

<b>SUBJECT</b>	Revisions to Guidance on Planning Obligations for Education Provision – Delegated Officers Action Report
<b>Date</b>	3 <sup>rd</sup> November 2021
<b>RESPONSIBLE OFFICER</b>	Simon James (Service Director: Education)
<b>REPORT AUTHOR</b>	Stephen Chainani (School Place Planning Commissioning Partner)

## 1. Key Summary

In 2010, the Council adopted guidance on securing Planning Obligations for Education Provision. The guidance has been updated to take account of changes in Government guidance, experience gained through subsequent negotiations with developers, and to incorporate the latest available building costs and figures on occupancy levels. This will ensure that the guidance remains robust to challenge from developers who continue to make appropriate contributions to meet the costs of additional education infrastructure requirements generated by their developments.

### RECOMMENDATION

**That the Service Director exercises their delegated authority to approve revisions to the Council's guidance on education contributions for implementation on all new residential planning applications from the date of decision.**

## 2. Reason for Recommendation

- 2.1 On 8 June 2010, the Cabinet Members for Achievement & Learning, Resources and Planning & Environment adopted Council guidance on Securing Planning Obligations for Education Provision (<https://buckinghamshire.moderngov.co.uk/CeListDocuments.aspx?MID=4950&RD=Planning%20Obligations%20for%20Education%20Provision%20%28Decision%20taken%29&DF=02%2f06%2f2010&A=1&R=0>). The aim of the guidance is to secure a coherent and consistent approach to ensuring that developers provide appropriate contributions to meet the costs of additional education infrastructure requirements generated by new housing developments. This will help to reduce the uncertainty and time spent on negotiating individual planning applications. While the guidance does not have the status of a Supplementary Planning Document, it aims to inform the preparation of the Council's local plan policies on developer contributions.
- 2.2 Since the guidance was adopted in 2010 following consultation – there have been a number of changes introduced including:
1. Buckinghamshire County Council and the four District Councils have now combined to become a single unitary authority. Wording within guidance has been updated to reflect change in structure and planning process.
  2. Revised local plan policies within each district apart from the Chiltern and South Bucks area where the plan has been withdrawn (although there is a CIL in place). The guidance incorporates policies within the new local plan for Wycombe which was adopted in August 2019 and the publication version of the local plan for the Aylesbury Vale area.
  3. Revisions to the Government's National Planning Policy Framework (NPPF) which gives great weight to the need to create, expand or alter schools through the preparation of plans and decisions on applications.

4. Department for Education (DfE) Statutory guidance for decision makers on factors to consider when making any changes to school provision.
5. Government introduced a threshold in 2014 that only allowed contributions to be sought from major development where there is already pressure to provide infrastructure. Previously the threshold was set at 4 homes – which the Government considered put a disproportionate burden of contributions on small scale developers, custom and self-builders.
6. DfE non-statutory guidance published November 2019 on securing developer contributions for education ([www.gov.uk/government/publications/delivering-schools-to-support-housing-growth](http://www.gov.uk/government/publications/delivering-schools-to-support-housing-growth)). This provides clarification on the S106 methodology for (i) Early Years (i.e. all new schools are now expected to include a nursery) (ii) SEN (i.e. while there is no standard capacity calculation, it is reasonable and fair to seek developer contributions for SEN provision in direct proportion to the needs arising from planned housing development) and (iii) build costs (see paragraph 3.1 below).
7. DfE guidance on planning areas used to assess demand for places to replace guidance from the Audit Commission which closed in 2015.
8. DfE guidance on methodology/timescales for assessing demand (i.e. base on intake year rather than total capacity and 5/7 year period for primary and secondary forecasts respectively).
9. New Population/Pupil Census to update pupil yield estimates with latest data.
10. Revised School Site Specification approved by Property Board in September 2019 to replace Appendices 3-4 (see background papers).

2.3 Council guidance has been revised to incorporate the above changes (see background papers for proposed changes to guidance highlighted in red) to ensure the guidance remains robust to challenge from developers.

