LAND AT OAKLEY FARM, CHELTENHAM

PROOF OF EVIDENCE ON EDUCATIONAL CONTRIBUTIONS

ON BEHALF OF ROBERT HITCHINS LIMITED

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E. EXECUTIVE SUMMARY

E.1 The following Proof of Evidence considers the need for educational infrastructure necessary in support of the proposed development of up to 250 dwellings.

E.2 All of the arguments between the parties were rehearsed between myself and the LEA at the recent Coombe Hill appeal, wherein the Inspector found in favour of the Appellant. Whilst the LEA has subsequently adjusted its position to reflect some of the findings of the appeal decision, the remaining issues in dispute have all been heard very recently and concluded upon in the favour of the Appellant. The LEA nevertheless seeks to re-run these arguments at this appeal.

<u>The relevant development plan policy or policies, and the relevant sections of any supplementary planning document or supplementary planning guidance</u>

E.3 Paragraph 34 of the NPPF requires that Development Plans set out the levels of educational infrastructure contributions expected from development. This was achieved by Policy INF6 of the JCS which requires that full regard will be paid to the IDP2014 when identifying infrastructure requirements where appropriate. Indeed, as set out in the JCS the whole plan was underpinned by the IDP2014.

E.4 The Inspector in the recent Coombe Hill appeal decision indicated that it may no longer be appropriate to rely upon the pupil product ratios of the IDP2014 given their age. Notwithstanding this the Inspector continued to rely upon those pupil product ratios in accordance with national planning and educational guidance which require that any new approach should:

a. be tested and set out in the adopted Development Plan,

b. not be introduced in supporting evidence base documents as these would not be subject to examination,

c. be subject to viability assessment which takes account of the other policies in the Development Plan to ensure that it does not undermine the deliverability of the Development Plan, and

d. be prepared with the input of local communities and stakeholders.

E.5 The only pupil product ratios that meets any of these requirements are those contained in the IDP2014.

E.6 The Inspector also found the pupil product ratios of the IDP2014 to be more convincing than those advanced by the LEA supported as they were by a sense-check.

E.7 The LEA nevertheless continue to seek to apply a new formulaic approach contrary to the PPG (23-004) and identify pupil product ratios which are significantly greater than those which have arisen in the past, those which are projected to arise by the ONS, or those sought by any neighbouring LEA.

E.8 The effect of the LEA's new formulaic approach would not only be explicitly contrary to all of the relevant guidance, it would also demonstrably and irrevocably:

a. Render the Development Plan inconsistent with national policy as it would no longer set out the levels of infrastructure required contrary to paragraph 34 of the NPPF;

b. Render Policy SP1 out-of-date and would logically require the delivery of a significantly greater number of homes across the plan period, since the County Council's new formulaic approach identifies that a significantly greater number of children will arise as a result of the housing requirement than assumed within the housing requirement. As a proportion of these will form households in the remaining plan period they will therefore require housing in addition to that provided by the housing requirement;

c. Render Policy SP2 out-of-date as the viability assessment prepared in Gloucester City has demonstrated that this would render any development in that area "wholly unviable", such that it would be necessary to adopt a different spatial strategy to achieve the minimum housing requirement, and this again is likely to require a significantly greater number of homes in other parts of the JCS area;

d. Render Policy SD10 out-of-date since residential development would be required in other locations than those facilitated by the application of Policy SD10 in response to the greater resultant housing requirement and the fact that at least some of the proposed supply would be "wholly unviable";

e. Render the evidence base upon which Policy SD11 relies out-of-date as there would be a need for a greater number of larger homes to accommodate all of the additional children that arise from the application of the County Council's new formulaic approach;

f. Render Policy SD12 out-of-date as there would be a greater need for affordable housing owing to the greater economic pressures on larger households, whilst at the same time compromising the viability of providing affordable housing;

g. Render at least a proportion of the supply undeliverable across the JCS area.

E.9 The application of this new formulaic approach would irrevocably undermine the deliverability of the Development Plan contrary to numerous sections of the PPG. Indeed, the Borough Council has outstanding objections to the introduction of a new formulaic approach to this effect.

E.10 The approach of the LEA is therefore not only contrary to national guidance, but it also undermines the Development Plan. If, as the LEA suggest, the pupil product ratios are to be reviewed at a s78 appeal this would as a matter of necessity require that all related policies are simultaneously reviewed.

E.11 It is my professional opinion that in accordance with national guidance the needs for education should be calculated in accordance with the tested infrastructure requirements of the IDP2014.

<u>Quantified evidence of the additional demands on facilities or infrastructure which are likely to arise from the proposed development</u>

E.12 The LEA considers the demand for primary and secondary school infrastructure in aggregate across a range of schools including some beyond the school place planning area, contrary to:

a. the PPG (23b-008) and the School Capacity Survey Forecast Guidance both of which require that this is considered across school place planning areas.

b. the Coombe Hill appeal decision, wherein the Inspector agreed with my approach and assessed the demand in aggregate across the school place

planning area and for all individual schools that could reasonably accommodate pupils arising within the proposed development.

E.13 The LEA has published forecasts of the demand for primary and secondary school places. Every previous forecast of the LEA has demonstrably over-estimated the number of pupils that have actually arisen as recognised in the Coombe Hill appeal decision. Nevertheless, in the absence of any alternative for the school place planning areas, the LEA's forecasts have been used. It should however be acknowledged that this is likely to over-estimate the demand for school places.

E.14 As set out above, the additional demand arising from pupils within the proposed development should be calculated using tested pupil product ratios referenced by the JCS. I therefore apply the pupil product ratios of the IDP2014 in accordance with the approach of the Inspector in the Coombe Hill appeal decision.

E.15 However, even if it is concluded that the JCS is inconsistent with national policy as it does not set out the infrastructure required, and it is concluded that a new pupil product ratio should be introduced without being subject to examination or consultation and without a viability assessment contrary to national guidance, then the new formulaic approach should be determined in accordance with national guidance.

E.16 The new formulaic approach of the LEA does not represent the most recent evidence of pupil yields as the NEMS Market Research Survey[1] was undertaken more recently. Additionally, the Inspector at Coombe Hill found the LEA's approach to be mistaken as contrary to the guidance of the DfE they do not take account of the fact that many pupils would not be new to the school system as they are already educated in Gloucestershire, and they assume that the backfilling of housing would place an equal demand on school places without taking any account of the fact that household sizes are falling. The LEA have however decided to disregard these findings and continue to assume that every pupil in a new build dwelling places an additional demand on school places. As a result, the pupil product ratios of the LEA are fundamentally flawed.

[1] Commissioned on behalf of the Appellant.

E.17 Therefore, even if national guidance is to be departed from contrary to my professional opinion, the most recent and the only credible candidate for the pupil product ratios are those identified by the NEMS Market Research Survey.

Details of existing facilities or infrastructure, and up-to-date quantified evidence of the extent to which they are able or unable to meet those additional demands

E.18 According to the LEA's over-inflated forecasts, from 2024/25 onwards there will be:

a. At least 104 available primary school places in aggregate across the primary school planning area,

b. At least 124 available primary school places in aggregate across the primary school planning area and the additional schools beyond the planning area that are within a reasonable travel distance of the site (i.e. using the approach of the LEA),

c. At least 85 available primary school places in the joint closest primary school to the appeal site,

d. A minimal number of available secondary school places across any area or school,

e. Notwithstanding that there will be no available sixth form places in aggregate across the secondary school planning area, there will be at least 94 available places within schools in the secondary school planning area.

E.19 The LEA however suggest that a school has no available places when 5% of places are available contrary to the recommendations of the Audit Commission and contrary to the explicit findings of the Coombe Hill appeal decision. Even on this incorrect basis, there will be:

a. At least 40 available primary school places in aggregate across the primary school planning area,

b. Notwithstanding that there will be no available primary school places in aggregate across the primary school planning area and the additional schools beyond the planning area that are within a reasonable travel

distance of the site (i.e. using the approach of the LEA), there will be at least 68 available places within schools in the planning area.

c. No available secondary school places across any area or school,

d. Notwithstanding that there will be no available sixth form places in aggregate across the secondary school planning area or the area used by the LEA, there will be at least 59 available places within schools in the secondary school planning area.

E.20 However, owing to the LEA's use of the aggregated capacity across a grouping of schools that does not reflect the planning area contrary to national guidance and to the approach of the Coombe Hill Inspector, in combination with the application of a 95% occupancy limit contrary to the recommendations of the Audit Commission and to the findings of the Coombe Hill Inspector, the LEA suggest that there is no available capacity to accommodate any of the pupils arising. This is surprising to say the least, given that their own forecasts identify a significant number of available places across the planning area and/or in individual schools.

E.21 In reality, there are more than sufficient primary school places to accommodate the proposed development regardless of the pupil product ratio applied and regardless of the area of assessment, providing that the recommendations of the Audit Commission and the explicit findings of the Coombe Hill Inspector are adopted such that a school is not considered to be full when it has 5% of places unoccupied.

E.22 It is agreed that there are no available secondary school places[2], such that it is appropriate for contributions to be provided to meet the full needs arising from the proposed development, which would be a need for an additional 27.3 places according to the IDP2014.

E.23 In terms of sixth form places, there will be more than sufficient capacity in individual schools to accommodate the needs arising from the proposed development regardless of the pupil product ratio or the application of a 95% occupancy limit. Given that there are sufficient places, it would not be necessary for additional places

[2] Or at least that the number is so small and reliant upon pupils accessing schools with selective admissions policies.

to be provided to make the development acceptable in planning terms and the requested contributions of the LEA are not fairly or reasonably related in scale.

The methodology for calculating any financial contribution necessary to improve existing facilities or infrastructure, or provide new facilities or infrastructure, to meet the additional demands

E.24 The LEA has identified cost multipliers which are accepted. Based on the need for 27.3 secondary school places at a cost of £19,490 per place, there is a need for financial contributions of £533,049.

Details of facilities or infrastructure on which any financial contribution will be spent

E.25 The LEA has not identified any project upon which the requested contributions will be spent but it is trusted that this will be forthcoming throughout the course of the appeal.

1. BACKGROUND

1.1 My name is Neil Tiley. I am an associate member of the Royal Town Planning Institute and have worked in the private sector for almost seven years. I currently hold the position of Director having previously been an Associate Director and before that a Principal Planner at Pegasus Group.

1.2 Prior to this I was employed in Local Government for 11 years, including as a Planning Manager at Wiltshire Council for 5 years; as a Senior Planner at Wiltshire LEA for 2 years; as the Demographer at Wiltshire LEA for 2 years; and as a Senior Research Assistant responsible for monitoring and analysing housing completions and undertaking demographic modelling for 2 years.

1.3 I have a wealth of experience in demographic modelling having been responsible for preparing demographic and household projections throughout my time at Wiltshire LEA and Wiltshire Council and then critiquing household projections in support of Local Plan examination during my time with Pegasus Group. In my time with the LEA I also acted as Census manager responsible for processing and explaining the results of the then 2001 Census.

1.4 I have over 13 years' experience of town planning, covering a wide range of disciplines but primarily focused on the preparation of detailed evidence in support of Local Plans, planning applications and appeals. I continue to regularly act as an expert witness in support of such appeals. I have also provided demographic evidence in support of a number of negotiations on planning obligations and recently to the s78 appeal at Coombe Hill in Gloucestershire in respect of educational need.

1.5 The evidence which I have prepared and provide for this appeal (APP/B1605/W/21/3273053) is true and has been prepared and is given in accordance with the guidance of my professional institution irrespective of by whom I am instructed and I confirm that the opinions expressed are my true and professional opinions.

2. INTRODUCTION

2.1 This Proof of Evidence relates to a planning appeal for a development of up to 250 residential dwellings including provision of associated infrastructure, ancillary facilities, open space and landscaping, demolition of existing buildings and formation of new vehicular access from Harp Hill at Oakley Farm, Priors Road, Cheltenham, Gloucestershire.

Putative Reasons for Refusal

2.2 The Borough Council have identified the absence of a s106 agreement which provides financial contributions towards education as a putative reason for refusal. The following Proof of Evidence considers the necessity for and scale of such contributions.

Responses to the planning application

2.3 The planning application subject to this appeal was submitted to the Borough Council on 22nd July 2020. The LEA has requested financial contributions towards educational infrastructure in a number of consultation responses, and responses have been prepared on behalf of the Appellant as follows:

- The LEA's initial response to this application on 6th August 2020 (CDB4A) requested a contribution of £4,285,983 to address the claimed educational needs arising from the proposed development of up to 250 homes (i.e. £17,143.93 per home).
- I prepared and submitted an Educational Needs Assessment (CDA20) on behalf of the Appellant in response. This document identifies that the request by the LEA is inconsistent with the Regulations and national guidance in a number of regards.
- The LEA then provided a partial draft response on 18th November 2020 (CDB4B) with a revised request for £4,055,863 (i.e. £16,223.45 per home) but this did not address the majority of concerns raised on behalf of the Appellant.
- I responded to this on behalf of the Appellant in a letter in late December 2020 (CDA21).

- The LEA then provided a note on 10th February 2021 (CDB4C) but this still does not address the majority of the concerns raised.

- Some clarity on the LEA's position in respect of the identified concerns was then forthcoming through the Coombe Hill appeal which sat in March and April 2021.

- The LEA then provided a complete version of their previous response of 16th September 2020 in May 2021 (CDB4D and CDB4E) although this again does not address the majority of the issues of concern.

2.4 Thankfully, the Coombe Hill appeal decision (CDK2[3]) was published at the start of June 2021, and this does address the issues of concern and provide clarity at least insofar as was necessary for the purposes of that appeal. This appeal decision found that the LEA's approach departed from the relevant guidance in numerous regards and supported the calculations undertaken by myself on behalf of the Appellant. This was a decision which determined a number of specific issues between the LEA and one of the same Appellants. I am advised that the principle of res judicata applies to planning inquiries which precludes relitigating issues as between the same parties and that therefore the starting point should be the Inspector's conclusions in that appeal.

2.5 In response, the LEA has now, to an extent recognised the deficiencies in their previous approach, and have published an Interim Position Statement (CDG1) purporting to address some but by no means all of these issues. The LEA has also published an Addendum to their Statement of Case (CDC4B) which adopts the approach of the Interim Position Statement and now requests a contribution of £2,626,013.75 (i.e. £10,504.06 per home).

Matters in dispute

2.6 In light of my understanding of the revised position of the LEA, the issues in dispute appear to have narrowed and can now be summarised as:

(i) Whether there will be some available capacity to accommodate some of the pupils arising from the proposed development?

[3] The appeal decision did not have paragraph numbers and so Pegasus Group has added these to the appeal decision and this is provided at CDK2 for ease of reference.

(ii) How should the number of pupils arising from a proposed development should be calculated?

2.7 However, until this is confirmed in a signed Statement of Common Ground, I briefly summarise the position on all relevant matters within this Proof of Evidence.

The structure of this Proof of Evidence

2.8 I firstly set out the relevant Regulations, policy and guidance which I believe are material to securing s106 planning obligations towards education in Cheltenham Borough. I then structure the remainder of this Proof of Evidence in accordance with the evidential requirements set out in paragraph N.3.3 of Annexe N to the Planning Inspectorate's Procedural Guide as follows. Those which are emboldened are those which it appears may not be agreed:

- The relevant development plan policies and the relevant sections of supplementary planning documents/guidance:
  - The infrastructure policies of the adopted Development Plan (section 4); and
  - **Whether in the light of material considerations it is appropriate to depart from the operative policies of the Council (section 5).**
- Quantified evidence of the additional demands on facilities or infrastructure which are likely to arise from the proposed development:
  - **The change in demand that would arise without the proposed development (section 6); and**
  - **The pupil yields to apply to new build development (section 7).**
- Details of existing facilities or infrastructure, and up-to-date, quantified evidence of the extent to which they are able or unable to meet those additional demands (section 8).
- The methodology for calculating any financial contribution necessary to improve existing facilities or infrastructure, or provide new facilities or infrastructure, to meet the additional demands (section 9).

- Details of the facilities or infrastructure on which any financial contribution will be spent (section 10).

3. POLICY CONTEXT

National Policy Context

CIL Regulations

3.1 Regulation 122(2) identifies that a planning obligation under s106 of the Town and Country Planning Act 1990 may only constitute a reason for granting planning permission if:

> **"...the obligation is -**
>
> **a) necessary to make the development acceptable in planning terms;**
>
> **b) directly related to the development; and**
>
> **c) fairly and reasonably related in scale and kind to the development."**

National Planning Policy Framework (NPPF)

3.2 Paragraph 58 states of the NPPF states inter alia:

> **"Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable."**

3.3 This indicates that the contributions sought should accord with the up-to-date policies of the Council.

Planning Practice Guidance (PPG)

3.4 The PPG provides a wealth of guidance on planning obligations which will be referred to as appropriate throughout this Proof of Evidence.

Securing Developer Contributions for Education, Department for Education, November 2019 (CDG2)

3.5 The guidance alluded to in the PPG (23b-008) is contained in this document. It draws upon good practice and is intended to assist Local Education Authorities establish a robust and consistent evidence base in support of the collection of developer contributions. This will be referred to as appropriate throughout this Proof of Evidence.

School Capacity Survey 2021: Guidance to forecasting pupil numbers in school place planning, Department for Education, April 2021 (CDG3)

3.6 This document provides some guidance on forecasting future pupil numbers to enable robust and effective pupil place planning. It suggests a number of parameters for assessing future pupil numbers which will be referred to as appropriate.

Local Policy Context

The Development Plan and supporting evidence

3.7 The Development Plan in Cheltenham Borough includes the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) which was adopted in December 2017; and the Cheltenham Plan (CP) which was adopted in July 2020. These provide the Development Plan policies on infrastructure which will be referred to as appropriate within this Proof of Evidence.

Community Infrastructure Levy and supporting evidence

3.8 Cheltenham Borough Council introduced a CIL Charging Schedule with effect from 1st January 2019. The evidence base prepared in support of the examination and the CIL Charging Schedule will be referred to as appropriate within this Proof of Evidence.

School Places Strategy (CDG4)

3.9 The LEA has published forecasts of the capacity of primary and secondary schools and of the number of primary and secondary school pupils across school place planning areas to inform effective commissioning of additional school places. These forecasts within the School Places Strategy (SPS) provide an indication of the future available capacity to accommodate additional pupils.

The Cognisant Study

3.10 The LEA commissioned Rapleys to undertake a survey of two new build developments in Gloucestershire to establish pupil product ratios. This was subject to numerous objections including owing to the limited sample of sites considered.

