DATED 20 OCTOBER 2022

(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

-AND-

(6) HODSON DEVELOPMENTS (CG FIVE) LIMITED

THE APPLICANTS

-AND-

(1) ASHFORD BOROUGH COUNCIL

-AND

(2) KENT COUNTY COUNCIL

THE RESPONDENTS

APPLICATION No.2: ANNEX A
APPLICATION FOR MODIFICATION/DISCHARGE OF
THE 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

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(1)	(2)	(3)	(4)	(5)
Request No.	**The planning obligation to be modified or discharged**	**S106 Agreement Reference (Clause/Para)**	**The Modification or Discharge applied for by the Applicants** **(The specified modification or discharge applied for below should be taken to include all necessary and consequential amendments to the s106 Agreement)**	**The Reasons for applying for the specified Modification or Discharge are detailed below.** **In every case where the application is to discharge any obligation it is because it serves no useful purpose for the reason/s given below.** **Likewise, where the application is to modify any obligation it is because whilst it continues to serve a useful purpose, for the reason/s given below it would serve that purpose equally well if it had effect subject to the modification specified herein.** **Further, in every case also the obligation specific reasons detailed below should in so far as relevant be read with the submission to which this schedule is annexed.**
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	To correct the drafting of the definition, to refer to the correct section of the T&CPA, namely section 91 rather than 56. This is understood to be agreed already and the s106 Agreement should be modified accordingly.

			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 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	The Definition of 'CMO'	Clause 1.1 (p.12)	The Applicants apply for the abolition of the CMO and the discharge of the obligations relating thereto, and its substitution by a standard estate management company reliant not on subsidy or commercial revenues but upon service charges under a new form of service charge deed to replace the current rent charge deeds. Consistent with the foregoing, the Applicants apply for the definition of the CMO to be modified, or alternatively all references to the CMO in the s106 Agreement to be modified, to take account of the proposed substitution (see Requests below) of the CMO by such a new estate management company (hereinafter ManCo).	The reasons relied upon and justifying the proposed substitution of the CMO and the consequent discharge and/or modification of the multiple obligations relating to the CMO referred to below are summarised in the factual narrative appended hereto at Appendix A1 (and supplemented below in relation to individual requests). Further, in this regard the Applicants refer to and rely in particular upon section 7 of the Explanatory Statement accompanying this application in addition to the reasons stated below. Further, for the avoidance of doubt, in so far as any requests herein below are predicated in the basis that the CMO is not replaced by such a new ManCo but is continuing, those requests and the reasons stated in

				support are advanced without prejudice to the primary application for the CMO to be replaced.
3	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. This is understood to be agreed already and the s106 Agreement should be modified accordingly.
4	Release from liability	Clause 2.2	The Applicants apply to modify the said release from liability clause to ensure additionally that any housing provider (registered or not) who by purchasing the whole or any part of the land comprised in the Site becomes an Owner or Paying Owner and who develops housing for rental or shared ownership will be released from liability on like terms to those contained in clause 2.2 upon the occupation by a tenant or purchaser (including a shared ownership purchaser or similar) of the last of the homes to be developed on their land. Thus, it is proposed that a new clause 2.2.1A be introduced mirroring clause 2.2.1 but commencing in terms that: 2.2.1A Also, in the event that an Owner shall have completed all of the Dwellings in the	Clause 2.2 is acknowledged potentially to serve a useful purpose by ensuring that Owners are released from liability upon completion and disposal of their part of the Development, but it fails to take account and provide for the kind of institutional investor, particularly those who deliver long-term affordable housing solutions, who retain an interest in the Site after they have completed their development and all of their Dwellings have been Occupied. This was an oversight in the original drafting, which was carried out before the dramatic evolution that there has been over the last 5 years of institutional capital investing to develop homes for long term rental or shared ownership schemes, in particular to provide homes for local essential and key workers. As currently drafted clause 2 is acting as a brake on the sale of parts of the site to this type of institutional investor

			area(s) of the Site in which it has an interest and all of those Dwellings shall have been Occupied by a tenant under a lease or shared ownership purchaser, then that Owner shall no longer be bound … CMO.'	and thereby preventing both accelerated delivery of homes at Chilmington Green and the delivery of a more diverse affordable housing mix catering to the area's broader housing needs. In the circumstances clause 2 will serve its purpose better or at least equally well, as well as the broader aims of the Development, if it is modified as proposed.
5	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. This is understood to be agreed already and the s106 Agreement should be modified accordingly.
6	Base date for indexation	Clause 28 (p.89)	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. 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.	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. 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 producing

			Further, the Applicants request the modification of Clause 28 to include provision as follows: 'Where any Index Linked payment required to be made under this Agreement by virtue of the Indexation results in that payment exceeding the cost of the item for which it is to be paid, the amount payable shall be reduced accordingly and only the amount reduced as aforesaid shall be payable.'	payments and contributions in excess of those that would be required to mitigate the impact of the Development. 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. 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. 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. The additional clause to be included ensures that the Indexation provisions serve their purpose better, and certainly equally well, as modified by securing that the Indexation provisions have no greater effect than that which they are properly intended to have.

				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 modify any of the principal obligations to which they relate.
	Schedule 1 – Affordable Housing			
7	Provision of 70 Extra Care Housing Units in Phase One – Viability Review 1	Paras 1.1, 2, 3 and 6 And Clause 1.1, the definition of Registered Provider	The Applicants propose that the obligations at paragraphs 1.1, 2, 3 and 6 be discharged. Alternatively, and without prejudice to the foregoing, if the paragraph 1.1 obligation is regarded at least in terms of AHU provision or similar as serving a useful purpose, the Applicants will apply for the said obligations to be modified to provide as follows: '1.1 Hodson and Chilmington Green Developments covenant with the Council to construct 70 Dwellings within the Hodson Viability Phase One Land and Chilmington Green Developments Viability Phase One Land as Affordable Housing Units prior to the date on which the 1,500th Dwelling to be Occupied is Occupied in accordance with the requirements of paragraphs 2 and 3 below;	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 useful purpose because such units are both unnecessary and their cost is undermining the viability of this phase and jeopardising overall delivery. Moreover, the Applicants have been unable to find a provider. The obligation should accordingly be discharged. 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 type 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 or similar accommodation brought forward by an unregistered provider to be constructed prior to occupation of the 1,500th Dwelling as indicated (rather than 850th). The proposed timing calibrated to ensure that this comes

			2. The Affordable Housing Units referred to paragraph 1.1 above shall be provided as Shared Ownership Units. 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. 6. The Owners covenant with the Council not to Occupy more than 1,500 [rather than 850] Dwellings unless and until:- 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:- 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 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	forward when the District Centre is to be built, as part of an overall Masterplan for the Centre. The flexibility to cater for AHU type accommodation to be constructed by an unregistered provider being dictated by market conditions. The adjustment to shared ownership likewise being driven by current and proposed land sales. Further, the modified requirement to substitute the ECHU's with standard AHU type accommodation will in itself result in a cost reduction of some £330,000, 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 the Viability Report and the viability analyses therein justifying the changes sought to the s106 Agreement. The financial benefits referred to above and the contribution made by this specific proposal to the viability and deliverability of the Development and ultimately therefore to ensuring that this obligation will serve any useful purpose at all, more than justifies this modification. For completeness, the counter proposal previously made by ABC for the ECHU's to be substituted by 70 older persons independent living units by 1000 occupations is noted and the deferred trigger acknowledged and relied upon. However, the only viable option within this Review Phase is the provision of Shared Ownership split as stated

			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 Further, to accommodate the provision of AHUs by responsible providers of social housing that have not been approved by the Council as a 'Registered Provider' and to ensure they are not excluded under the s106, the Applicants propose that the definition of Registered Provider be modified to state '… or any other provider of social housing otherwise approved by the Council, such approval not to be unreasonably withheld.' Consequential modifications to be made to Paragraphs 15 and 15.1 to insert reference to 1.1. Consequential modifications also to be made to Schedule 43, Extra Care Affordable Housing Costs for Viability Phase 1.	to be provided at the time proposed and the said modification is pursued accordingly.
8	Provision of 24 Affordable Housing Units in Phase One – Viability Review 1	Paras 1.2, 4, 5 and 7	The Applicants apply to modify the obligation at 1.2 to provide: '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	The obligation to provide 24 Affordable Housing Units in Viability Review Phase One is acknowledged as potentially serving 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.

			Housing Units prior to the date on which the 1000th Dwelling to be Occupied is Occupied [rather than 650th] in accordance with the requirements of paragraphs 4 and 5 below. 4. The Affordable Housing Units referred to at paragraphs 1.2 and 1.3 above shall be provided as Shared Ownership Units.... 7. The Owners covenant with the Council not to Occupy more than 1,300 [rather than 650] Dwellings unless and until'	Further, in the light of current market conditions and operator response, the obligation to include Affordable Rents is non-viable. It does not therefore serve any useful purpose and should be modified to provide instead for the provision of further Shared Ownership units. 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. As can be seen from the Viability Report and the updated viability analysis therein, the cumulative benefit of the s106 modifications/discharges proposed results in a reduction in s106 finance costs from c.£135m (excluding land costs) to c.£30m (excluding land costs). Further, the cashflow benefit of this specific variation is evidenced at the Explanatory Statement, Appendix 3 Figure 5.2. The financial benefits referred to above and the contribution made by this specific proposal to the viability and deliverability of the Development and ultimately therefore to ensuring that this obligation will serve any useful purpose at all, more than justifying the changes sought to the s106 Agreement.

9	10% Affordable Housing to be provided in each Viability Review (2 to 10) as a minimum provision	Paragraphs 8, and 14	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 95% occupied dwellings.	The said obligation to provide 10% Affordable Housing Units in each Viability Review Phase is acknowledged potentially 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. 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. Again, as can be seen from the Viability Report and the updated viability analysis therein, the cumulative benefit of the s106 modifications/discharges proposed results in a reduction in s106 costs from c.£126m (excluding land costs) to c.£20m (excluding land costs). Further, the cashflow benefit of this specific variation is evidenced at the Explanatory Note, Appendix 3 Figure 5.2. These figures clearly demonstrate also that consistent with Application No.1 the 10% provision is the upper limit of what can be sustained and is feasible in at least the first 4 Viability Review Phases. Certainly, the financial benefits referred to above and the contribution made by this specific proposal to the viability and deliverability of the Development and ultimately therefore to ensuring that this obligation will serve any useful purpose at all, more than justifies this modification.

				It is crucial that a balance is struck between the useful purpose intended to be served by any obligation and the ability to deliver the Development so as that purpose or any aspect of it can be served at all.
10	Affordable Housing Unit tenure split 60% Affordable Rents and 40% Shared Ownership, with 5% of units to have Habinteg fixtures and fittings	Paragraphs 9 and 12	The Applicants apply to modify the Affordable Housing tenure split so as to provide 30% Affordable Rents and 70% Shared Ownership.	The said obligation to provide AHU's subject to differing tenures is acknowledged potentially 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. 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. Alternatively, the Applicants seek now written approval from the Council under the terms of paragraphs 9 and 12 in accordance with the proposed modification.
	Schedule 2 – Carbon Off Setting			

11	Provision of a Building Energy Performance Certificate for each building. Calculation of carbon off setting contributions and payment liabilities.	Schedule 2 and 43	The Applicants apply to discharge the whole of Schedule 2 and the obligations therein. Whilst the above is understood to be agreed it will be necessary to give proper effect to this by modifying Schedule 43, to ensure appropriate credit is still included in each Viability Phase Review for the Carbon Off-setting Savings achieved by other means. The Applicants apply accordingly.	This obligation no longer serves a useful purpose and should be discharged. It is understood that this request is agreed by ABC both as to residential and non-residential. The precise form of the variation to the s106 Agreement, however, remains to be agreed.
	Schedule 3 – Combined Heat and Power Plant (CHP)			
12	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.	The Feasibility/Viability Studies were formally submitted for fact-checking by the Council on 5 April 2019. In breach of paragraph 2 of Schedule 3 no response was forthcoming from the Council within the requisite 28 days. In the event it was not until only recently in 2022 that any response was received, with the Council requesting further information on the submission. Given the content and conclusions reached in the submitted Feasibility/Viability Studies it is the case now that the CHP/DHP is not Feasible in all Scenarios, so that it should 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.
	Schedule 4 – Community Management Organisation (CMO)			In this regard the Applicants refer to and rely in particular upon section 7 of the Explanatory Statement accompanying this application in addition to the reasons stated below.
13	Provision of the CMO welcome pack etc.	Paragraph 2.1.2	The Applicants apply for the obligation to provide a copy of the welcome pack document and other documentation to each first purchaser or tenant/occupier to be discharged. In the alternative, and without prejudice to the foregoing, the Applicants will seek to modify the obligation to provide for the said documentation to be provided in e-form and by email only.	The provision of this copy documentation no longer serves any useful purpose, to do so is expensive and unnecessary given that the same documentation is readily accessible online. Alternatively, if contrary to the foregoing, the provision of copy documentation directly to each first purchaser or tenant/occupier is for any reason regarded as serving some useful purpose, that purpose would be equally well served by the documentation being provided in e-form and by email only.
14	Provision of the CMO First Operating Premises, their completion and acceptance	Para 4.1.3, and in particular the opening clause thereof providing 'That no Dwelling shall be Occupied ..'	Without prejudice to the Applicants' primary position that this obligation has been met and in any event has been waived by the Respondents and/or they are estopped from relying thereon, the Applicants apply to modify the opening clause of 4.1.3 to provide 'That prior to 350 Dwellings being Occupied:- a) the CMO .. etc.	Whilst the Applicants maintain their position regarding compliance, waiver and estoppel, it is acknowledged that these matters are disputed by the Respondents (ABC's Letter of Response dated 16/9/22 refers). Without prejudice to the Applicants' primary position, therefore, but to avoid further controversy and ensure that this obligation continues to serve its intended purpose in terms of delivery of the CMO First Operating Premises rather

				than none, the Applicants seek to modify the same as claimed.
15	Continued maintenance obligations in respect of the CMO First Operating Premises	Paragraph 4.1.4	The Applicants apply for the obligations under paragraph 4.1.4 to be discharged.	The First Operating Premises have been completed and ready for CMO occupation since March 2020. However, the CMO deferred occupation due to Covid at that time and has to date failed to take up occupation of the same. Given the passage of time it would be unfair to continue to require performance of these obligations, the appropriate time for their performance has now passed and they should no longer properly be regarded as serving a useful purpose.
16	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. In addition, for all appropriate consequential variations including the discharge of Schedules 33 and 35.	As set out in this application and the supporting reports, the overarching proposal pursued by the Applicants is for the CMO to be replaced by a new standard form estate management company. To the extent that this proposal is not accepted or, if it is, until that happens, the Applicants position in relation to the CMO Operating Premises is that the First Operating Premises are sufficient and there is no sensible requirement for the Second. The First Operating Premises have been completed and ready for CMO occupation since March 2020. However, the CMO deferred occupation due to Covid at that time and has to date failed to take up occupation of the same. This is partly because the CMO staff prefer still to work from home following a change of working practices apparently brought about by the Covid 19 Pandemic, and partly because the premises are located near to building

				activity. The building is though in a central location chosen by ABC and the CMO and is more than sufficient for the operating requirements of the CMO on-site. It is proposed therefore that the CMO remains in this building and for any additional space it needs in the longer term to be accommodated in the other community provision including, particularly for temporary needs such as events, the schools. 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. 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. The removal of this cost at £250,000 is shown in the Viability Report at Appendix 3, Item ref 5700.2, and forms part of this updated viability analysis justifying each discharge and modifications sought.
17	Payment of Deficit Grant Contributions	Para 7 and Sch 29A Items 7, 10, 13, 16, 20, 22, 26, 29, 33,	The Applicants' application in this regard is to discharge the Deficit Grant Contributions in their entirety.	The Applicants seek the discharge of the Deficit Grant Contributions obligations because:

		37 and equivalent items in Sch 29B and 29C.		(a) the CMO structure is essentially flawed (see the Factual Narrative (at Appendix A1) and does not work and the CMO should be replaced by a conventional professionally run estate management model with the CMO's responsibilities limited to the delivery of estate maintenance services (see Schedule 3 the Framework Agreement at Schedule 38) funded by the Rentcharge deeds (or preferably and as has been proposed separately by a new and improved form of Service Charge Deed (see Request 18 below)) together with income from community assets, and (b) the DGC are in any event substantially undermining the viability and deliverability of the Development and do not therefore realistically serve any useful purpose and should be discharged accordingly. As for (a) the performance over the first years of the CMO has provided the clearest evidence that the proposed structure is not fit for purpose. The CMO has failed to carry out even the most basic of its functions despite grant funding, and it is abundantly obvious now that the nature and scale of the physical endowments and funds to be transferred under the existing obligations are well beyond what can be reasonably and sustainability be managed by this body. The CMO is currently over specified and its scale and complexity is not deliverable for a development of this

				nature and the time horizons over which it will be built. Based on the experience to date, it will be more appropriate to limit the scope and budget of the CMO/ManCo to a list of essential services along the lines of a traditional Estate Management model. This will ensure the services can be delivered and managed sustainably without additional external funding. As to the DGC, the CMO simply does not and should not require this additional level of funding to deliver the services actually required of it. Indeed, such additional funding it has received to date, has not been spent sensibly nor delivered any material benefits to residents. Rather the CMO should simply rely upon the monies collected under the Rentcharge Deeds (or as has been proposed separately an improved form of Service Charge Deed) and properly manage its accounts to meet its liabilities. 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. In the premises neither the CMO as currently constituted nor the DGC realistically serve any useful purpose and these contributions should be discharged in their entirety.

