






Respondent	Section of Local Developer Guide and summary	Representations
<p>28/5/2020 s40 (2) 3rd Principal Planning Policy Officer Cotswold District Council</p>	<p>In Summary Firstly, the revision has been prepared unilaterally by GCC Secondly, if GCC through its Guide wants to claim a share of developer contributions to enable delivery of its infrastructure priorities it must in the first instance ensure that those infrastructure priorities are in tune with the infrastructure priorities of the district Thirdly, the Guide (much like its pre-consultation version) struggles to explain its purpose and identify its intended audience Fourthly, and relatedly, the Guide should provide greater clarity on how the County Council is going to justify additional S106 contributions in addition to the CIL levy</p>	 LDG 2020 Refresh - CDC comments.docx
<p>19/6/2020 s40 (2) 3rd FoDDC, Forward Plan Manager</p>	<p>Unfortunately the document currently reads as though GCC's requirements and concerns have been put ahead of those of the district councils. It also disregards the basic contextual issue that there is a finite "pot" of money that can be obtained from developments without threatening the viability of a scheme; and that this requirement needs to be balanced against other council priorities such as affordable housing/ recreation provision etc. Other means of provision for education need to be explored alongside a method of balancing all contributions.</p>	 GCC Developer Contributions Guide n
<p>19/6/2020 s40 (2) 3rd Planning Policy Team Leader Cheltenham Borough Council</p>	<p>I am concerned that the approach proposed in the LDG may render schemes unviable, leading to choices needing to be made about what key infrastructure new development should fund (schools, affordable housing etc.). It is felt it should be produced as a collaborative approach between the County Council and the district authorities, including other stakeholders and infrastructure providers, where appropriate.</p>	 Local Developer Guide Consultation - (

<p>19/6/2020 s40 (2) 3rd - Planning Policy Tewkesbury Borough Council</p>	<p>Response on behalf of the JCS group Suggested amends</p>	 <p>200618 JCS Response to GGC LDC</p>
<p>19/6/2020 s40 (2) 3rd Head of Planning Strategy Stroud District Council</p>	<p>Viability of development The LDG should set out the relevant CIL regimes operating within Gloucestershire and set out how and when the County Council will seek to secure funding through CIL and how the approach to seeking S.106 contributions will complement this process. Advises a collaborative approach with the districts</p>	 <p>SDC comments on the draft revised Loc</p>

Cotswold District Council’s response

Ref	Response
<p>Foreword General Comments</p>	<p>The length of document is too long. It provides too much background information and not enough attention is spent on providing developers with practical advice. The tone of the document and its supporting letter, especially on the topic of CIL, is unhelpful and it is hoped a more collaborative tone and approach is adopted with a future update.</p> <p>The Council recognises that the LDG helps to support the process by which expert advice is offered on strategic infrastructure requirements, by way of statutory consultation on planning applications and local plans. However, the Council in its role as the local planning authority will determine how it will weigh this advice against material considerations such as evidence on development viability and council priorities such as the delivery of affordable housing.</p> <p>GCC reassures the reader (where the assumed audience are planning applicants) that <i>“the collective of local authorities in the County have every intent to work collaboratively on an improved, co-authored version of the Guide as soon as practically possible and hopefully by Spring 2021.”</i> Whilst a co-authored document is welcomed, GCC have made a commitment before confirming the Council’s support and allocation of resources. CDC requests that GCC establish a project brief outlining timelines, resources and stakeholders. The Council supports the idea of using a neutral party such as the Planning Advisory Service to assist and/or advise the Gloucestershire Councils when co-authoring a new County and District Local Developer Guide.</p> <p>Whilst some alterations have been to the pre-consultation version have been accepted there still remain underlying concerns that relate to its strategic context:</p> <ol style="list-style-type: none"> 1. Firstly, the revision has been prepared unilaterally by GCC. It sets out GCC’s position regarding developer contributions (s.106 and CIL) towards provision of the various types of infrastructure it is responsible for. As may be anticipated where a unilateral approach is adopted, the Guide puts GCC’s requirements ahead of those of the local planning authorities (LPA). <p>This disregards a basic contextual issue. There is a finite “pot” of money that can be obtained from developers without threatening the viability of a scheme. Both GCC and the LPAs make calls on that “pot” according to their priorities. It is not acceptable for one party in that process to assume that its requirements must inexorably take priority over the requirements of another.</p> <p>Guidance to developers on what contributions they are likely to be expected to make to mitigate the impacts of their proposals is good practice and a helpful facility. But it needs to be the outcome of a collaborative, agreed process that has been prepared jointly by GCC and the six district LPAs, a point accepted in the Foreword.</p> <ol style="list-style-type: none"> 2. Secondly, and relatedly, there needs to be recognition by GCC that there is a quid pro quo to be negotiated here. If GCC through its Guide wants to claim

Gloucestershire County Council – Local Developer Guide consultation (May 2020)

