

**CITY OF EDINBURGH COUNCIL
DRAFT SUPPLEMENTARY GUIDANCE – DEVELOPER CONTRIBUTIONS &
INFRASTRUCTURE DELIVERY**

Homes for Scotland Representation (submitted via CEC Web Portal)

February 2017

Question 1

Do you have any comments on the Council’s approach to infrastructure provision associated with development?

Homes for Scotland welcomes the opportunity to provide comment on the City of Edinburgh Council draft Supplementary Guidance – Developer Contributions & Infrastructure Delivery. We are pleased to see this draft guidance coming forward quickly in a positive response to the letter from the Minister for Local Government and Housing to City of Edinburgh Council Chief Executive in November 2016, in support of the delivery of homes in Edinburgh through the adopted Local Development Plan’s spatial strategy and associated infrastructure.

While we are glad to see this draft, and we are generally supportive of the proposed approach to the developer contributions and infrastructure delivery set out within the draft guidance, we have a number of concerns which must be resolved before the guidance is finalised and adopted. We acknowledge that this early draft of the guidance should provide an opportunity for re-drafting within, and indeed, exceeding the statutory timescales for adoption.

Of particular concern is the compliance of the draft guidance with Circular 3/2012 Planning Obligations and Good Neighbour Agreements. Paragraph 14 of this Circular sets out the five policy tests which must be met when planning obligations are sought, and the following paragraphs of the Circular go on to detail the requirements of each test.

This is relevant to all contributions, but of particular concern with Section 2a – Education Infrastructure. Paragraph 17 of the Circular states that “there should be a clear link between the development and any mitigation offered as part of the developer’s contribution.” Further, in paragraph 20 the Circular states that “planning obligations must be related in scale and kind to the proposed development”. The supplementary guidance should set out the direct impact that allocated sites within the Local Development Plan will have on education capacity of schools within the catchment of the development and set out the direct action required to mitigate any impacts, including cumulative impacts, of the development, and explain the costs of this direct action. If several developments should proportionately share the cost of that direct action, this should be clearly set out within the guidance.

We note that it should be a priority for the Council to identify any existing spare capacity within its schools and to include the potential for school catchment reviews to best use the existing available capacity to accommodate pupils from new developments. Any catchment review should set out the redistribution of pupils from one catchment to another.

These actions then set out an evidence base to meet the “relationship to proposed development test” within the Circular. We do not consider that the Council has produced an evidence base which shows its compliance with this Circular test for Education Infrastructure within the draft guidance. We acknowledge that cumulative impacts of new development

must be considered, but the scale and kind of contributions sought must relate to the direct impacts of the proposed development.

The draft guidance confirms that the Council has not prepared any projections for secondary school infrastructure. It has assumed that any available capacity within secondary schools will soon be fully utilised because of assumptions about future growth and increased primary school rolls. The draft guidance seeks to apply a cost per pupil generated regardless of whether there is an identified need. We are concerned that this approach does not comply with Circular 3/2012 as the contributions must relate to the impacts of development to comply with the “relationship to proposed development test” and the “scale and kind test” of the Circular – showing a clear link between the development and the mitigation required, that the obligation does not extract a payment which is not directly related to the proposed development, and that the obligation must be related in scale and kind to the proposed development.

Whilst there is a statement within Section 1 – Introduction confirming that “*this guidance takes account of Scottish Government Circular 3/2012 Planning Obligations and Good Neighbour Agreements and other relevant government advice on contributions and legal agreements*”, it does not explicitly set out its compliance with this Circular. We suggest that a statement of conformity with Circular 3/2012 should be provided by the Council to clearly set out the evidence base for the contributions sought, and their compliance with the tests within the Circular.

Question 2

Do you have any comments on how infrastructure has been assessed?

We note that the Education Appraisal (December 2016) states that it “takes account of new housing sites allocated in the LDP and other land within the urban area, including potential housing sites identified within the Council’s Housing Land Study (June 2014)”. This is useful in analysing potential windfall development, but we do not consider it to be a reliable evidence base to inform the education assessment, particularly as many of the sites within the housing land study have permission for other uses.

Homes for Scotland would like to see further information and evidence from City of Edinburgh Council to explain how financial contributions will be sought from windfall sites. If education infrastructure and other infrastructure requirements from windfall developments have been fully factored into the draft guidance’s calculations, this is not clear and should be set out far more explicitly. If these have not been taken into consideration, this should be addressed by the Council in a revised draft of this guidance as a priority.

The approach within the draft guidance states (section 2a, part A, page 4) that “Residential development is required to contribute towards the cost of education infrastructure to ensure that the cumulative impact of development can be mitigated”. This assumes that there will be no available capacity within existing schools. The approach should be clear that residential development will only be required to contribute towards the cost of education infrastructure where it has been confirmed that there is insufficient capacity available in a school within the catchment of that development to accommodate the number of pupils generated by that development.

