

Developer Contributions for Education policy

Proposed to be adopted May 2020

Introduction

North Yorkshire County Council has a statutory duty to ensure sufficient school places are available for every child under the Education Act 1996.¹ The timely provision of education infrastructure to support new housing is essential in meeting the objectives to secure high quality school places when and where they are needed.

The County Council works closely with the nine Local Planning Authorities in North Yorkshire:

- Craven District Council, Hambleton District Council, Harrogate Borough Council, Richmondshire District Council, Ryedale District Council, Scarborough Borough Council, Selby District Council, North York Moors National Park Authority, Yorkshire Dales National Park Authority.

The County Council also works closely with North Yorkshire schools, academies and other associated organisations, including:

- Maintained schools (community, voluntary controlled, voluntary aided and foundation schools, which are directly funded by the local authority);
- Academies and free schools (state-funded, non-fee-paying schools, operating through funding agreements with the Secretary of State). Free schools are new state schools, whereas many academies are converter schools that were previously maintained by the local authority;
- Multi-academy trusts, or MATs, which run groups of academies;
- Church of England and Roman Catholic Dioceses;
- Regional Schools Commissioner.

This policy sets out how the County Council will consider whether existing school capacity is sufficient to accommodate proposed development within the relevant area, and if it is not:

- the developer contributions needed for education, based on known pupil yields from all homes where children live; this includes primary, secondary, special educational needs and disabilities, and early years provision;

¹ Education Act (1996), Section 14.

- when we will request contributions of land to provide sites for new or expanded schools.

Policy background

National policy context

Section 106 of the Town and Country Planning Act 1990 as amended by the 1991 Act enables local authorities to seek to negotiate a contribution from developers towards the cost of meeting the infrastructure necessary to support their development. The guidance on planning obligations in the National Planning Policy Framework (NPPF) states:

Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations.²

For education this will mean asking housing developers for a contribution towards the cost of extending or reconfiguring an existing school or setting, or building a new one. Government guidance sets out in more detail how local authorities can best seek funding for these purposes:

- Ministry of Housing, Communities and Local Government, Planning policy guidance, 'Planning obligations';³
- Department for Education guidance 'Securing developer contributions for education' (November 2019).⁴

The Government provides funding to local authorities for the provision of new school places, based on forecast shortfalls in school capacity. There is also a central programme for the delivery of new free schools. Funding is reduced however to take account of developer contributions, to avoid double funding of new school places.⁵ National Planning Practice Guidance states that:

Government funding and delivery programmes do not replace the requirement for developer contributions in principle. Plan makers and local authorities for education should therefore agree the most appropriate developer funding mechanisms for education, assessing the extent to which developments should be required to mitigate their direct impacts.⁶

Developer contributions for education are secured by means of conditions attached to planning permission, a planning obligation under Section 106 of the Town and Country Planning Act 1990, or the Community Infrastructure Levy (CIL). CIL revenues are intended to help fund the supporting infrastructure needed to address

² National Planning Policy Guidance (NPPG) 2019, paragraph 54.

³ MHCLG, Planning Practice Guidance, Planning Obligations <https://www.gov.uk/guidance/planning-obligations>

⁴https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/793661/Securing_developer_contributions_for_education.pdf

⁵ MHCLG, Planning Practice Guidance, Planning Obligations, para 7.

⁶ MHCLG, Planning Practice Guidance, Planning Obligations, para 7.

the cumulative impact of development across a local authority area. Alternatively, a Section 106 planning obligation secures a contribution directly payable to the local authority for education (or direct provision of a school 'in kind'), though a planning obligation must comply with the following tests set out in the CIL Regulations, requiring it to be:

- Necessary to make the development acceptable in planning terms
- Directly related to the development
- Fairly and reasonably related in scale and kind to the development

Changes to the CIL regulations in September 2019 removed pooling restrictions which previously limited the number of planning obligations that could be used to fund a single infrastructure project, and allow planning obligations to fund infrastructure also being partly funded by CIL.⁷

Local authorities can use funds from both CIL and Section 106 planning obligations to pay for the same piece of infrastructure regardless of how many planning obligations have already contributed.

