

APPEAL REFERENCE APP/X2410/W/21/3287864

LAND OFF COSSINGTON ROAD, SILEBY -

**CONFIRMATION OF LEICESTERSHIRE COUNTY COUNCIL
REQUESTS FOR SECTION 106 EDUCATION CONTRIBUTIONS**

7TH MARCH 2022

INTRODUCTION

1. The purpose of this document is to revise and confirm the extent and nature of the Leicestershire County Council's ("the County Council") request for Section 106 education contributions required (early years, primary, secondary and special) for the proposed development of Land off Cossington Road, Sileby ("the Site") by David Wilson Homes East Midlands and Anthony Raymond Shuttlewood ("the Applicants"). It is required as a consequence of the Education Proof of Evidence (" the EPOE") dated 28th February 2022 submitted by Ben Hunter EFM Consultants (EFM) acting as specialist education consultants on behalf of the Applicants.
2. This report should be read in conjunction with the following documents:
 - The County Council response for Education contributions to Charnwood Borough Council dated 7th April 2021 and revised 7th December 2021, and for Early Years contributions dated 8th April 2021 and revised 4th March 2022 extracts of which are included in the relevant sections of this report.
 - The Leicestershire County Council Planning Obligations Policy approved by the Cabinet 25th June 2019 ("LPOP") – available via the following link;

<https://www.leicestershire.gov.uk/environment-and-planning/planning/developer-contributions>
 - The DfE guidance published in November 2019 entitled 'Securing Developer Contributions for Education'

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/843957/Developer_Contributions_Guidance_update_Nov2019.pdf
 - The County Council's response to Ben Hunter dated 21st February 2022 which directly addresses the further questions raised by Mr Hunter in his email to the County Council of the 8th February 2022.

It is noted that Mr Hunter's submission of evidence to the Inspectorate is dated the 28th February 2022 and follows the receipt of further information from the County Council to address his further

questions. It is not understood why Mr Hunter has not chosen to reference this further information within the proof of evidence, or why he has not sought to bring this to the attention of the Inspectorate later, as the information provided has a fundamental bearing to the matters of contention.

It is further noted that much of the rationale presented by EFM within the Proof of Evidence is predicated on out-of-date information drawing on schools' information taken from the DfE schools capacity return (the SCAP return) submitted in summer 2020. In contrast information provided by the County Council here and in communications with EFM represent the most recent position drawing on SCAP data from July 2021 and more recent office of National Statistics Information. Again, this has a significant bearing to the matters raised by EFM.

3. It is a matter of regret to the County Council that it has had to divert scarce officer time and resources to prepare this document given the ongoing work with the applicant and the Charnwood Borough Council to draft a Section 106 Agreement including all of the required contributions as previously requested for early years, primary, secondary, special education (including associated home to school transport) prior to the involvement of EFM Consultants.

In this respect it is a disappointment that EFM have not sought to engage the County Council in a meaningful conversation beforehand to seek to resolve the matters now evident.

BACKGROUND

4. Charnwood Borough Council ("CBC") is the Local Planning Authority for the Site. The site is located off the Cossington Road, Sileby.
5. An initial application for 170 dwellings for the Site was made early in 2021 to CBC. under planning application reference P/21/0491/2. The application was refused in September 2021, and an Appeal lodged in December 2021. The first Reason for Refusal ("RfR") was related to a loss of an Area of Local Separation, between the villages of Sileby and Cossington. The second RfR states that the development creates demand for open space, education provision and healthcare services which cannot be met by existing services however, this is incidental to the principal reason for the RFR regarding village separation.

CALCULATION OF S106 EDUCATION CONTRIBUTIONS

6. Section 14 (1) of the Education Act 1996 (as amended) places a statutory duty on the Education Authority to "secure that sufficient schools for providing primary and secondary education are available for their area". The reference to schools also includes academies. Whilst the legislation does not define is what constitutes an 'area'; it is generally assumed that it means the geographic and administrative boundaries of the County Council acting in its capacity as Local Education Authority ("LEA").

