

SECTION 106 AGREEMENTS – PRINCIPLES

Section 106 of the Town and 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 will mean asking developers of housing estates for a contribution towards the cost of extending or reorganising an existing school or building a new one.

The Department of the Environment Circular 1/97 provides guidance on planning obligations. The document acknowledges in Annex B, Paragraph 7 that “planning obligations have a positive role to play in the planning system. Used properly they can remedy genuine planning problems and enhance the quality of development. They can provide a means of reconciling the aims and interests of developers with the need to safeguard the local environment or to meet the costs imposed as a result of development”.

Paragraph B10 states that “the provision of community facilities eg reasonable amounts of open space, social, educational, recreational or sporting facilities may be acceptable provided that such facilities are directly related to the development proposal, the need for them arises from its implementation and they are related in scale and kind”.

Furthermore Paragraph B12 says “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”. However, developers should not be expected to remedy existing deficiencies.

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.

BACKGROUND TO COMMUTED SUMS FOR EDUCATION FACILITIES

We want York to be a world class city in the 21st Century. The success of the City will, in part, depend upon its ability to enable everyone to be highly motivated, flexible and creative life-long learners. We want to achieve this in learning environments which are high quality and accessible to both pupils and the public.

In order to do this, schools and the Authority need to maximise funding availability.

The Local Education Authority (LEA) has a legal obligation to ensure sufficient school places are available for children arising from development. In certain circumstances the resources to extend existing school buildings can be secured from an annual capital bidding mechanism to the Department for Education and Skills (DfES). These needs are assessed by the Department for Transport, Local Government and The Regions (DTLR) who, in consultation with the Treasury and Government Departments, make the allocation of spending approval to Authorities.

The LEA has had difficulty in obtaining funding for their statutory responsibilities towards the children in the area. Securing funding for significant extensions to schools or the replacement of life expired premises is crucial to the long term aims of the Authority. For the large projects such as the building of replacement schools the authority is already exploring ways of obtaining capital funding through the public and private partnership programme. However, in some instances, the Authority will find it difficult to secure appropriate provision for children from new housing development unless contributions are sought from developers.

The early years foundation stage of learning, has been identified by the government as a priority in children's education. The Government provides a grant per child per annum towards the cost of foundation-stage education provided that there is a place available in a registered nursery. The problem is ensuring sufficient places in appropriate facilities so that children are eligible for the grant. Without money from developers towards the cost of providing appropriate facilities, children from new developments may not be able to access the level of education envisaged by the Government.

PURPOSE OF THE SUPPLEMENTARY PLANNING GUIDANCE

Given the councils powers to secure funding from developers it is necessary that a clear procedure is in place for seeking contributions, ensuring contributions are appropriate and subsequently properly applied.

The purpose of this Supplementary Planning Guidance is to explain the procedures for calculating the contributions and the means for implementing the councils proposals for contributions towards education facilities.

The Supplementary Planning Guidance is intended for use by landowners and potential developers of housing sites and their professional advisers. It outlines the circumstances where City of York Council will seek contributions towards providing adequate education facilities to serve the development and the method for calculating such contributions.

THE POLICY CONTEXT

Paragraph 16 of Annex B to Circular 1/97 indicates that the development plan forms an important framework into which a planning obligation should fit. The paragraph states "where a local planning authority is likely to seek planning obligations in connection with a particular type of development or in relation to specific development sites, they should

make this clear by setting it out in policies in their local plan". However the paragraph further explains that the existence of plan policies does not preclude negotiation on proper and appropriate planning obligations on their merits in relation to individual planning proposals.

Policies in the deposit City of York Local Plan support the principle of requiring developer contributions towards community facilities. Policies GP13 is a general policy endorsing the content of Circular 1/97. Policy C6 acknowledges that where there is a direct consequence for education facilities as a result of a residential development negotiations will take place to secure financial contributions towards the provision of such facilities.

In terms of education facilities, the Local Planning Authority is entitled to negotiate reasonable and appropriate financial contributions by way of buildings or facilities. The Local 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.

