

Technical Appendix 11: Land Matters



1.0 Service Overview

- 1.1 There are numerous matters which require consideration when securing land transfers in a S106 agreement in addition to the location and suitability considerations given in Chapter 4.
- 1.2 The issues of timing, use and servicing are all vital to ensure that the land to be transferred is done so in a manner that ensures service provision occurs when it is required and in facilities that are fit for purpose. This will involve transfer of land for school use in most cases but could involve other service requirements such as fire stations or childcare settings.

Timing for calling on the land

- 1.3 The county council will always attempt to open a facility at the time when sufficient demand for services is projected to arise. Taking land too early risks wasting public money to maintain land that it does not have a current need for and can create access issues during construction of the wider site. The county council would also not wish to build facilities significantly in advance of a need for them arising as it would be encumbered with building management responsibilities for facilities it is not utilising for service provision.
- 1.4 Flexibility to enable the county council to call on land secured for transfer will need to be included within the S106 agreement. The county council would normally agree not to call on land so early for the transfer to occur within the first year post-commencement on the wider development site to facilitate site servicing works. However, the county council require an ability to call on the land when need is expected.
- 1.5 For schools, in instances where the school in question has been planned to mitigate on-site demand, the county council would want to be able to call-on land at any point up to 5 years post-completion of a wider development for a primary school and up to 10 years post-completion for a secondary school. This should allow time for service need to materialise. In instances where schools are planned to meet cumulative demand from a number of sites, the county council may seek alternative timescales to ensure school projects are deliverable at the right time to mitigate arising need.
- 1.6 For land for non-education use, timescales for land transfer would be considered on a case-by-case basis.
- 1.7 The county council needs to take account of the time taken for service need, for example education yield, to grow following occupation of new homes. This may include securing access to the site in a situation where the wider development has completed a significant time prior to the need for a service facility and when developers have long left the site. As an example, this could be where school provision is required on a relatively small housing allocation site where the residential build-out will only take a few years. This will ensure the county council can keep track of projected need for future services/facilities and start the land transfer process at an appropriate time to match service delivery requirements for residents.
- 1.8 The county council would normally look to call on an entire site so that it can deliver a facility at its fully intended size from the outset. However, it is possible that the county council will want to call on part of a site initially, followed by the rest at a later date.

Land Specification

- 1.9** Please refer to the notes below to support work to be conducted on the initial feasibility for the land requirement for a new primary school. For alternative school sizes, please contact the county council at growth@hertfordshire.gov.uk.
- 1.10** When working with developers on potential new school sites, the county council asks developers to ensure the proposed site meets the following criteria which will form part of the terms included in the S106 agreement.
- 1.11** The county council's site standards are based on achieving compliance with Department for Education (DfE) guidance "Area guidelines for mainstream schools: Building Bulletin 103" (BB103) or Building Bulletin 104 Area Guidelines for SEND & alternative provision (BB104) and are presented below as the most up to date Hertfordshire County Council Land Specification: Education – 2024.11.29 (and may be updated from time to time).
- 1.12** There may be site characteristics, such as the gradient or drainage, which need further investigation to clarify suitability of the site for external sports and other school related facilities.
- 1.13** The Developer should have regard to the current Sports England guidance on external sports facilities, the design or cost of which may not be included in the standard build of a new or expanded school. Developers are advised to engage early with the county council to agree additional build parameters and costs where appropriate. See also Additional requirements for non-education use of school land.
- 1.14** Please be advised that the county council criteria must be met prior to the county council confirming that the proposed site is acceptable for a new school. If criteria cannot be met to demonstrate that a site meets the county council's school site specification standards, the county council reserves the right to refuse to accept the site that has been offered.
- 1.15** The investigations/survey report will assist the developer in demonstrating that the site meets the county council's school site specification standards.
- 1.16** The most up to date specification at the point of publication is contained on the next page. A standalone specification form for developers to complete will be provided on the county council webpages alongside this Guide. Developers should contact the county council to confirm whether any amendments to the specification may be appropriate.
- 1.17** The transferor should prepare the necessary survey evidence required for the county council to be satisfied that the site is suitable for education use in line with the criteria above as early as possible in the planning application stage. Evidence is to be provided in support of the county council's School Site Specification template.
- 1.18** Developers or site promoters are advised to consider access to the education land early in the master planning process. The county council would expect consideration of a construction & maintenance access to the land, and direct access from a highway of an adoptable standard at the point the school becomes operational.

