



ALFREDSON YORK
ASSOCIATES

TOWN AND COUNTRY PLANNING ACT 1990

SECTION 78 APPEAL

BY

Accrue (Forum) 1 LLP

PLANNING APPLICATION FOR RESIDENTIAL DEVELOPMENT

Land at former B&Q, Stretford, Trafford

PROOF OF EVIDENCE ON EDUCATION MATTERS

JOHN POWELL LLB (Hons), OPERATIONS DIRECTOR, ALFREDSON YORK ASSOCIATES LTD.

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1. Introduction

1.1. Qualifications & Experience

1.1.1. My name is John Robert Powell. I hold an Honours degree in Law from the University of East Anglia.

1.1.2. I previously worked for ten years in central and local government dealing with issues of school place planning, buildings and site issues.

1.1.3. I was a Planning Officer and then Senior Planning Officer at the Funding Agency for Schools, a Non-Departmental Public Body that dealt with all grant-maintained schools. My responsibilities included the planning of school places in 22 London Boroughs, and the opening of two new schools, in Oxfordshire and Surrey.

1.1.4. On the closure of the Funding Agency, I moved into local government, firstly with Reading Borough Council and then with West Berkshire Council. My responsibilities included managing the section with oversight of, among other things, planning of school places, admissions, home to school transport and school building projects.

1.1.5. In 2005 I founded Education Planning and Data Solutions. In 2012 this organisation became a limited company named EPDS Consultants. EPDS Consultants was an education consultancy specialising in the fields of school place planning, school buildings and sites, and related data, and advised other education consultancies, local authorities, land owners, construction companies, planning agents and developers on the implications of new housing on education infrastructure.

1.1.6. Following the decision of the two Directors to pursue their own business interests EPDS Consultants closed in July 2020, and I set up a new venture, Alfredson York Associates, to continue my work within this field.

- 1.1.7. I am currently advising various land agents and developers on school place mitigation matters in respect of Ware (Hertfordshire), Stansty Chain Road (Wrexham), North West Horsham (West Sussex) and a number of other developments.
- 1.1.8. I was instructed by Accrue (Forum) 1 LLP to provide an independent analysis of the educational issues arising from the proposed development and to liaise with Trafford Metropolitan Borough Council ("the Council") to attempt to reach an agreed position.
- 1.1.9. In providing my independent review, I have sought and obtained details as to the current and forecast usage of the existing schools from the Local Education Authority and have attempted to have dialogue with Officers in order to try and establish common ground wherever possible.
- 1.1.10. I confirm that insofar as the facts stated in my report and this proof of evidence are within my own knowledge, I have made clear which they are and I believe them to be true, and that the opinions I have expressed represent my true professional opinion. I confirm that my report includes all facts which I regard as being relevant to the opinions which I have expressed and that attention has been drawn to any matter which would affect the validity of those opinions. I confirm that my duty to this inquiry as an expert witness overrides any duty to those instructing or paying me, that I have understood this duty and complied with it in giving my evidence impartially and objectively, and that I will continue to comply with that duty.

1.2. Scope of Evidence

1.2.1. My evidence considers the likely impact on local education infrastructure arising from the proposed development and the appropriate methodology for calculating the mitigation that may be required to meet any such impact.

1.2.2. My evidence is presented in six sections: firstly, a statement of the issues before the Inspector (section 2); secondly, an analysis of the Statutory and Policy framework (section 3); thirdly, a history of correspondence on the Education matters between the parties (section 4); fourthly, an analysis of the Council's rationale for the contribution requests made (section 5); fifthly, the Appellant's position in relation to appropriate mitigation (section 6); and finally, a summary and conclusions (section 7).

2. Matters to be determined by the Inspector

2.1. This section summarises the issues upon which the Inspector is asked to reach conclusions.

2.2. As an introduction, education contributions are calculated by reference to a simple formula:

Where (child yield multiplied number of dwellings) less available surplus is a positive number, then that number multiplied by the cost per place is required to mitigate the impact of development.

2.3. The issues in this appeal, that impact on the above formula, are:

- the correct assessment of the yield from the appeal site (and possibly other sites);
- the correct year for assessing demand in the system;
- the assessment of the number of places available;
- the relevant schools to consider;
- the impact of out of borough pupils' and
- any appropriate level of surplus places to be left unfilled.

3. Statutory and Policy Framework

3.1. I do not repeat all of the statutory and policy framework identified in the Proof of my planning colleague and the Planning SOCG. I focus instead on issues of particular relevance to the educational assessment.

3.2. The Education Act 1996

3.2.1. The site at the former B&Q, Stretford, lies within the primary and secondary catchment areas for schools for which the local education authority is the Council.

3.2.2. The Education Act 1996, as amended, provides in section 14:

14 Functions in respect of provision of primary and secondary schools.

(1) A local authority shall secure that sufficient schools for providing—

(a) primary education, and

(b) education that is secondary education by virtue of section 2(2)(a),
are available for their area.

