



## Appeal Decision

Inquiry held on 8-11 and 15-16 October 2024

Site visits made on 7, 9, 14 and 16 October 2024

by **D M Young JP BSc (Hons) MA MRTPI MIHE**

an Inspector appointed by the Secretary of State

Decision date: 22/11/2024

**Appeal Ref: APP/E2205/W/24/3345454**

**Land north of Possingham Farmhouse, Ashford Road, Great Chart, TN26 3BQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
- The appeal is made by Hodson Developments Ltd against the decision of Ashford Borough Council.
- The application Ref is 22/00571/AS.  
The development proposed is an outline application for the development of up to 655 residential dwellings (including 30% affordable dwellings) to consider access only (excluding internal circulation routes), with all other matters reserved.

### Decision

1. The appeal is allowed and outline planning permission (all matters reserved except for access) is granted for up to 655 residential dwellings (including 30% affordable dwellings) at land north of Possingham Farmhouse, Great Chart, TN26 3BQ in accordance with the terms of the application, Ref 22/00571/AS and subject to the conditions in the attached schedule.

### Preliminary Matters

2. The Inquiry sat for six days between 8 and 16 October. I undertook several unaccompanied site visits before and during the Inquiry. These included multiple observations of the traffic flows between Matalan and Tank roundabouts in the AM, PM and inter-peak hours. With the agreement of the main parties, a formal accompanied site visit after the Inquiry had closed was not deemed necessary.
3. Planning, Ecology, Drainage, Education and Highways Statements of Common Ground<sup>1</sup> (SoCG) have been submitted and I have had regard to these in reaching my decision.
4. As set out at paragraph 5.1.1 of the Planning SoCG, it is agreed that the Council cannot demonstrate a five-year supply of deliverable housing sites<sup>2</sup>, contrary to the requirements of paragraph 76 of the National Planning Policy Framework<sup>3</sup> (the Framework). The effect of this is two-fold. First, the policies that are most important for determining the application are to be considered out-of-date, and secondly, it engages paragraph 11(d)(ii) which states planning permission should be granted "*unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed*

<sup>1</sup> CDs1.12-15, ID19

<sup>2</sup> The supply is agreed as 4.39 years.

<sup>3</sup> CD6.1

*against the policies in the Framework taken as a whole*" (hereafter I refer to this as the "tilted balance").

5. A signed and dated agreement under s106 of the Town and Country Planning Act was submitted after the close of the Inquiry in accordance with an agreed timetable. Amongst other things this contains obligations to Ashford Borough Council (the Council) and Kent County Council (KCC) in respect of off-site highway works, bus services, the wastewater treatment works (WwTW), secondary school and health care contributions. A draft version of the document was discussed at the Inquiry. All the proposed contributions would need to be assessed against the statutory Community Infrastructure Levy (CIL) tests, a matter I return to later in my decision.

### **Main Issues**

6. The Council refused planning permission for the nine reasons for refusal (RfR) set out in the Decision Notice<sup>4</sup> dated 14 December 2023. As confirmed in the Council's Opening Statement<sup>5</sup> RfRs 4, 5 and 6 regarding ecology, drainage and heritage were withdrawn before the Inquiry following further information from the Appellant. Moreover, it was agreed by the Council that RfR 7 concerning climate change could be resolved by way of a suitably worded planning condition.
7. It was further agreed that RfR 8 concerning the impact on the Stodmarsh Special Protection Area (the SPA) could be resolved by a combination of planning conditions and obligations following the grant of planning permission for a WwTW<sup>6</sup>.
8. In light of the above, the main issues are:
  - 1) Whether the proposed development would cause unacceptable harm to the character and appearance of the area;
  - 2) Whether traffic from the proposed development would have an unacceptable effect on the safe operation and capacity of the A28 corridor between the Matalan and Tank roundabouts;
  - 3) Whether the development would be located in a sustainable location where future residents would be able to access local services and facilities using sustainable modes of transport;
  - 4) Whether the proposed development would result in harm to Possingham Farmhouse (Grade II listed);
  - 5) Whether a financial contribution towards secondary school provision is necessary and reasonable in all respects, and
  - 6) Whether the benefits of the scheme would outweigh any identified harm.

---

<sup>4</sup> CD1.3

<sup>5</sup> ID3

<sup>6</sup> Appeal Ref: APP/E2205/W/24/3345453

## The Appeal Site and Surroundings

9. These are described in detail within Section 2 of Planning SoCG, the Design and Access Statement<sup>7</sup>, the Landscape and Visual Impact Appraisal<sup>8</sup>, the Committee Report<sup>9</sup> and the Proofs of Evidence (PoE) of Mr Tully<sup>10</sup> and Ms Tomlinson<sup>11</sup>.
10. Put simply, the appeal site comprises approximately 24.2 hectares of flat arable farmland situated to the east of the A28 Ashford Road close to the village of Great Chart. It has a low hedgerow interspersed by some mature trees to its western boundary with the A28. Public Byway AW245 is located adjacent to the site's eastern boundary which is enclosed by taller hedgerows and trees. Possingham Farmhouse is located approximately 70 metres from the southern site boundary.
11. Save for the small parcel of land close to the north-eastern boundary (hereafter referred to as "the overlap land"), the appeal site lies outside Chilmington Green (CG) which is allocated for a new community comprising 5,700 dwellings in the CG Area Action Plan<sup>12</sup> (the AAP). The proposed development does not include any housing or greenspace on the overlap land. To the north-east of the appeal site, phase 1 of the CG development is currently under construction.

## Reasons

### *Character and appearance*

12. While there are established hedgerows around most of the site's perimeter, public views across it are only readily available from the A28 and to a lesser extent the Public Byway. However, there is no dispute that views of the appeal site over a wider area are strictly limited. It is also common ground that it does not lie within any local or national landscape designations and is not 'valued' in the terms of Framework paragraph 180a). To use an oft-repeated description, it is ordinary attractive countryside which the Council accepts is suitable for residential development.
13. The site is bounded on two sides by the CG site and on plan-form at least, appears to have been carved out from the AAP boundary. At present there is no CG development remotely close to the appeal site and this reinforces its rural character. However, I recognise that the urban edge of Ashford will slowly encroach up to the northern and eastern boundaries of the appeal site over the next few decades albeit separated by generous landscape buffers. Against that background, the appeal site can reasonably be seen as a logical extension to CG.
14. While CG and the policies in the AAP are relevant to understanding the emerging landscape context, the fact remains that the majority of the appeal site lies outside the jurisdiction of the AAP. I do not therefore subscribe to the view that the appeal scheme, beyond the overlap land, should be assessed against policies in the AAP. As indicated in paragraph 4 above, the AAP is in

---

<sup>7</sup> CD2.4

<sup>8</sup> CD2.8

<sup>9</sup> CD1.2

<sup>10</sup> CD1.23

<sup>11</sup> CD1.27

<sup>12</sup> CD7.3

any event out-of-date, and this reduces the weight to be attached to any conflicts with it.

15. The landscape strategy for the proposed development comprises the retention and enhancement of most of the existing vegetation and boundary trees on and adjacent to the appeal site. Added to this, landscape buffers and areas of greenspace would help the development integrate with the surrounding countryside to the west and south and the emerging CG development to the north and east. There was some debate around the size of the buffers particularly along the A28 frontage of the site. However, the evidence suggests that they would be of an appropriate width in conjunction with the proposed structural landscaping to soften the visual impact of the development in transitory views from the A28. The buffers are also within the range, if not more generous, than those accepted on some of the earlier phases of CG to the north.
16. The application was accompanied by a detailed Landscape and Visual Impact Appraisal<sup>13</sup> (LVIA) which provides a detailed description of the existing baseline and assesses the likely landscape and visual effects of the development through a series of viewpoints. It was not suggested that other viewpoints should have been considered nor was any issue taken with the accuracy of the photomontages contained in Appendix 4 of Mr Tully's PoE.
17. The LVIA concludes that the impact of the proposed development on landscape and visual character is expected to be localised and low with the biggest effect stemming from the loss of the site's open agricultural character. The degree of harm would be higher in the short-term most notably during construction but would reduce over time as the structural landscaping matures. Those conclusions are supported by the photo montages which demonstrate that the longer-term landscape and visual effects outside of the site boundaries would not be significant particularly when one takes into account the emerging CG development which would have a profound effect on landscape character to the west of Ashford.
18. While the Council accepts the site is suitable for development, its case was essentially that the proposed density was inappropriate and inconsistent with the AAP and the resulting harm would be localised but moderate. The Appellant produced a plan<sup>14</sup> which compared the densities of the proposed development against those in the AAP. While the average densities across the appeal site might be higher than those along the southern edge of CG as well as the Council's preferred 31-40 dwellings per hectare scheme, I do not consider the differences would be distinguishable to the average passer-by particularly given building heights in those development parcels closest to the A28 would be no higher than 2.5 storeys. Even in the alternative, views of the houses would be heavily filtered in the long-term such that any subtle differences in density between the appeal site and other parts of CG would be imperceptible from outside the appeal site boundaries.
19. The final point to make in terms of density is that the AAP was a product of its time, and the densities and other elements of the scheme were conceived in a scenario where CG was to be the westward extent of Ashford. The appeal scheme has begun to change that position, and it would be unrealistic to

---

<sup>13</sup> CD2.8

<sup>14</sup> CD13.4

assume that the land beyond the AAP boundary would remain undeveloped in perpetuity. Accordingly, it is right and proper that further reviews of the AAP<sup>15</sup> should take account of the changing context. I do not consider the correct response is to take those densities or building heights from the western parcels of CG and expect them to be applied to all future development beyond the AAP boundary. On any analysis such an approach would be in sharp conflict with the objectives of the Framework to boost significantly the supply of housing and to make the most efficient use of land.

20. Based on the above findings I am satisfied that the proposed development would not cause unacceptable harm to the character and appearance of the area. There would be some moderate localised landscape and visual harm in the short-term as a result of the loss of the site's open character. However, that would be the inevitable consequence of any new housing on a greenfield site such as this and is not a reason to dismiss the scheme out of hand. The level of harm would reduce to minor in the medium/ long term as the structural landscaping takes hold and the CG development progresses up to the appeal site's boundaries. I therefore conclude that the development would not conflict with the criteria in Ashford Local Plan 2030 (the LP) Policy HOU5 f) which among other things seek development that sits sympathetically within the wider landscape.

### *Highways*

21. Paragraph 115 of the Framework advises that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. 'Severe' is the highest test in the Framework and matters of driver inconvenience caused by increases in queuing and delay are unlikely in themselves to constitute severe impacts unless they are 'very great'<sup>16</sup> and can be attributed solely to the appeal scheme.
22. Rather than directly alleging a severe impact on the local highway network, RfR 3 states that the Applicant failed to demonstrate that the development would not have a severe impact on the highway network. At the Inquiry, KCC's case moved away from a 'fail to demonstrate' argument and towards a positive case underpinned by its own traffic modelling. KCC set out two thresholds of severity, these being a 5% increase in the Ratio of Flow to Capacity (RFC) or a 60 second increase in delay. At the outset, I will say that those thresholds are a very long way from my own interpretation of a 'very great' or 'severe' impact.
23. The crux of the disagreement between KCC and the Appellant, relates to the extent of off-site mitigation necessary to make the development acceptable in highway terms. The difference of opinion as to what mitigation is necessary stems largely from differing approaches to traffic modelling including the appropriate trip rates, CG internalisation and background growth factors, trip distribution and assignment.
24. Before addressing the matter of mitigation, it is first necessary to establish the impact of the appeal scheme on queuing and delay. To do this, one starts with the baseline situation to which expected growth, the levels of travel expected

---

<sup>15</sup> ID41

<sup>16</sup> See para 271 of the Pickering's Farm decision CD8.2

from relevant committed developments and the travel demand from the appeal development itself are added. With this in place, one can look at what improvements are proposed by the Appellant and assess whether resultant levels of queuing and delay would be severely adverse. It is not, to look merely at the magnitude of the increased traffic generated by the development proposal compared to the existing levels, and to see if the improvements proposed as part of a scheme deliver a nil detriment outcome. Nor is it sufficient to show that the Appellant could have taken a different approach to traffic modelling. For the Highway Authority to make good its case, it must demonstrate that the Appellant's assessment was flawed to the extent that it materially underrepresents expected travel conditions along the A28 corridor.

