

KENT COUNTY COUNCIL

Developer Contributions Guide

2023



kent.gov.uk/developercontributionsguide



Foreword

I am delighted to introduce Kent's Developer Contributions Guide.

Kent is preparing for continued growth in our population in the years ahead. This could be as much as 20% growth by 2040, compared to 2020 figures, reflecting the county's position as a place where people wish to live, at all stages of their lives. This growth in population requires additional housing, of all types, to be developed, with an additional 190,400 homes forecast to be built by 2040.

Infrastructure to support this growth is pivotal to creating sustainable communities. As the provider of most key, large-scale physical and social infrastructure (such as Education, Highways, Transportation, and Waste), Kent County Council (KCC) must ensure that necessary development is not at the expense of the infrastructure and services available for existing residents and businesses.

The National Planning Policy Framework (NPPF) and Kent Planning Authorities' Local Plans include policies requiring developers to mitigate their projects' impact on infrastructure. KCC considers all planning applications under this framework.

As well as securing the appropriate contributions, KCC is clear that essential infrastructure must be provided in the 'right place at the right time.' This principle is clearly outlined in our Strategic Statement '[Framing Kent's Future: Our Council Strategy 2022-26](#)'.

Given the significant levels of projected growth, it is more important than ever that KCC works closely with the 12 District, City and Borough local planning authorities to deliver infrastructure that supports sustainable development, and I am delighted that we have strong relationships to further build upon. Designed for local planning authorities, landowners and developers, this Guide sets out precisely what infrastructure will be required by the county council to support new housing in the county, how that requirement has been calculated and when it should be delivered.



Derek Murphy,

Cabinet Member for Economic Development

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1. Introduction

- 1.1.1. This Guide will inform district, borough and city authorities and developers about the impact new development will have on KCC's services and the subsequent developer contributions required to mitigate those impacts. In assessing planning applications, a Local Planning Authority (LPA) will also consider other policy requirements, non-KCC infrastructure requirements, and the cumulative cost of all relevant developer contributions to deliver sustainable development. In the overall planning balance, LPAs will need to assess the public benefits and disbenefits of the development proposals, including their contribution to infrastructure to support growth, in forming their decision.
- 1.1.2. It is acknowledged that some Local Plans will have been assessed taking into account the expected levels of mitigation required at that time. With 12 Planning Authorities across the county, Local Plan adoption times are varied and as such it has not been possible to match perfectly with all authorities. KCC is committed to regularly updating the Guide in accordance with fluctuations of service demands and updated costs, to ensure the CIL Reg 122 tests are met. The publication of the Guide will inform developers, ensuring that they know the likely infrastructure costs (and certainly the maximum-contribution scenario) when they are bidding for land or securing options.

1.2. The Purpose of This Guide

- 1.2.1. Sustainable development 'meets the needs of the present, without compromising the ability of future generations to meet their own needs'. [1] The planning system helps to achieve it by balancing economic, social, and environmental objectives, in the public interest. [2] In seeking to achieve sustainable development in the public interest, the impact of growth on infrastructure is a key consideration. Kent County Council is responsible for delivering and maintaining much of the large-scale infrastructure that its residents and businesses require, such as roads, schools, waste disposal services and libraries. To promote sustainable development, this Guide sets out the developer contributions which may be required by the county council to support growth and mitigate any adverse impacts on its infrastructure. Developer contributions (Planning obligations under s106 of the Town and Country Planning Act 1990 (as amended), works under s278 of the Highways Act and contributions from the Community Infrastructure Levy (CIL)) play a key part in the delivery of sustainable development, ensuring that infrastructure is delivered in a timely manner, and is appropriately situated and accessible. Put differently, developer contributions are needed to fund infrastructure to support growth.

[1] Resolution 42/187 by the United Nations General Assembly.

[2] As set out in paragraph 8 of the National Planning Policy Framework (NPPF).

1.2.2. The use of developer contributions links to the county council’s Strategic Statement ‘[Framing Kent’s Future: Our Council Strategy 2022-26](#)’. This includes the key priority - ‘Infrastructure for Communities’, which contains several commitments and supporting objectives to improve the county’s infrastructure, including:

‘Our ‘Infrastructure First’ commitment seeks to ensure that new development provides the appropriate physical and social infrastructure necessary to support new and existing communities’ quality of life.’

1.2.3. Following the publication of the Levelling Up White Paper [3] and subsequent Levelling Up and Regeneration Bill, [4] significant changes may take place. Until such time as a new mechanism is enacted, the county council intends to refer to this Guidance to support requests for developer contributions.

[3] <https://www.gov.uk/government/publications/levelling-up-the-united-kingdom>.

[4] <https://www.gov.uk/government/publications/levelling-up-and-regeneration-further-information/levelling-up-and-regeneration-further-information#the-levelling-up-and-regeneration-bill>.

1.2.4. For the purposes of formulating planning applications and their determination, this Guidance should be read alongside Development Plan Policies (Local Plans and Neighbourhood Plans) and relevant Supplementary Planning documents adopted by Kent Local Planning Authorities (LPAs). The Guide will also be used as the basis of KCC responses to proposed growth strategies in LPA development plans, providing evidence for the infrastructure delivery planning and viability assessments that underpin the Local Plan. The Guide and/or Technical Appendices will be reviewed when significant changes are made to service strategies and in evidence to support county council requirements. Significant changes will be subject to further consultation. [5]

[5] Significant means an increase in rate/s above inflation and/or a new contribution area.

1.2.5. It should be noted that this Guide does not specify every type of contribution that may be required to make development acceptable in planning terms. It provides an overview of obligations which may be sought by KCC only as part of the planning process and where necessary. While it is KCC’s role to assess the impact of new development upon its services, the LPA must consider the cumulative cost of all relevant developer contributions. Where cumulative costs exceed the development’s viability, KCC will seek to work with the LPA to assess the priority of infrastructure on a case-by-case basis, based on technical analysis.

1.2.6. Applicants should contact their Local Planning Authority for advice regarding contributions which may be sought by the LPA (e.g., affordable housing, sports provision, public open space, allotments, cemeteries, community buildings and health etc.).

