

**STATEMENT OF FACT OF STEPHEN CHANDLER on behalf of the GLOUCESTERSHIRE LOCAL EDUCATION AUTHORITY (“LEA”) IN SUPPORT OF LOCAL PLANNING AUTHORITY’S CASE**

**In relation to planning appeal reference – APP/B1605/W/W/20/3261154**

**Proposed development on land adjacent to Oakhurst Rise LPA Ref. 20/00683/OUT**

29<sup>th</sup> March 2021

**1. INTRODUCTION**

- 1.1 My name is Stephen Chandler and I am currently the Place Planning Manager, Commissioning for Learning at Gloucestershire County Council (“GCC”)
- 1.2 I have a degree in Mathematics. My work profile includes pupil place planning and school organisation, consultation and stakeholder engagement. I have over 15 years public sector experience in Local Government working in Education and Children’s Services.
- 1.3 This Statement of Fact has been prepared to assist the Planning Inspectorate in its consideration of the request made by GCC (as LEA) for the planning obligations towards education provision to mitigate the impacts of the appeal proposals. This statement consolidates and expands upon the key points made by GCC in its original representations to Cheltenham Borough Council ( dated 4<sup>th</sup> June 2020 with Post 16PPR amendment notify by email date 21<sup>st</sup> October 2020 ) and in its subsequent correspondence with the Appellant’s agent from June 2020 to February 2021 to further questions raised by the them.
- 1.4 As can be seen in relation to the previous paragraph, the Appellants have been provided with substantive information and I believe that I have provided all of the information that has been asked of me as it is able to do. The Appellants have raised the same substantive questions on numerous occasions in different forums including FOI requests.
- 1.5 The LEA are seeking the following education contributions:

Contribution Application	Contribution Amount	Calculation (see 5.7 below)	Review adjustment figure (individual dwelling)	Contribution Application
Primary Education	£241,305.09	DfE per pupil multiplier for 2019 (£15,091) x pupil yield (15.99)	£6,187.33	Holy Apostles Church of England Primary School and/or primary places in the

				Charlton Kings primary planning area in accordance with the Gloucestershire School Places Strategy
Secondary Education (11-16)	£152,022.00	DfE per pupil multiplier for 2019 (£19,490) x pupil yield (7.8)	£3,898	Cheltenham secondary planning area in accordance with the Gloucestershire School Places Strategy
Secondary Education (16-18)	£ 62,822.76	DfE per pupil multiplier for 2019 (£23,012) x pupil yield (2.73)	£1,610.84	Cheltenham secondary planning area in accordance with the Gloucestershire School Places Strategy

- 1.6 The LEA suggested payment triggers for the education contributions referred to above are in two tranches on or prior to the first occupation of a) the 1<sup>st</sup> Dwelling; and b) either the 21<sup>st</sup> Dwelling or 50% of the Dwellings being first occupied (whichever is the earlier).

## 2. STATUTORY RESPONSIBILITIES FOR SCHOOL PLACE PLANNING

- 2.1 In terms of education provision, GCC has statutory duties to ensure the provision of inter alia primary and secondary provisions (Section 14 of the Education Act 1996 (**Appendix 1**)), that being the provision sufficient school places for all 4-19 year old young people in its area.

## 3. PLANNING FOR SCHOOL PLACES

- 3.1 The planning and organisation of school places in Gloucestershire is a complex task not least because of the size and diversity of the County. In accordance with its statutory duties, GCC commissions suitable school accommodation to support the promotion of high-quality education standards and to ensure vulnerable learners get fair access to educational opportunities. GCC manages the impact of rising and declining pupil numbers and helps to create a diverse community of schools and provisions.
- 3.2 GCC has a School Places Strategy (“SPS”) in place that sets out the pupil place needs in mainstream, state funded schools in Gloucestershire between 2018 and 2023. The document was adopted in December 2018. The strategy examines the duties placed upon the GCC by the Department for Education (DfE) and its purpose is to help key stakeholders and partners understand how school places are planned and developed throughout the County. The SPS is a public document and is available on GCC’s webpage. The SPS projections are reviewed every 2 years with the latest review/report being considered by

County Council's Cabinet for on 24<sup>th</sup> March 2021 with a view to approving the same. Once approved the updated SPS and Implementation Plan for 2021-26 (Appendix 2) will be published on GCC's website.

- 3.3 The SPS is refreshed to keep in line with latest developments and its Implementation Plan informs future capital programme investment priorities. The Report and GCC forecasts do not consider non-state funded schools, other than to assume that historical rates of admission to the independent sector will continue in future years such that projections are unaffected by them. The forecasts include pupil yield from new housing that has already been completed as reported annually to GCC by the Borough Councils. The forecasts do not include pupil yield from any other planned housing that has not been completed at the time when the forecasts are calculated.
- 3.4 On an annual basis GCC's place planning team receive updated local level data. This is used to provide revised school level pupil forecasts and identify if further provision is required for the following year.
- 3.5 Information about expected levels of new housing from the six District/Borough Councils is also taken into account in the planning of places linked to the annual forecasts. However, the base forecasts do not include pupil yield from any anticipated, granted or speculative developments, as it is uncertain whether those developments will be implemented during the forecast period.
- 3.6 Where new places are required as a result of new housing developments, and where existing capacity cannot meet that requirement, GCC seeks developer contributions to address this.