7. In respect of individual school/academy admission policies, their specific catchment area will be specified in the admissions policy of the school/academy as required by the 'School Admissions Code' published by the DfE in September 2021. For maintained schools the admissions policy will be set by the LEA. Academies operate outside of the LEA's control and will directly set their own admission arrangements which may cross geographic boundaries of local authorities.
8. There are currently 98,958 children and young people of statutory school age resident in Leicestershire attending Leicestershire based maintained schools and Academies.
9. For the Charnwood Borough Council Area this translates as 23,215 children and young people of statutory school age resident in the borough attending maintained schools and Academies.
10. The number of pupils having an Education Health and Care Plan (EHCP) in Leicestershire and requiring specialist SEND provision, has risen dramatically in recent years and continues to do so – there are currently in excess of 5,800 Education Health Care Plans representing a rise of circa 65% since 2017.
11. For the Charnwood Borough Council area there are 1,190 children and young people of statutory school age having an EHCP.
12. The majority of children and young people resident in the borough are expected to attend local maintained schools and Academies. The assertion made by Mr Hunter within paragraph 6.3 of the Proof of Evidence that children and young people will also attend independent schools (or indeed faith schools, although no reference is made to this), is a statement of fact however, to suggest that this has a material bearing to lowering the demand for local schools (to any significant degree) is misleading.
13. When calculating an education contribution, the County Council uses figures based on DFE cost multipliers. Information regarding cost multipliers is set out within the Leicestershire County Council Planning Obligations Policy (LPOP).
14. The LPOP was last revised in June 2019. For education infrastructure the policy states that "the cost multipliers used to calculate the value of each school place required will be reviewed on an annual basis in April and will be based on the average cost per pupil place for extension and rebuild projects in the National School Delivery Cost Benchmarking Report (NSDCBR)".
15. The NSDCRB report is commissioned by the Department for Education (DFE) and is normally published annually. The figures referred to in the LPOP are based on the NSDCBR report published in February 2019.
16. Due to the Covid-19 pandemic, there was no data collection in 2020 and therefore no annual report was published. As a result, the County Council made no adjustments to its request for contributions last year.

17. The 2021 DFE report was completed in May 2021 and advice to education authorities was circulated at the end of June 2021. The cost multiplier for a primary school place has been increased from £14,592 to £18,356 to reflect the information published in the 2021 Report.
18. The cost multipliers for the remaining Education sectors, including Early Years, have not changed, and will be reviewed when next year's DFE report is published.
19. The costs set out in the response for education contributions are calculated at a point in time (typically annually) and take account of the latest costs data provided within the National School Delivery Cost Benchmarking Report. The latest costs review was carried out on 1 July 2021.
20. The current cost multipliers applied to this application are detailed below:

Sector	DFE amount per pupil	Pupil ratio per house	Pupil ratio per flat/apartment
Primary	£18,356	0.30	0.043
High 11-14	£17,876	0.1	0.016
Upper 14-18	£18,355	0.1	0.016
Secondary 11-16	£17,876	0.167	0.0267
Secondary 11 – 18	£18,118	0.2	0.032
Post 16	£19,327	0.033	0.0053
Contributions for Special Schools are made on developments of 100 houses or more with at least 2 bedrooms			
Primary (Special Schools)	£65,664	0.00363	0.00052
Secondary 11-19 (Special Schools)	£81,531	0.004	0.00064

21. It is noted in the Proof of Evidence (paragraph 6.9) that Mr Hunter acknowledges the cost multipliers applied by the County Council as reasonable, and further notes that these are below the national figures advised by the DfE hence seems to confirm that the Leicestershire request represents good value for money.
22. To assess whether a request for an education contribution should be made by the County Council in respect of a planning application for residential development, its starting point will consider the current net capacity of the

nearest school; primary and secondary. For maintained schools this is defined by the DfE as the net space available for teaching and learning, after the deduction of circulation and infrastructure areas. Academies would normally adopt this process as good practice to define net space. Net capacity assessments will be adjusted accordingly to take account of anticipated year group/class sizes, the method of curriculum delivery and expected pedagogy to set a usable working capacity for the school. For academies this will then translate to a figure in their funding agreement with the Education, Skills and Funding Agency. The agreed net capacity of the school is then considered in the context of the demand for places arising from the proposed development.

23. Where it is known that Section 106 contributions are already in place from other developments within the catchment area, the impact of such developments in relation to the forecast demand for places will be taken into consideration. For the avoidance of doubt, where the capacity of a school has been increased using Section 106 funding, the County Council includes the pupils from that development in forecasting the demand for places. However, where the capacity of a school has not been increased but the County Council has Section 106 contributions that can be used to increase capacity, the places that funding is intended to provide will not be included in the forecast numbers for that school.
24. When a request is made it is based on the number of pupils generated by the development to the nearest two decimal places.
25. The table provided in paragraph 20 above sets out the pupil yield rates applied to the site, these are further explained in the LPOP. More recent analysis of Leicestershire pupil rates up to 2021 show there is potential for a marginal increase in pupil rate to 0.32 per dwelling for primary education, however this has not been sought here.
26. It is noted that EFM in preparing their Proof of Evidence have adopted a different approach to the demographic modelling of pupil numbers nevertheless Mr Hunter has confirmed (Paragraph 6.7) that the work undertaken by the education authority to determine the pupil yield is 'reasonable' and therefore accepted.
27. It should be noted that the yield rates calculated by the County Council have been based on 170 dwellings with two or more bedrooms i.e., attracts a full claim, as no other information has been provided by the applicant such that it might reduce the amount requested. For example, it is not known how many of the dwellings will be one bedroom, supported living accommodation or flats. This is a point referenced in the Proof of Evidence (paragraph 6.2).