				The discharge of these contributions is shown in the Viability Report, at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5700.6 and forms part of this updated viability analysis justifying each discharge and modifications sought.
18	The provision of Rentcharge Deeds in respect of each freehold Dwelling	Paragraph 8 and Schedule 31	The Applicants apply to discharge these obligations and/or modify the same as appropriate, to substitute the Rentcharge regime with a Service Charge payment.	The current regime for entering and registration of Rentcharge Deeds on the scale required in respect of the Developments is not working and fails to serve any useful purpose. These obligations should be discharged and/or modified accordingly to provide for a workable solution, by way of a substitute Service Charge provision.
19	Provision of Commercial Estate: Basic Provision	Paragraphs 9 and 10 and Sch 29D Item 14	The Applicants apply to discharge the obligations under paragraphs 9 and 10 and Schedule 29D Item 14. In addition, the Applicants apply for any appropriate consequential variations including the discharge of Schedule 36.	The Applicants seek the discharge of the Commercial Estate: Basic Provision at £2,921,000 because it no longer serves a useful purpose for the reasons (a) and (b) referred to under Request 17 above As to (a), the essence of the current CMO structure is that it should operate as an independently viable commercial enterprise supported by the Commercial Estate, but this is not realistic. Further, there is little if any market demand for the Commercial Estate and significant issues over its future profitability, potential value for money and viability to support the operations of the CMO in any event. As matters stand, therefore, on any view it is clear that the CE no longer serves a useful purpose.

				Moreover, as to (b), the total capital cost of the Basic Provision in the sum of £2,921,000 even before indexation is undermining the viability of the Development and cannot be sustained. Even if, contrary to the foregoing, the Provision were to be regarded as useful, in practice it is not feasible but self-defeating and useless. The removal of the Basic Provision is shown in the Viability Report, Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5700.4 and forms part of this updated viability analysis justifying the discharge of obligations and modifications sought.
20	Provision of Commercial Estate: Second Tranche	Para 11 and Sch 29D Item 24	The Applicants apply to discharge the obligations under paragraph 11 and Schedule 29D Item 24. In addition, the Applicants apply for any appropriate consequential variations including the discharge of Schedule 37.	The reasons relied upon are as above for the First Tranche. The removal of the Second Tranche is shown in the Viability Report, Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5700.5 and forms part of this updated viability analysis justifying the discharge of obligations and modifications sought.

21	Provision of Commercial Estate: Third Tranche	Para 12 and Sch 29D Item 27	The Applicants apply to discharge the obligations under paragraph 12 and Schedule 29D Item 27.	The reasons relied upon are as above for the First and Second Tranches. The removal of the Third Tranche is shown in the Viability Report at Appendix 3, Infrastructure (Scenario 2) Line Ref 5700.6 and forms part of this updated viability analysis justifying the discharge of obligations and modifications sought.
22	Payment of Cash Endowment	Paragraph 13	The Applicants apply to discharge the obligations under paragraph 13 to pay the First Cash Endowment and the Second Cash Endowment. In the premises there should be no Option A or Option B and all necessary consequential amendments removing reference to these should be made accordingly.	Option B (requiring the payment of the First and Second Cash Endowments) is fundamentally flawed. The Commercial Estate was proposed to provide the CMO with a long term revenue stream. However, as above, it can already be seen no longer to serve any useful purpose. Further, a one off cash endowment does not have a useful purpose in replacing an asset endowment and it is not appropriate for Section 106 payments to be levied to fund an unspecified alternative investment by the CMO. The mistake by the draftsperson was to suppose any symmetry between Option A and Option B. Where Option A and the Commercial Estate: Second and Third Tranches do not proceed, that does not provide any justification for Option B and paying these very significant sums or indeed any sum directly to the CMO.

				Moreover, as referred to above, the total cost of the First and Second Cash Endowments (in the sum of 2x £2,190,750) would undermine the viability of the Development and cannot be sustained.
23	Payment of CMO Start up Contribution	Paragraph 14	The Applicants apply to discharge these obligations and for the sums already paid to be refunded accordingly.	The Applicants repeat and rely upon the reasons stated above in respect of the other CMO, DGC and CE obligations. In particular, that the funds paid to date have not been spent sensibly nor delivered any material benefits to residents. In reality these obligations have not achieved any useful purpose, should be discharged retrospectively and the wasted contributions refunded. The Viability Report and updated viability evidence in support of this application duly reflect this submission; see the Explanatory Statement Appendix 3: Viability Report (Appendix 3: Infrastructure Cost Plan, Infrastructure Cost Plan (Scenario 2) Line Ref. 5700.3).
	Schedule 5 – Early Community Development			In this regard the Applicants refer to and rely in particular upon section 8 of the Explanatory Statement accompanying this application in addition to the reasons stated below.

24	To pay annual Early Community Development Contributions of £50,000	Paragraph 1.2	The Applicants apply for all past and further payments of ECD Contributions to be discharged.	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.' The payment of the first, second and third ECD contributions was predicated upon this expectation. However, as at January 2020 the occupation level on site was just 30 dwellings (circa 72 people), whilst as at August 2022 some 215 dwellings are occupied (circa 516 people). At these occupancy levels, the payments made are not proportionate to the population on site and therefore not in line with their originally intended purpose (as described at paragraph 2 of Schedule 5) and cannot be justified. Further, 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 2031. Given this actual rather than planned housing trajectory and the associated levels of occupancy, the payments due under the existing terms are not proportionate to need in the short term.

				The first three payments have already been made (£150,000), but is unclear how if at all these monies have been expended in relation to community activity. Moreover, ABC has now, instead of and in substitution for these payments, secured £755,000 in funding from DHLUC for: • Improved access to, through and around Discovery Park and nearby Coleman's Kitchen woods (upgrading Public Rights of Way) • Promoting active travel and sustainability • The creation of a community space for the local community to meet and hold events • Stodmarsh Nutrient Neutrality Assessment and exploring bio-diversity net gain opportunities • Further community development work and cultural projects • Improving information sharing and communication for local residents • Supporting the growth of the Community Stakeholder Group. In context, therefore, these additional payments no longer serve any useful purpose and should be discharged accordingly, both retrospectively and prospectively with those payments already made duly refunded. The Viability Report and updated viability evidence in support of this application duly reflect this submission; with the first three payments shown in the Explanatory

				Statement Appendix 3: Viability Report (Appendix 3: Infrastructure Cost Plan, Line Ref. 5700.7) as refunded and the remaining liabilities discharged.
	Schedule 6 – Natural Green Space			
25	The obligations to provide Informal/Natural Green Space Facilities	Para 1 et seq.	The Applicants do not seek to reduce the Informal/Natural Green Space but do seek to modify some of the detail of these obligations as referred to below.	Although the Applicants do not seek to reduce their s106 obligations to provide Informal/Natural Green Space Facilities, but it should be noted and is duly recorded here, that the Green Space obligations are proving to be substantially more expensive than is presently allowed for as a cost to the Development at Schedule 29D. Rather than the sums shown there (see items 7, 15, 19 and 21) the true costs are likely to be in the order of £7.5m. The scale of this obligation ought properly to be taken into account when considered the other requests herein, particularly those based primarily or exclusively on viability and the deliverability of the Development.
26	The conditions attaching to occupation in each Main Phase	Paras 1.1.5 to 1.1.10	The Applicants seek to discharge or modify these conditions as appropriate to remove amongst other things the powers of veto effectively given to the CMO thereunder, as follows:	The amendment to paragraph 1.1.5 is justified because there is no useful purpose to be served in the CMO being able to halt the Occupation of Dwellings in each or any of the Main Phases merely because the CMO and/or the ManCo which should replace it, identifies some Defect in the Green Space Facilities. This is a wholly unnecessary and oppressive provision.

			Paragraph 1.1.5 to be modified to omit the last part of the clause beginning 'and are free from … a cosmetic nature). Paragraph 1.1.8 to be discharged. Paragraphs 1.1.9 and 1.1.10 also to be discharged. Alternatively, paragraph 1.1.9 to be modified to provide the Informal/Natural Green Space Facilities have been transferred to the CMO/ManCo by way of a transfer in a form acceptable to them (their approval of the form not to be unreasonably withheld). Likewise, in this alternative, parargaph1.1.10 should be modified to provide '… in a form previously approved by the Council (its approval not to be unreasonably withheld) … etc.'.	Further, in practice the CMO is neither equipped nor competent to be the arbiter of such matters. Rather under a normal Estate Management (ManCo) model they should simply be obliged to maintain and/or keep in repair and good condition the Green Space Facilities, by no doubt in practice using third party maintenance contractors. As for paragraph 1.1.8, there is simply no justification for imposing this additional burden upon the Applicants. It is not appropriate for Section 106 payments to be levied to meet transaction costs in this way. In any event, for the reasons stated below, the Applicants propose that the land should not be transferred at all. That to do so is unnecessary. As to the discharge/modification of the transfer obligation under 1.1.9 and 1.1.10 so as these spaces are retained by the Applicants, this is consequential upon and consistent with the move away from the CMO to a standard ManCo. There is no useful purpose to be served in transferring these assets to any such estate management company. Indeed, it would be unusual for this to be the case. Moreover, the provision of these spaces as an amenity would be unaffected and the obligations in relation to the same would serve their purpose equally well if varied in this way. Alternatively, if contrary to the foregoing, there was to be a transfer, to avoid an impasse over the form and any accompanying documentation, the alternative provision to

				be added to clauses 1.1.9 and 1.1.10 for approval not to be unreasonably withheld, is clearly necessary. Without such a proviso the operation of the clauses may be frustrated and they would fail in any event to serve any useful purpose at all.
27	The 12 months repairing liability following transfer	Paragraph 1.2	The Applicants apply to discharge this obligation.	The clause gives the CMO excessive powers to demand repairs are carried out. Particularly, where, as noted above, in reality the CMO is neither equipped nor competent to be the arbiter of such matters. Moreover, under a normal estate management (ManCo) model the CMO should simply be obliged to maintain and/or keep in repair and good condition the Green Space Facilities, by no doubt in practice using third party maintenance contractors. On any view, therefore, the clause fails to serve any useful purpose and should be discharged.
28	Provision for payment toward the Council's costs	Paragraph 2	The Applicants seek the discharge of this payment obligation	Because providing for payment toward the Council's costs undermines the purpose of the clause (to secure the transfer on appropriate terms), compensating the Council even in cases where it unreasonably refuses approval, which should not the case.

				The clause does not therefore serve any proper or useful purpose and should be discharged accordingly.
	Schedule 7 – Chilmington Hamlet			In this regard the Applicants refer to and rely in particular upon section 8 of the Explanatory Statement accompanying this application in addition to the reasons stated below.
29	Chilmington Hamlet facilities to be provided by 1400 occupations	Para 1.3 and Sch 29D Item 12	The Applicants apply for the following modifications: That paragraph 1.3 be modified to read 'Unless the Council agrees otherwise, not to occupy more than 3,500 Dwellings unless …' In addition, the Applicants apply for paragraph 1.3.1 to be modified to omit the last part of the clause beginning 'and are free from … a cosmetic nature). Further, the Applicants apply to modify and/or in so far as necessary discharge the obligation to transfer the Facilities, substituting an obligation to grant a lease of the same for a term of 21 years. Thus, the Applicants apply for paragraph 1.3.4 to be discharged and paragraph 1.3.5 to be modified to provide for the Facilities to be transferred to the CMO/ManCo by way of the grant of a lease in the Facilities for a term of 21	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 should be delayed until the facilities are viable (i.e. there are enough people living on the development to make sufficient use of them). Based on the general profile of demand for cricket facilities and the total demand for 2 to meet the needs of the whole development, Chilmington Hamlet is likely to be viable no earlier than 3,500 homes. Further, the current front loading of this community provision, the Hamlet by 1,400 Dwellings and the Community Hub by 1,800 Dwellings, will not only have a significantly detrimental effect on the Paying Owner's cashflow in this initial phase of the Development, but more critically without modification will likely cause the loss of the funding available to the Applicants to carry out the Development at all. Rather, the purpose of these provisions can be better or at least equally well served by modifying them as proposed,

			years at a peppercorn ground rent and which (a) shall not secure any service charge in relation to the premises (b) shall be unencumbered (except for any easements or other rights to lay maintain enter report divert renew replace connect to and use any new or existing and proposed service media) and subject always to the provisions of this Deed and any conditions to the Planning Permission that apply to the land and (c) shall confer all legal rights and easements over neighbouring and adjacent land that are reasonably necessary and appropriate to enable the demised land to be used for its intended uses and purposes. The form of the said lease to be acceptable to the CMO/ManCo (their approval of the form not to be unreasonably withheld). And, Paragraph 1.3.6 to be modified to provide that the Owners have served the CMO/ManCo with an engrossed lease/s (as appropriate) as aforesaid of the land on which the Facilities are located in a form previously approved by the CMO/ManCo or in the event that the CMO/ManCo has still not approved the same within 6 weeks of the relevant owner serving the same) in a form previously approved by the Council where the Council's approval of the	supporting the Development whilst securing delivery of these facilities in any event at a relatively early stage in the life of the Development. Certainly, given the level of capital cost here (£1.266m) this is another significant factor in terms of viability and deliverability, justifying the deferment of this obligation to support the ultimate delivery of the entire Development. The proposed modification is captured in the updated sensitivity analysis in the Viability Report at Appendix 3 of the Explanatory Statement. As for the modification and/or discharge of paragraphs 1.3.4 to 1.3.6 to provide for the grant of a 21 year lease rather than a freehold transfer, this is consequential upon and consistent with the move away from the CMO to a standard ManCo. Moreover, this will not detract from the provision of these Facilities and the obligations will serve their existing purpose equally well if modified as proposed. Further or alternatively, if the above is not accepted for any reason, and the obligation to transfer remains, the Applicants nonetheless seek the discharge of paragraph 1.3.4 and the modifications to paragraphs 1.3.5 and 1.3.6 for the (alternative) reasons stated above in respect of the like paragraphs under Schedule 6.

			form of lease proposed by the Owners is not to be unreasonably withheld … etc. Alternatively, if contrary to the foregoing the Facilities are to be transferred, the Applicants apply for paragraph 1.3.4 to be discharged in any event for the further reasons given and paragraphs 1.3.5 and 1.3.6 to be modified to require that approval of the form of transfer is not to be unreasonably withheld. Schedule 29D item 12, to be modified accordingly so that the trigger for payment refers to 3,250 Dwellings.	
30	Submission and Approval of Design Brief and Specification by 1,000 occupations	Paras 1.1 and 1.2	The Applicants apply to modify paragraph 1.1 to provide, 'Not to Occupy more than 3,000 Dwellings unless a design brief and specifications for the following indicative facilities and/or facilities of no greater environmental impact as may be approved by the Council (approval not to be unreasonably withheld) … at Schedule 7A to be provided in Chilmington Hamlet has been approved by the Council with a total capital cost of £1,266,000.00 … including fees, contingencies, specification and design costs,	The modification in occupations is proposed for the reasons stated above in respect of the provision of these facilities and is consequential upon that modification. The modification of the planned costs to include fees, contingencies, specification and design costs, supervision fees, access costs and service costs, is justified for reasons of viability and deliverability, ensuring that the cost of these Facilities is not so substantial as to undermine the viability of the relevant Main Phases and strike at the very delivery of these assets. The third modification is proposed to reinforce the existing obligation and ensure the purpose of the

			supervision fees, access roads and service costs ('the Facilities')'. Further, the Applicants apply for the following provision to be added for the avoidance of doubt 'The scope of the said facilities to be altered as may reasonably be required to match the stipulated total capital cost as aforesaid.'	preceding paragraphs is fulfilled, i.e. the provision of the Chilmington Hamlet facilities at a total cost of £1,266,000.
31	The provision for consultation with the CMO and stakeholders etc. and approval of the details of the consultation .	Paragraph 1.2 and its sub-paragraphs 1.2.1, 1.2.2 and 1.2.3	The Applicants apply to modify paragraph 1.2 and/or discharge aspects of the same as follows: Paragraph 1.1.2 to be modified to omit the requirement to consult the CMO (or its substitute) Paragraph 1.2.2 to be discharged so as to omit the requirement to consult and to obtain approval in respect of the details of the consultation, and Paragraph 1.2.3 to be modified simply to state 'shall include the consultation responses.'	The consultation with the CMO (or its substitute) under 1.1.2 is surplus to requirements, given that the Council will have the opportunity already to consult with all interested parties when approving the design brief and specification. This part of the paragraph does not, therefore, serve any useful purpose and should be discharged or modified accordingly. As for 1.2.2, the requirement to consult over the details of the consultation (whether with the CMO or Council) also fails to serve any useful purpose. It unnecessarily complicates what should be a relatively straightforward and simple exercise. This obligation should be discharged accordingly. The modification to 1.2.3 is consequential on the foregoing.

32	The 12 months repairing obligation following transfer	1.4	The Applicants apply to discharge this obligation in its entirety.	The clause gives the CMO excessive powers to demand repairs are carried out, particularly where, as noted above, in reality the CMO is neither equipped nor competent to be the arbiter of such matters. Further, under a normal Estate Management (ManCo) model the CMO should simply be obliged to maintain and/or keep in repair and good condition the Green Space Facilities, by no doubt in practice using third party maintenance contractors. On any view, therefore, the clause fails to serve any useful purpose and should be discharged.
33	Provision for payment toward the Council's costs	Paragraph 2	The Applicants apply to discharge this payment obligation.	Because providing for payment toward the Council's costs undermines the purpose of the clause (to secure the transfer on appropriate terms), compensating the Council even in cases where it unreasonably refuses approval, which should not be the case. The clause does not therefore serve any proper or useful purpose and should be discharged accordingly.
	Schedule 8 – Children and Young People's Play Space			In this regard the Applicants refer to and rely in particular upon section 8 of the Explanatory Statement accompanying this application in addition to the reasons stated below.

34	The provision of the design brief and specification for the children's and young people's play spaces and/or other facilities	Paragraph 1	The Applicants apply to modify the delivery of the design brief and specification for each play space and/or the other facilities in each Main Phase 1, 2, 3 and 4, by altering the number of Dwellings specified in the unnumbered sub-paragraphs of Paragraph 1.1 from the current 50, 50, 750, 650 and 1150 to 350, 500, 850, 850 and 1350 respectively. The Applicants request that paragraph 1.1.1 be modified to read '… and not exceeding a total of £2,585,143.00 … for the play space including fees, contingencies, specification and design costs, supervision fees, access roads and service costs ('the Facilities')'. Further, before 1.1.2, the Applicants apply to insert 'The scope of the said facilities to be altered as agreed with the Council to match the stated capital cost for each of PS1, 2, 4, 5 and 7 and the total capital cost as aforesaid.'	So far as the initial 0.5ha in Main Phase 1 is concerned the practical point arises, that it is not possible to provide this safely until the surrounding construction works are completed. The other play spaces are postponed for the same construction related reasons. Notably, in doing so the delivery of these assets remains substantially in line with policy. Further, given the level of capital cost here (£2.585m) this is another significant factor in terms of viability and deliverability, justifying the deferment of these obligations supports the ultimate delivery of the entire Development. Likewise, the modification of the planned costs to include fees, contingencies, specification and design costs, supervision fees, access costs and service costs, is justified for reasons of viability and deliverability, ensuring that the cost of these Facilities is not so substantial as to undermine the viability of the relevant Main Phases and strike at the very delivery of these assets. The proposed modification is captured in the updated sensitivity analysis in the Viability Report at Appendix 3 of the Explanatory Statement.