#### **4.0 Pupil Place Planning in Gloucestershire**

- 4.1 Gloucestershire is a predominantly rural County. It has a population of 637,070 (2019); however, nearly 40% of the population live in the urban areas of Gloucester and Cheltenham.
- 4.2 Pupil projections are reviewed and updated annually as part of the school planning process and in order to inform the annual Schools Capacity Survey (SCAP) provided to the DfE. This national exercise presents the statistics on school places, capacity assessments, unfilled school places, pupils over capacity, pupil number forecasts and place planning in England. In light of the COVID-19 pandemic, the 2020 SCAP collection was cancelled by the DfE.
- 4.3 Gloucestershire has continued to plan pupil places maintaining and updating the pupil forecasts.
- 4.4 There are two key data sources that inform future projections, these are:
  - Anonymised birth and population data, relating to pre-school children, based on GP patient registers and provided by NHS Digital; and
  - Pupil numbers from the DfE School Census

- 4.5 GCC produces pupil projections for individual schools across both primary and secondary school phases. GCC uses health service data of recording GP registration to track the numbers of births and the location of pre-school age children across the county and to inform the process of forecasting primary school numbers.
- 4.6 The pre-school age population is projected into primary school rolls according to trend-based intake patterns at each school.
- 4.7 Secondary school forecasts are calculated by projecting forward the Year 6 cohort, also according to trend-based intake patterns. If the size of the Year 6 cohort is forecast to rise, the projected year 7 cohort size at secondary schools will also be forecast to rise.
- 4.8 Pupil forecasts are compared with school capacities to give the projected surplus or deficit places. It is important to note that where a deficit is identified within the next few years, work will already be underway to address the situation.
- 4.9 The forecasting process is trend-based; which means that relative popularity and intake patterns from the previous five years are assumed to continue throughout the forecasting period. The annual refresh offers an opportunity to take account of recent changes in these trends to give a rolling five year forecast with annual updates. These updated forecasts form the basis of revisions to the School Places Strategy Report when it is updated. If a housing development that was already under way and partially completed in the previous year's forecast has slowed or halted, this will be reflected in the next forecast. For example, this situation has occurred this year at the Chesterton housing development in Cirencester. The developer of that site has reported a two year delay in their build schedule because of unusual economic conditions relating to the on-going pandemic. GCC has subsequently reviewed its pupil forecasts and has agreed with the Regional Schools Commissioner to delay the opening of the new Steadings Primary Academy for two years to coincide with the new development programme. Pupil yields are not included from future housing development, the yield is included at the annual refresh when GCC has been notified that the houses have been completed.
- 4.10 Forecasting future demand for school places can never be absolutely accurate given the assumptions which have been made about movements in and out of any given locality, the place of individual developments, patterns of occupation and not least the parental preferences for places at individual schools. This will be a function of geography, school reputation, past and present achievement levels and the availability of alternative provision, hence the need to review on an annual basis. There is also a presumption against the expansion of failing schools, to ensure the quality of education for all children is maintained.
- 4.11 In areas where pupil numbers are increasing GCC will identify where additional places may be required, either by expanding existing schools or by commissioning new schools on new site within the community.
- 4.12 GCC will, in all cases, consult with the head teacher, staff, governors, Academy trustees, the relevant Diocesan Authority (where appropriate) and the local community where any major re-organisation or closure of provision is proposed. Such factors as the number of available

and required places, school performance, the condition and suitability of the school buildings as well as parental choice, community issues and resources available will be considered in respect of both general and specific place planning.

## 5.0 PUPIL YIELDS

- 5.1 The number of pupils arising from new housing development is known as ‘pupil yields’. The DfE non-statutory guidance ‘Securing Developer Contributions for Education’ (April 2019) states at paragraph 8 that pupil yields should be based on up-to-date evidence from recent local housing developments. It is the responsibility of a local authority to assess and determine pupil yields from development.
- 5.2 Pre-empting but subsequently in accordance with this guidance, in 2018 GCC commissioned a survey and report from Cognisant Research to establish current yields (pupil product ratios). Cognisant are an independent team of researchers who have carried out similar exercises for other local authorities across the country. The survey was to identify the child/pupil yield from recently completed housing developments in Gloucestershire. The methodology agreed was to collect data, house by house on newly constructed housing developments in two of the County’s local planning areas.
- 5.3 The 2018 Cognisant Research study revealed new ratios and yields that exceeded the Council’s previous levels. The ratios were also higher than the national average. These levels were challenged by a number of housing developers at the time, who were considering the impact of pupil yields from future development proposals.
- 5.4 In 2019, a group of developers (Crest Nicholson, Redrow and Taylor Wimpey, co-ordinated by Rapleys LLP (“the Developer Group”)) challenged the pupil yield figures adopted by the local authority. The three developers approached GCC, to discuss the Cognisant Research survey carried out in 2018 and indicated that they felt it was unrepresentative of a wider range of developments in the county, as the scope of the survey had been limited. They requested that we work together with them to increase the scope of the survey to include other recent developments in the county, so that a more representative outcome would be produced. GCC agreed to this approach and Cognisant Research was commissioned to expand the study, coordinated by Rapleys LLP and funded by the three national housing developers: Crest Nicholson, Redrow and Taylor Wimpey.
- 5.5 All the commissioning parties, together with GCC agreed to adopt the original research methodology, which has been used in many other local authority areas, such as Northampton, Somerset and South Gloucestershire. The area coverage was extended – the settlements scoped for the 2019 review where chosen by the Developer Group and agreed by GCC. The 2019 study Cognisant Research collected, analysed and published data from research undertaken at seven settlements, totally 8690 dwellings (Appendix 3)
- 5.6 The findings from this research revealed pupil ratios in keeping with the GCC 2018 study and again greater than the national average. A post survey meeting was held with the Developers Group (who was involved in commissioning the additional survey work) and the

findings were explained to the Developers Group and GCC in detail by Cognisant Research to ensure all involved were fully conversant with the outcomes. Neither the methodology nor the findings of the 2019 study were disputed by the Developer Group at the time. However, it is fair to say that the Developers Group seem to want to now distance themselves from findings that they accepted in 2019. The updated pupil ratios have been used to calculate education contributions for more than 60 planning applications since they were introduced in 2019 and were accepted at two recent planning appeals i.e. developments at Stoke Road, Bishops Cleeve (APP/G1630/W/19/3229581) and Ashmead Drive, Gotherington (APP/G/1630/W/20/3256319). See section 10 below.

