

Planning Obligations for Education in Worcestershire

Document Details:

Status: 0.5 April 2018

Date: April 2018

Document Location: Worcestershire County Council website

Contact: Provision Planning and Accommodation Team, Children, Families and Community

www.worcestershire.gov.uk

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1 Introduction

Worcestershire County Council has a statutory responsibility to ensure there are sufficient school places for all children resident in Worcestershire who wish to attend a state-funded school. This includes academies and free schools.

Provision of sufficient good quality school places is crucial in ensuring that all children have the opportunity to gain the vital knowledge, skills and qualifications needed for a bright start in life.

The National Planning Policy Framework 2012 paragraph 72 states that the 'Government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities;' It also states that planning authorities should give 'great weight to the need to create, expand or alter schools'. It is considered that this is applicable both to school development proposals themselves and to addressing the education impacts of development generally. Without investment, schools may not be able to accommodate additional pupils generated by new housing development, creating an adverse impact on both new and established communities. It is important that developers take appropriate steps to mitigate the impact of their developments on education infrastructure.

This Evidence Base sets out the approach the County Council will take in assessing the impact of new housing developments on schools and in calculating the appropriate mitigation. This approach will involve close working with local planning authorities. This document should be read alongside relevant policies and supplementary planning documents which may be adopted from time to time for each local planning authority in Worcestershire.

Worcestershire County Council welcomes and encourages approaches from developers and district councils at an early stage to help identify the potential impact of housing development and the mitigation that is likely to be required. Contact details for enquiries can be found on page 16.

2 Planning Policy Context

The National Planning Policy Framework 2012 and the Community Infrastructure Levy Regulations 2010 (as amended in 2014), sets out criteria in respect of planning obligations.

Planning obligations, also known as **Section 106 agreements** (based on that section of The 1990 Town & Country Planning Act) are private agreements made between local authorities and developers and can be attached to a planning permission to make acceptable development which would otherwise be unacceptable in planning terms. The land itself, rather than the person or organisation that develops the land, is bound by a Section 106 Agreement.

The **Community Infrastructure Levy (CIL)** is a planning **charge** introduced by the Planning Act 2008 as a tool for local authorities in England and Wales to help deliver **infrastructure** to support the development of their area. It came into force on 6 April 2010 through the **Community Infrastructure Levy Regulations 2010**.

Paragraph 203 of the National Planning Policy Framework (NPPF) states that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. In addition, to ensure that planning obligations and the levy can operate in a complimentary way, the levy regulations 122 and 123 place limits on the use of planning obligations to avoid 'double dipping'.

Paragraph 204 and regulation 122 of the CIL Regulations 2010 set three tests for any planning obligation. The obligation must be:

- 1) Necessary to make the development acceptable in planning terms
- 2) Directly related to the development
- 3) Fairly and reasonably related in scale and kind to the development

[Regulation 123\(2\)](#), of the CIL Regulations 2010, as amended by the [2014 Regulations](#), prevents section 106 planning obligations being used in relation to those things that are intended to be funded through the levy by the charging authority.

Regulation 123 also prevents the local authority from seeking a financial contribution or provision of an infrastructure project where five or more separate planning obligations have already been sought for the funding or provision of that project from other sources (i.e. financial contributions secured in other Section 106 agreements). All payments, counting back to 6 April 2010, are taken into account. Such payments are commonly referred to as "pooled contributions".

The County Council has set out an approach to planning obligations for education which inherently meets these tests. This document details the factors that are taken into account and methods of assessment used in the process. Finally it outlines how this supports the County Council in meeting the statutory tests.

3 Worcestershire County Council's Approach to Planning Obligations for Education

Developers may be asked to provide contributions for infrastructure in several ways. This may be by way of the Community Infrastructure Levy or planning obligations in the form of section 106 agreements.

Planning obligations include Section 106 Agreements and Unilateral Undertakings authorised by the Section 106 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991, Section 12. These documents are negotiated between the interested parties including the local planning authority, Worcestershire County Council, and the developer. They set out the steps the developer will take to mitigate the impact of a development during the various stages of construction and occupation.

