

Planning Policy & Implementation

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Sarah McLaughlin
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Our Reference :
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Wednesday, 28 August 2019

Dear Mrs McLaughlin,

Re: Hertfordshire County Council (HCC) Guide to Developer Infrastructure Contributions

Thank you for providing the opportunity to provide comments on the Guide to Developer Infrastructure Contributions (henceforth referred to as 'the Guide').

East Herts Council recognises that there is a need to provide applicants and local planning authorities with up to date information about anticipated contributions required to mitigate needs arising from development, and as such this Council sees the Guide update as a positive step. When completed and adopted by the County Council it will be a very useful tool in setting clear expectations for all parties. Within Hertfordshire there is a good history of working together, especially as part of the Plan-making process. As authorities move towards the delivery of previously unexperienced levels of growth, East Herts Council looks forward to continuing to work with you and its neighbouring authorities in securing the infrastructure needed to support this development. However, East Herts Council does have some concerns with the Guide and the Protocol as explained below.

East Herts Council officers responded informally to an earlier draft of the Guide setting out a number of concerns. Unfortunately it appears that the majority of these concerns have not been addressed nor have resulted in any practical changes to this draft now subject to wider consultation. This is disappointing and therefore, the same concerns are reiterated below.

The Protocol – Local Plans Engagement Plan

Table 2 of the Protocol has a number of typographical errors that should be corrected. The appendices will need to be updated, particularly appendix 5 on Children’s Services. Not only should this section make it clear that the 1:500 threshold may no longer be appropriate and is being updated, but it should also make it clear that when using the demographic model when considering actual proposals, this could result in significantly different outputs and therefore early engagement on likely yield based on anticipated housing mix is a necessity.

Paragraph 2.15 of the Protocol refers to the fact that separate representations may be submitted by the HCC Property Team separate to dialogue and consultation responses between the LPA and the Growth Unit. It is appreciated that there needs to be a ‘firewall’ between departments but there also needs to be consistency and transparency and there therefore needs to be a mechanism by which there is a consistent response provided from the County Council as a whole.

There are a number of notable inconsistencies between the Guide and the Protocol. This Council therefore suggests that the forewords and introduction to both documents be revised to ensure there is a consistent understanding of the anticipated levels of growth (both homes and jobs) across the County and a clear message is given as to the need to address this growth. There is a danger on over-reliance on the Hertfordshire Infrastructure Funding Prospectus in identifying growth needs as this not only has an end date at least two years short of the majority of adopted/final stage plans, but it also does not take into account the emerging plan figures or those set out through new Housing Delivery Tests.

The Guide

Section 2: Infrastructure and Viability

East Herts Council is very concerned about the substantial uplift in contributions now being requested in advance of the consultation and adoption of this Guide. Whilst the Council acknowledges that there is never a good time to introduce a review of developer obligations, this Council’s concern relates to the significance of the proposed increases. Officers are, as you know, in the process of determining and negotiating on the S106 Agreements for several strategic site allocations, and are experiencing first-hand the result of the increased costs. They are resulting in extremely difficult and negative discussions that are straining relationships between parties. Furthermore, and most importantly, the Council is concerned that the increased costs will have consequential impacts on the delivery of the recently adopted development strategy which would put this authority at risk from

speculative, unplanned development, particularly if this results in housing delivery on strategic allocated sites being stalled as a result of protracted and unyielding negotiations regarding education costs.

This Council has made very difficult decisions to deliver growth, including removing large areas of land from the Green Belt. The Council is not prepared to undermine this hard-fought development strategy by now asking its residents to accept schemes that do not deliver against the policy requirements set out in the District Plan. Whilst this Council recognises the importance of County provided infrastructure, the District Plan allocated sites on the basis of their ability to deliver policy compliant development which includes vital contributions towards affordable housing, sports and recreation and green infrastructure along with other supporting infrastructure which would have wider community benefits. It is therefore concerned that these contributions will be put at risk as a result of the increased level of contributions now being sought towards education and highways infrastructure since East Herts Council adopted its Plan.

