

REPORT TO: East Lothian Council

MEETING DATE: 23 February 2016

BY: Depute Chief Executive (Partnerships and Community Services)

SUBJECT: Housing Land Supply: Interim Planning Guidance

1 PURPOSE

- 1.1 To provide advice to the Council on how the Housing Land Supply: Interim Planning Guidance should be used in view of approval of the Council's Draft Local Development Plan (as amended) on 17 November 2015.
- 1.2 To notify Council of the effective housing land supply position in East Lothian based on the 2015 Housing Land Audit, including planning permissions approved for residential development since 31 of March 2015.
- 1.3 In view of the continued shortfall of effective housing land in East Lothian, to approve this updated Housing Land Supply: Interim Planning Guidance as containing material considerations to be taken into account when determining planning applications for housing development on land not allocated for that purpose by the East Lothian Local Plan 2008.

2 RECOMMENDATIONS

- 2.1 It is recommended that:
 - (i) Council agrees to use the approved Draft Proposed Local Development Plan (as amended) as a material consideration that gives additional weight in favour of 'the general principle' of housing development on sites included within the Draft Proposed Local Development Plan (as amended) as it determines planning applications under the Housing Land Supply: Interim Planning Guidance. The approved Draft Proposed Local Development Plan (as amended) should be taken into account on a case-by-case basis with other material considerations as appropriate.
 - (ii) Council agrees to the further strengthening of the principle established in 2.1(i) as the Draft Proposed Local Development Plan (as amended) advances through its stages to adoption, using it as a significant material consideration in favour of proposals for housing development on sites that it proposes to allocate for housing development. This

would be on the basis that it provides sufficient effective housing land, and provided no representations would affect an issue relevant to the determination of an application. This should be reflected at key stages including the approved Proposed Local Development Plan and the Proposed Local Development Plan (as modified) post examination.

- (iii) Council agrees to use the advice set out in this report and the factors set out in the Housing Land Supply: Interim Planning Guidance at Appendix One as material considerations in the assessment of planning applications for housing against SDP Policy 7 where such proposals are made for land not allocated for this purpose by the East Lothian Local Plan 2008.

3 BACKGROUND

Housing Land Supply Issues

- 3.1 Scottish Planning Policy (SPP) requires a generous supply of land for house building to be maintained at all times so there is enough effective housing land for at least five years. Recent planning appeal decisions, together with the modifications made by Scottish Ministers in their approval of SESplan's Strategic Development Plan, indicate a requirement to increase the amount of effective housing land within East Lothian. In recognition of this, since 2013 the Council has been using Housing Land Supply: Interim Planning Guidance to support appropriate proposals for housing development on land not allocated for that purpose by the East Lothian Local Plan 2008.
- 3.2 However, despite housing developments allowed on appeal, and that the Council has had in place Housing Land Supply: Interim Planning Guidance since December 2013, and that it has approved planning permissions for housing development on sites not allocated for that purpose by the adopted East Lothian Local Plan 2008, there continues to be a shortfall of effective housing land in the area. The basis for this conclusion is set out at Appendix Two of this report. Whilst there is currently no nationally prescribed method for how the adequacy of the five year effective housing land supply is to be calculated, the methodology used here is based on established practice, as applied in recent planning appeal decisions in East Lothian. The steps of this calculation are also explained fully in Advice Box 1 of the Council's approved Draft Proposed Local Development Plan (as amended).
- 3.3 The adopted East Lothian Local Plan 2008 does not provide an adequate supply of effective housing land for the next five years, even though a significant part of the shortfall that has arisen is as a consequence of wider economic and housing market conditions. It is also likely that, if the Council were to wait until adoption of the emerging East Lothian Local Development Plan, it will be early to mid-2017 before any house completions can be anticipated from those sites. Consequently, only a very limited contribution of house completions from emerging Local Development Plan allocations could realistically be delivered in the short term with that approach.

- 3.4 For this reason, when the Council approved its Draft Proposed Local Development Plan on 17 of November 2015, it invited land owners and developers in control of sites that it wants to allocate for housing development to engage collaboratively with officers to seek to address cumulative impact issues and constraints, and to identify appropriate mitigation solutions. Such engagement was invited in relation to all sites promoted by the draft plan.
- 3.5 The intention of this engagement is to ensure that appropriate solutions can be found to enable housing delivery on sites promoted by the Council to occur as early as possible following adoption of the Local Development Plan and thereby make an earlier contribution to the five year supply of effective housing land. The resources respective parties choose to invest in such collaborative working is clearly at their own risk, since confirmation of approach will only be certain following adoption of the plan. However, the Council has made clear that it is willing to commit officer time to this engagement in the interests of delivering the additional homes required by the SDP in the locations that it has decided are the most appropriate for residential development.
- 3.6 Importantly, in circumstances where the adopted plan is out of date or where there is a shortfall in the five-year supply of effective housing land, Scottish Planning Policy is clear that the adopted plan policies on the supply of housing land will not be considered up to date. On both counts this is relevant to the East Lothian Local Plan 2008, which remains the adopted local plan for the area. Although SPP reaffirms the primacy of the adopted East Lothian Local Plan 2008 in decision making, in circumstances where development plan policies are not considered up to date it further advises that a significant material consideration in the assessment of planning applications should be the policy principles of SPP, including *'the presumption in favour of development that contributes to sustainable development'*.
- 3.7 SPP is clear that the aim of *'the presumption'* is to achieve the right development in the right place; it is not to allow development at any cost. However, SPP only contains high level policy principles. It does not provide a vision or a spatial strategy for the future planning of a local area. Whilst compliance with SPP does not mean planning permission must be approved, speculative housing proposals may be able to meet these high level policy principles of SPP. In these situations, less weight may be given to policies or proposals of the adopted East Lothian Local Plan 2008 that specify where the Council does not want housing development to occur than may be given to a planning application's compliance with the high level policy principles of SPP.
- 3.8 As such, in the absence of up-to-date local plan policies on the supply of housing land, the Council should continue to manage proposals for housing development on land not allocated for that purpose by the current East Lothian Local Plan 2008 by using the factors set out in Housing Land Supply: Interim Planning Guidance as material considerations. In addition to all the relevant policies of the statutory development plan, decisions must also have regard to all relevant material considerations, and apply an appropriate

