



## **RESPONSE TO CONSULTATION CITY OF EDINBURGH COUNCIL: TRAM DEVELOPER CONTRIBUTIONS**

### **Introduction**

Homes for Scotland is the representative body of the house-building industry in Scotland. Its members build over 90% of the new houses completed in Scotland each year. Homes for Scotland provides a range of policy advisory services to its members, including advice and representation on development planning and related issues.

The proposal to introduce modern tram systems to Edinburgh and its immediate hinterland is a sign of long-overdue progress in dealing with public transport for Scotland's political capital and economic heart. Homes for Scotland has no strong view as to the appropriateness of the Tram as a solution to transport issues. However, it is a matter of great concern that the tram proposal represents yet another attempt to pass part of the responsibility for funding strategic public infrastructure from the public to the private sector, and to do so in a way which is cumbersome and inefficient.

### **Grounds of Objection**

Homes for Scotland is opposed to several aspects of the proposals and Supplementary Guidance:

- The extent to which development can be shown to depend on the provision of the tram proposals
- The extent to which development can be demonstrated to benefit from the tram proposals
- The date of application of the Guidance
- The extension of the contributions regime to other, unspecified, elements of the public realm
- The mechanisms for securing contributions
- The potential extension of the contributions regime to proposals outwith the defined corridors
- The assumptions made on public sector funding
- The wider context

## **Dependency of development**

Edinburgh Council's premise in proposing developer contributions is to apply them to "developments which may depend on or benefit from the Tram...". In relation to housing developments, it is evident that the market in Edinburgh is supporting a rapid rate of house-building and selling. Indeed, the extent of price inflation in Edinburgh is the clearest possible signal that demand in Edinburgh is exceeding supply. In that context, housing development is clearly not dependent on transport in general, or the Tram in particular. The marketing of housing in Edinburgh at present takes no account of the potential tram system, since it remains a possibility only with no timescale for completion. Developers remain confident that any housing in the proposed corridors would be commercially successful in present circumstances.

It may be argued that Transport Assessments would show that developments required to be served by improved public transport. Edinburgh is already well-served by its bus network, and an improving system of parking regulation allied to bus and cycle priority measures. Therefore the provision of a Tram system is not the only possible solution to public transport improvements when considering a residential planning application. The argument that developments would therefore "depend on" the Tram system is unproven.

The Council rightly states in paragraph 3.10 of the Committee Report of 1 April that the Tram "is a strategic public transport improvement". It also argues that it is a key proposal for the continued strategic growth of the city. However, it cannot be argued that individual applications for housing development are dependant on this strategic infrastructure. If the Tram is a genuine strategic project, then it should be regarded as such and funded centrally in a clear and simple manner.

## **Benefits to Development**

The second key assumption by the Council is that development would benefit from accessibility to the Tram system. Homes for Scotland believes that a number of supply and demand-side factors are driving the strength of the Edinburgh housing market, including: constrained land supply; shortage of certain types of housing; economic growth and fiscal advantages to property ownership. Set against these, the theoretical benefit of a future Tram system is a minimal consideration to developers or purchasers. Further, if the Tram system were in place now, in today's market, it would still represent only one of many factors in investment decisions.

The problem is to quantify what, if any, benefit the Tram may have both on land values and on house selling prices. Current prices for both are not affected by long-term hope value of a possible Tram system. In the future, it will be impossible to justify any particular figure for beneficial rises in values as attributable solely to the Tram.

In that context, the Report and Guidance gives no explanation of the calculation of the figures for contributions in Tables 1 and 2, so that developers cannot be expected to comment on these without justification of the calculation methodology. Also of concern is the suggestion that the figures will be updated annually on the basis of the Retail Price Index plus 2%. Developers must question why above-inflation rises are appropriate. It is also noted that the figures in the Tables remain in draft, and therefore there should be discussion with representatives of the various sectors of the development industry as the guidance progresses.

All of this calls into question the ability of the Council to apply the principles of Circular 12/1996, which require that any contribution must be necessary to make an application acceptable, and which should be in scale with the impact of the development.

Section 13 of the Guidance would appear to be anomalous. It proposes that separate negotiations on developments in excess of the scale factor 15 should take place, and that contributions in such cases are likely to be greater than the minimum applying in the Tables. However, it is evident that the rates of contribution per house or other unit measurement generally fall with increasing scale, so the proposal in Section 13 seems inappropriate, certainly as a general principle.

### **Date of Application of Guidance**

The Council has decided to bring the Guidance into force with effect from 2 April 2004, arguing in paragraph 3.14 that expectations are already being raised by the prospect of the Tram. As discussed above, it would be difficult to persuade any house builder that land and property prices are being influenced by the prospect of the Tram as opposed to the many other forces at work in the property market.

The application of the Guidance is premature given that the Bills promoting the Tram lines have not completed their passage through Parliament. Until this happens, there is no certainty that the projects will proceed, and therefore Circular 12/1996 could not be applied to any planning application. The Council appears to anticipate at least the first line in operation before 2010, but the Guidance makes provision for the return of developer contributions within various time periods up to 2020. Considerable uncertainty therefore remains as to the timing, and even the likelihood, of implementation.

