

**TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (INQUIRIES PROCEDURE) (ENGLAND)
RULES 2000**

**LAND NORTH OF POSSINGHAM FARMHOUSE
ASHFORD ROAD, GREAT CHART, KENT, TN26 1JR**

**PINS Reference:
APP/E2205/W/24/334454**

**Application Numbers:
22/00571/AS**

**OPENING SUBMISSIONS ON BEHALF OF
THE APPELLANT
HODSON DEVELOPMENTS LTD**

A. INTRODUCTION

1. There is a national crisis in the provision of housing. That crisis can only be addressed one way, which is to grant planning permission for additional housing.
2. The Appellant seeks permission for the following development:

“Outline application for the development of up to 655 residential dwellings (including 30% affordable dwellings) to consider access only (excluding internal circulation routes), with all other matters reserved.”
3. Additionally, Ashford Borough Council (“ABC”) cannot demonstrate a five-year housing land supply, contrary to the requirements of the National Planning Policy Framework (“NPPF”), which seeks to “*significantly boost*” the supply of housing.
4. The Appellant is committed to developing the appeal site and, as the main developer of the adjacent Chilmington Green, has a long-term interest in getting the proposed development, design, facilities and use right on this site that lies immediately adjacent. The proposed development will be delivered in line with the aspirations and overall vision for the wider Chilmington Green development.
5. The site will provide a readily deliverable and sustainable development in a location where strategic housing growth is not only expected but supported by adopted planning policy. The proposed development also provides appropriate opportunities to support sustainable travel patterns through providing for bus, cycle and pedestrian movements both to and within the Site. These contributions are offered towards supporting sustainable travel through the s.106 agreement.
6. Furthermore, the proposed development will allow the Appellant to unlock part of the Chilmington Green site that is currently stalled due to Stodmarsh and delivery issues, which will be resolved in part by the proposed development helping to fund the capital expenditure associated with the Wastewater Treatment Works (“WwTW” or “WwTP”)¹, all while also delivering a significant number of houses in the short term, including much needed affordable housing.

¹ Collins, Proof, para 4.9.6: *“The cost of the WwTW is predicted to be significantly in excess of £5million and was not an expected cost for Chilmington Green when the*

7. On a fair and objective planning balance, therefore, the proposed development should receive planning permission. The proposal accords with the development plan and, in the case of any conflicts with policy, the significant economic, social and environmental benefits of the proposed development significantly and demonstrably outweigh any adverse impacts. The proposals are justified having regard to the NPPF and the presumption in favour of sustainable development. There are no adverse impacts that cannot be mitigated and/or demonstrably outweighed in this case.
8. ABC's Planning Committee refused permission on 13 December 2023, citing 9 reasons for refusal.
9. However, 3 of the 9 initial reasons for refusal are no longer pursued by ABC as a result of further discussions between the parties: the reasons for refusal concerning ecology (RfR 4); flood risk and drainage (RfR 5); and heritage (RfR 6) have all been formally withdrawn. There is very little, if any, remaining dispute with regards to nutrient neutrality (RfR 8). Furthermore, reasons for refusal 7 (climate change resilience) and 9 (s.106 agreement) are clearly capable of being addressed through a combination of compliance with Building Regulation requirements, planning conditions and the draft s.106 agreement.

B. MATTERS NOW IN AGREEMENT

10. The site and wider area are described more fully in evidence and in the Statement of Common Ground ("**SoCG**"). Although not itself allocated for development, the site lies immediately adjacent to (and thus falls to be considered within the context of) the wider Chilmington Green development, which is allocated in the adopted development plan and Chilmington Green Area Action Plan (AAP). The site offers the potential for a logical expansion of the allocated development.

s.106 agreement and planning consent was granted. Chilmington Green is already heavily loaded with early delivery of infrastructure items which is challenging its viability. The need for the WwTW further reduced the viability of the scheme. Therefore, Possingham will help to deliver a capital receipt that would help to fund the WwTW."