degree of weight to them and the statutory plan. Important material considerations include SPP and the emerging LDP.

SESplan Strategic Development Plan

- 3.9 Scottish Ministers approved the SESplan's Strategic Development Plan on 27 June 2013 and its associated Supplementary Guidance on Housing Land on 18 June 2014. This has confirmed the distribution of housing requirements for the SESplan area and for East Lothian.
- 3.10 As such, SESplan Policies 1A and 1B, Policy 5, Policy 6 and Policy 7 provide the up-to-date strategic planning policy context on the supply of housing land. In accordance with SESplan's Supplementary Guidance on Housing Land, the emerging East Lothian Local Development Plan is to plan for the delivery of 10,050 homes in the period 2009–2024, with an interim requirement for 6,250 new homes up to 2019 (with balance of 3,800 in the period 2019–2024).
- 3.11 In the context of these SDPs requirements, and if there is a shortfall of effective housing land, SESplan Policy 7 gives councils discretion to approve planning permission, in appropriate circumstances, for housing development on greenfield land not allocated for that purpose. In adopting this approach, it should be emphasised that it does not mean any location or scale of greenfield housing land proposal is acceptable in principle.
- 3.12 While SESplan Policy 7 provides planning authorities with discretion to grant planning permission to maintain a five years' effective housing land supply this does not override other relevant statutory development plan policy, including those of the East Lothian Local Plan 2008. These policies are still to be taken into account, and weighed against other relevant material considerations. The housing land supply issue is, however, a significant material consideration to be taken in to account when determining such applications.
- 3.13 SESplan Policy 7 states:

“Maintaining a Five Year Housing land Supply

*Sites for greenfield housing development proposals either within or outwith the identified strategic development areas **may** be allocated in local development plans or granted planning permission [our emphasis] to maintain a five years' effective housing land supply, subject to satisfying each of the following criteria:*

- a) The development will be in keeping with the character of the settlement and local area:*
- b) The development will not undermine green belt objectives; and*
- c) Any additional infrastructure required as a result of the development is either committed or to be funded by the developer.”*

- 3.14 As described above, the emerging East Lothian Local Development Plan is unlikely to be adopted before late 2016 / early 2017. Waiting to address the effective housing land supply issue until its adoption would mean (a) a further 12–15 month period during which the Council is at risk of planning by appeal (and potential awards of costs against it) and (b) a housing requirement that will increase to a level that is undeliverable during the Local Development Plan period, particularly in the short term (with increased likelihood of on-going plan failure when the new plan is operative).
- 3.15 Accordingly, the approach again recommended is that the Council embraces SESplan Policy 7 by supporting the principle of appropriate proposals for housing development on greenfield land in situations where, other than for the land's non-allocation for housing in the adopted East Lothian Local Plan 2008:
- (i) the proposed development would not otherwise be a significant departure from the provisions of the Development Plan (while ensuring consistency with SESplan's Policy 7 itself);
 - (ii) the land is or can be made effective and is demonstrably able to deliver early house completions to augment the 5-year effective land supply (and thus support for the principle of the proposal may be justified because it could increase the 5-year effective housing land supply, and the site could be substantially completed within this period);
 - (iii) the proposal, consequent on its scale or impact (on an individual or cumulative basis), would not prejudice existing Development Plan allocations (which the SDP requires to be carried forward and not undermined) or the strategy or proposals of the emerging LDP (taking in to account prematurity and prejudice considerations of SPP).
- 3.16 As such, to ensure that the Council supports only those proposals that are, in the first instance, consistent with these overarching principles, and to ensure it is consistent in its assessment of such proposals, its approach should be supported by further criteria against which the principle of such planning applications would be assessed. The Housing Land Supply: Interim Planning Guidance at Appendix One draws relevant factors together and translates them into material considerations that should be applied in the assessment of planning applications. The proposal to which support may be given at this stage should be assessed on a case by case basis against these factors.
- 3.17 The discretionary use of SDP Policy 7 to support planning applications for residential development on an unallocated, greenfield housing site should therefore depend on (a) the extent to which the proposal satisfies other relevant provisions of the statutory Development Plan, and (b) the extent to which it satisfies the Council's criteria for assessing housing applications on unallocated, greenfield land, including as the proposal's scale, and (c) any other relevant material considerations as appropriate.

