



Sevenoaks District Council
Development Management (Planning)
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Sevenoaks
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FAO: Nicola Furlonger

Economic Development

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Tuesday 15th March 2022

Your Ref: SE/19/05000/HYB

Our Ref: K/E/ SE/19/05000/HYB RJK

Dear Nicola

Planning Application: SE/19/05000/HYB
Provision and Delivery of County Council Community Services:

We understand that Sevenoaks District Council (“SDC”) is moving towards a grant of permission for the above development pursuant to the earlier resolution. Please find attached our up-to-date assessment of education requirements arising from this development based on the 635 units and our most up to date review of school spaces. In short, 100 additional secondary school places are required to serve this development and, in addition to the primary school site, contributions towards the costs of extra SEN provision and the land for a new secondary school are needed. This letter just addresses the need for education contributions (all other requirements for contributions to KCC infrastructure and services remain as in our earlier statutory consultation response albeit they need to be pro-rated for the number of units).

We understand that SDC remains of the view that it cannot or should not require educational (or other) contributions in addition to CIL. That position is clearly wrong for the reasons given in the attached advice of David Forsdick QC. Unless SDC is going to make financial provision for the 100 places and other requirements through CIL then this need will have to be provided through a s.106 Agreement. Government policy is clear on this, and we have never had any response to our analysis on this either during the recent Broke Hill case or in our letter of 2nd February 2022. It will be unlawful to proceed on the current basis. First, our statutory consultation response was inexplicably not referred to in the report to committee – the fact there had been amendments to the application since 2019 did not mean that our 2019 consultation response did not stand. It clearly did. SDC has therefore left out of account a

necessarily highly material consideration. Second, you now have the up-to-date position on need which would have to be reflected in the s.106 agreement in any event. Third, the basic approach in para 879 of the report to committee is wrong in law; contrary to government policy and will result in the unacceptable position where KCC (and thus the public) will be forced to pay for spaces the need for which is generated by this development and for which this developer should be required to pay. It will be challenged. Fourth, given that error and the up-to-date information may (depending on the constitution of SDC) be necessary to report this matter back to committee (*Kides*) with a recommendation that the full education contribution be provided (with a claw back if CIL is subsequently dedicated to this).

The Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 (the CIL Regulations) (Regulation 122) require that requests for development contributions of various kinds must comply with three specific legal tests:

1. Necessary,
2. Related to the development, and
3. Reasonably related in scale and kind

These tests have been applied in the context of this planning application and give rise to the following specific education requirements (the evidence supporting these requirements is set out in the attached Appendices). We rely on our earlier letter for all other contributions.

Requirement Summary (see addendum information page 8)

	Per Applicable House (x 635)	Per applicable flat (0)	Total (assessment totals based on all dwellings being houses)	Project
Primary Land	The provision of a 1.6 Ha serviced site of regular shape, level and free of any encumbrances within the development site			For the development of a future 1FE Primary School on the new development site with the capacity for 210 pupils
	KCC's response February 2019 to the LPA's Regulation 19 consultation upon the Sevenoaks proposed Local Plan (currently in abeyance) requested safeguarding of a site for a new primary school of 1.6 ha in size (not 1.16ha) for future education planning need			
Special Education	£617.31	£154.33	£391,991.85	Towards Milestone Academy Special

				School expansion, New Ash Green DA3 8JZ
Secondary Education	£5,176.00	£1,294.00	£3,286,760.00	Towards a new Secondary School or for additional secondary provision within Sevenoaks District
Secondary Land	£4,392.89	£1,098.22	£2,789,485.10	Towards the land acquisition costs for a new Secondary School

'Applicable' excludes: 1 bed units of less than 56 sqm GIA, and any sheltered accommodation.

Please note:

- that the figures for Secondary Education are to be **index linked by the BCIS General Building Cost Index from April 2020 to the date of payment** (Apr-20 Index 360.3)
- that the figures for Special Educational Needs and Disabilities are to be **index linked by the BCIS General Building Cost Index from Qtr 4 2020 to the date of payment** (Q4 2020 at 364).
- are valid for 3 months from the date of this letter after which they may need to be recalculated due to changes in district council housing trajectories, on-going planning applications, changes in capacities and forecast rolls, projects and build costs.

