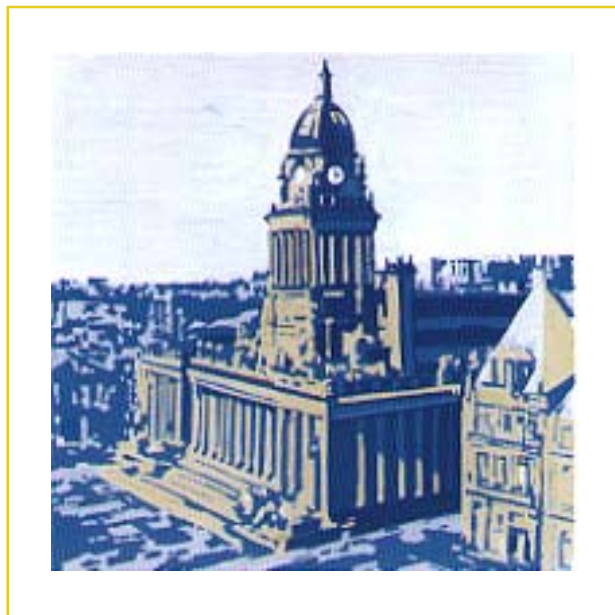


SUPPLEMENTARY POLICY GUIDANCE No. 11

**SECTION 106 CONTRIBUTIONS
FOR SCHOOL PROVISION**

1st February 2001
£5.00

LEEDS CITY COUNCIL



LEEDS UNITARY DEVELOPMENT PLAN

INTRODUCTION

1. Powers are available under Section 106 of the Town and Country Planning Act 1990 (as substituted by the 1991 Act) to secure payments from housing developments toward school provision. Government policy is given in Circular 1/97, "Planning Obligations" and Leeds City Council policy is set down in Revised Draft UDP Policy GP7A. The policy framework circumscribes how the power to require contributions for school provision may be used.
2. UDP Policy GP7A is general to all types of benefit needed to make proposed developments acceptable. This supplementary guidance is intended to amplify and explain how GP7A will be put into practice to secure provision of education facilities which will be needed as a result of proposed housing development. The draft recommendations of the UDP Inquiry Inspector do not materially change this policy stance.
5. The benefit must be **necessary** to make the proposed development acceptable. In terms of school provision, this could mean that a housing development would have to generate a demand for school places which could not be met by existing infrastructure.
6. The benefit has to be directly related to the proposed development. This test is likely to preclude the creation of a policy approach which seeks a proportionate contribution from all new housing developments regardless of whether they generate need for the benefit. It will favour an approach where contributions are sought only from housing developments generating a need for additional provision which could not be met locally.
7. The benefit must be fairly and reasonably related in scale and kind to the proposed development. In practice, this calls for a fair and systematic method of justifying the scale of the contribution.

GOVERNMENT GUIDANCE: CIRCULAR 1/97

3. Annex B of this Circular advises how the powers under Section 106 may be used through the granting of planning permission to obtain a range of benefits. The provision of education facilities is quoted as an example of a benefit that local planning authorities can seek to address a need created by a proposed development (Paras B9 and B10).
4. A number of "tests" are put forward to help judge whether it is acceptable for a planning authority to require provision of a benefit. Supplementary planning guidance on education provision needs to have regard to how the following tests may be satisfied:
 8. The Circular also advises that the cost of maintenance and other recurrent expenditure should normally be borne by the body or authority in which an asset is vested. Some exceptions are quoted to this rule, but education provision is not included (para B14). Hence, contributions for school provision will only be to cover the capital costs of new building and not the cost of books, furniture and maintenance.
 9. There is no explicit advice in the Circular that local authorities should make allowances in the amount of contribution sought to take account of development viability. The Circular does state that attempts should not be made "...to extract excessive contributions to infrastructure costs

from developers"(para B12), that "Planning authorities should, however, be aware of the financial consequences for developers of entering into an agreement." (para B13) and that they should "...bear in mind that attempts to secure benefits may be counter-productive: if they seek more than is justified, they may frustrate worthwhile development proposals...." (para B15).

10. It is not the intention of this SPG to require "benefits" greater than are required to address the education needs arising from the development, allowing for existing provision. Where the viability of a development is brought into question by the required benefits, this can be a material consideration which the City Council can weigh in making its decision on a planning application.

