



ASHFORD
BOROUGH COUNCIL

Rebuttal Proof of Evidence of Faye Tomlinson in respect of:

Land north of Possingham Farmhouse, Ashford Road, Great Chart, Kent.

Appeal by:

Hodson Developments Ltd

Appeal Reference: APP/E2205/W/24/3345454

Planning Application Reference: 22/00571/AS

24 September 2024

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1.0 Introduction

1.1 I, Faye Tomlinson, am employed by Ashford Borough Council (The “Council”) as a Team Leader (Strategic Applications) in the Planning and Development Department. My qualifications and experience are set out within my main Proof of Evidence.

1.2 The evidence that I provide within this Rebuttal Proof of Evidence is true to the best of my knowledge and has been prepared and is given in accordance with the guidance of my professional institution. The opinions expressed are my own and are formed from professional judgement based on my knowledge and good practice.

1.3 In this Rebuttal Proof of Evidence I seek to address statements made (on behalf of the appellant) by Mr John Collins in his Planning Proof of Evidence and Mr Ian Dix in Section 4.0 of his Highways Proof of Evidence. In accordance with the Government’s ‘Procedural Guide: Planning appeals – England, 12 September 2024’ (paragraph 11.13.2) I do not seek to restate my own evidence and I seek to present only points of rebuttal where it may assist the inquiry to have a rebuttal in writing and / or deal with matters that had not been previously presented by the appellant. I do not seek to rebut all of the evidence presented by Mr Collins and Mr Dix and the fact that I do not rebut all points should not in any way be taken that I accept that the evidence is correct.

2.0 Rebuttal to the Appellant’s Planning Proof of Evidence

Appellant’s Section 1: Introduction

2.1 The appellant’s paragraph 1.3.4 refers to ‘Appendix A’, stating that it “*serves to highlight the very significant road infrastructure which has already been*

delivered on Site to facilitate access to the primary school, secondary school and future phases of residential development". However, Appendix A provides no details of the road infrastructure that has been delivered on site to date. Instead it only provides details of the status of housing land parcels owned by the appellant in Phase 1 of the Chilmington Green development. The only road infrastructure on site delivered by the appellant are roads to access housing land parcels occupied/currently under construction (I note that these roads do not yet have their wearing course and have not been adopted by the County Council). The primary and secondary schools are located on existing country lanes with no footpaths or provision for cyclists. There are currently no roads directly connecting the schools to the housing land parcels in Phase 1, the only road is the A28, a fast highway with no footpaths.

2.2 For completeness, there are two housing parcels in Phase 1 of the Chilmington Green development not identified by the appellant in Appendix A. These are owned and being developed by others and the details are as follows:

- Parcel P (Jarvis) is nearing completion.
- Parcels Q1 & Q2 (BDW) are complete.
- Parcel R (BDW) is nearing completion.

2.3 In paragraph 1.3.6 the appellant states that *"the application to vary the S106 is not a matter for this Appeal to consider and I demonstrate in evidence that this Appeal scheme is deliverable in its own right"*. The appellant goes on to state that the appeal development is *'self-contained'*. However, the appellant's evidence relies on infrastructure and facilities to be provided as part of the Chilmington Green development that is currently the subject of the appellant's

appeal to vary the Chilmington Green S106, in particular in relating to the timing of the delivery of the infrastructure and facilities. It is my view that the appellant's appeal by which it seeks to vary the Chilmington Green S106 is relevant to the Possingham Farm appeal, given that the Possingham Farm appeal scheme expressly relies on infrastructure and facilities which are the subject of that appeal.

Appellant's Section 2: The Site & Background

- 2.4 In paragraph 2.1.4 the appellant states that "*The northern boundary of the Site is bound by the newly constructed road (The Avenue)*". I question the accuracy of this statement. This road is only partially constructed, and it is not open to vehicles or pedestrians.
- 2.5 With reference to the bullet point list of facilities that the appellant states has been delivered, I disagree that the '*temporary community facility*' is '*large in scale*'. It is a single storey temporary building with circa 170sq/m floorspace, comprising a circa 54sq/m community space, a circa 27sq/m meeting room and associated CMO office, kitchen and toilet facilities. I also disagree that road infrastructure and pedestrian connections have been delivered. As stated above, the only road infrastructure delivered are roads to access housing land parcels. The main road access that is to link the Phase 1 and Phase 2 land parcels, known as The Avenue Phases 1 & 2, has only been partially constructed and is not open to vehicles or pedestrians. In addition, upgrades to existing field paths (PROW) have been delivered by the County Council to connect land parcels A & E and land parcel P to the primary school but I am not aware of any other pedestrian connections that have been delivered. The appellant should clarify what "*road infrastructure and pedestrian connections*"

they have delivered, their stage of construction and when they will be open to the public for both vehicular and pedestrian use.