- 5.7 The pupil yield formula used in the GCC yield calculation for this proposed development is derived from the evidence in the Cognisant Research 2019 report. For every 100 new dwellings there are: 30 pre-school children, 41 primary pupils, 20 secondary pupils, and 7 post-16 pupils.

## 6.0 CAPACITY TO ACCOMMODATE

- 6.1 The GCC School Places Strategy (**Appendix 2**) states at paragraph B8 that

*'The fundamental aim in planning school places is to provide places near to where children live, to meet parental preferences as far as possible; to locate schools at the heart of their communities and to minimise travel to school distances. Gloucestershire County Council believes that where additional school places are needed because of new housing development, as far as possible the costs should fall on the landowners and/or developers, by way of contribution falling within the concept of planning obligations'*

- 6.2 Additionally, NPPF Para 94 states

*'it is important that a sufficient choice of school places is available to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive and collaborate approach to meet this requirements, and to development that will widen choice in education. They should:*

- a) Give great weight to the need to create, expand or alter schools through the preparation of plans and decisions on applications; and*
- b) Work with school promoters, delivery partners and statutory bodies to identify and resolve key planning issues before application are submitted'*

- 6.4 Paragraph 23b-008 of the PGG advises that

*'Plan makers and decision markers should consider existing or planned/committed school capacity and whether it is sufficient to accommodate proposed development within the relevant school place planning areas'*

It cross refers to the DfE guidance on Securing Developer Contributions of Education (November 2019), which advises at paragraph 3 that it is important the impacts of development area adequately mitigated, requiring an understanding of, for one, the

capacity of existing schools that serve the development. It is not correct to look only at capacity of that area but rather it is necessary to focus on the capacity of the individual school closest to and which would be appropriate to accommodate the pupil yield from a development. This is particularly the case in rural areas where distances between schools and between homes and schools can be great and accessibility can be challenging. There are also clear community and social benefits in children from the same settlement attending the same school, as is recognised in the School Places Strategy.

6.5 The nearest accessible primary school to the Appeal site is Holy Apostles Church of England Primary School at a walking/travel distance of 0.7 miles. This school is a very popular primary planning area and this one form of entry 210 place school is currently full and oversubscribed, with numbers projected to remain at capacity for the foreseeable future.

6.6 There are four other primary (including infant/junior) schools in the planning area and all within the statutory 2 mile walking distance, these are shown in the table below.

Planning Area 916	DfE No	School	Edubase (Straight line distance) (miles)	Walking/ Travel distance (miles)
1830	3316	<b>Holy Apostles CofE Primary School</b>	<b>0.25</b>	<b>0.6</b>
1830	2142	Glenfall Community Primary School	0.67	1.1
1830	5207/ 5206	Charlton Kings Infants & Junior Schools	0.69/ 0.83	0.9/ 1.1
1810	3097	St. John's CofE Primary School	0.71	0.9
1810	3093	Holy Trinity Primary School	0.85	1.2

6.7 All of these primary schools are at capacity or within 95% of capacity which is sensible planning and allows flexibility for families moving in and out of the area and in accordance with Audit Commission guidelines as stated at 6.12 below. If we were required to plan for 100% of capacity at all times, then there would be no school places available for families moving into the area at any time or for pupils to changes schools mid-stream. For forecast information please refer to Appendix attached. It should be noted that this is an extremely popular area for families with children to move into, to enable them to be within the catchment of the highly successful local secondary school

6.8 The nearest accessible secondary school and sixth-form is Balcarras School, another very popular, successful and oversubscribed school. The school is 1.2 miles walking distance from the Development.

6.9 Balcarras School has a capacity of 1399 places and a Planned Admission Number (PAN) of 194. Balcarras School is full and oversubscribed and is expected to remain at capacity for the foreseeable future.

6.10 As shown in the table below there are two other secondary schools within a 3 mile walking' travel distance, being Pitville School and Bournside School. There are two further secondary schools over the 3 miles travel distance, being All Saints Academy and Pates Grammar School, which is selective.

	Planning Area 916	DfE No	School	Edubase (Straight line distance) (miles)	Walking/ Travel distance (miles)
Secondary	2500	5408	Balcarras School	0.92	1.2
	2500	5421	Pitville School	1.35	1.9
	2500	5418	Cheltenham Bournside School	2	2.7
	2500	6905	All Saint's Academy	2.76	3.6
	2500	5403	Pate's Grammar School	2.79	3.4

6.11 Secondary school places in Cheltenham are extremely tight with 100% of the Year 7 places for September 2021 being allocated. These allocations include an additional 120 places at the High School, Leckhampton which is a new secondary school opening in September 2021 to serve Cheltenham. The additional capacity has already been planned to meet known demand coming through from growth in the feeder primary schools and existing development. Whilst there may be a very small percentage of forecast surplus places over the next 5 years, these are expected to fill from in year movements and parental preference in the area.

6.12 Not all unfilled school places should be considered to be 'surplus'. The Audit Commission advises that some margin of spare school capacity is necessary to provide some flexibility for **unexpected influxes** of children and **expressions of parental preference (both of which GCC have not ability to predict)**. The 2013 National Audit Office report Capital Funding for New School Places (**Appendix 4**) confirms that the DfE considers it

*'reasonable for authorities to aim for between 5 and 10 per cent primary surplus to allow them some opportunity to respond to parental choice'* (paragraph 1.17)

And that 5 per cent is

*'the bare minimum needed for authorities to meet their statutory duty with operational flexibility, whilst enabling parents to have their choice of schools'* (paragraph 1.16)

## 7.0 LEVELS OF CONTRIBUTION REQUIRED

7.1 The DfE has not produced updated Place Costs Multipliers since 2008/09, so in the subsequent years GCC has applied the annual percentage increase or decrease in the RICS BCIS Public Sector Tender Price Index (BCIS All In TPI from 2019/20) during the previous 12



months to produce a revised annual cost multiplier in line with current building costs, as per our standard drafting of GCC's planning obligations. We calculate the percentage increase using the BCIS indices published at the start of the financial year and use this for all indexation calculations during the year for consistency and transparency, in accordance with the guidance set out in the GCC Local Developer Guide. **This is the approach that has generally been taken by Local Authorities across the country since 2010.**

7.2 At the 2019/20 value of the index GCC is seeking a cumulative education contribution of £456,149.85 to meet demand generated by this development of 39 qualifying dwellings.

