

**Our approach towards mitigating the
impact of development on Schools and
Early Years & Childcare Provision**

Education Contribution Guidelines Supplement



Front cover: Queen Boudica Primary School, Colchester.
Picture courtesy of Willmott Dixon Construction.

Foreword

The Education Contribution Guidelines Supplement is a companion document to the Essex County Council Developers' Guide to Infrastructure Contributions and contains additional information regarding education contributions that will be of assistance to developers. The two documents should be read in conjunction to gain a full understanding of the justification for and operation of the policies outlined. Copies of both can be downloaded from the Essex County Council website www.essex.gov.uk

Please note that this document only covers the administrative county of Essex and not the unitary authorities of Southend-on-Sea and Thurrock. It replaces the Essex County Council Schools Service's Developer Contribution Guidelines that were published in January 2005. Local Planning Authorities, that have adopted 'Standard Charges' (such as Chelmsford Borough Council) or that adopt a 'Community Infrastructure Levy', may issue guidance that takes precedence over this document or aspects thereof.

The 'Quick Guide' at the start of this document answers some frequently asked questions and provides an overview that developers of small straightforward sites may find useful. The full guide contains information appropriate to all developers but in particular those promoting larger more complex sites.



Notley Green Primary School, Great Notley, Braintree.
Picture courtesy of Bryant Harvey Partnership

A quick guide to education contributions

What is the range of contributions that may be sought?

Monies and/or land may be sought toward providing facilities for childcare, early years, primary school, secondary school and post-sixteen provision. Works in lieu of contributions may be acceptable in some circumstances, subject to EU Procurement regulations. Developments may also be required to contribute towards school transport or the provision of safe routes to schools.

Which types of developments may be required to contribute?

Housing developments including a net increase of ten or more dwellings may be expected to contribute. Commercial developments likely to employ twenty-five or more people may also be expected to contribute towards early years and childcare provision.

Are any developments exempt from making a contribution?

Developments that are wholly non-profit making may on occasion gain planning permission without all their impacts being mitigated. Developments that are 100% social rented (as opposed to including intermediate types of affordable housing) or are required to meet the needs of the gypsy and traveller community may, for example, be exempted from some or all of the contributions that would normally apply. Affordable housing provided as part of any development that includes private or shared ownership dwellings **will** attract a contribution.

Are any types of dwelling exempt?

Dwellings that are unsuitable for families either by design or planning condition will not be expected to make a contribution. For example, dwellings with only one room that could be used as a bedroom and sheltered housing for people over the age of 50 will be exempt.

When are contributions not needed?

Contributions are unnecessary where the level of local unfilled permanent places is, and will remain, sufficient to provide for the children and young people that the development generates, the existing community and other planned growth in the area.

How are the levels of contribution set?

A formula is used to estimate the number of places in each age group that will be required to serve the development. Different factors are applied to the number of houses, flats and employees to reach a figure for each. In the case of small to medium developments the number of places required is then multiplied by the relevant cost per place. For larger developments the costs of provision, and land requirements, are determined by specially commissioned pre-application studies.

What are the rough levels of contribution that could be expected?

Based on April 2009 costs the 'worst case scenario' is £8,823 per house and £4,411 per flat. For early years & childcare contributions towards commercial developments the figure is £548 per employee. These figures are reduced if the need for a contribution only applies to some age groups. Any contributions to transport or safe routes to school would be in addition to these sums.

When is the level of contribution decided?

A final decision regarding a contribution can only be made once a planning application is submitted. This guide in conjunction with up-to-date figures available on the Essex County Council web site can, however, be used to estimate the likely level of contribution. Without prejudice estimates can also be obtained using the Education Contribution Enquiry Form given as appendix A to this document. In the case of large developments a great deal of work regarding the suitability of potential locations for new facilities must be undertaken at the pre-application stage, so early involvement of Essex County Council in discussions is strongly advised.

How are contributions enforced?

Developers are required to enter into legal agreements prior to the issue of planning permission. In most cases the agreement will be tripartite between the land owner, local Planning Authority and Essex County Council. In the case of simple agreements with financial contributions only, and pursuant to a full planning application, a unilateral undertaking following the standard template given as appendix B may be accepted.

When are contributions payable?

Contributions are payable prior to commencement of development except on larger sites with distinct phases that fit in with the delivery of the required provision. All financial sums are index-linked from the base date used in the contribution calculation to the date of payment.

Index

1. INTRODUCTION	8
2. ESSEX COUNTY COUNCIL'S EDUCATION DUTIES	8
2.1 Early Years & Childcare	8
2.2 Schools	9
2.3 Post 16 Education	9
3. DEVELOPMENTS COVERED BY THE POLICY	9
3.1 Thresholds	9
3.2 Qualifying Dwellings	10
4. ASSESSING THE NEED FOR A CONTRIBUTION	10
4.1 Pre-application Discussions	10
4.2 Planning Applications	11
4.3 Local Development Frameworks	12
4.4 Assessing the Sufficiency of Places to Serve Development	12
5. CALCULATING DEVELOPER CONTRIBUTIONS	14
5.1 Forecasting Demand Generated by Developments	14
5.2 The Cost of Additional Places	15
5.3 School Transport	15
5.4 Indexation	16
6. SECURING AND MAKING THE CONTRIBUTION	16
6.1 Legal Agreements	16
6.2 Pooling Contributions	18
6.3 Triggers	18
6.4 Un-used Contributions	18
6.5 Legal Costs	19

7. MAJOR DEVELOPMENTS	19
7.1 Contributions of Land	19
7.2 Contributions in Kind	20
7.3 New Provision Thresholds	20
7.4 Site Area Requirements	21
7.5 Site Compliance & Project Feasibility Process	22
7.6 Site Requirements	24
8. FURTHER INFORMATION & KEY REFERENCE DOCUMENTS	26

APPENDICIES

A. Education Contribution Enquiry Form	29
B. Unilateral Undertaking Template	31
C. Section 106 Agreement Education Clauses	39
D. Education Site Suitability Criteria Checklist	49
E. Land Compliance Study Brief	53
F. Site Feasibility Study Brief	57
G. Early Years & Childcare Centre Example Model Brief	61
H. Primary School Example Model Brief	63
I. Common Utility Loading Requirements	65

1. Introduction

Providing people with a decent place to live requires more than just bricks and mortar. It is local services and infrastructure that make new homes desirable to purchasers and the mitigation of their impacts which make them acceptable to existing residents. The system of 'developer contributions', introduced by the Town & Country Planning Act 1990, ensures that developers meet their obligations to the whole local community.

The availability of places at a high quality local nursery or successful local school is likely to be an important pull factor for families considering the purchase of a new home. Conversely, new residential development is unlikely to be welcomed by the existing community if additional pupils moving to the area deny their children a place at the local school or lead to larger class-sizes. Developer contributions towards education provision thus play an important role in the success of new residential developments.

Demand for early years and childcare provision in an area is also generated by levels of local employment. People often prefer to provide care for their pre-school age children close to where they work so that they can respond quickly in an emergency. Developer contributions for early years and childcare are thus sought from both residential and employment lead development.

Contributions towards each age group are only sought where development is likely to create a need for additional permanent accommodation. Where they are required there are two main costs that developer contributions have to cover: buildings and land. In some circumstances contributions may also be needed to provide school transport or safe routes for children to walk and cycle to an appropriate school. Revenue costs to help run education establishments are not sought.

Further information and advice is always available from Essex County Council staff, and developers are strongly advised to use the Education Contribution Enquiry Form (see appendix A) to check their potential obligations prior to purchasing development land or submitting a planning application.

2. Essex County Council's Education Duties

2.1 Early Years & Childcare

The Childcare Act 2006 places a range of duties on local authorities regarding the provision of sufficient, sustainable and flexible childcare that is responsive to parents' needs. Local authorities are required to play a lead role in facilitating the childcare market within the broader framework of shaping children's services, in partnership with the private, voluntary and independent sector.

Section 6 of the Act defines 'sufficient childcare' as sufficient to meet the requirements of parents in the area who require childcare in order to enable

them to take up, or remain in, work or undertake education or training which could reasonably be expected to assist them to obtain work.

Section 7 of the Act sets out a duty to secure free early years provision for pre-school children of a prescribed age. Regulations have been made to prescribe the type and amount of free early years provision each child is entitled to and the age at which a child becomes eligible to benefit. The current requirement is to ensure that 12.5 hours per week of free early years provision is available over 38 weeks of the year for all 3 and 4 year-olds. From September 2010 this requirement will increase to 15 hours per week with the extra hours already being offered to the most disadvantaged children.

2.2 Schools

Under section 14 of the 1996 Education Act, local authorities must secure sufficient appropriate school places to serve their area. The available schools must be sufficient in number, character and equipment to provide for all pupils the opportunity of appropriate education. Section 2 of the 2006 Education and Inspections Act places Essex County Council, as the appropriate local authority, under a further duty to secure diversity in the provision of schools and increase opportunities for parental choice.

The 2006 Act also casts local authorities in the role of 'commissioners of places' and requires the running of new schools to be subject to open competition, unless there are exceptional circumstances. Groups such as parents and faith communities are thus encouraged to 'bid' to run new schools. It must be noted that the competition process adds to the timescales and complexity of opening schools on new developments.

2.3 Post 16 Education

Section 2 of the 2008 Education and Skills Act requires that all persons under the age of eighteen yet to obtain a 'level three' qualification (for example two 'A' levels), must participate in education or training. Participation does not require all young people to stay on at school, as employment-based training can fulfill this requirement. Section 68 of the 2008 Act requires that Local Authorities make available such services as they consider appropriate to encourage, enable or assist participation in education or training. In March 2008 it was announced that the Learning and Skills Council is to be abolished with responsibility for 16 – 19 education passing to Local Authorities from April 2010.

3. Developments Covered by the Policy

3.1 Thresholds

Residential developments that result in a net increase of ten or more dwellings will be assessed for the need to make a developer contribution towards education. The ten dwelling threshold does not have regard to dwelling type but

dwellings that replace existing homes on site that are occupied at the time of application can be discounted. Commercial developments that will employ twenty-five or more people (whole time equivalent posts) may also be expected to contribute towards early years and childcare provision.

In cases where adjoining or nearby plots (regardless of ownership) are likely to be developed separately, these thresholds may be deemed to have been reached on the basis of the sites' cumulative capacity. This approach ensures that developer contributions can not be circumvented by sites being split up and likewise ensures there is no disincentive to developers working together to bring forward comprehensive regeneration schemes.

3.2 Qualifying Dwellings

Dwellings that either by design or planning condition are unlikely to house children are exempted from the calculation of any contribution the development needs to make. Discounted dwelling types include those with only one room that could reasonably be used as a bedroom, student accommodation, homes restricted to occupation by persons over the age of 50 and some types of care home. The manner in which a unit is marketed is not in itself a valid reason for exemption as future tenure may change.

No distinction is made between 'open market' and 'affordable' housing and contributions will in all normal circumstances be based on the total number of 'qualifying' dwellings. Not for profit schemes developed entirely as affordable housing under adopted 'local needs/rural exception' policies and schemes where all of the dwellings will be 100% owned by a Registered Social Landlord may, however, be exempted.

Trailer Parks and similar forms of housing that may be occupied throughout the school year on a residential basis may be required to make a contribution. However, sites developed specifically for the transient Gypsy and/or Traveller community will not attract developer contributions towards additional education places but may be expected to contribute towards measures to ensure children are able to travel or be transported to school safely.

4. Assessing the Need for a Contribution

4.1 Pre-application Discussions

Developers usually wish to know their obligations prior to making a planning application so they can assess the viability of a scheme and pay an appropriate price for the land. The methodology set out in the Essex County Council Developers' Guide to Infrastructure Contributions, and in this document, allows developers to estimate the likely costs of providing the community infrastructure needed to serve their development. Essex County Council staff are always willing to provide advice on a 'without prejudice' basis.