				The added sub-paragraph before 1.1.2 is proposed for the avoidance of doubt, to reinforce the existing obligation and ensure the purpose of the preceding paragraphs is fulfilled, i.e. the provision of each PS[Number] at the cost stated, with the whole provided at a total cost not exceeding that also stated.
35	The provision for consultation with the CMO, stakeholders etc. and approval of the details of the consultation	Paragraph 1.1.2	In addition, the Applicants apply to modify paragraph 1.1.2 as follows: To omit the requirement to consult with the CMO (or its substitute), To omit the requirement to consult and to obtain approval in respect of the details of the consultation, and consequentially, To omit the words 'and in particular the CMO's comments on the costings.'	The consultation with the CMO (or its substitute) under 1.1.2 is surplus to requirements, given that the Council will have the opportunity already to consult with all interested parties when approving the design brief and specification. This part of the paragraph does not, therefore, serve any useful purpose and should be discharged or modified accordingly. As for the requirement to consult over the details of the consultation (whether with the CMO or Council) this also fails to serve any useful purpose. It unnecessarily complicates what should be a relatively straightforward and simple exercise. This part of the obligation (in parenthesis) should be discharged accordingly. The omission of the final clause of 1.1.2 is simply consequential on the foregoing.
36	The applicable occupation limits in respect of the provision	Paragraphs 1.2 and 1.4	The Applicants apply to modify the occupation limits in paragraphs 1.2 and 1.4 from the current 500, 1100 and 1100 to 700, 1200 and	The modification in occupations is proposed for the reasons stated above in respect of the provision of the design brief and specification for each of the play spaces

	and construction of each PS[Number] in the relevant Main Phase		1300 respectively (the first 500 trigger for PS1 and the final 1500 trigger for PS7 in Main Phase 4 to remain unaltered).	and/or other facilities and follows upon those modifications.
37	The conditions attaching to occupation in relation to each 'PS[Number]' in each Main Phase	Paras 1.2.1 to 1.2.6	The Applicants seek to discharge or modify these conditions to remove amongst other things the powers of veto effectively given to the CMO thereunder, as follows: Paragraph 1.2.1 to be modified to omit the last part of the clause beginning 'and are free from … a cosmetic nature). Further, the Applicants apply to modify and/or in so far as necessary discharge the obligation to transfer the Facilities, substituting an obligation to grant a long lease of the same, being a lease (including a sub-lease) with a term of 125 years at a peppercorn ground rent and which makes the same provisions (a)-(c) as referred to above (see Schedule 7). Thus, the Applicants apply for paragraph 1.2.4 to be discharged and paragraphs 1.2.5-6 to provide instead that the Facilities, are: either	The amendment to paragraph 1.2.1 is justified because there is no useful purpose to be served in the CMO being able to halt the Occupation of Dwellings in each or any of the Main Phases merely because the CMO and/or the ManCo which should replace it, identifies some Defect in the play spaces and/or other facilities. This is a wholly unnecessary and oppressive provision. Further, in practice the CMO is neither equipped nor competent to be the arbiter of such matters. Rather under a normal Estate Management (ManCo) model they should simply be obliged to maintain and/or keep in repair and good condition the spaces/facilities, by no doubt in practice using third party maintenance contractors. As for the modification and/or discharge of paragraphs 1.2.4 to 1.2.6 to provide for the grant of a long lease rather than a freehold transfer, this is consequential upon and consistent with the move away from the CMO to a standard ManCo. Moreover, this will not detract from the provision of these Facilities and the obligations will serve their existing purpose equally well if modified as proposed.

			to be transferred to the CMO/ManCo by way of the grant of a lease as aforesaid of the land on which the Facilities are located in a form acceptable to the latter (their approval of the form not to be unreasonably withheld) or where the Owners have served the CMO/ManCo with an engrossed lease/s (as appropriate) as aforesaid of the land on which the Facilities are located in a form previously approved by the CMO/ManCo or (in the event that the CMO/ManCo has still not approved the same within 6 weeks of the relevant owner having served the same) in a form previously approved by the Council (where the Council's approval of the form of lease proposed by the Owners is not to be unreasonably withheld) that is executed … etc Alternatively, if contrary to the foregoing the Facilities are to be transferred, the Applicants apply for paragraph 1.2.4 to be discharged in any event for the further reasons given and paragraphs 1.2.5 and 1.2.6 to be modified to require that approval of the form of transfer is not to be unreasonably withheld.	Further or alternatively, if the above is not accepted for any reason, and the obligation to transfer remains, the Applicants nonetheless seek the discharge of paragraph 1.2.4. There is simply no justification for imposing this additional burden upon the Applicants. It is not appropriate for Section 106 payments to be levied to meet transaction costs in this way. Also in this alternative, whilst paragraphs 1.2.5 and 1.2.6 would enable the CMO or Council to veto the form of transfer, it is important that to avoid an impasse over the form and any accompanying documentation, the provisions for CMO/ManCo and Council approval are subject to the same not being unreasonably withheld. Without such a proviso these paragraphs would fail to serve any useful purpose at all. Certainly, modified as proposed these paragraphs will equally well, if not better, enable the alternative proposal to transfer these spaces/facilities to the CMO/ManCo on appropriate terms.

38	The 12 months repairing liability following transfer	1.3	The Applicants apply to discharge this obligation in its entirety.	The clause gives the CMO excessive powers to demand repairs are carried out, without providing any effective dispute resolution mechanism (at 1.3.2). Particularly, where, as noted above, in reality the CMO is neither equipped nor competent to be the arbiter of such matters. Further, under a normal Estate Management (ManCo) model the CMO should simply be obliged to maintain and/or keep in repair and good condition the Green Space Facilities, by no doubt in practice using third party maintenance contractors. On any view, therefore, the clause fails to serve any useful purpose and should be discharged.
39	Provision for payment toward the Council's costs	Paragraph 2	The Applicants apply to discharge this payment obligation.	Because providing for payment toward the Council's costs undermines the purpose of the clause (to secure the transfer on appropriate terms), compensating the Council even in cases where it unreasonably refuses approval, which should not be the case. The clause does not therefore serve any proper or useful purpose and should be discharged accordingly.

	Schedule 9 - Allotments			In this regard the Applicants refer to and rely in particular upon section 9 of the Explanatory Statement accompanying this application.
40	Provision of Main Phase 1 Allotments by 1000 Dwelling Occupations	Para 1 and Sched 29D Item 10	The Applicants apply to modify this obligation so that the provision of the Main Phase 1 Allotments is deferred to 1,450 Dwelling Occupations; i.e. paragraph 1.1 should be modified to read 'Unless the Council agrees otherwise, not to Occupy more than 1,450 Dwellings in Main Phase 1 or …' Paragraph 1.3 likewise to be modified to refer at sub-paragraph 1.3.1 to 1,450 Dwellings. Schedule 29D item 10, also to be modified accordingly so that the trigger for payment refers to 1450 Dwellings in Main Phase 1.	The obligation to provide the Main Phase 1 allotments is acknowledged potentially to serve a useful purpose but the requirement to do so by the 1000th Dwelling Occupations will adversely affect the Paying Owner's cashflow in Main Phase 1 and compromise the viability of this phase. 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. The revised trigger is based on the point at which demand for the minimum viable size (20 plots/0.66 ha) of allotment is reached (1,375 homes). The deferment of this cost is captured in the Viability Report at Appendix 3 of the Explanatory Statement and forms part of this revised viability analysis justifying the discharge of obligations and modifications sought.

41	Provision of Main Phase 2 Allotments by 1000 Dwelling Occupations	Para 1 and Sched 29D Item 11	The Applicants apply to modify this obligation so that the provision of the Main Phase 2 Allotments is deferred to 1,100 Dwelling Occupations; i.e. paragraph 1.1 should be modified to read 'Unless the Council agrees otherwise, not to Occupy … more than 1,100 Dwellings in Main Phase 2 or …' Paragraph 1.3 likewise to be modified to refer at sub-paragraph 1.3.2 to 1,100 Dwellings. Schedule 29D item 11, to be modified accordingly so that the trigger for payment refers to 1,325 Dwellings in Main Phase 2.	The Applicants refer to and rely upon the reasons advanced above in relation to Main Phase 1 Allotments.
42	Provision of Main Phase 3 Allotments by 1400 Dwelling Occupations	Para 1 and Sched 29D Item 18	The Applicants apply for this obligation to be discharged.	The obligation to provide these allotments is unnecessary and represents over provision of such facilities. Moreover, their cost is significant (£322,500) and serving only to undermine the viability and ultimately the deliverability of the Development. The discharge of this cost is captured in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5500.3 and forms part of this revised viability analysis justifying each discharge and modification sought.

43	Provision of Main Phase 4 Allotments by 1400 Dwelling Occupations	Para 1 and Sched 29D Item 20	The Applicants apply for this obligation to be discharged.	The obligation to provide these allotments is unnecessary and represents over provision of such facilities. Moreover, their cost is significant (£344,896) and serving only to undermine the viability and ultimately the deliverability of the Development. The discharge of this cost is captured in the Viability Report, Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5500.4 and forms part of this revised viability analysis justifying each discharge and modification sought.
44	The conditions attached to the provision of the Allotments in each Main Phase	Paragraphs 1.1.1 to 1.1.6	Firstly, the Applicants apply for the following clause to be added to paragraph 1.1.1 (after '… reserved matters approval'), 'and the planned cost for that Allotment.' Further, the Applicants apply to discharge the obligation to transfer the Allotment Facilities to the CMO/ManCo entirely and/or in so far as necessary modify them to provide for these Facilities to be provided pursuant to a renewable licence/s. Thus, the Applicants propose that all of 1.1.4 to 1.1.6 are discharged and 1.1.4 replaced with a simple obligation that 'the Allotment Facilities have been provided to the CMO/ManCo by	The modification to paragraph 1.1.1 is proposed for the avoidance of doubt and to reinforce the existing obligation, that it may better serve its intended purpose to provide Main Phase 1 Allotment and Main Phase 2 Allotment in accordance with the agreed budget or may serve that purpose equally well. As for the discharge and/or modification of paragraphs 1.1.4 to 1.1.6 to provide for the grant of a licence rather than a freehold transfer, this is consistent with the move away from the CMO to a standard ManCo. It will also provide additional flexibility in relation to the land use, catering for varying demand for allotments without detracting from the provision of these Facilities where they are wanted. Accordingly, the obligations will serve

			way of renewable bi-annual licence/s (as appropriate) in a form acceptable to the CMO/ManCo, its approval not to be unreasonably withheld. Alternatively, if the above is not accepted for any reason, the Applicants seek instead to modify these obligations to provide that these Facilities are transferred by way of a lease, which is a lease (including a sub-lease) with a term of 21 years at a peppercorn ground rent and which makes the same provisions (a)-(c) as referred to above (see Schedule 7). In this alternative, therefore, the Applicants apply for paragraph 1.1.4 to be discharged and paragraph 1.1.5 to be modified to provide for the Facilities to be transferred to the CMO/ManCo by way of the grant of a lease of the Facilities as aforesaid in a form acceptable to the latter (their approval of the form not to be unreasonably withheld). With paragraph 1.1.6 similarly modified to provide that the Owners have served the CMO/ManCo with an engrossed lease/s (as appropriate) as aforesaid of the land on which the Facilities are located in a form previously approved by the CMO/ManCo or in the event that the CMO/ManCo has still not approved the	their existing purpose equally well if modified as proposed. If the above proposal is not acceptable for any reason, the Applicants will pursue the alternative proposal to provide these Facilities by way of a 21-year lease. The reasons justifying this option and duly relied upon being no different in essence from those stated above. As for paragraph 1.1.4, there is simply no justification for imposing this additional burden upon the Applicants. It is not appropriate for Section 106 payments to be levied to meet transaction costs in this way. Further, whilst clauses 1.1.5 and the provisions of 1.1.6 would enable the CMO and ultimately the Council to veto the form of lease, it is important that to avoid an impasse over the form and any accompanying documentation, any approval is subject to the same not being unreasonably withheld. Without such a proviso the clause would fail to serve any useful purpose at all. Certainly, modified as proposed the clause will equally well, if not better, enable the alternative proposal to transfer these Facilities by way of a lease to the CMO/ManCo on appropriate terms.

			same within 6 weeks of the relevant owner serving the same) in a form previously approved by the Council (where the Council's approval of the form of lease proposed by the Owners is not to be unreasonably withheld) that is executed … etc.	
45	The 12 months repairing liability following transfer	1.2	The Applicants apply to discharge this obligation in its entirety.	The clause gives the CMO excessive powers to demand repairs are carried out, without providing any effective dispute resolution mechanism (at 1.2.2). Particularly, where, as noted above, in reality the CMO is neither equipped nor competent to be the arbiter of such matters. Further, under a normal estate management (ManCo) model the CMO should simply be obliged to maintain and/or keep in repair and good condition the Green Space Facilities, by no doubt in practice using third party maintenance contractors. On any view, therefore, this paragraph fails to serve any useful purpose and should be discharged.
46	Provision for payment toward the Council's costs	Paragraph 2	The Applicants apply to discharge this payment obligation.	Because providing for payment toward the Council's costs undermines the purpose of the clause (to secure the transfer on appropriate terms), compensating the Council

				even in cases where it unreasonably refuses approval, which should not be the case. The clause does not therefore serve any proper or useful purpose and should be discharged accordingly.
	Schedule 10 – DP3, Discovery Park Sports Hub and Discovery Park Sports Pitches			In this regard the Applicants refer to and rely in particular upon section 8 of the Explanatory Statement accompanying this application in addition to the reasons stated below.
47	Payment of £20,000 toward masterplanning	Paragraph 1.1	The Applicants apply for this obligation to be modified and/or discharged as appropriate and for the sum of £20,000 already paid to be refunded. Thus, the Applicants propose that clause 1.1 should read as follows: 'To prepare a masterplan for the Discovery Park, the Discovery Park Sports Hub, PS6 and the Discovery Park Sports Pitches in consultation with the Council and such others as the Council may decide; and ...'	The masterplan should properly and sensibly be prepared by the Applicants in consultation with the Council and other stakeholders. The relevant information for masterplanning is better known to the Applicants and it they who should be carrying this out and submitting the same for approval (see Request 53 below). In reality the obligation as existing does not therefore serve any useful purpose and should be discharged accordingly.
48	Submission and approval of design briefs and specifications for the Discovery Park Sports	Paragraph 2.1	The Applicants apply to modify this obligation so that the submission/approval of the design briefs and specifications should be re-geared from 1,000 Dwelling Occupations to 2,650 Occupations; i.e. paragraph 2.1 should be	The obligation to provide these community assets (at a total capital cost of up to £2,782,000.00 + £4,976,157) in stages after some 3200 and 5000 Dwellings is acknowledged potentially to serve a useful purpose (subject to requests 49 to 56 below) but the requirement

	Pitches and for the Discovery Park Sports Hub by 1000 Dwelling Occupations		modified to read: 'Unless the Council agrees otherwise, not to Occupy more than 2,650 Dwellings unless; 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 approved by the Council with a total capital cost of the Discovery Park Sports Pitches not exceeding £2,782,000 (two million seven hundred and eighty two thousand pounds) including fees, contingencies, specification and design costs … and with a total capital cost of the Discovery Park Sports Hub not exceeding £4,976,157 (four million nine hundred and seventy six thousand one hundred and fifty seven pounds) including fees, contingencies, specification and design costs etc. …' .	to submit the design briefs and specifications by 1,000 is wholly premature. Given the present housing trajectory and rate of occupations, modifying the number of occupations by which submission/approval is required from 1,000 to 2,650 will provide a similar and certainly ample lead in time for the delivery of these assets even by the stipulated 3,200 and 5,000 Dwellings (and therefore certainly by the revised 3,650 and 5,500 – see below). Further, the modification of the planned costs to include fees, contingencies, specification and design costs, supervision fees, access costs and service costs, is justified for reasons of viability and deliverability, ensuring that the cost of the Sports Facilities is not so substantial as to undermine the viability of the relevant Main Phases and strike at the very delivery of these assets. In the premises, Clause 2.1 will therefore serve its purpose equally well and in full if modified as proposed, allowing additional time for this obligation without impacting the ultimate delivery of these assets substantially in accordance with the existing terms of the s106 Agreement.
49	The provision for consultation with the	Paragraph 2.1.2	In addition, the Applicants apply for paragraph 2.1.2 to be modified to omit the requirement to	The consultation with the CMO (or its substitute) under 2.1.2 is surplus to requirements, given that the Council

	CMO, stakeholders and the public and approval of the details of the consultation		consult the CMO (or its substitute) and omit the requirement to consult and to obtain approval in respect of the details of the consultation and to omit the final clause 'and in particular the CMO's comments on the costings;'	will have the opportunity already to consult with all interested parties when approving the design brief and specification. This part of the paragraph does not, therefore, serve any useful purpose and should be discharged or modified accordingly. As for the requirement to consult over the details of the consultation (whether with the CMO or Council) this also fails to serve any useful purpose. It unnecessarily complicates what should be a relatively straightforward and simple exercise. This part of the obligation (in parenthesis) should be discharged accordingly. The omission of the final clause is consequential on the above.
50	The obligations to provide the Sports Facilities (1st Phase)	Para 2.2 and 2.8 and Sched 29D Item 26	The Applicants apply to modify paragraph 2.2 to provide, 'Not to Occupy more than 3,650 [rather than 3,200] Dwellings unless: 2.2.1 the first phase of the Sports Facilities has been provided in accordance with the reserved matters approvals and the planned cost for these facilities. 2.8 To construct and provide:- 2.8.1 The first phase of the Sports Facilities before the Occupation of more than 3,650	The Applicants submit that given the availability of alternative sports facilities and assets that precede the delivery of this first phase, the re-timing of this obligation is such that it will serve its purpose equally well if modified as proposed. In real terms the limited additional time sought by this modification for the delivery of these facilities being unlikely to have any material or even measurable impact on the experience of owners and occupiers at this stage in the Development.