25. The proposed development would be served via two accesses which would feed the majority of traffic onto the A28 to the west of Ashford. It is common ground that the A28 between the Matalan and Tank roundabouts is heavily congested during peak hours. I was able to see this congestion first hand during site visits conducted before and during the Inquiry. From my observations, the Tank roundabout appeared to operate within capacity in the AM and PM peak periods with very little queuing on any of the main approaches. The same cannot be said of the Matalan roundabout where I observed significant queuing on the A28 south-west and north-east approaches in the AM and PM peak hour respectively. Nonetheless, I did not find current levels of queuing or delay at either the Matalan roundabout or along this section of the A28 more generally, to be particularly excessive or unusual for a major urban route at peak times.
26. While I heard competing explanations for the delays at Matalan roundabout, from my observations it was patently clear that the junction is underperforming due to traffic being unable to exit the roundabout in an efficient manner. This in turn results in vehicles entering and waiting on the roundabout thus blocking the circulatory carriageway. The blocked exit is a symptom of slow-moving traffic on the A28 eastbound exit which stems from a lack of capacity at the Loudon Way signalised junction. Once past the Loudon Way signals, eastbound traffic moves more freely towards the Tank roundabout.
27. I also carried out observations in free-flowing conditions and saw little to support KCC's link capacity and humpback bridge arguments. While there is some limited restriction to forward visibility as one exits the Matalan roundabout, the bridge is very clearly not humpbacked, and the corridor is sufficiently wide to properly accommodate two-way flows associated with an Urban All-Purpose Road 2<sup>17</sup>. Under free-flowing conditions I saw no evidence of vehicles slowing on their approach to the bridge in either direction.
28. As part of the CG development, comprehensive improvements are proposed which involve dualling the A28 between the Matalan and Tank roundabouts. According to the Appellant's Transport Assessment<sup>18</sup>, the A28 improvements are intended to accommodate the level of traffic generated by CG and to allow spare capacity for future developments.

---

<sup>17</sup> See ID20

<sup>18</sup> CD2.22

29. The CG outline planning permission<sup>19</sup> requires a bond to be paid to KCC to cover the cost of the A28 dualling scheme before occupation of the 400<sup>th</sup> dwelling. While I acknowledge the separate s106B appeal in relation to the aforementioned trigger, as things stand, CG cannot go beyond 400 dwellings until the bond is paid. That is the factual legal position and therefore the appropriate baseline for the appeal scheme involves CG being constrained to 400 dwellings. Considering the agreed legal position for CG, I have some difficulty in understanding why KCC and the Appellant used 2,426 occupations at CG in the 2032 base case<sup>20</sup>. If a higher number of occupations beyond 400 is to be assumed at CG, then the impact of the appeal scheme should have been modelled with the A28 dualling scheme in place.
30. By the close of the Inquiry, the trip rates were agreed between the parties and comprise the 'base' and 'sensitivity' rates set out in Table 5.1 of Mr Dix's PoE<sup>21</sup>. Given both sets of trip rates are higher than those accepted on other large strategic developments around Ashford, including CG and apply no discount for the 30% affordable housing and/or travel plan initiatives<sup>22</sup>, I am satisfied they are sufficiently robust. In coming to that view, I have noted the Appellant's concession that KCC's approach to education/escort trips was correct. Nonetheless, the uplifted base trip rates, were still below the sensitivity rates.
31. In order to understand how the trips would disperse across the local road network, it is necessary to ensure that reasonable assumptions have been made in relation to journey purpose and levels of internalisation. In relation to the former, it was agreed that data from the 2019 National Travel Survey, which predated higher levels of homeworking arising from the Covid-19 pandemic, provide an accurate and robust estimation of distribution of peak hour trips across the network<sup>23</sup>.
32. The agreed internalisation factors are set out in paragraph 7.2 of Mr Hogben's PoE<sup>24</sup> (65% secondary education, 33% food retail, 25% non-food retail, 25% personal business and 33% leisure trips). No changes to the triggers in the CG s106 are proposed as part of this appeal scheme and the delivery of CG social infrastructure such as the supermarket, could be secured by the imposition of Grampian conditions. I am therefore satisfied that the internalisation factors are appropriate.
33. There was evidently differing opinions between the experts in relation to traffic assignment, that is the specific routes that traffic will use to reach a destination. Traffic assignment is not an exact science and invariably involves a degree of judgement. It is however generally accepted, all things being equal, that traffic will use the quickest and most direct route. It is also widely accepted that traffic will avoid the most congested parts of the network if other routes are available, even where this increases the overall distance travelled. These different choices are reflected in the various outputs from Google Maps<sup>25</sup> which were discussed extensively at the Inquiry.

---

<sup>19</sup> CD15.3

<sup>20</sup> I acknowledge that the 2,426 homes at CG is relevant to the S106B appeal, but that matter is not before me.

<sup>21</sup> Highway SoCG paragraph 1.3

<sup>22</sup> TAA, Appendix M CD2.27

<sup>23</sup> See Tables 5.3 and 5.4 to Dix PoE

<sup>24</sup> These rates are predicated upon the secondary school, District centre and other community facilities being delivered at any early stage in line with the existing Section 106 Agreement for CG.

<sup>25</sup> ID22-24

34. The Appellant's traffic assignment for various journey purposes is contained at Appendix 5 of Mr Dix's PoE. KCC was particularly critical of the assumption that 50% of grammar school and town centre bound traffic would turn off the A28 at the Matalan roundabout. I concur, at least in part, with some of the criticisms of the Appellant's flow diagrams made by KCC. In my opinion more traffic will route along the A28 than has been assumed by the Appellant. However, I accept that there are a myriad of factors that determine a driver's route choice, and it is reasonable to assume that some traffic will seek to avoid the most congested parts of the network. I therefore find that it would be unreasonable to assume that 100% of traffic for example heading towards the town centre or Norton Knatchbull Grammar School would use the A28 corridor. As to whether the difference between the parties on traffic assignment makes any material difference, the evidence is unclear.
35. KCC and the Appellant also took differing approaches in relation to the level of traffic growth to be applied to the observed traffic counts along the A28. As is established practice, KCC applied TEMPRO growth rates<sup>26</sup> which were taken from a wider area where growth would be expected to contribute to flows on the A28<sup>27</sup>. The Appellant argued that there had been little traffic growth on the A28 since 2004 and in fact journey times had improved between 2019 to 2024 despite the first phase of CG coming forward. Accordingly, the argument was made that it would be inappropriate to apply traffic growth to these junctions as they are physically unable to accommodate any further traffic. While I share KCC's concerns about the Appellant's A28 traffic growth figures<sup>28</sup>, I note that the Appellant's assessments do include various committed developments in addition to CG<sup>29</sup>. So, while I prefer KCC's approach to traffic growth, I do not consider the Appellant's approach including the use of a flat profile across the peak hour to be necessarily unreasonable.
36. Perhaps unsurprisingly, both KCC's and the Appellant's assessment of the Matalan roundabout (which assumed 2,426 homes at CG<sup>30</sup>) show that adding additional traffic associated with the appeal scheme would exacerbate queuing and delay at the junction. In the Appellant's sensitivity (worst case) scenario, delays on the south-west A28 approach in the AM peak increased by around 6 minutes from 2,471 to 2,833 seconds. In the PM peak the north-east A28 approach increases by over three minutes from 1,024 to 1,211 seconds. On the same arms, KCC's modelling<sup>31</sup> shows delays increasing by around 7 minutes in the AM peak and 2.5 minutes in the PM peak. Clearly these are significant impacts.
37. While traffic from the proposed development would exacerbate queuing and delay at the Matalan roundabout, it is the inclusion of the committed development traffic, including 2,426 CG homes, rather than the appeal scheme which pushes the junction over capacity<sup>32</sup>. While a more comprehensive solution would be required to accommodate all of the planned

---

<sup>26</sup> Table 6 of Hogben Rebuttal

<sup>27</sup> As explained in paragraph 9.3 of Mr Hogben's PoE avoid the double counting of trips, the number of homes and jobs proposed at both CG and Court Lodge by the 2032 forecast year have been removed using the 'Planning policy adjustment' function within TEMPro.

<sup>28</sup> Table 7, Dix PoE/Hogben Rebuttal paragraph 1.10

<sup>29</sup> See paragraph 6.13-6.21 TAA CD2.27

<sup>30</sup> TAA Paragraph 6.18 CD2.27

<sup>31</sup> Table 8, Hogben Rebuttal.

<sup>32</sup> See ID33



growth to the west of Ashford, in the context of this appeal, I am required to assess what is necessary to make this development acceptable.

38. To that end, the only evidence before me which models the impact of the appeal scheme in a scenario where the base is correctly constrained to 400 CG dwellings is KCC's spreadsheet which was submitted to the Inquiry at my request<sup>33</sup>. The outputs show that the impacts in the constrained scenario are relatively minor, for example, with 300 dwellings on the appeal site, delays on the A28 south-west approach to the Matalan roundabout increase by around 3 minutes in the AM peak. In the PM peak, delays on the A28 north-east arm increase by under a minute. KCC's spreadsheet shows a similar level of impact at the Loudon Way junction and Tank roundabout. These impacts are based on the higher sensitivity trip rates.
39. In my opinion, while the above impacts are clearly material, even on KCC's modelling, they fall short of the severity threshold. Nonetheless, without mitigation there would be increases in delay along the A28 which would weigh against the proposed development in the overall planning balance. To remedy that harm, the Appellant has proposed an improvement scheme comprising alterations to the Loudon Way junction<sup>34</sup>, as well as the Matalan<sup>35</sup> and Tank roundabouts. The works are designed to mitigate the impact of the appeal scheme rather than all growth to the west of Ashford. Again, the highway witnesses held contrasting views, supported by different modelling approaches, regarding the effectiveness of the Appellant's mitigation scheme.
40. For the Loudon Way signalised junction, the improvement involves the creation of an additional lane for A28 traffic, thereby increasing the throughput of the junction. In my experience, this is a common way of increasing the capacity of a junction. According to the Appellant, the additional capacity at the Loudon Way junction would help to relieve the queuing back which extends to the Matalan roundabout creating a blockage on the exit. The Matalan roundabout improvement scheme increases the width of the A28 entry and exit points. The additional lane for southbound traffic would also increase the throughput of the roundabout.
41. Based on the Appellant's sensitivity scenario<sup>36</sup>, the delay on the Matalan roundabout A28 SW approach decreases from 2,833 seconds to 775 in the AM peak. That represents a time saving of over 34 minutes. On the NW approach, PM peak delays decrease from 1,211 to 46 seconds, an improvement of approximately 19 minutes. At the Loudon Way junction, the Appellant's modelling shows a reduction in delay on the A28 western arm of nearly 5 minutes in the AM peak and by nearly 1 minute in the PM peak in the opposite direction<sup>37</sup>.
42. KCC's modelling<sup>38</sup> paints a different picture and somewhat counter intuitively, shows that the improvement scheme does not mitigate the impact of the proposed development and actually makes queuing and delay worse on the Brookfield Road arm. However, an improvement is shown on the A28 NE arm in the PM peak where delays reduce by approximately 2 and 4 minutes

---

<sup>33</sup> See ID33

<sup>34</sup> Appendix ID13 Dix PoE

<sup>35</sup> Appendix ID14, Dix PoE

<sup>36</sup> Table ID7.10 Dix PoE

<sup>37</sup> See Tables ID7.14 and ID7.16 Dix PoE

<sup>38</sup> Table 8 Hogben Rebuttal

compared to the 2032 base and 'with development' scenarios. It should be noted that neither of the parties provided modelling of the improvement scheme against the 400 CG dwelling base scenario.

