# **Education Payments**

## **Supplementary Planning Document**







Local Development Framework

Scarborough Borough Council Forward Planning May 2008 (updated OH 14 201G)

### Statement of Adoption

### **Statement of Adoption**

This Supplementary Planning Document was adopted by Scarborough Borough Council on the 12 May 2008.

Any person aggrieved by this Supplementary Planning Document may apply to the High Court for permission to apply for judicial review of the decision to adopt the Supplementary Planning Document.

The Statement of Consultation regarding this Supplementary Planning Document is to be found on the Scarborough Borough Council web site: www.scarborough.gov.uk

#### **Alternative Format Documents**

To improve the accessibility of the planning system, this and other Local Development Framework documents are or will be made available in large copy print, audio cassette, Braille or languages other than English. If you require the document in one of these formats please contact: Forward Planning, Scarborough Borough Council, Town Hall, St. Nicholas Street, Scarborough, YO11 2HG Tel: 01723 242380 E-mail: forwardplanning@scarborough.gov.uk.

**Statement of Adoption** 

Foreword

#### **Foreword**

Scarborough Borough Local Plan requires that new housing development makes appropriate provision for reducing the pressure on existing education facilities generated by the additional population. The purpose of this Supplementary Planning Document (SPD), prepared under the new Local Development Framework system (see Appendix A), is to provide further guidance to developers on the Local Planning Authority's requirements for new or improved educational facilities as a result of new residential development.

This Supplementary Planning Document is to provide guidance on:

- Why a planning obligation (s.106 Agreements/ unilateral agreements) may be required for education facilities;
- What form the obligation can take;
- The types of development that may be subject to planning obligations for educational facilities;
- How commuted sums are calculated;
- The process for dealing with s.106 Agreements/ unilateral agreements in conjunction with a planning application

This SPD replaces the Supplementary Planning Guidance (SPG) – "Developer Contributions to Education Facilities Standards" produced in January 2000, and amended in February 2007.

#### **UPDATE**

This document has been updated in line with the most up to date figures, multipliers and responsible Government Departments and is correct as of April 2012. This is in accordance with guidance from the County Education Authority (North Yorkshire County Council).

Foreword

## Contents

1	Background	2
2	Section 106 Agreements: Principles	6
3	The Policy Background	10
4	Calculating Developer Contributions to Education Facilities	14
5	Procedure	20
6	Monitoring and Review	22
	Appendix	
А	The Planning System	24
В	Sustainability Appraisal	26
С	Further Contacts	30

## Contents

#### 4

## Background 1

### 1 Background

### 1 Background

- 1.1 The opportunity for a decent education is central to the Government's aims of achieving sustainable communities. Provision of adequate educational facilities is crucial in ensuring that all children have the opportunity to gain the vital knowledge, skills and qualifications needed to help make a good start in life.
- 1.2 The County Council, as the public education provider, has to ensure that there a sufficient school places to meet the need in that locality. This can mean places are lost if the amount of children attending a school falls. However, the children from new housing developments place extra pressure on existing facilities. Without sufficient investment, a school's ability to accommodate extra pupils generated by new housing development can be compromised. It is therefore important to maintain sufficient levels of school capacity and infrastructure for a growing population.
- 1.3 The Proposed Modifications to the Regional Spatial Strategy (September 2007) make allowance for 11,800 additions to the housing stock from 2004 up to 2026 in Scarborough Borough as a whole. A proportion of these will be family accommodation. Whilst the County Council has a statutory duty to ensure that there are sufficient school places for the additional children from such developments, the development industry has a key role to play in the delivery of education provision, ensuring that the additional pressures on school capacity caused by new development can be accommodated.
- 1.4 It is proposed that this draft Supplementary Planning Document (SPD) will replace the 2000 Supplementary Planning Guidance (SPG) entitled 'Developer Contributions to Educational Facilities', which only considered contributions for Primary school places on developments of 25 or more units. Since the first SPG was adopted in 2000, the method of securing funds to build or extend schools has changed, becoming less centralised.
- 1.5 The County Council does not have the financial resources to secure appropriate provision (e.g. permanent buildings, not temporary structures) for children from new housing developments unless contributions are sought from developers.
- 1.6 The County Council has determined that there is a need to require contributions for both primary <u>and</u> secondary school places. This SPD proposes to change the threshold for requiring contributions for primary places to 25 units or more for the Scarborough urban area <sup>()</sup> and the towns of Whitby and Filey, as defined by the settlement boundaries in the Saved Local Plan, and 15 units or more for villages and other areas. This is to ensure that the relatively smaller scale developments in the villages and other areas, which cumulatively have a significant impact on the local schools, can be taken into account. The SPD also proposes a threshold for requiring contributions for secondary places, and for that threshold to be set at 150 units or more. This is much higher than the threshold for primary contributions because the links between residence and secondary school education are not as strongly influenced on location/ distance as compared to primary schools. These thresholds are in line with those adopted by other Local Planning Authorities in North Yorkshire.

