

REQUESTED EDUCATION CONTRIBUTION AT OAKLEY FARM, PRIORS ROAD, CHELTENHAM

(REF: 20/01069/OUT)

GCC has requested a full contribution to early years, primary and secondary education for this proposed housing development. This is on the basis that the 250 qualifying dwellings will place a demand on education infrastructure - which is already at capacity.

The Pegasus Group report dated 8 September 2020 challenges GCC's request on two broad grounds:

- i) That there is no justification for the requested contribution as a matter of principle; and
- ii) That even if a contribution can be justified, the calculations are inaccurate.

The Development Plan and other material considerations

Section 38(6) of the Planning Compulsory Purchase Act 2004 sets out that "*if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.*"

The development plan here comprises (at least in part) the **Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS)**, which was adopted by Cheltenham Borough Council in December 2017. Policies INF4, INF6 and INF7 address social and community infrastructure, infrastructure delivery and developer contributions respectively.

Policy INF4 requires that where new residential development will create, or add to, a need for community facilities (including education) it will be met on site and/or as a contribution to facilities and services off-site.

Relevant extracts from Policy INF6 are reproduced below [with our emphasis]:

1. Where infrastructure requirements are generated as a result of individual site proposals and/or having regard to cumulative impact, new development will be served and supported by adequate and appropriate on- and/or off-site infrastructure and services. In identifying infrastructure requirements, development proposals will also demonstrate that full regard has been given, where appropriate, to implementing the requirements of the Joint Core Strategy Infrastructure Delivery Plan.

2. Where need for additional infrastructure and services and/or impacts on existing infrastructure and services is expected to arise, the local planning authority will seek to secure appropriate infrastructure which is necessary, directly related, and fairly and reasonably related to the scale and kind of the development proposal, including:

iv. Early Years and Education

3. Priority for provision will be assessed both on a site-by-site basis and having regard to the mitigation of cumulative impact, together with implementation of the JCS Infrastructure Delivery Plan.

4. Planning permission will be granted only where sufficient provision has been made for infrastructure and services (together with their continued maintenance) to meet the needs of new development and/or which are required to mitigate the impact of new development upon existing communities. Infrastructure and services must be provided in line with an agreed, phased timescale and in accordance with other requirements of this Plan.

It continues at paragraph 5.7.4 that:

“..the provision of infrastructure is a matter of critical importance in the consideration and determination of applications for planning permission. Existing infrastructure may have sufficient capacity to absorb some if not all the envisaged impact of new development. However, in many instances this may not be the case..... if sufficient provision cannot be adequately demonstrated both in terms of infrastructure items and necessary maintenance, planning permission is likely to be refused.”

Policy INF7 on developer contributions states that:

“Arrangements for direct implementation or financial contributions towards the provision of infrastructure and services required as a consequence of development, including its wider cumulative impact, and provision where appropriate for its maintenance, will be negotiated with developers before the grant of planning permission. Financial contributions will be sought through the S106 and CIL mechanisms as appropriate.”

It continues that even after CIL is introduced *“it is likely that the S106 mechanism will be retained for use in securing site-specific obligations”*.

Cheltenham Borough Council adopted its **CIL Charging Schedule**, following examination, in October 2018. At paragraph 7.1 this states:

“Under Regulation 123 of the Community Infrastructure Levy Regulations 2010 (as amended) the charging authority will publish on its website their intention for how revenues raised from the levy will be spent. This will make clear what items will in future fall under the CIL rather than S106, but also show contributors and other interested parties what types of infrastructure the CIL could be spent on. In formulating the Regulation 123 list the Council will continue to work closely with other bodies to address strategic infrastructure and that delivered by other public authorities, for example, Gloucestershire County Council.”

The Council’s Reg 123 list sets out which infrastructure projects are to be:

- i) wholly or partly secured through CIL; or
- ii) secured through S106, S278, or alternative means.

With regards early years, primary and secondary education provision, it states that only infrastructure projects which are ‘*NOT directly related to an individual development*’ may be funded wholly or partly through CIL, and that other education provision will be funded through S106 agreements, or alternative means.

The **National Planning Policy Framework 2019** (NPPF) sets out that the purpose of the planning system is to contribute to the achievement of sustainable development. This includes accessible services that reflect current and future needs and support communities' health, social and cultural well-being. At paragraph 94 it sets out the importance of education facilities. It states:

"It is important that a sufficient choice of school places is available to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education. They should:

a) give great weight to the need to create, expand or alter schools through the preparation of plans and decisions on applications; and

b) work with schools promoters, delivery partners and statutory bodies to identify and resolve key planning issues before applications are submitted."