			[rather than 3200] Dwellings in accordance with the requirements of paragraph 2.2.1 of this schedule; … At Schedule 29D Item 26, the payment trigger likewise to be deferred from 2,800 to 4,000 Dwellings.	The additional clause added to 2.2.1 to ensure the facilities are provided in accordance with the planned costs supporting, as in other similar cases, the existing obligation and ensuring that it serves its intended purpose better or at least equally well.
51	The obligations to provide the Discovery Park Sports Facilities (2nd Phase)	Para 2.3 and 2.8 and Sched 29D Item 30	The Applicants apply to modify paragraph 2.3 to provide, 'Not to Occupy more than 5,500 [rather than 5000] Dwellings unless: 2.3.1 the second phase of the Sports Facilities have been provided in accordance with the reserved matters approvals … 2.8 To construct and provide:- … 2.8.2 The second phase of the Sports Facilities prior to the Occupation of 5,500 [rather than 5000] Dwellings in accordance with the requirements of paragraph 2.3.1 of this schedule; …	The Applicants submit that given the extensive provision of sports facilities and assets that precede this delivery of this second phase, the re-timing of this obligation is such that it will serve its purpose equally well if modified as proposed, in real terms the additional time sought by this modification for the delivery of these facilities being unlikely to have any material or even measurable impact on the experience of owners and occupiers at this stage in the Development.

			At Schedule 29D Item 30, the payment trigger likewise to be deferred from 4,600 to 5,100 Dwellings.	
52	The obligations to provide DP3 and PS6 and the applicable occupation limits	Paragraphs2.6.1 2.6.2, 2.6.3, 2.6.4, the relevant sub-paragraphs of 2.8 and Sched 29D Items 22, 23, 28 and 31	The Applicants apply for the following modifications: Delivery of DP3 in Phase 1 be deferred from 1500 to 2000 Occupations (subsequent phases remain unchanged); i.e. para 2.6 to be modified to read: 'Not to Occupy more than: 2.6.1 2650 [rather than 1500] Dwellings unless 1 ha of DP3 has been provided 2.6.2 3500 [rather than 2500] Dwellings unless 0.86 of DP3 has been provided 2.6.3 5000 [rather than 4000] Dwellings unless PS6 and 1.08 ha of DP3 have been provided 2.6.4 5750 [rather than 5500] Dwellings unless 4.42 ha of DP3 has been provided …' … '2.8 To construct and provide:-	The obligations to provide these areas of DP3 are acknowledged potentially 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. It will also jeopardise the funding presently available and further put at risk the delivery of the Development. The consequential deferment of the remainder of the DP3 provision and PS6 is similarly justified on viability and ultimately deliverability grounds. 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 from Main Phase 2 and thereafter at intervals through the course of the Development similar or shorter to those provided under the existing terms. . The deferred requirement to provide DP3 as proposed will result in a cost reduction within Main Phase 1. This specific item is shown in the Viability Report at Appendix

			... 2.8.3 1 ha of DP3 before the Occupation of more than 2650 [rather than 1500] Dwellings in accordance with the requirements of paragraph 2.6.5 of this schedule; and 2.8.4 0.86 ha of DP3 before the Occupation of more than 3500 [rather than 2500] Dwellings in accordance with the requirements of paragraph 2.6.5 of this schedule; and 2.8.5 PS6 and 1.08 ha of DP3 before the Occupation of more than 5000 [rather than 4000] Dwellings in accordance with the requirements of paragraph 2.6.5 of this schedule; and 2.8.6 4.42 ha of DP3 before the Occupation of more than 5750 [rather than 5500] Dwellings in accordance with the requirements of paragraph 2.6.5 of this schedule. At Schedule 29D Item 22, the payment triggers likewise to be deferred from 1350 to 1850, from 2,350 to 3,350, from 3,850 to 4,850 and from 5,350 to 5,600 Dwellings respectively.	3 at line 5500.29. The cumulative effect of this reduction together with the other discharges/modifications proposed in this application are duly reflected in the said report, in support of the changes sought herein to the s106 Agreement.

53	The obligation to provide the design brief and specification for DP3 and PS6 etc	Para 2.5	The Applicants apply to modify paragraph 2.5 to provide, 'Not to Occupy more than 2100 [rather than 1000] Dwellings unless: 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 not exceeding £2,056,813 (two million and fifty six thousand eight hundred and thirteen pounds) including PS6, fees, contingencies, specification and design costs etc. …'. In addition, the Applicants apply for paragraph 2.5.2 to be modified to omit the requirement to consult the CMO (or its substitute) and omit the requirement to consult and to obtain approval in respect of the details of the consultation.	These modifications are 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. The modification of the total costs of the Facilities to include PS6, fees, contingencies, specification and design costs, supervision fees, access costs and service costs, is justified for reasons of viability and deliverability, ensuring that the cost of these Facilities is not so substantial as to undermine the viability of the Development and strike at the very delivery of these assets. The requirement to consult over the details of the consultation fails to serve any useful purpose, given that any such consultation should be a relatively straightforward and simple exercise. This element of the obligation should therefore be modified or discharged as appropriate. Likewise, the consultation with CMO is surplus to requirements, given that the Council will have the opportunity already to consult with all interested parties when approving the design brief and specification. Again, therefore, this element of the paragraph serves no useful purpose and should be modified or discharged as appropriate.

54	The various conditions attaching to the delivery of each of the first and second phases of the Sports Facilities and the DP3	Paragraphs 2.2.1, 2.3.1 and 2.6.5 requiring provision of the relevant facilities in accordance with reserved matters etc. Paragraphs 2.2.4, 2.3.4 and 2.6.8 requiring payment of tax. Paragraphs 2.2.6, 2.3.6 and 2.6.10 dealing with the approval of the relevant transfers.	The Applicants apply for the following clause to be added to paragraphs 2.2.1, 2.3.1 and 2.6.5 (after '… design briefs and specification'), 'and at a cost not exceeding the total capital cost for these facilities stated above.' Further, the Applicants apply to modify and/or in so far as necessary discharge the obligations to transfer each of the first phase and second phase of the Sports Facilities and the DP3 so as to substitute an obligation in each case to grant a lease of the same, being a lease (including a sub-lease) with a term of 21 years at a peppercorn ground rent and which makes the same provisions (a)-(c) as referred to above (see Schedule 7). Thus, the Applicants apply for paragraphs 2.2.4-2.2.6, 2.3.4-2.3.6 and 2.6.8-2.6.10 to be discharged and new paragraphs 2.2.4-5, 2.3.4-5 and 2.6.8-9 to provide instead that each phase or the (DP3) Facilities, as the case may be, is: either to be transferred to the CMO/ManCo by way of the grant of a lease as aforesaid of the land on which the phase/Facilities are located in a form acceptable to the latter (their approval of the form not to be unreasonably withheld)	The modification to paragraphs 2.2.1, 2.3.1 and 2.6.5 are proposed for the avoidance of doubt and to reinforce the existing obligations. As for the modification and/or discharge of paragraphs 2.2.4 to 2.2.6, 2.3.4 to 2.3.6 and 2.6.8 to 2.1.10 to provide for the grant of a long lease rather than a freehold transfer, this is consequential upon and consistent with the move away from the CMO to a standard ManCo. Moreover, this will not detract from the provision of these phases and Facilities and the obligations will serve their existing purpose equally well if modified as proposed. Further or alternatively, if the above is not accepted for any reason, and the obligation to transfer remains, the Applicants nonetheless seek the discharge of paragraphs 2.2.4, 2.3.4 and 2.6.8. There is simply no justification for imposing these additional costs upon the Applicants. It is not appropriate for Section 106 payments to be levied to meet transaction costs in this way. Also in this alternative, given that existing paragraphs 2.2.5-6, 2.3.5-6 and 2.6.9-10 would enable the CMO or the Council to veto the form of transfer, it is important that to avoid an impasse over the form and any accompanying documentation, the provisions for CMO/ManCo and Council approval are made subject to the same not being unreasonably withheld.

			or where the Owners have served the CMO/ManCo with an engrossed lease/s (as appropriate) as aforesaid of the land on which the phase/Facilities are located in a form previously approved by the CMO/ManCo or (in the event that the CMO/ManCo has still not approved the same within 6 weeks of the relevant owner having served the same) in a form previously approved by the Council (where the Council's approval of the form of lease proposed by the Owners is not to be unreasonably withheld) that is executed … etc. Alternatively, if contrary to the foregoing the phases/Facilities are to be transferred, the Applicants apply for paragraph 2.2.4, 2.3.4 and 2.6.8 to be discharged in any event for the further reasons given and paragraphs 2.2.5-6, 2.3.5-6 and 2.6.9-10 to be modified to require that approval of the form of transfer is not to be unreasonably withheld.	Without such a proviso these paragraphs would fail to serve any useful purpose at all. Certainly, modified as proposed each will equally well, if not better, enable the alternative proposal to transfer these phases/Facilities to the CMO/ManCo on appropriate terms.
55	The 12 months repairing liability following the transfer of the second phase of	Paragraphs 2.4 and 2.7	The Applicants apply to discharge these payment obligations.	The clause gives the CMO excessive powers to demand repairs are carried out, without providing any effective dispute resolution mechanism. Particularly, where, as

	the Sports Facilities and the DP3			noted above, in reality the CMO is neither equipped nor competent to be the arbiter of such matters. Further, under a normal Estate Management (ManCo) model the CMO should simply be obliged to maintain and/or keep in repair and good condition the Green Space Facilities, by no doubt in practice using third party maintenance contractors. On any view, therefore, the clause fails to serve any useful purpose and should be discharged.
56	The obligation to publish the completed masterplan for the Discovery Park, the Discovery Park Sports Hub etc	Paragraph 3.4 requiring the masterplan no later than the Occupation of the 400th Dwelling	The Applicants apply to modify the obligation to provide that the Applicants will publish the masterplan and to defer publication until Occupation of the 2000th Dwelling.	Presently, the obligation for the masterplan to be published by the Council serves no useful purpose, because it is inconsistent with the Applicants having to produce the design briefs and specification and the detailed provisions for consultation with stakeholders and approval at that stage by the Council. The obligation should be discharged accordingly. As for deferring the publication, the modification is sought to accord with the modifications to Schedule 10 delivery requested above and for the same reasons.
	Schedule 11 – Cemeteries			In this regard the Applicants refer to and rely in particular upon section 8 of the Explanatory Statement accompanying this application in addition to the reasons stated below.

57	Payments in respect of cemeteries	Paras 1 and 2	The Applicants apply for all such payments toward Cemeteries to be discharged. Alternatively, and strictly without prejudice to the application above to discharge, the Applicants apply for these 5 payment obligations to be modified so as to replace the payments required with the provision of land sufficient to meet any reasonable proven requirement. In the further alternative, and again without prejudice to the foregoing, the Applicants apply for the 5 payment obligations to be modified so that a single payment is made only at the last trigger. So as only paras 1.5 and 2.5 are retained each providing for payment of a single instalment in the total sum of £200,000. Any such modification, however, to be subject always to the proviso that contributions to the provision of a new cemetery in south Ashford are also sought by the Council from other developments in the area that may benefit from the same, and the total sum eventually payable by the Applicants is reduced by any and all such claimed contributions.	The obligations to make these payments is, the Applicants submit, unnecessary and represents over provision of such facilities given the available off-site facilities. Indeed as noted in the Explanatory Statement the basis of the provision appears to have been miscalculated (see paragraph 8.15). In any event, their cost is significant (£800,000) and serving only to undermine the viability and ultimately the deliverability of the Development. The discharge of this cost is captured in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5300.9 and forms part of this revised viability analysis justifying each discharge and modification sought. As for the first alternative, if contrary to the foregoing the provision of a dedicated new cemetery in south Ashford did not represent over supply, then the purpose of the obligation would be equally well served if modified as proposed. Otherwise, and again without prejudice to each of the foregoing, as a minimum the 5 payments should be reduced and deferred as proposed, in support of the viability of the Development and thereby ensure that whatever useful purpose the obligations may have continues to be served through the delivery of the Development.

	Schedule 12 – Community Hub Building			In this regard the Applicants refer to and rely in particular upon section 8 of the Explanatory Statement accompanying this application in addition to the reasons stated below.
58	The obligation to provide a multi-purpose community leisure building and other facilities (the Community Hub Building) by 1,800 Dwellings	Para 1.2 and Sch 29D item 17	The Applicants apply for the following modifications and/or discharge of obligations: That paragraph 1.2 be modified to read 'Unless the Council agrees otherwise, not to Occupy more than 3,250 Dwellings unless: 1.2.1 the Facilities: First Tranche have been provided in accordance with the reserved matters approval and the approved design brief and specification and at a cost which together with the Facilities: Second Tranche does not exceed the sum of £2m inclusive as stated above … 1.2.2 all … the Facilities: First Tranche are located … 1.2.3 all conditions … apply to the Facilities: First Tranche …;'Further, that the obligations at paragraphs 1.2.5 to 1.2.6 to transfer/grant a Long Leasehold Interest to the CMO/ManCo of the Facilities (First Tranche) and with them paragraph 1.2.4, should be substituted by an obligation to grant leases to individual tenants e.g. the NHS or Police, on terms acceptable to	Along with the Chilmington Hamlet facilities (see above), the obligation to provide the Community Hub facilities is acknowledged potentially to serve a useful purpose, except for the community learning space which is surplus to requirements. However, two main issues arise. Firstly, the capital cost up to £5,152,127.00 is excessive and serving only to undermine the viability and ultimately the deliverability of the Development. The current obligation is over-priced and over-specified. If the Applicants carried out this build themselves there would be a significant saving in cost. With any further reduction to £2m capital cost achieved through value engineering the specification and such further alterations thereto as may reasonably be required to ensure this total cost is not exceeded. Secondly, the provision of the balance of this space (apart from the community learning facility which can be catered for elsewhere) should in any event be phased and where appropriate made subject to lease confirmation, as proposed. Nonetheless, the total space to be provided is still very large (see Section 8 of the Explanatory Statement and in

			them. Thus, paragraphs 1.2.4, 1.2.5 and 1.2.6 should be discharged and replaced by new obligation as follows: 'and 1.2.4 the Facilities; First Tranche have been transferred, in so far as required, to the proposed user/s of each by way of lease/s or tenancies (as appropriate) of the same on terms suitable to their intended use and that are acceptable to them.' Alternatively, and without prejudice to the proposal above, the Applicants will apply for paragraphs 1.2.4 still to be discharged in any event and paragraphs 1.2.5 and 1.2.6 to be modified to provide as follows: and either 1.2.5 the Facilities: First Tranche have been transferred to the CMO/ManCo by way of the grant of a Long Leasehold Interest in the Facilities in a form acceptable to the latter (their approval of the form not to be unreasonably withheld) .... or	particular paragraph 8.18) and as Quod states there much of it is not expected to be needed until much later than the triggers currently set. In these circumstances, as set out in the Explanatory Statement (paragraph 8.29), 'Whilst the challenges of phased construction are acknowledged, for the sake of avoiding mothballed buildings with associated liability and costs, this community provision should be phased and elements delayed until they are needed.' In addition, there should be a clause added to ensure that public service leases will be confirmed prior to triggering the construction works and contracting. Further, as indicated the requirement to provide these facilities by the 1800th Dwelling Occupation will be a cost to Phase 1 and is serving to undermine the viability of this phase and in turn delivery of the Development. Indeed, in terms of viability and deliverability, the current timetable for these assets would not only have a significantly detrimental effect on the Paying Owner's cashflow in the initial phases of the Development, but more critically without modification (going beyond the triggers indicated in the Explanatory Statement) it will likely cause the loss of the funding available to the Applicants to carry out the Development at all. 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

			1.2.6 the Owners have served the CMO/ManCo with a form for the grant of a Long Leasehold Interest of the land on which the Facilities: First Tranche are located in a form previously approved by the CMO/ManCo or (in the event the CMO/ManCo has still not approved the same within 6 weeks of their being served with the form for the grant of a Long Leasehold Interest) in a form previously approved by the Council (their approval not to be unreasonably withheld) that is executed by the owner … drawings. 1.2.7 Where the Facilities: First Tranche shall comprise the following: - a multi-purpose community space of up to 1500 sqm, to include - a fully stocked and equipped library - 340 sqm space for police community and social services outreach including family and social care (subject to lease confirmation) - 400 sqm within the multi-use building of community space to meet the needs of the community and the CMO Trust and to provide ancillary facilities for the MUGA	securing delivery of these facilities when needed in the life of the Development. As for the proposal to grant individual leases on terms acceptable to the proposed end users of the different facilities (with the Applicants retaining the land on which the facilities are located if the users do not want to take up any lease), this plainly makes sense in practical and market terms, providing the necessary flexibility to secure the delivery of these facilities for the Development. These modified terms accordingly serve the purpose of these obligations better than, or at least equally as well as, the existing terms, which by imposing a freehold transfer or long leasehold interest could actually undermine delivery of these assets in circumstances where such interests are not actually wanted. Otherwise, if for any reason the primary proposal and the reasons for it are not accepted, the Applicants will seek by way of alternative that these facilities are transferred only by way of a long leasehold interest (as defined), for essentially the same reasons as above. This proposal offering some additional flexibility, albeit short of the full ability to cater for actual demand facilitated by the foregoing. As for the discharge of paragraph 1.2.4 in any event (and the omission of any equivalent in relation to the Facilities; Second Tranche), this is justified for the reasons already

			- a multi-use games area - up to 500sqm of GP provision (subject to NHS lease confirmation) Subject always to such variations in scope as may reasonably be required to ensure that the total cost of £2mn is not exceeded. 1.5 To construct and provide the Facilities: First Tranche … more than 3,250 [not 1800] Dwellings. [That after the above there be inserted new paragraph 1.2A as follows, mirroring the above provisions in the case also of the proposed Facilities: Second Tranche] 1.2A 'Unless the Council agrees otherwise, not to Occupy more than 4,250 Dwellings unless: 1.2A.1 the Facilities: Second Tranche have been provided in accordance with the reserved matters approval and the approved design brief and specification and at a cost which together with the Facilities: First Tranche does not exceed £2mn inclusive as stated above … 1.2A.2 all … the Facilities: Second Tranche are located …	referred to above in respect of similar clauses in, for example, Schedules 8 and 9 above. The modifications sought (reduction in cost, split in provision and deferred triggers) so far as they affect costs are captured in the Viability Report at Appendix 3 at 5300.1 and form part of this revised viability analysis justifying each discharge and modification sought.