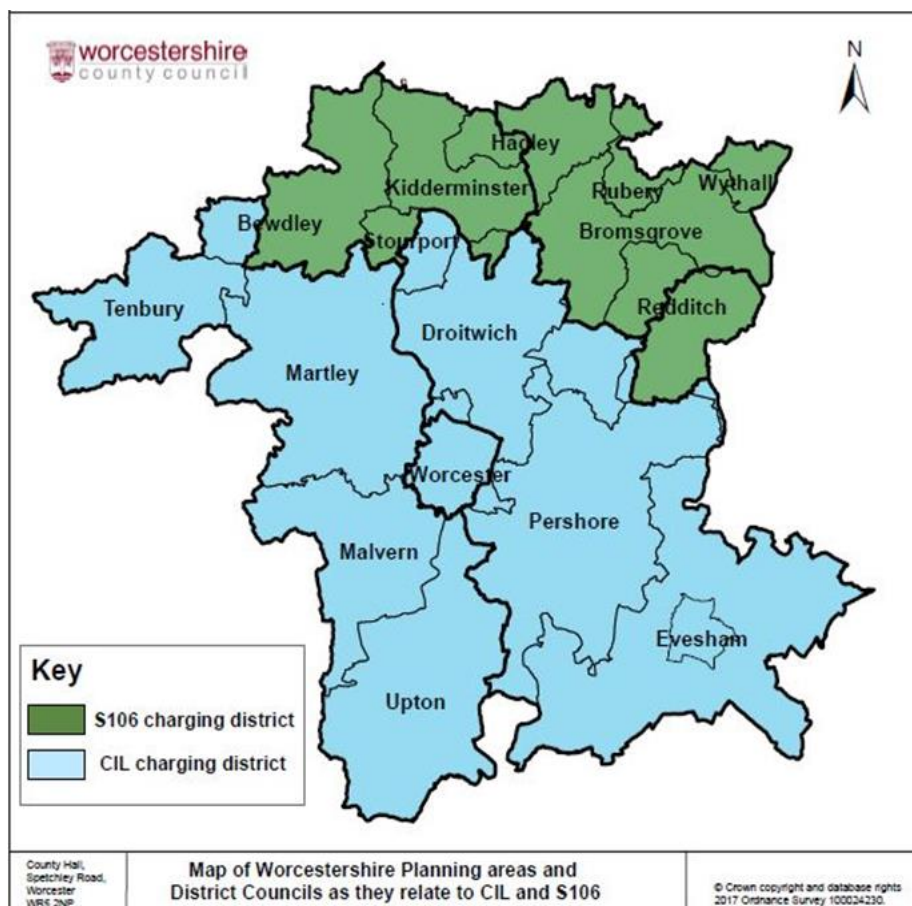
Worcestershire County Council will continue to apply the current mechanisms for mitigating the impact of new development until such time that they may be amended either at local or national level.

Community Infrastructure Levy

The South Worcestershire Councils consisting of Malvern District Council, Worcester City Council and Wychavon District Council adopted the Community Infrastructure Levy (CIL) in 2017. Malvern Hills District Council and Wychavon District Council adopted the CIL Charging Schedule on 5th June 2017 and Worcester City Council adopted the CIL Charging Schedule on 4th September 2017.

The evidence base will continue to be used to support requests for financial assistance from the CIL as a result of increased pupil numbers arising from housing growth.

The CIL charging areas are identified on the following map



Where large infrastructure is proposed and there is a requirement for at least half a form of entry¹ or where the development site has been identified on the CIL Regulation 123 List, the local authority will, where appropriate, seek to negotiate an education financial contribution proportionate to the required number of pupil places through a S106 agreement.

