



**Late Observations Sheet  
DEVELOPMENT CONTROL COMMITTEE  
21 March 2022 at 7.00 pm**

**Late Observations**

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## DEVELOPMENT CONTROL COMMITTEE

MONDAY 21<sup>st</sup> MARCH 2022

## LATE OBSERVATION SHEET

**4.1 19/05000/HYB - DSTL Fort Halstead, Crow Drive, Halstead, Sevenoaks KENT  
TN14 7BU**

On 15 March we received a further letter from KCC together with attachments relating to this proposal. A copy of the letter is attached for information excluding the attachments.

This letter gives an update on their request for items they consider must be provided within a planning obligation and which is summarised below.

It also raises a number issues about the assessments set out in the committee papers relating to CIL, S106 and the infrastructure needs of the proposal.

**Summary of infrastructure and contributions required.**

The letter attached partially updates the infrastructure contributions KCC are seeking but only in relation to education provision. A comparison of the contributions requested in 2019 and 2022 are set out below.

Infrastructure sought	2019 letter (750 residential units) Total sum sought in £	2022 letter (635 residential units) Total sum sought in £
Primary education	4,134,111	None
Primary school land	1.6ha parcel of land on site	1.6ha parcel of land on site
Secondary education	2,885,499	3,286,760
Secondary school land	2,016,451	2,789,485.1
Special education	None	391,991.85
Community learning	12,315	12,315
Youth services	49,125	49,125

## Supplementary Information

Libraries	41,588	41,588
Social care	61,890	61,890
Waste	178,155	178,155
<b>TOTAL £</b>	<b>9,379,134</b>	<b>6,811,301.05</b>

There have been some significant changes to the education infrastructure that KCC states is required, between 2019 and 2022, though other contributions have not been revisited, despite the reduction in residential units on site.

There are attachments and other details that set out more information on these requirements.

### **Other issues raised.**

The letter raises other issues, which are summarised below:

- KCC believe that SDC is of the view that it cannot and should not require educational contributions in addition to CIL and that this would be clearly wrong,
- If SDC is not going to guarantee financial provision for the KCC requirements through CIL then this will need to be provided through a S106 Agreement.
- If the above requirement is not met, then it would be unlawful to proceed.
- KCC's 2019 letter (for the larger scheme) was not referred to in the original committee report.
- Now that SDC have the up-to-date position (set out in this letter dated 15 March 2022) this would have to be reflected in the S106 Agreement.
- The developer should be required to pay for the school places generated by the development. If not, this will be challenged.
- There should be a recommendation to ensure that the full education contribution is provided.
- The minimum requirement for land for a school is 1.6ha to allow for future education planning need.
- If being reported back to committee, a draft copy of the committee report should be provided to KCC before it is publicly available.
- To notify KCC immediately if SDC consider the Regulation 122 tests are not met and allow them 10 working days to respond.

The letter is supported by a legal opinion.

## **Assessment**

The letter and attachments raise a variety of complex issues. It was received at a late stage in the application process.

Officers consider that it would be appropriate for all information provided by KCC to be given full, due consideration. Currently, there are areas of disagreement on the issues raised by KCC. It is appropriate for the Council to make a planning judgement when considering the needs for infrastructure and the impact this would have on viability. This question needs to be reconsidered in light of the additional representations submitted. The changes in requirements provided by KCC will also need to be re-considered to assess if they meet the Regulation 122 test: to be necessary to make the development acceptable, directly related to the development and fairly and reasonably related in scale and kind to the development.

Initial informal legal advice has been sought. However, Officers have not been able to fully consider and assess the issues raised and their implications or obtain detailed legal advice on these matters. The applicant has been made aware of the correspondence but has not had time to fully consider the request or their response either.

The most robust way to respond to the issues raised by KCC would be for the Council to seek formal legal advice; to allow the applicant time to do the same if they wish; and to report the application back to Development Control Committee once the advice has been considered and taken into account.

Members will then be able to consider the application afresh with all the information they need to make a properly informed decision.

### **Amended Recommendation:**

That the application be deferred for consideration of the latest information received and reported back to Development Control Committee in due course.

**4.2 20/02988/OUT - Land North of Town Station Cottages, Forge Croft, Edenbridge, KENT TN8 5LR**

On 17 March 2022 we received a further letter from KCC, together with attachments relating to this proposal. A copy of the letter is attached for information excluding the attachments.