An Education Contribution Enquiry Form is provided, as appendix A to this document, which can be sent to Essex County Council School Access Services to request an estimate. An email version is also available on the Essex County Council web site (www.essex.gov.uk) under School Organisation and Planning. It must be stressed that circumstances can change between estimates being issued and the formal assessment of a planning application. The estimated cost of providing education places will also rise in line with build cost inflation during any intervening period. Estimates and contribution requests are usually produced using costs calculated at the start of the financial year and indexation therefore runs from April of the year concerned.

On larger developments, specific education projects need to be identified and the contribution of land is often necessary in addition to financial contributions. In such circumstances a compliance study is required to assess land suitability and a feasibility study to ascertain building costs and any unacceptable restrictions on design or construction. This is a lengthy process that developers must facilitate during the pre-application stage. Full details are provided later in this document.

4.2 Planning Applications

The need for a developer contribution is usually formally assessed at either the outline or full planning application stage. Where a developer is seeking to vary the number or type of units through a reserved matters application, a contribution may also be requested. Likewise, where a developer is seeking to renew permission the need for a contribution may be reassessed.

In identifying a shortage in local provision and asking for a developer contribution Essex County Council are, in effect, objecting to the application. A developer contribution will in most cases overcome the objection, except where the County Council is unable to identify a suitable potential way of providing the education places needed to serve the development. Where the only way of accommodating development is to provide school transport appropriate additional contributions may be requested.

While it is the County Council's role to assess the impact of a new development on the services it provides, it is the Local Planning Authority's job to decide whether or not the level of contributions requested is appropriate. As a result of these responsibilities, Essex County Council will not negotiate directly over the level of contribution requested unless asked to do so as part of a tripartite discussion including relevant Local Planning Authority officers.

Although Essex County Council is also responsible for other areas that may necessitate developer contributions, such as highways, only the Local Planning Authority can look at the cumulative costs of developer contributions in relation to the financial viability of a scheme. In general, an acceptable development should not need to externalise any of its costs, but it is accepted that on occasions there may be overwhelming public benefits that can only be realised by giving permission to a scheme which would not be viable if full planning obligations were met. In these circumstances a decision of 'not viable' should not stem from a developer paying too much for land and the Local Planning

Authority will usually expect an 'open book' independent financial assessment before exceptions to policy are made.

Should an application be turned down Essex County Council's objection on education grounds will usually be recorded as a reason for refusal. Should an appeal be lodged the developer may still overcome the objection, prior to the Inquiry, by entering into an appropriate legal agreement to make the required contributions in the event of a successful appeal. Should such an undertaking not be received the County Council will provide an expert witness to deliver appropriate evidence to sustain its objection.

4.3 Local Development Frameworks

In preparing their Local Development Framework, Local Planning Authorities are required to consult key stakeholders identified in their Statement of Community Involvement. Essex County Council is a key stakeholder and will usually be asked to comment on large development options or proposals prior to public consultation. The efficient use of suitable surplus education capacity will usually be looked on as a positive feature of development. Areas where there are insufficient places and developments are unlikely to bring forward the required infrastructure are likely to receive a negative consultation response.

In general, for early years and childcare places, provision of a suitably sized new facility should overcome any objection to a growth location. Small to medium sized development may be problematic if the anticipated number of pupils is too large to accommodate in existing primary school provision but too low to justify a new school. The provision of a new secondary school is only appropriate on a very large new development and therefore sites with insufficient options to add places to existing schools within three miles safe walking distance are likely to be objected to.

4.4 Assessing the Sufficiency of Places to Serve Development

Contributions towards additional places will not be sought where forecasts suggest that appropriate education establishments can reasonably accommodate the expected increases in demand for places or where such places will be provided utilising other funding sources.

The Essex School Organisation Plan sets out the current availability of school places in each area and broad investment plans. It also includes a forecast predicting the picture in five years time based on birth rates, feeder school numbers, historical trends, housing development and other local factors likely to affect admissions to particular schools. The forecast methodology is outlined within the School Organisation Plan, along with an evaluation of the accuracy of previous plans. A draft edition is published each year, usually during the summer, for public consultation. Developers are particularly encouraged to comment on school reorganisation and how their developments may impact on planned investment. The Essex Childcare Sufficiency Assessment performs a similar function for early years and childcare provision. Essex County Council also produces regular forecasts that may be presented as evidence of the need

for a contribution, where local circumstances have changed significantly since the last plan was published.

The need for additional places may either be immediate or gradual. It is considered reasonable to take account of the future demand for places as well as the current picture since:

- there will be a time lag between the planning application and completion of the development;
- the peak of additional demand for places generally comes a few years after a development is first occupied;
- the development will be a permanent feature of the local community and it should thus cater not just for its immediate impact.

Any school accommodation that is temporary in nature, either through planning permission, design or build quality, is excluded from the assessment of available places. The presence of existing temporary accommodation should be taken as evidence that a school is already under pressure for places. Although some 'temporary' classbases remain on school sites for a considerable period of time they will eventually be removed if not needed by the existing community. It would be unreasonable for pupils from a new development to generate the need for temporary classbases to be converted to permanent build without the developer making a contribution. The school capacity figure used in assessing the need for a developer contribution is thus the school's current 'net capacity', as published in the School Organisation Plan, less any temporary places included in that figure.

The School Organisation Plan may for some schools also show an intended future capacity which shows works that the LEA expects to need to undertake during the plan period. This could include work based on the assumption that developer contributions are going to be made for forecast housing levels, including the development under consideration.

It is generally accepted that education provision in an area should not operate at 100% of its capacity, as it is important to retain some level of surplus to facilitate parental preference and mid-year admissions, and for contingency planning. The Audit Commission document Trading Places (1996 updated 2002), for example, suggested a target figure of 5% surplus places. A deficiency may thus be deemed to exist without the certainty of every local place being filled.

In deciding which local provision it is reasonable to include in an assessment, the needs of the new development must be balanced against those of the existing community. If the new development displaces pupils from another area there may be significant local opposition to the scheme. It is therefore important to look not just at the nearest school but also at the wider area. There may, for example, be places a little further away to which pupils from the new development could safely walk. Conversely there may be surplus places forecast at the nearest school that will be needed by the current population because another local school is forecast to be oversubscribed.

The maximum distance a pupil can be expected to walk is two miles up to the age of eight and three miles for older children. These are measured as actual

distances travelled and not straight line distances. In excess of these distances Essex County Council incurs transport costs and a developer contribution to cover these costs could be sought from any development generating a need for pupils to be transported.

In reality few children will walk these maximum distances and significant 'school run' traffic is generated if development is placed in locations with poor sustainability credentials. The quality of walking and cycling routes to education establishments will thus be considered when deciding which local provision it is reasonable to include in any assessment of local need. In some circumstances it may be appropriate to require a contribution to make a route to a school with surplus places safe, thereby avoiding the need to expand alternative local education provision.

Traditionally schools have taken pupils from their priority admissions or 'catchment' area. Current school admissions are, however, also based on a number of other criteria including the presence of siblings at the school, faith or ability in a particular curriculum area. A list of admissions criteria for each school can be found in the 'Education in Essex' booklets published each year by Essex County Council. Surplus places at any school that has admissions criteria that would exclude the majority of children moving to the new development will not be included in the assessment. If these schools are forecast to be oversubscribed, however, the children will need to find alternative places within the area.

5. Calculating Developer Contributions

5.1 Forecasting Demand Generated by Developments

New housing developments generate a demand for education places in all age groups. Commercial developments also generate a demand for early years and childcare provision as employees often require places for their children close to where they work.

In terms of housing development, some properties will clearly not generate a significant need for additional places. Such dwelling types include single bed properties, student accommodation and care homes. Where, by design or planning condition, it can be demonstrated that the dwellings can not be occupied by families the dwellings in question are discounted from the calculation of any contribution.

The factors used to calculate demand from qualifying dwellings are as follows:-

Age Range	Houses	Flats
Early Years and Childcare	0.09	0.045
Primary School	0.3	0.15
Secondary School	0.2	0.1
Sixth Form	0.04	0.02

The relevant factor(s) for the dwelling type(s) proposed and for the age range(s) needing a contribution are multiplied by the relevant number of dwellings to give a pupil product for each age range e.g. ten houses requiring a primary contribution would be $10 \times 0.3 = 3$ places.

The lower factors applied to flats recognise that some types of dwelling, although suitable for children, are less attractive to adults of an age that may have, or be considering starting, a family. For the purposes of education contributions houses are thus any dwellings that occupy two or more floors and have sole access to private outdoor space. Maisonettes, trailers and bungalows (but not chalet style bungalows with an attic room) may thus all be treated as flats.

The factors are designed to reflect the demand for places generated, rather than actual children moving to the development. It is recognised that some children will not need to change school and some will attend private, selective or faith schools.

The factor for early years & childcare places for commercial developments is 0.04 per employee. Full worked examples of contribution calculations can be found in the main Essex County Council Developers' Guide to Infrastructure Contributions.

5.2 The Cost of Additional Places

For larger schemes a feasibility study is needed to determine the full cost of providing new places at a particular school or early years and childcare setting (including design fees, charges and land). On smaller schemes standard cost per place figures are used. In the case of schools these are provided by the Department for Children Schools and Families (locally adjusted) while for early years and childcare provision the figure is based on Sure Start design guidance. These figures are, however, only appropriate for providing additional places at existing establishments as they do not include the costs of land, infrastructure or shared facilities such as a hall or staff room.

The cost per place figures used as at April 2009 were: -

Early Years & Childcare:	£13,698
Primary School:	£11,361
Secondary School:	£17,217
Post Sixteen:	£18,436

The cost per place figures are updated each April but indexation must be applied from the start of the relevant financial year up until payment is made.

5.3 School Transport

Essex County Council has a duty to provide school transport for children under the age of eight living in excess of two miles from a school via a safe walking route and in excess of three miles via a safe walking route for older children. Therefore, where housing development is proposed and such routes are not available Essex County Council will look for an additional developer contribution

to mitigate the impact of additional pupil living in an area that, in school transport terms, is 'unsustainable'.

If the development is within the stated statutory distances the preferred response will be to look at providing/improving the necessary safe routes in conjunction with other Highway related planning obligations. Where this is not possible a financial contribution equivalent to transporting the number of children generated by the development (as set out above) to an appropriate school for a minimum of five years will be sought.

5.4 Indexation

All contributions must be index linked as the amount calculated at the time a planning application is made may be significantly devalued by build cost inflation by the time the development begins and the contribution is paid. Most contributions will for consistency with the cost per place figures, alluded to above, be calculated as at the start of the financial year during which the calculation is made. Indexation will thus run from that date rather than the date an application is made or a section 106 agreement is signed.

The index used is the Department for Business, Innovation and Skills 'Tender Price Index of Public Sector Non-Housing Indices' (PUBSEC Index). The amount due is calculated by dividing by the index point pertaining to the date of the cost per place figure used and then multiplying by the point pertaining to the date the contribution is paid. For example, a contribution of £20,000 based on April 2004 figures would be divided by point 195 and, if paid a year later, would have been multiplied by point 210 to give a final contribution of £21,538.46.

6. Securing and Making the Contribution

6.1 Legal Agreements

Most developer contributions are secured through Section 106 agreements. These are legally binding agreements that set out the various duties of the developer and other parties. In the case of complex agreements it may be appropriate to draw one up, at least in draft, prior to planning permission being sought. Generally, however, they are completed once the Local Planning Authority has considered the application.

The simplest form of agreement is known as a Unilateral Undertaking. These do not require the Local Planning Authority or Essex County Council to perform any duties or become a signatory. They are only appropriate when a Full planning application has been made and the dwelling mix is fixed. The education contribution is stated as an index linked sum which is payable prior to commencement of the development. The pro-forma that must be used is the Unilateral Undertaking Template provided as appendix B to this document. It is also available on Essex County Council's web site. Once filled in the undertaking must be checked by Essex County Council Legal Services staff before it is signed.