Appellant's Section 4: Development at Chilmington Green

- 2.6 To clarify, the appellant refers in paragraph 4.3.2 to “*a south Ashford orbital road linking the A28 and A2070*”. This has not been delivered and there are no current plans to deliver this road.
- 2.7 In addition, paragraph 4.8.3 suggests that the Local Plan 2030 allocated housing sites at Chilmington Green which it does not. The allocation for Chilmington Green is set out in the Chilmington Green AAP.
- 2.8 In sections 4.1-4.8 the appellant refers to Ashford's spatial strategy for south Ashford, a strategy that the appellant has attributed ‘significant weight’ to in paragraph 3.2.1. However, the appeal site lies outside of the area of south Ashford allocated for development in the spatial strategy. It is therefore unclear how “*the appeal proposals form a critical part in the delivery of the Council's strategic vision for growth*” as stated by the appellant in paragraph 4.8.4.
- 2.9 Paragraph 4.9.1 refers to Appendix A which the appellant states “*sets out the masterplan for Chilmington Green and the different phases for the development*”. I note that this plan has been produced for this appeal and does not form part of the approved plans for Chilmington Green. The dwellings on parcels A; B; C1; C2; E; J; and K referred to on the plan, alongside the dwellings on parcels P; Q1; Q2 and R referred to in paragraph 2.2 above, total the 763 dwellings that currently benefit from reserved matters permission and can be constructed without the need to demonstrate nutrient neutrality.

- 2.10 At the time of drafting my Proof of Evidence the number of occupations on site was 360 (refer to paragraph 3.10 of my Proof). These occupations have occurred on parcels A; C2; E; J; P; Q1; Q2 and R. The reserved matters scheme for parcels D & H is agreed with the appellant, subject to the completion of a S106 legal agreement to secure nutrient neutrality. Discussion and negotiations are on-going between the Council and the appellant with regard to the schemes for parcels CH1 & CH2; F & G; I; L; M & O and the timescales for reaching agreement on these reserved matters application is not clear.
- 2.11 No reserved matters applications for Phase 2 of the Chilmington Green development have been submitted, however, in accordance with condition 5 of the outline planning permission for Chilmington Green all reserved matters applications for Phase 2 must be submitted by 6 January 2025. Prior to the submission of any Phase 2 reserved matters several conditions attached to the outline planning permission must be discharged. These include condition 17 which requires the Phase 2 Masterplan to be agreed; conditions 93; 94; 95 & 97 relating to archaeology and conditions 80-87 relating to ecology. Applications to discharge these conditions were submitted by the appellant in the summer of 2022, however, these conditions cannot yet be discharged because insufficient information has been submitted by the appellant.
- 2.12 In accordance with condition 7 of the Chilmington Green outline planning permission, applications for reserved matters for Phase 3 of the development are required to be submitted by 6 January 2030 (13 years from the date of the outline planning permission). Furthermore, applications for reserved matters for Phase 4 are required to be submitted by 6 January 2032 (18 years from the date of the outline planning permission) in accordance with condition 9.

- 2.13 I note that the appellant's appeal against the Council's decision to refuse planning permission for the Chilmington Green WwTP was allowed on 19 September 2024 (ref: APP/E2205/W/24/3345453). However, in light of the status of the reserved matters and discharge of conditions applications referred to above, in addition to the number of pre-commencement conditions the Inspector has attached to the planning permission for the WwTP, including the requirement to obtain an Permit from the Environment Agency before construction can commence on the WwTP (condition 8), it is not clear that the pace of construction of the Chilmington Green development would increase significantly in the short to medium term.
- 2.14 It is not clear in the appellant's paragraph 4.9.4 what is meant by the statement that the determination of planning applications is being held up due to "*the restrictions arising from the S106*". The Council is not aware of any restrictions in the S106 that are holding up determination of these applications. The applications are yet to be determined due to the appellant needing to demonstrate nutrient neutrality, and/or because the Council is waiting for the appellant to submit additional information in order for the applications to be fully assessed.
- 2.15 In paragraph 4.9.5, when referring to the Chilmington Green development, the appellant states that "*By allowing this Appeal, it will allow the Appellant to unlock part of the Site*" (I take this to mean the Chilmington Green site). The appellant expands on this point in paragraph 4.9.6 by stating that "*Possingham will help to deliver a capital receipt that would help to fund the WwTW*". In the table in paragraph 3.2.1 the appellant has attributed 'Significant Weight' to the funding that they state would be made available by the Possingham Farm

development to deliver the WwTW. They also attribute ‘Significant Weight’ to the Possingham Farm development helping to “*bring forward delivery of some services and facilities within Chilmington Green at an earlier date than it is currently viable to do so*”, although the appellant does not specify what services and facilities they are referring to. The appellant has not provided any information to support this ‘enabling argument’ nor have they proposed any mechanism to ensure that the Possingham Farm development would actually support the delivery of the WwTW and some services and facilities within Chilmington Green.