#### 3

## Background 1

1.7 This SPD has been informed by a Sustainability Appraisal (SA) which assesses the policy against environmental, social and economic objectives. The appraisal concluded that the SPD does not conflict with these objectives and has a positive overall contribution to sustainability.

## 1 Background

### 2 Section 106 Agreements: Principles

- 2.1 Section 106 of the Town & Country Planning Act 1990 as amended by the 1991 Act, enables planning authorities to seek to negotiate a contribution from developers towards the cost of meeting the infrastructure necessary to support their development. For education, this could mean asking developers of housing for a contribution towards the cost of extending an existing school or building a new one, or in the case of smaller developments commuted sums for extra school places, or sums to be pooled to reduce the cumulative pressure of a series of smaller developments.
- 2.2 Circular 05/2005 issued by the former Office of the Deputy Prime Minster provides guidance on planning obligations. It states in paragraph B3: "Planning obligations (or "s.106 agreements") are private agreements negotiated, usually in the context of planning applications, between local planning authorities and persons with an interest in a piece of land (or "developers"), and intended to make acceptable development which would otherwise be unacceptable in planning terms.

#### Statement 1

#### **Planning Obligations- Tests**

The Circular Indicates, in paragraph B5, that amongst other factors, planning obligations are only sought where they meet all of the following tests:

- relevant to planning;
- necessary to make the proposed development acceptable in planning terms;
- directly related to the proposed development;
- fairly and reasonably related in scale and kind to the proposed development; and are
- reasonable in all other respects.
- 2.3 The circular goes on to say "Within these categories of acceptable obligations, what is sought must also be fairly and reasonably related in scale and kind to the proposed development and reasonable in all other respects. For example, developers may reasonably be expected to pay for or contribute to the cost of all, or that part of, additional infrastructure provision which would not have been necessary but for their development. The effect of the infrastructure investment may be to confer some wider benefit on the community but payments should be directly related in scale to the impact which the proposed development will make." It is clear that developers should not have to remedy existing deficiencies, unless the development would materially exacerbate the situation.

#### **Types of Contribution**

2.4 Contributions may either be in kind or in the form of a financial contribution. In the case of financial contributions, payments can be made in the form of a lump sum or an endowment, or, if beneficial to all parties and not unduly complex, as phased payments over a period of time, related to defined dates, events and triggers.

#### **Pooled Contributions**

- 2.5 Where the combined impact of a number of developments creates the need for infrastructure, it may be reasonable for the associated developers' contributions to be pooled, in order to allow the infrastructure to be secured in a fair and equitable way. Pooling can take place both between developments and between local authorities where there is a cross-authority impact. Local authorities should set out in advance the need for this joint supporting infrastructure and the likelihood of a contribution being required, demonstrating both the direct relationship between the development and the infrastructure and the fair and reasonable scale of the contribution being sought. There should be a clear audit trail between the contribution made and the infrastructure provided.
- 2.6 In some cases, individual developments will have some impact but not sufficient to justify the need for a discrete piece of infrastructure. In these instances, local planning authorities may wish to consider whether it is appropriate to seek contributions to specific future provision (in line with the requirements for demonstrating need as set out above). In these cases, spare capacity in existing infrastructure provision should not be credited to earlier developers.
- 2.7 In cases where an item of infrastructure necessitated by the cumulative impact of a series of developments is provided by a local authority or other body before all the developments have come forward, the later developers may still be required to contribute the relevant proportion of the costs. This practice can still meet the requirements of the Secretary of State's policy tests if the need for the infrastructure and the proportionate contributions to be sought is set out in advance.

