

Report for: ACTION

The Royal Borough



Windsor &  
Maidenhead

<b>Contains Confidential or Exempt Information</b>	No – Part I
<b>Title</b>	Review and Revision of the S106 Education Contributions
<b>Responsible Officer(s)</b>	Chris Hilton, Director of Development and Regeneration Alison Alexander, Managing Director and Strategic Director of Children's Services
<b>Contact officer, job title and phone no.</b>	David Scott, Head of Education
<b>Member reporting</b>	Cllr Derek Wilson Lead Member for Planning Cllr Phillip Bicknell Lead Member for Education
<b>For Consideration By</b>	Cabinet
<b>Date to be Considered</b>	26 November 2015
<b>Implementation Date if Not Called In</b>	8 December 2015
<b>Affected Wards</b>	All wards
<b>Keywords/Index</b>	S106, developer contributions, education, schools

## REPORT SUMMARY

1. Provisions made in the Community Infrastructure Levy Regulations 2010 (as amended) came into effect on 6<sup>th</sup> April 2015. These provisions restrict the use of S106 contributions. This has resulted in a need to change the way in which Education S106 contributions are allocated. These contributions are used to offset the impact of new housing on school capacity.
2. This report recommends approval of an interim methodology for justifying and allocating developer contributions for education as set out in Appendix A, with implementation from 1<sup>st</sup> December 2015. The interim methodology includes updates to the level of contribution sought, these being amended in accordance with prior delegation from Council.
3. Appendix A sets out when contributions are required from developers for education projects and the justification for the amount sought. It also sets out the process for prioritising specific projects to offset the impact of a particular development.
4. The Royal Borough will continue to negotiate for developer contributions in this way until Community Infrastructure Levy (CIL) has been implemented.

<b>If recommendations are adopted, how will residents benefit?</b>	
<b>Benefits to residents and reasons why they will benefit</b>	<b>Dates by which they can expect to notice difference</b>
This report updates the way in which education S106 developer contributions are collected and allocated, in line with regulations, so that residents can continue to benefit from investment to provide new capacity in local schools.	December 2015

## 1. DETAILS OF RECOMMENDATIONS

### RECOMMENDATIONS: That Cabinet:

- i) **Approves the interim education S106 developer contributions methodology attached at Appendix A to be used as the basis for negotiations with developers. This includes revisions to the level of contribution sought per dwelling, in accordance with prior delegation from Council.**
- ii) **Requests that schools submit updated Asset Management Plans.**
- iii) **Delegates authority to the Managing Director and Strategic Director of Children's Services to agree future updates to the level of contribution sought per dwelling.**

## 2. BACKGROUND

- 2.1 The Royal Borough has been collecting education S106 developer contributions since 2002, to offset the impact of new housing developments on local schools. Over £10m has been collected, helping schools in all parts of the borough to expand their facilities to accommodate the additional children from new housing.
- 2.2 The existing framework was agreed by the Royal Borough's full Council in November 2005, and published as the *Planning Obligations and Developer Contributions Supplementary Planning Document – A Developers' Guide* in December 2005. An annual update, published under delegated authority from Council, set out revised costs and lists of projects eligible for funding.
- 2.3 The Community Infrastructure Levy Regulations 2010 (as amended) now restricts the use of S106 contributions, with the result that the existing arrangements for collecting and utilising education S106 developer contributions can no longer be applied.
- 2.4 The borough is currently working towards implementing CIL in 2016. This report recommends adoption of an interim education S106 developer contributions methodology so that residents, schools and developers are aware of the basis for negotiating education contributions is. The CIL will replace S106 contributions for education.
- 2.5 Revisions to the contributions sought are made under authority delegated by Council, in November 2005. Appendix A sets out the methodology and is briefly outlined as:
  - Education S106 developer contributions will now only be collected from a relatively small number of developments, due to restrictions on combining, or 'pooling',

contributions from more than five developments towards any single piece of infrastructure.

