



# Guidance note for planning legal agreements

## supplementary planning guidance

August 2007

### General Information

Please speak to or contact the council officer(s) directly as mentioned above if you have a specific query on the SPG as outlined.

There is a separate leaflet summarising all developer contribution contributions that was published in March 2007 that relates to these agreements.

We will be happy to assist you by telephone, fax, e-mail, letter or in person at our office. We are normally available 8:30am - 5pm Monday to Thursday and 8:30am - 4pm on a Friday to deal with general enquiries. However, it is helpful to arrange an appointment in advance of your visit to ensure your enquiry is dealt with efficiently and effectively.

The office in Linlithgow is easily accessible by foot, bike or bus. Cycle Parking is available to the rear of the building. A disabled parking space is located close to the entrance and there is a public car park within 50m of the building at the Vennel Car Park. Disabled access, hearing loop and private meeting rooms are available.

The office at Almondvale Boulevard is similarly accessible by foot, bike, bus and has a car park with spaces for visitors, including disabled spaces. Disabled access, hearing loop and private meeting rooms are available.



For more information:  
Contact the council on 01506 280000  
Email [dpgeneral@westlothian.gov.uk](mailto:dpgeneral@westlothian.gov.uk)

The information contained in this leaflet is up-to-date as of August 2007



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### **GUIDANCE NOTE FOR LEGAL AGREEMENTS UNDER: SECTION 48 of the ROADS (SCOTLAND) ACT 1984, SECTION 69 of the LOCAL GOVERNMENT (SCOTLAND) ACT 1973 and SECTION 75 of the TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997.**

#### PURPOSE OF THE GUIDANCE NOTE

The purpose of this guidance note is to briefly explain the differences between agreements under Section 48 of the Roads (Scotland) Act 1984, Section 69 of the Local Government (Scotland) Act 1973 and Section 75 of the Town and Country Planning (Scotland) Act 1997,.

The note sets out details of the information required by West Lothian Council to enable a planning agreement relative to each part of legislation, to be prepared. If you have any questions on any matter to do with the planning agreement, you should contact your own solicitor. You may also wish to contact the solicitor in the council who is dealing with your application however, it should be noted that West Lothian Council cannot offer you any advice about the terms of the legal agreement.

Where an applicant is entering into an agreement with West Lothian Council under Section 75 of the Town and Country Planning (Scotland) Act 1997, for the purposes of the council securing contributions for example relating to supplementary planning guidance, the set of rules described below will normally apply. Information from the 1997 Act relating to Section 75 Agreements, that are used to regulate development or use of land is set out below. Information relating to Section 69 of the Local Government (Scotland) Act 1973 and Section 48 of the Roads (Scotland) Act 1984 are also set out below.

#### **SECTION 48 AGREEMENT : ROADS (SCOTLAND) ACT 1984**

Section 48 of the Roads (Scotland) Act 1984 provides:

Section 48 - Contributions towards expenditure on constructing or improving roads.

The roads authority may enter into an agreement with any person willing to contribute to the construction or improvement of a road and may have regard to the extent of the contributions (if any) obtainable by virtue of such agreements in determining whether to undertake the construction or effect the improvement.

This allows a local authority to enter into an agreement with any person to secure infrastructure improvements including junction upgrading, installation of traffic lights and pelican crossings, traffic calming measures etc required to deal with the effects of new development.

#### **Other useful council guidance**

The customers reading this leaflet will also be interested in the council's guidance leaflet entitled 'Developer Contributions Policies - Summary of supplementary planning guidance, March 2007' which gives a summary of all the developer contribution policies the council has. A copy can be requested from planning directly.

This guidance leaflet should also be read along with the council's 'Professional services - a partnership approach to deliver infrastructure required to support the development strategy' guidance that was approved in May 2005. The local plan strategy requires that where infrastructure improvements are required as a direct result of proposed developments, these costs will be borne by developers and it is anticipated additional resources will be required to deliver the full range of professional services within the council to support the implementation of the development plan. A copy of the guidance can also be requested from planning directly.

#### **Commitment to providing an efficient service**

West Lothian Council is committed to ensuring it will do all that it can to ensure that matters within its control are dealt with as quickly and expeditiously as possible in order to help our customers with regard to entering into legal agreements with the council.

