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| Document Title | East Lothian Local Development Plan 2018 Developer Contributions Framework: Responses to Developer Contributions Framework Consultation |

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Additional information:

To be read in conjunction with Report to East Lothian Council dated 29/05/18 titled East Lothian Local Development Plan 2018 - Supplementary Guidance / Supplementary Planning Guidance Consultation

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| Authorised By | Douglas Proudfoot |
| Designation | Head of Development |
| Date | 17/05/18 |

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| Representee | DCFSG Aspect | Summary of Comment(s) | Modifications sought | ELC Response | Action (e.g. Modification) |
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| | | Homes for Scotland fundamentally disagrees with the inclusion of contributions towards rail improvements including platform lengthening and increasing station car park sizes within the Developer Contributions Framework draft Supplementary Guidance and reiterated within policies in the Propped Plan. | | | |
| | | Network Rail is funded by central government through Transport Scotland, and it is therefore not for the local authority to be burdened with improvements to Network Rail infrastructure either itself, or certainly not through seeking developer contributions towards improvement costs. | | | |
| Homes for Scotland | Rail | Seeking developer contributions towards the cost of upgrading Network Rail facilities places an unnecessary burden upon the development industry. Delivering more homes across Scotland is a national priority for the Scottish Government, and in order to achieve this, homebuilders must be supported to deliver homes, rather than having additional burdens added. An accumulation of the necessary education and transport contributions together with these new burdens may raise issues with viability for some home builders, and has the potential to slow the delivery of new homes that we are in acute need of. | Remove reference to seeking developer contributions towards any rail improvement measures such as larger station car parks or platform lengthening within the Developer Contributions Framework Supplementary Guidance | The matter of rail developer contributions is resolved under LDP Examination Report Issue 18a Transport General and 18c Public Transport. The Reporter's conclusions on this matter support the Council's position that it is justified in seeking developer contributions towards rail platform extensions (PROP T10) and enlarging station car parks (PROP T9) as the proposals are required are required as a result of capacity issues created by planned development and subsequently proportionate contributions are required. Network rail has a duty to maintain, renew and develop the rail network but its role is not effectively to subsidise the transport impacts of new development in the plan. For full detail refer to issues 18a and 18c in the LDP Examination Report. | No change |
| Homes for Scotland | Healthcare | While we acknowledge that the majority of sites within the Proposed Plan do not have a requirement for developer contributions towards healthcare facilities, Homes for Scotland disagrees with the principle of charging the homebuilding industry for the provision of healthcare facilities. NHS as an organisation is funded through central government funding, and the burden should not be placed upon the development industry to cover any funding shortfall that may hinder the provision of primary healthcare facilities. Primary healthcare provision should not be for the council to provide for, and this certainly should not be for developer contributions to meet the cost of the necessary facilities. Most surgeries act as businesses, and developers should not be expected to supplement other businesses. It appears that a key issue with healthcare provision is the lack of practitioners rather than physical facilities. This is a national issue and not something that can or should be solved by the local authority or developers. We do not believe that these contributions conform to the tests set out within Circular 3/2012. The delivery of more homes is a national priority and the private homebuilding industry, which delivers the vast majority of new housing across Scotland, should be supported to increase delivery of homes, rather than having increasing burdens placed upon it. Provision of new homes has a positive effect on health and wellbeing, and should be supported as such. | Homes for Scotland does not agree with the principle of seeking developer contributions for healthcare facilities and suggests the removal of the requirement for developer contributions towards new facilities at Blindwells. | The matter of developer contributions towards the provision of healthcare facilities is resolved in the Council's favour under in Issue 16 of the LDP Examination Report. The Reporter concluded that the need for such facilities at Blindwells is directly attributable to new development and therefore it is reasonable for the Council to seek a contribution towards these. | No change |
| | | Para 3.94 of the Proposed Plan refers to the Developer Contributions Framework Supplementary Guidance as the source for costs for education interventions, however the representee feels this could be clearer and more transparent on a few points. It would be better if the education analysis within the Technical Note 14 background paper was introduced to the Supplementary Guidance as an Annex to provide an evidence base for the contributions requested, at the moment the Technical Note provides this rather than the Guidance itself. | | | |