More complex agreements are required when the unit mix could change, when there is a range of developer contributions that need to be secured or when the developer requires another party to perform an act. Essex County Council will be a party to all such agreements involving education. The education contribution will usually be stated by reference to the formula outlined in section five of these guidelines. This allows for changes in the dwelling or employment mix without a new agreement becoming necessary. Essex County Council Legal Services should in all cases be contacted prior to any drafting work being commenced. The main clauses that are likely to be required in the case of financial contributions towards education are given as appendix C.

Common to all agreements is the need for the developer to give formal notice prior to each trigger being reached. Clearly, a reasonable period is required to allow any formula amount or indexation to be calculated and sums to be collected. Truncating these periods is not in the interests of developers as failure to meet unrealistic timescales can prevent the implementation of development or phases thereof.

Once the contribution is received Essex County Council will place it in an interest bearing account, and if requested to do so will covenant to repay any unused balance ten years after the dwellings are occupied. This covenant will usually make repayment subject to the proviso that the developer has given notice of occupation and that the request to make the repayment is made within a year of the right to repayment arising. The agreement will also usually state the age range and area in which the contribution can be spent. It is not always possible, desirable or effective to use monies to expand the school closest to the development but contributions will always be used to ensure there are sufficient places within the area to accommodate the development. Specific establishments cannot be named unless a feasibility study has been completed. Also, public consultations are a key element in school expansion proposals and the planning process would be held up if these were completed prior to signing legal agreements. The developer should ensure any specific information requirements they have regarding how funds are used are set out in the agreement.

An agreement including the transfer of land will have a number of additional key elements. The developer will, for example, need to agree to undertake any works required to ensure the site meets the criteria set out in appendix D, or established as necessary during the feasibility study. In all cases the developer must provide appropriate warranties and indemnities to ensure that the County Council can reclaim any abnormal costs associated with a failure to meet such obligations.

Agreements including works in kind will likewise require additional bespoke clauses providing Essex County Council with comfort and redress in the event that deadlines are not met or the quality of design or workmanship is unacceptable. Clauses relating to compliance with European Procurement Legislation may also be necessary.

The full range of clauses that will be required can be anticipated by understanding the requirements set out in this document.

6.2 Pooling Contributions

In order to allocate funds to a specific project a feasibility study must be concluded to demonstrate that the project in question can be undertaken and meet the need for the additional places identified. These studies commonly take in excess of six months to conclude and therefore, apart from on major sites, it is impractical to specify in the legal agreement precisely how each contribution will be spent.

The pooling of contributions allows planning applications to be determined quickly and contributions to be saved up to bring forward the most urgent schemes as soon as their viability can be ascertained. Contributions will in all but exceptional circumstances be used on a project in the same town as the development or at a school that forms part of the local group identified in the Essex School Organisation Plan.

6.3 Triggers

Contributions will usually be payable prior to commencement of the development to provide a firm financial platform for the planning and delivery of the required places within an acceptable time-frame.

In the case of major development it may be appropriate to phase contributions when Essex County Council will not be liable up front for the total cost of works or when the infrastructure can be provided in a phased manner without adding significantly to the costs or risks of the project. Small partial payments will not be accepted due to the excessive administrative burden multiple payments generate. Contributions will always be required in advance of the occupation of units to which the sums pertain unless bank-backed inflation-proof sureties are provided to guarantee payments in the event that the developer passes into administration. The triggers for phased payments will also require 'long stop' dates as it would be totally unacceptable for a facility to remain half built due to occupation triggers not being reached as anticipated.

An example of how phased payments can work is when a two form entry primary school is built. The first phase of the works to provide one-form of entry will require funding up front. This phase must include all the shared facilities, such as the hall and staff areas, required for the complete school. This avoids any disruption to the school when the second phase of works takes place. Work, and therefore the payment, on the second phase would not be required until around 500 dwellings were occupied (depending on build rate).

6.4 Un-used Contributions

Contributions can remain un-used for a number of reasons. There may be valid local opposition to a project, a lack of feasible affordable options or simply less demand than was anticipated. Most Section 106 agreements state that contributions should be used within ten years of the first dwelling on the development being occupied and if not returned to the developer. Any unexpended balances returned to the developer will include any unused interest earned on the contribution.

Agreements involving land usually include a ten year option period with a further five years following transfer to build on the site or return it to the developer. From the County Council's perspective it is important that the agreement is sufficiently flexible to provide adequate time to make a decision, and not be pressed into establishing a new facility prematurely. Developers are advised to consider how the Local Planning Authority might view potential alternative uses for the site in the event that an education use is not established and ensure their development plans allow for this alternative potential outcome.

6.5 Legal Costs

The developer is responsible for the cost of producing the legal agreement including the charge Essex County Council Legal Services make for their involvement. District and Borough Councils may also add their legal fees.

Standard agreements that closely follow the clauses set out in appendix B or C, and only cover education contributions, should not be expensive or time consuming to produce. Agreements involving land or works in kind are inevitably more complex. Protracted negotiation regarding any point obviously leads to additional expense. Ensuring the County Council's aspirations, as set out in this document, are fully met is thus essential if rapid progress is to be made.

7. Major Developments

For the purposes of schools and early years and childcare contributions a development that will not in itself, or in conjunction with other local sites, require a bespoke project to be commissioned is not thought of as a major development. Contributions from smaller sites will normally need to be pooled to generate sufficient funding to commission a building project and will not normally be required to contribute towards the cost of land. This may not be the case in areas of significant cumulative development where existing schools have insufficient site area to expand. In such circumstances additional financial contributions may be sought to allow Essex County Council to purchase appropriate land on the open market or, if necessary, through a compulsory purchase order.

In practice, sites of fewer than 100 dwellings or generating fewer than 500 employees are unlikely to be considered major developments.

7.1 Contributions of Land

With a large development it is unlikely that existing local provision will have sufficient land to expand to the required degree. Sometimes adjoining land can be purchased and an additional financial developer contribution made to fund the purchase. More often than not, however, new schools and early years and childcare provision need to be established, and the developer is required to transfer suitable land on the development to Essex County Council at a nominal cost (usually £1).

Before land can be accepted, rigorous site compliance and project feasibility processes must be completed to ensure that the land will be fit for purpose and able to satisfy relevant policies. A site criteria checklist is provided as appendix D to assist developers in identifying a suitable piece of land.

7.2 Contributions in Kind

In some cases developers may agree to carry out works in lieu of financial contributions. Such contributions are subject to strict rules, detailed specifications and appropriate surety being provided. Developers must also be aware of European Procurement Laws that require works to be openly tendered if they exceed a certain value. In circumstances where works in lieu are deemed acceptable, Essex County Council may require an indemnity against any claim resulting from a breach in these regulations.

7.3 New Provision Thresholds

There are no set thresholds which require a new facility to be built. In particular, early years and childcare provision can vary significantly in size. It is unlikely, however, that a development of fewer than 250 dwellings or generating fewer than 500 jobs could support a bespoke facility.

In the case of primary schools, Essex County Council has a policy of establishing two form entry (420 place) schools wherever possible. It also aims to avoid mixed age teaching and a school of 210 places (one form entry) is the smallest size primary that achieves this aim. The Audit Commission, leading a study looking at tackling falling primary school rolls (March 2005), found that:

'Primary schools of around 420 pupils or 210 pupils are the most efficient and offer a critical mass promoting more effective teaching and learning'

A cohort of 210 pupils is likely to be generated by approximately 700 new houses or a mixed development of around 1,000 dwellings. It must be recognised, however, that if suitable existing local schools cannot be expanded, a new school may become necessary to cater for any number of additional pupils.

With regard to secondary education, new schools are only likely to be required to serve large green field sites. Four forms of entry, or 600 pupils in the 11 to 16 age range, is the absolute minimum secondary school size recommended by the Department for Children Schools and Families. This is the number of pupils that would be generated by a development of around 3,000 houses. In the planning context for new secondary schools Essex County Council would aim to establish a school of at least six forms of entry (900 pupils in the 11 to 16 age range). To achieve this size, and to integrate communities, it is likely that such a school would serve a wider area than a new housing development. The precise number of new homes to trigger the need for a new secondary school thus requires careful consideration on a case by case basis.

7.4 Site Area Requirements

The area of land that Essex County Council requires for schools and pre-schools is based on current Department for Children Schools and Families Building Bulletins and other relevant publications. In line with its aspiration to deliver world class education it will always seek site areas towards the top end of any recommended range. Central government also encourage 'extended schools' that include other community services, and clearly larger sites are required if such facilities are to be co-located with a school.

In order to produce a school with manageable year groups Essex County Council may require more land than indicated by a straight forward calculation of pupils from a development. As stated previously, Essex County Council will in most cases seek primary school sites capable of supporting two forms of entry, and resist larger new schools. Likewise, it will usually seek secondary school sites capable of expansion to at least 1,200 places (plus sixth form provision if required). Although there is no set upper limit, a secondary school of 2,000 pupils would be larger than any current establishment in Essex.

The following figures are a guide to likely requirements: -

Early Years and Childcare	
Places	Site Area (meters square)
26	628
56	1275

Primary				
Class Bases	Pupils / Places	Site Area (hectares)	Ideal Dimensions (meters)	
			Length	Width
7	210	1.09	145	75
11	315	1.57	157	100
14	420	1.93	161	120
21	630	2.77	173	160

Secondary	
11 -16 Places	Site Area (hectares)
900	6.91
1200	8.68
1500	10.44
1800	12.2

Where ideal site areas cannot be achieved, two storey buildings or artificial pitches may reduce site area requirements, but such design features will add significantly to the building costs that the developer is expected to contribute.

7.5 Site Compliance & Project Feasibility Process

Where a new facility is required the County Council must, before entering into any legal agreement, ensure that the land identified is both suitable for education use and acceptable in terms of position within the overall development. The process also determines the level of developer contribution that is required to fund the project and any conditions that Essex County Council needs to impose. The following stages must be completed: -



It is essential that the developer contacts Essex County Council prior to embarking on the first stage of this process to ensure that the appropriate site areas are being looked at. Where possible the process should be completed in tandem with the production of the Local Development Framework. The developer should thus be in a position to complete the 'Initial Consideration' stage prior to making a submission to the Local Planning Authority in response to a 'call for sites'.

The Initial Consideration stage should not be undertaken lightly or focus on particular areas that may be of lesser economic value. Failure to identify any 'show stoppers' at this stage may lead to the expense and delay of abortive work. The Site Suitability Checklist given as appendix D should be used to evaluate each area considered and identify any studies that the developer

needs to commission to provide evidence required during subsequent stages of the feasibility process. The developer must ensure that any company employed to complete a study provides a warranty for their work that can be assigned to Essex County Council in the event that the site is accepted.

The second stage of the feasibility process is Site Identification. During this stage Essex County Council will consider the sites that the developer has identified as potentially meeting the site suitability criteria. The two parties must work together to narrow down the potential sites and agree which sites should move forward to detailed independent study. Outside consultants may need to be involved and further studies may have to be commissioned at the developer's expense in order to provide all the evidence that is needed to make a decision.

Ideally both the Compliance Study and the Project Feasibility stages will be completed as one. It is, however, recognised that prior to the Site Allocation stage of the Local Development Framework broad areas rather than precise 'red line' sites may have to be considered. The Compliance stage is thus designed to study land in an area, leaving specific layout issues to the Project Feasibility stage.

The Compliance Study and Project Feasibility stages will be driven by independent consultants appointed by Essex County Council. Any studies required by the consultants to confirm the site's compliance with the Site Suitability Checklist or assign appropriate warranties to Essex County Council must be funded by the developer. A single or separate set of consultants may be used, depending on the gap between the two stages and any need for particular expertise. Example Compliance and Project Feasibility consultant briefs are given in appendix E and F to indicate the work that will be completed. A minimum of six months should be allowed to commission, complete and document both pieces of work if they are completed concurrently. As stakeholders, the developer and the County Council will be fully engaged in the process. Failure by the developer to provide appropriate evidence to back any assertion made regarding site suitability may lead to delay and fees being charged to them.