11. A small section of the site (to the north-east) is located within the boundary of the adopted Chilmington Green AAP. However, the proposed development does not include any housing or greenspace on the land within the site that is located within the Chilmington Green development site. The only development proposed on this land is an access road leading south, which is applied for in 'Full' and is shown on the proposed Primary Access Arrangement Plan.
12. So far as is relevant for the purposes of this appeal, it is agreed² that the development plan comprises i) the Adopted Ashford Local Plan 2030 and proposals map; ii) Chilmington Green Area Action Plan (AAP).
13. There is no objection to the principle of residential development on the site *per se*, provided that the location can be made sustainable.
14. Furthermore, a number of very critical matters are now agreed between ABC, KCC and the Appellant, including that:
 - a. The proposed development would result in less than substantial harm to the setting of the listed Possingham Farmhouse, which would sit at the lower end of the scale. The heritage reason for refusal has also now been withdrawn.
 - b. The ecology SoCG demonstrates that related issues can be overcome (and the ecology reason for refusal has now been withdrawn), including:
 - 1) In relation to skylark, a mitigation and compensation strategy is achievable.
 - 2) With the benefit of an updated Landscape Parameter Plan / Open Space Plan³, agreement has been reached with regards to the necessary avoidance, mitigation and compensation measures required for protected species and priority habitats;
 - 3) A condition can be imposed for the monitoring of the effects during the construction and post construction to be able to review

² For the purposes of this appeal, it is agreed that the Kent and Minerals Waste Plan and 6no. neighbourhood plans are not relevant.

³ N, D0410_001 F dated 9 September 2024.

the predicted impacts and provide feedback as to the effectiveness of mitigation on species, specifically birds and dormice over both the short and long term.

- 4) A condition can be imposed (alongside a legal agreement) to provide a long-term management and monitoring plan in the form of a Landscape and Ecological Management Plan (“LEMP”) in accordance with BS42020 for both on and off-site habitats.
- c. The drainage SoCG demonstrates that drainage issues can be overcome and that there are no remaining areas of disagreement in respect of flood risk (the associated reason for refusal has now been withdrawn).
 - d. The education SoCG demonstrates that it is agreed that:
 - 1) there is no justification for Early Years or Primary School planning obligations; and
 - 2) the request for Special Education Needs and Disabilities infrastructure is justified.
 - e. As to nutrient neutrality, the Appellant and future operator are satisfied that wastewater flows from the proposed development can be adequately treated by the (now approved) WwTW, which has a treatment capacity of up to 2,700 dwellings. If the discharge rate is limited to 3 litres p/s then the plant can treat up to 980 dwellings without additional measures. Additional measures could include storage of water on site and reuse of water on site or in the Chilmington Green area rather than going straight to discharge, such that there is good reason to conclude that the capacity will be above the 980 figure.
 - f. There are no amenity reasons for refusal in respect of the relationship between existing and proposed properties. The development is not considered to result in an unacceptable loss of privacy, overlooking, loss of light or overbearing to neighbouring properties. To mitigate any potential disturbance during the construction process, it is agreed that a Construction Environmental Management Plan can be secured by condition. It is agreed that conditions could be imposed to ensure that future residents benefit from adequate internal and external private space.
 - g. There would not be any material impact on the operation of the Strategic Road Network.

C. THE DEVELOPMENT PLAN

15. The Appellant's case is that the proposed development complies fully with the development plan, which is up-to-date.
16. Given ABC's lack of a five-year housing land supply, the 'tilted balance' applies in any event, and permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

D. MAIN ISSUES

17. The CMC note sets out the main issues for this inquiry, as follows:
 - a. Whether the proposed development would cause unacceptable harm to the character and appearance of the area;
 - b. Whether the proposed development would provide a good standard of amenity for future residents of the development;
 - c. Whether the future residents of the proposed development would be able to access local services with genuine alternatives to car-based travel;
 - d. Whether traffic from the proposed development would have an unacceptable effect on the safe operation and capacity of the local highway network, and
 - e. Whether the benefits of the scheme would outweigh any identified harm.
18. In light of further progress, we highlight the reduced number of issues remaining at this appeal, as follows.

Landscape and visual impact

19. When considering these matters, it is important to recognise that design and architectural treatment of built form is reserved for future consideration.