| | | The Scottish Futures Trust produces low, mean and upper estimates of construction / project costs. However the Developer Contributions Framework guidance does not confirm which of these estimates has been adopted by East Lothian Council. The representee seeks clarification and justification for the Council not adopting the actual Scottish Futures Trust figure, but a higher one. They appreciate the Council is building in risk, but do not consider that the development industry should take the burden of this. The figure should not be higher than the estimate, and justification provided to be more transparent. The homebuilding industry is simply looking for as much clarity and transparency as possible in the process, to allow calculations of contributions to be made as early as possible and set out very clearly upfront. The representee acknowledges that the draft Supplementary Guidance on Developer Contributions goes some way to delivering this clarity. | | | |
| | | The LDP and Supplementary Guidance should acknowledge that where contribution levels exceed actual build costs (based on an open book approach), relevant contributions will be reimbursed. | | | |
| | | The school roll forecasting should be updated at least annually. This could be done through the LDP Action Programme. The work for the Supplementary Guidance has been based on the programming of the LDP allocations. The representee considers this programming is unlikely to be delivered, therefore potentially the number sna scale of education mitigation interventions could be set at an unrealistic level matching the housebuilding programme. | | | |
| | | The representee queries the education contributions that seem to be extracting wider benefits not necessarily linked to the scale of development. In some cases a development will tip the school roll over capacity by a few pupils, but the development is expected to pay for new classrooms which are likely to result in surplus capacity. The Council or another developer could then benefit from the extra space. Greater clarification should be provided on the justification for this, giving necessary assurance that the contributions sought are, at all times, consistent with the scale of development. In addition, it seems that the Council is seeking additional General Purpose space, dining areas and sports halls when a development is the tipping point for capacity. This again is not necessarily linked in scale or kind (Circular 3/2012 tests) to the impact of development as the rest of the school and the future population will benefit from the expanded facilities. Analysis should be provided of what will happen to the extra space created by the loss of the old sports hall, and how this could be productively used. | The representee considers that the education analysis within Technical Note 14 should be added to the Supplementary Guidance as an Annex. Clarification is requested on education contributions. | Updated Technical Note 14 clearly sets out methodology and calculations behind education contributions. The Council sees no reasoning to include the calculations in the DCF as this would create a larger and unwieldy document. A separate evidence base document that is publicly available is sufficient. The £3,000 per m2 rates for schools is based on updating the SFT metric to current values using the BCIS index and taking account of actual contract values to procure school extensions. Under Issue 15, the Reporter concluded that the Council's approach was reasonable. All legal agreements securing contribution agreements are clear in that unused contributions will be returned to the payer after the relevant period. Regarding updating the DCF based on phased programming, this was undertaken for this updated DCF which has been informed by the agreed Housing Land Audit 2017. Likely contribution levels have been amended from the 2016 where there has been change in the scale of infrastructure expansion required or the number of contribution developments have changed. Following a demand assessment, if a development proposal(s) are projected to exceed the current or planned capacity then they will be required to contribute to the next deliverable level of capacity i.e. an additional whole classroom(s) or level of standard. i.e. increased pupils form a development push the school over the threshold for the requirement for a new hall. The Council cannot build half a classroom and other additional facilities have only been required because of the development, therefore the Council should not bear the cost of this works. Up to the point that school capacity works are completed, if further development proposals are reliant on this additional provision, then the council will seek proportional costs from those proposals and if required, use these to proportionally reimburse the original development once the school project is complete. Therefore other developers will not benefit from this. | No change |
| Homes for Scotland | Education | The Council has provided a comprehensive approach to defining the developer contributions being sought. The Council is seeking a comprehensive range of funding solutions. The representee notes that the Council has undertaken a review of these requirements against the tests of Circular 3/2012. | | | |
| Wallace Land Investments | Applying the Developer Contributions Framework | It is evident that the Council is seeking financial contributions to a number of matters which are not directly attributable to the impacts of the development strategy and more importantly, individual sites allocated in the Proposed Plan e.g. to meet the needs of existing health and social care facilities, funding for Rail Network contribution zones, establishment of a GP practice. | The representee invites the Council to reconsider its financial requirements as set out in the Supplementary Guidance, to ensure that there is a direct relationship as required by Circular 3/2012. | The matter of rail developer contributions is resolved under LDP Examination Report Issue 18a Transport General and 18c Public Transport. The Reporter's conclusions on this matter support the Council's position that it is justified in seeking developer contributions towards rail platform extensions (PROP T10) and enlarging station car parks (PROP T9) as the proposals are required are required as a result of capacity issues created by planned development and subsequently proportionate contributions are required. Network rail has a duty to maintain, renew and develop the rail network but its role is not effectively to subsidise the transport impacts of new development in the plan. For full detail refer to issues 18a and 18c in the LDP Examination Report. The matter of developer contributions towards the provision of healthcare facilities is resolved in the Council's favour under in Issue 16 of the LDP Examination Report. The Reporter concluded that the need for such facilities at Blindwells is directly attributable to new development and therefore it is reasonable for the Council to seek a contribution towards these. | No change |