Justification for infrastructure provision/development contributions requested

The County Council has modelled the impact of this proposal on the provision of its existing services and the outcomes of this process are set out below and in the attached appendix.

Secondary School Provision

The impact of this proposal on the delivery of the County Council's services is assessed in Appendix 1.

A contribution is sought based upon the additional need required, where the forecast secondary pupil product from new developments in the locality results in the maximum capacity of local secondary schools being exceeded.

The proposal is projected to give rise to 100 additional secondary school pupils from the date of occupation of this development. This need can only be met through the provision of a new Secondary School or in accordance with DfE Guidance Securing Development Contributions 2019 para 20 the contingency will be through additional secondary provision within Sevenoaks District.

The new secondary school accommodation will be delivered in accordance with the Local Planning Authority's Infrastructure Delivery Plan (where available and up to date); timetable and phasing.

Please note this process will be kept under review and may be subject to change as the Local Education Authority will need to ensure provision of the additional pupil spaces within the appropriate time and at an appropriate location.

Secondary Land

In addition, to secure the transfer of the secondary school site to KCC, a contribution towards the land acquisition for a new Secondary School land is required **at £4,392.89 per applicable house and £1,098.22 per applicable flat.**

The land acquisition costs are set out in Appendix 1a and are based upon local land prices. If a lower land acquisition price is agreed or alternative secondary education provision arrangements are made, KCC will return any unspent part of the Secondary Land Contribution, and this will be addressed in any s106 agreement.

The new secondary school accommodation will be delivered in accordance with the Local Planning Authority's Infrastructure Delivery Plan (where available); timetable and phasing.

Please note this process will be kept under review and may be subject to change as the Local Education Authority will need to ensure provision of the additional pupil spaces within the appropriate time and at an appropriate location.

Primary Education

There is no need for more spaces at present.

Build Contribution

Further to KCC response on this application in Nov 2019, the latest Primary Education assessment (Appendix 1) is indicating that Primary pupil numbers can be accommodated in existing provision in the assessed education planning groups. However strategically a new Primary School site of 1.6ha will be required in Halstead (as explained in KCC's response in February 2019 to Sevenoaks District Council's Regulation 19 Consultation on its emerging local plan). The fact that SDC's Local Plan is in abeyance does not remove this need. Given the likely housing numbers required

under any plan in this general area and without current certainty on other strategic sites in the district, this need can only be met through the provision of a new safeguarded Primary School within this proposed development site Masterplan.

Proposed school site

KCC welcomes in principle, the masterplan proposal to provide a primary school site for the development. KCC is concerned that the masterplan has only specified provision of a 1.16 Ha site allocation. This is not acceptable, because it falls significantly below the required site need to accommodate a 1 FE primary school. Our response to SDC's Regulation 19 draft local plan and the original request for Development Contributions dated 15th November 2019, have consistently stated a land requirement of 1.6 Ha.

KCC's requirement is for a 1.6 Ha site to accommodate a 1FE school, with expansion capacity, which is required to be transferred to KCC at nil cost and according to our General Transfer Terms (attached). In line with KCC's original request letter. The site should be centrally located within the development to provide good accessibility and should be level and of regular shape.

The current shape of the site illustrated in the masterplan does not appear acceptable. It is of irregular shape and on initial inspection, would make aspects of the site difficult for development. The masterplan shows two different sized sports pitches. The provision of both sports pitches should be to the required U11/12 standard specified in the [Football Association's Guidance](#) at 73.15 metres (80 yards) x 45.7 metres (50 yards), plus run off areas of 5.5 metres (6 yards) on each pitch side.

There appears to be a fallaway of around 10 metres from south to north across the site. Additionally, the eastern edge of the proposed site appears to be in close proximity to the steep wooded escarpment, which gives some concern regarding the integrity of the school pitches. As previously stated, the school site would need to be level and delivered in accordance with KCC's General Land Transfer requirements.

Special Education Needs and Disabilities provision¹

The Children's and Families Act 2014 and accompanying Code of Practice sets out the system for children and young people with special educational needs and disability (SEND) aged 0-25 years. KCC's SEND Strategy sets out its vision and priorities in respect of this area of its service.

