

EDUCATION

SPD



Developer Contributions Towards Meeting Education Needs

Regulation 19 Consultation Statement

FEBRUARY 2008

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1. Regulation 19 Consultation Statement

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PLANNING & COMPULSORY PURCHASE ACT 2004

Town & Country Planning (Local Development)(England) Regulations 2004

REGULATION 19: CONSULTATION STATEMENT

DEVELOPER CONTRIBUTIONS TOWARDS MEETING EDUCATION NEEDS SUPPLEMENTARY PLANNING DOCUMENT

Under the Town and Country Planning (Local Development)(England) Regulations 2004 it is a requirement to prepare and publish a Consultation Statement for a range of planning policy documents. Regulation 19 of the Town and Country Planning (Local Development) (England) Regulations 2004 relates to the adoption of supplementary planning documents and requires local planning authorities to prepare a Consultation Statement when adopting an SPD.

Under the Planning and Compulsory Purchase Act 2004 Regulation 18(4)(b) it is a requirement to prepare and make available a statement setting out:

- (i) a summary of the main issues raised at Regulation 17 consultation;
- (ii) how those issues have been addressed in the SPD.

2. Regulation 17 Summary of Issues

Summary of Issues Raised at Regulation 17

Regulation 18(4)(b) (i) & (ii): The Council prepared a draft of the document and provided stakeholders with an opportunity to have their say on the way the Council is proposing to go forward within the LDF. The six-week period of consultation ran from 22 June 2007 to 3 August 2007.

In total, 17 comments were received on the draft SPD. The representations received, and the Council's response to each representation and a recommendation as to what changes were made to the draft SPD, are set out below. A summary of this information is provided in the following table.

Table 2.1 Summary of Issues Raised at Regulation 17 Public Participation

Consultee	Issues	How issues have been addressed
Home Builders Federation	Objection to the developer having to undertake a full financial appraisal of the scheme.	Change the word 'required' to 'requested' in the last sentence of paragraph 2.2. Additional wording will be added to paragraph 2.2 to include reference to independent expert mediators in line with Circular 05/2005.
Home Builders Federation / Barrett (Northern)	The return of contributions should be made if they are not committed by the completion of the development or no more than 5 years in all other cases.	Change the word 'ten' to 'five' in the final bullet point of paragraph 2.14 in line with Circular 05/2005.
Barrett (Northern)	The exceptions for contributions do not include the provision of affordable housing.	Inclusion of a paragraph relating to cost recovery in 'Calculating Developer Contributions Towards Meeting Education Needs' section of SPD
Children's & Young People's Services	Inclusion should be made of cost recovery with regard to the drafting of legal agreements and monitoring the obligations	Inclusion of a new bullet point in paragraph 2.4 to include that contributions will not be sought from: 'the affordable housing provision of new residential developments'.

3. SPD Production Arrangements

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SPD Production Arrangements

Throughout the preparation of the SPD the Council's Children and Young People's Services were fully involved in its preparation. The Council's Local Development Framework Working Party considered the proposed responses to the early community engagement document on 2 November 2007 and by the Council's Cabinet on 28 January 2008. The SPD was formally adopted by full Council on 13 February 2008.

Full List of Representations at Regulation 17 The Council's Responses and Recommendations to Representations

ID 56 Ms Gina Bourne (1043) Home Builders Federation

Representation:

The HBF objects to the developer having to undertake a full financial appraisal of the scheme. Authorities can seek to negotiate with developers and can request open book accounting but it cannot expect or require it. Furthermore, different developers and development schemes will operate to different cost and profits and it will be difficult for a third party to comment on what is, and what is not, financially appropriate.

If this absolutely necessary we believe that this element of the policy needs expansion to provide that any information will be only submitted to a third party independent appraiser and not directly to the Council with only a summary report being available to the Council containing the recommendation of the advisor as to whether or not the proposed scheme would or would not be unviable.

Response:

It is noted that LPAs can request open book accounting but cannot expect or require it.