| | | There has been significant development in Scottish planning case law relating to planning obligations in the last 12 months. This includes a number of appeal decisions as well as judicial review. | | | |
| | | Planning authorities must establish a clear-cut and direct link between new development and the improvements sought. Cumulative financial contributions will be lawful provided the policy tests in Circular 3/2012 are met. Planning authorities need to establish the required link between new development and the improvements. | | | |
| | | A review has been undertaken of Technical Note 14 Draft Developer Contributions Framework to ascertain the calculation of the developer contribution and its relationship to the allocated sites in the Proposed Plan. This review highlights a number of concerns over the transparency of the modelling assumptions used to derive the scale of impact and subsequent cost to mitigate e.g. Education and Transportation. | | | |
| Wallace Land Investments | Applying the Developer Contributions Framework | The deletion of this wording from Policy DEL1 ensures that the policy mechanism in the Local Development Plan is not affected by any subsequent case law or challenges to the inconsistencies in the methodology being employed to derive the value of the developer contributions. | The representee recommends that the reference to ... within the contribution zone that applies to that intervention... should be deleted from Policy DEL1. | The Reporter did not support Wallace Lands modification to Policy DEL1 in their conclusions on Issue 31 Delivery of the LDP Examination Report. | No change |
| | | The representee recommends that the following sentence is inserted into Policy DEL1: ...Interventions will be funded from the infrastructure investment fund and at all times committed development will only be required to fund its proportionate share. | | | |
| | | The reason for this clarification is that the Council is committed to a delivery process which depends on drawing down the total cost of the intervention irrespective of whether it has the full cost contribution from all identified proposals. | | | |
| | | Without this reference, the delivery of the Council's development strategy could be delayed, if a developer is required to fund the full cost of the intervention but is only responsible for a proportion of the impact. For example, if four sites contribute to a defined intervention, and the initial site securing planning permission is required to meet 40% of the costs because of its impact, the delivery mechanism would not require that developer to deliver the full cost of the intervention. | | | |
| Wallace Land Investments | Applying the DCF | By making the Council's delivery mechanism transparent in the policy, this will provide essential guidance when it comes to defining the triggers in each individual Section 75 agreement. | Insert the following text into Policy DEL1: ...Interventions will be funded from the infrastructure investment fund and at all times committed development will only be required to fund its proportionate share. | The Reporter did not support Wallace Lands modification to Policy DEL1 in their conclusions on Issue 31 Delivery of the LDP Examination Report. Developers will be required to pay a contribution based on their proportion of the impact of the full cost of the additional level of infrastructure required. If part of the additional infrastructure is required because of existing conditions, the Council will meet this element of the costs, including through committed developer contributions. This is clear in the updated Technical Note. | No change |
| Wallace Land Investments | Applying the DCF | The representee recommends that the following sentence is inserted into Policy DEL1: ...In formulating the overall cost of the planning obligations, regard will be given to the impact on development viability to ensure the delivery of an effective site. | Insert the following text into Policy DEL1: ...In formulating the overall cost of the planning obligations, regard will be given to the impact on development viability to ensure the delivery of an effective site. | The Reporter did not support Wallace Lands modification to Policy DEL1 in their conclusions on Issue 31 Delivery of the LDP Examination Report. Contribution estimates should be factored in negotiations regarding the option and purchase price of land. East Lothian Council is unaware of any current situation whereby the viability of LDP allocated sites is being undermined by the likely level of contributions set out in the LDP. The DCF refers to exceptions in particular examples; where the merits of a proposal would outweigh the public interest in requiring contributions. | No change |
| | | The reason for this addition is to allow both the developer and the Council to come to an arrangement about the overall cost of the planning obligations or the timing of agreed payments. | | | |

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| | | An examination of the proposed financial contributions highlights that for many developments, the actual costs sought are not significant. At most a substantial number of allocations may only be expected to make payments of a few thousand pounds. This highlights that the necessity for the intervention is not significant. It is evident that the Council has not considered significance of impact in its Transport Contribution Zones. | | | |