Local policy context

North Yorkshire County Council's **Council Plan 2019-23**⁸ sets out key ambitions for 2023 that

- every child and young person has the best possible start in life;
- every adult has a longer, healthier and independent life;
- North Yorkshire is a place with a strong economy and a commitment to sustainable growth that enables our citizens to fulfil their ambitions and aspirations; and
- we are a modern council which puts our customers at the heart of what we do.

The **Young and Yorkshire 2 plan**⁹ aims to improve the lives of children and young people living in North Yorkshire, as well as their families. The plan has been written by the North Yorkshire Children's Trust, a partnership that represents all the agencies working with children and young people across the county. Its vision is to create a place of opportunity where all children and young people are happy, healthy and achieving, and its priorities include:

- Ensure children have great early years
- Raise achievement and progress for all
- Equip young people for life and work in a strong North Yorkshire economy

⁷ The Community Infrastructure Levy (Amendment) (England) (no.2) Regulations

⁸ <https://www.northyorks.gov.uk/council-plan>

⁹ <https://www.northyorks.gov.uk/young-and-yorkshire-2>

The County Council's **Strategic Plan for SEND Education Provision 0-25, 2018 – 2023**¹⁰ is for all children and young people in North Yorkshire who have special educational needs and disabilities (SEND), for their families and for all those working with them. We want all children and young people with SEND in North Yorkshire:

- To have the best educational opportunities so that they achieve the best outcomes.
- To be able to attend a school or provision locally, as close to their home as possible, where they can make friends and be part of their local community.
- To make progress with learning, have good social and emotional health, and to prepare them for a fulfilling adult life.

Local plans are prepared by the nine Local Planning Authorities in North Yorkshire, which comprise the seven Borough and District Councils and two National Park Authorities. These Local Plans are then examined independently by the Planning Inspectorate.

Seeking developer contributions for education

North Yorkshire County Council has for many years had a policy of aiming to secure contributions towards education provision wherever possible. This has become significantly more challenging in the context of Community Infrastructure Levy (CIL) and regulations which, until September 2019, restricted the pooling of contributions from multiple developments. Where CIL has been adopted the principle is that the District Councils collect a set sum per unit from all developments under a charging schedule and then distribute to infrastructure projects.

We propose to continue to request Section 106 contributions for education across the County. This will now also include areas that have adopted CIL. Changes to the CIL regulations in September 2019 removed pooling restrictions for Section 106 agreements and allowed Section 106 contributions to fund infrastructure also being partly funded by CIL. Our experience to date is that Section 106 agreements offer far more certainty that the school place need arising from a housing scheme will be supported by developer contributions.

Regardless of whether schools have academy status, are free schools, or maintained schools, the County Council remains the authority responsible for ensuring that there are sufficient school places available to meet the educational needs of the county's population. This means that the County Council remains the appropriate authority in determining the requirements for school provision as a consequence of housing development and will ask to be a party to any Section 106 agreement in order to secure the appropriate contribution. The County Council will work jointly with the nine Local Planning Authorities in North Yorkshire as plans are prepared and planning applications determined, to ensure that all education needs are properly addressed.

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https://www.northyorks.gov.uk/sites/default/files/fileroot/About%20the%20council/Strategies%2C%20plans%20and%20policies/Strategic_plan_for_SEND_education_provision_0-25_2018_to_2023.pdf

PRIMARY AND SECONDARY PROVISION

Calculating developer contributions for primary and secondary education provision

Where a new development is proposed in an area with sufficient projected school places, no financial contribution will be required; however, where the proposed development would result in insufficient projected school places, a contribution will usually be sought.

Forecasts of future school capacity and pupils on roll at local primary and secondary schools are made by the County Council over a five year period. Local primary and secondary schools are generally the catchment area schools for the proposed development. These forecasts are based on school census data and the latest school capacity information and will also take into account any unimplemented planning permissions.