#### **SECTION 69 AGREEMENT : LOCAL GOVERNMENT (SCOTLAND) ACT 1973**

Section 69 of the Local Government (Scotland) Act 1973 provides

Section 69 - Subsidiary powers of local authorities.

Without prejudice to any powers exercisable apart from this section but subject to the provisions of this Act and any other enactment passed before or after this Act, a local authority shall have power to do any thing (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.

Under this provision, Local Authorities have a general power to enter into agreements with developers, to do anything whether or not involving the expenditure, borrowing or lending of money, which is calculated to facilitate, or is conducive or incidental to the discharge of their functions. An agreement under Section 69 of the Local Government (Scotland) Act 1973, will be used only where the developer contributions that are required of the developer are monetary in nature and the developer is willing to meet those developer contributions in advance of the planning permission being issued. Not all developer contributions can be met in this way. Please speak to the development control officer dealing with your planning application to discuss.



## SECTION 75 AGREEMENTS: TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Town and Country Planning (Scotland) Act 1997 provides Section 75 - agreements regulating development or use of land spaces:

1. A planning authority may enter into an agreement with any person interested in land in their district (in so far as the interest of that person enables him to bind the land) for the purpose of restricting or regulating the development or use of the land, either permanently or during such period as may be prescribed by the agreement.
2. Any such agreement may contain such incidental and consequential provisions (including financial ones) as appear to the planning authority to be necessary or expedient for the purposes of the agreement.
3. An agreement made under this section with any person interested in land may, if the agreement has been recorded in the appropriate Register of Sasines or, as the case may be, registered in the Land Register of Scotland, be enforceable at the instance of the planning authority against persons deriving title to the land from the person with whom the agreement was entered into.
4. No such agreement shall at any time be enforceable against a third party who has in good faith and for value acquired right (whether title has been completed or not) to the land prior to the agreement being recorded or registered or against any person deriving title from such third party.



### Status of planning application

It must be recognised by the applicant/landowner/developer that until such time as an application for planning permission, that has been lodged has been decided by West Lothian Council, the application remains as an undecided application. The involvement of West Lothian Council legal services at any stage of the application is not to be construed as an indication that planning permission is to be granted. The sole purpose of legal services engaging with the applicant/landowner/developer at an early stage is to enable the legal work that is required for the creation of the planning agreement to be carried out in parallel with the consideration by the Development Control Manager, of the planning application, in the interests of providing an efficient service.

### Fees for legal work

The applicant will be responsible for all legal fees and costs incurred by legal services or by any external legal agents appointed by legal services, for the negotiation, preparation and recording/registration of the planning agreement. If the application for planning permission were to be withdrawn or refused, the work in connection with the planning agreement will not be taken further. **It should be noted that all fees that you have incurred or paid for the preparation of the planning agreement will not be refunded to you.** Fees paid to the planning department are also not refundable.

### A S.75 planning agreement is a voluntary agreement

An agreement made under Section 75 of the 1997 Act is, it should be noted, a **voluntary agreement** between the landowner and the Council. The purpose of the planning agreement is to **permanently** restrict or regulate the use of the land affected by the planning permission. The undertakings, restrictions and conditions contained in

the planning agreement will be recorded in the General Register of Sasines or registered in the Land Register of Scotland and will form, in all time coming, real and heritable burdens on the land affected by the planning permission.

### Effect of planning agreement

It is important that you understand that as the planning agreement runs with the land, it is more than just a contract or agreement between the landowner and the council. **It is a contract or agreement that will bind all future owners of the land affected by the planning permission.** This means that the restrictions on the use of the property, which have been agreed between the landowner and the council, apply not only against the original landowner, but apply against all future landowners.

### Disposal of land is subject to Section 75 agreement

If the landowner wishes to sell or dispose of all or part of the land or property that is affected by the planning agreement, such a sale or disposal will be subject to the whole terms of the planning agreement. While the planning agreement is in existence, the land cannot be sold or disposed of unless the new owner of the land agrees to accept and comply with the terms of the planning agreement.

### Enforcement of Section 75 agreement

The Section 75 planning agreement is enforceable by West Lothian Council against the owners of the land and their successors in title. This means that if the landowner or their successors in title are in breach of any of the terms and provisions of the planning agreement, the council can take enforcement action against them or any successor in title. Further details on enforcement action can be found in Part VI of the Town and Country Planning (Scotland) Act 1997.

