



**West Lothian
Council**

COUNCIL EXECUTIVE

**SUPPLEMENTARY PLANNING GUIDANCE – DEVELOPER CONTRIBUTIONS FOR
DENOMINATIONAL SECONDARY SCHOOL INFRASTRUCTURE**

REPORT BY HEAD OF PLANNING AND ECONOMIC DEVELOPMENT

A. PURPOSE OF REPORT

The purpose of this report is to advise Council Executive of the outcome of the consultation on revised supplementary planning guidance (SPG) on developer contributions for denominational secondary school infrastructure and to seek approval for interim changes to the existing SPG pending a further review which will focus on the scale of infrastructure needed.

The report also seeks approval for residential units with less than three habitable rooms to be exempt from all developer contributions for school infrastructure.

B. RECOMMENDATION

It is recommended that Council Executive:

- (1) Notes the outcome of consultation on the draft SPG.
- (2) Agrees not to introduce a revised SPG based on the seven different contribution rates proposed in the draft SPG.
- (3) Agrees, with immediate effect, as an interim change to the existing SPG, that residential units containing less than three habitable rooms shall be exempt from denominational secondary school contributions.
- (4) Agrees, with immediate effect, as an interim change to the existing SPG, that the SPG shall no longer apply to areas outwith West Lothian.
- (5) Agrees, with immediate effect, as an interim change that exemption 5.1 b) in the existing SPG should be amended to refer to 'purpose built housing for students' instead of 'student housing'.
- (6) Agrees, with immediate effect, that residential units containing less than three habitable rooms will be exempt from all developer contributions for school infrastructure; and
- (7) Agrees that the Head of Planning and Economic Development brings forward a report to the Development and Transport Policy Development and Scrutiny Panel before the end of the year setting out further proposed changes to the existing SPG for denominational secondary school infrastructure. This review shall focus on the scale of infrastructure required.

C. SUMMARY OF IMPLICATIONS

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| I Council Values | Focusing on our customers' needs; being honest, open and accountable; making best use of our resources; and working in partnership. |
| II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment) | <p>The implementation of the West Lothian Local Plan (WLLP) will require substantial funding for education infrastructure and substantial developer contributions. It is a key requirement of the WLLP and the approved Edinburgh and the Lothians Structure Plan (E&LSP) that development should not proceed beyond existing infrastructure capacity and that planning permission should not be granted until relevant infrastructure is provided or committed. The relevant structure plan policy is HOU 5.</p> <p>Policy IMP 2 of the WLLP requires developer contributions for denominational secondary school infrastructure.</p> <p>Policy IMP 17 of the WLLP indicates that planning agreements (section 75s) will be entered into where appropriate and that developer contributions will be sought in accordance with circular 12/1996 - Planning Agreements (this circular has been replaced by circular 1/2010).</p> <p>Developer contributions may also be obtained through section 69 agreements under the Local Government (Scotland) Act 1973.</p> <p>The council approved SPG to secure developer contributions for denominational secondary school provision in May 2005 and approved interim changes in November 2008. Revised SPG was approved in June 2010.</p> |
| III Implications for Scheme of Delegation to Officers | None. |
| IV Impact on performance and performance indicators | None. |
| V Relevance to Single Outcome Agreement | <p>Outcome 5 – Our children have the best start in life and are ready to succeed.</p> <p>Outcome 10 – We live in well-designed, sustainable places where we are able to access the services we need.</p> |
| VI Resources - (Financial, Staffing and Property) | The council is committed to forward funding some of the education infrastructure identified in |

the SPG for denominational secondary school infrastructure.

All approved SPG will apply to council owned sites that are to be developed for housing.

VII Consideration at PDSP

The draft SPG was reported to Development and Transport PDSP on 4 August 2011 and the panel agreed that consultation should be carried out and that the outcome should be reported to Council Executive.

VIII Other Consultations

Internal:
Education, Finance and Estates, Legal.

Senior Counsel was consulted on a planning appeal decision which has implications for this and other SPG.

External:
Community Councils, developers, landowners and Homes for Scotland were consulted on the draft SPG.

The draft SPG was also published on the council's website during the consultation period.

D. TERMS OF REPORT

D1 Background

West Lothian Council adopted the West Lothian Local Plan on 13 January 2009. The plan proposes major housing growth and, as a consequence, a number of new schools and school extensions are required to support the local plan strategy.

The purpose of the draft SPG which was the subject of consultation was to set out details of education infrastructure projects which will be required to support the implementation of the plan and to provide updated guidance on developer contributions. A copy of the draft SPG which was the subject of consultation is attached as Appendix 1.

The council has decided to forward fund some of the works necessary to increase capacity at St. Margaret's Academy. An extension at St. Margaret's Academy, increasing the capacity from 990 pupils, to 1,100 pupils, was completed in August 2011.