The County Council's criteria for an acceptable site for school use being one that is:

- 1.19** The Developer is expected to complete the form that accompanies this Guide on the county council webpage to show whether the criteria is met (currently), will be met (at the point of transfer) or won't be met. Evidence should be provided for all items that are scored to be met or mitigation or rationale should be provided for any criteria scored as "won't meet".

Criteria

1. Of regular shape (Roughly rectangular)

Evidence/Comments

Site plan

Criteria

2. Relatively flat (not more than 1:40 gradient); to align with pedestrian and vehicular access from connecting roads. Adjoining site levels of the proposed development to be consistent with the school land.

Evidence/Comments

Topographical survey to be undertaken at the point of transfer.
Indicative plan showing the boundary interfaces with the adjoining roads and footpaths.

Criteria

3. Standard trench fill / strip foundations can be used.

Evidence/Comments

Geotechnical Investigation required

Criteria

4. Free of physical landscape or topographical features including water features (above ground and underground attenuation features or other items (including overhead power cables) which might constrain its development and use for its intended purpose.

Evidence/Comments

Photographic evidence demonstrating no physical features on site.

A suite of site surveys should be included but not limited to:

- Ecological
- Flood Risk
- Geophysical Investigations
- Utilities mapping

Criteria

5. Free from underground obstructions or abnormal conditions that would be restrictive to foundation construction.

Evidence/Comments

Intrusive ground investigation survey should be provided which contain representative information for the entire site.

Criteria

6. No covenants are in place in relation to the land and no restrictions on the land have been negotiated with neighbouring parties.

Evidence/Comments

Land title to be provided

Criteria

7. The Owner shall provide results of site investigations for the proposed School Land carried out to the relevant current British and European Standards, including BS 5930, BS EN 1997 – 1 BSEN 1997 – 2 and all related standards referred to therein. This shall determine load bearing capacity of soils, soil types (and depths), type and location of any contamination, ground water level or abnormal ground conditions which may require further investigations.

Evidence/Comments

Intrusive Geotechnical Investigation to be provided

Criteria

8. Insurances through collateral warranties with rights for assignment for all site investigations completed by the developer will provide the County Council with redress from the provider in the event of error or inaccuracy.

Evidence/Comments

Warranties to be provided in a form agreeable to Hertfordshire (to be agreed)

Criteria

9. Drainage – there will be a requirement by the approving authorities to provide a drainage strategy. The Owner will design and install a network to facilitate additional and appropriate capacity including surface water storage. A connection will be available at the site boundary. Foul water capacity will be available to the site boundary and will connect to an adoptable drainage system. The connection points for both foul and surface water drainage will be located to avoid the need to provide pumping infrastructure. The school land shall be located to prevent surface water runoff from any adjacent

land being attenuated on the school land. SUDs/ Attenuation features should be provided off site. In the event adequate off-site capacity cannot be provided, a larger school site may be capable of accommodating on site provision but must serve the school only. The Developer is expected to contact the Lead Local Flood Authority (LLFA) for the preferred method of draining water.

The school will attenuate its own surface water run-off at greenfield run-off rates. The strategic SUDs network by the developer is to accommodate the surface water outfall from the school land at greenfield run-off rates.

Evidence/Comments

Drainage strategy to be provided that confirms the assumed run off rates from the school site into the strategic SUDs network and compliance with current guidance.

