

EAST HERTS COUNCIL

NON-KEY DECISION – NKD19/13

REPORT BY THE LEADER OF THE COUNCIL

HERTFORDSHIRE COUNTY COUNCIL GUIDE TO DEVELOPER
INFRASTRUCTURE CONTRIBUTIONS CONSULTATION, JULY 2019

WARD(S) AFFECTED: ALL

Purpose/Summary of Report

- The report proposes the Council's response to the Hertfordshire County Council Guide to Developer Infrastructure Contributions – Consultation July 2019.

RECOMMENDATION FOR DECISION: That: Hertfordshire County Council (HCC) be informed that East Herts Council (the Council):	
---	--

(A)	Submits this report as its response to the Hertfordshire County Council Guide to Developer Infrastructure Contributions Consultation, July 2019.
------------	---

1.0 Background

1.1 On 29 July 2019, Hertfordshire County Council (HCC) opened a consultation on the Hertfordshire County Council Guide to Developer Infrastructure Contributions. (the Guide). The consultation closes on 20 September 2019.

1.2 HCC is responsible for delivering and maintaining much of the large scale infrastructure that its residents and businesses require, such as roads, schools, waste disposal services and libraries. Where developments impact on these services, the County Council requests that financial contributions are sought from development through either a Section 106

Agreement or Community Infrastructure Levy where one exists. Alternative mechanisms for securing mitigation from development include through planning conditions or highway works carried out pursuant to agreements under section 38 or section 278 of the Highways Act 1980.

1.3 An informal consultation was held earlier this year with officers and various approaches were discussed with officers through forums such as the Herts Planning Group. East Herts Council officers prepared a response to this informal draft to which the County Council produced a response, sent directly to officers when the Guide was published for consultation.

1.4 The Guide will replace the 2008 Planning Obligations Toolkit and will be used to inform Plan-making and negotiations on financial contributions sought from planning applications. It is therefore intended to be used by local planning authorities, developers and other interested stakeholders. It is however, important to note that the Guide is not a statutory planning document. It is therefore a guide and reference. Ultimately the responsibility of weighing up the importance of planning obligations against competing requirements when considering planning applications falls to the local planning authority.

1.5 This report sets out the Council's response to the Guide to Developer Infrastructure Contributions. Following the consultation, the County Council will adopt the Guide and it will be a material consideration for local planning authorities.

2.0 Report

2.1 The Guide comprises 14 parts with 6 appendices setting out the County Council's approach to issues of viability, the transfer of land, transport, early year's education, education (primary, secondary and special educational needs), youth services, libraries, waste management, fire and rescue services, adult care services and other services. The Guide is

supported by a Guide to the Hertfordshire Demographic Model and New School and Expansion Costs documents.

East Herts Representations

- 2.2 In summary, East Herts Council is concerned about the potential implications that could arise as a result of the significant increase in the financial contributions sought from the County Council, particularly given the context of the recent adoption of the East Herts District Plan and the lack of a transition from the old toolkit and the new Guide in this respect. The Council response attached in full as **Essential Reference Paper 'B'** focuses on five particular aspects of the Guide as summarised below.

Section 2: Infrastructure and Viability

- 2.3 The Guide describes how the County Council has a responsibility to deliver and maintain infrastructure and will therefore aim to collaborate on the preparation of Infrastructure Delivery Plans (IDP). It also recognises that local authorities are responsible for ensuring that the level of contribution sought is reasonable in the context of the overall viability of a development proposal.
- 2.4 East Herts is concerned however, that there is a significant uplift in contributions already being sought by the County Council in advance of the launch of this consultation and that there is a lack of transition between the previous advice given by the County Council and the application of these new contributions. Furthermore, the Council is concerned about the basis upon which contributions are being sought in terms of the evidence base underpinning the costs and the lack of consistency in how general build cost increases have been applied. For example, across each service provision applied to each property size, costs have increased between 2 times and 62 times greater than 2008 contributions. The Council is also concerned about the potential impact on the viability of

strategic developments and the overall deliverability of the District Plan development strategy.

- 2.5 This Council therefore requests that greater collaboration is undertaken at an early stage in Plan-making in order to give greater certainty to the Plan-led approach to securing development supported by necessary infrastructure. It also recommends that there is greater explanation provided as to the basis of costs now sought as well as a period of transition for those authorities that have recently adopted a Plan or are towards the latter end of the Examination in Public process.

