

## **CABINET**

### **13 DECEMBER 2018**

## **REVIEW OF EDUCATION PLANNING OBLIGATIONS REQUIRED UNDER S106 AND COMMUNITY INFRASTRUCTURE LEVY**

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### **Relevant Cabinet Member**

Mr M J Hart

### **Relevant Officer**

Director of Children, Families and Communities

### **Recommendation**

- 1. The Cabinet Member with Responsibility for Education and Skills recommends that Cabinet:**
  - (a) notes the details of key changes to the proposed Planning Obligations Policy for Education;**
  - (b) authorises the publication of the proposed revised Education Planning Obligations Policy (the Policy) including key changes following formal public consultation;**
  - (c) authorises the Cabinet Member with Responsibility for Education and Skills, in consultation with the Director of Children, Families and Communities, to approve the Policy having regard to any representations and formally approve it for adoption (intended to take place on 1 April 2019);**
  - (d) authorises the Director of Children, Families and Communities to review the adopted Policy from time to time in order to update the 'cost per pupil place'; and**
  - (e) authorises the Director of Children, Families and Communities to review the adopted Policy following the publication of data from 2021 Census to update the 'pupil yield' figure.**

### **Background**

- 2. The Council has a statutory duty to ensure there are sufficient school places for all children aged 4-19 resident in Worcestershire who wish to attend a publicly-funded school. The Council also has responsibility for ensuring that all three and four year olds and all eligible two year olds can access high quality free early education places, either within school provision or in a variety of private provision.**

Provision of sufficient school places is crucial in ensuring that all children have the opportunity to gain the vital knowledge, skills and qualifications necessary for life and work.

3. Without investment, schools and early education providers may not be able to accommodate additional pupils generated by new housing developments, creating an adverse impact on both new and established communities and raises concerns over the viability and sustainability of new development. It is therefore important that developers and the Council take appropriate steps in partnership to mitigate the impact of new development on education infrastructure.
4. The Council currently utilises Community Infrastructure Levy contributions and Section 106 planning obligations to mitigate the impact of developments on educational infrastructure.
5. The Policy document sets out the approach the Council will take in assessing the impact of new housing developments on schools and early education provision and calculating the appropriate mitigation via conditions and planning obligations.
6. Since the Council's Education Planning Obligations Policy was last reviewed, there have been a number of changes to planning policy and the education environment which has meant that the policy is no longer fit for purpose, as explained below. Following an internal review of our policy it is recommended that Cabinet approves a 6 week formal consultation on the changes. Consultation is not mandatory but recommended to allow us to engage with the key stakeholders, ensure external scrutiny, challenge and openness.
7. Final approval of the document following Cabinet approval would provide the Policy with greater weight and substantiate our position in regard to developer contributions.
8. Where in her opinion, there are no major or significant objections to the draft Policy as published, it is recommended that final approval of the Policy be made by the Director of Children, Families and Communities. Where major or significant objections to the draft are raised during the consultation period, it is recommended that final approval of the Policy will be made by the Cabinet Member with Responsibility for Education and Skills.
9. It is recommended that the final Policy be implemented from 1 April 2019 and will apply to any planning applications to be granted planning permission from this date.

### **Proposed Revised Policy**

10. The proposed revised policy is set out in Appendix A. The key changes to the policy are highlighted in the following paragraphs.
11. The implementation of the Community Infrastructure Levy (CIL) in the south Worcestershire districts of Malvern Hills and Wychavon in June 2017 and Worcester City in September 2017 is anticipated to increase the funding gap for education facilities needed in consequence of new development. The existing policy was unclear how planning obligations would be sought within CIL areas. Therefore, the policy has been updated to clarify the position of how planning obligations and the CIL operate in a way that is complementary and does not hinder development.

12. The formula used for calculating the average pupil yield for Worcestershire under Section 106 of the Town and County Planning Act 1990 and for Community Infrastructure Levy is proposed to be revised.

13. The current pupil yield methodology is based on the average number of children (aged 4-15) living within owner occupied dwellings as at the 2011 Census. The revised policy proposes that the calculation is amended to include all children aged 0-15 to more accurately reflect early years requirements and to include all types of households, both rented and owner occupied, living in dwellings of 2 or more bedrooms. This methodology will more accurately reflect households living in Worcestershire; more closely reflect the realistic impact of new developments; and align more directly with the types of dwellings that we apply a Section 106 contribution to i.e. dwellings of 2 or more bedrooms.

14. This would result in a change of our pupil yield from 0.028 children per year group per dwelling to 0.029 children per year group per dwelling.

<b>Existing pupil yield Methodology:</b>	Total
No. of 4-15 year olds living within owner-occupied dwellings	56,676
No. of owner-occupied dwellings	171,353
Average no. of children aged 4-15 per household	0.3308
Average yield per dwelling per year group (12 year groups)	0.028

<b>Proposed pupil yield Methodology:</b>	Total
No. of 0-15 year olds living in households with two+ bedrooms	99,972
No. of households with two or more bedrooms	216,384
Average no. of children aged 0-15 per household with 2+ bedrooms	0.462
Average yield per dwelling per year group (16 year groups)	0.029

15. The formula used for calculating education contributions under Section 106 of the Town and County Planning Act 1990 and for CIL for early years places is proposed to be revised. The reason for the proposal is to reflect a change in legislation brought about by the Childcare Act 2016.