Landscape and character

20. The evidence of Mr Tully⁴ demonstrates that:

- a. With sensitive detailed design, the outline proposals for landscape buffers containing and defining the components of the proposed development would meet the criteria set down in Policy HOU5 and would provide an appropriately sized and designed landscape buffer to the A28 and countryside to the south and west.
- b. The varying width of the buffer zones surrounding development parcels provides opportunities for a range of landscape typologies which can be tailored to suit different functions including screening, view framing and enhancement, definition of routes and waymarking, creation of wildlife corridors and covers and containment of public open space and amenity areas.
- c. Since the outline submission, further work assessing the biodiversity of the site and potential enhancement for wildlife promotion has been undertaken by Corylus Ecology. The BNG report submitted to ABC recommends wider establishment of scrub areas in association with the woodland and hedgerow buffers, which is indicated on the revised Landscape Parameter Plan⁵.
- d. The density profiles and their relationship to the adjacent Chilmington Green development parcel are fully justified and appropriate. By following the design principles set out in the Chilmington Green Design Code, the proposed development will create a natural and sustainable extension to the approved masterplan whilst enhancing the local landscape character and potential for biodiversity gain.
- e. The structural and buffer landscape strategy of the proposed development and the manner in which it addresses the issues of impact on local landscape character and views, would create adequate containment, screening and softening of the proposed urban form and density and would provide visual and ecological benefits while presenting a limited and localised effect on landscape character and visual amenity.

⁴ Tully, Proof, paras 1.8-1.10.

⁵ Figure 03, D0410_001 Open Space Plan.

21. Overall, the appeal proposals, whilst resulting in a change in the local landscape character of the site from agricultural to primarily residential use, will not result in substantial harm to the wider landscape character and views from local receptors. In any event, the landscape character of the site must necessarily now be considered in the context of the considerable scale of change that will arise as a result of the adjacent Chilmington Green development.

22. Indeed, the visual impact and altering effect of the “*developing edge of Chilmington Green*” as part of the relevant baseline was recently noted by the Inspector when granting permission for the “*proposed construction of a Wastewater Treatment Plant, associated landscaping, and proposed vehicular access from Chilmington Green Road*” (i.e. the very recent, and highly relevant, appeal reference APP/E2205/W/24/3345453, the “**WwTW appeal**”), including as follows:

“21. ... I am mindful that in these identified views the proposed development at Chilmington Green would be a modifying feature. In this regard, although the proposal would be an intrusive and urbanising element, its effects would be diminished by the changing context of the site, and this effect would be intensified as development continues.

22. ... taking into account the extent to which the Chilmington Green development would alter these views, I consider these impacts to be overstated. Whilst I note that most of the development at the site has outline permission, and is currently stalled, I nonetheless take into account that large scale development is part of the development plan and the Council have not indicated that they consider the development will not go ahead.

23. Quite obviously, the same point applies with equal force to diminish the urbanising effect of the appeal proposals.

Density

24. As to the density of the proposed development, ABC’s case appears to be centred around an objection to a range of densities that differs from those permitted at Chilmington Green and, thus, an alleged failure to accord with the character of that adjacent development.

25. On proper analysis, those concerns are not well founded for a number of reasons:

- a. When comparing like with like, the proposed densities at the southern end of the appeal site are reflective of the southern boundary of Chilmington Green, albeit a little higher, which is expected on the Ashford Road corridor. Otherwise, the densities are consistent with other parcels within Chilmington Green⁶.
 - b. The proposed development is consistent with i) the approach set out within the Design Guide; and ii) what ABC has considered acceptable for the Chilmington Green site itself⁷.
 - c. The buffers for the appeal site are large, with a layout that does not look to be denser than phases that have already been built out successfully (and in award winning fashion) at Chilmington Green⁸.
 - d. The proposed development is consistent with how the interface between town and countryside actually presents across Ashford and is, therefore, in keeping with the surrounding edge of settlement developments⁹.
26. In any event, even if the proposed densities are considered to be a material departure from those approved at Chilmington Green, ABC's criticism is lacking in an important material respect; namely, it fails entirely to address what planning harm actually arises from any perceived departure. The reality, of course, is that no such harm arises – for precisely the same reasons cited above. In short, the parameter plans are acceptable in respect of the range of densities and building heights and there is no basis to conclude that a scheme of a design quality at least equivalent to the high standard of Chilmington Green cannot be achieved¹⁰.
27. It is important to make efficient use of land and to provide housing. Density levels cannot be too high unless they cause demonstrable harm.

⁶ Collins, Proof, para 9.3.6; paras 9.3.12 – 9.3.19.