The Table overleaf illustrates the level of increase between the 2008 Toolkit and those currently being sought. It is worth noting that there appears to be no consistency in the rate at which increases are proposed (between 2 and 61 times greater than 2008 contributions), and there appear to be anomalies where contributions sought from four bed properties are lower than those for three beds and two beds are greater than for three beds for example. If increased costs are due to increases in construction costs then one would expect to see a similar increase in costs across all house sizes. For example, the construction cost for a school expansion per square metre or pupil place is the same whether the development comprises three or four bedrooms. Therefore one would expect to see build cost increases applied consistently according to household size and anticipated pupil yield. The only service where there is any consistency is library services.

East Herts is determined to ensure that applicants mitigate the needs arising from their developments and therefore having clear guidance available to inform the earliest stages of plan-making and application preparation is key to achieving this. This Council is therefore keen to work with the County Council in order to ensure that the authorities can collectively achieve the very highest quality of development that is supported by vital community infrastructure.

Table 1: Comparison between 2008 Toolkit and 2019 Guide – contributions sought by house size and service

Provision	Houses					Flats			
	1 bed	2 bed	3 bed	4 bed	5 bed	1 bed	2 bed	3 bed	4 bed
Early Years Nursery 2008	£35	£175	£340	£459	£545	£32	£195	£270	
2019	£197	£618	£937	£1,188		£217	£673	£626	£766
Increase	5.6 x greater	3.5 x greater	2.6 x greater	2.6 x greater		6.8 x greater	3.5 x greater	2.3 x greater	
Early Years Childcare 2008	£14	£64	£138	£199	£244	£8	£57	£89	
2019	£448	£1,382	£2,043	£2,378		£493	£1,510	£1,303	£1,659
Increase	32 x greater	21.6 x greater	14.8 x greater	11.9 x greater		61.6 x greater	26.5 x greater	14.6 x greater	
Primary Education 2008	£231	£1,036	£2,469	£3,721	£4,692	£93	£816	£1,392	
2019	£1,059	£3,580	£5,878	£7,082		£1,055	£3,956	£4,748	£4,383
Increase	4.6 x greater	3.5 x greater	2.4 x greater	2 x greater		11.3 x greater	4.8 x greater	3.4 x greater	
Secondary Education 2008	£263	£802	£2,561	£4,423	£5,662	£47	£444	£1,677	
2019	£1,601	£5,032	£8,615	£10,894		£1,646	£5,398	£6,580	£6,996
Increase	6.1 x greater	6.3 x greater	3.4 x greater	2.5 x greater		35 x greater	12 x greater	4 x greater	
Youth Facilities 2008	£6	£16	£50	£82	£105	£3	£13	£41	
2019	£46	£133	£204	£242		£49	£147	£138	£157
Increase	7.7 x greater	8.3 x greater	4.1 x greater	3 x greater		16.4 x greater	11.3 x greater	3.4 x greater	
Library Facilities 2008	£98	£147	£198	£241	£265	£77	£129	£164	
2019	£160	£263	£386	£480		£151	£268	£324	£348
Increase	1.6 x greater	1.8 x greater	2 x greater	2 x greater		2 x greater	2.1 x greater	2 x greater	

Paragraph 2.2.5 of the Guide refers to taking a collaborative approach towards the preparation of Infrastructure Delivery Plans (IDP) for Local Plans. Whilst this is welcomed, the Guide needs to therefore acknowledge the status that the IDP will then have in setting the expectations of all parties as to the anticipated cost of key types of infrastructure. This is of vital importance, as it is clear in national guidance that authorities should not seek contributions significantly over and above that which is tested at the local plan stage. Therefore the IDPs must have input from the County Council which fully costs key infrastructure, taking account of policy compliant housing mixes and tenures for example, in order to better understand the likely demands arising from development. This information is readily available from local authorities within Strategic Housing Market Assessments and Employment Needs Assessments, which are often carried out at a greater-than-individual-district scale and therefore will provide the County with a good strategic foundation upon which to base their infrastructure cost estimates. Infrastructure costs are also available within the County's Infrastructure Funding Prospectus.

