
improving living in scotland



**RESPONSE TO FIFE COUNCIL PLANNING OBLIGATIONS
SUPPLEMENTARY GUIDANCE CONSULTATION DRAFT**

05 MAY 2017

RESPONSE TO FIFE COUNCIL PLANNING OBLIGATIONS SUPPLEMENTARY GUIDANCE CONSULTATION DRAFT

1 INTRODUCTION

- 1.1 Homes for Scotland is *the* voice of the home building industry in Scotland, with a membership of some 200 organisations together providing 95% of all new homes built for sale across the country as well as a significant proportion of affordable housing.
- 1.2 Homes for Scotland makes submissions on national and local government policy issues affecting the industry. Its views are endorsed by committees and advisory groups utilising the skills and expertise of key representatives drawn from our member companies.
- 1.3 Homes for Scotland welcomes the opportunity to comment on the Fife Council draft Planning Obligations Supplementary Guidance.
- 1.4 We have a number of serious concerns regarding the draft Supplementary Guidance (SG) in terms of its compliance with Circular 3/2012 Planning Obligations and Good Neighbour Agreements; the evidence base and methodology used by the Council in this draft SG; and the exemptions set out by Fife Council, the proportionality of these exemptions on the contributions sought, and resulting impact on viability for Homes for Scotland's home builder members. The remainder of this submission details our concerns in detail.
- 1.5 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 economic growth, employment, health and wellbeing, and should be supported as such. The industry is keen to work collaboratively with the Council to build more homes across Fife.

2 COMPLIANCE WITH CIRCULAR 3/2012

- 2.1 We acknowledge that the draft SG sets out the 'policy tests' within Circular 3/2012: Planning Obligations and Good Neighbour Agreements in the introduction (paragraph 1.2), however we expect to see these tests carrying through from the introduction to the remainder of the guidance, ensuring at all times that obligations meet the tests of the circular and serve a clear planning purpose, relate to the proposed development, relate in scale and kind to the proposed development, and are reasonable in all other respects. There are a number of instances where Homes for Scotland questions the compliance of the draft SG with the Circular, and these are set out below.

- 2.2 In light of the recent court decision in Aberdeen on the Strategic Transport Fund and its compliance with Circular 3/2012, it is particularly important that the Fife SG fully complies with the Circular. Paragraphs 32-35 of the Elsieck court decision clearly sets out reasoning in relation to compliance with the Circular.
- 2.3 In paragraph 1.6, the draft SG states that “*funds received through the planning obligations process needs to be clearly linked to the provision of specific pieces of infrastructure.*” We do not dispute that funds received through this mechanism should be linked to specific infrastructure interventions; however we consider it important to note that obligations should only be sought if development necessitates that specific infrastructure intervention. The infrastructure itself must relate to the development directly, and be necessary to make the proposed development acceptable in planning terms.
- 2.4 Homes for Scotland considers that Figure 1 on Page 4 should be amended to start at the beginning of the process of considering whether an obligation is necessary to fully comply with the Circular. The starting point should be a consideration of whether there is education/transport or other infrastructure capacity available to accommodate the proposed development. Are infrastructure interventions then required to make the proposed development acceptable in planning terms? We do not consider that the first question should relate to the type of development – essentially asking if the development is exempt from contributions or not. Planning obligations are not a tax on development and should only be sought where they meet all of the tests of the Circular – including serving a planning purpose, and necessary to make the proposed development acceptable in planning terms.

Public Art

- 2.5 We query the justification for continuing to seek public art contributions and whether this meets the necessity test in the Circular. Is a contribution towards public art necessary to make the proposed development acceptable in planning terms? We also query the level of contribution towards public art. At £300 per house, this contribution is higher than in other local authority areas.

