

TOWN AND COUNTRY PLANNING ACT 1990
(as amended)

**Appeal by David Wilson Homes East Midlands and
Anthony Raymond Shuttlewood**

**Land off Cossington Road, Sileby,
Leicestershire, LE12 7SL**

EDUCATION MATTERS
Section 106 Planning Obligation Requirements
Leicestershire County Council

**REBUTTAL TO LEICESTERSHIRE COUNTY COUNCIL'S REQUESTS FOR SECTION 106
EDUCATION CONTRIBUTIONS LETTER DATED 1ST APRIL 2022**

Ben James Hunter

BA DipMS

PINS Reference: APP/X2410/W/21/3287864

LPA Ref: P/21/0491/2

Date: 1ST April 2022

EFM
SUITE 2, UNIT 10, BRADBURY'S COURT,
LYON ROAD, HARROW MX HA1 1BY

Tel: +44 208 125 4081
Email: ben@efm-ltd.co.uk

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COSSINGTON ROAD, SILEBY
EDUCATION S106 REQUIREMENT
REBUTTAL TO LCC EVIDENCE

1 Introduction

- 1.1 This document is produced in response to the letter sent to the Inspector of the Cossington Lane, Sileby Appeal, dated 25th March 2022, and subsequently updated and resubmitted on 1st April 2022, by Leicestershire County Council ("LCC") Education following the Round Table on 23rd March 2022.
- 1.2 This letter states that LCC is responding to three specific questions. Specifically:
 - i. How available capacity at Highgate County Primary School will be taken up;
 - ii. The current capacity of the Humphrey Perkins School (Academy) as validated by the Department for Education; and
 - iii. The movement of student's resident within the parish of Sileby and Cossington to secondary schools within the locality providing for 11-16 year olds.
- 1.3 This document will respond to the points made by LCC individually.
- 1.4 It should also be noted that Mr Tucker referred to a Planning Appeal in Gloucestershire (APP/G1630/W/20/3257625 – Land off the A38, Coombe Hill Gloucestershire) during the Round Table session of 23rd March, which I have included in Appendix A of this document. This Appeal found that Gloucestershire County Council were not entitled to Education planning obligations on the basis of sufficient capacity in the existing Education landscape, and that the evidence of the county did not meet the statutory tests of CIL Reg 122.
- 1.5 Turning now to LCC's document dated 1st April 2022:

2 Highgate Primary School

- 2.1 Before responding to the points made in the LCC document of 1st April 2022, it should be noted that during the Round Table discussion new evidence was produced in the form of the below spreadsheet in relation to the need for places at Highgate Primary School:

**COSSINGTON ROAD, SILEBY
EDUCATION S106 REQUIREMENT
REBUTTAL TO LCC EVIDENCE**

Configuration		No. of Pupils		Round up							
No. of 2 bed+ flats/apartments:											
No. of 2 bed+ houses/bungalows:											
Total											
4-11											
School	Net Cap	2 YR FC	4 YR FC	Average of 2YR & 4YR Forecast	HG inc pupils from this dev	Average FC + HG	+/-	No of S106 funded places	+/- after S106 funded places discounted		
Highgate Community Primary School	285	227	235	231	294	525	-240	114	-126		
Sileby Redlands Community Primary School	420	369	351	360	32	392	28	0	28		
Cossington Church of England Primary School	105	102	99	101	38	140	-35	39	4		
Claim:	Per Pupil	x No.	TOTAL								
	£18,356.00	51.00	£936,156.00								

Developer Contrib. Calculations Pri_Pri_Assessment Pri_Pri_Sites Sec_Sec_Assessment Sec_Sec ...

Table 1: Sileby Primary School Projections

2.2 The Table shown above (Table 1) which was shared during the Round Table contains figures that do not correlate to a) the Table in paragraph 28 of LCC's Education evidence document dated 7th March 2022, b) the Table in paragraph 31 of LCC's Education evidence document dated 7th March 2022, and c) the new Table produced at the top of page 2 in the document dated 1st April 2022. In other words, we now have four different Tables produced during this Inquiry which are supposed to demonstrate the future roll of Highgate Primary School, all of which show different figures, and tell a very different story as to whether pupils forthcoming in Sileby will be able to be accommodated.

