

Sent by email to:

20/09/2019

Dear Sir/ Madam

Response by the Home Builders Federation to the Draft Guide to Developer Contributions Local Plan 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 This could lead to local plans being considered out of date and Local Planning Authorities being required to undertake early reviews of recently adopted plans.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 Hertfordshire County Council.

Impact of new development on infrastructure

The starting point for considering the scale of contributions required from development is to understand the scale and nature of the population growth arising from development within an area. Hertfordshire County Council (HCC) have prepared a demographic model to assess the nature of the population change arising from new

¹https://www.hbf.co.uk/documents/7876/The_Economic_Footprint_of_UK_House_Building_July_2018L_R.pdf



development from which it can understand the impact on its services. The County Council's modelling does not offer the necessary robustness to ensure that the proposed level of obligation is consistent with regulation 122 of the CIL regulations and paragraph 56 of NPPF – that they are directly related to the development, necessary to make the development acceptable in planning terms or fairly and reasonably related in scale and kind to the development. The approach taken by the County will overinflate the impact of new development across all services. These concerns are set out below.

Education

We have serious concerns regarding the approach taken to calculating education contributions in relation to:

- Expectation that all migrants will move into new houses
- Failure to adjust birth rate
- No consideration as to the impact of private education
- Cost of delivering a new school

Over reliance on migration data

When considering pupil yields the guidance from the Department for Education (2019) states in paragraph 8 that any modelling should be: “*based on up-to-date evidence from recent local housing developments*”. Therefore, whilst census data will be an important aspect of considering pupil yields the starting point for any consideration must be evidence from recent developments. The County do acknowledge the need for such evidence however, the whole basis for the calculation of pupil yields appears to stem from the assumption that migrants will only occupy new homes. Such an assumption is fundamentally flawed as it takes no account of the fact that newly forming or existing households within a Borough will also occupy new build homes. New homes by such households will have no additional impact on pupil yields and similarly new households from outside the area are more than likely to move into the existing housing stock as move into a new build home. The model as used by the County Council therefore risks double counting households whose children are already accounted for within the education system leading to the over provision of places within Hertfordshire.

No adjustments to birth rates since Census

According to the ONS the number of live births in Hertfordshire in 2010 was 14,969. In 2018 this figure was lower and only 13,967, a relative difference of 6.69% when compared with the number of live births in 2010. However, the model does not appear to take account of any changes in birth rates since 2010. If birth rates are expected to decline in future this must be included in any model for it to be considered sufficiently robust to meet the tests set out in paragraph 56 of the NPPF.

No consideration of children attending private schools

Finally, the model does not seem to take account of those children who do not enter the state system as they are educated either privately or at home. This is surprising given that data submitted by the County to the Department for Education showed that 23,501 children went to independent schools in 2019 – just under 11% of the children at all schools.

Costs of delivering schools

Our first concern in relation to costs is that the draft Guide does not provide sufficient clarity as to how the costs set out in the County's supporting evidence has been translated into the level of planning obligations being proposed. Greater clarity must be provided as to how the cost of meeting services is reflected in the planning contributions. Secondly, 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. For example, the County's costs for providing a secondary school has been automatically inflated by 25% to cover both external and abnormal costs. We would expect some costs for externals in the region of 10% but a further uplift of 15% for abnormal is not appropriate especially where land is provided for the Council by the developer.

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.

Conclusions on education

We do not consider the approach used by HCC to be effective. The flaws in the demographic model mean that the proposed level of planning obligations set out in the Guide is not reasonable related to the scale of the development nor can they be considered necessary to make the development necessary in planning terms. IN addition, the evidence supporting the cost of the delivery of new schools is inaccurate and fails to include funding from other sources. Given the significant cost impact of the education contributions the County must withdraw this draft guidance until robust evidence on the demographic impact of new homes, and in particular how they relate to pupil yields, is available.