### Paperwork and details required to prepare planning agreement

To enable West Lothian Council to prepare the planning agreement, certain papers will require to be produced to the legal services department of the council. You may find it beneficial to hand a copy of this guidance note to your solicitors and ask them to arrange for the various papers that are needed to be sent to the **Chief Solicitor, West Lothian Council, West Lothian House, Almondvale Boulevard, Livingston EH54 6QG**. The Legal Post address is LP3 Livingston.

The following items will be needed by the council:

1. **Title Deeds/Land Certificate:** A full prescriptive progress of the title deeds or the land certificate for the land that is affected by the planning application must be provided to the council. In some cases additional title deeds may be needed, for example where the planning permission relates to a new house to be built on a farm, the use of the house will be tied to the working of the whole farm. In that case the titles for the whole farm would require to be produced and the planning agreement will be registered/recorded against the whole of the farm. The title deeds for all of the relevant land must show that the applicant/landowner is infeft in the land. That means that the applicant/landowner must have a good recorded or registered title to the land. Your solicitor will be able to advise you further on this matter. All of the land that is to be subject to the planning agreement requires to be within the jurisdiction of West Lothian Council. Where the land that is to be subject to the planning agreement straddles more than one local authority, complications will arise and there can be no guarantee in such a case that a planning agreement can be competently entered into.
2. **Plans:** Plans clearly showing the land affected by the planning application and showing any additional land to be tied to the planning agreement require to be produced by you. The plans should be to a 1:1250 scale. The plans require to be produced at your expense. The plans should clearly show the land affected by the planning permission outlined red and it should also show any other land to be tied to the agreement as outlined blue. Five copies of each plan are required. The plans will require to coincide with the title deeds of the land. If new plans require to be prepared, the cost will require to be paid by the applicant or the landowner. Once again you should consult your

solicitor or land agent on this matter.

3. **Title Deed/Land Certificate searches:** Title deed searches in the Sasine and/or the Land Register over the land affected by the planning permission and any additional land affected, will require to be brought down to a date as close as possible to the date when the planning agreement is completed and is sent for recording/registration. These searches require to be produced at the applicant or landowner's expense. It would be the applicant/landowner's solicitor who would normally arrange for the searches to be obtained.
4. **Consent of heritable creditor:** If the land is affected by a standard security, the consent of the heritable creditor to the granting of the planning agreement will be required. The heritable creditor will also be required to sign the planning agreement as a consenter. A copy of the letter showing that the heritable creditor consents to the granting of the planning agreement must be produced before the draft planning agreement is finalised. The applicant/landowner requires to meet all costs in connection with obtaining the consent of the heritable creditor.
5. **Consent of landlord and tenant:** If the land to be affected by the planning agreement is subject to a lease the consent of the landlord and the tenant will be required. Where consent is required, the landlord/tenant will also be required to sign the planning agreement as consenter(s). A copy of the letter showing that the landlord/tenant consents to the granting of the planning agreement must be produced before the draft planning agreement is finalised.
6. **Letter of obligation:** At settlement the solicitor for the landowner will be required to grant in favour of West Lothian Council, a letter of obligation in terms of the council's preferred style. A copy of the proposed style of letter of obligation, preferred by the council will be forwarded to your solicitor at or near settlement.

### Costs of producing paperwork required from the applicant

All costs and outlays in connection with producing the land certificate or the title deeds, plans, up to date searches and the consent of any heritable creditor or landlord or tenant all require to be met in full by the applicant. For the avoidance of doubt West Lothian Council cannot obtain titles from lenders on behalf of applicants. Applicants will require to instruct their own solicitors to obtain title deeds and to obtain the consent of heritable creditors and to obtain up to date searches.

Until such time as West Lothian Council receive the land certificate/title deeds no progress can be made with preparing the planning agreement. Accordingly it is in your interest to produce all the appropriate paperwork to us as quickly as possible.

### When planning permission is released

It is only after (1) the planning agreement has been fully agreed, signed by the applicant/landowner and all consenters (2) the planning agreement has been presented for recording/registration with the Registers of Scotland (3) clear searches have been exhibited (4) a letter of obligation in terms of the council's preferred style has been issued by the solicitors for the applicant and (5) any financial payments due to be paid by a developer at the outset have been paid, that the planning permission can be released. No work to implement the planning consent should be carried out until the planning permission has been issued.