- If, following these calculations the local schools are deemed to be at capacity in year **five**, contributions will be sought for every place.
- If the school is “X” places short of capacity in year five and the development generates “Y” places, contributions will be sought on the difference between “X” and “Y”.
- If “X” is greater than “Y” no contribution will be sought.
- If the school is deemed to have some capacity in year five, but not sufficient to provide all the places generated by the development, contributions will be sought for the shortfall of places resulting from the development.

(see Appendix 1 for examples)

Calculations will be based on the number of houses included in the outline planning application. Any increase in the number of units approved through, for example, a reserved matters or subsequent application, will generate additional contributions. No account will be taken of the rate of house-building on the site as this is an uncertain variable.

Primary Education contributions will be sought in relation to outline or full applications for planning permission for residential developments of 10 or more dwellings with 2 or more bedrooms.

Secondary Education contributions will be sought in relation to outline or full applications for planning permission for residential developments of 25 or more dwellings with 2 or more bedrooms.

Contributions for education provision will not be sought in the following cases:

- Dwellings with less than two bedrooms.

- Sheltered accommodation or genuine elderly person, student or holiday accommodation. Such accommodation will be that which clearly is incapable of occupation for general residential purposes by virtue of its internal layout, ownership or management or which has occupancy restricted by planning condition or legal agreement.
- Temporary housing or bedsits and one-bedroom dwellings, if they are clearly incapable of being enlarged to two-bedroom units.
- Changes of use or conversion or redevelopment schemes where there is no net increase in the number of residential units to which contributions would apply.

Any planning permission granted for the change of use from sheltered or elderly persons, student or holiday accommodation or from one-bedroom flats to general residential units or two-bedroom flats and so on, would be subject to a contribution if the number of units exceeds the threshold criteria set below.

How many places are required?

In order to assess the long term demand arising from a new development, the County Council will use the following pupil yields:

Primary Schools (aged 4 to 11) – 0.25 children per dwelling

Secondary Schools (aged 11 to 16 or 11 to 18) – 0.13 children per dwelling

The pupil yields are derived from recent local housing developments across the County (see Appendix 2 and 3).¹¹

The number of children generated by residential development will vary depending on the type and size of dwelling and by the location of the development. In some cases it may be argued that houses are built for a particular market, for example couples, starter homes or that a development is not within easy reach of a primary school. We will not normally reduce the basis for the calculations to account for variables such as these, because, over time, any dwelling (excluding sheltered, elderly person only, or one bedroom units) in any location, has the potential to accommodate children of school age.

What level of contribution is required?

North Yorkshire County Council will multiply the projected pupil yield by the national average costs published in the DfE school places scorecards,¹² adjusted to reflect costs in the county using BCIS location factors. This is in line with DfE guidance.¹³

¹¹ Using the median average. These yields have been reduced by 0.01 to account for those pupils with an Education, Health and Care Plan, which are accounted for separately, under SEN provision.

¹² <https://www.gov.uk/government/statistics/local-authority-school-places-scorecards-2018>

¹³ Securing Developer Contributions for Education (November 2019).

The present costs (April 2019 to March 2020), derived from DfE school places scorecards published in June 2019, are as follows:

	England Cost of Place £	North Yorkshire location factor	2019/20 place cost multipliers £
Primary schools			
Permanent expansion	16,596	0.95	15,766
New school	19,611	0.95	18,630
Secondary schools			
Permanent expansion	22,738	0.95	21,601
New school	23,962	0.95	22,764

In the majority of cases, unless it is fully expected that a new school is to be provided, the average cost for permanent expansions at primary and secondary schools will be used. Only where a new school is required to mitigate the impact of the development, will we seek financial contributions using the average cost for a new school.

These rates will be updated on 1 April each year and reflect the latest published DfE school places scorecard at this date. If there is no DfE school places scorecard published within the last calendar year, we will reserve the right to uplift the costs in the latest published scorecard by inflation.