2.3 The new document from LCC dated 1st April 2022 states the following:

Should the net capacity be increased to 315, subject to agreement with the Academy Trust, then the impact to the calculation of place availability with Peashill Farm (phase 3) and Barnards Drive removed is as follows;

2.4 This is a misleading statement, as the school currently has a published capacity of 315 according to the 2021 SCAP submission from LCC, so there is no "increase" to be made. The school has been expanded to 315 places, and the Year Groups are phasing their growth, but LCC has already stipulated and had agreed with the Department for Education ("DfE") that the school has 315 places:

LA Name	School Name	School Places	Pupil on Roll	Primary Capacity
Leicestershire	Highgate Community Primary School	315	221	315

Table 2: Highgate Community Primary School Capacity (SCAP 2021)

COSSINGTON ROAD, SILEBY
EDUCATION S106 REQUIREMENT
REBUTTAL TO LCC EVIDENCE

- 2.5 LCC then state that if you remove the impact of a) Peashill Farm (phase 3) which has yet to receive a positive determination, and b) Barnards Drive, which is contributing to the expansion of Cossington Primary School, that the school does not go over capacity:

School	Net Cap	2 YR FC	4 YR FC	Average of 2YR & 4YR Forecast	Housing Gain	Average Forecast + Housing Gain	+/-	No of S106 funded places	+/- after S106 funded places discounted
Highgate Community Primary School	315	227	235	231	130	361	-46	46	0

Table 3: Highgate Community Primary School Projections

- 2.6 Essentially, what LCC's evidence to date has confirmed (in Table 1 of this document, and in paragraph 28 of their Education Evidence submitted to inform the Inquiry dated 7th March 2022) is that Sileby Redlands Primary School is never forecast to go over capacity. Table 3 in this document, which is also the third Table in LCC's 1st April letter, confirms that Highgate Community Primary School is not forecast to go over capacity. LCC has confirmed that Cossington Primary School is being expanded by at least 0.5 Forms of Entry, paid for by two approved developments. The culmination of all of this evidence is that planning obligations from the Cossington Road development are not necessary to make the development acceptable in planning terms.

- 2.7 LCC state in the third sentence of page 2 of their letter 1st April 2022:

The table above [Table 3] confirms that there will be 0 places available should the capacity be increased to 315.

- 2.8 To reiterate, the school has a capacity of 315 according to LCC's own SCAP Projections (Table 2). What this demonstrates is that all of the forthcoming development's pupils that have been considered to date that will impact Highgate Primary School can be accommodated at this school utilising current spare capacity. This is in direct contrast to LCC's evidence to date, and demonstrates why agreement between the Appellant and LCC has not been possible.

COSSINGTON ROAD, SILEBY
EDUCATION S106 REQUIREMENT
REBUTTAL TO LCC EVIDENCE

- 2.9 The conclusion is that Primary School infrastructure planning obligations (and also School Transport costs) cannot be deemed to be necessary and should be struck from the Section 106 agreement.

3 Humphrey Perkins School Capacity

- 3.1 LCC state at the top of page 3 of their letter of 1st April the following:

The stated capacity of Humphrey Perkins School set out in the 2020 SCAP was 995 as correctly stated by Ben Hunter in the EFM proof of evidence the figure of 995 stems from a net capacity return from the school dated 2017.

- 3.2 The confirmation of the accuracy of the evidence produced by the Appellant is appreciated. As discussed during the Round Table, SCAP 2021 data was not available in the public domain prior to the start of the Appeal, and was only released by the DfE on 24th March 2022.
- 3.3 The Appellant accepts that the published capacity of Humphrey Perkins is now 900. However, that does not answer the question of where the additional infrastructure provision/school places have gone. When the original Funding Agreement (30th December 2011) was produced for Humphrey Perkins School, the capacity was listed as 1,106 pupils. This was then transferred to the Lionheart Academies Trust on 27th September 2018. By the SCAP 2019 submission, the capacity was detailed at 995, as agreed. This has subsequently been reduced to 900 places. In other words, it seems that the school is intentionally reducing its capacity, whilst LCC is requesting funding from forthcoming developments to pay for its expansion back up to a level closer to its original size. No justification for this has been provided.
- 3.4 What is evident from the evidence is that a) Humphrey Perkins is currently operating below its capacity at 766 places out of 900 (making it 85% full as of the 2020/21 academic year); b) there are three schools that serve Sileby, one of which (Rawlins Academy) has not been considered in the evidence of LCC in spite of its clear connection to the village; and c) it is not certain that an actual expansion of Humphrey Perkins is being considered.