- 2.16 This enabling argument cannot be given material weight in this appeal in the absence of robust viability evidence to demonstrate that the Possingham Farm development could ‘enable’ the delivery of the WwTW and some Chilmington Green services and facilities in terms of the timing and scale of the funding that the Possingham Farm development would generate and how that would work alongside other funding that may be required to deliver the WwTW and the Chilmington Green services and facilities. In addition, a mechanism would also be required to ensure that the Possingham Farm development would actually support the delivery of the WwTW and the Chilmington Green services and facilities.

Appellant’s Section 5: Planning Policy & Other Material Considerations

- 2.17 Contrary to the statement made in the appellant’s paragraph 5.1.2, the Council does not agree that “*the presumption in favour of sustainable development is to be applied and the Appeal proposals fall to be determined under the NPPF para 11c.*” The Council’s view is that paragraph 11d applies in this case, for the reasons set out in paragraphs 6.10 - 6.13 of my Proof of Evidence.

- 2.18 The appellant's paragraph 5.1.4 identifies what in the appellant's view are the matters in dispute. The Council does not agree entirely with the matters stated by the appellant, however, the Council will work with the appellant to agree a final list of matters.
- 2.19 The appellant's paragraph 5.1.5 lists a number of Local Plan policies which the appellant considers "*relate to detailed design matters which will be addressed at the reserved matters stage or though suitable conditions*". The Council does not agree that the following policies the appellant refers to principally relate to detailed design matters:
- Policy SP6 - Promoting High Quality Design
 - Policy HOU14 - Accessibility Standards
 - Policy TRA6 - Provision for Cycling
- 2.20 The appellant refers in paragraph 5.1.10 to Local Plan policies HOU6: Self and Custom Build Development and IMP2 Deferred Contributions. The Council considers that policy HOU6 is relevant to the appeal. The Council does not agree that policy IMP2 is relevant unless the appellant is now making a case for deferred contributions, which they have not done to date.
- 2.21 The appellant's paragraph 5.3.3 states that "there is already a Community Centre, Primary and Secondary School provided by the Appellant". However, whilst the appellant has contributed financially to the construction of the primary school and is due to make financial contributions towards the delivery of the secondary school in the future, the secondary school has also received significant funding from the government (Department for Education) and both schools have/are currently being constructed by others.

- 2.22 The appellant continues that “*this proposal will help bring forward open space and District Centre’ facilities*”, however, the appellant does not explain how the appeal development would bring forward these facilities.
- 2.23 In paragraph 5.3.5 the appellant states that “*What this proposal does is help unlock delivery in the short term to assist with reaching the critical mass of dwellings and people to attract investment*”. However, the appellant does not explain what this ‘critical mass’ number of dwellings is.
- 2.24 In paragraph 5.3.12 the appellant refers to the over-provision of social infrastructure delivered through the wider Chilmington Green Development. It is not clear what the appellant means by the statement that there is over-provision at Chilmington Green. No detail of this alleged over-provision has been provided to the Council and no specific infrastructure has been referred to. The assertion cannot be given material weight in the absence of robust evidence to support it, for example, an assessment of existing and future committed demand compared to existing and future committed capacity to demonstrate that there is over-provision.
- 2.25 There appears to be an omission in the table in paragraph 5.3.14 as the total number of dwellings is 524, when up to 655 dwellings are proposed. It appears that the number of dwellings proposed for affordable home ownership, stated on the planning application form (CD2/28) as 131, has been omitted from the table.
- 2.26 The appellant’s paragraph 5.6.1 refers to 4 self/custom build plots being secured as part of the Kingsnorth Green Appeal decision (CD8/1). This is not correct, paragraph 39 of the Inspectors decision (CD8/1) states that “*5 serviced*

plots can be justified" and the s.106 agreement attached to that appeal decision secures 5 plots.

