

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

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

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

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

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

In these closing submissions, abbreviations are used and witnesses are not always referred to by their full title. No disrespect is intended.

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A. INTRODUCTION

1. We started this Inquiry by emphasising that there is a national crisis in the provision of housing. That crisis can only be addressed one way, which is to grant planning permission for additional housing. Given that, it is extraordinary how much resistance the Appellant has faced from ABC and KCC in circumstances where the proposed development will deliver a windfall site immediately adjacent to an allocated sustainable urban extension, which will not only make a crucial contribution to delivering ABC's housing supply of its own accord, but also offers the very real potential to unlock the adjacent Chilmington Green site (currently stalled due to Stodmarsh and delivery issues); not least by helping to provide to fund the capital expenditure associated with the WwTW¹ - itself an urgently required Stodmarsh solution.
2. Additionally, it is worth reflecting on who will benefit if planning permission is granted. This is not some academic proposal. It will provide actual homes for real families, couples, children and individuals that want to live and work in Ashford. 655 homes are proposed. In providing those additional homes, this proposal will provide security and comfort to an estimated 1570 or so occupiers², alleviating pressures elsewhere in a sustainable manner.
3. The very limited extent of public objection to the appeal proposal is notable. The truth is that housing developments are - at worst - benign once built and those that occupy them seek to contribute and assist the community of which they become part.

¹ Collins, Proof, para 4.9.6: "The cost of the WwTW is predicted to be significantly in excess of £5million and was not an expected cost for Chilmington Green when the s.106 agreement and planning consent was granted. Chilmington Green is already heavily loaded with early delivery of infrastructure items which is challenging its viability. The need for the WwTW further reduced the viability of the scheme. Therefore, Possingham will help to deliver a capital receipt that would help to fund the WwTW." In XiC and XX Collins noted that the capital expenditure associated with the WwTW was, in fact, likely to be nearer £8million.

² Given the housing mix and split, it is reasonable to work on the basis of 2.4 x 655.

4. In short, this is an important opportunity to bring forward high quality and much needed residential development on what will be a highly sustainable site. Of the 655 units, 30% will be affordable³, together with significant public open space, appropriately and sensitively landscaped. The previous and new Governments have taken every opportunity to stress that there is a national housing crisis in this country. This is further reflected in the NPPF which sets out national policies to support the objective “*of significantly boosting the supply of homes*”.
5. The Planning Committee’s reasons for refusal (and, with respect, Cllr Blandford’s appearance at this Inquiry) epitomised why there is a national housing crisis. Ongoing criticisms of the grant of permission for the WwTW on appeal, despite the Appellant’s proactive Stodmarsh solution being literally the only show in town that offers any potential to get houses built in this important strategic location. So far as Possingham is concerned, the belated extent to which a number of ABC’s criticisms have fallen away simply through continuing dialogue with the Appellant demonstrates that they were never well founded. Although elements of those criticisms remain as echoes, they are not based in the real world where: i) nationally there is a housing crisis; ii) we sit in an authority which cannot demonstrate a 5-year housing land supply; and iii) where ABC’s attempts to deliver on its development plan aspirations for the South Ashford Garden Community lie in tatters behind a stack of stalled applications. This is quite clearly not the way it was supposed to be.

B. MATTERS NOW IN AGREEMENT

6. The site and wider area are described more fully in evidence and in the Statement of Common Ground (“SoCG”). Although not itself allocated for development, the site lies immediately adjacent to (and thus falls to be considered within the context of) the wider Chilmington Green development, which is allocated in the adopted

³ Collins, Proof, para 6.3.2: “In the last published monitoring figures (2020/2021), ABC delivered 153 affordable housing completions. This scheme would deliver 197 affordable units.”

development plan and Chilmington Green Area Action Plan (AAP)⁴. The site offers the potential for a logical expansion of the allocated development.

7. A small section of the site (to the north-east) is located within the boundary of the adopted Chilmington Green AAP. However, the proposed development does not include any housing or greenspace on the land within the site that is located within the Chilmington Green development site. As you have heard, the only development proposed on this land is an access road leading south, which is applied for in 'Full' and is shown on the proposed Primary Access Arrangement Plan.
8. So far as is relevant for the purposes of this appeal, it is agreed⁵ that the development plan comprises i) the Adopted Ashford Local Plan 2030 and proposals map; ii) Chilmington Green Area Action Plan (AAP). The most relevant development plan and AAP policies are listed in the SoCG.
9. Furthermore, a number of very critical matters are now agreed, including that:
 - a. There is no sustained objection to the principle of residential development on the site *per se*. In fact, as it transpired and despite her earlier protestations, Ms Tomlinson would herself be prepared to accept a very considerable number of units on the site, provided it could be made sustainable⁶.
 - b. The proposed development would result in less than substantial harm to the setting of the listed Possingham Farmhouse, which would sit at the lower end of the scale. The heritage reason for refusal has been withdrawn.
 - c. The ecology reason for refusal has been withdrawn and a condition can be imposed (alongside a legal agreement) to provide a long-term management and monitoring plan in the form of a Landscape and Ecological

⁴ [CD7-3].

⁵ For the purposes of this appeal, it is agreed that the Kent and Minerals Waste Plan and 6no. neighbourhood plans for other land in the ABC area are not relevant to the determination of this appeal.

⁶ XX Tomlinson – as to which see further below.

Management Plan (“LEMP”) in accordance with BS42020 for both on and off-site habitats.

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

C. REASONS FOR REFUSAL

- 10. When ABC’s Planning Committee refused permission, they cited 9 reasons for refusal. After 6 days of Inquiry, we are left addressing the remnants of 4 of those

reasons, but in what appear to be heavily reduced and caveated terms, and only 2 of which go to whether permission should be granted.

11. ABC continues to rely upon RfR 1 and 2. However, Ms Tomlinson now accepts that residential development of this site is acceptable, but that the appropriate density would be around half of what is proposed – c. 300 units instead of 655 units⁷. Of course, not only would Ms Tomlinson’s preferred density still represent a substantial amount of development of an urbanised or suburbanised character, but it would also have virtually all of the impacts that she claims to be harmful. Her position in this respect also stands to be viewed in the context of the proportionate scale of increased benefits that would be delivered by the additional housing that the Appellant is proposing, as well as the wider benefits associated with the same.

Reason 1

The development would constitute an overly dense and urban form of development that would visually encroach on the countryside and harm the landscape character of the area. The density of the development would fail to accord with the character of the permitted adjacent Chilmington Green development and would consequently harm the setting of that development. The density of the development would also result in a failure to provide a good standard of public amenity for future residents of the development.

12. As Ms Tomlinson accepted⁸, the concern in RfR1 is the amount of development proposed, rather than the principle of having housing development on the land.

13. With that significant caveat in mind, the matters in dispute are:
 - a. Whether the development would constitute an overly dense and urban form of development that would visually encroach on the countryside and harm the landscape character of the area.
 - b. Whether the layout is too dense and whether it respects the pattern of development in the area.

⁷ During XiC, Tomlinson referred to density levels at Chilmington Green – below 10dph at southern end and western side of finger of 16-25dph. During XX, she agreed that those are the sort of density levels that she would envisage across the whole of the appeal site – so, around ½ the density that is proposed.

⁸ XX Tomlinson.

- c. Whether the density of the development would fail to accord with the character of the permitted adjacent Chilmington Green development and would consequently harm the setting of that development.
- d. Whether the development would lack public open space and accord with the 'garden community' ambitions of the approved Chilmington Green development in the vicinity of the site.
- e. Whether the proposed indicative layout fails to accommodate a sufficient landscape buffer to be in accordance with Policy HOU5 of the development plan.

14. The key policy relied on by ABC in these regards is Policy HOU5⁹.

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

16. The outline proposal has been informed by an assessment of the site's opportunities and constraints, as well as pre-application engagement with officers and other statutory consultees¹⁰. The proposals form a framework against which a further masterplan will be developed (to be secured by condition) to ensure the delivery of a high quality and distinctive development through future reserved matters applications¹¹. The parameter plans can clearly deliver a location appropriate scheme.

Landscape and character

17. The evidence of Mr Tully¹² was that:

- a. With sensitive detailed design, the outline proposals for landscape buffers containing and defining the components of the proposed development would meet the criteria set down in Policy HOU5 and would provide an appropriately sized and designed landscape buffer to the A28 and countryside to the south and west.

⁹ Local Plan [CD7-1].

¹⁰ Design & Access Statement [CD2-4]

¹¹ Collins, Proof, para 3.1.3.

¹² XiC and XX Tully; Tully, Proof, paras 1.8-1.10.

- b. The varying width of the buffer zones surrounding development parcels provides opportunities for a range of landscape typologies which can be tailored to suit different functions including screening, view framing and enhancement, definition of routes and waymarking, creation of wildlife corridors and covers and containment of public open space and amenity areas.
- c. Since the outline submission, further work assessing the biodiversity of the site and potential enhancement for wildlife promotion has been undertaken by Corylus Ecology. The BNG report submitted to ABC recommends wider establishment of scrub areas in association with the woodland and hedgerow buffers, which is indicated on the revised Landscape Parameter Plan¹³.
- d. The density profiles and their relationship to the adjacent Chilmington Green development parcel are fully justified and appropriate. By following the design principles set out in the Chilmington Green Design Code, the proposed development will create a natural and sustainable extension to the approved masterplan whilst enhancing the local landscape character and potential for biodiversity gain.
- e. The structural and buffer landscape strategy of the proposed development and the manner in which it addresses the issues of impact on local landscape character and views, would create adequate containment, screening and softening of the proposed urban form and density and would provide visual and ecological benefits while presenting a limited and localised effect on landscape character and visual amenity.

18. We pause to emphasise Mr Tully's point - any visual encroachment is limited and localised. Ms Tomlinson agreed that it was localised¹⁴. We invite the Inspector to form a judgement about these matters by reference to the following observations.

19. It is instructive to consider any potential impacts with reference to the LVIA¹⁵. We note, by way of examples:

¹³ Figure 03, D0410_001 Open Space Plan.

¹⁴ XX Tomlinson.

¹⁵ [CD2/8].