Confirmation from the LLFA that in principle, the strategy for draining the school land is accepted. Confirmation that assumed foul water capacity can be accommodated by the strategic network. Indicative connection locations to be confirmed.

It is expected that the school site will be at a greenfield run off rate.

Criteria

10. Free from contamination (to such extent as is appropriate for the intended use of the site) Not to deposit any waste, hazardous material or other materials that would prejudice the development of the school land.

Evidence/Comments

Intrusive Geotechnical Investigation to be provided

Criteria

11. Developers must be aware of HCC's commitment towards delivering a 20% improvement in biodiversity on site (Biodiversity Net Gain (BNG). Sites must include provision for the County Council to be able to achieve the minimum requirements for BNG as set out in planning legislation.

Evidence/Comments

BNG baseline survey to be undertaken and provided to HCC

Criteria

12. Free from any protected species (any appropriate mitigation measures to be wholly completed by the transferor).

Evidence/Comments

Ecology survey including confirmation of removal of any protected species if applicable. Walkover survey to confirm ecological position of the site no earlier than 1 month prior to transfer.

Criteria

13. Within Flood Zone 1 located away from natural water courses/ditches. Free draining across the whole site and not liable for flooding or record of previous flooding.

Evidence/Comments

Flood Risk Assessment to be provided.

Criteria

14. A hydrant should be available in accordance with HCC Site Servicing Specification.

Evidence/Comments

Location map showing hydrant locations to be provided.

Criteria

15. On the completion of the development, noise levels at the school boundary must be compliant with British Standard Requirements and Building Bulletin BB93 for Acoustic Design of Schools.

Evidence/Comments

Baseline noise assessment to be provided prior to transfer.
Predicted noise levels at completion of adjoining development to be provided to ensure that school is able to be delivered in compliance with BB93 and Acoustics of Schools: a design guide. Consideration should be made on the proposed location of the school and adjacent land uses.

Criteria

16. Consistent low levels of air pollutants (gases and particulates) likely to adversely impact upon the health and wellbeing of all users. Baseline air quality monitoring of a nature and scope proportionate to the sensitivity of the proposed location and to be agreed by the County Council should be undertaken in advance of a planning application being submitted; reliance solely upon modelled assessments will not be considered a sufficient method through which the exposure of the school community to poor air quality can be objectively considered.

Evidence/Comments

Provide a baseline monitor over a period of 3 months and a forecast update based on the completed development to provide evidence that the site will comply with the air quality requirements of BB101.

Criteria

17. Having direct access from a developer constructed and maintained highway of an adoptable standard with achievable/viable opportunity for walking and cycling as the preferred mode of travel. Entry location agreed with HCC. Off site infrastructure delivered by the Developer to, as a minimum, comply with the requirements of the 'Safe Routes to School Design Guidance' and supplementary guidance issued by the National Transport Authority.

Evidence/Comments

Masterplan identifying proposed vehicle, cycle and walking routes and proposed site access points.

Criteria

18. Vacant possession with no permanent building or structure on the school land or below ground. Any pre-existing buildings/structures or other built features are to be demolished and the remains to be removed from the site prior to the land being transferred and surface levelled.

Evidence/Comments

Photographic evidence, Ground Investigation surveys and Topographical surveys to be provided as noted in item 2.

Criteria

19. Developer expected to provide the correct electricity supply (depending on school size) to meet HCC's requirements. New build schools will be net carbon zero in operation so sufficient electricity supply will be required. Compliance with 'Hertfordshire School Site Servicing Specification' is required.

Evidence/Comments

Confirmation that compliance with Hertfordshire School Site Servicing Specification will be provided.

Criteria

20. Centrally located within the development or as otherwise agreed with the County Council to support sustainable transport links. Provision to include safe crossings for pedestrians across roadways in close proximity to the school site.