COSSINGTON ROAD, SILEBY
EDUCATION S106 REQUIREMENT
REBUTTAL TO LCC EVIDENCE

- 3.5 To demonstrate this latter point, LCC state in their evidence document of 7th March 2022:

*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.*

- 3.6 If an expansion is not required, and instead “improvements” or “remodelling” or “enhancing” is the plan for the school, how is that considered CIL Regulation 122 compliant? This does not demonstrate that there is a deficit of places at the school, or that the school will need to grow to accommodate the pupils of this development.
- 3.7 The combination of these factors has not sufficiently proved that planning obligations are necessary to make the development acceptable in planning terms, and on that basis all Secondary School infrastructure costs should be struck from the Section 106 agreement.

4 Movement of secondary aged pupils (11-16) resident in Sileby and Cossington

- 4.1 LCC has provided clear and unambiguous data confirming that there are three Secondary Schools with links to Sileby that should be considered appropriate capacity. Whilst the link between Wreake Valley School and Sileby is less than that of the other two schools (Humphrey Perkins and Rawlins), the link is growing, with the 2021/22 academic year seeing more attendees from Sileby than in preceding years. This simply shows that LCC should not only be considering the catchment area school for capacity, and that pupils from Sileby have options, including at schools with considerable numbers of surplus places.

5 Matters Relating to Inspectors Further Questions Raised 28th March 2022

- 5.1 The Inspector raised the following question in relation to the evidence provided by LCC:

Primarily, it is not clear from the worksheet extracts for Highgate where the 46 S106 funded places come from, when the County Council's statement of 7 March refers to 153 S106 funded places for this school. Where have the remaining 107 funded places

COSSINGTON ROAD, SILEBY
EDUCATION S106 REQUIREMENT
REBUTTAL TO LCC EVIDENCE

gone? Are these linked to the removal of the Barnards Drive and Peashill Phase 3 developments?

- 5.2 LCC has responded by reiterating the previously unverified claim that Highgate will be 240 places over capacity, in spite of the school having, as of the previous academic year, 93 spare places (an increase in the roll of 333 places).
- 5.3 LCC then state that there are 153 funded places to be removed, which is in relation to the approved developments that are coming forward in the vicinity of Highgate and Cossington Primary Schools. It is not clear how this figure of 153 pupils relates to the figure of 240 places over capacity at Highgate Community Primary School, or why LCC has chosen to once again include this figure in their evidence.
- 5.4 The final Table provided, which can be seen below (from page 5 of the 1st April letter) states the following:

Highgate Primary School	Planning Reference	Site Address	Dwellings	S106 Prim	
	P/19/1215/2	Land off Seagrave Road, Sileby	187	0	
	P/19/0447/2	Land to the rear of 193 Seagrave Road, Sileby	18	5.4	
	P/17/2391/2	Land at 195 Seagrave Road, Sileby	23	5.52	
	P/19/2162/2	Land at Peashill Farm, Ratcliffe Road, Sileby	170	34.8	
				Total	45.72
Cossington Primary	Planning Reference	Site Address	Dwellings	S106 Prim	
<i>moved as requested</i>	P/20/2393/2	Land off Humble Lane, Cossington	130	39	
	P/21/0738/2	Land off Barnards Drive, Sileby	228	68.4	
				Total	107.4
				Grand Total	153.12

Table 4: LCC Education Evidence

- 5.5 The 46 funded places for Highgate Primary School relate to the figures shown in Table 3 of this letter, which as stated, demonstrate that the school will be full when considering the impact of forthcoming development, but not over capacity as has previously been stated.
- 5.6 The two developments allocated to Cossington Primary School justify its planned expansion of 0.5 Forms of Entry.

COSSINGTON ROAD, SILEBY
EDUCATION S106 REQUIREMENT
REBUTTAL TO LCC EVIDENCE

- 5.7 This new information does not justify planning obligations from this development, as the catchment area school (Sileby Redlands) is expected to have capacity following the positive determination of this development.

6 Conclusion

- 6.1 The data outlined in the letter of 1st April has not been sufficient to justify any of the existing planning obligations requested in relation to this development.
- 6.2 Please let me know if you need anything further with regards to any of the points outlined above.