- a. Part 2, internal page 14 [pdf 6] and Ms Tomlinson's point¹⁶ about the viewpoints predominantly being on or close to the site boundary, with limited long views from publicly accessible locations on higher ground, can be dealt with shortly – it was notable that Ms Tomlinson has not suggested any other viewpoints, which is hardly surprising that views either from edge of the Chilmington Green scheme or from the A28 with limited views from lightly used PRow's to the south.
- b. More distant viewpoints are identified at 1 and 11, from within the Chilmington Green site, but the majority of viewpoints are from close in. The reality is that, in planning terms (i.e. material planning harm), there is going to be no difference whether someone is looking from A28 with 655 homes or with c.300 homes on it¹⁷. To the extent that it would be seen through the buffers, you would see a suburban form of development, clearly within a settlement. You would notice that part of the town is there and, to put it bluntly, in planning terms – that difference does not matter and Ms Tomlinson was unable to say what was actually harmful about seeing more houses than she is prepared to accept. Her vague references to “visual harm” and her “reference back to the RfR” were unpersuasive given that, even on her preferred densities, she would already be accepting a similar measure of encroachment.
- c. Of Ms Tomlinson's suggestion¹⁸ that we should assess without CG in the background, the short – and, with respect, obvious – answer is that: i) A28 travellers are not sensitive receptors – they are fleeting, temporary and otherwise distracted; ii) from even the most cursory review of Mr Tully's images, it is abundantly clear that the proposed development will be seen in the context of the Chilmington Green development¹⁹; and, perhaps most importantly (quite remarkably given her evidence in this regard), iii) it is

¹⁶ Tomlinson Proof, para 4.44.

¹⁷ XiC Tully.

¹⁸ Tomlinson Proof, para 4.47.

¹⁹ For example, Tully, Proof, Appendix 4, figure 12 [pdf 29], which shows a view from A28 to South of site just as it goes over a rise. Land drops down heading towards Ashford and you can already see on existing viewpoint the construction on Chilmington Green site.

actually Ms Tomlinson's job to deliver Chilmington Green into the background of those views.

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

21. Indeed, precisely the same point about the visual impact and altering effect of the "developing edge of Chilmington Green" as part of the relevant baseline was recently emphasised by the Inspector in respect of the WwTW appeal, including as follows:

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

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

22. The same point applies with equal force to mitigate the urbanising effect of the appeal proposals. Given that very recent appeal decision, it is extraordinary that Ms Tomlinson took the point at all. In reality, Mr Tully's conclusions are both fair and robust; namely, change will not result in substantial harm to the wider landscape character and view from local receptors²⁰; and also in relation to compliance with Policy HOU5 (including (f)(i)²¹).

Density

23. As to the density of the proposed development, ABC's case appears to be centred around an objection to a range of densities that is different from those permitted

²⁰ Tully, Proof, para 8.3.

²¹ Tully, Proof, para 2.5.

at Chilmington Green and, thus, an alleged failure to accord with the character of that adjacent development.

24. First, when the relevant densities are compared on a 'like for like' basis²², they are consistent with one another²³. Therefore, it is plainly wrong for Ms Tomlinson to suggest that the proposed development "*completely disregards the density parameters in CGAAP Strategic Diagram 3 and OPA03RA*"²⁴. The application parameter plan [CD2/17] omits roads, footways and open space between parcels. Having recalculated density [CD13/3] so as to compare like with like²⁵, the proposed densities at the southern end of the appeal site are reflective of the southern boundary of Chilmington Green, albeit a little higher, which is expected on the Ashford Road corridor. Otherwise, the densities are consistent with other parcels within Chilmington Green²⁶. Thus, the proposed development will be reflective of the approach at Chilmington Green away from the District Centre.
25. The proposed development is consistent with i) the approach set out within the Design Guide; and ii) what ABC has considered acceptable for the Chilmington Green site itself²⁷.
26. Second, to the extent that there may be any limited divergence, there is a need for a measure of flexibility in seeking to apply the AAP²⁸, particularly in circumstances where its strict application has failed to deliver the required housing and/or deviation from what ABC views as requirements has already occurred elsewhere (and successfully)²⁹.

²² Which can be seen by comparing [CD13-3]; [CD13-4] and [CD13-5]

²³ XiC and XX Tully; Xic and XX Collins.

²⁴ Tomlinson, Proof, para 4.33.

²⁵ Compare with Chilmington Green density [CD13/4]; [CD15-10].

²⁶ Collins, Proof, para 9.3.6; paras 9.3.12 – 9.3.19.

²⁷ Collins, Proof, para 9.3.19.

²⁸ XiC and XX Collins. Furthermore, to the extent that any review of the AAP has taken place, it is not accepted that what ABC has undertaken is what was intimated by the AAP or Quality Agreement. It seems they reviewed in the document in terms of compliance with the NPPF, rather than having a review based on changing circumstances or lessons learnt from what has been delivered to date.

²⁹ XX Collins.

27. Third, as the Inspector observed, when the Chilmington Green scheme was discussed, it was envisaged that would be the countryside edge, but things have moved on and surely at some point ABC must have envisaged that there might be development³⁰.
28. In these regards, the evidence of Mr Tully and Mr Collins presents a fairer and better reasoned assessment, and should be preferred to that of Ms Tomlinson, whose evidence frequently conflated the different standards of “*acceptability*”, and the distinction between “*difference*” and “*harm*” (without any regard to constraints, site characteristics or the extent of change in the vicinity that is successfully being achieved at Chilmington Green). Ms Tomlinson’s evidence (and ABC’s case) was put on the basis of saying – the Chilmington Green documents do something different on Chilmington Green, therefore anything less than that (buffer) or greater (density) is not acceptable. But that is clearly not a sufficient or adequate way of analysing things. It is essential to identify what the actual harm is that is caused by the particular proposal.
29. On proper analysis, ABC’s concerns over whether the scheme will fit in with its surroundings are not well founded. In short (and despite Ms Tomlinson being asked a number of times), it remains very difficult to understand what the allegation of harm is here.
30. Picking up on some specific issues that arise in the evidence.
31. The buffers for the appeal site are large, with a layout that does not look to be denser than phases that have already been built out successfully (and in award winning fashion) at Chilmington Green³¹.
32. The proposed development is consistent with how the interface between town and countryside actually presents across Ashford and is, therefore, in keeping with the surrounding edge of settlement developments³².

³⁰ XiC Tomlinson, as part of the Inspector’s questions.

³¹ Collins, Proof, para 9.3.7 – 9.3.11.

³² Collins, Proof, paras 9.3.21 – 9.3.29.

33. Like density, quantum of development and quantum of space is a crude measure of design quality and associated amenity. In terms of scale and context, the frontage responds appropriately to both the A28 and the Chilmington Green residential character. The design will be able to take cues from the context. The usual indicators of excessive quantum, e.g. insufficient space and amenity impact, are absent.
34. There is also the critical policy imperative to make efficient and effective use of land, reflected in both the NPPF and National Design Guide, which indicates that well-designed places do not need to copy their surroundings, and it is appropriate to increase densities to reflect how we live today. Indeed, the NPPF promotes this, and the general need to optimise potential and make efficient use of land.
35. In any event, even if the proposed densities are considered to be a material departure from those approved at Chilmington Green, no planning harm actually arises from any perceived departure. Although ABC continues to take a point, importantly, there is no correlation between density and quality – and how density is designed may give rise to harm in a given case, but that is clearly not the situation here. The reality, of course, is that no such harm arises – for the reasons cited above.
36. The dispute about how dense the proposed development should be (i.e. what is proposed vs what Ms Tomlinson is prepared to accept) is not a material difference in planning terms. Moreover, in terms of approving an outline application, Ms Tomlinson agreed that the Inspector simply has to ask the question - can an acceptable, detailed, scheme come forward at reserved matters? When the details of this come forward, Ms Tomlinson also agreed that it would be possible to have an acceptable scheme in landscape terms, that in principle could preserve and enhance the setting of the nearest settlement³³. The parameter plans are acceptable in respect of the range of densities and building heights and there is no basis to conclude that a scheme of a design quality at least equivalent to the high standard

³³ XX Tomlinson.

of Chilmington Green cannot be achieved³⁴. The Inspector can, will and most probably already has, seen the obvious quality of what is on the Chilmington Green site at present, and with [CD13/4] will get a sense of how the proposed development will compare just as favourably.

Public amenity

37. ABC asserts that the proposed density would result in a failure to provide a good standard of public amenity.
38. Again, that assertion is not well founded³⁵ given that i) the wider Chilmington Green development provides very extensive areas of public open space in addition to buffer zones, open spaces and play areas that would be provided within the proposed development; and ii) the amount of open space to be delivered can be controlled by a suitably worded s.106 agreement.
39. It also appears that ABC's concerns were largely premised on a perceived lack of information, rather than necessarily on the basis of an assertion that some necessary open space, amenity space or play space provision cannot be made³⁶.
40. To put any concern about space around buildings, playspace and open space into context, it needs to be viewed in the light of this being a 24ha site³⁷, with considerable space between, among and around buildings.
41. Of the requirement for playspace:
- a. The Landscape parameters plan [CD2-18] shows LEAP, NEAP and four incidental play areas.
 - b. The Public Green Spaces and Water Environment SPD [CD7-11] summarises the green space requirements³⁸ and has a 0.5 ha per 1000

³⁴ Collins, Proof, para 9.3.30.

³⁵ Collins, Proof, section 9.4.

³⁶ XX Tomlinson, when asked if she was "saying it can't be done or that you don't know", she responded "I don't know".

³⁷ Application Form [CD2-1].

³⁸ [CD7-11], para 6.2 and table 1; Collins, Proof, para 13.2.34.

population requirement for children's and young person's playspace³⁹, which includes an area for informal ball games or cycle use, which would fall outside equipped play areas.

- c. Note the wording used "*with buffer area*", which is to be counted in the space requirement⁴⁰. Note also the buffer 20-30m from residential curtilages (where required)⁴¹. In the SPD, only 20% (1000 m² of 5000m²) is equipped play area.
- d. Of the playspace requirement here – 0.786ha, Mr Collins' evidence as to the needs arising provides a figure that is not simply the figure for the size of the bounded playspace / the playground, but which includes informal ball games and buffer zones⁴².
- e. Of Mr Collins' calculations of the 0.1805ha shown on illustrative layouts being less than 0.786ha, but with the excess on Chilmington Green⁴³; as he explained⁴⁴, and Ms Tomlinson has now accepted⁴⁵, the 0.1805ha is actually the measured LEAP and NEAP, but does not include wider informal areas and does not include the buffer⁴⁶.
- f. The draft s.106 commits to the provision of all playspace on site.
- g. In light of the above, we understand that ABC now accepts that adequate playspace can be provided on-site.

42. Of the requirement for open space:

³⁹ [CD7-11], para 6.9 and table 2; [pdf 16] Pdf 16: "6.9 The threshold for the on-site provision of children's and young people's equipped space is 415 dwellings. This figure is derived from the 0.5ha minimum size required for the equipped area and associated buffer zone. However, where a new development of less than 415 dwellings does not meet the accessibility standards set out in Step D below, then a buffer zone around the equipped play area could be incorporated as part of the informal/natural green space provision." Table 2 – Children and young people's play space (with buffer area), notes that land to be provided includes the buffer area.