11. The Circular advises that policies to secure benefits through Section 106 Agreements should be set out in development plans giving local community and development interests the opportunity to comment (para B16). The next paragraph goes on to say that such policies should:

- take account of the advice in the Circular,
- not seek unrelated benefits,
- not be based on blanket formulations,
- not seek contributions to a general fund unless for a facility or facilities which would be directly related to individual development proposals,
- not seek contributions to resolve existing problems except where they would be exacerbated by the proposed development
- not specify precise costs in advance
- not seek maintenance payments (see para 8. above)

DEVELOPMENT PLAN POLICY FOR LEEDS

12. The ability to use planning powers to secure education facilities has only emerged as an option recently. Hence, the policy in the Revised Draft UDP of 1993 (as amended by Proposed Changes in 1994) is general to all types of planning benefit which are necessary to make a development acceptable:

GP7A: Where a development would not otherwise be acceptable and a condition would not be effective, prior to granting planning permission a planning agreement will be required to secure economy, efficiency and amenity in the development and use of land, having regard to the interest of the local environment and other planning considerations.

13. Examples of benefits are given in relation to GP7A which includes "improvements to and provision of community buildings and open space for....education purposes".

IDENTIFYING WHERE SCHOOL PROVISION SHOULD BE SOUGHT

14. In accordance with national policy, contributions toward new school provision will only be sought from proposed housing developments where the new housing will generate a need which cannot be met by existing local facilities.

15. Throughout Leeds, a threshold of 50 dwellings or more or sites of 2 hectares or more will determine whether proposed housing developments should qualify for consideration of the need to provide educational benefits.

16. Of the proposed housing developments

above the threshold, the onus is on the Council to identify which of them ought to make a contribution and to recommend how much. To decide, regard will need to be given to the scale of proposed housing schemes and the capacity of existing local schools. As a general guide, in areas where there is known to be a shortage of capacity in existing schools, housing schemes of a scale equal or close to the threshold may be expected to make a contribution. In other areas where there is existing surplus school capacity, only housing schemes of a larger scale are likely to create a need for additional school provision.

17. Where Planning and Development Briefs are prepared for housing sites where school provision is considered necessary, recommendations will be made for how much and what contributions are expected. The fact that a brief approved before the adoption of this guidance makes no recommendation for provision will not be reason to waive consideration of the need for school provision as part of subsequent planning applications.
18. For housing sites where the number of dwellings and time scales for development are not known, a payment towards the provision of education facilities will be required on the basis of estimated numbers of dwellings. Arrangements to ensure that this happens will need to be set out in Section 106 Agreements accompanying outline planning approvals. Contributions cannot be required of reserved matters applications where no obligation was agreed for the outline permission.

COSTING CONTRIBUTIONS

19. Based upon the proposed number of new dwellings (or in the case of outline

applications, estimated number), the Council will produce an initial recommendation of the amount of additional education provision required and the financial contribution necessary. The recommendation will be based upon an estimate of the number of new pupils that a development will generate that cannot reasonably be accommodated by existing school capacity in the locality. The contribution required will equate to the cost of providing the additional school infrastructure necessary.

20. The estimate of how many pupils a housing development generates is based upon Pupil Product Ratios. Through the use of empirical studies, the Education Department has established PPRs appropriate to Leeds of 28 primary children and 10 secondary pupils per 100 new dwellings. This is based upon a Cambridgeshire County Council study and assumes a profile of new owner occupied housing with a balanced mix of dwelling sizes and types when initially occupied.
21. Local school capacity can be projected by the Education Department for the time when the development is likely to be occupied. This will be assumed to be within 12 months unless the developer informs the Council of a different timescale. The meaning of local will usually be taken as the area in which children have reasonable access to a school, having regard to historical trends of school attendance, appeal decisions and physical and perceived boundaries and constraints. For instance, parents may not wish their children to attend a primary school in a different settlement or suburb which is difficult to travel to. Leeds City Council policy aims to have a maximum class sizes of 30 pupils. This will become mandatory for primary school

reception classes in the academic year 1999/2000, for year 1 classes in 2000/1, for year 2 classes in 2001/2 and continue for further primary year intakes in subsequent years.

22. The infrastructure requirements will vary according to the number of pupils needing accommodation and the capacity of existing school facilities. It may be that an existing school needs to have additional class rooms. If two or more classrooms are required, there may be a need for additions to other school facilities (larger dining hall, assembly room, more toilets etc) depending on capacity of existing facilities. Where it will be inappropriate to add to an existing school, a completely new school may be needed. The cost of acquiring any additional land will also have to be accounted for or, if appropriate, it may be possible for a developer to contribute part of the housing site. The cost of fitting out school buildings in terms of standard fixtures and fittings should be included but not the cost of furniture and books etc. The Education Department of the Council will supply costings of all such provision.