7.3 This total comprises £241,305.09 towards primary school provision (15.99 places x £15,091 per place); £152,022.00 towards secondary school provision (7.8 places x £19,490 per place) and £62,822.76 towards secondary school post-16 provision (2.73 places x £23,012 per place)

<b>Contribution Application</b>	<b>Contribution Amount</b>	<b>Calculation (see 5.7 below)</b>
Primary Education	£241,305.09	DfE per pupil multiplier for 2019 (£15,091) x pupil yield (15.99)
Secondary Education (11-16)	£152,022.00	DfE per pupil multiplier for 2019 (£19,490) x pupil yield (7.8)
Secondary Education (16-18)	£ 62,822.76	DfE per pupil multiplier for 2019 (£23,012) x pupil yield (2.73)
<b>Total</b>	<b>£456,149.85</b>	

7.4 The primary financial contribution sought will be used to provide additional capacity either at the nearest primary school Holy Apostles or combined (pooled) with other s106 contributions received locally, to expand another primary school in the planning area.

7.5 The secondary and post 16 financial contributions will be combined (pooled) with other s106 contributions from developments in Cheltenham to provide additional secondary and post 16 places to meet the rise in demand for secondary places in Cheltenham. The new High School Leckhampton which will provide an additional 900 (11-16) secondary places in Cheltenham will provide additional capacity to meet the need arising from existing, planned and approved development only.

## **8.0 PLACE PLANNING FOR OAKHURST RISE**

8.1 The organisation of places across Gloucestershire is broken down into school planning areas for provision for children aged 2-18. As a starting point, the Council uses the primary planning area for pre-school (2-4 years) and primary school (5-11 years) aged children. Secondary planning areas, including sixth form, are used for pupils 11-18 years of age. Each

school planning area represents a certain number of schools within a geographical area. There is complete coverage across the whole county.

- 8.2 School place planning areas (“SPPAs”) are not geographical areas where one could draw a red line around as to take that approach would be an inflexible one. The SPPAs comprise a selection of schools defined by catchment areas and the feeder schools aligned to them. These are the same as the demographic planning areas that the Council is required to report on annually to the DfE and this in turn informs the future capital basic need allocations.
- 8.3 The SPPAs are set out in the GCC SPS (**Appendix 2**)
- 8.4 This planning arrangement provides accurate local information and highlights particular growth areas or excess capacity.
- 8.5 As with any boundary arrangement, there is cross over between school planning areas. GCC also considers distance, accessibility, trends and performances as major factors when forecasting and making changes to the schools’ estate.
- 8.6 The location of the Oakhurst Rise appeal site is shown on the map below along with primary and secondary schools in the area (Fig. 1)

Fig. 1



8.7 As mentioned in paragraph 7.3 this development of 39 qualifying dwelling would therefore generate 15.99 primary pupils, 7.8 secondary pupils and 2.73 post-16 pupils, based upon the GCC yield calculations.

## 9.0 POINTS OF CLARIFICATION

- 9.1 GCC has recently reviewed and refreshed its Local Development Guide to reflect local and national policies and guidance and changes including the introduction of CIL in various local authorities. <https://www.gloucestershire.gov.uk/planning-and-environment/planning-policy/gloucestershire-local-developer-guide-infrastructure-and-services-with-new-development/> the revision was adopted by Cabinet on 24<sup>th</sup> March 2021 (“LDG 2021”). In line with its forerunners (initial adoption in February 2014 and updated in December 2016), its intended purpose is to provide Developers and decision makers with an understanding of how GCC approaches its assessment of the impact of a development, which should inform the LPA/decision makers in the determination of planning applications. It does so by setting out the approach that GCC will generally take when considering whether additional infrastructure is required to meet the needs arising from new development in the form an open and transparent guide/working practice . As such, it is intended to assist an LPA in the implementation of policy (including policies INF4, INF5 and INF6 of the Joint Core Strategy 2011-2031)
- 9.2 As mentioned earlier in this statement GCC has also reviewed its SPS and has updated the strategy for the period 2021-2026. The revised SPS and implementation plan provides the latest overview of demographic information for the county and includes a more detailed analysis of each school planning area.

## 10. CONCLUSION

- 10.1 The requested planning obligations towards education contributions comply with the three tests set out at Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 i.e. that the planning obligation is ‘ *necessary /directly related /and fairly and reasonably related in scale and kind*’ to the appeal proposals, which will be addressed in turn, in summary form, in the following paragraphs.
- 10.2 **Necessary:**
- 10.2.1 the education contributions being sought which are based on up to date pupil yield data are necessary to fund the provision of the additional pre-school, primary and secondary school places generated by this development because there is a lack of capacity in the relevant education sectors to address the increase in the numbers of children needing a place at a local school arising directly from this development. There will be an additional 16 pupils in

the primary sector and 12 pupils in the 11-18 secondary sector all needing a place at a local school.

### 10.3 **Directly-related to the development:**

10.3.1 The additional pressure on school places will result from this development directly, additional homes equals additional people within this school catchment area. The developer contributions are directly related to the proposed development in that the contributions have been calculated based on specific formulas relative to the numbers of children generated by this development and will be allocated and spent towards improving capacity at the local schools/planning area to enable children from this development to attend a local school .

