

RE-DATED 27 APRIL 2021

(1) HODSON DEVELOPMENTS (ASHFORD) LIMITED

-AND-

(2) CHILMINGTON GREEN DEVELOPMENTS LIMITED

-AND-

(3) HODSON DEVELOPMENTS (CG ONE) LIMITED

-AND-

(4) HODSON DEVELOPMENTS (CG TWO) LIMITED

-AND-

(5) HODSON DEVELOPMENTS (CG THREE) LIMITED

THE APPLICANTS

-AND-

(1) ASHFORD BOROUGH COUNCIL

-AND

(2) KENT COUNTY COUNCIL

THE RESPONDENTS

**RENEWED APPLICATION FOR MODIFICATION/DISCHARGE IN RE
A SECTION 106 AGREEMENT DATED 27 February 2017
RELATING TO CHILMINGTON GREEN, ASHFORD ROAD, GREAT CHART
PURSUANT TO SECTIONS 106 AND 106A TOWN & COUNTRY PLANNING ACT 1990
AND ALL OTHER POWERS SO ENABLING
PURSUANT TO THE SETTLEMENT OF THE JUDICIAL REVIEW
AND ORDER MADE THEREIN DATED 23 APRIL 2021**

Introduction

1. This application is made pursuant to sections 106 and 106A of the T&CPA 1990 (as amended) by the above named Applicants to the above named Respondents in respect of the section 106 Agreement dated 27 February 2017 made between the said parties and others ('the s106 Agreement'), to discharge or modify the obligations contained therein as more particularly set out in the table below. The Applicants' reasons for applying for the discharge or modification of each obligation as the case may be are stated in column (5) of the said table and supported by the independent expert evidence annexed to this application.
2. The address or location of the land to which the application relates is Chilmington Green, Ashford Road, Great Chart (the site of the Development). A map identifying the land to which the planning obligations the subject of this application relates is annexed hereto at Annex A.
3. The names and addresses of the Applicants are as follows:
 - 3.1 Hodson Developments (Ashford) Limited, company registration number 07468189 whose registered address is at Office Suite 9, 55 Park Lane, London W1K 1NA.
 - 3.2 Chilmington Green Developments Limited, (company registration number 09286703) whose registered office is at Office Suite 9 55 Park Lane, London W1K 1NA ("Chilmington Green Developments").
 - 3.3 Hodson Developments (CG One) Limited, (company registration number 10392676) whose registered office is at Office Suite 9 55 Park Lane, London W1K 1NA.
 - 3.4 Hodson Developments (CG Two) Limited, (company registration number 10392663) whose registered office is at Office Suite 9 55 Park Lane, London W1K 1NA.
 - 3.5 Hodson Developments (CG Three) Limited, (company registration number 10982329) whose registered office is at Office Suite 9 55 Park Lane, London W1K 1NA.

If required, a schedule of the respective freehold interests of each Applicant in the land to which this application relates can be provided upon request.

4. This application relates, unless otherwise indicated, to the obligations under the s106 Agreement relating to Main Phase 1 of the Development; the Applicants reserve their position to make further applications in respect of the subsequent phases should this become necessary.
5. The independent expert evidence filed with and relied upon in support of the Applicants original application dated 20 August 2020 comprised the following report: The Report dated 8 August 2020 of Mr Thomas Hegan MRICS of Turner Morum (referred to hereinafter as Mr Hegan's Original Report).
6. Mr Hegan's Original Report evidenced that the discharge of and/or modifications to obligations sought principally to Main Phase 1 planning obligations were fully justified on viability grounds. In summary, Mr Hegan's Original Report established that the changes proposed improved the viability of Main Phase 1 by in excess of £84m. Further, that as can be seen from the Original Report, the cumulative benefit of the s106 modifications/discharges proposed resulted in a reduction in overall finance costs of circa £26m (twenty-six million pounds). Whilst the substantial cashflow benefits to the Development were evidenced at Appendix 3 Tab 3, Cashflow – Sensitivity.
7. It is the Applicants' case that Mr Hegan's viability analysis and his additional reports (see further below) more than justify each of the changes sought in this application in terms of the usefulness of the s106 obligations in issue, delivery of the subject phase (Main Phase 1) and hence ultimately of the entire Development. The effect of the changes sought and the benefits to the viability of Main Phase 1 as set out in Mr Hegan's Reports are relied upon in respect of each and every modification/discharge sought by this application and form part of the reasons in Column (5) in each instance. Equally, the Applicants refer to and rely upon the detailed reasons set out in the table below, to which the Respondents are referred.
8. Together with this s106A application, and without prejudice to it, the Applicants hereby apply also to the Second Respondent in its capacity as highway authority to vary the payment terms contained in the section 278 Agreement dated February 2017 made between the Applicants and the Second Respondent relating to the same land and Development and for the First Respondent's consent in so far as necessary under paragraph 2 of Schedule 18 to vary the terms of the s278 Agreement in accordance with that application, all as below.
9. The Applicants require this application to be decided by the Respondents as appropriate in accordance with the Regulations, but remain ready and willing to provide such further information as may be required by the Respondents to determine the same.
10. Attention is drawn to additional requests herein numbered 46A and 46B and the Respondents required to determine these on the same basis as they have agreed to revisit and determine all previous requests.
11. In addition, for the purposes of this renewed application made pursuant to the order dated 25 March 2021 (sealed on 23 April 2021) made between the parties in settlement of the Judicial Review application herein, the Applicants rely upon and require the Respondents fully to take into account both the

original report herein from Turner Morum prepared by Mr Hegan as referred to above and also now his Supplementary Report dated April 2021 appending as it does an updated viability assessment on which the Applicants now primarily rely.

12. Further, in the case of each and every request herein where reliance is placed on viability and/or the expert reports of Turner Morum, it is submitted that the Respondents are bound to accept and take into account in determining the request that evidence on the basis of and in accordance with the attached 'Further Legal Submission on Viability.'

Dated: 27 April 2021

(1)	(2)	(3)	(4)	(5)
Item	The planning obligation to be modified or discharged	S106 Agreement Reference (Clause/Para)	Specified Modification or Discharge (The specified modification or discharge applied for below should be taken to include all necessary and consequential amendments to the s106 Agreement)	Reasons for applying for the modification or discharge:- Where the application is to discharge any obligation it is because it serves no useful purpose for the reason/s given below. Where an application is to modify any obligation it is because it continues to serve a useful purpose, but for the reason/s given below would serve that purpose equally well if it had effect subject to the modification specified herein.
1	Definition of ‘Commence (Statutory) the Development’	Clause 1.1 (p.20)	The Applicants apply to modify the said definition to read as follows: ‘The carrying out of a Material Operation (Statutory) pursuant to the planning permission for the Planning Application and any Reserved Matters Application approval and any modification to the planning permission for the Planning Application and any Reserved Matters Application occurring prior to the commencement (statutory) of the Development which would constitute the beginning of the Development for the purpose of section 56 of the Planning Act (as amended) but for non-compliance with any condition of the planning	To correct the drafting of the definition, to refer to the correct section of the T&CPA and planning permission in respect of the main Planning Application as defined.

			permission for the Planning Application and any modification to the same and related expressions such as “Commenced (Statutory) the Development” “Commencement (Statutory) of the Development” and “Commenced (Statutory) the Development” shall be construed accordingly.’	
2	Definition of ‘Paying Owners’	Clause 1.1 (p.44)	The Applicants apply to modify the said definition to add as ‘Paying Owners’, Hodson Developments (CG Three) Limited.	By increasing the number of paying parties, each jointly and severally liable, the payment covenant is strengthened and the relevant obligations under the s106 Agreement better served.
3	Index Linking	Clause 28 (p.89)	The Applicants apply to modify the said definition so as to replace all references to ‘index linking’ in clause 28 to ‘Index Linking’	To correct the drafting of the clause.
4	Base date for indexation	Clause 28 (p.89)	<p>The Applicants apply to modify clause 28 so as to amend the base date for indexation for the Relevant Index from April 2014 or the second quarter of 2014 as the case may be to August 2018 or the third quarter of 2018 as the case may be.</p> <p>The said modification to be applied in each sub-clause as appropriate, so as to amend all references to April 2014 or the second quarter of 2014 as specified above.</p>	<p>The purpose of the index linking was of course to ensure that payments and capital contributions kept step with actual costs over time. However, the indexation date (April 2014) and the Relevant Indices (RPI, BCIS Indices or The Output Prices Index for Non Public Housing Works as the case may be) no longer properly serve this purpose.</p> <p>Rather, as a result of the historical base date and extended period over which payments and values in the s106 Agreement in respect of Phase 1 are now being indexed, the indexation provisions are over inflating the relevant sums. Thus, the indexation provisions are</p>

				<p>producing payments and contributions in excess of those that would be required to mitigate the impact of the Development.</p> <p>Certainly, if these section 106 payments and capital contributions were calculated at today's date they would be significantly lower than the amounts plus indexation being demanded or falling due. These inflated payments are not only unjustified but are serving materially to undermine the viability of the Development. See the examples given in Section 14 of Mr Hegan's Supplementary Report dated April 2021.</p> <p>Accordingly, there can be no doubt that the Applicants are entitled in accordance with the terms of section 106A to the modification of the current indexation provision to provide for a new base date to reduce the distortions and bring the payment more in to line with actual costs.</p> <p>To this end the Applicants propose that all payments and contributions should be rebased to August 2018, the actual commencement of house building on site. This date will not only reduce the cost distortions as aforesaid but fairly and properly makes allowance for the delays in reserved matters approvals for which the Applicants were not responsible.</p> <p>Further, for the avoidance of doubt, these modifications are proposed without prejudice to and in the alternative to any application hereinbelow to discharge or otherwise</p>
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				modify any of the principal obligations to which they relate. For example, the application to modify the indexation of the budget sum for the CMO Second Operating Premises is made without prejudice to and as an alternative to the application below to discharge the obligation at Clause 5 of Schedule 4 to provide these premises at all.
5	Index Linking in the case of a Reserved Matters Application approval	Clause 28 (p.89)	Further, the Applicants apply to modify clause 28.2 to read, ‘In the case of schedules 8 and 12, Index Linking shall be carried out each time a Reserved Matters Application is approved. The sum to be Index Linked shall be the relevant proportion of the amount (on a pro rata basis using the area for which a Reserved Matters Application approval has been granted) and the percentage change (if any) shall be between the figure of the Relevant Index for the third quarter of 2018 to the quarterly index figure of the Relevant Index for the date when the Reserved Matters Application is approved’	To correct the drafting of the clause and as above to rebase the date for indexation, modifying this from April 2014 to August 2018, for the reasons stated above.
	Schedule 1 – Affordable Housing			
6	Provision of 70 Extra Care Housing Units in	Paras 1.1, 2, 3 and 6	The Applicants propose that the obligations at paragraphs 1.1, 2, 3 and 6 be discharged.	The obligation at paragraph 1.1 and associated obligations at 2, 3 and 6 to provide 70 Extra Care Housing Units in Viability Review Phase One serves no