ODPM Circular 05/2005 states in paragraph B37 that: 'Local planning authorities and developers may wish to consider using independent expert mediators to help the process of negotiating the detail of planning obligations for complex or major applications, or to help to facilitate in dispute resolution where disputes are unduly delaying negotiations'. Furthermore, paragraph B38 goes on to state that 'there may be circumstances in which factual information needs to be validated before negotiations can continue. In these cases the parties may wish to agree to involve an independent third party with relevant expertise (e.g. valuation) to help process the negotiation.'

Recommendation:

Change the word 'required' to 'requested' in the last sentence of paragraph 2.2.

Additional wording will be added to paragraph 2.2 to include: 'The Council may consider using independent expert mediators to help the process of; validating factual information; negotiating the detail of planning obligations for complex or major applications; or to help to facilitate in dispute resolution where disputes are unduly delaying negotiations.' This is in line with guidance provided in Circular 05/2005.

ID 57 Ms Gina Bourne (1043) Home Builders Federation

Representation:

The HBF objects to blanket charges as such requirements may result in the development being unviable. All sites should be judged on their merits and the evident need and the available facilities in the area. Furthermore trends have indicated that the average household size is decreasing. Therefore, it is considered that the Local Planning Authority should not demand such requirements. Existing mechanisms, such as Council Tax, should be used to provide funding for such facilities.

Response:

Paragraph B10 of Circular 05/2005 states that decisions on the level of contributions should be based on negotiation with developers over the level of contribution that can be demonstrated as reasonable to be made whilst still allowing the development to take place.' This stance is supported in paragraphs 2.1 and 2.5 of the SPD. Paragraph 2.1 sets out that: 'The starting point for negotiations regarding school facilities is an assessment of existing school provision by the Group Director of Children and Young People's Services. This includes the current number of surplus places; and the effect of natural population growth prior to the proposed development.'

1. Appendix

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Recommendation:

No change to be made to the document.

ID 58 Ms Gina Bourne (1043) Home Builders Federation

Representation:

Ten years is too long a time period for the returning of contributions in order to reasonably maintain a relationship between the contribution and the benefit to satisfy the tests in Circular 05/2005. The return of contributions should be made if they are not committed by the completion of the development or no more than 5 years in all other cases.

Response:

In line with Section 106A(4) in paragraph A18 of Circular 05/2005, the Council agrees that return of contributions, as set out in the final bullet point of paragraph 2.14 in the SPD, should be changed from 10 to 5 years. The Circular states that: 'where over a period of time the overall planning circumstances of an area have altered it may not be reasonable for a landowner to be bound by an obligation indefinitely. Allowing the five-year to stand appropriately reconciles these various considerations.'

Recommendation:

Change the word 'ten' to 'five' in the final bullet point of paragraph 2.14.

D 73 Mr Paul Entwistle North West Regional Assembly

Representation:

Thank you for the opportunity to comment on the above document. The following represents officer level comments on the consultation document.

The NWRA welcomes the approach taken by Calderdale in addressing the issue of improvement of education, however I have no specific comments to make on the document.

I hope this is of assistance. If you require anything more than please contact me.

Response:

Comments noted.

Recommendation:

No change to be made to the document.

ID 74 Ms Sarah Watson Highways Agency

Representation:

Thank you for providing the Agency with the opportunity to review and comment on the above document. The Agency has reviewed the document provided and has no comments to make at this stage.

I look forward to hearing from you as and when further documents are progressed.

Response:

Comments noted.

Recommendation:

No change to be made to the document.

ID 75 Ms Georgina McGough Oldham Metropolitan Borough Council**Representation:**

Thank you for Consulting Oldham MBC on the draft Developer Contributions Towards Meeting Education Needs SPD. We have no comments to make on this SPD.

Response:

Comments noted.

Recommendation:

No change to be made to the document.

ID 116 Mr Alan Winstanley Calderdale MBC**Representation:**

CYPS supports the notion of cost recovery with regard to the drafting of legal agreements and monitoring the obligations. Clarity about what this will be needs to be identified - perhaps a % of the contribution so that you avoid having to continually agree a fee.