### 10.4 **Fairly and reasonably-related in scale and kind to the development:**

10.4.1 The calculation of need is based on a robust and up-to-date methodology that establishes yield or pupil product ratios as advised in paragraph 8 of the DfE Securing Developer Contributions for Education guidance

10.4.2 The proposed contributions are based on the most up-to-date DfE Place Cost Multiplier that has been subject to annual percentage increase/decrease based on the RICT BCIS Public Service Tender Price Index.

10.4.3 Given that the yield results from the scale of development proposed and that a relevant sum is calculated which only relates to the additional proposed pupils arising directly from this development to cover the costs of the extra places that will be required from the proposed qualifying dwellings it is considered that the contributions being sought are fair, reasonably related in scale and kind to the proposed development.

10.4.4 The contributions being sought are therefore considered to be in accordance with the Regulation 122(2) test and the failure to enter into any such contribution will result in the proposal failing to mitigate against its own impact on education facilities and would therefore be contrary to Policy INF6 of the JCS.

10.4.5 GCC's approach to planning obligations towards education contributions has been tested at two fairly recent Appeals:

10.4.5.1(APP/G1630/W/19/3229581) a development at Stoke Road, Bishops Cleeve – decision date 11<sup>th</sup> November 2019. The Inspector concluded that the planning obligations complied with each of the CIL Regulation 122 tests. The relevant paragraph of that decision is set out below:

*'70. In terms of education provision, a contribution of £746,270 is necessary to provide an additional 50 pre-school places to meet the demand from additional children generated by the development within the community. The primary education contribution of £1,200,489 is necessary and would be used towards accommodating the anticipated increase of 80 primary school places in a new*

*primary academy in Bishop's Cleeve. The additional pupils would be directly generated by the development. The secondary educational contribution of £989,516 is necessary and would be used towards the expansion of facilities serving Bishop's Cleeve area to accommodate the 43 additional secondary places required by the additional pupils directly generated by the development. Policies INF6 and IN7 of the JCS support this requirement. The financial contributions are calculated on Department of Education multipliers 2019. I consider the provision would be fairly and reasonably related in scale and kind to the development'*

The decision goes on to say:

*'75. In my view, all of the obligations in the two s106 Planning obligations are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. Therefore all meet the tests within Regulation 122 of the CIL Regulations and should be taken into account in the decision.'*

10.4.5.2 (APP/G1630/W/20/3256319) a development at land off Ashmead Drive, Gotherington – decision date 12<sup>th</sup> January 2021. The relevant paragraph of that decision is set out below:

*'86. There are several planning obligations. An agreement with Gloucester County Council obliges the payment of education contributions, a libraries contribution and a travel plan monitoring fee. It also obliges the developer to provide for bus stop upgrade works. The CIL Compliance Statement adequately sets out sufficient justification for the education and libraries contribution and monitoring fees, along with the requirement for bus stop upgrades. All these obligations would be necessary to make the development acceptable, directly related and fairly and reasonably related in scale and kind'*

## **11. DECLARATIONS**

**Statement of Truth:** I confirm that in so far as the facts stated in this document, are within my own knowledge, I have made clear which they are and I believe them to be true, and that the opinions expressed represent my true and complete professional opinion.

**Declaration:** I confirm that:

- a. This document includes all facts which I regard as being relevant to the opinions which I have expressed and that attention has been drawn to any matters which would affect the validity of those opinions.
- b. I am not instructed under any conditional fee arrangement.
- c. I have no conflicts of interest of any kind.

Appendix

	Planning Area 916	DfE No	School	Edubase (Straight line distance) (miles)	Walking/ Travel distance (miles)	N/A as Selective/ Out of county School
Primary	1830	3316	Holy Apostles CofE Primary School	0.25	0.6	
	1830	2142	Glenfall Community Primary School	0.67	1.1	
	1830	5207/5206	Charlton Kings Infants & Junior Schools	0.69/ 0.83	0.9/ 1.1	
	1810	3097	St. John's CofE Primary School	0.71	0.9	
	1810	3093	Holy Trinity Primary School	0.85	1.2	

	2500	5408	Balcarras School	0.92	1.2	
Secondary	2500	5421	Pittville School	1.35	1.9	
	2500	5418	Cheltenham Bournside School	2	2.7	
	2500	6905	All Saint's Academy	2.76	3.6	
	2500	5403	Pate's Grammar School	2.79	3.4	✓

All secondary schools are full in Year 7 and projected to be full for the foreseeable future

Projections for both primary and secondary in area

9161830 Charlton Kings				Actual NOR							Forecast Pupils												
School Details				Oct 20 PLASC							2021/22 (March21)		2022/23 (March21)		2023/24 (March21)		2024/25 (March21)						
Establishment Number	School Name	Governance	No of year groups	Capacity Sept 2021	PAN Intake as at Sept 2021	R	1	2	3	4	5	6	Total	Reception	Total	Reception	Total	Reception	Total	Reception	Total		
5207	Charlton Kings Infant Academy	CA	3	270	90	88	90	91					269	90	269	90	270	90	270	82	262		
5206	Charlton Kings Junior School	CA	4	372	193			94	94	92	93		373		373		374		373		372		
2142	Glenfall Community Primary School	CO	7	210	30	29	30	29	30	30	30	31	209	30	208	30	208	30	208	26	204		
3316	Holy Apostles C of E Primary School	VA	7	210	30	30	30	30	32	32	30	29	213	30	213	30	213	30	212	30	210		
<b>Planning area total</b>				<b>1062</b>	<b>150</b>	<b>147</b>	<b>150</b>	<b>150</b>	<b>156</b>	<b>156</b>	<b>152</b>	<b>153</b>	<b>1064</b>	<b>150</b>	<b>1063</b>	<b>150</b>	<b>1065</b>	<b>150</b>	<b>1063</b>	<b>138</b>	<b>1048</b>		
													100%		100%		100%						98.7%
9161810 Whaddon (part of PA)				Actual NOR							Forecast Pupils												
School Details				Oct 20 PLASC							2021/22 (March21)		2022/23 (March21)		2023/24 (March21)		2024/25 (March21)						
Establishment Number	School Name	Governance	No of year groups	Capacity Sept 2021	PAN Intake as at Sept 2021	R	1	2	3	4	5	6	Total	Reception	Total	Reception	Total	Reception	Total	Reception	Total		
3093	Holy Trinity C of E Primary School	VC	7	210	30	25	30	29	31	28	28	28	199	30	199	30	199	30	199	27	193		
3097	St. John's C of E Primary School	VC	7	203	29	29	26	29	28	26	27	29	194	29	194	29	196	29	199	28	199		
<b>Planning area total</b>				<b>413</b>	<b>59</b>	<b>54</b>	<b>56</b>	<b>58</b>	<b>59</b>	<b>54</b>	<b>55</b>	<b>57</b>	<b>393</b>	<b>59</b>	<b>393</b>	<b>59</b>	<b>395</b>	<b>59</b>	<b>398</b>	<b>55</b>	<b>392</b>		
													95.2%		95.6%		96.4%						94.9%