The number of children and young people with SEND in Kent is 13.4% of the total school population (January 2019). The majority are educated in mainstream school environments. However, children with more complex needs are supported through an Education, Health and Care Plan (ECHP) which sets out the provision they are

¹ SEND figures and data are provisional and subject to final check.

entitled to. January 2020 figures for Kent show that 4.2% of the total school population had an EHCP. The proportions have been rising both in Kent and nationally and this trend is set to continue. However, for the purposes of s.106 contributions, KCC is working to the national figure of 3.7%. In addition, the change in legislation in 2014 placed a duty on Local Authorities to maintain an EHCP until a young person reaches the age of 25 years, in appropriate cases.

School-age pupils with ECHPs are educated in mainstream school classes, in Specialist Resourced Provisions (SRPs) on mainstream sites, and in stand-alone special needs schools.

To take account of the provision types, KCC has applied a blended build cost of £45,916 per pupil place. This is the rate used in conjunction with the SEN Pupil Product Ratios for this request and accompanying assessment (Appendix 1a). The SEN pupil product ratios are 0.0134 per house and 0.0033 per applicable flat. In comparison, please note that the [National School Delivery Cost Benchmarking Study \(May 2021\)](#) published by the Education Building and Development Officers Group (EBDOG)² identifies the SEN special school expansion cost of £76,184 per pupil place.

Para 17 of the DfE's Securing Developer Contributions for Education 2019 states '*...We recommend that developer contributions for special or alternative school places are set at four times the cost the mainstream places, consistent with the space standards in Building Bulletin 104*'.

The proposal gives rise to additional pupils with Education and Health Care Plans (EHCP's) requiring extra support through specialist provision. This need will be met, as with other new developments in the vicinity, through additional provision at Milestone Academy Special School, New Ash Green DA3 8JZ and a contribution is therefore required of **£617.31 per 'applicable' house** and **£154.33 per 'applicable' flat**.

Implementation

The County Council is of the view that the above contributions comply with the provisions of CIL Regulation 122 and are necessary to mitigate the impacts of the proposal on the provision of those services for which the County Council has a statutory responsibility. Accordingly, the County repeats its request that the Local Planning Authority seek a section 106 obligation with the developer/interested parties prior to the grant of planning permission. The obligation should also include provision for the reimbursement of the County Council's legal costs, surveyors' fees and expenses incurred in completing the Agreement, and County monitoring fee of £500 for each trigger within the Agreement.

We understand that given the obvious flaws in the earlier report and the need to update the contributions required, it may be necessary for the matter to be referred

² EBDOG is a national body, representing Local Authorities on all issues associated with education, property and capital planning.

back to committee. If so, would you please confirm if and when this application will be re-considered and provide us with a draft copy of the Committee report prior to it being made publicly available. If you do not consider the contributions requested to be fair, reasonable, and compliant with CIL Regulation 122, it is requested that you notify us immediately and allow at least 10 working days to provide such additional supplementary information as may be necessary to assist your decision-making process in advance of the Committee report being prepared and the application being re-considered. In any event, we would be grateful if you could share at your earliest convenience a draft copy of any section 106 agreement or UU including the above matters prior to its finalisation.

We look forward to hearing from you with details of progress on this matter.

Yours sincerely

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Development Contributions
Kent County Council

Cc Merseyside Pension Fund, c/o CBRE Ltd, Henrietta House, Henrietta Place,
London W1G 0NB
KCC, Education & Communities,
File

Appendices:

The following Appendices contain the technical details of the County Council's assessment process.

1. Education Assessment
 - 1a. New School Land Costs
2. KCC General Land Transfer Requirements

Addendum - Development Contributions Rates information

Secondary Education

The rates for secondary referred to in the table (page 3 of this letter) were introduced in February 2018, following approval by the Infrastructure Funding Group (19 December 2017). The rates have since been updated in line with inflation, with indexation now based at April 2020. The latest ECP (2022-26) records a slightly different rate to what we have been requesting (see table below). This is because KCC Property has undertaken an extensive review of its own build costs for projects completed and benchmarked these against projects nationally.

The secondary requirement in relation to Fort Halstead is for a newly built school, which is assessed at per pupil cost of £25,880.00. The Education Assessment methodology works on the basis that each house in a development will produce 0.2 pupil product and each flat 0.05. These are KCC adopted Pupil Product Ratios (PPRs). Multiplying each of these PPR figures by the cost per pupil place provides for the new build secondary education rate of £5,176.00 per house and £1,294.00 per flat.