1.3. The Status of This Guidance

1.3.1. This Guide is not a statutory planning document: however, it is material consideration. KCC therefore, requests that all City, District and Borough authorities give it due weight in terms of plan making and planning application decisions. Following public consultation and Cabinet approval, KCC has adopted it as policy. **It states what is required to meet the local plan policy on infrastructure provision in respect of county services.** KCC will use it as a basis for its responses to Local Planning Authorities in relation to infrastructure planning for local plans and planning application consultations.

1.4. Context - The Legal Framework

1.4.1. Town and Country Planning Act (1990) - Planning Obligations (s106)

1.4.1.1. Planning Obligations (s106) can be used to deliver development plan and government policy objectives and mitigate impacts to make development acceptable in planning terms. They may:

- Restrict development or use of the land in any specified way.
- Require specified operations or activities to be carried out in, on, under or over the land.
- Require the land to be used in any specified way.
- Require a sum or sums to be paid to the authority on a specified date or dates or periodically.

1.4.1.2. In line with the legal requirement set out in [Regulation 122 of The Community Infrastructure Levy Regulations \(2010\) \(as amended by the 2011 and 2019 regulations\)](#), s106 contributions for infrastructure provision may only constitute a condition for granting planning permission if they meet the following tests:

- 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.

(The same tests are set out in Paragraph 57 of the [NPPF](#) [6] and the Planning Practice Guidance (PPG)).

[6] Revised July 2021.

Information setting out how KCC's requests comply with the tests will be provided within the county council's responses to specific planning applications.

1.4.1.3. The planning obligations KCC may consider necessary for a scheme will depend on:

- The current level of infrastructure provision
- The nature and impact of the development on existing infrastructure
- Whether CIL or alternative funding will be available

1.4.1.4. Where they are required, planning obligations may need to be delivered in-kind on the site or within the vicinity of the site. Others may be financial contributions to be made to the county council as infrastructure provider.

1.4.1.5. Planning obligations will be used to deliver infrastructure that relates to the specific site. Contributions collected under s106 must be spent in accordance with the terms of the legal agreement. For infrastructure to support growth but not directly connected to the development, either CIL (where available) or alternative funding will be used.

1.4.2. Community Infrastructure Levy (CIL)

1.4.2.1. The Community Infrastructure Levy Regulations (2010), introduced by the Planning Act 2008 and in force since 6 April 2010, allow local planning authorities to impose a charge to fund infrastructure to support growth when granting planning permission.

1.4.2.2. Setting a CIL is not mandatory and under the current legislation, county councils cannot adopt a CIL. However, where a CIL is introduced, payment is compulsory.

1.4.2.3. Currently, five of Kent's 12 local planning authorities have introduced a CIL charging schedule. They are:

- Canterbury City Council
- Dartford Borough Council
- Folkestone and Hythe District Council
- Maidstone Borough Council
- Sevenoaks District Council

Differing arrangements are in place for the distribution of CIL receipts from the five authorities.

1.4.3. Highways Act - s278 and s38 Agreements

1.4.3.1. Where works are required to mitigate the impact of growth on the public highway, KCC will normally require this to be fully funded and delivered directly by the developer under a s278 agreement with the Highway Authority. s278 agreements provide an element of security (in the form of a

financial bond and a percentage of cash), should the Highway Authority need to complete works to an acceptable standard.

- 1.4.3.2. Details of any proposals must be agreed by the Highway Authority prior to planning consent being granted. Any associated works are subject to technical inspection and acceptance.
- 1.4.3.3. After considering the applicant's Transport Assessment, the Highway Authority will advise where mitigation measures are required, and the appropriate time for the works to be delivered. It will then recommend conditions to be placed on the application and the appropriate occupational trigger.
- 1.4.3.4. Under the Highways Act 1980, a s38 agreement allows KCC to take over and maintain at public expense [7] roads, footways, cycleways and other Highway areas and infrastructure constructed by a developer. These will usually relate to internal highways within the red-line application area of a development. As well as providing security of access to new development areas, KCC will use s38 agreements to secure vehicular or non-vehicular access through a development to connect with any existing adjacent Highways.

[7] Highways adoption process.

1.4.4. National Planning Policy Framework (NPPF)

- 1.4.4.1. The [National Planning Policy Framework](#) (NPPF) sets out the government's planning policies for England and how these should be applied. It must, therefore, be considered when preparing development plans and planning applications: paragraphs 31, 34, 55, 57 and 58 relate specifically to developer contributions and infrastructure provision.

1.4.5. Planning Practice Guidance (PPG)

- 1.4.5.1. [Planning Practice Guidance](#) (PPG) provides government guidance on all areas of planning and the NPPF, including developer contributions and viability ([planning obligations](#), [CIL](#) and [viability](#).) These documents should be read together.

1.5. The Interaction Between s106 and CIL

- 1.5.1. Local planning authorities (LPAs) must prepare annual Infrastructure Funding Statements (IFS), detailing which infrastructure they intend to fund through s106, s278 Highways Act, CIL (if they are a charging authority) and where they will seek other funding streams (see regulation 121A). As a contribution receiving authority, KCC also produces an Infrastructure Funding Statement.
- 1.5.2. Many charging authorities have not reviewed their CIL since the IFS was introduced. However, the former regulation 123 infrastructure lists (now

abolished) can still be a useful indication of infrastructure that may be funded through CIL. The lists will help to explain the funding approach taken at the time the CIL was set and therefore, the basis of the viability assessment.

- 1.5.3. Each charging authority is responsible for collecting, distributing, and prioritising CIL funding. KCC will use this Guidance and the Technical Appendices when seeking funding allocations from a CIL charging authority. To ensure effective mitigation of growth, LPAs should also refer to this Guidance, the Technical Appendices and KCCs response to planning applications when planning CIL infrastructure spending.
- 1.5.4. Whether or not CIL will be available, LPAs can seek s106 contributions for any item that meets the test set out in regulation 122 of the Community Infrastructure Levy Regulations (as amended) 2010. KCC may therefore, require s106 to mitigate the direct impact of development on its services and infrastructure.
- 1.5.5. CIL can be used to fund any infrastructure required to support growth, including strategic infrastructure not directly necessary for, or related to an individual development. By contrast, s106 obligations can be used only to mitigate the needs of the specific development proposal in the planning application.
- 1.5.6. Kent County Council will report on all s106, and CIL contributions received, showing where these have been spent and how it intends to use future contributions.
- 1.5.7. Further information on spend and receipt of s106/CIL contributions can be found in KCC's annual [Infrastructure Funding Statement](#).