PRIMARY EDUCATION CONTRIBUTIONS

28. The County Council request for education contributions submitted to CBC on 7th December 2021 states the following in respect for primary schools.

Primary School Sector Requirement £936,156.00 + transport costs (See map attached)

The site falls within the catchment area of Sileby Redlands Community Primary School. The School has a net capacity of 420 and 392 pupils are projected on the roll should this development proceed; a surplus of 28 pupil places.

There are 2 other primary schools within a two-mile walking distance of the development:

<i>Cossington Church of England Primary School</i>	<i>Deficit 35</i>
<i>Highgate Community Primary School</i>	<i>Deficit 240</i>

There are currently 153 pupil places in this sector being funded by S106 agreements from other developments in the area to be deducted.

The overall deficit including all schools within a two-mile walking distance of the development is 94 pupil places. The 51 deficit places created by this development can therefore not be accommodated at nearby schools and a claim for an education contribution of 51 pupil places in the primary sector is justified.

In order to provide the additional primary school places anticipated by the proposed development the County Council would request a contribution for the Primary School sector of £936,156.00. Based on the table above, this is calculated the number of deficit places created by the development (51) multiplied by the DFE cost multiplier in the table above (£18,356.00) which equals £936,156.00.

However, a number of developments have recently been granted planning permission that will contribute to the expansion of Highgate and Cossington Primary Schools to the maximum capacity on their respective sites and Redlands Primary School would not expand for a development of this size. Therefore, the only solution would be to transport pupils outside the area.

Transport costs will be required to meet the cost of transporting pupils to the nearest school with places in perpetuity. The County Council would expect the developer to meet the cost of the additional school transport in perpetuity, and the cost of expanding the school to which transport is provided.

To transport up to 51 pupils will require 1x bus at a cost of around £38,000 per annum.

The contribution would be spent within five years of receipt of final payment

29. It should be noted that there are three primary schools within a statutory 2-mile walking distance of this development. They include the following schools:

- Sileby Redlands Primary School
- Highgate Primary School, Sileby
- Cossington Church of England Primary School

Details of the above primary schools are provided within Section 8 of the Proof of Evidence, hence is not repeated here.

30. In respect of the primary school request, there appear to be three points arising from Mr Hunter’s Proof of Evidence:

- i. Which developments are likely to contribute towards the demand for places at the Highgate Primary School such that there is a deficit of places prior to this development proceeding should planning permission be granted.
- ii. Why this particular development cannot contribute to a further expansion of Cossington CofE Primary School as the nearest school.
- iii. How is the need for a contribution for transport costs justified?

31. It should be noted that there is an overall deficit of primary places within a two-mile radius of this development due to planning applications that have been granted planning permission. In terms of the question regarding the availability of places at Highgate Primary School the following table sets out the chronology of applications and changes to the volume of housing, to demonstrate how available capacity will be taken up.

Highgate - Original Applications		Dwellings	Yield
P/19/1215/2	Land off Seagrave Road, Sileby	187	
P/14/1395/2	Seagrave Road, Sileby	2	
P/19/0447/2	Land to the rear of 193 Seagrave Road, Sileby	18	
P/17/2391/2	Land at 195 Seagrave Road, Sileby	23	
P/17/1578/2	Land at Peashill Farm, Ratcliffe Road, Sileby	170	
TOTAL		400	120
Updated Highgate - Feb 2022			
P/19/1215/2	Land off Seagrave Road, Sileby	187	
P/19/0447/2	Land to the rear of 193 Seagrave Road, Sileby	18	
P/21/0738/2	Land off Barnards Drive, Sileby	228	
P/17/2391/2	Land at 195 Seagrave Road, Sileby	23	
P/19/2162/2	Land at Peashill Farm, Ratcliffe Road, Sileby	31	
P/17/1578/2	Land at Peashill Farm, Ratcliffe Road, Sileby	170	
P/21/2131/2	Land at Peashill Farm, Ratcliffe Road, Sileby	175	
TOTAL		832	249.6
Section 106 funded Places deducted			153
Balance of deficit places			96.6