(2) The schools available for an area shall not be regarded as sufficient for the purposes of subsection (1) unless they are sufficient in number, character and equipment to provide for all pupils the opportunity of appropriate education.

(3) In subsection (2) “appropriate education” means education which offers such variety of instruction and training as may be desirable in view of—

(a) the pupils’ different ages, abilities and aptitudes, and

(b) the different periods for which they may be expected to remain at school,
including practical instruction and training appropriate to their different needs.

(3A) A local authority in England shall exercise their functions under this section with a view to—

(a) securing diversity in the provision of schools, and

(b) increasing opportunities for parental choice.

(4) A local authority is not by virtue of subsection (1)(a) under any duty in respect of children under compulsory school age.

(4A) A local authority for an area in Wales may secure that regional schools for providing—

(a) primary education, and

(b) education that is secondary education by virtue of section 2(2)(a),

are available for Wales or any part of Wales that includes the area of the authority.

(4B) For this purpose a “regional school”, in relation to a local authority, is a school maintained by that authority which provides education to meet both—

(a) the needs of pupils with particular special educational needs/additional learning needs in their area, and

(b) the needs of such pupils in the rest, or any other part, of Wales,

whether or not the institution also provides education suitable to the requirements of other pupils.

(5)

(6) In exercising their functions under this section, a local authority shall in particular have regard to—

(a) the need for securing that primary and secondary education are provided in separate schools;

(b) the need for securing that special educational provision is made for pupils who have special educational needs (in the case of a local authority in England) or the need for securing that additional learning provision is made for pupils who have additional learning needs (in the case of a local authority in Wales); and

(c) the expediency of securing the provision of boarding accommodation (in boarding schools or otherwise) for pupils for whom education as boarders is considered by their parents and the authority to be desirable.

(7) The duty imposed by subsection (6)(a) does not apply in relation to middle schools or special schools.

3.2.3. This duty applies in relation to all the children in the local education authority area, whether they have lived there all their lives or have just moved into a new development.

3.2.4. The Education Act does *not* state it is the duty of a local education authority to ensure that there are sufficient school places at the catchment area school for all children residing within that particular school's catchment area.

3.2.5. The Education Act states that the education authority must provide school education appropriate to the requirements of pupils for their area.

3.2.6. The residential component of the proposed development would include family housing. Family housing often includes school age children who would seek to enrol in local schools. Those schools may or may not be sufficient to accommodate these children without the need for additional capacity to be provided.

3.3. Community Infrastructure Levy ("CIL") Regulations 2010

3.3.1. The Community Infrastructure Levy Regulations ("the Regulations") came into force in April 2010 and, where adopted, imposed a community infrastructure levy ("the levy") on new development.

3.3.2. The levy was and is intended to provide infrastructure to support the development of an area and, to a large extent, replaced Section 106 planning obligations, which have traditionally been the mechanism for securing the infrastructure requirements of proposed developments.

3.3.3. In order to ensure that planning obligations and the levy can operate in a complementary way, the Regulations scaled back the way planning obligations operated. Limitations were placed on the use of planning obligations.

3.3.4. When a charging authority introduced the levy, section 106 requirements should be scaled back to those matters that are directly related to a specific site, and are not set out in a regulation 123 list.

3.3.5. When the levy was introduced regulation 123 limited the use of planning obligations. Where the regulation 123 list included a generic type of infrastructure (such as 'education' or 'transport'), section 106 contributions should not have been sought on any specific projects in that category. Where a regulation 123 list includes project-specific infrastructure, the charging authority should not have sought any planning obligations in relation to that infrastructure.

3.3.6. The government document "Community Infrastructure Levy - An overview" (extracts at Appendix AYA01 with my emphases) stated:

What is the Community Infrastructure Levy?

2. *The Community Infrastructure Levy (the levy) came into force in April 2010. It allows local authorities in England and Wales to raise funds from developers undertaking new building projects in their area. The money can be used to fund a wide range of infrastructure that is needed as a result of development. This includes new or safer road schemes, flood defences, **schools**, hospitals and other health and social care facilities, park improvements, green spaces and leisure centres.*

The benefits of the levy

3. *The Government has decided that this tariff-based approach provides the best framework to fund new infrastructure to unlock land for growth. **The Community Infrastructure Levy is fairer, faster and more certain and transparent than the system of planning obligations** which causes delay as a result of lengthy negotiations. Levy rates will be set in consultation with local communities and developers and will provide developers with much more certainty 'up front' about how much money they will be expected to contribute.*

3.3.7. In September 2019, revised regulations were introduced. As part of this, the section entitled "Removing Pooling Restrictions" deleted regulation 123 in its entirety.

