

Policy on Developer Contributions to Education Facilities



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Harrogate
BOROUGH COUNCIL

 North
Yorkshire County Council

Policy on Developer Contributions to Education Facilities



1. Background

- 1.1 The North Yorkshire County Council Structure Plan, adopted in 1995 makes allowance for 34,400 additions to the housing stock up to 2006. The County Council, as Local Education Authority (LEA), has a statutory duty to ensure sufficient school places are provided for the additional children from such development.
- 1.2 The normal method of securing resources to build or extend schools is via the Capital Bidding mechanism to the Department for Education and Skills (DFES). LEA needs are assessed and the Department of the Environment, Transport & the Regions (DETR) in consultation with the Treasury and other departments, makes allocations of spending approvals to authorities. Over the last few years, as resources have generally diminished, there have been increasing difficulties in keeping up with the LEA's statutory responsibilities towards the children in its area. These difficulties focus on two issues; the operation of the bidding formula, and the ability of the County Council to translate spending approvals into hard cash.
- 1.3 The position of the LEA in relation to capital funding generally is worsening, and increasingly other means for achieving improvements to the school stock are being considered such as a Private Finance Initiative, land sales or Capital Challenge.
- 1.4 To date, the North Yorkshire County Council Education and Library Services Committee has taken the view that the provision of a fully serviced site, at the least, would be sought from developers where the size of proposed development is such that it will require a new school simply to serve that development. For other developments the view has been that provision would be secured through the normal capital bidding mechanisms.



- 1.5 However the time has come when the County Council will be hard pressed to be able to secure appropriate provision (eg not temporary buildings) for children from new housing development unless contributions are sought from developers.
- 1.6 Primary schools in Harrogate District provide good quality education, and are often an attraction for new house buyers with premiums being paid for houses lying near to the most popular schools.

2. Section 106 Agreements: Principles

- 2.1 Section 106 of the Town & Country Planning Act 1990 as amended by the 1991 Act, enables planning authorities to seek to negotiate a contribution from developers towards the cost of meeting the infrastructure necessary to support their development. For education, this could mean asking developers of housing estates for a contribution towards the cost of extending an existing school or building a new one. The Department of the Environment Circular 1/97 provides guidance on planning "obligations". It states (Annex B Paragraph 2) that "properly used, planning obligations may enhance the quality of development, providing a mechanism whereby the interests of the developers may be reconciled with the need to protect the environment and the need to meet certain infrastructure costs arising from development". It states that such obligations must be relevant to planning, directly related to the proposed development and "fairly and reasonably related in scale". The Circular (Paragraph B12) states that "developers may reasonably be expected to pay for or contribute to the cost of infrastructure which would not have been necessary but for their development". It is clear that developers should not have to remedy existing deficiencies.
- 2.2 Paragraph B10 of the Circular states that "the provision of community facilities, eg reasonable amounts of open space, social, educational, recreational or sporting facilities may be acceptable provided such facilities are directly related to the development proposal and the need for them arises from its implementation and they are related in scale and kind".



- 2.3 The Circular indicates that in negotiating with applicants for planning permission, the local planning authority may seek modifications or improvements to applications or enter into agreements to enable development to go ahead which might otherwise be refused or to overcome planning objection or meet the “costs” imposed as a result of the development, ie the full cost of essential community facilities required as a direct result of a proposed development.
- 2.4 The Circular also states that “the existence of plan policies should not preclude negotiation on proper and appropriate planning obligations on their merits in relation to individual planning proposals.”

3. The Policy Context

- 3.1 The Harrogate District Local Plan (adopted in February 2001) includes a policy which provides for financial contributions for community facilities to be sought. Policy IMP2 states:

Provision of infrastructure needs generated by development

“THE BOROUGH COUNCIL WILL EXPECT DEVELOPERS TO PROVIDE FOR ALL TRANSPORTATION, SEWERAGE, DRAINAGE, LANDSCAPING, PARKING, OPEN SPACE AND COMMUNITY FACILITY NEEDS GENERATED DIRECTLY BY THE DEVELOPMENT, EITHER ON SITE OR OFF SITE. NORMALLY, THESE REQUIREMENTS WILL BE IMPOSED THROUGH CONDITIONS ATTACHED TO THE GRANT OF PLANNING PERMISSION. ALTERNATIVELY, THE BOROUGH COUNCIL MAY SEEK A PLANNING OBLIGATION TO SECURE NECESSARY FACILITIES THROUGH EITHER DIRECT PROVISION AND/OR BY A FINANCIAL CONTRIBUTION TO BE MADE FOR THE PROVISION OF FACILITIES NEARBY. DEVELOPMENT WILL NOT BE PERMITTED WHERE MATERIAL HARM IS CAUSED BY A FAILURE OR INABILITY TO PROVIDE NECESSARY INFRASTRUCTURE.