			1.2A.3 all conditions … apply to the Facilities: Second Tranche …; 'and 1.2A.4 the Facilities; Second Tranche have been transferred, in so far as required, to the proposed user/s of each by way of lease/s or tenancies (as appropriate) of the same on terms suitable to their intended use and that are acceptable to them.' Alternatively, and without prejudice to the proposal above, the Applicants will apply instead for paragraph 1.2A.4 (and 1.2A.5) to provide as follows: and either 1.2A.4 the Facilities: Second Tranche have been transferred to the CMO/ManCo by way of the grant of a Long Leasehold Interest in the Facilities in a form acceptable to the latter (their approval of the form not to be unreasonably withheld) …. or 1.2A.5 the Owners have served the CMO/ManCo with a form for the grant of a Long Leasehold Interest of the land on which the Facilities: Second Tranche are located in a form previously approved by the CMO/ManCo	

			or (in the event the CMO/ManCo has still not approved the same within 6 weeks of their being served with the form for the grant of a Long Leasehold Interest) in a form previously approved by the Council (their approval not to be unreasonably withheld) that is executed by the owner … drawings. 1.2A.6 Where the Facilities: Second Tranche shall comprise the following: - further community space of up to 2500 sqm, to include - a 1000 sqm community leisure building - up to 500sqm of GP provision (subject to NHS lease confirmation) - additional floor space of up to 200 sqm for identified community needs, including youth provision Subject always to such variations in scope as may reasonably be required to ensure that the total cost of £2mn is not exceeded. 1.2A7 To construct and provide the Facilities: Second Tranche in accordance with the requirements of paragraph 1.2A.1 of this	

			schedule prior to the Occupation of more than 4,250 Dwellings. 1.2A8 In respect of each of the Facilities: First and Second Tranche, the right to carry out the requisite building works being reserved always to the Paying Owners [Applicants]. 1.2A9 In respect of each of the Facilities: First and Second Tranche, no building contract shall be entered nor construction begin prior to confirmation of the public service leases, i.e. for Police or GP use. At Schedule 29D Item 17, the payment should be reduced to £2m and split equally (or as appropriate) and the trigger should likewise be split and deferred from 1300 to 3,150 Dwellings and 4,150 Dwellings respectively.	
59	The submission and approval of a design brief and specification for the Community Hub Building	Para 1.1	The Applicants apply to modify this obligation so that the submission/approval of the design brief and specification for the Facilities: First Tranche and Second Tranche may be split with the former to be re-geared from 1,400 Dwelling Occupations to 2,850 Occupations and the latter to 3,850 Dwelling Occupations. Hence paragraph 1.1 should read:	This modification is proposed for the reasons stated above in respect of the provision of these facilities and consequential upon those modifications.

			'Not to Occupy more than 2,850 Dwellings unless: 1.1.1 a design brief and specification for the Facilities: First Tranche and/or other facilities of no significantly greater environmental impact as may be approved by the Council to be provided in the District Centre has been approved by the Council with a total capital cost that (together with Second Tranche) does not exceed £2mn … including fees, contingencies, specification and design costs, supervision fees, access roads and service costs and the costs of those matters to be done at the Owner's expense referred to below;' Para 1.1.2 to be modified to refer to the Facilities: First Tranche. Whilst new paras 1.1A.1 and 1.1A.2 should be inserted in similar terms to 1.1.1 and 1.1.2 above but referring to the Facilities: Second Tranche and with a trigger of 3,850 Dwelling Occupations.	

60	The provision for consultation with the CMO and stakeholders etc. and approval of the details of the consultation	Paragraph 1.1.2	In addition, the Applicants apply for paragraph 1.1.2 to be modified to omit the requirement to consult the CMO (or its substitute) and omit the requirement to consult and to obtain approval in respect of the details of the consultation and to omit the final clause 'and in particular the CMO's comments on the costings;'	The consultation with the CMO (or its substitute) under 2.1.2 is surplus to requirements, given that the Council will have the opportunity already to consult with all interested parties when approving the design brief and specification. This part of the paragraph does not, therefore, serve any useful purpose and should be discharged or modified accordingly. As for the requirement to consult over the details of the consultation (whether with the CMO or Council) this also fails to serve any useful purpose. It unnecessarily complicates what should be a relatively straightforward and simple exercise. This part of the obligation (in parenthesis) should be discharged accordingly. The omission of the final clause is consequential on the above.
61	The 12 months repairing liability following the transfer of the Facilities	Paragraph 1.3	The Applicants apply to discharge this payment obligation.	The clause gives the CMO excessive powers to demand repairs are carried out, without providing any effective dispute resolution mechanism (at 1.3.2). Particularly, where, as noted above, in reality the CMO is neither equipped nor competent to be the arbiter of such matters. Further, under a normal Estate Management (ManCo) model the CMO should simply be obliged to maintain and/or keep in repair and good condition the Green Space

				Facilities, by no doubt in practice using third party maintenance contractors. On any view, therefore, the clause fails to serve any useful purpose and should be discharged.
62	The obligation to make designated parts of the Community Hub Building available for use by the County Council in accordance with the booking system agreed between the CMO and the CC	Paragraph 1.4	The Applicants apply to discharge this obligation in its entirety.	The inclusion of this obligation under the s106 Agreement appears to be mistaken. The obligations thereunder are not matters within the power or control of the Applicants. The clause does not therefore serve any useful purpose and should be discharged accordingly.
63	Provision for payment toward the Council's costs	Paragraph 2	The Applicants apply to discharge this payment obligation.	Because providing for payment toward the Council's costs undermines the purpose of the clause (to secure the grant on appropriate terms), compensating the Council even in cases where it unreasonably refuses approval, which should not be the case. The clause does not therefore serve any proper or useful purpose and should be discharged accordingly.
	Schedule 13 – Local Centre Hubs			

64	The Orchard Village Facilities and the Chilmington Brook Facilities	Paragraphs 1-3 and 4-6 respectively	The Applicants reserve the right to make a further application to discharge or modify these obligations as the case may be.	The Applicants, as in the case of all other obligations not the subject of specific requests to vary in this application, reserve their rights to make a further application in relation to Orchard Village and Chilmington Brook in due course should the need arise.
	Schedule 14 – District and Local Centres			In this regard the Applicants refer to and rely in particular upon section 9 of the Explanatory Statement accompanying this application in addition to the reasons stated below.
65	The obligation to construct and provide the District Centre Facilities in Main Phase 1 and the Orchard Village and Chilmington Brook small Retails Units in Phases 3 and 4 and associated obligations including marketing plans etc.	Paragraphs 1.1 to 1.5	The Applicants apply to modify or in so far as necessary discharge the Main Phase 1 District Centre obligations 1.1 to 1.5 to permit a revised scheme for the same, to be the subject of a separate application for planning permission. Further or alternatively, and whatever form the District Centre Facilities are to take, the Applicants require that the District Centre facilities are to be provided by no earlier than 2700 [rather than 1250] Occupations	The obligations at paragraph 1 to provide a District Centre with the facilities indicated under 1.1 no longer serve any useful purpose as drafted. The current retail market is such that the facilities under 1.1 focused as they are on small units is wholly unsustainable. The Applicants have canvased the market, but there are no operators who will contemplate the present scheme. The Applicants will accordingly make a new planning application for the District Centre facilities on CH1 and CH2. The revised scheme set out in that application will replace that outlined under the provisions of paragraph 1, and these should be modified accordingly and/or in so far as necessary discharged to accord with and permit the said revised scheme.

				Further and in any event whether the District Centre obligations are revised or not the requirement to provide these facilities by 1250 Dwellings is unrealistic and certainly if it were to become necessary for the Applicants to fund all or any part of these Facilities would undermine the viability of Main Phase 1 and with it the deliverability of the Development. If this were to eventuate it would not only have a significantly detrimental effect on the Paying Owner's cashflow in this initial phase of the Development, but more critically without modification it will jeopardise the very funding available to the Applicants to carry out the Development at all. In the premises, 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. The Viability Report has accordingly pushed back the commencement/completion of the District Centre in the updated sensitivity model, as can be seen specifically in the cashflow appraisal, and the benefits of this form a part of the overall viability analysis and conclusions in support of the modifications sought. The Applicants, as in the case of all other obligations not the subject of specific requests to vary in this application, reserve their rights to make a further application in relation to the Orchard Village and Chilmington Brook

				small Retails Units etc. in due course should the need arise.
66	The submission and approval of a design brief and specification for the District Centre Facilities by 950 Dwelling Occupations	Paragraph 1.1	The Applicants apply to modify or in so far as necessary discharge the Main Phase 1 District Centre obligations to accord with and permit the revised scheme for the same as referred to above. Further or alternatively, and whatever form the District Centre Facilities are to take, the Applicants apply for the occupation triggers in respect of these to be modified, so that the design brief and specification is to be delivered by 1500 (rather than 950) occupations and the facilities are to be provided by 2700 (rather than 1250 occupations) with paragraph 1.1 modified accordingly.	This discharge or, alternatively, modification is proposed for the reasons stated above in respect of the provision of these facilities and consequential upon that modification.
	Schedule 15 - Education			In this regard the Applicants refer to and rely in particular upon Sections 3 and 11 of the Explanatory Statement accompanying this application in addition to the reasons stated below.
67	The provision of Bonds to the value of PS1 Contributions 2, 3 and 4	Para 6 and 7(e)	The Applicants apply for the obligation to provide Bonds for these PS1 Contributions to be discharged.	The obligation to provide Bonds for these Contributions in the total sum of £5,850,000 does not serve any useful purpose and should be discharged. The Applicants rely in this regard upon Sections 3 and 11 of the Explanatory

				Statement. This is unnecessary and wholly excessive and duplicative security. There is no proper justification for the 'triple lock' imposed under the s106 obligations. Moreover, the Applicants maintain that 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. 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. 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 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 this Phase and with it the delivery of 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. Moreover, it is necessary for this obligation to be discharged for viability and deliverability reasons, specifically that this obligation is likely to jeopardise the

				funding available to the Applicants to carry out the Development at all.
68	Education Contributions; Primary School 1 Contributions 1 to 4 to the County Council	Para 7 (as amended by the Deed dated 29/3/19)	The Applicants apply for the obligation to pay PS1 Contribution 4 and the Indexation payments on previous Contributions to be discharged. Alternatively, and strictly without prejudice to the foregoing application to discharge the Applicants seek the following modifications: 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 2,650 Dwellings on Site being Occupied for the first time. Thus, together with the modification proposed at Item 69 below, paragraph 7(d) should, in the alternative, be modified to read: 'pay PS1 Contribution 4 (including indexation) to the County Council prior to 2650 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	The PS1 Contribution 4 and these very significant indexation payments are undermining the viability of the Development and in turn its deliverability and cannot sensibly therefore be regarded as serving a useful purpose. Further, PS1 is and will be of substantial benefit to the wider Ashford community, as well as to other developments both current and future, and these (such as Court Lodge and Kingsnorth) ought properly to contribute, so obviating these further payments toward PS1 by the Applicants. In any event, if for any reason these obligations were not to be discharged the current payment timetable (even as revised by the Supplemental Deed) is unrealistic and only serving to compromise the viability of Main Phases 1 and 2 and potentially the whole Development. Indeed, without the discharges/modifications sought in relation to Education, the payment obligations will likely lead to the loss of the funding available to the Applicants to carry out the Development at all. The discharge of this contribution and the said indexation amounts to reflect the imperative above is shown in the Viability Report and specifically at Appendix 3,

			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.' In addition, the Applicants seek to introduce provision for these payments to be reduced in any event fully to take account of any contributions that have or should have been obtained from other developments (existing, proposed or future) that will benefit from PS1 at the Development.	Infrastructure Cost Plan (Scenario 2) Line Ref 5200.2, and forms part of this new viability analysis justifying each discharge and modification sought.
69	Education Contributions; Primary School 2 Contributions 1 to 4 to CC	Paras 8, 10, 11, 12 and 14	The Applicants apply for the following modifications to the PS2 obligations: [Insert new 8A to 8G] 8A. The Owners shall before 1100 Dwellings are occupied provide details on projected completions and development pipeline, including details of tenure and size, to enable the County Council (CC) to make informed child yield projections. 8B. The CC shall provide feedback to the Owners on their projected child yield, including	Whilst it is acknowledged that further primary school provision may potentially serve a useful purpose, current modelling based on the Development to date and the experience from PS1, clearly shows that the current occupation and time based triggers may lead to premature delivery, with schools unable to meet their minimum viable size to receive revenue funding and therefore having to be delayed in any case (or opened at risk to Kent CC). For the reasons set out in the Explanatory Statement, Section 11, the Applicants therefore seek to modify the current triggers so as they will be based on need and not

			an explanation of the methodology used in making the projection. 8C. A forum shall be established at which the CC shall consult with the Owners and other relevant stakeholders including any potential future school operators as to the need for PS2 arising from demand from within the Development. 8D. Following the consultation referred to above and before 1200 Dwellings have been occupied the CC must decide, acting reasonably, whether to proceed or not with PS2 for the purpose of ensuring that it is operational within 3 years. 8F. If the decision under 8D is not to proceed with PS2 at that stage, the process set out above shall be repeated commencing before the next 300 Dwellings are completed (i.e. details by 1500 Dwellings, consultation and then a decision by 1600 Dwellings etc.) and again as required up until the like process in respect of PS3 is engaged. 8G. If the decision under 8D is to proceed with PS2, the following paragraphs shall apply, but not otherwise.	merely occupations. The Dwelling numbers used in the proposed modification reflecting the pattern, for the purposes of review and performance following any decision to proceed, the current timetable and intervals for delivery. Modified in this way, it is submitted that the obligations will better serve their purpose or at least serve that purpose equally well. The only exception to the above arises in relation to funding and the payment of PS2 Contributions. It is necessary for these to be deferred as proposed for reasons of viability and deliverability, indeed without modification the current payment timings will likely cause the loss of the funding presently available to the Applicants to carry out the Development at all. The payment intervals calibrated to accord with the existing monthly intervals for payment. These modifications are accordingly necessary to ensure that the obligations continue to serve their intended purpose and for that matter any useful purpose at all.

			8. The Owners shall not bring into residential use nor Occupy more than another 100 Dwellings across the whole Site following the decision to proceed unless and until the location … after the day when the 100 Dwellings as aforesaid have been so first Occupied until the County Council has given its approval under this paragraph (such approval not to be unreasonably withheld). 10. The Owners shall deliver a duly executed Transfer … within 12 months from the date when another 200 Dwellings (including the 100 above) have been first Occupied across the Site following the decision to proceed. No further Dwellings … beyond 12 months after first Occupation of the 200 Dwellings as aforesaid, unless a duly executed Transfer …. 11. The Owners shall provide an Adoptable Access … by the date when another 900 Dwellings (including the 200 above) have first been Occupied across the Site following the decision to proceed (or earlier upon the reasonable request of the County Council). No more than another 899 Dwellings as aforesaid shall be brought into residential use …. 12. Subject to PS2 proceeding, then unless and until PS2 Contribution 1 has been paid to the	

			County Council, no more than 2,650 Dwellings shall be brought into residential use nor first Occupied on the Site following the decision to proceed. Paragraph 14(a) to be modified to provide, subject to PS2 proceeding, for payment of PS2 Contribution 1 to the County Council prior to 2,650 Dwellings being first Occupied on the Site, with subsequent Contributions 2, 3 and 4 to be payable at 3,250, 3,850 and 4,350 Occupations respectively.	
70	The provision of Bonds to the value of PS2 Contributions 2, 3 and 4	Para 13 and 14(e)	The Applicants apply for the obligation to provide Bonds for these PS2 Contributions to be discharged.	The obligation to provide Bonds for these Contributions in the total sum of £5,850,000 does not serve any useful purpose and should be discharged. The Applicants rely in this regard upon Sections 3 and 11 of the Explanatory Statement. This is unnecessary and wholly excessive and duplicative security. There is no proper justification for the 'triple lock' imposed under the s106 obligations. Moreover, the Applicants continue to maintain that 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. 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. 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 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 this Phase and with it the delivery of 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.
71	Education Contributions; Primary School 3 Contributions 1 to 4 to CC	Paras 15, 17, 18, 19 and 21	The Applicants apply for the following modifications to the PS3 obligations: [Insert new 15A to 15G] 15A. The Owners shall before 2900 Dwellings are occupied provide details on projected completions and development pipeline, including details of tenure and size, to enable the CC to make informed child yield projections. 15B. The CC shall provide feedback to the Owners on their projected child yield, including	The Applicants refer to and rely upon the reasons stated above in answer to Request 69.

			an explanation of the methodology used in making the projection. 15C. A forum shall be established at which the CC shall consult with the Owners and other relevant stakeholders including any potential future school operators as to the need for PS2 arising from demand from within the Development. 15D. Following the consultation referred to above and before 3,250 Dwellings have been occupied the CC must decide, acting reasonably, whether to proceed or not with PS2 for the purpose of ensuring that it is operational within 3 years. 15F. If the decision under 15D is not to proceed with PS3 at that stage, the process set out above shall be repeated commencing before the next 300 Dwellings are completed (i.e. details by 3,550 Dwellings, consultation and then a decision by 3,650 Dwellings etc.) and again as required up until the 4,499 Dwelling Occupations across the site. 15G. If the decision under 15D is to proceed with PS3, the following paragraphs shall apply, but not otherwise.	

