

Forward Plan reference number: Not Applicable

Report title: <i>Publication of the revised Essex County Council Developers' Guide to Infrastructure Contributions 2023 (to replace DGIC 2020)</i>	
Report to: Councillor Lee Scott, Cabinet Member for Planning a Growing Economy	
Report author: Graham Thomas, Head of Planning and Sustainable Development	
Date 23 November 2023	For: Decision
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County Divisions affected: All Essex	

1. Everyone's Essex

- 1.1 Everyone's Essex, the Essex County Council's (ECC) organisation strategy, sets out four strategic areas and 20 commitments. The Developers' Guide to Infrastructure Contributions 2023 ('the Guide') is directly aligned to these four strategic areas, with both the strategy of Everyone's Essex and the Guide seeking to deliver transformative outcomes to the things that really matter for the quality of life of our residents. The strategic areas are as follows:
- The Economy;
 - The Environment;
 - Children and families, and
 - Promoting health, care and wellbeing for all the parts of our population who need our support.
- 1.2 The Guide is essential to delivering long-term financial benefits to help deliver the required community infrastructure for Essex residents, and reduce unnecessary costs being placed on the public purse. The updates proposed in this report are in line with new Regulations, and they provide clarity and set expectations for the Local Planning Authorities' as they bring forward their new and replacement Local Plans. Another vital reason for an update to the Guide is to allow amendments to the schedule of rates set out in Section 5 of the Guide such that it represents the current actual costs of delivering the infrastructure listed. The rate of contributions need to be subject to periodic reviews to ensure that they are in line with inflation and other drivers directly linked to costs.

2 Recommendations

- 2.1 To agree to adopt and publish the revised Developers' Guide to Infrastructure Contributions as set out in Appendix A.
- 2.2 To delegate authority for 6 months from the date of this report 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 Background and Proposal

- 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 2019 and published in 2020.
- 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 Guide supports the collection of between £20-30million worth of contributions each year. The purpose of the Guide is to:
- 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,
 - assist 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),
 - ensure County guidance aligns with the National Planning Policy Framework ("NPPF") and other relevant legislation.
- 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
 - Additional appendices as appropriate to support the content
- 3.4 The updated version of the Guide aligns with the overall aims of the NPPF and the Community Infrastructure Levy Regulations 2010 (as amended).
- 3.5 It has been necessary to update the current Guide as follows:
- Financial contributions have been updated as necessary throughout to take account of inflation, national policy and changes in service provision. For example, amendments have been made to reflect the cost per place for new school places as set out in the Department of Education scorecard and to the costs associated with delivering library infrastructure,
 - To enable an increased focus on net-zero and climatic factors throughout the Guide due to the publication of the Essex Climate Action Plan. Amendments make clear the need for developers to demonstrate how the location and configuration of the proposed development would act to promote sustainable travel patterns, particularly with regards to Active Travel to school. The Guide also contains many references to the Essex

Design Guide around such topics as passive solar gain, public transport and cycling,

- To incorporate revisions to how ECC implement employment and skills contributions. The amendments relate to the implementation of Employment and Skills Plans and how ECC will exhibit greater alignment with the districts with regards to roles and responsibilities,
- An amendment is required to reflect an interim change which reduces the threshold for contributions which needs to be made to reflect the growing demand for SEND in Essex. Please note that the SEND team are currently undertaking further detailed work in this area, and following the completion of this assessment, the Guide will be further updated,
- The need to incorporate factual updates with regards to NSIPs, Garden Communities, Housing, NHS/ Public Health and the Essex Climate Commission, as supplied by the relevant internal team,
- The emergency services requested updates to their sections in the existing Guide to draw attention to their infrastructure requirements. Sections have been submitted by the emergency services themselves for inclusion,
- A new Active Travel section supplied by the Active Travel team has been inserted into the revised Guide, as well as references to the same throughout the document where relevant.
- Updated Monitoring Fees to better reflect the resources required to manage and monitor s106 agreements and contributions.