The council is not in a position to forward fund all of the education infrastructure required to support the implementation of the local plan. Other funding mechanisms will be required. The Scottish Government is currently considering if new funding models can be introduced to help deliver key infrastructure which will support development.

D2 The need for review

There are three reasons why the SPG requires to be reviewed:

- The catchment area for denominational secondary provision has changed to exclude areas within the administrative boundary of the City of Edinburgh Council. As a consequence, developer contributions need now only be sought from developers within West Lothian.
- A planning appeal decision (PPA -400 -2019) indicates that the SPG should be adjusted to make it more robust and accord more closely with Scottish Government advice on planning agreements.
- At the meeting of the Development Management Committee on 16 December 2010, officers agreed to take forward a proposal to the Development and Transport PDSP to examine and review developer contributions in relation to one-bedroom properties, house extensions and sheltered housing/retirement flats. All members of the Development Management Committee were invited to attend the meeting of the Development and Transport PDSP on 4 August to contribute to the discussion on the draft SPG.

D3 Catchment review

On 28 June 2011, the Education Executive decided that the boundary for denominational schools in West Lothian should be amended to exclude areas within the administrative area of the City of Edinburgh Council. On 30 June 2011, the City of Edinburgh Council supported the proposed change. As a consequence of these decisions, developer contributions for denominational school infrastructure in West Lothian should no longer be required from any housing developments proposed within the administrative area of the City of Edinburgh Council. The school roll forecasts have been adjusted to reflect the changes to the catchment areas. Recommendation 4 of this report is that the SPG should no longer apply to areas outwith West Lothian.

D4 Planning appeal decision PPA-400-2019

The council has had in place SPG for denominational secondary school infrastructure for over six years and, during this time, there have been few challenges by developers to the need for contributions, or the scale of contributions.

However, in March 2011, a Scottish Government reporter upheld an appeal for the erection of a flat above a hot food takeaway at West Main Street, Whitburn. This appeal decision has implications for the approved SPG for denominational secondary school infrastructure.

The appeal proposal was for the extension of a hot food takeaway and formation of manager's flat above. West Lothian Council refused planning permission on 16 December 2010 as the applicant was not willing to pay developer contributions for denominational secondary school infrastructure and an extension at Whitburn Academy. The application was acceptable in all other respects and is the type of development that the council should be seeking to support. This was the item at Development Management Committee which prompted the request from members that there should be a review of developer contributions.

On 25 March 2011, the appeal was upheld by a reporter appointed by Scottish Ministers. The reporter granted planning permission without the need for any developer contributions being payable to the council.

In coming to his decision, the reporter noted that the proposal would remove a prominent eyesore in Whitburn town centre and this was a material consideration in favour of the proposal. Whilst the reporter accepted the principle of requiring financial contributions was in accordance with the development plan, he found that the requirements were not justified in this specific case. In particular, the reporter concluded that it was difficult to argue that the appeal proposal would place demands on secondary school infrastructure and for this reason he concluded that the contributions were unnecessary and did not arise as a direct consequence of the development or any cumulative impact, and did not fairly relate in scale and kind to the development and hence can be regarded as unreasonable. The reporter was of the opinion that the contributions sought by the council failed the tests of circular 1/2010 'Planning Agreements'.

Following the appeal decision on case PPA-400-2019, a consultation with Senior Counsel took place and Counsel advised that the council should consider moving away from a standard charge approach where all developers pay the same level of contribution for school infrastructure irrespective of the size of the residential unit. Counsel further advised that the council should seek to illustrate clearly the link between the level of contribution rate and the information the council collects and maintains about child per house ratios.

In the draft SPG which was considered by Development and Transport PDSP, dwellings with four habitable rooms were regarded as 'standard size' residential units on account of the fact that this size of unit was the most common in West Lothian and it was proposed that they would be charged 100% of the 'standard rate'. It was further proposed that properties with less than four habitable rooms would obtain a discount on the standard rate and properties with more than four habitable rooms would be charged a premium. The level of discount or premium would be directly linked to child per house ratios by applying a formula which is described in the draft SPG.

In the draft SPG, the 'standard rate' was identified as £1,990, with contribution levels varying from £127 to £3,134, with actual payments being indexed to the RICS Building Cost Information Service Tender Price Index. Seven different contribution rates were identified in the draft SPG. Currently, the contribution rate for denominational secondary school infrastructure for all residential units is £1,983 (indexed).

When the draft SPG was being prepared, consideration was given to making properties with two habitable rooms exempt from contributions. However, because there is evidence that children of school age do reside in these types of property, albeit in relatively small numbers and in recognition of the cumulative impact that these types of properties would have on the demand for school places, rather than making these units exempt, it was proposed in the draft SPG that a large discount would apply. However, it was proposed that units with only one habitable room (ie studios) would be exempt.