			Paragraphs 15, 17 and 18to be amended in like terms to paragraphs 8, 10 and 11 above. As to paragraphs 19 and 21, subject to PS3 proceeding, PS3 Contribution 1 to be paid at 4,500 and subsequent Contributions 2, 3 and 4 at 4,900, 5,300 and 5,700 respectively.	
72	The provision of Bonds to the value of PS3 Contributions 2, 3 and 4	Para 20 and 21(e)	The Applicants apply for the obligation to provide Bonds for these PS3 Contributions to be discharged.	The Applicants refer to and rely upon the reasons stated above in answer to Request 70.
73	Education Contributions; Primary School 4 Contributions 1 to 4 to CC	Paras 22, 24, 25, 26 and 28	The Applicants apply for the PS4 obligations to be discharged.	The requirement for a fourth Primary School was based upon the original proposal for the development of 7,000 dwellings, It is plain even at this stage that this provision is surplus to requirements and cannot sensibly be regarded as serving any useful purpose. That this is the case is only demonstrated and reinforced by the experience in relation to Primary School 1 and the lower than projected level of demand from within the Development for this first school. The PS4 obligations should be discharged accordingly. The discharge of this cost is captured in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5200.5 and forms part of this revised viability

				analysis justifying each discharge and modification sought.
74	The provision of Bonds to the value of PS4 Contributions 2, 3 and 4	Para 27 and 28(e)	The Applicants apply for the obligation to provide Bonds for these PS4 Contributions to be discharged.	The Applicants refer to and rely upon the reasons stated above in answer to Request 70.
75	Stage One Secondary School Site Transfer and Adoptable Access etc.	Paras 33 and 35	In this regard the Applicants rely upon the recently signed Deed of Variation dated 13 July 2022 subject only to the further discharge/modification sought below. In the event, however, that DfE or KCC funding is not forthcoming, the Applicants reserve their right to make a further application to discharge/modify the Secondary School obligations as appropriate and/or necessary.	As noted in column 4, the Applicants remain committed to the recently signed Deed of Variation subject to the further variations sought herein, but reserve their position should the DfE funding, upon which that agreement is predicated and relies, not be forthcoming.

76	Provision of Bonds for the Stage One and Two Secondary School Contributions	Schedule 15, Part 6, Para 42	In so far as necessary the Applicants apply for the obligation to deliver Bonds for the Stage One and Two Secondary School Contributions to be discharged.	Given the terms of the DoV signed 13 July 2022 this is understood to have been agreed already and the s106 Agreement should be correctly modified accordingly. However, if and in so far as necessary, the Applicants refer to and rely upon the reasons stated in support of Request 70 above, including Sections 3 and 11 of the Explanatory Statement as referred to therein.
77	Secondary School Contributions	Schedule 15 Part 5	The current s106 Agreement provides for: Stage one contribution £13,550,000 index linked. Stage two contribution £8,950,000 index linked Stage 1 contribution 1- prior to occupation of 749 dwellings / 1st January 2020 (if development has commenced), whichever is earlier. Stage 1 contributions 2, 3 and 4 to be paid 6, 12 and 39 months after the stage 1 contribution 1 Stage two contribution 1 to be paid on the date when 3,499 dwellings are occupied. Stage 2 contributions 2, 3 and 4 - 12, 36 and 76 months after the Stage 2 contribution 1	The further modification of paragraph 37 is justified on the basis that the delivery of the school is being accelerated to benefit the wider community rather than simply mitigating the effects of this Development. Based on the total amount of secondary school places projected, and pro-rated to an average per home, a secondary school of 4 Forms of Entry (the typical minimum viable size) would not actually be needed by virtue of the Development itself until c. 2,000 homes. The reason to bring forward the delivery of school is to meet wider Ashford needs, as is fully acknowledged both in the Area Action Plan and in recent Cabinet reports regarding the school delivery and funding. It is submitted in the light of the Explanatory Statement from Quod that this acceleration has not been reflected in the DoV properly or indeed at all and that the agreement should be modified accordingly.

			The recently agreed Deed of Variation already modifies the above and triggers the requirement to bring forward the secondary school to opening at 2024, with the first payment by Hodson no later than 2026, regardless of occupations. Hodson will also pay back KCC for the £3.1m required to service the site, at interest of 3% above base rate. However, for the reasons stated in column 5, the Applicants apply now to vary further the payment obligations under the DoV, to defer repayments to commence from 2000 homes as follows: 37. The Paying Owners shall: (a) Pay the Stage One Secondary Contribution 1 to the County Council on or before the date when 2650 Dwellings on the Site have been Occupied. (b) Pay the Stage One Secondary Contribution 2 to the County Council on or before the date when 3125 Dwellings on the Site have been Occupied. (c) Pay the Stage One Secondary Contribution 3 to the County Council on or before the date	In addition, the modification is sought for reasons of viability and deliverability, deferring the Contributions to assist further the Applicants' cash flow and in the light also of the delays in delivery (circa 12 months) and the deferred requirement for funds that have already occurred. The deferment of this cost is captured in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5200.1 and forms part of this revised viability analysis justifying each discharge and modification sought. As for the introduction of a provision to take account of contributions from other developments, this is only right and just. Moreover, the Secondary School obligations will serve their purpose better or at least equally well if modified in this way given the wider pool of funding to be drawn upon with this change. The schools are also significant community assets. As such, it is requested that the school assets, and their community use, be reflected in the triggers for additional community buildings and sports pitches with reference to the Community Hub and Chilmington Hamlet.

			when 3625 Dwellings on the Site have been Occupied. (d) Pay the Stage One Secondary Contribution 4 to the County Council on or before the date when 4500 Dwellings on the Site have been Occupied. (e) Pay the Stage Two Secondary Contribution 1 to the County Council on or before the date when 4800 Dwellings on the Site have been Occupied. (f) Pay the Stage Two Secondary Contribution 2 to the County Council on or before the date when 5100 Dwellings on the Site have been Occupied. (g) Pay the Stage Two Secondary Contribution 3 to the County Council on or before the date when 5400 Dwellings on the Site have been Occupied. (h) Pay the Stage Two Secondary Contribution 4 to the County Council on or before the date when 5700 Dwellings on the Site have been Occupied. In addition, the Applicants seek to introduce provision for payments to be reduced fully to take account of any contributions that have or	

			should have been obtained from other developments (existing, proposed or future) that will benefit from the Secondary School provision at the Development.	
78	Provision of an account of education expenditure and repayment of any surplus	Paragraphs 48 and 49	The Applicants apply for the existing paragraph 48 to be modified, and in so far as necessary discharged, so that the Owner's Agent or the person from whom any contribution was received may apply to the County Council one year following practical completion of a School for an account of the expenditure of the money, such account to be provided within a reasonable time of any such request. Further, for paragraph 49 to be modified to provide for any surplus to be reimbursed forthwith to the person/s from whom the contribution was received, and for the remainder of the paragraph (beginning 'or if the person …') to be deleted.	There can be no sensible justification for the County Council to be able to withhold any surplus monies, that have not been applied for the purpose for which they were intended, for more than 1 year following practical completion of a School. Those parts of paragraphs 48 and 49 providing otherwise cannot therefore be regarded as serving any useful purpose and should be modified and/or discharged accordingly. Further or alternatively, in relation to paragraph 49, that part of the same relevant to any Issuer of a Bond serves no purpose where the Bond obligations are to be discharged in any event (as set out above).
	Schedule 15A – KCC General Site Transfer Requirements			

79	Provision of the site	Paragraph 4	The Applicants apply for this paragraph to be modified to state as follows: The site to be provided to the County Council in a reasonably level condition. If works are required to do …	The current wording of the paragraph is ambiguous. It should be amended to achieve is original purpose, to provide a reasonably level site for the intended user.
80	Site setting out at handover	Paragraph 5	The Applicants apply for the reference to 'and fenced' to be omitted.	The obligation to fence is surplus to requirements, it is already covered under the build costs and accordingly this provision is duplicative and serves no useful purpose.
81	Construction access	Paragraph 7	The Applicants apply for paragraph 7 to be modified by inserting after the words 'Haul Roads to be constructed' the words 'to the site boundary', and after the words 'and maintained' the words 'prior to transfer'.	For the avoidance of doubt and in support of the existing provisions and their current purpose.
82	Provision of services and utilities on site	Paragraph 8	The Applicants apply for paragraph 8 to be modified by inserting after the words 'Prior to the site transfer' the words 'or, if not reasonably practicable, within a reasonable time thereof …' Further, the requirement that statutory undertakers' plant 'shall' be located outside of the site boundary should be modified to 'may'.	These modifications are requested to make due allowance for the practicalities of provision and ensure that the paragraph does in fact serve its purpose in practice. The modifications will secure, therefore, that the paragraph actually serves its intended purpose better or at least equally well.
83	Provision of temporary electricity and water supplies	Paragraph 10	The Applicants apply to discharge this obligation.	It is not possible for the Applicants to provide these services, only the school contractor who is occupying the site can make these arrangements.

				The obligation does not in practice therefore serve any useful purpose and should be discharged.
84	The payment of the County Council's legal costs and the costs of any Project Management agreements	Paragraph 14	The Applicants apply to discharge this obligation.	There is simply no justification for imposing the burden of these very significant costs upon the Applicants in addition to the education contributions referred to above. It is not appropriate for Section 106 payments to be levied to meet legal and transaction costs in this way nor for the County Councils' own project management costs to be recouped as provided. Further, given the likely level of these costs on the transfer of each site they will materially and adversely affect viability at each stage and by the same measure the deliverability of the Development. On any view, therefore, this provision cannot be regarded as serving any proper and useful purpose and should be discharged accordingly.
	Schedule 16 – Other KCC Services			In this regard the Applicants refer to and rely in particular upon section 8 of the Explanatory Statement accompanying this application in addition to the reasons stated below.

85	Library Services, 4 x £225k contributions	Para 1 and 2 and Sch 30B	The Applicants application in this respect is for these Library Services Contributions to be discharged. . Schedule 30B column 2 to be amended accordingly, to remove these payment amounts.	A fully stocked and equipped library is included already in the Community Hub (under Schedule 12 as amended This obligation is accordingly surplus to requirements, duplicative and serves no useful purpose. Moreover, the costs here are significant (£900,000) and serving only to undermine the viability and ultimately the deliverability of the Development. In accordance with the Applicants' case hereunder, the discharge of these obligations as proposed is shown in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5300.10 (second 5300.1) and forms part of this updated viability analysis justifying each discharge and modification sought.
86	Payment of Youth Services Contributions to KCC	Paras 3, 4, 9 and Sch 30A-C	The Applicants primary application in this respect is for these Youth Services Contributions to be discharged. In the alternative and without prejudice to the above application to discharge and subject to sufficient definition of the services to be provided and their costs, the Applicants apply for these obligations to be modified by grouping the remaining Schedule 16 Services Contributions into a single obligation to pay £350,000, with 5 equal phased payments based	The application to discharge is made because these contributions no longer serve a useful purpose, in as much as there is already ample provision in this regard. These payments accordingly amount to substantial over provision, are surplus to requirements and should be discharged accordingly. In the alternative and without prejudice to the reasons above in support of discharge, if contrary to the foregoing these contributions are regarded as potentially serving some useful purpose, the contributions are both excessive and the alternative time based triggers for the service

			on the following triggers 1,500, 2,650, 3,500, 4,500 and 5,500,., Thus, Part 2 – to be renamed Combined (Youth Services, Community Learning and Family Care) Contributions, also paragraphs 3 and 4 to be replaced by the following paragraphs: '3. The Owners must ensure that no more Dwellings shall be Occupied or brought into residential use on the Site: 3.1 after 1499 Dwellings have been Occupied on the Site unless and until the Combined Contribution 1 in the sum of £90,652 has been paid to the County Council; 3.2 after 2649 Dwellings have been Occupied on the Site unless and until the Combined Contribution 2 in the sum of £90,652 has been paid to the County Council; 3.3 after 3499 Dwellings have been Occupied on the Site unless and until Combined Contribution 3 in the sum of £260,870 has been paid to the County Council; 3.4 after 4499 Dwellings have been Occupied on the Site unless and until Combined Contribution 4 in the sum of £130,345 has been paid to the County Council.	delivery components are vastly out of step with the actual building trajectory and likely to result in premature payment and attendant wasted expenditure. Further, the fixed allocation of funds to this service and each of the other Schedule 16 services (excluding Library Services) appears overly prescriptive and inflexible. Accordingly, and again without prejudice to the application to discharge, 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. The discharge of these obligations as proposed is shown in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5400.1 and forms part of this updated viability analysis justifying each discharge and modification sought.

			3.5 after 5499 Dwellings have been Occupied on the Site unless and until Combined Contribution 5 in the sum of £130,345 has been paid to the County Council 4. The Paying Owners shall: 4.1 Pay Combined Contribution 1 to the County Council by the date when 1500 Dwellings have been Occupied on the Site; 4.2 Pay Combined Contribution 2 to the County Council by the date when 2650 Dwellings have been Occupied on the Site;4.3 Pay Combined Contribution 3 to the County Council by the date when 3500 Dwellings have been Occupied on the Site; 4.4 Pay Combined Contribution 4 to the County Council by the date when 4500 Dwellings have been Occupied on the Site. 4.5 Pay Combined Contribution 5 to the County Council by the date when 5500 Dwellings have been Occupied on the Site. Paragraph 9 to be modified to say 'The County Council shall not use the Combined Contributions paid under this Schedule any any interest accrued thereon for any purpose other than Youth Services, Community Learning or	

			Family Social Care (as defined), allocated as KCC thinks fit. Schedules 30A-C also to be amended accordingly to omit the current payments and triggers and replace them as above.	
87	Payment of Community Learning Contributions to KCC	Para 5 and 6, and Sch 30A-C	The Applicants primary application in this respect is for these Community Learning Contributions to be discharged. In the alternative and without prejudice to the above application to discharge, the Applicants apply for these obligations to be modified by the omission of paragraphs 5 and 6, to be replaced as set out above in relation to Youth Services. Schedules 30A-C also to be amended accordingly to omit the current payments and triggers and replace them as above.	The application to discharge is made because these contributions no longer serve a useful purpose, in as much as there is already ample provision in this regard. These payments accordingly amount to substantial over provision, are surplus to requirements and should be discharged accordingly. In the alternative and without prejudice to the reasons above in support of discharge, if contrary to the foregoing these contributions are regarded as potentially serving some useful purpose, the Applicants repeat the alternative case made in relation to the Youth Services Contributions above. The discharge of these obligations as proposed is shown in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5300.11 and forms part of this updated viability analysis justifying each discharge and modification sought.

88	Payment of Family Social Care Contributions	Para 7 and 8 and Sched 30A-C	The Applicants primary application in this respect is for these Family Social Care Contributions to be discharged. In the alternative and without prejudice to the above application to discharge, the Applicants apply for these obligations to be modified by the omission of paragraphs 7 and 8, to be replaced as set out above in relation to Youth Services. Schedules 30A-C also to be amended accordingly to omit the current payments and triggers and replace them as above.	The application to discharge is made because these contributions no longer serve a useful purpose, in as much as there is already ample provision in this regard. These payments accordingly amount to substantial over provision, are surplus to requirements and should be discharged accordingly. In the alternative and without prejudice to the reasons above in support of discharge, if contrary to the foregoing these contributions are regarded as potentially serving some useful purpose, the Applicants repeat the alternative case made in relation to the Youth Services Contributions above. The discharge of these obligations as proposed is shown in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5300.22 and forms part of this updated viability analysis justifying each discharge and modification sought.
89	Provision for repayment of surplus	Paragraph 10	The Applicants apply for paragraph 10 to be modified to amend the reference to 10 years to 4 years.	The reference to 10 years is unjustified and unfair and sensibly serves no useful purpose. Any surplus from one contribution should be repaid before the next, accordingly the provision for repayment after 4 years properly serves the intended purpose of this clause.
	Schedule 17 - Ecology			

90	Providing for compliance with any mitigation and enhancement strategy approved pursuant to the Planning Permission	Paragraph 1	The Applicants apply to discharge this paragraph and the sub-paragraphs thereto in their entirety.	The provisions of this schedule are unnecessary because the matters to which it refers are fully covered in the CMO framework agreement and similar provision will be included in any substitute or amended version thereof The paragraph and its sub-paragraphs do not therefore serve any useful purpose and should be discharged accordingly.
	Schedules 18 and 18A – A28 Improvement Works			NOTE: The Applicants primary application herein is under s106A to vary the terms of Schedules 18 and 18A of the s106 Agreement incorporating the terms of the s.278 Agreement, in accordance with the discharges/modifications proposed (in column (4)) and for the reasons stated (in this column (5)) below under this heading. 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 discharges/ modifications and for the reasons stated. Further, in the relation to the latter application, the Applicants apply also herein under paragraph 2 of 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. In relation to these Schedules 18 and 18A the Applicants refer to and rely in particular upon section 10 of the Explanatory Statement accompanying this application in addition to the reasons stated below.
91	Provision of a Bond in the form required	Schedule 18 Para 1 and Schedule 18A	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.' Further, that consequential amendments be made to the Council's obligations (under Schedule 18A), varying 5.1 to omit reference to the Bond and omitting clauses 5.4, 5.10, 5.11 and clauses 8 (Release of Bond) and 12.	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. 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. Moreover, if contrary to the foregoing, 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 the delivery of the Development. The provision of a Bond is, therefore, self-defeating and cannot be regarded as serving any useful purpose in relation to the Development. The discharge of this cost is captured in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5100.2b and forms a substantial part of this revised viability analysis justifying each discharge and modification sought.
92	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 the Occupation of the 2,650th Dwelling subject to no Force Majeure Event occurring ...'	Whilst in principle it is acknowledged that letting the Construction Contract potentially 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. 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 2031. 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) and at August 2022 the occupation level on site is only some 215 dwellings (circa 516 people) 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.
93	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.	The Applicants apply for Schedule 18A and the Developer's Covenants under Schedule 1 to pay Pre-Contract Costs and Post-Contract Costs and any shortfalls to be discharged. Alternatively, and without prejudice to the foregoing, the Applicants apply for the Schedule 1 Developer's Covenants to be modified (and in so far as necessary discharged) as follows: - by amending clause 2 to read 'The Developer hereby covenants with the Council to pay the Post-Contract Costs in the instalments and upon the events set out in Payment Table 1 of Annex 2, subject always to credit being given for any further LEP or other funding or contributions received from or that should have been charged to and/or received from any other developments benefiting from the A28 Improvement Works.'	The application to discharge the payment obligations in respect of the A28 is advanced for reasons of viability and deliverability. Such are the costs of these obligations that the burden of payment is undermining the viability of Main Phases 1 and 2 and in turn the deliverability of the Development. Most immediately, without modification the payments required will likely cause the loss of the funding available to the Applicants to carry out the Development at all. In the circumstances these payment obligations cannot sensibly be regarded as serving any useful purpose. The discharge of this cost is captured in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5100.2a and forms a substantial part of this revised viability analysis justifying each discharge and modification sought. Alternatively, if contrary to the foregoing the A28 Improvement Works and these Contributions are regarded as serving a useful purpose, the existing timetable for

			- 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 (subject to credit for any other funding as referred to at clause 2) 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.' 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 'Column 1 Amounts' and the 'Column 2 – Due Dates' provide for the following Post-Contract 278 Contributions: ▪ Contribution 1 = (Amount) £1,080,041.41 payable prior to the Occupation of the 2,650th Dwelling ▪ Contribution 2 = (Amount) £1,080,041.41 payable prior to the Occupation of the 3,000th Dwelling	delivery and payment is such as will likely cause the loss of the funding presently available to the Applicants, so as to undermine viability and deliverability and mean that these obligations fail to serve any useful purpose at all. The adjustment to the triggers for contributions Further and subject to the foregoing the delivery and payment timetable 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. The Applicants rely in this regard upon Section 10 of the Explanatory Statement and the traffic modelling therein. In summary, as set out in Section 10 the junction modelling carried out by Vectos that informed the current phasing of the works and payment regime establishes that the identified road improvements will not be required until the delivery of substantially greater numbers of Dwellings as detailed therein. Vectos accordingly propose a modified schedule of payments in line with the up-to-date traffic data. Further, it is understood to be uncontroversial that the payment schedule should be based upon the County Council's own total cost of works in the sum of £22.8m, and should also be subject to deduction for the SELEP funding that remains in place in the sum of £6,318,335.