Transport

In addition to our concerns regarding the demographic modelling on pupil yields the link between the number of bedrooms in a dwelling and the need for a planning obligation is too general to be compatible with Regulation 122(2). There are other factors that should be taken into account. In relation to transport requirements, for example, the type of development proposed will generate a different level of transport requirements. Specialist housing for older people will create the same level of bed

spaces as other development but, potentially, fewer transport movements. Thus, to seek the same planning obligations from all types of development based solely on bed spaces is not related to the development itself and is thus not consistent with Reg 122(2).

Waste management

This is the only section of the document that clearly states that it is the increase in population within the County that increases the need for public service facilities. However, the discussion then erroneously slips back to equating increases in population with the quantum of development, overall. Waste management is, quite clearly, a charge that the Council levies on all properties 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 works proposed cannot be directly related to the development itself and thus would not meet the CIL Regulation 122(2) tests.

Fire and rescue services

It is acknowledged that the provision of sufficient fire hydrants is directly related to developments and are necessary to make them acceptable in planning terms. Provision will be made as part of the water strategy for a site. However, the provision of Fire and Rescue services is paid for out of general Council Tax and new development increases revenue for the services to be provided. The guide gives no guidance as to the scale of possible Fire and Rescue services such as serviced land and/or build costs, yet these are vital if the proper viability assessment of local plan allocations is to be made.

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.

Other services

It is recognised that each development must be assessed regarding its specific impact on infrastructure. Where it is necessary to mitigate that impact a planning obligation can be sought. However, we agree that such impacts should be assessed on a site by site basis and any contributions negotiated on a site by site basis.

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.

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.

Accommodation for older people

We could find no reference within the draft guide to 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.

Other concerns

Section 4 - Transfer of land

Section 4 should be clearer on how the transfer of land may form part of the planning application's site-specific mitigation/obligation and how the value of the land is calculated.

Section 5 – Transport

Paragraph 5.2.9 acknowledges that each LPA has its own infrastructure priorities and approach towards planning obligations. The suggestion that the more recent document should take precedence is not acceptable. Both documents should be aligned.

Section 5.4 references pre-application charges for pre-application meetings. The guide should make it clear that advice given at pre-application stage should be able to be relied upon at later stages of the planning application process, particularly since the applicant will have paid for that advice.

Appendix 1 - S106 template

In addition to our comments on the draft guide we also have two concerns relating to the proposed clauses set out in Appendix 1.

Firstly, clause 4.1(v) requires payment of legal costs. While this is common practice, there is no statutory power to require payment of legal fees and, especially in view of the Oxfordshire case (Oxfordshire County Council v Secretary of State [2015] EWHC 186 (Admin)), they cannot be justified as planning obligations pursuant to Regulation 122 of the Community Infrastructure Levy Regulations 2010.

Secondly, clause 5.2 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. We would suggest that five-year claw back period would be a more appropriate approach.

Finally, we do not support all financial contributions being collected prior to the commencement of development. Given that infrastructure contributions collected by the Council are rarely spent prior to the commencement of a development there should be no need for all contributions to be paid at this point. Whilst some contributions may be required it must be agreed which contributions are required to enable the delivery of that development. The County must recognise that such contributions can be significant, and it may be necessary for staged payments on some developments to ensure delivery in line with local policies.

Conclusion

We do not consider the draft guidance to be consistent with national policy on the basis that:

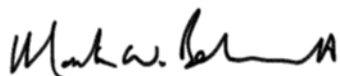
- The demographic evidence supporting the need for services, in particular the pupil yield, is fundamentally flawed in that it is based on the premise that all new homes will contain households migrating from outside of the County. Until evidence of yields from new development is provided the County cannot demonstrate that the proposed impacts are directly related or fairly and reasonable related in scale and kind to the development as required by paragraph 56 of the NPPF;
- It is unclear as to how the costs of providing infrastructure are related to the level of obligations set out in the draft guide. In addition, the costs would appear to be over inflated; and
- The contributions being proposed have not been considered as part of recent local plan examinations as required by national policy. The Government is clear that all costs required of a development should be considered through the local plan to ensure that these costs are properly tested and allow for these costs to be taken into account in the price paid for land. The introduction of these higher costs outside of the plan making process is therefore contrary to national policy and requires a more considered approach to the introduction of any new guidance relating to developer contributions.

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 local plans.

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



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