3.11 In response, the LEA, Crest Nicholson, Taylor Wimpey and Redrow jointly commissioned Cognisant to survey five additional developments. A Memorandum of Understanding was agreed between these partners on the basis that the final report needed to be 'signed off' by all four parties. The resultant Cognisant Study (CDG5) has not however been signed off by all four parties. To the contrary, Crest Strategic, Redrow Homes and Taylor Wimpey have each raised significant objections to the way in which the findings of the Cognisant Study are being used (CDE11A-D). Indeed, the way in which the LEA use these ratios is inconsistent with the relevant guidance in numerous regards as set out within this Proof of Evidence.

3.12 Unsurprisingly, as a result of these departures from the relevant guidance, the Cognisant Study is the subject of widespread objections as referenced in paragraph 8 of the response of Forest of Dean District Council and the fourth and fifth paragraphs on the third page of the response of Stroud District Council to the emerging Local Development Guide (CDE12). Forest of Dean District Council correctly identify in paragraphs 8 and 9 that it is necessary for another survey to resolve these issues.

Adopted Local Development Guide

3.13 The LEA nevertheless did not commission further work, but instead adopted a document entitled Local Development Guide (LDG) in March 2021 (CDE13) which includes the resultant pupil product ratios.

3.14 The LDG was subject to consultation in spring/summer 2020 to which substantial objections were submitted on behalf of a wide range of stakeholders including the District/Borough/City Councils (CDE12) including because of the numerous departures from relevant guidance. In particular, Cheltenham Borough Council objected to the proposed new approach owing to the fact that its impacts on viability had not been tested.

3.15 The LEA revised the LDG in numerous regards prior to adoption, but these revisions were not subject to further consultation and notwithstanding these revisions (and in some cases because of these revisions), the LDG remains inconsistent with relevant guidance. The LDG was then adopted without being subject to scrutiny through an examination. The fact that the LDG is inconsistent with numerous parts of the relevant guidance has been confirmed in the recent Coombe Hill appeal decision.

3.16 The LDG confirms that it is not a Development Plan Document nor a Supplementary Planning Document, but is instead claimed by the County Council to be a material consideration in the determination of planning applications. Prior to its adoption a pre-action protocol exchange of correspondence took place resulting in the LEA unequivocally conceding that the LDG was not to be treated at a planning policy document. As a result of this agreement in respect of its status (i.e. not policy) it was not then subject to a judicial review, and therefore it can be no more than a material consideration which should not be treated as policy[4].

3.17 The outstanding objections including those of the District/Borough/City Councils remain unresolved, the adopted document is contrary to relevant guidance and it is agreed that it does not contain policies which are intended to guide the determination of applications. The status of this document and the weight to be afforded to this material consideration must be viewed in this context as no more than limited.

Coombe Hill Appeal Decision (CDK2)

3.18 The LEA previously made requests for contributions towards educational infrastructure in respect of a proposed development at Coombe Hill on the basis of the LDG. This was the subject of a s78 appeal at which I acted as expert witness in March 2021. The appeal decision has recently been published and this supports my position on numerous matters that will be material to the current appeal including that:

- the pupil product ratios previously applied by the LEA were "startlingly high" (paragraph 102);
- it would be wrong to ignore the effect of vacant dwellings as the LEA did (paragraph 103), although the LEA has now sought to address this in the IPS;
- the survey of the LEA omits any consideration of pupils that do not attend LEA funded schools and therefore further exaggerates the product ratios (paragraphs 106-107), which the LEA has sought to address in the IPS[5];

[4] According to Regulation 5(a)(iv) of the Town and Country Planning (Local Planning) (England) Regulations 2012.
[5] Although I consider these adjustments to be insufficient.

- it is correct to take account of effects along the housing market chain which has not been undertaken by the LEA (paragraph 108);
- the LEA's forecasts overestimate the number of pupils arising (paragraph 109);
- for all of the above reasons, the LEA's calculations of the number of pupils arising from a development were not convincing and those prepared by myself were more convincing (paragraph 109);
- the consideration of the capacity of schools should not be limited to individual schools including because this would not reflect parental choice (paragraphs 110-114), although the LEA has now addressed this in the IPS;
- a school should not be considered to be at capacity when it is 95% occupied (paragraph 115); and
- accordingly there was more than sufficient capacity in every phase of education to accommodate the proposed development at Coombe Hill without any developer contributions (paragraph 120).

Interim Position Statement

3.19 In light of the recent Coombe Hill appeal decision, the LEA has published an Interim Position Statement (IPS) to address some but not all of the issues with the LDG. This too has not been subject to consultation or to any scrutiny through examination.

3.20 The IPS adjusts the pupil product ratios identified by the Cognisant Study and the IPS also adjusts the area of assessment of the LDG.

3.21 However, the IPS does not make any adjustment to the approach of the LDG in response to the Inspectors findings in the Coombe Hill decision that:

- capacity does not mean 95%, or
- many pupils within new developments will not be new to local schools.

THE RELEVANT DEVELOPMENT PLAN POLICY OR POLICIES, AND THE RELEVANT SECTIONS OF ANY SUPPLEMENTARY PLANNING DOCUMENT OR SUPPLEMENTARY PLANNING GUIDANCE

4. THE OPERATION OF THE INFRASTRUCTURE POLICIES OF THE ADOPTED DEVELOPMENT PLAN

4.1 Paragraph 34 of the NPPF identifies that:

> **"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."**

4.2 I therefore review the adopted Development Plan before proceeding to consider the material considerations that weigh in favour of determining the application in accordance with or contrary to the Development Plan in subsequent sections.

The Development Plan

4.3 The JCS was supported by an Infrastructure Delivery Plan (IDP) which was published in 2014. Throughout the JCS, the infrastructure needs are identified as being those of the IDP including in:

- Paragraph 5.1.5 which identifies that the infrastructure required to support the levels of housing and employment growth in the JCS is assessed in the IDP and that this identifies the potential for developer contributions to address infrastructure requirements;

- Policy INF4(2) which identifies that where new residential development creates a need for additional community facilities, this will be addressed either on-site or through contributions[6] and paragraph 5.5.2 which confirms that in accordance with the IDP, this policy includes the need for educational infrastructure.

[6] It is important to distinguish at this point that in accordance with the PPG (23b-001), contributions can include both s106 planning obligations and CIL.

- Paragraph 5.5.6 which again confirms that through the implementation of the IDP, the social and community infrastructure needs of existing and future communities will be met.

- Policy INF6(1) which similarly relies upon the IDP, identifying that the infrastructure requirements that arise from development proposals must have full regard to the IDP.

- Paragraph 5.7.2 which yet again confirms that the IDP underpins and accompanies the JCS, that it sets out the infrastructure that is required, and that developers are required to assist in the implementation of the IDP.

4.4 It is therefore clear throughout the JCS that the IDP provides the basis upon which infrastructure needs should be determined. Indeed, in order to accord with Policy INF6 of the Development Plan it is necessary to have full regard to the JCS IDP of 2014 where appropriate. As the IDP provides the pupil product ratios that informed the JCS, the IDP was clearly appropriate for the purpose of identifying educational needs at the point of adoption.

4.5 As my colleague Mr Hutchison explains in more detail, the explicit intention at the point of adoption was that the JCS would have been immediately reviewed, which would have included an updated IDP. In fact, such a review has only just begun, 7 years later, so one of the reasons why the IDP2014 has not been kept up to date is as a result of the failure of the plan system locally.

4.6 Paragraph 5.7.5 of the JCS also refers to the Local Developer Guide of 2013[7]. This document presumably identified matters relevant to the determination of infrastructure requirements which are not provided in the IDP potentially including for example the area of assessment. However, the Local Developer Guide of 2013 pre-dates the IDP of 2014 and so cannot have superseded those matters which are detailed in the IDP including for example the pupil product ratios. Similarly, this supporting text cannot supersede the explicit policy wording which requires that "full regard" is had where appropriate to the IDP (rather than the Local Developer Guide).

[7] Unfortunately this document no longer appears to be publicly available.

4.7 Paragraph 17.4 of the CP identifies that insofar as infrastructure is concerned, the policies complement rather than replace or amend those of the JCS and as such Policy INF6 remains the operative policy for determining the level of infrastructure required. Paragraph 17.9 then confirms that the level of infrastructure required will be based on recognised formulae and benchmarks. The only such recognised formulae for calculating the pupils arising from a proposed development are those identified in the IDP2014.

4.8 The Development Plan therefore provided a clear policy requirement for determining developer contributions that can be accurately accounted for in assessing the price paid for land in accordance with the PPG (23b-004). The JCS also provided, by reference to the IDP of 2014, the rates by which contributions towards education expected from development are to be calculated as required by the PPG (23b-008).

4.9 The infrastructure needs identified by the IDP of 2014 were considered throughout the examination of the JCS. This included a consideration of the viability of the combined policy requirements in light of these identified infrastructure requirements as required by the PPG (23b-004)[8], to ensure that the cumulative costs of all relevant policies were realistic as required by the PPG (23b-005).

4.10 The request of the LEA however does not accord with the IDP2014 insofar as educational infrastructure is concerned, as the LEA consider that it is no longer appropriate to rely upon the IDP2014. If this approach is supported, the result would be that the JCS no longer sets out the contributions expected from development, nor the levels of infrastructure required contrary to paragraph 34 of the NPPF. The LEA's approach therefore assumes that the Development Plan does not set out the levels of infrastructure required contrary to paragraph 34 of the NPPF. The consequence of the LEA's approach is that the Development Plan would be inconsistent with national policy such that it would be out-of-date. It remains unclear whether the Borough Council agree with this position.

4.11 In paragraph 101 of the recent Coombe Hill appeal decision, the Inspector agreed with the LEA that it would no longer be appropriate to rely upon the IDP2014 as

[8] As set out in the response of the Cheltenham Borough Council to the then emerging LDG (CDE12).

more recent pupil product ratios are available[9]. This would leave a policy vacuum for determining educational needs[10] which would need to be filled by pupil product ratios which would have to be determined in accordance with national policy and guidance. Any pupil product ratios that are significantly different from those relied upon in the JCS would obviously also have implications for other policies of the Development Plan which would also need to be taken into account.

4.12 Notwithstanding the fact that the Inspector in the Coombe Hill appeal decision considered that it was no longer appropriate to use the pupil product ratios of the IDP2014, the Inspector proceeded to go on to apply national policy and guidance and found in paragraph 109 that my calculations which were based upon the pupil product ratios of the IDP2014 were more convincing supported as they were underpinned by a sense check.

4.13 I have some sympathy with the LEA's position that as the pupil product ratios are based on a standard which originates from 2007[11], they may no longer be appropriate. However, pupil product ratios tend to remain broadly static unless there has been a significant change in the number of births within the last 18 years and therefore regardless of the fact that the pupil product ratios were prepared some time ago, they are likely to remain of relevance, if only as the starting point[12] until a better, properly prepared dataset has been produced and tested. Furthermore, as set out subsequently, if pupil product ratios have changed significantly in the interim, national guidance is unequivocal that these would need to be robustly tested at examination alongside other policies to ensure that the Development Plan is deliverable.

[9] The Inspector did not however engage with the fact that this is contrary to national policy and numerous parts of national guidance as addressed in the subsequent section.
[10] And all infrastructure needs.
[11] As set out in footnote 11 of the IDP2014 (CDE8).
[12] In Gloucestershire, the number of births increased from 2005 to 2016 but have subsequently reduced to the reflect the number of births in the period 2000-05. The bulge in the younger population that has resulted from the increase are all now aged over 4 and so will already been in either primary, secondary or sixth form education. The subsequent reduction in birth rates from 2016 onwards means that the number of pupils coming into the school places is likely to be lower than the number leaving such that if anything the pupil product ratios are likely to be lower than they have been in the recent past and lower than they were in the period 2002-07 which presumably informed the pupil product ratios of the IDP2014.

4.14 In summary, the Coombe Hill Inspector's approach indicates that the pupil product ratios of the IDP2014 upon which Policy INF6 rely is no longer appropriate such that the Development Plan no longer sets out the appropriate levels of educational infrastructure. The result of this would be that the Development Plan does not comply with paragraph 34 of the NPPF. Nevertheless, having applied national policy and guidance, the Inspector found that my work, which was based upon assessing the pupil product ratios of the IDP2014 to be robust for the purposes of determining educational needs in preference to the LEAs which was founded upon the deeply flawed LDG.

The Infrastructure Delivery Plan 2014

4.15 The Infrastructure Delivery Plan (IDP2014) (CDE8) prepared in support of the JCS to which the supporting text and Policy INF6 refer was published in August 2014. This provides the formulaic approaches[13] to calculating infrastructure needs upon which the JCS was examined and adopted. As set out at the bottom of page 6, the educational yields which inform the IDP2014 were provided by the LEA and as set out on pages 75, 76, 81 and 83 they were correct as of April 2014.

4.16 The pupil yields of the IDP2014 for qualifying dwellings are set out on page 75. The LEA identify in both the LDG and IPS that 1 bedroom properties are not qualifying dwellings. It is understood that it has been agreed with Cheltenham Borough Council that 24 of the proposed homes will be 1 bedroom properties and therefore according to the guidance of the LEA will not qualify for contributions. I appreciate that this is newly arising information which has not been taken into account in the request of the LEA. I however take this into account through the remainder of this Proof of Evidence and adjust the request of the LEA accordingly. The pupils yields of the IDP2014 are set out and compared with the ratios now used by the LEA in Table 4.1 below.

[13] The fact that these approaches were formulaic is confirmed on pages 74, 76, 81, 83 and 87 of the IDP2014.

Table 4.1 – a comparison of the yields applied by the LEA with those referenced in the adopted Development Plan

	Yield per 100 qualifying homes		Yield from 226 qualifying homes		
	IDP2014	IPS	IDP2014	IPS	% difference
Primary	27.76	38.5	62.7	87.0	139%
Secondary and sixth-form	13.87	23.0	31.3	52.0	166%
Total	41.63	61.5	94.1	139.0	148%

4.17 The request from the LEA is therefore inconsistent with the basis upon which the deliverability of the Development Plan was tested. The product ratios of the LDG were twice as high as those in the IDP2014 and even with the LEA's adjustments in the IPS they still remain a whopping 48% greater. As a result, the Coombe Hill Inspector found the pupil product ratios of the LEA to be "startlingly high" and I would suggest that even with the adjustments of the IPS this remains the case. This should have led the LEA to undertake a sense check – if the figures are now so far in excess of the previous PPRs which are broadly in line with nearby LEAs then unless there was an obvious reason for that radical change – then they are patently not robust and need revisiting.

4.18 That was essentially the point that was debated in the Coombe Hill inquiry – and yet the LEA steadfastly maintained their position (with some force) despite the most egregious of errors – e.g. that no house in the new development would be unoccupied, and that no child in the new development will already be at school in Gloucestershire or would go to a non-state school. This failure to properly sense check remains an obvious concern despite the LEA being forced to recognise some of these points.

5. WHETHER IN THE LIGHT OF MATERIAL CONSIDERATIONS IT IS APPROPRIATE TO DEPART FROM THE OPERATIVE POLICIES OF THE COUNCIL

Is it appropriate to introduce a new formulaic approach?

5.1 The Inspector considered in the Coombe Hill appeal decision, that the pupil product ratios of the IDP2014 are no longer appropriate for determining educational needs, with the obvious inference that they ought to have been updated through the plan led system some years ago.

5.2 This would leave a policy vacuum that would need to be filled based on pupil product ratios prepared in accordance with national policy and guidance. The Inspector in the Coombe Hill appeal decision undertook this exercise and found that my work based upon the pupil product ratios of the IDP2014 were still more convincing than those of the LEA. I nevertheless understand that the LEA do not agree and once again seek to introduce the different new formulaic approach of the IPS for the purposes of this appeal.

5.3 The introduction of any new formulaic approach, such as that proposed by the LEA, to calculating educational needs on an ad-hoc basis at a s78 appeal rather than through a comprehensive review of Development Plan policies would be explicitly contrary to national guidance as described below.

5.4 The PPG (23b-004) states inter alia:

> **"Policies for planning obligations should be set out in plans and examined in public. Policy requirements should be clear so that they can be accurately accounted for in the price paid for land.**
>
> **Such policies should be informed by evidence of infrastructure and affordable housing need, and a proportionate assessment of viability…**
>
> **…It is not appropriate for plan-makers to set out new formulaic approaches to planning obligations in supplementary planning documents or supporting evidence base documents, as these would not be subject to examination. Whilst standardised or formulaic evidence may have informed the identification of needs and costs and the setting of plan policies, the decision maker must still ensure that each planning obligation sought meets the statutory tests set out in regulation 122. This means that if a formulaic approach to developer contributions is adopted, the levy can be used to address the cumulative impact of infrastructure in an area, while planning**

> **obligations will be appropriate for funding a project that is directly related to that specific development.**
>
> **Planning obligations assist in mitigating the impact of development which benefits local communities and supports the provision of local infrastructure. Local communities should be involved in the setting of policies for contributions expected from development." (emphasis added)**

5.5 The introduction of the new formulaic approach of the LEA is therefore contrary to national guidance.

5.6 Indeed, the introduction of an untested new formulaic approach through the Development Management process rather than the Plan Making process, without taking account of the viability of the Development Plan as a whole and without the evidential basis of the new formulaic approach having been subject to examination is contrary to:

- Paragraph 34 of the NPPF which requires that plans should set out the contributions expected from development including setting out the levels of other infrastructure required including educational infrastructure.
- The PPG (23b-003) which requires that plan-makers rather than decision-makers consider the combined impact of requests for planning obligations so that they do not undermine the deliverability of the Development Plan.
- The PPG (23b-004) which requires that policies for planning obligations are clearly set out in plans and examined in public.
- The PPG (23b-004), (23b-005) and (23b-011) which require that policies should be informed by evidence of infrastructure need.
- The PPG (23b-004), (23b-005) and (23b-011) which require that policies are informed by a proportionate assessment of viability that takes into account all relevant policies, and local and national standards including the cost implications of CIL and planning obligations.

- The PPG (23b-004) which requires that local communities should be involved in the setting of policies[14] for contributions.

- The PPG (23b-005) which requires that the cumulative cost of all relevant policies will not undermine the deliverability of the plan.

- The PPG (23b-008) which requires that plans should set out the contributions expected from development including the contributions needed for education.

- The PPG (23b-013) which requires that plans should set out policies of the contributions expected from development to enable fair and open testing of the policies at examination.

- The PPG (23b-013) which requires that local communities, landowners, developers, local (and national where appropriate) infrastructure and affordable housing providers and operators should be involved in the setting of policies for the contributions expected from development.

- Securing Developer Contributions for Education which requires at the bottom of page 4 that developer contributions towards new school places should be based on up-to-date evidence from recent housing development which should then be subject to viability assessment when strategic plans are prepared[15].