The draft guidance does not provide the number of pupils in the eight schools and the school extensions that will be from the sites allocated within the LDP and existing homes. If existing pupils are to attend new schools as a result of catchment reviews, then the allocated sites within the LDP are not wholly responsible for the impacts arising on the existing school infrastructure. In this case the Council must accept some responsibility for its share of the costs of this education infrastructure for any capacity provided through the schools and extensions delivered through this guidance which is not related to pupils directly from allocated sites within the LDP.

Question 3

Do you have any comments on the requirements within the education, transport, public realm and green space contribution zones?

Circular 3/2012 requires that planning obligations relate to the direct impact of the proposed development. We do not consider that the Contribution Zone approach directly links to the impacts of developments, or to the scale and kind of contributions sought. This is a particular problem where a proposed housing development is required, under the Contribution Zone approach, to contribute to education infrastructure beyond the school catchment within which the development sits. We consider that contribution zones for school extensions should follow the relevant primary school catchment areas, and not be set wider than these.

Homes for Scotland has a number of queries on the Education Infrastructure Costs as set out within the table in Annex 1 on page 17 of the draft guidance as follows:

- The table is not complete, and there are omissions of figures for a 1 class extension, and a 600 capacity secondary school. This table should be updated with all data incorporated;
- We query the validity of the 7.5% contingency fund added to the cost of new schools and extensions. This adds further cost to the delivery of new schools. We suggest this is removed as there is no evidence to support such a high contingency;
- In the absence of full data for the single class extension, we query the total of £350,000. Based on a recent extension at Gilmerton Primary in Edinburgh, a single classroom has a floor area of 62-64 square metres. At the total cost of £350,000 as stated in the guidance, this classroom then equates to a cost of £5,645 per square metre. This is excessive when compared to the cost of £2,171 for a 2 class extension, and the other costs per square metre for other extensions. It is therefore concluded that the single class extension must be accounting for a lot more than the classroom floorspace to arrive at a total of £350,000. These figures should be further explained and evidence provided.
- If a single classroom floor area is on average 62-64 square metres, then two classrooms will be an average of 124 square metres. However the guidance allows for 213 square metres for a 2 class extension. This is just under 90 square metres extra added. We accept that additional floorspace will be required for corridors etc., but when looking at the figures across the 2, 3, 4, and 5 class extensions, the floorspace required by the guidance far exceeds that required for classroom space. We therefore request evidence on this from the Council;
- The SFT cost metric sets indicative costs for secondary schools at £28,000 per pupil (including allowances for abnormals, servicing and off site infrastructure), based on

HubCo North Territory reporting. The Scottish Government awards funding at £25,893 per pupil (at 2 Q2 2015 prices) for new secondary school build projects. We expect secondary school extensions to offer cost savings – for example the typical cost for a new primary school per square metre is £2,759 and for an extension the typical figure is £2,118 metres squared. The draft guidance sets the indicative cost per square metre for a secondary school extension at £2,986 per square metre, however the cost within the draft guidance for a new secondary school is lower than that of an extension, at £2,301 square metres. There is no explanation given in the draft guidance as to the inconsistent cost projections for new schools and extensions for primary and secondary schools.

- We have sought costing details for comparison – in Perth the project costs for the new 1,100 capacity secondary school at Bertha Park is £22,993 million – of £20,902.73 per pupil. In Edinburgh, the Council's projected cost for a 600 capacity secondary school is £19,293,885, or £27,593,885 including land costs of £8,300,000. Therefore the cost per pupil of a 600 capacity secondary school in Edinburgh is £45,989.81 including land costs, or £32,156.47 without land costs. Clarification should be provided to explain why it is much more expensive to build a school in Edinburgh than Perth, even assuming there is no land cost.
- We suggest an Annex should be included to the guidance to provide evidence for costings, and fully costed examples for clarity.

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.

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.

The draft guidance does not provide evidence to justify the requirement for new or extended medical practices. We do not believe that these contributions conform to the tests set out within Circular 3/2012. There is a lack of information to justify the costs set out within Annex 4 of the draft guidance. These are estimated costs which are not based on evidenced need or demand in relation to catchment areas or number of patients a practice will serve.

Homes for Scotland does not agree with the principle of seeking developer contributions for healthcare facilities, therefore we suggest the removal of the requirement for developer contributions towards healthcare facilities.

Question 4

Do you have any comments on the arrangements for Section 75 legal agreements?