2. Kent

2.1. Creating Quality Places

- 2.1.1. Kent (excluding Medway) is England's largest non-metropolitan county. It has a population of 1,589,100 across twelve districts, city, and borough councils, consisting of urban, rural, and coastal communities. With this figure predicted to reach 1,913,100 by 2040, infrastructure delivery has been recognised as one of four priorities in KCC's strategy for 2022-2026: '[Framing Kent's Future](#)'. As a key infrastructure provider, KCC maintains an 'infrastructure first' approach, [8] ensuring infrastructure is planned for, funded, and delivered in a timely manner to create sustainable places.

[8] As set out in [Framing Kent's Future – Our Council Strategy 2022-2026](#)
– Priority 2: Infrastructure For Communities.

- 2.1.2. Infrastructure helps to shape and deliver quality places. For example, schools provide focus at neighbourhood centres, especially when

combined with other community facilities, by enabling parents/carers dropping children off on foot to use local retailers and coffee shops. KCC recognises the importance of engaging early and throughout the planning and decision-making processes, working with other stakeholders to deliver quality places for people living and working in Kent.

- 2.1.3. The county council understands that delivering sustainable infrastructure at the point of need is sometimes restricted by financial cashflows. KCC and its key stakeholders will seek to address this issue where possible through detailed master-planning of growth and places. In addition, it may be possible to bid for Government funding to ‘unlock’ development schemes through the early delivery of infrastructure projects. KCC will work collaboratively with the LPAs and developers to explore these areas, with the joint ambition to maximise funding opportunities for Kent through a co-ordinated strategic approach.

2.2. Sustainability and Climate Change

- 2.2.1. In ‘[Framing Kent’s Future](#)’, KCC has prioritised the environment, sustainability and climate change. One of its four key priorities is ‘Environmental Step Change’. This includes commitments to:

- Improve how KCC values and protect Kent’s environment;
- Take steps to achieve Kent’s target of Net Zero by 2050;
- Back carbon-zero energy production;
- Ensure the county is well placed to adapt to climate change.

- 2.2.2. The planning system and contributions to sustainable development through infrastructure are central to achieving specific objectives, including significantly reducing transport emissions through road space, parking, and other initiatives, and promoting sustainable flood risk management practices in development, regeneration, and land management. This reinforces the sustainable development commitment made in the Kent Design Guide [9]:

‘To ensure residents have access to viable and attractive travel options that allow them to make safe, efficient and more sustainable journeys throughout Kent.’

[9] Currently being revised following public consultation.

2.3. Garden Communities and Large-Scale, Strategic Development

- 2.3.1. Across the county, a proportion of new housing and employment growth is expected to be planned for through the provision of new garden settlements and large-scale, strategic developments. Some will be urban extensions, others distinct, stand-alone new entities. Their success depends on timely and efficient delivery of infrastructure, services, and

facilities, including community, employment, and environmental infrastructure, to enable residents to ‘live, work and play’ in resilient, well-connected, and inclusive places.

2.3.2. The Town and Country Planning Association (TCPA) [10] describes a Garden City as ‘*a holistically planned new settlement which enhances the natural environment and offers high-excellence affordable housing and locally accessible work in beautiful, healthy, and sociable communities*’. The Garden City Principles are an indivisible and interlocking framework for their delivery, and include:

- Land value capture for the benefit of the community;
- Strong vision, leadership, and community engagement;
- Community ownership of land and long-term stewardship of assets;
- Mixed-tenure homes and housing types that are genuinely affordable;
- A wide range of local jobs in the Garden City within easy commuting distance of homes;
- Beautifully and imaginatively designed homes with gardens, combining the best of town and country to create healthy communities, and including opportunities to grow food;
- Development that enhances the natural environment, providing a comprehensive green infrastructure network and net biodiversity gains, and that uses zero-carbon and energy-positive technology to ensure climate resilience;
- Strong cultural, recreational, and shopping facilities in walkable, vibrant, sociable neighbourhoods;
- Integrated and accessible transport systems, with walking, cycling and public transport designed to be the most attractive forms of local transport.

[10] <https://www.tcpa.org.uk/garden-city-principles>.

2.3.3. KCC expects large-scale/Garden Communities to be delivered in line with these principles and will work with districts from an early stage. Such projects may require their own demographic modelling if a predicted population change results in a significant increase in young families, for example. This may then result in the requirement for bespoke infrastructure to meet their growth needs (see paragraph 3.3.4).

3. Kent County Council: Contributions

To establish an indication of contributions requested by KCC, the dwelling number and housing mix can be entered in Technical Appendix 3 – Development Contributions Calculator. Contribution rates have been set at their maximum level to provide a ‘maximum-contribution scenario’. It will

not be until the specifics of an application are known to the county council that appropriate contribution rates can be provided. For example, whether or not a primary school can be expanded to provide places, or a new school (including land) is required will dictate the level of contribution needed.

- 3.1.1. KCC is responsible for delivering and maintaining much of the large-scale infrastructure that Kent residents and businesses require, including roads, schools, waste disposal services and libraries. Much of this provision is already at capacity and therefore, the impact of growth is a key consideration.
- 3.1.2. KCC may seek contributions and/or facilities from developments to mitigate the impact of growth on infrastructure and services including, but not limited to:
- Adult Social Care (ASC)
 - Community Learning and Skills
 - Education- Primary
 - Education- Secondary
 - Education -Early Years
 - Education – Special Education Needs
 - Highways and Transportation
 - Integrated Children’s Services - Youth Services/Early Years Service
 - Land for Education, Highways and Waste
 - Libraries, Archives and Registrations
 - Public Rights of Way (PRoW)
 - Waste Disposal and Recycling
- 3.1.3. Led by the Local Planning Authorities, KCC will engage with the Local Plan processes to ensure infrastructure is planned for from the outset within Local Plan Policies (as required by the NPPF). The detailed approach to setting out KCC contributions is set out in the Technical Appendices to this document.

3.2. Type and Level of Contributions

- 3.2.1. KCC will take a consistent approach to assessing the need for developer contributions, but the specific circumstances of each case will be considered on its own merit. For example, this will include assessing the current capacity of KCC infrastructure/services relevant to the development in question, such as school capacities. It will provide evidence that the infrastructure is required (in whole or in part) to serve the proposed development, considering any existing local surplus service capacity. Provisions and contributions in respect of large-scale development and Garden Communities will be assessed on a bespoke basis (see paragraph 3.3.4).