⁷ Collins, Proof, para 9.3.19.

⁸ Collins, Proof, para 9.3.7 – 9.3.11.

⁹ Collins, Proof, paras 9.3.21 – 9.3.29.

¹⁰ Collins, Proof, para 9.3.30.

Public amenity

28. ABC asserts that the proposed density would result in a failure to provide a good standard of public amenity.
29. Again, that assertion is not well founded¹¹ given that i) buffer zones, open spaces and play areas would be provided within the Possingham Farm development ii) the wider Chilmington Green development provides very extensive areas of public open space in addition to; and iii) the amount of open space to be delivered can be controlled by detailed design and a suitably worded s.106 agreement.

Sustainable location, highways and transportation

Sustainable location

30. The reason for refusal is based on ABC considering the Site as being “*presently*” in an unsustainable location. However, the correct question is whether it will be a sustainable location given the application scheme, conditions and the s.106 requiring off-site provision to be in place and the development forming a logical extension of the wider sustainable Chilmington Green urban extension.
31. The evidence of Mr Collins and Mr Dix will demonstrate that the appeal proposals represent a sustainable form of development, having specific regard to the type of development proposed and the services and facilities that will be accessible within the wider Chilmington Green Development. The layout of the residential development is designed to promote walking and cycling, thereby integrating the site with the neighbouring consented sustainable urban extension at Chilmington Green. This will encompass both existing Public Rights of Way routes as well as proposed walking and cycling infrastructure. The proposed new bus service provision will benefit not only residents within the site and Chilmington Green, but also extend to the wider community within Ashford.

¹¹ Collins, Proof, section 9.4.

Highways impact

32. The matter in dispute is whether the development would have a severe impact on the highway network and/or an unacceptable impact on highway safety.
33. Once disagreements over modelling and methodologies are understood and put to one side, it becomes clear that there are essentially four remaining, material, points of dispute between Mr Hogben (for KCC) and Mr Dix:
- a. The distribution (where to) and assignment (which route) of traffic from the site;
 - b. The extent of any existing issues along the A28 corridor;
 - c. The extent of any impacts arising from the proposed development on three key junctions¹²; and
 - d. Whether there are solutions that could satisfactorily mitigate those impacts or whether, as appears to be KCC's case, those impacts can only be mitigated by its preferred A28 dualling scheme.
34. The evidence of Mr Dix demonstrates that:
- a. The appeal proposal is consistent with national and local transport related policies.
 - b. The site is in a location that will be highly accessible for all modes of transport. There will be a range of local facilities within reasonable walking and cycling distance of the site, including primary and secondary schools and the local centre in Chilmington Green¹³. The proposed bus services will provide connections to facilities further afield, including the train station. There will be genuine alternatives to travelling by car.
 - c. A package of transport related measures has been identified and is offered by the Appellant in order to further improve the accessibility of the site.

¹² Referred to as i) the Matalan roundabout (Dix, Proof, paras 7.22 – 7.37); ii) the Loudon Way Traffic Signal junction (Dix, Proof, paras 7.38 – 7.48); and iii) the Tank roundabout (Dix, Proof, paras 7.49 – 7.57).

¹³ Dix, Table ID4.3 provides a summary of local facilities and when they will be in place. Dix, Table IDR2.1 provides a summary of the facilities identified by Mr Hogben for KCC and when the facilities and associated links will be provided.

All of the identified local facilities and the links and services to them are either in place or will be in place at an early stage of development¹⁴.

- d. The proposed site accesses would safely accommodate traffic associated with the proposal.

35. Mr Dix's evidence and associated transport assessments demonstrate that, with the benefit of conditions and the Appellant's proposed mitigation measures (including in respect of the A28 to the north of the site¹⁵), the proposal would not give rise to any severe highway or transport impacts (including residual cumulative impacts). Indeed, Mr Dix considers that the Appellant's proposed mitigation would provide a net benefit to the network. Therefore, the appeal should not be refused on highways or transport grounds.

Nutrient neutrality

36. The proposed development will not have an adverse impact on the integrity of the Stodmarsh SAC, SPA, SSSI and Ramsar Site alone or in combination with other plans or projects.

37. The site is located outside the Stodmarsh hydrological catchment. There is no pathway for nutrients in surface water to impact Stodmarsh.