- 3.18 The main issue currently facing East Lothian is in the delivery of housing in the short-term to 2019/2020. Slippage in the start date / programming of large scale housing allocations (such as Letham Mains and Blindwells) of the East Lothian Local Plan 2008 is pushing more anticipated completions into the period 2019–2024, at the expense of completions up to 2019/20. Appropriate additional smaller and deliverable sites that can start and complete quickly (and be substantially complete before 2019/20) without undermining the emerging East Lothian Local Development Plan are needed to make a positive contribution to support the housing land supply in this period. The Council has identified a number of such additional sites in its Draft Proposed LDP.

Using the Emerging LDP when determining planning applications

- 3.19 In parallel with the Housing Land Supply: Interim Planning Guidance, the Council should increase the degree of support it gives to the strategy and sites of the emerging local development plan as it advances through the remaining stages towards its adoption. A significant consideration will be a need to avoid prejudicing the preparation, final content or ability to deliver the emerging East Lothian Local Development Plan.

Draft Proposed Local Development Plan (as amended)

- 3.20 The approval of the Council's Draft Proposed Local Development Plan (as amended) on 17 November 2015 was an important step forward, although this was a non-statutory stage in the plan-making process. Nonetheless, this decision provided the Council's 'settled view' on the strategy and sites it wants to promote as a sustainable development strategy for the area, to ensure the right development can occur in the right places to meet the SDP's requirements. In approving the draft plan, consultation responses to the Main Issues Report were also considered by the Council.
- 3.21 Given the shortfall of effective housing land in the area, and that the Council's 'settled view' has been reached, the draft plan should be taken into account by the Council as a material consideration when it determines planning applications for housing development on land not allocated for that purpose by the adopted East Lothian Local Plan 2008.
- 3.22 As such, in the assessment of planning applications it would be reasonable for the Council to use the approved Draft Proposed Local Development Plan (as amended) as a factor to give additional weight in favour of 'the general principle' of housing development on sites which are included within the draft plan.
- 3.23 This position could be further strengthened when the sites of the finalised Proposed Local Development Plan are included within a Housing Land Audit as '*sites with agreed residential development potential*'. This means that their anticipated contribution is taken into account in the overall effective land supply position.

- 3.24 However, the draft plan needs to be given an appropriate degree of weight when taking such decisions. At this stage it cannot be given as much or more weight than Scottish Planning Policy, or a Finalised Proposed Local Development Plan.
- 3.25 This is because the draft plan has not yet replaced the adopted East Lothian Local Plan 2008 as the statutory local development plan for the area. Before this can happen the draft plan needs to be finalised as a Proposed Local Development Plan. It needs to be published for a period of representation so interested parties have the opportunity to seek modifications to the plan. If there are unresolved representations, these will be examined by a reporter appointed by Scottish Ministers. The reporter will consider the merit of the representations and, following examination, make recommendations to the Council on whether the plan should be changed as a result of these. Any such recommendations will be largely binding on the Council, and may require that changes be made to the plan before it can be adopted by the Council as the up-to-date local development plan for the area.
- 3.26 For these reasons, and until technical work on the draft plan has been concluded such that it can be finalised as a Proposed Local Development Plan, the degree of weight that can be given to the draft plan when determining planning applications for housing development on land not allocated for that purpose by the adopted East Lothian Local Plan 2008 should be limited.
- 3.27 Nonetheless, the draft plan does provide the Council's 'settled view' on the sites that it considers have residential development potential and that it considers should be developed to meet the SDP's housing requirements. At this stage, this view is subject to the conclusion of further technical work, including the identification of acceptable means of funding and delivering suitable mitigation that will address the cumulative impact of development.
- 3.28 The draft plan should be taken into account on a case-by-case basis with other material considerations as appropriate when determining planning applications for housing on land not allocated for that purpose by the adopted East Lothian Local Plan 2008.

Finalised Proposed Local Development Plan

- 3.29 Following publication of the Main Issues Report, the next statutory stage in the process is approval of a finalised Proposed Local Development Plan for representation. Once the Council has approved a finalised Proposed Local Development Plan the content of the plan will be a material consideration in the determination of planning applications for housing development on land not allocated for that purpose by the adopted East Lothian Local Plan 2008.
- 3.30 Furthermore, following the period for representation, if no representations have been made to the finalised Proposed Local Development Plan that would affect consideration of an issue relevant to the determination of an

application, then the content of the Proposed Local Development Plan will be a significant material consideration in the determination of such applications.