Their letter gives an update on their request for items they consider must be provided within a planning obligation and which is summarised below.

It also raises a number concerns about the assessments set out in the committee papers relating to CIL, S106 and the infrastructure needs of the proposal.

**Summary of infrastructure and contributions required.**

The letter attached partially updates the infrastructure contributions KCC are seeking, but only in relation to education provision. A comparison of the KCC requests for contributions in 2020 and 2022 are set out below.

<b>Infrastructure sought</b>	<b>2020 letter Total sum sought in £</b>	<b>2022 letter Total sum sought in £</b>
Primary education	None	None
Primary school land	None	None
Secondary education	1,759,840	1,759,840
Secondary school land	5.3 hectare parcel of land on site	5.3 hectare parcel of land on site
Special education	None	209,885.40
Community learning	5,582.80	5,582.80
Youth services	22,270	22,270
Libraries	18,853	18,853
Social care	49,939	49,939
Waste	62,477.80	624,47.80
<b>TOTAL £</b>	<b>£1,918,932.60</b>	<b>£2,128,818</b>

There have been some changes to the education infrastructure that KCC states is now required, though the request for special education £209,885.40 towards Milestone Academy Special School expansion in New Ash Green. In addition, KCC have clarified that secondary education contribution, rather than being used District wide for a new school, would now be requested to be used *“towards a new Secondary School on the proposed site or for additional secondary provision within Sevenoaks District.”*

There are attachments that set out more information to justify these requirements.

### **Other issues raised.**

The KCC letter raises also raises a number of other concerns, which are summarised below:

- KCC believe that SDC’s approach to not require educational contributions within the Section 106, rather than being covered by CIL is clearly,
- If SDC is not going to make financial provision for the KCC requirements through CIL, then this will need to be provided through a S106 Agreement.
- If the above requirement is not met, then it would be unlawful to proceed.
- Now that SDC have the up to date position (set out in this letter dated 17 March 2022), this would have to be reflected in the S106 Agreement.
- Suggest that Section 106 agreement is amended, to require any potential shortfall with CIL to be picked up and covered by a Section 106 contributions

The letter is supported by a legal opinion.

### **Assessment**

The letter and attachments raise a variety of complex issues. It was received at a late stage in the application process.

Officers consider that it would be appropriate for all information provided by KCC to be given full, due consideration. Currently, there are areas of disagreement on the issues raised by KCC. It is appropriate for the Council to make a planning judgement when considering the needs for infrastructure and the impact this

## Supplementary Information

would have on viability. This question needs to be reconsidered in light of the additional representations submitted. The changes in requirements provided by KCC will also need to be re-considered to assess if they meet the Regulation 122 test: to be necessary to make the development acceptable, directly related to the development and fairly and reasonably related in scale and kind to the development.

Initial informal legal advice has been sought. However Officers have not been able to fully consider and assess the issues raised and their implications or obtain detailed legal advice on these matters. The applicant has been made aware of the correspondence but has not had time to fully consider the request or their response either.

The most robust way to respond to the issues raised by KCC would be to for the Council to seek formal legal advice; to allow the applicant time to do the same if they wish; and to report the application back to Development Control Committee once the advice has been considered and taken into account.

Members will then be able to consider the application afresh with all the information they need to make a properly informed decision.

### **Amended Recommendation:**

That the application be deferred for consideration of the latest information received and reported back to Development Control Committee in due course.





Sevenoaks District Council  
Development Management (Planning)  
Argyle Road  
Sevenoaks  
Kent TN13 1HG

FAO: Nicola Furlonger

### Economic Development

Invicta House  
County Hall  
Maidstone  
ME14 1XX

Phone: 03000 414176

Ask for: [REDACTED]  
[REDACTED] @kent.gov.uk

Tuesday 15<sup>th</sup> March 2022

Your Ref: SE/19/05000/HYB

Our Ref: K/E/ SE/19/05000/HYB RJK

Dear Nicola

**Planning Application: SE/19/05000/HYB**  
**Provision and Delivery of County Council Community Services:**

We understand that Sevenoaks District Council (“SDC”) is moving towards a grant of permission for the above development pursuant to the earlier resolution. Please find attached our up-to-date assessment of education requirements arising from this development based on the 635 units and our most up to date review of school spaces. In short, 100 additional secondary school places are required to serve this development and, in addition to the primary school site, contributions towards the costs of extra SEN provision and the land for a new secondary school are needed. This letter just addresses the need for education contributions (all other requirements for contributions to KCC infrastructure and services remain as in our earlier statutory consultation response albeit they need to be pro-rated for the number of units).