38. The foul drainage strategy and nutrient neutrality mitigation for the proposed development is for wastewater to be conveyed to a WwTW for treatment before discharge into the River Beult catchment, thereby avoiding entirely the River Stour catchment. In this regard, the Appellant notes:

- a. Mr Carter accepts on behalf of ABC that *"the offsite WwTP, if granted planning permission, is capable of resolving this reason for refusal, subject to the imposition of a suitable mechanism to tie the WwTP to the appeal scheme"*¹⁶.

¹⁴ Dix, Rebuttal, para 2.9.

¹⁵ In this regard, Mr Dix's assessment of the implications of traffic associated with the Appeal Scheme shows that it is the committed developments that create the future issues on the A28. The implications of the Appeal Scheme would be mitigated by the Appellant's proposed improvements.

¹⁶ Carter, Proof, para 6.2.

- b. The WwTW appeal was allowed on 19 September 2024.
- c. The planning system should just assume that the Environment Agency will do its job in dealing with the permit (see WwTW appeal, para 26-28).

39. Since the WwTW appeal has now been allowed, and STC has indicated that it will meet the necessary standards for an environmental permit to be granted, it is unclear whether it is still disputed whether suitable mitigation measures can be demonstrated and secured to prevent the development from adding to the deterioration of the water quality at the Stodmarsh SPA/SAC.

E. BENEFITS

40. The evidence of Mr Collins demonstrates that the proposed development will deliver a number of important planning benefits¹⁷, including:

Benefit	Weight attributed
Provision of much needed housing	Significant weight
Affordable housing contribution	Significant weight
Contribution to delivery of spatial strategy	Significant weight
Delivery of 5 self-build / custom build plots	Moderate weight
Delivery of a high-quality development	Moderate weight
Delivery of new public open space and play facilities to support sustainable movement and ecology corridors	Moderate weight
Contribution to local economy through construction and occupation phases	Moderate weight
Ecological and landscape benefits	Moderate weight
Development will secure monies for the Council under the New Homes bonus	Moderate weight
Will help fund the wastewater treatment works needed due to the nutrient neutrality issue	Significant weight
Will assist in delivering footpath and cycleway connections in the short term	Moderate weight
Will help bring forward delivery of some services and facilities within Chilmington Green at an earlier date than it is currently viable to do so and in doing so will increase the level of sustainability of the location	Moderate weight

¹⁷ Collins, Proof, Table 3.1 and Section 15.

F. THIRD PARTY OBJECTIONS

41. Other objections and concerns raised by Third Parties¹⁸ are addressed in the Appellant's evidence by reference to the various themes.
42. In the course of the appeal, a Heritage Briefing Note was submitted on behalf of Mrs Cleaves (the "**Tor&Co Briefing Note**"). The Tor&Co Briefing Note agrees with the assessments conducted on behalf of the Appellant and ABC that the harm to the setting of the listed Possingham Farmhouse would be 'less than substantial', but asserts that such harm should be assessed as 'moderate', rather than 'very low'¹⁹ or 'low'²⁰. However, in reaching that conclusion, the Appellant considers that the experiential relationship between the Site and the listed building is overstated, and by extension the contribution of the Appeal Site to the significance of the building is also overstated²¹.
43. In short, although concerns about a new development are always understandable because of the effect of change, none of the concerns raised are justifiable grounds for refusing this appeal because they are – in very large part – not endorsed by the consultation responses and have all been dealt with in great detail by the application documents and the Appellant's evidence, which show that the concerns are simply not made out.

G. SECTION 106 CONTRIBUTIONS

44. The draft s.106 agreement contains a number of 'blue pencil' clauses, which are included in the alternative – depending on which parties' evidence the Inspector prefers on any outstanding point.
45. The Appellant will continue to negotiate the draft s.106 agreement with the Councils. In the event that the draft s.106 agreement is not concluded, then the

¹⁸ A total of 52 letters were received in response to the application and further representations in response to the Appeal.

¹⁹ As per the Appellant.

²⁰ As per ABC.

²¹ RPS Built Heritage Technical Note (dated 23 September 2024).

Appellant will offer a comprehensive set of obligations in the form of a Unilateral Undertaking.