Homes for Scotland does not object to the principle of the development and use of a Model Legal Agreement. From experience elsewhere in Scotland where a template has been implemented, it will be important for any model agreement to be drafted in collaboration with the development industry, allowing input and feedback to any draft before implementation. It should also be made clear within the model agreement and in any supporting text or 'hook' within the Supplementary Guidance that the model agreement is a starting point for negotiations on Section 75 agreements, and that each agreement will continue to be taken on an application by application basis, simply using the model agreement as a starting point to speed up the S75 negotiations and ultimately deliver the development more quickly and efficiently.

We are concerned that the draft guidance sets out provision for the Council to hold education infrastructure contributions for 30 years from the date of construction of the new infrastructure. In order to comply with Circular 3/2012, paragraph 21 which states "*in the case of financial payments, will these contribute to the cost of providing necessary facilities required as a consequence of or in connection with the development in the near future*", we consider that a period of 10 years, in line with other contributions, should be applied to education infrastructure contributions and all monies returned to applicants if not spent within this time.

We also consider that care must be taken if the Contribution Zone approach is to be adopted. We contest that the statement within page 13 of the draft guidance "*within Contribution Zones, contributions will be held and be put towards actions set out within the Action Programme*" and suggest this is not compliant with Circular 3/2012. Contributions can only be used for infrastructure interventions associated with the development, and cannot be put towards wider actions not directly related to the impacts of the development. This is particularly relevant given the recent court decision in Aberdeen relating to their Strategic Transport Fund.

Question 5

Do you have any comments on how the Council will deliver the required infrastructure?

The Minister for Local Government and Housing stated in his letter of 9th November 2016 that he expects "the City of Edinburgh Council to make decisions at the earliest opportunity which provide for or contribute to the infrastructure requirements identified in [the Local Development Plan]". Homes for Scotland also expects to see delivery of development supported by this Supplementary Guidance, and that there is no delay to approval of applications as suggested by Section 2a, C, page 4 which suggests that development could be delayed due to the delivery of education infrastructure. Homes for Scotland would like to work with City of Edinburgh Council to progress development as efficiently as possible, in the spirit of the Minister's letter.

The guidance expects that the Council will fund and deliver all of the education infrastructure requirements of new schools and extensions to schools; however it is not clear within the guidance how the Council will raise the capital funding for these works. In order to support and encourage the delivery of new homes, the new schools or extensions must be built in advance of the pupils actually being generated from the occupation of new homes, and

therefore the Council will be required to front fund and deliver the education infrastructure to support the new development. We are concerned that the LDP Action Programme report to the Council's Finance and Resources Committee on 19th January 2017 stated "*Members should note that no allowance for the infrastructure costs identified in this report is provided for within the Capital Investment Programme 2015-2020 or indicative five year plan 2019/20 – 2023/24. Therefore, there remains a real risk to the Council that required infrastructure cannot be delivered as required within the Local Development Plan proposals, without the identification of additional resources required to fund this.*" We are concerned that there is no allowance for infrastructure expenditure, and therefore question how this infrastructure can be delivered at the right time by the Council if no funding mechanism is in place for its delivery.

Homes for Scotland suggests that provision should be set out within the Supplementary Guidance to demonstrate any interim measures the Council intends to adopt to accommodate pupils arising from the ongoing completion of homes from allocated sites in the LDP before a permanent solution is available. Can the existing education infrastructure accommodate pupils until such time as the new schools or extensions are built? This is critical to avoid holding up delivery of new homes until the schools or extensions are built to accommodate new pupils from the new developments.

Question 6

Do you have any comments on the council's approach, should the required contributions raise demonstrable commercial viability constraints and/or where forward or gap funding may be required.

Homes for Scotland acknowledges that there will already be agreements in place between home builders and land owners for many of the allocated sites within the Local Development Plan. It is therefore important that land costs are included in any viability assessment as a major component of development costs. Consideration must be taken to the overall cumulative effect of the obligations being sought through this guidance to ensure that the financial contributions do not have too significant effect on land values, which may render a site undeliverable if the land owner decides not to release the land on less favourable terms.

Question 7

Do you have any further comments you wish to make?

Ultimately, Homes for Scotland is seeking coherent, clear and transparent Supplementary Guidance, compliant with national planning policy and guidance, setting out all of the requirements for applicants in the delivery of new homes in Edinburgh which are proportionate and reasonable, and a policy and guidance position which actively encourages and facilitates the delivery of new homes for Edinburgh.

Homes for Scotland is happy to discuss this representation further with City of Edinburgh Council planning officers, and would be happy to feed into any further draft of the Supplementary Guidance as appropriate to ensure that the guidance is adopted in an acceptable form as soon as possible.

We would also ask that the home building industry is involved in any amendments to associated documents, for example the Action Programme, as a result of amendments to this draft guidance.