- Paragraph 19 of Securing Developer Contributions for Education which requires that the contributions towards educational infrastructure should be set out in Local Plans.

5.7 The LEA has also been reminded of this necessity for policies to be reviewed cumulatively, rather than in isolation, in the response of Forest of Dean District

[14] Noting that whilst the Local Development Guide of 2021 was subject to consultation, this does not form a Local Development Document and does not therefore contain policies, notwithstanding the fact that it remains subject to numerous and significant unresolved objections and departs from national guidance.
[15] It should be noted that the Inspector in the Coombe Hill appeal decision did not address this later qualification which requires such ratios to be subject to testing at examination and accordingly did not apply the DfE guidance in full.

Council (CDE12) to the then emerging Local Development Guide of 2021 which states:

> **"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 polices are deliverable."**

5.8 Similarly, Cheltenham Borough Council reminded the LEA of this in their response which states inter alia:

> **"The LDG acknowledges the challenges 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 LEA 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…**
>
> **…I am concerned that the approach proposed in the LDG may render schemes unviable…"**

5.9 As I understand matters, the Borough Council has not even been consulted on the new formulaic approach of the IPS which the LEA are now inviting the Inspector to accept.

5.10 Indeed, I am not aware of any other part of national guidance that is so clear and repetitive as this. The new formulaic approach which is now promulgated by the LEA however:

- Is not set out in the policies of the adopted Development Plan and so is contrary to the Development Plan, paragraph 34 of the NPPF, the PPG (23b-004), (23b-008), and (23b-013);
- Has not been fairly and openly tested at examination contrary to the PPG (23b-004), (23b-013) and to Securing Developer Contributions for Education;
- Is based on infrastructure requirements which have not been tested at examination and which have not been prepared in accordance with the

relevant guidance (as discussed subsequently) as would have become apparent at an examination, contrary to the PPG (23b-004), (23b-005), and (23b-011);

- Does not take account of the viability of all relevant policies and standards (including the CIL rate) contrary to the PPG (23b-003), (23b-004), (23b-005), (23b-011), and to Securing Developer Contributions for Education;
- Has not been prepared with the input of local communities contrary to the PPG (23b-004) and (23b-013);
- Demonstrably undermines the deliverability of the Development Plan contrary to paragraph 34 of the NPPF, the PPG (23b-003), and (23b-005).

What would be the effects of introducing a new formulaic approach?

5.11 If such a new formulaic approach is considered to represent a determinative material consideration capable of superseding the pupil product ratios of the Development Plan, contrary to national policy and national guidance such that it should be applied, it would also be necessary to consider the effects of this[16] which would irrevocably undermine the operation of the Development Plan as described below.

5.12 What the LEA ought to have done is to found its work on the IDP2014 (which has been endorsed by the examination and to which policy requires one to have full regard) and then to provide a robust evidence base engaging relevant stakeholders and promoted this through the Development Plan led process. Instead the LEA have sought to "go it alone" and firstly adopted the LDG in the teeth of extensive and detailed objection from its commissioning partners and other LPAs, and has then adopted an IPS which hasn't even been consulted upon (presumably because the LEA would know that it would have been extensively criticised). It too cannot comprise policy and it too does not address the fundamental concerns that the LEA are promoting guidance which is out of step with the only evidence which has been properly scrutinised.

[16] In addition to the fact that the Development Plan would no longer set out the levels of educational infrastructure required in accordance with paragraph 34 of the NPPF such that the JCS as a whole would be rendered out-of-date.

Policy INF6 and the CIL Charging Schedule

5.13 As set out in paragraph 57 of the NPPF, providing the appeal proposals provide contributions that accord with up-to-date policies of the Council, including Policy INF6 of the JCS they should be approved. If, however contrary to the PPG, a new formulaic approach is introduced as advocated by the LEA, then this would have the effect of rendering the infrastructure policies of the JCS (particularly Policy INF6) and the CIL Charging Schedule of the Borough Council out-of-date.

5.14 The new formulaic approach of the LEA would also render numerous other policies of the JCS out-of-date, not only in Cheltenham Borough but across the entire plan area as briefly described below. I do not consider that such a new formulaic should be introduced on an ad-hoc basis at appeal as this would undermine the operation of numerous policies of the Development Plan.

Policy SP1

5.15 As set out in paragraph 3.1.12 of the JCS, the housing requirement was informed by the household formation rates of the 2012 based official projections. These projections project that the average number of primary, secondary and sixth form aged children per 100 households will reduce from 36.6 in 2020 to 36.3 in 2031 reflecting the ageing of the population. It follows that the average number of net additional children per net additional 100 households that arise from 2020 onwards must be below 36.6. Indeed, the net change in children from every 100 additional households assumed within these projections can be calculated and this is presented in Table 5.1 below.

Table 5.1 – the child product ratios per 100 households of the projections which informed the JCS compared with the pupil product ratios per 100 dwellings assumed by the LEA

Phase of education	Child product ratio per household of the 2012 projections[17]	Pupil product ratio per dwelling assumed by the LEA
Primary school	5.1	38.5
Secondary school	17.2	17
Sixth form	10.6	6
Total	**32.9**	**61.5**

[17] The latest 2018 based projections indicate that the net change child product ratios will be even lower at -8.6 primary school aged children, 10.8 secondary school aged children, and 11.0 sixth form aged children per 100 households or 13.2 in total.

5.16 As identified in Table 8.1, the new formulaic approach of the LEA produces pupil product ratios per dwelling that are significantly greater than the child product ratios per household of the projections that have informed the housing requirement of the JCS. Indeed, the LEA suggest that 100 dwellings will accommodate 61.5 pupils as compared to the evidence base of the JCS which suggests that 100 households will only accommodate 32.9 children. The LEA's rates are therefore circa twice as great as that assumed within the housing requirement. However there is no evidence at all that this is the case based on any information arising out of the ONS, and if this was the position then the housing requirement of the adopted plan, and the standard methodology are grossly inadequate to meet local needs – a point which is not accepted by the Borough Council in considering housing need.

5.17 To illustrate the extent of this departure, there is a residual housing requirement across the JCS plan area for 21,581 dwellings[18] which would accommodate 20,767 households[19]. In addition to the 150,204 households projected in 2020 this would provide for 170,971 households by 2031. The projections indicate that by 2031 there will be 36.3 primary, secondary and sixth form aged children in every 100 households, which would provide for 62,064 primary, secondary and sixth form children by the end of the plan period. This represents an increase of 7,018 pupils from that identified by the projections in 2020. By contrast, the LEA's new formulaic approach suggests that the residual requirement for 21,581 dwellings would accommodate an additional 13,272 primary, secondary and sixth form pupils in the JCS plan area by 2031. The approach of the LEA therefore suggests that there will be 6,254 more pupils (=13,272-7,018) than children that will be accommodated in the adopted housing requirement.

5.18 A proportion of these additional 6,254 primary, secondary and sixth form pupils will form households in the remaining 12 years of the plan period from 2019, but these are not taken into account within the adopted housing requirement. As a direct result of the LEA's new formulaic approach it would therefore be necessary for the adopted housing requirement to be reviewed and increased significantly to accommodate the additional children that will form households within the plan period.

[18] Comprising 7,362 in Cheltenham, 4,320 in Tewkesbury and 9,899 in Gloucester.
[19] Based on the allowances for vacant and second homes assumed in the evidence base of the JCS.

5.19 The fact that the SHMA which informs the housing requirement has also informed the pupil product ratios of the IDP is set out explicitly at the top of page 75 of the IDP2014. If different pupil product ratios are now applied as proposed by the LEA, the objectively assessed need and therefore the housing requirement would need to be revised and increased significantly accordingly.

5.20 I consider that in accordance with national guidance such reviews of the formulaic approach for determining infrastructure requirements and of the objectively assessed need for housing should be undertaken as part of the review of the Development Plan rather than on an ad-hoc basis at a s78 appeal.

5.21 It is therefore apparent that the new formulaic approach of the LEA is directly contrary to the evidence base of the JCS and if this is applied for the purposes of this appeal it would immediately result in the adopted housing requirement and all policies that flow from this including Policies SP1 and SP2, being concluded to be out-of-date, such that they would also need to be reviewed as part of this appeal. It would also mean that the need for new housing would be even more acute – a point which I apprehend will not be accepted by the Borough Council.

Policy SP2

5.22 Gloucester City Council has identified that the application of the LEA's new requests would render the allocations proposed in the City Plan wholly unviable[20]. Similarly, Tewkesbury Borough Council has indicated that this new formulaic approach would render between 9 and 15 of 22 site typologies unviable[21] As such, had the new formulaic approach of the LEA been available and subject to consultation at the point the JCS was examined, it would be likely to have resulted in a fundamentally different spatial strategy and suite of policies to those provided in the JCS.

5.23 As set out in paragraphs 77 and 79 of the Inspectors Final Report on the JCS (CDE10), even on the basis of the evidence available at that time, there was a shortfall of 1,346 dwellings in Gloucester City and a shortfall of circa 2,400 in Tewkesbury Borough. Had the new formulaic approach of the LEA been available at the time the JCS was examined such that as a minimum all non-strategic

[20] As set out in paragraph 4.1 of the Background Topic Paper on Infrastructure and Viability of October 2020.
[21] As set out in the Tewkesbury Borough Plan Viability Assessment Addenda of March 2021.

development in Gloucester City and a significant proportion of sites in Tewkesbury Borough would have been unviable, it is very likely that an entirely different spatial strategy and/or package of policies would have been found to be necessary.

5.24 The LEA's requests, in the absence of a reconsideration of other policies, would thereby undermine the spatial strategy as much of this could simply not been delivered and thereby as a direct result of the LEA's approach Policy SP2 would be rendered out-of-date.

Policy SD10

5.25 Policy SD10 sets out where residential development will be supported. As a result of the increased housing requirement and the effects on the spatial strategy that arise as a direct result of the application of the LEA's new formulaic approach, there would be a need for development in other locations than those supported by Policy SD10, with the effect that Policy SD10 would also be rendered out-of-date.

Policy SD11

5.26 All of the additional children assumed by the LEA arise from the same housing requirement and so the necessary consequence of this is that the need for larger dwelling units will increase from that upon which the JCS was prepared. This would immediately render the Strategic Housing Market Assessment out-of-date for yet another reason[22]. As such, if the new approach of the LEA is to be adopted, the evidence base upon which Policy SD11 relies would also be rendered instantly out-of-date.

Policy SD12

5.27 Similarly, the affordable housing needs to which the JCS responds were identified in the SHMA. In Table 7.13 of the Strategic Housing Market Update, March 2014 (CDE9) it is identified that the proportion of households in affordable need increases with additional children. Some 2.0% of multi-adult households without children are in affordable need, whereas this increases to 4.3% of such households with 1 child and to 4.9% of such households with 2 or more children. This is unsurprising given

[22] The first being that as set out previously, the approach of the LEA requires that the projections upon which the SHMA is based to be incorrect.

the additional demands children place on earnings as well as the need for larger (and typically more expensive) housing required to accommodate children.

5.28 Accordingly, it is evident that the significant increase in the number of children in the same number of dwellings assumed by the LEA is material to the need for affordable housing, such that there would be a greater need than that which was considered at the JCS examination.

5.29 Paragraph 5.1.3 of the JCS also acknowledges that where viability is finely balanced, hard choices may sometimes need to be made in prioritising what is to be provided for. This balance is reflected in paragraph 4.13.7 of the JCS which identifies that viability rather than need has informed the policy requirement for affordable housing. It is therefore apparent that if as advanced by the LEA, the need for infrastructure to be secured in support of developments is greater than that identified by the Councils[23] and tested at the JCS examination, this is likely to have necessitated a different suite of policies to ensure that the Development Plan was viable and deliverable.

5.30 As a direct result of the new formulaic approach of the LEA, not only has the viability of the affordable housing requirement been undermined but also the need for affordable housing will have increased. Either or both of these factors would render Policy SD12 out-of-date.

The developable supply

5.31 The transport implications of the JCS were also tested during the examination. The new formulaic approach of the LEA requires that a significantly greater number of pupils are resident in 100 dwellings than were assumed at the examination. If correct then, this would clearly result in a greater number of trips per dwelling as these pupils travel to and from school which has not been taken into account in the transport evidence base when examining the JCS. These additional trips would have implications for the sustainability of some of the sources of supply and the highways mitigation required in support of these. Accordingly, for yet another reason, the new formulaic approach of the LEA could render the JCS or parts of the JCS out-of-date and undermine their deliverability.

[23] Including the LEA which provided evidence on the need for educational infrastructure as identified on page 6 of the Infrastructure Delivery Plan of 2014 (CDE8).

Summary

5.32 In short, as a direct result of the application of the LEA's new formulaic approach which is not set out in the Development Plan, and which is contrary to the NPPF and the PPG, and in the absence of the necessary review of all Development Plan policies, many of the policies of the Development Plan would be rendered out-of-date and would be undeliverable.

5.33 Whilst it is agreed for the purposes of this appeal that the most important policies are out-of-date owing to the absence of a five-year land supply, the five-year land supply is at least theoretically capable of being remedied. The same cannot be said of the effects of the LEA's requests as these will permanently and irrevocably cause the policies to be out-of-date if accepted.

5.34 The corollary is that if the Inspector were to accept that the new IPS is the basis for decision making then it can only logically mean that the Inspector is concluding that the housing need professed by the Borough Council is far too low and that the need for additional housing is far more acute. The public sector simply cannot have it both ways and there is no recognition of this patent inconsistency. Nonetheless the Inspector will be well aware of the need for consistency in decision making and the implications of the LEA's position, presumably motivated by securing a return to the public purse for education needs, necessarily means that the case for additional housing is much greater than the need that is discussed elsewhere in the evidence. And yet I have been able to find no recognition that Cheltenham Borough have yet been advised of this consequence by the LEA, let alone that they have positively responded to it.

5.35 This demonstrates why it is necessary to set out policies for planning obligations in the Development Plan[24] and to allow the evidential basis of infrastructure needs to be robustly tested at examination[25] and for the viability of these to be considered in the context of all relevant policies and standards[26]. To do otherwise, as the Borough and LEA propose would not only instantly render numerous policies out-of-date as they do not reflect the fundamentally different demographic basis of the

[24] As set out in paragraph 34 of the NPPF and repeatedly throughout the PPG.
[25] As set out in the PPG (23b-005), (23b-011) and (23b-013).
[26] Ibid.

new formulaic approach, but it would also render the Development Plan undeliverable.

QUANTIFIED EVIDENCE OF THE ADDITIONAL DEMANDS ON FACILITIES OR INFRASTRUCTURE WHICH ARE LIKELY TO ARISE FROM THE PROPOSED DEVELOPMENT

6. THE CHANGE IN DEMAND THAT WOULD ARISE WITHOUT THE PROPOSED DEVELOPMENT

The area of assessment

6.1 The PPG (23b-008) identifies that decision makers should consider whether the existing and committed school capacity within the relevant school place planning areas is sufficient to accommodate a proposed development. The School Capacity Survey 2021 forecast guidance (CDG3) similarly identifies that demand should be forecast for these planning areas on page 5.

6.2 The school place planning areas provide the areas for which the County Council is required to report on to the Department for Education to inform the need for capital investment. These areas are also used in the School Places Strategy of Gloucestershire County Council (CDG4) to determine whether there is a need for additional educational capacity.

6.3 As the demand for educational infrastructure is calculated across these school place planning areas to inform the need for capital investment and pupils are able to exercise choice in the school that they attend, in accordance with the PPG, I consider that the demand should be considered across the relevant planning area.

6.4 I also consider that the capacity in other individual schools that are accessible from the site may also be relevant to determine whether the need for any additional places is directly related to a development as required by Regulation 122[27]. Indeed, the LDG recognises that it is appropriate to consider the capacity in individual schools in paragraph 55.

6.5 This approach wholly accords with that of the Inspector in the Coombe Hill appeal decision where the Inspector considered the capacity across planning areas and then also in individual schools in paragraphs 117 and 118[28].

[27] For example, it is possible that there would be shortfall in places across a planning area but significant surplus places in accessible schools such that notwithstanding the more strategic need there is no need for additional places to serve the development in question.
[28] Rather than being limited to only the closest primary and secondary school as the LEA did as set out in paragraph 111.

6.6 As such the capacity is initially considered across the schools in the Whaddon primary school planning area and the Cheltenham secondary school planning area (where the Site lies), and then for a list of individual schools which have been agreed with the LEA to be within a reasonable travel distance from the site.

6.7 I understand from discussions with the LEA that they now consider that the capacity should be considered in aggregate for the agreed list of individual schools without any regard being paid to the capacity in individual schools. This appears to be an obvious contrivance to reduce the extent of any apparent capacity. This approach is also inconsistent with:

- The PPG (23b-008) which requires that the capacity is considered across a planning area rather than across a planning area and some additional schools,
- The LDG which recommends that capacity is assessed in local schools in paragraph 55,
- The approach of the LEA to the Coombe Hill appeal where, as recognised in paragraph 111, the LEA considered the capacity in individual schools,
- The findings of the Coombe Hill appeal decision in which the Inspector identified that he was more persuaded by my approach of assessing the capacity across the planning area and within individual schools in paragraph 115 and proceeded to consider the capacity on both bases in paragraphs 117 and 118.

6.8 Such an approach would not only be contrary to the relevant guidance and the findings of the recent Coombe Hill appeal decision, but it could also produce anomalous conclusions. For example, in a planning area with a number of over-subscribed school but a number of under-subscribed schools, it is possible that in aggregate there would be insufficient capacity and that contributions would be sought notwithstanding the fact that there are under-subscribed schools that have the capacity to easily accommodate the pupils arising. Such contributions would clearly not be necessary to make the development acceptable in planning terms. It was also not a case which was put to the Coombe Hill Inspector and is patently wrong.

Demographic change

6.9 In order to calculate the need for additional school places arising from a proposed development, it is firstly necessary to establish how the number of pupils will change in the absence of the proposed development to establish the baseline position.

6.10 As illustrated in Figures 6.1 and 6.2 below, recent official and high international migration variant sub-national household projections have provided a good proxy of the change in the number of secondary and sixth form pupils historically and slightly over-estimate the number of primary school pupils. Given the consistency of the latest variant projections with the proposed levels of housing delivery, I use these as comparators where appropriate. However, it is relevant to note that the number of births has continued to reduce in Gloucestershire as illustrated at the top of page 25 of the School Places Strategy (CDG4). This has continued with a significant drop to only 5,930 births in 2019/20. The recorded 6,257 births in 2018/19 and 5,930 births in 2019/20 are significantly lower than the 6,334 and 6,409 births assumed in 2018/19 and 2019/20 in the variant projections. Indeed, it has been widely reported that as a result of the current pandemic, birth rates are expected to fall to historically low levels, which would reduce the number of pre-school aged children even further in the coming years[29]. As a result, within a few years, the number of children becoming of school age will be significantly lower than identified by these projections. Nevertheless, these are used as a proxy in the interim.