SPECIAL EDUCATIONAL NEEDS AND DISABILITIES (SEND) PROVISION

Planning policy guidance and DfE guidance¹⁴ states that requirements for education contributions should consider SEND provision, and recommends a local authority-wide pupil yield factor based on evidence of recent developments.

SEND provision in North Yorkshire includes:

- Enhanced mainstream schools (EMS) – mainstream schools providing an enhanced offer to children and young people with SEND.
- Pupil Referral Service (PRS) – a school established and maintained by a local authority to provide education for pupils who would otherwise not receive suitable education because of illness, exclusion or any other reason.
- Special School - A school specifically organised to make special educational provision for pupils with SEND. Pupils attending a special school will have an Education, Health and Care Plan.

How many places are required?

The County Council will apply the following yield for SEND provision:

¹⁴ MHCLG, Planning Practice Guidance, Planning Obligations; DfE, Securing Developer Contributions for Education (November 2019).

0.01 per dwelling

This pupil yield is derived from recent local housing developments across the County (see Appendix 4).

A contribution directly required for SEND provision will not be sought on any developments of less than 100 dwellings.

What level of contribution is required?

North Yorkshire County Council will follow DfE guidance that developer contributions for special or alternative school places are set at four times the cost of mainstream places, consistent with the space standards in Building Bulletin 104.¹⁵

The current cost is £63,064 per SEND place.

EARLY YEARS CHILDCARE PROVISION PLACES

The County Council has a duty to ensure early years childcare provision within the terms set out in the Childcare Acts 2006 and 2016. Planning policy guidance and DfE guidance¹⁶ states that requirements for education contributions should consider all school phases 0-19, including early years.

How many places are required?

For developments of over 100 dwellings with two or more bedrooms an assessment will be made of the need to secure additional S106 funding for early years/pre-school provision, where it can be reasonably demonstrated that there is no capacity for local providers to meet increased demand for early years places arising as a consequence of the development.

Where developer contributions are considered appropriate a yield rate of 0.05 children per dwellings will be applied. (This is based on dividing the primary yield rate of 0.25 by 7 (to provide an average yield per year group of primary aged pupils) and multiplying by 1.3 (to account for on average 4 terms (that is to say, 1 year and a term) of early years government funding for 3 and 4 year-olds).

The need for a contribution will be established by comparing the number of children generated by the development, with the vacancies available in existing Early Years providers within a three mile radius of the development.

Having taken the above factors into account, where it can be demonstrated that the number of Early Years children generated by a development is greater than the space capacity in current or planned Early Years provision the County Council will

¹⁵ DfE, Securing developer contributions for education, paragraph 17.

¹⁶ MHCLG, Planning Practice Guidance, Planning Obligations, paragraph 8; DfE, Securing Developer Contributions for Education (November 2019).

require a contribution to fund the provision of the additional Early Years places required arising from the development.

What level of contribution is required?

North Yorkshire County Council will follow DfE guidance that developer contributions for early years provision are set at the same as for a primary school.¹⁷

The current cost is £15,766 per early years place.

Following DfE guidance, developer contributions for early years provision will usually fund places at existing or new school sites.¹⁸

Section 106 agreements

The Government encourages Local Planning Authorities to use and publish standard forms and templates to assist with the process of agreeing planning obligations. This does not remove the requirement for local planning authorities to consider on a case by case basis whether a planning obligation is necessary to make the development acceptable in planning terms.¹⁹

North Yorkshire County Council will recommend the use of model clauses for education contributions in Section 106 agreements as set out in Appendix 5.