⁴⁰ XX Tomlinson.

⁴¹ [CD7-11], para 6.24.

⁴² Collins, Proof, para 13.2.36.

⁴³ Collins, Proof, para 13.2.42.

⁴⁴ XiC and XX Collins.

⁴⁵ XX Tomlinson.

⁴⁶ i.e. the 0.18ha is the LEAP, NEAP, and 4 x LAP equivalents.

- a. The Landscape parameter plan (Rev G)⁴⁷ has been provided to demonstrate that there is an adequate buffer between the LEAP, NEAP, 4 x LAP equivalents and the residential development within the parcels, including to what are indicative property boundaries. These were accepted as realistic and shown between 20-30m, which Ms Tomlinson accepted “*look like most would be appropriate*”⁴⁸. In any event, one needs to consider the practical purpose of such buffers, which is primarily to address the risk of ‘noisy play’⁴⁹, rather than simply as a landscape or design tool
- b. When applying green space standards and the categories of green space, there is no separate provision in relation to ecological space as a separate category.
- c. Spaces can be (and often are⁵⁰) multi-functional or have a dual use.
- d. The evidence of both Mr Tully and Mr Collins is that there is ample space to meet the policy requirement of 3.144ha, with the submitted details showing over 3.23ha (and over 3ha, however you measure it), which Ms Tomlinson accepted as meeting the policy requirement of natural open green space⁵¹.
- e. Indeed, by the end of Ms Tomlinson’s evidence, it appeared to be accepted that this scheme is capable of achieving the open space requirements, with the only residual concern being one as to quality of provision. Both Mr Tully and Mr Collins confirmed that the parameters are such that high quality space can be provided.

43. Lest there be any doubt about the provision of playspace or openspace, if the Inspector were minded to grant consent then reserved matters will have to come forward for landscaping, and if it was thought necessary then a condition or obligation could set out the minimum requirements⁵². The Landscape parameters

⁴⁷ [ID.11].

⁴⁸ XX Tomlinson.

⁴⁹ XX Tomlinson.

⁵⁰ XiC and XX Tully; XiC and XX Collins.

⁵¹ XX Tomlinson, caveated only on the basis that “if that label is correct, I’d have to accept that”.

⁵² XX Tomlinson.

plan [CD2-18]; [ID.11] presents generous landscaping opportunities at the reserved matters stage.

Reason 2

The development would be located in a presently unsustainable location where future residents of the development would not have access to appropriate local services and facilities that are convenient and accessible by sustainable modes of transport.

Sustainable location

44. The reason for refusal is based on ABC (and Ms Tomlinson⁵³) considering the Site as being “*presently*” in an unsustainable location. However, the relevant question is, quite obviously, whether it would be a sustainable location when occupied⁵⁴.
45. ABC’s case (and Ms Tomlinson’s evidence) therefore fails to acknowledge that the development will form a logical extension of the wider sustainable Chilmington Green urban extension.
46. The Appellant is committed to developing the site and, as the main developer of the adjacent Chilmington Green, has a long-term interest in getting the proposed development, design, facilities and use right on this adjacent site⁵⁵. The proposed development will be delivered in line with the aspirations and overall vision for the wider Chilmington Green development.
47. The site is neither isolated nor remote. It will provide readily deliverable and sustainable development in a location where strategic housing growth is not only expected but supported by adopted planning policy. The proposed development also provides appropriate opportunities to support sustainable travel patterns through providing for bus, cycle and pedestrian movements both to and within the Site. These contributions are offered towards supporting sustainable travel through the s.106 agreement, with a Travel Plan proposed to be secured by condition.

⁵³ XX Tomlinson.

⁵⁴ Which appeared to be accepted by Tomlinson during XX, despite her desire to “refer back to the reason for refusal”.

⁵⁵ XiC and XX Collins.

48. The facilities (and routes to them) that have to be available in order to ensure that the proposed development is sustainable is to be determined by the conditions and planning obligations in respect of this proposed development, rather than any other development; i.e. if anything is required in respect of Possingham Farm, then it is to be secured via the conditions of any Possingham permission (and any associated s.106 agreement), rather than in respect of any other conditions or s.106 agreement. If the permission here says that the site cannot be occupied beyond a certain number until an off-site facility is available, then that facility will need to come forward. Despite what ABC or KCC might say, it simply does not matter what the Chilmington Green s.106 says on timing or what may happen in the s.106B appeal. It would be dangerous to be led down the path of thinking otherwise.
49. To put that point with reference to an example, if the Inspector decides that the foodstore on the District Centre should be open by first occupation on the proposed development (as the Appellant proposes), then the consent will require that. If the Chilmington Green s.106 allows that food store to be delivered later, it is a 'so what?' point⁵⁶. That is the simple and correct position. Similarly, whatever happens in the s106B appeal at Chilmington Green, if there are conditions and an obligation on the permission for Possingham Farm, those will still be in place and enforceable and will have to be complied with to deliver the proposed development⁵⁷.
50. On that correct basis, the position is very simple – we are looking at whether the proposed development at Possingham Farm is sustainable development on its own merit⁵⁸.
51. Nor does Ms Tomlinson's suggestion that it would not be possible to use conditions to secure such facilities stand up to scrutiny⁵⁹. To use the food store as an example again, if it is considered necessary for that store to be open in the

⁵⁶ As agreed in XX Tomlinson.

⁵⁷ As agreed in XX Tomlinson.

⁵⁸ XX Tomlinson.

⁵⁹ Tomlinson, Rebuttal, para 3.10; XX Tomlinson.

Chilmington Green District Centre before units are occupied at Possingham Farm, and provided that it is necessary to make the scheme acceptable, then such a condition would be necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects⁶⁰. In principle, it is reasonable to have a negative condition that is reliant on something else happening: see the PPG, which only caveats that proposition to the extent that *“such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission”*⁶¹. Here, a negative condition would mean that the developer would want to ensure it was done; and, of course, the Appellant is the main developer and owner of the land at Chilmington Green.

52. To test Ms Tomlinson’s example⁶² of the risk of the Appellant selling Parcel L to another developer at a time that would prevent the pedestrian route being provided prior to first occupation of the proposed development, if there was a negative condition on the proposed development’s consent, not only would be commercially disastrous to sell Parcel L without securing the delivery of the pedestrian route, but – unsurprisingly – Ms Tomlinson was not able to cite a single example of a similar situation having arisen elsewhere in her experience⁶³.

53. The evidence of Mr Collins and Mr Dix demonstrates that the appeal proposals represent a sustainable form of development, having specific regard to the type of development proposed and the services and facilities that will be accessible within the wider Chilmington Green Development. KCC’s case that the full District Centre is required at Chilmington Green is required to ensure that Possingham Farm is sustainable does not stand up to scrutiny either on the basis of Mr Hogben’s evidence as to internalisation (see below) or given that the Appellant is committed to providing the critical element (i.e. the food store) before first occupation.

⁶⁰ NPPF, para 56.

⁶¹ PPG, para 1.21a-009-20140306.

⁶² Tomlinson, Rebuttal, para 3.5.

⁶³ XX Tomlinson and in answer to the Inspector’s questions.

54. As to what is actually needed, it is also instructive to note what is already provided by way of a primary school and temporary community building. Moreover, it was agreed that the secondary school would be provided in September 2025⁶⁴, which is before any home will be occupied at the proposed development. Of course, the relevant condition provides for a community use agreement in respect of the secondary school's indoor and outdoor sports facilities, school hall, drama studio, classroom space, dance studio, car parking, all of which would be available at the secondary school pursuant to that condition⁶⁵. Such community use of facilities is entirely common⁶⁶. As noted above, a negative condition has been offered for the provision of a food store at the District Centre, reserved matters for which having already been submitted.
55. The layout of the residential development is designed to promote walking and cycling, thereby integrating the site with the neighbouring consented sustainable urban extension at Chilmington Green. This will encompass both existing Public Rights of Way routes as well as proposed walking and cycling infrastructure. ABC's concern appears fixated on a distance of 800m, apparently on the basis that this distance is some sort of 'cut off' for sustainability, despite it not being an upper limit in any policy or guidance⁶⁷.
56. What really matters as well as (and often even more than) distance, are a multitude of interacting factors such as usability, surfacing, lighting, safety, segregation, ease of use, access, interactions with traffic, gradient⁶⁸. Here, the routes proposed would be usable and are highly likely to be used.
57. The Inspector is invited to take a step back and look at this site's sustainability credentials in the round. In doing so, the Inspector will note that the site will be

⁶⁴ XX Tomlinson. To the extent that Adams suggested otherwise on behalf of KCC, even he acknowledged that it would be provided by or before 2027 (XX Adams).

⁶⁵ [CD14-1] Reserved Matters decision notice, condition 24; XX Tomlinson.

⁶⁶ XX Tomlinson.

⁶⁷ Manual for streets [CD9-10], para 4.4.1 – the walkable neighbourhood, what MfS tells us – typically within 10mins (800m) – see full quote – “however, not an upper limit...”; as agreed XX Tomlinson. The same is also true of the other references to typical catchments of around 800m or 10 minutes' walk: see Planning for walking [CD9-11], para 6.3, which is to be read in its full context.

⁶⁸ XX Dix; XiC Collins.

very close to a primary and secondary school, with a range of appropriate facilities within an easy walk of under or around 2km. The Appellant is offering to provide routes that people would feel comfortable in using – they will be easy to use, of appropriate widths and attractive. Any challenges associated with access along or adjacent to construction sites or parcels are nothing out of the ordinary and can very easily be addressed by erecting hoardings, signage and the usual measures implemented on a daily basis up and down the country.

58. The Appellant will provide the following infrastructure prior to first occupation of any dwellings in order to ensure the accessibility of existing facilities:
- a. Access Roundabout C;
 - b. Avenue from Access C Roundabout to Chilmington Green Road;
 - c. Formal pedestrian crossing across Chilmington Green Road;
 - d. Active Travel route between the formal pedestrian crossing across Chilmington Green Road and Secondary School;
 - e. Footway and cycleway links from Parcel B, C, J and K at Chilmington Green to Singleton.
59. Draft Condition 9 also includes the Avenue from Access A roundabout to Chilmington Green Road.
60. Negative conditions have been agreed for pedestrian and cycle routes, with bus stops to be provided on site⁶⁹.
61. The Appellant has proposed a proportionate level of bus service provision, both in terms of number and frequency⁷⁰, along with provision of the associated bus stops. The proposed new bus service provision will benefit not only residents within the site and Chilmington Green, but also extend to the wider community within Ashford⁷¹.

⁶⁹ Thus, the concern expressed at Tomlinson, Proof, para 5.10 that bus stops would only be provided on the A28 has been superseded: see XX Tomlinson.