[29] See for example: https://www.southampton.ac.uk/news/2021/03/pandemic-fertility-rates.page (CDG10).

Figure 6.1 – a comparison of recent official population projections with the actual number of primary pupils on roll

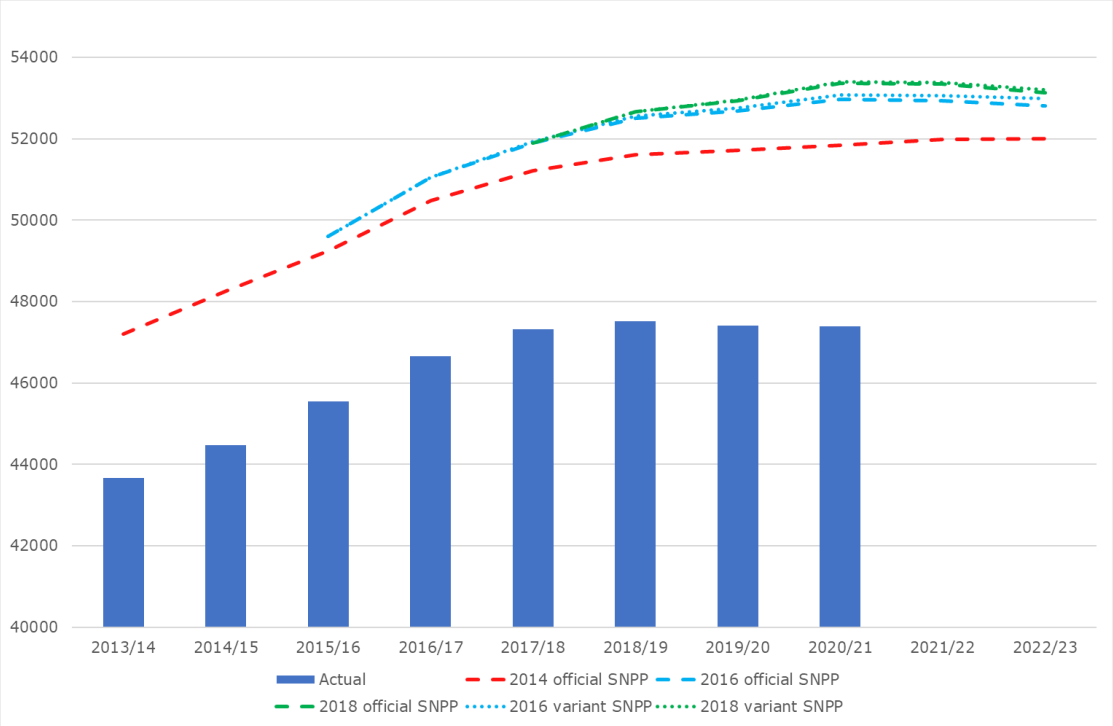
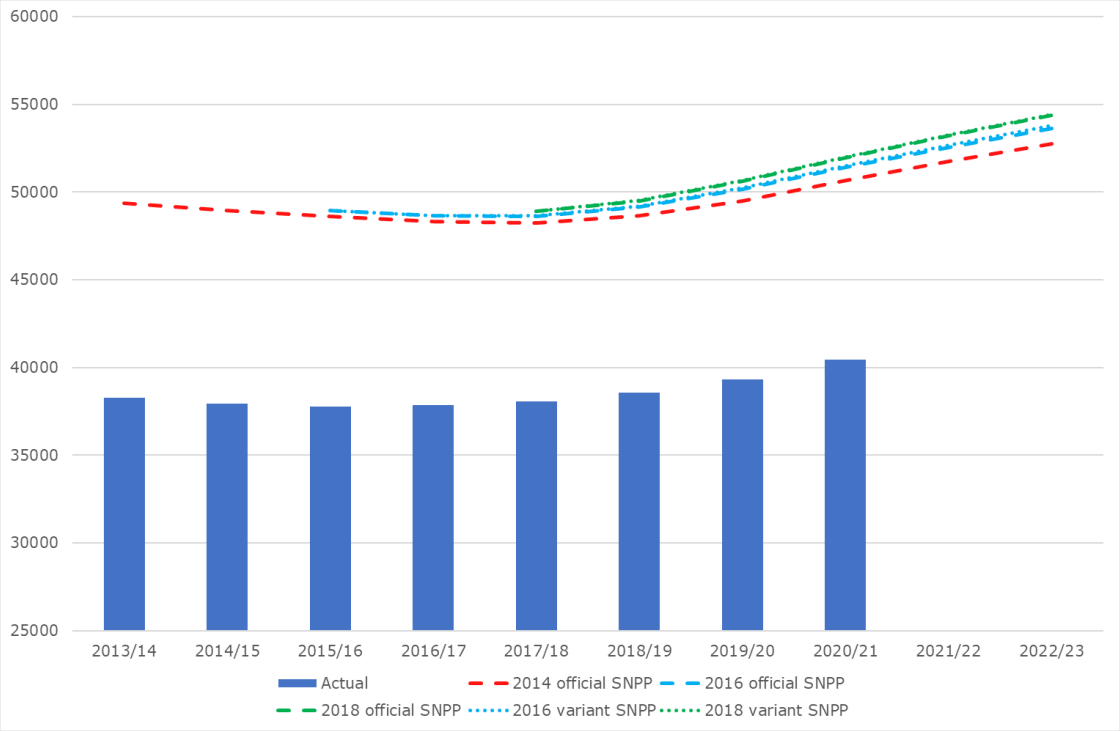


Figure 6.2 – a comparison of recent official population projections with the actual number of secondary and sixth form pupils on roll



School Places Strategy

6.11 The School Places Strategy 2021-26 (CDG4) provides the LEA's most recent published forecasts of primary and secondary (excluding sixth form) pupils. This takes account of both a cohort progression forecast[30] that reflects the change that is assumed to arise from the underlying population as well as making an allowance to account for any additional demand that arises from housing development. The cohort progression methodology is consistent with that applied in the previous School Places Strategy 2018-24 (CDG6) and so both are considered below.

[30] A cohort progression forecast forecasts the number of pupils on the assumptions that (1) the same proportion of the current cohort of 4 year olds will attend Reception Year in Primary Schools next year as has happened in the recent past and (2) the same proportion of pupils in each school year will progress to the following year as has happened in the recent past. It is in effect a demographic based forecast which assumes that recent trends will persist.

6.12 The number of pupils in 2020/21 are now known and so I assess the accuracy of the forecasts of previous and current School Places Strategies in this context as well as then considering the likely accuracy of current forecasts beyond this date.

Accuracy of forecasts to 2020/21

6.13 The accuracy of the forecasts of the previous and current School Places Strategies can be ascertained by comparing these with the now known number of pupils in 2020/21. This comparison is undertaken for Gloucestershire and the relevant school place planning areas[31] in Tables 6.1 and 6.2 below.

Table 6.1 – accuracy of the previous School Places Strategy[32]

	2020/21		
	Forecast	Actual	Difference
Gloucestershire primary	49,798	47,398	+2,400 (+5.1%)
Gloucestershire secondary	35,050	34,011	+1,039 (+3.1%)
Relevant planning areas			
Whaddon primary school place planning area	1,190	1,153	+37 (+3.2%)
Cheltenham secondary school place planning area	5,063	4,783	+280 (+5.9%)

Table 6.2 – accuracy of the current School Places Strategy

	2020/21		
	Forecast pupils	Actual pupils	Difference
Gloucestershire primary	47,448	47,398	+50 (+0.1%)
Gloucestershire secondary	34,401	34,011	+390 (+1.1%)
Relevant planning areas			
Whaddon primary school place planning area	1,156	1,153	+3 (+0.3%)
Cheltenham secondary school place planning area	4,839	4,783	+56 (+1.2%)

[31] The School Places Strategies do not provide forecasts for individual schools and so this analysis considers the accuracy across the relevant planning areas.
[32] Those entries where the forecasts of the LEA have over-estimated the number of pupils arising are highlighted in green.

6.14 This indicates that the previous and current published forecasts of the LEA have consistently overestimated the number of pupils across Gloucestershire and in each of the relevant planning areas and in some cases significantly so. As is always the case, forecasts will inevitably be more accurate in the short-term, but those of the School Places Strategy have nevertheless consistently over-estimated the number of pupils arising even in the first one or two years of the forecast.

Accuracy of forecasts from 2020/21 onwards

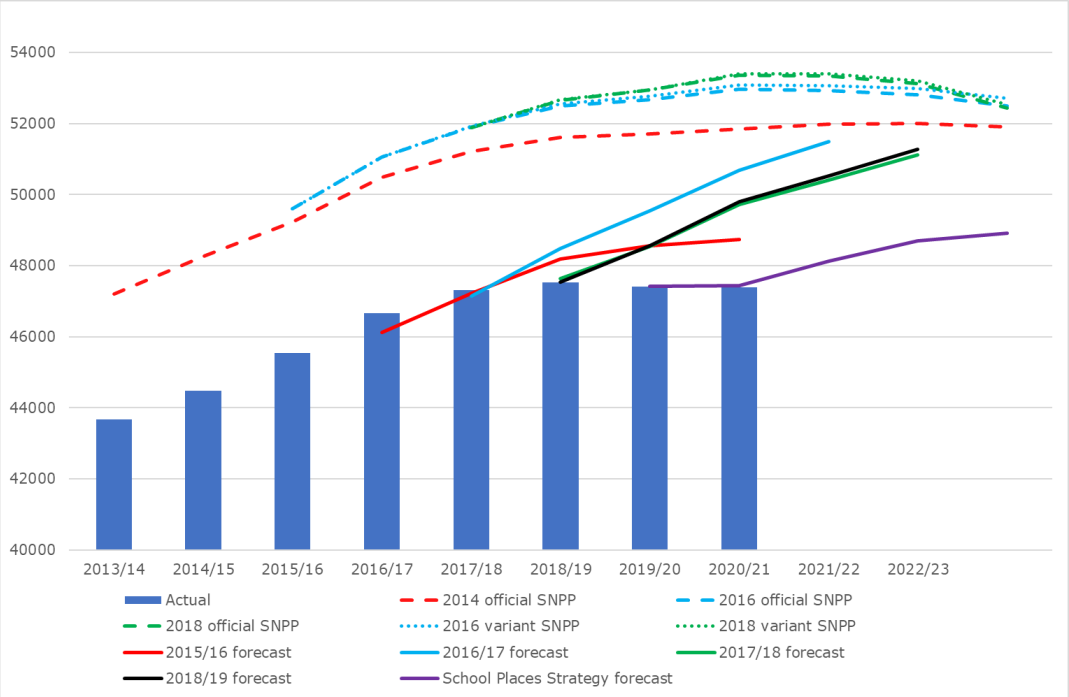
6.15 The model used by the LEA to calculate the cohort progression forecasts is set out in the School Places Strategy which identifies that it is based on the trends of intake patterns over the previous five-years[33] in accordance with the recommendation of the School Capacity Survey. These intake patterns will reflect the change in the number of resident children over the previous five-years which will have been influenced by the numbers of additional homes built in this period. The demographic trends therefore broadly assume that the same levels of development are maintained. As a result, the assumption of the School Places Strategy, that all development will increase the number of pupils results in double counting as pupils in new build development that replicates the past trends of development will be included within the cohort progression forecasts and then again within the manual adjustment for new build development. This double counting is explicitly warned against in the penultimate paragraph of page 16 of the School Capacity Survey guide but has not been taken into account by the LEA.

6.16 By comparing the forecasts of the LEA with the number of additional children expected to arise in the variant projections (which as set out above provide a reasonable proxy in Gloucestershire), it is possible to analyse whether this potential double counting and any other factors have affected the accuracy of the LEA's previous and current forecasts[34]. These are presented in Figures 6.3 and 6.4 which demonstrate that not only have the recent forecasts of the LEA overestimated the number of pupils that have actually arisen[35] even on the basis of the lower product ratios assumed within those forecasts, but also that the current forecasts suggest

[33] As set out in the middle of page 13.
[34] The previous forecasts of the LEA are available from the Department for Education.
[35] By comparing the bars with the solid lines.

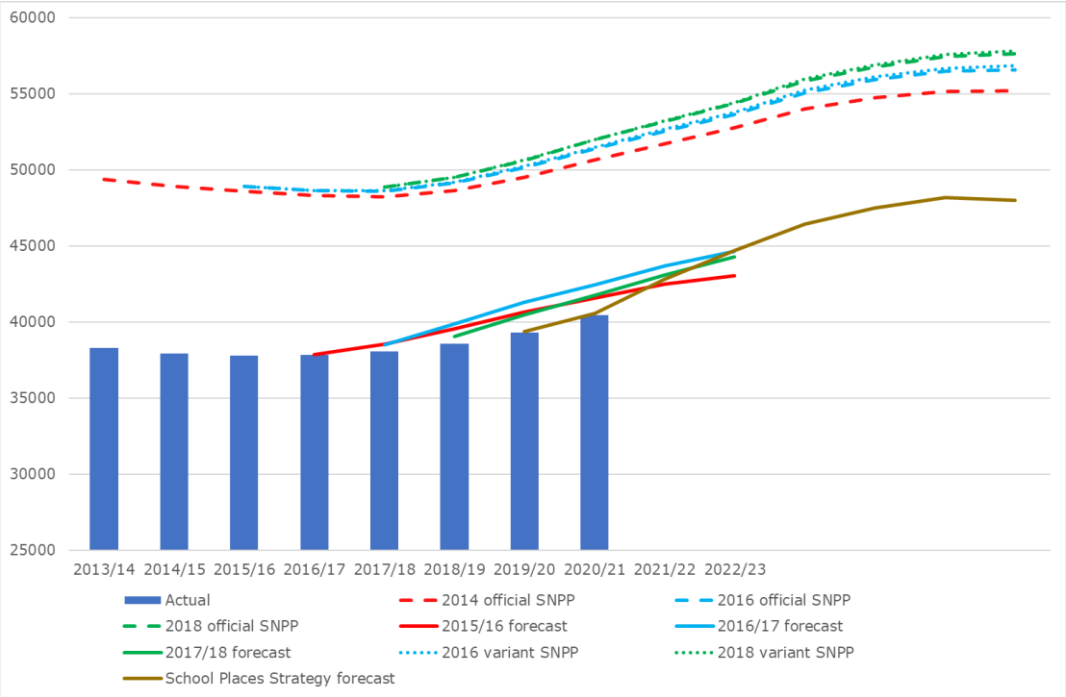
that the number of pupils will increase much more rapidly from 2020/21 onwards than identified by the respective projections[36].

Figure 6.3 – a comparison of the recent forecasts of the LEA with the projections and the number of primary pupils on roll



[36] By comparing the solid and dotted lines.

Figure 6.4 – a comparison of the recent forecasts of the LEA with the projections and the number of secondary and sixth form pupils on roll[37]



6.17 Indeed, the School Places Strategy of 2021 indicates that the number of primary school pupils will increase from 47,409 to 48,918 across Gloucestershire over the period 2019/20 to 2023/24, an increase of 3.2%. At the same time, the latest variant projections indicate that within Gloucestershire the number of primary school aged children will increase by only 0.8%.

6.18 Similarly, the School Places Strategy suggests that the number of secondary school pupils (excluding sixth form) will increase from 33,300 in 2019/20 to 39,297 in 2026/27, an increase of 18.0% as compared to the variant projections which indicate that the secondary aged population (excluding sixth form) will increase by 12.4%.

6.19 It is therefore apparent that the School Places Strategy significantly over-estimates the growth in the number of pupils. The identified over-estimation could arise from the demographic trends (reflected in the cohort progression forecasts) not being

[37] The secondary pupils including sixth form are not available from the School Places Strategy and so this is excluded from this Figure.

maintained or the product ratios applied to new build development being too high or a combination of them both.

6.20 In light of this demonstrable over-inflation in the forecasts of the School Places Strategy, the LEA recognised that these were not suitable for assessing the number of pupils that will actually arise in a Joint Statement to the recent Coombe Hill inquiry (CDG7). In light of this over-inflation the LEA agreed that the cohort progression forecasts should be used excluding the effects of development. Indeed, the LEA has provided updated unpublished forecasts in their original Statement of Case[38] that adopt this approach, and which reflect cohort progression alone.

Cohort progression forecasts

6.21 The forecasts of the School Places Strategy suggest that based on cohort progression alone, the number of pupils attending primary schools in Gloucestershire will reduce from 47,409 to 45,627 in the period 2019/20 to 2023/24 (a reduction of 1,782 pupils) and the number of pupils attending secondary schools will increase from 33,300 to 36,631 (an increase of 3,331) in the period 2019/20 to 2026/27.

6.22 I have prepared cohort progression forecasts in accordance with the methodology of the School Capacity Survey in Appendix 1. The School Capacity Survey recommends that these forecasts are prepared using either an average, weighted average or trend based cohort progression rate, but the most appropriate of these should be selected[39]. The average and weighted average forecasts are broadly consistent, but the trend based forecast is something of an outlier as it identifies that the number of primary school pupils will reduce far more significantly, and the number of secondary school pupils will increase far more significantly. The trend based forecast assumes that the change in cohort progression rates from 2017/18 to 2019/20 continues into the future in a linear way without taking any account of how this relates to the cohort progression rates in the interim. For example, 100% of pupils in year 9 progressed to year 10 in 2017/18, 99% in 2018/19 and 103% in 2019/20[40], such that the use of a trend based forecast assumes a linear trend between 100% and 103% such that in 2020/21 there would be a cohort progression

[38] And these have been supplemented by forecasts for a number of additional schools in an e-mail of 21st July 2021 (CDG9).
[39] In the paragraph following the table on page 13.
[40] This exceeds 100% as net additional pupils joined the schools in this year.

rate of 105% without paying any regard to the fact that the rate was broadly consistent at around 100%. As a result, the trend based forecast assumes that less and less primary school pupils will progress to the following year group and more and more secondary school pupils will. I consider that this is anomalous in Gloucestershire and therefore consider that the average and weighted average forecasts should be used.

APPENDIX 1: COHORT PROGRESSION FORECAST

6.23 These average and weighted average forecasts indicate that:

- the number of primary school pupils will reduce by between 3,036 and 3,224 from 2019/20 to 2023/24 as compared to the reduction of 1,782 assumed in the School Places Strategy; and

- the number of secondary school pupils will increase by between 2,675 and 3,135 from 2019/20 to 2026/27 as compared to the increase of 3,331 assumed in the School Places Strategy.