- Contributions will be sought where there are less than 10% surplus places at any tier of education in the area local to the development.
- Contributions will not usually be sought on developments that generate a net pupil yield of less than three children.
- The amount sought will be based on the cost of providing additional school infrastructure for the number of pupils that a new development is expected to yield.
- The proposed per m<sup>2</sup> build rate is based on DfE costs, updated in line with inflation. The space required per pupil is based on government guidance.
- Contributions from any single development will usually only be used to fund or part-fund a scheme at one school. The contributions will not, as has previously been the case, be split across a number of schools or across primary/secondary schools. This is to ensure that the sums collected can be used effectively and that the project can be delivered.
- Only certain schemes are compliant with the CIL regulations – e.g. new schools, extensions to existing schools, internal remodelling of existing schools and disabled access improvements. It makes clear that certain types of work, such as repairs and maintenance, are not eligible for education S106 developer contributions.
- There will be a number of schools with potential projects. These will be prioritised as follows:
  - Priority 1 – school expansion schemes that are already approved by Cabinet.
  - Priority 2 – other compliant schemes.

2.6 Within Priority 2, potential schemes will be derived from the current School Asset Management Plans (AMP). Schools are asked each summer to update their AMPs<sup>1</sup>, and this report recommends that schools are asked for an updated AMP following Cabinet. Schools will be asked to rank their projects and estimate the size of the scheme (m<sup>2</sup>).

2.7 This approach ensures that the administrative impact on schools is kept to a minimum and that planning applications can be determined within statutory timeframes, whilst still preserving direct school involvement.

2.8 Schemes within Priority 2 will be scored on the basis of best addressing local demand for places; whether they result in an increased school Published Admission Number (PAN); the current balance between the number of places at the school and available workplaces; and cost.

2.9 The main changes from the previous system of collecting and allocating education S106 developer contributions are that:

- Contributions from one development will not be split between several schools but directed towards one project.
- Projects to be funded will be identified at the planning application stage, not subsequently.
- A prioritisation process will be used to identify projects to be funded. This was not previously required.
- The per m<sup>2</sup> build costs have been updated in line with inflation.

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<sup>1</sup> Except in Summer 2014.

### 3. OPTIONS

<b>Recommendation 1 - Approves the Interim Education S106 Developer Contributions Methodology attached at Appendix A to be used as the basis for negotiations with developers. This includes revisions to the level of contribution sought per dwelling, in accordance with prior delegation from Council.</b>	
<b>Approve</b>	<b>Recommended.</b> This will provide a robust framework for the negotiation of education S106 developer contributions that is clear to residents, schools and developers.
<b>Reject</b>	<b>Not recommended.</b> The borough will still be able to negotiate education S106 developer contributions, but there could be less clarity about process or the grounds for negotiation.

<b>Recommendation 2 - Requests that schools submit updated Asset Management Plans (AMPs).</b>	
<b>Approve</b>	<b>Recommended.</b> Although schools are asked on an annual basis for their AMPs, many schools do not respond. A reminder may encourage more schools to provide an update, which, in turn, will ensure that the borough's information is up-to-date.
<b>Reject</b>	<b>Not recommended.</b> This will mean that the borough's AMP information will be more out-of-date than otherwise.
<b>Alternative</b>	<b>Not recommended.</b> The consideration of schools as being eligible for consideration for S106 funds could be made contingent on them having submitted an updated AMP list in 2015. This may help ensure that the borough's AMP information is more up-to-date. It is likely, however, that significant numbers of schools will still fail to provide up-to-date AMPs.
<b>Options</b>	<b>Note</b>

<b>Recommendation 3 - Delegates authority to the Managing Director And Strategic Director of Children's Services to agree future updates to the level of contribution sought per dwelling.</b>	
<b>Approve</b>	<b>Recommended.</b> Children's Services are currently running an exercise to update the 'pupil yield' figures (i.e. the number of children a new house is expected to generate), which won't be complete until 2016. Government guidance on school accommodation and local build costs also change. Delegated authority to amend these figures will allow the Royal Borough to use the most up-to-date figures and make prompt decisions accordingly.
<b>Reject</b>	<b>Not recommended.</b> It would be necessary to return to Cabinet to amend the figures used in the policy creating extra levels of bureaucracy and significantly impeding timeliness of decisions.