The final element of the feasibility process is the Planning Application stage. Clearly, any final decision over the appropriateness of a school site rests with Local Planning Authority Members. The results of the Compliance and Project Feasibility stages form an important part of the pre-application work that must be submitted with a planning application to inform the decision. If the application is approved the process leads to the drawing up of appropriate legal agreements. The conditions and triggers that will be written into the agreement should be borne in mind throughout the feasibility process to avoid any last minute misunderstandings. The transfer of the land in a fully serviced and remediated condition, ready to allow construction to begin, should be anticipated as required at the outset of the development.

Feasibility work is also required when a project at an existing school is identified. In these circumstances the school's governing body will play a major role in addition to the County Council. Not all of the issues set out on the Site Suitability Checklist will apply and the feasibility process may be somewhat truncated. However, work will still need to be commissioned and completed with due diligence.

7.6 Site Requirements

A lot of the things that make a site suitable for education purposes are common sense, and the question ‘would I send my children there?’ is one to keep in mind. All new school sites must fully comply with Building Bulletins 98 (secondary) or 99 (primary) and any documents that support or supersede them. The relevant document for provision for the under-fives is ‘Building for Sure Start’ (March 2004). Sites must also be capable of supporting a facility matching the appropriate Essex County Council Model Brief. Model briefs for a 56 place early years and childcare facility and a 420 place primary school are provided as appendices G & H. Specific design standards change on a regular basis. At present, for example, Essex County Council expects all new education facilities to meet the BREEAM (Building Research Establishment Environmental Assessment Method) ‘very good’ standard, but as building codes are tightened to reduce carbon emissions a higher standard may be required.

The starting point for selecting a site is to assess its physical characteristics. Levels and site dimensions are key. The ground needs to be flat but a drop of around ‘one in seventy’ from east to west is perfect to drain surface water from the sports pitches. Boundary lengths are in part set by the fact that sports pitches should play north to south so that players are faced with the sun at its highest and least troublesome angle. The following dimensions are, for example, required for football pitches.

Football Pitches - including run off areas			
	Width (meters)	Length (meters)	Area (hectares)
Minimum Primary	49	82	0.402
Preferred Primary	59	92	0.543
Age 13 to 15 min.	54	87	0.470
Age 15 to 17 min.	59	103	0.608
Senior (18) min.	72	114	0.821
Adult min.	76	118	0.897

The soil composition of the site is also important so that playable pitches can be established and standard foundation types can be used for the buildings. The whole site must be usable year round and so cannot include any land that may flood. Likewise, land in a cordon sanitaire (or similar), or land that could have limited use due to important habitats, archaeology or conservation issues is unacceptable. The land also cannot be dissected in any way by footpaths or utility infrastructure either above or below ground.

The location of the school or early years and childcare buildings needs to be considered in relation to the existing community, the new development and any potentially conflicting land uses. It should be at the heart of the community it is intended to serve.

Next, the site must be free of encumbrances. Potential issues include poorly placed trees that should be protected, any old buildings or other structures or any other physical features that could prevent the most appropriate design being pursued. Underground pipes, cables, structures, waste and void spaces are all unacceptable. Some of these features can, of course, be removed and included in a planned remediation of the site by the developer prior to transfer.

Essex County Council must be absolutely sure there are no pollution, contamination or environmental issues with the site, or in the area, that could put children or staff at risk. Air, soil, light, noise and radiological pollution levels must all be acceptable and developers will need to provide detailed contamination studies where any potential problem is identified. Transmitter/receivers, incinerators, power-lines, transformers, phone masts and similar perceived threats to public health can also prove unacceptable in close proximity to an education establishment.

There is then a range of issues with access, some of which will require detailed consultation with the Highways Service. The safety of children is paramount and there is a strong preference for the school or early years and childcare setting to abut a pedestrian only area where parents can wait and children can safely leave the buildings without spilling out onto narrow footways or car parks. Commonly, new schools are planned to form part of a community hub, and therefore a public square with shops and other community facilities can perform this function. Such an arrangement may provide 'footfall' and enhance the viability of the adjoining businesses.

Safe and direct walking and cycling routes will need to be established between the school or early years and childcare setting and the residential areas they will serve, making access to more than one boundary essential. Crossings, speed restrictions and traffic calming may also need to be installed at the developer's expense as part of their 'highways' contribution. At secondary school level in particular, proximity to public transport will also be an issue if traffic levels in the area are to be acceptable. Developers are strongly advised to contact the Highways Service and, in particular the School Travel Plan Officer, to discuss these matters. The education provision must be included in the overall Travel Plan for the development.

Road access for staff and deliveries must be sufficient and cannot be from a cul-de-sac, or other no-through route, in case there is an emergency and the carriageway is blocked. The main access should serve the south of the site as teaching rooms are generally built facing north to minimise direct sun light, and thus provide consistent light and temperature to the learning environment. A separate road entrance is required to allow pitch maintenance equipment onto the playing field and comprehensive emergency access.

Access for construction is a further consideration. Building work on the facility may need to begin as soon as homes start to be constructed. It may thus be impossible for the developer to provide the permanent access roads to the site in time for construction traffic. In these circumstances suitable temporary access can be negotiated but the permanent access must be provided by a specified date prior to the earliest potential opening date of the facility. Access to the site for investigation purposes prior to the site's transfer to the County Council will also be necessary and access in order to start laying out sports

pitches may be sought, depending on the time of year. This is because grass needs to establish over two winters before a pitch is fully playable.



The necessary services and utilities must be provided to the appropriate boundary prior to site transfer. Common loading requirements are given as appendix I. Where it is not essential to construction the provision can be delayed until building has progressed and the appropriate system is ready to be installed. Water and electricity will always be needed on transfer but, as with road access, temporary arrangements funded by the developer may initially be acceptable. Gas, telephone, broadband, sewers and surface water drainage can, in most cases, be provided to slightly later agreed timescales. The provision of utilities and services can never be triggered by the occupation of dwellings or commencement of a specific number. Where any provision after transfer is agreed, appropriate penalty clauses in the s106 requiring the developer to reimburse any costs incurred by Essex County Council as a result of a delay will be expected. These could include considerable transportation costs if children have to be bussed to an alternative school until the new site is ready.





Finally, there will be planning and legal issues that must be investigated. These include issues such as rights of way, covenants on the land, land charges and urban design requirements. Since education establishments do not exist in isolation, there may be matters associated with adjoining land uses both in terms of unsuitable coalescence and synergy that require attention.

The checklist provided as appendix D summarises the most common issues that could prevent a school or early years and childcare facility from being built and a particular piece of land being accepted. It is not, however, an exhaustive list and in determining the best location for a new facility there are other less tangible factors that may come into play.

Some issues can be overcome with careful planning or remediation but all additional or abnormal costs must be met by the developer. It is important to remember that public perception is key. If parents cannot be convinced that the site is suitable then they won't send their children to the school or early years and childcare establishment. The County Council cannot open a new school without full stakeholder consultation and thus will not agree to land if public support for an education establishment on the site is likely to be withheld.

8. Further Information and Key Reference Documents

-  The 'Essex School Organisation Plan' is available on the Essex County Council web site www.essexcc.gov.uk under School Organisation and Planning.
-  The 'School Admission Booklets' are available on the Essex County Council web site www.essexcc.gov.uk under School Admissions.

-  The Primary and Secondary School Model Briefs are available from Essex County Council's Capital Programme and Building Development team by phoning 01245 436351
-  'Trading Places' is available from The Audit Commission, PO Box 99, Wetherby LS23 7JA.
-  The PUBSEC Index is included in the BIS Construction Price and Cost Indices that can be downloaded from www.bcis.co.uk (Email freetrial@bcis.co.uk to request a seven day trial subscription).
-  'Area Guidelines for Schools (Building Bulletins 98 & 99)' can be downloaded from www.teachernet.gov.uk/management.

Copies of Appendix A, B, C and D are available to download from Essex County Council's web site www.essex.gov.uk

Education Contribution Enquiry Form

Please return form to: Pupil Planning & Admissions (Strategy), Essex County Council Schools Service, PO Box 4261, County Hall, Chelmsford, CM2 1GS.
 Tel: 01245 436725 Fax: 01245 436314 E-Mail: admin.strategy@essexcc.gov.uk

Who To Contact	
Title	Job title
First Name	Surname
Contact Department	Direct Dial/Mobile Phone Number
E-mail Address	
About Your Organisation	
Organisation Name	Office Phone Number
Office Address	Office Fax Number
Organisation Web Address	Town
	Postcode
About The Site	
Site Name	Planning Officer at LPA
Site Address	Development Partners
	Postcode (ESSENTIAL)
	Town
	Postcode (ESSENTIAL)
Number of Units	
Qualifying units	Additional Info: <small>e.g. Target market or no/low car units</small>
1 bed/discouraged units	
Private Houses	Est Start Date
Social Houses	Net Area (Ha)
Private Flats	Social Flats
Social Flats	Est. Finish

Information given on this form may be stored electronically, in compliance with the data protection act, & may be shared with the local planning authority. Estimates based on this information are given without prejudice.

Unilateral Undertaking Template



Essex County Council

Unilateral Undertaking

Under Section 106 of the Town and Country Planning Act 1990 as amended

Education Contribution

DATE

[]

GIVEN BY

[]

FOR

A monetary contribution towards the provision of primary, secondary and early years & childcare facilities

DEVELOPMENT

[]

PLANNING APPLICATION NUMBER

[]

THIS UNDERTAKING is given on [insert date]

BY:

- (1) [] whose registered office is situated at []
(hereinafter called "**the Developer**")
- (2) [] whose registered office is situated at []
(hereinafter called "**the Owner**")

IN FAVOUR OF:

- (3) ESSEX COUNTY COUNCIL of County Hall Market Road Chelmsford in the County of Essex CM1 1LX (hereinafter called "**the County**") and
- (4) [BOROUGH/DISTRICT] COUNCIL of
(hereinafter called "**the Council**")

Recitals

- (1) The County and the Council are local planning authorities for the purposes of the Town and Country Planning Act 1990 as amended for the area within which the Site is situated and are the authorities which can enforce the terms of this Undertaking
- (2) The County is the local authority for statutory age education and pre school age education and childcare in the area within which the Site is situated
- (3) The Owner is the owner of the Site which forms the land registered at HM Land Registry with Freehold Title Absolute under Title Number []
- (4) The Developer is the developer of the Site on behalf of the Owner
- (5) The Planning Application has been made to the Council on behalf of the [] and in granting the Planning Permission the Council and the County consider it expedient that provision should be made for regulating or facilitating the development or use of the Site in the manner hereinafter appearing and that entering into this Undertaking will be of benefit to the public
- (6) The Payers consider that certain planning obligations should be entered into as at the date of this Undertaking subject to the conditions set out herein in respect of the Site
- (7) The Payers have agreed to enter into this Undertaking with the intention that the obligations contained in this Undertaking may be enforced by the County or the Council against the Payers and their successors in title

Operative Powers

- 1.1 This Undertaking is made pursuant to Section 106 of the 1990 Act to the intent that it shall bind the Payers and their successors in title and assigns and the persons claiming under or through them
- 1.2 This Undertaking creates planning obligations for the purposes of Section 106 of the 1990 Act
- 1.3 This Undertaking is conditional upon the grant of Planning Permission

Interpretation

- 2.1 In this Undertaking the following expressions shall have the following meanings:-

"**1990 Act**" shall mean the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004

"**Anticipated Mix**" means [] Qualifying Flats and [] Qualifying Houses on which the Education Contribution is based

