

NT/SHF/P21-0026

15th February 2021

Sent by Email: idikemp@icloud.com

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Dear Sir

Response to Examination Documents 003 and 004

I welcome your letter of 6th February 2021 which sought clarity on the approach of Tewkesbury Borough Council when determining the need for planning obligations.

I am disappointed by the response of the Borough Council in EXAM 004, a view which is no doubt shared by others.

In the second paragraph of its letter, the Borough Council identify that the approach towards contributions are provided in policies of the JCS including Policy INF6 which requires that full regard is paid to the Infrastructure Delivery Plan (IDP). The IDP sets out the formulaic approach to determining educational needs which was tested as part of the JCS examination. Indeed, paragraph 5.1.5 of the JCS identifies that the IDP underpins the potential for developer contributions.

However, the Borough Council now propose to rely upon a new formulaic approach in the Borough Plan which differs from that which was considered as part of the JCS examination. This new formulaic approach has not been tested and it was not proposed to be identified in any policy of the Tewkesbury Borough Plan. As such no participant has been provided the opportunity to address this fundamentally different approach which it is now apparent is being proposed in the Tewkesbury Borough Plan. This new policy is proposed to be introduced mid-examination to reflect the new formulaic approach, and so clearly all participants should be provided the opportunity to respond to this.

The Borough Council then suggest that the new formulaic approach which is proposed in the emerging Local Developer Guide of the County Council will, once adopted by the County Council, form an important material consideration in the determining of planning applications notwithstanding that it has not been subject to the necessary examination. You will be aware of the wealth of jurisprudence to the effect that purported policy which ought to be part of a

DPD is not lawful if it is not promoted as such. In any event its impacts will need to be tested in order to assess the robustness of the new formulaic approach as part of this examination.

Furthermore, the new formulaic approach cannot be treated in isolation from other policies. The new formulaic approach of the County Council has significant implications upon the soundness of numerous policies of both the JCS and the emerging Borough Plan which will need to be considered if the new formulaic approach is accepted as a basis for decision making. In particular, the new formulaic approach assumes that every new build house will accommodate around twice as many pupils as that assumed in the JCS. If a new policy were to be introduced in the Borough Plan to replace Policy INF6 and reflect this new formulaic approach, it would also be necessary for the Council to:

- Replace the housing requirement of the JCS to account for the circa twice as many children per household that arises from the new formulaic approach of the LEA, a proportion of whom will need homes during the plan period. Whilst the housing requirement and the new formulaic approach might superficially appear to be beyond the scope of the Borough Plan, if one is examined without the other this will lead to an inconsistent, unjustified and ineffective plan (i.e. school places would be provided for the circa twice as many children arising from the new formulaic approach without the housing requirements of these children within the plan period being taken into account).
- Publish a new Strategic Housing Market Assessment to assess the need for larger homes and the potentially greater need for affordable housing that arises from the assumption of a substantially greater number of children per household. This will clearly have a direct effect on the soundness or otherwise of Policies RES12 and RES13.
- Publish a new Transport Assessment that takes account of the additional flows that arise from the new formulaic approach of the LEA.

The Borough Council also suggest that as a result of the amendments to the CIL Regulations that they will seek contributions towards education through planning obligations rather than through CIL as assumed in the adopted CIL Charging Schedule. This different approach therefore undermines the justification for the adopted CIL Charging Schedule. Indeed we understand that the Council has already committed to an immediate review of its CIL charging schedule. On any view it would be preferable to review this alongside the Borough Plan.

It is disappointing that the Borough Council do not draw any attention to the fact that the new formulaic approach of the emerging Local Developer Guide of the County Council is subject to widespread objections from a wide range of stakeholders including from the District/Borough/City Council's.

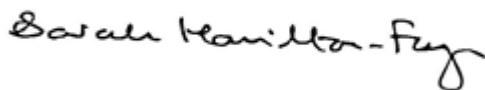
I note the Borough Council's response to all of the preceding points is to prepare an Addendum to the Viability Assessment to address the viability implications of the new formulaic approach of the LEA. This is problematic.

Even if it is considered that the Borough Plan examination is able to proceed on this fundamentally different basis, it will be necessary for the Council as a minimum to:

- Publish the evidence base in support of the new formulaic approach of the County Council to allow this to be tested as part of the current examination.
- Prepare demographic modelling to reflect the circa twice as many pupils per dwelling and identify a new housing requirement;
- Work with neighbouring LPAs under the duty to co-operate to address the unmet needs that arise in Gloucester City as a direct result of the new formulaic approach in that LPA which the City Council has identified would render all allocations "wholly unviable".
- Update the Strategic Housing Market Assessment to assess the size and tenure mix that arises from the circa twice as many pupils per dwelling.
- Update the Transport Assessment to take account of the additional trips that arise from the additional pupils.
- Publish the Addendum to the Viability Assessment.
- Review the CIL Charging Schedule.

If this is accepted, in order to prevent unnecessary delays, it will be necessary for the Borough Council to prepare and publish all of this necessary evidence at the earliest opportunity to allow all participants sufficient opportunity to respond before attending hearing sessions. As the hearing sessions start this week, it is not clear how this could be facilitated. I hope that you are able to provide clear direction as soon as possible in this regard.

Yours faithfully



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