43. It is difficult, if not impossible, to properly reconcile the conflicting modelling outputs, something not helped by differing approaches to background growth, intercept values and assignment. Junction modelling is also known to become extremely sensitive to input changes when RFC values exceed 1. To that extent, one has to treat both sets of modelling outputs with a degree of caution. Nonetheless, it cannot be right that when such a large scheme comes to an appeal there is so much disparity between the parties in relation to traffic modelling. It is not for me to carry out some kind of forensic investigation into the inputs of each modelling exercise as that would be an enormous undertaking even if all the relevant spreadsheets and background information had been submitted.
44. Given the disparity between the modelling outputs, I have decided to base my conclusions on my own experience and extensive observations. As a result, I consider the Appellant's improvement scheme would logically improve the flow of traffic along this corridor by increasing capacity and addressing the primary constraint at the Matalan roundabout. KCC's expert witness agreed that the Loudon Way works would increase the capacity of the junction, and this is consistent with my own experience of similar schemes elsewhere. To that end, I give greater weight to the Appellant's modelling of the improvement scheme as it is more consistent with what would normally be expected for a scheme of this nature. However, given there are elements of KCC's overall modelling approach which are to be preferred, I have taken a precautionary approach to the scale of the benefits reported in Mr Dix's PoE. Accordingly, I find that the Appellant's improvement scheme would deliver a nil-detriment outcome at the very least.
45. I have carefully considered KCC's highway safety concerns regarding the Matalan roundabout pedestrian crossings. However, the improvement schemes have been safety audited and the presumption of regularity must apply to those assessments. I am therefore satisfied that any perceived risk to pedestrians on KCC's part could be mitigated by additional signage.
46. Both KCC's and the Appellant's modelling suggested that the appeal scheme along with other committed developments will have an adverse impact on the operation of the Tank roundabout. Similar to the Matalan roundabout, one of the key constraints here is the ability of traffic to exit the roundabout promptly onto the A28 due to traffic queuing back from the Loudon Way junction particularly in the PM peak. This matter would be addressed in part by the Loudon Way improvement works. Another constraint identified by the Appellant is the operation of the pedestrian crossing on the A28 to the east of the roundabout. To address this, the Appellant is proposing to upgrade the control system to MOVA<sup>39</sup> and to add sensors which would limit the lights going to red when no pedestrians are present.
47. Additional information submitted during the Inquiry<sup>40</sup> indicates that the pedestrian crossing is currently well used with the green man being called roughly 15 times on each carriageway in the AM/PM peaks. The data also

---

<sup>39</sup> Microprocessor Optimised Vehicle Actuation

<sup>40</sup> ID26

shows that some pedestrians crossed the road before the Green Man appeared. While I accept KCC's point that this does not necessarily mean they called the Green Man in the first place, I consider a reasonable inference can be made to that effect.

48. Accordingly, the upgrade of the control system and the installation of detection equipment would likely deliver some moderate benefits in traffic flows to/from the Tank Roundabout. Given the relatively modest impacts reported in KCC's spreadsheets, I consider the improvements would mitigate the impact of the development. KCC states that it does not install MOVA on pedestrian crossings as a matter of principle, however, the reasons for this are unclear. KCC has not suggested that the detection equipment would not provide a benefit to traffic flows.
49. Part 2, Schedule 23 of the s106 agreement is subject to a blue pencil clause and presents three highway mitigation options for the A28 corridor. Option A is concerned with the delivery of the Appellant's improvement scheme prior to 'substantial implementation'<sup>41</sup>. As an alternative to the physical delivery of the highway works, Option A also provides for a payment to KCC in lieu of the works. As I have already found the Appellant's improvement scheme to be acceptable mitigation for the proposed development, it is not necessary for me to consider Options B and C which relate to the A28 dualling scheme.
50. Finally, my role is to determine what is necessary to make the current appeal scheme acceptable and this is what I have done. It is not for me to pre-judge the s106B appeal process by entertaining alternative highway scenarios which may or may not arise depending on the outcome of that appeal. The s106B appeal will be determined in due course on its own facts and my findings on the highway merits of this scheme do not prejudice those proceedings.
51. Based on all of the foregoing and subject to the early implementation of the Appellant's improvement scheme, I consider that highway matters are neutral in the planning balance.

### *Accessibility*

52. There is no dispute that the location of the appeal site is not currently sustainable. That is not surprising given its greenfield status and location beyond the built-up edge of Ashford. The issue is therefore whether future residents of the proposed development would, at the time of occupation, be able to access local services and facilities at CG and elsewhere through sustainable modes of transport such as walking, cycling and public transport.
53. The Appellant's case relies to large extent on the delivery of facilities on the adjacent CG site for which it is also the developer. Although delivery timescales at CG have slipped from those originally envisaged, it was established at the Inquiry that there are a multitude of reasons for this including, but not limited to, the Nutrient Neutrality (NN) issue<sup>42</sup>. While much was made of the separate s106B appeal, I formed the overall view that the Appellant was committed to bringing forward the CG development as demonstrated by its commitment to resolving the NN issue through the WwTW despite opposition from the Council.

---

<sup>41</sup> In effect this means once the development progresses above foundation level

<sup>42</sup> See WwTW Appeal and associated Costs Decision ID8.

54. The Appellant has committed to a bus service commencing on occupation of the 100<sup>th</sup> dwelling and continuing throughout the lifetime of the development. The service would connect the appeal site to the town centre and railway station (see Schedule 19 of the s106 agreement) and would be independent of any commitments in relation to CG. Bus stops would be located in such a way that they would not be more than 400m from any dwelling. The only disagreement between the parties relates to the frequency of the service. The Appellant preference is for a service every 30 minutes during the weekday peak hour and once an hour thereafter.
55. I consider the proposed frequency to be acceptable particularly bearing in mind the bus service would commence on occupation of the 100<sup>th</sup> dwelling when levels of patronage are likely to be low, particularly outside of peak hours. As the quantum of dwellings on the appeal site increases, there may be sufficient demand to justify a more frequent service throughout the day. However, levels of bus patronage would be monitored and reviewed through the Bus Service Monitoring Report, so it would be possible to amend the timetable to respond to increases or decreases in demand. I am therefore satisfied that future residents would be able to access Ashford town centre and the international train station by public transport.
56. A comprehensive list of local facilities at CG and anticipated delivery dates is contained at table ID4.3 of Mr Dix's PoE<sup>43</sup>. According to the Appellant, the first occupations on the appeal site would commence in 2025-26 and assuming a seven year build out (65 occupations in the first year and then 100 occupations in each subsequent year), the development would be completed in 2032-33. On current projections, the Appellant expects 2,623 dwellings to be completed at CG by 2032-33. This information is clearly important given the Appellant's case is contingent on facilities coming forward at CG by the time houses on the appeal site are occupied.
57. The six-form entry Chilmington Green Secondary School (CGSS) would open in September 2025. Access between the appeal site and the school would be via a network of pedestrian and cycle routes with appropriate road crossing facilities<sup>44</sup>. This would result in a 15-minute walk from the centre of the appeal site<sup>45</sup>. A Community Use Agreement which is captured by a condition on the planning permission<sup>46</sup> would ensure local residents can access the indoor and outdoor sport facilities at CGSS. I am therefore satisfied that the CGSS and associated community facilities would be conveniently accessibly on foot and pedal cycle from all parts of the appeal site.
58. Although further away, there is already a primary school at CG located on Mock Lane. At over 20 minutes' walk time, the distance on foot is at the very limits of what might be considered an acceptable walking distance. With a travel time of approximately six minutes, cycling is a more viable alternative. While the western section of Mock Lane is not ideal for cycling, it is less than 200m in length and benefits from good forward visibility along most of its length. From my observations traffic speeds and volumes were very low and nowhere near the theoretical 60mph speed limit. Nonetheless, I accept that

---

<sup>43</sup> CD1.24

<sup>44</sup> Pursuant to Condition 11

<sup>45</sup> The Appellant's routes in ID13 do not utilise the Byway along the appeal site's southern boundary which is to be upgraded as part of the development. This would potentially reduce the stated walk/cycle times

<sup>46</sup> Condition 24, CD14.1

the situation is likely to be different around school drop off/pick up times and as the wider CG development is built out.

59. To address some of the Council's concerns, a condition is proposed which would require an application to be made to KCC to reduce the speed limit via a Traffic Regulation Order<sup>47</sup>. Quite why this was not a requirement for the CG development remains unclear. While a reduction in the speed limit may help to reduce driven speeds, I still have concerns about the sharp bend approximately 200m from the junction with Chilmington Green Road. While a pedestrian footway has been constructed here, it only commences part way around the bend. In my view, that footway could and should be extended further west to the location of the school warning sign. This would encompass the whole bend and give cyclists and pedestrians, adequate protection from oncoming vehicles on what is a narrow section of road.
60. A longer-term solution might be to make Mock Lane a cul-de-sac for vehicular traffic at the bend given the CG Access and Strategic Vehicular Routes Plan<sup>48</sup> indicates that other east-west connections are to be provided. To address my concerns, I have amended the wording of condition 12 so that it requires a more comprehensive solution for Mock Lane including an extension of the footway, signage and traffic calming in addition to the Traffic Regulation Order. Based on my observations, there is sufficient space within the Public Highway to deliver an appropriate scheme. Subject to the imposition of this condition, I am satisfied that the walking<sup>49</sup> and cycling route to the primary school would be acceptable.
61. According to the Appellant, a second primary school is anticipated to open around 2028-29 at the Orchard Village area within CG<sup>50</sup>. To that extent, access to the existing GC primary school on Mock Lane would become less of an issue in the medium term. The second primary school would not only be significantly closer to the appeal site but is also likely to be accessed from the appeal site via a network of traffic-free cycle and pedestrian routes.
62. A Grampian condition is proposed in relation to the delivery of the supermarket within the CG district centre<sup>51</sup>. Based on the route in Mr Dix's PoE (Appendix ID3) this would be a 22-minute walk from the centre of the site. I concur with the Council that this is probably well outside what most people would consider a convenient walking distance. However, a supermarket is a destination that people are likely to drive to, irrespective of distance, given the arduous nature of carrying shopping bags for even the shortest distance. The Appellant also indicated that there could be future opportunities to route the bus service through or close to the CG district centre, something that could be addressed through the Bus Service Monitoring regime pursuant to Schedule 19 of the s106 agreement.
63. In terms of delivery timescales, an application which includes a 2,136m<sup>2</sup> supermarket<sup>52</sup> has been submitted to the Council and is currently under consideration. The Appellant anticipates that this would open around the time

---

<sup>47</sup> Condition 12

<sup>48</sup> CD15.5

<sup>49</sup> The Appellant's pedestrian route (Appendix ID3) is unrealistic as it involves a major deviation from the desire line. In practice, pedestrians will want to use Mock Lane as it is the most direct route.

<sup>50</sup> To the west of Chilmington Green Road

<sup>51</sup> Condition 9

<sup>52</sup> At the Inquiry it was explained that the supermarket would be of an equivalent size to a typical Aldi or Lidl

of first occupation on the appeal site i.e. 2025-26. Condition 9 would prevent occupation of any dwelling until the supermarket is open. These conditions would be effective and enforceable irrespective of the outcome of the s106B appeal and would meet the test in the Planning Practice Guidance (PPG) for Grampian conditions<sup>53</sup>.

