

Appendix 1: Representations by Gedling Borough Council on Nottinghamshire County Council Developers Contributions Strategy

Questions and responses

General

1 This strategy focusses primarily on the Council's approach to seeking and expending planning obligations secured through Section 106 agreements. Should further information be provided about our approach to the Community Infrastructure Levy (CIL)? If so, what sort of information is required?

Response

The wording in paragraph 2.7 which in summary sets out that the County Council will work with the relevant CIL charging authorities in producing and reviewing their infrastructure priorities is accurate and does not need any more detail.

2. Do you support NCC's protocol for seeking planning obligations in response to planning consultations as detailed at paras 3.5-3.9? Are there any other matters that need to be included?

Response

Supported.

3. Do you support NCC's protocol for dealing with viability issues as detailed at paras 3.10-3.16? Are there any other considerations that have not been included?

Response

General support to the approach set out in paragraphs 3.10 – 3.16. However, it would be helpful if the document could give some indication of the County Council's priorities within the document where viability is an issue.

Education

4. Do paragraphs 4.5-4.11 provide the necessary framework for seeking contributions towards primary and secondary education infrastructure? Is there any further clarification or explanation needed?

Response

Yes, further clarification is required. In effect, the guidance is seeking an additional three secondary school places for Further Education or FEs, which is additional to the 16 secondary school places specified in the 2020 Developer Obligations Strategy. It is not clear how the additional three FE places have been derived the only reference being the following sentence in paragraph 4.8:

“Where the relevant planning area includes schools with sixth form provision, the secondary school yield will be increased to 19 pupils for every 100 dwellings in order to take account of the additional demand on post-sixteen places”.

Paragraph 4.8 refers to ONS data being used as the basis for calculating that 100 homes gives rise to 16 pupils of secondary age. Clarification is sought as to whether this data and the calculation covers the secondary school age group up to 16 years of age only and excludes post 16 year olds who stay on. The paragraph should therefore refer to 100 homes generating 19 places for secondary schools/post 16 Fes. If this is not the case and the ONS data and calculation does cover students up to 18 years of age then it is likely that there would be an element of double counting for FE places. Clarification is also sought as to why this contribution is being sought now and not in the previous version of the guidance if the relevant data was available at this time.

5. Does the description of the methodology for forecasting school capacity at paras 4.12-4.17, which is based on best practice guidance from the DfE, provide sufficient information to support contribution requests?

Response

Yes, no comments.

6. NCC seeks contributions to increase capacity within school planning areas rather than at named schools. Do you agree with the types of projects that developer contributions might be used to fund, as listed at para 4.18?

Response

Yes, agreed.

7. Do you think that developers should be provided with the option of delivering a new school, including early year provision, where their development yields sufficient pupil demand, as described at paras 4.23-4.24?

Response

Yes in principle, if the delivery of a new school meets the requirements of the Education Authority.

8. Does the methodology outlined at paras 4.27-4.30 provide the necessary framework for seeking contributions towards Special Educational Needs and Disabilities (SEND) provision?

Response

We consider that this is more a matter of social care policy and have an in principle objection to this potential requirement. It is considered that this potential contribution would fail the regulatory test set out in the CIL Regulations and the NPPF.s

In addition, more evidence and clarification is required to demonstrate the need for SEND places. It is queried whether the calculation should be based on the forecast numbers of school age children up to 16 years of age after which there is a degree of choice about staying on post 16 and where this teaching takes place. We would argue that developers should not be required to make contributions towards FE places, which are determined through personal choice by students/parents as opposed to directly arising from the development. (Please also see our comments above seeking clarification on the ONS data for population groups and the school age groups they cover). If the calculation is based on the 37 places generated for primary and secondary school children up to 16 years set out in paragraph 4.8 then the need is for a negligible 0.48 SEND places. In any case, the calculated need of 0.52 places based on a generated 40 school places per 100 dwellings as set out in the document is demonstrating a very marginal need at best.

Whilst we object in principle to this potential contribution, if it is retained then SEND places should only be sought for very large housing developments of at least 200 homes or more on a case-by-case basis where the minimum calculated need is for at least one whole place or more.

It is not clear from paragraph 4.27 and 4.28 that should a SEND place(s) be sought then the overall educational contribution would be adjusted to take this into account to avoid double counting i.e. the calculation would be 39 school places plus a SEND place at an additional £83, 728 per 100 homes. A suitable caveat to this effect should be added to paragraph 4.8.

9. Are the payment trigger points proposed in Table 3 (p.20) feasible? If not, what trigger schedule period would be feasible for inclusion within a s106 agreement?

Response
Yes supported.

Transport

10. The Strategy supports the aims of the National Planning Policy Framework (NPPF) by supporting sustainable and viable development. What do you consider to be the key priority for funding sustainable means of transport associated with new development? i.e. public transport, car, walking, cycling.

Response
The hierarchical approach set out in paragraph 5.1 of the document is supported and consistent with ACS Policy 14.

11. As described at paragraph 5.7, the Council may request that developers contribute financially towards offsite highway works, such as improved bus stops, cycling and pedestrian infrastructure or public rights of ways that would not necessarily be secured through a planning condition. Is there any further

information that should be included in the strategy to support such contribution requests that is not already included?