⁷⁰ Every 30 minutes during peak hours and every hour during non-peak hours.

⁷¹ XX Dix.

62. It is understood that KCC simply wants a more frequent service to be provided throughout the day⁷², but this is when demand for transport including travelling by bus is much lower. In this regard, we note the Inspector's concern in respect of ensuring that any bus service is proportionate to the level of demand early in the development. To ensure the best use of funds, monitoring of the bus service can be included as part of any approved Travel Plan⁷³.
63. Against that backcloth, it was telling that – despite repeated opportunities to do so – Ms Tomlinson was unable to identify any additional provision required as part of this appeal proposal in order to make it sustainable⁷⁴. Her evidence was not that this site is unsustainable unless or until a particular further element is provided⁷⁵. Not once has she identified any particular additional elements that are required to make the proposed development sustainable, let alone saying why it is unsustainable if those are not provided⁷⁶ - her only remaining concern appears to be distance to those facilities, but even that concern was not properly articulated in her evidence, where she discusses distances to existing amenities, but does not say that facilities will be provided, but are just too far away⁷⁷.
64. Of compliance with Policy HOU5 in these regards, it is clear that: i) sub-paragraph a)⁷⁸ is met given that the proposed development is proportionate to the size of Ashford, the level of provision that will be available and the site's proximity to Chilmington Green as a sustainable urban extension; ii) sub-paragraphs b)⁷⁹ and

⁷² Every 30 minutes.

⁷³ XiC and XX Dix.

⁷⁴ XX Tomlinson.

⁷⁵ Tomlinson, Rebuttal, section 3.

⁷⁶ XX Tomlinson.

⁷⁷ See, for example, Tomlinson, Proof, paras 5.7 and 5.8; XX Tomlinson.

⁷⁸ i.e. that the scale of development proposed is proportionate to the size of the settlement and the level, type and quality of day to day service provision currently available and commensurate with the ability of those services to absorb the level of development in combination with any planned allocations in this Local Plan and committed development in liaison with service providers.

⁷⁹ i.e. that the site is within easy walking distance of basic day to day services in the nearest settlement, and/or has access to sustainable methods of transport to access a range of services.

c)⁸⁰ are met looking at what will be the position when the proposed development is occupied. Again, the only appropriate conclusion is that the policy is fully complied with.

65. Overall, taking ABC's case on sustainability at its highest, they are not suggesting that there are other facilities that should be secured, but the two remaining points that Ms Tomlinson relied upon were effectively the walking distance 800m point and what she had to say about the degree of likelihood of things happening. In reality, Ms Tomlinson's approach is again to say 'the answer's no, but what's the question?' That is not a robust evidential basis to refuse permission.

Reason 3

In the absence of a comprehensive and robust assessment of the impact of the development on the strategic and local highway network and highway safety, the applicant has failed to demonstrate that the development would not have a severe impact on the highway network and/or an unacceptable impact on highway safety, and/or a requirement to contribute to the repayment of forward-funding secured and used by the Council to provide highway capacity at Drovers roundabout and/or M20 Junction 9.

The issue

66. The matter in dispute is whether the development would have a severe impact on the highway network and/or an unacceptable impact on highway safety. Properly understood, it goes to the required conditions or planning obligations, rather than as a reason for refusal.

67. It is agreed that to the extent there is an existing capacity problem at the three key junctions on the A28, such issues are a matter for KCC to address as local highways authority⁸¹.

68. There are essentially four remaining, material, points of dispute between Mr Hogben and Mr Dix:

- a. What level of traffic will be generated by the proposed development and where it is likely to go;

⁸⁰ i.e. that the development is located where it is possible to maximise the use of public transport, cycling and walking to access services.

⁸¹ XX Hogben.

- b. The extent of any existing issues along the A28 corridor;
- c. The extent of any impacts arising from the proposed development; and
- d. Whether there are a range of solutions that could satisfactorily mitigate those impacts or whether, as is KCC's case, those impacts can only be mitigated by its preferred A28 dualling scheme.

Modelling

69. It is unusual to reach the end an Inquiry with such a limited extent of agreement on traffic and transport modelling.

70. Of that agreement, we note that:

- a. The trip rates from TRICS are agreed. Two sets of trip rates were used, with the higher rate in Mr Dix's sensitivity test⁸², and the lower rate in Mr Dix's main model and KCC's modelling.
- b. The NTS 2019 is the same as NTS 2015-2019 and both are an average. Both experts used this data.
- c. So far as the education / escort issue is concerned, Mr Dix has now adopted Mr Hogben's figures, which are within his sensitivity modelling outcomes⁸³.
- d. The internalisation assumptions are agreed: 65% education, 33% food, 25% non-food, 25% personal, 33% leisure⁸⁴.

71. With that agreement in mind, we make a number of observations.

⁸² Dix, Rebuttal, IDR5.1 and 5.2, which shows sensitivity modelling with higher TRICS figure, described in XX Dix as the upper range and a reasonably robust case.

⁸³ XiC and XX Dix. By comparing the traffic movements at Matalan roundabout in AM and PM peak, his sensitivity test – 141 movements associated with Possingham in AM, 164 in the PM. Those figures would now be 123 and 145 respectively.

⁸⁴ Hogben, Proof, para 7.2.

72. Modelling generally. Although transport modelling can be helpful, it is only as good as the inputs provided. Those inputs are reliant on a series of professional judgements, which are then tested by attempts to validate the model. In a case such as this, it is inevitable that a great deal will turn on the perceived credibility of each expert witness and their modelling and therefore necessarily also the reliability of their evidence.
73. Changes in modelling. There is a dramatic difference between Mr Hogben's modelling outputs – compare and contrast the results reported in his Proof⁸⁵, with those reported in his Rebuttal⁸⁶. It appears that KCC's original modelling had assumed that Chilmington Green would be built out beyond 400, to 2,426 dwellings⁸⁷, along with 1000 dwellings at Court Lodge; whereas changes were made to the C&A modelling and then reported in Mr Hogben's Rebuttal⁸⁸. Thus, despite Mr Hogben alleging “*errors in the Appellant's approach*” – of not constraining Chilmington Green to 400 dwellings – he had, in fact, taken precisely the same approach in his Proof. By the same token, KCC's opening submissions criticised the Appellant for modelling Chilmington Green growth without the A28 dualling scheme⁸⁹, but that is precisely what Mr Hogben had done in his Proof.
74. As with all of these things, a model is only as reliable as its underlying assumptions and the associated inputs. There are multiple other changes in the C&A modelling that result in the differences reported by Mr Hogben in his Proof and then Rebuttal; for example TEMPRO, the effect of which is not clear.
75. Transparency. Linked to the above point is the need for transparency. However, swathes of Mr Hogben's evidence relies on material that is not properly capable of being interrogated and is, therefore, of questionable evidential value: see, for example, Hogben, Proof, para 12.20 onwards and Tables, 8, 9 and 10, all derived from various bits of spreadsheets linked to other spreadsheets. It still remains

⁸⁵ For example, Hogben, Proof, Table 3 Matalan roundabout.

⁸⁶ For example, Hogben, Rebuttal, Table 8.

⁸⁷ Hogben, Proof, para 12.2.

⁸⁸ Hogben, Rebuttal, para 1.1, in respect of which he had “assumed TEMPRO growth”, rather than any particular figure for Court Lodge.

⁸⁹ KCC Opening, para 6, 42a.

unclear as to whether Court Lodge is assumed to be delivering and at what pace in Mr Hogben's Rebuttal modelling, save that it is said to have assumed "*TEMPRO growth*", but without any clarity as to the effect on the associated flows along the A28. Nor is it possible to interrogate his manual inputting of intercept values, which have the effect of making it less likely that vehicles will enter the roundabouts and, therefore, increase the queueing shown by his modelling⁹⁰.

76. There are other examples of Mr Hogben presenting his evidence in a selective fashion; for example, providing a swathe of google journey search material, but failing to bring to the Inspector's attention the fact that carrying out a similar exercise for Tank roundabout would suggest that there is not much of an issue at all at that location⁹¹, thus demonstrating the clear limitations of his approach. The most that any of the google material suggests is that there are a variety of routes, and whichever one may turn out to be the quickest will depend on how traffic and congestion functions on a particular day at any particular time.

77. Peak traffic growth. Mr Hogben's assertions are to be viewed in the context of: i) evidence of peak period, two-way traffic having fallen since 2004 in the AM peak (down 2.63%) and a small increase in the PM peak (2.27%)⁹², which indicates that the junctions are at capacity and cannot accommodate additional traffic; and ii) daily flow figures⁹³ also show minimal growth since 2004 (and 2004 was higher than 2005, 2006), even with the initial Chilmington Green development. On those bases, Mr Hogben's use of higher growth figures are not appropriate (or properly justified) and in addition, that Mr Dix's reliance on the flat profile is more reliable given his calibrated and validated modelling (and, at a higher level, for the simple reason that if the two junctions are at or close to capacity then there is no space for a peak within a peak).

78. Internalisation. As noted above, the assumptions are agreed. However, Mr Hogben stated concerns about whether those assumptions are robust given his concerns about the provision of services and facilities within Chilmington Green.

⁹⁰ XX Hogben.

⁹¹ See, for example, [ID.23] – zoomed out view.

⁹² Dix, Table ID7.2.

⁹³ Hogben, Rebuttal, para 1.10, Table 7.

This is not agreed⁹⁴. In any event, it was a straw man given that Mr Hogben's own evidence is that: i) the majority of non-food retail and personal business are not internalised even with services in Chilmington Green; ii) he assumes 2/3 of food retail trips are not to the supermarket at Chilmington Green but are instead external; and iii) those are a small part of the AM peak hour traffic anyway.

79. Trip assignment. A considerable amount of time was taken up with google journey planning data – some print outs relied upon by Mr Hogben supposedly in support of his trip assignment assumptions⁹⁵ and others submitted by the Appellant to demonstrate the risks associated with Mr Hogben's approach and assumptions⁹⁶.

80. Ultimately, much will turn on the Inspector's judgment in these regards, but – to take just one example - it is obviously unreasonable for Mr Hogben to assume that all traffic heading towards the town centre goes on the A28 to and from Ashford. The reality is, of course, that drivers will exercise choices, particularly when they are making their choices in the knowledge of patterns of congestion and alternative routes. Contrary to Mr Hogben's assertion⁹⁷, not everyone is reliant on google maps for each and every one of their journeys.

81. And of course, even if drivers are permanently tied to google maps (which, when taking familiar routes, common sense says they are not), it is notable that there are still choices generated by the google journey searches. Take Mr Hogben's Image 3⁹⁸, which shows three options at 07.55hrs, with two to the east via Chilmington Green. Of those alternatives, it was a significant overstatement for Mr Hogben to describe his preferred route as "*clearly quicker and clearly shorter*"⁹⁹, given that the comparison (for that particular search criteria on that particular day / time) was

⁹⁴ XX Dix: "I think the internalisation factors are justified by what is there and required to be there".