### 4. KEY IMPLICATIONS

Defined Outcomes	Unmet	Met	Exceeded	Significantly Exceeded	Date they should be delivered by
Proportion of qualifying planning applications with agreed S106 developer contributions secured during operation of the interim methodology.	<10%	10%	11-14%	>15%	01/12/2016

- 4.1 This methodology will be used until such time as it is superseded by the Community Infrastructure Levy, expected in 2016.

## 5. FINANCIAL DETAILS

### Financial impact on the budget

#### Capital

- 5.1 The borough received over £2m of education S106 developer contributions in each of the 2012/13, 2013/14 and 2014/15 financial years. These funds were generated by the old, pre-6<sup>th</sup> April 2015, education S106 policy, when at least 80 new agreements were signed each year.
- 5.2 In the 2015/16 financial year, monies from legal agreements that were signed prior to 6<sup>th</sup> April 2015 are still coming in, but receipts this year are expected to be significantly reduced on previous years. To date, less than £300k has been received. This is partly because a Ministerial statement in November 2014 stated that S106 contributions should not be sought on developments of ten dwellings or less. This was overturned by the High Court<sup>2</sup>, but by this point CIL restrictions on pooling were in force.
- 5.3 Whilst the borough is currently moving towards implementing a CIL locally, it cannot currently collect the levy until the charging schedule has been examined by an independent examiner. Two S106 legal agreements, totalling just over £700k, have been signed since 6<sup>th</sup> April 2015. By adopting an interim S106 methodology the borough will have a transparent and compliant basis for negotiation with developers, and will therefore be able to offset some of the impact of new housing on schools.
- 5.4 The interim methodology on education S106 developer contributions states that the borough will not usually seek contributions on developments that generate a net pupil yield of less than 2 children. This means that the minimum contribution sought will be around £30k. Historically, 87% of education S106 contributions have been for less than this amount. It follows, therefore, that the proportion of planning applications for which education S106 developer contributions will be sought under the new policy will be in the region of 10-20%.
- 5.5 The number of education S106 developer contributions agreed under this policy will be dependent on the type and size of planning applications coming forward.

#### Revenue

- 5.6 There are no direct impacts on revenue funding.

## 6. LEGAL

- 6.1 The Community Infrastructure Levy Regulations 2010 (as amended) set out three tests that must be met to justify requests for contributions. They must be:
- Necessary to make the development acceptable in planning terms.
  - Directly related to the development.
  - Fairly and reasonably related in scale and kind to the development.
- 6.2 The CIL regulations also introduced a restriction in the use of S106 developer contributions on any determination of a planning application after 6<sup>th</sup> April 2015. Regulation 123 states that from the 6<sup>th</sup> April 2015:

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<sup>2</sup> The Secretary of State is currently appealing the decision.

- (3) *Other than through requiring a highway agreement to be entered into, a planning obligation (“obligation A”) may not constitute a reason for granting planning permission to the extent that*
- (a) *obligation A provides for the funding or provision of an infrastructure project or provides for the funding or a provision of a type of infrastructure; and*
  - (b) *five or more separate planning obligations that—*
    - (i) *relate to planning permissions granted for development within the area of the charging authority; and*
    - (ii) *which provide for the funding or provision of that project, or provide for the funding or provision of that type of infrastructure,*  
*have been entered into on or after 6<sup>th</sup> April 2010<sup>3</sup>.*

6.3 This means that, where planning permission has been granted from 6<sup>th</sup> April 2015, any S106 contribution arising can only be pooled with up to four other S106 contributions to fund any single piece of new infrastructure. This limit of five pooled contributions includes any contributions from planning permissions granted since 6<sup>th</sup> April 2010. This limit on the ‘pooling’ of contributions is a significant change from the previous S106 arrangements. The new pooling limit does not apply, however, if all of the contributions for a single project are funded from developments approved prior to 6<sup>th</sup> April 2015.

## 7. VALUE FOR MONEY

7.1 By increasing the proportion of planning applications for which education S106 developer contributions are agreed, the borough will maximise the funds available to offset the impact of new development on local schools.

