

Application Number	17/00655/AS
Location	Land at Luckley Field, South of 128 Little Chequers, Wye (Site Wye 2)
Grid Reference	05073/46456
Parish Council	Wye with Hinxhill
Ward	Wye
Application Description	Removal of condition 11 on planning permission 14/00195/AS (Erection of 25 dwellings with vehicle access off Little Chequers. Parking, drainage works, structural and on site landscaping) to exclude herptile fencing from the site
Applicant	Harville Farms, Harville Road, Wye TN25 5EU
Agent	The JTS Partnership, 1 st Floor 44 St Peters Street, Canterbury CT1 2BG
Site Area	1.33 hectares

Introduction

1. This application is being reported to the Planning Committee as it is a major application that is not covered by the scheme of delegation. This is because, although the removal of condition is relatively minor, the consequence of a S73 application is to grant a fresh planning permission for the development.

Site and Surroundings

2. The site forms Wye 2 housing allocation as set out in the Tenterden & Rural Sites DPD. A full description of the site was given in the report on 14/00195/AS for the erection of 25 dwellings. This report can be read by the following link:

<http://vm-abcapps/committeeSystem/ViewAgenda.aspx?MeetingId=1753>

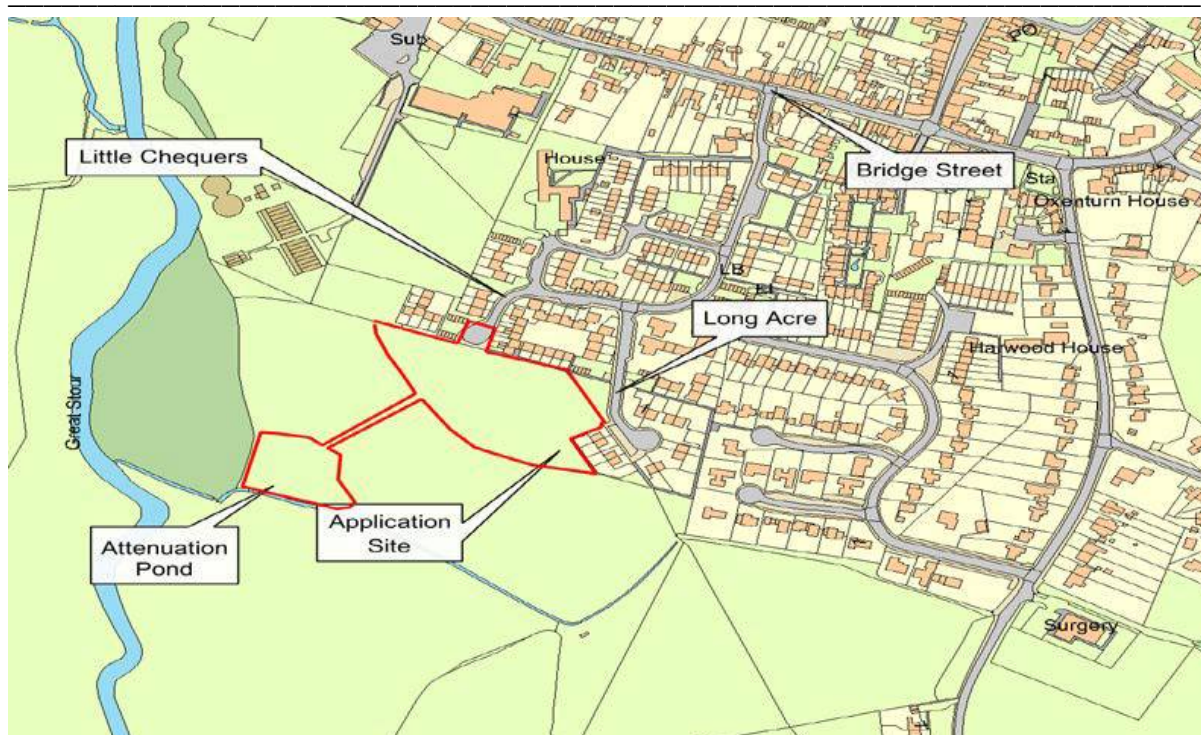


Figure 1: Site location plan

3. A site location plan is attached as an annex to this report.

Proposal

4. The application is a Section 73 application of the Town & Country Planning Act (TCPA) 1990 for the removal of condition 11 of application 14/00195/AS for the erection of 25 dwellings with associated parking, drainage and landscaping. Condition 11 reads as follows:

Condition 11:

“Prior to the commencement of development herptile exclusion fencing shall be erected around the perimeter of the site in accordance with details previously submitted to and approved in writing by the Local Planning Authority. The fencing shall thereafter be retained as an effective barrier preventing herptiles from entering the site and shall remain in situ until the completion of the development.

Reason: To ensure that European and UK protected species are not harmed as a result of the development.”

5. The applicant's state that the condition is unnecessary as when the site was surveyed in 2012 there was no evidence at all of the site being used by amphibians or reptiles. The survey work undertaken under the original application was carried out again in 2015 and the report submitted with the application reaches the same conclusions as before: there is no evidence of

great crested newts within 500m of the site, the site in its entirety is currently under 100% intensive agricultural management and has been under arable production since 2012 to the present day and such use makes the site poor in terms of providing habitat for either amphibians or reptiles (herptiles).

Planning History

14/00195/AS: Erection of 25 dwellings with a vehicle access off Little Chequers. Parking, drainage works, structural and on site landscaping – PERMIT

Consultations

Ward Member: Is a member of the Planning Committee.

Parish Council: Object on the following grounds:

- The ecological report is dated 2015 and therefore is 2 years old;
- Great Crested Newts (GCNs) are known to occur in the adjacent areas, including Chequers Park estate, and have been recorded from ponds within 500m of the site;
- A breeding population of GCNs occurs at Orchard Drive;
- Reports of GCNs from the pond at Lady Johanna and Thornhill Primary School;
- A terrestrial male was observed in Cherry Garden Lane;
- GCNs are known to wander through wheat fields;
- Slow worms are known to occur in the gardens on the adjacent Chequers Park Estate;
- Given the above; condition 11 should remain in order to ensure GCNs do not wander onto the site

KCC Biodiversity: No objection stating:

“The land is currently quite dense arable farmland, and as such, has limited suitability for reptiles and amphibians. There are also no suitable waterbodies nearby to the development site meaning it is very unlikely that great crested newts will be present. Therefore, the installation of any herptile exclusion fencing would be unnecessary. This was backed up through the submission of the ecological documents within the original planning application of which has now been updated”.