	<p>a share of developer contributions to enable delivery of its infrastructure priorities it must in the first instance ensure that those infrastructure priorities are in tune with the infrastructure priorities of the district, borough and city councils. Failure to do so risks undermining the good planning of Gloucestershire through lack of co-ordination and the pursuit of divergent or even conflicting objectives;</p> <p>3. Thirdly, the Guide (much like its pre-consultation version) struggles to explain its purpose and identify its intended audience. The Guide reads as a statement to the district, borough and city councils setting out its expectations and as a statement to local developers on how to assess the cost of county council related infrastructure. The former acts as distraction to the latter and key questions are left unanswered by the Guide; and</p> <p>4. Fourthly, and relatedly, the Guide should provide greater clarity on how the County Council is going to justify additional S106 contributions in addition to the CIL levy. CDC is concerned that planning applications that are otherwise consistent with the adopted Local Plan will now will now receive objections from GCC as a result of the updated Guide. The CDC CIL examination process explained that CIL cannot cover the full infrastructure gap and that infrastructure providers such as GCC will need to work closely with CDC, the Local Enterprise Partnership, the government and other partners to secure other sources of funding to cross subsidise infrastructure.</p>
<p>Section 1: General comments</p>	<p>The document does not adequately explain GCCs and LPAs the respective roles of GCC and the District authorities and how infrastructure will be prioritised. However, it accepted that a new co-authored Guide together with a new Gloucestershire Statement of Common Ground will help to make this process more transparent. GCC state that it will actively look to lever in other sources of funding but it does not provide examples. This raises questions about whether infrastructure is deliverable, and linked to this, whether housing or other developments are deliverable. The District authorities are duty-bound to maintain a five year housing land supply. Any ambiguity over infrastructure delivery has a direct impact on the ability to demonstrate a deliverable five year housing land supply¹.</p>
<p>Section 2: Paragraphs 16 to 18</p>	<p>The first few paras (16 to 18) flit between subjects. First it discusses the rules governing conditions and then jumps straight to a discussion about GCC's education responsibilities and general guidance. Clarity is sought.</p>
<p>Section 2: Paragraph 32</p>	<p>The paragraph states that there is no guarantee CIL money will be used to cover the infrastructure associated with the development CIL has been collected on. This should be considered as one of the benefits of CIL, as it allows CIL money to be spent on the infrastructure projects which are the most urgent in the district. As indicated in paragraph 47 and 49, the CIL spending priority list should be a collaborative piece of work between the LPAs and infrastructure providers such as GCC. Once such a priority list has been established, S106 contributions can still be sought where appropriate as per paragraph 45.</p>
<p>Section 2: Paragraph 32</p>	<p>This paragraph suggests that CIL will not be able to cover the infrastructure funding gap, while S106 can. This is factually incorrect. The funding gap can only be resolved by acquiring funds from a wide range of sources including both CIL and S106 contributions. Moreover, comparison of S106 funding received from</p>

¹ Planning Practice Guidance: Housing supply and delivery (Paragraph: 007 Reference ID: 68-007-20190722; Revision date: 22 July 2019)

Gloucestershire County Council – Local Developer Guide consultation (May 2020)

	<p>applications approved just before the introduction of CIL with the amount of CIL those applications would have paid if CIL had been in place, has shown the amounts raised are similar with CIL being slightly higher. This would make sense, as both are based on viability. As CIL will also be collected from many smaller developments which would not have paid any S106 contributions, there is no reason to believe that S106 contributions would be better suited to fund the infrastructure funding gap without CIL.</p>
Section 2: Paragraph 41	<p>Looking at the required infrastructure in CDC's Infrastructure Delivery Plan, which were taken forward into the adopted Local Plan, it is indeed likely that the majority of CIL funds collected will be spent on infrastructure delivered by GCC. The collaborative process to set CIL spending priorities will therefore be very important to provide clarity for all.</p>
Section 2: Paragraph 42	<p>As mentioned before, this flexibility on CIL spending is one of its benefits, as it allows funding to be used on the infrastructure that is most urgently needed in Cotswold District.</p>



s40 (2) 3rd party

Economic Growth and Strategic Planning
Gloucestershire County Council
1st Floor, Block 4
Shire Hall
Westgate Street
Gloucester
GL1 2TP

19th June 2020

To whom it may concern,

Gloucestershire County Council Local Development Guide Update: Consultation Draft - April 2020

The JCS authorities welcome the opportunity to input into the Draft Local Developer Guide (LDG). The authorities wish to continue to work with the County Council to manage effectively the delivery of infrastructure to support the growth agenda. In that regard, the authorities have a few general comments around the approach taken in the LDG, which are set out below. However, we have also provided more detailed comments, which are attached with this letter.

The LDG acknowledges the challenge of viability and there are limits to the system of contributions in being able to deliver all new infrastructure aspirations. However, the LDG does not set out how the anticipated S106 requirements from the County Council have been assessed for their viability impacts on development in ensuring they will not undermine deliverability. This is particularly critical in the context of the JCS authorities having adopted CIL charging schedules that were set based on viability across the area.

Whilst it is agreed developments should make as full a contribution as possible towards infrastructure needs, in reality there is a finite “pot” of money that can be obtained from developments. There will be many calls on this pot and the authorities need to direct this resource to the highest priority infrastructure that enable the delivery of sustainable growth without threatening the viability of schemes. It should also therefore not be the case that one particular infrastructure requirement automatically takes precedent over others. The authorities need to prioritise requirements in a way that supports deliverability, affordable housing delivery and housing supply generally.

The authorities recognise S106 contributions may be sought in addition to CIL, however, we are also extremely mindful that this needs to be fully justified by robust evidence to ensure any contributions meet the CIL regulations. There also needs to be a consistent approach to producing this evidence with a clear understanding of how infrastructure needs will be determined. As a pertinent example, the LDG sets out the approach and evidence to forecasting primary and secondary education requirements from new development and the level of existing capacity in the relevant area. However, there is no methodology provided for establishing contributions towards other areas of County responsibility, such as early years' education and libraries, with guidance stating the County Council will determine needs. This evidence-based approach will also be critical in prioritising where contributions from development are prioritised.

The concept of providing a LDG is considered to be a positive tool to help facilitate development. However, it is felt it should be produced as a collaborative approach between the County Council and the district authorities, including other stakeholders and infrastructure providers, where appropriate. It should also be developed in the context of the county-wide work to address barriers to development, including the Planning Development Charter, which highlights partnership working and deliverability and viability as a key pledge of the authorities.

We hope these comments are constructive and the JCS authorities look forward to continued joint working and engagement with the County Council on the Local Developer Guide and to deliver growth and infrastructure in the county.