Having an approach which is based on evidence as opposed to a blanket standard approach will lead to more certainty, allow for the full consideration of costs within a site-specific and whole-plan viability context and therefore provide more confidence in the Plan-led system. Plus, this will prevent misunderstandings of expectations and future challenge when negotiating legal agreements for subsequent applications and the lengthy delays that occur as a result.

There clearly needs to be a process of transition between the old Toolkit and the new Guide, particularly given the significant difference in costs between the two documents. This is particularly necessary where local plans have just been adopted or have reached latter stages of plan-making. There is therefore unlikely to be a one-size-fits-all approach to a transition between old and new given that there are ten authorities at different stages of Plan-making. Where authorities are at the Examination stage, they will be examined under the remit of their submitted IDP and therefore applications submitted during or soon after will base their costs upon that IDP. In the circumstance that new sites are introduced or amendments to sites made through the Examination process there may indeed be a need to undertake another plan-wide viability assessment at which time the Guide could be considered. However, there is likely to be considerable resistance from site promoters to the introduction of new cost evidence at a late stage.

When a Plan is adopted, the NPPF makes it clear that applications should be assumed to be viable when they comply with an up to date local plan. The strategic sites now coming forward in East Herts are, to all extents and purposes, policy-compliant schemes. These schemes have been prepared in the context of the advice provided by the County Council regarding infrastructure requirements and their associated costs within early draft IDPs through an iterative process including

when the final IDP was submitted and tested throughout the Examination process. No representations were made to indicate that the IDP was incorrect or that indicative costs sought were not sufficient to deliver the required infrastructure. It is therefore unreasonable to require these applications to undertake a viability assessment to demonstrate that they cannot afford the increased contributions being sought by the County Council where they differ so significantly from the IDP.

Paragraph 2.3.3 states that if the County Council is asked to reduce an obligation then a viability assessment is expected in line with national guidance. The Planning Practice Guide (paragraph 008 ref: 10-008-20190509) states that such viability assessments “should be based upon and refer back to the viability assessment that informed the plan; and the applicant should provide evidence of what has changed since.” Therefore, in the case of East Herts, strategic sites have been in preparation for a number of years, the District Plan has been recently adopted and applications have been developed on the basis of previously provided advice supported by an IDP which has been through the whole Examination in Public process. Any future viability assessment will therefore be based upon the assumptions set out in the East Herts District Plan IDP. The only changes to proposals since the plan was brought into force are the costs now being requested by the County Council. East Herts Council will need to consider this when appraising viability assessments and determine whether these costs are reasonable.

Outside of this particular circumstance, the Council supports the need for developers to provide evidence as to why they cannot meet their obligations in the form of a viability assessment. At the same time, in order for a local planning authority to consider the combined implications of all the obligations on an individual application, they must be in receipt of fully justified calculations from infrastructure providers. There must therefore also be flexibility and the ability to make sensible, pragmatic decisions based on individual site circumstances. It is welcomed that the Guide acknowledges its status and recognises that the overarching responsibility for weighing up competing requirements falls to local planning authorities when considering applications. This will no doubt become a more often used tool in order to move applications through where no agreement can be reached between parties.

For new applications, the County Council will need to be fully engaged during the pre-application and masterplanning process of strategic or significant scale proposals in order for applicants to understand their obligations so they can be truly reflected in their land negotiations. The masterplanning process allows for the exploration of scenarios and the testing of infrastructure needs through the evolution of an application. Early engagement in this process prevents the need for negotiations following the submission or even determination of the application.

This Council therefore urges the County Council to continue to make staff resource available to support parties through this process.

Section 3 – Structure of the Guide - Demographic Model

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.

The main application for the demographic model is calculating pupil yield arising from new development. This response therefore focuses on this aspect as it results by far in the greatest source of debate and challenge when negotiating S106 Agreements.