6.24 The preceding analysis demonstrates that the cohort progression forecasts of the School Places Strategy over-estimate the number of pupils arising and significantly so in the case of primary school pupils. This is perhaps unsurprising given the significant reduction in the birth rate which occurred in 2019/20 and the facts that this information was not available at the time the School Places Strategy was prepared.

6.25 Nevertheless, as I am unable to identify the precise boundaries of the school planning areas, so I cannot undertake the necessary forecasts at this scale[41] and so in accordance with the position accepted by the LEA at the Coombe Hill appeal the following analysis proceeds on the basis of the cohort progression forecasts provided by the LEA, notwithstanding the fact that the previous forecasts have demonstrably over-estimated the number of pupils arising to date, and, that they

[41] I have repeatedly requested the boundaries of the school planning areas from the LEA. However, rather surprisingly, the LEA has identified that the school planning areas do not have boundaries. These are the areas for which the LEA forecast the number of pupils based on the cohort progression within those areas and the number of homes proposed within those areas. If they do not have boundaries to determine the cohort progression forecast inputs or the number of homes taken into account, it is entirely unclear how any of the forecasts could be constructed or relied upon.

significantly over-estimate the number of pupils arising in the future compared to that which arises from forecasts prepared in accordance with the DfE methodology.

6.26 The relevant cohort progression forecasts of the LEA are set out in Table 6.3 below.

Table 6.3 – the cohort progression forecasts

		2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28
Relevant planning areas									
Primary school pupils in the Whaddon primary school place planning area	St Mary's C of E Infant School	210	180	179	179	179	-	-	-
	Prestbury St Mary's C of E Junior School	238	270	270	270	270	-	-	-
	Oakwood Primary School	317	323	333	334	335	-	-	-
	Holy Trinity C of E Primary School	192	200	200	201	196	-	-	-
	St. John's C of E Primary School	196	194	196	199	199	-	-	-
	TOTAL	1,153	1,167	1,178	1,183	1,179	-	-	-
Secondary school pupils in the Cheltenham secondary school place planning area	Pittville School	836	888	901	902	875	875	875	875
	Balcarras School	1,012	1,016	1,004	1,000	973	970	970	970
	Cheltenham Bournside School	1,406	1,449	1,486	1,496	1,496	1,500	1,500	1,500
	All Saints' Academy	776	826	881	908	907	900	900	900
	Pate's Grammar School	753	752	755	750	751	750	750	750
	TOTAL	4,783	4,931	5,027	5,056	5,002	4,995	4,995	4,995
Sixth form pupils in the Cheltenham secondary school place planning area	Balcarras School	393	384	391	395	411	408	377	370
	Cheltenham Bournside School	341	329	340	363	387	390	389	389
	All Saints' Academy	172	164	159	172	206	226	224	220
	Pate's Grammar School	469	497	528	537	540	532	542	548
	TOTAL	1,375	1,374	1,418	1,467	1,544	1,556	1,532	1,527
Other identified primary schools									
Holy Apostles C of E Primary School		212	213	213	212	210	-	-	-
Dunalley Primary School		410	408	409	407	406	-	-	-
Glenfall Community Primary School		209	208	208	208	204	-	-	-
Charlton Kings Infant Academy		269	269	270	270	270	-	-	-
Charlton Kings Junior School		374	373	374	373	372	-	-	-

Effects of Other Developments

6.27 The LEA has indicated that it intends to provide a list of other permitted developments[42] that they consider may absorb the available places. Whilst this information has yet to be received, this proposition is incorrect for two reasons.

6.28 Firstly, as set out above, the LEA has recognised that their forecasts which include an allowance for new development are not accurate. Indeed, the cohort progression forecasts will already reflect the levels of development achieved in the recent past. Any additional adjustment for new development should therefore only reflect delivery rates in excess of those achieved in the past.

6.29 In All Saints, Battledown, Oakley and Prestbury wards which is taken as a proxy for the Whaddon primary school planning area, there have been an average of 167 homes delivered per annum over the period 2015-20 such that the cohort progression forecasts in effect assume that an additional 167 homes per annum will be delivered in the future. The Borough Council predict in the spreadsheet accompanying the latest Five Year Housing Land Supply Position Statement that there will be an average of 46 homes per annum built in the period 2020-25, such that the cohort progression forecasts for this planning area already assumes that significantly more homes will be built than anticipated by the Borough Council. Therefore, any developments will only already be more than accounted for within the cohort progression forecasts and will certainly not absorb additional primary school places than the cohort progression forecasts.

6.30 Similarly, across Cheltenham Borough as a whole which is taken as a proxy for the Cheltenham secondary school planning area, there have been an average of 505 homes delivered per annum from 2015-20, and the Borough Council predict that there will be an average of 515 homes per annum from 2020-25[43]. This means that if the cohort progression forecasts were accurate and the Borough Council's trajectory is realistic, the cohort progression forecasts would already account of 98% of the pupils arising from development. However, as set out above, the cohort

[42] It is anticipated that this will be confined to permitted developments in accordance with the approach of the Inspector in paragraph 119 of the Coombe Hill appeal decision following discussion of this issue at the inquiry, as the LEA cannot reserve capacity for future potential developments.
[43] This is the figure that arises from the deliverable supply of 2,577 homes identified by the Borough Council.

progression forecasts of the LEA over-estimate the number of pupils arising and so they may account for all of the pupils arising. Nevertheless, even working on the basis of the cohort progression forecasts, only 2% of the secondary school and sixth form pupils arising from new developments will be additional to these forecasts. However, as set out in my Housing Proof of Evidence, I consider that an average of 282 homes per annum will be delivered in the period 2020-25[44] such that the cohort progression forecasts already assume that significantly greater levels of development will be achieved than actually will be.

6.31 Secondly, of the developments I have been able to identify, these have all made financial contributions through s106 agreements to address their educational needs in full. They therefore make provision to meet their needs and will not therefore absorb any of the available places.

Capacity

6.32 The final capacity of the individual schools is provided in the LEA's original Statement of Case. These figures are used to assess the ability of the existing capacity to accommodate the forecast number of pupils in Table 6.4 below.

Table 6.4 – the available capacity[45]

			2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28
Relevant planning areas										
Primary school pupils in Whaddon primary school place planning area	St Mary's C of E Infant School	Forecast pupils from Table 6.3	210	180	179	179	179	-	-	-
		Forecast capacity	210	180	180	180	180	-	-	-
		Available places	0	0	1	1	1	-	-	-
		Occupancy rate	100.0%	100.0%	99.4%	99.4%	99.4%	-	-	-
	Prestbury St Mary's C of E Junior School	Forecast pupils from Table 6.3	238	270	270	270	270	-	-	-
		Forecast capacity	240	270	270	270	270	-	-	-
		Available places	2	0	0	0	0	-	-	-
		Occupancy rate	99.2%	100.0%	100.0%	100.0%	100.0%	-	-	-
	Oakwood Primary School	Forecast pupils from Table 6.3	317	323	333	334	335	-	-	-
		Forecast capacity	420	420	420	420	420	-	-	-
		Available places	103	97	87	86	85	-	-	-
		Occupancy rate	75.5%	76.9%	79.3%	79.5%	79.8%	-	-	-

[44] This is the figure that arises from the deliverable supply of 1,412 homes identified by myself.
[45] Where schools would operate at 95% or less occupancy this is highlighted in light green, where they would operate at between 95% and 100% inclusive occupancy this is highlighted in light orange and where they would operate at in excess of 100% this is highlighted in light pink.

			2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28
	Holy Trinity C of E Primary School	Forecast pupils from Table 6.3	192	200	200	201	196	-	-	-
		Forecast capacity	210	210	210	210	210	-	-	-
		Available places	18	10	10	9	14	-	-	-
		Occupancy rate	91.4%	95.2%	95.2%	95.7%	93.3%			
	St. John's C of E Primary School	Forecast pupils from Table 6.3	196	194	196	199	199	-	-	-
		Forecast capacity	203	203	203	203	203	-	-	-
		Available places	7	9	7	4	4	-	-	-
		Occupancy rate	96.6%	95.6%	96.6%	98.0%	98.0%			
	TOTAL	Forecast pupils from Table 6.3	1,153	1,167	1,178	1,183	1,179	-	-	-
		Forecast capacity	1,283	1,283	1,283	1,283	1,283			
		Available places	130	116	105	100	104	-	-	-
		Occupancy rate	89.9%	91.0%	91.8%	92.2%	91.9%	-	-	-
Secondary school pupils in Cheltenham secondary school place planning area	Pittville School	Forecast pupils from Table 6.3	836	888	901	902	875	875	875	875
		Forecast capacity	865	905	905	905	875	875	875	875
		Available places	29	17	4	3	0	0	0	0
		Occupancy rate	96.6%	98.1%	99.6%	99.7%	100.0%	100.0%	100.0%	100.0%
	Balcarras School	Forecast pupils from Table 6.3	1,012	1,016	1,004	1,000	973	970	970	970
		Forecast capacity	1,028	1,028	1,000	1,000	970	970	970	970
		Available places	16	12	-4	0	-3	0	0	0
		Occupancy rate	98.4%	98.8%	100.4%	100.0%	100.3%	100.0%	100.0%	100.0%
	Cheltenham Bournside School	Forecast pupils from Table 6.3	1,406	1,449	1,486	1,496	1,496	1,500	1,500	1,500
		Forecast capacity	1,440	1,470	1,500	1,500	1,500	1,500	1,500	1,500
		Available places	34	21	14	4	4	0	0	0
		Occupancy rate	97.6%	98.6%	99.1%	99.7%	99.7%	100.0%	100.0%	100.0%
	All Saints' Academy	Forecast pupils from Table 6.3	776	826	881	908	907	900	900	900
		Forecast capacity	900	900	900	900	900	900	900	900
		Available places	124	74	19	-8	-7	0	0	0
		Occupancy rate	86.2%	91.8%	97.9%	100.9%	100.8%	100.0%	100.0%	100.0%
	Pate's Grammar School	Forecast pupils from Table 6.3	753	752	755	750	751	750	750	750
		Forecast capacity	754	754	754	754	754	754	754	754
		Available places	1	2	-1	4	3	4	4	4
		Occupancy rate	99.9%	99.7%	100.1%	99.5%	99.6%	99.5%	99.5%	99.5%
	TOTAL	Forecast pupils from Table 6.3	4,783	4,931	5,027	5,056	5,002	4,995	4,995	4,995
		Forecast capacity	4,987	5,057	5,059	5,059	4,999	4,999	4,999	4,999
		Available places	204	126	32	3	-3	4	4	4
		Occupancy rate	95.9%	97.5%	99.4%	99.9%	100.1%	99.9%	99.9%	99.9%
Sixth form pupils in Cheltenham secondary school place planning area	Balcarras School	Forecast pupils from Table 6.3	393	384	391	395	411	408	377	370
		Forecast capacity	361	361	361	361	361	361	361	361
		Available places	-32	-23	-30	-34	-50	-47	-16	-9
		Occupancy rate	108.9%	106.4%	108.3%	109.4%	113.9%	113.0%	104.4%	102.5%
	Cheltenham Bournside School	Forecast pupils from Table 6.3	341	329	340	363	387	390	389	389
		Forecast capacity	460	460	460	460	460	460	460	460
		Available places	119	131	120	97	73	70	71	71
		Occupancy rate	74.1%	71.5%	73.9%	78.9%	84.1%	84.8%	84.6%	84.6%

			2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28
	All Saints' Academy	Forecast pupils from Table 6.3	172	164	159	172	206	226	224	220
		Forecast capacity	250	250	250	250	250	250	250	250
		Available places	78	86	91	78	44	24	26	30
		Occupancy rate	68.8%	65.6%	63.6%	68.8%	82.4%	90.4%	89.6%	88.0%
	Pate's Grammar School	Forecast pupils from Table 6.3	469	497	528	537	540	532	542	548
		Forecast capacity	450	450	450	450	450	450	450	450
		Available places	-19	-47	-78	-87	-90	-82	-92	-98
		Occupancy rate	104.2%	110.4%	117.3%	119.3%	120.0%	118.2%	120.4%	121.8%
	TOTAL	Forecast pupils from Table 6.3	1,375	1,374	1,418	1,467	1,544	1,556	1,532	1,527
		Forecast capacity	1,521	1,521	1,521	1,521	1,521	1,521	1,521	1,521
		Available places	146	147	103	54	-23	-35	-11	-6
		Occupancy rate	90.4%	90.3%	93.2%	96.4%	101.5%	102.3%	100.7%	100.4%
Other identified primary schools										
Holy Apostles C of E Primary School		Forecast pupils from Table 6.3	212	213	213	212	210	-	-	-
		Forecast capacity	210	210	210	210	210	-	-	-
		Available places	-2	-3	-3	-2	0	-	-	-
		Occupancy rate	101.0%	101.4%	101.4%	101.0%	100.0%	-	-	-
Dunalley Primary School		Forecast pupils from Table 6.3	410	408	409	407	406	-	-	-
		Forecast capacity	420	420	420	420	420	-	-	-
		Available places	10	12	11	13	14	-	-	-
		Occupancy rate	97.6%	97.1%	97.4%	96.9%	96.7%	-	-	-
Glenfall Community Primary School		Forecast pupils from Table 6.3	209	208	208	208	204	-	-	-
		Forecast capacity	210	210	210	210	210	-	-	-
		Available places	1	2	2	2	6	-	-	-
		Occupancy rate	99.5%	99.0%	99.0%	99.0%	97.1%	-	-	-
Charlton Kings Infant Academy		Forecast pupils from Table 6.3	269	269	270	270	270	-	-	-
		Forecast capacity	270	270	270	270	270	-	-	-
		Available places	1	1	0	0	0	-	-	-
		Occupancy rate	99.6%	99.6%	100.0%	100.0%	100.0%	-	-	-
Charlton Kings Junior School		Forecast pupils from Table 6.3	374	373	374	373	372	-	-	-
		Forecast capacity	372	372	372	372	372	-	-	-
		Available places	-2	-1	-2	-1	0	-	-	-
		Occupancy rate	100.5%	100.3%	100.5%	100.3%	100.0%	-	-	-
TOTAL of agreed list of primary schools		Forecast pupils from Table 6.3	2,627	2,638	2,652	2,653	2,641	-	-	-
		Forecast capacity	2,765	2,765	2,765	2,765	2,765	-	-	-
		Available places	138	127	113	112	124	-	-	-
		Occupancy rate	95.0%	95.4%	95.9%	95.9%	95.5%	-	-	-

6.33 By the time the proposed development is occupied, which would not be before 2024/25, it is therefore apparent that even on the basis of the cohort progression forecasts of the LEA, there will be at least:

- 104 available primary school places in aggregate across the Whaddon primary school planning area,

- 124 available primary school places in aggregate across the agreed list of schools,
- 1 available place in St Mary's C of E Infant School,
- 85 available places at Oakwood Primary School,
- 14 available places in Holy Trinity C of E Primary School
- 4 available places in St Johns C of E Primary School,
- 14 available places at Dunalley Primary School, and
- 6 available places at Glenfall Community Primary School.

6.34 Similarly, there will be at least:

- Between 0 and 4 available secondary school places in aggregate across the Cheltenham secondary school planning area,
- Between 0 and 4 available secondary school places in Cheltenham Bournside School, and
- Between 3 and 4 available places in Pate's Grammar School.

6.35 And:

- No available sixth form places in aggregate across the Cheltenham secondary school planning area,
- Between 70 and 73 available sixth form places at Cheltenham Bournside School, and
- Between 24 and 44 available places at All Saints Academy.

6.36 As Pate's Grammar School has a selective admissions policy and there are forecast to be no available secondary school places in Cheltenham Bournside School from 2025/26 onwards, I work on the basis that there are no available secondary school places (excluding sixth form) to accommodate the proposed development.

Occupancy Rate

6.37 In paragraph 56 of the adopted LDG, the LEA suggest that a school should be treated as having no surplus places when it is at or above 95% occupancy.

6.38 The capacity of a school by any common usage of the term is 100% of the places available, and as can be seen from the table above schools can and do operate in excess of their theoretical capacity. The approach of the LEA, namely that a school's capacity is actually 95% of its capacity, is strange to say the least. It would be expected that if there were demonstrably sufficient places to accommodate a proposed development, then it would be considered that there were sufficient places. However, the LEA's approach instead assumes that where there are sufficient places but this would result in a school being in excess of 95% occupancy, there are insufficient places.

6.39 The LEA's position was informed by the recommendations of the Audit Commission in Trading Places: The Supply and Allocation of School Places, 1996[46] which actually states that:

> **"Value for money in the supply of school places is served by avoiding the twin dangers of too many and too few places. LEAs need to secure a close fit between pupils and places, not just at authority-wide level but also in individual schools. It is unrealistic and probably undesirable to aim for a perfect match at each school; a sensible approach would be to plan for a 95 per cent occupancy rate at schools and accept some variation, say plus or minus 10 per cent, around this target." (emphasis added)**

6.40 The Audit Commission's recommendation is therefore that schools should aim to operate with 95% occupancy to operate efficiency but that it is acceptable for schools to operate within the range of 85% to 105% occupancy. As it is acceptable for a school to operate at in excess of 95% capacity, it cannot be necessary to make contributions to ensure that a school never exceeds 95% occupancy to make a development acceptable in planning terms.

6.41 The LEA also seek to draw support from the National Audit Office's Capital Funding for New School Places report of 2013. Paragraph 1.16 indicates that the DfE adopted a planning assumption that there should be at least 5% surplus capacity across

[46] As agreed by the LEA at the Coombe Hill inquiry.

each LEA or district rather than in each school. In paragraph 1.17 it proceeds to explain that this is not a target and that the DfE needs to undertake further work to identify whether this assumption is appropriate.

6.42 Even if this planning assumption is used as a hard and fast target as proposed by the LEA rather than a planning assumption as acknowledged by the National Audit Office, it is compatible with the recommendations of Trading Places, as together these documents recommend that there is at least 5% surplus capacity across a district or LEA but anywhere between 85% and 105% occupancy in individual schools. This reflects the fact that the occupancy rates will inevitably vary between individual schools but also ensures that there is sufficient capacity across an LEA to enable parental choice. The approach of the LEA however departs from this and applies the recommendations of the National Audit Office which relates to LEA's to individual schools rather than relying upon the explicit recommendation of the Audit Commission that individual schools can acceptably operate at between 85% and 105% occupancy.