3.3.8. The effect of this was to remove the rule in reg.123(2) that prevented regard being had by a planning decision-maker to a planning obligation that provided for the provision of infrastructure listed in a reg.123 list.

3.3.9. However, simply because the restriction in reg.123(2) has been removed does not mean that a planning decision-maker can have regard to any and all planning obligations. There remains the restriction, contained in reg. 122(2), that a planning obligation "may only constitute a reason for granting planning permission for the development if the obligation is

(a) Necessary to make the development acceptable in planning terms

(b) Directly related to the development; and

(c) Fairly and reasonably related in scale and kind to the development."

3.4. Department for Education Guidance on Planning Obligations

3.4.1. In April 2019, the Department for Education (DfE) published "Securing developer contributions for education", non-statutory guidance for local authorities regarding seeking planning obligations towards education provision from residential development. This guidance is attached at CD-M1.

3.4.2. Whilst this is non-statutory, it is important to consider elements of this guidance, as they carry some weight in a planning context, although this clearly does not supersede or outweigh the CIL regulations as outlined above.

3.4.3. The purpose of the guidance is underpinned by four principles, as set out below:

- *Housing development should mitigate its impact on community infrastructure, including schools;*
- *Pupil yield factors should be based on up-to-date evidence from recent housing developments;*
- *Developer contributions towards new school places should provide both funding for construction and land where applicable, subject to viability assessment when strategic plans are prepared and using up-to-date cost information;*
- *The early delivery of new schools within strategic developments should be supported where it would not undermine the viability of the school, or of existing schools in the area.*

3.4.4. However, it should be noted that nothing within this non-statutory guidance supersedes the tests set out at paragraph 3.3.9 above.

3.5. School Admissions Code 2021

3.5.1. The current relevant School Admissions Code took effect from September 2021 and begins by setting out its statutory basis, as set out below:

The Statutory Basis for the School Admissions Code

1. The School Admissions Code ('the Code') has been issued under Section 84 of the School Standards and Framework Act 1998 ('SSFA 1998')¹. The Code has been made following a consultation under Section 85(2) of the SSFA 1998 and after being laid before Parliament for forty days.

2. This Code comes into force on 1 September 2021 and, unless otherwise stated, applies with immediate effect. The Code applies to admissions to all maintained schools in England. It should be read alongside the School Admission Appeals Code and other guidance and law that affect admissions and admission appeals in England.

3. This Code imposes mandatory requirements and includes guidelines setting out aims, objectives and other matters in relation to the discharge of functions relating to admissions by the bodies listed below: a) Admission authorities of maintained schools as defined in Section 88(1) (a) and (b) of the SSFA 1998 b) Governing bodies and local authorities (when not admission authorities) c) Schools Adjudicators d) Admission Appeal Panels. These bodies have a statutory duty to act in accordance with the relevant provisions of the Code.

3.5.2. The Published Admission Number (PAN) for each year group is the minimum number the school must accept in that year group if it has sufficient applicants. The PAN is set for each cohort at the cohort's year of first entry to the school, and remains unchanged for the life of the cohort. This is set out in Section 1 of the Code.

Published Admission Number (PAN)

1.2 As part of determining their admission arrangements, all admission authorities must set an admission number for each 'relevant age group'

3.5.3. "Relevant age group" is defined by the Code as being:

the age group at which pupils are or will normally be admitted to the school e.g. reception, year 7 and year 12 where the school admits external applicants to the sixth form (Section 142 of the SSFA 1998).

3.5.4. This means that any building project to expand a school, whether primary or secondary, can only alter the PAN for the first year of entry after the building project, and cannot alter the PAN for cohorts already within the school.

3.5.5. This position is supported by the appeal decision at Malpas (appeal reference APP/A0665/A/13/2193956 and attached at Appendix AYA02), where the Inspector noted that:

"51. When allocating places at BHHS a priority is given to children living in the catchment and those with siblings already at the school (whether out-of-area or not), while any spare places are made available to others from outside the catchment who apply. As such, in the long-term any children from this site could be accommodated within the existing school, as they would take priority in the allocations process and the number accepted from out-of-area would be reduced accordingly. The contribution's aim of achieving the permanent increase in capacity for what is not going to be a permanent issue is therefore not justified. It was said that those living elsewhere should have the opportunity to send their children to the school, but there is no reason why that should be so in planning terms."

3.5.6. In this appeal case, the local secondary school was full, but was full as a result of previous admission year groups admitting a number of pupils from out-of-catchment and out-of-borough. In the long term, as pupils from the appeal site applied in the normal admission round, they would obtain a place, and the out-of-borough pupils would not. The duty to educate those pupils fell to their local education authority.

3.6. Surplus Places

3.6.1. The most up-to-date reference to keeping some surplus places within the local school planning system comes from the National Audit Office's 2013 report on "Capital funding for new school places".

