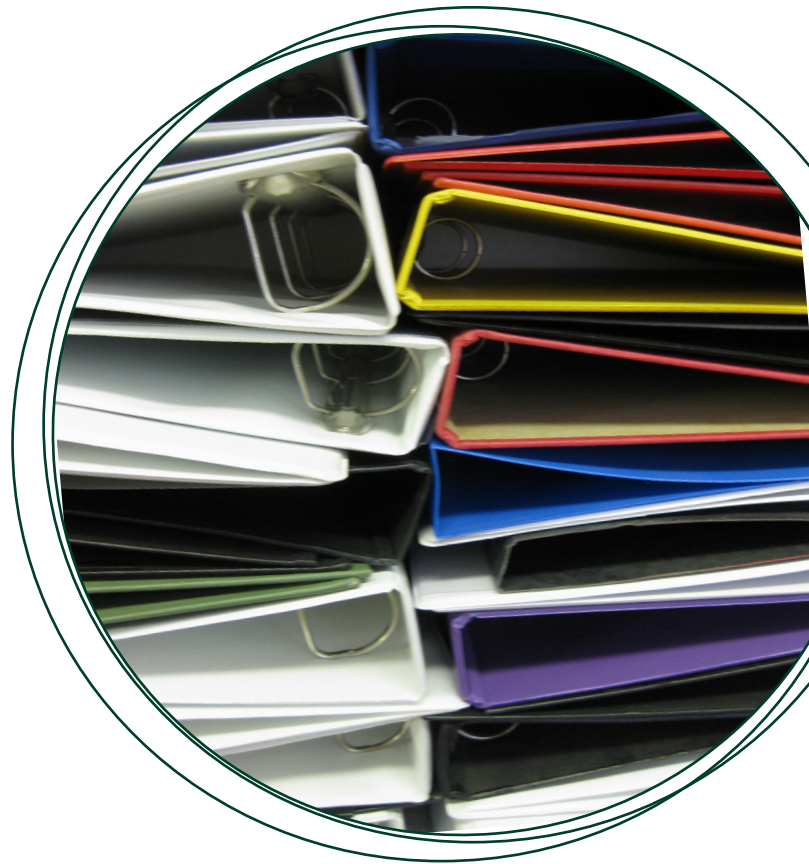




Supplementary Planning Guidance Note

No.23 Developer Contributions to Education

Adopted by Flintshire
County Council on 17th
January 2017



Purpose

It is Flintshire County Council's intention to prepare and keep up to date a series of Supplementary Planning Guidance (SPG) Notes which will provide detailed guidance on a range of development issues and topics. The purposes of these Notes are:

- To assist the public and their agents in preparing planning proposals and to guide them in discussions with officers prior to the submission of planning applications,
- To guide officers in handling, and officers and councillors in deciding, planning applications, and
- To assist Inspectors in the determination of appeals

The overall aim is to improve the quality of new development and facilitate a consistent and transparent approach to decision making.

Planning policies: the Flintshire context

The Development Plan

Under planning legislation, the planning policies for each area should be set out formally in the Development Plan. Flintshire County Council, as the Local Planning Authority (LPA), has a legal duty to prepare and keep up to date a development plan for the County, and the Flintshire Unitary Development Plan was adopted in 2011. The UDP provides broad policies together with allocations of land for all the main uses such as housing, employment and retailing, and will help to shape the future of Flintshire in a physical and environmental sense as well as influencing it in economic and social terms. The Plan therefore seeks:

- To help the Council make rational and consistent decisions on planning applications by providing a policy framework consistent with national policy and
- To guide development to appropriate locations over the period up to 2015.

The need for Supplementary Planning Guidance

Despite the Plan containing policies with which the Council can make consistent and transparent decisions on development proposals, it cannot in itself give all the detailed advice needed by officers and prospective applicants to guide proposals at the local level, such as house extensions or conversions of agricultural buildings. The Council's intention is to prepare a range of Supplementary Planning Guidance notes (SPG) to support the UDP by providing more detailed guidance on a range of topics and issues to help the interpretation and implementation of the policies and proposals in the UDP. The review of the Local Planning Guidance Notes will be undertaken on a phased basis and details of the available SPG's can be found on the Council's website. Where there is a need to refer to another SPG this will be clearly referenced. These SPG Notes are freely available from Planning Services, Directorate of Environment, County Hall, Mold, Flintshire CH7 6NF (telephone 01352 703228), at the Planning Services reception at County Hall and can be downloaded from the Planning Web pages www.flintshire.gov.uk/planning

The status of Supplementary Planning Guidance

In line with the advice of the Welsh Government (WG) the Guidance Note was the subject of Council resolution and was formally adopted as Supplementary Planning Guidance on 17th July 2012. Subsequently a review has been carried out and changes to this document were subject to a 6 week consultation process over a period between 10th June and 22nd July 2016 and this Guidance Note was again the subject of Council resolution and has been formally adopted as Supplementary Planning Guidance on 17th January 2017.

