Woodhead Road, Honley
Kirklees Council's response to EFM report of 30 September 2021

This note addresses the issues raised by Kirklees Council's email response dated 18 November 2021 to EFM's original report.

1. I will start with Kirklees Council's final comment, which relates to my paragraph 2.7, in which the Council refutes the existence of the statutory two and three-mile walking distances.

The distances are contained within **s444(5)** of the **Education Act 1996 (EA96**), in this way:

"… "walking distance" – (a) in relation to a child who is under the age of eight, means 3.218688 kilometres (2 miles), and (b) in relation to a child who has attained the age of eight, means 4.828032 kilometres (3 miles)…. In each case measured by the nearest available route."

Section 508B EA96 deals with the arrangements for travel for "eligible children", **Schedule 35(B) S15 para 6** defines an eligible child as being one who is "…*of compulsory school age and is a registered pupil at a qualifying school which is not within walking distance of his home, (b) no suitable arrangements have been made by the local authority for boarding accommodation for him at or near the school and (c) no suitable arrangements have been made by the local authority for enabling him to become a registered pupil at a qualifying school nearer to his home."*

Schedule 35(B) (15) then defines "walking distance" as having the meaning given by Section 444(5) – the 2 and 3-mile distances.

The Council, is therefore, wrong in stating *"There is no statutory two or three-mile walking distance"*. EA96 is quite clear in its measurement of the distance (to six decimal places) and in how and to whom it may be applied.

The Council's Home to School Transport Policy 2020-21 addresses the circumstances under which a child may qualify for free school travel, and uses the EA96 definition of a "qualifying school" in doing so. The Council states (para 1d) "*The measurement of the statutory walking distance is not necessarily the shortest distance by road…"* [my emphasis], and later refers to the 2 and 3-mile

distances. It is highly contradictory, therefore, to claim that "*There is no statutory walking distance.*" and then explicitly rely upon it in another policy document.

There are clearly walking distances, the scale of which are defined within Statute. The position is simply that the Council does not employ the walking distances as part of its assessment of need for development contributions. It relies upon the identification of a single school.

2. The Council should be aware, however, of a recent appeal hearing (2018) for a site in Skegby, Nottinghamshire (ref APP/W3005/W/18/3213342) in which the Inspector considered the implications of assessing only the most local school in a situation where the wider cluster was forecast to have sufficient space. A similar situation to this one. The Inspector concluded that the contribution sought was not fairly and reasonably related to the development and was not necessary to make the development acceptable, stating "*…if a planning area approach is used, as nationally recommended*[1]*, then it is possible that there will be a surplus of places…".*

This, alongside the previous appeal decisions noted in my original report, indicates that a broad view of local schools should be taken by authorities when assessing the places available to meet the needs of a development.

3. In response to the Council's comment that the report's paragraph 2.6 "*misses out the rationale behind the flexibility requested*", this is not the case. The need for geographical flexibility in terms of expenditure is completely understood, but it must be matched by a similar geographical flexibility in terms of the assessment of capacity and vacant places at local schools. It is illogical and iniquitous to assess the local school as needing additional places, seeking contributions for them, and then adding the additional places to another school, which already has sufficient capacity to meet the needs arising. And this in an environment of falling rolls. Both schools should be assessed.

Furthermore, and as already discussed within the report, the operation of parental choice and local admissions patterns has meant that the PAA school (Brockholes) has in the past admitted pupils from Honley. With additional pupils moving into the Brockholes area as a result of the development, admissions of Honley children will automatically reduce in favour of pupils from the new development. DfE guidance on securing developer contributions for education (para 3) states "*It is important that the impacts of development area adequately mitigated, requiring an understanding of… The capacity of existing schools that will serve development, taking account of pupil migration across planning areas…" [my emphasis]*. In ignoring the numbers of pupils who live in Honley and attend at Brockholes PS, the Council is clearly not doing this.

4. Finally, the Council's developer obligations policy was produced in around 2012 and does not appear to have been updated since then. This means that it does not take into account the NPPG

[1] In both NPPG (paragraph 8: ID 23b-009-2-19-315) and "Securing developer contributions for education" (DfE 2019)

updates of 2019, the various CIL updates since 2012, nor the DfE Guidance of 2019. It is hard, therefore, to consider it fully fit for purpose.

In summary:

- The Council has placed itself in a contradictory position relying on the assessment of just one school but being prepared to provide additional places at an alternative school which already has sufficient places to meet the need.
- While the difficulty of the Council's policy position in terms of its existing policy is understood, that policy must now be considered out of date and unfit for purpose.
- The recent appeal decision highlights the need for a broader assessment of school places.
- In summary, the request for contributions cannot be considered to meet CIL Regulations (in terms of being necessary to make the development acceptable). As a Statutory Instrument supported by statute, the CIL Regulations take precedence over local policy.

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