- 3.31 Accordingly, on the basis that the finalised Proposed Local Development Plan provides sufficient effective housing land, and provided no representations would affect an issue relevant to the determination of an application, the finalised Proposed Local Development Plan would be a significant material consideration in favour of proposals for housing development on sites that it proposes to allocate for housing development.
- 3.32 However, where representations have been made that are relevant to an issue that could affect the determination of an application, the finalised Proposed Local Development Plan should carry less weight in the determination of such applications. Unresolved representations may result in changes to the plan. In these circumstances it would be unreasonable to place significant weight on disputed aspects of the plan when determining applications. Such considerations could apply to sites that the Council would wish to see developed for housing, and/or to policies that may support or seek to restrain housing development, etc.
- 3.33 The finalised Proposed Local Development Plan should be taken into account on a case-by-case basis with other material considerations as appropriate. At this stage it would be reasonable to consider whether there are acceptable means of funding and delivering the identified mitigation that will address the cumulative impact of development (see paragraphs 3.38–3.39 below).
- 3.34 Notwithstanding the considerations that may arise from representations made to the finalised proposed local development plan, at this stage the Council should, wherever it can but subject to the considerations set out in paragraphs 3.35–3.42 below, continue to take action in advance of adopting the plan by being prepared to approve planning permission for appropriate housing proposals.
- 3.35 This ongoing early action will be needed to ensure planning permission can be approved for appropriate housing sites within a timescale that could allow them to deliver enough homes in the periods envisaged by the SDP.

Considerations related to prematurity and prejudice

- 3.36 SPP states that where a plan is under review (as is the case here) decisions should not prejudice an emerging plan by predetermining the scale, location or phasing of development central to the emerging plan.
- 3.37 This is a consideration that is very likely to apply where the development is so substantial, or its cumulative effect (e.g. with other existing and / or emerging proposals) would be so significant, that to grant permission would undermine the plan making process. Such considerations related to prematurity and prejudice will become even more relevant closer to plan adoption, e.g. at Proposed Local Development Plan stage, etc.

- 3.38 It is important to note that these considerations are equally relevant to larger scale proposals that are supported by the emerging plan as well as those that are not – the outcome of any examination of the emerging plan is not yet known, and to approve planning permission for a large scale proposal (even if supported by the Council at this stage) may prejudice the ability of an examination to recommend that it be replaced by another.
- 3.39 Prematurity and prejudice considerations can also apply in situations where a proposed development, even small scale, is dependent on an infrastructure solution that is necessary to accommodate the impact of development proposed by the emerging plan, on an individual or cumulative basis, but for which a solution has not yet been identified, e.g. the provision of additional secondary education capacity in the Musselburgh area.
- 3.40 The same considerations would apply if the early approval of sites associated with the finalised Proposed Local Development Plan strategy were to occur without the requisite contributions being provided towards additional infrastructure capacity that arise as a consequence of the strategy overall – doing so could compromise the funding base for the infrastructure, and potentially prejudice the deliverability of the finalised Proposed Local Development Plan.
- 3.41 Importantly, however, there may be situations where cumulative impact issues can be overcome for smaller scale housing proposals of an appropriate scale in suitable locations that would not undermine the finalised Proposed Local Development Plan (and may help deliver it) and that would contribute towards the maintenance of an adequate five-year effective supply of housing land.
- 3.42 Such proposals may be supported on the proviso that the necessary cumulative impact assessment has been undertaken (based on accommodating all relevant proposals of the finalised Proposed Local Development Plan) and if any necessary mitigation can be provided and will be funded by the developer on a proportionate and pro-rata basis as appropriate. Such proposals would need to be assessed on a case-by-case basis.
- 3.43 To avoid decisions that would be premature to or prejudice the emerging plan, the factors set out in the Housing Land Supply: Interim Planning Guidance should therefore only be used to determine appropriate smaller scale housing proposals in suitable locations that, if approved, would not undermine significant decisions on where large scale developments should occur and that would not compromise how additional infrastructure capacity could be funded and delivered on an individual or cumulative basis.

Post-Examination Report

- 3.44 Once the finalised Proposed Local Development Plan has been examined and the report of examination has been received, the Council will have before it the finalised Proposed Local Development Plan and any amendments that it may need to make to the plan consequent on the findings of the examination.

The finalised proposed plan and any recommendations to modify it, taken together, should reflect the plan that the Council can adopt.

- 3.45 However, at this stage adoption of a modified plan is subject to some limited exceptions, for example where a recommended modification to the finalised Proposed Local Development Plan should not be followed consequent on the findings of further environmental assessment. As such, once the plan has been modified as appropriate, and this further technical work has concluded, the finalised Proposed Local Development Plan (as modified) should carry significant weight as a material consideration.

Post-Adoption

- 3.46 The key stage will be the Council's adoption of an up-to-date Local Development Plan as soon as possible on conclusion of the above steps. This will provide up-to-date development plan coverage in the area, and reaffirm the primacy of the development plan in decision making.
- 3.47 The adopted Local Development Plan will set out where new housing development can occur to meet the SDP requirements. It will also allow the Council to resist proposals for housing development in locations where the plan does not provide for this, provided the plan makes available sufficient effective housing land.

Proposed Site Assessment Criteria

- 3.48 Notwithstanding the need to make more effective housing land available in the area, the Council should nonetheless adopt a cautious approach to the release of non-allocated housing sites, particularly where the scale and impact on the character of an existing settlement or the local area / landscape is an issue. Matters of prematurity and prejudice also need to be carefully considered on a case-by-case basis. The scale of proposals and the ability to provide infrastructure capacity to non-allocated sites without undermining existing allocations or those of the emerging LDP will be key considerations.
- 3.49 To help ensure a prudent approach the recommended considerations that should be taken into account when determining planning applications for housing development on land not allocated for this purpose by the East Lothian Local Plan 2008 are detailed in Appendix One to this report. These material considerations should be applied with immediate effect to new applications for planning permission and to those that have been registered and are presently undetermined.