3.6.2. At paragraph 1.16 and 1.17, this document, with my emphasis in bold, states that:

1.16 The Department compiled its estimate of places required by examining local authorities' forecast data for pupil numbers in 2014/15 and existing capacity in May 2010 in each authority, and, for county councils, for each district within that authority. It then calculated the number of extra places needed to achieve a surplus of places of at least 5 per cent in each authority or district. The Department adopted this planning assumption in the context of a challenging spending review when preparing its funding bid to HM Treasury. It considered that on average 5 per cent was the bare minimum needed for authorities to meet their statutory duty with operational flexibility, while enabling parents to have some choice of schools. As at September 2010, 37 of 152 authorities were forecasting a surplus of primary places of below 5 per cent by 2014/15 without any spending on new places, while another 62 would be in deficit, with fewer primary places than children.

*1.17 The Department's overall framework for supporting the delivery of new school places is not fully aligned with its twin objectives of ensuring that there is a place for each child and some spare capacity to facilitate parental choice. **Local authorities' statutory duty to provide sufficient schools does not require them to maintain surplus capacity for parental choice.** Although the Department issued guidance in June 2009 that it was reasonable for authorities to aim for between 5 and 10 per cent primary surplus to allow them some opportunity to respond to parental choice, it did not subsequently communicate to authorities its September 2010 figure of a minimum of 5 per cent surplus. **This is because this was a planning assumption, rather than a target it expected authorities to meet.** The Department recognises that it needs to undertake work to identify whether its assumption realistically enables parental choice.*

3.6.3. With regards to the seeking of contributions to enable parental preference to be met, this matter has been considered previously in an appeal at Audlem (appeal reference APP/R0660/A/13/2204723 and attached at Appendix AYA03).

3.6.4. The Inspector, at paragraph 122 of his report, stated:

"122. Parental preference may be the responsibility of the Council but not of the appellant company ..."

3.6.5. In this appeal, there were surplus secondary places locally, although the nearest secondary school was full. The local authority sought a full contribution to increase places at the nearest school to accommodate new children without impacting negatively on the existing pattern of parental preference in the area.

3.7. The Council's Policy on Developer Contributions and CIL

3.7.1. The Council published a Revised SPD on Developer Contributions in 2014, at the same time as it introduced the Community Infrastructure Levy.

3.7.2. This SPD does not include Education as an infrastructure area for which contributions will be sought.

3.7.3. The current Regulation 123 list is dated 2016, and sets out that the Levy will cover, amongst other matters (my emphasis in bold):

The following education projects:

Borough-wide expansion of existing primary schools to provide additional intake places

Provision of a 1-form entry primary school to serve Pomona Island, Trafford Wharfside, Old Trafford and Lancashire County Cricket Club Quarter

Provision of a 2-form entry primary school in Carrington

Provision of a 1-form entry primary school in Altrincham

Provision of a 1-form entry primary school in Stretford

Borough-wide expansion of existing secondary schools to provide additional intake places

3.7.4. The Council therefore has no adopted policy basis for seeking any education S106 contributions from this site, even if they were in line with the CIL regulation tests.

4. Correspondence between the parties on Education matters

4.1. A copy of all correspondence between Alfredson York Associates and the Council on education matters is attached at Appendix AYA04.

4.2. Freedom of Information/Initial Information Request

4.2.1. Upon instruction for this appeal, I submitted a request for information from the Council. This was submitted on 18th October 2021 via a Freedom of Information request, and was followed up with a direct request to the Planning case officer on 2nd November 2021. A response to that latter request was completed on 9th November 2021. Follow-up queries were also raised.

4.3. Common Ground and Revised assessments

4.3.1. As part of the initial information response, I sought to have a dialogue with my counterpart within Education at the Council.

4.3.2. This request was initially made by my colleague, Ellenor Barefield, on 1st November 2021 denied despite further requests for clarification and dialogue, until 30th November 2021.

4.3.3. At our meeting on 30th November 2021, I raised issues based on the assessment before me at that time (attached at Appendix AYA05).

4.3.4. The Council took these matters away and came back with the revised request/justification attached at Appendix AYA06, on 3rd December 2021.

4.3.5. This raised further matters for query, around which discussion is ongoing at the time of writing.

5. The Council's Methodology and Assessment of the Appeal Site

5.1. The Council's Methodology

5.1.1. The Council's methodology for calculating education contributions is not currently published as part of the Council's planning policy documents, but has been provided by the Council after a request made on 30th November 2021. The methodology is attached at Appendix AYA07.

5.1.2. This methodology has been neither consulted upon, nor formally adopted as Planning Policy. It should therefore be given little weight, and the concerns with the methodology should be noted.

Child Yield

5.1.3. In assessing the child yield of a development, the Council uses yield factor of 3 children per 100 dwellings per school year group. This equates to a yield of 21 primary age pupils and 15 secondary age pupils per 100 dwellings.