| | | Wallace wishes to highlight the necessity test in Circular 3/2012 and invites the Council to review its transport contribution costs per zone. It is evident that the approach adopted by the Council to defining these zones is highlighting how minor the final cost contribution is going to be, e.g. many of the contributions in the zones will only amount to a few thousand pounds at most. It is difficult to reconcile a planning obligation of a few thousand pounds to the test of necessity in Circular 3/2012. | | The Council should review the significance of the impacts across the Transportation zones to define which zones create a significant impact which requires a planning intervention under this Supplementary Guidance. For example, the Council may decide that all impacts below a particular cut-off, say less than 15%, do not meet the scale and kind test of Circular 3/2012, that ... Planning obligations must be related in scale and kind to the proposed development. | The value of a contribution is not a relevant matter here. Small contribution levels do not mean that the strength of scale and kind of relationship between a development and an intervention is trivial. The transport interventions set out in the LDP have been tested through the transport appraisal process, which has been agreed with Transport Scotland. These interventions are necessary to successfully implement the plan. |
| Wallace Land Investments | The DCF for East Lothian Contribution Zone Tables and Maps section (pages 27) | It is difficult to understand the logic behind the variance in the charging of the mitigation costs and compliance with the tests in Circular 3/2012 e.g. in relation to "Mitigation of Cumulative Impacts at Tranent High Street Contribution Zones". This is not an isolated example as a review of the costs per home across all the zones for each intervention also demonstrates this effect. | | | The Transport Contributions Methodology Report will be provided as part of the evidence alongside the updated DCFSG. |
| Barratt David Wilson Homes | Dunbar Area Outline Delivery Strategy | Generally, while a cumulative approach to developer contributions is supported in principle, the exact funding requirement should be as transparent as possible. In this regard costings for new infrastructure provision and how the cost is spread over the proposed contribution zone should be set out in detail. (See written planning statement submitted by Clarendon Planning to the LPD in respect of Preston Mains, East Linton) | | | The Technical Note has been updated and will be provided as part of the evidence alongside the DCFSG. |
| Barratt David Wilson Homes | Delivery Strategy | This Table should include reference to Preston Mains as a housing site. It should also specifically state the facilities required as a result of the proposed new housing within East Linton. (See written planning statement submitted by Clarendon Planning to the LPD in respect of Preston Mains, East Linton) | | | |
| | | Persimmon accept the need for new development to be brought forward in association with supporting infrastructure and facilities. | | | |
| | | Planning obligations made under section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended) should only be sought where they meet all of the following tests: <ul style="list-style-type: none"> • necessary to make the proposed development acceptable in planning terms (paragraph 15) • serve a planning purpose (paragraph 16) and, where it is possible to identify infrastructure provision requirements in advance, should relate 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 (paragraphs 17-19) • fairly and reasonably relate in scale and kind to the proposed development (paragraphs 20-23) • be reasonable in all other respects (paragraphs 24-25) | | | |
| | | Although LDP Policy states that the provision of infrastructure and community facilities should be in accordance with Circular 2/2012, the representation questions whether all of the proposals related to Policy DEL1 meet the tests. | | | |
| | | In particular, concern is raised in relation to: <p>PROP T3: Segregated Active Travel Corridor (SATC) - There does not appear to be any detailed explanation of how the total amount has been calculated or any explanation of the proportion expected to be funded by developers. Disagree that the need for the SATC arises directly as a result of new development therefore contrary to test in Circular 2/2012. Question whether the actual form of provision will provide value for money and is therefore reasonable. And even if it was reasonable to require developer contributions, doubt that the financial contribution expected from developers is proportionate, at nearly ¼ of the total cost.</p> | | | |
| Persimmon Homes | DCF | PROP T9: Safe guarding Land for Larger Station Car Parks and PROP T10 Safeguarding Land for Platform Shortening - The proposals are misleading as these facilities should be provided directly by Network Rail and not by developers. Network Rail are a private entity who build and maintain the network, and they charge train operators to use the rail network. They seek to make a profit, which they reinvest in the network. Train operators obviously charge passengers with a view to making a profit. An increased number of passengers arising from new developments will logically increase revenues for both operators and Network Rail. It is therefore completely unacceptable and unreasonable to expect developers to fund improvements to the rail network. The proposals are also likely to be costly, affecting the potential viability of projects and will, in its current form create a further level of uncertainty and delay. | Delete requirements for contributions towards the Segregated Active Transport Corridor and rail linked infrastructure. | The matter of active travel developer contributions is resolved under LDP Examination Report Issue 18b Active Travel. The Reporter's conclusions on this matter support the Council's position that it is justified in seeking developer contributions towards part of the cost of delivery the Segregated Active Travel Corridor (PROP T3). For full details refer to issue 18b in the LDP Examination Report. | |