The DfE states that pupil yield modelling should be based upon up-to-date evidence from recent local housing developments. Whilst the Guide acknowledges this, it refers to the Guide to the Hertfordshire Demographic Model document (Modelling Guide) which details how the model is built upon Census data. The modelling guide states in section 1.4 that a new pupil yield survey was started in January 2019 which fulfils the requirement set out in the DfE guide. However, this work is ongoing and has not fed into the modelling guide. Instead, all the technical appendices go to great lengths to explain how Census data has been used to form the basis on the model rather than up to date survey work.

In terms of education and yield models, the Government's April 2019 Guidance on *Securing Developer Contributions Towards Education* states that a new methodology for calculating yield will be prepared by the Department for Education. The Hertfordshire Demographic Model may not continue to be appropriate and therefore a mechanism for reviewing the model must be included.

The Modelling Guide is incredibly complicated, which makes it almost impossible to scrutinise effectively. Whilst the approach to the modelling appears on the face of it to be a sophisticated tool which takes account of different age groups and recognises that demographics change over time, ultimately it is still based on an assumption that all new homes will be occupied by migrants – i.e. households that are new to the area. It does not take into account that in addition to those moving in to the area, some new homes will be occupied by existing residents and therefore do not automatically account for new pupils. New households are formed for a number of reasons, including family breakup, or through concealed households accessing the market for the first time. It is therefore not the case that if an existing family or concealed household relocate to a new home, the children of which are already accounted for in the education system, that the property they

vacate will result in the formation of more households with children, particularly if upscaling from a smaller property.

The modelling uses Hertfordshire-wide Census figures as a proxy when detailed development mixes are unavailable. The issue currently being faced is that there is a great difference between the 1 form of entry per 500 homes ratio used for Plan-making and that modelled at the planning application stage. This arises because using the Plan-making model is designed to average out differences in demographic features across the County, but in doing so it disguises these important differences, which in modelling terms will only lead to an output that doesn't work for any one district. The population demographics of Watford for example will be different from East Herts, as will their future development types. East Herts Council therefore recommends adding a more district-specific approach to the modelling which uses known information from published Strategic Housing Market Assessments and Employment Land Assessments as another layer of information in order to assist in making the model more responsive to local circumstances.

Nowhere in the Guide or the Modelling Guide is there reference to the fact that a proportion of children in existing households do not attend state education, are either home-tutored or attend private school for example, and therefore a proportion of new households would also not require a school place. A reduction to pupil yield as a result is being applied in current negotiations; therefore this should be set out clearly as an approved approach in the guide.

The Council welcomes the change in approach which does not differentiate between market value and social housing in terms of pupil yield for example. However, it is recommended that, as with the demographic modelling, local ratios of affordable housing and the proportions of affordable rent and shared ownership (amongst other affordable products) are used to inform the model. This will be particularly important moving forward as local plans are requiring significant uplifts in the delivery of affordable housing.

Section 4 Transfer of Land

This section would benefit by providing clear evidence of where the land requirement for new schools comes from. It is worth referring to the Government's Building Bulletin guidelines and acknowledging that these may change over time. It is also worth noting that the Building Bulletin Guidelines include a range of space requirements that depend very much on design specification and provides far greater flexibility than your land requirements.

In terms of the specification, Paragraph 4.2.2 and 4.2.4 should clarify that the whilst the Education Land Specification set out in Appendix 5 is for primary facilities only, the principles are applicable to all school sizes. The specification should make provision for a variety of school models in order to ensure that more constrained urban situations are taken into account. Furthermore, the list of evidence expected may not be available at Outline stage or during early stages of Plan-making. Therefore a level of pragmatism may be required and there should be a mechanism for agreeing when such evidence needs to be provided.

This section should also address how cumulative needs are managed. For example, where three sites result in the need to expand a school, but only one site is making the expansion possible through the provision of land. The process for fairly distributing the costs associated with that land and the expansion should be set out.