Justification

Satisfactory development requires that provision of necessary physical and social infrastructure, the need for which is wholly or mainly generated by a development, is linked to the grant of planning permission and financed from the proceeds of that development. The Borough Council intends to use its development control powers to achieve this end, so that new development areas are properly integrated with existing settlements and have adequate facilities in their own right.

Where a new development results in a need for new physical or social infrastructure, it is reasonable to expect the developer to provide these facilities so as not to place an undue burden on existing infrastructure. This policy follows the advice in DoE Circular 1/97 in placing an emphasis on planning conditions as the main mechanism for delivering facilities necessitated by new development. Where, exceptionally, it is more appropriate to establish a planning obligation in the form of a legal agreement attached to planning permission, the Borough Council will approach the matter on the basis of the advice in paragraphs B7 to B15 of Circular 1/97.”

- 3.2 In terms of educational facilities, the local planning authority is entitled to negotiate reasonable and appropriate financial contributions or contributions by way of buildings or facilities. The planning authority may require a contribution where the facilities are required and are necessary as a direct consequence of the development or the need arises as a result of the development.
- 3.3 A housing development will, depending on its size and composition, give rise either in the short or long term, to a demand for school places. If it can be demonstrated that there is, or will be, no spare capacity in local schools and no additional capacity is programmed by the Education Authority, then the proposed housing development imposes a burden or “planning loss” on the community which the developer should resolve either indirectly or directly. A similar situation exists for example if a development imposes a traffic problem on local roads.



- 3.4 The planning authority is entitled to refuse planning permission or impose conditions which delay development, or part of the development, until such time as the necessary provision is made.
- 3.5 A planning authority is entitled (where public funding is unavailable) to seek the full costs of educational facilities arising from a development. Retrospective requirements or provision to rectify existing deficiencies cannot be sought. Negotiations between the developer and the planning authority should be based on the application of clear and reasonable criteria which identify how developer contributions are calculated, and the type of development or geographical area to which contributions should apply.
- 3.6 The Town and Country Planning Acts and Circular 1/97 enable negotiations to take place with developers to secure contributions to a wide range of infrastructure costs. The calculation of contributions for educational facilities, affordable housing, open space or public transport provision must be based on formulae which can be justified, and contributions should not be sought as an automatic entitlement regardless of local circumstances, local needs and the opportunities for implementation.
- 3.7 In relation to educational facilities the starting point is an assessment by the Director of Education of existing school provision, the number of vacant places and the effect of natural population growth in the community in the absence of the proposed housing development. In addition to this, changes in catchment areas or the existence of other non-implemented planning approvals may be a factor in determining whether the proposed development will give rise to a capacity problem in local schools or in schools where children from the proposed development are likely to attend.
- 3.8 If contributions are sought in relation to a wide range of infrastructure costs and affordable housing, then, taken together, some substantial sums may be involved. In some cases, this may lead to a situation where the proposed development is alleged to be non-viable. In these cases, the planning authority is entitled to refuse planning permission on the grounds that the development does not mitigate its impact on the community, such as overcrowding in local schools, traffic congestion or lack of open



space. In these circumstances, it is open to the planning authority to make a judgement on the balance of advantages and disadvantages of the development and the provision of infrastructure. For example affordable housing is subject to a viability check. If negotiations fail to reach agreement on these matters, because of the alleged non-viability of the development it may be necessary to require “open book” information on the costs of the development and residual values. This situation may only arise on brownfield sites where the costs of remediation render the development marginal before any planning gain is considered.



Calculating Developer Contributions to Education Facilities

- 4.1 Circular 1/97 states that it is not acceptable to impose rigid formulae. However, there is a need to apply some rate, eg for the number of children per household which is reasonable in the area, and apply cost formulae to that. Such formulae are not rigid as they reflect the impact of a particular development.
- 4.2 Contributions will not be sought for sheltered accommodation or bona fide elderly person, student or holiday accommodation. Such accommodation will be that which clearly is incapable of occupation for general residential purposes by virtue of its internal layout, ownership or management or which has occupancy restricted by planning condition or legal agreement.
- 4.3 Contributions will not be sought for temporary housing or bedsits and one bedroom dwellings which are clearly incapable of being enlarged to two bedroomed units.
- 4.4 Any planning permission granted for the change of use from sheltered or elderly persons' accommodation or one bedroomed flats to general residential units or two bedroomed flats etc, would be subject to a contribution if the number of units exceeds the threshold criteria set below. Contributions will not be sought for changes of use or conversion or redevelopment schemes where there is no net increase in the number of residential units to which contributions would apply.