The implementation of the proposals is premature in terms of SPP1 The Planning System, which states (Paragraph 41) that Supplementary Guidance is useful where an urgent policy response is needed. Supplementary Guidance should support the statutory development plan, not be an alternative. The public and other interest groups should be involved in its preparation. Supplementary Guidance carries less weight than the development plan in determining applications. Critically, SPP1 requires that urgent responses to policy issues should be incorporated into statutory plans as soon as possible.

Firstly, in Homes for Scotland's view, the Tram is not an urgent policy issue given the uncertainty over its timing and the prematurity of any attempt to determine its impact on current development proposals. Secondly, any such Guidance should be incorporated within a statutory development plan, and it is suggested that the appropriate plan would be the new City-wide Local Plan. The Guidance should then be tested through the Public Local Inquiry which would follow finalisation of that Plan. The likely timescale for that process is still well within any feasible start date for the Tram project, or any date from which the Tram might exert even minimal impact on property values. If a scheme of developer contributions were found to be appropriate by a Reporter, then it could be applied much more fairly and reasonably from the date of adoption of the City-wide Local Plan.

### **Other Public Realm Issues**

The Council is seeking to apply the contributions regime to "associated public realm" works, although these are not defined in the Committee Report of 1 April 2004 or in the Guidance. Further information is needed before full comment can be made on this issue. If this term relates to the essential works required as part of a tram system – shelters, signage, platforms or boarding areas etc then the justification could perhaps be understood. If it refers to wider corridor improvements such as landscaping, building treatments etc then this would appear to be exceeding the tests of necessity, scale and kind. However, as a general principle, Homes for Scotland questions why developers should be responsible for funding a strategic project and the public realm works which go with it.

### **Mechanisms for Securing Contributions**

Paragraph 3.15 of the Committee Report notes that "no differentiation is made in the draft guideline between outline and detailed applications. Contributions should be agreed at the outline stage and then taken forward as necessary." This is impractical in Homes for Scotland's view. Outline planning applications rarely contain any of the detail required to determine housing numbers and densities, detailed infrastructure and amenity provision or transport impacts. It would not be possible to determine the scale of impact at outline application stage. The Guidance suggests that the main mechanism for securing contributions will be Legal Agreements, most likely Section 75 Agreements. Such Agreements are concluded at the stage of full planning consent, so there seems no justification in trying to deal with the contributions issue at outline stage.

While the use of S75 Agreements has become standard practice, the problem is the efficiency of the process at present, and the likely efficiency in the future. Negotiation and signing of a Section 75 Agreement, upon which planning consent is often conditional, presently takes anything up to 15 months in Edinburgh. The increased volume of Agreements which would result from this Guidance is likely to slow the rate of issue of planning consents, and hence of developments to meet market demands, even more.

This simply highlights again the inefficiency of attempting to secure public strategic investment through contributions from developers. The recent Barker Report for the UK Treasury highlighted this issue, and proposed that a far more effective mechanism would be to tie contributions to the land rather than to the developers. Mechanisms such as development tariffs and land charges were raised, but there is no discussion of these in the Council's reports.

Principle 7 of the Guidelines contains unacceptable proposals. Firstly, it is proposed that developer contributions could be held until 2020 in the event of slower progress than anticipated. This is wholly unreasonable. The development industry expects to invest capital efficiently, not leave it in Bank accounts for up to 16 years. There could be no demonstrable link to impacts and benefits over such time periods. There should be a maximum period of 5 years before contributions are returned to developers.

Secondly, it is suggested that developers should have to give 30 days notice in writing to inspect details of the ring-fenced account within which contributions were held. This is an unacceptably-long period.

### **Extension of contributions beyond defined zones**

A proposal is inserted at a fairly late stage in the Guidance document (paragraph 14) that "major developments of a strategic nature outwith the defined zones will also be considered for their relationship to the proposed tram system and may also be required to make a contribution." No definitions of "strategic" or "relationship" are offered. It seems clear that this proposal would result in negotiations on many additional planning proposals, adding yet more elements of delay and uncertainty to the development process in Edinburgh. This provision should either be dropped in its entirety, or a firm set of criteria produced for further public consultation.

### **Public Sector funding**

The Council's report of 1 April 2004 puts forward as part of the justification for seeking contributions that the Council has been awarded £375 million for the design of 2 lines and the construction of one. It notes that this is insufficient for the construction of **two** lines. However, it must be assumed that the Executive is minded to support Trams in Edinburgh, albeit that further support for Line 2 will be dependent on progress with Line 1. On that basis, it has to be asked why the cumbersome and contrived mechanism of developer contributions is being pursued when the priorities should be the effective delivery of the first line and the case for further funding of the second and subsequent lines.

### **Wider Context**

Homes for Scotland is concerned that the proposals for tram contributions are another of a mounting list of requirements on the development industry. There is no recognition of this cumulative burden in the Guidance or any recognition that not all types of contribution now sought by Edinburgh City Council are

either of equal weight and validity, or viable. Developers are being asked for increasing contributions to education, open space and recreation, water infrastructure and affordable housing. It is understood that the Council is preparing to introduce a further general requirement to contribute to local road network improvements. All of these requirements complicate and slow the development process. There is no doubt that, when the current inflationary market ends these requirements will become entirely unviable and threaten the delivery of the housing requirements currently being promoted through Structure and Local Plans.