In response to the objection raised by the Parish Council, KCC Biodiversity has added the following comments:

“I’ve taken into consideration the information provided by the parish council who have identified a great crested newt breeding pond around 400 metres away from the development. This had not been identified by the submitted ecological appraisal within the original application. According to the rapid risk assessment provided by Natural England, an offence is “highly unlikely” taking into consideration the distance (400 metres) and amount of land to be lost (~1 hectare). In addition, the pond is separated by a number of roads providing a potential barrier and the habitat to be lost (dense arable) is of low potential. In light of this, we maintain our view that the installation of herptile exclusion fence will be unnecessary.”

Natural England: State that they have no comments to make and refer to their Standing Advice.

Neighbours: 15 neighbours consulted; no comments received. The application has also been advertised and a site notice posted as the application is a major application.

Planning Policy

6. The Development Plan comprises the saved policies in the adopted Ashford Borough Local Plan 2000, the adopted LDF Core Strategy 2008, the adopted Ashford Town Centre Action Area Plan 2010, the Tenterden & Rural Sites DPD 2010, the Urban Sites and Infrastructure DPD 2012, the Chilmington Green AAP 2013 the Wye Neighbourhood Plan 2015-30 and the Pluckley Neighbourhood Plan 2016 - 30. On 9 June 2016 the Council approved a consultation version of the Local Plan to 2030. Consultation commenced on 15 June 2016 and closed after 8 weeks. Proposed changes to the draft Local Plan were approved for further consultation by the Council on 15 June 2017 and consultation has now commenced. At present, the policies in this emerging plan can be accorded little weight.
7. The relevant policies from the Development Plan relating to this application are as follows:-

Ashford Borough Local Plan 2000

GP12 - Protecting the countryside and managing change

EN9 - Setting and entrances to towns and villages

EN31 - Important habitats

LE5 - Equipped public open space (policy formally saved but standards and thresholds superseded)

LE7 - Play facilities (policy formally saved but standards and thresholds superseded)

LE9 - Maintenance of open spaces

CF21 - School requirements for new housing developments

Local Development Framework Core Strategy 2008

CS1 - Guiding principles to development

CS2 - The Borough Wide Strategy

CS6 - The Rural Settlement Hierarchy

CS9 - Design Quality

CS10 - Sustainable Design and Construction

CS11 - Biodiversity and Geological Conservation

CS12 - Affordable Housing

CS13 - Range of Dwelling Types and Sizes

CS15 - Transport

CS18 - Meeting the Community's Needs

CS18a - Strategic Recreational Open Spaces

CS20 - Sustainable Drainage

Ashford Town Centre Area Action Plan 2010

None

Tenterden & Rural Sites DPD 2010

TRS17 - Landscape character & design

TRS18 - Important Rural Features

TRS19 - Infrastructure provision to serve the needs of new developments

WYE2 - Land at Luckley Field:-

"Land at Luckley Field is proposed for residential development (indicative capacity 20 units).

Development proposals for the site shall:-

a) Provide a landscaped boundary along the southern edge of the site;

b) Provide vehicular access via Little Chequers and / or Long Acre;

c) Provide a mix of dwelling types and sizes as required by policy CS13 of the Core Strategy;

d) Provide affordable housing as required by policy CS12 of the Core Strategy;

e) Provide play equipment on the recreation ground in accordance with saved policy LE7 of the Borough Local Plan 2000 or, any subsequent SPD superseding that policy; and

f) Provide a financial contribution towards the maintenance of public open space in the village and the play equipment provided under (e) above, in accordance with saved policy LE9 of the Borough Local Plan 2000, or any subsequent SPD superseding that policy."

8. The following are also material to the determination of this application:-

**Emerging Ashford Local Plan 2030 Regulation 19 Versions June 2016
(as amended in July 2017) (Draft)**

Whilst this currently has little weight, the following are emerging policies that are relevant to this proposal:

SP1 - Strategic Objectives

SP2 - The Strategic Approach to Housing Delivery

SP6 - Promoting High Quality Design

HOU1 - Affordable Housing

HOU4 - Residential Development in the rural settlements

HOU12 - Residential Space standards internal

HOU13 - Homes suitable for family accommodation

HOU14 - Accessibility standards

HOU15 - Private external open space

EMP6 - Promotion of Fibre Optic to the Premises (FTTP)

TRA3a - Parking Standards for Residential Development

TRA5 - Planning for Pedestrians

TRA6 - Provision for cycling

TRA7 - The Road Network and Development

ENV1 - Biodiversity

ENV3 - Landscape Character and Design

ENV4 - Light pollution and promoting dark skies

ENV5 - Protecting important rural features

ENV6 - Flood Risk

ENV7 - Water Efficiency

ENV8 - Water Quality, Supply and Treatment

ENV9 - Sustainable Drainage

ENV12 - Air Quality

ENV13 - Conservation and Enhancement of Heritage Assets

ENV14 - Conservation Areas

ENV15 - Archaeology

COM1 - Meeting the Community's Needs

COM2 - Recreation, Sport, Play and Open Spaces

COM3 - Allotments

COM4 - Cemetery Provision

Supplementary Planning Guidance/Documents

Affordable Housing SPD 2009

Residential Parking and Design Guidance SPD 2010

Sustainable Drainage SPD 2010

Landscape Character SPD 2011

Residential Space and Layout SPD 2011

Sustainable Design and Construction SPD April 2012

Public Green Spaces & Water Environment SPD 2012

Dark Skies SPD 2014

Village Design Statements / Neighbourhood Plans

Wye Neighbourhood Plan

Wye Village Design Statement

Other Guidance

Informal Design Guidance Notes 1- 4 (2015)

Government Advice

National Planning Policy Framework 2012

9. Members should note that the determination must be made in accordance with the Development Plan unless material considerations indicate otherwise. A significant material consideration is the National Planning Policy Framework (NPPF). The NPPF says that less weight should be given to the policies above if they are in conflict with the NPPF.
10. The NPPF has at its heart a presumption in favour of sustainable development which should be seen as the golden thread running through both plan making and decision taking.
11. At paragraph 17, the NPPF states that “every effort should be made objectively to identify and then meet the housing, business and other development needs of an area”. It goes on to state that “planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings”.
12. Paragraph 109 seeks to ensure that the natural environment is conserved or enhanced and any impacts on biodiversity are minimised.