Evidence/Comments

Provide a summary confirming links to sustainable access to developments local centre and adjacent sustainable transport hubs.

Criteria

21. All utilities are available to provide connection (within an accessible service route) at a location agreed with HCC. Please refer to Hertfordshire School Site Servicing Specification.

Evidence/Comments

Confirmation that services are in place prior to transfer of land. Evidence required as per Hertfordshire School Site Servicing Specification

Criteria

22. Where existing trees and woodlands form part of the site, appropriate measures shall be taken, in accordance with Local Planning Policy and BS5837 to retain and enhance or remove trees in accordance with an Arboricultural Report or planning condition. There should be no TPO trees or ancient woodlands, wildlife havens on site.

Evidence/Comments

Provide Arboriculture survey with confirmation of measures taken. Site review 1 month prior to transfer of land.

Criteria

23. Site boundary to be free of any existing features that may hinder the installation of 2.4m high weld mesh fencing.

Evidence/Comments

Site plan, survey and photographic evidence.

Criteria

24. Public rights of way should be agreed upon and located to boundary edges and not included in Gross Site Area.

Evidence/Comments

Confirmation of public rights of way routes around the site and that there are no public rights of way across the school land.

Criteria

25. Free from invasive plants and or other hazardous species (including but not limited to Japanese Knotweed).

Evidence/Comments

Ecology survey to be provided and confirmation of removal of invasive species if applicable. Site walkover to be undertaken 1 month prior to transfer.

Criteria

26. Free from protected plants as noted within Schedule 8 of the Wildlife and Countryside Act 1981.

Evidence/Comments

Ecology survey to be provided and confirmation of removal of invasive species if applicable. Site walkover to be undertaken 1 month prior to transfer.

Criteria

27. Site to be free of environmental / designations such as scheduled monuments.

Evidence/Comments

Confirmation required of land search/title plan.

Criteria

28. Provide confirmation of adjacent land uses to confirm that such uses will not be detrimental to the operation of a school site.

Evidence/Comments

Provide masterplan

Criteria

29. If no existing adoptable highway access is available to the site, confirmation that a school construction access/haul road will be provided to facilitate the school development programme.

Specification of the haul road to be minimum of 300mm Type 1, 300mm Type 3, suitably levelled and compacted to a width allowing use by heavy goods vehicles, with passing places at suitable locations.

Evidence/Comments

Confirmation and programme for construction of haul road pre-transfer of land required.

1.20 Green Belt removal should be considered and addressed via the adoption of Local Plans.

1.21 School buildings and other potential uses of a school site, for example pitches with floodlighting or enhanced sports halls for community-use to meet Sport England requirements of a wider development may be considered inappropriate development in the Green Belt. This could require the county council to demonstrate Very Special Circumstances to justify the proposed development which would form a key aspect of a future planning application. Further details are provided in the [HCC Local and Strategic Plans Engagement Document](#).

Initial Feasibility

1.22 The county council's site standards are based on Department for Education guidance "Area guidelines for mainstream schools: Building Bulletin 103" (BB103).

1.23 As each site is different, there must be consideration to town planning requirements and any abnormalities such as:

- highways (access, constraints, improvements) car parking, cycle bays, drop off and turning circles;
- abnormalities leading to site constraints such as; topography, trees, ancient woodland, contaminated land, archaeological remains & ancient monuments;
- sewers, drainage and sustainable drainage such as balancing ponds or swales (which can require considerable land take depending on design);
- fencing and hedging; and/or
- external storage, refuse area and recycling point.

1.24 The county council may require further detailed work to be completed to demonstrate deliverability, for example if significant on-site drainage solutions are required. This will be considered on a site by site basis.