4 POLICY IMPLICATIONS

- 4.1 In appropriate circumstances application of the material considerations set out in the Housing Land Supply: Interim Planning Guidance would allow the Council to support planning applications for housing that are not consistent with site-specific policies of the East Lothian Local Plan 2008.

5 EQUALITIES IMPACT ASSESSMENT

- 5.1 This report is not applicable to the well being of equalities groups and an Equalities Impact Assessment is not required.

6 RESOURCE IMPLICATIONS

- 6.1 Financial – none
- 6.2 Personnel - none
- 6.3 Other – none

7 BACKGROUND PAPERS

7.1 DPEA Planning appeal decisions:

- PPA-210-2037, Dovecot Farm, Haddington
- PPA-210-2036, Ferrygate Farm, North Berwick
- PPA-210-2031, Beveridge Row, Belhaven
- PPA-210-2018, Barbachlaw, Wallyford
- PPA-210-2049, Land at Lempockwells Road, Pencaitland
- PPA-210-2047, Ferrygate Farm, North Berwick
- PPA-210-2043, Land at Old Craighall, Musselburgh
- PPA-210-2038, Land West of Aberlady Road, Haddington

7.2 SESplan Strategic Development Plan, June 2013

7.3 Letter of approval of SESplan Strategic Development Plan, Scottish Government, June 2013

7.4 SESplan Supplementary Guidance on Housing land, May 2014

7.5 Letter of approval of SESplan Supplementary Guidance on Housing Land, Scottish Government, June 2014

7.6 Report by Depute Chief Executive (Partnerships and Services for Communities) to 28 October 2014 meeting of East Lothian Council, *SESplan Supplementary Guidance on Housing Land*

7.7 East Lothian Council LDP: Main Issues Report (October 2014)

7.8 East Lothian Council Draft Proposed LDP (as amended) (November 2015)

7.9 Housing Land Supply: Interim Planning Guidance (December 2013)

7.10 Housing Land Supply: Interim Planning Guidance (December 2014)

7.11 Housing land Audit 2015

AUTHOR'S NAME	Iain McFarlane
DESIGNATION	Service Manager: Planning
CONTACT INFO	01620 827292 imcfarlane@eastlothian.gov.uk
DATE	12 February 2016

East Lothian Council

Housing Land Supply: Interim Planning Guidance

Factors against which planning applications for housing on land not allocated for this purpose will be assessed pending adoption of East Lothian Local Development Plan

In assessing planning applications for housing the Council will have regard in the first instance to the statutory Development Plan status of any site. This is the SESplan Strategic Development Plan and the East Lothian Local Plan 2008 (ELLP).

In the case of a planning application for housing on a site where the principle of such a use is not specifically supported by the statutory Development Plan, the Council accepts that the availability of an effective supply of housing land is a significant material consideration. In the case of a greenfield site, SESplan Policy 7 would be applicable. The weight the Council affords its terms, and the terms of other Development Plan policies, to individual planning applications will depend on the extent to which the proposed development is able to satisfy all of the following material considerations:

1 Effectiveness

The Council will require convincing evidence that, were planning permission to be granted, then the site would be immediately effective or capable of being substantially complete within five years.

2 Scale

This guidance does not apply to planning applications for single houses or small groups of houses in the open countryside since SESplan Policy 7 refers to the 'character of the settlement and local area', requiring proposals to adjoin existing settlements.

The upper size limit of the proposed development must be such that, were the Council to grant planning permission, it would not be of a scale that would prejudice the Council's subsequent flexibility to consider and determine the amount and location of housing land release through the Local Development Plan process.

The actual number of residential units permissible on any one site or within any one settlement will be assessed against the scale and character of the specific settlement. However, the Council will only consider approving a development proposal that, in its totality, does not exceed 300 residential units. Other than in the main towns where the upper limit will apply, the maximum permissible will therefore be significantly less than this maximum

site capacity. Planning applications that are a consequence of the subdivision of a larger site into smaller applications in order to meet this maximum will be resisted.

This also reflects that it can contribute to short term needs, that is, the site must be capable of being substantially built out within any five year period starting from its anticipated determination date so that it can contribute to the five year housing land supply. At the same time, it must not be so large that it would prejudice future decisions on development plan requirements and how these would be best dealt with in the short term and beyond.

3 Timing

If the proposal is otherwise acceptable, the Planning Authority may direct that the duration of planning permission is for a period of less than 3 years. This is intended to reinforce the Council's requirement that sites must be developed in the short term and not land banked.

Applicants must also be aware that renewal of such a planning permission might not be permitted.

In this regard the Council will require convincing evidence that a housebuilder has an interest in the site such that it can reasonably be followed through within the duration of any planning permission, so that early completions may be anticipated.

