

**CABINET**

**DATE OF MEETING: 5 JANUARY 2017**

**TITLE OF REPORT: UPDATE ON USE OF S106 EDUCATION CONTRIBUTIONS**

**Report of: Joint Chief Executive/Monitoring Officer**

**Cabinet member: Councillor Stephen Parker, Planning and Councillor Ken Crookes, Finance**

**I PURPOSE OF REPORT**

To bring to conclusion the outstanding issues with regard to S106 Education contributions that are held by Hart. Cabinet initially considered this matter on 6<sup>th</sup> October 2016 and this report addresses recommendations B, C, and D (the whole minuted decision is attached as Appendix I) of the October report.

**2 OFFICER RECOMMENDATION**

In consideration of the agreement reached between the Leader of Hart and others, and the Leader of Hampshire County Council and others, Cabinet:

- 1 Suspends Standing Order 18.6 in relation to recommendations B, C, and D of the 6<sup>th</sup> October 2016 Cabinet report in accordance with Standing Order 24;
- 2 Withdraws the decisions made on recommendations B, C, and D contained in the 6<sup>th</sup> October 2016 Cabinet report: S106 Education Developer Contributions Developer Contribution Funds and agrees the following:
  - a All existing and future S106 developers contributions funds secured by Hart District Council on behalf of Hampshire County Council for educational purposes should be paid over to the County Council;
  - b No S106 developer contributions funds secured by Hart District Council for educational purposes shall be retained or used by the District Council for any purposes associated with the future of the site of the current Hart Leisure Centre;
  - c Hampshire County Council be invited to be signatories on any education related matters to be secured through S106 Planning Obligations; and
  - d Officers will work with Hampshire County Council to draw up a suitable working Protocol for the County Council involvement in S106 Planning Obligations.

### 3 CONSIDERATIONS

#### 3.1 October Cabinet report recommendations B and C

Following Cabinet's decision not to release some S106 education developer contributions funds to Hampshire County Council because of lack of clarity and justification for its proposed use, further discussions have taken place and a further very informed submission has been made by the County Council. This positive response to Cabinet's concerns is welcome. It addresses in full all outstanding matters and therefore all remaining and future S106 education funds secured by Hart should be passed to the County Council as Hart has no further purpose in retaining them. Cabinet should therefore withdraw recommendation B and C of the October Cabinet report

#### 3.2 October Cabinet report recommendation D

In light of positive discussions with the County Council over the future of the site of the existing Hart Leisure Centre there is also now no reason for Hart to retain or use any S106 funds secured for educational purposes in associated with either the "mothballing" or future use of this soon to be decommission leisure facility. The funds should more properly be used to deliver new school places as originally intended. Cabinet should therefore withdraw recommendation D of the October Cabinet report.

#### 3.3 The approach to securing future S106 Education and other Developer Contributions

The availability of school places is a material consideration in the determination of planning applications. Hart however, as Local Planning Authority, and using the criteria as set out in Government Guidance and statute as reflected in Recommendation E of the 6<sup>th</sup> October 2016 Cabinet report (contained with Appendix 1), will still have to satisfy itself whether any financial contribution is necessary for any particular development and if any such contribution is compliant with the CIL Regulations (these principle apply to any approach to securing developer contributions irrespective of whether they are education related). In addition, Hart will need to consider what is an appropriate contribution to request in the context of development viability, and any other infrastructure needs which contributions are also being sought for. This approach is reflected in the recent Joint Ministerial Statement published by Brandon Lewis (then Minister of State for Housing and Planning) and Lord Nash (Parliamentary Under Secretary of State for Schools) earlier this year (attached at Appendix 2).

Although no arrangement can be allowed to fetter the discretion of Hart acting as Local Planning Authority, it is appropriate for the County Council to be included as a signatory to any future Education related S106 Planning Obligation and to ensure that the developer pays any education related financial contribution sums secured direct to the County Council. This could operate in the same way as the current Highway Agency agreement.

