

Sent by email to: developersguide@essex.gov.uk

12/12/2019

Dear Sir/ Madam

Response by the Home Builders Federation to the Draft Guide to Developer Contributions consultation

Thank you for consulting the Home Builders Federation (HBF) on the latest consultation on the Draft Guide to Developer Contributions. The HBF is the principal representative body of the housebuilding industry in England and Wales and our representations reflect the views of discussions with our membership of national and multinational corporations through to regional developers and small local housebuilders. Our members account for over 80% of all new housing built in England and Wales in any one year.

Our members recognise the need to ensure that there is sufficient infrastructure to support new development and the need to contribute towards its delivery. In 2018 alone the industry paid £841m in infrastructure contributions which included £122m on new or improved schools¹. However, whilst we recognise the need for such contributions it is important that they are not only in line with national policy but also introduced in a manner that will not jeopardise the delivery of local plans and the sites identified in these plans that are required to meet the development needs of an area.

Significant and sudden increases in contributions could jeopardise delivery of growth that has been considered deliverable and developable at recent local plan examinations. This could lead to local plans being considered out of date and Local Planning Authorities being required to undertake early reviews of recently adopted plans. Given the significant impacts arising from this draft guide it is essential that the evidence base supporting the required contributions is robust, that the impacts on the delivery of the growth that has been properly considered through the preparation and reviews of local plans. We do not deem any of these to have been properly considered by Essex County Council as part of the preparation of this guide.

Impact of new development on infrastructure

Early years and childcare

Whilst we appreciate that Councils have a duty to secure sufficient childcare to meet the needs of their population it must be remembered that childcare places are largely

¹https://www.hbf.co.uk/documents/7876/The_Economic_Footprint_of_UK_House_Building_July_2018LR.pdf



provided through the private sector market for childcare, with funding being received by Councils from central government and through Council tax to support the provision of free places within this market. We do not see why the house building industry should seek to subsidise private sector childcare providers through developer contributions. Where there is a lack of childcare provision Local Planning Authorities should be more flexible with regard to allowing empty properties on high streets or in business parks to change use rather than requiring developers to provide new facilities on land that would otherwise be used to provide much needed houses.

We recognise that the Government expects early education provision to be provided as part of any new or expanded primary school and that developer contributions may have a role in providing such places where they form part of an existing or new primary school. The provision of early years is subsequently integrated within primary or all-through schools. Therefore, the guide produced by the DfE recommends that the per pupil cost of early years provision should be the same as for a primary school place, contrastingly the County's proposed guide sets early years and childcare places at a £2,141.00 premium over primary education places. There does not appear to be any justification for this approach.

Education

The County Council have maintained the pupil yield factors from new houses and flats for both primary and secondary schools. Whilst we do not have significant concerns regarding the pupil yield factors used, we do note that no account appears to have been taken as to the number of pupils that may attend private schools. We would have expected this to be included as one of the factors affecting pupil numbers set out in section 2.4 of the School Organisation Plan. This is surprising given that data submitted by the County to the Department for Education showed that 11,000 children went to independent schools in 2019.

We are also concerned that the County Council has increased the cost of providing primary and secondary school places by 25% and 20% respectively. It is essential that the County do not inflate the cost of providing infrastructure and that an accurate assessment is used when considering the cost of any obligation. In particular we note that the cost of delivering external works is some 25% of build costs. Given that viability assessments prepared by LPAs only include an external cost of 10% for residential development this is surprisingly high and will need to be more thoroughly justified – in particular, the increase in costs relating to hard surfacing, the balancing charge and incoming services. We would suggest that these figures are revisited to provide a more appropriate assessment of the costs of delivering each school place.

In addition, there is no evidence presented as to how funding from central Government and local taxation will be used to support the delivery of infrastructure. It would appear that the full cost is to be provided by developer contributions and fails to recognise that there will be consequential increases in local taxation and Government grant arising from new development. The County must set out more information with regard to how funding interacts with the spatial strategy and the delivery of infrastructure.