46. For the purpose of these opening remarks, the Appellant observes as follows with regards to some of the key, outstanding, points of negotiation.

The statutory tests

47. Planning obligations may only constitute a reason for granting planning permission if they meet the following statutory tests²². They must be:
- a. Necessary to make the development acceptable in planning terms;
 - b. Directly related to the development; and
 - c. Fairly and reasonably related in scale and kind to the development.

Matters in dispute

48. By reference to the draft s.106 agreement, those clauses where the drafting is agreed, but there are discrete points of evidence as to whether the particular obligation is in fact required and/or justified are as follows:
- a. Schedule 1 (paragraphs 2.9-2.14 only) - Quality Monitoring Fee
 - b. Schedule 6 - Art and Creative and Creative Industries Contribution
 - c. Schedule 8 - Community Building Contribution
 - d. Schedule 12 - Indoor Sport Contribution
 - e. Schedule 13 - Libraries Contribution
 - f. Schedule 14 - Outdoor Sports Contribution
 - g. Schedule 16 - Secondary School Contribution
 - h. Schedule 22 - Strategic Parks Contribution
 - i. Schedule 26 - Waste Disposal Contribution

49. Part of the Appellant's case in respect of a number of the outstanding points is that the Councils are plainly not justified in seeking such contributions in respect of the proposed development if the same or similar contributions have not been sought in respect of comparable developments elsewhere in the area that are likely to have the same or similar impacts. The Appellant's evidence cites a number of examples

²² CIL Regulations, Reg 122; NPPF, para 57.

where this appears to be the case, including with reference to similar developments at Court Lodge and Kingsnorth.

Healthcare contribution

50. There is a remaining dispute about the drafting of Schedule 10 and, specifically, where any healthcare contribution can be expended, with the Appellant's position being that it ought to be required to be on the Chilmington Green main site, given the need to satisfy the statutory tests.

Education

51. With regards to education contributions, the sole remaining matter in dispute is the requirement for Secondary School planning obligations (see Schedule 16).

52. It is agreed that the proposed development is likely to generate 86 Secondary School aged pupils when fully built out. A developer is not required to pay for the number of pupils who will live on the site, but only to make up any shortfall in capacity caused by the scheme. That is to be judged as pupil numbers change over time.

53. In this regard, the evidence of Mr Hunter²³ demonstrates that:

- a. There are currently (2023/24 academic year) spare places in the two schools that directly serve the proposed development, which makes KCC's request for 100% of the child yield of the proposed development highly questionable. Beyond this, KCC has projections verified by the DfE that show 446 spare places across Non-Selective Ashford Secondary Schools by 2029/30, which includes the fully funded new school on Chilmington Green. 446 spare places is over five times the child yield of the proposed development. The headroom forecast in the planning area is substantial and considerably beyond any margin of error, and therefore the Inspector can have a very high confidence in this conclusion.
- b. KCC's Commissioning Plan for Education 2024-2028 shows the Ashford Non-Selective Schools having 144 (almost five forms of entry) spare places in Year 7 by 2030/31. The proposed development is expected to generate

²³ Hunter, Summary, paras 3.1 – 3.6.

17 pupils in Year 7 when fully built out. This again demonstrates that KCC does not anticipate an issue in non-selective admissions schools that could serve this site, as the fully funded Chilmington Green School has added more than sufficient capacity to the area at a rate that exceeds the child yield of the proposed development.

- c. The only way that KCC can justify planning obligations is by erroneously adding in the full child yield of Chilmington Green (which will not materialise for 20 plus years based on the current build out), the full child yield of developments without signed s.106 agreements (which may still be refused or will provide Secondary School planning obligations) and the full child yield of this site, which will come forward gradually as the development builds out. When these errors are adjusted, the picture is completely different, and planning obligations for additional provision are demonstrably excessive and not CIL Regulation compliant.

Community facilities, open space and sports

54. The Chilmington Green development includes considerable provision of community facilities, open space and sports facilities (such as at the secondary school), including a temporary community facility that is already on site, but very underutilised. It is considered this facility alone has capacity to accommodate the needs of the proposed development²⁴. In due course, the Appellant will provide a permanent community hub as that development progresses.

55. Based on the existing and committed provision, it is considered that the requests for payments toward a community building, the voluntary sector and the arts are not necessary to make the development acceptable.