⁹⁵ In his Proof and Rebuttal, as well as [ID.25] Google map searches at 08.15hrs.

⁹⁶ [ID.22] Journey times at 08.15hrs, various routes starting at 08.15hrs; [ID.23] Tank roundabout printed in ¼ hour intervals, with zoom in; [ID.24] Wider scale of typical traffic, at ¼ hour intervals.

⁹⁷ XX Hogben.

⁹⁸ Hogben, Rebuttal, Image 3.

⁹⁹ XiC Hogben.

between his route at 10-18 minutes and the alternatives at 12-20 minutes. Much the same is also true of the various google searches for journeys at 08.15hrs¹⁰⁰. Of course, traffic on A28 might take the Victoria Way route (Brookfield Road, Leacon Road, Victoria Road) from Matalan Roundabout. Or earlier, Tithe Barn Lane.

82. The short point is that, when leaving the appeal site, a driver will have to choose whether to go onto the A28 – if using the main access, onto Chilmington Green Road, and then left to A28, right and then north east on Mock Lane or down Chilmington Green Road and up via south east. If a driver believes that the A28 is or is likely to be congested, then they may well come off the A28 earlier to take another route. However, Mr Hogben’s analysis fails entirely to account for those route choices. His modelling is unreliable as a result.
83. Link capacity and the cause of the problem. There are also a number of problems with Mr Hogben’s ‘link capacity’ theory.
84. First, the Bridge is not ‘humpbacked’ and, as the Inspector will have seen, the road is wide enough for vehicles to pass without remotely needing to slow. The google images – take [ID.9] as an example – show traffic slowing opposite Brunswick Road, long after the traffic has passed over the bridge. The 08.15hrs and 08.30hrs images show traffic slowing between Brunswick Road and Loudon Way. These images support Mr Dix’s ‘ripple effect theory’ from the traffic signals, in combination with vehicles trying to move into right turn lane at Brunswick Road. If the bridge and road widths were the problem, then northbound traffic would slow before the bridge and resume speed limit afterwards. But that is not what Mr Hogben’s google images show and not what the Inspector will have seen.
85. Second, in an attempt to make good his ‘link capacity theory’, in XiC Mr Hogben relied on cancelled guidance¹⁰¹, although he then acknowledged that he did not rely on it “*in any of [his] written evidence*”. Quite what the Inspector is supposed to make of that is unclear.

¹⁰⁰ [ID.22]

¹⁰¹ [ID.20] – TA 79/99, Capacity of urban roads, Table 2.

86. Third, even in doing so, Mr Hogben derived his capacity figure of 1,100 by virtue of his obviously erroneous interpretation and use of that cancelled guidance; in particular, he used the figure for a UAP3 road, which is described as a variable standard road carrying mixed traffic with frontage access, side road, bus stops and at grade pedestrian crossings, 30 mph to 40mph, more than 2 side roads per km, frontage access, unrestricted parking, some at grade pedestrian crossings, buses at kerbside. As Mr Dix indicated, the correct approach (had the guidance still been extant) would have been to use the larger capacity figures derived from the UAP1 or UAP2 roads - the description of which more accurately reflects the relevant highway.
87. Fourth, if one were to properly undertake the same exercise using the current guidance¹⁰² (as Mr Dix described during XiC), then a maximum realistic flow for this stretch of A28 would, reflecting the % HGVs, be 1,650.
88. Finally, therefore, had Mr Hogben actually modelled the link constraints on traffic for this particular link, using the correct guidance, then it would not come up as a constraint. Using the figures from the 2023 surveys (northbound AM peak 1,088; PM peak 1,154), then the link is well within capacity.
89. Updated modelling re triggers¹⁰³. For all of the above reasons, the Appellant simply does not accept that the new material submitted by Mr Hogben takes matters any further. It is yet more product of his unreliable assumptions, inputs and modelling. It has not been tested by cross examination and cannot properly be interrogated. It can be afforded no material weight.

Proposed improvements

90. From the perspective of mitigating any highways impacts, it is agreed that there are existing issues along the A28 corridor, with the three key junctions operating at or around capacity. However, the extent of those issues, along with the extent of any impacts arising from the proposed development on the three key junctions is not agreed.

¹⁰² [ID.21] – DfT’s Tab Unit M3.1 GuidanceTag Manual, p.106, para E6.5.

¹⁰³ [ID.31-34].

91. Detailed analysis has been undertaken of those junctions.
92. The main existing issues identified by Mr Dix are at Matalan Roundabout with the northbound constraint being the Loudon Way junction and the “rippling” back of the queuing to Matalan Roundabout and southbound being the approach to Matalan Roundabout. This is why the Appellant is proposing improvements to those junctions¹⁰⁴.
93. The following mitigation measures are proposed by the Appellant:
- a. Matalan roundabout – improvements at the roundabout and at the Loudon Way traffic signals to increase capacity at the junction;
 - b. Loudon Way traffic signals – improvements at the junction to increase capacity at both the Matalan roundabout and the junction itself;
 - c. Tank roundabout – a contribution to improve the crossing to the south of Tank roundabout to increase the flow of traffic on the A28.
94. As a matter of logic, the Appellant’s proposed mitigation works improve the existing situation, summarised as follows:
- a. At Loudon Way, the improvements would allow forward movements in both lanes northbound, so as to enable northbound traffic to move faster, and so reduce exit slowing at Matalan roundabout.
 - b. At Matalan roundabout, the improvements would open out the northbound A28 exit and provide 2 lanes in the southbound A28 entrance.
 - c. At the pedestrian crossing to the south of Tank roundabout, the improvements would introduce kerbside detection and MOVA to enable the intelligent management of the crossing, reducing unnecessary red phases¹⁰⁵. By improving the crossing to the south, the exit blocking to the roundabout will be removed and will have benefits for all the approaches to the roundabout.

¹⁰⁴ XiC Dix.

¹⁰⁵ Dix provided further information on the use of the crossing in response to the Inspector’s request.

95. Mr Hogben himself acknowledged that individual elements of the proposed mitigation works would add capacity. Take Loudon Way northbound for example, where the proposal is to alter the junction so that traffic going ahead can be in the left hand lane and to adjust the exit so as to enable more free flowing northbound traffic. Mr Hogben acknowledged that this would provide “*a bit more stacking capacity in the form of a lane*”, which “*might allow traffic to flow more freely during the peak hours*”¹⁰⁶. Likewise, he accepted that one benefit of speeding up northbound traffic is that it will help traffic get past Brunswick Road junction, with the benefit of making the turn in better, potentially alleviating the problem that he had identified on the google journey material of people waiting to turn right¹⁰⁷.
96. Standing back, therefore, the Inspector was correct to describe Mr Hogben’s modelling output¹⁰⁸ in respect of the mitigation works as “*counter-intuitive*”. With respect, Mr Hogben ought to have recognised that his results indicate problems with his unreliable modelling, rather than a problem with the proposed mitigation works. The problem with his model being that he has used slope and intercept values that do not appropriately reflect the way that the junctions are operating presently or will operate in the future with the obvious benefit of the mitigation works.
97. It is also important to note that there are no highways safety concerns associated with the proposed mitigation works, which have been audited, with any minor recommendations adopted. Mr Hogben’s concern about the safety of the pedestrian crossing movements at the Matalan roundabout was neither shared by Mr Dix, nor reflective of reality, given the good levels of visibility in all directions. An independent Road Safety Audit has been undertaken of the proposed mitigation by two ROSPA accredited Road Safety Auditors and no safety issue was raised with the proposed crossing¹⁰⁹.

¹⁰⁶ XX Hogben.

¹⁰⁷ XX Hogben.

¹⁰⁸ For example, Hogben, Rebuttal, Table 8.

¹⁰⁹ XX Dix.

Summary

98. The evidence of Mr Dix demonstrates that:

- a. The appeal proposal is consistent with national and local transport related policies.
- b. The site is in a location that will be highly accessible for all modes of transport. There are a range of local facilities within reasonable walking and cycling distance of the site, including primary and secondary schools and the local centre in Chilmington Green¹¹⁰. The proposed bus services will provide connections to facilities further afield, including the train station. There will be genuine alternatives to travelling by car.
- c. A package of transport related measures has been identified and is offered by the Appellant in order to further improve the accessibility of the site. All of the identified local facilities and the links and services to them are either in place or will be in place at an early stage of development¹¹¹.
- d. The proposed site accesses would safely accommodate traffic associated with the proposal.
- e. With the benefit of conditions and the Appellant's proposed mitigation measures (including in respect of the A28 to the north of the site¹¹²), the proposal would not give rise to any severe highway or transport impacts (including residual cumulative impacts).

99. The appeal should not be refused on transport grounds.

¹¹⁰ Dix, Table ID4.3 provides a summary of local facilities and when they will be in place. Dix, Table IDR2.1 provides a summary of the facilities identified by Mr Hogben for KCC and when the facilities and associated links will be provided.

¹¹¹ Dix, Rebuttal, para 2.9.

¹¹² In this regard, Mr Dix's assessment of the implications of traffic associated with the Appeal Scheme shows that it is the committed developments that create the future issues on the A28. The implications of the Appeal Scheme would be mitigated by the Appellant's proposed improvements.

D. THIRD PARTY OBJECTIONS

100. Other objections and concerns raised by Third Parties¹¹³ are addressed in the Appellant's evidence by reference to the various themes.

101. In the course of the appeal, a Heritage Briefing Note was submitted on behalf of Mrs Cleaves at Possingham Farm (the "**Tor&Co Briefing Note**"). Mr Davis spoke to the Tor&Co Briefing Note on Day 1. Crucially, the Tor&Co Briefing Note agrees with the assessments conducted on behalf of the Appellant and ABC that the harm to the setting of the listed Possingham Farmhouse would be 'less than substantial', but asserts that such harm should be assessed as 'moderate', rather than 'very low'¹¹⁴ or 'low'¹¹⁵. However, in reaching that conclusion, the Appellant considers that the experiential relationship between the Site and the listed building is overstated, and by extension the contribution of the Appeal Site to the significance of the building is overstated¹¹⁶.

102. Further to the above, Mr Davis also accepted that his client had no objection to the principle of development, but was commenting on a perceived departure from Chilmington Green AAP. Therefore, much like Ms Tomlinson's evidence, both Mr Davis and Cllr Langford fell into the trap of conflating 'difference' with 'harm', with Cllr Langford also apparently against the principle of development generally ("*...we don't need to extend Ashford further*"), and also still frustrated by the recent grant of permission for the WwTW on appeal. Neither are proper reasons to object to the proposed development in light of ABC's housing supply position and the Inspector's comments (and partial award of costs to the Appellant) in respect of the WwTW appeal.