LAND ADJACENT TO OAKHURST RISE, CHARLTON KINGS, CHELTENHAM, GLOUCESTERSHIRE

PLANNING APPLICATION REFERENCE: 20/00683/OUT

PLANNING APPEAL REF: APP/B1605/W/20/3261154

**INITIAL COMMENTS ON THE DRAFT UNILATERAL UNDERTAKING (attached for ease of reference)**

Prepared by Bridgette Boucher on behalf of Gloucestershire County Council (“GCC”)

a. **The Face of the Document | Front Cover:** Section 106 TCPA 1990 (as amended) is not the only statutory provision upon which GCC relies, when requesting contributions – the other statutory provisions are:

- Chapter III of the Education Act 1996;
- Public Libraries and Museums Act 1964;
- Section 111 of the Local Government Act 1972; and
- Section 1 of the Localism Act 2011

Thus, I respectfully request that the above should also be identified on the face of the document/ the front cover. I will address this again later in this document. Whereas this is a minor point, the changes would give clarity. I am familiar with the argument that the provisions have no place in a unilateral undertaking but I believe that to be wrong.

b. **The recitals:** GCC is not the local highway authority for all highways within the County – it is not responsible for trunk roads or special roads. This important qualification is missing from **recital 1(b)** of the draft (page 2 of the draft)

c. **Definitions and Interpretation Clause:**

- a. Definition of ‘Appeal’ - **Clause 7.2** (page 3) of the draft: the appeal reference seems to have been omitted
- b. Definition of ‘Index-linked’ – **Clause 7.5** (page 4) of the draft: this does not work with the education contributions as each are calculated using a base year; in this case, the base year is 2019/20 and thus the distinction should be made within the definition.
- c. Definition of ‘Relevant Index’ – **Clause 7.14** (page 5) of the draft: GCC’s preferred index for education provisions is as set out below:

*‘ the cost multiplier issued by the Department for Education (DfE) or by any other Department Ministry or other body upon which the duties in connection with that*



*index devolves being the cost per pupil for the construction of accommodation to provide additional pupil places and supplemented by the Building Cost Information Service Public Sector Tender Price Index (BCIS PSTPI) issued by the Royal Institution of Chartered Surveyors (RICS) in the years when the DfE costs multiplier is not published*

*or*

*in the event that the DfE ceases to compile or publish the cost multiplier and/or RICS cease to compile or publish the BCIS PSTPI such indices as the parties shall agree or in default of agreement such indices as shall be determined for the purposes of this Deed as being an index or indices which gives an accurate indication of the rate of inflation of prices in the UK from month to month ‘*

This was the most relevant index at the time the DfE stopped producing annual costs multipliers in 2008/9 – I am told that it is the closest/best fit to the now defunct index hence by GCC adopted its use. However, I am told that the Public Sector TPI is now no longer being updated by RICS and so GCC currently uses the BCIS All-In TIP. That said, I have taken instructions from my instructing officers and it appears that in this particular instance they are prepared to accept the suggested Index proposed by the Appellants.

- d. There appears to be an inconsistency of approach in where the definitions lay within the draft UU in that the contributions being sought by GCC are set out in the Second Schedule (page 11 onwards). I would content that all definitions should appear in one place to be both consistent and provide clarity – the obvious place being clause 7 of the draft. I shall address the differential in the level of contributions being sought later in this document

- d. **Statutory Provisions** as mentioned above, there is no such clause in the draft but if it were to be included, the draft should also refer to the other statutory provisions listed below:
  - a. Section 278 of the Highways Act 1980,
  - b. Public Libraries and Museums Act 1964,
  - c. Chapter III of the Education Act 1996,
  - d. Section 111 of the Local Government Act 1972;
  - e. Section 1 of the Localism Act 2011

or all other enabling powers

- e. **Planning Obligations (Clause 8.2, page 6 ):** The Appellant cannot covenant ‘**with**’ anyone in a unilateral undertaking