The representations received and how the note has been amended to take account of the issues raised has been summarised in the Comments and Responses document which can be found in Appendix 2.

This document should therefore be afforded considerable weight as a material planning consideration.

No. 23 Developer Contributions to Education

1 - Background to this note

1.1 - This is one of a series of Local Planning Guidance notes designed to explain and clarify the policies in the Flintshire Unitary Development Plan (UDP). This guidance note will focus specifically on developer contributions to educational facilities.

1.2 - Local Planning Guidance Note 22, Planning Obligations explains more generally the use of Planning Obligations in terms of the type of obligations and when they are and are not appropriate.

1.3 - Local Authorities find themselves under increasing financial pressure to meet the educational needs arising from new residential development within their area. Cumulatively even a relatively small development can have a significant financial impact on the provision of school places. Welsh Office Circular 13/97 'Planning Obligations' makes provision for developer contributions to offset the negative consequences of development provided there is guidance on this in the local development plan. The adopted Flintshire UDP provides this guidance through its policy on Conditions, Developer Contributions and Planning Obligations, Policy IMP1 Planning Conditions and Planning Obligations. The rest of this note sets out further information on identified educational needs and shows how this policy will be applied to the provision of educational facilities.

2 - Education Planning In Flintshire

2.1 - Flintshire has a Schools Modernisation Strategy which sets out how the Flintshire Local Authority (LA) will provide sufficient and suitable school places. In accordance with the requirements of the Welsh Government, the Authority has an obligation to provide suitably located and sufficient school places whilst avoiding significant numbers of surplus places, and ensure that there is sufficient capacity to accommodate pupils in accordance with the capacity formula methodology of the Welsh Government.

2.2 - The LA is legally required to maintain class size limits of no larger than 30 in Key stage one, and is obliged to maintain the same limit in Key stage two.

2.3 - Although there are surplus places presently in some schools, there are other areas where there is an acute shortage of capacity, leading to admission appeals by parents. In some schools those surplus places may only be available in certain year groups. Empty places in a school do not necessarily equate to there being sufficient capacity at that school.

2.4 - Key Welsh Government policy objectives in relation to sustainable development include the need to locate development so as to minimise the need to travel and to promote access to a range of community facilities, including education, whilst maximising opportunities for community development and social welfare. Where new development takes place in a community this can have a significant impact on existing facilities such as the capacity of local schools. Where this is the case the council require appropriate contributions from developers in order to mitigate against these impacts on the nearest suitable school to their development.



2.5 - In some areas of the County, there are oversubscribed schools in areas where land is earmarked for residential development. This extra development puts additional pressure on the local school, and in some cases would lead to pupils not being accommodated. The cost implications of extending capacity of a school to accommodate local developments can be severe, and financial contributions are currently the only practical means of ensuring adequate capacity.

2.6 - Using the most up to date information held by the council, the effects of demand for school places and in the future effects of the schools modernisation plan on schools in the vicinity of new residential development will be taken into account at the planning application stage and this will form part of the negotiation process at that time.

3 - Criteria

3.1 - The Council recognises that a good planning obligation system will help promote economic well being. It will not impose inappropriate burdens on developers which would result in worthwhile development not taking place. However, it is important to clarify the policy requirements of the Council so that real costs of development are reflected in negotiations between landowners and developers. The aim is to make all aware very early on in the development process of the requirements and implications for land values.

3.2 - The requirement for developer contributions will be based on the following:

1. Developments which comprise 5 or more dwellings or, where this is unknown, a site area of 0.2 hectares or more.
2. The Council will seek education contributions in all cases where the identified schools have less than 5% surplus places having taken into account the proposed development. Contributions should only be sought in respect of the number of pupils which would take surplus places below 5%, rather than the total number expected from the development. The contributions will be held by the LA to fund works at those schools directly affected by the development.
3. Where paragraph 2 above is satisfied, contributions will be required for the nearest suitable primary or secondary school or for both. Any development however small will have an impact on the schools nearby and this should be recognised. A list of the primary and secondary schools capacity can be found on the Flintshire County Council Website. It is important to note that this list is a guide only and may be subject to variations, it is therefore important also to contact the Department of Lifelong Learning for up to date information.