103. Although concerns about a new development are always understandable because of the effect of change, none of the concerns raised are justifiable grounds

¹¹³ A total of 52 letters were received in response to the application and further representations in response to the Appeal. On Day 1 of the Inquiry, the Inspector heard from Mr Davis on behalf of Possingham Farmhouse and Cllr Langford, Ward Member for the appeal site.

¹¹⁴ As per the Appellant.

¹¹⁵ As per ABC.

¹¹⁶ RPS Built Heritage Technical Note (dated 23 September 2024).

for refusing consent for this appeal proposal because they are – in very large part – not endorsed by the consultation responses and have all been dealt with in great detail by the application documents and the Appellant’s evidence, which show that the concerns are simply not made out.

E. PLANNING BALANCE AND OVERALL COMPLIANCE WITH THE DEVELOPMENT PLAN

104. The proposed development will bring the important planning benefits identified by Mr Collins with reference to the NPPF and the Development Plan¹¹⁷, including:

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

105. These benefits are individually and cumulatively substantial. They collectively indicate and reinforce the justification for granting planning permission.

106. Of those benefits, it is also relevant to note that Ms Tomlinson agreed with the weight that Mr Collins afforded to i) housing land supply; ii) provision of

¹¹⁷ Collins, Proof, Table 3.1 and Section 15.

affordable housing; iii) the custom build; iv) contribution to local economy; and v) the delivery of new homes bonus monies¹¹⁸. Her disagreement was limited to a disagreement as to weight with regards to the other factors, but importantly on a couple of issues, was also based on her prior understanding as to i) the provision of open space and play facilities¹¹⁹; ii) concerns about a bus service, footway and cycleway (which were said to be uncertain for dubious reasons); and iii) a concern about delivery re spatial strategy (again, an erroneous point about ‘difference’ equating to ‘harm’). Moreover, by applying ‘no material weight’ to what she described as an “*enabling argument*” in respect of Chilmington Green facilities or the WwTW, Ms Tomlinson ignored what is blindingly obvious; namely, that the WwTW is an unexpected, and considerable capital expense, which capital receipts from the proposed development can contribute towards. That is not a viability argument; it is just common sense¹²⁰.

107. For the reasons given above, the Appellant’s case is that the proposed development complies fully with the development plan, which is up-to-date. There is no conflict with any policy in the development plan.

108. However, as Mr Collins explained in XiC, even if there is merit in any of ABC’s concerns considered above (which is rejected), it is clear that the proposal complies with the development plan when taken as a whole. There is no evidence of Ms Tomlinson having given proper weight to the plethora of policies in the development plan which are not breached and/or positively support the proposal. This approach is contrary to the requirement under s.38(6) to consider the development plan as a whole and reach a judgment.

109. Even taking ABC’s (unfounded) concerns about design, scale, landscape and open space provision at their highest, the development plan when taken overall is clearly directing permission to be granted. The proposal will deliver essential homes in what will be – at the time of occupation – a sustainable location, where there is no dispute that the site-specific design principles in the Development Plan

¹¹⁸ XiC Tomlinson.

¹¹⁹ Which she later accepted in XX.

¹²⁰ XX Collins.

are complied with, there is less than substantial heritage harm that is outweighed by the public benefits (as part of the heritage balance), no residential amenity harm (whether to occupiers or neighbours), and important sustainable infrastructure will be provided and/or funded.

110. In any event, given ABC's lack of a five-year housing land supply, the 'tilted balance' applies, and permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

111. On a fair and objective planning balance, therefore, the proposed development should receive planning permission.

F. CONDITIONS

112. As was evident at the roundtable, there is limited remaining dispute over what is largely now an agreed set of conditions.

113. The Appellant's key concern relates to the imposition of any condition that would restrict occupation that is linked to the delivery of the A28 dualling scheme. First, on Mr Dix's evidence, no such restriction is justified. Second, to the extent that Mr Hogben's evidence might suggest otherwise, it is unreliable and to some extent untested - see above. Third, placing such a restriction on any permission granted in respect of Possingham Farm will have the practical effect of preventing the developer from i) securing funding (because of the uncertainty that would arise as a result of KCC effectively being in control of when those A28 dualling works may or may not ever actually be completed); ii) generating capital receipts to put towards delivery of the essential WwTW, which is absolutely central to unlocking this, and the Chilmington Green, site.

114. KCC's approach is in effect to say 'not one house more'. That is unattractive and unnecessary.

115. The question is the effect of Possingham Farm on the A28 without A28 dualling and what, if anything, is needed to mitigate it. It is common ground that if the A28

dualling takes place then there is no problem. Presently the three junctions are at capacity, with limited Chilmington Green development.

116. How much development has taken place at Chilmington Green by the forecast year (beyond that needed by condition) does not alter the traffic generation from Possingham Farm to any significant degree.
117. Ultimately, another Planning Inspector will have to decide whether the requirement for a bond before 400 houses at Chilmington Green can be dispensed with. If it cannot, then the KCC concerns do not arise. If it can be, then their concerns are unfounded.
118. The Inspector does not have to put in place a restriction on Possingham Farm based upon a possible outcome of the s.106B which that Inspector will have found acceptable.
119. As an aside, the social infrastructure at Chilmington Green that is relied on by the Appellant for the purposes of ensuring Possingham Farm's sustainability (e.g. food store, primary school, secondary school, etc), does not include or rely on any further housing at that site.

G. SECTION 106 CONTRIBUTIONS

The statutory tests

120. Planning obligations may only constitute a reason for granting planning permission if they meet the following statutory tests¹²¹. They must be:
 - a. Necessary to make the development acceptable in planning terms;
 - b. Directly related to the development; and
 - c. Fairly and reasonably related in scale and kind to the development.

¹²¹ CIL Regulations, Reg 122; NPPF, para 57.

Section 106

121. The draft s.106 agreement contains a number of 'blue pencil' clauses, which are included in the alternative – depending on which parties' evidence the Inspector prefers on any outstanding point.

Matters in dispute

122. By reference to the draft s.106 agreement, those clauses where the drafting is agreed, but there are discrete points of evidence as to whether the particular obligation is in fact required and/or justified are as follows:

- a. Schedule 1 (paragraphs 2.9-2.14 only) - Quality Monitoring Fee
- b. Schedule 6 - Art and Creative and Creative Industries Contribution
- c. Schedule 8 - Community Building Contribution
- d. Schedule 10 - Health
- e. Schedule 12 - Indoor Sport Contribution
- f. Schedule 13 - Libraries Contribution
- g. Schedule 14 - Outdoor Sports Contribution
- h. Schedule 16 – Secondary School Contribution
- i. Schedule 19 – Bus service
- j. Schedule 20 – Management
- k. Schedule 21 (paras 3.3, 3.4 and 3.5) – Nutrient Neutrality
- l. Schedule 22 - Strategic Parks Contribution
- m. Schedule 23 – Part 1 RIF; Part 2 A28
- n. Schedule 26 - Waste Disposal Contribution

123. Part of the Appellant's case in respect of a number of the outstanding points is that the Councils are not justified in seeking such contributions in respect of the proposed development if the same or similar contributions have not been sought in respect of comparable developments elsewhere in the area that are likely to have the same or similar impacts. The Appellant's evidence cited a number of examples where this appears to be the case, including with reference to similar developments at Court Lodge and Kingsnorth.

Nutrient neutrality

124. The proposed development will not have an adverse impact on the integrity of the Stodmarsh SAC, SPA, SSSI and Ramsar Site alone or in combination with other plans or projects.
125. The site is located outside the Stodmarsh hydrological catchment. There is no pathway for nutrients in surface water to impact Stodmarsh.
126. The foul drainage strategy and nutrient neutrality mitigation for the proposed development is for wastewater to be conveyed to a WwTW for treatment before discharge into the River Beult catchment, thereby avoiding entirely the River Stour catchment.
127. Mr Carter accepts on behalf of ABC that *“the offsite WwTP, if granted planning permission, is capable of resolving this reason for refusal, subject to the imposition of a suitable mechanism to tie the WwTP to the appeal scheme”*¹²².
128. The WwTW appeal was allowed on 19 September 2024.
129. The WwTW would be operated and maintained by Severn Trent Connect (“STC”), which has confirmed *inter alia* that i) it will be the long-term operator of the WwTW in its capacity of a statutory sewerage undertaker, legally responsible for compliance with the requirements of the Environment Agency permit; ii) the parameters stated on the environmental permit application¹²³ are sufficient for processing the foul flows from at least 2,700 dwellings; iii) based on its considerable experience, STC is satisfied that the monitoring data does not provide any basis for an environmental permit to be refused; iv) the WwTW will be able to satisfactorily meet the necessary standards for an environmental permit; and v) there are no obvious reasons why the EA would refuse to grant the environmental permit.

¹²² Carter, Proof, para 6.2.

¹²³ Submitted to the EA on 29 July 2024, acknowledged by the EA on 7 August 2024.

130. It is again instructive to note how the Inspector responded to ABC's concerns as to whether a permit would be granted, when allowing the WwTW appeal, including as follows:

- “26. *The EA are the regulatory body responsible for ensuring that discharges into ground and surface water do not harm water quality. Their licensing process will require assessment of existing and potential future flows as well as assessment of the quality and volume of discharge entering a water body. It is not possible, as part of the application or this appeal, to confirm that a licence will be issued. That decision lies with the EA, although I note that the EA, as a statutory consultee, did not indicate that a licence was likely to be withheld, or that planning permission should not be granted.*
27. *The WwTP could not operate lawfully without the appropriate Environmental Permit. Whilst planning guidance sets out that wherever possible, parallel processing of other consents should be encouraged to help speed up the process and resolve any issues as early as possible, it does not require that other consents are in place before planning permission is granted. Neither is it necessary to be certain that such consents will be granted before a planning application is determined.*
28. *If the EA considered that discharge to the catchment would impact water quality and so cause environmental harm, the Environmental Permit would not be issued and the WwTP would not be able to be brought into operation. I have no evidence to suggest that the operator would operate without or outside of such a permit, but if they did, the fact that a planning permission has been granted is not a legitimate defence where an environmental offence has been committed.”*

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

132. In this regard, and in any event, the evidence of Mr Laister demonstrates that:

- a. The principle of the nutrient mitigation strategy for the proposed development is agreed; namely, the use of a new WwTW.
- b. The (now consented) WwTW has been designed with a capacity of 2,700 homes, including the proposed development.
- c. In accordance with the advice published by NE, the NNAMS demonstrates that the development can achieve Nutrient Neutrality on site and the development will not have a significant adverse effect on Stodmarsh¹²⁴.

