

**Overview & Scrutiny Committee – 24<sup>th</sup> March 2015**

**Section 106 contributions and education provision**

At the meeting of the Overview & Scrutiny Committee in November, Members resolved to request the County Council to appear at a future meeting to explain:-

1. when there is a development that will generate a S106 contribution, how do they (KCC) assess the need for school places from that development, and,
2. when they have the money, how do they allocate it to meet the needs for facilities for students arising from that development/across the Borough

With the introduction of the Community Infrastructure Levy (CIL) as a mechanism for providing developer funding towards strategic infrastructure, such as primary and secondary schools, the role of Section 106 Agreements as the traditional means for providing such funding is due to change shortly. From April 2015, local planning authorities shall no longer be able to pool more than 5 Section 106 contributions towards generic infrastructure ‘types’ such as education – and in practice, that may restrict the ability to levy developer funding until a CIL Charging Schedule for the Borough has been adopted, unless a specific education facility is to be provided.

Borough and County Council officers are currently liaising to assess this issue and how best to ensure that education facilities are provided in a timely fashion to serve new developments as they come forward.

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**Report Title: Kent County Council's management of s106 Developer Contributions secured from housing schemes in Ashford**

**Purpose of the Report**

This report is to advise members of how Kent County Council manages and monitors the securing and allocation of s106 developer contributions for school infrastructure projects instigated to accommodate pupil demands from new housing developments.

**Background**

KCC carries out assessments of Ashford planning applications for housing development and makes requests for developer contributions wherever it can substantiate that a development will result in a deficit in the number of available local school places. Funding contributions secured under s106 planning obligations help to meet the cost of providing additional pupil places.

Developer contributions are key to assisting KCC to meet the net demand on service capacity arising from house building. KCC predicts the number of additional pupil places needed at primary schools within two miles, and secondary schools within three miles, of the housing site. KCC has robust pupil forecast data based on GP registration data for pre-school aged children, school census information, travel-to-school patterns and family migration trends. Applications are assessed against other housing applications in the vicinity comprising permitted developments as well as undetermined planning applications.

**Applicable distances**

The two and three miles distances are based on "walking distance" as defined in the Education Act 1996: two miles for children under the age of eight and three miles for children who have attained the age of eight. Actual travel-to-school patterns and parental preferences are leaning KCC towards analysing service need across larger strategic areas such as whole towns or natural sub-divisions of larger urban areas. Although these distances are used in the wording of s106 agreements, they should not represent barriers to school expansion. Children can be transported to school located further afield and expanding schools more than two/three miles away can free up places when local children from new developments displace those living further away and, maybe, closer to the expanded school. Ideally, KCC would wish to seek the borough's cooperation to apply contributions to school projects beyond the conventional walking distances. The introduction of the Community Infrastructure Levy will, in time, provide greater flexibility for applying appropriate funding amounts to school projects where they are required.

## **Planning obligations**

Planning obligations are conventionally enshrined in s106 agreements, unilateral undertakings and, to a lesser extent these days, planning conditions.

## **Community Infrastructure Levy**

The Community Infrastructure Levy (CIL) is a planning charge, introduced by the Planning Act 2008 as a tool for local authorities in England and Wales to help deliver infrastructure to support the development of their area. It came into force on 6 April 2010 through the Community Infrastructure Levy Regulations 2010. Development may be liable for a charge under CIL if the local planning authority has chosen to set a charge in its area.

CIL may be more streamlined and flexible than s106 obligations but as it will not generate the same level of contributions as s106, as evidenced by other authorities who have implemented CIL, KCC is concerned about the levy's ability to raise sufficient capital to fund the cost of service infrastructure provision. There are implications for KCC and the borough resulting in a potential loss of benefit from planning obligations, eg the securing of s106 contributions post April 2015 until the borough has implemented CIL, assuming it intends to do so.

Financial assessments and forward planning have highlighted that under CIL there will be a resultant funding gap and uncertainty about alternative funding streams to plug the gap, ie from Basic Need grant, capital receipts from disposals, direct government funding and bids to growth funds, etc. Although KCC has a statutory duty to ensure that sufficient school places are available, it may be prevented from delivering the necessary pupil places in the appropriate location or in time to address increasing pupil pressures.