"**Commencement**" means the carrying out on the Site of a material operation described in Section 56 of the 1990 Act PROVIDED ALWAYS for the purposes of this Undertaking Commencement shall exclude demolition site survey investigation preparation remediation the removal of services or the erection of fences or hoardings and "**Commence**" shall mutatis mutandis be construed accordingly

"**Development**" means the development permitted by the Planning Permission

"**Education Contribution**" means the sum of [] thousand pounds sterling (£[]) adjusted by the percentage change in build costs from the Education Index Point prevailing at April 20XX to the Education Index Point prevailing at the date of Commencement to be used by the County for the provision of facilities for the education and/or care of children between the ages of 0 to 19 (both inclusive) within 3 miles of the Development or at such other education and/or childcare facility that in the opinion of the County best serves the Development including the reimbursement of capital funding for such provision made by the County in anticipation of the Education Contribution

"**Education Index**" means the Department for Business Innovation and Skills Tender Price Index of Public Sector Building Non-housing (PUBSEC Index) with 1985 equalling 100 or in the event that the PUBSEC Index is no longer published or the calculation method is substantially altered then an appropriate alternative index nominated by the County

“Education Index Point” means a point on the most recently published edition of the Education Index at the time of use

“Flat” means a Residential Dwelling that occupies a single floor and /or does not benefit from private open space for the exclusive use of the residents of the Residential Dwelling and no other persons

“House” means a Residential Dwelling that does not meet the definition of a Flat

“Local Authority Seven Day Deposit Rate” means the rate of interest the County can expect to earn on investments through the money market the rate used being the one for the Friday of each week applied for the preceding week and which is published on the Financial Times web site the following Monday or in the event that the rate is no longer published or the calculation method is substantially altered then an appropriate alternative rate nominated by the County

“Occupation” means occupation of a building constructed as part of the Development but excluding day time occupation by workmen involved in the construction of the Development or in so far as such uses are ancillary to the construction of the Development the use of finished buildings for sales purposes for use as temporary offices or for the storage of plant and materials and **“Occupied”** shall mutatis mutandis be construed accordingly

“Payers” means the Developer and the Owner

“Planning Application” means the planning application which the Council has given the reference [] requesting permission to develop the Site to form the Anticipated Mix

“Planning Permission” means the planning permission granted pursuant to the Planning Application including any application(s) where planning permission has been granted to vary or renew the Planning Permission provided that such application(s) relate substantially to the same development of the Site granted pursuant to the Planning Application whereby otherwise a deed of variation to this Undertaking would be required

“Qualifying Flats” means the number of Flats that shall be constructed on the Site that have two or more rooms that may by design be used as bedrooms less the number of such Flats (if any) that at the date of this Undertaking are habitable and shall be demolished in accordance with the Planning Permission

“Qualifying Houses” means the number of Houses that shall be constructed on the Site that have two or more rooms that may by design be used as bedrooms less the number of such Houses (if any) that at the date of this Undertaking are habitable and shall be demolished in accordance with the Planning Permission

“Residential Dwelling” means a Residential Dwelling to be constructed on the Site or created by conversion of an existing building on the Site

“Site” means the area edged red on drawing [] attached hereto comprising of [*insert number*] hectares of land

“Unit Mix” means the number of Qualifying Flats and Qualifying Houses that will be constructed on the Site in accordance with the Planning Permission

- 2.2 References in this Undertaking to the Payers and the County and the Council or any one or more of them shall include reference to their respective successors in title and to persons claiming through or under them
- 2.3 Words importing the singular meaning where the context so admits shall include the plural meaning and vice versa
- 2.4 Words of the masculine gender include the feminine and neuter genders and words denoting natural persons include companies corporations and firms and all such words shall be construed interchangeably in that manner
- 2.5 Words denoting an obligation on the Payers to do any act matter or thing shall include an obligation to procure that it be done and words placing the Payers under a restriction shall include an obligation not to cause permit or allow infringement of the restriction
- 2.6 Any reference to an act of parliament shall include any modification extension or re-enactment thereof for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given thereunder or deriving validity therefrom
- 2.7 Headings contained in this Undertaking are for reference purposes only and should not be incorporated into this Undertaking and shall not be deemed to be any indication of the meaning of the parts of this Undertaking to which they relate
- 2.8 The applicable law for this Undertaking shall be English law

Notices

- 3.1 Any notice or other written communication to be served or given by the Payers to the County under the terms of this Undertaking shall be deemed to have been validly served or given if received by electronic mail received by facsimile delivered by hand or sent by recorded delivery post to the County provided that the notice or other communication is marked URGENT NOTICE for the attention of the Manager School Organisation and Planning Essex County Council Schools Children & Families Directorate PO Box 4261 County Hall Chelmsford CM1 1GS

- 3.2 The Developer confirms that any communication which is to be served on the Developer should be sent to [] at []
- 3.3 The Owner confirms that any communication which is to be served on the Owner should be sent to [] at []
- 3.4 The Payers shall serve on the County not less than four weeks prior to Commencement a notice stating the expected date Commencement will take place and the Unit Mix of the Development and in the event that the Unit Mix constructed or to be constructed on the Development should at any time differ from the Unit Mix notified to the County then the Payers shall serve on the County a further notice stating the revised Unit Mix within fourteen (14) days of the revised Unit Mix being decided
- 3.5 The Payers shall serve on the County a notice within one (1) month of first Occupation of a Residential Dwelling and on a six (6) monthly basis thereafter indicating the Unit Mix of Occupied Residential Dwellings together with the Unit Mix of Residential Dwellings that are under construction and also indicating the Unit Mix of Residential Dwellings where construction work has yet to start at the time the notice is served

Education Contribution

4. The Payers agree and undertake
 - 4.1 Not to Commence before paying the Education Contribution to the County
 - 4.2 To pay the Education Contribution to the County before Commencement
 - 4.3 That in the event that the Unit Mix does not match the Anticipated Unit Mix the Payers agree the County shall be entitled to revise the Education Contribution accordingly and demand and enforce payment of the Education Contribution as revised and even in the event that the Education Contribution has been paid the Payers undertake to pay an additional appropriate sum which shall from the date payment is received by the County form part of the Education Contribution
 - 4.4 That In the event that the Payers fail to serve notice as set out in clause 3.4 then the County may calculate the amount of the Education Contribution based on an estimate of the Unit Mix as it sees fit acting reasonably and demand and enforce payment of the Education Contribution by the Payers at any time thereafter
 - 4.5 In the event that the Education Contribution or part thereof is paid later than the date of Commencement then the amount of the Education Contribution or part thereof payable by the Payers shall in addition include either an amount equal to any percentage increase in build costs between the Education Index Point prevailing at the date of Commencement and the date of payment multiplied by the Education Contribution or part thereof due or if greater an amount pertaining to interest on the Education

Contribution or part thereof due calculated at the Local Authority Seven Day deposit Rate from the date of Commencement until the date payment of the amount due is received by the County

Transfer of Interests

- 5.1 The Payers shall save for liability in respect of any antecedent breach upon parting with its interest in the Site be released from all obligations rights and duties under the terms of this Undertaking and all outstanding obligations rights and duties shall pass to the Payers successors in title to the Site
- 5.2 Otherwise than in relation to individual purchasers of Residential Dwellings on the Site the Payers shall give to the County within one month of the Payers disposing of any part of the land comprised in the Site written notice of the name and address of the person or persons to whom the land has been transferred

General

- 6.1 Any covenant by the Payers not to do an act or thing shall be deemed to include an obligation to use reasonable endeavours not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred
- 6.2 The Payers acknowledge that nothing in this Undertaking shall prejudice or affect the rights powers duties and obligations of the County or the Council in the exercise of their functions in any capacity and the rights powers duties and obligations of the County or the Council under private public or subordinate legislation may be effectively exercised
- 6.3 The Payers declare that any obligation covenant or undertaking contained herein by the Payers which comprise more than one person or entity shall be joint and several and where any obligation covenant or undertaking is made with or undertaken towards more than one person it shall be construed as having been made with or undertaken towards each such person separately and where the Payers are different persons agreements obligations covenants and undertakings given by either shall be deemed to be given jointly and severally by both
- 6.4 If any provision of this Undertaking is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Undertaking shall continue in full force and effect and the Payers shall amend those provisions in such a reasonable manner so as to achieve the intention of the Payers Council and County PROVIDED ALSO that the Payers must seek the consent of the County and the Council to the termination of this Undertaking on such terms as may in all the circumstances be reasonable if the effect of the foregoing

Section 106 Agreement Education Clauses



Essex County Council

Education Contribution

Section 106 Agreement

Under Section 106 of the Town and Country Planning Act 1990 as amended

DATE

[]

BETWEEN

Essex County Council; []; [] Council and []

FOR

A monetary contribution towards the provision of primary secondary and early years and childcare facilities

DEVELOPMENT

[]

PLANNING APPLICATION NUMBER

[]

PARTIES

- (1) ESSEX COUNTY COUNCIL of County Hall Market Road Chelmsford in the County of Essex CM1 1LX (hereinafter called "**the County**") and
- (2) [] (hereinafter called "**the Developer**")
- (3) [] (hereinafter called "**the Council**")
- (4) [] (hereinafter called "**the Owner**")

RECITALS

- (1) The County and the Council are local planning authorities for the purposes of the Town and Country Planning Act 1990 as amended for the area within which the Site is situated and the County and the Council may enforce the terms of this Agreement
- (2) The County is the local authority for statutory age education and pre statutory age education and childcare in the area within which the Site is situated
- (3) [] is the owner of the Site which forms the land registered at HM Land Registry with Freehold Title Absolute under Title Number []
- (4) The Planning Application has been made to the Council on behalf of [the] and in granting the Planning Permission the Council consider it expedient that provision should be made for regulating or facilitating the Development or use of the Site in the manner hereinafter appearing and that entering into this Agreement will be of benefit to the public

IT IS HEREBY AGREED AS FOLLOWS: -

Operative Powers

- 1.1 This Agreement is made pursuant to Section 106 of the 1990 Act to the intent that it shall bind the Payers and their successors in title and assigns and the persons claiming under or through it
- 1.2 This Agreement creates planning obligations for the purposes of Section 106 of the 1990 Act

Interpretation

2.1 In this Agreement the following expressions shall have the following meanings:-

"the 1990 Act" means the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004

"Commencement" means the carrying out on the Site of a material operation described in Section 56 of the 1990 Act PROVIDED ALWAYS for the purposes of this Agreement Commencement shall exclude demolition site survey investigation preparation remediation the removal of services or the erection of fences or hoardings and **"Commence"** shall mutatis mutandis be construed accordingly

"Demolished Early Years and Childcare Pupil Product" means the number of early years and childcare places generated by the Demolished Residential Dwellings which shall be the Demolished Qualifying Flats multiplied by 0.045 plus the Demolished Qualifying Houses multiplied by 0.09

"Demolished Primary Pupil Product" means the number of primary pupil places generated by the Demolished Residential Dwellings which shall be the Demolished Qualifying Flats multiplied by 0.15 plus the Demolished Qualifying Houses multiplied by 0.3

"Demolished Qualifying Flats" means the number of Flats (if any) with two or more rooms that may by design be used as a bedroom that at the date of this Agreement are habitable and shall be demolished in accordance with the Planning Permission

"Demolished Qualifying Houses" means the number of Houses (if any) with two or more rooms that may by design be used as a bedroom that at the date of this Agreement are habitable and shall be demolished in accordance with the Planning Permission

"Demolished Residential Dwellings" means the Demolished Qualifying Flats and the Demolished Qualifying Houses

"Demolished Secondary Pupil Product" means the number of secondary pupil places generated by the Demolished Residential Dwellings which shall be the Demolished Qualifying Flats multiplied by 0.1 plus the Demolished Qualifying Houses multiplied by 0.2

