



DEVELOPMENT AND TRANSPORT POLICY DEVELOPMENT AND SCRUTINY PANEL

SUPPLEMENTARY PLANNING GUIDANCE – DEVELOPER CONTRIBUTIONS FOR ARMADALE ACADEMY

REPORT BY HEAD OF PLANNING AND ECONOMIC DEVELOPMENT

A. PURPOSE OF REPORT

The purpose of this report is to advise the panel of proposed changes to the existing supplementary planning guidance (SPG) on developer contributions for Armadale Academy.

B. RECOMMENDATION

It is recommended that the panel:

- 1) notes the key principles to be included in the SPG and agrees to consultation being carried out; and
- 2) agrees that the outcome of the consultation, together with any revisions proposed to the SPG as a result of consultation, should be reported to the Council Executive for decision.

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 that development should not proceed beyond existing infrastructure capacity and that planning permission should not be granted until relevant infrastructure is provided or committed. Policy 9 of the approved Strategic Development Plan (SDP) for Edinburgh and South East Scotland identifies a similar provision.</p> <p>Policy IMP 3 of the WLLP requires developer contributions to help overcome education constraints and this is mirrored in Policy 9 of the SDP.</p> |

Policy IMP 17 of the WLLP indicates that planning agreements (now planning obligations) 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developer contributions will be sought in accordance with circular 12/1996 - Planning Agreements (this circular has been replaced by circular 3/2012).

Developer contributions may also be obtained through section 69 agreements under the Local Government (Scotland) Act 1973.

The council approved SPG to secure developer contributions for a replacement Armadale secondary school provision in December 2005.

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 1 - Our children have the best start in life and are ready to succeed.</p> <p>Outcome 2 – We are better educated and have access to increased and better quality learning and employment opportunities.</p> <p>Outcome 3 – Our economy is diverse and dynamic and West Lothian is an attractive place for doing business.</p>
VI Resources - (Financial, Staffing and Property)	<p>Residential developers will be required to make payments in accordance with the SPG.</p> <p>The SPG will apply to council owned sites that are to be developed for housing.</p>
VII Consideration at PDSP	The panel has not previously considered this SPG.
VIII Other Consultations	<p>Internal: Education, Finance and Estates, Legal.</p> <p>External: Community Councils, developers, landowners and Homes for Scotland will be consulted on the draft SPG.</p> <p>The draft SPG will also published on the council’s website during the consultation period.</p>

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 Main Issues Report to the West Lothian Local Development Plan, which was approved for consultation by the council on 19 June, proposes a continuation of this strategy.

This original SPG was approved on 6 December 2005 and is in the process of being updated. Changes to the policy were also approved on 25 November 2008 which meant that it applied to all housing within the catchment area of Armadale Academy (previously it had related only to developments of 5 or more units) and the SPG sets out developer contribution levels for houses and flats to be built within the catchment area (see Appendix B to report that identifies the up-to-date catchment area boundary). A contribution of £1,653 per house and £620 per flat was required from developers within the catchment area. These contribution levels being index linking to the Retail Price Index from the first quarter 2005.

The council replaced Armadale Academy as part of PPP3. The replacement school has greater capacity than the previous school. The council funded the entire school through the PPP contract but intends to recover some of its costs by seeking developer contributions for the additional 220 spaces which were provided and this was the reason for taking forward the SPG. The council is forward funding the provision of extra capacity at this school to support the development plan.

D2 The Proposed Changes

Policy IMP 1 of the WLLP requires all developers of housing sites within the catchment area of Armadale Academy to contribute to the cost of providing a new non-denominational secondary school to replace Armadale Academy. SPG setting out developer contribution rates for this project was approved by the council in December 2005. It was indicated in that SPG that the policy would be kept under review and that contribution rates would be updated if there was a material change in circumstance.