3.2.2. Requirements for large sites allocated in local plans will have been calculated and identified at the infrastructure planning and plan-making stage. General contribution levels for each infrastructure type are set out in the Technical Appendices and Table 1 of this Guide.

3.3. How KCC Assesses the Impact of Each Development

3.3.1. KCC uses service-specific models to calculate the likely client numbers generated by any given development. Most are flexible to allow for additional information that may affect the result. Outputs are provided to applicants, who can support the process by providing details of the total number of dwellings and housing mix proposed.

3.3.2. The technical appendices provide information on the approach and justification for seeking planning obligations from new development on a service-by-service basis. They advise on thresholds, base charges, and comment on the potential use of contributions. Information regarding individual projects will be provided at the time of a pre-application enquiry or consultation on a case-by-case basis. A summary is provided in Section 3, Table 1.

3.3.3. Where a CIL charge has not been introduced, planning obligations are the only route to delivering infrastructure to mitigate the effects of development. If a development is not large enough to require on-site provision but large enough to affect service provision, KCC will use the methodology set out in the Technical Appendices to determine the scale and nature of the s106 obligations. Where an application has been submitted in outline, allowing the mix and number of dwellings to change at the Reserved Matters stage, KCC will create a formula for inclusion in the relevant s106 obligation, using the methodology set out in the Appendices.

3.3.4. Garden Communities and Large-scale Strategic Development- Bespoke Assessment

3.3.4.1. Evidence from previous large-scale developments (1,000 units or more) in Kent, such as Park Farm (Ashford) and Kings Hill (Tonbridge and Malling) suggests their population profile can be very different to that of smaller developments. In particular, the number of children, and thus the need for school places, is well above that for smaller in-fill projects.

3.3.4.2. KCC may use bespoke evidence, including from these existing large-scale sites, to ensure appropriate infrastructure is planned and provided on future similar developments. Responses to infrastructure planning at the plan-making and planning application stages will be based on demographic modelling specific to the proposed development – an approach supported by the Department for Education’s [Securing developer contributions for education](#) (November 2019 – para 34).

3.4. How Infrastructure Projects are Identified - Plan Making

- 3.4.1. Local Plans form the basis for service-related infrastructure planning. The NPPF (para 34) recognises that: *'Plans should set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required, along with other infrastructure (such as that needed for education, health, transport, flood and water management, green and digital infrastructure). Such policies should not undermine the deliverability of the plan'*.
- 3.4.2. In accordance with the NPPF, KCC expects infrastructure to be planned and tested throughout the development of a Local Plan and Policy Making. It encourages LPAs to engage early on potential development scenarios and will provide evidence in relation to the impact of proposed growth scenarios based on the approach set out in this Guide. KCC will seek to coordinate with Kent LPAs throughout plan production, to ensure that appropriate levels of infrastructure are planned, as well as working together to create maximum impact for communities through efficient delivery of complementary infrastructure.
- 3.4.3. In support of a Local Plan, local authorities may publish an Infrastructure Delivery Plan (IDP). KCC seeks to collaborate with districts and boroughs to develop a joint working approach to IDPs and unless otherwise agreed, KCC expects LPAs to use the costings and methodologies set out in this Guide (See Technical Appendices and Section 3, Table 1).
- 3.4.4. Strategic sites will often require new infrastructure provision, such as a new school, to mitigate their impact. Consequently, KCC will be seeking the inclusion of key infrastructure in local plan policies.
- 3.4.5. If there are delays in developments coming forward for consideration, the infrastructure evidence provided for the adopted development plan may no longer be up to date. Service needs can fluctuate due to factors beyond KCC's control: changes in national policy, a sudden rise in birth rates, or parents' preference for a particular school, for example. Where new or additional infrastructure requirements arise, KCC will provide robust evidence to support them, showing how the project meets the three tests of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).
- 3.4.6. KCC may also explore pooling S106 contributions, in accordance with regulation 122 of the CIL Regulations 2010 (as amended), to mitigate the combined or cumulative effects of a selection of smaller sites fairly and efficiently. Applicants are strongly advised to contact KCC at the earliest opportunity to discuss the current potential infrastructure impacts of their specific development.

3.5. Obsolete or Withdrawn Local Plans

- 3.5.1. Where a Local Plan is out of date or has been withdrawn, KCC will assess the impact of each planning application on a site-by-site basis, using the costings and methodologies set out in this Guide and the Technical Appendices.

3.6. The Scale and Nature of the Planning Obligation

- 3.6.1. KCC will seek proportionate obligations based on the infrastructure needed to mitigate a development's specific impact. Indicative costs are shown in the Technical Appendices: KCC will confirm precise obligations at the point of consultation.

Before requesting a planning obligation, KCC will assess:

- a) If the proposed development will create a need in the local area; and
- b) If the infrastructure project identified to mitigate the impact of development aligns with the estimated costs shown in the Technical Appendix.

3.7. KCC's Approach to Planning Obligations

- 3.7.1. KCC's approach to calculating and seeking development contributions, including their legal and policy basis, is set out in the individual Technical Appendices.

3.8. Thresholds, Qualifying Developments and Contribution Rates

- 3.8.1. The thresholds for seeking s106 contributions from each service area are set out within the individual Technical Appendices and Table 1 below, unless as otherwise agreed with individual Districts as the determining authority and accordingly supported by their Planning Policy, including lower thresholds.

- 3.8.2. Unless otherwise stated, no distinction will be made between:

- 'Open Market' and 'Affordable Housing';
- Caravan parks and similar forms of accommodation that are occupied for 12 months of the year as permanent residences;
- Flats and houses.

Discounts on contributions will be applied as follows:

- Education – no contributions for education will be requested for non-applicable dwellings, C2 dwellings and age restricted dwellings (over 55s). Rates sought are based on houses and flats.
- Integrated Children's Services – no contributions for Integrated Children's Services will be requested for non-applicable dwellings, C2 dwellings and age restricted dwellings (over 55s).

- Community Learning & Skills and Adult Social Care – discounts may be applied for C2 dwellings, depending on the type of residential facility provided.