"Development" means the development permitted by the Planning Permission

"Early Years and Childcare Contribution" means the Net Early Years and Childcare Pupil Product multiplied by the cost generator of [] pounds sterling (£[]) adjusted by the percentage change in build costs from the Education Index Point prevailing at April 20XX to the Education Index Point prevailing at the date of Commencement

"Education Contribution" means the Early Years and Childcare Contribution and the Primary Education Contribution and the Secondary Education Contribution

“Education Index” means the Department for Business Innovation and Skills Tender Price Index of Public Sector Building Non-housing (PUBSEC Index) with 1985 equalling 100 or in the event that the PUBSEC Index is no longer published or the calculation method used is substantially altered then an appropriate alternative index nominated by the County

“Education Index Point” means a point on the most recently published edition of the Education Index at the time of use

“Education Purposes” means the provision of facilities for the education and/or care of children between the ages of 0 to 19 (both inclusive) within 3 miles of the Development or such other education and/or childcare facility that in the opinion of the County best serves the Development including the reimbursement of capital funding for such provision made by the County in anticipation of the Education Contribution

“Flat” means a Residential Dwelling that occupies a single floor and /or does not benefit from private open space for the exclusive use of the residents of the Residential Dwelling and no other persons

“Gross Early Years and Childcare Pupil Product” means the Qualifying Flats multiplied by 0.045 plus the Qualifying Houses multiplied by 0.09

“Gross Primary Pupil Product” means the Qualifying Flats multiplied by 0.15 plus the Qualifying Houses multiplied by 0.3

“Gross Secondary Pupil Product” means the Qualifying Flats multiplied by 0.1 plus the Qualifying Houses multiplied by 0.2

“House” means a Residential Dwelling that does not meet the definition of a Flat

“Local Authority Seven Day Deposit Rate” means the rate of interest the County can expect to earn on investments through the money market the rate used being the one for the Friday of each week applied for the preceding week and which is published on the Financial Times web site the following Monday or in the event that the rate is no longer published or the calculation method is substantially altered then an appropriate alternative rate nominated by the County

“Net Early Years and Childcare Pupil Product” means the Gross Early Years and Childcare Pupil Product less the Demolished Early Years and Childcare Pupil Product

“Net Primary Pupil Product” means the Gross Primary Pupil Product less the Demolished Primary Pupil Product

“Net Secondary Pupil Product” means the Gross Secondary Pupil Product less the Demolished Secondary Pupil Product

“Occupation” means occupation of a building constructed as part of the Development but excluding day time occupation by workmen involved in the construction of the Development or in so far as such uses are ancillary to the construction of the Development the use of finished buildings for sales purposes for use as temporary offices or for the

storage of plant and materials and "**Occupied**" shall mutatis mutandis be construed accordingly

"Payers" means the Developer and the Owner

"Planning Application" means the planning application which the Council has given the reference [] requesting planning permission to develop the Site to form a maximum of X Residential Dwellings [of which X shall be Qualifying Flats and X shall be Qualifying Houses]

"Planning Permission" means the planning permission granted pursuant to the Planning Application including any reserved matters and / or amendments to the Planning Application and / or renewal of the Planning Application given planning permission by the Council

"Primary Education Contribution" means the Net Primary Pupil Product multiplied by the cost generator of [] pounds sterling (£[]) adjusted by the percentage change in build costs from the Education Index Point prevailing at April 20XX to the Education Index Point prevailing at the date of Commencement

"Qualifying Flats" means the number of Flats that shall be constructed on the Site that have two or more rooms that may by design be used as bedrooms

"Qualifying Houses" means the number of Houses that shall be constructed on the Site that have two or more rooms that may by design be used as bedrooms

"Residential Dwelling" means a Residential Dwelling to be constructed on the Site or created by conversion of an existing building on the Site

"Secondary Education Contribution" means the Net Secondary Pupil Product multiplied by the cost generator of [] pounds sterling (£[]) adjusted by the percentage change in build costs from the Education Index Point prevailing at April 20XX to the Education Index Point prevailing at the date of Commencement

"Site" means the area edged red on drawing [] attached hereto comprising of [*insert number*] hectares of land

"Unit Mix" means the number of Demolished Qualifying Flats and the number of Demolished Qualifying Houses and the number of Qualifying Flats and the number of Qualifying Houses and the number of Residential Dwellings that by definition shall not be counted as Qualifying Houses or Qualifying Flats

- 2.2 References in this Agreement to the Payers and the County and the Council or any one or more of them shall include reference to their respective successors in title and to persons claiming through or under them
- 2.3 Words importing the singular meaning where the context so admits shall include the plural meaning and vice versa
- 2.4 Words of the masculine gender include the feminine and neuter genders and words denoting natural persons include companies corporations and firms and all such words shall be construed interchangeably in that manner
- 2.5 Words denoting an obligation on a party to do any act matter or thing shall include an obligation to procure that it be done and words placing a party under a restriction shall include an obligation not to cause permit or allow infringement of the restriction
- 2.6 Any reference to an act of parliament shall include any modification extension or re-enactment thereof for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given thereunder or deriving validity therefrom
- 2.7 Headings contained in this Agreement are for reference purposes only and should not be incorporated into this Agreement and shall not be deemed to be any indication of the meaning of the parts of this Agreement to which they relate

Notices

- 3.1. Any notice or other written communication to be served or given by one party upon or to any other under the terms of this Agreement shall be deemed to have been validly served or given if received by electronic mail received by facsimile delivered by hand or sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given provided that the notice or other written communication is marked as follows for each recipient:
 - 3.1.1 for the Payers it shall be marked for the attention of []
 - 3.1.2 for the County it shall be marked URGENT NOTICE for the attention of the Manager School Organisation and Planning, Essex County Council Schools Children & Families Directorate, PO Box 4261, County Hall, Chelmsford, CM1 1GS.
 - 3.1.3 for the Council it shall be marked for the attention of []
- 3.2 The Payers shall serve on the County not less than three (3) months prior to Commencement a notice stating the expected date Commencement will take place and the Unit Mix of the Development and in the event that the Unit Mix constructed or to be constructed on the Development should at any time differ from the Unit Mix notified to the County then the Payers shall serve on the County a further notice stating the revised Unit Mix within fourteen (14) days of the revised Unit Mix being decided

- 3.3 At least one (1) month prior to the expected date of Commencement notified to the County pursuant to Clause 3.2 the County shall serve notice on the Payers stating the amount of the Education Contribution due at the expected date of Commencement
- 3.4 The Payers shall serve on the County a notice on first Occupation of a Residential Dwelling within one (1) month thereof and on a six (6) monthly basis thereafter indicating the Unit Mix of Occupied Residential Dwellings the Unit Mix of Residential Dwellings that are completed but not Occupied the Unit Mix of Residential Dwellings that are under construction and the Unit Mix of Residential Dwellings where construction work has yet to start at the time the notice is served

Education Contribution

- 4.1 The Payers shall not Commence before paying the Education Contribution to the County
- 4.2 The Payers shall pay the Education Contribution to the County prior to Commencement
- 4.3 In the event that the Payers fail to serve notice as set out in clause 3.2 then the County may calculate the amount of the Education Contribution based on an estimate of the Unit Mix as it sees fit acting reasonably and demand and enforce payment of the Education Contribution by the Payers at any time thereafter
- 4.4 In the event that the Unit Mix to be constructed on the Development does not match the Unit Mix on which the Education Contribution paid was based the Payers shall pay to the County as soon as the change in Unit Mix becomes apparent any additional amount pertaining to the difference between the Education Contribution paid and the Education Contribution pertaining to the Unit Mix to be constructed as part of the Development and any such additional amount shall from the date payment is received by the County form part of the Education Contribution
- 4.5 In the event that the Education Contribution or part thereof is paid later than the date of Commencement then the amount of the Education Contribution or part thereof payable by the Payers shall in addition include either an amount equal to any percentage increase in build costs between the Education Index Point prevailing at the date of Commencement and the date of payment multiplied by the Education Contribution or part thereof due or if greater an amount pertaining to interest on the Education Contribution or part thereof due calculated at the Local Authority Seven Day Deposit Rate from the date of Commencement until the date payment of the amount due is received by the County
- 4.6 The County shall place the Education Contribution when received from the Payers into an interest bearing account and utilise the same solely for Education Purposes
- 4.7 In the event that the Education Contribution is overpaid by the Payers then the County shall be under no obligation to return any such overpaid

sum in whole or in part if in good faith the County have spent the Education Contribution or have entered into a legally binding contract or obligation to spend the Education Contribution

- 4.8 If requested in writing by the Payers no sooner than the tenth (10th) anniversary of the first Occupation of a Residential Dwelling but no later than one year thereafter and provided the Payers have served notice of first Occupation of a Residential Dwelling on the County in accordance with Clause 3.4 the County shall return to the Payers any part of the Education Contribution that remains unexpended when such notice is received (together with interest accrued that relates to that unexpended part) PROVIDED ALWAYS THAT if the County is legally obliged to make a payment in respect of Education Purposes the unexpended part of the Education Contribution shall not be repaid until such payment is made and the unexpended part of the Education Contribution to be repaid shall not include such payment
- 4.9 Upon receipt of a written request from the Payers prior to the eleventh (11th) anniversary of the first Occupation of a Residential Dwelling the County shall provide the Payers with a statement confirming whether the Education Contribution has been spent and if the Education Contribution has been spent in whole or in part outlining how the Education Contribution has in whole or in part been spent
- 4.10 Any dispute in relation to how the Education Contribution has been spent must be raised in writing by the Payers and received by the County within one month of receipt by the Payers of the Council's statement referred to in Clause 4.9 and shall clearly state the grounds on which the expenditure is disputed
- 4.11 In the event that no written request is received by the County from the Payers pursuant to Clause 4.8 or no valid dispute is raised by the Payers pursuant to Clause 4.10 above the Payers shall accept that the Education Contribution has been spent in full on Education Purposes

Transfer of Interests

- 5.1 The Payers shall save for liability in respect of any antecedent breach upon parting with its interest in the Site be released from all obligations rights and duties under the terms of this Agreement and all outstanding obligations rights and duties shall pass to the Payers successors in title to the Site
- 5.2 Otherwise than in relation to individual purchasers of Residential Dwellings the Payers shall give to the County within one month of the Payers disposing of any part of the land comprised in the Site written notice of the name and address of the person or persons to whom the land has been transferred

General

- 6.1 It is hereby agreed that the provisions of this agreement shall become effective at the date of this agreement
- 6.2 Unless otherwise specified where any agreement certificate consent permission expression of satisfaction or other approval is to be given by any party or any person on behalf of any party hereto under this Agreement the same shall not be unreasonably withheld or delayed but may only be given in writing and may be validly obtained only prior to the act or event to which it applies and the party giving such agreement certificate consent permission expression of satisfaction or other approval shall at all times act reasonably and where any payment of costs or other payments are to be made by the Payers to the County or to the Council such costs and other payments shall be deemed to be reasonable and proper
- 6.3 Any covenant by the Payers not to do an act or thing shall be deemed to include an obligation to use reasonable endeavours not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred
- 6.4 No compensation shall be payable by the County to any party to this Agreement arising from the terms of this Agreement
- 6.5 Nothing in this Agreement shall prejudice or affect the rights powers duties and obligations of the County in the exercise of its functions in any capacity and the rights powers duties and obligations of the County under private public or subordinate legislation may be effectively exercised as if it were not a party to this Agreement (and in particular it shall not be precluded from entering into any agreement under the 1990 Act with any other party and shall not be deemed to be in breach of this Agreement by so doing)
- 6.6 Any agreement obligation covenant or undertaking contained herein by any of the parties which comprise more than one person or entity shall be joint and several and where any agreement obligation covenant or undertaking is made with or undertaken towards more than one person it shall be construed as having been made with or undertaken towards each such person separately and where the Payers are different persons agreements obligations covenants and undertakings given by either shall be deemed to be given jointly and severally by both
- 6.7 If any provision of this Agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Agreement shall continue in full force and effect and the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality provided that any party may seek the consent of the other or others to the termination of this Agreement on such terms as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of the parties