Since December 2005, circumstances have changed. These include:

- The WLLP has been adopted and some new sites have been allocated for housing as a result.
- Some windfall development has been supported.
- The replacement school has been constructed and definitive cost information is now available.
- The council has refined the methodology it uses to produce school roll forecasts.
- Updated school roll forecasts are available having regard to the most up to date information about child per house ratios, transfer rates, stage migration, housing land supply etc.
- A secondary school consultation has been completed in north and north west of West Lothian that resulted in Westfield Primary School being removed from the Armadale Academy catchment area. The council can therefore not assume as previously that contributions will be forthcoming from developments in this catchment area.

The council has set up a West Lothian Local Infrastructure Fund and has decided to forward fund school extensions in the north and north west of West Lothian to support the development plan strategy.

The council has also approved a wider range of exemptions to contribution than set out in the current SPG for Armadale Academy. The revised SPG will include all current exemptions.

As a consequence of these changes, there is a need to update the SPG requiring developer contributions for Armadale Academy.

This SPG will be taken into account in the determination of all planning applications for housing within the existing catchment areas of Armadale Academy. The policy will be revised as circumstances require. Factors which could lead to the policy being reviewed include:

- updates in the Housing Land Audit;
- higher or lower rates of house completion than that assumed in the Development Planning Housing Model;
- additional housing allocations
- availability of updated information on costs;
- changes in assumptions about the child/house ratio as a result of the actual housing mix proposed;
- demographic changes;
- changes in the pattern of attendance at schools;
- changes in the type of residential units that are to be exempt from contributions;
- updated school roll forecasts;
- changes in catchment areas;
- changes to the Strategic Development Plan;
- approval of the Local Development Plan; and
- any other significant matter that impacts on non-denominational primary school provision in the catchment area of Armadale Academy.

It is noted that the rate of house building in West Lothian has fallen significantly as a consequence of the recession, although there is evidence that completions are increasing again. The general housing downturn has nevertheless been taken into account in the latest school roll forecasts. The council will continue to monitor the rate of house building and will further adjust school roll forecasts, as and when required, to reflect changes in the housing market.

With the recession resulting in a severe slowdown of the private sector housing market and creating difficulty for developers in raising finance to forward fund major infrastructure, the council will keep its education strategy under review and, where possible, be flexible.

The draft SPG will require consultation with landowners, developers and with other relevant stakeholders. The outcome of the consultation will be reported to Council Executive in due course.

The proposed contribution rate is **£3,862** per residential unit. The revised SPG is attached as Appendix A.

E. CONCLUSION

As one of the earliest SPG produced for education contributions there is an outstanding need to update the existing SPG for Armadale Academy to take account of current practice and circumstances. Consultation on the proposed changes will be carried out before the changes are considered by Council Executive.

F. BACKGROUND REFERENCES

Report to Development and Transport PDSP 9 October 2008 - The Effect of the Credit Crunch on the West Lothian Local Plan.

<http://coins.westlothian.gov.uk/coins/calendar.asp>

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

http://www.westlothian.gov.uk/media/downloadaddoc/1799514/1841832/1875738/spg_planningforeducation

Report on Replacement Armadale Academy SPG 2005

http://www.westlothian.gov.uk/media/downloadaddoc/1799514/1841832/1875738/2173476/Armadale_Academy

Interim Changes to Developer Contribution Policies, November 2008

<http://www.westlothian.gov.uk/media/downloadaddoc/1799514/1841832/1875738/2173476/interimchanges>

Planning for Education SPG

http://www.westlothian.gov.uk/media/downloadaddoc/1799514/1841832/1875738/spg_planningforeducation