32. The information provided above, and which confirms that stated to Mr Hunter on the 21st February 2022, shows how the deficit of places at Highgate Primary School arises as a consequence of other developments granted planning permission elsewhere within Sileby village, such that there is not capacity to make any spaces available for the proposed development subject to this appeal.
33. In terms of Cossington C of E Primary School, advice has already been given to state that a planning application for 130 dwellings to Land off Humble Lane, Cossington (CBC reference P/20/2393/2) is expected to provide for land to increase the Cossington C of E Primary School by 0.5FE (105 places). Unfortunately, Mr Hunter appears to have overlooked that at the same Charnwood Plans Committee (which granted approval for Humble Lane). An application for 228 dwellings on Barnards Drive, Sileby (CBC reference P/21/0738/2) was also granted planning permission with both developments justifying the 105 places to expand Cossington C of E Primary School, as detailed in the table below.

Development	Dwellings	Primary yield
Humble Lane Cossington	130	39
Barnards Drive Sileby	228	68.4
Total	358	107.4

34. The Local Authority is working with Charnwood Borough Council as part of the Charnwood Local Plan (CLP) to confirm site allocations and potential school expansions. The CLP Policy HA53 (Barnards Drive) confirms that this development will support a contribution to the reasonable costs of the provision of a 0.5 form entry extension of Cossington C of E Primary School located at site HA59 (Humble Lane).
35. The proximity of the Land off Cossington Road, Sileby application to the Cossington C of E Primary School, (the nearest school) might suggest that extending this school would offer the most practical solution. However, it should be noted that Cossington C of E Primary School sits on a very constrained site with disconnected buildings in two locations separated by public walkway. The school is also within a conservation area and previous planning requirements have increased the cost of works on site to a level greater than the normal cost multiplier would fund. Therefore, both applications, granted planning permission in December 2021, have financial requests that exceed the cost multipliers to take account of these considerations.
36. Should the application subject to this appeal be granted permission and the local authority deem it reasonable and appropriate to consider a further extension to Cossington C of E Primary School, then the cost of additional land

and the full cost of adding further extension would need to be met from this application. In contrast, our presently stated solution is for a contribution based on the cost multiplier to expand an alternative school in the locality and provide transport to this (this is further explained below). Whilst this may seem to offer for the applicant a more financially affordable solution, if it helps to consider an extension to Cossington C of E Primary School then the County Council would be open to discussions.

37. It is expected that the primary school likely to accommodate primary aged pupils arising from this development will be outside of the legal statutory walking distance requirement for primary aged pupils (2-miles) and will not be such that any accessible walking route exists in these circumstances it is reasonable to expect that the applicant in keeping with their Section 106 Obligations should contribute towards home to school transport costs. The County Council expects (in keeping with the LPOP) that home to school transport costs should apply for the duration that a primary aged pupil receives their education, that is to say from reception year to year six; seven years in total.
38. It has been previously advised to the applicant and confirmed to Mr Hunter that the transport cost will be £38,000 per annum, however, this is reduced by the County Council in the first three years to recognise that the development will not be at full pupil yield capacity, and also that the amount of £220,400 is to be paid over the same 7 years that a primary age pupil would be educated through the Primary Education sector. Hence, the overall request for transport assistance amounts to £220,400 as set out in the table below:

Year	No Pupils	Cost	Transport
1st Year	10 pupils	£15,200	Minibus
2nd Year	20 pupils	£22,800	Minibus & Taxi
3rd Year	30 pupils	£30,400	2 minibuses
4th Year	40 pupils	£38,000	Bus
5th Year	51 pupils	£38,000	Bus
6th Year	51 pupils	£38,000	Bus
7th Year	51 pupils	£38,000	Bus
Total Cost		£220,400	

SECONDARY EDUCATION CONTRIBUTIONS

39. The County Council request for education contributions submitted to CBC on 7th December 2021 states the following in respect for Secondary schools.

<i>Secondary School (11-16) Sector Requirement £507,499.64 (See map attached)</i>
--

The site falls within the catchment area of Humphrey Perkins School. The School has a net capacity of 900 and 1021 pupils are projected on the roll should this development proceed; a deficit of 121 pupil places.

A total of 44 pupil places are included in the forecast for this school from S106 agreements for other developments in this area and have to be deducted.

This reduces the total deficit for this school to 77 pupil places 9 of which 48 are existing and 29 are created by this development).

There are no other schools within a three-mile walking distance of the site. A claim for an education contribution in this sector is therefore justified.