16. There has been a statutory requirement to provide 15 hours (the universal entitlement) for all 3 and 4 year olds since September 2010. From September 2015, the Government also required the Council to provide 15 hours of free education for the most disadvantaged 2 year olds, which represents around 32% of all 2 year olds (2015-2018) living in Worcestershire. From September 2017, the Government doubled the number of hours that some three and four year olds are entitled to in Worcestershire.

17. The majority of early years places are provided through the private, voluntary and independent sector and for many businesses there is limited capital investment available to expand or provide more spaces when pressures from housing are created. Therefore, contributions from Section 106 and the CIL are required to mitigate the direct impact of new housing to support capital projects and ensure sufficiency duties are met and maintained and that new development is sustainable.

18. The methodology used for calculating the cost contribution required from new development has changed from a tariff-based cost per dwelling formula to a cost per pupil place formula, to be updated on an annual basis. This proposal will more accurately reflect the actual cost of adding education places within Worcestershire.

19. The previous methodology for calculating developer contributions utilises a cost per pupil place that is based on a historic calculation using the Department for Education Building Cost Multiplier (BCM) index linked since 2012 to calculate a cost per dwelling tariff with variable charges based on the number of bedrooms in each dwelling.

20. The revised methodology is based on a cost estimate for a mid-range school design based on Government guidelines, Building Bulletin 103, costed using the Building Cost Information Service (BCIS) with the BCIS Worcestershire regional variance applied.

21. The revised policy seeks to simplify the calculation for the contribution required on new development by changing from a cost per dwelling tariff to a cost per pupil place formula. The proposed change will make the calculation more transparent and clearer to developers.

22. The revised policy amends the types of affordable housing that are exempt from contributions. The definition of affordable housing has changed since the original publication of the National Planning Policy Framework (NPPF) in 2012. Social rent housing and affordable rent housing places great pressure on school places however, it is proposed that properties deemed social rent housing and affordable rent housing will be counted as a nil contribution to address the needs of those with the greatest housing needs. All other types of affordable housing including those with a market element, for example low cost and part-rent part-buy, will be chargeable.

23. Social rent and affordable rent housing, although likely to accommodate children, will often be occupied by families with a local connection already resident in the area. Other tenures are less likely to be restricted in their allocation and should be treated the same as open market dwellings. A number of other local authorities do not discount for affordable housing on the basis that any property vacated by the residents will be backfilled by new families.

24. The changes highlighted above are regarded as sensible and will allow the revised policy to more accurately reflect the situation in Worcestershire as it currently stands and will allow the Council to both support appropriate housing development, as well as provide funds for necessary changes to education provision.

25. The Policy as proposed is recommended to be publicly available. A copy of the online response form is set out in Appendix B. The following proposed key stakeholders will be directly notified:

- Worcestershire District Councils
- Local Members of Parliament
- Neighbouring authorities
- Clinical Commissioning Groups (Worcestershire)
- Schools (including maintained and academy schools)
- Sixth form providers
- Further education providers
- Early Years providers.

26. If consultation is approved the consultation timetable proposed will be:

<b>Dates</b>	<b>Description</b>
13 December	Cabinet decision
20 December	Call-in period ends
7 Jan 2019	Formal consultation begins
18 Feb 2019	Formal consultation ends
25 Feb 2019	Collation and review of representations received
8 March 2019	Final policy approval decided by Cabinet Member with Responsibility for Education and Skills, in consultation with the Director of Children, Families and Communities
1 April 2019	New policy uploaded onto website and implemented

### **Legal, Financial and HR Implications**

27. Developer contributions are subject to legal agreements as specified in Section 106 of the Town and Country Planning Act 1990 (as amended), which must meet statutory tests of necessity, direct linkage to development and reasonableness. No changes in legal procedure are envisaged as a result of the proposed revisions to the policy document.

28. The proposed revisions to the policy aim to provide a more appropriate approach to funding education infrastructure as a result of housing growth. Appendix D sets out the potential impact of these changes on the S106 financial contribution required on an example development.

29. There are no HR implications for consideration under these proposals.

### **Privacy and Public Health Impact Assessments**

30. There is no impact on Privacy or Public Health.

### **Equality and Diversity Implications**

31. An Equality Relevance Screening has been completed in respect of these recommendations. The screening did not identify any potential Equality considerations requiring further consideration during implementation. A copy of the Equality Relevance Screening is set out in Appendix C.

## Supporting Information

- Appendix A – Draft Education Planning Obligations Policy Worcestershire 2019 (electronic only)
- Appendix B – Questions to consultees (electronic only)
- Appendix C – Equality Relevance Screening (electronic only)
- Appendix D – Potential Impact on the S106 financial contribution required on an example development (electronic only)

## Contact Points

### County Council Contact Points

County Council: 01905 763763

### Specific Contact Points for this report

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## Background Papers

In the opinion of the proper officer (in this case the Director of Children, Families and Communities) the following are the background papers relating to the subject matter of this report:

- Current Worcestershire Planning Obligations for Education document:  
[http://www.worcestershire.gov.uk/downloads/file/6817/education\\_planning\\_obligations\\_evidence\\_base](http://www.worcestershire.gov.uk/downloads/file/6817/education_planning_obligations_evidence_base)
- National Planning Policy Framework 2018  
<https://www.gov.uk/government/publications/national-planning-policy-framework--2>
- Community Infrastructure Levy  
<https://www.gov.uk/guidance/community-infrastructure-levy>
- Childcare Act 2016  
[http://www.legislation.gov.uk/ukpga/2016/5/pdfs/ukpga\\_20160005\\_en.pdf](http://www.legislation.gov.uk/ukpga/2016/5/pdfs/ukpga_20160005_en.pdf)