2.27 Paragraph 5.10.1 of the appellant's Proof states that "*where there is a clear overprovision by a developer, that developer should be able to benefit from their own overprovision. If an LPA were to seek to deny this, I consider it would amount to inappropriate behaviour*". The appellant has not indicated what infrastructure they consider that they have over-provided and has submitted no analysis of this alleged over-provision. I assume that the appellant is referring to the Chilmington Green development, although this is not explicitly stated. The infrastructure secured as part of the Chilmington Green development was fully justified in the planning officer's report at the time that decision was made. It is a serious allegation to suggest that the Council has behaved inappropriately and any such statement should be fully evidenced.

2.28 Paragraph 5.11.3 of the appellant's Proof refers to the S106 being drafted to include the provision of a private management company arrangement for the management of public community space and facilities. The S.106 drafted by the Council and shared with the appellant on the 30 August 2024 makes provision for a community stewardship model of governance to be taken forward either by the Chilmington Community Management Organisation or the formation of a separate independent stewardship organisation that aligns with the long term stewardship arrangements for Chilmington Green. This aligns with the heads of terms set out in the Council's Planning Committee Report (CD1/2). Given that it is the appellant's view that the proposed development at Possingham Farm would be a natural extension to the Chilmington Green development and should be able to benefit from infrastructure and facilities to

be provided as part of the Chilmington Green development then it is also appropriate that the management and maintenance of public community space and facilities at the Possingham Farm development should adopt the same form of community stewardship as the Chilmington Green development.

- 2.29 In paragraph 5.14.12, the appellant refers to the Climate Change Guidance for Development Management, 2022 [CD7/6) as having limited weight. This guidance seeks to support the delivery of 'The Vision' for the Borough which includes adopting a positive approach to adapting to and mitigating against the effects of climate change by promoting sustainable energy technologies. The guidance also responds to Local Plan Policy SP1(i) which advances the climate change agenda, stating that planning applications are expected to ensure new development is resilient to, and mitigates against the effects of, climate change by promoting development that minimises natural resource and energy use.
- 2.30 In addition, the guidance reflects the Government's proposed direction of travel set out in its consultation on proposed reforms to the NPPF and other changes to the planning system which seek to increase support for renewable energy as a means of tackling climate change (amongst other things). On this basis, I consider the document should be afforded moderate weight - as a minimum.
- 2.31 Furthermore, the appellant has stated that "*the proposals satisfy the guidance*" but has not explained how. No details have been provided, to date, about the measures that would be incorporated into the proposed development to meet the objectives of the guidance.

Appellant's Section 6: Housing Need

In paragraph 6.2.2 the appellant suggests that more weight should be given to applications for the delivery of housing where nutrient neutrality mitigation can be provided. I do not agree with this suggestion. All new housing developments within the borough need to demonstrate that sufficient surface and waste water drainage infrastructure is available or can be provided to serve the development. The need to demonstrate nutrient neutrality makes the delivery of housing schemes in some areas of the borough more challenging, however, it does not follow that if a scheme can provide its own nutrient neutrality mitigation on site then this on-site provision should be given more weight in the decision making process than would otherwise be the case, when a scheme is contrary to the development plan in other respects.

Appellant's Section 9: Landscape & Density & Residential Amenity

- 2.32 In paragraph 9.3.4, the appellant refers to three drawings that have been produced to accompany their Proof. I have commented on CD13/5 above and will not comment further here. However, I will comment on drawing: 29892A_53_J - Possingham Farm Parcel Density Parameter Plan (CD13/3) and 1041_C - Chilmington Green Overall Density Plan including Possingham Farm (CD13/4).
- 2.33 Drawing 29892A_53_J is a revised version of the Parcel Density Parameter Plan ref: 29892A_53_H (CD2/17) originally submitted with the appeal. In revision 'J' the 'Plan'; 'Schedule'; and 'Key' have been altered quite significantly. It is not clear whether the appellant intends that revision 'J' is to supersede revision 'C', noting that the plans are described as "additional" in paragraph 9.3.4. I note the following changes to the Plan:

- The density parcels have been expanded to include the roads and footpaths on the site which has consequently made the parcel areas, in hectares, larger. This has the effect of giving a reduced density figure.
- The 'Plan' and 'Key' now include a new density range: – '20-29 dph'.
- The density of parcels B; C; E; & H have been reduced from 50-59dph to 40-49dph.
- The density of parcel D has been reduced from 50-59dph to 30-39dph.
- The density of parcel I has been reduced from 50-59dph to 30-39dph.
- The density of parcel J has been reduced from 30-39dph to 20-29dph.
- The size of each parcel area in the 'Schedule' has increased and the 'dph' figure for the majority of the parcels has decreased.

