

Appellant Response 9 Jan 23 in respect of Infrastructure Funding Statements, LPA and County Council Notes dated 6 Jan 23

From: Tara Maizonnier <TMaizonnier@ridge.co.uk>

Sent: 09 January 2023 17:28

To: Legg, John <John.Legg@planninginspectorate.gov.uk>; Skinner, Helen <HELEN.SKINNER@planninginspectorate.gov.uk>

Cc: Guy Wakefield <GWakefield@ridge.co.uk>; Hugh Richards <hr@no5.com>; paul.instone@appliedtownplanning.com; Jay Singh <jay.singh@wychavon.gov.uk>

Subject: RE: LPA Infrastructure Spending Statements and Supporting Clarification - Land North of Droitwich APP/H1840/W/22/3305934 - 22/00201/OUT

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Dear John and Helen,

The Appellants have reviewed the additional information provided in the LPA's email (dated 6 January) and have the following comments.

At the end of the inquiry the Inspector requested that the District Council provided the two published Infrastructure Funding Statements (IFS) as well as one which was due to be published by 31st December accompanied by an explanatory note of these documents and their relevance. In response, these documents have been provided as well as an additional unexpected note from the County Council which was not requested by the Inspector. These documents have already been uploaded to the appeal website.

The District Council's note and IFS's

The 2020 and 2021 IFS's were available prior to the inquiry, and these have now been complemented by the 2022 IFS. As expected, the 2022 IFS does not take matters any further forward and the infrastructure list of the District Council remains the Regulation 123 List which identifies that educational infrastructure will be funded using CIL on developments such as that proposed.

The District Council has provided a brief note which addresses the content and relevance of the IFS's as requested by the Inspector. This raises no new points to those discussed at the appeal and as such no response is necessary.

In simple terms, it remains the case that:

- The CIL Charging Schedule was approved on the basis that educational infrastructure will be funded using CIL on developments such as that proposed in accordance with the Regulation 123 List.
- The District Council's website sets out that this remains the case.
- Policy SWDP62 identifies that the approach will be set out within the Developer Contributions SPD which has now been adopted and which also confirms that CIL receipts will be spent in accordance with the Regulation 123 List.
- The District Council has not considered or published a new infrastructure list which sets out any alternative approach.
- The District Council has collected CIL and has not spent this on any alternative form of infrastructure.

The County Council's note

The County Council has also now published an extensive note responding to numerous of the matters discussed at the inquiry, rather than the role or consequence of the IFS's, which was not requested by the Inspector, and which was not expected. In effect, the County Council is seeking to revisit the case presented at the appeal albeit that these revisions make no material difference to the merits of the

case. On this basis, the starting point of the Appellant is that the note of the County Council should not be admitted, and it should be removed from the appeal website as a matter of urgency.

Furthermore, the County Council cannot determine the way in which CIL monies will be spent, as this responsibility lies with the District Council, and as such the content of the note must be viewed as being the opinion of a body that stands to benefit financially if s106 monies are forthcoming in addition to CIL monies, rather than being the opinion of the District Council who are actually responsible for determining whether or not CIL monies will be used to fund educational infrastructure as set out on their website and in accordance with the basis of the adopted CIL Charging Schedule.

However, in the event that the new note of the Council is admitted, then the Appellant would respond as follows:

1. The Inspector will recall that the CIL Regulation 123 list of the District Council identifies that housing sites of a sufficient size which in themselves generate a need for a 0.5FE or more expansion of a school will be required to fund educational infrastructure using s106, but that on other smaller developments such as that proposed, educational infrastructure will be funded using CIL as set out on page 23 of the Regulation 123 List. This is not disputed in the County Council's note. The starting point is therefore that CIL will be used to fund the educational infrastructure needs arising from the proposed development.
2. This is confirmed on the District Council's website which identifies under the title "What does CIL fund?" and then defers to the Regulation 123 List, as referred to by the Appellant at the inquiry.
3. The County Council draw attention to Policy SWDP62 on page 1 of their note, to which the Appellant made reference at the inquiry. This Policy sets out that the Developer Contributions SPD, which was adopted subsequent to the SWDP, provides detailed guidance on the funding mechanisms. The Council however do not provide the relevant quotes from this SPD which sets out in paragraph v of the summary that *"The Community Infrastructure Levy Regulation 123 list that accompanies the South Worcestershire Council's Community Infrastructure Levy Charging Schedule explains which infrastructure will be funded from Community Infrastructure Levy receipts and which infrastructure will be funded from planning obligations using a Section 106 agreement."* This therefore yet again confirms that the educational infrastructure should be funded using CIL.
4. On page 2, the County Council emphasise the fact that the Regulation 123 List identifies that this identifies the forms of infrastructure which the District Council intends to spend CIL on. As set out at the appeal, the members of the District Council have not considered or resolved that it intends to spend CIL in a different way and as such the public-facing position of the Council remains that CIL will be used to fund the educational infrastructure required in support of developments such as that proposed. This does not therefore assist the County Council's case.
5. The County Council correctly recognise on page 2 that notwithstanding CIL there remains a funding gap. This is common in many LPAs. However, it would be entirely unjustifiable to contend as the County Council appear to do that as a result of a funding gap which was known at the point of the CIL examination, CIL should not now be spent in accordance with that required at the time of the CIL examination. This point therefore does not therefore assist the case of the County Council. Furthermore, the examining Inspector found in paragraph 40 of his Final Report that *"Subject to the modifications which I am recommending, the Council's approach is realistic in achieving a reasonable level of income to address an acknowledged gap in infrastructure funding, while ensuring that development remains generally viable across the south Worcestershire area."* The different approach now proposed by the County Council would therefore as a matter of necessity also render the South Worcestershire Development Plan generally unviable.
6. On page 3, the County Council suggest that *"the CIL 123 list is therefore based on out-of-date documents and cannot be considered to be reflective of the current needs of South Worcestershire"*. However, firstly it is the published Infrastructure List of the District Council

and therefore remains current. Secondly, even if the County Council (rather than the District Council) considers that the CIL Regulation 123 List is out-of-date, which would as a matter of necessity mean that the CIL Charging Schedule is out-of-date, it is not possible to depart from the CIL Charging Schedule and provide funds through s106 instead of CIL as the County Council would like. The County Council are instead seeking both which is clearly not necessary to make the development acceptable in planning terms.