64. Notwithstanding that the public house, village hall or the full district centre are likely to be in place by the time the proposed development is completed, I do not consider these facilities are necessary at first occupation to make the development sustainable in accessibility terms. I have therefore amended the wording of condition 10 so that the trigger point for the district centre (excluding secondary school and supermarket) is the mid-way point for the development.
65. While the walk distances to some destinations would be above the 800m recommended in Manual for Streets and other guidance, one has to take a realistic and proportional approach to such guidance, recognising that the cited distances are desirable and not hard and fast rules. Accordingly, they should be applied with a degree of flexibility which recognises that the opportunities to promote sustainable transport modes will be determined by the type of development and its location<sup>54</sup>. In that vein, outside of central London and other major cities, there will be very few residential sites that are able to meet the recommended walk distances in all cases.
66. Bringing all these threads together, it is clear that a number of key services and facilities would be in place from an early stage of the development. The supermarket and secondary/primary schools would all be open upon first occupation. The bus service would commence upon occupation of the 100<sup>th</sup> dwelling. A range of other facilities<sup>55</sup> would come forward over time such that the sustainability credentials of the proposed development would slowly improve. By the time the development is complete around 2032-33 there would be a good range of services and facilities available to future residents either on foot or by cycling. Mindful of the location of the appeal site beyond the built-up edge of Ashford, I consider the level of accessibility and opportunities for sustainable travel would not conflict with national policy in the Framework as well as LP Policy HOU5 c).

#### *Heritage assets*

67. The duty under Section 66 of the Planning (Listed Building and Conservation Areas) Act 1990 requires special regard to be paid to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses.
68. The nearest heritage asset to the appeal site is Possingham Farmhouse (Grade II). The Council and Appellant agree that the impact on the building's setting, that is the surroundings in which it is experienced, would be towards the lower end of the 'less than substantial' scale<sup>56</sup>. The current occupier of Possingham Farmhouse (Mrs Cleaves) spoke at the Inquiry<sup>57</sup> and argued that the

---

<sup>53</sup> Para 1. 21a-009-20140306.

<sup>54</sup> Framework paragraph 114 a)

<sup>55</sup> See Table ID4.2 Dix PoE

<sup>56</sup> CD1.12 paragraph 5.4.1

<sup>57</sup> ID4

Appellant's Heritage Assessment<sup>58</sup> had underplayed the harm that would be caused by the proposed development. In support of her concerns Mrs Cleaves cited the heritage assessment carried by Tor & Co<sup>59</sup> which concluded that the development would result in a moderate level of harm to Possingham Farmhouse.

69. In my opinion, the open expanse of agricultural land that surrounds Possingham Farmhouse to the north, east and south, forms part of the building's wider setting and therefore the loss of some of this land to housing would inevitably erode the functional and historic relationship of the heritage asset to its rural surroundings.
70. However, the significance and enjoyment of the building derives mainly from it being a well preserved and attractive example of vernacular 16<sup>th</sup> Century architecture. As I saw when I visited the site, the building has very limited visual exposure outside its immediate curtilage and is not readily visible from the appeal site or the A28 and other public vantages. Given the intervening distances and a near complete absence of intervisibility between the farmhouse and the appeal site, I consider the latter makes only a limited contribution to the building's significance and does not form part of the surroundings in which the building is experienced and enjoyed by the public at large.
71. For these reasons, I concur with the Council and Appellant that the harm would be towards the very lower end of the less than substantial scale. Nonetheless, paragraph 208 of the Framework requires that a balancing exercise is undertaken to weigh the harm against the public benefits of the proposal. I undertake this balance in the context of the guidance in paragraph 205 of the Framework, which makes it clear that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Nonetheless, I am satisfied that the scale of the public benefits arising from the proposed development (set out in more detail in paragraph 139) are sufficient to outweigh the identified harm to Possingham Farmhouse. The proposal therefore passes the "paragraph 208" test.

#### *Secondary school contribution*

72. Schedule 16 of the s106 agreement seeks a financial contribution of £1,396.80 per flat and £5,587.19 per dwelling. The money would be spent on the provision of new education places at secondary schools within Ashford. KCC argued these pupils cannot be provided for within the forecast secondary school capacity. The Department for Education's 'Securing Developer Contributions for Education'<sup>60</sup> sets out the basic principle that it is the housing developer's responsibility to mitigate the impact of its development on education by ensuring there are enough good new school places to meet local needs.
73. It is common ground that the correct units of assessment are the Ashford North Non-Selective Secondary and the Ashford Selective Secondary Planning Groups. The pupil yield factors for the appeal scheme are further agreed<sup>61</sup>

---

<sup>58</sup> CD2.2

<sup>59</sup> ID5

<sup>60</sup> CD12.1

<sup>61</sup> Education SoCG CD1.15, paragraph 6.4

which results in a need for 86 secondary school spaces. The issue between the parties relates to capacity and specifically how the capacity of CGSS is accounted for and whether it should be available to the proposed development in the period before CG is fully built out.

74. The respective expert witnesses both produced spreadsheets summarising their forecasts<sup>62</sup> which were discussed at length at the Inquiry. KCC's spreadsheet shows a deficit of places throughout the next 10 years, reaching a peak of -871 places in 2029-30. The deficit identified by KCC exists before the pupil yield from any proposed new developments contained in the assessment is considered, that yield being 486 pupil places (including the 86 pupils from the appeal site).
75. KCC's approach of ringfencing capacity at the CGSS is made by reference to paragraph 66 of the DfE guidance which states:
- If a new school opens in a single phase below its full capacity while it awaits pupils moving to the development, this does not represent an available surplus for other developments assessing their own impact and mitigation unless circumstances have changed for the original development, such as a redesign of later phases which will give rise to fewer pupils than previously planned.* (my emphasis)
76. It is the differing interpretations of paragraph 66 which lie at the heart of the dispute. The Appellant pointed out that that as of September 2025 CGSS will open as a full 6FE school. It will not therefore '*open in a single phase below its full capacity*'. While that is true, I am not persuaded it necessarily disappplies the general thrust of paragraph 66 which, on any fair-minded reading, is to ensure developers do not use up capacity paid for and created by other schemes to meet their need. To that end, I consider the guidance supports KCC's position that the new capacity that is to be provided at CGSS should be reserved for CG, and not made available to the appeal scheme. In this case, there can be little doubt that the CG development, once complete, will generate enough pupils to fill the 900 places at CGSS<sup>63</sup>.
77. However, paragraph 66 is only guidance and does not trump the statutory necessity test enshrined in the CIL Regulations. Accordingly, it is still incumbent on me to consider whether a deficit in secondary school provision would actually materialise in practice taking account of the anticipated delivery timescales at CG and all other material considerations.
78. The Appellant argued that there would only be a deficit in secondary school provision if a) the full child yield of the remaining CG dwellings is deducted from the remaining capacity; b) the full child yield of sites without planning permission are also included, and c) the impact of the selective admissions schools are included in the projections. When these assumptions are corrected, the forecasts show a large number of spare spaces<sup>64</sup>. The Appellant argued a more realistic approach would be to look at how and when the demand from CG will come forward over the next 20 years rather than assuming the full child yield from the outset, when the full impact on the school system could be in the 2040's and beyond.

---

<sup>62</sup> ID17 and CD12.7

<sup>63</sup> The initial, phases of CG have yielded more pupils than was assumed (68 pupils from 320 dwellings). Extrapolated this would result in a total demand of 1,222 pupils.

<sup>64</sup> Assessment Summary table, ID17



79. There is some merit in these arguments. Currently less than 400 dwellings at CG have been occupied and of the remainder, only a small proportion has Reserved Matters approval. Even on the most optimistic timescales, the 847 places from CG will not materialise for a significant period and well beyond the end of the 2032-33 assessment period<sup>65</sup>.
80. I have similar concerns about the 400 school places assumed from 2022-23 onwards from other new developments in the area. There has been no meaningful attempt to understand when the demand from these developments might reasonably materialise, instead it has been crudely totalled and assumed to be unmitigated and present through the assessment period. KCC's case in this regard failed to stand up to scrutiny when it was established that the single biggest contributor (Court Lodge) did not have the benefit of a Reserved Matters approval and was therefore most unlikely to generate its full demand before the end of the assessment period. The Appellant's spreadsheet indicates that of those developments that do have planning permission, s106 agreements have secured mitigation towards secondary school education and therefore it is assumed that the demand generated would be adequately mitigated.
81. The manifest disconnect between the figures in KCC's spreadsheet and the practical reality of when demand from CG and other schemes (some of which do not even have outline planning permission) would come forward, undermines my confidence in KCC's approach. The Appellant's spreadsheet demonstrates that there would be surplus capacity in the secondary school system throughout the assessment period to accommodate the 86 pupils from the appeal site as well as those that might reasonably be expected to come forward in that timeframe from CG. There is also a trend of the surplus increasing throughout the assessment period with 610 spare spaces in 2032-2033 as the effect of lower birth rates, noted in KCC's own projections, work through the education system.
82. However, there are a number of shortcomings with the Appellant's forecasts which became apparent during cross examination. I share KCC's concerns regarding the Appellant's inclusion of sixth form classes and omission of selective schools from the forecast capacity figures as well as the assumptions around bulge classes and reducing Published Admission Numbers. These arguments were necessary to the Appellant's case but on balance I am not persuaded they were sufficiently robust or appropriately evidenced.
83. All this means that even with corrections to remove the 400 pupils from other developments and assuming CG demand coming forward in line with the conservative forecasts in paragraph 4.23 of Mr Hunter's PoE, there is still likely to be a deficit in secondary school places across the relevant planning group between 2027-28 to 2030-31. This covers the period when the appeal scheme is expected to be generating demand for secondary school spaces. Moreover, and irrespective of the longer-term trends identified by the Appellant, I also have concerns that there could be capacity problems at CGSS in the longer term beyond the end of the assessment period if additional capacity is not created for pupils from the appeal site. Taking all the above considerations in the round, I consider the secondary school obligation satisfies the relevant legal tests.

---

<sup>65</sup> Hunter PoE, paragraph 4.23

## Other Matters

### *Natural Greenspace*

84. Disagreement remained at the close of the Inquiry regarding the proposed level of natural greenspace and whether it would meet the requirements of LP Policy COM2<sup>66</sup>. During the Inquiry the Appellant submitted a revised version of the landscape parameter plan<sup>67</sup> which indicated that 3.23ha (in excess of policy requirements) of greenspace including accessible areas of long and open grassland would be provided.
85. While I acknowledge the Council's concerns about the inclusion of SUDS features in the Appellant's calculations, I am mindful that the appeal site is 24ha in size and contains substantial landscape buffers. To that end and bearing in mind areas of open space can serve dual purposes, I am satisfied that a policy compliant level of natural greenspace could come forward at the Reserved Matters stage pursuant to the obligations in Schedule 11 of the s106 agreement.
86. Even if I were to take the Council's case at its highest, I am cognisant that vast areas of open space are to be provided nearby at CG which would be highly accessible to future residents of the appeal site. Accordingly, a small deficit of natural greenspace would be insufficient, by itself, to justify withholding permission.

### *Appropriate Assessment*

87. The SPA is a wetland environment of international importance including open water, reedbeds and grazing marshes. The interest features of the SPA include great bittern, gadwall, northern shoveler and hen harrier, together with assemblages of waterbirds and breeding birds. The conservation objectives for the SPA are to ensure that the integrity of the site is maintained or restored, including by maintaining or restoring the habitats and populations of the qualifying features.
88. The appeal site falls outside the SPA catchment and therefore there is no pathway for nutrients in surface water to impact it. However, the local WwTW serving the appeal site is Ashford (Bybrook) which discharges into the River Stour. Therefore, if foul water from the proposed development was conveyed to the Bybrook WwTW, a potential pathway would be established for nitrogen and phosphorus to the SPA. It is therefore possible that the development, when taken in combination with other residential development, could have a significant effect on the ecological integrity of the SPA.
89. Under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) as competent authority I am required to undertake an Appropriate Assessment of the development on the basis of its Likely Significant Effects on the SPA as a European Site. Natural England has not objected to the information provided by the Appellant<sup>68</sup> to support the Appropriate Assessment.

---

<sup>66</sup> Policy COM2 defers to SPD which requires 3.144ha of informal/natural greenspace for the proposed development.