	<p>Phase One – Viability Review 1</p>		<p>Alternatively, and without prejudice to the application to discharge above, the Applicants propose that these obligations are modified to provide:</p> <p>‘1.1 Hodson and Chilmington Green Developments covenant with the Council to construct a further 70 Dwellings within the Hodson Viability Phase One Land as Affordable Housing Units prior to the date on which the 1000th Dwelling to be Occupied is Occupied in accordance with the requirements of paragraphs 2 and 3 below;</p> <p>2. 28 of the Affordable Housing Units referred to paragraph 1.1 above shall be provided as Shared Ownership Units and 42 of the Affordable Units referred to at paragraph 1.1 above shall be provided as Affordable Rent Units (or Intermediate Affordable Housing Units if requested by the Owner’s Agent and confirmed by the Council to the Owner’s Agent as being acceptable to the Council in writing at the Council’s absolute discretion).</p> <p>3. All of the Affordable Housing Units referred to at paragraph 1.1 above shall be provided as 1 and/or 2 bedroom flats in one or more buildings.</p>	<p>useful purpose because such units are both unnecessary at this stage in the Development and their cost is undermining the viability of this phase and jeopardising overall delivery. The obligation should accordingly be discharged.</p> <p>Alternatively, if contrary to the foregoing the paragraph 1.1 obligation is regarded as serving a useful purpose at least in terms of Affordable Housing Unit provision the Applicant will propose that obligations at 1.1, 2, 3 and 6 are modified accordingly to substitute the ECHU’s by the equivalent number of AHU’s to be constructed prior to occupation of the 1000th Dwelling as indicated.</p> <p>The modified requirement to substitute the ECHU’s with standard AHU’s will in itself result in a cost reduction of some £330k, producing a commensurate improvement in viability. The cumulative effect of this reduction together with the other discharges/modifications proposed in this application are duly reflected in Mr Hegan’s Reports and his overall viability analyses justifying the changes sought herein to the s106 Agreement.</p>
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			<p>6. The Owners covenant with the Council not to Occupy more than 1000 Dwellings unless and until:-</p> <p>6.1 All of the further 70 Affordable Housing Units referred to in paragraph 1.1 above have been completely constructed in compliance with the requirements of paragraph 2 and 3 above and so that such Affordable Units have been made ready for Occupation and either:-</p> <p>6.1.1 The Unencumbered freehold title to the Affordable Housing Land on which the building/s in which those Affordable Units are located has been transferred to a Registered Provider; OR</p> <p>6.1.2 subject always to prior approval by the Council (such approval being at the Council's absolute discretion to be confirmed by the Council in writing to the Owner's Agent) a duly executed transfer of the freehold title to the Affordable Housing Land on which the building/s containing all of the Affordable Units referred to in paragraph 1.1 above has been delivered to a Registered Provider.</p> <p>Consequential modifications also to be made to Paragraphs 15 and 15.1 to insert reference to 1.1.</p> <p>Consequential modifications to be made to</p>	
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			Schedule 43, Extra Care Affordable Housing Costs for Viability Phase 1.	
7	Provision of 24 Affordable Housing Units in Phase One – Viability Review 1	Paras 1.2, 4, 5 and 7	<p>The Applicants apply to modify the obligation at 1.2 to provide:</p> <p>‘1.2 Hodson CG One, Hodson and Chilmington Green Developments covenant with the Council to construct 24 Dwellings within the Hodson CG One and the Chilmington Green Developments Phase One Land as Affordable Housing Units prior to the date on which the 850th Dwelling to be Occupied is Occupied in accordance with the requirements of paragraphs 4 and 5 below;’</p>	<p>The obligation at paragraph 1.2 to provide 24 Affordable Housing Units in Viability Review Phase One is acknowledged to serve a useful purpose but the requirement to do so by the 650th Dwelling will adversely affect the Paying Owner’s cashflow and compromise the viability of this Phase 1 – Viability Review 1.</p> <p>The purpose of these provisions can be better or at least equally well served by modifying them as proposed, supporting the Development whilst securing delivery of these units in any event within Phase 1.</p> <p>As can be seen from Mr Hegan’s Reports and the updated viability analysis therein, the cumulative benefit of the s106 modifications/discharges proposed results in a reduction in overall finance costs of circa £38m (thirty-eight million pounds).</p> <p>Further, the cashflow benefit is evidenced at Appendix 3 Tab 6, Cashflow – Sensitivity, line item 12, at Development year 10, in Mr Hegan’s Supplementary Report.</p>

				<p>His analysis in both these respects and each of them more than justifying the changes sought in this application in terms of the usefulness of the s106 obligations, delivery of the subject phase (Main Phase 1) and ultimately of the entire Development.</p>
8	10% Affordable Housing to be provided in each Viability Review (2 to 10) as a minimum provision	Para 8 and 14	<p>The Applicants apply for the obligation for this provision to be completed by 75% occupied dwellings within the relevant review phase to be modified to 1500 occupied dwellings.</p>	<p>The said obligation to provide 10% Affordable Housing Units in each Viability Review Phase is acknowledged to serve a useful purpose but the requirement to do so by the 75% occupied dwellings will adversely affect the Paying Owner's cashflow and compromise the viability of each viability phase.</p> <p>The purpose of these provisions can be better or at least equally well served by modifying them as proposed, supporting the Development whilst securing delivery of the 10% AHU's in any event within each phase.</p> <p>Again, as can be seen from Mr Hegan's Reports and the updated viability analysis therein, the cumulative benefit of the s106 modifications/discharges proposed results in a reduction in overall finance costs of circa £38m (thirty-eight million pounds). In addition, the cashflow benefit is evidenced at Appendix 3 Tab 6, Cashflow – Sensitivity, line item 12, at Development year 13, in Mr Hegan's Supplementary Report.</p>

				<p>These figures clearly demonstrate also that the 10% provision is the upper limit of what can be sustained and is feasible in this phase.</p> <p>Certainly, Mr Hegan’s analysis in these respects and overall, more than justifies the changes sought in this application in terms of the usefulness of the s106 obligations, delivery of the subject phase (Main Phase 1) and ultimately of the entire Development.</p>
9	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	The Applicants apply to modify the Affordable Housing tenure split so as to provide 30% Affordable Rents and 70% Shared Ownership.	<p>The said obligation to provide AHU’s subject to differing tenures is acknowledged to serve a useful purpose but the current allocation solely to Affordable Rent Units and Shared Ownership Units is not sustainable or feasible, adversely affecting the Paying Owner’s cashflow and compromising the viability of the current phase and potentially delivery of the overall Development.</p> <p>The purpose of these provisions can be better or at least equally well served by modifying them as proposed, supporting the Development whilst securing delivery of the 10% AHU’s in any event within the current phase.</p> <p>Alternatively, the Applicants seek now written approval from the Council under the terms of paragraphs 9 and 12 in accordance with the proposed modification.</p>

	Schedule 2 – Carbon Off Setting			
10	<p>Provision of a Building Energy Performance Certificate for each building.</p> <p>Calculation of carbon off setting contributions and payment liabilities.</p>	Sch 2	<p>The Applicants apply to discharge the whole of Schedule 2 and the obligations therein.</p> <p>Further, that any necessary consequential modifications be made to Schedule 43, Carbon Off-setting Savings for Viability Phase One.</p>	<p>The obligation to pay such contributions no longer serves any useful purpose. As acknowledged by the Ashford Local Plan 2030 changes to Building Regulations now take into account all regulated emissions (see Chapter 9: The Natural & Built Environment (para 9.111)).</p> <p>These changes supersede and render redundant the Chilmington Green Carbon Reduction Project and with it any requirement for payment of carbon off-setting contributions (across all Phases). The relevant obligations should be discharged accordingly.</p> <p>The removal of these contributions altogether is shown in Mr Hegan’s Supplementary Report at Appendix 3 Tab 5 s106 – Sensitivity cost item 101, and forms part of his updated viability analysis justifying the modifications sought.</p>
	Schedule 3 – Combined Heat and Power Plant (CHP)			

11	Viability submissions and appraisal for a Combined Heat and Power Plant (CHP) or District Heating Plant (DHP)	Schedule 3	The Applicants apply to discharge the obligations under Schedule 3 save for paragraph 1.3.2.	<p>The Feasibility/Viability Studies were formally submitted for fact-checking by the Council last April 2019. Given that in breach of paragraph 2 of Schedule 3 no response has been forthcoming from the Council it is submitted that save for paragraph 1.3.2 the extant obligations under this Schedule patently no longer serve any useful purpose and should be discharged (across all Phases).</p> <p>Without prejudice to the above, it is to be noted that in any event the Feasibility/Viability Studies confirmed that the CHP/DHP is not Feasible in all Scenarios, so that it should otherwise be confirmed now that except for paragraph 1.3.2 the obligations under Schedule 3 shall cease to have any further effect as regards the District Centre.</p>
	Schedule 4 – Community Management Organisation (CMO)			
12	Provision of the CMO Second Operating Premises	Para 5.1.1 to 5.1.5 and Sch 29D Item 6	The Applicants apply for these obligations under paragraph 5 and Schedule 29D Item 6 to be discharged.	The First Operating Premises have been completed and are ready for CMO occupation. The building is in a central location and it is proposed therefore that the CMO remains in this building until the Community Hub

				<p>(see Schedule 12) has been completed, at which stage the CMO can move directly in to this location.</p> <p>In the circumstances the CMO Second Operating Premises is surplus to CMO requirements and the associated obligations no longer serve any useful purpose and should be discharged.</p> <p>Furthermore, the cost of this provision at £250,000 is materially contributing to the non-viability of Phase 1 and for this reason also can no longer be regarded as serving a useful purpose.</p> <p>The removal of this cost at £250,000 is shown in Mr Hegan's Supplementary Report at Appendix 3 Tab 5 s106 – Sensitivity cost item 53, and forms part of his updated viability analysis justifying the modifications sought.</p>
13	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.	<p>The Applicants' primary application in this regard is to discharge the Deficit Grant Contributions in their entirety.</p> <p>In the alternative and without prejudice to the above application to discharge, the Applicants propose that the DGC obligations should be modified so that the level of funding is reduced to match the CMO's requirement and so that the</p>	<p>The Applicants seek the discharge of the Deficit Grant Contributions obligations because (a) they are so it transpires unnecessary and (b) they are in any event undermining the viability of Main Phase 1 and with it the delivery of the Development. The payments do not therefore serve any useful purpose and should be discharged accordingly.</p> <p>As to the DGC being unnecessary, the CMO simply does not require this additional level of funding to deliver the</p>