School site sizes

1.25 The county council currently seeks net land allocations of the following sizes for new mainstream school locations:

Phase	Size (Form of Entry)	Total School Area	Build Zone
Primary	2FE	2.03ha	0.77ha
Primary	3FE	2.92ha	1.08ha
Secondary	6FE	8.36ha	2.76ha
Secondary	8FE	10.78ha	3.56ha
Secondary	10FE	13.20ha	4.36ha

1.26 Developers are urged to seek advice from the county council to ensure the most up to date information is available.

1.27 The net land area required must be capable of development for the required use and cannot therefore include, as examples, tree belts, copses and drainage features which prevent land being used for the intended service use.

Additional requirements for non-education use of school land

1.28 The BB103 land size requirements and Schedules of Accommodation used by the county council to justify the necessary land-take for future schools do not account for use of a school site for community facilities. If, during the planning

application stage, it is agreed that school land will also be used by the community, for example for sports pitches, there may be a requirement for additional land and/or financial contributions to be provided to the county council to enable such land use.

1.29 Sport England standards can be more significant than requirements for sports provision for education use, therefore it is unreasonable to expect an education-based contribution of land and financial contributions to cover the additional use of the site. This could be relevant in circumstances where the provision of additional grass pitches, artificial sports pitches, floodlighting and sports halls, amongst others, are required.

1.30 Discussions should be undertaken early in the planning application stage to ascertain what school land might also be used for and what additional contributions should be secured in the S106 agreement for their deliver by the county council. This could involve contributions to the district council for sports provision being passed to the county council.

Delivery of school

1.31 In most instances, the county council will only call on land when it considers that demand for the facility is forthcoming. However, it is possible that, following transfer, the requirement for the facility reduces and the county council does not need to deliver a facility on-site and has no need for the land.

1.32 If the county council decides not to deliver a school following land transfer, land should be transferred back to the original landowner.

1.33 As an example of delivery, a primary school will tend to take approximately 3 years following land transfer assuming an 18-24-month construction period, commissioning of building systems and fit-out, plus lease legal work and similar for the county council to hand over collateral warranties, and involvement of the Academy that will eventually operate the school.

Rights reserved / rights over retained land

1.34 The county council will require access to the secured land prior to calling for the land transfer. This is to enable the county council to fulfil any obligation connected with school site planning, construction & maintenance.

1.35 Access is required with or without agents and should be permitted by providing a licence free of charge to enable entry to undertake surveys, investigations and minor preparatory works.

1.36 There will be circumstances where a site is to be provided solely for education-use, completely separate from other parcels of land which are being developed for wider, residential-led, mixed-use schemes. For example, a standalone site allocated in a Local Plan for education-use only. The county council also would request to be granted access to these sites prior to transfer for the same purposes.

1.37 The county council may require rights reserved over the wider development site to enable construction on and use of the land transferred and this would should be confirmed by the developer when confirming the land meets the land specification requirements prior to transfer.

Servicing Works

- 1.38 Land that is transferred to the county council must be provided with sufficient services to enable access onto site and the operation of future facilities for their intended use.
- 1.39 Developers should ensure the servicing work requirements listed in the accompanying School Site Servicing Specification - 2024.11.29 are provided and serve notice to the county council of completion of servicing works within 12 months of the county council calling on the land.
- 1.40 Services for the wider development site must not be on, under or over the land to be transferred and any existing services must be removed or relocated prior to transfer.
- 1.41 In circumstances where there is a requirement to reserve rights for future utilities or services across the land transferred, this would only be accepted on the basis of a 1m perimeter zone of the land being agreed.
- 1.42 The county council will only agree to limited, if any, service works charges and this will need to be agreed within a legal agreement.

Meanwhile / Interim Uses of land

- 1.43 The county council will, in most instances, not call on land early into the build phase of a wider development, and it is likely that future county council land will be temporarily vacant following occupation on site by residents of new housing. This could lead to discussions, either at the planning stage or following commencement, of whether the land that will subsequently be transferred to the county council can be utilised for a temporary use.