Assessment

13. The main issues for consideration are:

- (a) Principle of the development;
- (b) Whether the removal of condition 11 is acceptable when assessed against Section 73 of the Town & Country Planning Act 1990;
- (c) Other conditions for consideration; and,
- (d) Whether any changes are required to other conditions or the legal agreement.

Principle of the development

- 14. The principle of development has been established by planning permission 14/00195/AS (approved 11 November 2015) for the development of 25 dwellings with associated roads, parking and landscaping. The site is allocated for residential development in the Tenterden & Rural Sites DPD 2010 with an indicative capacity of 20 units. The permission remains extant.
- 15. Since the grant of planning permission, there have been no material changes on the site or indeed in the adopted Development Plan that would affect the principle of the development proposed. This remains an allocated site in the Development Plan and in the absence of a 5 year supply of achievable and deliverable housing sites (a material change that has taken place since the original application was first considered) would only tip the balance further in terms of supporting the development.

Whether the removal of condition 11 is acceptable when assessed against Section 73 of the Town & Country Planning Act 1990

- 16. Section 73 concerns the determination of applications to develop land without compliance with conditions previously attached.
- 17. Section 73 (2) states that on such an application, the Local Planning Authority shall consider only the question of the conditions subject to which planning permission should be granted and –
 - (a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly; and,
 - (b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

18. It goes on to say at Section 73 (4) that this section does not apply if the previous planning permission was granted subject to a condition as to the time within which the development to which it related was to be begun and that time has expired without the development having been begun (the current permission is still extant until 11 November 2018).
19. This proposal is seeking to simply remove the condition attached relating to the erection of herptile exclusion fencing around the perimeter of the site. The development has yet to lawfully commence on site and no conditions attached to the original grant of planning permission have been discharged to date.
20. Policy CS11 of the Core Strategy deals specifically with ecology, stating that development proposals should avoid harm to biodiversity and geological conservation interests and seek to maintain and where possible enhance it. Policy EN31 of the adopted Local Plan seeks to ensure that developments that harm sites of conservation importance or protected species are not permitted unless there are very special circumstances for doing so. Policy ENV1 of the emerging Local Plan, along with guidance contained in the NPPF, echo these adopted policies.
21. The condition was put on as a precautionary measure at the time of decision of the original application. Since this decision was issued, the Council has engaged the services of KCC Biodiversity to advise on matters in respect of protected species and their habitat. They have stated that based upon the survey information submitted with the original application and as updated and on the basis that the land continues to be used for arable farming, then the site has a low ecological value and offers poor terrestrial habitat for amphibians or reptiles (herptiles). This, combined with the lack of suitable nearby waterbodies, means that herptiles are highly unlikely to be on the site or to wander onto the site. KCC Biodiversity are of the view that the condition requiring the erection of herptile exclusion fencing in this instance is unnecessary and should be removed.
22. Concerns were raised by the Parish Council and these were commented upon by KCC Biodiversity, who maintain their advice that the fencing is not required.
23. In light of the above, I do not consider that without the exclusion fencing, the development would result in any harm to matters of ecological importance and as such the condition can be removed. In any event, a condition relating to biodiversity and wildlife enhancement remains.

Other conditions for consideration

24. In considering an application under Section 73, the Council can revisit other conditions on the decision notice other than those being applied for in respect

of variation / removal. All other conditions remain relevant with the exception of condition 36, which relates to the Code for Sustainable Homes. This was a material consideration at the time a decision was made on the original application but subsequently abolished. As such, this condition is no longer of any relevance and should be removed from the decision notice. That said, policy CS10 of the Core Strategy is relevant and I have suggested an alternative condition that addresses issues such as water consumption, energy efficiency and the use of onsite sustainable energy technologies and this is set out in the recommendation as condition 39.

Planning Obligations

25. Regulation 122 of the Community Infrastructure Regulations 2010 says that a planning obligation may only constitute a reason for granting planning permission for a development if the obligation is:
- (a) necessary to make the development acceptable in planning terms;
 - (b) directly related to the development; and,
 - (c) fairly and reasonably related in scale and kind to the development.
26. A new planning permission is issued when a Section 73 application is granted. The new permission sits alongside the original and therefore requires a S106 Agreement. The contribution as set out in the original S106 Agreement all remain relevant to this application (as contained in Table 1 below), with the exception of contributions to the carbon fund as Code for Sustainable Homes is now obsolete. In order to avoid pooling restrictions, a deed of variation of the original S106 Agreement is to be entered into and this will relate to this application

Table 1

	Planning Obligation			Regulation 122 Assessment
	Detail	Amount(s)	Trigger Point(s)	
1	<p><u>Affordable Housing</u></p> <p>Provide not less than 35% of the units as affordable housing, comprising 60% social rented units and 40% in other forms of affordable provision (or such other proportion as the Council specifies) and to such standards, timings and other particulars as the Council specifies in an affordable housing scheme. The affordable housing shall be managed by a registered provider of social housing approved by the Council.</p>	<p>6 social rented units</p> <p>3 units in other forms of affordable provision</p>	<p>To be agreed in the affordable housing scheme to be approved prior to commencement</p>	<p>Necessary as would provide housing for those who are not able to rent or buy on the open market pursuant to Core Strategy policy CS12, policy WYE 2 of the Tenterden & Rural Sites DPD, the Affordable Housing SPD and guidance in the NPPF.</p> <p>Directly related as the affordable housing would be provided on-site in conjunction with open market housing.</p> <p>Fairly and reasonably related in scale and kind as based on a proportion of the total number of housing units to be provided.</p>

	Planning Obligation			Regulation 122 Assessment
	Detail	Amount(s)	Trigger Point(s)	
2	<p><u>Outdoor Sports Pitches</u></p> <p>Contribution towards provision of or improvements to outdoor sports pitches and associated facilities and maintenance thereof</p>	<p>£1,589 per dwelling for capital costs</p> <p>£326 per dwelling for maintenance</p>	<p>Before completion of 75% of the dwellings</p>	<p>Necessary as outdoor sports pitches are required to meet the demand that would be generated and must be maintained in order to continue to meet that demand pursuant to Core Strategy policies CS1, CS2 and CS18, Tenterden and Rural Sites DPD policy TRS19, Public Green Spaces and Water Environment SPD and guidance in the NPPF.</p> <p>Directly related as occupiers will use sports pitches and the facilities to be provided would be available to them.</p> <p>Fairly and reasonably related in scale and kind considering the extent of the development and the number of occupiers and the extent of the facilities to be provided and maintained and the maintenance period is limited to 10 years.</p>