Report to Education Executive on 18 March 2014 - 2012 Base School Forecasts

Appendices/Attachments: One – Draft SPG

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26 June 2014

Appendix A

SUPPLEMENTARY PLANNING GUIDANCE - DEVELOPER CONTRIBUTIONS FOR ARMADALE ACDEMY

1.0 INTRODUCTION

- 1.1 West Lothian Council adopted the West Lothian Local Plan (WLLP) in January 2009. The WLLP 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 Main Issues Report to the West Lothian Local Development Plan, which was approved for consultation by the council on 19 June, proposes a continuation of this strategy.
- 1.2 The purpose of this supplementary planning guidance (SPG) is to set out updated developer contribution rates for Armadale Academy. In August 2012, Council Executive agreed not to introduce denominational secondary school contribution rates based on the number of habitable rooms. It also agreed, on an interim basis that residential units containing less than three habitable rooms would be exempt from contribution. This SPG complies with this decision.
- 1.3 SPG for developer contributions for Armadale Academy was first approved in May 2005. A replacement SPG was approved in December 2005 and interim changes were approved in November 2008.
- 1.4 The adopted West Lothian Local Plan (WLLP) sets out a development strategy for West Lothian. The success of the local plan development strategy is dependent on additional school capacity being provided and the council securing appropriate developer contributions.

2.0 BACKGROUND

- 2.1 The original SPG was approved on 6 December 2005. Changes to the policy were approved on 25 November 2008 which meant that it applied to all housing within the catchment area of Armadale Academy (previously it had related only to developments of 5 or more units) and the SPG sets out developer contribution levels for houses and flats to be built within the catchment area. A contribution of £1,653 per house and £620 per flat is required from developers within the catchment area. These contribution levels being Index linked to the Retail Price Index from the first quarter 2005.
- 2.2 The SPG for Armadale Academy approved in 2005 was prepared at a time when Armadale Academy had capacity for 990 pupils and a replacement facility with a capacity for 1,210 pupils was planned as part of a Public Private Partnership (PPP) project.
- 2.3 The additional 220 spaces were proposed to support the scale of housing planned in the catchment area for Armadale Academy. The number of additional pupil spaces represents 18.18% of the total pupil capacity of the replacement school.

- 2.4 It is now necessary to make this SPG for Armadale Academy current, because:
- The West Lothian Local Plan has now been adopted.
 - Some windfall development has been supported.
 - The catchment area for Armadale Academy has been changed.
 - The replacement school has been completed and opened in August 2009 with a pupil capacity of 1,210.
 - The final cost of the replacement school is known.
 - Updated housing audits, housing models and school roll forecasts are available and the council has also refined the methodology it uses to produce school roll forecasts.
- 2.5 Once approved, this revised SPG will replace the SPG for Developer Contributions for a Replacement Armadale Academy (December 2005, as amended by Interim Changes, November 2008).

3.0 LEGISLATIVE AND POLICY CONTEXT

- 3.1 Section 75 of the Town and Country Planning (Scotland) Act 1997 allows planning authorities to secure developer contributions, through the use of planning obligations, to overcome obstacles to the granting of planning permission.
- 3.2 Scottish Government Circular 3/2012 *Planning Obligations and Good Neighbour Agreements* sets out current policy on planning agreements. This indicates that planning agreements (now obligations) should only be sought where they meet all the following tests:
- Necessary to make the proposed development acceptable in planning terms.
 - Serve a planning purpose and, where it is possible to identify infrastructure provision requirements in advance, should be relevant to development plans.
 - Relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area.
 - Fairly and reasonably relate in scale and kind to the proposed development.
 - Be reasonable in all other respects.
- 3.3 The approved Strategic Development Plan for Edinburgh and South East Scotland (SDP) requires sufficient infrastructure to be available, or its provision to be committed, before development can proceed. The plan supports the delivery of infrastructure through developer contributions, funding from infrastructure providers or other appropriate means, including the promotion of alternative delivery mechanisms. Policy 9 of the SDP refers.
- 3.4 The adopted West Lothian Local Plan (WLLP) sets out a development strategy for West Lothian. It is proposed that this strategy is carried forward in the emerging West Lothian Local Development Plan. The success of the local plan development strategy is dependent on additional school capacity being provided. In accordance with Policy IMP 3 of the WLLP, legal agreements will be required to secure the provision of new schools or school extensions and associated community facilities from developers where this is directly attributable to serving their proposed housing development. Policy IMP17 of the WLLP also requires legal agreements to be in place to secure key infrastructure.
- 3.5 Policy IMP 1 of the WLLP identifies a need for all housing developers within the catchment area of Armadale Academy to contribute to the cost of replacing the school.