REQUIRING, PHASING AND PROPORTIONING COSTS

23. It may be that, on being faced with a recommended contribution toward school provision, a housebuilder may make a case that the proposed housing will not be viable. The Council's response in accordance with Circular 1/97 and UDP Policy GP7A must be that if the school provision is necessary to accommodate the pupil growth which will be generated by the proposal, there may be no option but to insist on its provision or refuse planning permission. It will not be acceptable to allow housing developments to proceed which will

generate a demand for school places that cannot reasonably be met by existing local schools. There are appeal cases in other authorities which support this stance. However, where the pupil numbers requiring additional school accommodation is marginal - perhaps just one or two pupils - the Council will not normally require a developer contribution because pupil generation predictions cannot be relied upon for this level of accuracy. Other exceptional circumstances will need to be considered on their merits.

24. The developer contribution may be secured in different ways. Developers may enter into Section 106 Agreements with the Council to ensure that financial contributions are paid at given times. Normally, payments will be expected on commencement of the housing development or otherwise in time to enable completion of the necessary infrastructure before generation of the demand for additional school places. For large schemes, the Council will normally accept the phasing of payments. Sums will be held in trust by the Council and money not used within 15 years will be repaid with the Council's standard rate of interest. Another possible means of provision will be for the developer to build the education infrastructure as part of the housing development or on another site agreed by the City Council.
25. Where possible, the Council will endeavour to ensure that the contribution which a housebuilder is asked to make is proportionate to the need generated by his proposed development. One difficulty for ensuring proportionality is that provision will normally be required in minimum amounts of whole classrooms. Another difficulty is that where there is potential for a number

of housing developments to make a contribution, they may not all come forward at the appropriate time. Also, some future developments may not be anticipated at the time when a contribution is sought from a current one.

26. When a development generates a need for less than a whole extra classroom, the Council may be able to offer pro-rata funding. However, this will be dependent upon the availability at the right time of Council money and spending approval from the Department of Education and Science. The City Council will use its best endeavours to obtain the necessary funding and approvals but it will not be available where the gap between the pupil demand generated and a full classroom is very small (ie less than a quarter of the size of a full classroom).

27. In some instances it may be anticipated that more than one housing development may materialise which would generate a need for new school provision in a local area. Where possible, the Council will endeavour to deal with proposals in ways which will enable the financial burden of the school provision to be shared commensurately between the prospective housing developments. There may also be a role for Section 106 Agreements to control timing and delivery arrangements in situations where two or more housing developments are likely to go ahead fairly simultaneously and the arrangements can be co-ordinated and agreed in an equitable form.

28. It may also be appropriate to ask a developer to pay for the provision or relocation of temporary school infrastructure (such as pre-fabricated classrooms) to deal with the need which will be generated by a

development. This may be acceptable when it is known that school roles are likely to fall off in the future (according to natural demographic trends).

29. The City Council will take all relevant factors into account in trying to achieve agreement with developers on how to proceed. The appropriate course to pursue in each particular instance will need to be explored with the applicant and the Department of Education when dealing with planning applications.

APPENDIX A:INTERNAL PROCEDURES

When developer enquiries are made or planning applications submitted for new housing in excess of the thresholds above, the development control service will consult the local plan service whose responsibility it will be to co-ordinate consultation with the Education Department.

In preparing advice or briefs on the development of sites which could involve housing development in excess of the threshold, the local plan service of the Planning Department will consult the Education Department asking for an assessment of the need for new school provision and a recommendation on the level of any contribution required. The local plan service will supply the following information with the initial consultation request:

- location site plan
- address
- numbers of dwellings proposed
- types of dwellings proposed (eg bungalows, flats, houses)
- size of dwellings proposed in terms of number of bedrooms
- tenure of dwellings proposed (eg private rented, owner occupied, social)

Where a proposed development or site of principal interest is near other sites with housing development potential, the local plan service should consider sending details of these in order that the Education Department receives a holistic picture of pupil generation potential in the locality.

The Education Department will respond with comments normally within 2 weeks of receiving a consultation. It should quantify local school capacity and predict the

increased pupil demand from the site of principal interest and take account of the combined impact of other housing sites. It should assess the likely need for additional primary and secondary school places and make recommendations on how the necessary infrastructure may be best provided including advice on the amount of any financial contributions.

Essential details of all contributions toward school provision (financial or otherwise) which are made by housing developments will be recorded on a monitoring system established by the Planning Department.