Response:

Comments noted. Additional wording will be included in the SPD to allow for the recovery of costs incurred in drafting legal agreements and monitoring obligations.

Recommendation:

Inclusion of a paragraph in 'Calculating Developer Contributions Towards Meeting Education Needs' section that reads: "The calculation of the education infrastructure contribution will include a charge to reflect the necessary or incidental expenses incurred by the Children's and Young People's Service in connection with the preparation, negotiation, implementation and monitoring of S106 agreements."

ID 118 Mr Roy Donson Barratt (Northern)**Representation:**

Paragraph 2.4 first bullet point refers to a walking distance (and cross references to the Education Act). For clarity it is suggested that the walking distance is fully defined in the document for example by quoting the text of the relevant section of the Education Act as an appendix.

Response:

The full definition of walking distance will be included as part of the footnote along with the existing link to the relevant part of the Education Act 1996. It is not consider necessary to include this quote as a single appendix.

Recommendation:

1.1 Full definition of walking distance taken from the Education Act 1996 to be included as part of the footnote to the first bullet point in paragraph 2.4

1. Appendix

Representation:

The exceptions for contribution do not include the provision of affordable housing. Affordable housing occupants by definition are locally based. Indeed, as set out in the proposed affordable housing SPD, their needs will be based on a local area assessment. Therefore the education requirements of affordable housing occupants will already be provided for or allowed for in the calculation of natural population growth (paragraph 2.1 of this document). Therefore, to require a payment for affordable households, amounts to double counting. Contributions from a new development should be net of affordable housing provision. For the purposes of an outline consent, where the number of dwellings are not fixed this should be a reduction of 20% of the number of dwellings in keeping with the proposed affordable housing SPD.

Response:

The Council agrees that it is not reasonable to expect housing developers to provide an education contribution in addition to a subsidy for social housing. In many circumstances social housing does not bring in extra children to the area.

Recommendation:

Inclusion of a new bullet point in paragraph 2.4 to include that contributions will not be sought from: 'the affordable housing provision of new residential developments' Additional wording will be included in paragraph 2.12 to clarify that affordable housing will be calculated at 20% of the number of proposed dwellings where the application is at outline stage. This is in line with the Affordable Housing SPD.

Representation:

Paragraph 2.12 reserves the right of the Council to change this document on a local area basis. In order for the document to continue to be a material planning consideration any such changes needs to be subject to proper public consultation and formally adopted.

Response:

Comments noted. Additional wording will be included in the SPD to clarify.

Recommendation:

Additional wording will be made to paragraph 2.12 to include 'subject to appropriate consultation arrangements and formal adoption'.

Representation:

Paragraph 2.14 refers to the return of unspent contributions within 10 years. The payment will be made on first occupation, which on average will be about 2 to 3 years before the last completion. Whilst it is reasonable to allow for children to arise from development as it matures, education provision is not made "just-in-time" but usually looks to a five-year time horizon to calculate future needs. Therefore, money spent say 9 years after the first occupation can be considered to have lost its relationship to the development as the occupiers may well be second or third time occupants. It is considered that to maintain the test of relationship as set out in Circular 05/2005, the period for the return of unspent money should be 5 years or within 2 years of the last completion, whichever is the longer.

Response:

In line with Section 106A(4) in paragraph A18 of Circular 05/2005, the Council agrees that return of contributions, as set out in the final bullet point of paragraph 2.14 in the SPD, should be changed from 10 to 5 years. The Circular states that: 'where over a period of time the overall planning circumstances of an area have altered it

may not be reasonable for a landowner to be bound by an obligation indefinitely. Allowing the five-year to stand appropriately reconciles these various considerations.'

Recommendation:

Change the word 'ten' to 'five' in the final bullet point of paragraph 2.14.

Representation:

Paragraph 2.15 appears to suggest a threat of constraining development to fit with education provision. This proposal is totally contrary to the whole purpose of this document. If a payment is required and provided then there is, by definition, no reason to prevent development. This paragraph should be omitted.