4. Only those schools directly affected by a development will be the subject of the financial contribution. Sometimes more than one development will be proposed in close proximity which taken together prompts the need for additional facilities and in these circumstances where there is a cumulative effect the Council may pool contributions to fund the necessary facilities.
5. In calculating surplus places in schools, the Authority will take into account approved developments and their future impact upon school numbers.
6. For its part, payments received by the Council as a result of planning agreements will be held in interest bearing accounts with a unique finance code, to be used only for the purposes specified in the obligation which will also specify the school to be benefited; if not spent as intended or within the agreed timescale, they will be reimbursed with interest.
7. For the purposes of planning contributions the pupil capacity will be calculated net of any capacity that has been achieved through using temporary accommodation, for example mobile classrooms within the school grounds.

4 - Use of Contributions

4.1 - The provision of new schools.

- The provision of new classrooms.
- The provision of additional facilities and associated resources.
- Purchasing of land for a new school or classroom(s) or other physical works.
- Improvements and refurbishments to existing facilities.

4.2 - Contributions may be spent on extending the physical capacity of the school or for purchase of land to allow the extension of the school be it for additional playing fields or parking as required by the increase in the number of pupils. Contributions may also be spent on additional 'facilities and associated resources' which will help the schools to accommodate an increase in pupils but which may not be extending the physical capacity of the built form. For example, facilities refers to toilets, store rooms, staff rooms, kitchens, outdoor classrooms, ICT facilities and sports pitches. Associated resources refers to tables, chairs, books, tablets and sports equipment, the type of resources needed to provide education in schools today. This is not a comprehensive list, merely some examples of what may reasonably be required to provide for the educational needs of the additional pupils.

5 - Exceptions

5.1 - The exceptions to the provision of school places will be the following type of residential development from which planning authorities will not seek contributions.

1. Housing specifically designed for occupation by elderly persons (ie restricted by planning condition or agreement to occupation by those over aged 55 years or more).
2. 1 bed dwellings or 1 bed apartments or flats.

6 | The Councils Obligations

6.0 When negotiating with the Council the developer can expect Section 106 Agreements to address:

1. The schools to which their contributions will be put.
2. The timing/phasing of the agreed contributions.
3. Contributions will normally be spent within 10 years of receipt.
4. Individual developer contributions may not in themselves be enough to fund required projects. In this event such monies will be pooled together with other developer contributions to fund the necessary facilities.
5. The Council will produce an Annual Statement of funds received from Section 106 Agreements.

7 | Contribution Formula

7.0 Contributions towards additional or improved school facilities will be based on the following factors:

- A. The number of qualifying dwelling units in the development (5 or More or Over 0.2 hectare).
- B. The number of school age children likely to be generated by each residential unit, 0.24 is the primary school formula multiplier and 0.174 is the secondary school multiplier. The primary and secondary figures used above are currently in line with or less than other local authorities and will be reviewed on an annual basis.
- C. Cost Guidelines

The average cost of providing a school place will be based on:

1. Welsh Government Guidance (Measuring Capacity of Schools in Wales Circular 09/06) data to calculate the amount of space required per pupil.
2. Department for Children, Schools and Families (DCSF) Project Cost and Performance Data updated in accordance with the Royal Institute of Chartered Surveyors Building costs Information service All Tender Index. The Building Cost Multiplier figures can be found in the Appendix 1.

The formula element reads:

Number of housing units x 0.24 (primary school formula) = Child Yield (after calculating the 5% surplus where appropriate) x £12,257 cost multiplier per pupil = Developer Contribution (using the Cost Multiplier figures from 2008/09)

Primary School Pupils

For example if school capacity was 200, 5% would be 10 pupils so that the trigger for contributions would be 190.

And if actual Number of Pupils 185

Development of 50 houses $50 \times 0.24 = 12$ pupils

$$185 + 12 = 197$$

$$197 - 190 = 7$$

We only ask for contributions for 7 pupils.

$$7 \times £12,257 = £85,799$$

Secondary School

For example if School capacity was 1700, 5% would be 85 pupils so that the trigger for contributions would be 1615.