- f. **Conditionality (Clause 10)** (page 7 of the draft): The UU cannot be conditional upon Commencement of Development as this will be contrary to many other provisions such as clause 12 (Consent to Registration) and 14 (Warranty) to name an obvious couple.
- g. **Consent to Registration (Clause 12)** (Page 9 of the draft): GCC has not registered Deed containing these types of planning obligations for a number of years and so the second section of this clause is redundant.
- h. **Community Infrastructure Levy (“CIL”) Regulations (Clause 15)** (page 10 of the draft): I have two observations to make in relation to this clause: firstly, Sub-clause 15.1 falls short of addressing any subsequent situations i.e. if the decision is quashed following a successful legal challenge and secondly, although GCC would gladly address the situation set out in sub-clause 15.2 if we were discussing a bi-lateral agreement, I do not consider that this is an appropriate clause to be included in a UU.
- i. **Omission of a specific clause relating to Indexation:** Indexation is referred within the Second Schedule of the draft (page 11 onwards) but to my mind it should sit within a specific clause. I would suggest that such a clause could be added at the end of page 9. My suggested wording would be as follows:
- ‘ 16. Indexation Any contribution referred to in this Deed shall be increased or decreased by an amount equal to the increase or decrease of the relevant Index from the date hereof (save in relation to the Education Contributions which use the base year of 2019/20) until the date on which such contribution is payable*
- j. **Omission of a specific clause relating to Late Payment Interest:** Again, this is referred to in the Second Schedule of the draft (page 11 onwards) but again, for clarity, it should sit within a specific clause of its own. I would suggest that a further additional clause could be added to the end of page 9 and the wording of that clause could be as follows:
- ‘17. Late Payment Interest If any sum payable under the terms of this Deed is not paid at the time specified within it Late Payment Interest will be paid to the County Council on such sum at the Late Payment Interest rate’*
- k. Should the parties/Inspector accept my suggestion in relation to the new clause 17 referred to above, an additional definition will need to be inserted into the draft UU – my suggested wording would be:
- ‘Late Payment Interest means a rate calculated on a daily basis and compounded quarterly from the due date until payment at five per cent (5%0 per annum over HSBC Bank plc base rate from time to time in force’*
- l. **Omission of Notice of Commencement clause:** The bi-lateral draft submitted to the Appellants contained a clause that provided for notification to be given to GCC at certain milestone i.e. 28 days prior to anticipated commencement | 7 day of the actual

commencement date having occurred. It is important for GCC to have this clause included in any planning obligation for indexation calculation purposes. The proposed clause also gave GCC the ability to elect a date it considered Commencement took place. These provisions are especially important at Gloucestershire is a two tier authority and as such GCC is not the planning permission issuing authority. It could be inserted as a new clause at the end of page 9. To assist, the suggested wording is follows:

*“16. 1 The Trust and the Owner will:*

*16.1.1 write to the S106 Monitoring Officer no less than twenty eight (28) days before the expected Commencement of Development to notify the County Council of the expected Commencement date;*

*16.1.2 within seven (7) days of the actual Commencement serve on the S106 Monitoring Office the Notice of Commencement; and*

*16.2 The County Council through the S106 Monitoring Officer is at liberty to elect a date which it considers to be the Commencement of Development date in default of the Owners’ compliance with sub-clauses 16.1.1 and 16.1.2 above for the purposes of Clause 17 (Indexation) and Clause 18 (Late Payment Interest)’*

Should the above clause of something similar be accepted, a definition of the S106 Monitoring Officer would be needed, I would suggest the following wording:

*‘S106 Monitoring Officer means that officer of the County Council appointed from time to time with the role of monitoring the compliance of the Owner or other persons with the provisions of this Deed’*

m. **Omission of a Costs Clause:** two point to raise in relation to this provision and these are:

- a. There is no reference to payment of GCC’s legal and other costs; and
- b. There is no reference to payment of GCC’s S106 Monitoring Officer’s fees (£4,000.00 as currently drafted)

GCC would expect to have their legal fees paid in respect of negotiating and commenting upon the planning obligations prior to completion of the Deed (whether it is a bi-lateral agreement, tri-lateral agreement or UU). However, GCC is more flexible in relation to payment of GCC’s S106 Monitoring Officer’s fees. GCC asked that an initial payment of £500 is made on completion of the Deed with the balance of those fees being paid prior to the Commencement.

n. **Omission of a VAT Clause:** The UU should be clear in relation to the payment of VAT in that the contributions being sought by GCC are exclusive of any VAT payable. I would therefore expect the UU to have a specific clause to make that point and a definition of VAT would also be required. My suggestions for both (which also appeared in the draft bi-lateral agreement that had been provided to the Appellants) are as follows:

*‘VAT means the tax referred to in the Value Added Tax Act 1994 or any tax of a similar nature which is introduced in substitution for or as an addition to such tax from time to time’*

And the wording of the additional clause being:

*‘All payments in accordance with the terms of this Deed are exclusive of any VAT payable in respect thereof’*

- o. **The Second Schedule - Covenants by the Owner – the Planning Obligations** (page 11 onwards): It is unhelpful to GCC to solely set out the various contributions by individual dwelling amounts. For clarification purposes, especially for the end users, I would always include the figure calculated for the number of dwellings proposed. My suggested definitions from the bi-lateral draft being:

<b>‘the Libraries Contribution’</b>	means the sum of eight thousand four hundred and twenty eight pounds (£8,428.00) (exclusive of any payments required under clauses 8 and 9 of this Agreement) (the equivalent of One Hundred and Ninety Six Pounds (£196.00) per Dwelling (subject to any adjustment pursuant to Paragraph 3, Part 1 of Schedule 2 in accordance with the number of Dwellings authorised) payable in instalments in accordance with paragraph 1.1, Part 1 of Schedule 2) and to be used in accordance with paragraph 1.1, Part 2 of Schedule 2 of this Agreement
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<b>‘the Primary Education Contribution’</b>	<p>means the sum of two hundred and forty one thousand three hundred and five pounds (£241,305.00) (exclusive of any payments required pursuant to clauses 8 and 9 of this Agreement) calculated on the basis of:</p> <p>DfE per pupil multiplier for 2019 (£15,091) x pupil yield (15.99) = maximum contribution (£241,305.09)</p> <p>(subject to any adjustment pursuant to Paragraph 3, Part 1 of Schedule 2) payable in instalments pursuant to Paragraph 1.2, part 1 of Schedule 2) and to be used in accordance with Part 2 of Schedule 2 of this Agreement</p>
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<b>‘the Secondary Education Aged 11-16 Contribution’</b>	<p>means the sum of one hundred and fifty two thousand and twenty two pounds (£152,022.00) (exclusive of any payments required pursuant to clauses 8 and 9 of this Agreement) calculated on the basis of:</p> <p>DfE per pupil multiplier for 2019 (£19,490) x pupil yield (7.8) =</p>
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	<p>maximum contribution</p> <p>(subject to any adjustment pursuant to Paragraph 3, Part 1 of Schedule 3) payable in instalments pursuant to paragraph 1.3, Part 2 of Schedule 2 of this Agreement</p>
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<p><b>‘the Secondary Education Aged 16-18 Contribution’</b></p>	<p>means the sum of sixty two thousand eight hundred and twenty three pounds (£62,823.00) (exclusive of any payments required pursuant to clauses 8 and 9 of this Agreement) calculated on the basis of:</p> <p>DfE per pupil multiplier for 2019 (£23,012) x pupil yield (2.73) = maximum contribution</p> <p>(subject to any adjustment pursuant to Paragraph 3, Part 1 of Schedule 2) payable in instalments pursuant to paragraph 1.4, Part 1 of Schedule 3 and to be used in accordance with paragraph 1.3, Part 2 of Schedule 2 of this Agreement</p>
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Whereas on the fact of each, they may look complicated, it clearly sets out firstly the total base line figure for each contribution, then how that figure was reached i.e. use of the DfE pupil multiplier and pupil yields.