In order to provide the additional 11-16 school places anticipated by the proposed development, the County Council requests a contribution for the 11-16 school sector of £507,499.64.

Based on the table above, this is calculated the number of deficit places created by the development, rounded to 2 decimal places (28.39) multiplied by the DFE cost multiplier in the table above (£17,876) which equals £507,499.64.

This contribution would be used to accommodate the capacity issues created by the proposed development by improving, remodelling or enhancing existing facilities at Humphrey Perkins School or any other school within the locality of the development.

The contribution would be spent within 5 years of receipt of final payment

40. The Proof of Evidence confirms (paragraph 9.4) that the catchment area secondary school is the Humphrey Perkins School the Humphrey Perkins Secondary school includes the following feeder primary schools:
 - Barrow Hall Orchard Church of England Primary School
 - Burton on the Wolds Primary School
 - Seagrave Primary School
 - Sileby Highgate Primary School
 - Sileby Redlands Primary School
 - Wymeswold Primary School
 - Cossington Primary School

41. It is reasonable to expect therefore that pupils arising from the land off Cossington Road, Sileby development will attend the Humphrey Perkins School.

42. It should be noted that certain homes forming part of this application are likely to be positioned over 3-miles (by direct line) from the entrance to Humphrey Perkins School, nevertheless the County Council does not seek to secure a contribution for transport costs from the applicant.

43. The Proof of Evidence states (Paragraph 9.3) that ‘there is a second school that is also the same distance from this development site, this is Wreake Valley Academy.’ The feeder primary schools for Wreake Valley are as follows:
 - Barkby The Pochin Primary
 - East Goscote Broomfield Primary
 - Gaddesby Primary
 - Queniborough C Of E Primary

- Rearsby St Michael & All Angels Church of England Primary
- Syston St Peter and St Paul C of E Primary
- Syston The Merton Primary
- Thrussington C of E Primary
- Thurmaston – Church Hill C of E Junior
- Thurmaston – Eastfield Primary

It can be seen from the above that the Wreake Valley Academy does not serve the areas covered by this application.

44. Consideration should also be given to the DfE requirements regarding walking distances to schools. Whilst the WVA may be within a reasonable distance to the application site it should be noted that there is no walking route between the two locations, that is to say there is no continuous footpath alongside the roadways between the two, for example the Syston Road particularly where this crosses the bridge of the Midland Mainline railway.
45. Wreake Valley College is part of SCAP Group 4 Syston, this is the planning group agreed with the DfE to determine place availability in the area (and by implication Central Government capital grants for the development of further places). Nevertheless, the County Council has confirmed that WVA is the nearest Post 16 provision to this site, and historically an often-chosen destination for students' resident in the area. There is sufficient capacity within the Post 16 provision at WVA to accommodate this development and therefore an education contribution has not been requested for this sector.
46. In contrast to the above the Humphrey Perkins School is located within SCAP Group 5 Barrow, and includes pupil forecast data for Sileby and Cossington, which further demonstrates the need for this to be considered as the catchment school for this development.
47. The PoE makes reference to the NPPF in relation to travelling to school stating;

'It is the intention of the planning system and the provision of state-funded schools that the ideal mode of travel to and from school is walking or cycling. The NPPF made this plain at paragraph 38. Paragraph 38 has been replaced by paragraph 106A in latest iteration of the NPPF (July 2021) with an exhortation to minimise the number and length of journeys. The words 'within walking distance of most properties' have been removed.'
48. The County Council wishes to make clear that the NPPF (2019) at paragraph 38 says nothing about walking to school but simply states;

'Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for

sustainable development where possible.'

Hence the comments made by Ben Hunter are considered to be a misrepresentation of the policy guidance.

The NPPF paragraph clearly does not reference the ideal mode of travel to and from school, nor does it include the words 'within walking distance of most properties'.

49. The revised version of the NPPF issued in July 2021 continues to include paragraph 38 (and without reference to walking) but also includes paragraph 106 which states that:

'Planning policies should:

- a) Support an appropriate mix of uses across an area, and within larger scale sites, to minimise the number and length of journeys needed for employment, shopping, leisure, education and other activities;'*

It is acknowledged that this latest version does seek to 'minimise the number and length of journeys needed for education' but remains silent on the preferred means to achieve this.

SPECIAL EDUCATIONAL NEEDS (SEND) CONTRIBUTIONS

50. The County Council request for education contributions submitted to CBC on 7th December 2021 states the following in respect for Special schools.

