



URGENCY POWERS
PRE-DECISION CONSULTATION

TITLE OF CONSULTATION: NYCC CONSULTATION: DEVELOPER
CONTRIBUTIONS FOR EDUCATION

OFFICER REQUESTING: PHILLIP SPURR – PROGRAMME DIRECTOR FOR
ECONOMIC DEVELOPMENT, BUSINESS AND
PARTNERSHIP

1.0 PURPOSE

1.1 To consider North Yorkshire County Council's (NYCC) proposed new policy for developer contributions for education and to agree Ryedale District Council's response.

2.0 RECOMMENDATION(S)

2.1 It is recommended that:

(i) The Council's response to the consultation is as follows:

"Ryedale District Council is committed to ensuring that the impact of new development on infrastructure capacity is addressed and to securing developer contributions for this purpose. However, the proposed policy appears to be well advanced and in this respect, it is very disappointing that the implications of the proposed approach have not been discussed at an earlier stage. As drafted and as it stands, the approach would not be economically viable in Ryedale.

Ryedale District Council operates the Community Infrastructure Levy. Whilst the District Council is entirely aware that Section 106 pooling restrictions have been lifted and that Section 106 and CIL can both be used to fund infrastructure, CIL charges in Ryedale are established. The CIL charges have been independently examined. They have been set at a level which ensures that plan-compliant affordable housing contributions can also be secured from development sites and that development remains economically viable. The CIL charge is a mandatory charge. Section 106 agreements are secured by negotiation. If NYCC's policy is to seek education contributions through the use of Section 106 agreements, the contribution will directly compete with the ability of development sites to deliver affordable housing. This is not acceptable to this Authority. In this Council's experience, sites will not be economically viable if education contributions are sought in addition to affordable housing contributions and mandatory CIL charges. The District Council has no plans to cease the operation of CIL in Ryedale and it will be several years before the charge is reconsidered/ revised. The proposed approach will provide less certainty that necessary school places could be funded.

Against this context it is imperative that the County Council reconsider this matter – particularly in areas of the County which operate the CIL.

The District Council would be happy to discuss how CIL receipts can be used to

address the educational requirements arising from levels of planned growth and to use the new Infrastructure Funding Statements to confirm this. The District Council recognise that the County Council does need a greater level of certainty over the use of CIL contributions. The IFS's provide the vehicle for achieving this and will also help to ensure that (CIL) contributions can be prioritised 'holistically' to reflect other infrastructure requirements which relate to highways requirements for example, as well as education infrastructure.

The District Council has progressed its development plan and the allocation of sites for new development on the basis of the use of CIL. The infrastructure required as a result of planned levels of growth has been agreed with the County Council, including school improvements. Contributions secured to date have helped to secure extensions to Malton, Pickering and Norton Primary Schools. It would be helpful to understand if requirements have changed. The County Council is aware that the Ryedale will secure land at Norton for a new primary school and that the CIL will be used to progress the delivery of a new school. The District Council would appreciate urgent confirmation that the County Council remain committed to the delivery of this school and an indication of the financial contribution required for the new primary school at Beverley Road Norton, based on the anticipated number of new homes proposed for the site. Under the proposed method, the level of contribution would be in the region of £2,794,500.00. The District Council would be grateful if the County Council could confirm that this is now the level of contribution that is required for this scheme."

3.0 REASON FOR RECOMMENDATION(S)

- 3.1 Developer contributions are an important way in which to ensure that the impact of growth in the District can be mitigated. Contributions are integral to the implementation of the Development Plan and Council Plan objectives.
- 3.2 NYCC is consulting on their proposed approach between February 2020 and 1 April 2020. All responses received by this date were due be considered by the County Council's Executive on 21 April. In view of the current COVID emergency, NYCC has extended the consultation period to 1 May 2020 and NYCC's executive will consider the proposed approach at its meeting on 19 May 2020. It is important that the District Council's views on the proposed approach are considered by the County Council.
- 3.3 Developer contributions for infrastructure improvements can be sought from developers in order to mitigate the impact of development. They are secured in three main ways through: 'Section 106' legal agreements; the Community Infrastructure Levy (CIL) and via Section 278 Highway Agreements. Section 106 agreements and CIL are the main ways in which a range of infrastructure improvements are funded. Affordable housing contributions are always secured by Section 106 agreements.
- 3.4 Section 106 agreements are legal agreements which are entered into as part of the grant of planning permission. The contribution must be directly related to the development proposed. This generally means that money is spent in the area close to where the development is located. The level of contribution is negotiated and the legal agreement is used to specify the way in which contributions are to be used. Section 106 agreements will include clauses to ensure that money is returned to a developer if it is unspent or spent in a way which is not in accordance with the legal agreement. Section 106 contributions can only be sought if three tests are met. These are: that they are necessary to make the development acceptable in planning terms; directly related to the development and, fairly and reasonably related in scale and kind to the development.