| | | Unhelpful that the technical note was not appended to the Draft Framework. | | | |
| | | If there was a more fluid recognition of school rolls, it would enable accurate and reasonable contributions to be calculated. | | | |
| | | The £3,000 per square meter cost for additional accommodation is above the upper SFT figure. Why not adopt the medium level and why is this figure the same for new build accommodation as it is for extensions. | | | |
| | | At Aberlady, there is an existing temporary classroom which is currently being refurbished yet the proposed developer is being asked to contribute £750,000 to build two new classrooms after the refurbished temporary building has been demolished. The peak that requires the 2nd additional classroom is not reached until 2030 and receded below the two classroom requirement soon after. If the housing come on stream at a different rate then it may well be the case that only one classroom is required or the Council makes a contribution based on the existing room that it's to be removed (despite refurbishment) and also the spare capacity that will existing every year (even the peak is at least 5 pupils below capacity). | | | |
| | | If the additional space is provided via an open book tendering process, what will be the recourse if it is procured at below the £3,000 per sqm level assumed ? | | | |
| | | Where spare capacity exists assume that future developments (planned or windfall) will benefit from this additional capacity provided and paid for by a previous developer. Similarly new facilities (general space/sports halls etc.) will be enjoyed by more pupils and the general public than simply those new pupils generated by development. Again looking at Aberlady, the extra classroom will now have been paid for twice (with the first one being put in place around 10 years ago) as well as a contribution to the main hall and outdoor facilities. It does not seem reasonable or equitable that a housebuilder pays for both classrooms in this instance and the additional space as it is clearly needed and will be enjoyed by the full school roll. It would appear that in these instances the proposed contributions do not meet the test in the Circular. | | | |
| APT Planning & Development | DCF | Furthermore with regards to the contributions sought for North Berwick HS (and additional expansion land), there appears to have been a degree of underspend and under-provision from identified requirements dating back approximately 14-15 years and presumably incorporating contributions paid to date. These forecast extensions have not happened and are being rolled into this document despite presumably having been paid for previously ? The increase in developer contributions in the new LDP is so significant as to have a material impact on the proposed viability of potential development. Again, with Aberlady in mind the contributions have increased by almost £2m from what could have reasonably been expected when looking at previous calculations and looking at school capacities (for both primary and secondary schooling). | No amendments proposed however, objects to the document as a barrier to development. | The matter of rail developer contributions is resolved under LDP Examination Report Issue 18a Transport General and 18c Public Transport. The Reporter's conclusions on this matter support the Council's position that it is justified in seeking developer contributions towards rail platform extensions (PROP T10) and enlarging station car parks (PROP T9) as the proposals are required are required as a result of capacity issues created by planned development and subsequently proportionate contributions are required. Network rail has a duty to maintain, renew and develop the rail network but its role is not effectively to subsidise the transport impacts of new development in the plan. For full detail refer to issues 18a and 18c in the LDP Examination Report. | The Technical Note has been updated and will be provided as part of the evidence alongside the DCFSG. |
| Clarendon Planning & Development Ltd. | Transport Contribution Zones | As with education, a clear and transparent calculation is required to support unit costs for Transport Contributions | Link rate per unit for each zone to further guidance (i.e. within the Transport Appraisal) on how these figures are arrived at. | Please refer to the updated Technical Note and Methodology Report setting out how the transport contribution values have been reached. | The Technical Note has been updated and will be provided as part of the evidence alongside the DCFSG. |
| Clarendon Planning & Development Ltd. | Local Contribution Zone Tables and Maps section (pages 27) | A clear and transparent calculation is required to support unit costs for Local Contributions. | Link education rate per unit for each zone to further guidance on how these figures are arrived at. | Please refer to the updated Technical Note for how the education, sports and health contributions have been calculated. | The Technical Note has been updated and will be provided as part of the evidence alongside the DCFSG. |