### 3. Considerations:

3.1 DfE guidance on securing education contributions recommends a significant increase on the Council's current S106 cost multipliers although they are considered to reflect the actual cost of providing school places (i.e. they are based on a national average cost as published in the DfE school place scorecards). The cost multipliers used in the 2010 guidance were based on the funding per pupil used by the DfE to determine the capital allocation to local authorities; While the funding per pupil has remained relatively unchanged over the last 10 years – actual build costs have increased significantly (i.e. the BCIS Buildings Cost Index has increased by 58% over the same period). The change in costs<sup>1</sup> is shown in the table below:

Provision Type	S106 per dwelling		% Increase
	Current	Revised	
Primary (incl pre-school)	£5,205	£7,649	47%
Secondary	£5,784	£5,565	-4%
Special	£777	£1,065	37%
Total	£11,766	£14,279	21%

<sup>1</sup> Note primary contributions include pre-school provision and are based on the cost of new school provision. Secondary costs previously included upper and grammar provision - however there is expected to no longer be a need (subject to population growth and out of county trends) for additional grammar school places due to recent expansions and the level of out county admissions (which can be displaced over time).

- 3.2 DfE guidance states that the amount of money that Councils' should seek to secure through developer contributions for education provision should reflect the cost of providing school places, linked to the policy requirements in an up-to-date emerging or adopted plan that has been informed by viability assessment. The local plan policy for Wycombe was generally informed using the actual cost of new provision whereas in Aylesbury Vale the costs were based on current S106 cost multipliers (and assumed the mix on new homes used to calculate pupil yield to be similar to that on existing homes across the county. Appendix 1 provides a comparison between education costs built into the Local Plan viability assessments and the revised costs based on the latest DfE guidance and Council housing mix assumptions. The costs of education obligations in Wycombe assumed each development would make provision for a new 1FE school – however it is now assumed that each development will only make a contribution based on their actual pupil yield (so in most instances the cost has reduced). The Wycombe sites are also not required to make a secondary S106 contribution as this is covered by the Community Infrastructure Levy (CIL). In Aylesbury as the costs in the Local Plan were based on actual pupil yield the revised cost multipliers have generally resulted in an increase in costs – so some developments may be subject to greater viability issues.
- 3.3 Paragraph 6.11 of the proposed guidance remains and allows for planning obligations to be prioritised on an individual basis in negotiation with developers should contributions cause a scheme to become unviable. While it may be possible for Local Authority basic need funding to be used to fill a funding gap (if viability evidence shows this to be necessary) this will need to be considered on a case by case basis as the availability of education funding awarded annually is highly unpredictable.
- 3.4 There are a number of undetermined planning applications at various stages in the planning process – some of which are at the advanced stages (e.g. some of the larger higher profile schemes including Woodlands which is already the subject of a viability assessment). Due to the potential implications on viability/delays to planning process, it is recommended that the revised guidance only apply to new applications submitted after the revisions have been implemented.
- 3.5 Property Board were consulted and approved the proposed revisions including using realistic cost estimates to calculate contribution requirements (in line with DfE guidance) to ensure that education infrastructure is fully funded as far as possible. Members of Property Board include Cllr Anita Cranmer (CM Education and Skills), Cllr John Chilver (CM Property & Assets), Cllr Bill Chapple (CM Environment & Climate Change) and Cllr Steve Bowles (CM Town Centre Regeneration)

#### **4. Options available**

- 4.1 The only other option would be for the Service Director not to agree to the proposed revisions. However, the Council faces significant pressure on its capital budget to fund future school expansion schemes and new schools. This is largely as a result of significant increased build costs due to abnormal costs (such as highways, SUDS, ecology and other sustainability requirements) and increased construction costs (e.g. labour costs and cost of steel, bricks and other materials). If the Council's education planning obligation guidance is not updated then it may impact on its ability to meet its statutory sufficiency duty or result in schemes having to be funded from the Council's reserves. The revisions will ensure the guidance is based on latest national and local policy and

ensure consistency and transparency in relation to future discussions with Case Officers and Developers.

## **5. Corporate Implications**

- 5.1 Revisions to guidance will ensure developer contributions are maximised to pay for education infrastructure necessary to meet new housing growth and ensure the LA is able to meet its statutory sufficiency duty under the Education Act 1996.
- 5.2 The guidance document is compliant with the Town and Country Planning Act 2015 and meets national planning policy guidance:
1. Meets with the 3 statutory tests within the Community Infrastructure Levy Regulations 2010:
    - Methodology for assessing need is based on the latest DfE guidance to ensure contributions are necessary to make the development acceptable in planning terms;
    - Contributions are assessed and spent on schools within the relevant planning area in line with DfE guidance to ensure they are directly related to the development.
    - Contributions are calculated based published DfE cost multipliers to ensure they are fairly and reasonably related in scale and kind to the development.
  2. Based on latest local plan policies and DfE guidance/NPPF to ensure the Council takes a proactive, positive and collaborative approach to meeting its statutory sufficiency duty and facilitating sustainable development by helping to identify and resolve key planning issues before applications are submitted.
- 5.3 The proposed revisions are not expected to have a detrimental impact on the environment as they would ensure as far as possible that developer contributions are based on actual cost of providing school places as reported by LAs which incorporate environmental sustainability measures. The policy promotes sustainable and healthy travel patterns for young people by ensuring as far as possible new developments meet their full education requirement.