New schools

We will work with plan makers to identify which schools are likely to expand, and where new schools will be needed as a result of planned growth. We will work with local planning authorities to ensure that planning policies and planning obligations require a suitable school site to be made available at the appropriate time. National Planning Practice Guidance has an initial assumption that development will provide both funding for construction and land for new schools required onsite, commensurate with the level of education need generated by the development.²⁰

The County Council uses the Building Bulletin 103 and Section 77 policies in conjunction with each other, to ensure that new school sites meet both guidelines. Applying this guidance, for a new 3-11 primary school with integral nursery, the County Council would usually request the following site areas for a primary school:

Total pupils	Forms of entry	Total site area
210	1	1.19 ha
420	2	2.14 ha
630	3	3.09 ha

¹⁷ DfE, Securing developer contributions for education, paragraph 16.

¹⁸ DfE, Securing developer contributions for education, paragraph 16.

¹⁹ MHCLG, Planning Practice Guidance, Planning Obligations, paragraph 16.

²⁰ MHCLG, Planning Practice Guidance, Viability, paragraph 29.

The County Council has a checklist of suitability requirements for new school sites (Appendix 6), and expects developers to show which criteria the proposed site fully meets, and to provide details of how the proposed site might not be considered to fully meet any of the criteria. The County Council will recommend the use of model clauses for education sites in Section 106 agreements as set out in Appendix 7.

Where new schools are planned within housing developments, we will consider whether direct delivery by the developer would represent best value for money, subject to an appropriate specification from the County Council. This would need to comply with state aid and public procurement legislation.

In multi-phase developments, we may recommend land-equalisation approaches to ensure the development 'hosting' a new school (and any additional safeguarded land) is not disadvantaged.

Where appropriate, for instance in the early stages of development while the need for school places is growing, the County Council may seek developer contributions for temporary expansions to existing schools if required, and for transport costs for pupils travelling further than the statutory walking distance.²¹ This could include:

- the full cost of any temporary accommodation required on school sites pending the delivery of any new schools or extended school facilities;
- the cost of transporting children to a school, where it is not possible to provide additional school places within an available walking distance of the development. This contribution will be in addition to any pupil place contributions and will relate to the cost of providing a new transport route for the additional pupils for a defined period of time. This claim will usually apply during the early phases of a major development prior to the opening of the new school on site.

Following DfE guidance, we will not usually take into account the capacity of existing primary schools beyond the statutory walking distance when calculating developer contributions for permanent onsite schools in new settlements and urban extensions. This promotes sustainable and healthy travel patterns.²²

Expansion of existing school sites

Where it is determined that there is a need to expand an existing school to mitigate the impact of a development, and the school site is undersized with reference to the capacity of the school and the guidelines for school sites in Building Bulletin 103 and Section 77, then the County Council would seek additional land from the developer wherever possible to mitigate the impact of the development.

²¹ DfE, Securing Developer Contributions for Education (November 2019), paragraph 29.

²² DfE, Securing Developer Contributions for Education (November 2019), paragraph 30.

Monitoring and Review

The 2019 CIL regulations require County Councils to publish an infrastructure funding statement where they receive a contribution entered into during the reported year. For the financial year 2019/2020 onwards, any local authority that has received developer contributions (section 106 planning obligations or Community Infrastructure Levy) must publish online an infrastructure funding statement by 31 December 2020 and by the 31 December each year thereafter.

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Summary of proposals

	Pupil yield per house	Minimum number of houses on which assessment made	Contribution per place (2019/20 rates)	
			Expansion	New school
Primary	0.25	10	£15,766	£18,630
Secondary	0.13	25	£21,601	£22,764
Special Educational Needs and Disabilities	0.01	100	£63,064	£63,064
Early years	0.05	100	£15,766	£15,766

Contact

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Supporting appendices

Appendix 1: Examples of calculating developer contributions for primary education provision

Appendix 2: Primary-aged pupil yields from recent housing in North Yorkshire (summer 2019)

Appendix 3: Secondary-aged pupil yields from recent housing in North Yorkshire (summer 2019)

Appendix 4: Pupils with Education, Health and Care Plans in recent housing in North Yorkshire (summer 2019)

Appendix 5: Model clauses for education contributions in Section 106 agreements

Appendix 6: Education Site Suitability Checklist

Appendix 7: Model clauses for education sites in Section 106 agreements