¹²⁴ Laister, Proof, para 6.1.

133. To the extent that it is possible to discern any remaining dispute relating to nutrient neutrality¹²⁵, this appears to be limited to three 'blue pencil' clauses in Schedule 21 to the draft s.106, which (at the time of writing) provide as follows:

- “3.3 Not to Occupy or permit Occupation of any Dwelling on the Development unless the Transfer has been effected and where appropriate fully registered
- 3.4 To notify the Council within 20 Working Days of any Transfer of the WWTP including details of the terms of the Transfer full contact details for the Undertaker and any other matter as may be required by the Council
- 3.5 Until such time as the Transfer contemplated by paragraph 3.3 above has been completed and where appropriate clean title is available at HM Land Registry showing the registered ownership has transferred to the Undertaker to fully maintain manage and carry out any repairs and remedial work to the WWTP to ensure its continued full operation”

134. “Transfer” is defined in the draft s.106 as:

*“either
the transfer of the freehold proprietorship or
the grant of a leasehold of 999 years in duration or
the grant of sufficient rights licences and / or easements necessary of the land for the WWTP (including any adjoining land) for the purposes of ongoing maintenance of the WWTP and its associated pipework by the Owner to an Undertaker and which shall clearly define the extent of the pipework from the Development and feeding the WWTP which shall become the responsibility of the Undertaker after the completion of the transfer”*

135. The Appellant considers that the terms of any transfer are a matter for the developer to settle with the NAV operator (i.e. in this case, STC). ABC’s argument in support of para 3.3 appear to be that unless the Owner is required to enter into a transfer with the NAV operator in the terms specified there is insufficient certainty that the mitigation will be properly secured. This ignores the fact that:

- a. The Appellant has agreed to a condition being attached to any planning permission which will prohibit occupation of any dwelling unless and until the WWTP is operational;
- b. Only a NAV operator approved by OFWAT may operate the WWTP (it is not possible for a private company to operate the WwTW as the Environment Agency would not grant the necessary discharge permit to a private company);
- c. The NAV operator will have a statutory duty to manage and maintain the plant; and

¹²⁵ [ID.28].

- d. The NAV operator can be relied upon to ensure that it will be able to comply with its statutory duties before commencing operation of the WWTP.
136. Paragraph 3.3 is not needed to ensure that the mitigation proposed is certain. It does not therefore meet Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) as it is not *“necessary to make the development acceptable in planning terms”*.
137. Paragraph 3.4 is not necessary (and is also contrary to Regulation 122) as the requirement to give notice with details of the transfer to the Council does not assist in securing the mitigation. In addition, the requirement to provide details of *“any other matter as may be required by the Council”* is too vague to be reasonable.
138. Paragraph 3.5 requires the Owner *“to fully maintain manage and carry out any repairs and remedial work to the WWTP to ensure its continued full operation”* until the transfer contemplated by paragraph 3.3 above has been completed and where appropriate clean title is available at HM Land Registry.
139. This obligation would appear to have the effect of requiring either (1) that the Owner continues to manage and maintain the WWTP after the NAV Operator has started to operate it; or (2) the WWTP does not become operational (and therefore no dwellings can be occupied) until the transfer has been registered at the Land Registry. Option (1) would be unlawful as once the WWTP becomes operational, only the NAV Operator may manage and maintain it and it has a statutory duty to do so. Option (2) is unreasonable and unnecessary. There have been very substantial delays in getting transfers registered at the Land Registry and it could take a year or longer for registration to be completed. There is no reason why a NAV operator should not be able to commence operation of the WWTP once it has been constructed and in advance of any transfer being registered as its statutory responsibilities to manage and maintain are not contingent on completion of any process at the Land Registry.

140. The Council refers to an appeal decision¹²⁶ in support of its argument that the above matters must be secured by condition, rather than in a s106. The Inspector in that appeal decided that he could not accept a Grampian condition to secure payment of a SANG contribution as habitat mitigation because the SANG in that case had not yet received planning permission. The mitigation was not therefore sufficiently certain. The outcome in that appeal would still therefore have been the same if the developer had offered the contribution in a s106.

Education

141. With regards to education contributions, the sole remaining matter in dispute is the requirement for Secondary School planning obligations. The difference between the respective experts is essentially summarised in two spreadsheets: [ID.17] and [CD12/7]. The dispute centres around forecast pupil numbers vs anticipated capacity.

142. Despite never having been aired before¹²⁷, Mr Adams attempted to bring in a further complaint about whether the Chilmington Green secondary school would be available to service the needs of residents at Possingham because of some apparent issue about services being provided in time¹²⁸. Not only was that an entirely new point raise in XiC by reference to documents not before the Inquiry, but – viewed properly – it went nowhere. It was flatly contradicted by ABC’s case and Ms Tomlinson’s evidence, which is that the school will be provided and open long before this development begins to deliver children. Even on Mr Adams’ own evidence¹²⁹, he did not “*deem it material in terms of calculating whether Possingham should / should not make a contribution*” and the Inspector can be “*satisfied that the secondary school will be open*”¹³⁰.

¹²⁶ [CD8-4] Aston Clinton appeal decision.

¹²⁷ For example, in KCC’s Statement of Case or in Mr Adams’ Proof.

¹²⁸ XiC Adams.

¹²⁹ During XX Adams, he suggested that it would take around 3 years for the proposed development to produce pupils, which would put it around later 2027/28. Thus, as he accepted, whatever the dispute is about services and roads around the secondary school, it will be resolved and school open and operational by 2027.

¹³⁰ XX Adams.

143. It is agreed that the proposed development is likely to accommodate 86 Secondary School aged pupils when fully built out, but it does not follow that solely because school aged children will live on the new development that a contribution to education is required. The question is whether the existing education landscape can accommodate this level of growth. In short, it depends where there would be a lack of capacity. It is necessary, therefore, to calculate capacity for future years, which is affected by birth rate, population movements and can change year by year.
144. It also depends on whether any short-term capacity issue can be accommodated by other measures; for example, temporarily larger school rolls, bulge classes or temporary accommodation, rather than expensive capital expenditure on permanent infrastructure.
145. The Appellant and KCC's dispute with regards to whether Secondary School planning obligations are necessary to make the development acceptable in planning terms comes down to how the figures are represented.
146. KCC believes that it is appropriate for the full child yields of Chilmington Green and other developments to be applied to the current capacity numbers. Mr Adam's calculations assume the 847 pupils from the Chilmington Green development which does not have reserved matters approval were present from 2023-24¹³¹, which they obviously were not.
147. The Appellant believes that this is not a true representation of how children come forward on new developments, and that places will be available for the children of Possingham Farm when they are required, without the need to grow the area any further. Indeed, it appears to be agreed¹³² that the 847 would not actually come forward until much later – possibly decades into the future¹³³. In this regard, the Inspector can test the reality of Mr Adams' approach by looking at the forecast for 2025 / 26 and then looking at how much capacity there is, with an

¹³¹ [CD12-7] Appendix 1.

¹³² XX Adams.

¹³³ XX Hunter.

eye on demand. There simply are not 847 pupils adding to the roll or reducing the capacity of the schools at that point. Mr Adams' approach has the effect of artificially increasing demand and reducing capacity on the basis of an 'all or nothing' approach. At its highest, Mr Adams described his figures as showing "*the notional capacity we need to reserve financially... from an accounting perspective*"¹³⁴. His evidence about "*reserving capacity*" actually says nothing about real capacity, it simply suggests that anything from Chilmington Green is knocked out of the capacity figures, despite i) those 847 pupils only likely to be part of the demand on or near to the day that Chilmington Green is fully built out; and ii) Mr Adams having made no attempt to calculate the capacity when Chilmington Green is fully built out¹³⁵.

148. Likewise, Mr Adams' approach is to also assume that other new developments come forward in full in 2023-24, which adds a further 400 pupils into his figures, even though they were not. To take just one example from his list of new developments – the largest is 930 houses at Court Lodge, which would generate 188 pupils, but in relation to which outline planning application has yet to be determined¹³⁶. Therefore, Mr Adams' bottom line figures, which max out at a deficit of 1,357 in 2029-2030 are pure fantasy. They also assume that those places are not covered by basic need grant or planning obligations.

149. Therefore, KCC's approach is to add in the full child yield of Chilmington Green (which will not materialise for 20 plus years based on the current build out), the full child yield of developments without signed s.106 agreements (which may still be refused or will provide Secondary School planning obligations) and the full child yield of this site, which will come forward gradually as the development builds out. Mr Adams' attempts in oral evidence to give a figure for Chilmington

¹³⁴ XX Adams.

¹³⁵ XX Adams, in which he accepted that his forecast goes up to 2032/33, but that its not his evidence that CG will be built out in its entirety by then. When looking at capacity, therefore, his evidence does not tell the Inspector what the actual capacity or actual demand is in that period.

¹³⁶ With reference to [CD14-6] Housing Land Supply, [pdf 40], assumes 150 dwellings at Court Lodge by 2029, 100 dpa rate.

Green pupils at some point beyond the projections offered in his written evidence were unpersuasive and riddled with uncertainty.

150. In these key regards, the evidence of Mr Hunter¹³⁷ is to be preferred. It demonstrates that there are currently (2023/24 academic year) spare places in the two schools that directly serve the proposed development, which makes KCC's request for 100% of the child yield of the proposed development highly questionable. Beyond this, KCC has projections verified by the DfE that show 446 spare places across Non-Selective Ashford Secondary Schools by 2029/30, which includes the fully funded (by the Appellant) new school on Chilmington Green. 446 spare places is over five times the child yield of the proposed development. The headroom forecast in the planning area is substantial and considerably beyond any margin of error, and therefore the Inspector can have a very high confidence in this conclusion.

151. KCC's Commissioning Plan for Education 2024-2028 shows the Ashford Non-Selective Schools having 144 (almost five forms of entry) spare places in Year 7 by 2030/31. The proposed development is expected to generate 17 pupils in Year 7 when fully built out. This again demonstrates that KCC does not anticipate an issue in non-selective admissions schools that could serve this site, as the fully funded Chilmington Green School has added more than sufficient capacity to the area at a rate that exceeds the child yield of the proposed development.

152. On the basis of real-world projections, the request for planning obligations for additional provision are demonstrably excessive and not CIL Regulation compliant.

Community facilities, open space and sports

153. The Chilmington Green development includes considerable provision of community facilities, open space and sports facilities, including a temporary community facility that is already on site, but very underutilised. It is considered that this has capacity to accommodate the needs of the proposed development¹³⁸.

¹³⁷ Hunter, Summary, paras 3.1 – 3.6.