Yours sincerely,

s40 (2) 3rd party personal data

A large black rectangular redaction box covers the signature area, with the text 's40 (2) 3rd party personal data' written in red above it.

s40 (2) 3rd

Senior Responsible Officer

Gloucester, Cheltenham & Tewkesbury Joint Core Strategy

Detailed Comments on the Local Developer Guide

- It should be made clearer that these are the County Council's, Upper Tier, Strategic Infrastructure Requirements and it does not cover all of the requirements of the LPAs. At the moment it is only by reading through the Foreword to paragraph 4 on page 1 that this is explained.
- The idea of further joint working with the district authorities on producing combined countywide guidance in future is supported in principle. However, for the time being, it would be useful to provide a website/page on which links to all relevant guidance is provided at a national, county and local level to help developers access all relevant information in one place.
- (Page 1) Comments made regarding the 'lack of clarity on CIL governance' should be expanded to reflect their context with CIL across the district authorities, as we all have different arrangements. This includes the role of parish councils. In particular, in the case of the JCS authorities, it should be explained that the authorities are working on the governance arrangements with the County Council and other infrastructure providers, but this is still a work in progress that has yet to be formalised.
- (Page 3) Title, 'with' as opposed to document title 'required to support'
- (Page 3, paragraph 1) Footnote 1 references highway impact to demonstrate when contributions will become necessary. However, this specific reference appears incongruous in a section of the document making general introductions, while also not referencing other significant infrastructure issues, such as education.
- (Page 3, paragraph 6) Formatting issue – font size appears smaller than the rest of the text.
- (Page 3, paragraph 7) The comment on "generously high purchase prices or commitments" would benefit from a reference to the Government's support for reasonable rather than extraordinary returns. 24 July 2018 Amendment to Guidance on Viability first published on 6 March 2014 and last updated 1 September 2019: A 'reasonable' return should be less than the old, 'competitive' return.
- (Page 3, paragraph 9) The second sentence does not emphasise the imperative nature of securing infrastructure or services 'necessary' to facilitate or as a result of development.
- (Page 4, paragraph 10) It is stated "*Most [suggest providing authority] Infrastructure Delivery Plans (IDPs) within Gloucestershire suggest that the County Council is responsible for some 70-80% of the necessary community [can distinguish it from strategic so may confuse] infrastructure*". However, it is not clear that this refers to 70-80% of infrastructure receipts. It is not that the county area responsible for 70-80% of the total infrastructure required, but that they are responsible for those with the highest relative costs that lead to high percentages of the total funding being spent.
- (Page 4, footnote 2) Typo – reference to Neighbourhood Plan should be plural.
- (Page 4, paragraph 13) The subject is planning conditions, but mechanisms for securing some highways contributions are added to the end of the paragraph and would benefit from

being included in a more detailed explanation of the statutory provisions and their criteria for use.

- (Page 5, paragraph 15) Unilateral Undertakings are themselves made pursuant to S106.
- (Page 5, paragraph 17) Reference is made to the three tests as the criteria for 'conditions' rather than obligations. In the NPPF Paragraph 55 applies to conditions and Paragraph 56 to Obligations. Paragraph 55 effectively introduced 6 'similar' tests:
 - necessary;
 - relevant to planning;
 - relevant to the development to be permitted;
 - enforceable;
 - precise; and
 - reasonable in all other respects
- (Page 5, Footnote 7) Whilst the three tests first appeared as guidance in the NPPF in 2010 they were put on a statutory footing in the Community Infrastructure Levy Regulations as Regulation 122(2).
- (Page 6, paragraph 20) The first sentence needs a reference – is this to 'Paragraph: 046 Reference ID: 61-046-20190315' of the NPPG? Does the rest of the paragraph refer to 'Paragraph: 048 Reference ID: 61-048-20190315'?
- (Page 6, paragraph 21) The last sentence needs a reference to the guidance [Bullet Point 9] 'Securing developer contributions for education', Paragraph 4.
- (Page 6, paragraph 22) The statement around securing developer contributions to recoup the monies needs reference [Bullet Point 9] 'Securing developer contributions for education', Paragraph 7.
- (Page 6, Paragraph 21 and 22) References are given to footnote 9 in both paragraphs – one should be to footnote 8.
- (Page 7, Paragraph 23) The advice to work jointly needs to be referenced. 'Securing developer contributions for education': footnote 19.
- (Page 7, footnote 14) We would recommend changing this to just Community Infrastructure Levy Regulations 2010 (as amended), as the quoted amendments do not bring them up to date with the text which refers to the 2019 amendments.
- (Page 7, paragraph 28) Wording – "*changes to the used application of planning obligations have been made*" doesn't sound right. Should it read, 'changes to the use of planning obligations have been made'?
- (Page 7, Paragraph 29) It is stated that the charging authorities can use both CIL and S106 contributions to fund the same piece of infrastructure, but adds 'as long as clearly defined'. This is not the requirement. The requirement now is to report in a detailed and transparent

manner in the Infrastructure Funding Statement on S106 and CIL spending to demonstrate no double charging has taken place.