## 8. SUSTAINABILITY IMPACT APPRAISAL

8.1 There are no sustainability impacts arising from the recommendations in this report.

## 9. RISK MANAGEMENT

Risks	Uncontrolled Risk	Controls	Controlled Risk
Unrealistic expectations from schools about the availability of S106.	High	Offer schools an update on S106 funding via Bursar Support meetings.	Low
Perceptions of unfairness arising from allocation of S106 funds to schools.	High	Record and retain prioritisation and scoring information for each application.	Low

## 10. LINKS TO STRATEGIC OBJECTIVES

10.1 Residents First - Adopting this new methodology will help secure developer contributions towards education, and these contributions will be used to support improved education outcomes for our children and young people.

<sup>3</sup>The Community Infrastructure Levy Regulations 2010 (<http://www.legislation.gov.uk/ukdsi/2010/9780111492390/contents>) as amended, for example, by The Community Infrastructure Levy Regulations 2011 (<http://www.legislation.gov.uk/ukdsi/2011/987/regulation/12/made>)

- 10.2 Value for Money – securing developer contributions will enable the Borough to secure additional education infrastructure capacity in a cost effect manner.
- 10.3 Equipping ourselves for the future – securing the best educational infrastructure for our children and young people will support them achieving the best possible educational outcomes to be economically independent citizens of the future.

## **11. STAFFING/WORKFORCE AND ACCOMMODATION IMPLICATIONS**

- 11.1 There are no staffing/workforce or accommodation implications arising from the recommendations in this report.

## **12. PROPERTY AND ASSETS**

- 12.1 There are no property and assets implications arising from the recommendations in this report.

## **13. ANY OTHER IMPLICATIONS**

- 13.1 There are no other implications at this stage.

## **14. CONSULTATION**

- 14.1 Representatives from the Fairer Funding For All Borough Schools group were invited by the Chair of the Children’s Services Overview and Scrutiny Panel to the meeting of that panel on Tuesday 20<sup>th</sup> October 2015. The Chair invited the representatives to answer three questions:
- How do we strike balance between the need to respond to planning applications quickly and involving schools in any decisions?
  - How do we strike a balance between treating schools fairly and ensuring that education S106 contributions are spent in accordance with regulations?
  - How do we decide between competing school projects?
- 14.2 A summary of the Fairer Funding suggestions and the borough’s responses to those is included as Appendix B.

## **15. TIMETABLE FOR IMPLEMENTATION**

- 15.1 Subject to call-in, this policy will be implemented on 1<sup>st</sup> December 2015 and will remain in place until the borough implements the CIL locally.

## **16. APPENDICES**

Appendix A: Interim Education S106 Policy  
Appendix B: Consultation with Fairer Funding

## 17. BACKGROUND INFORMATION

### Legislation and Guidance

17.1 The legislation that sets out the circumstances in which local authorities can seek developer contributions are contained in the following:

- The Planning Action 2008.
- The Community Infrastructure Levy Regulations 2010 (as Amended).
- Localism Act 2011.
- The National Planning Policy Framework 2012.
- The Growth & Infrastructure Act 2013.

17.2 Guidance is set out in the National Planning Practice Guidance.

### Cabinet papers

17.3 None.

### Previous policies

17.4 None.

## 18. CONSULTATION (MANDATORY)

Name of consultee	Post held and Department	Date sent	Date received	See comments in paragraph:
<b>Internal</b>				
Cllr Burbage	Leader of the Council	30/10/2015	02/11/2015	
Michaela Rizou	Cabinet Policy Assistant	23/10/2015	27/10/2015	
Cllr Bicknell	Lead Member for Children's Services	26/10/2015	26/10/2015	
Sean O'Connor	Head of Legal Services/SLS	26/10/2015	28/10/2015	
Edmund Bradley	Finance partner	26/10/2015	29/10/2015	
Andrew Brooker	Head of Service			
Alison Alexander	Managing Director	23/10/2015	29/10/2015	
<b>External</b>				

### Report History

Decision type:	Urgency item?	
Key decision	No	
Full name of report author	Job title	Full contact no:
Ben Wright	Education Planning Officer	01628 796572
Hilary Oliver	S106 special projects officer	01628 796363