Signed:



Ben Hunter

Associate Director – Education and Social Infrastructure
EFM (on behalf of David Wilson Homes)

1st April 2022

COSSINGTON ROAD, SILEBY
EDUCATION S106 REQUIREMENT
REBUTTAL TO LCC EVIDENCE

**Appendix A: APP/G1630/W/20/3257625 – Land off the A38, Coombe Hill,
Gloucestershire (Education related extracts)**



The Planning Inspectorate

Appeal Decision

Inquiry Held on 22-25 and 30-31 March and 1 and 20-21 April 2021

Site visit made on 19 March 2021

by P W Clark MA(Oxon) MA(TRP) MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 1st June 2021

Appeal Ref: APP/G1630/W/20/3257625

Land off the A38, Coombe Hill, Gloucestershire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Bovis Homes Limited & Robert Hitchins Limited against Tewkesbury Borough Council.
- The application Ref 20/00140/OUT, is dated 11 February 2020.
- The development proposed was originally described as residential development (up to 150 dwellings), associated infrastructure, ancillary facilities, open space and landscaping. Construction of a new vehicular and pedestrian access from the A38 and pedestrian access to the A4019.

Decision

The appeal is allowed and outline planning permission is granted for residential development (up to 95 dwellings), associated infrastructure, ancillary facilities, open space, landscaping and construction of a new vehicular and pedestrian access from the A38 and pedestrian access to the A4019 on Land off the A38, Coombe Hill, Gloucestershire in accordance with the terms of the application as amended, Ref 20/00140/OUT, dated 11 February 2020, subject to the twelve conditions appended to this decision.

Procedural matters

Some time before the opening of the Inquiry, the appellant sought to amend the description of the scheme. The description would change, replacing "up to 150 dwellings" by "up to 95 dwellings". The appellant advertised the intention for an appropriate period as widely as the Council had itself consulted on the original application. For that reason, and because the descriptive quantity "up to 95" is contained within the descriptive quantity "up to 150", I am satisfied that nobody would be prejudiced by considering the appeal on the basis of the revised description of development, which is what I have done.

The application form states that the application was made in outline with all matters reserved. At the opening of the Inquiry, the appellant advised that the way the Town and Country Planning (Development Management Procedure) (England) Order 2015 (the Order) defined access had caused confusion and had led to an inaccurate completion of the application form. In the Order, the definition of "access", in relation to reserved matters, means the accessibility to and within the site, for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network. The appellant intended that most details of access to and within the site

COSSINGTON ROAD, SILEBY
EDUCATION S106 REQUIREMENT
REBUTTAL TO LCC EVIDENCE

Appeal Decision APP/G1630/W/20/3257625

should remain as reserved matters but, as part of the submitted Transport Assessment, had included a detailed drawing of one pedestrian and vehicular access from the A38 into the site and had intended that that access should be given detailed consideration at this stage.

The Borough Council had not understood that to be the intention of the appellant but acknowledged that, had it correctly inferred the appellant's intention, it would have relied on the advice of the highway authority in coming to a conclusion on the acceptability of the details. The highway authority, which had been consulted by the Borough Council on the application, acknowledged that it had treated the application as though detailed consideration was to be given to the access in question and had given that detailed consideration and advised that the access would be acceptable. From third party comments on file, it appears that members of the public had also considered the application to be made in the way understood by the highway authority and intended by the appellant and have commented accordingly. I therefore take the view that nobody would be prejudiced if I now do the same.

No request for an EIA screening opinion was made, nor was any given. Instead the appellant elected to submit an Environmental Statement following a Scoping Opinion sought and issued. The Environmental Statement includes two parameter plans (subsequently amended in accordance with the revised description of development) covering Land Use, Access and Movement and Building Heights. In accordance with decisions of the courts¹ these parameter plans must be applied by condition, if permission is granted, so as to establish an envelope within which the detailed design and discharge of reserved matters can proceed, irrespective of whether or not they would be otherwise required to make the development acceptable (condition 4).

The appeal has therefore been considered as an application made in outline with all matters reserved except for details of one access onto the A38. Other details of access, appearance, landscaping, layout and scale remain to be considered at a later date (condition 1).

An informal, unaccompanied site visit was made before the Inquiry opened. By agreement at the Inquiry, no further accompanied visit was made.

Main Issues

At the time the appeal was made, seven issues could be identified;

- Whether the appeal site would be an appropriate location for new residential development of the scale proposed.
- The effect of the quantity of development proposed on the character and appearance of the area.
- The effects of the proposal on the Coombe Hill Canal SSSI and the Severn Estuary SPA (including the adequacy of on-site mitigation and ecological enhancements).
- The effects of the proposal on flooding on and off the site.
- The effects of the proposal on the supply of market and affordable housing.
- The effects of the proposal on the demand for, and provision of, Schools.