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 of a development imposes a traffic problem on local roads.

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.

THE CALCULATION OF DEVELOPER CONTRIBUTIONS

Circular 1/97 states that it is not acceptable to impose rigid formulae. However, there is a need to provide some guidance in a form which gives the developer an indication of the processes by which planning obligations will be calculated.

The Requirement for Primary and Secondary Places

The first step in determining whether contributions will be required is an assessment of existing education provision at the schools affected. Affected schools are those in whose catchment area the proposed development lies within. The provision at these schools will be assessed by the Local Education Authority (LEA) to determine whether there is or will be, sufficient capacity to accommodate the extra pupils that the proposed development would generate. The basis of this assessment will be the annual schools' census data and the annual school capacity measurements. The LEA will also take into account any unimplemented planning permissions that may have a factor in determining whether the proposed development will give rise to a capacity problem in the affected schools. A developer contribution will only be sought where it has been proven that the affected schools have insufficient capacity to accommodate the additional pupils that would be generated solely by the proposed development. The following types of housing will not be suitable for families and it is not proposed to seek contributions from them:

- One bedroomed flats or houses which are clearly incapable of being enlarged to two bedroom units.
- Sheltered accommodation or bona fide elderly person or holiday or single person student accommodation. Such accommodation will be that which is clearly 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.

Calculation of number of Children arising from the Proposed Development (Primary and Secondary).

Calculations for the number of children generated by a housing development is based on Department for Education and Skills (DfES) guidance which gives standard ratios of number of pupils per housing unit. These ratios were regionally adjusted and comparable Local Authorities were then consulted both regionally and nationally to verify the accuracy and justification of these ratios.

Within the City of York these ratios are as follows:

- Primary Sector 1 place per 4 dwelling units
- Secondary Sector 1 place per 7 dwelling units

These ratios will represent the threshold at which commuted sums will be requested from developers. Where the number of dwellings generates part of a place, the higher figure will be used to calculate the commuted sum. For example, if 19 dwellings are proposed, this would generate a need for 3 secondary school places and 5 primary school places. However, commuted sums will only be sought from the area of identified need.

Basis for the Calculation

The basis of calculating a contribution will be the DfES cost multiplier. This is the assessment by the government for the cost of a school place per pupil. It is regionally adjusted to take into account local cost of provision. The present costs (April 2007 to March 2008) are as follows:

- Primary Sector £10,648 per pupil
- Secondary Sector £16,270 per pupil

The cost multiplier will be reviewed on an annual basis.

These contributions will then be used for the capital costs of extending, re-organising or constructing additional educational provision at the schools directly affected by the development.

The Requirement for Foundation-Stage Education

As for primary and secondary education the first step in determining whether contributions will be required for foundation-stage education will be an assessment of the existing foundation stage provision within the school catchment area of the development. Although foundation-stage education is not formally within the school catchment regime the Government policy and the City of York's new primary admissions policy is to promote the idea of 'community schools' where children will start their education from 3 years old and then progress on to primary education within the same school environment. It is therefore proposed to use the same catchment area as for schools to assess potential need as overtime the two types of provision will become interconnected.

The early years and child care service keep up-to-date information through the children's information service on the capacity of foundation stage education facilities in all areas of City of York Council. A developer contribution will only be sought where the early years and child care service can show through the above document that the school catchment area within which the development is located has no spare capacity for foundation-stage education facilities (Ofsted dictate numbers of children per room and standards for physical environment for foundation-stage education. This information can be found in Ofsted's guide national standards for sessional day care).

The types of housing development that will require a contribution will be the same as for

primary and secondary education (see paragraph above).

It has been established that the number of primary school places that are generated by a development is 1 place for every 4 houses. The Government is seeking to provide all 3 to 5 year olds with 2½ hours education each day. This being essentially half of the primary school day it is considered reasonable that the ratio 1 foundation-stage place per 8 dwelling units, be used as the basis for the number of children of pre-school age to be generated by a development. Where the number of dwellings generates part of a place, the higher figure will be used to calculate the commuted sum.