Response:

Comments noted. It is not the intention of Planning Obligations to delay development. However, it may be the role of planning conditions in certain circumstance to phase developments to ensure that all necessary infrastructure is in place before dwellings become occupied. A change of wording will be included in the SPD to this regard.

Recommendation:

Change of the term 'Planning Obligations' to 'planning conditions' in paragraph 2.15.

ID 119 Mr Roy Donson Barratt (Northern)**Representation:**

Paragraph 2.18 refers to seeking additional contributions. Such a proposal is a fundamental misunderstanding of planning law. Only an outline or full planning permission for all purposes and a reserved matters application is not able to have an additional Section 106 Agreement attached to it. If such an attempt is made, and the application whether not determined or refused, it is likely to be appealed and costs sought. The last sentence of the paragraph should be omitted.

Response:

Paragraph 2.18 seeks to confirm that contributions negotiated at outline stage will be revised at the reserved matters stage based upon actual dwelling numbers. This is not to seek additional contributions over and above those sought at outline stage but is to revise the contributions once actual figures are available. The rewording of this sentence in the SPD should set this out more clearly.

Recommendation:

Reword the last sentence of paragraph 2.18 to read: 'Should a reserved matters application present more dwellings than have been allowed for in the 30dph calculation for the outline application, then a revised contributions will be calculated with contributions expected to make-up any shortfall as a result more detailed information provided at reserved matters stage'.

ID 121 Mr Ian Smith English Heritage**Representation:**

Thank you for consulting English Heritage about the above document. At this stage, we have no comments to make about its content.

1. Appendix

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If you have any queries about this matter or would like to discuss anything further, please do not hesitate to contact me.

Response:

Comments noted.

Recommendation:

No change to be made to the document.

ID 125 Mr John Pilgrim Yorkshire Forward

Representation:

We are generally supportive of the SPD, however, the document may be strengthened by distinguishing between larger and smaller houses as a five bedroom house is likely to create a greater need for school places compared to a two bedroom house.

Finally, I hope the above comments are helpful in your assessment of the SPD. I would be grateful if you could acknowledge receipt of this letter and keep me informed on the progress of the SPD. Please do not hesitate to contact me if you have any comments or queries regarding this response.

Response:

The distinction between houses and apartments was made at the Regulation 17 stage of the SPD as a result of comments made at Early Community Engagement. It is based upon figures taken from the Census 2001. Whilst the Census also provides a breakdown of number of rooms and number of persons for households as a whole, and in different geographical areas, this data cannot be identified specifically for households with children. It is not considered appropriate to make these distinctions on an arbitrary level based on assumptions of the relationship between the size of a dwelling and the number of children living in it, without sufficient evidence to demonstrate the position.

Furthermore, Paragraph B10 of Circular 05/2005 states that decisions on the level of contributions should be based on negotiation with developers over the level of contribution that can be demonstrated as reasonable to be made whilst still allowing the development to take place.' The formulae is intended to serve as part of a 'framework for negotiating and securing planning obligations' as set out in paragraph B33 and are not intended to be hard and fast rules.

Recommendation:

No change to be made to the document.

ID 128 Mr Henryk Peterson Sport England

Representation:

Thank you for consulting Sport England.

The SPD provides a draft policy framework for implementing Replacement UDP policy GCF1 re new housing meeting 'community costs' arising from pressure from children for school places.

The SPD is intended to secure the necessary infrastructure and the provision of adequate facilities to meet needs arising from development.

Response:

Comments noted.

Recommendation:

No change to be made to the document.

ID 129 Mr Henryk Peterson Sport England

Representation:

Children for school places will not solely generate pressure on school facilities. It may therefore be of value if the SPD explain contributions to upgrade or provide new school facilities catering for more pupils will need to be of a quality to cater for any planned or expected additional community usage.