6.43 The cohort progression forecasts of the LEA indicate that across the planning areas within Cheltenham Borough[47] only 89.3% of primary school places will be occupied by 2023/24[48], 99.9% of secondary school places and 100.4% of sixth form places will be occupied by 2026/27. Across Gloucestershire the School Places Strategy indicates that only 86.4% of primary school places will be occupied by 2023/24 and 96.2% of secondary school places will be occupied by 2026/27[49]. It is therefore clear that there will remain a sufficient number of primary school places but that additional secondary school and sixth form places are likely to be required to accord with the planning assumption of the National Audit Office. However, it should be noted that this is a planning assumption for the LEA and that it would not be necessary in terms of Regulation 122 for an individual development to fund empty places to meet this planning assumption.

[47] The Swindon Road, Whaddon, Hester's Way, Charlton Kings and Hatherley/Leckhampton primary school planning areas and the Cheltenham secondary school planning area.
[48] Based on the School Places Strategy as the figures aren't available from the supplementary information provided in the LEA's Statement of Case and supplementary e-mail.
[49] The corresponding figures are not available for sixth form places across Gloucestershire.

6.44 The justification of the LEA for the use of a 95% occupancy rate in individual schools appears to be based on the premise that if a school operates at 100% capacity, there would be no available capacity for newly arising pupils during the course of a school year. This is misinformed for numerous reasons as follows:

- Schools can acceptably operate at in excess of 100% occupancy as recommended by the Audit Commission and indeed this happens at many schools across Gloucestershire. Therefore, pupils that sought to change schools mid-year could be acceptably accommodated even if this resulted in schools being minimally over-subscribed;

- Pupils can move to or from schools during the course of a school year and it would be expected that these movements would broadly balance out, such that the occupancy rate at a start of a year should be broadly maintained. Therefore, if the occupancy rate was limited to 95%, it would be likely that there would remain 5% unused capacity throughout the year which would not be an efficient use of the available infrastructure;

- In the 2020/21 school year, the number of primary school pupils across Gloucestershire changed from 47,365 in October 2020 to 47,398 in January 2021, a change of only +0.07% and the number of secondary school pupils changed from 40,563 to 40,448, a change of only -0.3%. Similarly, in the year 2020/21, the number of primary school pupils in any primary school planning area changed by between -1.5% and +1.9%, and the number of secondary school pupils in any secondary school planning area changed by between -0.7% and 0.0%. Therefore, the allowance of 5% for changes is grossly over-inflated compared to what actually occurs; and

- The need to find additional capacity to allow for mid-year changes is not directly related to a proposed development and so seeking contributions towards such changes would not comply with Regulation 122.

6.45 The use of a maximum 95% occupancy rate in each school is especially inappropriate in Gloucestershire given that as demonstrated above the forecasts already over-inflate the number of pupils arising. In effect a buffer is already built into the forecasts and therefore this additional buffer would be doubly inappropriate.

6.46 This issue was discussed in detail in the recent Coombe Hill appeal decision and the Inspector accepted the advice of the Audit Commission that capacity means a figure of between 85 and 105% in paragraph 115. The Inspector also then applied this approach in paragraph 117 where he identified that there would be sufficient capacity with a 89.8%-96.7% occupancy rate. The LEA are therefore seeking to rerun an argument that has been rejected in terms after full argument. The simple fact is that there is no policy basis from DfE, nor any appeal decision or authoritative statement to support GCC's position in this regard.

6.47 Notwithstanding the recommendation of the Audit Commission that individual schools can acceptably operate at up to 105% capacity, I consider that it is appropriate to assume that a school operates at no more than 100% capacity. Indeed, providing 100% was never exceeded this would make the most efficient and optimal uses of school places. The LEA however illogically assume, based on a misreading of the Audit Commission's recommendation and contrary to the findings of the recent Coombe Hill appeal decision, that a school should operate at no more than 95% which requires that at least 5% of places remain vacant in perpetuity. This clearly does not make efficient use of resources. I nevertheless proceed to consider the available capacity on both bases. The calculations of Table 6.4 are adjusted on this basis in Table 6.5 below.

Table 6.5 – the available capacity with a 95% occupancy limit

			2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28
Relevant planning areas										
Primary school pupils in Whaddon primary school place planning area	St Mary's C of E Infant School	Forecast pupils from Table 6.3	210	180	179	179	179	-	-	-
		Forecast capacity	200	171	171	171	171	-	-	-
		Available places	-11	-9	-8	-8	-8	-	-	-
		Occupancy rate	105.3%	105.3%	104.7%	104.7%	104.7%	-	-	-
	Prestbury St Mary's C of E Junior School	Forecast pupils from Table 6.3	238	270	270	270	270	-	-	-
		Forecast capacity	228	257	257	257	257	-	-	-
		Available places	-10	-14	-14	-14	-14	-	-	-
		Occupancy rate	104.4%	105.3%	105.3%	105.3%	105.3%	-	-	-
	Oakwood Primary School	Forecast pupils from Table 6.3	317	323	333	334	335	-	-	-
		Forecast capacity	399	399	399	399	399	-	-	-
		Available places	82	76	66	65	64	-	-	-
		Occupancy rate	79.4%	81.0%	83.5%	83.7%	84.0%	-	-	-
	Holy Trinity C of E Primary School	Forecast pupils from Table 6.3	192	200	200	201	196	-	-	-
		Forecast capacity	200	200	200	200	200	-	-	-
		Available places	8	-1	-1	-2	4	-	-	-

			2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28
		Occupancy rate	96.2%	100.3%	100.3%	100.8%	98.2%			
	St. John's C of E Primary School	Forecast pupils from Table 6.3	196	194	196	199	199	-	-	-
		Forecast capacity	193	193	193	193	193	-	-	-
		Available places	-3	-1	-3	-6	-6	-	-	-
		Occupancy rate	101.6%	100.6%	101.6%	103.2%	103.2%			
	TOTAL	Forecast pupils from Table 6.3	1,153	1,167	1,178	1,183	1,179	-	-	-
		Forecast capacity	1,219	1,219	1,219	1,219	1,219			
		Available places	66	52	41	36	40	-	-	-
		Occupancy rate	94.6%	95.7%	96.6%	97.1%	96.7%	-	-	-
Secondary school pupils in Cheltenham secondary school place planning area	Pittville School	Forecast pupils from Table 6.3	836	888	901	902	875	875	875	875
		Forecast capacity	822	860	860	860	831	831	831	831
		Available places	-14	-28	-41	-42	-44	-44	-44	-44
		Occupancy rate	101.7%	103.3%	104.8%	104.9%	105.3%	105.3%	105.3%	105.3%
	Balcarras School	Forecast pupils from Table 6.3	1,012	1,016	1,004	1,000	973	970	970	970
		Forecast capacity	977	977	950	950	922	922	922	922
		Available places	-35	-39	-54	-50	-52	-49	-49	-49
		Occupancy rate	103.6%	104.0%	105.7%	105.3%	105.6%	105.3%	105.3%	105.3%
	Cheltenham Bournside School	Forecast pupils from Table 6.3	1,406	1,449	1,486	1,496	1,496	1,500	1,500	1,500
		Forecast capacity	1,368	1,397	1,425	1,425	1,425	1,425	1,425	1,425
		Available places	-38	-53	-61	-71	-71	-75	-75	-75
		Occupancy rate	102.8%	103.8%	104.3%	105.0%	105.0%	105.3%	105.3%	105.3%
	All Saints' Academy	Forecast pupils from Table 6.3	776	826	881	908	907	900	900	900
		Forecast capacity	855	855	855	855	855	855	855	855
		Available places	79	29	-26	-53	-52	-45	-45	-45
		Occupancy rate	90.8%	96.6%	103.0%	106.2%	106.1%	105.3%	105.3%	105.3%
	Pate's Grammar School	Forecast pupils from Table 6.3	753	752	755	750	751	750	750	750
		Forecast capacity	716	716	716	716	716	716	716	716
		Available places	-37	-36	-39	-34	-35	-34	-34	-34
		Occupancy rate	105.1%	105.0%	105.4%	104.7%	104.8%	104.7%	104.7%	104.7%
	TOTAL	Forecast pupils from Table 6.3	4,783	4,931	5,027	5,056	5,002	4,995	4,995	4,995
		Forecast capacity	4,738	4,804	4,806	4,806	4,749	4,749	4,749	4,749
		Available places	-45	-127	-221	-250	-253	-246	-246	-246
		Occupancy rate	101.0%	102.6%	104.6%	105.2%	105.3%	105.2%	105.2%	105.2%
Sixth form pupils in Cheltenham secondary school place planning area	Balcarras School	Forecast pupils from Table 6.3	393	384	391	395	411	408	377	370
		Forecast capacity	343	343	343	343	343	343	343	343
		Available places	-50	-41	-48	-52	-68	-65	-34	-27
		Occupancy rate	114.6%	112.0%	114.0%	115.2%	119.8%	119.0%	109.9%	107.9%
	Cheltenham Bournside School	Forecast pupils from Table 6.3	341	329	340	363	387	390	389	389
		Forecast capacity	437	437	437	437	437	437	437	437
		Available places	96	108	97	74	50	47	48	48
		Occupancy rate	78.0%	75.3%	77.8%	83.1%	88.6%	89.2%	89.0%	89.0%

			2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28
	All Saints' Academy	Forecast pupils from Table 6.3	172	164	159	172	206	226	224	220
		Forecast capacity	238	238	238	238	238	238	238	238
		Available places	66	74	79	66	32	12	14	18
		Occupancy rate	72.4%	69.1%	66.9%	72.4%	86.7%	95.2%	94.3%	92.6%
	Pate's Grammar School	Forecast pupils from Table 6.3	469	497	528	537	540	532	542	548
		Forecast capacity	428	428	428	428	428	428	428	428
		Available places	-42	-70	-101	-110	-113	-105	-115	-121
		Occupancy rate	109.7%	116.3%	123.5%	125.6%	126.3%	124.4%	126.8%	128.2%
	TOTAL	Forecast pupils from Table 6.3	1,375	1,374	1,418	1,467	1,544	1,556	1,532	1,527
		Forecast capacity	1,445	1,445	1,445	1,445	1,445	1,445	1,445	1,445
		Available places	70	71	27	-22	-99	-111	-87	-82
		Occupancy rate	95.2%	95.1%	98.1%	101.5%	106.9%	107.7%	106.0%	105.7%
Other identified primary schools										
Holy Apostles C of E Primary School		Forecast pupils from Table 6.3	212	213	213	212	210	-	-	-
		Forecast capacity	200	200	200	200	200	-	-	-
		Available places	-13	-14	-14	-13	-11	-	-	-
		Occupancy rate	106.3%	106.8%	106.8%	106.3%	105.3%	-	-	-
Dunalley Primary School		Forecast pupils from Table 6.3	410	408	409	407	406	-	-	-
		Forecast capacity	399	399	399	399	399	-	-	-
		Available places	-11	-9	-10	-8	-7	-	-	-
		Occupancy rate	102.8%	102.3%	102.5%	102.0%	101.8%	-	-	-
Glenfall Community Primary School		Forecast pupils from Table 6.3	209	208	208	208	204	-	-	-
		Forecast capacity	200	200	200	200	200	-	-	-
		Available places	-10	-9	-9	-9	-5	-	-	-
		Occupancy rate	104.8%	104.3%	104.3%	104.3%	102.3%	-	-	-
Charlton Kings Infant Academy		Forecast pupils from Table 6.3	269	269	270	270	270	-	-	-
		Forecast capacity	257	257	257	257	257	-	-	-
		Available places	-13	-13	-14	-14	-14	-	-	-
		Occupancy rate	104.9%	104.9%	105.3%	105.3%	105.3%	-	-	-
Charlton Kings Junior School		Forecast pupils from Table 6.3	374	373	374	373	372	-	-	-
		Forecast capacity	353	353	353	353	353	-	-	-
		Available places	-21	-20	-21	-20	-19	-	-	-
		Occupancy rate	105.8%	105.5%	105.8%	105.5%	105.3%	-	-	-
TOTAL of agreed list of primary schools		Forecast pupils from Table 6.3	2,627	2,638	2,652	2,653	2,641			
		Forecast capacity	2,627	2,627	2,627	2,627	2,627			
		Available places	0	-11	-25	-26	-14			
		Occupancy rate	100.0%	100.4%	101.0%	101.0%	100.5%			

6.48 Therefore, even assuming that a school has no available places when 5% of the places are available, even on the basis of the cohort progression forecasts of the LEA, there will be at least:

- 40 available primary school places across the Whaddon primary school planning area in aggregate,

- No available primary school places across the agreed list of primary schools if these are considered on an aggregated basis,
- 64 available places at Oakwood Primary School, and
- 4 available places in Holy Trinity C of E Primary School.

6.49 In terms of sixth form places there will be:

- No available sixth form places in aggregate across the Cheltenham secondary school planning area,
- Between 47 and 50 available sixth form places at Cheltenham Bournside School, and
- Between 12 and 32 available places at All Saints Academy.

6.50 The LEA however inexplicably identify that there are forecast to be no available primary school assuming a 95% occupancy rate.

Summary

6.51 Based on the cohort progression forecasts of the LEA which demonstrably over-inflate the number of pupils arising, there will be:

- 104 available primary school places within schools in the Whaddon primary school planning area in aggregate and an additional 20 in primary schools within a reasonable travel distance outside of the planning area,
- 124 available primary school places across the agreed list of primary schools if these are considered on an aggregated basis,
- A significant number of available places in individual schools including 85 available places at Oakwood Primary School, 14 at Holy Trinity C of E Primary School, and 14 at Dunalley Primary School,

- No available secondary school places within schools or in aggregate across the Cheltenham secondary school planning area[50], and
- Between 94 and 117 available sixth form places within schools in the Cheltenham secondary school planning area in aggregate including at least 70 at Cheltenham Bournside School and at least 24 at All Saints Academy.

6.52 If however, it is concluded that schools with 5% of places available have no available places, as assumed by the LEA, there would still be at least:

- 40 available primary school places within schools in the Whaddon primary school planning area in aggregate,
- No available primary school places across the agreed list of primary schools if these are considered on an aggregated basis,
- 64 available places in Oakwood Primary School and 4 available places in Holy Trinity C of E Primary School,
- No available secondary school places within schools or in aggregate across the Cheltenham secondary school planning area, and
- Between 59 and 82 available sixth form places within schools in the Cheltenham secondary school planning area.

6.53 In the subsequent analysis, in order to ensure that there will be sufficient places, the lower end of these ranges of the available places are used.

[50] Whilst the forecasts identify that there will be 4 available places from 2025/26 onwards, as these arise at Pate's Grammar School, which is a selective school, I disregard these.

7. THE PUPIL YIELDS TO APPLY TO NEW BUILD DEVELOPMENT

An untested new formulaic approach

7.1 In the Coombe Hill appeal decision, the Inspector suggested that pupil product ratios should be based on up to date evidence from recent housing developments. Whilst this is true, it does not avoid the clear directions of national policy and guidance that such up to date pupil product ratios also need to be tested at examination[51], clearly set out in the Development Plan[52], informed by a viability assessment[53], informed by evidence of infrastructure needs[54], that they should not undermine the deliverability of the Development Plan[55], and that new formulaic approaches such as that proposed by the LEA should not be introduced through SPDs or evidence based documents[56]. None of these could be achieved by any other formulaic approach than that which was examined alongside the JCS and which is clearly referred to within the JCS namely those identified in the IDP2014.

7.2 Nevertheless, even if national policy and guidance are to be departed from contrary to my professional opinion and the principle of introducing a new formulaic approach on an ad-hoc basis is accepted without considering the direct effects on numerous other Development Plan policies with consequent harms to the deliverability and sustainability of the Development Plan, this new formulaic approach should be based on the most up to date evidence from recent housing developments and would need to be rigorously tested[57]. I therefore proceed to consider the merits of the potential pupil product ratios before the current appeal namely those of the IDP which were informed by the Cognisant Study and those of the NEMS Market Research Survey commissioned on behalf of the Appellant, the headline findings of which are included as Appendix 2.

APPENDIX 2: HEADLINE FINDINGS OF THE PUPIL PRODUCT RATIO STUDY

7.3 The Coombe Hill Inspector incorrectly indicated that the most recent evidence is to be found in the Cognisant Study of 2019 (CDG5) which informed the problematic LDG. However, a more recent survey had been commissioned on behalf of the

[51] See the PPG (23b-004), (23b-013)
[52] See paragraph 34 of the NPPF, the PPG (23b-004), (23b-005), (23b-008), (23b-013)
[53] See the PPG (23b-004), (23b-005), (23b-011)
[54] See the PPG (23b-005), (23b-008), (23b-011)
[55] See paragraph 34 of the NPPF, the PPG (23b-003), (23b-005)
[56] See the PPG (23b-004)
[57] At this s78 appeal rather than at examination as set out in the PPG (23b-004).

Appellant, namely the NEMS Market Research Survey of 2020 which accords with the relevant guidance unlike the LDG and so the pupil product ratios identified therein are both based on a more recent survey than those identified in the LDG and do not suffer from the flaws of the LDG which were identified in the Coombe Hill appeal decision. Whilst the pupil product ratios of the LDG have subsequently been adjusted in the IPS, these are still based on the Cognisant Study of 2019 and so are less recent than those in the NEMS Market Research Survey of 2020, and they are still subject to number of the flaws identified in the Coombe Hill appeal decision.

7.4 The NEMS Market Research Survey was presented to the Coombe Hill appeal as a sense-check of the PPRS Update rather than as an alternative, given that my position was and remains that the IDP2014 should continue to be applied. It is therefore understandable why the Inspector did not consider this as an alternative as it was not offered as one. However, if the Inspector's findings are accepted namely that the best and most recent evidence should be used regardless of the conflict with national policy and national guidance, the NEMS Market Research Survey clearly provides the most recent evidence as well as evidence that does not suffer from the flaws of the LDG or the IPS.

7.5 Furthermore, the IPS acknowledges that it is an interim position that will be applied until the necessary information becomes available from a full review in the next 6 months. I would suggest that in the absence of the acknowledged necessary information, the weight afforded to the IPS should be limited at most. As such, even if it was appropriate in principle to depart from national policy and guidance, the IPS would not provide grounds to do so.

Pupils and children

7.6 There is an important distinction to be drawn between the number of children resident with a new build dwelling and the number of pupils that will attend an LEA-funded school. All of the relevant guidance indicates that the capacity in schools should be calculated using pupil yields rather than child yields including:

- The PPG (23b-008);
- Repeatedly throughout Securing Developer Contributions for Education; and

- Repeatedly within the School Capacity Survey 2021 guide (see in particular the first paragraph under the section entitled 'Calculate uptake factor' on page 10).