		<p>following paragraphs are modified to refer to the Dwelling Numbers stated:</p> <p>7.1.1, reference to the ‘125th Dwelling’ to be modified to ‘1501st Dwelling’</p> <p>7.1.2, reference to the ‘500th Dwelling’ to be modified to ‘2000th Dwelling’</p> <p>7.1.3, reference to the ‘750th Dwelling’ to be modified to ‘2500th Dwelling’</p> <p>7.1.4, reference to the ‘1000th Dwelling’ to be modified to ‘2800th Dwelling’</p> <p>7.1.5, reference to the ‘1250th Dwelling’ to be modified to ‘3000th Dwelling’</p> <p>7.1.6, reference to the ‘1500th Dwelling’ to be modified to ‘3500th Dwelling’</p> <p>7.1.7, reference to the ‘1750th Dwelling’ to be modified to ‘4000th Dwelling’</p> <p>7.1.8, reference to the ‘2000th Dwelling’ to be modified to ‘4500th Dwelling’</p> <p>7.1.9, reference to the ‘2250th Dwelling’ to be modified to ‘5000th Dwelling’</p>	<p>services required of it. The CMO will or certainly ought to be able to use the Rent Charge Deed and properly manage its accounts to meet its liabilities, only taking on further assets or any additional overheads as and when these resources allow.</p> <p>Moreover, as stated, the total amount of the DGC in the sum of £3,350,000 to be paid in Phases 1 and 2 is undermining the viability of the Development and cannot be sustained.</p> <p>In the alternative and without prejudice to the reasons above in support of discharge, if contrary to the foregoing the DGC is found to serve some useful purpose, the Applicant will contend that the level of funding should be modified so as to match the requirements of the CMO and the timing of payments also adjusted.</p> <p>With the timescales for the transfer of community assets to the CMO now later than in the predicted business plan financial model, any requirement for deficit funding must similarly be deferred. Not just because the payments as scheduled are more than mitigating the effects of the Development but because these payments are adversely affecting the Applicants’ cashflow and undermining viability.</p> <p>Thus, again if contrary to the Applicants’ primary case above, the DGC does serve a useful purpose, that</p>
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		<p>7.1.10, reference to the ‘2500th Dwelling’ to be modified to ‘5500th Dwelling’</p> <p>And,</p> <p>7.2.1 ‘more than 124 Dwellings ..’ to be modified to ‘more than 1500 Dwellings ..’.</p> <p>7.2.2 ‘more than 499 Dwellings ..’ to be modified to ‘more than 1999 Dwellings ..’.</p> <p>7.2.3 ‘more than 749 Dwellings ..’ ‘to be modified to ‘more than 2499 Dwellings ..’.</p> <p>7.2.4 ‘more than 999 Dwellings ..’ to be modified to ‘more than 2799 Dwellings ..’.</p> <p>7.2.5 ‘more than 1249 Dwellings ..’ to be modified to ‘more than 2999 Dwellings ..’.</p> <p>7.2.6 ‘more than 1499 Dwellings ..’ to be modified to ‘more than 3499 Dwellings ..’.</p> <p>7.2.7 ‘more than 1749 Dwellings ..’ to be modified to ‘more than 3999 Dwellings ..’.</p> <p>7.2.8 ‘more than 1999 Dwellings ..’ to be modified to ‘more than 4499 Dwellings ..’.</p> <p>7.2.9 ‘more than 2249 Dwellings ..’ to be modified to ‘more than 4999 Dwellings ..’.</p>	<p>purpose would be better or at least equally well served by deferring the instalments as proposed (covering Phase 1 and necessary consequential modifications into subsequent phases)</p> <p>Further, the indexation of these sums is a prime example also of the unrealistic inflation of the Paying Owner’s liabilities under the s106 Agreement. As referred to above there is no substantiated basis for indexing these contributions at all and the provision for indexation should be discharged or otherwise modified as proposed.</p> <p>The rescheduling of these contributions, removing payments 4-6 from Main Phase 1, is shown in Mr Hegan’s Supplementary Report at Appendix 3 Tab 5 s106 – Sensitivity cost items 22, 31, 43, 55, 64 and 74, and forms part of his updated viability analysis justifying the modifications sought.</p>
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			<p>7.2.10 'more than 2499 Dwellings ..' to be modified to 'more than 5499 Dwellings ..'.</p> <p>Further, Schedule 29A and the dates of payment therein likewise to be modified as follows:</p> <p>7, 75 modified to 1450</p> <p>10, 425 modified to 1925</p> <p>13, 675 modified to 2425</p> <p>16, 925 modified to 2725</p> <p>20, 1175 modified to 2925</p> <p>22, 1425 modified to 3425</p> <p>26, 1675 modified to 3925</p> <p>29,1925 modified to 4425</p> <p>33, 2175 modified to 4925</p> <p>37 2425 modified to 5425</p> <p>And like modifications to be made to Schedules 29B and 29C.</p>	
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14	Provision of Commercial Estate: Basic Provision	Para 9 and Sch 29D Item 14	<p>The Applicants apply to discharge the obligations under paragraph 9 and Schedule 29D Item 14.</p>	<p>The Applicants seek the discharge of the Commercial Estate: Basic Provision at £2,921,000 because it no longer serves a useful purpose. The Basic Provision is of no use or value to the CMO and is not feasible from its perspective, rather it will serve only materially to undermine the viability of Main Phase 1 from the perspective of the Applicants and with it the delivery of the Development.</p> <p>The CMO as established has no use for the Basic Provision as envisaged or at all. It simply does not at this Main Phase 1 stage have the organisation or operational capabilities to take on any such liability or exploit it commercially.</p> <p>Further, the Provision will not now have any usefulness as a source of income for the CMO. Firstly, given the prevailing economic conditions it is unlikely that it would generate any material income (see Section 4, paragraph 4.9 of the Supplementary Report). Secondly, the CMO has no requirement for additional funding to deliver the services required of it. The CMO will or certainly ought to be able to use the Rent Charge Deed and properly manage its accounts to meet its liabilities, without taking on the Basic Provision or any such additional overhead.</p> <p>Moreover, as stated, the total capital cost of the Basic Provision in the sum of £2,921,000 even before indexation is undermining the viability of the</p>
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				<p>Development and cannot be sustained. If, therefore, contrary to the foregoing, the Provision can at least in principle be regarded as useful, in practice it is not feasible but self-defeating and useless.</p> <p>The removal of the Basic Provision is shown in Mr Hegan’s Supplementary Report at Appendix 3 Tab 5 s106 – Sensitivity cost item 77, and forms part of his updated viability analysis justifying the discharge of obligations and modifications sought.</p>
	Schedule 5 – Early Community Development			
15	To pay annual Early Community Development Contributions of £50,000	Para 1.2	The Applicants apply for all further payments of ECD Contributions to be discharged.	<p>Notably, the Adopted 2017 – Early Community Development Strategy states (at page 13), ‘Within the early year’s timeframe it is expected that the existing community (i.e. those living in the Chilmington Hamlet – approximately 70 people/30 dwellings – together with a few scattered dwellings elsewhere) will be joined by a further circa 200 dwellings (circa 480 people) within the Chilmington Development Area, by the end of 2019. The first new residents are expected early 2019.’</p> <p>The payment of the second ECD contribution in December 2019 was plainly predicated upon this expectation. However, as at January 2020 the occupation</p>

				<p>level on site was just 30 dwellings (circa 72 people). At these occupancy levels, the payments made are already excessive with regard to their originally intended purpose (as described at paragraph 2 of Schedule 5) and cannot possibly be justified.</p> <p>Furthermore, whilst it was originally envisaged that Main Phase 1 would be completed within 5 years, it is not now expected that this phase can be completed until 2029. Given this actual rather than planned housing trajectory and the associated levels of occupancy, the payments due under the existing terms are again plainly excessive and surplus to requirements in the short term. Whilst, on the other hand, the proposed payments are wholly inadequate to serve their originally intended purpose over the longer term through to 2029.</p> <p>In the circumstances, these payments no longer serve any useful purpose and should be discharged accordingly. Mr Hegan's previous evidence and updated viability evidence in support of this application duly reflect this submission. Thus, the first two payments are included at Appendix 3 Tab 5 s106 – Sensitivity cost items 11 and 12, whilst the remaining liabilities are discharged (see cost items 24, 35 and 46).</p>
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	Schedule 7 – Chilmington Hamlet			
16	Chilmington Hamlet facilities to be provided by 1400 occupations	Para 1.3 and Sch 29D Item 12	<p>The Applicants apply for the following modifications:</p> <p>That paragraph 1.3 be modified to read ‘Unless the Council agrees otherwise, not to occupy more than 2600 Dwellings unless ...’</p> <p>Schedule 29D item 12, to be modified accordingly so that the trigger for payment refers to 2300 Dwellings.</p>	<p>The obligation at paragraphs 1.1 to 1.3 to provide the Chilmington Hamlet facilities, including the obligation to submit the Design Brief, are acknowledged potentially to serve a useful purpose but the requirement to do so by the 1400th Dwelling will adversely affect the Paying Owner’s cashflow and compromise the viability of this Phase 1 – Viability Review 1.</p> <p>Rather, the purpose of these provisions can be better or at least equally well served by modifying them as proposed, supporting the Development whilst securing delivery of these facilities in any event at a relatively early stage in the life of the Development.</p> <p>Certainly, given the level of capital cost here (£1.26m) this is another significant factor in terms of viability and the overall conclusions in Mr Hegan’s Reports justifying the deferment of this obligation to improve the viability of the subject phase and support the ultimate delivery of the entire Development. The removal of this item within the updated sensitivity analysis in Mr Hegan’s evidence is at Appendix 3, Tab 5 s106 cost item 69.</p>
17	Submission and Approval of Design Brief and	Paras 1.1 and 1.2	The Applicants apply to modify paragraph 1.1 to provide, ‘Not to Occupy more than 2200	This modification is proposed for the reasons stated above in respect of the provision of these facilities and

	Specification by 1,000 occupations		Dwellings unless a design brief and specification for the following indicative facilities and/or facilities of no greater environmental impact as may be approved by the Council ... at Schedule 7A to be provided in Chilmington Hamlet has been submitted to the Council for approval with a capital cost ...?.	consequential upon that modification, and for the further reasons below. In addition, there is no logical reason why Dwelling Occupations should depend upon the Council's approval of an appropriate submission or be vulnerable to delays in the granting of approval, particularly where the submission will already have been subject to consultation with the CMO and other stakeholders and the public. Accordingly, the Applicants include in their proposed modification, the change from 'approved' to 'submitted.'
	Schedule 8 – Children's and Young People's Play Space			
18	The provision of PS1 facilities by 500 Dwelling Occupations in Main Phase 1	Para 1.2 and Sch 29D Item 2	The Applicants apply for the following modifications: That the PS1 facilities be provided by 1250 Dwelling Occupations in Main Phase 1. Further, that the trigger for payment at Schedule 29D item 2, be modified accordingly to refer to 1000 (rather than 250) Dwellings in Main Phase 1.	The obligations at paragraphs 1.1 to 1.3 to provide the CYP's Play Space within Main Phase 1 and connected obligation to submit the design brief is acknowledged to serve a useful purpose but the requirement to do so by the 500 th Dwelling Occupation will adversely affect the Paying Owner's cashflow and compromise the viability of this Phase 1 – Viability Review 1 and not feasible. Rather, the purpose of these provisions can be better or at least equally well served by modifying them as proposed, supporting the Development whilst securing

				<p>delivery of these facilities in any event within the same phase as under the existing provisions.</p> <p>The deferment of this cost (from 500 to 1250 occupations) is captured in Mr Hegan’s Supplementary Report (as before) at Appendix 3 Tab 5 s106 – Sensitivity cost item 32, and forms part of his updated viability analysis again justifying the modifications sought.</p>
19	Submission and approval of PS1 design brief and specification by 50 Dwelling Occupations	Para 1.1	<p>The Applicants apply for the submission of the design brief to be re-gearred from 50 to 800 Dwelling Occupations, i.e. paragraph 1.1 should be modified to provide:</p> <p>‘Not to Occupy more than:-</p> <p>800 Dwellings in Main Phase 1 in relation to a 0.5 ha play space marked “PS1” on the attached plan ...</p> <p>unless:</p> <p>1.1.1 a design brief and specification for the children’s and young people’s play spaces and/or other facilities of no significantly greater environmental impact as may be approved by the</p>	<p>This modification is proposed for the reasons stated above in respect of the provision of these facilities and consequential upon that modification, and for the further reasons below.</p> <p>In addition, there is no logical reason why Dwelling Occupations should be made dependent upon the Council’s approval of an appropriate submission or be vulnerable to delays in the granting of that approval, particularly where the submission will already have been subject to consultation with the CMO and other stakeholders and the public. Accordingly, the Applicants include in their proposed modification, the change from ‘approved’ to ‘submitted.’</p>

			Council ... at Schedule 8A have been submitted to the Council for approval with the total capital cost of each play space as follows ...'	
	Schedule 9 - Allotments			
20	Provision of Main Phase 1 Allotments by 1000 Dwelling Occupations	Para 1 and Sched 29D Item 10	<p>The Applicants apply to modify this obligation so that the provision of the Main Phase 1 Allotments is deferred to 1500 Dwelling Occupations; i.e. paragraph 1.1 should be modified to read 'Unless the Council agrees otherwise, not to Occupy more than 1500 Dwellings in Main Phase 1 or ...'</p> <p>Schedule 29D item 10, to be modified accordingly so that the trigger for payment refers to 1400 Dwellings in Main Phase 1.</p>	<p>The obligations to provide allotments is acknowledged to serve a useful purpose but the requirement to do so by the 1000th Dwelling Occupation will adversely affect the Paying Owner's cashflow in Main Phase 1 and compromise the viability of this phase.</p> <p>The purpose of these provisions can be better or at least equally well served by modifying them as proposed, supporting the Development whilst securing delivery of these facilities in any event within the same phase as under the existing provisions.</p> <p>The deferment of this cost is captured in Mr Hegan's Supplementary Report at Appendix 3 Tab 5 s106 – Sensitivity cost item 54, and forms part of his viability analysis justifying the modifications sought.</p> <p>The application of indexation to this cost item is also a prime example of the exaggeration in costs contributions produced by indexation from the original April 2014 base date.</p>