2.34 With respect to drawing 1041_C - Chilmington Green Overall Density Plan including Possingham Farm (CD13/4), this appears to be a new version of the Residential density Plan OPA03R4 by JTP (CD15.10) approved as part of the outline planning permission for the Chilmington Green development showing the proposed density across the whole of the Chilmington Green site (and not only Phases 1 & 2 as described by the appellant). I note the following changes to the Plan:

- Drawing 1041_C introduces a new density band:- 51-56dph (53dph average).
- Parcel G on Drawing 29892A_53_J is shown as being within density band 40-49dph, with a density on the 'Schedule' of 40dph. However, drawing 1041_C shows parcel G as being within density band 36-45dph (average

40dph). This could be misleading because, in accordance with Drawing 29892A_53_J the density of parcel G could be higher than that shown on drawing 1041_C (I acknowledge there is some overlap between the density band attributed to Parcel G in the two Plans).

- The western part of parcel L is shown on drawing 1041_C as having a density of 16-25dph (21dph on average). However, Drawing 29892A_53_J indicates that Parcel L would have a density of 30-39dph with the 'Schedule' on the Plan indicating that the density would be 39dph. I therefore find the indication that the western part of Parcel L would have a density of 16-25dph to be misleading.

2.35 Paragraph 9.3.6 of the appellant's Proof compares what the appellant has assessed as being the density of land parcels within Phases 1 & 2 of the Chilmington Green development with the density of parcels proposed at Possingham Farm. However, the appellant has actually only stated the density range of land parcels within Phase 1 of the Chilmington Green development, referred to as 21-59dph. The appellant does not appear to have assessed the density of development proposed for Phase 2, noting that these proposed densities are not shown on drawing D0140_007 Overall Masterplan (CD13/5) within which the Phase 1 parcel densities are indicated.

2.36 Paragraph 9.3.6 also states that the density of the proposed development would range "*between 20-59dph albeit the very southern end near the A28 is below this*". This is misleading as the Parcel Density Parameter Plan ref: 29892A_53_J indicates that the lowest density band would be 20-29dph, with the lowest density in the Schedule on the Plan being 28dph.

2.37 The appellant has not assessed the density of the proposed development against the density proposed on land parcels within the Chilmington Green development closest to the appeal site i.e., on the land immediately to the north of the proposed development which I refer to as the 'Overlap Land' in my Proof of Evidence and the land parcels neighbouring the appeal site to the east which I refer to as 'Chilmington Green Phase 3 Land East of the Site' in my Proof of Evidence. Instead the appellant has compared the density of the proposed development with that of parcels located within Phase 1 of the Chilmington Green development, circa 1.3 km to the north of the appeal site and much closer to the proposed Chilmington Green district centre where higher densities were assessed as being appropriate. I consider that the comparison undertaken does not present a full and clear picture of how the density of the proposed development would sit alongside the density of development proposed on the land parcels within the Chilmington Green development closest to the appeal site.

2.38 In paragraph 9.3.9 the appellant refers to three awards that the appellant has received for the development at Chilmington Green. It is not clear how these awards demonstrate that "*the identified densities for Possingham Farm can be delivered while achieving a suitable and appropriate townscape and built form*" as suggested by the appellant in paragraph 9.3.8.

2.39 In paragraph 9.3.12, the appellant refers to the Chilmington Green Design Code stating that the Code "*indicates that the A28 corridor was to accommodate medium density housing of suburban and urban character.*" However, the medium density housing referred to is located further north along the A28 than the appeal site. The Design Code describes the appropriate housing density

within the Chilmington Green development adjacent to the appeal site fronting the A28 (on the Overlap Land) as 'low density suburban' with a density of 15dph or less, 16-25dph or 21-30 dph (refer to the plan on page 75 and paragraph 7.5 (page 79) of the Design Code). The density of development proposed on the Overlap Land is 16-25dph as agreed on the approved residential density parameter plan (CD15/10).

- 2.40 In paragraph 9.3.17, the appellant refers to parcel A of the Chilmington Green development stating that "*the dwellings on the western parcel are 4 and 5 bed (up to 3 storeys) and 4 storey apartment blocks*". It is not clear what part of parcel A the appellant is referring to here as the dwellings adjacent to the A28 on parcel A are two and a half storeys (as illustrated in the appellant's figure 9.1) and there are no apartment blocks constructed or proposed alongside the A28. The Chilmington Green Storey Heights parameter plan (CD15/11) allows up to 2.5 storeys in this location.
- 2.41 In paragraph 9.3.18 the appellant refers to Chilmington Green parcels B and K. The appellant has not referred specifically to storeys heights on parcel B, however, the approved plans do show three storey houses adjacent to the A28, whereas the Chilmington Green Storey Heights parameter plan allows up to 2.5 storeys in this location. In respect of parcel K the Chilmington Green Storey Heights parameter plan allows up to 2.5 storeys adjacent to the A28 on Parcel K. The majority of the houses approved adjacent to the A28 on Parcel K are two and 2.5 storeys, except for two corner properties which are predominately two-storeys with a third storey corner turret feature.
- 2.42 The appellant has referred to the development on parcels A, B and K of the Chilmington Green development to justify their approach to building heights on