4 Development Plan Strategy

In situations where infrastructure capacity is available and the site is/can be made effective, any grant of planning permission must not prejudice the delivery of the existing Development Plan strategy, or that of the emerging LDP as it is developed. For example:

- (i) It must not take infrastructure capacity from, or compromise the ability to provide infrastructure to, existing housing land allocations of the adopted local plan that do not yet have planning permission or are committed but have not yet started, and
- (ii) it must not be dependent on the prior provision of infrastructure required by existing housing land allocations that do not yet have planning permission or are committed but have not yet started and delivered the necessary infrastructure; and
- (iii) it must not prejudice the ability to provide infrastructure capacity for proposals emerging through the LDP as it is developed, or be dependent on the potential provision of infrastructure capacity associated with any emerging LDP strategy or site.

5 Locational Considerations

As a general principle, this guidance only applies to housing applications that form an appropriate extension to an existing settlement defined in ELLP2008. The guidance does not apply to otherwise isolated development in the countryside, to which the terms of ELLP2008 Policy DC1 (Development in the Countryside and Undeveloped Coast) will continue to apply.

Sites identified to contribute to the short-term housing land supply will also contribute to SESplan's strategic housing requirements, as set out in its Supplementary Guidance on Housing Land¹. Consequently:

- 5(i) Sites within the East Lothian Strategic Development Area as defined in SESplan's Strategic Development Plan, June 2013², **may** be acceptable, subject to criteria 1-4 (above) being met, and provided that:
- a. development of the site would not undermine green belt objectives, and
 - b. the site is an appropriate extension to an existing settlement identified in the East Lothian Local Plan 2008, and its scale and nature is in keeping with the scale and character of that settlement and the local area, and
 - c. infrastructure is available or can be made available (see also criterion 4) within a timescale that allows for early house completions, and
 - d. the site's development for housing is consistent with all other relevant Development Plan policies.
- 5(ii) Sites outwith the East Lothian Strategic Development Area **may** be acceptable, subject to criteria 1-4 (above), the provisos noted in 5(i) above and the following additional provisos:
- a. the settlement is well-served by public transport, and
 - b. existing facilities and services are both available and accessible within the settlement such that the need to travel is minimised;
 - c. the extent to which the additional housing would help make a demonstrable and necessary contribution to sustaining or improving educational, social or community facility provision within the local area may also be a material consideration
- 5(iii) The proposed development must not use land that is allocated for another specific use unless: there is no reasonable prospect of that use being realised on all or part of the site; a housing use on a part of the site would help deliver the allocated use on a significant remainder of the site; or the desirability of securing housing outweighs the retention of the allocated use.

¹ SESplan Supplementary Guidance on Housing Land May 2014 (ratified by East Lothian Council October 2014).

² Broadly defined as area 5 in Figures 1 and 4, and as described in paragraph 48, of SESplan's Strategic Development Plan, June 2013,

Mixed use proposals, including residential development, for undeveloped land allocated for business or industrial use under Classes 4, 5 or 6 of the Town and Country Planning (Use Classes) (Scotland) Order 1997 will be expected to:

- a. provide appropriate services to unserved business/industrial land, thereby facilitating the take-up of employment land, and
- b. not prejudice the continued use of the remainder of the allocated area for the business/industrial use, and
- c. not prejudice, in the Council's view, the supply of employment land in East Lothian, and
- d. demonstrate that the location is in all other respects a suitable one for housing.

Where necessary, the Council will require the landowner and/or developer to enter into legal agreements to ensure these objectives are met. Unilateral obligations may also be considered.

For the avoidance of doubt, this guidance does not override the provisions of ELLP2008 Policy ENV2 (Town and Village Centres, Other Retail or Mixed Use Areas).

- 5(iv) The proposed housing use must be compatible with adjoining or nearby existing uses and the amenity to be enjoyed by the residents of the proposed new housing must not be harmed by such existing uses. The introduction of new homes should not be compromised by or compromise the consideration of potential new land allocations, including potential employment allocations, set out in the emerging LDP as it is developed.
- 5(v) The proposed housing use must be capable of being contained within robust, defensible boundaries and must not set a precedent for subsequent future expansion, the principle of which would be more appropriately considered through a Development Plan review.

**Planning Service
Partnerships and Services for Communities
East Lothian Council**

23rd February 2016

How the Adequacy of the 5-year Effective Housing Land Supply has been Assessed

Introduction

B.1 There is currently no nationally or regionally prescribed method for how the adequacy of the five year effective housing land supply should be calculated. However, the Council's Draft Proposed Local Development Plan sets out a methodology for this based on established practice, including as applied in recent planning appeal decisions within East Lothian, as well as the current principles set out in the Scottish Government's planning advice note PAN 2/2010.

Background

B.2 SDP1 was prepared under SPP 2010, which expected the SDP to set a housing requirement to 2024, and to identify how much land '*should be capable of development*' by 2019 – i.e. there was no need to set a housing requirement for the period up to 2019. However, the outcome of the SDP Examination was that the current SDP sets two housing requirements, one for the whole plan period to 2024 and one 'interim' requirement up to 2019.

B.3 Consequently, when approving SDP1, Scottish Ministers required SESplan to prepare Supplementary Guidance on Housing Land to confirm the distribution of the SDP housing requirement across Local Development Plan areas for the period 2009-2024, with an interim requirement also to be introduced for the period up to 2019.