<sup>67</sup> ID11

<sup>68</sup> CD2.24 & CD4.12

90. The foul drainage strategy and NN mitigation for the proposed development is for wastewater to be conveyed to the recently approved WwTW for treatment before discharge into the River Beult, thereby avoiding entirely the River Stour catchment. The WwTW has a capacity to serve at least 2,700 dwellings.
91. The Council accepts that the Appellant's mitigation can resolve its concerns subject to the imposition of a suitable mechanism to tie the WwTP to the appeal scheme<sup>69</sup>. A planning obligation in the s106 agreement [Schedule 21] would ensure that the WwTW is operational before any dwelling is occupied. Accordingly, and while acknowledging the precautionary principle, I am satisfied that no harm would be caused to the integrity of the SPA either alone or taken in combination with other residential development. Accordingly, I consider the development would be acceptable under the tests of the Habitats Regulations and there would be no conflict with paragraph 188 of the Framework.

### **Conditions**

92. The parties have suggested a number of planning conditions<sup>70</sup> which I have considered against advice in the PPG. In some instances, I have amended the conditions in the interests of brevity, to avoid repetition or to ensure compliance with the PPG.
93. To provide certainty, I have imposed standard conditions for outline permissions covering time limits, the reserved matters and the approved plans [Conditions 1-5]. I have omitted the requirement for a Climate Change Mitigation Strategy as I consider these matters are either covered under the Building Regulations regime or captured by other conditions<sup>71</sup>. A Construction and Transport Management Plan is necessary to ensure all aspects of the construction adhere to best practice and do not adversely affect the amenity of local residents [6]. I have however simplified and/or omitted some of the requirements where these are covered by other conditions and/or legislation.
94. Conditions requiring improvements to Mock Lane, construction of the site accesses, provision of sustainable travel routes including a pedestrian crossing on Chilmington Green Road, a Residential Travel Plan, the delivery of facilities within the CG district centre are necessary in the interests of highway safety and to encourage sustainable modes of travel [7-14]. As discussed elsewhere in this decision, I have imposed a more proportionate trigger point for the facilities within the CG district centre other than the CGSS and supermarket.
95. Ecology conditions are necessary to ensure the development delivers a net-gain for biodiversity and to safeguard any protected species that maybe present on the appeal site [15-17]. Drainage conditions are necessary to ensure satisfactory drainage and future maintenance of the site in the interests of flood prevention [18-19]. An archaeology condition is necessary to protect any archaeological assets that may be present [20]. A scheme to protect future occupiers from road noise is necessary in the interests of residential amenity [21]. Land contamination conditions are necessary to ensure the land is suitable for a residential use [22-23]. Finally, conditions covering accessible building standards, water consumption and high-speed

---

<sup>69</sup> Carter PoE, paragraph 6.2

<sup>70</sup> ID36

<sup>71</sup> Also see the Written Ministerial Statement dated 13 December 2023.

broadband are all necessary to ensure compliance with the Council's sustainability objectives in these areas [24-26].

96. Conditions 6, 15-19, 20 and 22 are 'pre-commencement' form conditions and require certain actions before the commencement of development. In all cases the conditions were agreed between the main parties and address matters that are of an importance or effect and need to be resolved before construction begins.
97. I have omitted the suggested tree protection condition as these requirements are already covered under condition 15. I have also omitted several conditions which required post-construction verification reports to be submitted to demonstrate compliance with details that would already have been approved by the Council. In all cases, I do not consider these conditions meet the test of necessity.

### **Planning Obligations**

98. Regulation 122 of the CIL Regulations and paragraph 57 of the Framework set out policy tests for planning obligations which must be necessary to make the development acceptable in planning terms; directly related to the development and fairly and reasonably related in scale and kind to the development. While many of the obligations contained in the s106 agreement are agreed between the parties, the agreement provides that if my decision letter concludes that any provision is incompatible with any one of the CIL tests then the relevant obligation shall cease to have effect.
99. An executed version of the agreement was submitted after the close of the Inquiry and was accompanied by an agreed note setting out final positions. Among other things, the note confirms that the disagreements over Schedules 20 (Open Space Management Body) and 21 (SPA mitigation) had been resolved.
100. As is customary, a number of the contributions have been calculated as a per dwelling payment. However, great care needs to be taken with this approach given the legal framework set out above. The fact that there may be an SPD or similar document containing a tariff of financial contributions does not obviate the need for Councils to assess the current level of local infrastructure provision and to reach an informed view on the nature and impact of the appeal scheme on that infrastructure.
101. In satisfying the legal tests it will be necessary therefore to show that 1) the development would generate demand on services and infrastructure, and 2) an assessment of existing provision to demonstrate the demand cannot be met by existing infrastructure. While the CIL Compliance Statements in this case have generally provided satisfactory evidence in relation to 1), a number of the contribution requests, as set out below, are hindered by a lack of evidence in relation to b).

### *Kent County Council Obligations*

102. KCC's obligations are set out in its CIL Compliance Statement<sup>72</sup>. The monitoring fee obligation [Schedule 1] would require the developer to contribute to the cost of monitoring and implementing the s106 agreement at

---

<sup>72</sup> ID27

a rate of £300 per trigger. The Developer Contributions Guide sets out the justification for such charges and how they are worked out. I am therefore satisfied that the monitoring fee obligation is reasonable and necessary.

103. An adult social care contribution of £180.88 per dwelling would be put towards specialist housing provision, adaption of community facilities, technology to promote independence, multi-sensory facilities and changing places within the Borough [Schedule 2]. The proposed development is calculated as generating 61 additional clients in line with the formula in the Developer Contributions Guide. It is stated that existing adult social care infrastructure is already at capacity. I am thus satisfied that the adult social care obligation meets the statutory tests.
104. A community learning and skills contribution of £34.21 per dwelling [Schedule 9] would mitigate the impact of additional users on KCC's adult education service which cannot be accommodated within existing infrastructure. The contribution is in line with Table 1 of the Developer Contributions Guide with the amount supported by Technical Appendix 2<sup>73</sup> of the same. I am therefore satisfied that the community learning and skills obligation meets the relevant legal tests.
105. A contribution of £62.63 per dwelling is sought to address the direct impact of the proposed development on local library services [Schedule 13]. KCC's Compliance Statement advises that the contribution will be put towards additional resources, equipment and stock (including digital infrastructure and resources and reconfiguration of space) at local libraries serving the development, including Ashford Gateway and Stanhope Libraries, to meet the demands of the additional borrowers which will be generated by the development.
106. The problem I have with the library contribution is that there is no assessment of current resources, equipment and stock at either Ashford Gateway or Stanhope Libraries as required by paragraph 2.2.4 of Technical Appendix 16<sup>74</sup>. Accordingly, there is nothing before me to demonstrate that existing library infrastructure is incapable of accommodating new users from the proposed development or that the new users would have an unacceptable effect on current resources, equipment and stock. It is also not clear why the new library facility proposed at CG that was presumably deemed acceptable for 5,750 dwellings, could not meet the needs of a further 655 dwellings on the appeal site either with or without additional improvements.
107. I would also question, particularly in light of the opening hours of the nearest libraries, whether it is realistic to conclude that 655 dwellings would generate 190 new users. It is reasonable to assume that a proportion of future residents would relocate from elsewhere in the Ashford area and therefore already likely to be registered at a library. Even if all residents were new to the area and without a library card, I am not persuaded that dividing Kent's population by the number of library users per year is a particularly robust methodology. It is not clear from Appendix 16 how 'library users per year' has been calculated. It could be the total number of residents with a library card, or it could be based on those that physically visit a library. If the latter, it would be useful to understand how visits has been affected by the contraction of library opening

---

<sup>73</sup> CD12.2B

<sup>74</sup> CD12.2G

hours<sup>75</sup> in recent years. For all these reasons, I am not persuaded the library contribution is necessary to make the development acceptable. It therefore fails the legal tests for planning obligations.

108. The special educational needs and disabilities (SEND) contribution of £559.83 per house and/or £139.96 per flat [Schedule 15], is agreed between the parties. The amount has been calculated via the tariff in the Developer Contributions Guide. While I accept the proposed development will generate the demand for SEND pupils set out in the KCC's Compliance Statement, the capacity assessment of existing infrastructure required by paragraph 1.4.1.3 of the Developer Contributions Guide (referred to as test 2) above) is notably lacking with just a fleeting reference to SEND infrastructure across Kent being at capacity.
109. There is no specific information before me to demonstrate a deficit in SEND provision in the Ashford area. Accordingly, I have given serious consideration to striking the contribution out. Nonetheless, I have decided to give the contribution the benefit of the doubt on this occasion. However, KCC should take note of these comments and ensure that any future planning obligations relating to education are robustly justified with site specific information.
110. A Public Rights of Way contribution [Schedule 17] is sought towards the improvement of Footpaths AW37, AW220 and Byway AW245. On the information before me, including my own observations of these routes, I am satisfied that these improvements are reasonably necessary to encourage walking and cycling and to minimise travel times to local facilities. The Public Rights of Way contribution therefore meets the statutory tests.
111. As covered elsewhere in this decision, the bus service obligation [Schedule 19] is necessary to encourage sustainable patterns of travel. A Travel Plan monitoring contribution of £1,000 [Schedule 24] is reasonably necessary to cover KCC's costs in monitoring compliance of the provisions of the Travel Plan. In both cases the obligations meet the legal tests in Regulation 122.
112. A contribution of £74.05 per dwelling for integrated children's services [Schedule 25] is supported by Technical Appendix 15<sup>76</sup> to the Developer Contributions Guide. This states a contribution will be sought where there is a need for both Youth Hub expansion/enhancement and outreach capacity increases. While I take no issue with the 91 additional users identified by KCC, here is no information before me to demonstrate a deficit in existing capacity as required by test 2). Crucially, and unlike the SEND and adult social care contributions, KCC's Compliance Statement does not state that existing infrastructure is at capacity or incapable of accommodating the new users. Without some form of assessment of existing capacity local to the appeal site, the obligation does not meet the legal test of necessity.
113. A waste disposal contribution of £142.13 per dwelling would be put towards the provision of a new Waste Transfer Station within the Folkestone and Hythe District [Schedule 26]. While KCC officers acknowledged that the new facility would not directly serve the proposed development, it was argued the contribution was justified on the basis that the new facility would free up

---

<sup>75</sup> Stanhope is the nearest library to the appeal site and is open 15 hours a week and only available outside working/school hours for 3 hours on a Saturday morning.

<sup>76</sup> CD12.2F

capacity at the Ashford Waste Transfer Station which is operating at capacity. With cognisance to Technical Appendix 18<sup>77</sup> which specifically refers to a new facility at Folkestone, I am satisfied the contribution meets the necessary legal tests.

114. I have already considered the need for the Secondary Education contribution [Schedule 16] and A28 dualling works [Schedule 23] elsewhere in this decision and I do not need to repeat those findings again here.

#### *Ashford Borough Council Obligations*

115. The affordable and adaptable housing obligation [Schedule 3] would secure 30% on-site affordable housing in line with a mix agreed with the Council. This is necessary to ensure compliance with LP Policies SP1 and HOU1 as well as the Affordable Housing SPD<sup>78</sup>. The provision of adaptable dwellings is necessary to ensure compliance with LP Policy HOU14 which requires a maximum of 7.5% of all new-build affordable homes to be built as wheelchair accessible dwellings. I am thus satisfied that the affordable and adaptable housing obligation meets the relevant legal tests.

116. An allotment contribution of £258 per dwelling for capital costs and £66 per dwelling for maintenance [Schedule 4] has been calculated to meet the need of residents of the proposed development in line with the Public Green Spaces and Water Environment SPD<sup>79</sup>. The Council's Compliance Statement contains an assessment of existing provision which is noted as failing to meet demand with the nearest two sites being fully occupied with significant waiting lists. I am therefore satisfied that the allotment contribution meets the relevant legal tests.

117. The amenity open space land obligation [Schedule 5] relates to the management of those parts of the site which would not be privately owned and located in and around the proposed dwellings, excluding informal/natural green space and play space. Schedule 20 presents two governance options for the amenity land with the Appellant being required to consult with the Council before deciding on which model to adopt. On the information before me, I consider the obligations contained in Schedules 5 and 20 meet the relevant legal tests.