the appeal site. However, I do not agree that the context of the Chilmington Green parcels referred to are comparable to the appeal site. Parcels A, B and K are located in the Chilmington Rise character area of the Chilmington Green development as identified in Section 5.1 the Design Code (pages 27-30). This character area is described in the Design Code (section 5.1 first paragraph) as being the “*front door*’ of the new development as it includes the main access from the A28”. This area includes the district centre and will be the highest density part of the development. In contrast the appeal site is located adjacent to, and within, in respect of the Overlap Land, the Orchard Village character area (refer to pages 31-34 of the Design Code). The Design Code (section 5.2 second paragraph) states that:

“Orchard Village will provide a sensitive transition from the compact urban grain of Chilmington Rise in the north east to the settlement’s countryside edge in the south west. Along this edge very low density development with detached homes in large plots will have a rural character and overlook areas of managed wetland and woodland. The urban grain will gradually loosen in the areas closest to the countryside edge with plots becoming larger and streets taking on the character of rural lanes rather than suburban streets”.

- 2.43 These two areas are proposed to present different characters to reflect their different locations. I consider that it is more appropriate to consider the appeal site in the context of the Orchard Village character area and not the Chilmington Rise character area. In this context the appeal proposal is not consistent with the approach set out within the Design Code and is not consistent with what the

Council would consider to be acceptable for the Chilmington Green site as suggested by the appellant in paragraph 9.3.19.

- 2.44 The appellant presents a table in paragraph 9.3.23 which refers to dwelling storey heights proposed within the appeal site, three land parcels in the Chilmington Green development and in three other locations in Ashford. I have already commented on the Chilmington Green land parcels adjacent to the A28.
- 2.45 With regard to the three other locations in Ashford, no map has been provided to identify these locations, although two photos have been provided in figures 9.2 & 9.3. I have identified that these photos show locations close to the Junction 9 M20 – A20. Given that the locations referred to in the table have not been clearly identified I am not in a position to comment on the locations specifically. However, from my knowledge of Ashford I consider that the locations listed in the table are not comparable to the environment of the appeal site. All three are situated close to motorway junctions (M20 Junction 9 and 10a) and all are located adjacent to wide dual carriage highways with development on both sides of the highway. None of these examples are directly adjacent to the open countryside.

Appellant's Section 10: Stodmarsh & Nutrient Neutrality

- 2.46 In paragraph 10.1.5, the appellant refers to "*the LPA's various documents stating that review of viability for Chilmington Green is required.*" I am not clear what is meant by this statement. If the documents referred to are relevant to this appeal then they should be specifically referenced.

Appellant's Section 13: Planning Conditions & S106.

- 2.47 I note that the appellant has raised concerns about several of the financial planning obligations proposed by the Council to mitigate the impacts of the development, and questions whether these obligations are necessary to mitigate the impacts of the development. I understand there are two strands to the appellant's position. Firstly that the neighbouring Chilmington Green development is already over-providing community infrastructure, and secondly, that the community infrastructure to be provided on the Chilmington Green site would also be sufficient to meet the needs of the Possingham Farm development.
- 2.48 Local Plan Policy SP1 (Strategic Objectives) seeks to ensure development is supported by the necessary social, community, physical and e-technology infrastructure, facilities and services, with any necessary improvements brought forward in a co-ordinated and timely manner. This strategic objective is supported by policies COM1 (Meeting the Community's Needs); COM2 (Recreation Sport, Play, and Open Spaces); COM3 (Allotments) and IMP1 (Infrastructure Provision).
- 2.49 The Council is currently reviewing the position presented by the appellant in section 13 of their Planning Proof of Evidence alongside the comments provided by the appellant on the draft S106 agreement on 18 September 2024. Regrettably, given the short timescales available, the Council is not able to provide a full response to the appellant's position in this rebuttal and will seek further time to do so and produce a CIL compliance statement.
- 2.50 By way of background and context, I understand that on 11 July 2024 the Council's solicitor requested a legal costs undertaking from the Appellant's solicitor for drafting the s.106 agreement. I understand that the undertaking was

not provided by the Appellant until seven weeks later on 29 August 2024, despite the Council chasing. The Council accordingly provided the draft s.106 on 30 August 2024. After a further delay, the Appellant's solicitor then provided extensive comments and changes on 18 September 2024, requesting a response within two days. In the seven weeks delay in July and August 2024, the s.106 could have gone back and forth between the parties' solicitors enabling them to take instructions on any disagreement on the contributions or other matters in the s.106 draft in the normal way, but unfortunately this was not possible. Nonetheless, the Council will seek to work with the Appellant to reduce areas of difference and reach agreement where possible.