7. On page 3, the County Council then rely upon the County Council's own Education Planning Obligations Policy. This is a document prepared by the County Council and so cannot be determinative of the way in which CIL is distributed by the District Council. In any event this document does not identify that s106 monies will be required on developments such as that proposed and therefore does not provide any assistance to the County Council.
8. On page 4, the County Council correctly identify that the District Council has not identified a new approach to the allocation of CIL funding. As such, and as set out at the appeal, it would be expected that CIL will continue to be allocated in accordance with the approach set out on the District Council's website, relied upon to justify the operative CIL Charging Schedule and set out in the SPD to which Policy SWDP62 refers. This once again does not therefore assist the County Council's case. Furthermore, as set out at the appeal, the CIL monies collected are demonstrably not being directed to other forms of infrastructure and therefore remain available to fund educational infrastructure.
9. On page 5, the County Council then emphasise numerous sections of the PPG numerous of which do not provide assistance one way or the other with the issue in dispute. However, a number of the extracts assist the Appellants case as follows:
 - a. the PPG (25-166) sets out that authorities set out in their IFS which infrastructure they intend to fund through the levy. Whilst the District Council has not done this within the IFS, it has done so through the Regulation 123 List, their website and the SPD. Therefore, the principle established in this part of the PPG is that the infrastructure list should be publicly available which it is in Wychavon as which identifies that the educational infrastructure to support the proposed development will be funded using CIL.
 - b. the PPG (25-169) once again confirms the need for transparency.
10. On pages 7-8, the County Council correctly identify that the CIL monies arising from the proposed development will be insufficient to meet the cost of educational infrastructure required. However, this fails to take account of the fact that CIL monies will be generated from allocated sites, sites which require 0.5FE or more expansions of schools, and other forms of development the infrastructure for which will be funded using s106. These sites will thereby give rise to CIL receipts that are not required to support those developments and will provide a surplus to address infrastructure needs arising from smaller developments such as that proposed.
11. On page 9, the County Council refer to the fact that the DfE identify in Securing Developer Contributions for Education that basis needs grant funding will also be available to provide school places, but that this should not negate housing developer's responsibility to mitigate the impact of their development on education. However, the appeal proposals do mitigate for their effects on education through the necessary infrastructure being funded through CIL in accordance with the repeatedly stated position of the District Council. Indeed, Securing Developer Contributions for Education proceeds to identify that "...basic need funding can be used for new school places that are required due to housing development..." as well as identifying other forms of funding to secure places to address any funding gap.
12. Securing Developer Contributions for Education also confirms that "*The amount of money that you seek to secure through developer contributions for education provision should reflect the cost of providing school places, linked to the policy requirements in an up-to-date emerging or adopted plan that has been informed by viability assessment.*" The policy requirement of Policy SWDP62 is that funding should be secured in accordance with the SPD which relies upon the Regulation 123 List and so the DfE guidance confirms that the educational

infrastructure should be funded using CIL. Furthermore, the CIL Charging Schedule was informed by viability assessment, as opposed to the new approach now advanced by the County Council. Accordingly, for another reason, the only approach which accords with the DfE approach is to fund educational infrastructure using CIL.

13. On page 9, the County Council now also propose that the s106 should be modified. This was not a case advanced by the County Council at the appeal and no such modification was requested by the Inspector during the inquiry. Indeed, the proposed modification is unnecessary as set out above.
14. On page 10, the County Council suggest that the issue of CIL was raised late in the process and that it is “*a speculative effort to avoid a contribution*”. Both of these allegations are simply untrue. Firstly, the issue of CIL was raised by the Appellant on 11th November, and yet a response was not forthcoming from the County Council until the opening of the inquiry. Accordingly, any delay in reaching agreement on this issue falls squarely with the County Council rather than the Appellant. Secondly, the Appellant is not seeking to avoid making an appropriate contribution as is evident from the fact that the blue pencil clause allows for the full contribution requested by the County Council if this is deemed necessary and appropriate by the Inspector. Instead, the Appellant is seeking to avoid paying an inappropriate and unnecessary contribution towards infrastructure for which funds have and will be generated by another means.

I would be grateful if this email could be passed onto the Inspector.

Many thanks and kind regards

Tara

Tara Maizonnier
Principal Planner
Ridge and Partners LLP
07469 141013
01242 237496
TMaizonnier@ridge.co.uk



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From: Jay Singh <jay.singh@wychavon.gov.uk>
Sent: 06 January 2023 14:10
To: Legg, John <John.Legg@planninginspectorate.gov.uk>; Skinner, Helen <HELEN.SKINNER@planninginspectorate.gov.uk>
Cc: Tara Maizonnier <TMaizonnier@ridge.co.uk>; Hugh Richards <hr@no5.com>; paul.instone@appliedtownplanning.com; Guy Wakefield <GWakefield@ridge.co.uk>
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Dear John, Helen

As requested by the Planning Inspector during the s106 discussion on the proposed education obligations, please see enclosed LPA Infrastructure Funding Statements for

20/21/22 with supporting notes from the LPA and the Education Authority. These will be added to the Core Documents List on the Inquiry Website shortly.

I understand the appellant will be have an opportunity to provide further written comments to the Inspector on the enclosed documents.

Kind Regards

Jay Singh

Principal Planning Officer

Wychavon District Council

good services, good value

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