## **Changes in planning obligation legislation – pooling of obligations**

There have been changes in the procedure to secure planning obligations as a result of introducing CIL legislation. Advice from the Planning Advisory Service is that:

- After April 2015 there can be no more than five planning obligations that secure contributions towards a specific project or type of infrastructure and which have been entered into since April 2010 (ie signed after April 2010 – the relevant date being the date the obligation was signed regardless of when or whether the permission was/has been implemented).
- A specific named project needs to be identified if KCC wishes to secure s106 contributions post April 2015. That project must name a school that requires expansion or is to be newly built and be supported with adequate justification.
- It would appear to be acceptable to have five planning obligations towards the first FE at a particular school and a further five for the subsequent expansion with a second FE, assuming that they are undertaken as separate projects.

Five planning obligations towards one classroom and a further five towards a second classroom, etc, will not be acceptable.

- The expectation is that these projects would appear in the district's Infrastructure Delivery Plan and the county's capital expenditure programme. Careful consideration will need to be given to the synergy between future planning obligation projects, CIL Regulation 123 lists and the county's capital programme: projects are likely to need funding from other sources as well.
- Apparently, planning obligations with generic descriptions of how the contributions will be spent on education provision within the borough, say, and that are current at April 2015, can still be used for projects after April 2015.

If planning obligations were introduced to make acceptable developments that would otherwise have been refused permission, it follows that if fewer planning obligations and inadequate levels of developer contribution are secured to enhance service capacity then more developments are therefore to be deemed unsustainable. KCC and the borough need to identify sites where it is unlikely that future contributions can be secured under s106 as alternative funding solutions will be needed in order to avoid greater demands being placed upon existing education service delivery – to the detriment of both local and new residents. To this end, KCC proposes to circulate its s106 schedules to the borough for confirmation of accuracy or for amendment, as necessary, so that options and areas of concern can be jointly tackled.

### **Changes in planning obligation legislation – sites of ten units or less**

Additionally, government has published a response to their consultation on “Planning Performance and Planning Contributions” (March 2014) and is making further changes to national policy with regard to planning obligations. Affordable housing and tariff style contributions should not be sought on small scale developments, ie sites of 10 units or less and which have a maximum combined gross floor space of 1,000 square metres. This is to reduce the disproportionate burden of developer contributions on small-scale developers. This will also apply to all residential annexes and extensions. It is appreciated that Ashford BC does not generally seek contributions on sites of less than 10 units but if this government advice is adopted then it would be useful to learn how KCC will be notified of those applications where planning obligations will not be sought as it wishes to avoid wasting resources responding to applications where the request for contributions will not be supported.

### **Use and direction of s106 developer contributions**

Section 106 agreements clearly state when contributions are due, the amounts, what they are to be used for, how long we have to use them and when contributions not spent are to be paid back. These conditions relate directly to the development. Legislation now states that contributions should be:

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and

(c) fairly and reasonably related in scale and kind to the development.

KCC records s106 agreements entered into, the amount and phasing of contribution payments and the permissible uses of that money. Contributions received are allocated to capital infrastructure works in accordance with the requirements stipulated in the legal agreements. Returns are generally made annually to each district detailing contributions secured, received and to which projects they have been allocated. Their use is in line with the infrastructure requirements corresponding to the provision identified and without which the development's planning application would otherwise be refused.

Contributions secured under s106 agreements are assessed against the prevailing service needs that are identified when planning permission is granted. There is then likely to be a time lapse before the development commences, the trigger points for payment of the contribution (or part thereof), the demand on services is such that a project is instigated and to which the contribution is allocated. In the event that a service need does not materialise for a number of reasons then the monies are not redirected elsewhere (unless permitted by the s106 agreement) and, ultimately, could be returned to the developer unspent and with interest.

KCC Education's ability to identify and quantify a net pupil demand or pressure resulting from new housing is based on robust pupil forecasting data that takes into account the number of births each year, the extent of surplus capacity with local schools, parental preferences, other developments in the vicinity and other population influences. Notwithstanding the time delays mentioned above, these forecast data are reviewed and updated annually to provide the most accurate illustration of the capacity situation in our schools and where capacity needs have to be met.

### **The challenges of reduced or no planning obligations**

When planning obligations are not straightforward they can disrupt the smooth process of meeting pupil demand by enhanced facilities funded from developer contributions. In some cases, requests for contributions are turned down or the developer petitions against payment on grounds of viability. Others may offer reduced contributions (again usually because of viability reasons) or deferred contributions with payment conditional on market forces – a factor that is independent of the education needs and project programme. Whilst this helps to make new housing more sustainable, it results in education projects being unsustainable but no less vital. This results in funding needed for additional pupil place projects not forthcoming or, at best, subject to delay. KCC may have committed to implementing the project only to find that in the absence of developer funding the county has to fund the project itself from, most probably, Basic Need funding which government grants primarily for meeting indigenous school population demands not to satisfy needs caused by house building.