Planning Obligation				Regulation 122 Assessment
Detail	Amount(s)	Trigger Point(s)		
3	<p><u>Informal/Natural Green Space</u></p> <p>Contribution towards provision of or improvements to informal/natural green space and associated facilities and maintenance thereof</p>	<p>£434 per dwelling for capital costs</p> <p>£325 per dwelling for maintenance</p>	<p>Before completion of 75% of the dwellings</p>	<p>Necessary as informal/natural green space is required to meet the demand that would be generated and must be maintained in order to continue to meet that demand pursuant to Core Strategy policies CS1, CS2 and CS18, Tenterden and Rural Sites DPD policy WYE 2 & TRS19, Public Green Spaces and Water Environment SPD and guidance in the NPPF.</p> <p>Directly related as occupiers will use informal/natural green space and the space to be provided would be available to them.</p> <p>Fairly and reasonably related in scale and kind considering the extent of the development and the number of occupiers and the extent of the facilities to be provided and maintained and the maintenance period is limited to 10 years.</p>

Planning Obligation				Regulation 122 Assessment
Detail	Amount(s)	Trigger Point(s)		
5	<p><u>Children's and Young People's Play Space</u></p> <p>Contribution towards provision of or improvements to children's and young people's play space and associated facilities on the recreation ground in the village and maintenance thereof.</p>	<p>£649 per dwelling for capital costs</p> <p>£663 per dwelling for maintenance</p>	<p>Before completion of 75% of the dwellings</p>	<p>Necessary as children's and young people's play space is required to meet the demand that would be generated and must be maintained in order to continue to meet that demand pursuant to Core Strategy policies CS1, CS2 and CS18, Tenterden and Rural Sites DPD policy WYE 2 & TRS19, Public Green Spaces and Water Environment SPD and guidance in the NPPF.</p> <p>Directly related as occupiers will use children's and young people's play space and the play space to be provided would be available to them.</p> <p>Fairly and reasonably related in scale and kind considering the extent of the development and the number of occupiers and the extent of the facilities to be provided and maintained and the maintenance period is limited to 10 years.</p>

	Planning Obligation			Regulation 122 Assessment
	Detail	Amount(s)	Trigger Point(s)	
6	<p><u>Allotments</u></p> <p>Contribution towards provision of or improvements to allotments and associated facilities and maintenance thereof</p>	<p>£258 per dwelling for capital costs</p> <p>£66 per dwelling for maintenance</p>	<p>Before completion of 75% of the dwellings</p>	<p>Necessary as allotments are required to meet the demand that would be generated and must be maintained in order to continue to meet that demand pursuant to Core Strategy policies CS1, CS2 and CS18, Tenterden and Rural Sites DPD policy TRS19, Public Green Spaces and Water Environment SPD and guidance in the NPPF.</p> <p>Directly related as occupiers will use allotments and the facilities to be provided would be available to them.</p> <p>Fairly and reasonably related in scale and kind considering the extent of the development and the number of occupiers and the extent of the facilities to be provided and maintained and the maintenance period is limited to 10 years.</p>

	Planning Obligation			Regulation 122 Assessment
	Detail	Amount(s)	Trigger Point(s)	
7	<p><u>Strategic Parks</u></p> <p>Contribution towards provision of strategic parks and associated facilities and maintenance thereof</p>	<p>£146 per dwelling for capital costs</p> <p>£47 per dwelling for maintenance</p>	<p>Before completion of 75% of the dwellings</p>	<p>Necessary as strategic parks are required to meet the demand that would be generated and must be maintained in order to continue to meet that demand pursuant to Core Strategy policies CS1, CS2, CS18 and CS18a, Tenterden and Rural Sites DPD policy TRS19, Public Green Spaces and Water Environment SPD and guidance in the NPPF.</p> <p>Directly related as occupiers will use strategic parks and the facilities to be provided would be available to them.</p> <p>Fairly and reasonably related in scale and kind considering the extent of the development and the number of occupiers and the extent of the facilities to be provided and maintained and the maintenance period is limited to 10 years.</p>

Planning Obligation				Regulation 122 Assessment
	Detail	Amount(s)	Trigger Point(s)	
8	<p><u>Primary Schools</u></p> <p>Contribution towards the extension of a primary school within 2 miles of the site</p>	<p>£590.24 per applicable flat and £2,360.96 per applicable house</p>	<p>Half the contribution upon occupation of 25% of the dwellings and balance on occupation of 50% of the dwellings</p>	<p>Necessary as no spare capacity at any primary school in the vicinity and pursuant to Core Strategy policies CS1, CS2 and CS18, saved Local Plan policy CF21, Tenterden and Rural Sites DPD policy TRS19, Developer Contributions/Planning Obligations SPG, [Education Contributions Arising from Affordable Housing SPG], KCC Guide to Development Contributions and the Provision of Community Infrastructure and guidance in the NPPF.</p> <p>Directly related as children of occupiers will attend primary school and the facilities to be funded would be available to them.</p> <p>Fairly and reasonably related in scale and kind considering the extent of the development and because the amount has taken into account the estimated number of primary school pupils and is based on the number of dwellings and because no payment is due on small 1-bed dwellings or sheltered accommodation specifically for the elderly.</p>

	Planning Obligation			Regulation 122 Assessment
	Detail	Amount(s)	Trigger Point(s)	

