

Forward Plan reference number: N/A

Report title: Publication of the revised Essex County Council Developers' Guide to Infrastructure Contributions	
Report to: Councillor Tony Ball, Cabinet Member for Economic Development	
Report author: Alethea Evans, Strategic Development Lead	
Date: 16/10/20	For: Decision
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County Divisions affected: All Essex	

1. Purpose of Report

- 1.1 To seek approval for publication and use of the updated Essex County Council ("ECC") Developers' Guide to Infrastructure Contributions (2020) (the "Guide").

2. Recommendations

- 2.1 To agree to the publication of the Guide and its subsequent use to inform requests for developer contributions.
- 2.2 To delegate authority to the Head of Planning, in consultation with the S151 Officer, to make future revisions to the Guide on a chapter or section focused basis, as and when required, to respond quickly to legislative and market changes.

3. Summary of Issue

- 3.1 ECC have operated a Developers' Contribution Guide to identify the infrastructure requirements to mitigate and support sustainable growth since 2003. The current guide in use was last updated in 2015 and published in 2016.
- 3.2 The Guide details the scope and range of contributions towards infrastructure which ECC seeks from developers and landowners in order to mitigate the impact of their development and make it acceptable in planning terms. The purpose of the Guide is:
- Promote a consistent and transparent approach to infrastructure contributions so that developers can be assured that they are making a fair contribution to the infrastructure needed to support growth and local residents can understand how development in their area makes a positive contribution to the community.
 - Assisting Local Planning Authorities (LPAs) with the production of Local Plans and supporting evidence they require to inform the Infrastructure Delivery Plans and, where applicable, the Community Infrastructure Levy (CIL).
 - Ensuring County guidance aligns with the National Planning Policy Framework ("NPPF") and the changes to the Community Infrastructure Levy Regulations 2010.
- 3.3 The Guide consists of the following chapters:
- Section 1: Introduction
 - Section 2: The Legal Framework
 - Section 3: Guidance applicable to all Section 106 contributors
 - Section 4: Land, Building and Contributions in kind

- Section 5: Contributions required by Service Area
- Section 6: Further Advice on key issues
- Appendices as appropriate to support the content

4. The updated Guide

4.1 The updated version of the Guide aligns with the overall aims of the NPPF and the Community Infrastructure Levy Regulations 2010 (as amended).

4.2 It has been necessary to update the current Guide because:

- Revised Community Infrastructure Levy (CIL) Regulations which came into force in September 2019 ushered in two key changes:
 - Legislative change– removing the previous restriction which limited the number of contributions from section 106 agreements to just 5 per infrastructure project or type (known as the ‘pooling’ restriction). This change is particularly important in relation to schools as now many s106 contributions can be combined to contribute to new or expanded school projects which would not previously been deliverable. However, the CIL requirements still apply, in that any contribution requested must accord with the 3 tests of being:
 - Necessary;
 - directly related to the development, and;
 - fair and reasonable in scale.
 - Legislative change- requiring all children 16 years of age or older (ages 16-18) to be in full time education or training, something that is not covered by the current guide.
- There are new requirements in respect of employment and skills, currently not addressed by the existing guide. These new requirements are particularly important at this time, as ECC looks to support the Essex economy during the Covid-19 recovery phase over the next few years.
- Contributions to the (substantial) cost of special educational needs provision which is now required and not currently covered by the current guide.
- Both the health and emergency services have requested they be referenced within the updated Guide to draw attention to their infrastructure requirements.

4.3 The Guide addresses the points above.

4.4 Public consultation and engagement took place to help shape and inform the Guide. A draft Guide was published for a 6-week period ECC's website between October – December 2019. Specific bodies were notified of the consultation directly: key Developers in Essex, the Essex Developers' Group, Planning Portfolio Holders, all elected Members of ECC, Essex Planning Officers Association and all of the Essex local authorities.