	Schedule 10 – DP3, Discovery Park Sports Hub and Discovery Park Sports Pitches			
21	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	Para 2.1	<p>The Applicants apply to modify this obligation so that the submission/approval of the design briefs and specifications should be re-gearred from 1000 Dwelling Occupations to 2200 Occupations; i.e. paragraph 2.1 should be modified to read: ‘Unless the Council agrees otherwise, not to Occupy more than 2200 Dwellings unless;</p> <p>2.1.1 design briefs and specifications for the Discovery Park Sports Pitches and for the Discovery Park Sports Hub and/or other facilities of no significantly greater impact ... at Schedule 10A have been submitted to the Council for approval with a total capital cost of ...’</p> <p>.</p>	<p>The obligation to provide these community assets (at a total capital cost of up to £2,782,000.00 + £4,976,157 Index Linked) in stages after some 3200 and 5000 Dwellings is acknowledged to serve a useful purpose but the requirement to submit the design briefs and specifications by 1000 is obviously premature.</p> <p>Given the present housing trajectory and rate of occupations, modifying the number of occupations by which submission/approval is required from 1000 to 2200 will provide a similar and certainly ample lead in time for the delivery of these assets by the stipulated 3200 and 5000 Dwellings.</p> <p>Clause 2.2 will therefore serve its purpose equally well and in full if modified as proposed, allowing additional time for this obligation without impacting the delivery of these assets in accordance with the existing terms of the s106 Agreement.</p> <p>Further, the Applicants again include in their proposed modification, the change from ‘approved’ to ‘submitted.’ There is no logical reason why Occupations</p>

				should be linked to approval rather than submission or exposed to delays in the granting of that approval, particularly where the submission will already have been subject to consultation with the CMO and other stakeholders and the public.
22	The obligations to provide DP3	Paras 2.6.1 and 2.6.2 and Sched 29D Item 22	<p>The Applicants apply for the following modifications:</p> <p>Delivery of DP3 in Phase 1 be deferred from 1500 to 2000 Occupations and consequentially in Phase 2 from 2500 to 3000 (subsequent phases remain unchanged); i.e. para 2.6 to be modified to read:</p> <p>‘Not to Occupy more than:</p> <p>2.6.1 2000 Dwellings unless 1 ha of DP3 has been provided</p> <p>2.6.2 3000 Dwellings unless 0.86 ha of DP3 has been provided ...’</p> <p>At Schedule 29D Item 22, the payment trigger likewise to be deferred from 1350 to 1850 Dwellings.</p>	<p>The obligations to provide these areas of DP3 are acknowledged to serve a useful purpose but the requirement to provide the first 1 ha by the 1500th Dwelling Occupation will adversely affect the Paying Owner’s cashflow in Main Phase 1 and compromise the viability of this phase.</p> <p>The purpose of these provisions can be better or at least equally well served by modifying them as proposed, supporting the Development whilst securing delivery of these facilities in any event within the first two main phases as under the existing provisions.</p> <p>The deferred requirement to provide DP3 as proposed will result in a cost reduction within the subject phase of some £279k, producing a commensurate improvement in viability. This specific item is shown at Mr Hegan’s updated Appendix 3, Tab 5 s106 Sensitivity cost item 71. The cumulative effect of this reduction together with the other discharges/modifications proposed in this application are duly reflected in Mr Hegan’s Supplementary Report and his overall viability analysis</p>

				and conclusions in support of the changes sought herein to the s106 Agreement.
23	The obligation to provide the design brief and specification for DP3 etc	Para 2.5	<p>The Applicants apply to modify paragraph 2.5 to provide, ‘Not to Occupy more than 1500 Dwellings unless:</p> <p>2.5.1 a design brief and specification for DP3 ... at Schedule 10B have been submitted to the Council for approval with a total capital cost of the DP3...’.</p>	<p>This modification is proposed for the reasons stated above in respect of the provision of these facilities and consequential upon that modification, and for the further reasons below.</p> <p>In addition, there is no logical reason why Dwelling Occupations should depend upon the Council’s approval of an appropriate submission or be vulnerable to delays in the granting of approval, particularly where the submission will already have been subject to consultation with the CMO and other stakeholders and the public. Accordingly, the Applicants include in their proposed modification, the change from ‘approved’ to ‘submitted.’</p>
	Schedule 12 – Community Hub Building			
24	The obligation to provide a multi-purpose community leisure building and other facilities (the Community	Para 1.2 and Sch 29D item 17	<p>The Applicants apply for the following modifications:</p> <p>That paragraph 1.2 be modified to read ‘Unless the Council agrees, otherwise, not to Occupy more than 2,500 Dwellings unless: ...’</p>	The obligation to provide the Community Hub Building (at a capital cost up to £5,152,127.00) is acknowledged to serve a useful purpose but the requirement to do so by the 1,800 th Dwelling Occupation will be a cost to Phase 1 and Phase 2 and will serve to undermine the viability of these early phases. It will plainly also have a

	Hub Building) by 1,800 Dwellings		At Schedule 29D Item 17, the payment trigger should likewise to be deferred from 1300 to 2000 Dwellings.	<p>significantly detrimental effect on the Paying Owner's cashflow in the initial phases of the Development.</p> <p>In the circumstances, the purpose of these provisions can be better or at least equally well served by modifying them as proposed, supporting the Development whilst still securing delivery of these facilities in any event within the same phase (Main Phase 2) in the life of the Development.</p>
25	The submission and approval of a design brief and specification for the Community Hub Building	Para 1.1	<p>The Applicants apply to modify this obligation so that the submission/approval of the design brief and specification for these facilities be re-gearred from 1400 Dwelling Occupations to 1800 Occupations i.e. paragraph 1.1 should read:</p> <p>'Not to Occupy more than 1800 Dwellings unless:</p> <p>1.1.1 a design brief and specification for the following indicative facilities and/or other facilities of no significantly greater environmental impact ... at Schedule 12A to be provide in the District Centre has been submitted to the Council for approval with a total capital cost of ...'</p>	<p>This modification is proposed for the reasons stated above in respect of the provision of these facilities and consequential upon that modification, and for the further reasons below.</p> <p>In addition, there is no logical reason why Dwelling Occupations should be made dependent upon the Council's approval of an appropriate submission or be vulnerable to delays in the granting of that approval, particularly where the submission will already have been subject to consultation with the CMO and other stakeholders and the public. Accordingly, the Applicants include in their proposed modification, the change from 'approved' to 'submitted.'</p>

	Schedule 14 – District and Local Centres			
26	The obligation to construct and provide the serviced sites and Small Retail Units (the District Centre Facilities) by 1250 Dwellings and associated obligations including marketing plans etc.	Paragraphs 1.1 to 1.5	<p>The Applicants apply for the following modifications:</p> <p>That paragraph 1.2 be modified to read ‘Unless the Council agrees, otherwise, not to Occupy more than 1800 Dwellings unless: ...’</p> <p>And paragraphs 1.4 and 1.5 should also each refer to 1800 Dwellings [rather than 1250]</p>	<p>The obligations at paragraph 1.2 to provide the serviced sites and Small Retail Units and associated marketing plan are acknowledged to serve a useful purpose, but the requirement to do so by 1250 Dwellings will undermine the viability of Main Phase 1. It will plainly also have a significantly detrimental effect on the Paying Owner’s cashflow in this initial phase of the Development.</p> <p>In the circumstances, the purpose of these provisions can be better or at least equally well served by modifying them as proposed, supporting the Development whilst still securing delivery of these facilities at an early stage in the life of the Development.</p> <p>Where the modification above is made, there can be no doubting that paragraph 1.1 will serve its purpose equally as well if modified from 950 to 1500 Dwellings, and this alteration should therefore also be made.</p> <p>Mr Hegan has accordingly pushed back the commencement/completion of the District and Local Centres in his sensitivity model, as can be seen specifically in the cashflow appraisal, and the benefits of this form a part of his overall viability analysis and conclusions in support of the modifications sought.</p>

27	The submission and approval of a design brief and specification for the District Centre Facilities	Paragraph 1.1	<p>The Applicants apply to modify this obligation so that in paragraph 1.1 where reference is made to 950 Dwellings it should be to 1500 Dwellings. Further, that clause 1.1 should be modified to read:</p> <p>‘Not to Occupy more than 1500 Dwellings in Main Phase 1 unless ... has been submitted for approval to the Council.’</p>	<p>This modification is proposed for the reasons stated above in respect of the provision of these facilities and consequential upon that modification, and for the further reasons below.</p> <p>In addition, there is no logical reason why Dwelling Occupations should be made dependent upon the Council’s approval of an appropriate submission or be vulnerable to delays in the granting of that approval, particularly where the submission will already have been subject to consultation with relevant stakeholders and the public. Accordingly, the Applicants include in their proposed modification, the change from ‘approved’ to ‘submitted.’</p>
	Schedule 15 - Education			
28	Education Contributions; Primary School 1 Contributions 1 to 4 to the County Council	Para 7 (as amended by the Deed dated 29/3/19)	<p>The Applicants apply for the following modifications:</p> <p>That paragraph 7(d) (as amended by the Supplemental Deed of Agreement dated 29 March 2019) should be modified to provide for payment of PS1 Contribution 4 prior to 1950 Dwellings on Site being Occupied for the first time.</p>	<p>Whilst it is accepted the PS1 Contributions continue to serve a useful purpose, the current payment timetable (even as revised) is unrealistic and only serving to compromise the viability of Main Phase 1 and potentially the whole Development.</p> <p>Given the actual rather than planned housing trajectory, with Main Phase 1 not predicted to be completed until 2029 rather than within 5 years as originally planned, the purpose of these payments can only be served by rescheduling them to align with progress, as proposed by</p>

			<p>Thus, together with the modification proposed at Item 27 below, paragraph 7(d) should be modified to read:</p> <p>‘pay PS1 Contribution 4 (including indexation) to the County Council prior to 1950 Dwellings on Site being Occupied for the first time and pay PS1 Contribution 2 Indexation Amount and PS1 Contribution 3 Indexation Amount and Interest on the PS1 Contribution 2 Indexation Amount from 5 December 2018 until the date of payment and Interest on PS1 Contribution 3 Indexation Amount from 5 June 2020 until the date of payment to the County Council not later than 78 months from the date of Commencement of the Development.’</p>	<p>the specified modifications. The number of occupied Dwellings correlating with those that were expected to be completed by the months specified under the existing terms (at the build rate of 300 completions per annum upon which the existing s106 Agreement timings are predicated).</p> <p>The deferment of this contribution to align with progress, is reflected in Mr Hegan’s Reports and specifically his updated Appendix 3 Tab 5 s106 – Sensitivity cost item 78, and forms part of his overall viability analysis justifying the modifications sought.</p>
29	Payment of PS1 Contribution 2 Indexation Amount and PS1 Contribution Indexation Amount	Para 7 (as amended by the Deed dated 29/3/19)	The Applicants also apply to modify paragraph 7A (as introduced by the Supplemental Deed of Agreement dated 29 March 2019) by replacing the two Indexation Amounts stated therein with figures re-calculated on the basis that the base date for indexation is August 2018 or the third quarter of 2018 as appropriate.	For the reasons stated above in relation to Item 4

30	Education Contributions; Primary School 2 Contributions 1 to 4 to CC	Paras 8, 10, 11, 12 and 14	<p>The Applicants apply for the following modifications to the PS2 obligations:</p> <p>Paragraph 14(a) to be modified to provide for payment of PS2 Contribution 1 to the County Council prior to 1550 Dwellings on Site being so Occupied for the first time.</p> <p>Paragraph 14(b) to be modified to provide for payment of PS2 Contribution 2 to the County Council prior to 1725 Dwellings on Site being so Occupied for the first time.</p> <p>Paragraph 14(c) to be modified to provide for payment of PS2 Contribution 3 to the County Council prior to 2475 Dwellings on Site being so Occupied for the first time.</p> <p>Paragraph 14(d) to be modified to provide for payment of PS2 Contribution 4 to the County Council prior to 2700 Dwellings on Site being so Occupied for the first time.</p> <p>Paragraphs 8, 10, 11 and 12 to be modified accordingly. Thus,</p> <p>Paragraph 8, should refer to 1699 Dwellings [rather than 1049]</p>	<p>Given the actual rather than originally planned housing trajectory, with Main Phase 1 not predicted to be completed until 2029 rather than within 5 years (by June 2023) as originally planned, the timed based triggers for payment of the PS2 Contributions 2 to 4 obviously result in them being premature.</p> <p>For example, at the predicted build rate PS2 Contribution 2 would become due at the end of Main Phase 1 rather than some 9 months into Main Phase 2 as originally planned.</p> <p>Further, to require PS2 Contributions 2 to 4 to be made before the completion of Main Phase 1 will only serve unnecessarily to undermine the viability of this Phase and potentially the Development. Equally, it makes no sense in these circumstances to anchor PS2 Contribution 1 to the 900th Dwelling on site to be Occupied,</p> <p>Accordingly, the purpose of these payments can only be served, or will at least be equally well served, by rescheduling them to align with progress, as proposed by the specified modifications.</p> <p>The numbers of occupied Dwellings proposed correlating (as above for PS1) with those that were expected to be completed by the months specified under the existing terms for PS2 Contributions 2 to 4 (at the build rate of 300 completions per annum on which the present timings under the s106 Agreement are</p>
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			<p>Paragraph 10, should refer to 1750 Dwellings [rather than 1100]</p> <p>Paragraph 11, should refer to 2580 and 2579 Dwellings respectively [rather than 1930 and 1929], and</p> <p>Paragraph 12, should refer to the 1549 Dwellings [rather than 899].</p>	<p>predicated). The modified Dwelling numbers thereby ensuring these contributions are made no earlier than the stage of the Development they were originally envisaged to be made under the existing obligations and PS2 Contribution 1 being rescheduled to align with these.</p> <p>The deferment of PS2 (1)-(4) to align with progress, is reflected in Mr Hegan’s Supplementary Report at Appendix 3 Tab 5 s106 – Sensitivity cost items 52 and 79 and forms part of his viability analysis for the subject phase justifying the modifications sought.</p>
31	The provision of Bonds to the value of PS2 Contributions 2, 3 and 4	Para 13 and 14(e)	<p>The Applicants apply for the obligation to provide Bonds for these PS2 Contributions to be discharged.</p> <p>In the alternative and without prejudice to the application above to discharge this obligation, the Applicants propose that the following modifications should be made:</p> <p>Paragraph 13 to be modified to provide, ‘No further Dwelling shall be brought into residential use nor thereafter Occupied on the Site unless Bonds have been provided to the value of the PS2 Contribution 2 plus PS2 Contribution 3 plus PS2 Contribution 4 by the time when the 1649th [or alternatively, the 1099th] Dwelling on Site to be</p>	<p>The obligation to provide Bonds for these Contributions in the total sum of £5,850,000 no longer serves any useful purpose and should be discharged. It has ceased to be possible in the financial markets to obtain Bonds of the kind required by the s106 Agreement. In the premises the reality is that this obligation has been rendered redundant and it should be discharged accordingly.</p> <p>The Applicants have already provided further evidence since first making these requests in support, but nonetheless will in so far as necessary provide any further evidence in support if required.</p> <p>Otherwise if contrary to the Applicants’ own enquiries it can be shown by the Respondents that a compliant form</p>