We understand that SDC remains of the view that it cannot or should not require educational (or other) contributions in addition to CIL. That position is clearly wrong for the reasons given in the attached advice of David Forsdick QC. Unless SDC is going to make financial provision for the 100 places and other requirements through CIL then this need will have to be provided through a s.106 Agreement. Government policy is clear on this, and we have never had any response to our analysis on this either during the recent Broke Hill case or in our letter of 2<sup>nd</sup> February 2022. It will be unlawful to proceed on the current basis. First, our statutory consultation response was inexplicably not referred to in the report to committee – the fact there had been amendments to the application since 2019 did not mean that our 2019 consultation response did not stand. It clearly did. SDC has therefore left out of account a

necessarily highly material consideration. Second, you now have the up-to-date position on need which would have to be reflected in the s.106 agreement in any event. Third, the basic approach in para 879 of the report to committee is wrong in law; contrary to government policy and will result in the unacceptable position where KCC (and thus the public) will be forced to pay for spaces the need for which is generated by this development and for which this developer should be required to pay. It will be challenged. Fourth, given that error and the up-to-date information may (depending on the constitution of SDC) be necessary to report this matter back to committee (*Kides*) with a recommendation that the full education contribution be provided (with a claw back if CIL is subsequently dedicated to this).

The Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 (the CIL Regulations) (Regulation 122) require that requests for development contributions of various kinds must comply with three specific legal tests:

1. Necessary,
2. Related to the development, and
3. Reasonably related in scale and kind

These tests have been applied in the context of this planning application and give rise to the following specific education requirements (the evidence supporting these requirements is set out in the attached Appendices). We rely on our earlier letter for all other contributions.

### Requirement Summary (see addendum information page 8)

	Per Applicable House (x 635)	Per applicable flat (0)	Total (assessment totals based on all dwellings being houses)	Project
<b>Primary Land</b>	The provision of a <b>1.6 Ha</b> serviced site of regular shape, level and free of any encumbrances within the development site			For the development of a future 1FE Primary School on the new development site with the capacity for 210 pupils
	KCC's response February 2019 to the LPA's Regulation 19 consultation upon the Sevenoaks proposed Local Plan (currently in abeyance) requested safeguarding of a site for a new primary school of 1.6 ha in size (not 1.16ha) for future education planning need			
<b>Special Education</b>	£617.31	£154.33	£391,991.85	Towards Milestone Academy Special

				School expansion, New Ash Green DA3 8JZ
<b>Secondary Education</b>	£5,176.00	£1,294.00	£3,286,760.00	Towards a new Secondary School or for additional secondary provision within Sevenoaks District
<b>Secondary Land</b>	£4,392.89	£1,098.22	£2,789,485.10	Towards the land acquisition costs for a new Secondary School

'Applicable' excludes: 1 bed units of less than 56 sqm GIA, and any sheltered accommodation.

Please note:

- that the figures for Secondary Education are to be **index linked by the BCIS General Building Cost Index from April 2020 to the date of payment** (Apr-20 Index 360.3)
- that the figures for Special Educational Needs and Disabilities are to be **index linked by the BCIS General Building Cost Index from Qtr 4 2020 to the date of payment** (Q4 2020 at 364).
- are valid for 3 months from the date of this letter after which they may need to be recalculated due to changes in district council housing trajectories, on-going planning applications, changes in capacities and forecast rolls, projects and build costs.

### **Justification for infrastructure provision/development contributions requested**

The County Council has modelled the impact of this proposal on the provision of its existing services and the outcomes of this process are set out below and in the attached appendix.

### **Secondary School Provision**

The impact of this proposal on the delivery of the County Council's services is assessed in Appendix 1.

A contribution is sought based upon the additional need required, where the forecast secondary pupil product from new developments in the locality results in the maximum capacity of local secondary schools being exceeded.

The proposal is projected to give rise to 100 additional secondary school pupils from the date of occupation of this development. This need can only be met through the provision of a new Secondary School or in accordance with DfE Guidance Securing Development Contributions 2019 para 20 the contingency will be through additional secondary provision within Sevenoaks District.

The new secondary school accommodation will be delivered in accordance with the Local Planning Authority's Infrastructure Delivery Plan (where available and up to date); timetable and phasing.