This ratio will represent the threshold at which commuted sums will be requested from developers.

Basis for the Calculation

The basis for calculating a foundation stage contribution has been established by taking half of the DFES cost multiplier for a primary school place. The figure for the period April 2007 to March 2008 is £5,324.

This figure will be reviewed annually and the City of York Council reserves the right to change the basis of the calculation in line with future Government initiatives.

The contribution for foundation-stage education will then be used for the capital costs of extending, re-organising or constructing additional pre-school facilities within the school catchment area of the development.

PROCEDURE

Where development briefs are being prepared or allocations made in the local plan process for 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 is available from Education Planning, Mill House, North

Street, York. Education planning will also be able to respond to house builders' queries for individual sites.

On receipt of a relevant planning application, the Development Control Section will contact the Education Department to ascertain whether contributions are necessary in the particular case. Based on the advice of the Education Department the applicant will be informed if any contribution is required towards education provision. Contributions will normally be secured through Section 106 agreements. Contributions will only be sought in the sector of education where the school or pre-school facilities are full.

Where a proposed development is of such a size that it is deemed to have a significant effect on the education provision in a catchment area it may be necessary for the Planning and Education Authorities to enter into separate negotiations with the developer to agree a contribution which would not be based on the criteria laid out in this document.

It is not the intention of this Guidance to require 'benefits' greater than are required to address the educational needs arising from the development, allowing for existing provision. Where the viability of a development is brought into question by the required benefits, this can be a material consideration which the Local Planning Authority can weigh in making its decision on a planning application. The Local Planning Authority consider that on the whole viability arguments are only likely to occur on some Brownfield sites, historic sites or conversion schemes where there are significant unforeseen development costs.

It is proposed that contributions will normally be required upon the first occupation of the new dwellings. In some circumstances contributions may be delayed or phased by agreement with the Education Department. The Education Department will make provision for the return of monies if the money has not been spent 10 years after the date it is received by the Council.

The Education Department will be obliged to show how the funds received will be spent within a prescribed period and how they will deal with the identified impact. In the majority of cases the funds will be spent on the school or pre-school provision identified during the planning process, however, the Education Department reserves the right to allocate funds to other schools/nurseries if overall education strategy or changes in catchment areas or parental choice so demand.

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**DEVELOPER CONTRIBUTIONS TO EDUCATION FACILITIES – SUMMARY
OF REQUIREMENTS**

When is Education contribution required?	When the education provision within the catchment area of the development has insufficient capacity to take more pupils. (Capacity will be determined by the Education Department).
What type of development will trigger a need for a contribution?	All residential development comprising units of 2 bedrooms or more including changes of use and conversion schemes (where there is a net increase in the number of residential units) but excluding sheltered, retirement, student or holiday accommodation where a specific condition is to be attached restricting the occupancy of the development.
What size of development will require a payment?	Contributions will be required for every 4 housing units for primary school provision, 7 housing units for secondary school provision and every 8 housing units for foundation-stage education or part thereof. (NB There is no other minimum threshold for payment).
Where can I find out about a schools existing capacity?	A school census analysis is published annually. This information is available from Education Planning (Telephone: 01904 554271). Foundation-stage information can be obtained from The Early Years and Child Care Service (Telephone: 01904 554384).
What will the cost be for each place required?	The cost per place will be the Department for Education and Skills cost multiplier. The cost for April 2006 to March 2007 will be £10,164 for a primary place and £15,531 for a secondary place. Foundation stage contributions have been established by taking half the cost of the DfES' cost multiplier. The cost for April 2006 to March 2007 will be £5,082 These figures will be updated on an annual basis. NB Further negotiations may be required for developments that generate significant pupil numbers.
When will the commuted sum need to be paid?	Generally the money will be required at the time of the occupation of the first dwelling on the site. However, for larger developments phasing of payments will be agreed.
Where will the money be spent?	Reorganisation, expansion or new build at the school(s) affected by the development or in the case of foundation-stage education reorganisation, expansion or new build of pre-school facilities within the school catchment area of the development.
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