<i>Special Schools £95,962.33</i>
--

The number of pupils having an EHCP in Leicestershire and requiring specialist SEND provision, has risen dramatically in recent years and continues to do so – there are currently in excess of 5,800 EHCP's representing a rise of 65% since 2017.

The special school population has risen from 1,138 to 1,483. The special school population will continue to grow as a result of the increasing birth rate and the growth in new housing. Currently 1.21% of the primary age population and 2% of the secondary age population are educated in Special Schools and Resource Bases sited on mainstream sites.

All Special Schools in Leicestershire are therefore full, and have a deficit of available spaces, and are forecast to remain so. In some instances, the special schools are having to use their own teaching staff to teach pupils in available space in mainstream schools. Unless specialist places are made available when needed then pupils will miss out on access to specialist facilities, equipment, and environment a Special School establishment is able to provide.

The Council therefore seeks developer contributions towards the cost of expanding Special school provision for developments of 100 dwellings or more.

The threshold of 100 dwellings was chosen to reflect the low special pupil yield and the avoidance of claiming very small amounts on all developments.

This development of 170 houses with two or more bedrooms generates 0.62 primary and 0.68 secondary SEN pupils.

Based on the table above this contribution is calculated as follows:-

The primary yield (30 pupils per 100 dwellings) x by the proportion of primary age pupils attending special schools (1.21%) = number of SEN pupils per 100 dwellings (0.00363) so 0.00363 per dwelling.

0.00363 x 170 dwellings = 0.61710 pupils x Cost multiplier (£65,664) per place = £40,521.25

The secondary yield (20 pupils per 100 dwellings) x the proportion of secondary age pupils attending special schools (2%) = number of SEN pupils per 100 dwellings (0.004) so 0.004 per dwelling.

0.004 x 170 dwellings = 0.6800 pupils x cost multiplier (£81,531) per place = £55,441.08

There are five Area Special Schools in Leicestershire. The closest school to this development is the Ashmount School in Loughborough. The school currently has capacity for 192 pupils and 229 pupils are projected on roll should this development proceed, a deficit of 37 pupil places. A total of 17 pupil places are included in the forecast for this school from S106 agreements for other developments in this area and have to be deducted. This reduces the total deficit for this school to 20 pupil places.

Any contributions towards special education provision will be pooled, if appropriate, and used to provide additional capacity at the school nearest to the development

Therefore, in order, to provide the additional SEN school places anticipated as a result of the proposed development, the County Council requests a total contribution for the special school sector (primary and secondary) of £95,962.33

51. Proof of Evidence submitted by Mr Hunter recognises the advice given by the DfE in their document 'Securing Developer Contributions for Education' issued in November 2019 and which states (paragraph 10)

'We advise you to seek developer contributions for expansions required to sixth form and special educational needs and disabilities (SEN) provision, commensurate with the need arising from the development.'

52. The DfE guidance further states (paragraph 11 onwards) that to determine the need for SEN provision, pupil yield data should identify the number of pupils/learners within recent local housing developments who attend special schools, pupil referral units or alternative provision, SEN units and resourced provision within mainstream schools. It is reasonable and fair to seek developer contributions for SEN provision in direct proportion to the needs arising from planned housing development, applying the same principle to SEN provision as to mainstream. There is no standard capacity assessment applicable to special

schools and other types of non-mainstream education, as their ability to accommodate pupils depends on the specific needs of each child. However, an increase in housing will lead to an increase in SEN, and we advise you to seek developer contributions for all special school/SEN places generated by a development, where there is a need for additional SEN provision. Greater travel distances to special schools and alternative provision should not affect the consideration of whether a planning obligation meets the required legal tests.

53. Specifically, it should be noted that the DfE make clear that it is not necessary to disaggregate the SEN pupil yield factor according to different complex needs. All education contributions are based on an assessment of probability and averages, recognising that the precise mix of age groups and school choices cannot be known before a development is built. Site-specific factors will always need to be taken into account, but a robust local authority-wide pupil yield factor based on evidence of recent developments will often be sufficient to demonstrate that this need is reasonably related in scale and kind to the development.
54. The Leicestershire Planning Obligations policy sets out in detail how SEND contributions will be determined. The prevalence of pupils with SEND needs and having an EHCP (those not having an EHCP and receiving SEND support in mainstream schools are discounted) when compared to the schools' mainstream population is quite low, nevertheless the cost of making provision for these pupils particularly where their needs require they attend independent specialist provisions is quite high. In this respect the County Council believes it is not appropriate to overlook SEND contributions and does not have financial capacity to do so given the high cost of developing places. Neither is it appropriate that the County Council should seek to round up SEND pupil numbers such that this might add a financial and unnecessary burden to the applicant.
55. The Section 106 response to this appeal refers to 1.3 pupils with special educational needs split between primary and secondary this is considered reasonable and appropriate to this development although I am mindful that the incidences rate of pupils within Leicestershire has dramatically increased in recent years. By way of illustrating this point it is known that 1190 pupils resident in Charnwood have an EHCP in contrast to a schools population of Charnwood 23052 (mainstream primary, secondary and Post 16) i.e. the incidence rate of SEND equates to 5.16% and at the current time is higher than the methodology applied in the LPOP.