¹ Half a form of entry is equivalent to 15 pupils per year group

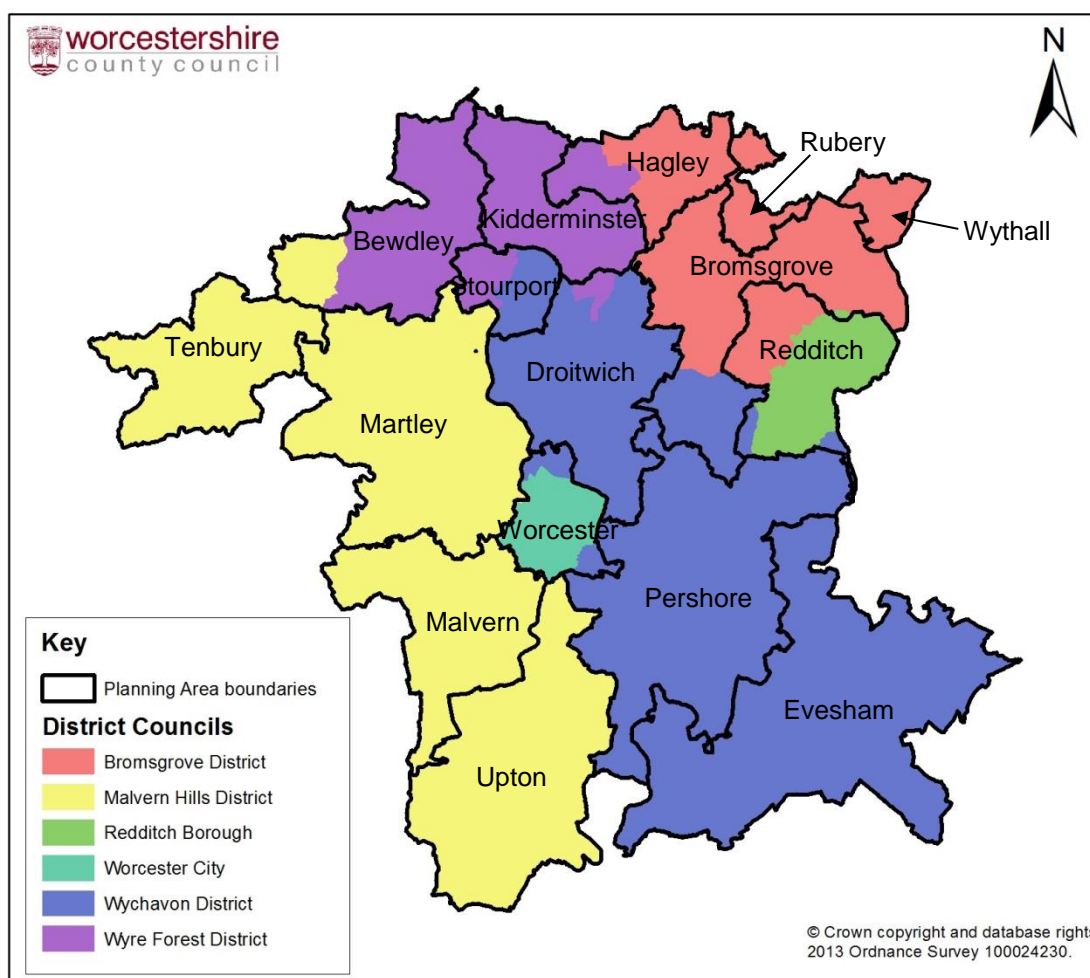
4 Collecting Contributions for Education Infrastructure

Worcestershire County Council is responsible for ensuring there are sufficient school places for all children resident in Worcestershire whose parent's wish them to attend a state maintained school. There are several different types of school that fall within the state maintained sector, all of which are eligible to receive funding from planning obligations if they are deemed to be related to a particular development. This includes the following types of school:

- Community
- Voluntary Controlled
- Voluntary Aided
- Foundation
- Academy
- Free School

The County Council operates 16 Education Planning Areas, based around the main population centres. Figure 1 below shows how these Education Planning Areas relate to district council boundaries. There are both two-tier and three-tier education systems in operation.