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| Hallhill Developments Ltd. | Transport Contribution Zones | PROP T3: Segregated Active Travel Corridor: The SATC is proposed to extend from Dunbar to Edinburgh, mainly utilising existing roads. As indicated on page 51 of LDP Technical Note 14, the total cost of this is estimated to be £23,400,000 (not including land acquisition costs), of which the developers will be expected to contribute £5,330,000, which is nearly 23% of the cost. There does not appear to be any detailed explanation of how the total amount has been calculated or any explanation of the proportion expected to be funded by developers. We cannot agree that the needs for the SATC arises directly as a result of new development, and requiring developer contributions would therefore be contrary to the test in Circular 2/2012. Rather, the proposal seems to be a Council aspiration to serve the East Lothian community. We seriously question whether the actual form of provision will provide value for money and is therefore reasonable. And even if it was reasonable to require developer contributions, we doubt that the financial contribution expected from developers is proportionate, at nearly ¼ of the total cost. | (PROP T3) Proposed Modification: Delete references to the need for developer contribution to the SATC from all LDP policies and proposals and supplementary guidance. | The matter of active travel developer contributions is resolved under LDP Examination Report Issue 18b Active Travel. The Reporter's conclusions on this matter support the Council's position that it is justified in seeking developer contributions towards part of the cost of delivery the Segregated Active Travel Corridor (PROP T3). For full details refer to issue 18b in the LDP Examination Report. | No change |
| Hallhill Developments Ltd. | Transport Contribution Zones | Proposals T9 and T10 are slightly misleading in their titles, as in the text it is explained that developers will be required to contribute to these interventions. In our view, these facilities should be provided directly by Network Rail and not by developers. Network Rail are a private entity who build and maintain the network, and they charge train operators to use the rail network. They seek to make a profit, which they reinvest in the network. Train operators obviously charge passengers with a view to making a profit. An increased number of passengers arising from new developments will logically increase revenues for both operators and Network Rail. It is therefore completely unacceptable and unreasonable to expect developers to fund improvements to the rail network. | (PROP T9 and PROP T10) Proposed Modification: Delete references to the need for developer contribution to rail linked infrastructure from all LDP policies and proposals and supplementary guidance. | The matter of rail developer contributions is resolved under LDP Examination Report Issue 18a Transport General and 18c Public Transport. The Reporter's conclusions on this matter support the Council's position that it is justified in seeking developer contributions towards rail platform extensions (PROP T10) and enlarging station car parks (PROP T9) as the proposals are required are required as a result of capacity issues created by planned development and subsequently proportionate contributions are required. Network rail has a duty to maintain, renew and develop the rail network but its role is not effectively to subsidise the transport impacts of new development in the plan. For full detail refer to issues 18a and 18c in the LDP Examination Report. | No change |
| Hallhill Developments Ltd. | Dunbar Area Section | The Draft Developer Contributions Framework is justified by the content of LDP Technical Note 14, which contains the following information for Dunbar on page 36: Dunbar Grammar: LDP accommodation requirement for increase in capacity from Established (1199) to LDP (1300) new build and alterations to provide 6 classrooms, 1 science, 1 art and ancillary accommodation. Dunbar Lochend (P4 – P7): 3 classrooms, 1 GP, breakout, stairs, toilets and cloaks, PE hall expansion. Dunbar John Muir (P1 –P3): 2 classrooms and 1 GP space (1 new classroom and GP space: 1 additional classroom by internal alterations) | Proposed Modification: Before Policy DEL1 and related policies and proposals and supplementary guidance are finalised, justification is required on the basis for developer contributions to education as set out in this representation. | The £3,000 per m2 rates for schools is based on updating the SFT metric to current values using the BCIS index and taking account of actual contract values to procure school extensions. Under Issue 15, the Reporter concluded that the Council's approach was reasonable. Scale of Dunbar Grammar extension has been reduced in light of revised projections based on HLA2017. Details are set out in Technical Note 14. Additional school capacity can not only be provided for in additional classrooms. There are other additional spaces that are required to accommodate pupils in order to meet education and teaching standards. These will be set out in the assessment of individual proposals. | |
| Hallhill Developments Ltd. | Dunbar Area Section | The representee can broadly understand the need for additional classrooms at these schools but unfortunately there is no detailed explanation given for the other construction items. Without a further explanation of the justification for the required contributions, HDL cannot support Policy DEL or the related Developer Contributions Supplementary Guidance relating to education in Dunbar: Also, the representation notes that the cost per square metre of construction is identified as £3,000. This exceeds the SFT metric and is not justified. This representation should be read in conjunction with the representation made on behalf of Stewart Milne Homes in support of the housing allocation at Penraig Hill, East Linton (PROP DR8). Stewart Milne Homes accept the need for new development to be brought forward in association with supporting infrastructure and facilities. Planning obligations made under section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended) should only be sought where they meet all of the following tests: • necessary to make the proposed development acceptable in planning terms (paragraph 15) • serve a planning purpose (paragraph 16) and, where it is possible to identify infrastructure provision requirements in advance, should relate 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 (paragraphs 17-19) • fairly and reasonably relate in scale and kind to the proposed development (paragraphs 20-23) • be reasonable in all other respects (paragraphs 24-25) | Delete requirements for contributions towards the Segregated Active Transport Corridor and Rail related infrastructure. | The matter of active travel developer contributions is resolved under LDP Examination Report Issue 18b Active Travel. The Reporter's conclusions on this matter support the Council's position that it is justified in seeking developer contributions towards part of the cost of delivery the Segregated Active Travel Corridor (PROP T3). For full details refer to issue 18b in the LDP Examination Report. | |