- (Page 8, paragraph 31) refers to “*other relevant up to date guidance*”. This should at least have a reference to the thematic categories, if not actual examples.
- (Page 8, paragraph 32) It is suggested to reword the second sentence which states “*CIL is a generic pot of money which is applied across the CIL Charging Area to facilitate development across the locality*”. It could explain the breakdown of CIL funding into its 3 parts: admin costs, neighbourhood and strategic and it should reflect the ongoing relationship between CIL and S106. As it is currently worded it is presented as a problem that has been adopted but cannot provide for all demands for infrastructure to mitigate the impact of development and this is in one way inaccurate and in another too simplistic. CIL was never justified on the basis it would replace certain elements of infrastructure that was, and still is, justifiably secured by way of S106 according to the tests in Regulation 122. The requirement at Examination, to justify adopting CIL and imposing the viability tested charging schedule was that it was needed to help meet a shortfall in funding for infrastructure required to deliver the quantum of development envisaged in the Local Plan. At the time this was understood and widely accepted by the development industry who could see that many small developments that historically had not been required to make contributions by way of S106, would now be contributing additional funding towards infrastructure required, not only as a result of an individual or number of large developments, but also the accumulative impact that so much small scale development has.
- (Page 8, paragraph 34) Charging authorities ‘within Gloucestershire’ are also the collecting authorities as this is not always the case nationally.
- (Page 9, paragraph 38) The planning act should be referenced as a footnote. Should this be Part 7 of the CIL Regs 2010 (as amended), specifically Regulation 59? This is only true for the CIL held by a Charging Authority from the Strategic Fund. The Neighbourhood fund, whether passed on to Parish Councils and Neighbourhood Forums or held by the Charging Authority/District Council in non-parished areas can be spent on: not only “(a) the provision, improvement, replacement, operation or maintenance of infrastructure, but also “(b) anything else that is concerned with addressing the demands that development places on an area” (Regulation 59C).
- (Page 9, paragraph 39) Reference should be made to the legal definition of infrastructure being referred to.
- (Page 9, paragraph 40) A reference to Regulation 59 would be more appropriate.
- (Page 9, paragraph 44) It should be worded that CIL ‘does’ or ‘must’ run alongside S106, rather than saying it ‘can’.
- (Page 9, paragraph 45) The wording needs to be updated to better reflect the situation since the 1 September 2019 changes. If it meets the test in Regulation 122 then it must be secured via S106, however the removal of pooling restrictions does mean that any number of developments may contribute to the same infrastructure project, if it can be shown to be sufficiently related and it may be that wider smaller development will also benefit and

should also contribute, which is why CIL may also be used for the same project if the Charging Authority so wish.

- (Page 10, paragraph 46) This paragraph appears to be a repetition of paragraph 10 – is this necessary?
- (Page 10, paragraph 47) Reference should be made to the new infrastructure list, rather than the now deleted Regulation 123 list and its production alongside the Infrastructure Funding Statement(s) as the opportunity to ‘influence’ [final decision with Charging Authority] spending priorities.
- (Page 10, paragraph 48) The wording needs tidying up with a better explanation of the Neighbourhood Fund – see comments on Paragraphs 32 and 38 above and add detail regarding 15% capped, 25% uncapped and fund held in non-parished areas.
- (Page 11, paragraph 51) This paragraph could be expanded to include an explanation of the Gloucestershire Economic Growth Capital Investment Pipeline (CIP).
- (Page 11, paragraph 52) This needs to be reworded in line with previous explanation that CIL, once adopted, is non-negotiable and is a fixed charge. Rolling it’s description in with S106 contributions and saying they will be sought “*as appropriate on a case by case basis*” may be misleading.
- (Page 12, paragraph 56) The first bullet point on ‘Fairness’ talks about only contributing where it is necessary to make a development sustainable. However, this should instead be expressed as ‘where it is necessary to make the development acceptable in planning terms’ (rather than sustainable), as per the tests of Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.
- (Page 16, paragraph 74) The first sentence appears to be a repetition of paragraph 72. Typo of ‘flexibly’ should be flexibility.
- (Page 18, paragraph 80) The Monitoring Contributions section beginning at Paragraph 80 should make reference to the 2019 changes to the regulations regarding charging for monitoring of S106 agreements - Regulation 122(2A) – paragraph 83 in particular is somewhat out of date.
- (Page 20, paragraph 91) Suggest reviewing the tense of the wording as ‘has been’ could be ‘was’ now / ‘this has had an impact ... as take-up rates will be high”.
- (Page 22, paragraph 98) If additional education facilities are required as a direct result of new development than S106 will need to be used to secure it. This is especially relevant for affordable housing, which is exempt from CIL and would therefore provide no income, but would still generate a need. Charging authorities would have the option to fund further provision using CIL monies if these are as a result of the demand generated by the unattributed individual and small-scale developments. The statement that the County Council expects CIL money to be prioritised is not considered appropriate and it should be a

collaborative approach to infrastructure to prioritise what infrastructure should be funded from a limited pot of contributions.

- (Page, 22 Paragraph 100) Using S106 to “*mitigate the direct effects of the proposed development*” shouldn’t be expressed as the County Council’s preferred approach, it is the approach allowed for in the legislation.
- (Page 27, Paragraph 129) The assumption can’t be made that CIL monies will be used to increase access to libraries. CIL will not be able to meet all of the infrastructure demands that make up the shortfall in funding identified and therefore priorities within IDPs will need to guide spending.
- (Page 29, paragraph 135) It appears unlikely that archives would be identified as critical or essential to the delivery of development within the IDPs of the authorities, particularly when considered against the needs of highways and education.
- (Page 29, paragraph 137) It would be useful to include a reference to the requirement to ensure that health and wellbeing, and health infrastructure are considered in plan making and decision taking.
- (Page 37, Appendix 2) It is positive that a link is included to the Pupil Product Ratio Study in the appendix – this may benefit from a short summary here as well.
- (Page 43, Appendix 5) It may be worth adding links to the online calculators on each authorities websites, if they have one and also to the Instalments policy adopted by each authority, if they have one, as this is mentioned within the guidance and is relevant for project planning.



Dear s40 (2) 3rd
early personal

Gloucestershire County Council Local Development Guide Update: Consultation – June 2020

Cheltenham Borough Council welcomes the opportunity to input into the Draft Local Developer Guide (LDG). The Council wish to continue to work with the County Council to manage effectively the delivery of infrastructure to support the growth agenda. In that regard, the Council has a few comments around the approach taken in the LDG which are set out below.

The consultation is taking place when much of the development industry are furloughed and therefore not in a position to respond to the consultation. I appreciate that the consultation has been extended until the 19th June, but I remain concerned that parts of the development sector may have been unable to contribute through this consultation process.

