

Committee(s): Planning and Licensing Committee	Date: 18 December 2019
Subject: Essex County Council Revised Developer Contributions Consultation Response	Wards Affected: All
Report of: Phil Drane, Director of Strategic Planning	Public
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Summary

Essex County Council are consulting on a new edition of the Developers' Guide to Infrastructure Contributions (Appendix B), which will replace the previous edition published in January 2016. Planning and Licensing Committee formally acknowledged the Developers' Guide to Infrastructure Contributions (revised edition 2016) as having material weight for planning applications (Item 104, 19 July 2016).

Revisions to the developers' guide are being proposed in light of changes to the Community Infrastructure Levy Regulations 2010. Among other things, it updates existing guidance and introduces a number of new requirements regarding waste and recycling, libraries, and addresses issues relating to the shortage of labour in the construction industry.

An officer response has been submitted to the consultation, subject to Members' approval (Appendix A). As a planning document which has direct implications on infrastructure funding in the Borough, it is important that the Council respond and further consider issues through the Local Development Plan and Duty to Cooperate processes.

Recommendation

Members are asked to:

R1. Approve the response to the Essex County Council's Developer Contributions Guide Consultation, as set out in Appendix A.

Main Report

Introduction and Background

1. Essex County Council (ECC) is consulting on a new edition of the Developers' Guide to Infrastructure Contributions, which was revised in light of changes made to the Community Infrastructure Levy (CIL) Regulations 2010, including the removal of 'pooling' restrictions. Originally, the 'pooling' mechanism was introduced to encourage the adoption of CIL by local authorities, by restricting the number of contributions from Section 106 (S106) agreements to just five per infrastructure project or type. However, it has been seen to be a barrier to development, because some applications were refused when the limit on the number of pooled contributions had already been met. Therefore, this has been reviewed by Government and the pooling restrictions have now been removed as of 1 September 2019. This means that contributions can now be collected from more development sites towards infrastructure provision in Essex; as such, trigger points for certain infrastructure categories need be updated to reflect this amendment.
2. The developers' guide covers the administrative area of ECC and details the scope and range of contributions towards infrastructure which ECC may seek from developers and landowners in order to make development acceptable in planning terms, such as schools, roads and libraries. It does not cover services provided by second tier local authorities (City, District and Borough Councils), such as affordable housing or open space, nor contributions that may be sought by other infrastructure providers, such as the NHS or the Police.
3. The revised Developers' Guide to Infrastructure Contributions can be viewed at Appendix B.

Issue, Options and Analysis of Options

4. Additional requirements introduced in the revised Developers' Guide to Infrastructure Contributions include:
 - a. **New requirement regarding employment and skills:** Commercial development of 200 dwellings and above and 2,500sqm employment floorspace and above are required to provide an Employment and Skills Plan (ESP) as well as financial contributions if necessary. The revised guide expects every 2,500 sqm of commercial development to be capable of generating at least one paid job placement in construction, which would aid in addressing local construction skills. The ESP includes notification of apprenticeship opportunities to Essex candidates

prior to advertisement, school/college engagement activities, work placements, supported employment for local residents;

- b. **New rates regarding waste and recycling:** Previously waste and recycling may be required for by 100 units and above developments through S106 agreements or through funding from a CIL; contributions through S106 agreements may be considered on a case by case basis. The revised guide now sets out 100 units and above developments should contribute at a rate of £120 per unit for houses and £90 per unit for flats;
 - c. **New requirement regarding public health:** Development to be assessed via a health impact assessment as per local planning policy; and
 - d. **New requirement regarding NHS healthcare service:** Mitigation will be sought from new development for a range of uses and services to facilitate the delivery of appropriate care. Funding may be utilised collectively to increase space or improve premises which are not within close vicinity of the development site but will be sited where residents of new development will be treated. Funds may also be used to fund one-off costs to recruit and retain clinical personnel within the area.
5. Changes made to infrastructure requirements in the ECC's revised Developers' Guide to Infrastructure Contributions include:
- a. **Education contribution:** Trigger for education contribution is changed to 20 dwellings and above. Previously this was required from development that would produce more than 6 pupils;
 - b. **Travel plans:** Trigger for travel plan requirement in residential development changes to 80 dwellings and above. Previously the trigger for residential development was 250 dwellings and above;
 - c. **Highways contribution:** Calculation of commuted sums for maintenance is updated;
 - d. **Libraries:** Calculation of libraries contribution is updated in respect of developments of 20 dwellings and above dependent on local requirements; and
 - e. **Monitoring costs:** The change to the CIL Regulations has also resulted in the Government allowing local authorities to seek a monitoring fee

through S106 planning obligations. Therefore, ECC's monitoring charge now would additionally cover:

- i. maintenance and development of the planning obligations monitoring database system;
- ii. recovery of obligation contributions not made, including any necessary formal or legal action; and
- iii. previously up to 2% of the total obligations, to a maximum of £2,000 would be expended for monitoring compliance. In this update, £550 per obligation, or, 1% of total obligations up to a maximum of £10,000 per agreement on more complex sites would be expended for monitoring compliance; on major strategic housing sites typically over 1,000 dwellings this will be negotiated on a site by site basis.