3.8.3. Table 1 (below) summarises the contributions that may be sought to mitigate the impact of growth.

Table 1: Summary of Contributions Required by KCC Service Area as of 2022/23 (for full details refer to the Technical Appendices (TA)). [11]

Service Area	Threshold for Seeking S106 Contributions	Expected Contribution	Index
Adult Social Care (TA1)	10 dwellings and above or a site size of 0.5Ha or more.	£180.88 per dwelling	BCIS All-In Tender Price
Community Learning and Skills (TA2)	10 dwellings and above or a site size of 0.5Ha or more.	£34.21 per dwelling	BCIS All-In Tender Price
Education – Primary – New Build (TA 4 & 6)	10 dwellings and above or a site size of 0.5Ha or more.	£7,081.20per applicable* House and £1,770.30 per applicable* Flat	BCIS All-In Tender Price
Education – Primary – Expansion (TA 4 & 6)	10 dwellings and above or a site size of 0.5Ha or more.	£5,412.74 per applicable* House and £1,353.18 per applicable* Flat	BCIS All-In Tender Price
Education – Secondary – New Build (TA 4 & 6)	10 dwellings and above or a site size of 0.5Ha or more.	£5,587.19 per applicable* House £1,396.80 per applicable* Flat	BCIS All-In Tender Price
Education – Secondary – Expansion (TA 4 & 6)	10 dwellings and above or a site size of 0.5Ha or more.	£5,329.27 per applicable* House and £1,332.32 per applicable* Flat	BCIS All-In Tender Price
Special Educational	10 dwellings and above or a site size of 0.5Ha	£559.83 per applicable* House and	BCIS All-In Tender Price

Needs and Disabilities (TA 4 & 7)	or more.	£139.96 per applicable* Flat	
Education Land (TA 4, 8, 9 & 11)	10 dwellings and above or a site size of 0.5Ha or more.	To Be Advised	BCIS All-In Tender Price
Flood Risk Management and Sustainable Drainage (TA 12)	Strategic Development	To Be Advised	BCIS All-In Tender Price
Heritage and Archaeology – Community Archaeology Provision (TA 13)	Sites which are strategic in size or sited in areas of significant archaeological potential	To Be Advised	BCIS All-In Tender Price
Highways and Transportation (TA 14)	Any development impacting upon the highway.	Highway works required to mitigate impacts demonstrated within the applications Transport Statement/Assessment via s278, S38 Agreements. Highway Works and/or Travel Plan interventions via s106 contributions and/or commuted sums for maintenance.	Road Construction Index (ROADCON) or BCIS General Build
Integrated Children’s Services – Youth and Early Years Services (TA15)	10 dwellings and above or a site size of 0.5Ha or more.	£74.05 per dwelling	BCIS All-In Tender Price
Libraries,	10 dwellings and above	£62.63 per dwelling	BCIS All-In

Registration & Archives (TA16)	or a site size of 0.5Ha or more.		Tender Price
S106 Monitoring Fee	All S106 agreements	£300 per payment trigger	BCIS All-In Tender Price
Public Rights of Way (PRow) (TA17)	Assessed on a case-by-case basis	To Be Advised	Road Construction Index (ROADCON) or BCIS General Build
Waste Disposal and Recycling (TA18)	10 dwellings and above or a site size of 0.5Ha or more.	£194.13 per dwelling (maximum - dependent on projects required for the locality)	BCIS All-In Tender Price

[11] Contact KCC for the most up to date information.

Please note:

- All costs referred to above and elsewhere within this document are based at Q1 2022 and will be reviewed regularly.
- Indexation Base Date for quoted costs is Q1 2022.
- For the purposes of education contributions, Applicable Dwellings means dwellings with one or more bedrooms, and over 56 sqm GIA.
- The costs to mitigate growth are shown per dwelling and will be used to inform the county council's responses to local plan proposals.
- Where the LPA is not seeking a s106 contribution, KCC may seek CIL contributions for the required infrastructure, as shown above.
- This Guide does not specify every type of contribution that may be required to make development acceptable in planning terms. It provides an overview of obligations which may be sought by KCC as part of the planning process, where necessary. Applicants should contact their Local Planning Authority for advice regarding contributions which may be sought by the LPA (e.g., affordable housing, sports provision, public open space, allotments, cemeteries, community buildings and health etc.).

3.8.4. This table outlines contributions that may be expected when assessing infrastructure required at the plan-making stage, and for individual planning

applications. Planning obligations may be in the form of financial contributions, works, on-site provision, or land.

- 3.8.5. To establish how contributions are assessed, and the amount likely to be required by KCC, please refer to the Technical Appendices. Unless otherwise stated, assessment of service capacities will take place at planning application stage.
- 3.8.6. To establish an indication of contributions requested by KCC, the dwelling number and housing mix can be entered in Technical Appendix 3 – Development Contributions Calculator.

4. Land, Buildings and Contributions In-Kind

4.1. The Requirement for Land

- 4.1.1. In some circumstances, KCC may require land to be transferred to its ownership. Examples include new or expanded schools and nurseries, buildings for community services or land to be dedicated as highway or other forms of travel infrastructure. KCC will work with LPAs and developers during the development of Local Plans, to identify and allocate sites to ensure additional infrastructure can be delivered. This will include work to establish the value of land, which will be conducted on a case-by-case basis.
- 4.1.2. For some new infrastructure relating to development, land may be required to establish a new facility on the development site itself. In other cases, it may be more appropriate to expand an existing local service.
- 4.1.3. Where infrastructure is needed to serve more than one development, [12] the land element may be provided by one developer on their site, with other developers making a capital contribution towards it. Developers will need to work together to agree a proportionate approach to their contribution. Each development will be considered on a site-by-site basis. Where an equalisation agreement is not forthcoming, proportionate financial contributions will be sought from the relevant developments.

[12] For example, where several sites have been grouped together under one strategic allocation within the local plan.

- 4.1.4. Where land has been provided at nil consideration to KCC, other developments coming forward in the site's vicinity may be required to make a proportionate contribution towards the land provided by a developer (see Para 5.6 Apportionment and Land Contributions for further details).