- 3.6 Work to update the guide, including engagement with internal ECC teams, was completed in late 2022.
- 3.7 A tracked change version of the emerging Guide was subsequently made available to all district/borough/city councils via Essex Planning Officer Association forums (chief officers, policy forum and Development Management forum) in addition to the Essex Developers Group by direct email on 30 January 2023. Comments were requested to be returned by 15 March 2023. During this period, ECC's Infrastructure Planning and Finance Manager attended a meeting of the Essex Developers Group on Tuesday 14 February to present the broad nature of the updates and encourage feedback and engagement.
- 3.8 Notification of the intention to update the guide was set out on the ECC public facing website. Online accessibility rules prevented a 'tracked change version' of the Guide being published online, instead the wording gave notice of the work underway to update the Guide and encouraged interested parties to email ECC with details of any updates they considered necessary.
- 3.9 During the consultation period, no responses were received from the public. Forty-two responses were received from 7 organisations: Basildon Council, Harlow Council, Maldon Council, Rochford Council, as the LPAs), Essex Police, Essex Fire and Rescue, and City and Country from the development and construction sector. All district, borough and city councils in Essex were consulted, only those listed in this paragraph responded.

3.10 ECC received 42 responses from the consultees and the comments included support for the guide and some suggested amendments. In order to address the comments received from the consultees, ECC considered the comments and responded to each one, as set out in Appendix C, which contains a schedule of all the comments received during the consultation and ECC's response. Some of the comments related to the following:

- There was support for the consolidation of the contribution costs in the guide, which could now all be found in one place (section 5). The shift to Active Travel in the guide was positively received and ECC, in response to a comment received, updated the guide to clarify that pedestrian access as the default with emergency/accessible vehicle access requirements.
- Some comments related to not being clear as to how figures for SEN financial contributions or costs for transporting children to school were reached. Also, there was a query regarding the reduction of Early Years and Childcare cost per place. ECC clarified the basis of these calculations that are based on accepted methodology and did not feel that the guide needed to be changed as it contains the up-to-date figures and costings as calculated by ECC. The Early Years and Childcare costs in the 2023 guide corrected an error in the 2020 guide. The guide contains an estimate of child yield from qualifying houses and there was a comment querying this figure as ECC used a standard that doesn't reflect differences in tenure. ECC considered this comment and because the standard figure is one that is supported by DfE and is justifiable and workable from a practical perspective, no change was made. ECC received comments requesting clarity on indices used to calculate contributions - ECC considered the comment and amended the guide to reflect this. Following a comment relating to education contributions which maybe too low to be spent, no change was made to the guide however ECC welcomes discussion on a case by case basis with local councils.
- There was a comment that related to the requirement to return unspent contributions within 10 years of receipt. ECC clarified that this is the position that ECC has taken and it is reflected in the S106 Agreement Template.
- There was a comment requesting clarification to the evidence used to justify a contribution request in comparison to the flexibility required for spending by ECC. Requests are based on capacity in the ward but spending flexibility extends to 3 miles from the development, which crosses ward boundaries. ECC agrees this is an area which needs further work, to ensure capacity as close as possible to the development is the priority but the provision of mitigating infrastructure within the ward is difficult in very urban areas. This is an area that is under review but no changes were made to the guide.
- Essex Police and Essex Fire and Rescue comments related to clarifying their position on the impact of new development in relation to community safety and contact details for those organisations. The guide was updated to reflect this.
- ECC received a comment to add further detail to the introduction to refer to financial contribution and/or land and ECC also received a separate comment that ECC should request land or financial contributions to mitigate impacts of new

developments. ECC considered the suggestions and both land and financial contributions are essential to mitigate impacts and align with regulatory requirements, therefore ECC would not limit the ability to ask for land and/or financial contributions. The introduction was not amended as that level of detail regarding land and/or financial contributions was set out in the guide and it was not necessary to repeat it in the introduction.