## **6. Next Step**

- 6.1 If the recommended action is authorised the revised guidance will be implemented with immediate effect on all new planning applications submitted.

## **7. Delegated authority**

- 7.1 Legal have advised that as the revisions to the guidance are in line with the original Cabinet Member decision as opposed to introducing new policy (i.e. paragraph 3.1 of the guidance states that it will be reviewed to take account of changes in Government guidance, experience gained through subsequent negotiations with developers, and to incorporate the latest available building costs and figures on occupancy levels - without the need for a full scale review) the decision to approve can be taken without the need for full consultation by the Service Director under the following delegated powers:

*2.3 Officers set out in the scheme are expected to...consult relevant Portfolio Holders when exercising temporary or specific delegations resolved at Council or a Committee or Sub-Committee meeting where appropriate.*

*2.4 Portfolio Holders for the relevant area should be consulted on the exercise of a delegated power in all cases where:*

- a. there is likely to be opposition from members of the public*
- b. where there are political sensitivities;*
- c. there is likely to be media (including social media) interest; or*
- d. expenditure is unusual for the budget area.*

*2.5 Before exercising any delegated power, officers must consider whether to consult with the relevant Portfolio Holder on the exercise of delegated powers or not to exercise delegated powers but to refer the matter to the relevant councillor or Council Body to decide.*

*2.8. The scheme does not delegate to officers: (a) any matter reserved to full Council; (b) any matter which by law may not be delegated to an officer; (c) any key decision; or (d) any matter expressly withdrawn from delegation by the Council, Committees, Leader or Cabinet.*

*2.10. This scheme delegates to the Corporate and Service Directors all executive and non-executive powers and duties relevant to their areas of responsibility detailed...subject to the limitations, restrictions, reservations and requirements for consultation set out above.*

7.2 As a member of Property Board, the Portfolio Holder has been consulted on and approved the revisions to the guidance. She was also made aware that the final decision would be made by the Service Director (see extract of minutes from meeting on 8 July in Appendix 2). The Planning, Growth & Sustainability Management Team have reviewed the guidance and agreed that the revisions can be approved by the Service Director for Education alone.

7.3 Moreover, the DfE have confirmed that there was no requirement to consult on their Education Contribution guidance – however they worked closely with the Ministry of Housing, Communities & Local Government (MHCLG) on the drafting of the guidance and the associated additions to Planning Practice Guidance, which include links to the DfE guidance. The DfE have reported that feedback from developers and Councils has been generally positive.

## **8. Exercise of Delegated Authority**

I, Simon James, Service Director for Education, consider it is appropriate for me to exercise my delegated authority and agree the above recommendation.

Signed: 

Dated: 3<sup>rd</sup> November 2021

Simon James

Service Director for Education

Background Papers:

1. Council School Site Specification
2. Revised education planning obligations guidance Oct 2021

**Appendix 1 - School costs used for IDP vs Revised DfE Cost Multipliers for LP viability testing**

Primary Contribution per dwelling (expansion) £6,728  
 Primary Contribution per dwelling (new schools) £7,990  
 Upper School Contribution per dwelling £5,814 (Assumes no requirement for grammar school contribution equivalent to £1,113 per dwelling)