#### **Unspent Contributions**

2.8 In the event that contributions are made towards specific infrastructure provision but the infrastructure is not provided within an agreed timeframe, arrangements should be made for contributions to be returned to developers.

### 3 The Policy Background

3.1 The Scarborough Borough Local Plan (adopted 1999, with selected policies 'saved' in 2007) contains Policy C6 which enables contributions on community facilities or infrastructure to be sought. This SPD therefore relates to Policy C6 which is outlined below. This SPD will be reviewed in line with any new Development Plan Document adopted which would replace Policy C6, or any changes made by the Government regarding Circular 5/2005.

#### C.6 (Developer Contributions)

"Where new development will generate the need for additional infrastructure provision or community facilities, planning permission will only be granted where contributions which are reasonably related in scale and nature to the proposed development are secured through a legal agreement. Contributions will be sought for:

- (i) the provision of on-site facilities necessary in the interests of comprehensive planning; and/or
- (ii) the provision of or improvement of off-site facilities where existing facilities will be placed under additional pressure.

#### **Justification**

- (i) Infrastructure provision and community facilities must be provided, maintained and improved if the quality of life of Borough residents is not to deteriorate. Where major development is proposed it may necessitate completely new additional provision as well as improvements to existing facilities. This provision should be proposed as part of the development package to ensure that the needs of new occupiers have been fully considered."
- (ii) In the context of the County Council's policy seeking developer contributions towards the provision of education facilities the Borough Council is preparing Supplementary Planning Guidance explaining the scope of the policy and describing the basis on which contributions will be sought.
- 3.2 In terms of educational facilities, the Local Planning Authority is entitled to negotiate reasonable and appropriate financial contributions or contributions by way of buildings or facilities. The planning authority may require a contribution where the facilities are required and are necessary as a direct consequence of the development or the need arises as a result of the development.
- 3.3 A housing development will, depending on its size and composition, give rise either in the short or long term, to a demand for school places. If it can be demonstrated that there is, or will be, insufficient capacity in local schools and no additional capacity is programmed by the Education Authority, then the proposed housing development imposes a burden or "planning loss" on the community which the developer should resolve either indirectly or directly. A similar situation exists for example if a development imposes a traffic problem on local roads.

- 3.4 The planning authority are entitled to refuse planning permission or impose conditions which delay development, or part of the development, until such time as the necessary provision is made. To minimise delay, however, there needs to be a mechanism to enable developers to bring forward new provision sooner than it would otherwise be made, by providing the necessary funding.
- 3.5 In these cases a planning authority is entitled (where public funding is unavailable) to seek the full costs of educational facilities arising from a development. Retrospective requirements or provision to rectify existing deficiencies cannot be sought. Negotiations between the developer and the planning authority should be based on the application of clear and reasonable criteria which identify how developer contributions are calculated, and the type of development or geographical area to which contributions should apply.
- 3.6 The Town & Country Planning Acts and Circular 05/2005 enable negotiations to take place with developers to secure contributions to a wide range of infrastructure costs, including contributions for educational facilities, but they must be based on formulae which can be justified. Contributions should not be sought as an automatic entitlement regardless of local circumstances, local needs, and the opportunities for implementation. Although thresholds are proposed, each application will also be individually assessed to determine the impact on the existing local school(s).
- When a planning application for major new housing is received, in relation to educational 3.7 facilities, the starting point will be assessment of existing school provision, the number of vacant places and the effect of natural population growth in the community in the absence of the proposed housing development. This information is collated by the County Council and reviewed annually. Enquiries can also be made direct to the Strategic Services section within the Children and Young People's Service at County Hall, Northallerton. Please note that applicants/developers should not go to educational establishments directly with offers of educational provision. In addition to this, changes in catchment areas or the existence of other unimplemented planning approvals may be a factor in determining whether the proposed development will give rise to a capacity problem in local schools or in schools where children from the proposed development are likely to attend. It is important for developers to note that any assessment of the need for a contribution will be based upon the most up to date information in terms of school rolls and projected pupil numbers. These may fluctuate over time and it is, therefore, prudent for any contractual arrangements with landowners to include appropriate contingency provision in the event of a contribution being sought.
- 3.8 If contributions are sought in relation to a wide range of infrastructure costs and affordable housing, then, taken together, some substantial sums may be involved. In some cases, this may lead to a situation where the proposed development is alleged to be unviable. In these cases, the planning authority is entitled to refuse planning permission on the grounds that the development does not mitigate its impact on the community, such as over-crowding in local schools, traffic congestion or lack of open space. In these circumstances, it is open to the planning authority to make a judgment on the balance of advantages and disadvantages of the development and the provision of infrastructure. For example affordable housing is subject to a viability check and should not be required where it would render a proposed development unviable. If negotiations fail to reach agreement on these matters, because of the alleged