			▪ Contribution 3 = (Amount) £1,080,041.41 payable prior to the Occupation of the 3,350th Dwelling ▪ And continuing. to be payable at every additional 350 Dwelling Occupations ▪ Contribution 10 = £1,080,041.41 to be payable prior to the Occupation of the 5,700th Dwelling. ▪ (Line 11) Total £10,804,141 Provision should also be made to vary the Total above to reflect reasonable actual costs (where lower than estimated) as the said works come forward, further LEP or other funding and any contributions that have or should have been obtained from other developments whether existing, proposed or future, with the Contributions 1 to 10 to be reduced accordingly. Further, application is made to correct paragraph 2(ii) of Schedule 18 to remove the first 'have', and in so far as necessary to discharge paragraph 2(iii) of Schedule 18.	In addition, (percentage) contributions are being or should also be made by neighbouring or other developments that have an impact on these A28 Improvement Works, and credit ought properly to be given for these contributions against the amounts to be paid by the Applicants in reduction of those amounts. Presently, Vectos have determined, for example, the funding that should be forthcoming from the neighbouring Court Lodge development and this has been included in the modifications sought. The effect of these modifications alone would significantly contribute to reducing the finance costs burdening the Development. Thus, without prejudice to the overriding need to discharge these payment obligations entirely, in default, the modifications sought are necessary to improve the viability and secure the deliverability of the Development as a whole. Certainly, 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. Further or in the further 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 grant aid or other funding already received).

				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 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			In this regard the Applicants refer to and rely in particular upon section 10 of the Explanatory Statement accompanying this application in addition to the reasons stated below.
94	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	The Applicants apply to discharge these payments in their entirety. Alternatively, and without prejudice to the application to discharge above, the Applicant's apply to amend (second) paragraph 2 to vary the works for which these sums are payable, to exclude reference to items (i) to (v) as referred to in Column 5 for the reasons stated therein. In light of the said reduction in the scope of works, the maximum cost of the required measures could be no more than £50,000.	Whilst it is acknowledged that payments for off-site pedestrian and cycle links can in principle serve a useful purpose given that the site needs to remain as a sustainable urban extension, the existing provisions are not fit for purpose and do not serve any useful purpose. None of the specified works have any current utility in terms of benefitting the Development or at all. The discharge of this cost is captured in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5100.3 and forms a substantial part of this

			Further, the Applicants apply to modify the existing triggers and replace them with those that follow. Thus, the Applicants apply to modify paragraph 1 to provide for , 6 equal payments of £8,333.33 prior to the occupation of the 2,000th unit, the 2,500th unit, the 3,000th unit,the 4,000th unit, the 4,500th and 5,000th unit. Subject also to introducing provision that credit being given for any omitted work and for any further or other funding and contributions received from or that should have been charged to and/or received from any other developments (whether existing, proposed or future) benefiting from the same pedestrian and cycle links. 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, 3001,4000, 4,501 and 5,001 (rather than the existing 4 triggers) respectively. Equivalent consequential modifications to be made to Schedule 30A, referring to 1926 and 2426 (rather than 926 and 1426) and in each of	revised viability analysis justifying each discharge and modification sought. Alternatively, and without prejudice to the foregoing, as a minimum the scope of (second) paragraph 2 should be amended as follows for the reasons indicated: (i) the references to Magpie Hall Road and to drawing number 131065/A/25 Rev B should be removed as there is no need to provide a connection to Stubbs Cross given that the facilities and services within Chilmington are now significantly more extensive and in the light of the approach taken with regard to the Court Lodge application where no such connections were required. Further, Court Lodge has proposed a roundabout in the same location. If and in so far as any development is required to meet the costs of these measures it should in any event be Court Lodge which will have a much greater impact on Magpie Hall Road; (ii) the 'promotion of national cycle route 18' is too nebulous an obligation to be useful, whilst the reference to drawing 131065/A/102 is wholly inappropriate given that the route exclusively serves Beaver Green and not the Development; (iii) the references to drg no 131065/A/84 should also be removed as these were proposed when there would be a period when pupils from the site would need to use the primary school in Beavers Green. This is no longer the

			30B and 30C again to 2001, 2501, 3001, 4000, 4501 and 5001.	case with the primary school within the Development being brought forward earlier; (iv) the improvement of the signage on the footpath/cycleway from the Site through Great Chart to Matalan roundabout is already within the scope of the A28 works, rendering this obligation redundant; (v) the reference to Greensands Way is not identifiable on the drawing, has no relevance to the Development and serves no useful purpose. Further, the existing timetable will result in a level of provision that is obviously premature. Transport obligations have been reviewed in light of the revised development phasing schedule and KCC advice to Hodson, as well as local policy (including ABC's Infrastructure Development Plan (2018). The modification in triggers is sought in order to reflect the present housing trajectory and rate of occupations. KCC's April Response offering 6 equal payments at revised triggers is acknowledged and will in so far as necessary be relied upon in support of these further adjustments.
	Schedule 20 – Provision of Bus Services			In this regard the Applicants refer to and rely in particular upon section 10 of the Explanatory Statement accompanying this application in addition to the reasons stated below.

95	Provision of Bus Services	Sch 20, and Sch 29D Items 1, 13, 25 and 29	The Applicants apply to modify the bus services provision to provide for tenders to be invited and the commencement and level of service to be in accordance with the availability of an operator and confirmation from the operator as to service viability without reliance on any subsidies. The Applicants apply also, therefore, for the discharge of all bus subsidies. The Applicants apply for paragraphs 1 and 2 to be modified as follows: Paragraphs 1.1 and 1.2 to refer to 2,684 Dwellings [rather than 100 and 200] Paragraph 1.3, to refer to 2,684 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	The central reason for the modifications in service and discharge of subsidies that are proposed is that the bus services as currently provided for in the s106 Agreement cannot be provided within Main Phase 1 or subsequent Phases as they are wholly unviable and unsustainable. As regards the services, given the actual building trajectory and rate of completions the stated level of service would be far in excess of what is required by the Development for many years and equally will be unviable for many years. 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 1, subsequent Phases and ultimately the delivery of the Development as a whole. In the premises the purpose of the obligations to provide a bus service and bus infrastructure will only be served, or will at least be equally well served, if the proposed modifications to the sub-paragraphs of Paragraph 1 are made. 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.

			Dwellings than specified above (consent not to be unreasonably withheld).' Paragraphs 1.4 and 1.5, to refer to 2,784 Dwellings [rather than 200]. Paragraphs 1.6 and 1.7, to refer to 3,584 Occupations [rather than 1,222] Paragraph 1.8 to be modified to read 'Not to Occupy more than 3,584 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.' Paragraphs 1.9 and 1.10, to refer to 4,784 Occupations [rather than 2,722] Paragraph 1.10 also to include, as in the case of Main Phase 1, the following provision '… and any property so specified has been transferred at nil consideration and nil cost to the specified body.' Paragraph 1.11 to be modified to read 'Not to Occupy more than 4,784 Dwellings until the bus service has been reviewed by the Owners with the operator with a view to increasing the	Moreover, such is the level of subsidies presently payable under Paragraph 2, that they are wholly unsustainable and likely to jeopardise the funding available to the Applicants to carry out the Development at all. The subsidies do not therefore realistically serve any useful purpose and should be discharged accordingly. The additional changes to 1.10 and 1.18 correct what appears to be a drafting error and certainly an unjustified inconsistency with paragraph 1.6 and the provisions relating to Main Phase 1. The modifications to and discharge of these obligations as proposed is shown in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5100.4 and forms part of this updated viability analysis justifying each discharge and modification sought. Nonetheless, and without prejudice to the foregoing, if an operator can be identified who is ready willing and able to commence services (without subsidy) at any earlier stage than requested, the Applicants would of course willingly work with them to achieve this.

			frequency of service to at least every 13-14 minutes. The service to be increased if agreed, but only in so far as the operator confirms it is viable to do so.' Paragraphs 1.12 and 1.13, to refer to 5,348 Occupations [rather than 4,107] Paragraph 1.14 to be modified to read 'Not to Occupy more than 5,348 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 10 minutes. The service to be increased if agreed, but only in so far as the operator confirms it is viable to do so.' Paragraphs 1.15 and 1.16, to refer to 5,500 Occupations [rather than 5,000]. Paragraph 1.18 to be omitted in accordance with the modification to paragraph 1.10 above providing for the transfer of any property to the specified body. Paragraph 2 to be discharged and likewise Items 1, 13, 25 and 29 of Schedule 29D to be discharged.	

96	Provision of bus vouchers to each owner	Sched 20 para 1.17	Further, the Applicants apply to discharge the obligation under paragraph 1.17 to provide bus vouchers.	The application to discharge the provision of £450 worth of bus vouchers to each owner, at a total cost of £2,587,500, is advanced for reasons of viability and deliverability. Such is the level of cost of this obligation that the burden of payment is undermining the viability and in turn the deliverability of the Development. Most immediately, unless discharged the cumulative cost of the current s106 Agreement obligations in Main Phases 1 and 2, will likely cause the loss of the funding available to the Applicants to carry out the Development at all. In the circumstances these payment obligations cannot sensibly be regarded as serving any useful purpose. The discharge of these obligations as proposed is shown in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5100.6 and forms part of this updated viability analysis justifying each discharge and modification sought.
	Schedule 21 – Off-site Traffic Calming			In this regard the Applicants refer to and rely in particular upon section 10 of the Explanatory Statement accompanying this application in addition to the reasons stated below.
97	Traffic monitoring	Para 1.1	The Applicants apply to modify the monitoring obligations as follows:	These modifications are proposed to simplify the obligations and to gear them more immediately to the payment obligations. The obligations will on this basis

			1.1 Not to Occupy on Site more than the following numbers of Dwellings … 1.1.2 2,399 1.1.3 5,649 [Omit 1.1.4-1.1.6] Unless (i) monitoring … County Council.	serve their intended purpose better, or at least equally well, if modified as proposed.
98	Traffic Calming payments to CC The current s106 Agreement requires payment of £408,498 (index linked) across two payments. The current triggers are prior to the occupation of the 1,000th unit and the 2,000th unit as set out in paragraphs 1 and	Paras 1.2, 1.3, 2.1 and 2.2 and Sch 30A	The Applicants apply for the following modifications to be made: Paragraph 1.2 is modified to refer to 'the 2,499th Dwelling on the Site [rather than the 999th] Paragraph 1.3 is modified to refer to 'the 5,749th Dwelling on the Site [rather than the 1999th] Paragraph 2.1 is modified to refer to 'the 2,500th Dwelling on the Site [rather than the 1000th] Paragraph 2.2 is modified to refer to 'the 5,750th Dwelling on the Site [rather than the 2000th] Schedule 30A is similarly modified to reflect the above, so that the relevant payment triggers become 2,499 and 5,749 [rather than 925 and 1925].	These modifications to further defer the payment obligations in this regard recognise the longer lasting impacts of Covid lockdowns on traffic flows which are only just returning to pre-pandemic levels and the lasting impacts on the working pattens of those who do not need to travel to work every day each week. The deferment of the payments also assists the viability of the scheme, in turn its deliverability and thus the utility of these obligations at all. . Equally, KCC's agreement in this regard to defer the obligations to 1500 and 2500 Dwellings is acknowledged and will be relied upon in support of these further adjustments. In addition, however, the Applicants request that provision be made for the contributions only to become payable where the measures for which they are intended are actually required. Given that there are 9 roads and the total contribution is £408,498, each contribution of £45,389 per road should only become payable where

			Payment in each case to be subject to the deduction of £45,389 in respect of each road (of the 9 roads) where the traffic on that road is not shown to be 10% above predicted levels (i.e. base levels plus traffic growth to the year in question). Subject always to payments also being reduced to reflect reasonable actual costs (where lower than estimated), any other funding and any contributions that have or should have been obtained from other developments whether existing, proposed or future, benefiting from the same off-site traffic calming.	traffic on that road is more than 10% above predicted levels (base levels plus traffic growth to the year in question). This is to ensure that contributions are not wasted but actually serve the purpose for which they are intended. Further, it is only right also that contributions that have or should be made by other developments be taken into account. For example, in relation to traffic calming the Court Lodge and Kingsnorth developments adjoin Long Length and Magpie Hall Road and will directly benefit and should be contributing to these costs. It is only fair that these other developments that have been brought forward since the 106 Agreement was entered should be contributing in this regard. The deferment of these payment is captured in the Viability Report at Appendix 3, Infrastructure Cost Plan (Scenario 2), Line Refs 5100.7 & 8 and forms a part of this revised viability analysis justifying each discharge and modification sought. In the premises, the relevant obligations will serve their purpose equally well if modified as proposed.

	Schedule 22 - RIF			In this regard the Applicants refer to and rely in particular upon section 10 of the Explanatory Statement accompanying this application in addition to the reasons stated below.
99		Sched 22	The Applicants' primary application is to discharge the RIF payment obligations under this Schedule. Alternatively, and without prejudice to the foregoing, the Applicants seek to modify the s106 Agreement. The current s106 Agreement requires payment of a contribution of £5.622 million paid in four instalments prior to the occupation of 4,000, 4,600 5,200 and 5,600 dwellings. As such, there are four payments triggered by occupations, as set out in paragraphs 1 and 2. It is proposed, in the alternative, to amend paragraphs 1 and 2 so as to provide a contribution of £4,216,941: • The payment of £1,405,647 prior to the occupation of the 4,339th unit • The payment of £1,405,647 prior to the occupation of the 4,990th unit	The primary application to discharge the RIF payments is advanced for reasons of viability and deliverability. Such is the level of cost of this obligation that the burden of payment is undermining the viability and in turn the deliverability of the Development. In these circumstances these payment obligations cannot sensibly be regarded as serving any useful purpose and ought to be discharged. Alternatively, and without prejudice to the foregoing, the Applicants seek to modify the s106 Agreement as indicated. The Transport obligations under the Agreement have been reviewed in light of the revised development phasing schedule and KCC advice to Hodson, as well as local policy (including ABC's Infrastructure Development Plan (2018). The impact of neighbouring developments on the local and strategic road network has also been reviewed. The modification is sought, in the alternative, in order to reflect the change in traffic levels that have been observed, the impact of neighbouring developments on the local and strategic road network, as well as current forecasts that

			• The payment of £1,405,647 prior to the occupation of the 5,645th unit In effect, the modification delays the payment of the first 3 payments and deletes the last. Subject also, and again in the alternative, to introducing provision that the amounts payable are subject to audit, with credit to be given and payments reduced for any further or other funding or contributions received from or that should have been charged to and/or received from any other developments whether existing, proposed or future benefiting from the same road improvements. Thus, presently the Applicants will say, if the RIF is not discharged in its entirety, that the figures above should be reduced by a further £1.8m, so as to make each payment £805,647 instead (albeit this has not been applied to the headline figures above pending verification with the Respondents).	indicate Chilmington Green will be delivered later and more slowly than predicted at application stage. The current triggers will no longer generate the predicted level of traffic on the A28. Updated triggers of 4,338, 4,989 and 5.645 are required so as to provide equivalence in terms of predicted levels of traffic on the A28. The level of traffic previously associated with 5,199 dwellings would only be reached in 2048. The revised development phasing indicates that Chilmington Green would be built by 2048. For this reason, the final payment trigger of 5,599 is no longer appropriate and should be removed. In addition, where the RIF obligation is not discharged, it is right and fair that the amounts payable should be subject to comprehensive audit and reduced to take account of contributions that have or should be made by other benefitting developments. In particular again developments such as Court Lodge and Kingsnorth as set out above and, in this instance, the Eureka Leisure Park. Thus, as referred to at paragraph 10.82 of the Explanatory Statement, it appears that Court Lodge should have contributed circa £1.8m and this should be taken into account. Such purpose as the repayment clauses may serve, being equally well served if the obligations were to be modified as proposed.