7.7 The Cognisant Study which informs the IPS however recorded the number of children rather than the number of pupils in a new development as explicitly identified in the first paragraph of the Introduction. This approach is not only contrary to the relevant guidance, but the Coombe Hill Inspector also found that this further exaggerated the pupil product ratios of the LEA.

7.8 The LEA has now recognised this in the IPS and has made adjustments to make allowances for the proportion of children across Gloucestershire that are educated either at home or in the independent sector based on information obtained from the LEA's own records and the Independent Schools Council Census. On the basis of these datasets the LEA assumes that 2.6% of primary school aged children and 10.2% of secondary and sixth form aged children do not attend LEA funded schools. The result of this is that the LEA identify an average of 64.2 primary, secondary and sixth form pupils attending LEA funded schools in every 100 households.

7.9 Whilst such an adjustment is to be welcomed in principle, the reliance upon secondary data sources is no substitute for the use of primary data gathered from surveys designed to capture the necessary information. In particular, the secondary data sources will not reflect the differences between the use of home schooling or independent schools from households in new build developments as compared to the existing dwelling stock, or the different proportions of pupils in different phases of education accessing the independent sector, or take any account of the proportion of sixth form aged children accessing apprenticeships or traineeships. The Independent Schools Council Census also reflects the location of schools rather than the place of residence of the attending pupils and so does not provide an accurate figure for the take-up of independent schools from within Gloucestershire.

7.10 The necessary primary data has been gathered in the NEMS Market Research Survey which identifies an average of 34 primary, secondary and sixth form pupils attending LEA funded schools in every 100 households resident in a new build development.

7.11 It is therefore apparent that the findings of the Cognisant Study as adjusted by the LEA using unrepresentative secondary datasets identify significantly more pupils

(64.2) than those which arise directly from the NEMS Market Research Survey (34). Any request based on such unrepresentative datasets would clearly not be fairly or reasonably related in scale.

Dwellings and households

7.12 The returns to the survey of the Cognisant Study which informs the IPS and to the NEMS Market Research survey will necessarily all be from households in dwellings that were occupied. A proportion of new dwellings will not be occupied, and no returns will have been received from these. As set out in the PPG (23b-008) pupil yields should reflect homes where children live and so should not reflect vacant properties. It is therefore necessary to take account of the proportion of unoccupied new dwellings before applying the resultant yields which reflect only occupied dwellings as set out in paragraph 103 of the Coombe Hill appeal decision.

7.13 In the IPS, the LEA has adjusted the product ratios of the LDG to reflect vacant and second homes. This adjustment is based on the proportion of vacant and second homes across Gloucestershire in October 2020 which the IPS identifies as being 3.6%. This adjustment to the 64.2 pupils per 100 households results in 61.5 pupils per 100 dwellings.

7.14 There will however be significant variation in the number of vacant and second homes between areas which is not encapsulated by the application of a standard Gloucestershire wide rate. Indeed, the dataset relied upon by the LEA indicates that 4.3% of dwellings in Cheltenham Borough were vacant or second homes in October 2020.

7.15 The product ratios of the NEMS Market Research Survey had instead been adjusted based on the proportion of vacant and second homes assumed in the housing requirement of the JCS for Cheltenham Borough, namely 4.62%[58]. This adjustment to the 34 pupils per 100 households results in 32.4 pupils per 100 dwellings.

Migration

7.16 As set out in paragraph 3 of Securing Developer Contributions for Education and towards the bottom of page 16 of the School Capacity Survey guide, once the pupil yield factor (or pupil product ratio) has been established, it is also necessary to take

[58] As set out in Table 8 of the JCS OAN Update Report, September 2015 (CDE14).

account of pupil migration. Indeed, a proportion of the pupils resident in a new development are likely to already be educated in local schools and therefore will not place an additional demand on local places. This is evident from the fact that the NEMS Market Research Survey identifies that 75.5% of pupils did not move schools when moving to a new development.

7.17 It should be acknowledged that some of the households that move to a new build development will release dwellings for occupation by other households, some of whom will similarly have pupils new to local schools. As set out on the bottom of page 16 of the School Capacity Survey guide, it is also necessary to take account of these effects along the housing market chain.

7.18 The LEA's request pays no regard to this and as a result implausibly assumes that:

- every pupil resident within a new development will as a matter of course change schools, and/or
- family fragmentation and first time buyers do not exist such that every dwelling released along the housing chain will be filled by an existing household moving from elsewhere who will bring additional pupils to local schools.

7.19 This omission of the Cognisant Study and LDG has been highlighted by Forest of Dean District Council in paragraphs 7 and 10 of their response to the emerging Local Development Guide. The Inspector in the recent Coombe Hill appeal decision similarly correctly recognised that the approach of the LEA in this regard was mistaken.

7.20 Nevertheless, in the IPS the LEA continue to make no allowance for migration contrary to the clear findings of paragraph 108 of the Coombe Hill appeal decision. The justifications for this appear to be that:

- there are no secondary datasets available to adjust the pupil product ratios in response to this issue,
- as the Cognisant Study takes account of the proportion of households with no children this somehow accounts for backfilling, and

- even in the absence of such an adjustment the pupil product ratios of the IPS are conservative by reference to the 2011 Census.

7.21 The suggested absence of an appropriate secondary dataset does not provide any justification for disregarding the fact that a proportion of pupils will not be additional to local schools. Indeed, the consequence of this is that the requested contributions cannot be fairly or reasonably related in scale. Furthermore, there are some national datasets which provide some assistance. For example, the National Association of Estate Agents Housing Report of June 2021 (CDG8) identifies that 27% of sales were to first time buyers nationally, which compares to the 28.6% of new build homes in Gloucestershire that are occupied by households that did not release a property along the housing market chain including first time buyers according to the NEMS Market Research Survey.

7.22 The suggestion that the Cognisant Study takes account of these effects is simply incorrect. The Cognisant Study has surveyed households in new build development but has not gathered information on whether resident pupils have changed schools, or whether the household released a dwelling along the housing market chain for occupation by another household. These omissions mean that the LDG and IPS assume that:

- A household in a new build home with a child that has not changed school and that have released a home to another household without a child places a demand for one additional place, when in reality no additional demand has been generated,

- A household in a new build home with a child that has not changed school and that have not released a home to another household places a demand for one additional place, when in reality no additional demand has been generated.

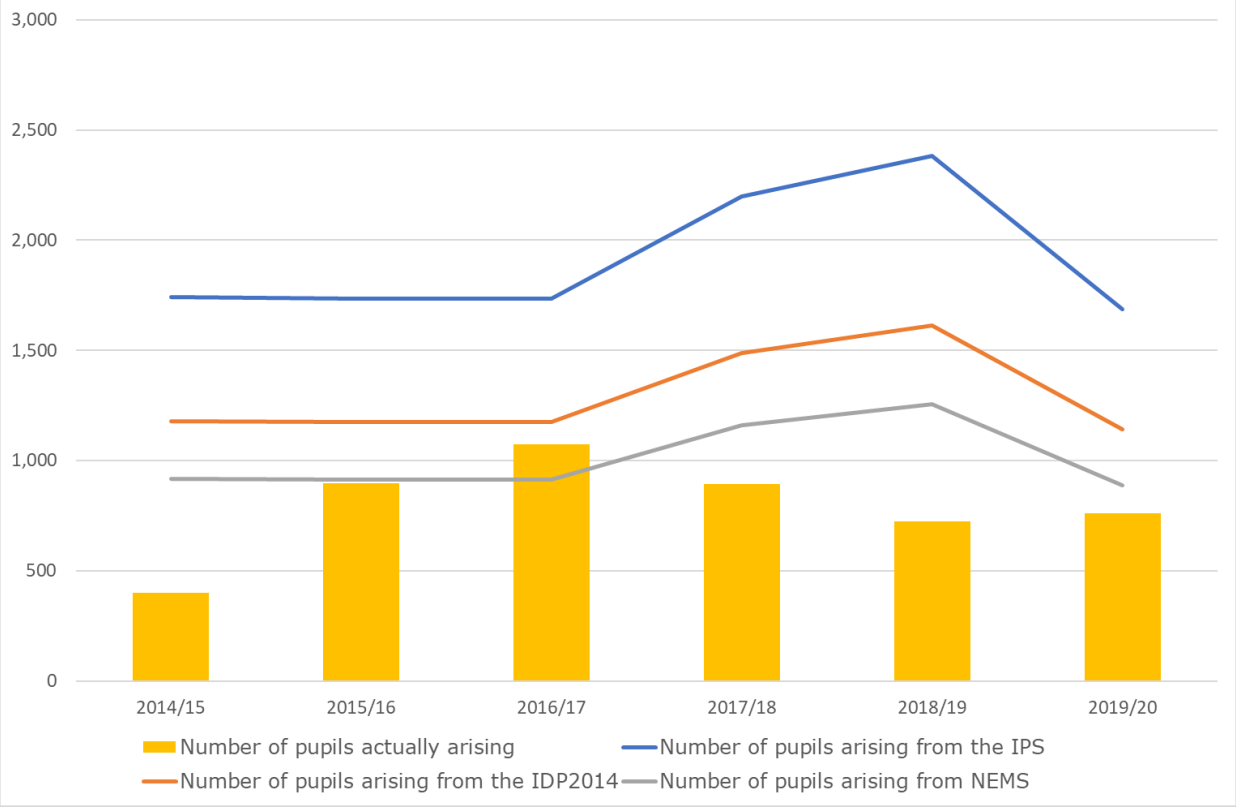
7.23 In effect the Cognisant Study and therefore the LDG and IPS mistakenly assume that every resident pupil in a new build home places a demand for an additional place contrary to the recent findings of the Coombe Hill appeal decision. This is an obvious and gross error, and I struggle to see how this position can sensibly be maintained by the LEA.

7.24 To put this in context, the number of pupils arising according to the IPS can be compared with the number of pupils that have actually arisen in recent years. This is presented in Table 7.1 and Figure 7.1 below which clearly demonstrates that the approach of the LEA unsurprisingly in the absence of any consideration of the proportion of pupils that are not new to the local population produces unrealistic results.

Table 7.1 – a comparison between the results of the approaches and the actual change in pupil numbers

	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
Net additional dwellings	2,832	2,822	2,821	3,577	3,874	2,743
Number of pupils arising from the IPS	1,742	1,736	1,735	2,200	2,383	1,687
Number of pupils arising from the IDP2014	1,179	1,175	1,174	1,489	1,613	1,142
Number of pupils arising from NEMS	918	914	914	1,159	1,255	889
Number of pupils actually arising	400	896	1,073	892	724	761

Figure 7.1 – a comparison between the results of the approaches and the actual change in pupil numbers



7.25 The reliance upon the 2011 Census is also mistaken. The IPS suggests that the 2011 Census identified:

- an average of 70 children including those of pre-school age per 100 dwellings, and
- that 61% of dwellings do not have children residing within them.

7.26 It then suggests that as the Cognisant Study identifies an average of 68 children excluding those of pre-school age per 100 dwellings and that 43% of dwellings do not have children residing within them, the pupil product ratios are conservative.

7.27 Not only does this analysis compare 'apples' with 'pears' by comparing the number of children including those of pre-school age with the number of children excluding those of pre-school age, but it is also factually incorrect.

7.28 The 2011 Census actually identified that across Gloucestershire there were 254,615 households, 121,667 dependent children[59] aged 0-18 and 88,260 dependent children aged 5-18. The Census therefore identifies that there were 48 dependent children aged 0-18 for every 100 households and 35 dependent children aged 5-18 for every 100 households[60]. Therefore, the 2011 Census does precisely the opposite of that suggested by the IPS as it highlights how high the pupil product ratios of the Cognisant Study are rather than providing any indication that they are conservative[61].

7.29 Similarly, the 2011 Census actually identifies that there were of the 245,172 households for which the necessary information is available[62], 176,715 did not have any dependent children and 68,457 did. The Census therefore identifies that 72% of households did not have any resident dependent children and 28% did. Even if all of those for which the necessary information is not available are assumed to have resident dependent children, 69% of households would not have had resident children and 31% did. The LEA however mistakenly identify that 61% of dwellings

[59] Dependent children are defined to be those aged under 16 living with at least one parent or aged 16 to 18 in full time education excluding those who have a spouse, partner of child living in the household.
[60] This includes the number of children in communal establishments.
[61] I have alerted the LEA to this error.
[62] 9,443 households are classed as "Other" and so it is not possible to identify whether these households had resident dependent children or not.

had no resident children and 29% did. On any of these bases, this does not suggest that the Cognisant Study which identified that 57% of households had resident children is conservative and it does precisely the opposite.

7.30 The LEA has clarified that they have taken the information from Census table QS118EW which actually identifies the average number of dependent children per family in households[63]. The Census defines a family as "a couple living together (with or without children) or a lone parent living with child/children; a person living alone is not a family". Therefore, whilst there may be 70 dependent children per 100 families in households, there are only 48 children including per 100 households once people living alone, groups of independent adults sharing accommodation, vacant dwellings, second homes etc are taken into account. Similarly, whilst 61% of families in households do not have dependent children, 72% of households do not have dependent children.

7.31 I had notified the LEA of this error, but have been informed that the LEA consider that the tables I have used do not use consistent definitions. This is simply incorrect. There is no inconsistent definition. The 2011 Census provides information on the number of dependent children and the number of dwellings which can be simply compared notwithstanding that each of these comes from a different Census table[64]. For completeness, I include all of the relevant Census Tables in Appendix 3.

APPENDIX 3: CENSUS TABLES

7.32 The LEA therefore maintain that the number of dependent children per family and the number of families without dependent children provides the best comparators of the number of dependent children per household and the number of households without dependent children rather than the number of children per household and the number of households without dependent children.

7.33 Therefore, there is no merit in any of the proposed justifications of the LEA for ignoring migration contrary to the relevant guidance and the findings of the Coombe Hill appeal.

[63] Rather than dwellings as suggested in the IPS.
[64] Unlike the 2001 Census which was subject to significant rounding and so minimal errors could arise from using data from different tables.

7.34 The NEMS Market Research Survey has gathered the necessary information on whether pupils resident within new developments have changed schools following a household move as required by the guidance. This shows that the overwhelming majority of pupils that move to a new development do not in fact change schools. This is perhaps unsurprising given that household growth does not arise entirely from in-migration. Indeed, the majority of household moves are over a relatively short distance. On average, only 6.1 of the 32.4 primary, secondary and sixth form pupils resident in every 100 new build dwellings in Cheltenham Borough change school.

7.35 It would therefore be expected that 100 new dwellings would accommodate 6.1 pupils that change school as compared to the request of the LEA which requires provision is made to accommodate 61.5 pupils all of whom are assumed to change school.

7.36 However, both the figures provided by the IPS and the NEMS Market Research survey do not take any account of the obvious fact that some of the households that move to a new build development will release dwellings for occupation by other households, some of whom will similarly have pupils new to local schools. As set out on the bottom of page 16 of the School Capacity Survey guide, it is necessary to take account of these effects along the housing market chain. The LEA's request inexplicably takes no account of these effects and so once again does not accord with the relevant guidance.

7.37 It would be impractical to survey all of the housing stock in Gloucestershire to establish whether the additional pupil product ratios experienced in the existing dwelling stock were markedly different to those in the newly arising stock[65], and so for the purposes of this analysis, it is assumed that as with new build development there would be 6.1 additional pupils for every 100 dwellings released along the housing chain.

7.38 The survey conducted on behalf of the Appellant, identified that 28.6% of households that moved to a new dwelling did not release a property for occupation by another household. It would therefore be expected that as a result of the

[65] If the ratios were significantly different, it would be expected that the existing dwelling stock would have lower pupil product ratios, as established older households often remain in their dwellings once children have left home. This would therefore reduce the resultant pupil yields identified in this Proof of Evidence.

development of 100 new dwellings, 71.4 existing dwellings would be released for occupation in the second link in the housing chain, then 50.9 in the third link, 36.3 in the fourth link, 25.9 in the fifth link, 18.5 in the sixth link etc.

7.39 For every 100 dwellings along the housing chain, it would be expected that they would accommodate 6.1 pupils new to local schools assuming that the ratios were consistent between new dwellings and the existing dwelling stock. The total additional pupils along the housing chain approaches a limit of 21.2 for every 100 dwellings taking account of the vacancy rate assumed in the Development Plan in Cheltenham as calculated in Table 7.2 below. It should be noted that this is a maximum figure as it assumes that every dwelling released along the housing chain and therefore every pupil within those dwellings will be within the area of assessment, when in reality a proportion of the released dwellings at each link in the chain will be outside of this area and thereby the pupils that move to these will not generate an additional demand on places within the area.

Table 7.2 – total net additional pupils along the housing market chain

	Dwellings released for occupation (previously figure -28.6%)	Additional pupils in each link in the chain	Total additional pupils (maximum)
New build	100	6.1	6.1
Second link	71.4	4.3	10.4
Third link	50.9	3.1	13.5
Fourth link	36.3	2.2	15.7
Fifth link	25.9	1.6	17.3
Sixth link	18.5	1.1	18.4
Seventh link	13.2	0.8	19.2
Eighth link	9.4	0.6	19.8
Ninth link	6.7	0.4	20.2
Tenth link	4.8	0.3	20.5
Eleventh link	3.4	0.2	20.7
Twelfth link	2.4	0.1	20.8
Thirteenth link	1.7	0.1	21.0
Fourteenth link	1.2	0.1	21.0
Fifteenth link	0.9	0.1	21.1
Sixteenth link	0.6	0.0	21.1
Seventeenth link	0.5	0.0	21.1
Eighteenth link	0.3	0.0	21.2
Nineteenth link	0.2	0.0	21.2
Twentieth link	0.2	0.0	21.2

7.40 Once the pupil yields are calculated in accordance with the relevant guidance, there would be 32.4 primary, secondary and sixth form pupils resident in every 100 new dwellings, of which only 6.1 would change school and thereby place a demand for an additional place. However, along the housing market chain there would be an impact of at most 21.2 additional pupils for every 100 dwellings built in Cheltenham Borough[66] assuming that every move was from within Gloucestershire.

7.41 It is therefore apparent that even if, contrary to national policy and guidance, it is appropriate to depart from Policy INF6 (and the product ratios of IDP2014), the request of the LEA (based on 61.5 pupils per 100 dwellings) is more than almost triple the amount which could be justified in accordance with the relevant guidance (21.2 pupils per dwelling).

7.42 The respective approaches and resultant product ratios of the IPS and the NEMS Market Research survey are compared in Table 7.3 below.

[66] It should be noted that this is minimally different to the rate which applies on average across Gloucestershire as identified in Table 2.8 of Appendix 2, owing to the specific vacancy rate applied in each LPA.