Please note this process will be kept under review and may be subject to change as the Local Education Authority will need to ensure provision of the additional pupil spaces within the appropriate time and at an appropriate location.

### Secondary Land

In addition, to secure the transfer of the secondary school site to KCC, a contribution towards the land acquisition for a new Secondary School land is required **at £4,392.89 per applicable house and £1,098.22 per applicable flat.**

The land acquisition costs are set out in Appendix 1a and are based upon local land prices. If a lower land acquisition price is agreed or alternative secondary education provision arrangements are made, KCC will return any unspent part of the Secondary Land Contribution, and this will be addressed in any s106 agreement.

The new secondary school accommodation will be delivered in accordance with the Local Planning Authority's Infrastructure Delivery Plan (where available); timetable and phasing.

Please note this process will be kept under review and may be subject to change as the Local Education Authority will need to ensure provision of the additional pupil spaces within the appropriate time and at an appropriate location.

### **Primary Education**

There is no need for more spaces at present.

### Build Contribution

Further to KCC response on this application in Nov 2019, the latest Primary Education assessment (Appendix 1) is indicating that Primary pupil numbers can be accommodated in existing provision in the assessed education planning groups. However strategically a new Primary School site of 1.6ha will be required in Halstead (as explained in KCC's response in February 2019 to Sevenoaks District Council's Regulation 19 Consultation on its emerging local plan). The fact that SDC's Local Plan is in abeyance does not remove this need. Given the likely housing numbers required

under any plan in this general area and without current certainty on other strategic sites in the district, this need can only be met through the provision of a new safeguarded Primary School within this proposed development site Masterplan.

#### Proposed school site

KCC welcomes in principle, the masterplan proposal to provide a primary school site for the development. KCC is concerned that the masterplan has only specified provision of a 1.16 Ha site allocation. This is not acceptable, because it falls significantly below the required site need to accommodate a 1 FE primary school. Our response to SDC's Regulation 19 draft local plan and the original request for Development Contributions dated 15<sup>th</sup> November 2019, have consistently stated a land requirement of 1.6 Ha.

KCC's requirement is for a 1.6 Ha site to accommodate a 1FE school, with expansion capacity, which is required to be transferred to KCC at nil cost and according to our General Transfer Terms (attached). In line with KCC's original request letter. The site should be centrally located within the development to provide good accessibility and should be level and of regular shape.

The current shape of the site illustrated in the masterplan does not appear acceptable. It is of irregular shape and on initial inspection, would make aspects of the site difficult for development. The masterplan shows two different sized sports pitches. The provision of both sports pitches should be to the required U11/12 standard specified in the [Football Association's Guidance](#) at 73.15 metres (80 yards) x 45.7 metres (50 yards), plus run off areas of 5.5 metres (6 yards) on each pitch side.

There appears to be a fallaway of around 10 metres from south to north across the site. Additionally, the eastern edge of the proposed site appears to be in close proximity to the steep wooded escarpment, which gives some concern regarding the integrity of the school pitches. As previously stated, the school site would need to be level and delivered in accordance with KCC's General Land Transfer requirements.

#### **Special Education Needs and Disabilities provision<sup>1</sup>**

The Children's and Families Act 2014 and accompanying Code of Practice sets out the system for children and young people with special educational needs and disability (SEND) aged 0-25 years. KCC's SEND Strategy sets out its vision and priorities in respect of this area of its service.

The number of children and young people with SEND in Kent is 13.4% of the total school population (January 2019). The majority are educated in mainstream school environments. However, children with more complex needs are supported through an Education, Health and Care Plan (ECHP) which sets out the provision they are

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<sup>1</sup> SEND figures and data are provisional and subject to final check.

entitled to. January 2020 figures for Kent show that 4.2% of the total school population had an EHCP. The proportions have been rising both in Kent and nationally and this trend is set to continue. However, for the purposes of s.106 contributions, KCC is working to the national figure of 3.7%. In addition, the change in legislation in 2014 placed a duty on Local Authorities to maintain an EHCP until a young person reaches the age of 25 years, in appropriate cases.

School-age pupils with ECHPs are educated in mainstream school classes, in Specialist Resourced Provisions (SRPs) on mainstream sites, and in stand-alone special needs schools.