9	<p><u>Secondary Schools</u></p> <p>Contribution towards the construction of secondary school places within 3 miles of the site</p>	<p>£1,272.90 per applicable flat and £5,091.60 per applicable house</p>	<p>Half the contribution upon occupation of 25% of the dwellings and balance on occupation of 50% of the dwellings</p>	<p>Necessary as no spare capacity at any secondary school in the vicinity and pursuant to Core Strategy policies CS1, CS2 and CS18, saved Local Plan policy CF21, Tenterden and Rural Sites DPD policy TRS19, Developer Contributions/Planning Obligations SPG, [Education Contributions Arising from Affordable Housing SPG], KCC Guide to Development Contributions and the Provision of Community Infrastructure and guidance in the NPPF.</p> <p>Directly related as children of occupiers will attend secondary school and the facilities to be funded would be available to them.</p> <p>Fairly and reasonably related in scale and kind considering the extent of the development and because the amount has taken into account the estimated number of secondary school pupils and is based on the number of dwellings and because no payment is due on small 1-bed dwellings or sheltered accommodation specifically for the elderly.</p>
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Planning Obligation				Regulation 122 Assessment
Detail	Amount(s)	Trigger Point(s)		
10	<p><u>Community learning</u></p> <p>Contribution towards the construction and/or equipping of community learning premises within the same settlement or in a reasonably accessible alternative location</p>	£34.45 per dwelling	Half the contribution upon occupation of 25% of the dwellings and balance on occupation of 50% of the dwellings	<p>Necessary as there is a shortfall in provision of this service available to meet the demand that would be generated and pursuant to Core Strategy policy CS18, Tenterden and Rural Sites DPD policy TRS19, KCC Guide to Development Contributions and the Provision of Community Infrastructure and guidance in the NPPF.</p> <p>Directly related as occupiers will use adult education facilities and the facilities to be funded will be available to them.</p> <p>Fairly and reasonably related in scale and kind considering the extent of the development and because the amount has taken into account the estimated number of users and is based on the number of dwellings.</p>

Planning Obligation				Regulation 122 Assessment
Detail	Amount(s)	Trigger Point(s)		
11	<p><u>Adult Social Care</u></p> <p>Contribution towards the construction and/or equipping of adult social care services premises within the same settlement or in a reasonably accessible alternative location</p>	£77.58 per dwelling	<p>Half the contribution upon occupation of 25% of the dwellings and balance on occupation of 50% of the dwellings</p>	<p>Necessary as additional social care services premises required to meet the demand that would be generated pursuant to Core Strategy policy CS18, Tenterden and Rural Sites DPD policy TRS19, KCC Guide to Development Contributions and the Provision of Community Infrastructure and guidance in the NPPF.</p> <p>Directly related as occupiers will use adult social care facilities and the facilities to be funded will be available to them.</p> <p>Fairly and reasonably related in scale and kind considering the extent of the development and because the amount has taken into account the estimated number of users and is based on the number of dwellings.</p>

Planning Obligation				Regulation 122 Assessment
Detail	Amount(s)	Trigger Point(s)		
12	<p><u>Youth Services</u></p> <p>Contribution towards the construction and/or equipping of youth services premises within the same settlement or in a reasonably accessible alternative location</p>	£26.74 per applicable dwelling	Half the contribution upon occupation of 25% of the dwellings and balance on occupation of 50% of the dwellings	<p>Necessary as there is no spare youth service space available to meet the demand that would be generated and pursuant to Core Strategy policy CS18, Tenterden and Rural Sites DPD policy TRS19, KCC Guide to Development Contributions and the Provision of Community Infrastructure and guidance in the NPPF.</p> <p>Directly related as occupiers will use youth service facilities and the facilities to be funded will be available to them.</p> <p>Fairly and reasonably related in scale and kind considering the extent of the development and because the amount has taken into account the estimated number of users and is based on the number of dwellings and because no payment is due on small 1- bed dwellings or sheltered accommodation specifically for the elderly.</p>
3.47				

	Planning Obligation			Regulation 122 Assessment
	Detail	Amount(s)	Trigger Point(s)	
13	<p><u>Healthcare Provision</u></p> <p>Contribution towards the construction and/or equipping of Primary Care premises within the same settlement or in a reasonably accessible alternative location</p> <p>Although the Primary Care Trust requested a contribution towards the revenue costs of their facilities, this is not regarded as necessary.</p>	£19,656	Half the contribution upon occupation of 25% of the dwellings and balance on occupation of 50% of the dwellings	<p>Necessary as additional primary care premises required to meet the demand that would be generated pursuant to Core Strategy policy CS18, saved Local Plan policy CF19, Tenterden and Rural Sites DPD policy TRS19 and guidance in the NPPF.</p> <p>Directly related as occupiers will use primary care facilities and the facilities to be funded will be available to them.</p> <p>Fairly and reasonably related in scale and kind considering the extent of the development and because the amount has been calculated based on the estimated number of occupiers.</p>

	Planning Obligation			Regulation 122 Assessment
	Detail	Amount(s)	Trigger Point(s)	
14	<u>Improvements to PROW</u>	£3,500	Upon occupation of 50% of the dwellings	<p>Necessary in order to improve the footbridge facility required to be upgraded to meet the extra pressures that arise from the development.</p> <p>Directly related as occupiers will use the PROW and the footbridge facility</p> <p>Fairly and reasonably related in scale and kind considering the extent of the development and because the amount requested is the amount required to upgrade the footbridge required due to the extra demand put on it as a result of this development.</p>
15	<u>Monitoring Fee</u>			
	Contribution towards the Council's	£ 1000 per	First payment	Necessary in order to ensure the planning

Planning Obligation			Regulation 122 Assessment
Detail	Amount(s)	Trigger Point(s)	
costs of monitoring compliance with the agreement or undertaking	annum until development is completed	upon commencement of development and on the anniversary thereof in subsequent years	<p>obligations are complied with.</p> <p>Directly related as only costs arising in connection with the monitoring of the development and these planning obligations are covered.</p> <p>Fairly and reasonably related in scale and kind considering the extent of the development and the obligations to be monitored.</p>
<p>Notices will have to be served on the Council at the time of the various trigger points in order to aid monitoring. All contributions to be index linked (normally from the date of the Committee's resolution) in order to ensure the value is not reduced over time. The costs, expenses and disbursements of the Council's Legal and Planning Departments incurred in connection with the negotiation, preparation and completion of the deed are also payable. The Kent County Council will also require payment of their legal costs.</p>			

Human Rights Issues

27. I have also taken into account the human rights issues relevant to this application. In my view, the “Assessment” section above and the Recommendations below represent an appropriate balance between the interests and rights of the applicant (to enjoy his land subject only to reasonable and proportionate controls by a public authority) and the interests and rights of those potentially affected by the proposal (to respect for private life and the home and peaceful enjoyment of their properties).