Section 3: Structure of the Guide – Demographic Model

- 2.6 There are two aspects to securing appropriate contributions; calculating what the demands arising from development are and the cost of mitigating these demands. Both aspects therefore need to be robust and are currently under intense scrutiny from developers.
- 2.7 Modelling the potential impacts of growth in terms of population change and pupil yield is incredibly complicated. Unfortunately Government guidance on this (Department for Education), has not been published yet although it has advised that it will be published shortly. Therefore the County Council's approach may need to be reviewed quite soon regardless.
- 2.8 Until such time that new Government guidance is available, East Herts Council recommends that the demographic model used be made more robust through the addition of local demographic data and an up to date survey on population demographics and pupil yields arising from recent development rather than a reliance on 2011 Census data alone.

Section 4: Transfer of land

- 2.9 The Guide sets out the County Council's approach to securing the transfer of land in order to delivery services such as schools and other community facilities and sets out a land specification and list of expected evidence regarding the details of such land. East Herts Council recommends that further explanation be added to the Guide to deal with issues of securing construction access required to deliver the facility and to address how cumulative needs arising from multiple developments are addressed.

Section 5: Transport

- 2.10 The Guide sets out how the County Council will approach developments in terms of their potential impacts on the highway network and how they address mitigation in terms of sustainable transport. The Guide explains that further work is ongoing with regards to a proposed two strand approach to seeking contributions from authorities that do not have a Community Infrastructure Levy in place, and therefore this Council reserves judgement on this approach and requests further engagement in due course.
- 2.11 East Herts Council queries whether having a two strand approach to seeking on-site mitigation and contributions towards off-site improvements to non-vehicular improvements could result in double-counting. This could occur on strategic scale developments where the first strand of contributions include improvements to bus networks and pedestrian and cycling networks through and in the vicinity of the site, which will have a wider community benefit. Therefore it may not be appropriate to request a second contribution towards the same provision.
- 2.12 Furthermore, this Council raises concern about the expectation that financial contributions should be payable prior to the commencement of development. This may not always be appropriate or reasonable and could impact on overall viability given the realities of development economics

and matters of cash flow. East Herts Council requests additions to the Guide in terms of the approach towards monitoring the impacts of development over time and the use of appropriate conditions.

Section 6: Early Year's Education and Section 7: Education

- 2.13 The Guide sets out in these two sections how contributions will be sought towards the provision of education facilities including nurseries, primary, secondary schools and special educational needs facilities. The greatest increases in costs within the Guide as a whole are towards these facilities and as such the cost of provision along with the method of calculating the yield arising from development is under considerable scrutiny by the development industry. Therefore, these sections and the evidence that underpins the contributions need to be fully robust in order to avoid challenge.
- 2.14 East Herts Council acknowledges the complexities of providing education facilities and that there will sometimes be anomalies and site-specific constraints that supersede the standard approach of cost per pupil/house size. However, new (April 2019) national guidance exists in the form of Department for Education Guidance on Securing Developer Contributions for Education that is not taken into account in the County Council's Guide. Therefore this Council recommends that the national guidance forms the basis of the County Council's approach.
- 2.15 There are a number of apparent inconsistencies and unexplained differences in the baseline information which underpins the County Council's contributions that need to be addressed in order to make the approach more robust. Without this there remains scope for developers to challenge the level of contributions being sought, which will result in long and arduous negotiations.
- 2.16 East Herts Council has no substantive comments to make regarding the remaining sections 8 to 14 of the Guide.

Conclusion:

2.17 Unlike a Local Plan, there is no independent scrutiny and examination of the evidence which makes the Guide in its entirety vulnerable to challenge. Therefore, in order to assist all parties there needs to be certainty in how and at what cost development mitigation will be achieved. Whilst East Herts Council therefore welcomes the publication of this Guide, there are areas of concern that this Council recommend be addressed and it looks forward to further collaboration on future iterations of the Guide in due course.

2.18 The Council's full response to the consultation is set out in **Essential Reference Paper 'B'**.

3.0 Implications/Consultations

3.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

Hertfordshire County Council Guide to Developer Infrastructure Contributions, July 2019:

<https://www.hertfordshire.gov.uk/about-the-council/consultations/environment/draft-developer-contributions-guide-consultation.aspx>

Contact Member: Councillor L Haysey – Leader of the Council
linda.haysey@eastherts.gov.uk

Contact Officer: Sara Saunders – Head of Planning and Building Control, Tel: 01992 531656
sara.saunders@eastherts.gov.uk

Report Author: Jenny Pierce – Senior Project Officer,
Tel: 01992 531625. jenny.pierce@eastherts.gov.uk