Table 7.3 – a comparison of the IPS and the NEMS Market Research survey

	IPS		NEMS	
Children resident per 100 households				
Primary	41	Gathered from survey	-	-
Secondary	20		-	-
Sixth form	7		-	-
State sector pupils resident per 100 households				
Primary	39.9	Adjusted based on secondary data (0.6% home educated and 2.0% independently educated)	20.8	Gathered from survey
Secondary	18.0	Adjusted based on secondary data (1.2% home educated and 9% independently educated)	10.5	
Sixth form	6.3		2.7	
State sector pupils resident per 100 dwellings				
Primary	38.5	Adjusted based on secondary data (3.6% in vacant/second homes)	19.8	Adjusted based on the Development Plan (4.62% in vacant/second homes)
Secondary	17.0		10.0	
Sixth form	6.0		2.5	
Additional state sector pupils resident per 100 dwellings				
Primary	38.5	No adjustment	4.4	Gathered from survey
Secondary	17.0		1.0	
Sixth form	6.0		0.7	
Additional state sector pupils arising along the chain per 100 dwellings				
Primary	38.5	No adjustment	15.3	Adjusted based on data gathered from the survey (28.6% of households do not release a property)
Secondary	17.0		3.5	
Sixth form	6.0		2.4	

7.43 The Cognisant Study which informs the IPS gathered primary data on the number of children per 100 households, but all of the evidence required to accord with national guidance including the number of pupils is based on secondary datasets which do not accurately reflect the particular circumstances experienced on new build developments in Gloucestershire. In contrast, the NEMS Market Research survey has gathered all of the necessary primary data where this is possible which should better reflect the reality of the number of pupils arising on new build developments in Gloucestershire.

7.44 I should re-iterate that whilst the product ratios of the NEMS Market Research survey are preferable to those of the IPS, I maintain that neither of these should be used until and unless they are tested at examination and considered alongside all other proposed Development Plan policies.

Comparators

7.45 As set out above and confirmed by the Coombe Hill appeal decision, the new formulaic approach of the LEA departs from the relevant guidance in a number of regards. This has unsurprisingly resulted in child product ratios that were found to be startlingly high in the Coombe Hill appeal. It would be expected that in light of the seemingly anomalous results of the Cognisant Study, the LEA would have sense checked the results, but no such exercise has been undertaken.

7.46 The product ratios identified in the PPRS Update and those identified by the NEMS Market Research survey are compared with numerous comparators in Table 7.4 below.

Table 7.4 – a comparison of the pupil product ratios of the IPS and NEMS

		Primary	Secondary	Sixth form	Total
Assessments of pupil product ratios in Gloucestershire	IDP2014	27.76	12.1	1.77	41.63
	NEMS taking account of migration	15.3	3.5	2.4	21.2
	NEMS without taking account of migration	19.8	10.0	2.5	32.4
	IPS without taking account of migration	38.5	17	6	61.5
Pupil product ratios applied in neighbouring LEAs	Herefordshire	No information available			
	Worcestershire[67]	20.37	13.97		34.34
	Stratford-on-Avon	24.92	17.8	3.56	46.28
	Wiltshire[68]	27.75	19.69		47.44
	South Gloucestershire	No information available			
	West Oxfordshire	Information only available for different house sizes			
	Vale of White Horse	Information only available for different house sizes			
	Swindon	37	14		51
Historic pupil product ratios in Gloucestershire	2010-20	21.0	2.3	-0.3	23.1
	2015-20	11.7	16.3	0.5	28.5

[67] In Worcestershire no additional pupils are assumed in affordable homes owing to the fact that such pupils are likely to move short distances and remain in the same school. The figures in this table assume that 40% of housing is provided as affordable housing given that this is the policy requirement for developments of 15 or more homes.
[68] In Wiltshire the pupil product ratio is discounted by 30% on affordable homes. The figures in this table assume that 35% of housing is provided as affordable housing given that depending on the location of a development within Wiltshire a development will either be required to provide 30% or 40% affordable housing.

Projected child product per 100 household ratios in Gloucestershire according to variant projections	2020-31	-5.8	10.5	10.1	14.8

7.47 It is immediately apparent that there are broadly two groupings of pupil product ratios namely:

- those which have actually occurred in Gloucestershire in recent years (23.1 and 28.5 respectively) and those which are projected to occur in the future (14.8) both of which take account of the migration which has occurred which broadly correspond with the NEMS Market Research survey findings which also take account of migration (21.2), and

- those which are sought by neighbouring LEAs which range from 34.34 in Stratford-on-Avon to 51 in Swindon which align with those of the IDP2014, but those of the IPS are significantly beyond the upper end (61.5).

7.48 This yet again suggests that the pupil product ratios of the IPS are anomalous.

7.49 The differences between these two groupings may in part be explained by the fact that the ratios identified by LEAs (between 34.34 and 51), those in the NEMS Market Research Survey without an adjustment for migration (32.4) and those of the IPS (61.5) reflect the pupil product ratios experienced on new build developments rather than across the entire dwelling stock. It is generally accepted that new build developments are attractive to younger households and as such they are likely to experience greater pupil product ratios although those in the IPS do appear to be extremely high by comparison with the others.

7.50 The pupil product ratios of the NEMS Market Research survey with an adjustment for migration (21.2) however take account of the pupil product ratios in new build development but also take account of the effects along the housing market chain and as such you would expect these to correlate with those experienced across the entire dwelling stock as they do (14.8-28.5).

7.51 The fact that the LEA has applied pupil product ratios that do not take account of the effects along the housing market chain and are therefore over-inflated may

explain how the LEA has been able to fund the provision of an additional 2,497 secondary and sixth form places from 2009/10 to 2018/19 notwithstanding the fact that the number of secondary and sixth form pupils has reduced by 1,384 in this period.

7.52 In summary, the pupil product ratios of the IPS seem over-inflated in their own terms including because they are significantly greater than those sought by any neighbouring LEA, but more importantly they do not reflect the changes across the entire dwelling stock and therefore suggest that a significantly greater number of pupils will arise than will actually be the case.

Corresponding pupil product ratios for the existing dwelling stock

7.53 If such pupil product ratios were to be applied which reflect the pupils arising in new build dwellings alone, many of whom will move from the existing dwelling stock in Gloucestershire, it would also be necessary to take account of the corresponding reduction of pupils within the existing dwelling stock when calculating the demand for school places. However, the LEA do not pay any regard to this and as such their approach identifies an unrealistic and artificially inflated demand for additional school places.

7.54 The residual housing requirement for 21,581 dwellings across Gloucestershire by 2031 would accommodate 20,805 households based on the allowance for vacant and second homes assumed by the LEA, such that there would be a total of 296,154 households by 2031. As identified previously, the high international migration variant projections provide a good proxy of the population changes that would arise from the residual housing requirement across Gloucestershire. By 2031, these projections suggest that there will be 35.3 primary, secondary and sixth form aged children in every 100 households in Gloucestershire. The residual housing requirement would therefore be expected to accommodate 104,404 primary, secondary and sixth form aged children.

7.55 However, based on the child product ratios per 100 households of the Cognisant Study, the residual housing requirement would increase the number of primary, secondary and sixth form school aged children by 14,147. In addition to those which existed in 2020 this would provide for a total of 117,190 primary, secondary and sixth form aged children in 296,154 households by 2031.

7.56 If the pupil product ratios of the IPS are applied to new build development, it would therefore be necessary to apply a corresponding pupil product ratio to the households in the existing dwelling stock to account for this difference of 12,785 primary, secondary and sixth form aged children. Based on the existing 275,350 households in 2020, this would require that in each existing 100 households the number of pupils would reduce by 4.6 as a direct result of the pupil product ratios of the IPS. This assumption would indicate that there will be a significant reduction in the number of pupils in populated areas such as Cheltenham in the absence of new development such as that proposed.

7.57 In the absence of the application of this corresponding pupil product ratio that arises directly from the pupil product ratios in the IPS, the IPS unrealistically assumes that new build dwellings have high pupil product ratios as pupils move from the existing dwelling stock to new build dwellings but then doesn't take account of the fact that this assumes that pupils are leaving the existing dwelling stock.

Conclusions on demand arising from the proposed development

7.58 The number of pupils arising as a result of the proposed development should be calculated in accordance with the Development Plan, national planning policy and national guidance using the pupil product ratios of the IDP2014.

7.59 However, as the LEA consider that it is no longer appropriate to apply the pupil product ratios relied upon in the Development Plan such that Policy INF6 must be considered to be out-of-date, the LEA seek to apply untested pupil product ratios contrary to national policy and national guidance, and furthermore the pupil product ratios applied by the LEA do not accord with national guidance in a number of regards and produce unrealistic results.

7.60 If contrary to my professional opinion, it is considered that it is appropriate to use a new formulaic approach notwithstanding the conflict with national policy and guidance, the best and most recent data has been gathered on behalf of the Appellant and is provided in the NEMS Market Research survey. Indeed, this is the only assessment which accords with the relevant guidance.

7.61 The resultant increases in the number of pupils that would arise from the proposed development of 250 dwellings using these respective pupil product ratios are set out in Table 7.5 below.

Table 7.5 – pupils arising from the proposed development of 226 qualifying homes

	IDP2014	IPS	NEMS
Primary school pupils	62.7	87.0	38.2
Secondary school pupils	27.3	38.4	8.1
Sixth form pupils	4.0	13.6	6.1
Total	94.1	139.0	53

7.62 If in accordance with national policy and guidance the pupils arising are calculated on the basis of the IDP2014 the proposed development would therefore give rise to a demand for 94.1 pupil places.

8. DETAILS OF EXISTING FACILITIES OR INFRASTRUCTURE, AND UP-TO-DATE, QUANTIFIED EVIDENCE OF THE EXTENT TO WHICH THEY ARE ABLE OR UNABLE TO MEET THOSE ADDITIONAL DEMANDS

8.1 There are three differences between myself and the LEA that are material to calculating the need for additional school places, namely:

- Whether the capacity should be considered in aggregate across the agreed list of schools, in aggregate across the planning area, and/or individually for the agreed list of schools,
- whether a school is at capacity once 95% of places are occupied, and
- the appropriate pupil product ratio to be applied.

8.2 The forecast number of available school places are set out in Table 6.4 assuming that schools can operate acceptably at up to 100% occupancy. The number of available places with a 95% occupancy rate is also provided in Table 6.5. Notwithstanding that on the basis of either of these there are demonstrably some available places, the LEA inexplicably assume that there are no available places. The number of pupils arising using the respective pupil product ratios are set out in Table 7.5. From these the need for contributions to secure additional places are calculated in Table 8.1.

Table 8.1 – the need for additional school places as a result of the proposed development

Occupancy rate	Area of assessment (minimum available primary, secondary and sixth form places)	Pupil product ratio (primary, secondary and sixth form pupils arising)	Primary	Secondary	Sixth form	Total
95% occupancy	Aggregated capacity of agreed schools (0,0,0)	IDP2014 (62.7,27.3,4.0)	62.7	27.3	4.0	94.1
		IPS (87.0, 38.4, 13.6)	87.0	38.4	13.6	139.0
		NEMS (38.2,8.7,6.1)	38.2	8.7	6.1	53.0
	Aggregated capacity across the planning area (40,0,0)	IDP2014 (62.7,27.3,4.0)	22.7	27.3	4.0	54.1
		IPS (87.0, 38.4, 13.6)	47.0	42.5	13.6	103.1
		NEMS (38.2,8.7,6.1)	0.0	8.7	6.1	14.8
	Individual schools (68,0,59)	IDP2014 (62.7,27.3,4.0)	0.0	27.3	0.0	27.3
		IPS (87.0, 38.4, 13.6)	19.0	38.4	0.0	57.4
		NEMS (38.2,8.7,6.1)	0.0	8.7	0.0	8.7
100% occupancy	Aggregated capacity of agreed schools (124,0,0)	IDP2014 (62.7,27.3,4.0)	0.0	27.3	4.0	31.3
		IPS (87.0, 38.4, 13.6)	0.0	38.4	13.6	52.0
		NEMS (38.2,8.7,6.1)	0.0	8.7	6.1	14.8
	Aggregated capacity across the planning area (104,0,0)	IDP2014 (62.7,27.3,4.0)	0.0	27.3	4.0	31.3
		IPS (87.0, 38.4, 13.6)	0.0	38.4	13.6	52.0
		NEMS (38.2,8.7,6.1)	0.0	8.7	6.1	14.8
	Individual schools (124,0,94)	IDP2014 (62.7,27.3,4.0)	0.0	27.3	0.0	27.3
		IPS (87.0, 38.4, 13.6)	0.0	38.4	0.0	38.4
		NEMS (38.2,8.7,6.1)	0.0	8.7	0.0	8.7

8.3 Based on the available capacity within individual schools that could accommodate the proposed development, the assumption that schools can operate acceptably at up to 100% occupancy and using the tested product ratios of the Development Plan consistent with the approach in the recent Coombe Hill appeal decision, the proposed development therefore generates a need for an additional 27.3 secondary

school places and no need for any primary or sixth form places as highlighted in yellow in Table 8.1 above.

8.4 In contrast the LEA assume that the capacity should be considered on an aggregated basis across a number of schools rather than the planning area contrary to any guidance or the approach adopted in the recent Coombe Hill appeal decision, and that it would be unacceptable for schools to operate at in excess of 95% occupancy contrary to the findings of the recent Coombe Hill appeal decision, and then also apply not only untested pupil product ratios that depart from national policy and guidance but also untested pupil product ratios that are demonstrably unrealistic. On this basis, there would be a need for 87 primary school places and 38.4 secondary school places and 13.6 sixth form places as highlighted in blue in Table 8.1.

9. THE METHODOLOGY FOR CALCULATING ANY FINANCIAL CONTRIBUTION NECESSARY TO IMPROVE EXISTING FACILITIES OR INFRASTRUCTURE, OR PROVIDE NEW FACILITIES OR INFRASTRUCTURE, TO MEET THE ADDITIONAL DEMANDS

9.1 The LEA identify the appropriate cost multipliers. Using these the cost of the places required in support of the proposed development are calculated in Table 9.1 based on the 9 scenarios identified in Table 8.1.

Table 9.1 – the maximum contribution for 250 dwellings

Occupancy rate	Area of assessment	Pupil product ratio	Primary	Secondary	Sixth form	Total
95% occupancy	Aggregated capacity of agreed schools	IDP2014	£946,773.12	£533,049.00	£91,963.51	£1,571,785.63
		IPS	£1,313,067.91	£748,805.80	£312,042.72	£2,373,916.43
		NEMS	£576,874.01	£169,564.63	£140,487.46	£886,926.10
	Aggregated capacity across the planning area	IDP2014	£343,133.12	£533,049.00	£91,963.51	£968,145.63
		IPS	£709,427.91	£828,325.00	£312,042.72	£1,849,795.63
		NEMS	£0.00	£169,564.63	£140,487.46	£310,052.09
	Individual schools	IDP2014	£0.00	£533,049.00	£0.00	£533,049.00
		IPS	£286,879.91	£748,805.80	£0.00	£1,035,685.71
		NEMS	£0.00	£169,564.63	£0.00	£169,564.63
100% occupancy	Aggregated capacity of agreed schools	IDP2014	£0.00	£533,049.00	£91,963.51	£625,012.51
		IPS	£0.00	£748,805.80	£312,042.72	£1,060,848.52
		NEMS	£0.00	£169,564.63	£140,487.46	£310,052.09
	Aggregated capacity across the planning area	IDP2014	£0.00	£533,049.00	£91,963.51	£625,012.51
		IPS	£0.00	£748,805.80	£312,042.72	£1,060,848.52
		NEMS	£0.00	£169,564.63	£140,487.46	£310,052.09
	Individual schools	IDP2014	£0.00	£533,049.00	£0.00	£533,049.00
		IPS	£0.00	£748,805.80	£0.00	£748,805.80
		NEMS	£0.00	£169,564.63	£0.00	£169,564.63

9.2 Therefore, I consider that there is a need for **£533,049** to secure the school places arising from the proposed development rather than the **£2,626,013.75** sought by the LEA or the **£2,373,916.43** which would be sought by the LEA once the 24 1-bed homes which do not qualify for contributions are discounted.

10. DETAILS OF THE FACILITIES OR INFRASTRUCTURE ON WHICH ANY FINANCIAL CONTRIBUTION WILL BE SPENT

10.1 The LEA's responses to the planning application (CDB4A-E) requested contributions but within these responses I have been unable to identify any projects towards which these contributions are intended to be spent as is expected by paragraph 20 of Securing Developer Contributions for Education.

10.2 In the absence of the identification of specific project/s it cannot be demonstrated that the projects are directly related to or necessary to support the proposed development.

10.3 However, providing the LEA is able to identify projects that will provide additional primary school places in the Whaddon primary school planning area and additional secondary and sixth form places in the Cheltenham secondary school planning area if it is concluded that such places are required, it would be appropriate to make contributions towards such projects.

11. CONCLUSIONS

11.1 The LEA has requested contributions towards the provision of educational infrastructure in support of the appeal scheme. The scale of the requested contributions are however demonstrably over-inflated in three regards.

11.2 Firstly, the LEA's forecasts indicate that there will be 104 available primary school places in schools in the Whaddon primary school planning area, and 94 available sixth form places in schools in the Cheltenham secondary school planning area. However, the LEA's request takes no account of these such that the request is not fairly or reasonably related in scale to the need for additional places.

11.3 Secondly, the LEA assume that there are no available places in a school when 5% of places are available, contrary to the Audit Commission recommendations and the findings of the recent Coombe Hill decision. Even if this position were to be accepted, there would still be 64 available primary school places in schools in the Whaddon primary school planning area and 59 sixth form places in schools in the Cheltenham secondary school planning area. However, the LEA's request does not take these into account such that even if this position is accepted the request would still not be fairly or reasonably related in scale.

11.4 Thirdly and finally, the LEA seek to introduce a new untested formulaic approach to calculating educational needs. Such an approach is contrary to national planning policy, national planning guidance and national educational guidance. The interim new formulaic approach of the LEA is also self-evidently a sticking plaster in the absence of the necessary detailed evidence required to identify such a new formulaic approach. It also unrealistically departs from national educational guidance and the findings of the recent Coombe Hill appeal decision by not paying any regard to migration.

11.5 The LEA's request is thereby not fairly or reasonably related in scale. Once the need for additional educational places is assessed based on the LEA's forecasts, taking account of all available places and using the tested pupil product ratios of the Development Plan in accordance with the approach that the Coombe Hill appeal decision supported, then there is a need for a contribution of £533,049 rather than the £2,626,013.75 currently sought by the LEA which is expected to be reduced to £2,373,916.43 non-qualifying 1-bed properties are discounted.