Employment and Skills

The HBF is supportive of improving skills within the construction industry and work with our members and many others on this agenda. Rather than place a new burden on residential development within Essex we would encourage the county council to work with the Home Building Skills Partnership in this area to boost skills and improve access to training.

Youth Provision

Whilst we recognise that facilities such as MUGAs and youth shelters may be appropriate in some circumstances we do not consider the provision of bespoke youth centres to be the responsibility of new development. There has been a general decline in the funding of such centres by local government and where they are available are provided in other existing community facilities. There is also no direct link between development and the need for such services and as such the requirement to provide funding for these facilities cannot be justified in regulation 122 of the CIL Regulations or paragraph 56 of the NPPF.

Adult care services

Adult care services are a general provision paid for from general taxation. Building new dwellings does not create a need for additional care services and thus no developer contribution should be required. The provision of specialist housing, including housing specifically designed for older people is included within the NPPF and thus each local planning authority should be planning positively to allow such housing to be provided within their areas.

Waste management

It is the increase in population within the County as whole that increases the need for waste management rather than from individual developments. Waste management is, quite clearly, a cost that the Council seeks to address through Council tax. Thus, additional properties increase the Council tax revenue. The relevant proportion of this tax will be allocated towards waste management and it is from this that provision for upgrading or new facilities should be made. It is clear that the choice over whether to upgrade an existing facility or provide a new facility is in the gift of the County Council itself rather than the developer of any specific development. Therefore, the charges proposed cannot be directly related to the development itself and thus would not meet the tests in regulation 122 of the CIL Regulations or paragraph 56 of the NPPF.

Public Art

Whilst we do not object to the provision of public art on developments it is not for the county council to consider such provision through this developer contributions guide.

This should be a matter to be addressed through the local plan by the local planning authority and not the county council. This section should therefore be deleted.

Protecting biodiversity

It is not for the County Council to consider the delivery biodiversity gain from new development. This is for the Local Planning Authority to consider through its local plan and development management policies. Its inclusion in this guide is unnecessary and should be deleted.

Libraries

We do not believe that the County Council should be seeking contributions towards such provision. The requirement for such facilities is not directly related to development itself and thus it does not meet the tests of the CIL Regulation or NPPF. This is clearly demonstrated through the closure of library facilities in a number of communities suggesting that standards of provision are flexible and, in many cases, not necessary.

Impacts on the deliverability of local plans

The NPPF establishes in paragraph 34 that development contributions should not undermine the deliverability of the plan. However, we could find no consideration with regard to the impact of these contributions on the deliverability of recently adopted local plans and no indication as to whether the County raised these higher costs with LPAs at the examination of recent local plans. As far as we are aware the County did not put forward any concerns at recent local plan examinations with regard to the evidence on infrastructure costs supporting these local plans and their associated IDPs. As such developers will have made agreements on the purchase of sites on the basis of policies in the local plan and any substantial increase of costs could prevent the delivery of sites allocated in local plans.

The lack of joint working with LPAs across Essex is failure of their duty to co-operate with and contrary to the Localism Act 2011. It is therefore essential that the County takes forward its approach to developer contributions in a manner which allows the approval of development that is in conformity with local plans, and the evidence supporting those plans. This requires the County to work in partnership with local planning authorities as part of the preparation or review of local plans not to unilaterally introduce new guidance outside of this process and the necessary public scrutiny it provides. We would suggest that the approach taken by the County is not only contradictory to paragraph 34 of the NPPF but it will also impact on the deliverability of adopted local plans and whether such authorities are able to show they have a five-year housing land supply.

Interaction of CIL charging schedules

It will also be necessary for ECC to consider its approach to developer contributions in the light of existing and upcoming CIL charges and the removal of restrictions for

pooled contributions. There is a risk that the County and LPAs will be seeking to collect funds to address the same funding gaps. ECC have provided no clarity on how this has been taken into account and it certainly reads as though it is their full intention to 'double-dip', on the basis it is no longer prohibited rather than it being justified. It will be very difficult for Essex County Council to conclude that an additional S.106 contribution will be necessary unless it can be shown that the relevant piece of infrastructure will not be sufficiently funded by CIL.