Planning appeal decision PPA-400-2020

When considering proposed changes to the SPG, members should be aware of another appeal decision, case PPA-400-2020. The proposal was for the erection of 12 flats at Deans House, Livingston. In this case, the determining issue was whether the appellant should be obliged to make a contribution towards the cost of Roman Catholic secondary school provision. The reporter dismissed the appeal on 21 June 2011.

In coming to this decision the reporter concluded that:

The planned provision of additional capacity, funded by developers, was preferable to requiring Roman Catholic pupils from the proposed development to attend a non-denominational school against their parent's wishes or placing them at St. Kentigern's where there is no direct bus service from Deans.

The council had demonstrated that new housing such as the appeal development would create a need for additional capacity in denominational secondary schools. The 'relationship' test of circular 1/2010 was therefore satisfied as there was a link between the development and the mitigation proposed arising from the developer contribution.

The council's SPG on denominational secondary education infrastructure sets out a clear basis for the calculation of contributions in proportion to the scale of development, the additional provision required and the cost of that provision. Furthermore, the council is entitled to take a strategic view by considering district wide issues. The 'scale and kind' test of circular 1/2010 is met.

In this case, the reporter supported the standard charge approach contained within existing SPG.

Whilst the outcome of this appeal decision is to be welcomed as it supports the council's position that developer contributions for denominational secondary school infrastructure are necessary for the appeal proposal, changes to the SPG were, and still are, considered to be desirable to ensure that the council is in the best possible position to defend any future appeals. The extent of the changes now proposed, however, are more limited than the changes proposed in the draft SPG.

D5 Other considerations

When preparing the draft SPG, consideration was given to seeking contributions from householders who add habitable rooms to their houses through extensions. Whilst it is acknowledged that such house extensions have the potential to place demands on school infrastructure, Policy IMP2 of the adopted West Lothian Local Plan does not require householders to contribute towards the cost of denominational secondary school infrastructure. The policy specifically targets those creating new residential units. For this reason, it was recommended to PDSP that the council should not seek contributions from those extending their existing property towards the cost of providing denominational secondary school infrastructure, or indeed any other education infrastructure necessary to support the development plan strategy.

On 10 December 2009, the Development and Transport Scrutiny Panel considered a report on developer contributions for house extensions that include additional bedrooms. The panel noted that introducing developer contributions for householder extensions would potentially result in the following problems:

- There would be delays in processing householder applications.
- There would be an increase in planning appeals.
- The policy would be a deterrent to prospective applicants extending their home, and this could have adverse consequences for the local economy and reduce planning application and building warrant fee income.
- There would be increased workload for Planning Services, Legal Services and Finance and Estates and the policy would be costly to administer.

It should also be noted that introducing the policy would not actually increase the total amount of contributions received because the target amount to be raised would be unchanged. If householders were asked to contribute towards education infrastructure, the level of developer contributions would reduce.

These factors add weight to the case for not requiring householders to contribute to education infrastructure.

It should be noted that Senior Counsel has recommended against introducing developer contribution requirements for householder applications as he believed that it could be difficult to defend such obligations if challenged.

Given all of the above, the draft SPG which was the subject of consultation did not require contributions to be paid by householders who add additional bedrooms.

The exemptions which were set out in paragraph 7.1 of the draft SPG which was the subject of consultation were broadly similar to the exemptions which currently apply. It was proposed that sheltered housing and retirement flats should continue to be exempt from education contributions as these types of development have no direct impact on the demand for school places.

D6 The outcome of the consultation

The draft SPG was the subject of extensive consultation with landowners, developers and other relevant stakeholders over a six week period, ending on 30 September. 10 responses were received.

During the six week consultation, comments were received from:

Homes for Scotland
Smiths Gore on behalf of the Scottish War Blinded
Rick Finc Associates on behalf of Mansell Homes
Barton Willmore on behalf of Ashdale Land and Property Company Ltd
PPCA Ltd on behalf of Regenco (Winchburgh Ltd
Blueprint Planning and Development on behalf of Achadonn Properties
Walker Group
Stirling Developments
McInally Associates on behalf of Ecosse Regeneration
Holder Planning

A summary of the comments made is included in Appendix 2 together with a proposed response.

Some respondents were in favour of some of the changes which were proposed but others were not in favour and believed that the SPG would stifle housing development in West Lothian as it would have an adverse impact on development viability. Further discussion took place with members of Homes for Scotland in spring this year in an attempt to explore if greater consensus could be achieved on a way forward but agreement could not be reached.

Given the differences of opinion on the best way forward, it is considered that the council should not proceed with a revised SPG based on seven different contribution rates as set out in the draft SPG. However, because there are a number of current planning applications involving the formation of one bedroom units which have been put on hold pending a decision about whether or not changes to the existing SPG would be made, it is recommended that interim changes should be introduced with immediate effect so that clarity on this aspect of the SPG can be provided. It is further recommended that a further review of the SPG is undertaken to review the scale of infrastructure needed.