118. £338.40 per dwelling is sought toward art and creative industries [Schedule 6]. While I acknowledge the social and cultural benefits of art and the creative industries, I am not persuaded on the evidence before me, that the proposed development would give rise to any unacceptable effects without the contribution. It therefore fails to accord with the statutory test of necessity.

119. I am satisfied the children's and young people's play space obligation [Schedule 7] is necessary to meet the demand for these facilities generated by the development and is in accordance with LP Policy COM1 and 2. The demand cannot reasonably be met on the CG site given the walk distances involved. The obligation therefore meets the legal tests.

120. The community building obligation seeks a contribution of £1,870.83 per dwelling for capital costs and £528.33 per dwelling for maintenance [Schedule

---

<sup>77</sup> CD12.2H

<sup>78</sup> CD7.8

<sup>79</sup> CD7.11

8] towards a community facility to meet the needs of residents. According to the Council's Compliance Statement, the contribution would be directed towards qualitative improvements to the approved community facility proposed as part of CG<sup>80</sup>.

121. While I take no issue with the Council's assessment of demand, as I understand it, the CG community building has yet to be constructed and made available for public use. Accordingly, it is difficult to understand how the Council can come to an informed judgement about the need for qualitative improvements much less stated what they might be. It seems to me that the contribution is premature particularly bearing in mind the Reserved Matters application for the district centre includes 14,505m<sup>2</sup> of Class E uses<sup>81</sup>. Moreover, the Community Use agreement for the CGSS would provide further space for community uses. Without any substantive evidence to the contrary, I consider that the above infrastructure would be sufficient to meet the demand for community facilities generated by the proposed development. Accordingly, the community building obligation does not meet the relevant legal tests.
122. The health care contribution [Schedule 10] of £565,920 is supported by a consultation response from the NHS Kent and Medway Clinical Commissioning Group<sup>82</sup> (CCG) which states that the development would *"have a direct impact which will require mitigation through the payment of an appropriate financial contribution."* The money would be spent on *"the refurbishment, reconfiguration and/or extension of Woodchurch Surgery and/or Headcorn Surgery and/or towards new general practice premises development in the area"*.
123. I have a number of concerns with the scant justification provided. First, it is stated that the development would result in 1,572 new patient registrations when using an average occupancy of 2.4 people per dwelling. However, that seems unlikely as it assumes that every resident would be new to the area whereas in reality many will already live in the Ashford area and be registered with a GP. Although there is a fleeting reference to 'limited capacity' in the CCG response, there is no suggestion that the Woodchurch or Headcorn surgeries are unable to accommodate new patients, or that existing or projected appointment wait times would be unacceptably long. It is not clear what 'limited capacity' actually means, nor is it explicit that it refers to the two nearest surgeries. There is also no mention of the doctor's surgery to be delivered at CG<sup>83</sup> and why new patients could not be accommodated there, again with or without capacity improvements.
124. In terms of what the money would be spent on, the information is again notably vague and provides for a range of possibilities some of which might not help to meet demand arising from the appeal scheme. No specific refurbishment or reconfiguration schemes at either Woodchurch or Headcorn surgeries are referred to. There are no costings or timings. Without that basic information I cannot be sure the amount sought is proportionate or that the scheme would be delivered when needed. There is also nothing from the CCG regarding other sources of funding so I do not know whether any scheme

---

<sup>80</sup> Located next to the CG Primary School on Mock Lane. LPA Ref: PA/2023/0985

<sup>81</sup> I was told that there is a temporary community building already in situ at CG which is under-utilised at present.

<sup>82</sup> CD1.5, CD1.9 Appendix 8

<sup>83</sup> According to Mr Dix's Table id4.3 THE Community Hub including GP surgery would be



would be dependent on s106 funding from other developments. In light of the foregoing, the health care contribution does not meet the statutory tests.

125. A minimum of 3.14ha of on-site natural greenspace would provide opportunities for outdoor recreation [Schedule 11]. The amount proposed would comply with LP Policy COM2 and the Public Green Spaces and Water Environment SPD. I am therefore satisfied the obligation meets the relevant legal tests.
126. The indoor sports contribution of £83.08 per dwelling (3G pitches) and £527.32 per dwelling (sports hall) has been calculated in accordance with the Sport England Sports Facility Calculator [Schedule 12]. The outdoor sports contribution of £500.00 per dwelling (capital costs) and £358.00 (maintenance) has been calculated in the same way [Schedule 14]. Both contributions are supported by LP Policy COM2. The Council's Compliance Statement refers to the Ashford Borough Playing Pitch Strategy 2017-2030 and the Ashford Indoor Sports Facility Strategy 2017.
127. The latter states that existing sports halls in the Ashford area were operating at capacity at peak times in 2017. No up-to-date information on sports hall capacity is before me. The Strategy also states that new 3G pitches will come forward at Discovery Park in response to the CG development. The Appellant disputes the need for the contribution and argued that CGSS will contain various indoor sports facilities including four badminton courts, a fitness/exercise and drama studios. These would be available to future residents of the development via a Community Use Agreement, an approach expressly supported by the Council's Strategy. In terms of outdoor sports, CG would provide a sports hub and cricket pitch in addition to pitches at CGSS.
128. The Community Use Agreement for CGSS is secured by a planning condition on that permission. There is no evidence which would cause me to doubt that the indoor/outdoor facilities at CGSS would not be available for community use by the time demand is generated by the proposed development. There is also no up-to-date assessment of indoor and outdoor sports facilities in the Ashford area, including what is likely to come forward at CG and Discovery Park. Without this information I simply cannot conclude that there would be a short or long-term deficit in provision.
129. I have carefully considered the Council's submissions in paragraphs 11.17-22 regarding facilities at CGSS. The concern here is that the Appellant may seek to reduce the amount of pitch provision at Discovery Park once a community use agreement is secured at CGSS. However, the relevant paragraph (6.23 of the CGAAP) makes clear that any reduction in the total spatial recreational requirement for sports pitches at Discovery Park would only be appropriate "if justified". Should a deficit in indoor/outdoor sports facilities occur at that time because residents of the proposed development were using provision at CGSS, then I find it unlikely that a reduction in the amount of provision at Discovery Park would be "justified". In any event that would be a matter for the Council at the appropriate time.
130. Based on the information before me now, I am satisfied that there would be sufficient indoor/outdoor sports capacity at CGSS and elsewhere at CG to meet the demand generated by the proposed development. Accordingly, I find that the indoor/outdoor sport obligations do not meet the relevant legal tests.

131. The obligations relating to the provision of self and custom build housing plots are necessary to bring choice to the housing market and enable local people to design and build their own homes [Schedule 18]. LP Policy HOU6 requires sites within and on the edge of the town of Ashford delivering more than 40 dwellings to supply no less than 5% of serviced dwelling plots for sale to self or custom builders. I am therefore satisfied that Option B meets the relevant legal tests.
132. The Appellant is proposing to connect the development to the recently approved WwTW on the CG site to achieve NN [Schedule 21]. The previous disagreement regarding the wording to some of the clauses has been resolved and replaced by provisions that would prohibit discharge of any wastewater from the development until the WwTW is under the full operational control of the Undertaker (Severn Trent Connect). As the WwTW is essential mitigation for the SPA, I am satisfied that Schedule 21 meets the legal tests.
133. The Strategic Parks obligation [Schedule 22] would require a financial contribution of £146 per dwelling for capital costs and £47 per dwelling for maintenance. The amount has been calculated in accordance with the Public Green Spaces and Water Environment SPD which requires strategic parks to be provided at the level of 0.3 hectares per 1000 population. The obligation is supported by the Ashford Open Space Strategy 2017 which identified an under supply of strategic parks within the Borough.
134. The Appellant disputes the need for the obligation and points to the adjacent CG site, which is delivering more than 5.7ha of strategic parks which exceeds policy requirements<sup>84</sup>. The quantum of strategic parks provision for CG is secured via the s106 agreement. However, as set out in the Council's Compliance Statement, the strategic park provision for CG is to be provided at Discovery Park. LP Policy CS18a states that "*Discovery Park will need to be of sufficient scale and must provide a range of uses which will serve a wider catchment than purely the residents of Chilmington Green*".
135. According to the Council, the contribution secured from CG was based on 7.44ha and was not considered to be an over-provision. An additional 27.39ha is required to be paid for via other funding, including S106 financial contributions from other nearby developments in accordance with LP Policy COM2. Having carefully considered the opposing arguments, I concur with the Council that the contribution is necessary to help deliver the Discovery Park scheme which would meet the needs arising from wider growth to the west of Ashford. The strategic parks obligation therefore meets the relevant legal tests.
136. While there is no dispute about the principle of the Regional Infrastructure Funding (RIF) contribution [Schedule 23], the parties disagree on the amount which should be calculated on the appeal scheme's traffic impact at the A28 Drivers Roundabout and M20 Junction 9 (including the Skyway Bridge adjacent to junction 9)<sup>85</sup>. The Council states the contribution (£534,918.75) is based on figures provided by KCC as part of their highway rebuttal evidence<sup>86</sup>. While I have considered the alternative figures proposed by the Appellant, given my earlier comments regarding the respective approaches to traffic

---

<sup>84</sup> CGAAP Policy CG9 requires 4.14 hectares.

<sup>85</sup> Appendix 14, CD1.9A

<sup>86</sup> CD1.38

assignment, I am prepared, on balance, to accept KCC's figures. Option 1 of the RIF obligation therefore meets the relevant legal tests.

### **Planning Balance**

137. I have found that the appeal scheme as with any greenfield development, would result in some limited short-term visual and landscape harm. There would also be limited heritage harm to the setting of Possingham Farmhouse albeit outweighed by the public benefits of the scheme. Collectively these harms attract moderate weight against the proposed development.

138. I have found the Appellant's A28 improvement scheme would satisfactorily mitigate the traffic effects of the development to at least a nil-detriment position. Taking a conservative approach highway matters are therefore neutral in the planning balance. I have also found that the development would be sustainable in accessibility terms with future residents benefitting from a moderate level of accessibility in the short-term rising to good in the longer term. I am satisfied that all other matters weighing against the proposal could be addressed by conditions and/or obligations.

139. Weighing in favour of the appeal scheme are the following principal benefits:

- 1) The provision of 655 dwellings in an area of need where the local authority is unable to demonstrate a five-year supply of housing.
- 2) The provision of affordable housing (196 dwellings/30%) in an area where there is significant demand.
- 3) The creation of revenue for the Appellant company that would help fund the delivery of the WwTW which is currently the only solution to unlocking stalled development on Phases 1 and 2 of CG.
- 4) Public access to the appeal site including policy compliant areas of public open space and play areas.
- 5) The delivery of a new bus service and improvements to the local right of way network which would benefit existing residents of Ashford.
- 6) Biodiversity Net Gain of 19% for habitats and 5% for hedgerows<sup>87</sup>.
- 7) A host of economic benefits during the construction and occupation phases including 2,030 full time equivalent jobs, with the provision of 22 apprentices and the generation of £7.89m in tax revenue, including £739,796 in Council Tax revenue.

140. Collectively the benefits listed above are of such magnitude that they clearly outweigh the identified harm even on the 'flat balance' under section 38(6) of the Planning and Compulsory Purchase Act 2004.

141. Had I taken the Councils' cases at their highest in relation to landscape and highway harm, this would not necessarily have led to the dismissal of the appeal. In that scenario I would have been obliged to apply the tilted balance which would have shifted the weighting in favour of a grant of planning permission "*unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits*". In this case I do not consider the harm

---

<sup>87</sup> CD2.25

identified by the Councils would significantly and demonstrably outweigh the appeal scheme's substantial benefits.