Accommodation for older people

We could find no reference within the draft guide to the development aimed specifically at meeting the needs of older people. A number of different types of development for older people exist, including sheltered housing, retirement living, assisted living, extra care, and care homes. Sheltered, retirement and assisted living are usually classified as Use Class C3, with extra care and care homes falling within Use Class C2. However, the County must note that not all C2 or C3 development is equally viable. The viability of housing for older people reduces with the level of care given. Reasons for this include changes to construction cost, design efficiency, professional fees, empty property costs, sales rates, marketing costs and risk return.

The Government has recently expressed concern around the delivery of housing for the elderly, and in February 2018 the House of Commons Communities and Local Government Committee specifically addressed the challenge of viability. The Committee concluded that the level of planning contributions sought often blocks the delivery of housing for older people. The imposition of a flat rate developer contribution was therefore criticised as being 'one size fits all'. The County must differentiate between mainstream residential development and specialised housing for older people, in terms of developer contributions recognising both differences in viability and their impact on infrastructure.

Monitoring fees

It is noted that under the revised CIL Regulations there is provision for councils to lawfully include a monitoring fee, subject to it being fairly and reasonably related in scale and kind to the development. It must also be demonstrated that the monitoring fee does not exceed the estimated costs of monitoring the development for the duration of time the planning obligation remains current. No evidence has been provided for the monitoring cost figures proposed. Instead, a number of points the monitoring fee is expected to cover are set out, without any estimation of how much each element is estimated to cost. Additionally, the monitoring fees we have previously paid in respect of S.106 obligations have been of very limited benefit, as generally councils do not proactively monitor the process. The list of items Essex County Council intend to fund with the fee seems unrealistic in terms of the service they are actually likely to deliver. The consultation document also fails to define what is meant by 'complex sites', for which the monitoring fee will be levied at a rate of 1% of the total obligations, capped at £10,000 per agreement.

Repayment of unused contributions

Clause 6.2 provides for repayment 10 year after completion of the development. This is unacceptable. If a development has been in place for 10 years and the contribution made has not been spent, then it is self-evident that the payment was not needed to make the development acceptable in planning terms. It should be incumbent upon the local planning authorities to ensure timely delivery of infrastructure and such a long repayment period does not encourage that.

This is a concern across the country and has been highlighted recently in the September 2019 issue of *Property Week* published findings from a series of freedom-of-information requests establishing that £4bn worth of contributions had been collected from developers by 210 councils between 2013 and 2018. Notably, at the time of their publication, approximately £2.5bn of the £4bn collected was unspent, representing 63% of the total amount. Whilst there likely other factors to consider and taking into account that *Property Week* have yet to publish their full analysis, the findings to date are indicative that councils are significantly underspending collected monies.

Given the lack of transparency on spending to date it can only be concluded that councils generally are already charging beyond what is required. A starting point might be for Essex County Council to be upfront about the funds already collected, including how they have been spent, will be spent, and then provide evidence for any demonstrable shortfall against the current / forecasted necessary infrastructure projects, which must comply with the tests under Regulation 122 of the CIL Regulations, based upon the adopted contribution schedules. We would also suggest that five-year claw back period would be a more appropriate length of time within which to deliver any necessary infrastructure.

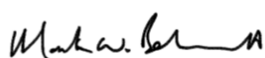
Conclusion

In taking this guide forward the County Council must:

- Revisit its evidence base to ensure it is sufficiently robust to support the level of contributions being proposed; and
- Work with LPAs to assess the viability implications of new contributions and only seek the application of these contributions through the preparation of new local plans in order to ensure a phased approach to the implementation of any new and properly justified requirements being placed on developers in Essex.

We hope these representations are of assistance and should you wish to discuss our concerns further please do not hesitate to get in touch.

Yours faithfully



Mark Behrendt MRTPI

Planning Manager – Local Plans
Home Builders Federation
Email: mark.behrendt@hbf.co.uk
Tel: 020 7960 1616