To take account of the provision types, KCC has applied a blended build cost of £45,916 per pupil place. This is the rate used in conjunction with the SEN Pupil Product Ratios for this request and accompanying assessment (Appendix 1a). The SEN pupil product ratios are 0.0134 per house and 0.0033 per applicable flat. In comparison, please note that the [National School Delivery Cost Benchmarking Study \(May 2021\)](#) published by the Education Building and Development Officers Group (EBDOG)<sup>2</sup> identifies the SEN special school expansion cost of £76,184 per pupil place.

Para 17 of the DfE's Securing Developer Contributions for Education 2019 states '*...We recommend that developer contributions for special or alternative school places are set at four times the cost the mainstream places, consistent with the space standards in Building Bulletin 104*'.

The proposal gives rise to additional pupils with Education and Health Care Plans (EHCP's) requiring extra support through specialist provision. This need will be met, as with other new developments in the vicinity, through additional provision at Milestone Academy Special School, New Ash Green DA3 8JZ and a contribution is therefore required of **£617.31 per 'applicable' house** and **£154.33 per 'applicable' flat**.

### Implementation

The County Council is of the view that the above contributions comply with the provisions of CIL Regulation 122 and are necessary to mitigate the impacts of the proposal on the provision of those services for which the County Council has a statutory responsibility. Accordingly, the County repeats its request that the Local Planning Authority seek a section 106 obligation with the developer/interested parties prior to the grant of planning permission. The obligation should also include provision for the reimbursement of the County Council's legal costs, surveyors' fees and expenses incurred in completing the Agreement, and County monitoring fee of £500 for each trigger within the Agreement.

We understand that given the obvious flaws in the earlier report and the need to update the contributions required, it may be necessary for the matter to be referred

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<sup>2</sup> EBDOG is a national body, representing Local Authorities on all issues associated with education, property and capital planning.

back to committee. If so, would you please confirm if and when this application will be re-considered and provide us with a draft copy of the Committee report prior to it being made publicly available. If you do not consider the contributions requested to be fair, reasonable, and compliant with CIL Regulation 122, it is requested that you notify us immediately and allow at least 10 working days to provide such additional supplementary information as may be necessary to assist your decision-making process in advance of the Committee report being prepared and the application being re-considered. In any event, we would be grateful if you could share at your earliest convenience a draft copy of any section 106 agreement or UU including the above matters prior to its finalisation.

We look forward to hearing from you with details of progress on this matter.

Yours sincerely

██████████  
██████████

Development Contributions  
Kent County Council

Cc Merseyside Pension Fund, c/o CBRE Ltd, Henrietta House, Henrietta Place,  
London W1G 0NB  
KCC, Education & Communities,  
File

Appendices:

The following Appendices contain the technical details of the County Council's assessment process.

1. Education Assessment
  - 1a. New School Land Costs
2. KCC General Land Transfer Requirements

## **Addendum - Development Contributions Rates information**

### **Secondary Education**

The rates for secondary referred to in the table (page 3 of this letter) were introduced in February 2018, following approval by the Infrastructure Funding Group (19 December 2017). The rates have since been updated in line with inflation, with indexation now based at April 2020. The latest ECP (2022-26) records a slightly different rate to what we have been requesting (see table below). This is because KCC Property has undertaken an extensive review of its own build costs for projects completed and benchmarked these against projects nationally.

The secondary requirement in relation to Fort Halstead is for a newly built school, which is assessed at per pupil cost of £25,880.00. The Education Assessment methodology works on the basis that each house in a development will produce 0.2 pupil product and each flat 0.05. These are KCC adopted Pupil Product Ratios (PPRs). Multiplying each of these PPR figures by the cost per pupil place provides for the new build secondary education rate of £5,176.00 per house and £1,294.00 per flat.





Sevenoaks District Council  
Development Management (Planning)  
Argyle Road  
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Kent TN13 1HG

FAO: Sean Mitchell

**Economic Development**

Invicta House  
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ME14 1XX

Phone: [REDACTED]  
Ask for: [REDACTED]  
Email: [REDACTED]@kent.gov.uk

17 March 2022

Your Ref: SE/20/02988/OUT  
Our Ref: K/E/ SE/20/02988/OUT RJK

Dear Sean,

**Planning Application: SE/20/02988/OUT – Land North of Town Station Cottages, Edenbridge Provision and Delivery of County Council Community Services:**

We understand that Sevenoaks District Council (“SDC”) will consider this application afresh at its next planning committee on 21 March 2022. Please find attached our up-to-date assessment of education requirements arising from this development based on the outline application for 340 dwellings and our most up to date review of school spaces. In short, up to 68 additional secondary school places are required to serve this development, along with contributions towards the costs of extra SEN provision, and appropriate land for a new secondary school are required. This letter just addresses the need for education contributions (all other requirements for contributions to KCC infrastructure and services remain as in our earlier statutory consultation response dated 11 November 2020).

The Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 (the CIL Regulations) (Regulation 122) require that requests for development contributions of various kinds must comply with three specific legal tests:

1. Necessary,
2. Related to the development, and
3. Reasonably related in scale and kind

## Supplementary Information

These tests have been applied in the context of this planning application and give rise to the following specific education requirements (the evidence supporting these requirements is set out in the attached Appendices). We rely on our earlier letter for all other contributions.

### Requirement Summary (see addendum information page 8)

	Per Applicable House (x 340)	Per applicable flat (0)	Total (assessment totals based on all dwellings being houses as per application detail)	Project
<b>Secondary Education (build costs)</b>	£5,176.00	£1,294.00	£1,759,840.00	Towards a new Secondary School on the proposed site or for additional secondary provision within Sevenoaks District
<b>Secondary Land</b>	The proposed safeguarding of a site for a new Secondary school of 5.3 ha is noted.			
<b>Special Education</b>	£617.31	£154.33	£209,885.40	Towards Milestone Academy Special School expansion, New Ash Green DA3 8JZ

'Applicable' excludes: 1 bed units of less than 56 sqm GIA, and any sheltered accommodation.

Please note:

- that the figures for Secondary Education are to be **index linked by the BCIS General Building Cost Index from April 2020 to the date of payment** (Apr-20 Index 360.3)
- that the figures for Special Educational Needs and Disabilities are to be **index linked by the BCIS General Building Cost Index from Qtr 4 2020 to the date of payment** (Q4 2020 at 364).
- are valid for 3 months from the date of this letter after which they may need to be recalculated due to changes in district council housing trajectories, ongoing planning applications, changes in capacities and forecast rolls, projects and build costs.

### **Justification for infrastructure provision/development contributions requested**

The County Council has modelled the impact of this proposal on the provision of its existing services and the outcomes of this process are set out below and in the attached appendix.

### **Secondary School Provision**

The impact of this proposal on the delivery of the County Council's services is assessed in Appendix 1.

A contribution is sought based upon the additional need required, where the forecast secondary pupil product from new developments in the locality results in the maximum capacity of local secondary schools being exceeded.

The proposal is projected to give rise to up to 68 additional secondary school pupils from the date of occupation of this development. This need can only be met through the provision of a new Secondary School on land proposed in the application or, in accordance with DfE Guidance Securing development contributions 2019 para 20, the contingency will be through additional secondary provision within Sevenoaks District.

The new secondary school accommodation will be delivered in accordance with the Local Planning Authority's Infrastructure Delivery Plan (where available and up to date); timetable and phasing.

Please note this process will be kept under review and may be subject to change as the Local Education Authority will need to ensure provision of the additional pupil spaces within the appropriate time and at an appropriate location.

As stated by KCC's Area Education Officer for Sevenoaks in his 12<sup>th</sup> February 2021 letter to the applicant, there may be the possibility that the school build would be funded by the Department for Education (DfE), but this is by no means guaranteed. As such, any s.106 agreement for this development would specify a clause that the applicant's secondary education build contribution would be passed onto the DfE towards the overall build costs.

### **Proposed school site**

KCC's requirement is for the land for the secondary school to be transferred to KCC at nil cost and according to our General Transfer Terms (attached). The secondary school site should be centrally located within the development to provide good accessibility, and to encourage active travel. The site should be level and of regular shape.

It is noted that the masterplan suggests use of school playing fields for formal play by the public outside of regular school hours. This is a concern in terms of school site security, including the costs of additional secure fencing and other security measures

to demarcate the school buildings from public access, as well as the logistical management and staffing to allow facilities for dual use. There is also the concern that the quality of the pitches would deteriorate more quickly with formal public access and require additional, costly maintenance. Also, pitches open to the public are likely to lead to unofficial use, such as dog walking and potential 'fouling' of sports pitches. This would incur health concerns and additional management of playing fields to ensure pitches are clear of hazardous litter. The provision of secondary sports pitches should be as per the requirements set out in Building Bulletin 103 or subsequent bulletins.