The County Council has recently published updated advice on its approach to securing developer financial contributions towards education provision. It is not

intended to be an adopted planning document but it does represent a useful starting point for the County Council to use when it negotiates with developers. A copy will be published on Hart's web site.

#### **4 FINANCIAL IMPLICATIONS**

There are no material financial implications for the Council arising from this report.

#### **5 ACTION**

Officers will work with the County Council to draw up a suitable Protocol for the County Council involvement in Section 106 Planning Obligations. The protocol would need to address issues such as compliance with the criteria as set out in Recommendation E of the October 2016 Cabinet report, timeliness of decision making to ensure that performance in the determination of planning applications is not affected by delays in completing any necessary S106, and prepayment of outstanding funds if not used for the intended purpose or if unspent after a certain period of time.

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#### **APPENDICES**

Appendix 1 – Extract from the Minutes of the 6<sup>th</sup> October 2016 Cabinet Paper Use of S106 Education Contributions

Appendix 2 - Joint letter from Brandon Lewis and Lord Nash -11 March 2016

**6<sup>th</sup> October 2016 Cabinet Decision**

- A. That the following projects have contributions paid to the County Council:
- Tavistock Infants and All Saints Church of England Junior - £223,940.03
  - Oakwood Infant and Greenfield Junior - £247,548.79
  - Hook Infants and Junior - £110,497.29
- B. That the following contribution requests be refused unless more clarity and justification was provided:
- Tweseldown Infant and Church Crookham Junior (£650,859.03)
  - Calthorpe Park School (£631,909.53 less £304,500 overpayment)
  - Buryfields Infant and Mayfield Junior (£24,889.20)
  - Robert Mays Secondary (£877,923.42)
- C. That the overpayment of £304,500 referred to in recommendation B above should be reserved for future projects to meet, at the discretion of the District Council, secondary education needs within the Fleet area.
- D. That £2m of the funds held by the District Council for secondary education be reserved for any changes that are deemed necessary to adapt the site of the current Hart Leisure Centre for education use to include any funds necessary for demolition and site clearance.
- E. That no further S106 Planning Obligation would be sought unless:
- a) It was necessary to make the development acceptable in planning terms;
  - b) It was directly related to the development; and
  - c) It was fairly and reasonably related in scale and kind to the development, and where evidence was provided to enable the Council to assess whether any financial contribution meets the following policy tests:
    - d) There was quantified evidence of the additional demands on facilities or infrastructure which were likely to arise from the proposed development;
    - e) There was up-to-date, quantified evidence of the extent to which existing facilities or infrastructure were able or unable to meet those additional demands;
    - f) A clear methodology existed for calculating any financial contribution which is shown to be necessary to improve existing facilities or infrastructure, or provide new facilities or infrastructure, to meet the additional demands;
    - g) Details are provided of the specific facilities or infrastructure on which any financial contribution will be spent; and
  - h) Where the project does not conflict with the five planning permission pooling limitations as set in the CIL Regulations.



Department for  
Communities and  
Local Government

**Brandon Lewis MP**

*Minister of State for Housing and Planning*

***Department for Communities and Local Government***

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[www.gov.uk/dclg](http://www.gov.uk/dclg)



Department  
for Education

**Lord Nash**

*Parliamentary Under Secretary of State for Schools*

***Department for Education***

Sanctuary Buildings  
Great Smith Street  
Westminster London SW1P 3BT  
tel: 0370 000 2288  
[www.education.gov.uk/help/contactus](http://www.education.gov.uk/help/contactus)

Dear Chief Executive,

Supporting housing development to increase housing supply, and providing a high quality school place for every child are two of the Government's top priorities.

We want to help people fulfil their aspirations of owning their own home and to help local authorities provide high quality school places particularly where the need for additional school places has increased due to new housing and growing communities. A key concern many of you have raised is how to secure funding to establish new schools, or expand existing ones, where they are needed.