Further national guidance on the use of planning obligations is set out in MHCLG **Planning Practice Guidance**. That part of the guidance on the *Community Infrastructure Levy* sets out at ID: 25-167-20190901 that:

"The levy is not intended to make individual planning applications acceptable in planning terms. As a result, some site-specific impact mitigation may still be necessary for a development to be granted planning permission. Some of these needs may be provided for through the levy but others may not, particularly if they are very local in their impact. There is still a legitimate role for development specific planning obligations, even where the levy is charged, to enable a local planning authority to be confident that the specific consequences of a particular development can be mitigated."

The basis for GCC's request

JCS Policies INF4 and INF6 are clear that development must be served, and supported by, adequate and appropriate infrastructure, including early years and education facilities. Where it is not, it states that planning permission is likely to be refused.

The provision of appropriate infrastructure is a matter of 'critical' importance in the development plan. The NPPF also requires that '*great weight*' be given to the provision of appropriate education facilities.

The Planning Practice Guidance sets out that CIL is not intended to make individual planning applications acceptable in planning terms, and that some site-specific impact mitigation may still be necessary.

JCS Policy INF7 reflects this stance. It states that even after CIL is introduced, S106 will be used to secure site-specific obligations.

For the reasons GCC has set out in its consultation response, the proposed housing development at Oakley Farm will place a significant demand on education facilities. Given that existing facilities are already at capacity, that demand cannot be met by existing infrastructure, and some site-specific impact mitigation is necessary.

The Pegasus report states at paragraph 2.12 that the CIL Charging Schedule has been prepared on the basis that no S106 contributions will be required on non-strategic sites such as Oakley Farm, and that educational needs arising from the development will be funded through CIL.

However, the CIL Charging Schedule and the Reg 123 list do not seek to prevent S106 contributions from sites such as Oakley Farm - so long as the requested contribution meets the Reg 122 tests.

Indeed, whilst Policy INF7 states that financial contributions will be sought through S106 and CIL mechanisms as appropriate, the Council's Reg 123 list, states that early years, primary and secondary education infrastructure requirements which are directly related to a development can be funded through S106.

Without such a financial contribution, the proposal would not mitigate its infrastructure impacts. It would not contribute to the JCS vision where all residents and businesses benefit from improved infrastructure, including roads, public transport, services, and community facilities. It would not be sustainable development. It would therefore be contrary to the development plan and to the NPPF.

The details of the calculation

Pupil Product Ratios.

GCC's education contribution calculations are based on Pupil Product Ratios.

The DfE Guidance: *Securing developer contributions for education* (November 2019) states at paragraph 8 that:

"Pupil yield factors should be based on up-to-date evidence from recent local housing developments, so you can forecast the education needs for each phase and type of education provision arising from new development."

GCC's Pupil Product Ratios are reviewed annually. The adopted GCC *Local Developer Guide* (December 2016) states at paragraph 101 that:

"The Pupil Product Ratio (PPR) is derived from the total child yield (see Appendix 2). This is reviewed annually and will be adjusted from time-to-time based on new information and data from other areas."

The PPRs were last updated in autumn 2019 following the receipt of a report from an independent research company, Cognisant. This report was commissioned to survey and assess the number of children arising out of new housing developments, in accordance with the DfE guidance.

The study was jointly commissioned by GCC and local housebuilders - Crest Strategic Projects, Redrow Homes Ltd and Taylor Wimpey Strategic Land.

A Memorandum of Understanding was signed between those housebuilders and GCC, agreeing the methodology, and that the findings of the report would be collectively accepted. The report was completed in the summer of 2019 and published on the Council's website shortly after.

The updated PPRs as a result of that study have therefore been in use by GCC since autumn 2019, prior to the consultation on the revised Local Developer Guide, which was carried out earlier this

year. The use of PPRs and DfE cost multipliers is not a newly arising formulaic approach, but is a well-established means of calculating education contributions. The PPR figures are available on the Local Developer Guide page of the Gloucestershire County Council website:

<https://www.gloucestershire.gov.uk/planning-and-environment/planning-policy/gloucestershire-local-developer-guide-infrastructure-and-services-with-new-development/>

However, upon further analysis, we acknowledge that the PPR figure for post 16 education was incorrectly calculated on the basis of three year cohorts, rather than two. This has the effect of reducing the PPR from this sector from 11 per 100 dwellings to 7 per 100 dwellings. The pupil yield for the secondary sector (11 to 16) from qualifying dwellings from this development is 50; whilst the revised pupil yield from the post 16 age group is 17.5.

Phase of Education	Pupil yield	Cost multiplier	Contribution
Pre-school	75	£15,091	£1,131,825
Primary	102.5	£15,091	£1,546,828
Secondary (11-16)	50	£19,490	£974,500
Age 16 to 18	17.5	£23,012	£402,710

The total requested contribution is therefore **£4,055,863**

Turning to the detailed matters set out in the Pegasus Report relating to the area of assessment, current and future needs.... [Education Team to provide detailed commentary on those sections of the Pegasus Report]

Conclusion

For all the above reasons, the requested contribution is considered to be 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.