- 2.51 Notwithstanding the above, I am able to respond to the following points raised in section 13 of the appellant's planning proof of evidence now.

Community building

- 2.52 As a point of clarification, in paragraph 13.2.20, the appellant refers to planning permission having been granted for a single-storey multi-purpose community building (ref: 2023/0985). This application was submitted by the primary school and the building was to be constructed in the grounds of the primary school with Homes England funding, however, this funding is no longer available and therefore this community building will not be constructed. This building was planned as an alternative to the temporary community building required to be constructed as part of the Chilmington Green development (referred to in paragraph 2.5 above) because the Council was uncertain about when this temporary building would be handed over to the CMO, given that the Chilmington Green S106 required the building to be made available prior to first occupation of the Chilmington Green development, but this did not happen. The

temporary building was handed over to the CMO in September 2023, some four years following the first occupation at Chilmington Green.

Voluntary sector and the arts

- 2.53 In paragraph 13.2.25 the appellant concludes that the Council's requests for financial contributions toward a community building, the voluntary sector and the arts are not necessary to make the development acceptable. In the preceding paragraphs they have provided some explanation as to why they consider a contribution towards a community building is not necessary, however, they have provided no information to explain why they consider a contribution towards the voluntary sector and arts to be unnecessary.

Cemetery space

- 2.54 In the bulleted list in paragraph 13.2.36 the appellant refers to a requirement to provide cemetery space. I can confirm that a contribution towards cemetery space is not required as part of the proposed development.

Strategic park, sports provision and children's playspace

- 2.55 In paragraphs 13.2.38 - 13.2.44 the appellant refers to amounts in hectares of strategic park; sports provision and children's playspace that the appellant considers to be over-provision on the Chilmington Green site, however, the appellant provides no details of where these figures have derived from.
- 2.56 In paragraph 13.2.42 the appellant identifies that there is insufficient provision of playspace proposed on the appeal site but states that provision would be made within the Chilmington Green site instead. In accordance with the Public Green Spaces and Water Environment SPD 2012 (CD7/7) sites the size of the

appeal site should make provision for play space on site (refer to Table 2, page 14). There is no justification for such a site to make provision off-site.

Natural green space

2.57 In paragraph 13.2.41 the appellant states that “*In respect of Natural Green Space, the Possingham Farm scheme exceeds requirements*”. However, the appellant has not provided any evidence to demonstrate that sufficient green space could be provided on the appeal site given the requirement for a significant amount of ecological mitigation on the site (refer to paragraphs 4.65-4.74 of my Proof of Evidence).

Appellant’s statements in respect of over-provision

2.58 The appellant has made assertions within his proof that the Chilmington Green development will make an over-provision of community facilities. The appellant has cited figures for what they state Chilmington Green will provide and then states that this amounts to over-provision. However, the appellant has not explained where the figures for the amounts of provision at Chilmington Green are derived from or how the alleged over-provision has been calculated. The appellant has not calculated what the Chilmington Green development is required to provide and then demonstrated how what is being provided exceeds what is required.

2.59 As explained above, the Council will continue to work with the appellant to reach agreement on the planning obligations necessary to meet the needs of the development.

3.0 Rebuttal to Section 4.0 of the Appellant’s Highways Proof of Evidence

- 3.1 The appellant proposes to provide a half hourly bus service through the appeal site prior to the occupation of 100 dwellings to connect the site to Ashford town centre and railway station. In paragraph 4.42 that appellant describes this bus service as “*a key element of the accessible transport strategy to provide a connection to employment opportunities and other services*”.
- 3.2 The appellant has not provided any evidence to indicate that a bus operator would be willing to operate a bus service from the site to Ashford town centre. The Council would expect to see letters of support from bus operators indicating that the proposed service would be viable, the number of housing occupations that would be required for a service to start and what frequency of service could be delivered. The Chilmington Green S106 agreement requires the appellant to provide a bus service between the Chilmington Green site and the town centre prior to the occupation of 100 dwellings. To date this bus service has not been provided and in their S106B appeal the appellant is seeking to delay the delivery of this bus service until 2684 occupations (refer to CD15/14 schedule 20, paragraphs 1.1-1.3).
- 3.3 In a previous request submitted in 2021 to amend the provision of the bus service from 100 occupations to 1501 occupations the appellant referred to the Chilmington Green bus service as being “*wholly unviable and unfeasible*” (refer to Appendix A, Section 44). Given the current situation at Chilmington Green I question whether this bus service proposed by the appellant would actually be delivered.