B.4 In accordance with SESplan's Supplementary Guidance on Housing Land, the East Lothian Local Development Plan is to plan for the delivery of 10,050 homes in the period 2009 – 2024, with an interim requirement for 6,250 new homes up to 2019. Whilst need and demand and rates of development can change significantly under different economic conditions, the SDPs housing requirements cannot change when the SDP is operative. They are based on HNDA estimates of housing need and demand that are approved as housing requirements by the Scottish Government.

B.5 House completions achieved and anticipated from the established housing land supply over these periods, including from land allocated by the East Lothian Local Plan 2008, can contribute to meeting the SDPs requirements in addition to new land allocations to be made by the emerging Local Development Plan. However, delays in confirming the distribution of the housing requirement at SDP level has delayed LDP preparation in East Lothian and thus the timescales within which additional land can be allocated by the Council.

B.6 If the Council is to meet the SDPs requirements, particularly in the short term, it needs to release additional land for housing earlier than can be achieved through the plan-making process. This is why the Council has been operating Housing Land Supply: Interim Planning Guidance since December 2013.

Current Method for Assessing the Adequacy of the 5-Year Effective Housing Land Supply

National and Regional Planning Policy

B.7 There is currently no nationally or regionally prescribed calculation method for how the numerical adequacy of the five year effective housing land supply should be carried out. Importantly, however, SESplan's Supplementary Guidance on Housing Land was approved by Scottish Ministers on the proviso that a modification was made to it to remove a sentence which read:

'Member authorities will base their calculation of the five year land supply on the period 2009-2024, taking into consideration housing completions.'

B.8 This would have required planning authorities to base their calculation of the adequacy of the five-year effective housing land supply over the period to 2024, taking in to account completions achieved since 2009 – i.e. to ensure enough effective land was available to meet the housing requirement for the whole plan period. Scottish Ministers took no issue with this calculation method. However, their approval letter continued to state in relation to that sentence:

'While it may be considered to provide useful further information or detail, the inclusion of this also gives rise to a potential inconsistency between SESplan itself and the supplementary guidance.'

B.9 The inconsistency referred to is that the method of calculation set out did not take into account the 'interim' housing requirement introduced by Scottish Ministers when they approved the SDP. The letter goes on to say that the Development Planning Scotland Regulations require that:

'for a matter to be included in supplementary guidance that will form part of the development plan it must be expressly identified in a statement contained in the plan as matters which are to be dealt with in supplementary guidance. It is not considered that the inclusion of the 2nd sentence of paragraph 3.13 complies with this requirement'.

B.10 Scottish Ministers directed that SESplan's method for calculating the adequacy of the five year effective housing land supply be removed from the Supplementary Guidance on Housing Land to ensure consistency with the SDP. However, they offered no alternative calculation method in their approval letter.

Planning Advice Note 2/2010: Affordable Housing & Housing Land Audits

B.11 The current drafting of Scottish Government Planning Advice Note 2/2010: Affordable Housing & Housing Land Audits has led to established practice on how this calculation is normally carried out within East Lothian.

B.12 Based on this national advice, the approach to assessing whether the supply of effective housing land is adequate for the next five years is based on if enough housing land is programmed to be developed in the next five year period to meet the

remaining housing requirement set for the whole plan period once it is apportioned pro-rata (annualised) over the next five years.

B.13 The assessment is normally carried out by comparing the programme of dwelling completions for the next five years to the recalculated housing requirement for the same period. If insufficient land is programmed to be developed to meet the recalculated housing requirement for that period then there is perceived to be a shortfall of effective housing land. The recalculation method subtracts dwelling completions achieved since the base date of the SDP (2009), divides the remaining requirement over the number of years of the plan period remaining, and then multiplies that annualised figure by five.

B.14 However, as explained above, SDP1 sets an overall housing requirement to 2024 as well as an 'interim' one to 2019. This means when the recalculation takes place under SDP1, if less than five years of the first plan period remain (as is now the case) any shortfall from the first plan period should be added to the relevant sum of annualised requirement(s) for the second plan period (rather than spreading the shortfall up to 2019 over the remaining plan period overall to 2024). This is because SDP1 expects sufficient effective housing land to be available so the housing requirement up to 2019 can be met in full. The steps of this calculation are explained fully in Advice Box 1 of the Council's approved Draft Proposed Local Development Plan (as amended).

B.15 However, low levels of market demand / mortgage availability can significantly affect the 'marketability' of sites, and thus the number of house sales that can be achieved and thus the number of dwelling completions that can be programmed from the land supply in any five year period, even if the land is otherwise 'unconstrained'. Based on current Scottish Government planning advice PAN 2/2010, even if a whole site (or part of a site that is under construction) is programmed to start and / or be developed slower than it could under better economic conditions, only the houses from land which is programmed to be built in the next five years contributes to the five-year 'effective' land supply, even if the site (or balance of it) is 'unconstrained' and could be developed for housing faster.