Highways and transportation

56. From the perspective of ensuring the site's sustainability, the Appellant is willing to provide the following infrastructure prior to first occupation of any dwellings in order to ensure the accessibility of existing facilities:

- a. Access Roundabout C;

²⁴ Collins, Proof, para 13.2.19.

- b. Avenue from Access C Roundabout to Chilmington Green Road;
- c. Formal pedestrian crossing across Chilmington Green Road;
- d. Active Travel route between the formal pedestrian crossing across Chilmington Green Road and Secondary School;
- e. Footway and cycleway links from Parcel B, C, J and K at Chilmington Green to Singleton.

57. The Appellant has proposed a proportionate level of bus service provision, both in terms of number and frequency²⁵, along with provision of the associated bus stops. It is understood that KCC wants a more frequent service to be provided throughout the day²⁶. There is also a dispute in terms of the appropriate occupation trigger.

58. From the perspective of mitigating any highways impacts, it is agreed that there are existing issues along the A28 corridor. However, the extent of those issues, along with the extent of any impacts arising from the proposed development on the three key junctions is not agreed and remains a matter for evidence.

59. Detailed analysis has been undertaken of the three key junctions, with the following mitigation measures proposed by the Appellant:

- a. Matalan roundabout – improvements at the roundabout and at the Loudon Way traffic signals to increase capacity at the junction;
- b. Loudon Way traffic signals – improvements at the junction to increase capacity at both the Matalan roundabout and the junction itself;
- c. Tank roundabout – a contribution to improve the crossing to the south of Tank roundabout to increase the flow of traffic on the A28.

60. The key difference between the parties is whether, as is the Appellant's case, there are solutions that could satisfactorily mitigate the identified impacts or whether, as appears to be KCC's case, those impacts can only be mitigated by its preferred A28 dualling scheme. The Appellant's case is that the full A28 dualling scheme

²⁵ Every 30 minutes during peak hours and every hour during non-peak hours.

²⁶ Every 30 minutes.

works are not required because the impacts of the proposed development can be mitigated by implementing alternative works.

61. Further, and in any event, the Appellant does not accept that the figures provided by KCC in respect of its A28 dualling scheme are either accurate or properly evidence-based. The Appellant has requested a detailed breakdown of costs from KCC to understand the calculation and to explore whether a figure can be agreed or whether an alternative sum is required to mitigate. It will therefore be a matter for evidence as to whether i) similar developments elsewhere with impacts on the A28 corridor (e.g. Court Lodge) have been required to provide similar contributions; ii) the sum being sought is either accurate (in the absence of a full and proper breakdown); or iii) proportionate to the impact arising from appeal scheme.

62. There also remains a dispute about whether an occupation restriction is required and, if so, what level it ought to be set at. The Appellant's approach is simply to seek parity with other comparable developments. In this regard, it is again appropriate to compare with Court Lodge, where the impact on traffic generation for the purposes of the A28 is at the very least comparable, but where a restriction on occupation has been set at 500 units.

Management body

63. There is an 'in principle' difference between the parties as to the appropriate management arrangements - see Schedule 20, Option A (Stewardship Body) or Option B (Management Company). The Appellant sees no proper justification for adopting anything other than a straightforward model, as has been adopted elsewhere in relation to comparable developments in the area. The Appellant's proposed approach is plainly acceptable.

Stodmarsh mitigation

64. In brief summary, ABC is understood to be seeking transfer of the relevant land, ringfencing of the WwTW's capacity and an obligation in respect of its ongoing operation and maintenance.

65. The Appellant's position is that transfer of land is neither necessary nor proportionate and that the ongoing operation and maintenance is a matter for STC as operator and statutory undertaker. There is also an issue between the parties as to the extent that these issues could be appropriately covered by condition, rather than obligation.

H. CONCLUSION

66. For the above and other reasons, which will be explored during the course of the Inquiry, the Appellant will in due course invite that the appeal is allowed.

67. Should the Inspector choose to grant permission on appeal, then the Appellant accepts that the permission ought to be i) conditional upon imposition of the list of (largely) agreed conditions; and ii) subject to the planning obligations as set out in the draft s.106 agreement.

**RICHARD HARWOOD OBE KC
JONATHAN DARBY**

**39 Essex Chambers, London
8 October 2024**