The LDG acknowledges the challenge of viability and there are limits to the system of contributions in being able to deliver all new infrastructure aspirations. However, the LDG does not set out how the anticipated S106 requirements from the County Council have been assessed for their viability impacts on development in ensuring they will not undermine deliverability. This is particularly critical in the context of the JCS authorities having adopted CIL charging schedules that were set based on viability across the area.

As you will be aware, the JCS CIL Policy and Schedules were the subject of extensive viability assessment and public examination. Through that process, different levels of CIL and s106 contributions were tested to ensure the viability of schemes. I recognise S106 contributions may be sought in addition to CIL, however, we are also extremely mindful that this needs to be fully justified by robust evidence to ensure any contributions meet the CIL regulations. There also needs to be a consistent approach to producing this evidence with a clear understanding of how infrastructure needs will be determined.

I am concerned that the approach proposed in the LDG may render schemes unviable, leading to choices needing to be made about what key infrastructure new development should fund (schools, affordable housing etc.). Whilst it is agreed developments should make as full a contribution as possible towards infrastructure needs, in reality there is a finite “pot” of money that can be obtained from developments. There will be many calls on this ‘pot’ and the authorities need to direct funding to the highest priority infrastructure that enables the delivery of sustainable growth without threatening the viability of schemes.

The delivery of housing in a planned fashion remains a key priority for Cheltenham Borough Council. I am concerned that viability challenges arising from allocated sites

as a result of the LDG will stall those developments and give rise to speculative planning applications in the County, on sites that would not otherwise be considered appropriate for development.

The status of the document

I understand the value of providing a LDG or some form of guidance to help facilitate development. However, it is felt it should be produced as a collaborative approach between the County Council and the district authorities, including other stakeholders and infrastructure providers, where appropriate. This could take the form of a review of CIL, but would need to be undertaken when the Covid-19 pandemic and its economic implications are understood.

We hope that these comments are constructive and we look forward to continued joint working with you to deliver growth and infrastructure in the county.

Yours sincerely,

s40 (2) 3rd party
personal data

Councillor s40 (2) 3rd
Leader of the Council
Cheltenham Borough Council

Note in relation to developer contributions and education

NG 18062020

1. This note is intended to help in response to the current debate about developer contributions and in particular those sought to support education provision. It has been brought about by changes to the levels of contribution being sought by GCC and by their consultation on a draft Local Developer Guide set to end on 19th June 2020.
2. The method of obtaining contributions remains but the scale of what is sought is raising issues of viability with the result that many allocations and their associated delivery of new market and affordable housing is undermined. Although some of the GCC material needs to be further justified, in two areas in particular (pupil product ratios and catchment definitions), the principle is correct and LAs are encouraged to maximise the contributions they can obtain. The scale of contributions and their impact on viability needs to be addressed urgently. Viability is referred to in government guidance but there is little to suggest how infrastructure that is necessary for a development to proceed can be obtained while not reducing the quality and number of dwellings (and sites) that can be delivered.
3. The main issue is with the attendant changes to the calculation of education contributions. These are based on the cost per additional pupil of providing the necessary facilities and the number of pupils expected to arise from a new development. There is some debate about the cost of provision per pupil due to the large recent increase but it is supported by DfE material. The increase is due to the rise in costs from when they were last adjusted and they will now be amended on an annual basis.
4. The key area for discussion is the pupil product. Some questions have been raised by others about the assumption that all the resident pupils in a new development should be regarded as new and therefore need to be catered for. There is no debate about the need to only require a contribution when there is a lack of capacity. There is a need to consider where this capacity should be counted (eg what are the relevant catchments). The need for contributions is reasonably taken as when 95% of the capacity of a school is reached.
5. Increasingly the educational need is taken as from pre school to 16-19 with additional scope for some groups to be catered for beyond 19. Although pre schooling is catered for in a variety of ways, the DfE advice is that it should be included in contributions sought. The actual provision may need subsidies and hence developer contributions.
6. A case is sometimes made that the pupil numbers expected on a development is not all additional when new dwellings are built because many occupiers of the dwellings move locally and are already in education often using the same facilities as may supply the new development. Whilst this may be correct, the overall s 106 principle is that a certain number of new dwellings need a range of infrastructure as they (the dwellings) are additional to those that are already there. The needs will be for services and facilities to meet the additional demand. Contributions sought must be necessary to enable the development to proceed. It is difficult to take a counter position because of this additionality, and ultimately new housing caters for new in migration and new households that may form and require services. Movers from elsewhere whether local or from the wider area will often vacate a property which itself will be re occupied and generate its own need for services. Where they do not (eg newly forming households) that often generates new and additional requirements especially as it

grows. It is therefore reasonable to say that each new dwelling in a proposed development should be considered a potential contributor to the need for infrastructure, though when considering the need for contributions to education then the type of dwelling and hence the mix proposed does need to be taken into account. This is already done in that older person's development and one bedroom dwellings are excluded from the dwellings which are likely to need school provision.

7. A starting point should therefore be the total potential need arising from a scheme. This must then be discounted for by the allowance for existing school capacity. This is done in order to take account of the specific circumstances that apply to a particular site. Using the same principle, the case for a discount against a figure related to the local transfer (pupils moving to the new development but remaining in current schools) may be examined.
8. The major consideration that remains is how representative the pupil product ratios are. These are based on a study of a number of sites and the results have been extensively debated by developers and within LAs. The current GCC consultation will inevitably result in further debate and the preparation of additional evidence to support various points of view. Any downward change would impact on quite considerably on the overall requirement. The only way in which these figures may be examined in more detail would be by quite extensive and complex research and potentially through another survey of yields. Some comparison with other LAs is possible but these may too be flawed. A quick comparison shows the following:

Pupil Product; Child yield per 100 dwellings

	Pre school	primary	secondary	Post 16
Gloucestershire	30	41	20	11
Bolton (2016)		23.2	18.7	
Suffolk (2019 update)	10	25	18	4
Nottingham (2020)		21	15	
Essex (2019)		30	20	
Surrey (2018)		25	18	
Derbyshire (2020)		20	15	6

The above suggests that further examination of the figures is necessary especially in respect of primary and post 16 education. Pre school contributions are able to be sought and the DFE encourages provision.