				The discharge of these obligations as proposed is shown in the Viability Report at Appendix 3, Infrastructure (Scenario 2) Line Ref 5100.1 and forms part of this updated viability analysis justifying each discharge and modification sought.
	Schedule 23 - Viability		**Without prejudice to the validity of Application No.1 and the continuing requirement for that application to be determined by the Respondents, requests 1, 2 and 3 therein are repeated here as requests 100, 101 and 102 of this application.**	Application 1 is accordingly reproduced at Appendix A2 hereto and the reasons stated therein duly relied upon as stated below.
100 to 102		See column 3 of the Appendix to Annex A herewith.	See column 4 of Appendix A2 herewith.	See columns 5 and 6 of Appendix A2 herewith.
103	Schedule 23	Paras 2.1.4-2.1.9	The Applicants apply to modify the Agreement by changing the definition of Premature Viability Review Submission for RP5 to RP10 (see below) and amending Para 2.1 to allow Viability Review Phase Submissions to be made when the cumulative number of dwellings within Reserved Matters Applications (RMAs) to date reach the	The existing provisions for VRS's no longer serve a useful purpose. On the contrary they are artificially restricting bringing forward different areas of the Development, inhibiting the Applicants from entering partnerships/agreements to increase delivery, working against ensuring value growth and undermining the overall deliverability of the Scheme.

			dwelling numbers specified therein. Thus, each of 2.1.4 to 2.1.9 should be amended as follows, '2.1 The Owners covenant with the Council as follows …: 2.1.4 no later than 40 days following the cumulative number of dwellings within RMAs first reaching 2475 dwellings to submit via the Owner's Agent to the Council for the Councils' approval a Viability Review Submission for Viability Review Phase Five and pay a further Viability Review Fee. 2.1.5 no later than 40 days following the cumulative number of dwellings within RMAs first reaching 2975 dwellings to submit via the Owner's Agent to the Council for the Councils' approval a Viability Review Submission for Viability Review Phase Six and pay a further Viability Review Fee … etc at dwelling intervals equal to those defining the relevant review phase.	The proposed modifications will yield the benefits described at paragraphs 6.3-6.7 of the Explanatory Statement and accordingly better serve the intended purpose of the Viability Review mechanism within the Agreement. The modifications tying Viability Review Submissions to RMA's rather than Dwelling Occupations and allowing a 12 month window (plus 40 days) for submissions to be made. In support of these modifications the Applicants refer to and rely in particular upon Section 3 (paragraphs 3.4 to 3.10) and Section 6 of the Explanatory Statement.
104		Definition of PVRS d) to i) and Para 3.19	And the definition of Premature Viability Review Submission should be amended to: 'Means a Viability Review Submission submitted greater than 12 months in advance of each of the progress stages specified at	For the reasons stated above in relation to Request 103.

			Schedule 23 paragraph 2.1.1 to 2.1.9. And for the avoidance of doubt any Viability Review Submission which is not followed by the relevant RMA within 12 months shall be re-submitted such that it is no greater than 12 months in advance of the relevant RMA' And schedule 23 paragraph 3.19 should be amended to delete 'that it receives and in the event…' onwards.	
	Schedule 24 – Public Art			
105	Payment of Public Art Contribution 1	Paragraph 1.1, 2.1 and Sch 29A Item 2	The Applicants apply to discharge this obligation and for the sum of £50,000 already paid to be refunded.	The Applicants seek this discharge and refund because it is not apparent how this money has been spent towards the provision of public art in line with paragraph 1.1. Unless and until any substantiation is provided, this obligation cannot therefore be regarded as serving any useful purpose. The discharge of this obligation as proposed is shown in the Viability Report at Appendix 3, Infrastructure (Scenario 2) Line Ref 5300.13 and forms part of this updated viability analysis justifying each discharge and modification sought.

106	Payment of Public Art Contributions 2 to 6	Paragraphs 1.2 to 1.6 and 2.2 to 2.6, and Sch 29A Items 2, 6, 17, 21 etc	The Applicants apply for the following modifications: 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 toward the provision of public art within the Site by the Owners in accordance with the brief prepared under 1.1 [rather than to the Council]. Modify 1.3 to provide 'Not to Occupy more than 1999 [rather than 999] Dwellings unless £150,000 (one hundred thousand pounds) Index Linked has been paid toward the provision of public art within the Site by the Owners in accordance with the brief prepared under 1.1 [rather than to the Council]. Modify 1.4 to provide 'Not to Occupy more than 2999 [rather than 1399] Dwellings unless £150,000 (one hundred thousand pounds) Index Linked has been paid toward the provision of public art within the Site by the Owners in accordance with the brief prepared under 1.1 [rather than to the Council]. Modify 1.5 to provide 'Not to Occupy more than 3999 [rather than 2599] Dwellings unless £150,000 (one hundred thousand pounds) Index	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. Further, the Applicants submit that there is a clear case in terms of securing the provision of public art with these contributions, for streamlining the process by allowing the Applicants themselves to take on the role of acquiring and placing the Public Art. In particular, thereby avoiding any unnecessary administration and resultant wasted expenditure. The purpose of these obligations will actually be better, or at least equally well served, therefore, if they have effect subject to the specified modifications so as to align with progress and presently projected completions and empower the Applicants to deliver the art. The deferment of these payments, such that only the first 2 remain within Main Phases 1 and 2, is reflected in the Viability Report at Appendix 3, Infrastructure (Scenario 2) Line Ref 5300.13. and forms part of this updated overall viability analysis justifying each discharge and modification sought.

			Linked has been paid toward the provision of public art within the Site by the Owners in accordance with the brief prepared under 1.1 [rather than to the Council]. Modify 1.6 to provide 'Not to Occupy more than 4999 [rather than 4099] Dwellings unless £150,000 (one hundred thousand pounds) Index Linked has been paid toward the provision of public art within the Site by the Owners in accordance with the brief prepared under 1.1 [rather than to the Council]. Further, to make the following consequential modifications: Modify 2.2 to provide '£100,000 (one hundred thousand pounds) Index Linked upon the Occupation of the 1000th Dwelling. Modify 2.3 to provide '£150,000 (one hundred thousand pounds) Index Linked upon the Occupation of the 2000th Dwelling. Modify 2.4 to provide '£150,000 (one hundred thousand pounds) Index Linked upon the Occupation of the 3000th Dwelling.	

			Modify 2.5 to provide '£150,000 (one hundred thousand pounds) Index Linked upon the Occupation of the 4000th Dwelling. Modify 2.6 to provide '£150,000 (one hundred thousand pounds) Index Linked upon the Occupation of the 5000th Dwelling. Together with consequential modifications to Schedule 29A, in particular as follows: Item 6, to refer to 950 Dwellings Item 17, to refer to 1959 Dwellings Item 21, to refer to 2950 Dwellings Item 17, to refer to 3959 Dwellings Item 21, to refer to 4950 Dwellings And equivalent consequential amendments to Schedule 29B as follows: Item 4, to refer to 1000 Dwellings Item 14, to refer to 1900 Dwellings	

			Item 19, to refer to 3000 Dwellings Item 14, to refer to 4000 Dwellings Item 19, to refer to 5000 Dwellings And Schedule 29C as follows: Item 8, to refer to Occupation of the 1000th Dwelling Item 18, to refer to Occupation of the 2000th Dwelling Item 23, to refer to Occupation of the 3000th Dwelling Item 18, to refer to Occupation of the 4000th Dwelling Item 23, to refer to Occupation of the 5000th Dwelling	
107	The obligations relating to installation of the public art and to	Paragraphs 1.7 and 1.8	The Applicants apply for these obligations to be discharged.	For the reason stated above it is proposed that the Applicants take on responsibility for the installation of the public art, paragraph 1.7 therefore no longer serves any useful purpose and should be discharged.

	maintain the same once installed			As for paragraph 1.8, it is wholly inappropriate and unfair to impose upon the Owners a continuing obligation to repair the public art. Once installed this should properly be maintained by the ManCo. The s106 should not be used to impose such continuing obligations. In the premises paragraph 1.8 should not be treated as serving any proper or useful purpose and should be discharged accordingly.
108	The commissioning, installation of the public art by the Council and associated consultation	Paragraphs 3 and 4	The Applicants apply for these obligations to be discharged.	As above, the Applicants submit that there is a clear case in terms of securing the provision of public art for the Applicants themselves to take on the role of acquiring and placing the Public Art. In particular, thereby avoiding any unnecessary administration and resultant wasted expenditure of the kind that has been apparent to date. Accordingly, these provisions do not actually serve any useful purpose and should be discharged accordingly.
	Schedule 25 – Heritage Interpretation			
109	Payment of Archaeological Archiving, Heritage and Archaeologist Contributions	Paragraphs 1 and 4.1	The Applicants apply to discharge each of these contributions and for a refund of the monies already paid.	The discharge and refund of the Archaeological Archiving contribution is justified because there is no archiving, other than that carried out by Hodson's consultant and this contribution serves no useful purpose.

				The Heritage contribution overlaps with PP Condition 97, is duplicative and serves no useful purpose. The Archaeologist Contribution again serves no useful purpose, given that the Applicants employ a consultant archaeologist directly. These obligations should be discharged and the £115,000 already paid refunded accordingly. The discharge of these payments as proposed is shown in the Viability Report at Appendix 3, Infrastructure (Scenario 2) Line Ref 5300.8 and forms part of this updated viability analysis justifying each discharge and modification sought.
110	Payment of Archaeologist Contributions	Paragraphs 2, 3, 4.2 and 4.3, and Schedules 30A, 30B and 30C	The Applicants apply to discharge the remaining payments under this schedule. Alternatively, and without prejudice to the primary application to discharge, the Applicants seek to modify paragraph 4.2 and 4.3 to refer only to the numbers of dwellings already stated and omit in each case sub-paragraph (b) (anniversary payments) or otherwise extend the dates therein to the third and sixth anniversaries of the Commencement of the Development.	The Development now being well beyond the initial three year period envisaged for the funding of a community archaeologist, it is submitted that there is no utility in any further payments being made and that this obligation should be discharged accordingly. Otherwise, if contrary to the foregoing these payments are regarded as still having a useful purpose, the time-based triggers mean the payments are significantly out of step with the progress of the Development and serve no useful purpose at the present time. Rather 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 amendment to align with the actual building trajectory and rate of progress. 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. Nonetheless, in accordance with the Applicants' primary case hereunder, the discharge of these payments, is shown in the Viability Report at Appendix 3 – line item 5300.15, and forms part of his updated viability analysis justifying each discharge and modification sought.
	Schedule 26 – Quality Agreement			In this regard the Applicants refer to and rely in particular upon section 12 of the Explanatory Statement accompanying this application in addition to the reasons stated below.
111	Quality Agreement, payments of £40,000 linked to Occupations and the payment of £80,000 on the first anniversary and £40,000 on the subsequent nineteen anniversaries	Paras 1, 2.1,2.2 and 2.3 to 2.21, and Sch 29A Items 9, 12, 15, 19, 24 etc. and likewise in Schedule 29B	The Applicants apply for paragraphs 1, 2.1, 2.2 and 2.3 to 2.21 and the payments therein to be discharged (without prejudice to the contention that properly construed the payments at 2.1 and 2.2are not due in any event in addition to the payments under paragraphs 1 and 2.3 to 2.21). The relevant line items in Schedules 29A, 29B and 29C should also therefore to be deleted.	These payments are surplus to requirements, grossly excessive and more than is necessary to mitigate the impact of the Development. As the Explanatory Statement notes, these amounts are not justified given the parallel payments for monitoring etc. 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,

		and 29C Items 5, 11, 14 etc		design briefs, specifications, construction management plans, waste management plan and liaison with the CMO and residents. All the above documents (material specifications etc) are submitted in any event as part of the reserved matters 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. In the circumstances these contributions cannot be said to serve any useful purpose and cannot be justified and the sums paid already should be reimbursed. Alternatively, and without prejudice to the primary application to discharge all such payments, as a minimum paragraphs 2.1 and 2.2 should be discharged and again the contributions made to date totalling the sum of £80,000 should be reimbursed (see the Viability Report, Appendix 3, Infrastructure (Scenario 2) Line Ref 5300.16)
	Schedule 28 – Monitoring Fee			In this regard the Applicants refer to and rely in particular upon section 12 of the Explanatory Statement accompanying this application in addition to the reasons stated below.

112	Payment of monitoring fees of £25,000 linked to Occupations and payment of £50,000 on the first anniversary and £25,000 on the subsequent nineteen anniversaries	Sch 28, paras 1, 2.1, 2.2 and 2.3 to 2.21 and Sch 29A Items 8, 11, 14, 18, 23, etc. and likewise in Schedule 29B and Schedule 29C Items 4, 10, 13, 16 etc.	The Applicants apply for paragraph 2.2 and the anniversary payments thereunder to be deleted and these obligations discharged (without prejudice to the contention that properly construed the payments at 2.1 and 2.2 are not due in any event in addition to the payments under paragraphs 1 and 2.3 to 2.21). The relevant line items in Schedules 29A, 29B and 29C should also therefore to be deleted. Further, the Applicants seek to modify the payments under paragraph 1 and 2.3 to 2.21 to provide for payment of £5,000 [rather than £25,000] subject to a schedule of monitoring activities and of the resource reasonably required.	The Applicants acknowledge that these payments potentially serve a useful purpose, but the contributions are disproportionate in scale. Certainly, as a minimum paragraphs 2.1 and 2.2 should be discharged and the contributions made to date totalling the sum of £45,000 should be reimbursed (see Appendix 3 of the Viability Report, Infrastructure Cost Plan (Scenario 2) Line Ref 5100.10). Prospectively, the sum of £5000 every 300 homes should more than suffice and any sums in excess would be surplusage and would not serve any useful purpose. In the premises these obligations would serve their purpose equally well if modified as proposed. Further, the reduction in these payments is duly taken into account in the Viability Report, see Appendix 3, Infrastructure Cost Plan (Scenario 2) Line Ref 5100.10 (second 5100.1), and forms part of this overall updated viability analysis justifying each discharge and modification sought.
	Schedule 29 – ABC Bank Accounts			
113	The Developers' Contingency Bank Account – Council	Sch 29, paragraphs 1 and 2, and clause 1.1	The Applicants apply for paragraphs 1 and 2 to be discharged and the definition of Council Minimum Balance to be deleted accordingly.	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

		definition of Council Minimum Balance		account should be closed and the amount held should be paid out to the Paying Owner. In support the Applicants refer to and rely in particular upon Section 3 (paragraphs 3.11 to 3.13) of the Explanatory Statement. 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. The removal of this obligation and re-crediting of the deposited amounts would further reduce pressure on the Development cashflow which as already demonstrated in the Viability Report has an excessive peak debt in the base case. It would also release funds immediately for the delivery of infrastructure to the obvious benefit of the Development.
114	Payments into Council Contributions Bank Account, Indexation payments, and withdrawals	Sch 29A, Sch 29B and Sch 29C	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. Further, the payment trigger in Schedule 29A and 29B, including those modified as above,	For the reasons stated above in relation to each of the relevant individual obligations. The proposed provision for payment triggers and withdrawal triggers to coincide and to be modified to whichever is the later, removes the otiose provision for

			should not be earlier than the withdrawal trigger for the same obligation in Schedule 29C. Rather, the payment trigger or withdrawal trigger as the case may be for any given obligation should be modified to whichever is the later.	payments to be made earlier than is otherwise necessary. The provisions to this effect serve no proper or useful purpose and should be modified/discharged accordingly.
115	Restriction on withdrawals	Paragraph 8	The Applicants apply to modify the obligation by omitting the words '(other than interest)'	There is no proper justification for excluding interest from the provisions for withdrawal. The Council should not be entitled to the free use of such sums. Rather the purpose of the obligation would be better, or at least equally well, served if modified as proposed.
116	The Developers' Capital Bank Account	Schedule 29D	The Applicants apply to discharge Schedule 29D.	The Developer's Capital Bank Account fails to serve any useful purpose, in that imposes a wholly unworkable funding regime for the Development. Rather than securing the delivery of the assets for which the sums due to be paid into the account are intended, the requirement to pay the full cost of those assets into an account in advance will undermine that purpose. The usual terms upon which finance is available, allow funds to be drawn down against agreed construction milestones in respect of any given asset; it is not feasible to obtain 100% of the funds in advance.

				In the premises the entire Schedule and all associated provisions should be discharged.
	Schedule 30 – KCC Bank Accounts			
117	The Developers' Contingency Bank Account – County Council	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 CCMB to be deleted accordingly.	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. In support the Applicants refer to and rely in particular upon Section 3 (paragraphs 3.11 to 3.13) of the Explanatory Statement. 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. The removal of this obligation and re-crediting of the deposited amounts would further reduce pressure on the Development cashflow which as already demonstrated in the Viability Report has an excessive peak debt in the base case. It would also release funds immediately for the

				delivery of infrastructure to the obvious benefit of the Development.
118	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. Further, the payment triggers in Schedule 30A and 30B, including those modified as above, should not be earlier than the withdrawal trigger for the same obligation in Schedule 30C. Rather, the payment trigger or withdrawal trigger as the case may be for any given obligation should be modified to whichever is the later.	For the reasons stated above in relation to each of the relevant individual obligations. The proposed provision for payment triggers and withdrawal triggers to coincide and to be modified to whichever is the later, removes the otiose provision for payments to be made earlier than is otherwise necessary. The provisions to this effect serve no proper or useful purpose and should be modified/discharged accordingly.
119	Restriction on withdrawals	Paragraph 8	The Applicants apply to modify the obligation by omitting the words '(other than interest)'	There is no proper justification for excluding interest from the provisions for withdrawal. The Council should not be entitled to the free use of such sums. Rather the purpose of the obligation would be better, or at least equally well, served if modified as proposed.
	Schedule 34			
120	Heads of Terms For The Lease of the	The Terms referred to in column 4	The Applicants apply, without prejudice to the foregoing, for the following modifications to the stated Heads of Terms:	These modifications are sought without prejudice to the overarching application to replace the CMO as referred to above.

	CMO's First Operating Premises		Under 4. Term, - at 4.1, the lease will be for a term of 2 years with an option for the tenant to extend the lease until completion of new premises in the Community Hub - at 4.4 reference to the CMO's Second Operating Premises to be modified to refer to the Community Hub. Under 9. Use, at 9.1 it should be stated that the property can only be used as a Chilmington community facility.	The reference to the Community Hub reflects the discharge of the CMO Second Operating Premises above. Whilst, the option to extend would ensure the CMO First Operating Premises remained available whilst required. The reference to Chilmington at paragraph 9.1 is plainly appropriate and the premises ought not to be used otherwise.
	Schedules 39 and 40			
121	Articles of Association of the CMO and the CMO Business Plan	The entire schedules.	The Applicants apply to discharge these Schedules (subject to appropriate transitional arrangements).	Consistent with the foregoing (see the many requests above going to the replacement of the CMO) and subject to appropriate transitional arrangements, the CMO to be wound up and replaced with a newly incorporated ManCo to manage the estate on a standard estate management model, providing the essential services listed at Schedule 3 of the Framework Agreement (at Schedule 38) funded by the new form Service Charge regime in place of the current rentcharge deeds. All references in the s106 to the CMO to be replaced by reference to the said ManCo.