Response
Support.

12. Do paragraphs 5.8-5.13 provide the necessary framework for seeking contributions towards public rights of way improvements? Is there any further clarification or explanation needed?

Response
Gedling Borough Council considers that the contributions to off site PROW improvements is not justified and does not meet the regulatory tests governing S106 contributions. It is considered that additional Council tax from new residents should be used to cover improvements to the wider PROW network.

13. Does paragraph 5.16 onwards provide sufficient detail to support requests for contributions towards local public transport infrastructure and bus services? Is any further information needed? This strategy also includes information regarding school transport contributions; do you support the approach detailed at paras 5.26-28?

Response
Object to the provisions relating to school transport. This is an additional and potentially substantial extra education related contribution and more of a social care policy matter. Consequently, it is not considered that in principle such an additional education contribution can be directly related to the development in question and does not therefore meet the tests set out in the CIL Regulations and NPPF

In addition, the justification is insufficiently robust referring to a formula applied to a given number of dwellings but without any evidence about the capacity of the current free school transport service to accommodate any additional demand within the relevant school catchment area. Without such evidence, this would appear to be the prospect of a standard per dwelling charge to be levied for larger developments across Nottinghamshire without justification and would not be fair or reasonably related to the development proposed. Furthermore, no indication of likely costs is given which as stated above is likely to be substantial given the need to employ drivers in vehicles with associated hire, fuel and maintenance costs for a long period of time several years in fact.

The fact that this potential contribution has been added to the contribution strategy when previously it has not been subject to contributions suggests it has spurious justification given free school transport for eligible children is not a new policy requirement to be provided by the County Council. In this context, it is noted that

the County Council has published policy statement for under 16 and over 16 school travel including for SEND pupils.

In short, Gedling Borough Council strongly objects on the basis that this potential contribution completely fails the regulatory tests for the following reasons:

- there is insufficient evidence to suggest that this is necessary to allow the development to proceed;*
- there is no evidence or statement of intent to link the need for this service directly to proposed developments based on an assessment that there is insufficient capacity within the relevant catchment area;*
- In any case, the proposed charge is not reasonable as it is a social care policy matter and not directly planning related.*

14. Paragraphs 5.33-5.34 describe the role of travel plans and travel plan monitoring contributions; is any further information required in this section?

Response

Yes, the guidance should make it clear that monitoring fees should relate to the scale and nature of the development proposed and not be a standard fee. In this context a standard fee of £30,000, which has been sought in connection with developments within Gedling Borough, is considered excessive and not reasonable Travel plan monitoring costs should be calculated on a cost recovery basis, if they are to meet the tests set out in the CIL Regulations and NPPF.

Other Services

15. Does Chapter 6 provide the necessary framework for seeking contributions towards library services? Is there any further clarification or explanation needed?

Response

This section should indicate that library provision would be a lower priority should viability issues limit the ability of a development to meet policy requirements.

16. Does Chapter 7 provide the necessary framework for seeking contributions towards waste management infrastructure? Is there any further clarification or explanation needed?

Response

The wording is similar to the existing Developer Contributions strategy and reasonably clear.

17. Does Chapter 8 provide the necessary framework for seeking contributions towards green spaces and infrastructure? Is there any further clarification or explanation needed?

Response

Yes, more explanation and clarification needed. Gedling Borough Council is not aware of any County owned recreational sites within the Borough. Developers are already required to contribute towards open space and green infrastructure within Gedling Borough and it is unreasonable to seek additional contributions towards other green infrastructure elsewhere.

Social Care

18. Paragraphs 9.4-9.5 describe how the Council will facilitate the inclusion of extra care housing within development proposals. Would you welcome early engagement with Housing with Care and Support professionals as described? How else can the Council support provision of extra care or supported living housing in Nottinghamshire?

Response

See response below for our general view that social care policy should not be included within the Developer Contribution Strategy.

19. What can the County Council do to help achieve its objective to support care leavers to find the right accommodation and help new development to meet needs of care leavers, as referred to at paras 9.6-9.10?

Response

Gedling Borough Council strongly objects to the inclusion of guidance on social care within this draft strategy. The delivery of social care infrastructure through planning obligations would not meet the regulatory tests set out in the CIL Regulations and NPPF. It would not be necessary to enable the development to proceed, directly related to the development nor reasonable.

Other comments

20. Are there any other matters relating to developer contributions that are not currently included in the strategy you feel should be? Is further clarification required on any issues that are included?

Response

There is a concern that a number of additional services are identified as potentially requiring developer contributions without sufficient justification and regard to the regulatory tests. It is notable that additional contributions are set out in the draft in comparison with the existing Developer Contribution Strategy 2021 despite none of these additional services being identified as new. Experience demonstrates that economic viability limits the ability of development to meet all the demands for developer contributions being requested to the extent that other priorities such as affordable housing – a key priority of Gedling Borough - is effectively being

squeezed down. The draft document should be more robust in terms of justification and more realistic in setting out its priorities.