9. Whilst it is recognised that the population in the Forest of Dean will continue to grow the biggest growth has been identified in older people. The ONS sub-national projections 2016 suggest a static number of 5-9 and a modest increase of 10-14s between 2021 and 2041:

	2021	2041
Age 5-9	4720	4738
Age 10-14	4758	4930

The other considerations are further examined below:

10. **Necessary**- Although the basic calculation should look at need from all eligible dwellings it would be possible to take the view that a reduced provision could be accepted because some incoming households will already be using local facilities. This compromises the s106 principle of providing for the potential need of the development but takes account of the reality that not all incoming pupils will need new provision. Similarly an allowance for private sector and home schooling could be made, though it may not be very large. The flexibility offered by this approach would be justified by the contribution sought being assigned to the likely additional demand arising rather than the theoretical need and potential of a given number of dwellings to require x new places. The established principle that existing capacity in local catchments is taken into account also supports this approach because it is based on meeting the necessary (additional) requirement that cannot otherwise be met. Some commentaries on the principle seek to offset provision because local movers anywhere within a given LA may vacate one school place and require another (no net increase in demand and arguably overall cost to the LA). This is a more tenuous argument and such capacity credits are possibly best accounted for simply by counting the number of spare places at any given facility at the time it needs to be assessed for its ability to meet the needs of its own catchment. Some pupils may also remain in the same school also in themselves generating no net increase, however the development proposed will still potentially do so simply because it results in additional dwellings.
11. **Catchments**- It is desirable to plan for sustainable travel and on the basis that schooling takes place locally though this will vary with the age group. Assumptions are made in the planning for provision and assessment of capacity and could be critical- for example in the current application for development at Netherend (P1995/18). Here the secondary school "chosen" is Wydean, which is fine for 16+ but the question may be raised that Dean Academy (Lydney) has spare capacity and is nearer at 5.5km against 9. There is an inevitable tension between local catchments which are ideal from a sustainability aspect and what may be practical and reflect actual behaviour. The situation in this case is that there are a high number of pupils at the school from out of the County and there is a clear case for suggesting that the resulting squeeze on capacity should be allowed for, in other words when assessing capacity it should be done on the basis of priority being given to pupils within the LA area in which the school is located.
12. **Costs per place**- There appears to be a clear derivation and justification for these and DfE figures are published which support them. The large increase between earlier figures and those now used is due to the time between reviews.
13. **CIL** The above relates to s106 as the means of obtaining contributions. CIL and s106 or CIL alone could be used. In the last case there is an understanding that CIL must address an

identified funding shortfall but also that it unlikely to be able to close it entirely. CIL contributions are spread across a variety of needs and could change the way in which education contributions are delivered. GCC are concerned and their concern highlights the potential shortfall that could occur. This again suggests that the existing methods are inadequate.

Analysis and Conclusions

14. All of the above serves to illustrate the difficulty of trying to ensure that appropriate provision is made for educational need arising from new development. The GCC paper seeks to demonstrate an approach which understandably seeks to maximise this within the rules and guidance. There are possible areas for re examination but overall the point has been reached where s 106 needs review and where the need is for balance which enables schemes to proceed (with provision for necessary infrastructure).
15. One theme in the guidance (NPPG and DfE) is that developer contributions (CIL and s106) must be affordable in the sense that the development remains viable. Para 34 of the NPPF, 2019 identifies that Local Plans should *“set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required, along with other infrastructure (such as that needed for education, health, transport, flood and water management, green and digital infrastructure). Such policies should not undermine the deliverability of the plan. “*
16. The NPPF clearly indicates that when setting policies for the requirement of contributions these should not be done in isolation but as a whole to understand the impact of each policy and ensure that a set of balanced deliverable policies are introduced; and that these are accompanied by an assessment of viability to evidence that the policies are deliverable.
17. This is summarised in another Authority’s guide which makes clear it is the responsibility of the LPA:

“It is recognised that it is the responsibility of the local planning authority to assess the reasonableness of the level of contribution sought by any individual S106 obligation. Only a local planning authority can consider the combined implications of all of the obligations on an individual application. Hertfordshire County Council will not negotiate directly over a level of contribution requested unless it is asked to do so by the local planning authority”. (draft)
<https://www.hertfordshire.gov.uk/media-library/documents/about-the-council/consultations/environment/developer-contributions-guide-2019.pdf>
18. The overall viability of a site may be threatened by competing demands for contributions but before that stage other s106 contributions may have been compromised if not considered together. These include affordable housing, play provision and there may also be impacts on sustainable construction (eg additional build costs that deliver more sustainable development cannot be supported because of other costs). Within the envelope which allows a development to proceed, it is important to achieve a balance of contributions which are necessary and ensure policy compliant development. Although not encouraged, the DfE guidance (para6, below) does appear to concede that other funding intended to support the viability of developments can be provided.
19. Other means of provision for education need to be explored alongside a method of balancing all contributions. The two tier local government set up makes this more difficult as GCC and

FoDDC would need to agree how to scale down the ideal contributions yet retain a development that is able to proceed. The view of what is necessary would need to be challenged (eg necessary means education can be provided for, ideal means it is done within the most sustainable catchments). All developers (private and RPs) are affected.