- 3.4 In paragraph 4.49 the appellant states that the Chilmington Green primary school; secondary school; district centre foodstore and temporary CMO offices will be in place prior to first occupation of any dwellings on the appeal site and pedestrian and cycle connections will be provided from the appeal site to these facilities. These proposed pedestrian and cycle routes are shown on the plans in appendix ID3, although these plans do not identify the location of the facilities referred to.
- 3.5 These routes pass through areas of the Chilmington Green site that are not currently accessible to the public and some routes would pass through future construction sites, for example, a pedestrian route is proposed through parcel 'L' which does not currently have reserved matters permission and could be many years away from being complete. It is also possible that the appellant could sell parcel 'L' to another developer which could result in the appellant no longer being able to deliver this route prior to first occupation of the appeal site. There is therefore uncertainty about whether these routes could actually be provided.
- 3.6 Furthermore, whilst the primary school and temporary CMO offices are already open and the secondary school is due to open in 2025, there is no delivery date for the district centre foodstore. A reserved matters application has been submitted and is currently being assessed by the Council, however, the appellant has sought to delay the delivery of the district centre, which includes the foodstore, in their S106B appeal from 1250 occupations to 2700 occupations (refer to CD15/14 schedule 14, paragraphs 1.2 -1.5).
- 3.7 Even if the trigger for delivery remains at 1250 occupations, given the current construction rate of Chilmington Green it could be many years before the

foodstore is open for customers. This is also reliant on a food store operator being interested in opening a store on the site. The appellant has provided no evidence of discussions with foodstore operators to demonstrate that there is commercial interest in opening a foodstore within the timescales required to serve the appeal site.

- 3.8 In paragraph 4.54 the appellant refers to other facilities proposed within the Chilmington Green development and in Appendix ID4 provides details of proposed pedestrian and cycle routes to these facilities. Again these plans do not identify the location of the facilities referred to. I note that the second primary school and Discovery Park are identified on Table ID4.2, however the location of these facilities is outside to the extent of the plans in Appendix ID4 and routes are not shown to these. A number of these routes are proposed to pass through areas of the site in phases 2 and 3 of the Chilmington Green development, therefore, for the reasons set out in paragraph 3.5 above, there is uncertainty about whether these routes could actually be provided within the timescales indicated in Table ID4.2.
- 3.9 Table ID4.3 refers to when facilities at the Chilmington Green are proposed to be delivered, however, the timescales in the table appear to be based on the current triggers in the Chilmington Green S106 agreement. No reference has been made to the new, delayed triggers for the delivery of all these facilities proposed by the appellant in their current S106B appeal. There is significant uncertainty that the facilities referred to would be delivered within the timescales set out in the table. This uncertainty is compounded by the appellant's current proposals to amend these timescales in their S106B appeal.

3.10 In paragraph 4.50 the appellant suggests that “*Planning conditions could be used to secure both the provision of these facilities and the pedestrian and cycle routes to them prior to the occupation of the first dwellings on the scheme*”. I am of the view that such conditions could not be imposed to make the development acceptable in planning terms because these conditions would not meet the tests in the NPPG, paragraph 56. In particular, the conditions would concern a service, such as the foodstore, whose delivery is either potentially far into the future and/or unknown or highly uncertain, and the delivery of pedestrian and cycle routes where there is uncertainty about when they could be delivered.

3.11 The appellant has provided a Framework Residential Travel Plan as part of their Proof. This reiterates a lot of the information contained in section 4.0 of their proof. However, an additional plan is provided in Figure 2.4 which identifies the location of amenities proposed on the Chilmington Green site. This plan is misleading as it shows amenities proposed in Phases 3 and 4 of the Chilmington Green development which would be delivered outside of the timescale for delivery of the Possingham Farm development indicated by the appellant.

4.0 Conclusion

4.1 I have reviewed the additional information and evidence provided in the appellant’s Proofs of Evidence and, for the reasons set out above, I remain of the view that the proposed development would not be in accordance with the development plan and that there are no other material considerations that would outweigh this conflict and the resultant harm that would be caused. As

such, I consider that this appeal should be dismissed and outline planning permission refused.