Furthermore, the Guide should go further and highlight the need for suitable construction access in addition to general highway matters. This is particularly important where there are likely to be conflicts in the delivery of the County service and the delivery of surrounding development, such as education provision provided in response to residential development but with different construction programmes.

Section 5 Transport

Paragraph 5.1.3 states that residential development of more than 80 units will usually require a transport assessment. The guide does not address how smaller developments which may still have a local significance will be required to assess their transport impacts; for example, sites in rural areas, or where the existing highway network is already congested.

Paragraphs 5.1.5 to 5.1.9 refer to the two strand approach to transport contributions; in particular that additional work is underway with regards to determining contributions towards non-car networks from non-CIL districts. This work will be undertaken during the remaining months of 2019 and will inform future iterations of the guide. Therefore, East Herts Council requests that the County Council engage with the relevant authorities throughout this process, and therefore reserves its position until such time that this work is forthcoming.

East Herts Council supports the principle of seeking contribution towards sustainable transport as a second strand, and the method of calculating demand based on the number of bedrooms of an individual dwelling. However, there could potentially be double-counting arising from the two strand approach. There needs to be a consideration of the proposed mitigation and/or improvements being made

to the network through the development itself, particularly in the case of strategic scale development. If it has been determined that a particular package of mitigation is required to address the impact of development, then the cost of this should be will be requested through the first strand. However, if a scheme proposes a re-routing and subsidisation of a bus route, among other off-site cycleway improvements which would have wider-than-site benefits, then would the cost of this be deducted from a strand two contribution? This approach therefore needs careful consideration, not only in order to ensure that contributions sought from development are fair and reasonable and related to the development, but also because the costs now sought are in the region of eight times greater than the previous toolkit.

Paragraph 5.2.8 states that financial contributions should be payable prior to the commencement of development. Whilst it is understood that later trigger points place risks on the County Council in terms of securing service provision, there are realities of development economics that need to be considered and no doubt this would be challenged on the grounds that until occupants are living in the new development there would be no demand for additional services. The County Council should therefore consider an approach which seeks contributions based on the occupation of properties in order to ensure services are available for new occupants.

It may also be appropriate to consider whether reduced contributions to services are possible, particularly on later phases of strategic scale development, if patronage of sustainable transport has increased to a stage where it is self-sustaining.

The guide does not give an indication of the time periods for which contributions will be sought, for example, on an annual basis for ten years post completion.

East Herts Council welcomes the commitment to monitoring and mitigating the observed impacts of development over time to ensure that objectives of travel plans continue to be met (paragraph 5.5.5). While the need for this approach will be determined on a case by case basis, local authorities would welcome a suite of standard words for use as planning conditions.

Section 6 Early Years Education and Section 7 Education

Comments made regarding the demographic model and calculating pupil yield as well as the increased cost of infrastructure provision are also applicable here as both the yield and costs associated with mitigation are intrinsically linked.

In terms of education contributions, the Government through the Department for Education (DfE) provides a national benchmark for construction costs in the form of a score card. This takes account of regional variances and provides example construction costs from recently completed projects. The national benchmarking exercise undertaken on a yearly basis provides average construction costs per square metre and per pupil place. The DfE also provide standard approaches to build specifications through Building Bulletin 103 and will shortly be producing guidance on pupil yield modelling.

East Herts Council acknowledges that there will sometimes be anomalies and site-specific constraints as well as variances in land value across the County and even within districts. Therefore, cost assumptions need to respond to all these factors, but should, as national guidance states, be based upon the national scorecard costs (paragraph 15 of the DfE Securing Developer Contributions for Education April 2019). The Government guide is also non-statutory guidance, but provides the best representation of national policy. The guide indicates that where site specific feasibility work has been undertaken which evidence a need for higher costs, only then should these be used in preference to the adjusted national average. This is reflected in paragraph 6.2.7, 7.3.2 and 8.2.7 of the Guide, but this does introduce uncertainty.

It is unclear from the Guide how the costs for education facilities as set out in the Construction Cost Model produced by Mace (the Mace model) feed in to the green tables in the overall guide which set out the expected contributions for each size of property. Example calculation tables would make the translation of information from one document to the other clearer.