4.0 EXISTING PROVISION AND SCALE OF NEW PROVISION

4.1 The SPG will be taken into account in the determination of all planning applications for housing within the existing catchment area of Armadale Academy from the date the SPG is approved. The policy will be revised as circumstances require. Factors which could lead to the policy being reviewed include:

- updates to the Housing Land Audit;
- higher or lower rates of house completion than that assumed in the Development Planning Housing Model;
- additional housing allocations;
- availability of updated information on costs;
- changes in assumptions about the child/house ratio as a result of the actual housing mix proposed;
- demographic changes;
- updated school roll forecasts;
- changes in catchment areas;
- changes in the pattern of attendance at schools;
- changes in the type of residential units that are to be exempt from contributions;
- changes to the Strategic Development Plan;
- approval of the Local Development Plan; and
- any other significant matter that impacts on secondary school provision in Armadale; and
- any other significant matter that impacts on non-denominational primary school provision in the catchment area of Armadale Academy

4.2 It is noted that the rate of house building in West Lothian has fallen significantly as a consequence of the recession, although there is evidence that completions are increasing again. The council will continue to monitor the rate of house building and will further adjust school roll forecasts, as and when required, to reflect changes in the housing market.

4.3 With the recession resulting in a severe slowdown of the private sector housing market and creating difficulty for developers in raising finance to forward fund major infrastructure, the council will keep its education strategy under review and, where possible, be flexible.

4.4 Given the current financial constraints, it is essential that the council only brings forward additional capacity when it is needed. This will help developers manage their cashflow and likewise assist the council manage its revenue spend.

4.5 Further information on the council's approach to developer contributions can be found in its *Planning for Education* SPG.

5.0 FORECASTS

5.1 The approved 2012 base school roll forecast for Armadale Academy is shown below. These forecasts take account of the recent catchment review.

2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
781	794	785	847	903	943	1011	1057	1107	1159	1224	1259

2012 & 2013 are actual start of school session census rolls

5.2 The council produces a housing model called the *Development Planning Housing Model* (DPHM) which shows where and when new house building is expected to take place over the next 20 years. The above school roll forecasts are based on programmed completions as set out in the West Lothian DPHM 2012. This acknowledges the fact that much of the proposed housing within local plan allocations will take place in the latter period of the current development plan.

5.3 The forecasts for S1 intakes for Armadale Academy are shown below in Table 2:

Year	S1	S1 Intake Limit
2012	137	220
2013	153	220
2014	151	220
2015	173	220
2016	179	220
2017	179	220
2018	217	220
2019	203	220
2020	217	220
2021	232	220
2022	252	220
2023	228	220

* It is proposed that additional accommodation is always planned to be available 1 year in advance of forecast need and that the additional accommodation caters for 3-4 years of school roll growth which, is necessary to avoid unnecessary disruption for pupils.

Assumptions

Child per house ratio	0.1706 (rounded)
Transfer rate	0.8574 (rounded)
Stage migration factor	0.9767 (rounded)
Number of units in Start of Session roll forecast	2433
Number of units programmed beyond the forecast period	903

Forecasts are based on the current pattern of attendance. This is likely to change when new schools are provided.

5.4 On the basis of the above assumptions, present school capacity is forecast to be fully utilised from school session 2021/22 onwards. Note the concern with potential undercounting in the approved 2012 base school roll forecast for the latter years of the time period noted in the March 2014 Education Executive report. The council will aim to secure developer contributions and/or identify funding which ensures that additional capacity is in place for the start of the 2020/21 school session. It should be noted that spare capacity can be taken up by placing requests; likewise housing completions could occur sooner than expected so it is possible that capacity could run out sooner than predicted. There may also be alternative or intermediate short term capacity options noting that budget, pupil safety and school detriment would require very careful consideration.