Education Obligations

- 2.6 We do not consider that paragraph 3.16 complies with the Circular tests. The obligation must relate to the development. We query the methodology of the town-wide / area-wide multi-catchment approach in Dunfermline and Kirkcaldy. Obligations are required to relate to the proposed development either as a direct consequence of the development, or arising from the cumulative impact of development in the area. We consider that cumulative impact is appropriate within catchments, but not on a multi-catchment approach. The Elsieck court case decision clearly stated that, in this case “*many of the planned developments in the designated zones have no impact*”

at all on the interventions proposed as part of the STF's programme of improvements" (paragraph 35, Elsieck court decision). We are concerned that with the multi-catchment approach in Fife, the same issues will apply. A development should only be required to mitigate the impact of that development within a catchment, and should not be required to mitigate for other deficiencies for which it has no direct effect.

- 2.7 Furthermore paragraph 3.16 states that "*the Council may elect to apply this approach to other areas*", but does not set out the methodology or evidence base for this. It is not appropriate for further multi-catchment / town-wide areas to be added by the Council without full consultation and scrutiny.
- 2.8 Homes for Scotland is concerned that the draft guidance does not appropriately take into consideration existing issues in education infrastructure capacities. New development should only be paying contributions towards any necessary education infrastructure interventions which arise as a result of that development, and should not be required to pay towards mitigation for any existing capacity issues. Circular 3/2012 states that "*planning obligations should not be used to resolve existing deficiencies in infrastructure provision or to secure contributions to the achievement of wider planning objectives which are not strictly necessary to allow permission to be granted for the particular development. Situations may arise where an infrastructure problem exists prior to the submission of an application for planning permission*" (Paragraph 21).

Transport Obligations

- 2.8 We do not consider that transport obligations fully comply with the Circular. Has the Council taken into consideration the Elsieck decision (see 2.6 above) in relation to cumulative impact? If a Transport Assessment is undertaken for a proposed development which shows no impact on certain junctions or parts of the network, how does this sit with the SG's requirement to contribute on a pooled basis of 'core', 'intermediate' and 'outer' zones? The key determining factor as set out in the Circular and reiterated in the Elsieck decision is that even with a zonal approach, the proposed development must have an impact on proposed interventions within that zone.

3. TRANSPORTATION METHODOLOGY

- 3.1 In addition to concerns over the compliance of certain aspects of the draft SG's methodology with Circular 3/2012, Homes for Scotland also queries other aspects of the Guidance's methodology.
- 3.2 We query the SG's methodology in terms of impact on transport as it only relates to future traffic from development and does not seem to include baseline traffic growth. Evidence should be provided to show information on existing traffic at junctions, and set out baseline growth expected at these

junctions which should include development which is already committed but not proposed development. It should then clearly set out the baseline growth and new development on top of that from Audit programming for new homes, and programming for other land uses. This will allow a clear picture of how much of an impact on transport infrastructure the new development proposed in Fife will have. Pressures on transport infrastructure arising from new development will require the payment of planning obligations towards specific interventions; however the Council must also accept responsibility for the proportion of the cost associated with existing issues, and to take account of baseline growth.

- 3.3 Despite being exempt from making contributions, has the transport assessment taken into account all of the employment uses, affordable housing and retail under 2,500sqm? Evidence should be provided to demonstrate how figures have been reached. HFS is concerned that the home building industry is being required to pay contributions for all exempt uses as well (as set out in Section 4 of this representation).
- 3.4 The draft guidance does not make it clear what the exact impact of each development on the network / junctions is. Further background evidence should be provided to support this draft SG. This evidence does not need to form part of the SG itself, but should be produced alongside the guidance as a supporting document to provide the necessary clarity and evidence to developers that contributions required are proportionate, necessary and directly related to the development, as required by the tests of Circular 3/2012 (as detailed in paragraph 2.8 above).
- 3.5 We query the requirement in paragraph 4.8 for sites outwith the core zone which adjoin this zone to pay the core cost. This does not seem logical. If the guidance remains unaltered, a development should pay for the zonal cost for the zone in which it sits.
- 3.6 Paragraph 4.9 sets out calculations for non-housing development. This approach looks at trips from a proposed development as a proportion of all of the FIFEplan LDP land allocations rather than a proportion of all trips. This is not an acceptable methodology as it only considers new development within the plan, and does not look at existing levels of traffic and baseline growth projections. Furthermore the majority of non-residential uses are exempt from contributions. There is no reference in the draft Guidance to suggest that the Council will cover the cost of contributions if certain uses are exempt – therefore are non-exempt uses (i.e. private housebuilding over 10 units) expected to cover all of the cost?
- 3.7 We request further clarity on the two costs in Figure 3 on page 17 with asterisks. The note states that “*sites located within these intermediate zones will be required to pay both zone costs to reflect the inter-relationship of likely traffic impacts across each zone*”. Does this mean both the Glenrothes and Kirkcaldy intermediate zones are required to pay for both intermediate zones?