EARLY YEARS CONTRIBUTIONS

56. The County Council request for an early years contribution submitted on 8 April 2021 stated that;

There are currently 5 childcare providers in Sileby providing 189 childcare places. There were 171 children aged 2, 3 and 4 year olds who claimed the Free Early Education in the Summer term 2021 headcount. This does not take into account babies, 1 year olds and non FEEE 2 year olds.

There are 2 other developments within Sileby with a planned housing total of 395 dwellings. This creates 33 places that are required. A total of 204 places required. Therefore, a full claim of 14 places is justified.

57. In the context of the above it was therefore expected that a development of this size would generate 14-15 Early Years aged pupils, hence a request for £124,698, which is the equivalent of approximately £8,313 per pupil place. The PoE appears to acknowledge that this is not excessive although raises the question whether there is already capacity available for this development in existing facilities.

58. More recently Ben Hunter has directly contacted EY colleagues and as a consequence the County Council has taken the opportunity to review the extent and nature of the early year's contributions appropriate to this application. A revised contributions request was generated on 4th March 2022 and which now states a slightly reduced EY contribution as follows:

Having investigated the impact on Early Years childcare on the proposed development I have determined that this development will see an increase of 14 Early Years children to the area, and so a contribution will be required to ensure there is childcare available to meet this demand.

There are currently 5 childcare providers in Sileby providing 189 childcare places. There were 171 children aged 2, 3 and 4 year olds who claimed the Free Early Education in the Summer term 2021 headcount. This does not take into account babies, 1 year olds and non FEEE 2 year olds.

There are 2 other developments within Sileby with a planned housing total of 395 dwellings. This creates 33 places that are required. A total of 204 places required. One of these developments, with 19 places, needs to be discounted. This leaves 185 places required. A surplus of 4 places.

With the additional 14 places required for this development there is a total of 199 places required, this leaves a deficit of 10 places required.

Therefore, the revised claim is now for 10 places.

This contribution would be used to accommodate the early learning capacity issues created by the proposed development by improving, remodelling or enhancing existing facilities at Cossington Primary school or at other schools or other early learning provision within the locality of the development.

Please note

- *For developments over 100 dwellings with two or more bedrooms an assessment will be made of the need to secure additional S106 funding for early years/pre-school provision.*
- *Where developer contributions are considered appropriate, a yield rate of 8.5 children per 100 dwellings will be applied.*
- *This analysis is produced on the most up to date figures available at the time which are subject to change.*

- *Education costs and the way these requirements are calculated were last updated 10 July 2019 as set out in the County Council's adopted Planning Obligations Policy. The figures contained within this document will be updated annually to reflect changes to inflation and any other fluctuations in costs.*

How we calculate a contribution

When calculating an Early Years provision contribution, a yield rate of 8.5 children per 100 dwellings of 2 bedrooms or more is applied. The table below explains how the total yield of 8.5 Early Years children per 100 dwellings is broken down into age groups. Based on information and data provided by Early Years providers, the County Council will not require a contribution to fund 100% places for all age groups. There is not a significant demand for children up to the age of one. The government offer a Free Early Education Entitlement (FEEE) for 40% of 2 year olds and due to the volume of parents returning to work, take up is quite high. 100% of three year olds in Leicestershire take up their FEEE place, but this figure reduces to 50% for take up by four year olds as they enter school.

	<i>Yield rates per 100 homes of 2 or more bedrooms</i>	
<i>Early years age group</i>	<i>3.4 children per year group</i>	
<i>1 year olds</i>	<i>25%</i>	
<i>2 year olds</i>	<i>75%</i>	
<i>3 year olds</i>	<i>100%</i>	
<i>4 year olds</i>	<i>50%</i>	
	<i>Total</i>	

This request for an education contribution is based on 170 houses and 0 flats/apartments with two or more bedrooms. No claim is made on one bedroom dwellings. Based on the table above, this site generates:

<i>Age Group</i>	<i>Number of Early Years children generated by the development</i>
<i>1 year olds</i>	<i>1.4</i>
<i>2 year olds</i>	<i>2.8</i>
<i>3 year olds</i>	<i>5.6</i>
<i>4 year olds</i>	<i>4.2</i>
<i>Total</i>	<i>14</i>

To assess whether there is a claim for an Early Years contribution, we compare the number of children generated by the development, with the number of existing Early Years providers within a one mile radius of the development.