Working with the applicant

28. In accordance with paragraphs 186 and 187 of the NPPF, Ashford Borough Council (ABC) takes a positive and proactive approach to development proposals focused on solutions. ABC works with applicants/agents in a positive and proactive manner as explained in the note to the applicant included in the recommendation below.

Conclusion

29. Section 73 of the TCPA 1990 allows Local Planning Authorities to consider whether planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted.
30. In this case, I consider that the proposal fully complies with the Development plan as a whole. The site is an allocated site in the Tenterden & Rural Sites DPD 2010.
31. There has been no material changes in policy terms (save the current absence of a 5 year housing land supply, which tilts the balance further in favour of this proposal) or on site, the principle of the development has been accepted previously and the original permission is extant.
32. It has been demonstrated that the presence of herptiles on site or crossing the site is extremely unlikely and therefore herptile exclusion fencing is not necessary. KCC Biodiversity agree with this. The Parish Council has raised concerns but KCC Biodiversity do not concur with these.
33. The amendments to the condition covering sustainable design and construction is required as Code for Sustainable Homes has been abolished.
34. On this basis, I recommend that subject to the applicant first entering into an agreement / deed of variation, the proposed development constitutes sustainable development in accordance with national and local plan policy and should therefore be permitted.

Recommendation

(A) Subject to the applicant first entering into a deed of variation of the existing section 106 agreement/undertaking in respect of 14/00195/AS to apply to this permission in terms agreeable to the Head of Development, Strategic Sites and Design in consultation with the Director of Law & Governance, with delegated authority to Head of Development, Strategic Sites and Design to make or approve minor changes to the planning obligations and planning conditions, as she sees fit.

(B) Permit

Subject to the following conditions and notes:

- 1 Written details including source/ manufacturer, and samples of bricks, tiles and cladding materials to be used externally shall be submitted to and approved in writing by the Local Planning Authority before the development is commenced and the development shall be carried out using the approved external materials.

Reason: In the interests of visual amenity.

- 2 Prior to the erection of any of the dwellings on the site, the following details shall have been submitted to and agreed in writing by the Local Planning Authority:
 - 1:5 and/or 1:10 sectional details through: window reveals; eaves, fascias, soffits and barge boards; ridge, bays, dormer windows, chimney pots and first floor jetties
 - 1:5 and/or 1:10 sectional details through porches, entrance canopies and supporting brackets
 - 1:5 and/or 1:10 details of any architectural features on the buildings including decorative hanging tiles and corbelling

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

Reason: To ensure a high quality development and in the interests of visual amenity.

- 3 No flues, vents, grilles or meter boxes shall be installed on the front elevation of any of the dwellings hereby permitted.

Reason: In the interest of visual amenity

- 4 All existing hedges or hedgerows shall be retained, unless shown on the approved drawings as being removed. All hedges and hedgerows on and immediately adjoining the site shall be protected from damage for the duration of works on the site. Any parts of hedges or hedgerows removed without the Local Planning Authority's prior written consent or which die or become, in the opinion of the Local

Planning Authority, seriously diseased or otherwise damaged within five years following contractual practical completion of the approved development shall be replaced as soon as is reasonably practicable and, in any case, by not later than the end of the first available planting season, with plants of such size and species and in such positions as may be agreed in writing with the Local Planning Authority.

Reason: To ensure the continuity of amenity afforded by existing hedges or hedgerows.

- 5 Details of the final surface finish of all areas of hard standing as set out on Drawing No. 13/0106-51 Rev N shall be submitted to and approved in writing by the Local Planning Authority before the development is commenced. The development shall then be carried out in strict accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interest of visual amenity

- 6 A landscaping scheme for the site (which may include entirely new planting, retention of existing planting or a combination of both) shall be submitted to and approved in writing by the Local Planning Authority before the development is commenced. Thereafter, the approved landscaping/tree planting scheme shall (with the exception of the landscape buffer to the southern boundary) be carried out fully within 12 months of the completion of the development. Any trees or other plants which within a period of five 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 unless the Local Planning Authority give prior written consent to any variation.

Reason: In order to protect and enhance the amenity of the area.

- 7 All trees planted shall be protected against stock and rabbits when planted, in accordance with details that shall have been previously agreed with the Local Planning Authority and such protection shall be maintained at all times.

Reason: In the interests of good forestry and amenity.

- 8 A landscape management plan, including long term design and bio-diversity objectives, management responsibilities and maintenance schedules for all landscaped areas, other than small, privately owned, domestic gardens, shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the development or any phase of the development, whichever is the sooner, for its permitted use. The landscape management plan shall then be carried out as approved.

Reason: To ensure the new landscaped areas are properly maintained in the interest of the amenity of the area.

- 9 All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part

of the development or in accordance with the programme agreed in writing with the Local Planning Authority, and any trees or plants whether new or retained 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 similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interests of the amenity of the area.

- 10 The landscaping scheme, as approved under condition 6 above, along the southern boundary of the site with the adjacent agricultural field shall be undertaken within the first planting season following the commencement of the development. The landscaping shall then be fully protected throughout the duration of the construction of this development in accordance with details that have previously been submitted to and approved in writing by the Local Planning Authority. Any trees or other plants which within a period of five 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 unless the Local Planning Authority give prior written consent to any variation.

Reason: In the interest of visual amenity.

- 11 Details of a scheme for the protection and enhancement of biodiversity, including bat & bird boxes, use of native species in landscaping and incorporation of features beneficial to wildlife wherever possible within and around the perimeter of the site, together with details of the timing/phasing of the respective elements forming the scheme and proposed management arrangements, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented prior to the occupation of the final dwelling on the site and thereafter maintained.

Reason: In order to ensure the development builds in opportunities for beneficial biodiversity as part of good design.

- 12 Prior to their erection on site, elevational details of the proposed boundary treatments as shown on Drawing No. 13/0106-51 Rev N shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatments shall thereafter be carried out in accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interest of visual amenity.

- 13 Before the occupation of the dwelling to which it relates, the boundary treatments as shown on Drawing No. 13/0106-51 Rev N shall have been installed with all communal boundary treatments completed upon occupation of the final dwelling.

Reason: In the interest of visual / residential amenity

- 14 Pedestrian visibility splays 2 m x 2 m, with no obstruction over 0.6 m above the access footway level, shall be provided prior to the first use of the access to which it relates is brought into use. The visibility splays shall be subsequently maintained.

Reason: In the interests of highway safety.