This is not as clear as it could be from the note. If this is the case, we query the proportionality and evidence base for this.

- 3.8 We note that the Strategic Transport Zones are all in the SESplan region of Fife, with none located in the TAYplan region. Is this a deliberate policy choice? We request further explanation and evidence to support this decision to understand more fully the Council's reasoning.
- 3.9 We query the methodology used to form Figure 5 on Pages 19-20. While the figure sets out anticipated costs for interventions in Kirkcaldy, Glenrothes and Dunfermline, it does not detail which proportion of each contribution will go to each individual transport project, and does not provide any timeline for delivery and implementation of the projects listed. Further information is required and a robust evidence base provided to ensure that this is compliant with Circular 3/2012. Further we note that the footnotes for this figure state "subject to verification in costed transport assessments". This guidance should provide costed interventions for which developments must contribute. If the costs are set out in Figure 5, there is no need for transport assessments to carry out further cost analysis on this figure, unless this has not been appropriately evidenced to date, in which case we query this and suggest that costs must be appropriately evidenced and backed up by apposite assessments.

4. EDUCATION METHODOLOGY

- 4.1 Homes for Scotland supports the statement in paragraph 5.1 that residential developments should only be required to provide education contributions where there is a shortfall in local school capacity.
- 4.2 We query the education infrastructure methodology. Existing school roll and capacity data should be used in the first instance, and baseline growth projections identified (including already committed development), and then the education impact from LDP sites modelled on top of this from Audit data, in order that the impact of new development can be established. Baseline growth projections including committed development plus the impact of new development from the LDP are both essential to fully understanding the picture of education infrastructure, as well as current capacities and rolls, to calculate the interventions required and contributions to be sought from new development. We therefore challenge the statement in paragraph 5.2 of the SG that "*existing capacity should not be taken into account when assessing the permanent solution that is required to support the proposed development*". This is an important consideration. Other authorities take into consideration existing capacity.
- 4.3 It is essential that where there is existing capacity in a primary or secondary school that can allow for the school to accommodate proposed development on a site by site basis that no contribution should be sought for education infrastructure from that proposed development.

4.4 From looking at current school rolls and capacities for schools in Dunfermline and Kirkcaldy (as set out in the table below), it is clear that there is a significant amount of spare capacity available which could accommodate new development. We consider existing capacity to be a relevant and important consideration to ensure that the infrastructure interventions are appropriate, and developer contributions sought are proportionate.

School - Kirkcaldy	Capacity	2016/17 School Roll	Occupancy	Available Capacity
<i>Balwearie High School</i>	1671	1547	93%	124
<i>Kirkcaldy High School</i>	1926	1109	58%	817
<i>Viewforth High School</i>	785	430	55%	355
TOTAL	4382	3086	70%	1296

School - Dunfermline	Capacity	2016/17 School Roll	Occupancy	Available Capacity
<i>Dunfermline High School</i>	1750	1549	89%	201
<i>Queen Anne High School</i>	2293	1544	67%	479
<i>Woodmill High School</i>	1445	1247	86%	198
TOTAL	5488	4340	79%	1148