**Conclusion**

142. For the reasons given above the appeal should be allowed.

*D M Young*

INSPECTOR

## **APPEARANCES**

### Ashford District Council

Hugh Flanagan of Counsel, he called:

Faye Tomlinson

Ashford Borough Council

### Kent County Council;

David Forsdick KC, he called:

David Adams BA (Hons) PG Dip

Kent County Council

Matthew Hogben BSc MA

Kent County Council

### Appellant

Richard Harwood OBE KC & Jonathan Darby of Counsel, they called:

John Collins MBA BA (Hons) MRTPI

DHA Planning

Ian Dix BSc (Hons) MSc CMLT

SLR Consulting Limited

Ben Hunter BA DipMS

Education Facilities Management Ltd

Neil Tully MA CMLI, Dip UD

Neil Tully Associates

### *Planning obligations roundtable*

Barry Stiff BEng (Hons)

Kent County Council

Scott Parks BSc (Hons) MRICS FQSi ICIOB

Allen Dadswell Construction  
Consultants

### Interested Parties

Steven Davies

Hobbs Parker

Linda Cleaves

Owner of Possingham Farmhouse

Cllr Jessamy Blanford

Borough Councillor for Weald Central  
Ward

**INQUIRY DOCUMENTS**

<b>Ref.</b>	<b>Document</b>
ID 1	Appellant Opening Statement
ID 2	KCC Opening Statement
ID 3	ABC Opening Statement
ID 4	Public Representation Statement – Hobbs Parker on behalf of owner of Possingham Farmhouse
ID 5	Tor & Co Briefing Doc
ID 6	Wessex Archaeology Historic Landscape and Built Heritage Appraisal
ID 7	Public Representation Statement – Ward Councillor
ID 8	WwTW Appeal Decision (APP/E2205/W/24/3345453)
ID 9	Loudon Way Traffic Signals Google Maps Data from KCC Highways
ID 10	Chilmington Green Building Heights Summary Table
ID 11	Landscape Parameter Plan D0410_001_G
ID 12	Illustrative Play Arrangement Plan D0410_08
ID 13	Email from 2018 from KCC enclosing schedule of 2018 costing A28 Duelling figures
ID 14	Schedule from KCC for 2017 and 2024 figures for costing of A28 Duelling
ID 15	Table of Comparison of S278 payments from KCC
ID 16	Matalan Junction Traffic Signals Google Maps Data from KCC Highways
ID 17	Appellant developer contribution assessment for Secondary (Years 7-11) Education Revised Assessment
ID 18	Email Chain between the Appellant and KCC Education confirming figures
ID 19	Highways SoCG
ID 20	Traffic Capacity of Urban Roads, Volume 5, Section 1, Part 3
ID 21	Tag M3 Guidance May 2024 Appendix E Section 6
ID 22	Google Maps Journey Times at 08:15
ID 23	Google Maps Journey Times at the Tank Roundabout
ID 24	Google Maps Journey Times for the Wider Area

ID 25	Updated journey times leaving the application site Thursday 10 <sup>th</sup> at 8.15am from Google Maps
ID 26	Use of A28 Crossing West of Tank Roundabout – Signal Summary
ID 27	KCC Updated CIL Compliance Statement
ID 28	ABC Update Note on Mechanisms for Securing Nutrient Neutrality Mitigation
ID 29	ABC RIF Table 2 Updated October 2024
ID 30	NHS Planning Obligations Email
ID 31	KCC Junction Capacity Spreadsheet at 400 dwellings
ID 32	KCC Junction Capacity Spreadsheet at 2426 dwellings
ID 33	KCC Revised Trip Rate Assessment at Chilmington Green 400 dwellings
ID 34	KCC Revised Trip Rate Assessment at Chilmington Green 2426 dwellings
ID 35	Planning SoCG with appendices, including draft conditions
ID 36	Draft Conditions
ID 37	Appellant Nutrient Neutrality and A28 Costing Note
ID 38	Appellant S278 Costs and Email from Walker Construction
ID 39	Appellant Corylus Ecology Note
ID 40	KCC A28 Dualling Cost Steps
ID 41	Report of Review of AAP
ID 42	Schedule from KCC for 2024 figures for costing of A28 Duelling
ID 43	KCC Closing Statement
ID 44	ABC Closing Statement
ID 45	Appellant Closing Statement

## **SCHEDULE OF PLANNING CONDITIONS**

- 1) Details of the access (internal circulation routes only), appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
- 1) The first application for approval of the reserved matters shall be made to the Local Planning Authority not later than the expiration of 3 years from the date of this permission and the last application for approval of Reserved Matters shall be made not later than 5 years from the date of this permission.
- 2) The development hereby permitted shall be begun no later than the expiration of 2 years from the date of approval of the last of the Reserved Matters to be approved.
- 3) The development shall be carried out in accordance with the following plans and documents approved by this decision.
  - Site Layout Plan 29892A\_103 F
  - Access and Movement Parameter Plan 29892A\_50H
  - Building Heights Parameter Plan 29892A\_51 H
  - Land Use Parameter Plan 29892A\_52 H
  - Parcel Densities Parameter Plan 29892A\_53 J
  - Landscape Parameter and Open Space Plan D0410\_001 G
  - Primary Access Arrangement VD21426-D100 C
  - Secondary Access (Ghost Island) Arrangement into Development on the A28 VD21426-D101 B
  - Sc104 Layout – Strategic FW Design for Long Length Sheet 1 of 5 VD15279-Phase 1-104-513.1 A
  - Site Location Plan - 29892A\_10
- 4) Prior to the submission of any application for approval of reserved matters pursuant to condition 1 the following shall be submitted to and approved in writing by the Local Planning Authority:
  - i. a phasing plan identifying the phases of development and their sequence of implementation;
  - ii. a detailed masterplan for the whole site identifying the location of residential land parcels, access and highways, pedestrian and cycle routes; informal natural green space; play space; SuDS and ecological mitigation areas.

The development shall be carried out in accordance with the approved phasing plan and masterplan with each phase being severable and separately implementable.
- 5) The plans and particulars pursuant to condition 1 shall include the following:



- i. An Arboricultural Impact Assessment and Tree Protection Plan, including a schedule of arboricultural site monitoring for the duration of the development until completion;
- ii. Details of existing and proposed levels and earth works for the site, including details of grading and mounding of land, showing the relationship with retained vegetation and surrounding landform;
- iii. A Public Right of Way (PROW) Management Scheme, to include details of the proposed alignment, enhancement and upgrading of existing and proposed new PROWs within and adjacent to the site, including details of upgrade works to enable access for cyclists and horse riders; details of PROW management before and during construction, if any temporary closures or diversions are required; and a timetable for delivery of the enhancements and improvements agreed;
- iv. A Play Space Strategy for the site, providing details of the provision of all play space on the site, including details of incidental and doorstep play;
- v. Layout plans and sections to demonstrate the provision of level thresholds to all principal entrances to all dwellings and/or level thresholds accessed by shallow ramps where level thresholds cannot be provided, linking the principal entrance of the dwelling/building to that which forms the public realm.

The plans and particulars pursuant to condition 1 shall also demonstrate the following:

- vi. that requirements for surface water drainage for all rainfall durations and intensities up to and including the climate change adjusted critical 100-year storm can be accommodated within the proposed development layout.
- vii. that an effective outfall for surface water can be provided for the development layout. This information may include details of surveys of watercourses and culverts and / or details of any works that may be necessary to deliver an effective outfall for surface water.

The development shall thereafter be carried out in accordance with the approved details.

- 6) No development, including any preparation works prior to building operations, within any phase shall take place until a Construction and Transport Management Plan for that phase has been submitted to and approved in writing by the Local Planning Authority. The Construction and Transport Management Plan shall include, but not be limited to the following:
  - i. A site plan identifying location of site entrance and exit; areas on site for parking and turning for site personnel; areas on site for parking loading and unloading of plant and materials, and provision of on-site for turning for delivery and construction vehicles including HGV's;

- ii. Details of areas for the storage of plant and materials, including stock piles;
- iii. Details of the form and location of any proposed temporary works compounds/welfare facilities;
- iv. Details of measures to prevent discharge of surface water onto the public highway;
- v. Details of facilities by which vehicles will have their wheels, chassis and bodywork effectively cleaned and washed free of mud and similar substances and details of measures to ensure that the local highway hinterland of the site is regularly monitored and cleared of any mud or similar substances, including location of water supplies;
- vi. A programme of works (including details of the timing of deliveries, measures for traffic management/signage);
- vii. Details of any temporary fencing/hoardings to be provided;
- viii. Details of the routing of construction and delivery vehicles to / from site.
- ix. Details of hours of construction
- x. Dust Management Plan and Risk Assessment, including proposals for monitoring dust / particulates and procedures to be put in place for preventing or controlling unacceptable releases, including dust suppression methods to be used; a bonfire policy; confirmation if a mobile crusher will be used on site and if so, a copy of the permit and indented dates of operation; details of liaison with other construction sites within 200m of the site boundary to ensure plans are co-ordinated and dust and particulate matter emissions are minimised.

The approved Construction and Transport Management Plan shall be adhered to throughout the duration of the construction period.

- 7) Prior to the commencement of above ground works details, including a plan, of the proposed pedestrian crossing of Chilmington Green Road within 20 metres of the Mock Lane junction to facilitate the crossing of the road by pedestrians and cyclists shall be submitted to and approved in writing by the Local Planning Authority. The pedestrian crossing shall be implemented in accordance with the approved details prior to the occupation of any dwelling hereby permitted.
- 8) Prior to the occupation of any dwelling hereby permitted the site access junctions with The Avenue Phase 2 (primary access) and Ashford Road A28 (secondary access) and associated visibility splays as shown on drawing numbers VD21426-D100 Revision D (primary access) and VD21426-D101 Revision B (secondary access) shall be implemented and opened to vehicular traffic.
- 9) Prior to the occupation of any dwelling hereby permitted the following off-site facilities shall be completed and open to the public:
  - i. A supermarket with not less than 2136m<sup>2</sup> gross internal area (GIA) at Chilmington Green district centre, and

- ii. Chilmington Green secondary school proposed on Chilmington Green land parcel E5.
- 10) The Chilmington Green district centre facilities (excluding the supermarket) with a total floorspace of not less than 4595m<sup>2</sup> (with at least 5 units to have less than 150m<sup>2</sup> floorspace at ground floor level) shall be completed and open to the public prior to the occupation of the 328<sup>th</sup> dwelling hereby permitted.
- 11) Prior to the occupation of any dwelling hereby permitted the following off-site highway infrastructure shall be completed to an adoptable standard and open to motor vehicles, pedestrians and cyclists:
  - i. The Chilmington Green Access C roundabout permitted under planning permission 12/00400/AS;
  - ii. Chilmington Green Avenue (Phase 2) from Chilmington Green Road to the Chilmington Green Access C roundabout permitted under planning permission 21/00840/AS (as amended);
  - iii. The Chilmington Green Avenue (Phase 1) from Chilmington Green Access A roundabout to Chilmington Green Road permitted under planning permission 17/00665/AS;
  - iv. The Chilmington Green Active Travel Route permitted under planning permission 21/00839/AS;
  - v. Footway and cycle links from Chilmington Green parcel B, C, J and K and Singleton proposed under planning application 17/01170/AS.

Except that for the works described in ii and iii where the carriageway need only be completed to binder course and footways and cycleways completed to wearing course level. Within 18 months after the completion of the adjacent land plots the carriageway in ii and iii will be completed to wearing course

- 12) Prior to the occupation of any dwelling hereby permitted, a scheme for the improvement of Mock Lane, details of which shall first be submitted to and approved in writing by the Local Planning Authority, shall be implemented in full and available for public use. The scheme shall include a Traffic Regulation Order for a reduction in the speed limit to 30mph, the extension of the existing footway/cycleway, signage and traffic calming.
- 13) Prior to the occupation of any dwelling hereby permitted, a detailed Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall include the following:
  - i. setting of objectives and targets;
  - ii. measures to promote and facilitate public transport use, walking and cycling;
  - iii. measures to reduce car usage;
  - iv. measures to reduce air pollution;
  - v. promotion of practices/facilities that reduce the need for travel;
  - vi. monitoring and review mechanisms,
  - vii. Travel Plan co-ordinators and associated support;

- viii. Provision of travel information and marketing together with a timetable for the implementation of each element.