20. There are examples of sites in the FoDDC of both types of threat/ squeeze including the following:
21. A small development of 36 units (from which Primary contributions were not sought) has seen the requirement for education contributions increase by 30% from £267K to £350K in turn reducing the affordable housing provision by 5%. Should the full education contributions have been required then this would have totalled £548K and reduced the affordable housing provision by a further 6-7%. It is noted that the consultation states contributions will now be amended on an annual basis, there is a concern that should the contributions continue to rise whilst house prices stagnate or fall, then this is likely to further reduce the provision of affordable housing and other requirements and could undermine the viability of the site which is a greenfield area in the south of the FoDD.
22. It is recognised that increased requirements of this nature could not only threaten the delivery of affordable housing but also other policy requirements. Ultimately the overall deliverability of a site may be affected. The FoDDC Council failed to meet the required thresholds for delivery measured against the housing delivery test for 2018/19 and as a result has to produce an action plan to boost delivery. Unaffordable infrastructure costs will undermine delivery. An important part of the action plan will focus on work with RP's to bring forward land led developments. RP's have indicated that the scale of such contributions potentially required is unlikely to make such developments viable in lower value areas like the Forest of Dean.
23. In addition to the possible effects on the provision of affordable housing it may also impact on the provision on the ability to deliver new dwellings to the Nationally Described Space Standard or the provision of adapted and adaptable housing. As the biggest demographic issue facing the district is large increase in older people, it will be vital that adapted and adaptable housing will be able to be delivered.
24. Private developers must be able to generate sufficient income to continue and the amount of S106 etc contributions is a key factor which does threaten both the overall developability and the quality that can be achieved on various sites. This impacts on the FoDDC's ability to see the requisite number of completions. The issue also affects RPs who need to be able to afford to develop, and where their available finance may not cover the total costs.
25. The central issue issues of the operation of the current system for obtaining developer contributions have been brought into sharp focus by the proposed update to the developer guide. Although some of the assumptions need further examination and there is a need for the balancing by the LPAs of the overall contributions the fundamental issue is lack of resources and the inability to deliver good quality development where it is needed (both from the private sector and RPs).

26. Unfortunately the document currently reads as though GCC's requirements and concerns have been put ahead of those of the district councils. It also disregards the basic contextual issue that there is a finite "pot" of money that can be obtained from developments without threatening the viability of a scheme; and that this requirement needs to be balanced against other council priorities such as affordable housing/ recreation provision etc.
27. Guidance to developers on what contributions they are likely to be expected to make to mitigate the impacts of their proposals is good practice and a helpful facility. But it needs to be the outcome of a collaborative, agreed process that has been prepared jointly by GCC and the six district LPAs (and other infrastructure providers, where relevant).

18062020

<https://www.gloucestershire.gov.uk/media/2085281/gloucestershire-school-places-strategy-2018-2023-final-web.pdf>

<https://www.gloucestershire.gov.uk/media/2093765/gloucestershire-county-council-ppr-report-703.pdf>

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

<https://www.gov.uk/guidance/planning-obligations>

<https://www.gov.uk/government/publications/delivering-schools-to-support-housing-growth>

notes:

DfE guide delivering schools to support housing growth p4 intro says:

Developer contributions towards new school places should provide both funding for construction and land where applicable, subject to viability assessment when strategic plans are prepared and using up-to-date cost information;

LAs may provide guidance on what to do about AH contributions. (p5 intro as above)

Para 1 DfE, education contributions can come via CIL, which implies that the route does not have to be relied on to deliver all the money that is needed though PP should be refused if the development cannot be made acceptable. However it is a judgement as to what is necessary in some fields.

Available sources of funding and patterns of where education is obtained are relevant considerations (DfE para 3)

DfE Para 6: ... "6. While basic need funding can be used for new school places that are required due to housing development, we would expect this to be the minimum amount necessary to maintain

development viability, having taken into account all infrastructure requirements. Where you have a reasonable expectation of developer funding being received for certain school places,³ and you have declared this in your SCAP return (or plan to do so), then basic need funding should not be considered available for those school places other than as forward funding to be reimbursed by developer contributions later.”

Para 8 DfE were working on a pupil yield method but in its absence local solutions remain valid

Planning Policy guidance..

“What funding is available for education?

Government provides funding to local authorities for the provision of new school places, based on forecast shortfalls in school capacity. There is also a central programme for the delivery of new free schools.

Funding is reduced however to take account of developer contributions, to avoid double funding of new school places. Government funding and delivery programmes do not replace the requirement for developer contributions in principle.

Plan makers and local authorities for education should therefore agree the most appropriate developer funding mechanisms for education, assessing the extent to which developments should be required to mitigate their direct impacts.

The Department for Education has published [guidance for local education authorities on developer contributions for education](#).

Paragraph: 007 Reference ID: 23b-007-20190315

Revision date: 15 03 2019”

Stroud District Council

Comments on the Draft Local Developer Guide (Update April 2020 Consultation Draft)

Introduction

Stroud District Council welcomes the opportunity to comment on the content of the draft revised Local Developer Guide (LDG). The adopted Stroud District Local Plan refers specifically to the existing County Council produced Local Developer Guide (paragraph 2.91) and the District Council's [Planning Obligations SPD](#) also includes sections on County Council related infrastructure derived from the Local Developer Guide.

Stroud District Council wishes to work together with the County Council to manage effectively the delivery of infrastructure to support the growth agenda. The District Council has set up CIL and S106 to work in tandem within the District (CIL on small sites/S106 on strategic sites) and has encouraged the County Council to apply for CIL funding to cover strategic infrastructure requirements.

Within this context, the District Council is disappointed with the County Council's intended unilateral approach to seeking developer contributions, notwithstanding current CIL arrangements, set out in the County Council's Interim Position Statement. Consequently, there are elements of the draft Local Developer Guide which the District Council recommends are changed before the Guide is finalised.

Purpose, structure and layout

If the purpose of the Guide is to, as the title would suggest, provide clear guidance to local developers on the likely requirement for infrastructure contributions, the LDG needs to be substantially edited and restructured to remove much of the first half of the document which reads as a background document, including long commentaries on legislation and different types of contributions and mechanisms which should be put in a background document or technical appendix.