| Stewart Milne Homes | Transport Contributions | Although LDP Policy states that the provision of infrastructure and community facilities should be in accordance with Circular 2/2012, the representation questions whether the various policies related to Policy DEL1 meet the above tests. PROP T3: Segregated Active Travel Corridor: The SATC is proposed to extend from Dunbar to Edinburgh, mainly utilising existing roads. As indicated on page 51 of LDP Technical Note 14, the total cost of this is estimated to be £23,400,000 (not including land acquisition costs), of which the developers will be expected to contribute £5,330,000, which is nearly 23% of the cost. There does not appear to be any detailed explanation of how the total amount has been calculated or any explanation of the proportion expected to be funded by developers. We cannot agree that the needs for the SATC arises directly as a result of new development, and requiring developer contributions would therefore be contrary to the test in Circular 2/2012. Rather, the proposal seems to be a Council aspiration to serve the East Lothian community. We seriously question whether the actual form of provision will provide value for money and is therefore reasonable. And even if it was reasonable to require developer contributions, we doubt that the financial contribution expected from developers is proportionate, at nearly ¼ of the total cost. | Delete requirements for contributions towards the Segregated Active Transport Corridor. | The matter of active travel developer contributions is resolved under LDP Examination Report Issue 18b Active Travel. The Reporter's conclusions on this matter support the Council's position that it is justified in seeking developer contributions towards part of the cost of delivery the Segregated Active Travel Corridor (PROP T3). For full details refer to issue 18b in the LDP Examination Report. | No change |
| Stewart Milne Homes | Transport Contribution Zones | Proposals T9 and T10 are slightly misleading in their titles, as in the text it is explained that developers will be required to contribute to these interventions. In our view, these facilities should be provided directly by Network Rail and not by developers. Network Rail are a private entity who build and maintain the network, and they charge train operators to use the rail network. They seek to make a profit, which they reinvest in the network. Train operators obviously charge passengers with a view to making a profit. An increased number of passengers arising from new developments will logically increase revenues for both operators and Network Rail. It is therefore completely unacceptable and unreasonable to expect developers to fund improvements to the rail network. PROP ED6 Dunbar Education Cluster: Policy DEL1 is also supported by Draft Developer Contributions Framework, intended as Supplementary Guidance. On page 46, it sets out costs for the Dunbar Area Education Contribution Zone as follows: Secondary School Capacity: Dunbar Grammar School £4,282.00 per house Pre-school & Primary School Capacity*: East Linton £8610.00 per house | Delete requirements for contributions towards Rail related infrastructure. | The matter of rail developer contributions is resolved under LDP Examination Report Issue 18a Transport General and 18c Public Transport. The Reporter's conclusions on this matter support the Council's position that it is justified in seeking developer contributions towards rail platform extensions (PROP T10) and enlarging station car parks (PROP T9) as the proposals are required are required as a result of capacity issues created by planned development and subsequently proportionate contributions are required. Network rail has a duty to maintain, renew and develop the rail network but its role is not effectively to subsidise the transport impacts of new development in the plan. For full detail refer to issues 18a and 18c in the LDP Examination Report. | No change |
| Stewart Milne Homes | Dunbar Area Section | The Draft Developer Contributions Framework is justified by the content of LDP Technical Note 14, which on page 36 indicates that 1 new classroom and 1 new PE Area are required at a cost of £861,000, which is £8,610/house. Unfortunately there is not enough information provided in Technical Note 14 to fully understand the justification for the required contribution. Stewart Milne Homes therefore have the following questions and comments: • What are the component costs of the classroom and PE Area? • We assume that the developer is only being asked to fund the classroom requirement directly arising from the development. It is noted that the school will exceed planned capacity without the proposed new development, and we assume therefore that a new classroom would be required in any case. Why is the developer being asked to fund this? Will the Council be making a financial contribution? • The cost per square metre of construction is identified as £3,000. This exceeds the SFT metric and we do not consider this to be justified. • We cannot find an explanation of why a new PE Area is required, or any specific costing? What is the new PE Area to comprise? Would it have been needed regardless of the new development, given the projected number of pupils exceeding existing capacity? As above, will the Council be making a financial contribution on this basis? | Before policy DEL1 and related policies and proposals and supplementary guidance are finalised, justification is required on the basis for developer contributions to education. | This matter has now been agreed in the grant of permission for the Pencairghill site for 113 units and the related Unilateral Undertaking securing contributions towards the additional nursery provision, an additional classroom and a contribution towards part of the costs of the sports hall. | Pencairghill is now a committed development. As it is the only planned development in the catchment there is no further requirement for contributions towards East Linton Primary. |
