
  - Diversify and accelerate housing delivery via engagement of multiple housebuilders, enabling placemaking growth and increasing the potential for additional affordable housing.
  - Maintain mixed and balanced communities, with affordable homes in each part of the site.

- 13.10 The chart and table below indicate the position before and after the changes.



	Scheme Plot Receipts	Total Infra / s106 Costs	Affordable Housing %	Scheme Debt (main infra delivery period)	Residual Land Value	Surplus / Deficit to BLV
Prior to Proposed Changes	£175m	£274m	10%	-£135m	-£169m	-£267m
Incorporating Proposed Changes	£188m	£176m	10%	£30m	£7m	-£91m

13.11 Key elements of the approach adopted are:

- Master developer model – engagement of a range of plot housebuilders is considered to be the only realistic way to deliver the scheme within a reasonable time period. The model therefore adopts a “Master Developer” structure, with plots generating a residual land value which is received by the Master Developer (Hodson) who delivers infrastructure and section 106 works / contributions.
- Funding – a cashflow based finance calculation is adopted, with a 7% finance rate, broadly aligned to the Homes England loan. No further fees (e.g. arrangement, commitment, exit etc) are added and this rate is therefore considered to be at the lower end of current market terms.
- Plot housebuilder returns – in order for housebuilders to participate in delivery of the scheme a market return will be required; where this is not the case housebuilders will

simply deliver elsewhere. At present a 12.5% return on private sale homes is included for plot housebuilders. This level is considered to be below typical expectations and could only be feasible where the other appraisal inputs / approaches are adopted (e.g. fully serviced land, level of risk inherent in revenue / cost assumptions, finance allowance etc). Should any of these inputs differ the return would be likely to require amendment.

- Land cost – the land cost paid by Hodson (or the benchmark land value) is excluded. Hodson would therefore only receive this where viability improved.
- Master developer return – no return to Hodson is included. As for land cost, any return could only be achieved where viability improved. Whilst this is clearly not a preferred approach, the opportunity to unlock and move forward the scheme creates future opportunity (albeit many years in the future).

13.12 The “Scenario 2 – Cost Plan Savings & Acceleration” line in the chart above indicates the benefits of the proposed changes, shifting the scheme from a substantial peak debt and overall deficit to a deliverable cashflow and marginal positive overall Residual Land Value. Whilst this Residual Land Value remains substantially below the target / benchmark land value, it is at a level at which the scheme can progress when considered in the round with all other assumptions / inputs. The changes also create the opportunity for placemaking growth, enabling the scheme to move beyond the marginal position. The scheme performance in this scenario is indicated in the “Scenario 2b – Accelerated with Placemaking Growth” line.

13.13 Scenario 2b assumes placemaking growth of 2% per viability review phase. If achieved, the scheme reaches marginally above the Benchmark Land Value, meaning that any further growth will enable additional affordable homes to be delivered. An increased placemaking growth level of 5% may be possible if market conditions were positive, this would allow affordable housing to increase to c.25% for the last 5 review phases. Whilst this increased growth scenario is helpful in indicating the opportunity arising from progressing the scheme, it clearly carries risk so for the avoidance of doubt cannot be relied upon as the base case.

13.14 The maximum level of affordable homes which could be delivered under the proposed amendments to the review mechanism would be 28% for the scheme as a whole.

13.15 Whilst the “Master Developer” approach is considered to be the only realistic way of delivering the scheme, a single developer approach has also been tested. This approach generates a substantial deficit and extends the delivery programme over many decades. It would therefore not be feasible to deliver.

13.16 It is noted that all of the scenarios presented above are on a no-grant basis. Hodson continues to engage with Homes England and will seek to increase the delivery of affordable homes via grant funding if possible.

## Overall Conclusion

13.17 The opportunity for the delivery of a high quality new settlement consistent with the original vision for Chilmington Green remains and Hodson are committed to its delivery, but to do so it is essential for changes requested to the S106 agreement by Application 2 to be confirmed.

- 13.18 The passage of time and changing circumstances since the original S106 obligations were agreed (which changes have largely been beyond the control of Hodson) have added to the challenges that a large scheme like Chilmington Green would have faced in any event.
- 13.19 Many of the provisions of the S106 agreement accompanying the Chilmington Green Planning Permission (12/00400/AS) no longer serve a useful purpose in their current form. In particular, .... transport and social infrastructure obligations can only serve a useful purpose if they are modified in the ways set out in this submission.