Although there have been some revisions since the early pre-consultation draft that was circulated previously to local authorities for informal comment, the document still reads as a list of requirements and expectations that the County Council has in approaching District and Borough Councils, rather than setting out an agreed local authority co-ordinated approach providing certainty for the development industry on how infrastructure will be provided.

It is recommended that the County Council engages in further discussions with District and Borough Councils to agree a joint approach and then to set out this approach clearly and concisely as a practical guide for the development industry to use.

The County Council approach

The sections on S.106 contributions and Community Infrastructure Levy clearly indicate that the County Council would prefer to seek contributions directly from developers through

legal agreements rather than to engage with District and Borough Councils on CIL. The key statement is set out in paragraph 52 where it states “as the County Council is not the CIL Charging Authority, it has no control over how the CIL payments collected will be utilised.”

To support this position, the LDG at paragraph 32 states that there is no guarantees that funds from the CIL pot will be forthcoming to cover infrastructure. However, at paragraph 45, the LDG itself recognises that CIL is a mandatory charge on development which has already undergone viability testing whilst S.106 is subject to viability testing at planning application stage and consequently a less consistent and reliable source of funding.

The truth is that both CIL and S.106 have a legitimate place in infrastructure planning but to maximise the benefits of these different approaches requires the local authorities to work together. What this draft LDG fails to do convincingly is to say how the local authorities have or will work together effectively. In other words, the LDG needs to set out a clear mechanism by which the County Council will seek CIL contributions as well as ask for S.106 contributions in circumstances where CIL does not apply. Whilst paragraph 45 states that “on the potential granting of a planning consent, the decision will be made between the LPA and the County Council as to whether the infrastructure contributions sought will be best secured via S.106 or via CIL” this is not a clear statement of the process to be taken and only encourages an ad hoc approach to infrastructure planning. It surely should be the function of this LDG to set out in advance the process to be followed and the criteria to be applied, not to wait until the development management process is reaching completion.

Since Stroud District Council implemented CIL in April 2017, the Council has steadily obtained funds for strategic infrastructure and has invited the County Council to submit proposals for funding strategic infrastructure that falls within the remit of the County Council. The District Council continues to encourage the County Council to fully engage with this process. At paragraph 98, the LDG states in relation to school provision, “the County Council will expect CIL monies to be prioritised to support the provision of new or expanded schools”, but this requires the County Council to regularly communicate to the District Council the specific projects that require funding through CIL and the levels and timings of funding requested.

The LDG should set out the relevant CIL regimes operating within Gloucestershire and set out how and when the County Council will seek to secure funding through CIL and how the approach to seeking S.106 contributions will complement this process. At the moment, the LDG is vague about the potential for co-ordination between local authorities and even states that, at paragraph 52, “where appropriate, however, it will continue to seek S.106 contributions in parallel.” It is important, for clarity, for this LDG to set out what this means in practice, particularly as whilst CIL and S106 can both be applied to the same scheme, they should not be secured for the same infrastructure costs.

Viability

The Guide makes a number of references to viability, particularly within the context of how CIL levels are set. However, there is no mention of how the County Council S106 requirements set out in the LDG have been assessed against viability considerations and no

process is set out as to how viability matters will be resolved if the “ask” is higher than a level that the developer claims can be afforded. Whilst at paragraphs 59 and 75 it is stated that the County Council will take viability considerations into account, it is not clear how they will do so, particularly as viability is a matter relating to the whole cost of development which is a matter for the determining authority to assess taking into account all of the infrastructure asks. At paragraph 79 there is a reference to taking into account developer evidence and any viability work undertaken by the local planning authority, but no agreed process is set out. For example, if the local planning authority concluded that development was not viable, the LDG is silent on the position of the County Council, how a reduced infrastructure contribution might be arrived at and how any disagreements would be resolved. Indeed, even if viability were to be identified as an issue, paragraph 79 only suggests it “can influence decisions around timing of payments, triggers and the use of deferred contributions”, and does not appear to envisage any potential reduction in contributions to the County Council nor how or where a reduced level might be determined.

By way of contrast, the Stroud District Council Planning Obligations SPD sets out a process for resolving viability matters and the District Council would expect negotiation for an appropriate County Council contribution to be subject to the same process and resolved through agreement between the developer and both authorities. This should be clarified in the final revised LDG.

Types of infrastructure

The District Council welcomes the broad guidance provided in the revised LDG relating to specific forms of infrastructure.

It is noted that the County Council’s approach towards funding primary and secondary schools has been subject to review and significant changes have been made to the estimated pupil product ratio (PPR) and how it is derived from the total child yield, as set out in Appendix 2. These are based on a study of a number of sites and the results have been extensively debated. It is noted that a number of developers have provided detailed responses to the legal and technical validity of the County Council’s approach and the impacts this approach may have on the viability of development.

Putting aside the issue as to whether the County Council ask for education is valid and correct, the result may nevertheless be that there is a lack of resources from all funding sources to deliver the level of infrastructure to support all needs.

For the District Council, therefore, the issue will come down to the viability of development. If the ask for education contributions is substantially increased, there is a risk that development may become unviable, given the lack of funds from other sources. With respect to the County Council, this is a matter ultimately for the decision making body – in most cases the local planning authority. As part of the preparation of a new Local Plan for Stroud District, covering the period 2020 to 2040, the District Council has commissioned viability consultants to consider the total costs of policies and infrastructure requirements on development and the results of this work will be available later in 2020. If the results of this work indicate that policies and infrastructure requirements will cumulatively lead to

viability issues, the District Council will need to reconsider those requirements and will consult with the County Council as part of this process.

Conclusions

Thank you for the opportunity to comment on the draft revised LDG. Whilst the District Council has raised some concerns regarding the revised LDG, the Council seeks to work with the County Council to resolve these matters and would welcome an early opportunity to discuss how the local authorities within Gloucestershire could work together more effectively to co-ordinate infrastructure planning in the future.

Stroud District Council

June 2020