5.1.4. The Council applies these yield factors to all dwellings over 1-bed in size, whether it is a 2-bed flat or a 4-bed house.

5.1.5. It is my view that this part of the Council's methodology fails the tests set out in the CIL regulations, as it is not fairly and reasonably related in scale and kind to the development.

5.1.6. The yield to be expected from a 2-bedroom flat is clearly not the same as the yield likely to arise from a 3-bed or 4-bed house.

5.1.7. Without taking into account the mix of dwellings, the calculations do not reflect the scale and kind of development.

Assessment of Surplus Places

5.1.8. The Council's methodology in assessing the number of surplus places in the local area is to consider the current numbers on roll against the Published Admission Numbers of the relevant schools, and to add in any child yield from previously committed development

5.1.9. The relevant schools, in the methodology, are those primary schools within a 2-mile safe walking distance, and secondary schools within a 3-mile safe walking distance.

5.1.10. The Council's methodology identifies (at paragraph 2.11 of that document) states:

"The operational surplus is not counted as available when calculating developer contributions. The permitted surplus range is between 5% and 10% to account for fluctuation in demand, parental choice and to accommodate in-year applications for school places. "

5.1.11. The Council will not seek contributions if the surplus is greater than 10%, but will seek full contributions if the surplus is less than 10% even if the impact of development still leaves the available surplus within the acceptable range.

5.1.12. The Council's methodology also takes no account in the numbers of pupils attending the relevant schools from outside Trafford.

Impact of Previous Applications

5.1.13. The Council's methodology, in assessing the impact of previously committed development, uses its generic yield as outlined above.

5.1.14. The methodology also fails to make allowance for places funded by such developments either through S106 or payments through CIL to provide additional education infrastructure.

5.1.15. To include the pupil yield from such developments in the calculation but not the places funded amounts to double counting, and is a matter dealt with in the Statement of Reasons from the Planning Inspectorate for a site in Blaby (attached at Appendix AYA08), which I deal with in more detail in Section 6 below.

5.2. The Council's Assessment

- 5.2.1. The Council, in submitting its statement of case for the planning appeal, provided its assessment of the contribution requirement (dated 27th May 2021) and set out at CD-F89.
- 5.2.2. The total contribution requested in May 2021 was £1,461,415, being made up of £739,639 for primary education (47 places for primary at a cost of £15,737 per place), and £721,776 for secondary education (being 33 places at a cost of £21,872 per place).
- 5.2.3. I do not repeat here in full the justification provided within the response by the Council, but will identify in Section 6 elements with which I disagree.
- 5.2.4. In summary the justification was that, at primary level, although there are some surplus places, this is at the lower end of an "acceptable" level of surplus and can be ignored.
- 5.2.5. At secondary level, although there are a number of surplus places, these had been allocated to development which was the subject of previously granted planning permissions.
- 5.2.6. Following discussions between the Council and the Appellant, flagging concerns with the Assessment provided, a revised Assessment was provided by the Council on 3rd December 2021. The total amount sought remains unchanged.
- 5.2.7. As set out in Section 6 below, I disagree with the Council's assessment of the appeal site's impact on education infrastructure, and it is my opinion that the Council's approach fails the tests set out in the CIL regulations.
- 5.2.8. For a number of reasons, including forecast numbers on roll, out of catchment area admissions and previous funding received by the Council, there is no necessity in planning terms to add further school places as a result of the appeal site.

6. The Appellant's adopted position and response to the Council's case

6.1. Summary of Appellant's adopted position

6.1.1. It is my opinion that the Council's request for contributions is flawed; this is for the reasons set out below.

6.1.2. It is my opinion that the yield of school age pupils has been overstated by the Council, through its use of a method that is not fairly and reasonably related in scale and kind to the appeal site.

6.1.3. The Council's methodology is also flawed in assessing surplus places as at the current date rather than using the forecast numbers on roll. It is evident that the appeal site will not have any dwellings occupied until 2024, and it is the forecast position that is relevant. It is also important to consider any change in capacity forecast over the same period, particularly with regard to contributions or Levy already received.

6.1.4. It is my opinion that no contribution is necessary, as there are sufficient surplus places to accommodate the impact of the appeal site. The assessment provided by Trafford allows for the impact of prior approved development but ignores the fact that Council will be in receipt of funds already paid as Levy or S106 contributions to mitigate this impact and has not accounted for the additional places funded in its calculations. Any further contribution cannot therefore be said to be necessary to make the development acceptable in planning terms.

6.1.5. The yield from the appeal site is less than the number of pupils currently obtaining places in local school from outside Trafford. In future admission years, the pupils from the appeal site would take precedence and Trafford would meet its statutory duty without the necessity of providing additional places.

6.2. The Appellant's adopted position on the relationship to the development in scale and kind of contributions sought

6.2.1. The Council's position on child yield is to assess all units greater than 1-bed using the formula of 3 children per 100 units per year group. This equates to a yield of 21 primary and 15 secondary aged pupils per 100 dwellings.

