

# Officer's Assessment Sheet

Application Number: 12/00400/AS

Stat. Class: n/a

Application Date: 28 August 2019

Case Officer: Rebecca Tickner  
8/13 week Date: n/a

Applicant: Chilmington Management Organisation  
Correspondent: Anthony Collins Solicitor

Location: Land at Chilmington Green Ashford Road Great Chart

Proposal: to approve a replacement rentcharge deed for the rentcharge deed appended to the s106 agreement dated 27 February 2017 at schedule 31

## **MATERIAL CONSIDERATIONS (Case Officer to complete)**

Policies None

## **SAFEGUARDING**

|                   |      |
|-------------------|------|
| Conservation Area | None |
| Listed Building   | None |

## ENVIRONMENTAL IMPACT ASSESSMENT

| Is an E/A required?                     | Reason for Decision: |
|---|----------------------|
| NO                                      |                      |
| Is formal screening opinion required? N |                      |
| Has screening opinion been issued? N    |                      |

Net Housing Density (where applicable)= (no. of dwellings per hectare) n/a  
No. of car parking/ garage spaces (housing only) = n/a

## **Proposal**

The recently incorporated Chilmington Management Organisation has resolved to update and replace the rentcharge deed appended to schedule 31 of the s106 agreement dated 27 February 2017 ('2017 Edition') for the land at Chilmington Green Ashford Road Great Chart development approved under scheme 12/00400/AS.

**The new version ('2019 Edition') incorporates text amendments to pick up the following issues:**

1. Notices - new clause 8 sets out requirements for how parties will communicate with each other, with a related new definition "Business Day". There was no such provision in the original deed, so this new provision makes the parties' obligations explicit.
2. "Community Buildings" – the definition has been tightened to make it clear that buildings must be for the use of all owners and occupiers on the estate and widened to permit buildings where the Chilmington Management Organisation ("CMO") has the use of the buildings (previously it must have a legal interest in those buildings so the effect of the change is that the CMO can take a licence to use buildings).
3. Indexation – the definition of "Index" has been amended and footnotes inserted to correct the date of commencement of the current RPI index, making it easier to determine what to do if the RPI Index is no longer published and making it clearer to developers' solicitors how the sum to be the subject of indexation (the CMO fee for dealing with its obligations concerning the Deed of Covenant and related Land Registry restriction) is to be dealt with.
4. "Management Areas" – the definition has been amended to include examples of anticipated management areas and excludes areas adopted by any Council.

5. Operation of Rentcharge – the S106 agreement contained a proviso requiring the CMO to give notice to any mortgagee of which it had notice before exercising its right of re-entry. The proviso has been replaced by a more comprehensive provision which requires the CMO before it takes any enforcement action to inform that it intends to do so and permit the owner and any mortgagee two (2) months to correct the issue. In the event the CMO does exercise its right of re-entry and then leases the property there is a further proviso that the owner can get it back providing the owner pays the CMO's costs and any arrears that were owed to it. These changes seek to ensure compliance with certain major mortgage lenders' current requirements.

6. Payment of the Rentcharges – Owners have been given the option to vary the timing for the payment of the Rentcharges.

7. Land Registry – incorporates a new specific obligation on the CMO to give a Land Registry certificate (needed for the new owner to register their purchase/lease) when the owner provides the Deed of Covenant (as described in Schedule 2) and pays the requisite fee.

8. Audited Service Charge Certificate – right of any owner to require, (within a limited timeframe), an audited service charge certificate containing the figure of the actual expenditure in any one year, the amount of any interim service charge paid, whether there was any excess or deficit and accrued surplus; and the status of the reserve fund. Previously the CMO was obliged to provide an unaudited Certificate (as defined in clause 1.1) to all owners as soon as possible as a matter of course.

9. Expenditure – there is a list of Expenditure items (as defined in clause 1.1) in Schedule 1; this has been enlarged to include sinking fund monies

10. Deed of Covenant – the Deed of Covenant (Schedule 2) is a document entered into by every subsequent Owner (as defined in clause 1.7 and including tenants) of a property on the Estate in which they covenant to comply with the terms of the rentcharge deed entered into by the original owner; this has been varied to include a specific commitment by the CMO to the new Owner/tenant to comply with the terms of that rentcharge deed

**There have been no amendments to the following substantive provisions:**

**Clause 2 – Rentcharges**

This clause imposes two Rentcharges on the property in CMO's favour, the purpose of which is for CMO to be able to enforce payment of the service charge by current and future owners; failing which ultimately the CMO can "exercise a right of re-entry".

**Clause 3 – Owner's Covenants**

This clause obliges the Owner to pay the Rentcharges (defined in clause 1.1) to the CMO and provides if there is any surplus over expenditure the monies will go into a Reserve Fund (defined in clause 1.1). It also provides a mechanism by which subsequent Owners (including tenants) must enter into a direct promise with the CMO to pay the Rentcharges.

**Clause 4 – Manager's Covenants**

Here the CMO promises to provide the Estate Services (defined in clause 1.1 and listed in Schedule 1) subject to the right of the CMO to vary those estate services and not provide them due to circumstances beyond the CMO's control.

**Clause 5 – Calculation of Service Charge**

This clause covers the procedures the CMO must follow to calculate the service charge, imposes a cap on the maximum amount that can be charged in each year, (increasing by reference to RPI), and requires the CMO to hold the Reserve Fund (defined in clause 1.1) in a separate designated deposit account.

## Clause 6 – Agreements and Declarations

These provisions permit the CMO to discontinue a service or waive or vary any regulations if it considers it is the general interest of owners of properties on the estate to do so. Before making any final decision on terminating a service the CMO must consider any view and wishes of the majority of Owners.

The CMO is permitted in its reasonable discretion to take on any additional land or facility within the estate.

## Schedule 1 – Expenditure

This schedule lists the estate services; generally, maintenance repair and renewal of common parts of the estate, and the monies expended by the CMO that can be recharged to Owners being the costs of providing the estate services and the operation of *the CMO*.

The requirement to use the 2019 Edition is to take effect immediately upon the approval of the LPA for all Disposals within schedule 4 of the s106 agreement dated 27 February 2017. The first schedule 4 Disposal is imminent.

## Representations

The Principal Solicitor (Strategic Development) & Deputy Monitoring Officer is satisfied on behalf of the Head of Legal and Democracy that the 2019 Edition is in substantially the same form as the 2017 Edition appended to the s106 agreement and his advice is to approve the 2019 Edition for use for all schedule 4 Disposals from the date of approval of the same

The Head of DM and Strategic Sites has delegated power to approve in writing the 2019 Edition as per clause 1.1 of the s106 agreement as “an estate rentcharge deed that is substantially the same form as the draft estate rentcharge deed at schedule 31” pursuant to her para 18.16 power under Part 3 ‘Responsibility for Functions’ Appendix 5 to the Constitution:

“to exercise all powers in connection with and under any planning obligations”.

## Conclusion

It is recommended that the Head of DM and Strategic Sites approves the 2019 Edition for use with immediate effect.

## Human Rights

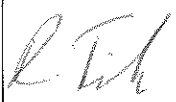
The Proposal represents an appropriate balance between the interests and rights of an Owner (to enjoy their land subject only to reasonable and proportionate controls by a public authority) and the wider public interest.

Dated:

29/08/19

C J Pakerson

Head of Development Management  
and Strategic Sites.

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|---|
| Signed  |
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| Case Officer  |