¹ R v Rochdale MBC ex parte Tew and Others [1999] 3 PLR 74 and R v Rochdale MBC ex parte Milne [2000] EWHC 650 (Admin)

COSSINGTON ROAD, SILEBY
EDUCATION S106 REQUIREMENT
REBUTTAL TO LCC EVIDENCE

- The effects of the proposal on the demand for, and supply of, open space, outdoor recreation, sports and community facilities.

An eighth matter, viability, was identified as a possible issue consequent on the sixth and seventh issues but, in the event, was a matter of little dispute at the Inquiry.

By the time the Inquiry had opened, agreement had been reached on the fourth issue (the effects of the proposal on flooding on and off the site) and a believed betterment of the existing position at the site is provided for within a submitted Unilateral Undertaking. A degree of agreement had also been reached on the provision of affordable housing, enshrined in a Unilateral Undertaking and so debate on the fifth issue during the Inquiry concentrated on the degree to which the Council fell short of a five-year housing land supply.

Two planning obligations by way of Unilateral Undertakings were submitted during consideration of the appeal. Regulation 122(2) of the Community Infrastructure Regulations (CIL) sets out three tests with which planning obligations must comply. Subject to my certifying compliance with the CIL regulations, the undertakings would provide the County Council with index-linked financial contributions of;

- £32,000 to enlarge the culvert under the A4019 road,
- £18,620 for library facilities in Tewkesbury,
- £107,050 for pre-school facilities,
- £397,980 for primary school provision,
- £224,069 for secondary school provision,
- £38,657 for sixth form provision and
- for the authority's technical charges and monitoring fees.

The undertakings would provide the Borough Council with;

- 40% of the number of dwellings as affordable housing, split 60:40 between affordable renting and shared ownership,
- £73 per dwelling for the provision of recycling and waste bins,
- arrangements for the maintenance of public open space,
- £100,000 for the benefit of the Gloucestershire Wildlife Trust's Coombe Hill Canal and Meadows Reserve,
- £4,750 for the preparation and distribution of Household Information Packs and
- £54 per dwelling for one year's membership of the Gloucestershire Wildlife Trust for each dwelling,
- together with the authority's technical charges and monitoring fees.

Nevertheless, other than the provisions for dealing with flooding, the Unilateral Undertakings do not resolve any other issues which were the subject of dispute during the Inquiry. I report upon compliance with the CIL regulations as I consider each issue in turn.

COSSINGTON ROAD, SILEBY
EDUCATION S106 REQUIREMENT
REBUTTAL TO LCC EVIDENCE

Appeal Decision APP/G1630/W/20/3257625

has an identified supply of 4.35 years or a lesser figure if the two sites in contention are discounted, the fact is that it simply does not have a five-year supply now. Unless further sites for development are identified, either through emerging local plans or through the development management process, it is likely to have an even lower identified supply in future.

Consequently, in addition to enhancing the value which is placed on the benefit of providing housing, the shortfall means that paragraph 11(d) of the NPPF applies. This deems the policies which are most relevant for determining the application as out of date. It applies the presumption in favour of sustainable development. This means granting permission unless NPPF policies to protect areas or assets of particular importance provide a clear reason for refusal or unless any adverse effects of so doing would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole. This NPPF paragraph is not displaced by NPPF paragraph 177 because the appropriate assessment carried out earlier has concluded that the project would not adversely affect the integrity of the Severn Estuary SPA.

Schools

It is accepted by both parties that the effect of the proposal on the demand for and provision of schools should be ascertained with reference to Department for Education guidance, *Securing developer contributions for Education* (November 2019).³ Paragraph 3 of this guidance advises that it is important that the impacts of development are adequately mitigated, requiring an understanding of:

- The education needs arising from development, based on an up-to-date pupil yield factor;
- The capacity of existing schools that will serve development, taking account of pupil migration across planning areas and local authority boundaries;
- Available sources of funding to increase capacity where required; and
- The extent to which developer contributions are required and the degree of certainty that these will be secured at the appropriate time.

Pupil yield factors (also known as pupil product ratios) are used to estimate the numbers of children that would arise from a development. They should be based on up-to-date evidence from recent housing developments. In Gloucestershire the most up to date evidence from recent housing developments is to be found in what is known as the Cognisant Study of 2019, examining 8690 dwellings at seven settlements.