6.2.2. This applies whether these dwellings are 2-bed flats or 4-bed houses, and as such is clearly not related in scale and kind to the proposed appeal scheme.

6.2.3. In order to derive a yield figure that is actually related to the appeal scheme, I have used the 2011 Census and the Commissioned Output tables 804 and 806.

6.2.4. These tables are in the public domain and were commissioned by a group of local authorities, headed by Hertfordshire County Council. Tables 804 and 806 focus on wholly moving households, by local authority area, in the year prior to Census moving into unshared accommodation. This information is used by various authorities, including Hertfordshire, as the best approximation to yield from new housing where no actual survey has been undertaken.

6.2.5. Table 804 gives the total number of relevant dwellings by type (i.e., flat or house) and number of bedrooms.

6.2.6. Table 806 lists the number of occupants of each dwelling size and type by age.

6.2.7. The summary of this information for the Trafford area, relevant to this appeal scheme is as follows:

Dwelling Type	1-bed flats	2-bed flats	3-bed flats
Dwelling Numbers	1,128	1,393	102
Primary Age Children	28	160	23
Primary Child Yield	0.0248	0.1149	0.2255
Secondary Age Children	9	54	19
Secondary Child Yield	0.0080	0.0388	0.1863

6.2.8. Applying the above yield figures to this appeal scheme gives the following position:

Dwelling Type	1-bed flats	2-bed flats	3-bed flats	Total
Dwelling Numbers	110	189	33	332
Primary Children Yielded	2.728	21.7161	7.4415	31.8856
Secondary Children Yielded	0.88	7.3332	6.1479	14.3611

6.2.9. It is my position that the Council's yield calculations are not in line with the CIL regulations and the table above should be used in calculating the yield from the appeal site. The table below sets out a comparison between the Council's yield methodology and the calculations above:

Pupil generation models for Former B & Q site, Stretford, Appeal Scheme								
Trafford Council Methodology				Census 2011 Data Methodology				
	1-bed	2-bed	3-bed		1-bed	2-bed	3-bed	
Primary Yield	0	0.21	0.21		0.0248	0.1149	0.2255	
Secondary Yield	0	0.15	0.15		0.008	0.0388	0.1863	
Dwellings	110	189	33	Total Generation	110	189	33	
Primary Generation	0	39.69	6.93	46.62	Primary Generation	2.728	21.7161	7.4415
Secondary Generation	0	28.35	4.95	33.3	Secondary Generation	0.88	7.3332	6.1479

6.2.10. This position is also relevant to other similar types of development locally which the Council is counting as having an impact on the appeal site, such as the development at Pomona Island/Manchester Waters, for which a comparison table is set out below:

Pupil generation models for Pomona Island/Manchester Waters Approved Permissions								
Trafford Council Methodology				Census 2011 Data Methodology				
	1-bed	2-bed	3-bed		1-bed	2-bed	3-bed	
Primary Yield	0	0.21	0.21		0.0248	0.1149	0.2255	
Secondary Yield	0	0.15	0.15		0.008	0.0388	0.1863	
Dwellings	301	469	57	Total Generation	301	469	57	
Primary Generation	0	98.49	11.97	110.46	Primary Generation	7.4648	53.8881	12.8535
Secondary Generation	0	70.35	8.55	78.9	Secondary Generation	2.408	18.1972	10.6191

6.2.11. The effect of this would also be to reduce the number of places required from previously approved development.

6.3. The Appellant's adopted position on the necessity of contributions sought

6.3.1. The Council's position is that full contributions are required for both primary and secondary school places.

Relevant schools

6.3.2. Page 5 of the DfE's Local Authority Pupil Planning Areas guidance (attached at Appendix AYA09 states that:

"Most local authorities divide their geographical regions into smaller areas for pupil place planning purposes and pupil planning areas should align with these smaller areas.

As a general guiding principle, schools located in close proximity, and which pupils could reasonably attend, should be grouped together in one planning area."

6.3.3. For this reason, it is my position that the relevant school place planning areas should be used to consider the schools upon which the impact of the appeal site will fall.

6.3.4. This position is also supported by the Inspector in the recent appeal at Coombe Hill, Gloucestershire (appeal reference APP/G1630/W/20/3257625 and attached at Appendix AYA10 where he stated, on page 21:

"The second bullet point of the DfE advice is to examine the capacity of existing schools that would serve the development. There is further DfE advice on how this is to be done in the form of its School Capacity Survey 2019 Guide to forecasting pupil numbers in school place planning. Projections of pupil numbers are to be made for primary years (reception to year 6) and for secondary years (years 7 to 11 (or 13 where schools have sixth forms)) using one set of planning areas for the primary projections and a second set for secondary years.