- A comment requested that ECC go further with activity promoting community use agreements, however ECC considered the comment and that those types of agreements may not always serve the education purpose of the school therefore to retain wording in the guide to ensure that it is considered on a case-by-case basis.
- A comment was made where it was suggested the guide be changed to reflect that purchases for land required for education use to use the market value rather than the nominal value. ECC sought to preserve flexibility and retain the ability to secure land for nominal value.
- A comment was received that queried the need for 6th form facilities alongside all secondary school developments and the need to consider alternative further education colleges in close proximity to the school. ECC considered this and amended the guide to reflect that this may be a possibility.
- Changes were made to the guide following comments that related to evidence of development viability being publicly available and ECC will work with LPAs to consider overage, phased payments; update to the Employment and Skills Plans, where some local councils require ESPs and other local councils don't regularly require them.

3.11 ECC has sought to address some of the comments within the guide and an updated version, taking into consideration the comments, is the subject of this report for approval.

4 Links to our Strategic Ambitions

4.1 This report links to the following aims in the Essex Vision

- Enjoy life into old age
- Provide an equal foundation for every child
- Strengthen communities through participation
- Develop our County sustainably
- Connect us to each other and the world
- Share prosperity with everyone

4.2 The recommendations in this report will positively support the Council's ambition to be net carbon neutral by 2030. The recommended updated to the Guide reflect the policy position of all ECC services delivering infrastructure across the County, confirming the requirements of ECC service areas in respect of infrastructure standards and securing financial contributions.

4.3 This report links to all of the strategic priorities in the Organisational Strategy 'Everyone's Essex':

- A strong, inclusive and sustainable economy – securing updated financial and non financial contributions towards infrastructure to support economic growth
- A high quality environment- communicating updated standards and securing contributions towards infrastructure which meets the needs of the environment and delivers on net zero ambitions
- Health, wellbeing and independence for all ages- delivering community and transport infrastructure which mitigates the impact of new development to support our communities
- A good place for children and families to grow- specifically securing financial and non financial contributions to support education infrastructure

4.4 The Guide delivers on the ECC Strategic Ambitions specifically in the supporting the role of ECC as:

- Highway and Transportation Authority, including responsibility for the delivery of the Essex Local Transport Plan; lead authority for Education including early years and childcare (EYCC), SEND, and Post 16 education; Lead Local Flood Authority (LLFA); lead advisors on public health; and has responsibilities for adult social care in relation to securing the right housing mix which takes account of the housing needs of older people and adults with disabilities.
- An infrastructure funding partner which seeks to ensure that development proposed is realistic and does not place an unnecessary (or unacceptable) cost burden on the public purse and, specifically, ECC's capital programme.
- A major provider and commissioner of a wide range of local government services throughout the county (and where potential cross boundary impacts need to be considered); and
- Advocate of the Essex Climate Action Commission (ECAC) Net-Zero: Making Essex Carbon Neutral (July 2021) providing advice and recommendations for action on climate change mitigation including setting planning policies which minimise carbon. This work has been tailored for use in the county of Essex. In November 2021 ECC's response was endorsement of the recommendations and agreed ECC's actions, set out in the Essex Climate Action Plan (November 2021) includes specific schemes and projects to be funded in the short term to 2025/26 with regard to land use and green infrastructure; energy; built environment; transport and waste matters. These immediate actions will be taken directly and in concert with partners to drive effective progress against the ECAC recommendations.

4.5 There have been and continue to be many and various changes to the planning system aimed at accelerating development, particularly housing delivery. What is new is that Government are now balancing pace of delivery with a much

stronger focus on the need for this to be well-designed to be able to create sustainable, beautiful places for people to live in, work and enjoy. It is evident that past performance, and the unplanned speculative nature of development in some places in Essex which have and not had up to date local plans in place, has placed an added burden on the public purse to mitigate the infrastructure deficit that should have been addressed through the development itself.