4.5 No responses were received from the public.

4.6 Responses were received from District/Borough/City Councils in Essex (as the LPAs) and the development and construction sector; these prompted both refinement of the Guide and further engagement.

4.7 Comprehensive outcomes and actions taken as a result of the consultation and engagement activities are captured in the attached report. The comments received were very wide ranging, reflecting the varied perspectives of developers, agents and

district councils across Essex. A significant proportion of the responses received were aimed at chapter 5, which identifies the contributions to specific services areas. Some key issues raised and dealt with by amendments to the Guide are as follows:

- Education (inc Early Years): many respondents queried the increased cost of places, indexes used and the approach to provision across the County. The Guide was updated to clarify wording and link to evidence supporting the approach. Opposition was also expressed to requirements for EYCC contributions from employment developments, with these seen as potentially doubling up on contributions from residential developments. The former requirement (contributions from employment schemes) was removed as a result
- Employment and Skills: A small number of district councils operate successful regeneration/economic development services and did not see the need for a countywide approach as this is not an ECC function. However, the majority of district councils were open to the countywide approach, appreciating the consistency this would bring. The Guide was not altered, but further engagement and collaboration work will take place with district councils to ensure suitable implementation (ongoing at present)
- Some district councils identified that they would seek to collect and hold all developer contributions through s106 agreements, and then work with ECC to pass funding as necessary once infrastructure schemes have been identified. The Guide has not been altered to reflect this stance, given the statutory responsibility ECC has to deliver and maintain infrastructure funded through the agreements.
- In a related vein, a common theme among several district councils was seeking to ensure that all development contributions secured from a particular district authority area should be spent in and invested to benefit that same council area and community. Broadly, this reflects the CIL regulation requirements that planning obligations are 'directly related to the development' and 'fairly and reasonably related in scale and kind to the development', which bind ECC's approach, so no change was necessary consequently
- Waste Management: respondents queried the need for this new area of contributions, identifying that council tax already covers this. The Guide section has been redrafted to confirm that council tax only funds collection and treatment of waste (primarily the second-tier councils' functions) and not the infrastructure required to deliver this (such as Recycling Centres and Waste Transfer Stations).
- Libraries: developers queried the need for contributions in relation to the regulations, and a number of district councils expressed surprise given the ECC service review in recent months. No changes to the Guide were considered necessary, as the request for contributions to libraries as a statutory duty and capacity is impacted by new developments. Further ECC Libraries Strategy 2019 confirmed support for libraries and commits to avoid closures for at least the next 5 years.
- Viability: many respondents raised concerns that increases in developer contributions (both by subject matter and in costs) might impact on development viability and delivery adversely. This was also considered to apply to those local authorities at an advanced stage of Local Plan preparation, where viability testing had already been carried out. A high-level assessment of viability impacts indicates that these impacts are relatively minor but also that increased contributions were essential to reflect inflation in costs over a five-year period since 2015. No changes were made accordingly but further attention will be given to costs / viability considerations.

- 4.8 In order to address the comments received the following was undertaken:
- Several meetings with the Essex Planning Officers' Association, and subsequent meetings (January/February 2020) with individual local authorities;
 - A second round of consultation on an updated draft Guide was undertaken in March 2020 with all Essex local authorities which prompted further refinement of the final draft Guide; and
 - As a corporate document, seeking to establish the ECC's position on developer contributions to infrastructure, the updated Guide was subject to review by ECC Scrutiny Committee in April 2020.