| Sportscotland | DCF | 1. sportscotland is a statutory consultee in certain circumstances (namely where proposals may result in the loss of outdoor sports facilities; or prejudice the use of an outdoor sports facility; or prevent the use of land which was last used as an outdoor sports facility, from being used again for that purpose). Where outdoor facilities are to be lost due to development proposals, sportscotland seeks to apply the provisions of SPP paragraph 226, namely, "the outdoor sports facility which would be lost would be replaced either by a new facility of comparable or greater benefit for sport in a location that is convenient for users, or by the upgrading of an existing outdoor sports facility to provide a facility of better quality on the same site or at another location that is convenient for users and maintains or improves the overall playing capacity in the area." In such instances, the delivery of the replacement facilities will often be secured by way of a Section 69 payment (although other mechanisms may be used). The rationale for monies paid in such cases comes from SPP paragraph 226. This requirement does not always seem to have been picked up by developers – they may be aware of developer contribution requirements (such as those covered by your Policy/SG), but not of this requirement to replace outdoor sports facilities (subject to the other caveats of SPP). To confirm, the requirement to replace outdoor sports facilities is in addition to any developer contribution requirements. Whilst this has clear backing from SPP, given that it is not always picked up by developers, it may help if this is clarified somewhere in the LDP the SG. 2. The SG initially refers to the requirement for contributions for "Sport Facilities Capacity, including formal indoor and outdoor recreation and changing facilities" (p6). LDP policy PROPCF1 and the SG specify that contributions within the relevant local zones are for "Sports Pitches and Changing Accommodation". We would have concerns that the latter wording is prohibitive to any potential demand generated for other types of facilities including indoor facilities e.g. pools, halls, tennis courts etc. The LDP policy and SG refer to the need for contributions for indoor facilities in relation to the Blindwells development site. The desire to co-locate community facilities at schools sites is noted, and welcomed, however it is unclear if and how the sports facilities and associated costs have been accounted for at these sites. The suggested wording would provide clarity and flexibility in relation to future demand for a broader scope of facilities if needed. | 1. Include reference within the supporting text to PROPCF1 (page 80) and the Supplementary Guidance (SG) to the requirement for compensatory replacement where development proposals will impact on outdoor facilities as detailed in SPP and separate to developer contributions. 2. Amend all references to "Sports Pitches and Changing Accommodation" to read "Sports Facilities, Pitches and Changing Accommodation". | Compensatory requirement is a policy matter and not something that can be forecast for in the DCF. In terms of sports infrastructure for which the Council is seeking contributions in the DCF, they are all either some form of sports pitch or changing pavilion. Therefore the current references are appropriate. | No change |

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| The Scottish Government | DCF | Circular 3/2012 paragraph 14 requires that contributions are only sought where they meet the 5 policy tests. Because the contributions zones are establishing the need for the contributions up front in the development plan, it should be set out how these have been calculated. Particularly important is the "relationship to the proposed development" test. If this methodology is set out in an accompanying assessment, reference could be made to this. P55 refers to demand projections, but it is not clear where these are contained. | Supplementary Guidance Provide detail on the methodology for defining the contribution zones, or indicate where this is set out and provide detail on how the contribution zone relates to the tests of Circular 3/2012. | Evidence for all the likely levels of contributions in the updated DCF and the assessments that are based upon is set out in the updated Technical Note 14 and the accompanying Transport Technical Documents. The DCF only sets out the likely contribution levels. Exact level of contributions will be dependent on demand assessment of development proposals as they are submitted. | The Technical Note has been updated and will be provided as part of the evidence alongside the DCFSG. |
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| The Scottish Government | DCF pg 47 paragraph 4.15 | Supplementary Guidance. Page 47, paragraph 4.15 states that the Council will seek to recover costs for drafting legal agreements from applicants. This reference should be removed. | There is not clear legal basis for such charges. The Fees Regulations provide for planning fees and charges but do not enable changes of this nature to be made. | This is no longer referred to in the DCF. | Reference has been removed from the DCF. |
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