JCS policy INF6 requires that, in identifying infrastructure requirements, development proposals will also demonstrate that full regard has been given, where appropriate, to implementing the requirements of the JCS Infrastructure Delivery Plan (the IDP) of 2014. As the IDP pupil yield factors are based on a 2007 assessment, they are no longer the most up to date evidence from recent housing developments and so it is no longer appropriate to use them as a basis for estimates of the effects of development on the demand for and provision of schools.

However, the use of the Cognisant Study is itself problematic and has been opposed, although not technically challenged, by some of the very bodies which commissioned its production. It has produced results which are startlingly high

³ By following this advice, I have no need to come to a view on the allegation of the adoption by the County Council of a "new formulaic approach" denounced in national Planning Practice Guidance.

COSSINGTON ROAD, SILEBY
EDUCATION S106 REQUIREMENT
REBUTTAL TO LCC EVIDENCE

Appeal Decision APP/G1630/W/20/3257625

when compared with previous figures for the area and with other local authority areas. The reasons remain not fully explained.

The Cognisant Study appears to be based on survey results weighted to correct the balance of participating returns so as to correspond with actual mix of dwellings of different sizes on the developments surveyed. The survey was by face to face interviews with residents who agreed to participate, so was self-selecting. There is no report of any check on whether participants were representative of those who chose not to participate (perhaps because they had no children and so would not have been interested in a survey intended to establish child product ratios) nor any consequent weighting. Nor, as Mr Tiley points out, was any adjustment made for second homes or vacant dwellings. It would be wrong to presume that new developments are immune from the vicissitudes of life which cause dwellings to become vacant. For both these reasons, the child product ratio identified by the Cognisant Study will have been exaggerated. Nevertheless, it is the best and most recent evidence available.

In translating its child product ratios into pupil product ratios, the advice of paragraph 13 of the DfE advice is relevant. It does not require their moderation with regard to their effects on the viability of a development but it does observe that; "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."

By contrast, the County Council's pupil product ratios take a fail-safe approach (or worst case scenario as the County Council's advocate described it in paragraphs 52, 56 and 57 of his closing submissions) of seeking to ensure provision for all contingencies rather than an assessment of probability and averages.

Consequently, as Mr Tiley points out, no allowance is made for parents who may choose to have their children educated outside of the state sector⁴. Paragraph 102 of the County Council's previously adopted Local Developer Guide noted that child yield was reduced to take account of these factors but the emerging Local Developer Guide (now adopted) does not. This omission contributes to exaggerate further the pupil product ratios used by the County Councils.

This particular cause of exaggeration would apply forcefully to early years calculations where, although local authorities have a duty to ensure early years childcare provision within the terms set out in the Childcare Acts and the DfE has scaled up state funding of early-year places, many early years settings fall within the private, voluntary and independent (PVI) sector, as paragraph 9 of the DfE advice points out. But the exaggeration also applies, to a lesser degree, to the primary and secondary sectors.

Finally, as Mr Tiley correctly points out, the County Council's calculations of pupil product ratios take no account of the fact that most house moves take place over short distances with the result that many prospective child residents are already in attendance at Gloucestershire schools and would not be new to the system. The County's view that such house moves would be backfilled by new residents with equal demands on the school system is mistaken because, as is well known, average household sizes nationally are falling as a result of the fragmentation of families, delays in family formation and the greater longevity of elderly households whose children have left home. Gloucestershire is not exempt from these phenomena.

⁴ Although Mr Chandler, at paragraph 6.12 of his evidence, asserts that the Cognisant study only took account of pupils educated in state schools.

⁵ I do not need to consider arguments about the status of the County Council's Local Developer Guide. What matters are the pupil product ratios themselves, not the vehicle in which they travel.