			<p>so Occupied has been Occupied for the first time.’</p> <p>Paragraph 14(e) to be modified to provide, ‘No further Dwelling shall be brought into residential use nor thereafter Occupied on the Site unless Bonds have been provided to the value of the PS2 Contribution 2 plus PS2 Contribution 3 plus PS2 Contribution 4 by the time when the 1649th [or alternatively, the 1099th] Dwelling on Site to be so Occupied has been Occupied for the first time’.</p>	<p>of Bond can be found, the likelihood is that this would be at face value or such a cost as to be prohibitive. Any additional financial commitment of this scale would palpably undermine the viability of Main Phase 1 and with it potentially the delivery the Development. In any event therefore the provision of a Bond is self-defeating and cannot be regarded as serving any useful purpose in relation to the Development and should be discharged accordingly.</p> <p>Alternatively, and without prejudice to the foregoing, if for any reason the provision of the Bonds can still be said to serve some useful purpose, the existing obligation to provide them would result in their premature provision, both significantly in advance of any need for the PS2 contributions and ahead of the payment terms proposed above.</p> <p>In these circumstances any purpose of the Bonds would be better or at least equally well served by postponing their provision to align with the timing of the PS2 Contributions (i.e. by the 1649th Dwelling) as proposed or otherwise to provide that the earliest they should be provided is by the day when the 1099th Dwelling is Occupied (the stage by which it was envisaged this obligation would be met under the existing provisions).</p>
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32	Stage One Secondary School Site Transfer and Adoptable Access etc.	Paras 33 and 35	<p>The Applicants apply for the existing Stage One Secondary School obligations to be discharged in their entirety.</p> <p>In the alternative and without prejudice to the application above to discharge these obligations, the Applicants propose that the following modifications should be made:</p> <p>Paragraph 33 to be modified to provide, ‘The Owners shall deliver a duly executed Transfer in respect of the Secondary School Site to the County Council and shall have provided an Ensured Access to the County Council by the time when the 1000th [or alternatively, the 750th] Dwelling to be so Occupied on the Site is Occupied’</p> <p>Paragraph 35 to be modified to provide, ‘The Owners shall provide an Adoptable Access to the Secondary School Site and execute an agreement and release for completion and to dedicate the same as highway under Section 38 of the Highways Act by the time when the 1500th [or alternatively, the 1250th] Dwelling to be so Occupied on the Site is Occupied’.</p>	<p>Presently the availability of Department of Education funding remains an issue. If in the light of any developments in this regard it were to be the case that the Secondary School obligations under the s106 Agreement become redundant the Applicants will seek the discharge of the s106 Agreement Stage One Secondary School obligations in their entirety.</p> <p>In the alternative, should the a fully grant funded solution not eventuate, the Applicants propose the modification of paragraphs 33 and 35 to align with the actual building trajectory, delivery of the Stage One Secondary School and thus projected demand for the Ensured Access and Adoptable Access (see further below).</p> <p>Certainly, under existing paragraphs 33 and 35 the provision of each Access will be premature and well in advance of any demand for either of them. What should have been the long stop alternatives of 1 September 2020 and 2022 at sub-paragraphs (a), now committing the Applicants to provision vastly ahead of any actual or reasonable requirement for access.</p> <p>The purpose of these provisions will therefore be better or at least equally well served if they are modified as proposed; postponing their provision to align with the timing of the Stage One Secondary School Contributions (see below) or otherwise to provide that the very earliest they should be provided is by the day</p>
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				when, respectively, the 750 th and 1250 th Dwelling is Occupied (again as under the existing terms).
33	Provision of Bonds for the Stage One Secondary School Contributions 1, 2, 3 and 4	Paras 37 and 38 and 42(a) and (b)	<p>The Applicants apply for the existing Stage One Secondary School obligations to be discharged in their entirety.</p> <p>Further or in the alternative the Applicants propose that in any event the obligation to provide Bonds for the Stage One Secondary School Contributions should be discharged.</p> <p>In the alternative, and if contrary to the Applicants' evidence it was somehow found to be the case that an appropriate Bond is available and realistically obtainable, the Applicants will propose the following modifications:</p> <p>Paragraph 37 to be modified to provide, 'The Owners shall ensure that after 899 Dwellings have been Occupied on the Site no more Dwellings shall be Occupied nor brought into residential use on the Site unless a Bond has been provided to the value of Stage One Secondary Contribution 1 plus Stage One Secondary Contribution 2.'</p> <p>Paragraph 38 to be modified to provide, 'The Owners shall ensure that after 1149 Dwellings have been Occupied on the Site no more</p>	<p>Presently the Paying Owner is in discussion with the Presently the availability of Department of Education funding remains an issue. If in the light of any developments in this regard it were to be the case that the Secondary School obligations under the s106 Agreement become redundant the Applicants will seek the discharge of the s106 Agreement Stage One Secondary School obligations in their entirety.</p> <p>Further, the obligation to provide Bonds for these Contributions in the total sum of £5,850,000 no longer serves any useful purpose and should be discharged in any event because it has ceased to be possible in the financial markets to obtain Bonds of the kind required by the s106 Agreement. In the premises the reality is that this obligation has been rendered redundant and it should be discharged accordingly.</p> <p>The Applicants have already provided further evidence since first making these requests in support, but nonetheless will in so far as necessary provide any further evidence in support if required.</p> <p>Otherwise if contrary to the Applicants' own enquiries, it can be shown by the Respondents that a compliant form of Bond can be found, the likelihood is that this</p>

		<p>Dwellings shall be Occupied nor brought into residential use unless: (a) a Bond has been provided to the value of Stage One Secondary Contribution 3 plus Stage One Secondary Contribution 4, and (b) Stage One Secondary Contribution 1 [OMIT and Stage One Secondary Contribution 2]* has been paid to the County Council.'</p> <p>Paragraph 42(a) to be modified to provide that the Paying Owners shall:</p> <p>'(a) provide a Bond to the value of Stage One Secondary Contribution 1 plus Stage One Secondary Contribution 2 by the date on which 899 Dwellings have been Occupied on the Site.'</p> <p>Paragraph 42(b) to be modified to provide that the Paying Owners shall:</p> <p>'(b) provide a Bond to the value of Stage One Secondary Contribution 3 plus Stage One Secondary Contribution 4 by the date on which 1149 Dwellings have been Occupied on the Site.'</p>	<p>would be at face value or such a cost as to be prohibitive. Any additional financial commitment of this scale would palpably undermine the viability of Main Phase 1 and with it potentially the delivery the Development. In any event therefore the provision of a Bond is self-defeating and cannot be regarded as serving any useful purpose in relation to the Development.</p> <p>Without prejudice to the foregoing, if contrary to the Applicants case it can be shown the Secondary School Bonds and Contributions serve a useful purpose, the existing timetable for performance of these obligations is out of step with the actual building trajectory and is undermining the viability of Main Phase One and potentially the Development. On this alternative premise the purpose of these obligations could only be served, or would at least be equally well served, if they were to have effect subject to the (alternative) modifications proposed, so as to align with progress and presently projected completions.</p> <p>When the s106 was signed on 27 February 2017 it was based on the principle of completion of 300 dwellings per year, with each main phase therefore being completed in approximately 5 years. Commencement (Statutory) Development occurred in June 2017 and it was expected by all parties that house building would commence on site shortly thereafter with the first dwellings occupied in late 2017. However, the first reserved matters planning application was only</p>
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				<p>approved in April 2018, so that house building could only commence mid-2018 and first occupations did not occur until late September 2019 (at least 2 years later than planned).</p> <p>Further, difficult economic conditions have meant that the rate of completions being achieved is not more than 150 per annum, with markedly reduced completions (not more than 50) in 2022 as a direct consequence of the Pandemic. The Paying Owner's present prediction is that Main Phase 1 will not be completed before at best the end 2029. Indeed, with the unprecedented conditions that have arisen and continue as a result of Covid 19 and the projected impact both in practical and economic terms any earlier is certainly now unrealistic.</p> <p>The original timetable for the Secondary School obligations must therefore be modified as proposed to ensure such purpose as they may have would be served. The numbers of occupied Dwellings proposed correlating (as above for PS1) with those that were expected to be completed by the months specified under the existing terms; at the build rate of 300 completions per annum on which the present timings under the s106 Agreement are predicated.</p> <p>Further, the modification marked []* is required because the limitation in paragraph 38 in relation to Stage One Secondary Contribution 2 is inconsistent with the</p>
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				existing payment provision for this Contribution at paragraph 41(b).
34	Payment of Stage One Secondary School Contribution 1	Para 41(a)	<p>The Applicants apply for the existing Stage One Secondary School obligations to be discharged in their entirety.</p> <p>In the alternative and without prejudice to the application to discharge above, the Applicants propose that Paragraph 41(a) should be modified to provide that the Paying Owners shall, ‘(a) pay Stage One Secondary Contribution 1 to the County Council on or before the date when 1000 Dwellings on Site have been occupied.’</p>	<p>Again, presently the availability of Department of Education funding remains an issue. If in the light of any developments in this regard it were to be the case that the Secondary School obligations under the s106 Agreement become redundant the Applicants will seek the discharge of the s106 Agreement Stage One Secondary School obligations in their entirety.</p> <p>Without prejudice to the foregoing, the Applicants acknowledge that otherwise the Secondary School Bonds and Contributions may in principle to serve a useful purpose. However, the existing timetable for performance of these obligations is out of step with the actual building trajectory and is undermining the viability of Main Phase 1 and potentially the Development. The purpose of these obligations can only be served, or will at least be equally well served, if they have effect subject to the (alternative) modifications proposed, so as to align with progress and presently projected completions.</p> <p>When the s106 was signed on 27 February 2017 it was based on the principle of completion of 300 dwellings per year, with each main phase therefore being completed in approximately 5 years. Commencement</p>

				<p>(Statutory) Development occurred in June 2017 and it was expected by all parties that house building would commence on site shortly thereafter with the first dwellings occupied in late 2017. However, the first reserved matters planning application was only approved in April 2018, so that house building could only commence mid-2018 and first occupations did not occur until late September 2019 (at least 2 years later than planned).</p> <p>Further, difficult economic conditions have meant that the rate of completions being achieved is not more than 150 per annum, with markedly reduced completions (not more than 50) in 2022 as a direct consequence of the Pandemic. The Paying Owner's present prediction is that Main Phase 1 will not be completed before at best the end 2029. Indeed, with the unprecedented conditions that have arisen and continue as a result of Covid 19 and the projected impact both in practical and economic terms any earlier is certainly now unrealistic</p> <p>The original timetable for the Secondary School obligations must therefore be modified as proposed. The modified number of occupied Dwellings correlating (as above for PS1 or PS2) with those that were expected to be completed by the months specified under the existing terms.</p> <p>The proposed modifications will therefore secure that the purpose of these payments is better or at least equally</p>
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				<p>well served. The modified Dwelling numbers ensuring the contributions are made at the same stage of the Development as they were set to be made under the existing obligations.</p> <p>The deferring of Stage 1 Secondary School payment 1 to align with progress in this way is reflected in Mr Hegan’s Supplementary Report at Appendix 3 Tab 5 s106 – Sensitivity cost item 44 and forms part of his updated viability analysis for the subject phase justifying the modifications sought.</p>
35	Payment of Stage One Secondary School Contribution 2	Para 41(b)	<p>The Applicants apply for the existing Stage One Secondary School obligations to be discharged in their entirety.</p> <p>In the alternative and without prejudice to the application to discharge above, the Applicants propose that Paragraph 41(b) should be modified to provide that the Paying Owners shall, ‘pay Stage One Secondary Contribution 2 to the County Council on or before the date when 1150 Dwellings on Site have been occupied.’</p>	<p>The Applicants repeat and rely upon the reasons stated above in respect of paragraph 41(a).</p> <p>The deferring of Stage 1 Secondary School payment 2 to align with progress in this way is reflected in Mr Hegan’s Supplementary Report at Appendix 3 Tab 5 s106 – Sensitivity cost item 45 and forms part of his updated viability analysis for the subject phase justifying the modifications sought.</p>