Local Plan Policy Ref	Details	Primary Provision: On-site or Expansion?	No. Dwellings	IDP Primary School Costs	Revised S106 Policy (HEDNA Mix)	IDP Secondary School Costs	Revised S106 Policy (HEDNA Mix)
<b>Wycombe Sites</b>							
Bourne End	Hollands Farm	1FE School/Expansion	467	£7,000,000	£4,423,809	CIL	CIL
High Wycombe	Gomm Valley/Ashwells	1FE School	700	£7,000,000	£6,630,978	CIL	CIL
High Wycombe	Abbey Barn South/North	1FE Expansion	605	£7,000,000	£5,731,059	CIL	CIL
High Wycombe	Tralee Farm (see also CSB site)	1FE School/Expansion	350	£7,000,000	£3,315,489	CIL	CIL
Princes Risborough Expansion Area	2 x 2FE Primary School	New Schools	2357	£14,300,000	£24,560,194	CIL	CIL
		Total WYC		£42,300,000	£44,661,528	CIL	CIL
<b>Aylesbury Sites</b>							
Winslow (WIN001 - 585 homes)	1FE Expansion/New School	1FE School/Expansion	585	£6,000,000	£4,557,902	Pooled	£3,938,835
Buckingham:Osler Way (420 homes-BUC46);Moreton Rd (130 homes-BUC043);Walnut Dr (170 homes-		1FE Expansion	700	£5,500,000	£5,453,899	Pooled	£4,713,136
Halton	RAF Site (HAL003 - 1000 homes)	1FE School/Expansion	1000	£6,000,000	£7,791,285	Pooled	£6,733,052
South Aylesbury	Stoke Mandeville/Stone (AGT1/AGT2)	2x2FE School	2800	£24,000,000	£25,908,863	Pooled	£18,852,544
Milton Keynes	Shenley Park	1.5FE School	1150	£10,000,000	£10,641,140	Pooled	£7,743,009
Milton Keynes	*SWMK	3FE School	1885	£12,000,000	£17,442,217	Pooled	£12,691,802
SE Aylesbury	*Hampden Fields	2FE + 3FE School	3000	£22,000,000	£27,759,496	Pooled	£20,199,155
East Aylesbury	*Woodlands	1.5FE School	1100	£10,000,000	£10,178,482	Pooled	£7,406,357
		Total AV (excl approvals)		£51,500,000	£54,353,089	Pooled	£41,980,576

**Notes:**

Secondary contributions to be pooled across the wider Aylesbury area - estimated cost of new schools/expansions estimated in IDP at £80m (excludes £30m for provision of new school on Quarrendon)

\*There are a number of sites where S106 agreement has already been agreed or applications already submitted so will be based on previous S106 policy (e.g. Hampden Fields, Woodlands, SWMK)

Any shortfall from S106 will need to met from CIL/Basic Need/HIF/Borrowing/S106 from other sites in planning area (e.g. Slate Meadow, Terriers Farm)

Wycombe IDP (June 17) included estimated costs for expansion of primary provision in High Wycombe at £12m and secondary provision in Wycombe at £57m

Aylesbury Vale IDP (May 18) included estimated short term costs of £16m for primary expansions in Haddenham, Wendover and Aylesbury as well as £20m for new schools on Kingsbrook

In the longer term - estimated £10m for expansion of existing schools in Aylesbury (e.g. Berryfields and Stoke Mandeville)

## **Appendix 2 – Minutes of Property Board Meeting on 8 July 2021**

### **Decisions – Property Board**

#### **4a S106 Education Contributions**

In June 2010 the Cabinet Members for Education and Planning adopted guidance for securing S106 to ensure we are transparent and it also helped inform local plan policies. The policy needs to be updated and there were a total of 10 changes listed in the report. This paper seeks to align the Board with previous decisions made and requests comments.

This updated guidance will be reviewed to take into account government guidance and incorporate the latest bill costs and occupancy levels. There isn't a need for a full scale review and it can be approved at Service Director level. This guidance has also been reviewed and approved by Legal and Finance.

Over the last 10 years we have lost money because the guidance hadn't been updated. Cllr Chapple suggested each year the cost of inflation should be added on our costs to keep us aligned with what's out there and this annual increase will also provide incentive to the developers. However, the Board notes DfE funding hasn't increased much in the last 10 years. We update a score card every year and found that the DfE actually provides less money than what our policy states – to date we have not been challenged. The scorecards provide an average across England and an index is applied to make sure we are getting the correct amount for Buckinghamshire.

Cllr Cranmer highlighted that we need to update the guidance to state that securing funding will be based on the latest scorecard and will be reflective of the DfE. The annual figures need to be revised and included in this guidance. It was noted that if Developers make late S106 payments they will be penalised with late interest charges and indexation.

The Board requests a separate paper to consider wider issues around CIL and how decisions are made. As we are now one Council we can request reallocations and can calculate what we expect to receive compared to S106 and earmark some of these funds. CIL only applies to residential and retail but excludes B1, B2 and B8 uses. [\[Note I believe Sue Palmer will be following this up\]](#)

**Decision: Approved**