- p. **Application of the Library Contribution being sought:** (paragraph 1 of the Second Schedule internal page 11 of the draft UU) GCC has confirmed that the Library Contribution is being sought to for a specific project in that it is intended to use the £8,428 towards further increasing stock provisions, both physical and electronic, of Charlton Kings Library to meet the increased demand arising from the development. The internal layout of Charlton Kings Library would have to be reconfigured in order to accommodate the additional stock and shelving that would be required. (internal page 5 – at paragraph 7.2 of Mrs. Everiss’s Statement of Fact). GCC does not take issue with the fact that the Library being sought is to be applied to the above project. However, the UU as currently drafted seems to suggest that further justification is need from GCC in terms of capacity/demand at a unspecified time. GCC would argue that this is both unnecessary and unclear but also inappropriate in any event to be included in a UU.

- q. **Application of the Primary Education Contribution being sought:** In terms of application of the primary education contribution is concerned, GCC had identified the Holy Apostle Church of England Primary School but also referred to the Charlton Kings primary planning area as the likely areas where the additional capacity would be required and therefore Primary Education Contribution being sought by GCC would be applied. The planning area will have been explained within Mr. Chandler’s Statement of Fact. The draft UU at paragraph 2 of the Second Schedule (internal page 12) refers to the ‘Charlton Kings primary Planning Area’ but there is no definition as to what this is within the draft UU. In the draft bi-lateral draft provided to the Appellants, the ‘primary planning area’ was referred to as being in accordance with the ‘Gloucestershire School Places Strategy’. However, there is no such definition in the UU either. As the parties will have seen in Mr. Chandler’s Statement of Fact, a revised Gloucestershire School Place Strategy was approved by GCC Cabinet on 24<sup>th</sup> March 2021.
- r. **Application of the Secondary Education Contributions (11-18 years) being sought:** Again, I make the same point as made in the previous paragraph, in that the draft UU at paragraphs 3 and 4 of the Second Schedule (internal pages 12 and 13) both refer to the ‘Cheltenham Secondary Planning Area’, which is not defined in the draft. Both paragraphs also refer to Leckhampton High School – this point is dealt with in Mr. Chandler’s Statement of Fact but in short, there will be no capacity available to accommodate the anticipated pupils from the proposed site the subject of this appeal. The figures set out by the Appellants in the UU in each case are flawed and I invite the Inspector to remove reference to both from the UU, should the references remain in the signed version of the UU.
- s. **Contribution Triggers:** The proposed triggers for both the Libraries Contribution and the Education Contributions are agreed (internal page 13 and 14 of the draft).
- t. **Travel Plan provision:** the draft UU in the first paragraph 5 (internal page 13) refers to a paragraph 5.14 of the Travel Plan submitted by the Developer as of April 2020 – it is a specific reference but does not make clear as to whether or not it is approved. This may be an issue if, in the final approved version, the paragraph numbers change.

**MATTERS IN DISPUTE:**

**Definitions of the Contributions:** Differentials: The parties are clearly at odds in terms of their calculated Contributions – for ease of reference, I set them out below.

Contribution application	Appellants proposals	GCC requirements
Libraries	£ ? – it is unclear from draft UU	£ 8,428.00
Primary	£110,941.35	£241,305.09
Secondary (11-16)	£102,010.35	£152,022.00
Secondary (16-18)	£ 23,872.68	£ 62,822.76

The Statements of Fact from Mrs. Jane Everiss in relation to the Libraries contribution and from Mr. Stephen Chandler in relation to Education contributions both set out GCC's case as to why their respective requested contributions are Regulation 122 compliant as does the CIL compliance statement provided. The respective Statements of Facts also clearly identify how the respective figures were calculated.

This information has been with the Appellant for some considerable time and indeed both Mrs. Everiss and Mr. Chandler have addressed numerous additional queries raised by the Appellant. I make this point as my learned friend, Mr. Young raised the point in his opening statement. To be clear, I believe that the responses were not what Mr. Kinsman wanted to hear rather than they were non-existent but I make no further point on this.

The approaches taken by Mrs. Everiss and Mr. Chandler in calculating the respective contributions being sought are a) consistent and b) in line with Local Authorities across the country. The Appellants has sought to introduce confusion by drawing the Inspector's attention to the Local Developers Guide in general and more specifically the cost multiplier. Both issues have been addressed in Mr. Chandler's statement.

Clearly it is for the Inspector to decide which figures are appropriate but from the County Council's perspective we would suggest that the proposed development is only acceptable provided the contributions being sought by them (as set out in the third column of the take set out above) are received. To be perfectly clear, there is no prospect of the County Council receiving the contributions being sought through CIL and in terms of the Education contributions the Department for Education guidance on securing developer contributions for education (November 2019) suggests that in a two tier authority the most effective mechanism for securing developer contributions for education is through the use of a planning obligation.

**March 2021**