- 3.5 The CIL is a charge which is levied on new development. If CIL is in operation in an area it is a mandatory charge and is non-negotiable. The CIL can be used to fund infrastructure outside of the local area in which the money is raised. It can only be charged in an area if the statutory process for bringing the charge into effect has been followed. The charge should also be consistent with and support the implementation of an up to date development plan.
- 3.6 National policy makes it clear that Local Planning Authorities should ensure that the combined total impact of requests for developer contributions do not undermine the deliverability of planned development. Viability assessment is integral to the ability to use CIL and the plan-making process.
- 3.7 Up until September 2019, restrictions limited the extent to which Section 106 contributions and CIL could operate together. In essence, if CIL was in place in an area, Section 106 contributions could not be sought to fund the infrastructure listed on a CIL 'Regulation 123' list –a situation commonly referred to as 'double dipping'. To encourage the use of CIL, central government imposed restrictions on the pooling of Section 106 contributions.
- 3.8 Recent changes to the legislation have amended this situation. Pooling restrictions have been lifted and both forms of contribution can be used to fund infrastructure, providing the use of Section 106 agreements meet the three tests referred to above and that CIL receipts are spent on the infrastructure needed to support development in a charging authority's area.
- 3.9 The changes have removed the Regulation 123 list. This is the list of infrastructure to be funded by CIL. The Regulation 123 list is to be replaced by Infrastructure Funding Statements. (IFS's) Authorities are required to set out in an IFS the infrastructure that they intend to fund and to detail the different sources of funding available to fund infrastructure requirements. National guidance makes it clear that in two tier areas, CIL charging authorities and contribution receiving authorities should work closely and collaboratively on the preparation of IFS's.
- 3.10 Ryedale adopted its CIL charging schedule in March 2016. The accompanying Regulation 123 list lists a broad range of infrastructure types that CIL will contribute to. This reflects the infrastructure requirements required to support the planned growth committed through the development plan. To date, the Council has not prioritised CIL expenditure against specific infrastructure projects. Notwithstanding this, the development plan secures land for the provision of a new primary school in Norton which will also require CIL funding to deliver.

NYCC – Proposed Policy

- 3.11 In summary, NYCC is proposing to request Section 106 contributions for education across the County, including those areas that have CIL in operation. If insufficient capacity exists to accommodate proposed development, NYCC propose to:
- Seek contributions of £15,766 per primary school place and £21,601 per secondary school place for existing school expansions (or £18,630 and £22,764 for a secondary school where a new school is required). This will be calculated based on a pupil yield per house of 0.25 for primary education and 0.13 for secondary education
 - Seek primary education contributions from sites of 10 dwellings* or more and for secondary education contributions from sites of 25 dwellings* or more (*dwellings of two or more bedrooms)
 - £63,064 for special educational needs and disabilities place provision, calculated at yield of 0.01 (place) per dwelling on sites of 100 houses or more