- 15 The area shown on Drawing No. 13/0106-51 Rev N as vehicle parking space, garages and turning shall be provided, surfaced and drained in accordance with details submitted to and approved in writing by the Local Planning Authority before the use is commenced or the premises occupied, and shall be retained for the use of the occupiers of, and visitors to, the development, and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order), shall be carried out on that area of land so shown or in such a position as to preclude vehicular access to this reserved parking space.

Reason: Development without provision of adequate accommodation for the parking of vehicles is likely to lead to parking inconvenient to other road users

- 16 The bicycle storage facilities as shown on Drawing No. 13/0106-51 Rev N shall be completed and available for use prior to the first occupation of the dwelling to which it relates. It shall thereafter be retained.

Reason: To ensure the provision and retention of adequate off-street parking facilities for bicycles in the interests of highway safety.

- 17 Prior to works commencing on site, details of parking for site personnel as well as details of loading and turning areas for construction traffic shall be submitted to and approved in writing by the Local Planning Authority and thereafter shall be provided and retained throughout the development. These details shall include the means by which site staff shall be prevented from parking on nearby residential streets. The approved parking, loading and turning areas shall be provided prior to the commencement of development.

Reason: To ensure provision of adequate parking, loading and turning facilities for vehicles in the interests of highway safety and to protect the amenities of local residents in accordance with policy.

- 18 Prior to the commencement of development, details of facilities, by which vehicles will have their wheels, chassis and bodywork effectively cleaned and washed free of mud and similar substances at the application site, shall be submitted to and approved in writing by the Local Planning Authority. The approved facilities shall then be provided prior to the works commencing on site and thereafter shall be maintained in an effective working condition and used before vehicles exit the site and enter onto the adopted highway for the duration of the construction works.

Reason: To ensure that no mud or other material is taken from the site onto the neighbouring highway by wheels of vehicles leaving the site to the detriment of

highway safety and the amenities of local residents.

- 19 Underground ducts shall be installed before any of the buildings hereby permitted are occupied, to enable telephone services, electricity services and communal television services to be connected to any premises within the application site without recourse to the erection of distribution poles and overhead lines and notwithstanding the provisions of Article 3(1) of the Town and Country Planning (General Permitted Development) Order 2015 or any other Order or any subsequent Order revoking or re-enacting that Order no distribution pole or overhead line within the application site shall be erected without the express consent of the Local Planning Authority.

Reason: In the interests of visual amenity.

- 20 All footpaths shown on approved Drawing No. 13/0106-51 Rev N shall be surfaced with materials, the details of which shall be submitted to and approved in writing by the Local Planning Authority. The paths shall be constructed in accordance with the approved details. The footpath linking the site to Little Chequers shall be completed and available for use prior to the first occupation of any of the units. The remaining footpaths shall be completed and available for use prior to the occupation of the dwelling(s) to which it relates. All footpaths shall be completed in accordance with the approved details prior to the occupation of the final unit on the site and thereafter shall be kept open to the public at all times.

Reason: In the interests of public safety, convenience and amenity and to ensure the satisfactory completion of the approved layout for the site.

- 21 Before the first occupation of a dwelling, the following works between that dwelling and the adopted highway shall be completed as follows:

- A. Footways and/or footpaths shall be completed, with the exception of the wearing course; and,
- B. Carriageways completed, with the exception of the wearing course, including the provision of a turning facility beyond the dwelling together with related:
 - 1. highway drainage, including off-site works;
 - 2. junction visibility splays; and,
 - 3. street lighting, street nameplates and highway structures if any.

The final wearing course shall be applied within one year of the occupation of the dwelling unless otherwise agreed by the Local Planning Authority in writing.

Reason: In the interests of highway safety.

- ,22 Prior to the first occupation of any of the units hereby permitted the following shall

be carried out in accordance with Drawing No. 13/0106-51 Rev N:

- Modification of the junction of Little Chequers and the new access road serving the development;
- 8 car parking spaces to be provided to serve the existing residents of Little Chequers; and,
- Pedestrian access to Long Acre.

Reason: In the interest of highway & pedestrian safety and to ensure the development is integrated with the village and accessible by sustainable modes of transport.

- 23 Prior to works commencing, details of the form and location of any proposed temporary works compounds shall have been submitted to and approved by the Local Planning Authority in writing and thereafter such compounds shall only be provided in accordance with such approval.

Reason: To ensure that the location of any necessary compounds is appropriate in terms of residential amenity and visual amenity.

- 24 No development shall commence until plans and particulars of a sustainable drainage system (including the details below) for the disposal of the site's surface water have been submitted to and approved in writing by the Local Planning Authority.

The submitted system shall comprise retention or storage of the surface water on-site or within the immediate area in a way which is appropriate to the site's location, topography, hydrogeology and hydrology.

The submitted system shall be designed to

- avoid any increase in flood risk;
- avoid any adverse impact on water quality;
- achieve a reduction in the run-off rate in accordance with the Ashford Borough Council Sustainable Drainage SPD document, adopted October 2010;
- promote biodiversity;
- enhance the landscape;
- improve public amenities;
- return the water to the natural drainage system as near to the source as possible; and,
- operate both during construction of the development and post-completion.

The submitted details shall include identification of the proposed discharge points from the system, a timetable for provision of the system and arrangements for

future maintenance (in particular the type and frequency of maintenance and responsibility for maintenance).

The approved system shall be provided in accordance with the approved timetable. The approved system shall be maintained in accordance with the approved details and shall be retained in working order until such time as the development ceases to be in use.

If the proposed surface water discharge point is to be the existing public sewer, the applicant must provide written confirmation from Southern Water of their agreement to the proposals.

Reason: In order to reduce the impact of the development on flooding, manage run-off flow rates, protect water quality and improve biodiversity and the appearance of the development pursuant to Core Strategy Policy CS20.

- 25 Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water drainage from parking areas and hardstandings shall be passed through an oil interceptor designed and constructed to have a capacity and details compatible with the site being drained. Roof water shall not pass through the interceptor.

Reason: To prevent pollution of the water environment.

- 26 No development shall take place until full plan and cross-section details of any proposed earthworks have been submitted to and approved in writing by the Local Planning Authority. These details shall include any proposed grading and mounding of land areas and full details of existing and final levels throughout the development also showing the levels of the proposed development in relation to the existing ground levels of the properties along Little Chequers and Long Acre. The development shall only be carried out in accordance with the approved details.