COSSINGTON ROAD, SILEBY
EDUCATION S106 REQUIREMENT
REBUTTAL TO LCC EVIDENCE

Appeal Decision APP/G1630/W/20/3257625

For all the above reasons, together with the County Council's record of overestimation of numbers of pupils in its forecasts⁶, I am not convinced by the County Council's calculations of the pupil demand likely to arise from the proposal. I find Mr Tiley's calculations more convincing, supported as they are by the "sense check" of the NEMS Market Research survey and by comparisons with other Local Education Authority areas. Nevertheless, in case I am mistaken, and to ensure the robustness of my decision, for the purposes of the remainder of this section of my decision, I use the "worst case scenario" of the County Council's figures, as does the appellant's expert, Mr Tiley; 28.5 pre-school places, 39 primary school places, 19 secondary school places and 6.5 post-16 places.⁷

The second bullet point of the DfE advice is to examine the capacity of existing schools that would serve the development. There is further DfE advice on how this is to be done in the form of its *School Capacity Survey 2019 Guide to forecasting pupil numbers in school place planning*. Projections of pupil numbers are to be made for primary years (reception to year 6) and for secondary years (years 7 to 11 (or 13 where schools have sixth forms)) using one set of planning areas for the primary projections and a second set for secondary years.

The planning areas should be mutually exclusive groups of schools that represent admissions patterns and reasonable alternatives to one another. National Planning Practice Guidance similarly refers to a need to consider school capacity within the relevant school place planning areas. There is no suggestion that the examination of capacity should be limited to only one primary and one secondary school to serve the development, yet this is what the County Council has done in basing its attitude towards the development on the view that Norton Primary School and All Saints Academy secondary school lack the capacity to serve the development. In fact, in the current case, even to base an assessment on school planning areas rather than individual schools may be unrealistic because the site is located on the cusp of three primary school planning areas (Churchdown/Innsworth school planning area D35, Tewkesbury school planning area D10 and Hesters Way Cheltenham school planning area D32) and two secondary school planning areas (Tewkesbury D48 and Cheltenham D53). It lies within but close to the edges of Churchdown/Innsworth primary school planning area and Tewkesbury secondary school planning area.

The County Council seeks to justify its choice of examining capacity in a more limited way with reference to the distance to be travelled (incurring less public expenditure on transport costs) and the desirability, in terms of social cohesion, of accommodating all the pupils deriving from the development at a single school. I am not persuaded by these arguments for the following reasons.

Firstly, they do not appear to take account of parental choice. Secondly, in terms of social cohesion, there is no evidence to suggest that all present child residents of Coombe Hill attend the same primary and secondary schools together. Not all parents would support such attempts at social engineering in any event. Thirdly, Norton, at a distance of 2.9 miles from the appeal site may be the closest primary school to the appeal site but that is still at a distance which primary school children are unlikely to walk (although a footpath is provided the full length of the A38, it is not continuously on the same side of the road and so would require crossing the main road twice between Coombe Hill and Norton, an implausible proposition for unaccompanied children of primary school age) and so motorised transport is likely. If transported by car, the differences in distances involved (3 miles to Tredington, 3.2 miles to the other options) are unlikely to figure largely in parents'

⁶ Demonstrated in amended figures 10.3 and 10.4 of Mr Tyler's evidence
⁷ Paragraph 7.5 of Mr Chandler's proof of evidence

COSSINGTON ROAD, SILEBY
EDUCATION S106 REQUIREMENT
REBUTTAL TO LCC EVIDENCE

Appeal Decision APP/G1630/W/20/3257625

choices. If transported by public transport, the greater frequency of bus services to John Moore Primary School, even with a five minute walk to and from the bus stop, is likely to make an accompanied round trip more convenient than using the less frequent service to Norton. Fourthly, the difference in travel times and distances between the two secondary schools in contention; All Saints Academy (3.2 miles) and Tewkesbury School (4.7 miles) is again unlikely to be determinative of parental choice.

For all the above reasons, I am persuaded more by the appellant's approach to analysis of school capacity available to serve the development than by the County Council's analysis. There is a further dispute between the parties as to whether capacity means 100% occupancy of a school or (as the County Council argues) 95%. I accept the advice given in the Audit Commission's publication *Trading Place: the Supply and Allocation of School Places* that a sensible approach would be to plan for a 95% occupancy rate at schools and accept some variation, say plus or minus 10% around this target. That is to say that capacity means a figure of between 85 and 105% occupancy. In practice, it does not make any difference to the outcome in this case, when assessed across school planning areas or groups of proximate schools.

For pre-school provision, I note that paragraph 2.23 of the Statement of Common Ground on Educational Contributions acknowledges that "capacity may be available to meet demand." Nothing that I subsequently heard during the Inquiry causes me to reach a different conclusion. The SOCG notes that the utilisation of that capacity must be funded but that is an ongoing revenue cost. It is incurred whether the capacity is used by residents of existing or new development. Insofar as it is publicly funded, it is publicly funded from the taxes or rates of both new and existing residents as a revenue cost. There should not be an expectation of any capital contribution from new development on that account.