- 6.8 No variation to this Agreement shall be effective unless made by Deed or pursuant to the determination of an application made under Section 106A of the 1990 Act
- 6.9 The failure by any party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement
- 6.10 Wherever there is any dispute under the terms of this Agreement which shall not be resolved within six months of any party having notified the others that such dispute exists any party shall have the right to refer the same to the decision of an Arbitrator to be appointed by the President for the time being of the Chartered Institute of Arbitrators in accordance with the provisions of the Arbitration Act 1996 from time to time subsisting
- 6.11 The Payers hereby agrees to pay forthwith the County's reasonable legal costs of and incidental to the preparation of negotiation of and entering into of this Agreement
- 6.12 This Agreement shall be enforceable as a local land charge and shall be registered as such
- 6.13 The applicable law for this Agreement shall be English law
- 6.14 It is hereby agreed and declared that a person who is not a party to this Agreement shall not be entitled in his own right to enforce any term of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999

I N W I T N E S S whereof this document has been executed as a Deed and delivered the day and year first before written

(1) The common seal of the County
was hereunto affixed in the presence of: - []
Attesting Officer

(2) The common seal of the Developer
was hereunto affixed in the presence of: - []
Authorised Signatory

(3) The common seal of the Council
was hereunto affixed in the presence of: - []
Attesting Officer

(4) The common seal of the Owner
was hereunto affixed in the presence of: - []
Authorised Signatory

Appendix D

Education Site Suitability Criteria Checklist

Site Name / Location :			
<i>Please attach plan</i>			
Please tick those criteria that the land fully meets. Give details overleaf of how the land might not be considered to fully meet any of the criteria. Supporting evidence such as contamination reports and topographical plans should be attached.			
CRITERIA	YES	NO	Evidence Attached
<i>Is the land suitable for the construction of high quality education buildings and outside spaces?</i>			
Flat ground			
Broadly level (A gradient of 1 in 70, across the width, is ideal to assist water run off from most pitches)			
At level with surrounding areas			
Roughly rectangular in shape			
Longer north to south boundaries of at least 120 meters each			
Shorter east to west boundaries of at least 70 meters each			
At least 30cm of clean topsoil			
Free draining			
Standard trench fill / strip foundations can be used			
<i>Is the site appropriately located for a school / early years & childcare facility to be established?</i>			
Centrally located to the overall development or area the school will serve			
Well located in relation to other neighbourhood facilities and public realm			
Not crossed by any public rights of way or access wayleaves			
Not liable to flooding			
Not crossed by or bounded by any power-lines			
Not crossed by and sufficiently distant from any gas mains			
Outside the cordon sanitaire of any sewage plant			
Free of items or structures of archaeological interest			
Free from protected species or habitats of special interest			
Site not part of a conservation area or subject to any special planning authority restrictions			
<i>Is the site and surrounding area free of pollution, contamination and other risk factors?</i>			
Free of soil and water table contamination			
Outside any current or proposed 57dBA Leq noise contour of an airport or similar facility			
Free from radiation or potential sources thereof			
Air quality standards are met			
Free from invasive plants such as Japanese Knotweed			
Not affected by ground gasses and vapours			
Not affected by potential sources of noise or light pollution e.g. major roads, car parks or industry			

Education Contribution Guidelines Supplement

<i>Is the site sufficiently distant from any land use that could cause public anxiety?</i>			
Chemical or petro-chemical production or storage			
Establishments storing or handling live viruses			
Facilities housing or treating people with a history of violence or a threat to children			
Incinerators			
Sites currently or previously used for land fill or rubbish disposal			
Aviation or high speed transportation e.g. train lines or helipads			
Major roads or traffic honeypots e.g. large retail outlets			
Prisons or facilities for persons with a history of offending			
Phone or radio masts and transmitters			
High voltage power lines			
Premises housing dangerous animals, birds, reptiles or insects			
<i>Is the site free from encumbrances that may need to be removed?</i>			
Free of buildings and other surface structures			
There are no trees on or abutting the site			
Free of pipes and underground cables			
Free from foundations, fuel tanks and other buried structures			
Free from spoil and fly tipping			
Free from filled spaces including mineral workings and land fill			
Free of void spaces including wells, sumps and pits			
<i>Will suitable safe access be provided to the site at appropriate points in time?</i>			
Access to all parts of the site for investigation purposes			
Usable vehicular/plant access suitable for construction and commissioning purposes			
Adopted public highway with suitable vehicular access to service buildings (not a cul-de-sac)			
Separate suitable vehicular access to service the playing field			
Access to both ends of the site for emergency purposes			
Direct pedestrian access to facilitate 'safe routes to school'			
A safe pedestrian realm to which children can egress at the end of the school/pre-school day			
Traffic calming or 20mph speed limits on surrounding roads			
Safe and direct cycle routes usable by the population to be served by the new facility			
Nearby links into the public transport network			
<i>Will the site be sufficiently serviced by the following utilities to suitable boundaries prior to transfer?</i>			
Water			
Electricity			
Gas			
Telephone			
Broadband			
Foul sewers			
Surface water drainage			

If you have answered 'No' in relation to any criteria, please give details below or on a separate sheet.

Please give details of any current or proposed adjoining land use that may disrupt the normal functioning of a school or early years & childcare facility, detract from learning or place anyone associated with the establishment at risk.

Please give any other details you know about, that may make this land unsuitable for a school or early years & childcare facility or may add to the cost of building or establishing one on the site.

DECLARATION

I confirm that the information I have given represents full disclosure of the facts and I have taken all necessary steps to ensure it is accurate beyond reasonable doubt. Should any information become evident in the future, that may have altered the response I have given, I will bring these facts to Essex County Council's attention immediately.

SIGNED:

ON BEHALF OF:

DATE:

Appendix E**Land Compliance Study Brief****Outline**

The purpose of the Land Compliance Study is to look at potential sites, or an 'area of search', to ascertain whether locations are suitable for Schools and/or Early Years & Childcare use. Facilities must be well located, safe and offer value for money. The range of issues that could make land unsuitable is too lengthy to list and therefore a holistic approach to the study is needed. It is the consultant's responsibility to decide which factors need investigating, and to what degree, in order for them to make their recommendation as to whether or not land is acceptable.

A study will usually be commissioned to inform Essex County Council's (ECC) response to a Local Development Framework consultation or a major pre-application enquiry from a developer. ECC will rely upon the content and recommendations of the final report produced by the consultant and therefore suitable warranties for the work are required.

Process

The consultant will be responsible for obtaining adequate information, leading meetings and other events, drawing suitable conclusions and providing a written record of their findings and recommendations. It is likely that they will be required to:-

- Attend an 'initial briefing meeting' with ECC officers;
- Make site visits;
- Collect information and review studies compiled by developers;
- Commission further studies to fill any gaps in available information;
- Organise, facilitate and minute a stakeholders event to discuss infrastructure deficits (e.g. services/access) & service delivery synergies (e.g. joint use of pitches/co-location of library);
- Hold discussions with key stakeholders / interested parties to gain a rounded view of issues;
- Evaluate the land as far as possible against the Site Suitability Checklist;
- Comprehensively evaluate the land against relevant government and professional guidance;
- Agree an 'Unresolved Risk Register' and/or commission/undertake further work;
- Meet with ECC's client officer to finalise report, ensuring brief met in full;
- Produce a final report and distribute a summary to stakeholders;
- Provide follow-up technical advice allowing smooth transition to the Site Feasibility Study stage (allowance to be included in fee collection).

Information Requirements

The consultant will be expected to collect all the information needed to complete the task. Stakeholders should be approached to provide existing studies, with additional work commissioned where available information is scant, unreliable or where gaps are identified. Desktop studies should be used, where appropriate to control costs, but invasive / field investigations may be agreed if deemed

prudent. Information requirements are likely to include, but may not be confined to:-

- Ordnance Survey maps and historical documents showing previous use;
- Topographical Survey of area;
- Ground Conditions Study* including local geology maps;
- Soil & Ground Water Contamination Study*;
- Flood Risk Assessment including Environment Agency flood zone designation;
- Archaeological Survey*;
- Habitat, Arboriculture and Ecology Study including site walkover report*;
- Planning Policy documents including relevant planning history;
- Noise Assessment against criteria in DCSF Building Bulletin 93;
- Air Quality Assessment including reference to Air Quality Management Areas;
- Mobile Phone/Radio Mast Locations including operating characteristics (Ofcom);
- Partner organisation plans for area.

** Denoted items requiring 'Phase One' desktop study with appropriate intrusive investigations commissioned if necessary.*

Final Report

The 'Final Report' will be produced following feedback provided by ECC Officers and stakeholders attending the presentation. Four bound paper copies and a 'pdf' CD-ROM version must be provided. A summary version of the report setting out key points relevant to stakeholders must also be produced and emailed to interested parties approved by ECC. Inability to meet any of the information or reporting requirements must be discussed with ECC and reflected in fee collection. To assist the consultant when compiling the report and to provide ECC with a uniform standard of presentation the report should include, as a minimum, the following sections: -

Introduction: - Purpose of the report; process undertaken and summary of key issues.

Area Context: - Description of area/locations and relationship with immediate surrounding areas (including photographs).

Consultation Responses: - Commentary on feedback from stakeholders, including the local planning authority; the developer; ECC officers and other agencies. Any opportunities for joint use or co-location of services should be clearly identified and evaluated.

Criteria Based Assessment: - An evaluation of the suitability of the land against each of the criteria set out in the 'Site Suitability Checklist'. It is accepted that some criteria cannot be fully evaluated at this stage and therefore these should be highlighted, as appropriate, for investigation as part of the Site Feasibility Study.

Holistic Assessment: Consideration of the suitability of the land against relevant planning, construction, legal and education regulations, advice and best practice including consideration of any potential exceptional costs.

Unresolved Risks: Completion of register (format provided below).

Conclusions: A list and explanation of the conclusions drawn regarding the suitability of the land for education use including how various considerations have been balanced. Where appropriate, the relative advantages of different locations within the area studied should be stated.

Recommendation: An unequivocal recommendation as to whether or not the land, or parts thereof, should be accepted by ECC and used for the purposes set out in the briefing document. Where appropriate, a preferred location within the area studied should be identified.

Appendices: To include all studies referred to in the report; a list of other reference materials used; minutes of key stakeholder meetings and details of warranties provided including professional body indemnities & third party backed guarantees.

Copyright to the final report in whole and in part, including any commissioned appendices, will rest with ECC and any element, including pictures, may subsequently be reproduced in other ECC publications. Prior to fee collection ECC will require the consultant to provide warranties for the work carried out so that, in the event that any of the final report's content is found to be inaccurate or misleading, any loss that results from ECC's reliance on the offending part of the report may be recovered. The consultant should therefore secure, and thereafter transfer to ECC, warranties for any third party work they rely upon or otherwise use in the report.

Timescales

The consultant will be expected to commence work on the study no later than two weeks following the commission being confirmed. An indicative work programme should be submitted and agreed at the initial briefing meeting, setting out when each stage of the process will be completed. Studies are expected to take between two and four months from inception to submission of final report, depending on complexity.

Unresolved Risk Register

Sheet of

THE RISK

Description of the Issue	
Why has the study not been able to resolve the issue?	

RISK AVOIDANCE

What are the circumstances that may lead to the issue being encountered?	
How can ECC minimise/eliminate the likelihood that the issue is encountered?	

RISK HANDLING

	Time Delay	Cost	Quality of Outcome
What will the impact be if the issue is encountered?			
How can the impact of the issue be minimised if encountered?			