36	Payment of Stage One Secondary School Contribution 3	Para 41(c)	<p>The Applicants apply for the existing Stage One Secondary School obligations to be discharged in their entirety.</p> <p>In the alternative and without prejudice to the application to discharge above, the Applicants propose that Paragraph 41(c) should be modified to provide, ‘pay Stage One Secondary Contribution 3 to the County Council on or before the date when 1450 Dwellings on Site have been occupied.’</p>	<p>The Applicants repeat and rely upon the reasons stated above in respect of paragraph 41(a).</p> <p>The deferring of Stage 1 Secondary School payment 3 to align with progress in this way is reflected in Mr Hegan’s Supplementary Report at Appendix 3 Tab 5 s106 – Sensitivity cost item 59 and forms part of his updated viability analysis for the subject phase justifying the modifications sought.</p>
37	Payment of Stage One Secondary School Contribution 4	Para 41(d)	<p>The Applicants apply for the existing Stage One Secondary School obligations to be discharged in their entirety.</p> <p>In the alternative and without prejudice to the application to discharge above, the Applicants propose that Paragraph 41(d) should be modified to provide, ‘pay Stage One Secondary Contribution 4 to the County Council on or before the date when 1975 Dwellings on Site have been occupied.’</p>	<p>The Applicants repeat and rely upon the reasons stated above in respect of paragraph 41(a).</p> <p>The deferring of Stage 1 Secondary School payment 4 to align with progress in this way, so removing it from the Main Phase 1, is reflected in Mr Hegan’s Supplementary Report at Appendix 3 Tab 5 s106 – Sensitivity cost item 80, and again thereby forms part of his updated viability analysis for the subject phase justifying the modifications sought.</p>

	Schedule 16 – Other KCC Services			
38	Payment of Youth Services Contributions to KCC	Paras 3 and 4, and Sch 30A-C	<p>The Applicants apply for these obligations to be modified by the omission in paragraphs 3 and 4 of the second sub-sub-paragraph and sub-paragraph (b) respectively so as to read:</p> <p>‘3. The Owners must ensure that no more Dwellings shall be Occupied or brought into residential use on the Site:</p> <p>3.1 after 499 Dwellings have been Occupied on the Site unless and until Youth Services Contribution 1 has been paid to the County Council;</p> <p>3.2 after 1099 Dwellings have been Occupied on the Site unless and until Youth Services Contribution 2 has been paid to the County Council;</p> <p>3.3 after 1799 Dwellings have been Occupied on the Site unless and until Youth Services Contribution 3 has been paid to the County Council.</p> <p>4. The Paying Owners shall:</p>	<p>Whilst in principle these Contributions continue to serve a useful purpose, the existing timetable for payment of these monies is vastly out of step with the actual building trajectory and likely demand for the relevant services.</p> <p>Accordingly, the purpose of these obligations can better be served, or will at least be equally well served, if they have effect subject to the specified modifications, removing the time based triggers and leaving the original Dwelling Occupation triggers unchanged so as to align with progress and meet the demand for these services as it arises.</p> <p>Consequential modifications also to be made to Contributions 3 for consistency, ensuring these do not become payable before Contributions 1 and 2.</p> <p>The deferring of these obligations as proposed is shown in Mr Hegan’s Supplementary Report at Appendix 3 Tab 5 s106 – Sensitivity cost item 82 and forms part of his updated viability analysis for the subject phase justifying the modifications sought.</p>

			<p>4.1 Pay Youth Services Contribution 1 to the County Council by the date when 500 Dwellings have been Occupied on the Site;</p> <p>4.2 Pay Youth Services Contribution 2 to the County Council by the date when 1100 Dwellings have been Occupied on the Site;</p> <p>4.3 Pay Youth Services Contribution 3 to the County Council by the date when 1800 Dwellings have been Occupied on the Site.</p>	
39	Payment of Community Learning Contributions to KCC	Para 5 and 6, and Sch 30A-C	<p>The Applicants apply for these obligations to be modified by the omission in paragraphs 5 and 6 of the second sub-sub-paragraph and sub-paragraph (b) respectively so as to read:</p> <p>‘5. The Owners must ensure that no more Dwellings shall be Occupied nor brought into residential use on the Site:</p> <p>5.1 after 1799 Dwellings have been Occupied on the Site unless and until Community Learning Contribution 1 has been paid to the County Council; ...’</p> <p>CLC Contribution 1 modified from 1500 Occupations to 1800.</p>	<p>Whilst in principle these Contributions continue to serve a useful purpose, the existing timetable for performance of these obligations is out of step with the actual building trajectory.</p> <p>In addition, the Applicant maintains that given the nature of this payment and its proposed use it would have greater utility when there are more households in occupation likely to generate increased demand for such services.</p> <p>Accordingly, the purpose of these obligations can better be served, or will at least be equally well served, if they have effect subject to the specified modifications, removing the time based trigger to align with progress</p>

				<p>and adjusting the number of Dwellings Occupied to optimise the usefulness of these monies.</p> <p>The deferring of this contribution, so as to exclude it from Main Phase 1, as proposed is shown in Mr Hegan’s Supplementary Report at Appendix 3 Tab 5 s106 – Sensitivity cost item 72 and forms part of his updated viability analysis for the subject phase justifying the modifications sought.</p>
	<p>Schedules 18 and 18A – A28 Improvement Works</p>			<p>NOTE: As noted above, the Applicants primary application herein is under s106A to modify the terms of Schedules 18 and 18A of the s106 Agreement incorporating the terms of the s.278 Agreement, in accordance with the modifications proposed (in column (4)) and for the reasons stated (in column (5)) below under this heading.</p> <p>Further or in the alternative, and without prejudice to the primary application above, the Applicants in so far as necessary hereby apply separately to Kent County Council in its capacity as highways authority to vary the terms conditions and obligations of the completed s.278 Agreement in accordance with the said modifications and for the reasons stated.</p> <p>Further, in the relation to the latter application, the Applicants apply also herein under paragraph 2 of</p>

				Schedule 18 and in so far as necessary for the prior written consent of the Council to vary the completed s.278 Agreement in accordance with the said modifications or otherwise as determined or agreed.
40	Provision of a Bond in the form required	Schedule 18 Para 1 and Schedule 18A	<p>The Applicants apply for paragraph 1 of Schedule 18 and the obligation to provide a Bond to be discharged. Equally, and consequentially that under Schedule 18A, Schedule 1 paragraph 7 should be discharged and that paragraph 4 thereof is modified to remove reference to the Bond by the omission of ‘..in these circumstances or in the event that the Council is able to increase its forward funding provide an amended Bond under clause 7 ... in Annex 2 to this Deed.’</p> <p>Further, that consequential amendments be made to the Council’s obligations (under Schedule 18A), omitting clauses 5.4, 5.10, 5.11 and clauses 8 (Release of Bond) and 12.</p>	<p>The obligation to provide a Bond in respect of the A28 Improvement Works in the total sum of £28,988,800 no longer serves any useful purpose and should be discharged because it has ceased to be possible in the financial markets to obtain a Bond in the form or of the ‘on-demand’ kind required by the s106 Agreement. In the premises the reality is that this obligation has been rendered redundant and it should be discharged accordingly.</p> <p>Evidence has already been provided to the Council establishing that a Bond cannot be obtained. Nonetheless, the Applicant will provide such further information in this regard as may be required by the Council, confirming the unavailability of the Bond.</p> <p>Alternatively, and without prejudice to the foregoing, if it were somehow to be shown contrary to the Applicants’ own enquiries and evidence (already provided) that a compliant (Annex 3) form of Bond is obtainable, the likelihood is that this would be at face value or such a cost as to be prohibitive. An additional financial commitment of this scale would palpably undermine the viability of Main Phase 1 and with it potentially the delivery the Development. The provision of a Bond is,</p>

				therefore, self-defeating and cannot be regarded as serving any useful purpose in relation to the Development.
41	A28 County Council's obligation to let a contract	Schedule 18 and Schedule 18A	The Applicants apply for clause 5.1 of the s278 Agreement at Schedule 18A to be modified to defer the date for letting the Construction Contract from 'no later than 2020' to 'no later than 2024 subject to no Force Majeure Event occurring ...'	<p>The Applicants are presently exploring the availability of Government funding to secure the delivery of these A28 Improvement Works. Depending upon the availability of such funding and its terms all or some of the obligations under Schedules 18 and 18A will become redundant and accordingly the Applicants reserve their entitlement to apply herein to discharge the same in due course.</p> <p>Subject to the foregoing, whilst in principle it is acknowledged that letting the Construction Contract serves a useful purpose, the existing timetable for this to be done is vastly out of step with the actual building trajectory and the requirement for these improvement works and is premature.</p> <p>Whilst it was originally envisaged that Main Phase 1 would be completed within 5 years (by end 2023), it is not now expected that this phase can be completed until 2029. More particularly, by 2020 this would have meant some 4/500 Dwellings, whereas as at January 2020 the occupation level on site was in fact just 30 dwellings (circa 72 people).</p>

				In the circumstances the purpose of this obligation will be better served or will at least be equally well served if it is postponed as proposed to reflect progress and presently projected completions and the actual requirement for the improved A28.
42	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.	<p>The Applicants apply for Schedule 18A and the Schedule 1 Developer's Covenants to be modified (and in so far as necessary discharged) by amending clause 4 to read 'Any additional funding required to pay the shortfall of the costs of the A28 Works pursuant to clause 3 of this Schedule over and above the sums shown in Payment Table 1 in Annex 2 being the Post Contract Costs to complete the A28 Works at nil cost to the Council payable pursuant to clause 2 of this Schedule will be paid under a revised payment schedule and the Council shall send to the Developer a revised payment schedule in substitution of Payment Table 1 of Annex 2.'</p> <p>Further, the Applicants apply for the Payment Table 1 at Annex 2 of the s.278 Agreement at Schedule 18A to be modified so that the 11 line items are expanded to 22 and the 'Column 1 Amounts' and the 'Column 2 – Due Dates' provide for the following Post-Contract 278 Contributions:</p>	<p>The Applicants repeat here their primary submission above (at Item 41) in relation to both Schedules 18 and 18A, reserving their position to seek in this application discharge of these obligations entirely dependent upon the outcome of current negotiations with Government and other stakeholders in relation to delivery of the A28 Works.</p> <p>Subject to the foregoing, whilst in principle it is of course acknowledged that the A28 Improvement Works and these Contributions will potentially serve a useful purpose, the existing timetable for delivery and payment is premature and wholly out of step with the actual building trajectory, so that unless modified they will wholly undermine the viability of Main Phase 1 and of the Development.</p> <p>Notably, the negative impact of the existing contributions on viability and the Paying Owner's cash flow has been compounded by the loss of LEP funding (at £10.2m), which it is accepted for present purposes falls to be added back to the outturn costs. This addition taken with actual costs savings now means the overall contributions total £26,000,000, which should</p>