### **Primary Education**

There is currently no need for more spaces within the assessed education planning groups.

### **Special Education Needs and Disabilities provision<sup>1</sup>**

The Children's and Families Act 2014 and accompanying Code of Practice sets out the system for children and young people with special educational needs and disability (SEND) aged 0-25 years. KCC's SEND Strategy sets out its vision and priorities in respect of this area of its service.

The number of children and young people with SEND in Kent is 13.4% of the total school population (January 2019). The majority are educated in mainstream school environments. However, children with more complex needs are supported through an Education, Health and Care Plan (EHCP) which sets out the provision they are entitled to. January 2020 figures for Kent show that 4.2% of the total school population had an EHCP. The proportions have been rising both in Kent and nationally and this trend is set to continue. However, for the purposes of s.106 contributions, KCC is working to the national figure of 3.7%. In addition, the change in legislation in 2014 placed a duty on Local Authorities to maintain an EHCP until a young person reaches the age of 25 years, in appropriate cases.

School-age pupils with EHCPs are educated in mainstream school classes, in Specialist Resourced Provisions (SRPs) on mainstream sites, and in stand-alone special needs schools.

To take account of the provision types, the local KCC has applied a blended build cost of £45,916 per pupil place has been applied. This is the rate used in conjunction with the SEN Pupil Product Ratios for this request and accompanying assessment (Appendix 1a). The SEN pupil product ratios are 0.0134 per house and 0.0033 per applicable flat. In comparison, please note that the [National School Delivery Cost Benchmarking Study \(May 2021\)](#) published by the Education Building and Development Officers Group (EBDOG)<sup>2</sup> identifies the SEN special school expansion cost of £76,184 per pupil place.

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<sup>1</sup> SEND figures and data are provisional and subject to final check.

<sup>2</sup> EBDOG is a national body, representing Local Authorities on all issues associated with education, property and capital planning.

Para 17 of the DfE's Securing Developer Contributions for Education 2019 states '*...We recommend that developer contributions for special or alternative school places are set at four times the cost the mainstream places, consistent with the space standards in Building Bulletin 104*'.

The proposal gives rise to additional pupils with Education and Health Care Plans (EHCP's) requiring extra support through specialist provision. This need will be met, as with other new developments in the vicinity, through additional provision at Milestone Academy Special School, New Ash Green DA3 8JZ and a contribution is therefore required of **£617.31 per 'applicable' house and £154.33 per 'applicable' flat.**

### Implementation

The County Council is of the view that the above contributions comply with the provisions of CIL Regulation 122 and are necessary to mitigate the impacts of the proposal on the provision of those services for which the County Council has a statutory responsibility. Accordingly, the County repeats its request that the Local Planning Authority seek a section 106 obligation with the developer/interested parties prior to the grant of planning permission. The obligation should also include provision for the reimbursement of the County Council's legal costs, surveyors' fees and expenses incurred in completing the Agreement, and County monitoring fee of £500 for each trigger within the Agreement.

We have obtained counsel's advice, which we enclose with this letter, and ask that the planning committee on 21 March 2022 is made aware of this updated request and the legal advice we have received.

Yours sincerely

[Redacted Signature]

Development Contributions  
Kent County Council

Cc

[Redacted Recipient Name]

KCC, Education & Communities,  
File

Appendices:

The following Appendices contain the technical details of the County Council's assessment process.

1. Education Assessment

## Supplementary Information

- 1a. Secondary & SEND School Build Costs
2. KCC General Land Transfer Requirements

**Addendum - Development Contributions Rates information****Secondary Education**

The rates for secondary referred to in the table (page 2 of this letter) were introduced in February 2018, following approval by the Infrastructure Funding Group (19 December 2017). The rates have since been updated in line with inflation, with indexation now based at April 2020. The latest ECP (2022-26) records a slightly different rate to what we have been requesting (see table below). This is because KCC Property has undertaken an extensive review of its own build costs for projects completed and benchmarked these against projects nationally.

The secondary requirement in relation to Four Elms is for a newly built school, which is assessed at per pupil cost of £25,880.00. The Education Assessment methodology works on the basis that each house in a development will produce 0.2 pupil product and each flat 0.05. These are KCC adopted Pupil Product Ratios (PPRs). Multiplying each of these PPR figures by the cost per pupil place provides for the new build secondary education rate of £5,176.00 per house and £1,294.00 per flat.

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