- 4.5 The basis for calculating the contributions for primary school places (age 5-11) as at January 2001 is as follows:

(DFES's cost multiplier)	£7,024
x	(regional factor) 0.92
+	(fees) 10%
+	<u>(furniture/equipment) £187</u>
=	£7,295 per primary place

- 4.6 The elements within this formula will be subject to annual review by the County Council in line with Central Government guidelines. The cost multiplier is the assessment made by the Government for the cost of a school place. The regional factor is an adjustment for local (County wide) costs of provision. The 10% addition represents an allowance for contingencies and fees.
- 4.7 Subject to paragraph 4.8 below no contribution is sought for secondary school places, due to the difficulties in demonstrating clearly to developers the impact that their specific scheme may have upon secondary school needs. It is not simply a case of looking to provide an extra classroom because specialist curricular needs in particular create additional complexities.
- 4.8 The County Council will continue to address accommodation needs at secondary schools caused by additional housing and therefore the planning authority, in conjunction with the Education Authority, reserve the right to seek secondary school contributions in the light of changing circumstances and particularly in relation to large scale developments.
- 4.9 Calculations are made on the basis that 0.25 primary school places are generated per relevant house or residential unit. The number of children generated by residential development will vary depending on the type and size of dwelling and by the location of the development. In some cases a developer may argue that houses are built for a particular market, eg couples, starter homes or that a development is not within easy reach of a primary school. The Planning and Education Authorities will not normally reduce the basis for the calculations to account for variables such as these, because, over time, any dwelling (excluding sheltered, elderly person only, or one bedroom units) in any location, has the potential to accommodate children of primary school age.



- 4.10 The contributions will normally apply to developments of 25 units or more regardless of site area. However, the Council reserves the right to review the policy and introduce alternative thresholds where necessary. Care will be taken to ensure the total development site is not deliberately sub-divided and phased in an attempt to avoid this threshold.
- 4.11 Forecasts of future school capacity and national population growth are made by the LEA over a three year period. If, following these calculations the local primary school is deemed to be at capacity in year 3, contributions will be sought at the full rate. If the school is "X" places short of capacity and the development generates "Y" places, contributions will be sought on the difference between "X" and "Y". If "X" is greater than "Y" no contribution will be sought. Calculations will be based on the number of houses included in the detailed planning application. Any increase in the number of units approved through, for example, a revised application, will generate additional contributions. No account will be taken of the rate of house-building on the site as this is an uncertain variable.
- 4.12 The basis of the calculations set out above will be subject to review, independent audit and change in the light of new demographic and other trends.
- 4.13 Contributions are only required where a local need is identified and therefore there is an obligation to show how funds received will be spent within a prescribed period, how they will deal with the identified impact, and in a manner which will be set out by the LEA. The LEA will incorporate provision for the return of contributions after 10 years if not spent. In the majority of cases funds will be spent on the local primary school. However, the LEA reserve the right to allocate the funds to other schools if overall education strategy or changes in catchment or parental choice so demand.
- 4.14 In the event of increased costs of implementing additional school places, no additional contributions will be sought from developers. The contribution is a once-only payment linked to the planning permission.



- 4.15 Contributions will be secured by direct payment or by way of a Section 106 Agreement. A contribution by way of the direct construction of classrooms etc, to an agreed standard is a preferred alternative to a financial contribution. The provision of temporary or mobile classrooms is not an acceptable alternative.
- 4.16 Normally, contributions will be required no later than the first occupation of the new dwellings. In certain circumstances (eg on large sites) payment of contributions may be delayed or phased by agreement with the LEA.

5. Procedure

- 5.1 Where development briefs are being prepared for large housing sites, the need for any commuted payment for education will be addressed through consultation with the LEA. Information on the likely position on the provision of school places over the next 5 years will be available from the County Council's School Organisation Plan. The LEA will also be able to respond to housebuilders' queries for individual sites.
- 5.2 Upon receipt of a relevant planning application, the local planning authority will contact the Education Authority to establish and advise the Local Planning Authority whether contributions are necessary in the particular case. The applicant and the Local Planning Authority will be notified accordingly and negotiations will take place between the Education Authority and the applicant/developer. The decision on the application and therefore on the need for a Section 106 Agreement is a matter for the Local Planning Authority. As a general principle the Local Planning Authority will not issue a decision notice on the application until agreement has been reached between the two parties. Any contribution due will be made payable to the County Council and **not** the Borough Council.



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