The planning areas should be mutually exclusive groups of schools that represent admissions patterns and reasonable alternatives to one another. National Planning Practice Guidance similarly refers to a need to consider school capacity within the relevant school place planning areas.”

6.3.5. In that appeal, the location of the site was near the borders of a planning area, and the Inspector went on to consider that it might have been justifiable to look at adjacent planning areas too.

6.3.6. In this instance, there is only one school that the Council considers to be relevant outside the relevant school place planning areas, and two schools that are in the school place planning areas which the Council thinks are not relevant.

6.3.7. To that extent, it is clear that this site is not adjacent to other relevant planning areas, and it is my position that the Stretford Primary and Secondary Planning Areas should be considered as the relevant schools.

6.3.8. An additional reason for considering the planning area schools as a whole is to allow a comparison against forecast numbers on roll which the Council only undertakes by Planning Area and not by individual schools.

Local birth rate

6.3.9. The table below shows the data for the lower layer super output area containing the site, and all areas adjacent to this, from the Office of National Statistics detailing the number of live births in each year from 2013 to 2020

Live births in England and Wales for small geographic areas									
ONS Crown Copyright Reserved [from Nomis on 10 December 2021]									
	2013	2014	2015	2016	2017	2018	2019	2020	
2011 super output area - lower layer									
E01006188 : Trafford 001F	31	30	31	34	31	31	25	27	
E01006141 : Trafford 003A	18	19	21	17	27	21	15	20	
E01006186 : Trafford 003B	30	21	32	30	26	25	17	22	
E01006187 : Trafford 003C	44	57	55	55	40	31	48	40	
E01006113 : Trafford 004A	26	23	28	16	28	18	23	36	
E01006114 : Trafford 004B	28	21	32	22	27	29	20	20	
E01006145 : Trafford 004E	29	23	22	19	20	26	24	24	
E01006146 : Trafford 004E	21	29	24	20	26	24	37	22	
Total	227	223	245	213	225	205	209	211	

6.3.10. This table clearly shows a fall in the numbers of children being born from a high point in 2015 (these children would already be in local schools). These numbers will eventually feed through into primary schools within five years of birth.

Forecasts

6.3.11. The Council's use of current number on roll figures to assess the appeal site's impact is flawed. It is clear that the appeal site will not impact the current numbers on roll, since the first occupation of Phase 1 is unlikely to be before September 2024, and the full scheme is unlikely to be completed before 2026. It is therefore important to assess the appeal site's impact against the forecast numbers in 2024/25 or even 2025/26.

6.3.12. This is standard practice in the assessment of developments for contributions across the country, including Lancashire, Essex, Oxfordshire, Hertfordshire, West Berkshire, West Sussex and Rochdale.

6.3.13. Given that by the time the full development is completed, none of the secondary pupils currently on roll will still be in 11-16 education, it is clear that the use of the current numbers on roll cannot possibly determine whether a contribution is necessary.

6.3.14. The most recent forecasts from Trafford are included at Appendix AYA11, and summarised in the tables below for the Stretford Primary and Stretford Secondary Planning areas:

Planning Area Code	3584100 Stretford Primary							
Academic Year	Primary							
Forecasts								
	Reception	1	2	3	4	5	6	Totals
2021/22	577	595	597	653	616	680	687	4405
2022/23	646	618	636	638	694	657	721	4610
2023/24	603	646	619	637	639	695	658	4497
2024/25	602	603	647	619	637	639	695	4442
2025/26	606	603	604	647	620	638	640	4358

Planning Area Code	3584200 Stretford Secondary							
Academic Year	Secondary							
Forecasts								
	7	8	9	10	11	12	13	Totals
2021/22	432	434	422	439	408	61	52	2248
2022/23	450	432	434	422	439	55	46	2278
2023/24	444	451	432	434	422	59	50	2292
2024/25	410	444	451	432	435	57	48	2277
2025/26	426	410	444	451	433	58	49	2271
2026/27	392	426	410	444	451	58	49	2230
2027/28	384	392	426	410	444	60	51	2167

6.3.15. The methodology for the calculation of these forecasts is also provided, at Appendix AYA12.

6.3.16. The methodology indicates, on page 2, that the yield from all planning permissions included in these forecasts, and therefore there is no need to include the impact from prior approved developments separately unless approved since the forecast preparations. This has been confirmed in the correspondence with the Council.

6.3.17. The actual numbers on roll in October 2021 for comparison with the first year of forecasts were 4,413 for primary (forecast 4,405) and 1,993 for secondary (forecast 2,248). It is therefore likely that the primary forecasts are relatively accurate, and the secondary forecasts over-estimate the number of pupils

6.3.18. This document clearly shows school rolls are forecast to fall to the end of the forecast period, and that if the local schools are capable of accommodating the demand currently, then there is no impact when the appeal site's demand comes on stream from September 2025 onwards.