5.5 The below table indicates the projected house build rates within the Armadale Academy catchment.

2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024-2033
100	175	304	225	239	202	246	228	218	238	258	196	707

- 5.6 The council uses well established and robust methods for estimating the number of children resulting from new developments, including household survey as well as cross matching of its pupil placement information (as set out in the *SPG Planning for Education*).
- 5.7 Education forecasting entails making assumptions about the rate of house build, stage migration factors, child per house ratios and transfer rates. The timing of education infrastructure projects could, therefore, vary from those indicated in Appendix 1 if trends differ significantly from those assumed.

6.0 FUNDING THE PROVISION OF THE ADDITIONAL CAPACITY

- 6.1 Forward planning for the new build Armadale school commenced in 2005 with the publication of the Finalised WLLP and supplementary planning guidance for developer contributions.
- 6.2 The SPG for developer contributions for a replacement Armadale Academy which was produced in 2005 demonstrated that the additional 220 places being provided was needed to support new housing development and that the 990 pupil capacity school that existed at the time could cope with the demand for pupil places from existing housing and committed development. This being the case, all additional 220 pupil places should be funded through developer contributions.
- 6.3 Taking into account the principles in Scottish Government Circular 3/2012 *Planning Obligations and Good Neighbour Agreements* that developer contributions secured through planning agreements should be reasonable in all respects and should reflect the scale of development and the likely impacts it will generate, the approach which is adopted in this policy is that developer contributions should be based on the likely impact that each development will have on the demand for places at Armadale Academy.
- 6.4 The actual construction cost of the replacement school was £30,360,000. As the additional 220 pupil places represents 18.18% of the total 1,210 capacity, the council will seek to recover 18.18% of the total cost of £30,360,000. On this basis, the amount to be recovered is £5,190,000, of which £215,101 has already been recovered.
- 6.5 Based on these indicative costs, a developer contribution rate of **£3,862** has been established. The methodology for establishing the level of contributions is set out in Appendix 2. The indicative costs include school commissioning costs.
- 6.6 Actual payments will be linked to the Retail Price Index from the first quarter 2005.
- 6.7 The level of contribution will be reviewed regularly to take account of any changed circumstances.
- 6.8 Developers should be aware that places at particular schools cannot be guaranteed.

- 6.9 Where the need to provide new education infrastructure arises as a result of several proposed housing developments, there is a need for the council to establish an indicative budget cost for the works deemed necessary and to publish developer contribution rates. An appropriate contingency is built into the budget cost. This is necessary to safeguard the council's position as the council should not be expected to carry the financial burden of unexpected development costs. If surplus funds are left over once the projects have been completed, the council will use reasonable endeavours to return surplus funds, on a pro-rata basis, those parties who made developer contributions towards the project. It may be necessary to adjust contribution rates as more details about the project become known.
- 6.10 Where landowners and developers have entered into legally binding Section 75 Agreements based on developer contributions rates for Armadale Academy secondary school which are higher than those now proposed and these contributions have yet to be paid, they may choose either to submit Section 75A applications seeking to modify these agreements or to accept that West Lothian Council will only require payment of the reduced amount of the developer contribution to be paid at the time when payment falls due. For the avoidance of doubt, where the rate of the developer contribution payment for Armadale Academy has reduced, and that reduction is still applicable at the time when payment falls due, West Lothian Council undertake that they will, notwithstanding the terms of any Section 75 Agreement to the contrary, apply the reduced rate of developer contribution applicable at the time when payment falls due.
- 6.11 Whilst it is understood that developers of large sites will not be in a position to make all their contributions up front, the council will need to have sufficient funds in place for each project before committing to a contract to build that project. Thus, whilst some phasing of payments is likely to be acceptable, some developers will need to make large payments at appropriate stages to ensure that constraints can be overcome. As a general principle, if one party makes overpayments to forward fund education infrastructure in order to overcome a constraint and other applicants later benefit from this, the council will seek to refund the overpayments to the party who made them once contributions are received from the other applicants who have benefited and it is clear that surplus funds are available.