un-viability of the development it may be necessary to require "open book" information on the costs of the development and residual values. This situation may arise in particular on brownfield sites where abnormal development costs may render the development marginal.

### **4 Calculating Developer Contributions to Education Facilities**

### Formulae and Standard Charges

- **4.1** Where contributions are not to be made in kind, Circular 05/2005 states that "Local authorities are encouraged to employ formulae and standard charges where appropriate, as part of their framework for negotiating and securing planning obligations".
- **4.2** Standard charges and formulae applied to each development should reflect the actual impacts of the development or a proportionate contribution to educational facilities element, and should comply with the general tests in Circular 05/2005, outlined in Statement 1 'Planning Obligations- Tests'. Contributions should be sought from residential development that is likely to place an additional burden on educational establishments that are currently operating at capacity or that are projected to reach capacity.

#### Calculations and Thresholds

#### **Primary School**

The basis for calculating the contributions at 2009 (these figures will be updated as appropriate) for primary school places (age 5-11) is as follows:

Department for Education (DfE) cost multiplier (£12,257) x regional factor (0.98) + 10% fees, plus furniture / equipment (£383) =

#### £13,596 per primary pupil place

#### Secondary School

The basis for calculating the contributions at 2009 for secondary school places (age 11-16) is as follows:

DfE cost multiplier (£18,469) x regional factor (0.98) + 10% fees, plus furniture / equipment (£383) =

#### £20,293 per secondary pupil place

Calculations are then summed on the basis that 0.25 (1 in 4) primary school places, and 0.125 (1 in 8) secondary school places are generated per relevant residential unit within the development.

#### **Thresholds**

The requirement for contributions to educational facilities for primary school places will only be made on a development of 25 units or more for the Scarborough urban area, <sup>(1)</sup>, and the towns of Whitby and Filey, as defined by the settlement boundaries in the Saved Local Plan. For the villages and other areas, the threshold of 15 units or more would be applied.

The requirement for contributions to educational facilities for secondary school places will only be made on a development of over 150 units or more.

Those properties must be of a type that children could occupy.

#### **Cost increases**

In the event of the costs of implementing additional school places increasing after agreement has been reached, no additional contributions, other than the Retail Price Index increase, will be sought from developers. The contribution is a once-only payment linked to the planning permission.

- 4.3 The elements within these formulae will be subject to annual review by the County Council in line with Central Government guidelines. The cost multiplier is the assessment made by the Government for the cost of a school place. The regional factor is an adjustment for local (county wide) costs of provision. The 10% addition represents an allowance for contingencies and fees.
- 4.4 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, and this is why only a proportion of the residential units in a development are considered within the calculation. A lower proportion of units, and higher threshold are required for secondary school places due to the generally less direct linkages between developments and secondary schools.
- **4.5** Contributions will not be sought where a development would not generate a demand for additional school places. Therefore, sheltered accommodation for the elderly and *bona fide* student or holiday accommodation will be exempt. Such accommodation is clearly incapable of occupation for general residential purposes by virtue of its internal layout, ownership or management. However, if the accommodation situation changes to private dwellings then a commuted sum may be required.
- **4.6** Any planning permission granted for the change of use from any of these forms of accommodation to general residential units or two bedroom flats etc., would be subject to a contribution if the number of units exceeds the criteria set out above in 'Calculations and Thresholds'. However, contributions will not be sought for 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.
- **4.7** In some cases a developer may argue that houses are built for a particular market, e.g couples, starter homes or the retired or that a development is not within easy reach of a primary school. The Planning and Education Authorities will not normally reduce the basis for the calculations to account for variables such as these, because, over time, any dwelling (excluding sheltered or one bedroom units) in any location, has the potential to accommodate children of primary school age.
- 4.8 Forecasts of future school capacity and national population growth by the Education Authority are made over a three year period. If, following these calculations the local primary school is deemed to be at capacity in year 5, contributions will be sought at the full rate. If the school is "X" places short of capacity 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. Any assessment undertaken by the Education Authority will be made available to developers. Any increase in the number of units approved through, for example a revised application, will generate additional contributions. Similarly, any reduction in the number of dwellings arising from a subsequent approval will be taken into account and the contributions recalculated provided that this would not frustrate or prejudice any contractual situation relating to the commencement of works on the school site. No account will be taken of the rate of house-building on the site as this is an uncertain variable.
- 4.9 The basis of the calculations set out above will be subject to review, independent audit and change in the light of new demographic and other trends.