Figure 1 - Education Planning Areas



In areas which operate a two-tier model, children enter primary school at reception before transferring to a secondary school at the start of Year 7. In areas which operate a three-tier model, children enter first school at reception, transfer to a middle school at the start of Year 5 or 6 depending on the age range of

middle school and then transfer again to high school at the start of Year 8 or 9 depending on the age range of the high school. The table below summarises the predominant model in operation in each Education Planning Area:

| Two-tier model Primary Years R-6 Secondary Years 7 - 13 | Three-tier model A First Years R-4 Middle Years 5-8 High Years 9-13 | Three-tier model B First Years R-4 Middle Years 5-7 High Years 8-13 | Three-tier model C First Years R-5 Middle Years 6-8 High Years 9-13 |
|---|---|---|---|
| <ul style="list-style-type: none"> • Bewdley • Hagley • Kidderminster • Malvern • Martley • Rubery • Stourport • Tenbury • Upton • Worcester • Wythall | <ul style="list-style-type: none"> • Bromsgrove • Redditch | <ul style="list-style-type: none"> • Droitwich • Pershore | <ul style="list-style-type: none"> • Evesham |

A small number of schools in the three-tier areas operate on a primary / secondary basis. This includes catholic school provision in the south of the county and some other schools that have sought to change their age range away from the three-tier model.

Identifying Related Schools

When a development site comes forward the County Council will identify which schools are considered to be directly related to the development. This will usually be where the school operates a catchment area as part of its admission criteria which covers the area in which the development is situated. Children resident in the catchment area will have a high priority for places at the school and families are likely to consider their catchment school as one of their three preferences when applying for admission.

Schools that do not operate a catchment area may use a range of criteria to prioritise admissions, including evidence of baptism in a particular faith, regular worship in a particular church, sibling connection to a child already attending the school, or distance to the school from the child's home address. Where schools are in close proximity to the proposed development but do not operate a catchment area they may still be considered as related schools if they meet the criteria on lack of surplus capacity and can demonstrate a likely demand from families moving onto the development.

If the school or schools identified as related to a development have no scope to expand or, where the school is an Academy and decides that it is not in the best interest of the school to expand, consideration will be given to investing in an alternative school which does have scope to expand. Significant expansions will be subject to appropriate public consultation and approval by the relevant decision making body. Where the related school(s) have academy or free school status, the expansion will be subject to agreement from the governing body and the Education Funding Agency.

Where the impact of a development is deemed to be so significant that a new school is required, negotiation will take place to agree the appropriate size and location of the school. There is no specified threshold which triggers a requirement for on-site provision but such sites would usually contain at least 500 dwellings and/or be designated as a significant site by the local planning authority. The County Council will supply evidence as necessary to support the request for a new school.

Methodology for Calculating Contributions

Each school has a Published Admission Number (PAN) which sets out the number of pupils which can be admitted into each year group. The PAN is included in the admission policy for the school, which is published each year for the following September intake. The County Council will initially assess the surplus capacity of schools related to the development by reference to the number of pupils on roll in the largest year group against the PAN in place for the most recent September intake. The number of pupils on roll for the largest year group will be taken from the census of pupils carried out each October. If this initial assessment suggests that there are insufficient places to accommodate the additional children likely to be generated by the development then a more detailed assessment will take place.

The detailed assessment will firstly consider the size of the proposed development as smaller sites will have a proportionally smaller impact on education infrastructure. Average pupil yields as set out in section 4 below show that each additional dwelling generates 0.028 extra pupils per year group. Developments of 35 dwellings or fewer will therefore generate on average less than 1 additional pupil per year group i.e. $35 \times 0.028 = 0.98$ pupils per year group.

Education planning obligations will only be considered for developments of less than 35 dwellings where there is an exceptional need to increase capacity in the related schools. It is anticipated that most exceptional cases will be in rural settlements where the local school is under pressure or where an accumulation of smaller developments will put pressure on school places. This will be assessed on a case by case basis, with relevant evidence provided to the local planning authority.