The purpose of this letter is to set out the various opportunities for securing funding for both the expansion of existing schools and new schools to support housing growth.

**Accommodating new demand for school places from new housing**

Where major new housing developments create an *additional* need for school places, then you as the local authority should expect a substantial contribution from the developer towards the cost of meeting this requirement. However, you will want to consider what is an appropriate contribution to request in the context of any other infrastructure needs which contributions are also being sought for. You should also consider carefully representations from developers about the timing of their contributions. Where there are genuine concerns that funding new school places alongside the development may render it unviable if homes are yet to be sold, we would encourage local authorities to be flexible in seeking such obligations up front.

One way of resolving these cash flow difficulties is to support the creation of a new school through the Government's central free schools programme. The Government is committed to opening 500 free schools by 2020 and the Department for Education (DfE) invites applications to establish new schools through this programme each March and September. While local authorities themselves cannot run or propose these new schools, many authorities have encouraged successful and well-established local education providers to establish new schools through the process. The upfront costs of establishing the new school are funded centrally. Whilst we still expect that developers should contribute to capital costs, these contributions can be provided later on, after the school has been established and new homes built and sold. This can help to overcome cash flow issues and enable developments to proceed. Additionally, in circumstances where a development generates a requirement for additional school places but not enough funding for a whole new school, the DfE free schools programme can help bridge that gap. Both types of arrangements require careful structuring and early engagement with the Education Funding Agency (EFA). You can contact the EFA at [FreeSchools.EFACAPITAL@education.gsi.gov.uk](mailto:FreeSchools.EFACAPITAL@education.gsi.gov.uk).

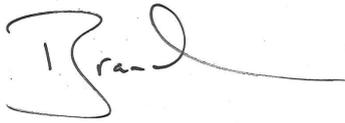
#### Accommodating existing additional demand for school places

Where the demand for additional school places is generated by population growth within a local area without a large scale extension of the housing stock, the cost of these additional places, including the transition funding required until that school reaches capacity, should be met by the local authority. £3.6 billion of basic need capital funding has already been allocated to local authorities for 2015-18, and we intend to continue to roll forward the timing of allocations so that you will always know levels of funding at least three years in advance. These allocations are made on a formulaic basis, using the information you provide through the annual school capacity survey about the size of existing schools and forecast pupil numbers. You can then choose whether to use this funding for the construction of a new free school through the well-established 'presumption process', with the authority providing the site, or to use it to expand existing schools.

You can also encourage applications to the central free school programme where the need for additional school places is caused by existing additional demand. Again, the DfE funds the upfront costs of establishing the new school centrally, and this has no bearing on any existing basic need allocation you may have received. The Secretary of State for Education has asked her Regional Schools Commissioners to work closely with local authorities to identify where free schools can help meet demographic pressures and to seek suggestions from local authorities as to suitable school operators. We encourage you to consider this option carefully, including whether you can support the development of new provision via this route by providing sites on a long lease and minimal cost basis, and how you could work with the DfE to identify the best local operators to run new schools.

We hope this is helpful in providing clarity about the routes to secure funding for new school places, but if you would like more information or would like to discuss it further please contact [daniel.bridger@communities.gsi.gov.uk](mailto:daniel.bridger@communities.gsi.gov.uk) at the Department for Communities and Local Government and [jane.balderstone@education.gsi.gov.uk](mailto:jane.balderstone@education.gsi.gov.uk) in relation to free schools or [victoria.dare@education.gsi.gov.uk](mailto:victoria.dare@education.gsi.gov.uk) in relation to new school places, at DfE.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Brandon Lewis', with a long horizontal flourish extending to the right.

Brandon Lewis MP  
Minister of State for Housing

A handwritten signature in blue ink, appearing to read 'Lord Nash', with a long horizontal flourish extending to the right.

Lord Nash  
Parliamentary Under Secretary of State for Schools