It can be seen from the above proposed responses set out in Appendix 2 that having considered the representations received on the draft SPG, less radical changes to the SPG are now proposed. It is proposed that all residential units with less than three habitable rooms should be exempt from having to make developer contributions for denominational secondary school infrastructure given the relatively small impact that such units have on the demand for school places. The changes which are proposed address the issues relating to the alteration to the catchment review, the outcome of planning appeal PPA-400-2019 and the request from Development Management Committee to examine and review developer contributions in relation to one bedroom properties.

The updated list of exemptions is attached at Appendix 3. It is recommended that these are approved as council policy with immediate effect.

In the interests of consistency, it is recommended that the council does not seek education contributions for any residential unit which has less than three habitable rooms. This will affect existing SPG for Armadale Academy, Armadale primary schools, Whitburn Academy and all other schools where developer contributions are being sought for the provision of additional school capacity.

For the purpose of the exemptions mentioned in this report, a habitable room shall be defined as 'any enclosed room intended for human occupation, excepting any room used solely as a kitchen, bathroom, toilet, washroom, utility room, hall or stair'.

It is proposed that a further review of the SPG will commence immediately and this will focus on the scale of provision needed. Following consideration by the Development and Transport PDSP, consultation will be undertaken and the outcome will be reported to a future meeting of the Council Executive for decision.

E. CONCLUSION

The consultation on the revised SPG resulted in a number of concerns being raised by developers. Having reflected on the concerns raised, it is proposed to proceed with a number of interim changes pending a further review of the SPG. This further review will focus on the scale of infrastructure required and will provide an update on the cost of provision.

F. BACKGROUND REFERENCES

Edinburgh and the Lothians Structure Plan 2015.

West Lothian Local Plan.

SG Circular 1/2010 - Planning Agreements.

Report to Development and Transport PDSP 9 October 2008 - The Effect of the Credit

Crunch on the West Lothian Local Plan.

Report to Education Executive on 16 June 2008 - Education Strategy to support the West Lothian Local Plan including pre-adoption modifications.

Report to Council Executive 29 June 2010 - Supplementary Planning Guidance : Developer contributions for denominational secondary school infrastructure.

Report to Development and Transport PDSP 10 December 2010 – Developer contributions for education for house extensions that include additional bedrooms.

Report to Education Executive 28 June 2011 – Review of Denominational (Roman Catholic) school catchment areas that cross the local authority boundary between West Lothian Council and the City of Edinburgh Council – Outcome of Consultation.

Report to Development and Transport PDSP 4 August 2011 – Supplementary Planning Guidance – Developer Contributions for Denominational Secondary School Infrastructure

Report to Policy, Partnership and Resources Committee 3 May 2005 – Developer contributions towards the provision of a new denominational secondary school.

Report to Council Executive 25 November 2008 – Interim changes to supplementary planning guidance.

Appendices/Attachments: Three – Outcome of consultation, Draft SPG and proposed exemptions

Contact Person: Colin Miller, Development Planning Manager, 01506 775216

Email: colin.miller@westlothian.gov.uk

Steve Field, Head of Planning and Economic Development

7 August 2012

APPENDIX 3 - PROPOSED UPDATED EXEMPTIONS TO EXISTING SPG

5.1 The only circumstances where developers will be exempt from this policy will be:

- a) Sites which already have the benefit of a current planning permission and that permission has not expired (unless it is proposed to increase the number of units in which case a contribution will be required based on the increase in the number of units). Where an existing planning permission expires, any new application will not be exempt from this policy.
- b) sheltered housing, purpose built student housing and other types of housing designed or approved for special population groups which do not include children within the resident's household.
- c) Sub-division of existing residential units provided the new residential accommodation would not result in a greater demand for school places. Where the demand for school places would be greater, contributions will be assessed on a case by case basis and will be in proportion to the additional demand generated.
- d) Sites where it is proposed to demolish existing residential units and replace with new housing provided there is no increase in the number of residential units. Where there is an increase in the number of units, the need for contributions will be assessed on a case by case basis and any contributions sought will be in proportion to the additional demand for school places which is generated.
- e) Sites where residential units have recently been demolished (ie. within the last two years) and the number of replacement units does not exceed the number of units previously located on the site. Where there is an increase in the number of units, the need for contributions will be assessed on a case by case basis and any contributions sought will be in proportion to the additional demand for school places which is generated.
- f) Residential units that contain less than three habitable rooms.

Definition:

For the purposes of this SPG, a habitable room shall be defined as any enclosed room intended for human occupation, excepting any room used solely as a kitchen, bathroom, toilet, washroom, utility room, shower room, hall and stair.