6. An officer response has been submitted in time for the 12 December 2019 consultation deadline, subject to approval by Committee (see Appendix A). A summary of the response includes:

- a. The new and updated requirements in the revised developers' guide has not been discussed with Brentwood Borough Council prior to it being published. It is unclear from the document and the consultation portal whether and which other local authorities and partners have been involved in updating the revised developers' guide;
- b. The Council is finalising its Local Development Plan with Submission expected in early 2020. The revised guidance and its new requirements for infrastructure contributions have not been considered in the Council's Infrastructure Delivery Plan (IDP) and viability work. Therefore, concern is expressed regarding the potential negative implications on the Brentwood plan making process;
- c. The revised guide does not address a gap that has existed in the current process whereby it is not flexible enough and so local authorities often have limited control over the management of developer contributions to address its specific local infrastructure challenges. As it is noted from the guide, the revised guidance only concerns obligations involving ECC; issues such as affordable housing, open space, certain strategic transport infrastructure are not covered by ECC. Quite often, every local authority faces different local infrastructure challenges and has different priorities from that of ECC and other parts of Essex. It is important that a joined up approach between ECC and local authorities is flexible enough to bridge this gap. A holistic coordinated approach is welcomed, but it must be flexible enough for local authorities to respond promptly to their specific issues;

- d. It is unclear from the revised developers' guide the rationales behind ECC's proposed changes made to thresholds and trigger points for developer contributions. The Council requests that this is explained and made explicit;
 - e. Regarding the template of a S106 agreement with ECC as the first signatory, this gives the impression that it is a comprehensive template for developer contributions for planning applications whilst in fact, it only includes obligations involving ECC. This will be confusing for developers who may instigate S106 agreement drafting on this basis;
 - f. Section 4.2 requirement regarding new school sites should be revised so as to allow flexibility on sites with technical constraints;
 - g. Contributions Reference Table 5A should be revised for further clarity; and
 - h. The Council requests that ECC consider the responses as part of further engagement with partners before publishing/adopting the revised guidance. In its current form, the document lacks clarity and does not allow flexibility for local authorities to respond to their own local challenges or cross-boundary issues. Moving forward, the Council welcomes a joined up conversation with ECC and neighbouring authorities on a revised approach.
7. Once the consultation has closed, a summary of the responses will be published. The Planning and Licensing Committee will be kept informed of the outcome and provided an update where appropriate.

Reasons for Recommendation

8. It is recommended that Appendix A be issued in response to the Developers' Guide to Infrastructure Contributions, forming the formal response to the consultation from the Council. The developers' guide could be assigned material weight when determining planning applications and can assist the Council in negotiating contributions required for necessary infrastructure. Therefore, it is important that the Council respond and further consider issues through the plan making process (i.e. Local Development Plan and Duty to Cooperate).

Consultation

9. ECC undertook public consultation between 31 October and 12 December 2019. Responses will be analysed and incorporated into a consultation report to be published by ECC in due course.

References to Corporate Plan

10. The Developers' Guide to Infrastructure and Contributions will provide advice on the level of contributions that would be required by developers towards infrastructure to make development acceptable in planning terms. This will inform proposed development in the emerging Brentwood Local Development Plan, which is a key priority in the Council's 'Vision for Brentwood' Corporate Plan 2016-2019. The Plan is an important delivery vehicle for several cross-cutting priorities, informed by individual Council strategies.

Implications

Financial Implications

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11. No direct financial implications.

Legal Implications

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12. The revised Developers' Guide to Infrastructure Contributions would have significant implications on infrastructure funding in the Borough and so it is important that the Council respond and further consider issues through the Local Development Plan and Duty to Cooperate processes. Engagement in this way is consistent with the Duty to Cooperate and the Council's adopted Statement of Community Involvement.

Economic Implications

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13. Financial contributions from development can be critical to enabling infrastructure provision and investment. An effective developers' guide, collaboratively prepared with the Council, can assist to secure necessary funding for infrastructure that enables and supports economic growth in the borough.

Other Implications (where significant) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

Background Papers

- The Community Infrastructure Levy Regulations 2010:
<https://www.legislation.gov.uk/ukdsi/2010/9780111492390/contents>
- Brentwood Infrastructure Delivery Plan (IDP):
<http://www.brentwood.gov.uk/index.php?cid=966>

Appendices to this report

- Appendix A: Brentwood Borough Council response to the Essex County Council Developers' Guide to Infrastructure Contributions (December 2019)
- Appendix B: Essex County Council Developers' Guide to Infrastructure Contributions, Revised Edition (October 2019):
<https://consultations.essex.gov.uk/rci/ecc-developers-infrastructure-contributions>