B.16 Current national planning advice expects the method for assessing the adequacy of the five-year effective housing land supply to be based solely on quantitative assessment, even though fluctuations in wider economic conditions can significantly influence the amount of 'unconstrained' land that can be counted as 'effective'. This has been confirmed in the outcome of recent planning appeal decisions. Current Scottish Government advice allows very little weight, if any, to be placed on wider material considerations (such as qualitative economic factors) when assessing if there is enough effective housing land available for the next five-years. However, the Scottish Government's position on this is currently being considered in detail in a review of current national planning advice on the matter.

B.17 In terms of meeting the SDPs housing requirements, lower levels of dwelling completions have been achieved since 2009 and are programmed to be delivered up to 2019/20 when compared to the rate and volume of development that would be needed to meet the recalculated (compounded) SDPs housing requirement for the area. As such, the 'interim' housing requirement is particularly challenging to meet

because of the scale of the shortfall that now exists. This is the case despite the fact that the Council has had housing developments on land not allocated for that purpose by the East Lothian Local Plan 2008 allowed on appeal, that it has had in place since December 2013 and is operating Housing Land Supply: Interim Planning Guidance, and that it has used this to approve planning permission for residential development on sites not allocated for that purpose by the East Lothian Local Plan 2008.

B.18 Notwithstanding this, in the absence of an adopted Local Development Plan with up-to-date policies setting out where the Council wants new housing to be developed to meet the SDP housing requirements, it should continue to manage proposals for housing development on land not allocated for that purpose by the East Lothian Local Plan 2008 through the continued application of the Housing Land Supply: Interim Planning Guidance.

Assessment of East Lothian’s five-year effective housing land supply

B.19 The following table uses the current method for assessing the adequacy of the five-year effective housing land supply situation within East Lothian, taking into account the SDPs interim requirement up to 2019:

Table1: ELC Five-Year Effective Housing Land Supply 2015/16 to 2019/20

		Steps	Method
1	SESplan Supplementary Guidance Housing Requirement	6,250	
2	House completions 2009 to 31/3/2015 ³	2,043	
3	Balance to deliver in four years between 2015/16 -2018/19	4,207	1-2
4	Add 1 year annualised requirement to shortfall, based on SDP housing requirement 2019/20 – 2023/24	760	3,800/5 = 760
5	Recalculated 5-year Housing Requirement	4,967	3 + 4
6	Completions programmed between 2014/15 and 2019/20 ⁴	3,307	
	Shortfall of effective housing land needed to 2019/20 (in addition to 2015 audit programming)	1,660 units	5 - 6
	Number of Years Supply	3.3 Years	6/5 = 0.66 0.66*5 = 3.3

B.20 Importantly, some additional sites have also obtained planning permission since the 31st March 2015 – i.e. after the period covered by the 2015 Housing Land Audit. At this stage, these sites should be taken in to account and added to the effective land supply to provide the most up-to-date position.

³ Source – Based on the 2014/15 Housing Land Audit

⁴ Source – Based on the 2014/15 Housing Land Audit

B.21 These sites and the programming anticipated from them at this stage is set out in Table 2 below.

Table 2: Sites Not Included in Housing Land Audit 2015

Site Name	Total Dwellings	Remaining at 04/15	15/16	16/17	17/18	18/19	19/20	Total 15-20	Remaining post 19/20	20/21	21/22	Total 20/22
Beveridge Row Belhaven	90	90	0	0	25	50	15	90	0	0	0	0
Inglis Farm Avenue Road Cockenzie East Lothian	35	35	0	0	15	15	5	35	0	0	0	0
Mingulay Lydgait Haddington East Lothian	8	8	0	8	0	0	0	8	0	0	0	0
Land To South, East And West Wallyford East Lothian*	400 (1050 increase to 1450)	1450	0	0	0	0	0	0	0	0	0	0
Ferrygate Farm North Berwick	140	140	0	0	25	50	50	125	15	15	0	0
Seton East Steading	9	9	0	0	9	0	0	9	0	0	0	0
Total	582	582	0	8	74	115	70	267	15	15	0	0
Note: Table 2 does not include applications awaiting conclusion of Section 75 agreements (Land at Tantallon Road: 125 Units; Land at Dovecot 80 Units; Land at Dolphingstone 160 Units; 91 High Street Haddington 15 units = Total 380 Units). * No additional dwellings programmed from Wallyford intensification within 5-year period.												

B.22 The additional contribution from these sites to the five-year effective housing land supply would amount to land for a further **267 dwellings** in the period up to 2019/20. Based on the calculation set out at Table 1 above, the inclusion of these sites would reduce the **shortfall in the five year effective housing land supply to 1,393 homes in the period to 2019/20, resulting in 3.6 years supply**. As such, further land capable of delivering this amount of additional completions during that period would be needed if a five-year effective housing land supply is to be secured.

Monitoring & Review

B.23 The effective land supply will be monitored and reviewed periodically, including once the Proposed Local Development Plan is finalised, and once the 2016 Housing Land Audit has reported.

B.24 The contribution of land released under Housing Land Supply: Interim Planning Guidance will also be monitored to ensure that there is a control over the amount of land released. In that context the use of the Housing Land Supply: Interim Planning Guidance will also be reviewed, and if necessary the guidance may need to be revoked / its use suspended.

B.25 Any changes to national planning advice on the matter will also be monitored and taken in to account, particularly if this would review the basis for assessing the adequacy of the five-year effective housing land supply.