Other developments have provided for “pay regardless” contributions with unspecified uses attached and allocation of monies at the discretion of the borough. Project planning cannot be carried out with certainty if the amount of funding is unknown. Developers can also ask not to make contributions by appealing to the planning authority under s106A of the Town and Country Planning Act 1990.

### **Commissioning Plan for Education Provision in Kent 2015-19**

The chapter in the commissioning plan focusing on Ashford describes the forecast pupil context in which s106 developer contributions need to be secured to provide sufficient new school places to accommodate the demands of new housing developments. KCC presumes that at some stage within the Local Plan period to 2031 the borough will adopt a CIL approach to funding community infrastructure including schools. In the meantime, the county has to operate acknowledging the restrictions placed on it, in terms of s106 funding, by the changes in planning legislation described above. It seems that new schools provision for the Chilmington Green development will be funded through s106 contributions and negotiations with the developers over phased payments and school delivery are well advanced.

The commissioning plan goes on to state:

*“In the medium term (by 2016-17) the Plan identified the need to commission a new school for the Cheeseman’s Green development, now known as Finberry.*

*“House-building in the area is set to continue, with 7,000 to 10,000 new houses anticipated by 2021. The provision of new schools is being factored into the planning for the Borough, with up to six schools and sites being requested or secured via developer contributions, including a new Secondary school. As these schools are built to serve these new communities, the timings are linked to those of the housing developments. As mentioned above we anticipate new school provision in Cheeseman’s Green opening in September 2015, and 1FE of new provision being commissioned for Chilmington Green for 2017.”*

The schools commissioning position to 2018-19 for Ashford and beyond has been re-created in the table on the following page.

## Ashford Primary School Commissioning

Planning Group or set of Planning Groups	Commissioning Position (by 2015-16)	Commissioning Position (by 2016-17)	Commissioning Position (by 2017-18)	Commissioning Position (by 2018-19 and after)
<b>Ashford Central</b>		Commission 30 Year R places	Commission 30 Year R places	Commission a new 2FE school.
<b>Ashford South East</b>	Open new academy (initially off-site) for Finberry (Cheeseman's Green). Open with Years R, 1 and 2 (1FE).	Relocate Finberry Academy to its permanent building and expand by 1FE.		
<b>Ashford South</b>	Commission 30 Year R places.	Commission 30 Year R places.	Subject to commencement of Chilmington Green's housing development commission the first 1FE of a new 2FE school.	<ul style="list-style-type: none"> <li>• Expand the new Chilmington Green Academy by 1FE.</li> <li>• Commission two further 2FE and one further 1FE schools at Chilmington Green.</li> </ul>
<b>Willesborough</b>				Commission a new 2FE school.

## Ashford Secondary School Commissioning

Commissioning Position (by 2015-16)	Commissioning Position (by 2016-17)	Commissioning Position (by 2017-18)	Commissioning Position (by 2018-19 and After)
			Subject to commencement of the Chilmington Green development, commission the first 4FE of a new 8FE school to open by 2022/23.

## **Future State**

We are looking to streamline the processes we operate to ensure these are as efficient as possible. We are, with colleagues at Ashford, exploring how we might arrive at an agreed position regarding schools sites which can support further pupils/expansion, and those that cannot. This might help inform future land use allocations, as well as identifying projects for both CIL and s106 purposes.

We are also exploring whether annual needs assessments can be produced and accepted; for example, areas in which we know any planning application would trigger a need for additional infrastructure, and those where (based on the housing trajectory) needs could be met. If we are able to develop initiatives like these, there would be meaningful time savings for both the county and borough officers.

## **Conclusion**

This paper seeks to acquaint members of the methods by which KCC operates and manages the process to secure and apply s106 developer contributions to infrastructure projects implemented to mitigate pupil demands from new housing. It describes the difficulties being encountered and the changes in legislation as local authorities transition into a landscape where the provision of community services to meet housing needs will be funded mainly by the Community Infrastructure Levy. KCC wishes to build on the past cooperative working relationship it has enjoyed with the borough as future Local Plan housing provisions are implemented and the supporting infrastructure, such as schools, is instigated.

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