- 1.44 There may be place-making benefits of such use, such as accessible open space being located close to housing, or the use of land for sports provision and it is accepted that land parcels may be significant in size.
- 1.45 The county council may accept meanwhile uses on future county council land but there are risks involved that could prejudice the use of secured land for future education use.
- 1.46 If the use of the land impacts the physical nature of the land so that it no longer meets the land specification, the developer will be required to remediate the site prior to transferring the land to the county council.
- 1.47 More significantly, there are risks to the future education use of land if interim uses become legally established. This is particularly pertinent when considering the timescales for which schools may be required, especially secondary schools. Local residents may also consider the intended meanwhile use to become part of the community and would see the removal of that use to be a negative proposal. This could occur even if the land has been clearly stated as intended for future use for a school or other county council facility.
- 1.48 It is the county council's preference for future land to be grassed and fenced during the period prior to a land transfer to ensure the land remains physically and legally unencumbered. The developer or landowner could be obligated through the S106 to put up Asset Protection Signs and/or submit a Landowner Deposit statement to the county council to make clear the future use of a parcel of land and protect its status for that intended future use.

- 1.49 Developers or local planning authorities should hold discussions with the county council on a site-by-site basis as early as possible to see if there are potentially acceptable temporary uses of the land in question.

First-use of land

- 1.50 A Transfer of Part of Registered Title (TP1) will accompany a land transfer and will state that the first use of the land is for the education use or as appropriate for other service provision if that is what the land was secured for. The county council would expect a draft TP1 to be included within the legal agreement.
- 1.51 Once property has been developed on the land for such use, the county council may apply for the removal of the restrictive covenant limiting the use of the land and facility. Once removed there will be no such restriction on use.

Community-Use

- 1.52 As mentioned earlier in this Technical Appendix, land transferred to the county council for service use may also be required for community use. Most common examples would be the use of sports facilities or pitches, but this could also involve use of school halls/rooms, or other service buildings.
- 1.53 When procuring an Academy Trust to operate the school post-construction, the county council can request that a Community Use Agreement be signed to ensure that communities have appropriate access to school facilities, but the operation and management of such community use is subsequently arranged by the Trust.
- 1.54 The county council would like the following Planning Condition to be added to permissions where community-use is expected:

Community Use Agreement for the Primary School

Use of the Primary School for non-education uses shall not commence until a community use agreement prepared in consultation with Sport England has been submitted to and approved in writing by the Local Planning Authority, and a copy of the completed approved agreement has been provided to the Local Planning Authority. The agreement shall apply to any sports facilities associated with the Primary School and include details of pricing policy, hours of use, access by non-educational establishment users/non-members, management responsibilities and a mechanism for review. The development shall not be used otherwise than in strict compliance with the approved agreement.

REASON:- To secure well managed safe community access to the sports facility/facilities, to ensure sufficient benefit to the development of sport and to accord with Development Plan Policy.

- 1.55 The main consideration of use of a school site is to ensure that education use is the priority and that community uses do not impact the safety of education use or the quality of education provision. It is vital that the school is designed to ensure that non-education use is not a disturbance to education provision and that non-education use does not cause undue wear and tear to education facilities that subsequently require additional maintenance and repairs to ensure they remain adequate for education provision. Limits on times for community use should also be set to minimise conflict of education and non-education uses. Please see the county council's [Service Provision and Place-Making Guide](#) for more detail.

- 1.56 The relevant school Trust/provider should be allowed to set reasonable charge rates for use of any community uses directly to ensure that they are able to recover the full cost of providing these facilities and any associated services to the community.

Developer Built Schools

- 1.57 Where a Section 106 agreement secures the land and funding for a new school, the county council will usually procure the school building and then arrange any necessary leasehold transfer to the provider. The county council would only support developer delivered education infrastructure, in lieu of contributions, by exception and in very limited circumstances; further information and the county council's 'Developer Built School Assessment and Delivery Framework' can be provided on request and developers are encouraged to engage with the county council as early as possible if they wish to discuss this option.