The agreed Travel Plan measures shall be implemented in accordance with the details approved within three months of first occupation of the development hereby permitted and thereafter maintained.

- 14) Prior to the occupation of each dwelling hereby permitted, the following works shall be completed between that dwelling and the adoptable highway:
  - i. Footways and/or footpaths, with the exception of the wearing course;
  - ii. Carriageways, with the exception of the wearing course but including a turning facility, highway drainage, visibility splays, street lighting, street nameplates and highway structures (if any).
- 15) No development, including any preparation works prior to building operations, within any phase shall take place until a construction ecological management plan (CEMP - biodiversity) has been submitted to and approved in writing by the Local Planning Authority. The CEMP - biodiversity shall be based on the recommendations in section 10 of the Corylus Ecology Ecological Impact Assessment Report (dated 24th April 2023), section 10 and Figure 4 (Impacts and Mitigation Plan) of the Corylus Ecology Addendum Ecological Impact Assessment Report dated November 2023, as well as sections 7 and 8, and the annotated landscape parameter plan/open space plan of the Addendum Ecological Impact Assessment Report (dated September 2024). It shall include the following:
  - i. Purpose and objectives for the proposed works;
  - ii. Risk assessment of potentially damaging construction activities. This shall include reference to the results of updated species/habitat surveys as advised by a suitably qualified ecologist;
  - iii. The identification of biodiversity protection zones and the use of protective fences, exclusion barriers and warning signs. This shall include a suitable buffer zone(s) (as set out by a suitably qualified ecologist) to protect the main badger sett and any other badger setts to be retained;
  - iv. Extent and location of proposed works shown on appropriate scale maps and plans for all relevant species and habitats;
  - v. Detailed design(s) and/or detailed working method(s) necessary to achieve stated objectives (including the location and timing);
  - vi. Timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction;
  - vii. Reference to any relevant and necessary protected species licences (e.g., badgers and dormice) and any relevant mitigation measures required;
  - viii. Reference to a detailed arboricultural method statement to protect retained trees/hedgerows;

- ix. Persons responsible for implementing and monitoring the works, including times during construction when specialist ecologists need to be present on site to undertake / oversee works;
- x. The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person; and
- xi. Details of the disposal of any wastes required to implement works.

The Development shall thereafter be carried out in accordance with the approved CEMP - biodiversity.

- 16) No development, including any site clearance and below ground works, within any phase shall take place until an Ecological Design Strategy (EDS) has been submitted to and approved in writing by, the Local Planning Authority. The content shall be based on the recommendations in section 10 of the Corylus Ecology Ecological Impact Assessment Report (dated 24th April 2023), sections 10 and 11, and Figure 4 (Impacts and Mitigation Plan) of the Corylus Ecology Addendum Ecological Impact Assessment Report dated November 2023, the Biodiversity Net Gain Report (dated March 2023) and associated biodiversity metric calculation tool (dated March 2023) produced by Corylus Ecology, as well as sections 7 and 8 of the Addendum Ecological Impact Assessment Report dated September 2024 and the landscape parameter plan/open space plan (N, D0410\_001 G dated 9th September 2024. The EDS shall include the following:

- i. Description and evaluation of features to be managed;
- ii. Purpose and conservation objectives for the proposed works and management;
- iii. Review of site potential and constraints, including those that might influence management;
- iv. Detailed design(s) and/or working method(s) to achieve stated objectives;
- v. Full details of soft landscape works, to include species, size and location of new habitats (e.g., trees, shrubs, hedges and grassed areas to be planted) with the extent and location/area of proposed works shown on appropriate scaled maps and plans;
- vi. Full details of the proposed ecological features as per section 7 and the annotated landscape parameter plan/open space plan of the Corylus Ecology Addendum Ecological Impact Assessment Report dated September 2024) as well as section 10 of the Corylus Ecology Ecological Impact Assessment Report (dated 24th April 2023), and section 10 of the Corylus Ecology Addendum Ecological Impact Assessment Report dated November 2023. For habitat boxes this shall include numbers, make and model, locations to include height, aspect and mounting location shown on scaled landscaping plans suitable for construction;
- vii. Full details of the extent of an appropriate buffer (as set out by a suitably qualified ecologist) for the main badger sett, and any other retained badger setts post-construction, and how it/they shall be protected from human interference over the long-term;

- viii. Measures to reduce potential conflict between humans and badgers (e.g., measures to reduce the risk of badgers digging setts in residential gardens);
- ix. Type and source of materials to be used where appropriate, e.g. native species of local provenance;
- x. Details of initial aftercare and preparation of a work schedule (including an annual work plan capable of being rolled forward over a five year period);
- xi. Appropriate management prescriptions for achieving aims and objectives (including sensitive management for amphibians, reptiles, bats, hazel dormice, badger, breeding birds, hedgerows);
- xii. An external lighting design plan for biodiversity;
- xiii. Timetable for implementation demonstrating that works are aligned with the proposed phasing development;
- xiv. Ongoing monitoring and remedial measures.
- xv. Persons responsible for implementing the works and details of the body or organisation(s) responsible for implementation of the plan; and
- xvi. Details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery.

Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size and species as those originally planted, unless written approval to any variation is provided by the Local Planning Authority.

The EDS shall be implemented and managed in accordance with the submitted and approved details.

- 17) No development, including any site clearance and below ground works, within any phase shall take place until a Skylark Mitigation and Compensation Strategy has been submitted to and approved in writing by the Local Planning Authority. The Strategy shall ensure off-site habitat is provided for the projected loss of at least six skylark territories (as identified in the Corylus Ecology Addendum Ecological Impact Assessment Report dated September 2024 (Corylus reference 21142)). The Strategy shall ensure the mitigation and compensation measures with regards to habitat improvements proposed, and the area of land required, are based on available scientific research (such as The SAFFIE Project Report by Clarke et al., June 2007; BTO Research Report No. 129 by Wilson and Browne, October 1993; and Journal für Ornithologie article on Territory density of the Skylark (*Alauda arvensis*) in relation to field vegetation in central Germany by Toepfer and Stubbe, December 2001). If the proposed compensation site already has existing skylark territories and/or is already proposed as skylark compensation for other development, evidence shall be provided to demonstrate that the measures proposed are additional to any existing territories. The Strategy shall include the following:

- i. Up-to-date breeding bird survey data for the proposed compensation site;
- ii. Purpose and conservation objectives for the proposed works;
- iii. Review of site potential and constraints;
- iv. Detailed design(s) and/or working method(s) to achieve stated objectives;
- v. Extent and location/area of proposed works on appropriate scale maps and plans;
- vi. Type and source of materials to be used where appropriate, e.g. native species of local provenance;
- vii. Timetable for implementation demonstrating that works are aligned with the proposed phasing of development;
- viii. Details of the body or organisation(s) responsible for implementing the Strategy;
- ix. Details of initial aftercare and long-term maintenance, and;
- x. Details for monitoring (to be undertaken by a suitably qualified ecologist(s)) and remedial measures.

The Skylark Mitigation and Compensation Strategy shall be implemented in accordance with the approved details no later than the commencement of construction or site clearance, if earlier. All features shall be retained as approved thereafter, unless remedial measures are required.

Approval for any remedial measures shall be sought from the Local Planning Authority in writing through condition 18 and thereafter implemented as approved.

- 18) No development, including below ground works, within any phase shall take place until a detailed sustainable surface water drainage scheme for the site has been submitted to and approved in writing by the Local Planning Authority.

The detailed drainage scheme shall be based upon the Flood Risk Assessment by Vectos ref: VD21426, 2nd issue dated 09 September 2024 [and shall demonstrate that the surface water generated by the development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100-year storm) can be accommodated and disposed of without increase to flood risk on or off-site. The detailed drainage scheme shall also demonstrate that any existing surface water flow paths can be accommodated and disposed of without increase to flood risk on or off site. The drainage scheme shall also demonstrate (with reference to published guidance):

- i. that silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters.
- ii. appropriate operational, maintenance and access requirements for each drainage feature or SuDS component are adequately considered, including any proposed arrangements for future adoption by any public body or statutory undertaker.

The drainage scheme shall be implemented in accordance with the approved details.

- 19) No development, including below ground works, within any phase shall take place until a detailed foul water sewerage disposal strategy has been submitted to and approved in writing by the Local Planning Authority. The Strategy shall include details of the arrangements, including an implementation plan, for the connection before any occupation of the dwellings hereby approved to the off-site Wastewater Treatment Plant granted planning permission on appeal under reference APP/E2205/W/24/334553. The development shall be implemented in accordance with the approved details.
- 20) No development shall take place until the applicant (or their agents or successors in title) has submitted to and had approved in writing by the local planning authority a programme of archaeological work consisting of a written scheme of investigation evaluation and mitigation and a timetable for the work. The development shall thereafter proceed in accordance with the approved written scheme of investigation and timetable. The programme of work shall include all processing, research and analysis necessary to produce an accessible and useable archive and a full report for publication which shall be submitted to the Local Planning Authority within two years of the completion of the archaeological fieldwork.
- 21) No development above foundation level within any phase shall take place until a scheme for protecting the dwellings hereby approved from road noise from Ashford Road A28; connecting roads, the Chilmington Green secondary school and potentially other sources such as plant (including air sourced heat pumps) shall be submitted to and approved in writing by the Local Planning Authority. The approved protection measures shall thereafter be completed before the approved dwellings are occupied, and thereafter shall be retained as effective protection.
- 22) No development, including site clearance and below ground works, within any phase shall take place until a scheme to deal with contamination of land and/or groundwater has been submitted to and approved in writing by the Local Planning Authority and no development, including site clearance and below ground works, shall take place until the measures approved in the approved scheme have been implemented.

The investigation report shall be conducted and presented in accordance with the guidance in CLR11 "Model Procedures for the Management of contaminated land" published by the Environment Agency. The scheme shall include all of the following measures:

- i. A desk-top study carried out by a competent person to identify and evaluate all potential sources and impacts of land and/or groundwater contamination relevant to the site. The requirements of the Local Planning Authority shall be fully established before the desk-top study is commenced and it shall conform to any such requirement. A full copy of the desk-top study and a non-technical summary shall be submitted to the Local Planning Authority without delay upon completion.
- ii. A site investigation shall be carried out by a competent person to fully and effectively characterise the nature and extent of any land



and/or groundwater contamination, and its implications. The site investigation shall not be commenced until a desk-top study has been completed, satisfying the requirements of point (1) above. The requirements of the Local Planning Authority for site investigations have been fully established, and the extent and methodology have been submitted to and agreed in writing by the Local Planning Authority. A full copy of a report on the completed site investigation shall be submitted to and approved in writing by the Local Planning Authority without delay upon completion.

- iii. A written method statement for the remediation of land and/or groundwater contamination affecting the site shall be submitted to and agreed in writing by the Local Planning Authority prior to commencement, and all requirements shall be implemented and completed to the satisfaction of the Local Planning Authority by a competent person. No deviation shall be made from this scheme.

A full copy of the completion report confirming the objectives, methods, results and conclusions of all remediation works shall be submitted to and approved in writing by the Local Planning Authority.

- 23) If unexpected contamination is found at any time when carrying out the approved development, it must be reported in writing to the Local Planning Authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared. Following completion of the remediation scheme a verification report that demonstrates the effectiveness of the remediation carried out must be prepared and submitted for approval in writing by the Local Planning Authority.
- 24) The plans and particulars pursuant to condition 1 'layout', 'scale' and 'appearance' shall include details of how at least 20 percent of the new dwellings shall be built in compliance with building regulations part M4 (2) as a minimum standard. The development shall be implemented in accordance with the details so approved.
- 25) Prior to the occupation of each dwelling, that dwelling shall be constructed and fitted out to ensure that the potential consumption of wholesome water by persons occupying the dwelling will not exceed 110 litres per person per day, as measured in accordance with a methodology approved by the Secretary of State and confirmed by Notice required by the Building Regulations 2010 (as amended).
- 26) Prior to first occupation, each dwelling shall be provided with High Speed wholly Fibre broadband.