And if actual Number of Pupils 1610

Development of 50 houses $50 \times 0.174 = 8.7$ pupils (round up to 9)

$$1610 + 9 = 1619$$

$$1619 - 1615 = 4$$

We only ask for contributions for 4 pupils.

$$4 \times \text{£}18,469 = \text{£}73,876$$

Appendix 1

Building Costs Multiplier for 2008/09* is given as

- » Primary £12,257
- » Secondary £18,469

* NB: These are the latest published figures but the Council will continually monitor this and update as appropriate

Appendix 2

Supplementary Planning Guidance Note (SPGN) Public Consultation, (10th June to 22nd July 2016) comments and responses to SPGN No 23. Developer Contributions to Education Following Review Consultation

Commenting body/ Individual	Comments	Response	Recommendation
No 23. Developer Contributions to Education			
Anwyl Construction. Mike Pender	<p>The starting point is that the need must be generated by the development. National Planning Guidance and CIL Regulations state that any planning obligations must meet 3 tests -</p> <ul style="list-style-type: none"> • Necessary to make the development acceptable • Directly related to the development • Fairly and reasonably related to the scale and kind of development. <p>The basis for and calculation of the need generated by the development is the proposed increase in pupils generated by the development – based on a standard and generally accepted formula to measure the likely increase in pupils as against existing/proposed school capacity and school rolls.</p> <p>It seems to Anwyl that the Council is</p>	<p>The LPA have not, and does not, intend to seek to negotiate Section 106 obligations for projects that already have had five or more obligations since the 6th of April 2010. Such an approach would breach the pooling restriction contained in Regulation 123 of the Community Infrastructure Levy Regulations (the Regs).</p> <p>Where a particular application comes forward the LPA will assess the impacts of that proposed development and seek to negotiate a Section 106 obligation where the proposed development will have an impact on educational infrastructure. In so doing, and in considering what level of contribution is required for any particular project, the LPA will have regulation 122 of the</p>	No action

	<p>applying a standard calculation to assess need - ie additional pupils - and a standard calculation to assess the contribution – based on number of additional pupils X a general cost multiplier per pupil.</p> <p>It seems to Anwyl that this is a mechanism to seek additional contributions where there have already been 5 or more contributions to a particular school through S106 Agreements based on school capacity issues and the Council cannot lawfully seek any more contributions based on capacity issues.</p> <p>The only way that the Council can seek additional contributions by way of planning obligations is to –</p> <ul style="list-style-type: none"> • Demonstrate that the planning obligation meets the 3 tests set out above • Demonstrate that a particular facility is needed and is directly related to the development • Demonstrate that there is an approved plan and costed programme to deliver the facility – such that the obligation is directly related to the development and can be delivered on that basis. <p>Any revised SPG 23 should be revised to</p>	<p>Regs firmly in mind, so that the obligation is indeed necessary to make the proposed development acceptable in planning terms, is directly related to the development and is reasonably related in scale and kind to the proposed development. The proposed SPG is in no way inconsistent with that approach as far as the LPA are concerned.</p> <p>The tests in Reg 122 is a matter to be borne in mind in respect of specific proposals and Anwyl appear to allege that the proposed SPG is unlawful as it fails to meet these tests. This is clearly a misinterpretation of the CIL Regs on Anwyls part as the test in Reg 122 cannot rationally be applied to the broader principles embodied in the proposed supplementary planning guidance note.</p> <p>Further, Anwyl also appear to have confused what can form part of an infrastructure project with what particular type of impact a development may have. Anwyl have stated that developments that impact upon capacity in schools cannot be mitigated where there have been five or more obligations that seek to address capacity impacts in</p>	
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	<p>take account of the above points such that the Council cannot continue to seek contributions based on capacity issues when the need ie “facilities” are not specifically generated by the particular development – otherwise the proposed changes to SPG 23 are not CIL compliant and so not lawful.</p>	<p>schools. Anwyl appear to seek to extend the pooling restriction beyond its proper legislative construction. The restriction is on the number of obligations related to projects themselves and not related to the impacts that the projects seek to mitigate. There could be a number of different projects that all happen to address a particular broad impact such as capacity, but this does not mean that there is a breach of the pooling restriction in CIL Regs 123 (which clearly restricts projects and not the mitigation of an impact).</p> <p>In fact, if Anwyls interpretation were correct, then the Regs would have the unfortunate effect of making future development unacceptable (until the adoption of the LDP and a CIL charging schedule) as it would be incumbent on the LPA to refuse planning permission where there would be unacceptable impacts on infrastructure that could not be adequately mitigated because of the pooling restriction. It was clearly not the intention of Parliament to restrict development in this way.”</p>	
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Mrs Sharron Jones, Clerk to Broughton and Bretton Community Council and Hawarden Community Council	I write to confirm that Broughton and Bretton Community Council and Hawarden Community Council have considered this revised guidance and are in support.	Noted	No action
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