- 4.6 Amendments to the proposed update of the Guide highlight the importance of maintaining a Plan-led approach to development, thereby ensuring that we can create great places for people's needs through well designed and well-balanced new development, including designing out the need to travel by car and delivering on our climate targets. Proposed amendments to the Guide also directly reference the Essex Climate Action Plan 2021 as well as the Essex Design Guide.
- 4.7 There is an inherent danger that increased pace of delivery will compromise the provision of accompanying infrastructure unless the local authorities work together to adopt a more transparent and collaborative approach by working with the development industry.
- 4.8 This updated guide is aimed at providing exactly that – a clear and transparent way for the development industry to understand our expectations and how to approach the provision of development should they wish to do business in Essex. In return we commit to a high quality and professional approach in our engagement with the planning process – advocating development that is compliant with emerging or adopted local plans and resisting speculative applications that have not demonstrated adequate assessment of their impact in the light of these local plans and provided appropriate mitigation.
- 4.9 Approving the recommendations in this report will contribute to the Council's ambition to be net carbon neutral by 2030 as it directly refers to the requirement for developers to bring forward developments that have designed out the need to travel by car and deliver on climate targets as set out in the Essex Climate Action Plan 2021.

5 Options

Option 1 – Do Nothing (Not Recommended).

- 5.1 If this revised Guide is not adopted and published the Council would be unlikely to be able negotiate and secure appropriate S106 infrastructure contributions, because the current guide (2020), which would continue to apply if the revised Guide is not adopted, does not reflect the increased contributions, financial or otherwise, that are now required.
- 5.2 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 if contributions are informed by out-dated price indexes.

- 5.3 The 2020 edition of the guide is out of date and if not updated, would result in ECC not being able to make the most of emerging opportunities such as the revised approach to Active Travel and delivering net-zero, which are current corporate focuses.

Option 2 (Recommended) – Support the adoption and publication of the Essex County Council Developers' Guide to Infrastructure Contributions 2023.

- 5.4 The updated Guide would enable ECC to realise the benefits from the amendments set out in the Guide, helping to support the Essex economy and delivering the sustainable infrastructure that is required to support communities by ensuring that this infrastructure is properly costed.

6 Issues for consideration

6.1 Financial implications

- 6.1.1 The Guide sets out the methodologies that are required to be used to determine the nature and scale of infrastructure and impact mitigation obligations as a result of proposed developments that cover ECC requirements to make development acceptable in planning terms in relation to service provision including education, highways and transport, and sustainable drainage provision.
- 6.1.2 The material amendments set out in the proposed revised Guide act to revise these methodologies to align them with extant price indexes and other relevant information. Without authorising the amendments, it is likely that infrastructure and mitigation obligations will not be appropriately calculated or funded, thereby potentially increasing financial liabilities for the Authority.
- 6.1.3 There are no direct financial implications with respect to updating the Guide, however the application of the Guide is critical in ensuring ECC minimises any negative financial impact of new developments on the cost of service provision. Whilst the process of amending and consulting drew on staff resources across ECC, these were all managed within existing budgets.

6.2 Legal implications

- 6.2.1 The concept of providing a guide to manage developers' expectations fits in well with the duty to co-operate in relation to planning in Planning and Compulsory Purchase Act 2004 as amended by the Localism Act 2011.
- 6.2.2 The publication of the Guide will contribute to lawful and transparent decision-making.
- 6.2.3 ECC will need to remain alive to emerging challenges as the new regime is subject to any court scrutiny or revised Government guidance, which may impact on the Guide as revised.

7 Equality and Diversity Considerations

- 7.1 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.
- 7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, sex, 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).
- 7.3 The Equalities Comprehensive Impact Assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

8 List of Appendices

- Appendix A – The Essex County Council Developers' Guide to Infrastructure Contributions (material amendments shown as proposed changes)
- Appendix B- Table of updated costs
- Appendix C - Schedule of Comments received through the February - March 2023 consultation and the actions subsequently taken.
- Appendix D - Equalities Comprehensive Impact Assessment

9 List of Background papers

- 9.1 None

I approve the above recommendations set out above for the reasons set out in the report.	Date
Councillor Lee Scott, Cabinet Member for Planning a Growing Economy	23/11/2023

In consultation with:

Role	Date
Director for Sustainable Growth - Steve Evison	
Signed off by Graham Thomas Head of Planning & Development	4/10/2023

Director, Legal and Assurance (Monitoring Officer)	26/10/2023
Susan Moussa on behalf of Paul Turner	
Executive Director, Corporate Services (S151 Officer)	14/11/2023
Stephanie Mitchener on behalf of Nicole Wood	