Response:

Comments noted. The SPD clearly sets out the requirement of contributions to be sought to mitigate the impact on the community as a result of residential development. It is not the purpose of the document to comment on the management of schools for planned or expected additional community usages.

Recommendation:

No change to be made to the document.

ID 130 Mr Henryk Peterson Sport England

Representation:

Sport England is pleased that Table 3 of the draft SPD "Comments Received at Earlier Community Engagement" makes reference to acceptance of Sport England's previously made comments.

It is noted reference is now made in Table 2 of the SPD "Summary of Requirements" to contributions towards sport provision.

Response:

Comments noted.

Recommendation:

No change to be made to the document.

ID 148 Mrs Marilyn Brichard Philip S Ryley & Co

Representation:

The proposal is to make new assessments to determine "the future demand that is to be placed upon these facilities, derived from local trends and the effects of the development proposals" However, the assessment should be made on the effects of the development proposals alone if it is to comply with the requirements of Circular 05/2005 and be necessary for the development to be approved. This paragraph implies that other factors may be allowed to influence the assessment. The full details of the assessment should be made available for discussion with developers, as it has not been possible in the past to make any kind of comment on the factors that led to the requested sum being calculated. With a background of falling school rolls, it is difficult to accept some of these requests as being simply due to the proposal for new housing.

Response:

1. Appendix

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Comments noted. It is agreed that, in accordance with Circular 05/2005 paragraph B5 criterion iii 'A planning obligation must be: directly related to the proposed development.' This is emphasised throughout the SPD. Changes will be made to the wording of the last sentence of paragraph 2.17 to make clear this position.

Recommendation:

Delete 'derived from local trends and' and replace with 'as a direct result of' in the last sentence in paragraph 2.17.

ID 149 Mrs Marilyn Brichard Philip S Ryley & Co

Representation:

The threshold for making a contribution is unreasonably low. It is the Council statutory responsibility to ensure that sufficient school places are provided for the children in the District. It should not be the case that a small development of five houses should produce the sort of additional pressure on school facilities to mean that the development could simply not proceed unless financial contributions were made. The inclusion of this low level of development indicates that this is simply another tax that is not justified in the terms of the Government Circular that sets out the context for this process. The threshold should come in at a much higher level and in no circumstances should it be applicable below 15 dwellings

Response:

The Council's approach to Planning Obligations is in line with paragraph B9 in Circular 05/2005 which emphasises that 'what is sought must also be fairly and reasonably related in scale and kind to the proposal. The Circular states in paragraph B4 that 'There are no hard and fast rules about the size or type of development that should attract obligations'. It is not considered unreasonable that a development of 5 dwellings could have a potential impact upon school places in primary schools. The evidence provided as part of the 2001 Census, and included in Appendix A of the SPD demonstrates this position. No evidence has been provided to the Council to suggest this is not the case.

Recommendation:

No change to be made to the document.

ID 150 Amanda Johnson Yorkshire & Humber Assembly

Representation:

Thank you for consulting the Assembly on the above. On this occasion, this is not a document that the Assembly would wish to comment on.

If you have any queries about the Regional Spatial Strategy and its relationship with Local Development Framework, please do not hesitate to contact me.

Response:

Comments noted.

Recommendation:

No change to be made to the document.

ID 681 Linda Riordan MP (Not Duly Made)

Representation:

The assessment criteria for calculating contributions appears to encourage the development of 4 or less houses and 19 or less apartments, since developers would not be required to contribute towards additional education needs. Such developments are less favourable in terms of sustainability (for example in terms of density and efficient use of land). The method of calculating contributions should be reconsidered in the light of these possible implications for sustainable development.

Response:

Comments noted. The assessment criteria for calculating contributions are based upon data provided as part of the 2001 Census and included in Appendix A of the SPD. The data provides an accurate basis upon which to calculate actual effect development will have upon the need for additional school places. There is no evidence available that would substantiate a change in the mechanism. The consideration of implications for sustainable development is more accurately dealt with in the Sustainability Appraisal report and as part of the Policies contained within the Development Plan.

Recommendation:

No change to be made to the document.