Reason: In the interests of the amenity of the area.

- 27 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 or any other Order or any subsequent Order revoking or re-enacting that Order, the attached and detached car barns shall be provided in accordance with the detailing shown on the approved plans and shall not be further altered through the addition of further doors or internal structures / obstructions without the prior permission of the Local Planning Authority in writing.

Reason: To ensure that the covered space is retained available for the storage of a vehicle when not in use in order to prevent the displacement of car parking and subsequent inappropriate car parking.

- 28 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 or any other Order or any subsequent Order

revoking or re-enacting that Order, the dwellings hereby approved shall only be occupied as single dwelling houses as described by Use Class C3 of the Town and Country Planning Use Classes Order 1987 as amended.

Reason: To ensure that car parking provided within the development remains adequate to meet the needs of the occupiers of the development and to protect the amenities of future occupiers of the development.

- 29 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 or any other Order or any subsequent Order revoking or re-enacting that Order, no development shall be carried out under Schedule 2 Part 2 & Class A and Schedule 2 Part 40 & Class A of that Order (or any Order revoking and re-enacting that Order), without prior approval of the Local Planning Authority.

Reason: In the interests of visual amenity.

- 30 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 or any Order revoking and re-enacting that Order, no windows, or similar openings shall be constructed in the first floor rear elevation of plots 1 & 2 as shown on Drawing No. 13/0106-51 Rev N other than as hereby approved without the prior written consent of the Local Planning Authority.

Reason: In the interests of the amenity of occupants of the properties to the rear.

- 31 A water-butt shall be provided to all dwelling houses and any single flats prior to their first occupation and shall thereafter be retained.

Reason: To allow for the storage of rainwater on site for watering of soft landscaping and thereby reduce the demand for mains water on site.

- 32 No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a watching brief to be undertaken by an archaeologist approved by the Local Planning Authority so that the excavation is observed and items of interest and finds are recorded. The watching brief shall be in accordance with a written programme and specification which has previously been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that features of archaeological interest are properly examined and recorded.

- 33 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 and agreed in writing by the Local Planning Authority.

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.

Reason: To ensure that risks from land contamination to the future users of land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

34 Before any construction commences on the site, the following shall be submitted and approved in writing by the Local Planning Authority:

- Code of Construction Practice;
- Hours of working for construction;
- The management and location of utility services within the development;
- The provision for centralised telecommunication & television & radio reception and limitations to external aerials within the development; and,
- The routing of construction vehicles and provision of appropriate signing.

These matters approved shall then be implemented as approved.

Reason: To ensure the protection of amenity during and following development.

35 Prior to the erection of plots 21, 24 & 25, the existing Public Right of Way AE117 shall have been diverted and be available for public use in accordance with any approved diversion order to be granted by KCC and shall thereafter be retained in situ and free from obstruction in perpetuity.

Reason: In the interest of preserving the amenity of its users and the functioning of the countryside.

36 None of the dwellings shall be occupied until works for the disposal of sewage have been provided on the site to serve the development hereby permitted, in accordance with details to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development.

Reason: To avoid pollution of the surrounding area.

37 Prior to the commencement of development, scaled sections and details of the profile of the attenuation pond both existing and proposed shall be submitted to and approved in writing by the Local Planning Authority. The works shall then be carried out in accordance with the approved details and completed prior to the occupation of any of the units hereby permitted. The works shall thereafter be retained and maintained in accordance with the approved details.

Reason: In the interests of amenity and to ensure sufficient capacity is provided to satisfy SUDs requirements

- 38 Prior to the commencement of development, a service plan and street lighting plan, including details of the luminaires, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interest of highway safety

- 39 The development shall be carbon neutral. Each dwelling hereby approved shall be constructed and fitted out so that:

- a) 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,
- b) carbon emissions are reduced by 10% through Low and Zero Carbon Technologies once energy efficiencies have been applied.

Unless otherwise agreed in writing by the Local Planning Authority, no work on each dwelling shall commence until the following details for those dwellings have been submitted to and approved in writing by the Local Planning Authority:

- a) Standard Assessment Procedure ("SAP") calculations from a competent person stating the estimated amount of carbon emissions from energy demand with and without LZC technologies installed.
- b) Details of the LZC technologies to be used to achieve the 10% reduction in carbon emissions

The development shall be carried out in accordance with the approved details. The approved LZC technologies shall thereafter be retained in working order unless otherwise agreed in writing by the Local Planning Authority. Unless otherwise agreed in writing by the Local Planning Authority, no dwelling shall be occupied until SAP calculations from a competent person have been submitted to and approved in writing by the Local Planning Authority for that dwelling stating (i) the actual amount of carbon emissions from energy demand with the LZC technologies that have been installed and what the emissions would have been without them and (ii) the actual amount of residual carbon emissions. No dwelling shall be occupied unless the notice for that dwelling required by the Building Regulations 2010 (as amended) of the potential consumption of wholesome water per person per day has been given to the Local Planning Authority.

Reason: In order to: (i) ensure the construction of sustainable buildings and a reduction in the consumption of natural resources, (ii) seek to achieve sustainable design features and on-site low and/or zero carbon technologies and (iii) confirm the sustainability of the development and a reduction in the consumption of natural resources all pursuant to Core Strategy policy CS10, the Sustainable Design and Construction SPD and advice in the NPPF

Notes to Applicant

1. This development is also the subject of an Obligation under Section 106 of the Town and Country Planning Act 1990, which affects the way in which the property may be used.
2. Working with the applicant

In accordance with paragraphs 186 and 187 of the NPPF Ashford Borough Council (ABC) takes a positive and proactive approach to development proposals focused on solutions. ABC works with applicants/agents in a positive and proactive manner by;

- offering a pre-application advice service,
- as appropriate updating applicants/agents of any issues that may arise in the processing of their application
- where possible suggesting solutions to secure a successful outcome,
- informing applicants/agents of any likely recommendation of refusal prior to a decision and,
- by adhering to the requirements of the Development Management Customer Charter.

In this instance:

- the applicant/agent was updated of any issues after the initial site visit;
- The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the committee and promote the application.

Background Papers

All papers referred to in this report are currently published on the Ashford Borough Council web site (www.ashford.gov.uk). Those papers relating specifically to this application may be found on the [View applications on line](#) pages under planning application reference 17/01119/AS)

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