There are a number of unexplained differences in the Mace model. Acknowledging that there may be some unknown costs that arise following initial feasibility design work for construction projects as large as schools, the Guide makes clear that developments must provide sites for school use as set out in the land specifications. Therefore, there should be no or few abnormal costs associated with new sites. To build in an immediate uplift in headline costs of 25% (primary) and 20% (secondary) for site works and abnormals therefore seems high, particularly when paired with a further 10% uplift for contingencies.

The Mace model includes a number of schools by way of providing benchmark construction figures. This list would benefit from the addition of towns to aid understanding of the different baseline land and construction values by area.

The Key Data tables on page 5 of the Mace model appear to use the same number of samples to feed in to both the expansion and new build tables. Have 253 new primary schools been built in Hertfordshire in recent years? A comparison with the

latest DfE Scorecard reveal that there have been no new build secondary schools in Hertfordshire with cost data published in the 2019 Scorecard (for construction during the previous monitoring year). How robust therefore are these benchmarks?

The Cost models for primary and secondary construction project specifications (pages 6 to 13) have a number of differences that would benefit from further explanation. Why for example do preliminaries which cover contractor staff and general preliminaries differ from 25% for primary and 20% for secondary? Similarly, overheads and profits are 15% for primary and 10% for secondary. There are differences in the price per square metre between primary and secondary school examples also. Looking at only new build comparisons by way of example (page 8 and page 10), structural frames, façade, wall finishes, floor finishes, fittings and fixtures, mechanical services and general builder's work values per square metre all differ, despite using the same baseline. These are all more expensive at primary level, despite the note on page 2 which asserts that higher value secondary schools would have higher specialist costs and complexities.

There are clearly a number of inconsistencies in the baseline data being used to inform the overall Guide that need to be corrected if there is to be faith in the appropriateness of the contributions sought in the Guide. Given these issues, there needs to be an acknowledgement that the contributions now being sought not only far exceed those that have been tested and found sound, there are also issues with the baseline information upon which the contributions are based. It must be reiterated that this Guide goes through no such examination process, and its status is limited to a guidance document issued by the County which is treated as a material consideration and will be weighed against other contributions and benefits provided by new development.

Given the concerns set out above, East Herts Council reiterates that provision should be made for the delivery of education and other community facilities by other parties, including developers. The latest Government guidance makes it clear that these opportunities are acceptable and acknowledges that this could indeed be cheaper due to economies of scale and could also enable a faster delivery on-site. There are ample mechanisms to ensure that build quality and specifications are met, particularly when forming part of a collaboratively prepared masterplan, and this should therefore be included as an option within the Guide.

Sections 8 to 13

East Herts Council supports the provisions set out in sections 8 to 13. However, it would like to draw the County Council's attention to a recent appeal decision on land proposed for development by the County Council on land at Patmore Close, Bishop's Stortford, where the Planning Inspector was quite clear that contributions

should only be sought for improvements to youth facilities, libraries and other County Council services where there are proven needs arising from development and the contribution is required to make the application acceptable in planning terms and where there are no conflicts with services already made provision for through Council Tax receipts.

It is hoped that this response has been helpful. Ultimately it is in the interests of both East Herts and Hertfordshire Councils to ensure that adopted and emerging development strategies are delivered. The penalties for authorities not delivering according to needs and published trajectories are high. Authorities are making difficult decisions in order to achieve unprecedented levels of growth, a commitment which is being made in the context of ensuring that vital infrastructure is also provided through development which has wider public benefits. Therefore it is fundamentally important that local plan strategies are the basis upon which key infrastructure needs and associated costs are made and the need for lengthy negotiations on contributions are minimised. Authorities therefore need to work together, with applicants, developers, landowners and service providers, to reach an agreed way forward. East Herts Council therefore looks forward to further collaboration on the Guide and Protocol.

Yours sincerely,

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Policy and Implementation