4.2. Location and Suitability

- 4.2.1. Developers should discuss their plans with KCC and the local planning authority at the earliest opportunity to identify the most appropriate

potential locations for new infrastructure. For large strategic sites, this should include a masterplan, considering sustainable transport and active travel routes, both within the site and connecting to existing neighbourhoods. The location of a potential KCC service need should be carefully considered in relation to other potential non-compatible uses.

4.2.2. Once the location has been agreed, ground conditions must be considered. For school sites, the General Land Transfer Terms are attached at Technical Appendix 8. Please contact developer.contributions@kent.gov.uk for the most up-to-date version.

4.2.3. See also Technical Appendix 9 for the current site-size requirements for education purposes.

4.3. Land Transfers – Legal Agreement

4.3.1. In most cases land will be provided at a nominal cost of £1 ('nil consideration') with the trigger for transfer set out within the s106 agreement. The agreement's timescales should be flexible, enabling KCC to plan for timely delivery. If KCC has not entered into a build contract to provide the facility within 10 years of the transfer date (or other longer time as may be agreed), the land will be transferred back to the developer.

4.4. Works and Buildings – Direct Delivery

4.4.1. In some cases, developers may wish to carry out works themselves, in lieu of financial contributions. These could include constructing a building that is then transferred to KCC together with land. This can often be the most effective way of timely, on-site delivery; however, it will be subject to strict requirements, detailed specifications, and appropriate surety, and agreed on a case-by-case basis.

4.4.2. Developers should be aware that procurement and competition laws require public works contracts to be openly tendered. Where works-in-lieu are deemed acceptable, KCC will require an indemnity against any claim resulting from a breach in these regulations.

5. Guidance applicable to all Section 106 contributors

5.1. Pre-Application Advice

5.1.1. KCC welcomes early involvement in discussions to resolve key issues before planning applications are submitted.

5.1.2. Developers are advised to contact the appropriate LPA (listed in 6.2) at the earliest opportunity. The LPA may wish to conduct discussions with KCC or be happy for the developer to approach KCC directly. KCC offers pre-application s106 infrastructure advice, in respect of education, communities, and waste free of charge: a fee applies for pre-application

advice from KCC Highways and Transportation. Further information can be at Highway pre-application advice.

- 5.1.3. From the information provided, KCC will use the process/formulas set out in the Technical Appendices to identify a development's impact on local infrastructure and services. It will suggest possible mitigation measures and estimate the cost of any developer contributions it may seek once a planning application is submitted.

5.2. Planning Performance Agreements

- 5.2.1. Kent County Council encourages Planning Performance Agreements (PPAs). These are voluntary agreements, normally involving the applicant of major or strategic developments that impact the county and the services KCC provides. PPAs enable applicants and the county council (plus the Local Planning Authority (LPA) as appropriate) to set out a framework for dealing with these applications, including pre-application stage. This framework may include agreeing timescales, setting up working groups, defining the role of each interested party, as well as defining the cost of resourcing KCC's services towards each project.

5.3. S106 Legal Agreements – Unilateral and Multiparty Agreements

- 5.3.1. Unilateral Undertakings under s106 of the Town and Country Planning Act 1990 do not require the LPA or KCC to perform any duties or be a signatory. These are, however, generally only appropriate for small developments where a full planning application has been made and the dwelling mix is fixed.
- 5.3.2. For most developments, full tripartite agreements are encouraged, to aid effective delivery of infrastructure in a timely manner. KCC and the LPA will need to enter into obligations with the developer, requiring:
- The use of financial contributions for specific purposes;
 - Sums to be placed in interest bearing accounts;
 - The safeguarding of land e.g., for education or highways purposes;
 - The return of unused contributions after ten years (unless a longer period is otherwise agreed).
- 5.3.3. Where KCC is a receiving authority for planning contributions, it encourages legal agreements to which it is itself a signatory. This avoids any further need to apply to the LPA for the release of funding that has already been determined in the planning application as CIL Regulation-compliant.
- 5.3.4. KCC should be involved in negotiating and agreeing any planning obligations that are due to be paid to it, to ensure these are fit for purpose and CIL-compliant. Again, early engagement is encouraged.

5.3.5. Once completed, the LPA will record the s106 legal agreement as a local land charge. Both KCC and the Local Planning Authority will then monitor compliance with the agreement. KCC maintains a register of all planning obligations. KCC will provide clear audits to the district and other stakeholders, showing when s106 monies are received and where and when they are spent.

5.4. Phased Payment and Triggers for Payment

5.4.1. Payment triggers for contributions will be required to reflect the need and priority of infrastructure delivery at the time of the application, as well as the nature of the development proposal. Triggers might usually be expected to be on Commencement, 25% occupations and 50% occupations. If payments are made at later stages of development, contributions should not be made beyond the stage where KCC needs to begin work on new provision, since it will not forward-fund projects that would incur interest payments. Triggers for payment must usually, therefore, be met during the early stages of development to avoid additional costs.

5.4.2. In the case of large developer contributions, phased payments may be appropriate. However, KCC will not support contributions being paid in arrears i.e., after the development to which the amounts relate has been occupied. Where later payments are considered essential by the LPA to ensure development viability, KCC may request surety from the developer, through a bond provider, to protect payment in the event of insolvency (see Para 5.7, Bonds and Guarantors).

5.5. Indexation

5.5.1. Contributions are subject to indexation to account for inflation. This ensures that they continue to cover the actual future cost of delivering the infrastructure.

5.5.2. Indexation establishes a base date, at which the index equals 100. If costs rise, the index point rises by an equivalent percentage. For example, if costs have increased by 5% since the base date, the current index point will be 105. Updated indices are published regularly.

5.5.3. The index for each contribution type is given in Section 3, Table 1 of this Guide and Technical Appendices. Indexation must run from the date the costing is based, up until the date of payment.

5.5.4. To apply the index and work out the contribution that is payable, the following formula must be used:

Contribution Payable

$$= \textit{Contribution Requested} \times \frac{\textit{Index at date of payment}}{\textit{Index on which request was based}}$$

5.5.5. For example: KCC requests a contribution of £1,000.00 based on the BCIS General Building Cost Index of April 2020 Index, which is 360.3. If the Index increases to 378.4 by the date of payment, the contribution payable is calculated as follows:

$$\text{Contribution Payable} = £1,000.00 \times \frac{378.4}{360.3} = £1,050.24$$

5.5.6. This example excludes any late-payment interest which applies from the date a payment is due and is not indexed - see Para 5.12.2

5.5.7. KCC cannot provide copies of indices (which are produced by subscription services) to developers owing to copyright restrictions. KCC will, however, provide the calculation and an explanation of the result on request.