- 4.10 Contributions are only required where a local need is identified and therefore there is an obligation to show how funds received will be spent within a prescribed period, how they will deal with the identified impact, and in a manner which will be set out by the Education Authority. The Education Authority will incorporate provision for the return of contributions where they remain unspent after a period of time to be agreed with the developer, or where the contribution exceeded the cost of necessary works. Where the latter applies, only the unspent element will be returned. In the event of alternative funding becoming available, provision will be made for a commensurate refund to the developer. Agreement between the Education Authority and the developer will specify where any contributions are to be spent.
- **4.11** Normally, contributions will be required upon the legal completion of the new dwellings. In certain circumstances, payment of contributions may be delayed or phased by agreement with the Education Authority.

#### **Payment in Kind**

- 4.12 A contribution by way of the direct construction of classrooms etc., to the Education Authority's specification, is a possible alternative to a financial contribution.
- **4.13** The provision of temporary or mobile classrooms is not an acceptable alternative and will only be tolerated where it forms a short term element in a longer term programme of providing permanent accommodation.

## Procedure 5

### 5 Procedure

#### **5 Procedure**

5.1 In the past, after submission of a relevant application, the Local Planning Authority (LPA) would contact the Education Authority to advise the LPA whether contributions are necessary in the particular case. However, the Council now strongly urges developers / applicants to discuss the scheme with the LPA prior to the submission of an application, as it is anticipated that in the process of pre-application discussions, the need and scope of a s.106 agreement would be established, through consultation with the Education Authority, and an agreed draft agreement produced. This is because the LPA will not issue a decision notice of approval on any application until agreement has been reached between the two parties, and as such may refuse an application if an agreement cannot be achieved in the Government's prescribed time frame for determining applications.

## Monitoring and Review 6

## 6 Monitoring and Review

## **6 Monitoring and Review**

- **6.1** Financial contributions received in respect of Section 106 Agreements are monitored in terms of:
- Details of amounts collected held electronically on a register of all S.106 and Unilateral Agreements and these can be inspected on request.
- An annual S.106 monitoring report is presented to the Planning and Development Committee and Cabinet. This monitors all S.106 and Unilateral Agreements, highlights all commuted sum payments that have been negotiated and/or collected, and give details of schemes which have been completed.
- 6.2 This provides transparency for developers and the local community on how the money has been spent and its effectiveness in terms of how many extra school places/new class rooms/ schools are provided.

## The Planning System A

### A The Planning System

### **Appendix A The Planning System**

The new planning system, introduced with the Planning and Compulsory Purchase Act 2004, allows for the preparation of Supplementary Planning Documents to provide guidance to developers and the public on the implementation of planning policy. This new system has changed the way that planning policy documents are produced and the format that they will take. The Regional Spatial Strategy (currently in draft form) is to give a strategic / upper tier of planning guidance covering the region as a whole. At the Borough level, the all encompassing Local Plan supplemented by Supplementary Planning Guidance (SPG) will be replaced by a portfolio of documents known as a Local Development Framework which will include the following:-

Development Plan Documents (DPDs) (subject to external examination)

- Core Strategy spatial vision and strategic objectives
- Site specific allocations
- Area Action Plans planning framework for areas of significant change or where conservation is needed
- Other DPDs thematic documents such as housing, employment, retail, open space, etc.
- Proposals Map geographic extent of policies and allocations

Supplementary Planning Documents (SPDs) (not subject to external examination) – expand on policies or provide further detail to DPDs

Local Development Scheme (LDS) – programme of document production

Statement of Community Involvement – indicates methods of including the community in the preparation of the various documents within the LDF

Sustainability Appraisal (SA) and Strategic Environmental Assessment (SEA) – appraises the social, environmental and economic effects of plan strategies and policies

Annual Monitoring Report – Monitors progress against the LDS programme and the effectiveness of existing policies

During the interim period of the production of LDF documents the Adopted Scarborough Borough Local Plan will retain development plan status and the policies contained within it will become 'saved' for a period of three years from the commencement of the 2004 Act. Proposals for saving those policies still required for the period beyond September 2007 is set in place.