- £15,766 for early years provision based on a yield of 0.08 (place) per dwelling on sites of 100 houses or more
- 3.12 Historically, NYCC has had a policy of requesting developer contributions from sites which will generate a requirement for additional school places. These have been calculated using standard costs per school place and based on yield assumptions and site thresholds. The proposed policy updates costs; establishes a standard site threshold for each education type and seeks contributions towards Early Years and Special Educational Needs and Disabilities provision as well as for Primary and Secondary provision. In view of historic restrictions on 'double dipping', Section 106 Developer contributions for education have not been sought in areas in North Yorkshire that have adopted a CIL charging schedule. In these areas CIL has been justified on the basis that it will be used to address the education requirements arising from planned levels of growth.
- 3.13 The County Council has produced its new policy following the lifting of S106 pooling restrictions and confirmation that both Section 106 and CIL can be used to fund infrastructure. It is unclear however, if the implications of the new policy are fully understood by the County Council and it is unfortunate that these have not been discussed in any detail with district Local Planning Authorities prior to consultation on the proposed detail and operation of the policy.
- 3.14 Ryedale currently uses the CIL and at present there are no plans to cease its use. In accordance with the legislation, the CIL charges in Ryedale were set on the basis that they represented an appropriate balance between the funding of infrastructure and affordable housing provision and the effect on the viability of development across the District.
- 3.15 Irrespective of whether the opportunity now exists to use CIL and Section 106 agreements to fund infrastructure, CIL is a mandatory charge in Ryedale. Therefore, if contributions are to be sought for education provision from Section 106 agreements these will directly compete with the ability to achieve plan-compliant levels of affordable housing contributions from sites. The delivery of affordable housing to meet housing need is a council priority. Assuming that this Council will look to secure compliance with its affordable housing policy, it is highly likely therefore that the education contributions sought will not be economically viable and that they will be unachievable.
- 3.16 Developers in Ryedale are expecting the CIL charge to address off-site infrastructure requirements. This is the basis on which the development plan has been prepared and sites selected and justified. It is not considered to be reasonable to impose further requirements at this stage.
- 3.17 The County Council will need to reconsider its proposed policy in those areas of the County that apply the CIL. The approach to making necessary improvements to education provision through CIL funding can then be the subject of joint Infrastructure Funding Statements that both parties can agree. This would provide the upper tier authority with the certainty that contributions will be forthcoming to fund necessary infrastructure. Such a process would also enable the County Council to confirm its priorities for infrastructure holistically across its service areas. (Including other infrastructure such as highway improvements.)
- 3.18 On a more detailed point, the Ryedale Plan and requirements for a new primary school at Norton have progressed on the basis that CIL contributions would be used to fund this school. In view of the current consultation, it is considered that the County Council should confirm their position in respect of this project at the earliest opportunity. A planning application for the site in Norton is expected imminently.

- 3.19 It would be helpful if the County Council could confirm the contribution that would be required for this project. Under the proposed Section 106 calculation the contribution required towards new primary school provision is £18,630 per required place. Assuming no current capacity in the local primary school and that 600 new homes are to be built on the site, this would equate to a requirement for 150 new places and a total contribution of £2,794,500. This figure is less than costs that have been previously indicated. In order to support the smooth progression of the planning application and to reassure the local community that the school will be delivered, it is important that the District Council seeks clarification that NYCC remain committed to the delivery of the school and that the required level of funding is clarified.

4.0 SIGNIFICANT RISKS

- 4.1 There are no significant risks associated with the recommendation. It is considered that the proposed policy is not appropriate in areas that currently charge CIL and will risk making development proposals unviable. In such circumstances the District Council as decision maker will need to ensure that the developer contributions sought do not make development unviable. This is likely to mean that the contributions sought by the County Council and the form in which they are sought will not be achievable.

5.0 IMPLICATIONS

- 5.1 The following implications have been identified:
- a) Financial
The mechanism for securing developer contributions has implications for the economic viability of development sites
 - b) Legal
None Identified
 - c) Other (Equalities, Staffing, Planning, Health & Safety, Environmental and Climate Change, Crime & Disorder)
Developer contributions are integral to the delivery of the development plan

6.0 MONITORING OFFICER ADVICE

As planning policy falls within the remit of P&R, the only required consultation is with the Leader. It is suggested that the Chair of Planning Committee be informed of the decision as Planning Committee has to apply planning policy.

Although some specific examples are cited in the proposed response to the consultation, the policy affects all areas of the District, so no consultation with local ward members is required.

7.0 CONSULTATION RECORD

According to the Constitution, under urgency powers, decisions usually taken by the Council and its committees are taken by the CEO following consultation with the appropriate elected members.

The appropriate elected members are:

- The Leader of the Council
- The Chair of the appropriate committee, for matters relating to that specific committee¹
- Relevant Ward member(s), if any, for matters of particular relevance to that ward²

Name of consultee	Cllr Duncan – Leader
This is urgently required to meet the deadline set by NYCC. It asks for NYCC to enter into meaningful discussions with RDC about developer contributions, which should hopefully be of benefit to both authorities into the future.	
Date consultation completed	17-04-20

8.0 DECISION

Decision of the CEO based on consultation	The recommendation is agreed.
Date	17-04-20

¹ “Chairman of the appropriate Committee” refers to committee specific matters and does not mean that all Committee Chairs will be consulted on everything

² “Relevant Ward Member(s), if any” refers to ward specific matters and does not mean that all Members will be consulted on everything