			<ul style="list-style-type: none"> ▪ Contribution 1 = (Amount) £1,000,000 – (Due Date) By 31 March 2025. ▪ Contribution 2 = £1,000,000 – 31 March 2026. ▪ Contribution 3 = £1,000,000 – 31 March 2027. ▪ Contribution 4 = £1,000,000 – 31 March 2028. ▪ Contribution 5 = £1,000,000 – 31 March 2029. ▪ Contribution 6 = £1,000,000 – 31 March 2030. ▪ Contribution 7 = £1,000,000 – 31 March 2031. ▪ Contribution 8 = £1,000,000 – 31 March 2032. ▪ Contribution 9 = £1,000,000 – 31 March 2033. ▪ Contribution 10 = £1,000,000 – 31 March 2034. ▪ Contribution 11 = £1,000,000 – 31 March 2035. ▪ Contribution 12 = £1,000,000 – 31 March 2036. ▪ Contribution 13 = £1,500,000 – 31 March 2037. ▪ Contribution 14 = £1,500,000 – 31 March 2038. ▪ Contribution 15 = £1,500,000 – 31 March 2039. Contribution 15 = £1,500,000 – 31 March 2039. ▪ Contribution 16 = £1,500,000 – 31 March 2040. ▪ Contribution 17 = £1,500,000 – 31 March 2041. 	<p>accordingly (subject to any credit for grant aid already spent) be the base costs for the purposes of the required contributions.</p> <p>In this regard it is noted that the drafting of clause 4 is muddled and mistaken and needs to be corrected as proposed to provide, as plainly intended, solely for the shortfall arising from the loss of LEP Funding to be spread across the Post-Contract 278 Contributions by the requirement for the provision of a revised payment schedule reflecting the increased funding and contribution requirements.</p> <p>Certainly, given the scale of this liability overall the purpose of these obligations will only be served or will at least be equally well served if they have effect subject to the specified modifications. If for example, it was suggested that the loss of LEP funding should be paid up front or even twice this would wholly undermine viability and be self-defeating so that any provision to this effect could serve no useful purpose and must be discharged in any event.</p> <p>Rather as will be seen from the proposed modifications, these postpone the letting of the contract and the start of the contributions to reflect progress and the consequential delay to the requirement for the completed A28 Improvements, as well as spreading the payments across additional years to improve cash flow and the viability of the Development. The letting of the contract</p>
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			<ul style="list-style-type: none"> ▪ Contribution 18 = £1,500,000 – 31 March 2042. ▪ Contribution 19 = £1,500,000 – 31 March 2043. ▪ Contribution 20 = £1,500,000 – 31 March 2044. ▪ Contribution 21 = £2,000,000 – 31 March 2039. ▪ <u>(Line 22) Total £26,000,000</u> <p>Further, application is made, in so far as necessary, to discharge paragraph 2(iii) of Schedule 18.</p>	<p>by (end) 2024 reflecting the state of progress and level of occupations and demand for the A28 Works envisaged under the existing terms.</p> <p>The approach proposed by these modifications is a significant contributing factor to the total £38.1m saving in finance costs to be achieved by this revised application. It is a substantial factor also in improving the viability of Main Phase 1 assessed (as in Mr Hegan’s Report and Supplementary Report) on a stand-alone basis; the revised payment schedule potentially achieving a reduction of some £33.2m in A28 costs within the subject phase (from circa £39.2m to £6m as shown in Mr Hegan’s updated analysis, compare Supplementary Report Appendix 2 Tab 1 Residual (Baseline) and Appendix 3 Tab 1 Residual (Sensitivity)). The adjacent costs are shown in Appendix 3 Tab 6 Cashflow (Sensitivity).</p> <p>Further or in the alternative, it is incumbent in any event upon the Council to send to the Applicants a revised payment schedule under clause 4 of Schedule 1 and it is otherwise invited to do so in accordance with the modifications proposed (subject to credit for any granted aid already spent).</p> <p>As to paragraph 2(iii) of Schedule 18, if the result of deferring the Post-Contract 278 Contributions as proposed was regarded as a significant delay in the implementation of the works detailed by the s278</p>
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				Agreement then paragraph 2(iii) must be discharged. Far from serving a useful purpose, by enabling the Council to withhold consent to a variation that is required in order to maintain the viability of the Development this paragraph would only be serving to undermine the Development.
	Schedule 19 - Off-Site Pedestrian and Cycle Links			
43	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	<p>The Applicants apply for paragraph 1 and the sub-paragraphs thereof to be modified to vary the numbers of Dwellings to be Occupied or brought into residential use on the Site unless the stated sums have been paid to the County Council to 2000, 2500, 2999 and 4999 (rather than 1000, 1500, 1999 and 3999) respectively.</p> <p>Likewise, to modify paragraph 2 and the sub-paragraphs thereof to vary the numbers of Dwellings to which payment of the stated sums is linked to 2001, 2501, 3000 and 5000 (rather than 1001, 1501, 2000 and 4000) respectively.</p> <p>Equivalent consequential modifications to be made to Schedule 30A, referring to 1926 and 2426 (rather than 926 and 1426) and in each of</p>	<p>Whilst in principle it is acknowledged that these payments will potentially serve a useful purpose, the existing timetable for performance of these obligations is undermining the viability of Main Phase 1 and potentially the Development.</p> <p>These payments along with other liabilities also fall primarily upon Main Phase One, and will as a result adversely and disproportionately impact the Paying Owner's cashflow in this phase where later phases are better able to sustain these payments whilst maintaining the viability of the Development.</p> <p>In the premises the purpose of these obligations will be better served or will at least be equally well served if they have effect subject to the specified modifications. The removal of these payments from Main Phase 1 is</p>

			30B and 30C again to 2001, 2501, 3000 and 5000.	shown specifically in Mr Hegan's Reports at Appendix 3 Tab 5 - line items 58 and 73, and forms part of his updated viability analysis justifying the modifications sought.
	Schedule 20 – Provision of Bus Services			
44	Provision of Bus Services	Sch 20, and Sch 29D Item 1	<p>The Applicants apply for paragraphs 1 and 2 to be modified as follows:</p> <p>Paragraphs 1.1 and 1.2 to refer to 1501 Dwellings [rather than 100 and 200]</p> <p>Paragraph 1.3, to refer to 1501 Dwellings [rather than 100] and to be amended to read ‘... until a bus service has started operating between the Site and the town centre to connect with trains from St.Pancras International to Ashford International. Tenders to be invited for different service options and the level of service to be in accordance with the successful bid (if any). If no bids are successful, the Council will consent to the Owners seeking re-tenders for other service options instead. Alternatively or in addition, the Council may consent in writing to the Owners Occupying a greater number of Dwellings than specified above.’</p>	<p>The central reason for the modifications proposed is that the bus services as described in paragraphs 1.1 to 1.8 cannot be provided within Main Phase 1 as they are wholly unviable and unfeasible.</p> <p>Given the actual building trajectory and rate of completions the stated level of service will be far in excess of what is required by the Development for many years and equally will be unviable (even with the subsidies offered) for many years.</p> <p>In addition, the related infrastructure costs and the timing and amount of the subsidies required are wholly unsustainable and will only serve to undermine the viability of Main Phase One and potentially the Development.</p> <p>In the premises the purpose of these obligations will only be served, or will at least be equally well served, if the proposed modifications are made. The deferment of these payments, removing the first from Main Phase 1,</p>

		<p>Paragraphs 1.4 and 1.5, to refer to 1600 Dwellings [rather than 200].</p> <p>Paragraphs 1.6 and 1.7, to refer to 1850 Occupations [rather than 1,222]</p> <p>Paragraph 1.8 to be modified to read ‘Not to Occupy more than 1850 Dwellings until the bus service has been reviewed by the Owners with the operator with a view to increasing the frequency of service to at least every 20 minutes. The service to be increased if agreed, but only in so far as the operator confirms it is viable to do so.’</p> <p>Paragraph 1.17, to be modified to read ‘Not to Occupy the 1501th Dwelling until the occupiers have been given vouchers ... ‘</p> <p>Paragraph 2 to be modified to provide for payment of subsidies as follows:</p> <ul style="list-style-type: none"> ▪ First Instalment – 1501 Dwelling occupations - £450,000 ▪ Second Instalment – 2000 Dwelling occupations - £450,000 ▪ Third Instalment – 3000 Dwelling occupations - £400,000 ▪ Fourth Instalment – 3500 Dwelling occupations - £400,000 ▪ Fifth Instalment – 4000 Dwelling occupations - £450,000 	<p>is shown in Mr Hegan’s Supplementary Report at Appendix 3 Tab 5 s106 – Sensitivity line item 20, and forms part of his updated viability analysis justifying the modifications sought.</p> <p>In the alternative, for the reasons set out above the Applicant seeks approval/consent now under the express terms of paragraphs 1.3, 1.4 and 1.8 to a substantially reduced level of service and to increased numbers of Dwellings as detailed in the proposed modifications.</p>
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		<ul style="list-style-type: none"> ▪ Sixth Instalment – 4500 Dwelling occupations - £450,000 ▪ Seventh Instalment – 5000 Dwelling occupations - £400,000 ▪ Total = £3,000,000 <p>Equivalent consequential modifications to be made to the relevant items of Schedule 29D also as follows:</p> <p>Item 1, to become items 1A and 1B, the triggers for payment to be 1450 and 1950 Dwellings respectively and the payments to be £450,000 each.</p> <p>Item 13, to become items 13A and 13B, the triggers for payment to be 2951 and 3451 Dwellings respectively and the payments to be £400,000 each.</p> <p>Item 25, to become items 25A and 25B, the triggers for payment to be 3950 and 4450 Dwellings respectively and the payments to be £450,000 each.</p> <p>Item 29, the trigger for payment to be modified to 4950 Dwellings.</p>	
	Schedule 21 – Off-site Traffic Calming		

45	Traffic Calming payments to CC	Paras 1.2, 1.3, 2.1 and 2.2 and Sch 30A	<p>The Applicants apply for the following modifications to be made:</p> <p>Paragraph 1.2 is modified to refer to ‘the 1501th Dwelling on the Site [rather than the 999th]</p> <p>Paragraph 1.3 is modified to refer to ‘the 2499th Dwelling on the Site [rather than the 1999th]</p> <p>Paragraph 2.1 is modified to refer to ‘the 1500th Dwelling on the Site [rather than the 1000th]</p> <p>Paragraph 2.2 is modified to refer to ‘the 2500th Dwelling on the Site [rather than the 2000th]</p> <p>Schedule 30A is similarly modified to reflect the above, so that the relevant payment triggers become 1425 and 2425 [rather than 925 and 1925].</p>	<p>Whilst in principle these payments continue potentially to serve a useful purpose, given the measure of these payments their incidence (at 1000 and 2000) is serving to undermine the viability of Main Phase 1 and potentially the Development.</p> <p>Similarly, these payments along with other s106 liabilities are adversely and disproportionately impacting the Paying Owner’s cashflow in this phase where later phases are better able to sustain these payments whilst maintaining the viability of the Development.</p> <p>In the premises the purpose of these payments will be better served or will at least be equally well served if they have effect subject to the specified modifications. The deferment of these payments, removing the first from Main Phase 1, is shown in Mr Hegan’s Reports at Appendix 3 Tab 5 s106 – Sensitivity cost item 57, and forms part of his updated viability analysis justifying the modifications sought.</p>
	Schedule 23 - Viability			
46	Viability Review Submission for Viability Review Phase Two by 851 Dwelling Occupations	Paras 2.1.1, 3.2 et seq and 3.18.2	The Applicants apply for the obligation to provide a Viability Review Submission for Viability Review Phase Two to be discharged entirely; deleting paragraphs 2.1.1 and 3.18.2 and reference to Viability Review Phase Two in	The Applicants propose the discharge of Viability Review Two because it is evident even at this stage that the viability cannot support any additional Affordable Housing and that this should be limited accordingly to 10% provision in the current Main Phase 1.