SPDs expand on policies within the DPDs or 'saved' policies within the Scarborough Borough Local Plan providing further details and guidance on a range of issues. Such documents will not have development plan status but will exist within the LDF and will be informed by extensive community involvement and the process of sustainability appraisal.

## Sustainability Appraisal B

### **B** Sustainability Appraisal

## **Appendix B Sustainability Appraisal**

#### **Sustainability Objectives**

- 1. To provide good quality employment opportunities available to all local residents including the young, deprived, disabled and those living in both urban and rural locations.
- 2. To provide conditions which enable business success, economic growth and investment in both urban and rural locations.
- 3. To support the tourism industry through the provision of accessible tourist facilities, building on the natural and historic features of Scarborough.
- 4. To provide lifelong educational opportunities for all local residents, including the young, deprived, disabled, the elderly and those in both urban and rural locations.
- 5. To promote good physical and mental health through the provision of access to adequate leisure facilities, recreational activities and health services in urban and rural locations.
- 6. To reduce crime and the fear of crime, particularly through secure by design.
- 7. To preserve and enhance all aspects of the historic environment and to provide opportunities for all residents to access and understand local cultural heritage.
- 8. To provide good access for all local residents to key services and facilities so that local needs can be met locally.
- 9. To provide a transport network which encourages the use of public transport, cycling and walking and minimises traffic congestion.
- 10. To optimise the use of empty buildings and derelict sites bearing in mind their potential nature conservation value.
- 11. To provide a good quality built environment, including green spaces, and ensure high standards of sustainable design and construction, including energy and water conservation, waste recycling facilities and sustainable materials.
- 12. To provide affordable, decent housing in accessible locations to meet the needs of local people in urban and rural locations.
- 13. To conserve and enhance all aspects of the natural environment and landscape, in particular designated sites and protected species, and provide opportunities for local residents to access and understand these.
- 14. To conserve and enhance all aspects of the coastal and marine environment, particularly designated sites and fisheries.
- 15. To protect water, soil and air quality through reducing pollution.
- 16. To reduce greenhouse gas emissions to mitigate the rate of climate change and ensure future development prepares for climate change.
- 17. To ensure prudent and efficient use of natural resources and minimal production of waste.
- 18. To minimise flood risk as a result of new development.

#### **Recording the Appraisal**

Each of the aims and objectives of the SPD are assessed against each of the sustainability objectives in order to gauge the effect that the principles of the SPD is likely to have on the move towards a more sustainable environment. The information is recorded in the following way:-

## Sustainability Appraisal B

- ++ Significant beneficial/desirable effect
- + Marginal beneficial/desirable effect
- -- Significant negative/undesirable effect
- Marginal negative/undesirable effect
- ? Uncertainty over effect
- D Depends on ImplementationAn empty cell denotes no effect

### The Appraisal

The appraisal of this document is shown in the table below.

## **B** Sustainability Appraisal

Sustainability Appraisal															
SA Objectives	1 2	က	4	Ŋ	2 9	<b>∞</b>	တ	6	1 12	13	4	15	16	17	18
To increase the number of places available for primary school education	<u>۲</u>		++			<b>+</b>									
To increase the number of places available for secondary school education	<del>-</del>		+ +			+ +									
To enhance the facilities at existing schools	<u>-</u> -		++	+	+	<b>+</b>						Ω	۵	۵	
To provide opportunities for new school ? + (extensions)	<u>۲</u>		+ +	+	+	++			Ω			٥	٥	D	۵

Sustainability Appraisal of Developer Contributions and Education Facilities SPD

## Further Contacts C

## C Further Contacts

## **Appendix C Further Contacts**

If you require further information please contact:

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