Having taken the above factors into account, where it can be demonstrated that the number of Early Years children generated by the development is greater than the space capacity in current or planned Early Years provision, the County Council will require a contribution to fund the provision of the additional Early Years places required.

The cost multiplier for the provision of Early Years places is based on the assessment of a number of new build projects, extensions and modular buildings which have been provided across the county since 2012.

The average cost per place provided is £8907. The cost multiplier will be reviewed annually and adjustment made where necessary. The calculation will only be applied where it is determined that there is insufficient Early Years Provision within a mile radius of the development. Based on the above information, please see below for the total contributions sought by Leicestershire County Council.

Total Requirement: £89,070 for 10 Early Learning places

59. The Proof of Evidence appears to enquire about the justification of the contribution for Early Years and argues that falling birth numbers in Charnwood should suggest that spare capacity will grow and not fall. This appears to be a flawed assumption and fails to recognise the extent of new housing within the locality of this application and the shortfall this creates in local EY provision.
60. The birth numbers for Sileby are not falling and remain stable as detailed in the table below;

School Feeder births in Jan	No of births
2017	108
2018	100
2019	116
2020	108
2021	108
	Average 108

61. There are currently five providers registered in the locality of the application, this is incorrectly stated as seven in the PoE. (Those listed for Rothley and Mountsorrel are considered too distant to be of relevance here and are also full.)

Provider name	Capacity	Numbers on Roll
Lime Tree Cossington Road	45	46
Lime Tree Day Nursery Sileby	54	37
Peter Pan Playgroup	44	45
Sileby Little Stars Pre School	26	25
Sileby Redlands Pre-school & Out of School Club	20	18
Total	189	171

62. A question has also been raised regarding the potential of the private sector to further expand to meet the demands for early years places arising from this application. In view of the relatively small size of this application it is not expected that a new EY provider would seek to establish provision in the area, this would seem a high-risk strategy to the County Council and one which seeks to enable applicants to avoid meeting their obligations to make contributions for infrastructure in accordance with planning law.
63. The DfE Guidance on [Securing developer contributions for education \(November 2019\)](#) is quite explicit about the above matter stating (Point 9 on page 8);

‘While many early years settings fall within the private, voluntary and independent (PVI) sector, local authorities have a duty to ensure early years childcare provision within the terms set out in the Childcare Acts 2006 and 2016. DfE has scaled up state-funded early years places since 2010, including the introduction of funding for eligible 2 year olds and the 30 hours funded childcare offer for 3-4 year olds. The take-up has been high, increasing demand for early years provision. All new primary schools are now expected to include a nursery. Developer contributions have a role to play in helping to fund additional nursery places required as a result of housing growth, however they may be provided’

CONCLUSION

64. The information provided within this response serves to demonstrate that the County Councils request for Section 106 contributions for education and early years for the application site is wholly compliant with the CIL regulations, insomuch that they are;

- Necessary to make the development acceptable in planning terms;
- Directly related to the development, and;
- Fairly and reasonably related in scale and kind to the development.

Accordingly, to the extent that the EFM Proof of Evidence asserts that certain aspects of the County Council requests may not be CIL compliant, the County Council respectfully but robustly disagrees.

65. The County Council is a publicly accountable local authority that delivers essential, statutory, education services. It does not make a profit and cannot cross-subsidise other works from developer contributions. The authority does not have any interest in asking developers to pay for education or early years places that are not needed and does not ask developers to pay for places that cannot be filled by residents of the development. It should also be understood that the County Council does not have the resources to make up the shortfall in contributions that are necessary to mitigate against the impact of this particular development.

APPENDICES

Appendix A Revised request for S106 education contributions (primary, secondary and specialist SEND) 7th December 2021.

Appendix B Revised Request for Section 106 early years contributions 4th March 2022.

Appendix C Catchment map for the Humphrey Perkins School

Appendix D Catchment map for Highgate and Redlands Primary Schools, Sileby and Cossington C of E Primary School.

Authors:

David Atterbury, Head of Education Sufficiency, Children & Family Services, Leicestershire County Council.

Sharon Townsend, Pupil Place Planning Officer (Charnwood & SEND), School Organisation Service, C&FS, Leicestershire County Council.