Where a developer or collaboration of developers seek to split a development area(s) in such a way that the total number of dwellings will be in excess of the threshold for an education contribution, Worcestershire County Council will seek to mitigate the impact of such proposal(s).

For developments of 35 dwellings or more the County Council will consider the average number of surplus places per year group and how this compares to the expected impact of the development. Consideration will also be given to forecast pupil numbers and known trends in parental preference in the area.

Out of area pupils

Where schools which operate a catchment area are shown to admit a significant number of pupils from outside their catchment this will be taken into account. Consideration will be given on a case by case basis.

Parents have the right under the School Admissions Code to apply to any school of their preference for a place for their child. While there is no automatic entitlement to a place at their first choice school the ability to nominate a preference does raise expectations that a significant proportion of applications will be successful. It is therefore recognised that in order to maintain an efficient system while still offering a degree of parental choice the County Council should seek to maintain an operational surplus of school places above the actual level of need.

Worcestershire is divided into 16 Education Planning Areas, based around the main centres of population. The County Council aims to provide 5% over capacity at the point of entry to school in any Planning Area and at subsequent points of transfer between phases as the operational surplus.

The requirement to run an operational surplus, coupled with the ability of parents to express a preference, makes it inevitable that most schools which use catchment area in their admission criteria will have some pupils attending from out of the area.

Where a school has a significant number of pupils from outside their catchment area, consideration will be given to whether the Education Planning Area for that school is able to meet the operational surplus requirements. A lack of surplus in the area as a whole will mean that displacement of out of area pupils is more difficult to manage and may cause pressure at other schools. This pressure will be directly related to the development and therefore must be appropriately mitigated to make the development acceptable in planning terms.

Bulge Year Groups

Where a school may have admitted an exceptionally large cohort in response to a short-term spike in demand, this will be taken into consideration when assessing the number of surplus places. It will not be taken as evidence that the school can admit additional children in every year group nor will it be counted as the largest year group

5 Calculating the Level of Contribution

Where the impact of a development is judged to be of a level which would require delivery of a new school then the contribution will be negotiated with the developer. The contribution sought will reflect the site specific build costs and proportion of the places in the new school which are likely to be filled by children resident on the proposed development. The County Council will consider payment in kind by way of land transfer or the direct provision of buildings by the developer. The specification of any buildings to be directly provided by the developer must be agreed with the County Council.

A contribution will not be required from sites of 10 dwellings or fewer as it is anticipated that the impact on education infrastructure will be low and pooling restrictions curtail the usage of S106 contributions to mitigate the cumulative impact of multiple small sites.

Sites of between 11 and 35 dwellings will only require a contribution where there is an exceptional need to increase capacity in the related schools. It is anticipated that most exceptional cases will be in rural settlements or where an accumulation of smaller developments will put pressure on school places. This will be assessed on a case by case basis, with relevant evidence provided to the planning authority.

Where a standard financial contribution is judged to be the appropriate mitigation for a development the amounts sought will be calculated based on a cost per dwelling. The formula for calculating this cost comprises the following elements:

Number of year groups

Worcestershire has both two- and three-tier education systems in operation in various parts of the county. The table on page 5 of this document sets out which system operates in which area. Cohorts in reception up to the end of year 6 are deemed to be in the primary phase. Cohorts in years 7 to 11 are deemed to be secondary phase.

Middle schools will have a number of primary phase year groups and a number of secondary phase year groups, depending on the age range they cover. A middle school admitting years 5 to 8 would therefore have 2 year groups at the primary phase and 2 at the secondary phase.

Secondary schools typically have 5 secondary phase year groups. Schools in three-tier areas will have fewer. Where the school has a sixth form this is treated as the equivalent of 1 additional year group to reflect the lower transfer rate into the sixth form.