7.0 EXEMPTIONS

- 7.1 The only circumstances where developers will be exempt from this policy will be:
- a) Sites which already have the benefit of a live planning permission granted before 16 December 2005 (unless it is proposed to increase the number of residential units with more than two habitable rooms in which case a contribution will be based on the increase in the number of units with more than two habitable rooms). In circumstances where planning permission has been granted after 16 December 2005 and developer contributions for Armadale Secondary are payable but it is now proposed to increase the number of units or change the housing mix, additional contributions will be required based on the increase in the number of residential units with more than two habitable rooms. 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. The existing and proposed demand for school places will be established by applying the child per house ratios set out in Appendix 1.

- 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 no more than one of the resultant units has more than two habitable rooms. Where more than one of the resultant units has more than two habitable rooms, the first residential unit with more than two habitable rooms will be exempt but a full contribution will be payable for each of the other residential units with more than two habitable rooms.
- d) Sites where it is proposed to (1) demolish existing occupied residential units or (2) demolish existing houses which have been vacant for less than two years at the time that a planning application is submitted to replace them or (3) replace houses which have been demolished but were previously occupied within the two years leading up to the submission of a planning application being submitted to replace them, provided in all cases (1) – (3) above that there is no increase in the number of residential units. Where there is an increase in the number of units, additional contributions will be required based on the increase in the number of residential units with more than two habitable rooms.
- e) 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.

8.0 DETERMINATION OF PLANNING APPLICATIONS

- 8.1 Decisions on planning applications will be determined in accordance with the development plan unless material considerations indicate otherwise.

9.0 SECURING THE DEVELOPER CONTRIBUTIONS

- 9.1 Developer contributions may be secured by means of a Section 75 obligation concluded between the applicant and the council, prior to the issue of planning permission. In some cases, the use of a Section 69 Agreement under the Local Government (Scotland) Act 1973 may be more appropriate.
- 9.2 In some cases, where relatively small sums of money are involved, it may be possible to avoid formal Section 75 obligations and Section 69 agreements and for the council to collect contributions through an exchange of letters prior to planning permission being granted.
- 9.3 Wherever possible, the council will allow developers to make phased payments. Planning conditions to phase housing developments may be necessary in some cases to ensure that infrastructure thresholds are not exceeded.

10.0 SCHOOL SPECIFICATION AND TIMESCALE

- 10.1 The council will decide the appropriate design, specification and procurement route for all education projects.

11.0 FURTHER INFORMATION

11.1 For further information or advice please contact:

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APPENDIX 1

Additional capacity forward funded at Armadale Academy

Year	Project	Capacity Increase
2009	Additional capacity at Armadale Academy	220 places

Assumptions:

1. Forecast assumptions are sustained
2. Developer contributions are paid at appropriate stages

APPENDIX 2

Contribution rates for Armadale Academy

The actual construction cost of the replacement school was £30,360,000. As the additional 220 pupil places represents 18.18% of the total 1,210 capacity, the council will seek to recover **18.18%** of the total cost of £30,360,000, ie £5,190,000

Extension to Armadale Academy	
Extension	£5,190,000
Commissioning costs	n/a
Total to be funded by developers	£5,190,000
Deduct contributions already received at October 2012	-£215,101
Amount outstanding	£4,974,899

This scale of infrastructure (220 additional pupil capacity) will support **1,288** residential units (including exempt residential units) within the current catchment area of Armadale Academy.

It is assumed that 8.63% of the residential units will be exempt, so for the purposes of this SPG the total cost (£4,974,899) is divided by 1,280 (the total number of units likely to be contributing) to give an average developer contribution rate of **£3,862** per residential unit.

Actual payments will be linked to the Retail Price Index from the first quarter 2005.