5.6. Apportionment and Land Contributions

5.6.1. The general principles underpinning apportionment are as follows:

- Infrastructure interventions/projects should be matched to those development(s) which result in that intervention being required.
- Contributions should be equitable between developments, in proportion to the scale of the development and level of impact or generated demand.

5.6.2. Therefore, contributions should be proportional to the level of impact or generated demand resulting from the planned growth based on likely trip generation, housing unit numbers and child yields etc.

5.6.3. Through the local plan process, KCC will work with the local planning authorities and developers to identify and allocate sites to meet the needs of new infrastructure provision, including education, highways, and waste services.

5.6.4. In terms of land to deliver the infrastructure, it is expected that this land will be provided to the county council at 'nil consideration'. Where a development is providing land and the site area is in excess of that required solely to meet the needs of their development, the landowner should not be disadvantaged. Therefore, KCC will seek proportionate financial contributions for the land from other contributing sites and where secured and received, will transfer these sums to the land provider. For example, the value of the land will normally be based on its existing or alternative use value where there is no realistic prospect of development, or the site has been allocated in the development plan. If the site could realistically have been given residential permission but for the need to facilitate the provision of the infrastructure to meet the needs of other development sites, it would normally be valued at residential land value. In any event the site will be provided to KCC at 'nil consideration.' The county council will work with the LPAs to secure this via the s106 process and CIL contributions.

5.7. Bonds and Guarantors

- 5.7.1. KCC may require surety where s106 funding is enabling the delivery of a large infrastructure project. This may take the form of bonds, parent company guarantees or letters of intent, as agreed with KCC's Corporate Director of Finance.
- 5.7.2. The precise nature of the surety will be determined by a detailed analysis of the organisation's published financial statements and independent credit report, using recognised techniques such as accounting ratios. It will also take into consideration the contract's value and duration, and the nature of the industry in which the project is being delivered. This will be discussed with the organisation.
- 5.7.3. The size of a bond will depend on the contribution/s required and calculated to ensure nil cost and risk to KCC. It will take the form of either a cash deposit, or a surety provided by a third party (a recognised bond provider such as a major bank or insurance company on the Financial Services Register and approved by the Financial Conduct Authority). In the event of a breach, KCC must be sure that any financial contributions are available immediately.

5.8. Viability

- 5.8.1. Viability should be considered at the plan-making stage, as set out in para 58 of NPPF. As part of the evidence base for their Local Plans (or CIL charging schedules), LPAs should have a published viability assessment as part of the evidence base for their plans, in accordance with the standardised approach in the Viability Planning Practice Guidance (www.gov.uk/guidance/viability). This will include the infrastructure requirements and cost estimates to meet planned growth, as provided by KCC. Local Plans should, from now, be using the standards and multipliers set out in the Guide.
- 5.8.2. The LPAs all have local plan policies that seek to mitigate development in terms of infrastructure, the cost of which will potentially change over time. KCC provides evidence of need and the cost of mitigation at application stage, which will address development plan policy, NPPF and meet the CIL Reg 122 tests. If the Guide adversely impacts the viability of a development to the point where it cannot be delivered, this could constitute the basis of a viability review (allowed for within the Planning Practice Guidance (PPG) - Viability).
- 5.8.3. In areas with an up-to-date Local Plan, viability assessments should not be required for planning applications, since it is assumed that policy-compliant development is viable. Most developments in these areas should, therefore, meet KCC's s106 requirements as contained in this Guide.
- 5.8.4. It is acknowledged that some Local Plans will have been assessed taking into account the expected levels of mitigation required at that time. Local

Plan adoption times for the 12 Planning Authorities across the county are varied and as such it would not be possible to match perfectly with all authorities. KCC is committed to regularly update the Guide in accordance with fluctuations of service demands and costs, to ensure the CIL Reg 122 test are met.

- 5.8.5. Where the plan is out of date, there has been a change in circumstances, or requirements in this Guide cannot otherwise be met, a viability assessment may be submitted to the LPA when seeking planning permission. This should be based on the standardised approach in the PPG, referring to the viability assessment that informed the Local Plan and setting out what has changed since then. The applicant must explain why the scheme's particular circumstances justify reduced infrastructure delivery. It should also be disclosed to KCC in full and unredacted form, including all appendices.
- 5.8.6. The publication of the Guide will inform developers, ensuring that they know the likely infrastructure costs (and certainly the maximum-contribution scenario) when they are bidding for land or securing options.
- 5.8.7. While it is KCC's role to assess a new development's impact on its services, the LPA has to consider the cumulative cost of all relevant developer contributions, assess the development's viability, and balance that with the need to deliver sustainable growth. Where the LPA deems the total s106 contributions would not be viable, KCC expects the legal agreement to include a review mechanism enabling additional payments should viability improve. This is applicable where a Local Plan includes reference to such review mechanisms. KCC therefore, encourages LPAs to include a review mechanism within their local plan.
- 5.8.8. In general, a development should alleviate its own impact. However, KCC accepts that some overwhelming public benefits can only be realised by giving permission to schemes that would be unviable if full planning obligations were met. In these circumstances, the PPG states that a proposed development should not be judged 'not viable' through a developer paying too much for land.
- 5.8.9. Any departure from the normal approach outlined within this Guide will be reported bi-monthly to KCC's Infrastructure First Group.
- 5.8.10. Kent County Council will be transparent regarding all s106 processes, decisions, and procedures.

5.9. Viability Reviews

- 5.9.1. The PPG ([009 Reference ID: 10-009-20190509](#)) states that Local Plans should set out where a review mechanism may be appropriate. It goes on to say:

‘Where contributions are reduced below the requirements set out in policies to provide flexibility in the early stages of a development, there should be a clear agreement of how policy compliance can be achieved over time. As the potential risk to developers is already accounted for in the assumptions for developer return in viability assessment, realisation of risk does not in itself necessitate further viability assessment or trigger a review mechanism. Review mechanisms are not a tool to protect a return to the developer, but to strengthen local authorities’ ability to seek compliance with relevant policies over the lifetime of the project.’