¹³⁸ Collins, Proof, para 13.2.19.

In due course, the Appellant will provide a permanent community hub as that development progresses.

154. As noted above, the secondary school would be provided in September 2025, with the relevant condition providing for a community use agreement in respect of the secondary school's indoor and outdoor sports facilities, school hall, drama studio, classroom space, dance studio, car parking.

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

Healthcare contribution

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

157. For a healthcare contribution to be required, it is necessary to show some sort of additional need that requires funding and also to have regard to the funding that NHS will receive for having those additional patients. However, the letter relied upon by ABC¹³⁹ simply does not do that – it merely says that there will be more patients and therefore we calculate a figure based on number of people. That is inadequate to justify a payment

158. Nor is there anything in the additional correspondence from the NHS commissioning group¹⁴⁰ that satisfies the relevant tests.

Bus service

¹³⁹ [CD1/9a] – folder with CIL compliance statement and appendices, Appendix 8 letter from NHS dated 27 April 2022.

¹⁴⁰ [ID.30].

159. The Appellant has proposed a proportionate level of bus service provision, both in terms of number and frequency¹⁴¹, along with provision of the associated bus stops.

RIF repayment contribution

160. It is understood that this is sought in relation to works at M20 J9 and Drivers roundabout, which were carried out in 2011. The remaining dispute is about the extent of the contribution.

161. The Appellant's alternative figure is calculated with reference to Mr Dix's evidence of trips at these junctions.

Highways and transportation

162. The key difference between the parties is whether, as is the Appellant's case, there are solutions that could satisfactorily mitigate the identified impacts or whether, as appears to be KCC's case, those impacts can only be mitigated by its preferred A28 dualling scheme. The Appellant's case is that the full A28 dualling scheme works are not required because the impacts of the proposed development can be mitigated by implementing alternative works.

163. Mr Dix's evidence and associated transport assessments demonstrate that, with the benefit of conditions and the Appellant's proposed mitigation measures (secured by the draft s.106 option, including in respect of the A28 to the north of the site¹⁴²), the proposal would not give rise to any severe highway or transport impacts (including residual cumulative impacts). Therefore, the appeal should not be refused on transport grounds.

164. There is no justification for seeking a contribution to the A28 dualling scheme from the proposed development in circumstances where other schemes with the

¹⁴¹ Every 30 minutes during peak hours and every hour during non-peak hours.

¹⁴² In this regard, Mr Dix's assessment of the implications of traffic associated with the Appeal Scheme shows that it is the committed developments that create the future issues on the A28. The implications of the Appeal Scheme would be mitigated by the Appellant's proposed improvements.

same or similar impacts on the A28 have not been required to make a proportional contribution. The example that has been discussed in evidence is the larger, 1,000 unit, Court Lodge scheme, which – on Mr Hogben’s forecasts¹⁴³ - will put 43% of its traffic along the A28 corridor yet in respect of which KCC was not seeking a financial contribution towards the A28 dualling scheme. Indeed, the first mention of Court Lodge being required to make any such contribution arose during Mr Hogben’s XiC and, as it transpires, has yet to even be discussed with that developer. Either way, Mr Hogben’s clear evidence was that in order to be CIL Regulation compliant, any contribution from this development would need to be consistent with and of a similar amount to the contribution that KCC will now be seeking from Court Lodge¹⁴⁴.

165. However, despite that evidence, KCC’s approach is still to i) require the proposed development to pay for existing problems (pausing there to reflect on Mr Stiff’s description of the A28 dualling scheme being pursued “*for the Appellant’s benefit*”, which is a statement starkly in contrast to the agreed evidence as to there being an existing issue); ii) to require the proposed development to pay for the Court Lodge impact; and iii) calculate that contribution as the entire difference between what is due from another development (Chilmington Green) and an, entirely unreliable, estimated cost. Such an approach is quite obviously not compliant with the CIL Regulations.

166. Further, and in any event, the Appellant does not accept that the figures provided by KCC in respect of its A28 dualling scheme are either accurate or properly evidence-based. To cite just a few examples of the uncertainty and lack of clarity with regards to those figures:

- a. The base figure is extraordinarily high in comparison with the anticipated or estimated highway construction costs. It is inflated by very high allowances for project risk (without any background information), design and ECI elements, as well as borrowing costs.
- b. The base figures are estimated or anticipated project costs, but have not been produced with reference to any tenders or background information.

¹⁴³ Hogben, Proof, Table 8.

¹⁴⁴ XX Hogben.

Those figures vary considerably and by amounts that far exceed increases in material, labour, plant and machinery costs¹⁴⁵;

- c. The amount allowed for 'Preliminaries' in each iteration of the spreadsheet is extremely high as a proportion of the overall construction costs;
- d. The 2018 figure fails to take into account £4,185,165 of expenditure by 30 April 2018, which is not to be indexed or borrowed¹⁴⁶. It has been paid for by LEP or by the Appellant.
- e. KCC's latest schedule (dated 10 October 2024, but sent on 14 October 2024) changes various figures (still inconsistently with the others).
- f. The 10 October 2024 schedule includes a different total paid to date figure (£4,021,720) to that stated in the 30 April 2018 schedule (£4,185,165).
- g. The 30 April 2018 schedule includes a figure stated for 'Utilities' (£1,440,406) that is higher than the equivalent figure stated in the 10 October 2024 schedule (£44,475). The basis for the 'refund' described by Mr Stiff is unclear and unproved. There is no information as to how that figure for 'Utilities' (£1,395,391 more in 2018 than in 2024) has been adjusted for elsewhere in the figures.
- h. KCC appear to have paid Jacksons Contractor £728,257 for 'Early Contract Involvement' (ECI), which is essentially advising on design. Compare that sum with the estimated cost of the highway works in 2018 (£5.2million before prelims) - this is an extraordinarily high amount. There is no explanation as to why a contractor has been paid 1/7th of the estimated cost of the works to advise on a design, particularly when the same schedule indicates that KCC has already paid out £1,859,751 on 'Design and Supervision and Miscellaneous Fees'.

167. Mr Hogben refused to (or was simply unable to) provide any explanation whatsoever for the inconsistent figures. Mr Stiff was unable to assist the Inquiry on the projected finance costs.

¹⁴⁵ See the series of documents at [ID.14] and [ID.15].

¹⁴⁶ Any indexation would be of the £20,530,673 which was left to be incurred in 2018, rather than the £26,248,000 in the 2017/2024 schedule.

168. As noted above, KCC's request for £5.9million is simply the difference between the claimed cost (which is not accepted as reliable) and the sums to be provided by Chilmington Green (c. £32m). It is not based on the proportionate contribution that the proposed development would make to any traffic and does not include any allowance for Court Lodge traffic or traffic from any other future development that will also contribute to the A28 traffic.
169. Thus, even if the Appellant is wrong with regards to the base figures, the only figure that is grounded in evidence and capable of being recovered must be calculated with reference to a proportionate contribution from Court Lodge (50%, based on Mr Hogben's evidence).
170. In contrast, the costings provided by the Appellant in relation the proposed mitigation works are robust and have been produced by an experienced contractor. Although Mr Stiff raised some 'high level' queries in respect of those figures, they (utilities aside) related to relatively small items; for examples, i) lane rental costs (£600 per day); ii) allowance for re-use of replacement light columns (c.£3,000); iii) additional sub-base construction (c. £13,000); iv) s.278 construction costs. Any uncertainty in respect of utilities can readily (and quickly) be resolved through surveys work.
171. Standing back, therefore, KCC appears to be challenging these figures without any apparent reflection upon the contradiction of doing so despite the Appellant's figures having been provided with a considerably greater degree of certainty than any figure ever put forward or relied upon by KCC in respect of the A28 dualling scheme.
172. Notwithstanding the above, consistent with its stated desire to get building homes, the Appellant now offers a 'third way', which is to:
- a. Offer the proposed mitigation works (or cost thereof on KCC's election) in order to provide the 'headroom' in the highway network to enable homes to come forward in the short to medium term; and
 - b. Offer a contribution towards the A28 dualling scheme, which is calculated on the basis of a Possingham Farm's proportionate share of impact as described above and in evidence.

173. In effect, therefore, this ‘third way’ offers the best of both worlds – in the short to medium term housing delivery can commence, thus generating capital receipts to fund the WwTW, whilst providing ‘head room’ to avoid any severe highways impact, providing benefits for all road users by improving a recognised existing problem. For the longer term, there will be an appropriate, CIL-compliant, contribution offered towards the A28 dualling scheme. If KCC is concerned about abortive costs, the Appellant’s drafting provides for KCC to elect for payment in lieu of those proposed mitigation works.

Management body

174. Although the drafting is settled, there is an ‘in principle’ difference between the parties as to the appropriate management arrangements – see Schedule 20, Option A (Stewardship Body) or Option B (Management Company). The Appellant sees no proper justification for adopting anything other than a straightforward model, as has been adopted elsewhere in relation to comparable developments in the area and as is adopted conventionally up and down the country. In the absence of any evidence to the contrary¹⁴⁷, the Appellant’s proposed approach is plainly acceptable.

Grace period

175. It is very much hoped that the parties can use the ‘grace period’ indicated by the Inspector during the s.106 roundtable to resolve any outstanding drafting points, as well as to reflect upon and negotiate the appropriate sums to be inserted in respect of each drafting option, in a manner that properly reflects the evidence that the Inquiry has heard so as to be compliant with the CIL Regulations.

H. CONCLUSIONS

176. There is a national, regional and local crisis in the provision of housing.

¹⁴⁷ During XX Tomlinson, she was unable to point to any evidence that she had provided to suggest otherwise.

177. This proposal will help house in the region of 1,570 people in an attractive development as the illustrative material shows. Please think of your power to transform those lives by granting consent by using this site to house people. Those people will have their lives transformed by the grant of planning permission.
178. Overall, this is a proposal that achieves compliance with all relevant development plan policies, and the development plan when taken as a whole. There are no material considerations to justify a departure from the development plan. Instead, the material considerations including many benefits, including the efficient use of land, reinforce the grant of planning permission.
179. In any event, given ABC's lack of a five-year housing land supply, the 'tilted balance' applies, and permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.
180. On a fair and objective planning balance, therefore, the proposed development should receive planning permission. The proposal accords with the development plan and, in the case of any conflicts with policy, the significant economic, social and environmental benefits of the proposed development significantly and demonstrably outweigh any adverse impacts. The proposals are justified having regard to the NPPF and the presumption in favour of sustainable development. There are no adverse impacts that cannot be mitigated and/or demonstrably outweighed in this case.
181. The Inspector is invited to allow this appeal.

RICHARD HARWOOD OBE KC

JONATHAN DARBY

39 Essex Chambers, London

16 October 2024