NOTES / COMMENTS

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Appendix F**Site Feasibility Study Brief****Outline**

Following the completion of the Land Compliance Study, a Site Feasibility Study is needed to investigate site specific issues and produce outline project costings. Whether it is desirable to build an education facility on a particular plot of land depends on a significant range of issues including both absolutes and broader principles that may need to be balanced. The question that the consultant should keep in the back of their mind is 'would I send my child to a school or early years & childcare facility built on that site?' They are therefore responsible for deciding which factors need investigating in order for them to make their recommendation as to whether or not a site is acceptable.

A study will usually be commissioned to inform Essex County Council's (ECC) response to an area action plan or planning application. At this stage, as well as education issues, the joint use or co-location of other community facilities must be considered.

ECC will rely upon the content and recommendations of the final report produced by the consultant and therefore suitable warranties for the work are required.

Process

The consultant will be responsible for obtaining adequate information, leading meetings and other events, drawing suitable conclusions and providing a written record of their findings and recommendations. It is likely that they will be required to:-

- Review the Land Compliance Study to identify any further work that is required to determine the suitability of land, now that a 'red line' site has been identified;
- Attend an 'initial briefing meeting' with ECC officers;
- Make site visits;
- Collect information and review studies compiled by developers;
- Commission further studies to fill any gaps in available information;
- Hold discussions with key stakeholders and interested parties to gain a rounded view of issues;
- Organise, facilitate and minute a 'key issues' workshop event for stakeholders;
- Agree an 'Unresolved Risk Register' and/or commission/undertake further work;
- Fully evaluate the site against the Site Suitability Checklist;
- Comprehensively evaluate the site against relevant government and professional guidance;

- Estimate the full cost of delivering the project on the site (including any options);
- Deliver a presentation to key stakeholders setting out draft conclusions and soliciting feedback;
- Meet with ECC's client officer to finalise report, ensuring brief met in full;
- Produce final report and distribute a summary to stakeholders;
- Provide follow-up support relating to the completion of legal agreements (allowance to be included in fee collection).

Information Requirements

The consultant will be expected to collect all the information needed to complete the task. The evidence base compiled during the Land Compliance Study should be built on to provide a detailed picture of the specific site, that has been identified for education use, and its immediate environs. Care should be taken not to duplicate work undertaken during the previous study but where gaps are identified or site specific detail is lacking additional investigations may be approved. New information sources are likely to include: -

- Local Development Framework documents & consultations;
- Developer master-plans and phasing plans;
- Planning applications;
- Utility & service plans including capacity data from statutory suppliers;
- Local Transport Plans and Travel Plans;
- Site Access Statements and drawings.

Final Report

The 'Final Report' will be produced following feedback provided by ECC Officers and stakeholders attending the presentation. Four bound paper copies and a 'pdf' CD-ROM version must be provided. A summary version of the report setting out key points relevant to stakeholders must also be produced and emailed to interested parties approved by ECC. Inability to meet any of the information or reporting requirements must be discussed with ECC and reflected in fee collection. To assist the consultant when compiling the report and to provide ECC with a uniform standard of presentation the report should include, as a minimum, the following sections: -

Introduction: - Purpose of the report; process undertaken and summary of key issues.

Site Context: - Description of site and relationship with immediate surrounding areas (including photographs).

Compliance: A review of the Land Compliance Study in relation to the specific site now identified, including details of any additional work undertaken and necessary changes to content / conclusions.

Consultation Responses: - Commentary on feedback received including the workshop and meetings held with stakeholders such as the local planning authority; the developer; utility providers and highways officers.

Opportunities: - Details of any opportunities for partnership working or exemplar practice such as joint service provision or 'green' buildings.

Criteria Based Assessment: - An evaluation of the suitability of the land against each of the criteria set out in the 'Site Suitability Checklist'. Work completed during the Land Compliance Study should be updated to relate to the specific site being studied.

Holistic Assessment: Consideration of the suitability of the site against relevant planning, construction, legal and education regulations, advice and best practice.

Layout: Indicative layout including buildings, outdoor areas and access. The purpose of these plans is to prove that the relevant ECC model brief can be delivered on the site and to provide a basis for costings. Detailed designs are not required and the plans are not intended to dictate how the facility in question will eventually look. A location for a site compound and construction access should also be identified.

Phasing: Confirmation that project timescales can be met in this location by reference to phasing plans for the development and the resultant provision of necessary infrastructure.

Project Costings: Itemised estimated costings for the project and different options, including appropriate fees and taxation. The assumptions underlying the costings must be stated.

Exceptional Costs: A list of any costs over and above the normal costs of establishing the facility, on the land in question, plus suggested ways of minimising these costs in terms of time and money.

Unresolved Risks: Update of register established as part of the Land Compliance Study adding any site specific or newly identified risks.

Conclusions: A list and explanation of the conclusions drawn regarding the suitability of the site for the purposes stated in the briefing document including how various considerations have been balanced.

Recommendation: An unequivocal recommendation as to whether or not the site should be accepted by ECC and used for the purposes set out in the briefing document.

Conditions: A list of any conditions ECC should secure from the land owner prior to taking ownership of the land including remediation, ground works, section 106 obligations and warranties. Any location specific works required prior to transfer, including any structures that should be removed or retained, must be shown on a plan. Recommended off site works, such as traffic calming measures or safe walking/cycling routes, should also be denoted on a plan.

Appendices: To include all studies referred to in the report; a list of other reference materials used; event/meeting minutes and details of warranties provided including professional body indemnities & third party backed guarantees.

Copyright to the final report in whole and in part including any commissioned appendices will rest with ECC and any element including pictures may subsequently be reproduced in other ECC publications. Prior to fee collection ECC will require the consultant to provide warranties for the work carried out so that, in the event that any of the final report's content is found to be inaccurate or misleading, any loss that results from ECC's reliance on the offending part of the report may be recovered. The consultant should therefore secure, and

transfer to ECC, warranties for any third party work they rely upon or otherwise use in the report.

Timescales

The consultant will be expected to commence work on the study no later than two weeks following the commission being confirmed. An indicative work programme should be submitted and agreed at the initial briefing meeting setting out when each stage of the process will be completed. Studies are expected to take between two and four months from inception to submission of final report, depending on complexity.

Appendix G

Early Years & Childcare Centre Example Model Brief

56 Place Facility Requirements	Places	M ²
<u>12 x 0-2s</u>	12	
3.5m ² of area per child		42
Milk preparation area		6
Baby change		5
Defined sleep area		12
<u>2-3s</u>	20	
2.5m ² of area per child		50
2 children's toilets		12
<u>3-4s</u>	24	
2.3m ² of area per child		55
2 children's toilets		12
<u>Other facilities</u>		
Laundry room- to include washing machine and tumble dryer		6
Servery- to include sink, fridge, kettle, microwave		35
Office- to include a desk and some filing/ storage		10
Accessible toilet with space for mobile baby change table		4
Shower/ hygiene room		6
<u>Shared space</u>		
Staff room		16
Staff toilets		12
Baby change facilities		4
Drop in area/ reception		28
Multi purpose/ meeting room (for maximum 25 people)		50
Small meeting room (suitable for health services)		12
Crèche for up to 12 children with access to outside space		50
Secure buggy store/ lobby		10
Office space for 2 full time staff and 2 hot-desking places		16
Circulation space @15%		60
BUILDINGS - Sub Total		513
Outdoor play (9m ² per child) – south / southeast facing		504
Service area & parking		300
OUTDOOR - Sub Total		804
TOTAL	56	1,317

Appendix H

Primary School Example Model Brief

Two Form Entry Requirements (420 Places)		Classbase Size Options (M ²)			
		1	2	3	4
BASIC	Reception Base 1	69	69	69	69
TEACHING AREAS	Reception Base 2	69	69	69	69
	Standard Base 1	50	54	57	63
	Standard Base 2	50	54	57	63
	Standard Base 3	50	54	57	63
	Standard Base 4	50	54	57	63
	Standard Base 5	50	54	57	63
	Standard Base 6	50	54	57	63
	Standard Base 7	50	54	57	63
	Standard Base 8	50	54	57	63
	Standard Base 9	50	54	57	63
	Standard Base 10	50	54	57	63
	Standard Base 11	50	54	57	63
	Standard Base 12	50	54	57	63
	ICT Suite	40	40	40	
	Shared Practical Area 1	40	40		5
Shared Practical Area 2	40				
HALLS & STUDIOS	Assembly Hall	180	180	180	180
	Small Hall	80	80	80	80
LEARNING RESOURCE	Library	36	36	36	36
	Group Room 1	15	15	15	15
	Group Room 2	15	15	15	15
	Group Room 3	15	15	15	15
STAFF & ADMIN.	Head Teacher	12	12	12	12
	Second Office	8	8	8	8
	Main Admin Office	21	21	21	21
	Reception Area	6	6	6	6
	Therapy Room	8	8	8	8
	Staffroom	42	42	42	42
	Staff Work Areas	18	18	18	18
	Reprographics	5	5	5	5
Sick Bay	2	2	2	2	
COMMUNITY	Area for Extended Use	50	50	50	50
STORAGE	Pupil Coats & Bags	56	56	56	56
	Classbase Stores	48	48	48	48
	Stock Cupboard	12	12	12	12
	Specialist/Secure Stores	12	12	12	12
	PE Storage	25	25	25	25
	Dining/Furniture Store	25	25	25	25
	Caretakers Store & Office	8	8	8	8
	Cleaners Stores	6	6	6	6

NON-NET AREAS	Pupils Toilets - Reception	16	16	16	16
	Pupils Toilets - Other	45	45	45	45
	Hygiene Area	9	9	9	9
	Pupils Changing	16	16	16	16
	Staff Toilets (inc. disabled)	13	13	13	13
	Kitchen (inc. office & w.c.)	74	74	74	74
	IT Server Room	5	5	5	5
	Circulation	344	346	345	353
	Plant & Services	47	47	47	48
	Internal Walls	63	63	63	64
Gross Total Floor Area		2195	2205	2200	2247

Minimum External Spaces

- Grass Playing Pitches 8,400m²
- Hard Surface Games Courts 1,440m²
- Hard Informal Social Areas 1,030m²
- Soft Informal Social Areas 1,850m²
- Habitat Area 620m²

Parking Standards

- Vehicles 28 spaces (maximum)
- Disabled 2 bays (minimum included in above total)
- Cycles 150 racks (approx min subject to travel plan)
- Powered two wheelers 3 spaces (minimum)

Appendix I

Common Utility Loading Requirements

The following information is provided as a guide only, as system and building design will influence precise requirements. Common primary school sizes are listed below. Early Years and Childcare settings will commonly conform to these loadings with a minimum requirement akin to a 210 place primary school. Secondary schools, requiring specialist rooms, will require higher loadings than indicated by pupil numbers.

Electrical, Gas and Water

Places	210	315	420	630
Electrical (three phase)	100KVA 200amps	130KVA 200amps	150KVA 200amps	200KVA 300amps
Gas (21mbar at meter)	230KW/HR	300KW/HR	400KW/HR	550KW/HR
Water (domestic)	50mm 1.5L/S	65mm 2.0L/S	65mm 3.0L/S	65mm 4.2L/S

Sprinkler systems

Requirements depend upon building height and available mains water pressure. The latest BS EN 12845 LPC rules, based on an OHG1 system are as follows:

Towns Main Fed System

Minimum Demand (at valve set) 375 l/min @ 1bar + 1bar for every 10 metres for height of building.

Maximum Demand (at valve set) 540 l/min @ 0.7bar + 1bar for every 10 metres for height of building.

Pressure losses attributable to the length and diameter of infill pipes must be added to the above values to give requirement at the mains connection point.

Pump and Tank System

An OHG1 tank of 27.5m³ in size

Pipe-work supplying water to the tank to deliver 12.73 l/min

Pipe diameter of 80mm

Communications

Two 90mm ducts to local system.

N.B. Advice should be sought from Essex County Council's Construction Management team and the appropriate project manager before relying on any figure given above.



Old Heath Primary School, Colchester
Picture courtesy of the school and Claire Ellis

This booklet is issued by

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