			<p>paragraphs 3.2-3.10 and making all other appropriate consequential amendments.</p>	<p>The Applicants refer to and rely in this regard on the detailed reasons already stated at Item 8 above and the content of Mr Hegan’s Reports as referred to also thereunder.</p> <p>Further, whilst Mr Hegan’s Supplementary Report seeks now to take take account of the effects of the current pandemic, it must be acknowledged that the full economic consequences for the house building industry are not yet fully known and are continuing.</p> <p>In the circumstances the Applicants submit that it is patently the case that greater than 10% provision is not sustainable and that accordingly the Viability Review Submission for Viability Phase Two already serves no useful purpose, is redundant and should be discharged.</p>
46A	<p>Viability Review Submission for Viability Review Phase Three by 1351 Dwelling Occupations</p>	<p>Paras 2.1.2, 3.3 et seq and 3.18.3</p>	<p>The Applicants apply for the obligation to provide a Viability Review Submission for Viability Review Phase Three to be discharged entirely; deleting paragraphs 2.1.2 and 3.18.3 and reference to Viability Review Phase Three in paragraphs 3.3-3.10 and making all other appropriate consequential amendments.</p>	<p>The Applicants propose the discharge of Viability Review Three because it is evident even at this stage that the viability cannot support any additional Affordable Housing and that this should be limited accordingly to 10% provision in the current Main Phase 1.</p> <p>The Applicants refer to and rely in this regard on the detailed reasons already stated at Item 8 above and the content of Mr Hegan’s previously submitted Report herein and Supplementary Report dated April 2021.</p>

				<p>The viability assessment for this VRP set out in Mr Hegan’s Supplementary Report clearly demonstrates that the 10% AHU provision is the upper limit of what can be sustained and is feasible in this phase.</p> <p>Certainly, Mr Hegan’s analysis in these respects and overall, more than justifies the changes sought in this application in terms of the usefulness of the s106 obligations, delivery of the subject phase (Main Phase 1) and ultimately of the entire Development.</p> <p>Further, as in the case of each and every request herein where reliance is placed on viability, it is submitted that the Respondents are bound to accept and take into account in determining the request the viability analysis relied upon by the Applicants in accordance with and on the basis of the attached ‘Further Legal Submission on Viability.’</p> <p>In the premises, it is submitted accordingly that on the basis of the foregoing it is demonstrably the case that the obligations relating to this VRP no longer serve any usual purpose and should be discharged.</p>
46B	Viability Review Submission for Viability Review Phase Four by	Paras 2.1.3, 3.4 et seq and 3.18.4	The Applicants apply for the obligation to provide a Viability Review Submission for Viability Review Phase Four to be discharged deleting paragraphs 2.1.3 and 3.18.4 and	The Applicants acknowledge in seeking the discharge of these obligations, that they potentially continue to serve a useful purpose, but on the basis that even at this stage it can clearly be demonstrated that the viability

	1951 Dwelling Occupations		reference to Viability Review Phase Four in paragraphs 3.4-3.10 and making all other appropriate consequential amendments.	<p>submission for VRP Four would not support greater than 23.5% AHU provision, the Applicants propose that the AHU provision be fixed for both Viability Review Phase Three AND Viability Review Phase Four at 17% so as to render this review redundant also.</p> <p>In this regard also the Applicants rely on the evidence for this VRP contained in Mr Hegan's Supplementary Report dated April 2021 at Appendix 5.</p> <p>In the premises, it is submitted accordingly that on the basis of the foregoing it is should be accepted that the obligations relating to this VRP no longer serve any useful purpose and should be discharged.</p>
	Schedule 24 – Public Art			
47	Payment of Public Art Contributions 1 to 4	Para 1.2 and 2.2, and Sch 29A Items 2, 6, 17, 21 etc	<p>The Applicants apply for the following modifications:</p> <p>Modify 1.2 to provide 'Not to Occupy more than 999 [rather than 99] Dwellings unless £100,000 (one hundred thousand pounds) Index Linked has been paid to the Council.</p> <p>Modify 1.3 to provide 'Not to Occupy more than 1499 [rather than 999] Dwellings unless</p>	<p>Whilst in principle these payments continue potentially to serve a useful purpose, the existing timetable for performance of these obligations is out of step with the actual building trajectory and is undermining the viability of Main Phase One and potentially the Development.</p> <p>The purpose of these obligations can only be served, or will at least be equally well served, if they have effect subject to the specified modifications so as to align with progress and presently projected completions. The deferment of these payments, such that only the first 2</p>

		<p>£150,000 (one hundred thousand pounds) Index Linked has been paid to the Council.</p> <p>Modify 1.4 to provide ‘Not to Occupy more than 1999 [rather than 1399] Dwellings unless £150,000 (one hundred thousand pounds) Index Linked has been paid to the Council.</p> <p>Modify 2.2 to provide ‘£100,000 (one hundred thousand pounds) Index Linked upon the Occupation of the 1000th Dwelling.</p> <p>Modify 2.3 to provide ‘£150,000 (one hundred thousand pounds) Index Linked upon the Occupation of the 1500th Dwelling.</p> <p>Modify 2.4 to provide ‘£150,000 (one hundred thousand pounds) Index Linked upon the Occupation of the 2000th Dwelling.</p> <p>Together with consequential modifications to Schedule 29A, in particular as follows:</p> <p>Item 6, to refer to 950 Dwellings</p> <p>Item 17, to refer to 1459 Dwellings</p> <p>Item 21, to refer to 1950 Dwellings</p> <p>And equivalent consequential amendments to Schedule 29B as follows:</p>	<p>remain within Main Phase 1, is reflected in Mr Hegan’s Supplementary Report, see Appendix 3 Tab 5 s106 – Sensitivity line items 19 and 56, and forms part of his updated overall viability analysis justifying the modifications sought.</p> <p>Further, these contributions provide another prime example of the unjustifiable distortions to contributions resulting from the existing indexation provision (at clause 28). The escalation in costs that this produces is out of all proportion to the real cost of delivery of the public art to be installed (see also Section 14 of Mr Hegan’s Supplementary Report).</p>
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			<p>Item 4, to refer to 1000 Dwellings</p> <p>Item 14, to refer to 1500 Dwellings</p> <p>Item 19, to refer to 2000 Dwellings</p> <p>And Schedule 29C as follows:</p> <p>Item 8, to refer to Occupation of the 1000th Dwelling</p> <p>Item 18, to refer to Occupation of the 1500th Dwelling</p> <p>Item 23, to refer to Occupation of the 2000th Dwelling</p>	
	Schedule 25 – Heritage Interpretation			
48	Payment of Archaeological Contributions	Para 4, and Schedules 30A, 30B and 30C	The Applicants apply to modify paragraph 4.2 and 4.3 to refer only to the numbers of dwellings already stated and omit in each case subparagraph (b) (anniversary payments) or otherwise extend the dates therein to the third and sixth anniversaries of the Commencement of the Development.	<p>These payments are significantly out of step with the progress of the Development and are now premature and serve no purpose at the present time.</p> <p>Their purpose would be better or at least equally well served by making them dependent exclusively on occupied dwelling numbers or otherwise deferring payment as proposed by the alternative specified</p>

				<p>amendment to align with the actual building trajectory and rate of progress.</p> <p>The timings (third and sixth year) correlating with the stage of the development at which these contributions would be made under the existing terms of the s106 Agreement. The deferment of these payments, leaving only payment 2 and 3 in Main Phase 1, can be seen in Mr Hegan’s Supplementary Report at Appendix 3 Tab 5 s106 – Sensitivity cost items 28 and 40, and forms part of his updated viability analysis justifying the modifications sought.</p>
	Schedule 26 – Quality Agreement			
49	Quality Agreement, payment of £80,000 on the first anniversary and subsequent nineteen anniversaries	Para 2.1 and 2.2 and Sch 29A Items 9, 12, 15, 19, 24 etc. and Schedules 29B and 29C	<p>The Applicants apply for paragraph 2.1 and 2.2 and the anniversary payments therein to be discharged (without prejudice to the contention that properly construed these are not due in any event in addition to the payments under paragraph 1).</p> <p>The relevant line items in Schedules 29A, 29B and 29C should also therefore to be deleted.</p>	<p>The anniversary payments are grossly excessive and more than is necessary to mitigate the impact of the Development.</p> <p>These monies are meant for staff and related costs to monitor the quality of the development, including the Chilmington Green Quality Agreement, Design Code and any other submitted or agreed materials specifications, design briefs, specifications, construction management plans, waste management plan and liaison with the CMO and residents.</p> <p>All the above documents (material specifications etc) are submitted in any event as part of the reserved matters</p>

				<p>applications or discharge of planning conditions and the planning fee should cover any review. Building Control also attend site. Certainly, the Council have not otherwise undertaken any of these tasks or incurred additional overhead to justify these charges.</p> <p>In the circumstances these contributions cannot be said to serve any useful purpose and cannot be justified. As a minimum therefore paragraphs 2.1 and 2.2 should be discharged and the contributions made to date totalling the sum of £80,000 should be reimbursed (see Appendix 3 of Mr Hegan's Reports, Tab 5 s106 line item 13). The exclusion of these payments is duly taken into account in Mr Hegan's Supplementary Report, see Appendix 3 Tab 6 s106 – Sensitivity line items 13, 29, 37, 41, 50, 66, 76 and 84-89, and forms part of his overall updated viability analysis justifying the discharge sought.</p>
	Schedule 27 - Travel Plan Monitoring Fee			
50	Payment of £1000 per annum x25	Paragraphs 1 and 2	The Applicants apply for the obligations under this schedule to be discharged.	The travel monitoring obligations no longer serve any useful purpose as this function is included (and duplicated) in the approved travel plan; the obligation should accordingly be discharged.

	Schedule 28 – Monitoring Fee			
51	Payment of monitoring fees of £50,000 on the first anniversary and on the subsequent nineteen anniversaries	Sch 28, paras 2.1 and 2.2 and Sch 29A Items 8, 11, 14, 18, 23, etc. and Schedules 29B and 29C	<p>The Applicants apply for paragraphs 2.1 and 2.2 and the anniversary payments thereunder to be deleted and these obligations discharged (without prejudice to the contention that properly construed these are not due in any event in addition to the payments under paragraph 1).</p> <p>The relevant line items in Schedules 29A, 29B and 29C should also therefore to be deleted.</p>	<p>The anniversary payments are grossly excessive and more than is necessary to mitigate the impact of the Development.</p> <p>These monies are meant for monitoring compliance with the s106 Agreement and the planning conditions, including liaison with interested parties, attendance at CMO meetings and reviewing viability under Schedule 23.</p> <p>However, the discharge of planning conditions requires a planning fee which should cover any review and the Paying Owners must pay the Council a Viability fee in accordance with Schedule 23. Certainly, the Council have not otherwise undertaken any of these tasks or incurred additional overhead to justify these charges.</p> <p>In the circumstances these contributions cannot be said to serve any useful purpose and cannot be justified. As a minimum therefore paragraphs 2.1 and 2.2 should be discharged and the contributions made to date totalling the sum of £50,000 should be reimbursed (see Appendix 3 of Mr Hegan’s Reports, Tab 5 s106 line item 15). The exclusion of these payments is duly taken into account in Mr Hegan’s Supplementary Report, see Appendix 3 Tab 6 s106 – Sensitivity line items 15, 27, 30, 39, 42, 49, 51, 61, 65, 75 and 95-100, and forms part of his overall</p>

				updated viability analysis justifying the discharge sought.
52	ABC Bank Accounts, provision of the Developers' Contingency Bank Account – Council	Sch 29, paras 2 and 3, and clause 1.1 definition of Council Minimum Balance	The Applicants apply for paragraphs 2 and 3 to be discharged and the definition of CMB to be deleted accordingly.	<p>The Council is already sufficiently secured by the covenants provided by the Paying Owners, such that the DCBA - Council serves no useful purpose at all. The account should be closed and the amount held should be paid out to the Paying Owner.</p> <p>Further, the sums involved are substantially more than are required to mitigate the impact of the Development and are undermining the viability of Main Phase 1 and with it delivery of the Development overall. For these reasons also the account cannot be regarded any longer as serving a useful purpose, it is self-defeating and should be discharged accordingly. See in this regard Mr Hegan's further evidence at paragraph 5.1.8 in his Supplementary Report.</p> <p>The removal of this obligation and re-crediting of the deposited amount is duly taken into account the Supplementary Report, see Appendix 3 Tab 6 s106 – Sensitivity, cost item 1, and forms a substantial part of his overall updated viability analysis justifying the discharge sought.</p>

53	Payments into Council Contributions Bank Account, Indexation payments, and Payments into the Developers' Capital Bank Account - Council	Sch 29A, Sch 29B, Sch 29C and Sch 29D	The Applicants also apply for the payment schedules contained in each of these Schedules to the Agreement to be modified in accordance with the foregoing as relevant.	For the reasons stated above in relation to each of the relevant individual obligations.
54	KCC Bank Accounts	Sch 30, paras 1 and 2, and clause 1.1 definition of County Council Minimum Balance (CCMB)	The Applicants apply for paragraphs 1 and 2 to be discharged and the definition of CMB to be deleted accordingly.	<p>The County Council is already sufficiently secured by the covenants provided by the Paying Owners, such that the DCBA – County Council serves no useful purpose at all. The account should be closed and the amount held should be paid out to the Paying Owner.</p> <p>Further, the sums involved are in any event substantially more than are required to mitigate the impact of the Development and are undermining the viability of Main Phase 1 and with it delivery of the Development overall. For these reasons also the account cannot be regarded any longer as serving a useful purpose, it is self-defeating and should be discharged accordingly. See in this regard Mr Hegan's further evidence at paragraph 5.1.8 in his Supplementary Report.</p> <p>The removal of this obligation and re-crediting of the deposited amounts is duly taken into account in the Supplementary Report, see Appendix 3 Tab 6 s106 – Sensitivity, cost items 1 and 2, and forms a substantial</p>

				part of his overall updated viability analysis justifying the discharge sought.
55	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	The Applicants also apply for the payment schedules contained in each of these Schedules to the Agreement to be modified in accordance with the foregoing as relevant.	For the reasons stated above in relation to each of the relevant individual obligations.

STATEMENT OF TRUTH

The Applicants believe the facts and matters stated in this application above are true.

Signed duly authorised for and on behalf of the Applicants.

Name.....

Date