Previous development

6.3.19. Whilst the forecast data includes previously approved development, no allowance is made for the fact that much of this development has either contributed Levy or S106 contributions for the places generated.

6.3.20. This capacity must also be added in to the equation, otherwise this would amount to double counting. This is clearly set out in the Statement of Reasons from the Planning Inspectorate in its decision on the site in Blaby (attached at Appendix AYA08):

"112. However, the applicant and the LEA disagree over whether account should be taken of places that will be funded through planning obligations already in place relating to other development. Consequently the S.106 agreement contains 2 alternative clauses (the "First Education Formula", representing the view of the applicant, and the "Second Education Formula", representing that of the LEA). I agree with the applicant that account should be taken of places for which funding already exists. To do otherwise would be unreasonable, in my view, and would fail the relevant tests for planning obligations: the contribution would in part be unnecessary, and would not be reasonably related in scale."

6.3.21. The same would also apply to the Council's assessment, and the impact, of previously approved development.

6.3.22. The most recent Regulation 62 report published by the Council on its website is for the Financial Year 2018/19, and is attached at Appendix AYA13. This shows a total retained for Strategic CIL projects of £2,490,850.38 and that there had been zero expenditure. This funding is to mitigate the impact of previously approved schemes in line with Regulation 123 list.

6.3.23. This additionally funded capacity needs to be added to the total capacity of the primary and secondary schools before calculating whether any, or how much, surplus is available.

Out of area pupils

6.3.24. Attached at Appendix AYA14 is a spreadsheet from the Council detailing the number of pupils attending each of the relevant school from out of catchment and from out of Trafford.

6.3.25. The forecast methodology (Appendix AYA12) makes it clear, on page 1, that the level of inward migration is assumed to continue, and so there will continue to be an allowance for pupils from out of Trafford.

6.3.26. The Council has been clear that its statutory duty is to educate pupils resident in Trafford. The impact of this scheme would simply be to limit the number of pupils from out of Trafford obtaining a place at Trafford schools, and would not necessitate an increase in the number of places in Trafford schools.

6.3.27. This is in line with the decision in the Malpas appeal (Appendix AYA02):

"51. When allocating places at BHHS a priority is given to children living in the catchment and those with siblings already at the school (whether out-of-area or not), while any spare places are made available to others from outside the catchment who apply. As such, in the long-term any children from this site could be accommodated within the existing school, as they would take priority in the allocations process and the number accepted from out-of-area would be reduced accordingly. The contribution's aim of achieving the permanent increase in capacity for what is not going to be a permanent issue is therefore not justified. It was said that those living elsewhere should have the opportunity to send their children to the school, but there is no reason why that should be so in planning terms."

6.3.28. This clearly would also apply in the case of this appeal site. This would mean that there is no material impact on the local schools.

Surplus Place Availability

6.3.29. As identified above, the National Audit Office document does not set out that a range of surplus should be made available. It set out that the Department for Education used a 5% surplus as a planning assumption for the funding of additional places.

- 6.3.30. The highlighted sections at paragraph 3.6.2 of my evidence above shows that it is not relevant to this appeal, and the Audlem appeal reference earlier (Appendix AYA03) makes it clear that this is not a matter for developer contributions to address.
- 6.3.31. In practice it is not possible to retain surplus places within a school since each school must admit up to its Published Admission Number if it has sufficient applicants, and the Published Admission Number for each school should reflect its capacity.
- 6.3.32. It is also not in a school's best financial interests to operate with empty places, since the revenue funding for a school relies heavily on pupil numbers.
- 6.3.33. Even if it were accepted that some surplus should exist, it is unclear why, if the "acceptable range" set by Trafford is 5% to 10%, any contributions are required if the surplus remains within the "acceptable range".
- 6.3.34. The net effect of a 10% surplus being maintained is that, if nine schools are full, the tenth school would need to be empty. This cannot be an acceptable position.

7. Summary and Conclusion

7.1. Summary

7.1.1. In Section 5 I set out why the Council's position is flawed. The Contribution as sought is neither necessary nor reasonably related in size and scale.

7.1.2. The yield being sought by the Council does not reflect the appeal scheme and a revised yield of 32 primary and 14 secondary pupils should be substituted.

7.1.3. This yield should also be applied to other similar schemes that the Council say are relevant in its assessment of the site.

7.1.4. The Council's failure to use forecasts at the time that the appeal scheme will be delivering pupils, and instead using current numbers on roll, means the contribution is not related to the site, as it does not relate to the time when the impact will be felt.

7.1.5. It is my opinion that no contributions are necessary due to the availability of school places locally, the forecast position in these schools, the places that have already been funded and not taken into consideration, the yield from the development and the number of pupils attending from outside Trafford.

7.2. Conclusion

7.2.1. The appeal should be allowed and, the Appellant contends, the Unilateral Undertaking be approved with education infrastructure contributions that accord with CIL regulations.