Pupil Yield

The table below shows numbers of school-aged children and households based on data from the 2011 Census. The number of 4-15 year olds was calculated on the assumption that the proportion of children living in households was the same as the proportion in the 0-15 age group.

| | Bromsgrove | Malvern Hills | Redditch | Worcester | Wychavon | Wyre Forest | Total Worcs. |
|--------------------------|------------|---------------|----------|-----------|----------|-------------|--------------|
| Number of 4-15 year olds | 11,360 | 7,268 | 8,000 | 9,078 | 12,038 | 8,932 | 56,676 |
| Number of households | 30,684 | 23,409 | 22,930 | 27,513 | 36,198 | 30,619 | 171,353 |

Using this data we can calculate that the average yield of children aged 4-15 per owned household in Worcestershire is $56,676 / 171,353 = 0.3308$.

There are 12 year groups covering education for statutory school aged children. Therefore the average yield per dwelling, per year group is $0.330 / 12 = 0.028$

Analysis of the 2011 census data shows that on average each privately owned dwelling in Worcestershire will produce 0.028 children per school year group. This figure is used to estimate the impact of a development on related schools in terms of potential additional pupils per year group.

Building Cost Multiplier

This figure represents the cost of providing one additional pupil place in a particular phase of education. It is derived from figures originally published by the Department for Education with indexation applied periodically based on the Retail Price Index. As at April 2018 the multiplier was £15,024 per primary place, £22,539 per secondary place and £24,467 per sixth form place.

Formula

The formula for calculating the Base Contribution is therefore as follows:

$$(P \times 0.028 \times \text{PBCM}) + (S \times 0.028 \times \text{SBCM}) + (F \times 0.5 \times 0.028 \times \text{FBCM}) = \text{Base Contribution}$$

Where:

P = the number of primary phase year groups in the school

PBCM = Primary Building Cost Multiplier

S = the number of secondary phase year groups in the school

SBCM = Secondary Building Cost Multiplier

F = the number of sixth form year groups in the school

FBCM = Sixth Form Building Cost Multiplier

Weightings

The calculation above produces the Base Contribution which will be sought for a private market dwelling of 2 or 3 bedrooms for each school. Weightings are applied to the Base Contribution for dwellings with 4 or more bedrooms and for flats and apartments.

A weighting of 50% is applied to the Base Contribution to produce the cost per dwelling for private market dwellings with 4 or more bedrooms. This reflects the increased likelihood of there being children resident in the dwelling.

A reduction of 60% is applied to the Base Contribution to produce the cost per dwelling for flats and apartments with 2 or more bedrooms. This reflects the decreased likelihood of there being children resident in the dwelling.

Exemptions

All houses and flats with 1 bedroom will be counted as a nil contribution, as they are unlikely to generate additional children. Specialist housing for the elderly or people with disabilities will also be exempt as the pupil yield will be insignificant.

Dwellings which are categorised as 100% affordable social rent housing will be counted as a nil contribution.

Table of Charges

A schedule of current costs per dwelling by Education Planning Area will be produced and updated each April. This will be published on the Worcestershire County Council website. It will help to inform developers of the likely level of contribution that may be sought from a development in a particular school catchment area. The County Council will provide a detailed response once a planning application is submitted but welcomes and encourages early discussions with developers to identify the likely impact of a development and the mitigation required.

6 Payment of Contributions

A legal agreement will be completed for each planning application where education planning obligations are to be made. If the application is in outline, without detailed numbers and types of dwelling then an amount per dwelling will be specified in the agreement so that a total contribution can be calculated once the detailed information is available.

Financial contributions will be subject to indexation and interest will be charged on late payments. The calculation of indexation and interest will be set out in the legal agreement.

Payment of agreed financial contributions will usually be sought on or before occupation of one third of the total dwellings on the development. The County Council will consider payment by instalments so long as the total agreed contribution is received prior to occupation of the final dwelling.

The County Council will retain the funds received in an interest bearing account set up specifically for Education Planning Obligations.

The County Council will carefully monitor and commit to spending the contributions within the time period agreed with the developer. This will usually be 10 years from receipt of the final payment. The County Council will not accept any less than 5 years in which to spend the contribution.