For primary schools, even using the County Council's exaggerated pupil product ratios, there would be sufficient capacity in 2023 within the Churchdown/Innsworth primary school planning area in which the appeal site lies to absorb the demand arising from the development without the need for expanding accommodation (between 92 and 203 spaces available, 39 required, resulting in 89.8-96.7% occupancy). Alternatively, looking across primary school planning areas to the nearest primary schools to the appeal site, there would be sufficient capacity to absorb the demand arising from the development without the need to expand accommodation. Indeed, one school (Queen Margaret Primary School) could accommodate all the children arising from the development without exceeding 95% occupancy.

Similarly, for secondary schools and sixth form demand, even using the County Council's exaggerated pupil product ratios, there would be sufficient capacity within the Tewkesbury Secondary School planning area in which the appeal site lies to accommodate the demand arising both from the development and from other committed developments, without any need for expanded premises. Tewkesbury School itself is forecast to have a surplus capacity of at least 373 places in 2024/5, more than sufficient to accommodate pupils expected to arise from other committed developments (161.5) as well as those which the Council expects to arise from the appeal proposal (19).

The Council argues that the capacity should be reserved for other allocations in its emerging Local Plan but there is no guarantee that they would be found sound or come forward, nor any reason why capacity should be reserved for those prospective developments rather than for the appeal in hand. Appraisals of the consequences of demand arising from new development are usually made on the basis of actual proposals as applications are made, together with committed

COSSINGTON ROAD, SILEBY
EDUCATION S106 REQUIREMENT
REBUTTAL TO LCC EVIDENCE

Appeal Decision APP/G1630/W/20/3257625

permissions. On that basis, there would be no shortfall requiring the appeal proposal to contribute to an expansion of capacity.

I therefore conclude that the effects of the proposal on the demand for and provision of schools would be acceptable without the need for any provision of expanded facilities. The appeal proposal would comply with Policy GNL11 of the Tewkesbury Borough Local Plan to 2011 (adopted March 2006) and Policies INF4, INF6 and INF7 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011 – 2031. Amongst other matters, these require that planning permission will not be given unless the infrastructure and public services necessary to enable the development to take place are available.

It follows that I do not need to consider the third and fourth bullet points of the DfE advice on securing developer contributions for Education. It also follows that the provisions of the Unilateral Undertaking for financial contributions to be made in respect of Education contributions (the pre-school years contribution, the primary education contribution, the secondary education contribution and the sixth form education contribution) are unnecessary and so, do not meet the statutory tests of the CIL regulations. I have therefore taken no account of them in reaching my decision.

It also follows that I do not need to opine on a matter which took a considerable amount of inquiry time. That issue was the propriety and reasonableness of levying a CIL charge (apparently introduced and originally justified on the basis of raising money to be spent on the provision of education but subsequently the subject of a decision to divert the revenue to other causes) whilst simultaneously seeking contributions to education capital expenditure through planning obligations.

Open space, outdoor recreation, sports and community facilities

The County's case for seeking a financial contribution towards the provision of additional or improved library facilities in Tewkesbury to serve the development was not contested and appears to be well-founded. The inclusion of a financial contribution for this purpose within the Unilateral Undertaking would satisfy the need to make such a contribution towards the provision of that particular community facility. It appears to be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related to it in scale and kind and so it would comply with the CIL regulations.

Paragraphs 1.26 and 5.2 and Schedule 3 of the Unilateral Undertaking to the Borough Council commit the developer to provide no less than 2.4ha of public open space on site, designed in such a manner as to encourage recreation activity to be diverted away from the Coombe Hill Canal SSSI, including a Locally Equipped Area for Play (LEAP) and laid out prior to the first occupation of any dwelling on site. The undertaking also makes provision for future maintenance of the open space. These arrangements would exceed the requirements of policy RCN1 of the Tewkesbury Local Plan to 2011 adopted in March 2006, which specifies a quantity of open space to be provided on site in proportion to the expected population, amounting to a total of 0.28 ha in this case. The proposals would comply with policies INF4, INF6 and INF7 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011 – 2031. Amongst other matters, these require that planning permission will not be given unless the infrastructure and public services necessary to enable the development to take place are available.

The quantity of open space proposed would also be adequate to serve the site under development adjacent to the Swan public house at Coombe Hill and so the arrangements would also comply with policy COO1 of the emerging local plan