5. Impact of Updated Guide & COVID 19

- 5.1 Overall, the Guide is essential to delivering long-term financial benefits for the Council through increased developer contributions which will fund necessary and required community infrastructure. The updates are in line with new Regulations, they provide clarity and set expectations for the LPAs as they bring forward their Local Plans. The Guide will also provide clarity for the development and construction industry on contributions they must make, which they will be able to build into their financial valuations/appraisals when assessing land values etc.
- 5.2 The Guide aligns with the Council's four strategic priorities:
- Transform the Council to achieve more with less;
 - Enable inclusive economic growth;
 - Help people get the best start; and
 - Help create great places to grow up, live and work.
- 5.3 The Guide is ready for publication now and is the product of significant engagement over the past 8 months. However, the economic impact of the global pandemic and ensuring a timely and effective response may prompt further changes to the guide to reflect government guidance and advice in the coming months. Similarly, ECC is already considering a range of targeted responses to support economic recovery and this may also prompt further revisions to the Guide. Any changes to the Guide must be evidence-based, prompted by legislation or market changes and it is good practice that any changes be subject to consultation.
- 5.4 Designating approval of the recommendation for such revisions to the Head of Planning (recommendation 2.2) would enable agile response to changes identified as necessary. This is considered particularly important during the forthcoming period of economic recovery from the COVID 19 pandemic and in recognition that business needs can emerge and change quickly, requiring a similarly prompt and targeted response. Where changes proposed have financial or legal implications, consultation with Finance and Legal will be undertaken.

6. Options

- 6.1 Option 1 – Do Nothing (Not Recommended).

If the Guide is not published the Council would be unlikely to be able negotiate and secure appropriate S106 infrastructure contributions, because the current guide (2016) does not reflect the increased financial contributions now required.

The current operating environment would prevail, and with more development coming forward, pressure on the public purse could lead to an increase in ECC borrowing costs and/or the non-provision of services/infrastructure.

The 2016 edition of the guide is out of date and if not updated, would result in ECC not being able to make the most of the opportunities which have arisen as a result of the lifting of the pooling restriction. The 2016 guide is more limited in the scope of infrastructure requirements. For example, it does not include economic and skills contributions.

6.2 Option 2 (Recommended) – Support the publication and use of the Essex County Council Developers' Guide to Infrastructure Contributions 2020.

The updated Guide would enable ECC to realise the benefits set out in the report and help support the Essex economy and deliver infrastructure required to support communities.

7. Next steps

7.1 Following publication of the Guide, it will be updated and placed on the ECC website for use, all interested parties will be advised by email, and the effective date confirmed.

8. Issues for consideration

Financial implications

8.1 The report recommends adopting the updated Guide. The schedule of rates set out is up to date and represents the current actual costs of maintaining the infrastructure listed. The rates will be subject to periodic reviews to ensure they are in line with inflation and other drivers directly linked to costs.

8.2 The financial impact of the changes are as follows:

8.2.1 Lifting of the pooling restrictions allows better use of smaller contributions towards bigger capital projects;

8.2.2 Previously no provision had been made for contributions to education for 16-18 year olds;

8.2.3 Financial contributions for Employment and Skills will either be used by the district or ECC to fund training and support to enable access to newly created employment opportunities for those who may struggle to access the opportunities without extra support;

8.2.4 Contributions towards Special Educational Needs provision will bring benefit against services which have previously not received any S106 funding;

8.2.5 Introducing monitoring costs will contribute towards the costs of administering and monitoring the process.

Legal implications

8.3 The publication of the Guide will contribute to lawful and transparent decision-making.

9. Equality and Diversity implications

- 9.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
- a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
 - b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 9.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).
- 9.3 The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

10. List of Appendices

- 10.1. The Essex County Council Developers' Guide to Infrastructure Contributions 2020.
- 10.2. Equality Impact Assessment
- 10.3. Developer's Guide 2020- Consultation Outcomes

11. List of Background papers

I approve the above recommendations set out above for the reasons set out in the report.	Date
Councillor Tony Ball, Cabinet Member for Economic Development	16 October 2020

In consultation with:

Role	Date
Director for Sustainable Growth - Steve Evison	
Signed off by Graham Thomas Head of Planning & Development	12 July 2020
Monitoring Officer	
Signed off by Laura Edwards on behalf of Paul Turner	14 September 2020
Executive Director for Corporate and Customer Services (S151 Officer)	05 October 2020
Signed off by Stephanie Mitchener, Director, Finance & Procurement	