If any funds are not spent within the period specified in the planning agreement, monies will be returned to the party who paid them with interest calculated at 1% below the bank base rate, compounded annually. Where the base rate is less than 1% no interest will be paid.

7 Disbursement of Monies

Nomination of projects

The completed legal agreement will specify the infrastructure projects to be funded or delivered from education planning obligations made for the development. Where priorities have been identified in the Infrastructure Development Plan for the relevant local planning authority these will be reflected in agreements made. If no priorities have previously been identified the County Council will agree with the related schools which projects will be put forward for inclusion in the legal agreement with the developer.

Contributions will always be used to fund capital projects to deliver permanent school facilities and will not be used for providing temporary accommodation unless this is a necessary short-term measure as part of the delivery of a permanent building.

Highest priority will be given to projects which deliver additional capacity to allow schools to admit extra pupils. This may include any form of additional teaching area or support facilities such as spaces for group work, enhanced toilet facilities or office areas. Contributions may support capital projects which benefit school-based facilities including settings for pre-school aged children, extended school facilities or specialist facilities for children with disabilities.

Contributions may be used to provide facilities at any type of state-funded school, including academies and free schools. Priorities will be determined by the County Council in consultation with schools as necessary. No single project will be named in more than 5 separate legal agreements in line with CIL regulation 123. Projects that receive funding from planning obligations will not be eligible to receive CIL funds when these are available.

Forward funding of projects

In certain circumstances it may be necessary for the County Council or its partners to deliver education infrastructure projects ahead of the related development to ensure that schools are able to manage the impact or to take advantage of other funding opportunities which may be time limited. Such circumstances are only likely to occur where the infrastructure is intended to manage the cumulative impact of a number of sites, or is to be partially funded from other sources such as Government grants.

The forward funding of projects does not remove the obligation from developers to fund the infrastructure that is shown to be necessary to mitigate the impact of their development. The County Council will endeavour to make clear the intention to forward fund a project at the point of completion of the legal agreement but reserves the right to adjust the timing of delivery of an agreed education infrastructure project as necessary during the lifetime of the related development.

8 Meeting the Statutory Tests

The County Council believes that the approach detailed above inherently meets the statutory CIL tests. In summary this is because any planning obligation that is sought will be:

Necessary to make the development acceptable in planning terms

- All types of housing development will create additional households in the community in which they are situated.
- With the exception of developments aimed at specific sub-sections of the population, such as retirement apartments, these new households are likely to include children at some stage in the lifespan of the property.
- This increase in the child population will create additional demands on schools in the local area.
- If it can be demonstrated that the related schools do not have sufficient capacity to absorb the additional demands likely to be placed on them, then the development cannot be considered acceptable unless appropriate mitigation is put in place.

Directly related to the development

- Schools are identified as directly related to a development where they operate a catchment area as part of their admission criteria which covers the area in which the development is situated.
- Other schools may be considered related where they are in close proximity to the development, meet the capacity criteria and can demonstrate a likely demand from families moving on to the development.

Fairly and reasonably related in scale and kind to the development

- The level of contribution sought will have a direct relationship to the number, size and type of dwellings in a development.
- There will be an uplift of 50% for dwellings with 4 or more bedrooms, reflecting the increased child population in such dwellings.
- Flats and apartments of 2 or more bedrooms receive a 60% reduction to reflect the lower child population in such dwelling types.
- 1-bed dwellings will be a nil contribution.
- 100% affordable social rent dwellings and specialist age-restricted dwellings will be a nil contribution.
- The contribution sought will reflect the net increase in dwellings, taking account of any demolitions due to take place as part of the development.
- Where on-site provision of a new school is required the contribution will be subject to negotiation to accurately reflect site specific issues and costs. The cost of a new school is likely to be more per place than extension of existing schools where core facilities e.g. halls and administrative space, will already be in place.

9 Contact Details

For further information on the content of this document or to discuss a potential development please contact:

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