- 5.9.2. Where KCC and the LPA agree to a review mechanism to aid cashflow and the delivery of the development, KCC will follow the methodology set out in the Local Plan or agree the viability review methodology with the LPA to be included in the s106 agreement.

5.10. Planning Appeals

- 5.10.1. Where an appeal is submitted to the Planning Inspectorate and KCC has previously sought planning obligations, KCC will re-assess the development proposal to ensure its requests remain up to date and necessary. Where contributions are required, KCC will submit an appeal statement and / or statement of common ground to the Planning Inspectorate. Applicants should contact both KCC and the LPA early in the appeals process, to ensure efficient production of legal agreements and reduce any duplication of work that might otherwise occur.

5.11. Procedure for the Discharge of Planning Obligations to KCC

- 5.11.1. When submitting an obligation discharge request, applicants should provide sufficient information to identify the original permission. This includes the planning application reference, the date of the s106 legal agreement or subsequent deed of variation (if applicable) and the clause to which the request relates.
- 5.11.2. Where KCC is satisfied that the requirements of a particular clause or clauses have been complied with, the Development Investment Team will issue a formal discharge notice to the applicant and relevant LPA.
- 5.11.3. Applicants wishing to discharge s106 planning obligations should email: developer.contributions@kent.gov.uk.

5.12. Fees, Charges and Monitoring

5.12.1. S106 Legal Agreement Fees

- 5.12.1.1. Applicants are responsible for the cost of negotiating, agreeing, and completing any legal agreement, to cover KCC officer time and resources. This will apply also to Planning Appeals.

5.12.2. Late Payment Interest

5.12.2.1. Late-payment interest set at 4% above the Bank of England Base Rate will be charged on the outstanding balance from the payment due date.

5.12.3. Monitoring costs

5.12.3.1. KCC applies s106 monitoring fees under Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011. This is reflected in Planning obligations PPG - Paragraph: 036 Reference ID: 23b-036-20190901 and for CIL in the Community Infrastructure Levy Regulations 2010 (as amended).

5.12.3.2. KCC will manage and monitor each legal agreement/unilateral undertaking from the point at which it is signed. The monitoring fee will be payable where KCC is to receive contributions, with payment due on commencement of the development.

5.12.3.3. A monitoring fee of £300.00 will be payable for each payment trigger. For example, where all contributions are paid on two trigger points, this will incur two payments totalling £600.00.

5.12.4. Time Limit for Spend of Contributions

5.12.4.1. Any contributions will be repaid to the original payee on request if not committed or spent towards its purpose within 10 years of receipt of the contributions in full (if paid in instalments) or alternative longer period as may be agreed. See also the Department for Education (DfE) guidance 'Securing developer contributions for education' published in April 2019. [13]

[13] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/909908/Developer_Contributions_Guidance_update_Nov2019.pdf.

5.12.5. Infrastructure Funding Statement

5.12.5.1. The Community Infrastructure Levy (CIL) regulations require all LPAs that issue CIL liability notices or enter into section 106 planning obligations during a reporting year to publish an Infrastructure Funding Statement (IFS) at least annually. KCC's IFS can be found [here](#).

6. Contact with KCC and District Councils/Local Planning Authorities

6.1. Kent County Council - Contacts

Who to contact:

For planning obligations in relation to all non-transport matters, contact the Development Investment Team.

developer.contributions@kent.gov.uk;

For information on planning obligations in relation to transport matters, contact the Highways Development Management Team.

[Highway pre-application advice – Kent County Council](#)

For pre-application advice from a specific service area, contact the relevant team as shown below:

Service	Email Address
Highways and Transportation - East Ashford, Canterbury, Dover, Folkestone and Hythe, Swale and Thanet	DevelopmentPlanningEast@kent.gov.uk
Highways and Transportation - West Dartford, Gravesham, Maidstone, Sevenoaks, Tonbridge and Malling and Tunbridge Wells	Developmentplanningwest@kent.gov.uk
Public Rights of Way (PRoW) - East Ashford, Canterbury, Dover, Folkestone and Hythe, Swale and Thanet	eastprow@kent.gov.uk
Public Rights of Way (PRoW) - West Dartford, Gravesham, Maidstone, Sevenoaks, Tonbridge and Malling and Tunbridge Wells	westprow@kent.gov.uk

Education	North Kent – ian.watts@kent.gov.uk East Kent – marisa.white@kent.gov.uk South Kent – lee.round@kent.gov.uk West Kent – nicholas.abrahams@kent.gov.uk
Waste	wasteinfrastructure@kent.gov.uk

6.2. Local Planning Authorities

6.2.1. For advice on local planning authority requirements for developer contributions, please contact the appropriate authority listed below:

District, Borough, or City Council	Telephone Number	Website Address and Email Contact Details
Ashford Borough Council	Tel: 01233 331111	www.ashford.gov.uk planning.help@ashford.gov.uk
Canterbury City Council	Tel: 01227 862000	www.canterbury.gov.uk planning@canterbury.gov.uk
Dartford Borough Council	Tel: 01322 343434	www.dartford.gov.uk planning.admin@dartford.gov.uk
Dover District Council	Tel: 01304 821199	www.dover.gov.uk developmentmanagement@dover.gov.uk
Folkestone and Hythe District Council	Tel: 01303 853000	www.folkestone-hythe.gov.uk planning@folkestone-hythe.gov.uk

Gravesham Borough Council	Tel: 01474 337000	www.gravesham.gov.uk planning.general@gravesham.gov.uk
Maidstone Borough Council	Tel: 01622 602000	www.maidstone.gov.uk planningsupport@midkent.gov.uk (Shared service with Swale Borough Council)
Sevenoaks District Council	Tel: 01732 227000	www.sevenoaks.gov.uk planning.comments@sevenoaks.gov.uk
Swale Borough Council	Tel: 01795 417850	www.swale.gov.uk planningsupport@midkent.gov.uk (Shared service with Maidstone Borough Council)
Thanet District Council	Tel: 01843 577000	www.thanet.gov.uk planning.services@thanet.gov.uk
Tonbridge and Malling Borough Council	Tel: 01732 844522	www.tmbc.gov.uk planning.applications@tmbc.gov.uk
Tunbridge Wells Borough Council	Tel: 01892 526121	www.tunbridgewells.gov.uk planning@tunbridgewells.gov.uk