- 4.5 We note that paragraph 5.1 and figure 6 of the draft guidance require developers to find a solution to capacity issues. We contest this requirement and suggest that it should be for the Council to determine how to provide the necessary infrastructure to support its plan, and to meet its requirements.
- 4.6 We note that the Education Estate Assessment (paragraph 5.12) looks at education provision over a 20-30 year period and would caution that the accuracy of this forecasting is unlikely to be strong.
- 4.7 We contest the requirement for the developer to cover the cost of the feasibility study (paragraph 5.16) where the proposed development is an allocated site. We expect that this study should have been carried out as part of the LDP preparation.
- 4.8 Paragraph 5.17 of the draft guidance states that costs for education infrastructure will be based on Scottish Futures Trust or Fife Council estimates for new secondary and primary schools. We query the choice of estimates. Do these estimates differ, and if so, why?
- 4.9 Homes for Scotland requests further information to support Figure 8 on page 25 – is there an evidence base to support this figure? How does the percentage tariff approach set out in Figure 8 align with the standard pupil per house ratio used by the Council for its school roll forecast?

- 4.10 We welcome the transition arrangements set out in paragraph 5.24 of the draft guidance.
- 4.11 Paragraph 5.26 sets out that contributions will continue to be recouped after the infrastructure has been delivered. The guidance should be amended to set clear time boundaries to this with a cut-off point. A review mechanism should be put in place to re-calculate and if the infrastructure intervention has been paid off, any additional money should be reimbursed to those who have already paid contributions, rather than the Council keeping these monies. The contributions review mechanism in paragraph 5.27 does not seem to be equitable and seems to conflict with paragraph 5.26. If, for example, there is a catchment review and as a result the cost of education infrastructure intervention is reduced, those who developed in the area first will have paid a higher fee than those who come along later in the plan's lifespan.
- 4.12 Homes for Scotland suggests that further detail is added to the draft guidance to clearly set out the Council's approach to gap funding to deliver infrastructure solutions. Does the Council have an approach for this?
- 4.13 We acknowledge the Scottish Government's recent policy to increase free nursery care to 1140 hours per annum for 3 and 4 year olds and eligible 2 year olds. This is a significant increase from the current eligibilities, and will have an impact on nursery provision across Scotland. Has the Council engaged with the Scottish Government to discuss these implications and who will be required to pay for these? The home building industry should not be expected to take on this cost of Scottish Government policy.
- 4.14 We challenge the solutions available to applicants as set out in paragraph 5.31 of the draft SG, and suggest that these will have the opposite effect than desired, and will only make developments less viable. Re-phasing a proposed development and capping build and sale numbers at an agreed figure will extend the period of the development, therefore increasing costs and reducing viability. Limiting the tenure or mix of a site to favour 'low pupil generating' homes – i.e. smaller homes, will reduce the income received from the site and therefore will negatively impact viability. Indeed the mix needs to reflect the market demand. The final solution of funding the reconfiguration of the existing school estate (layout, and ancillary space) is the only option which makes sense and can be supported. However, if this is a feasible option, why is the reconfiguration of school estates not a preferred solution in the first place rather than more costly alternatives?

5. EXEMPTIONS – PROPORTIONALITY AND IMPACT ON VIABILITY

- 5.1 Homes for Scotland acknowledges that exemptions are set out in the adopted Local Development Plan within Policy 4, however we are concerned about the impact on the viability of housing sites in Fife. By placing exemptions on Classes 4, 5 and 6, affordable housing, and retail development of less than 2,500m² gross floor area, it essentially leaves private development of over 10 units to subsidise all other development. This is not proportionate and in current times where the delivery of more homes across all of Scotland is a national and local government priority, we query the reasonableness of the homebuilding industry bearing the burden of all necessary infrastructure requirements associated with new development, instead of sharing this burden between all uses.
- 5.2 We can only assume that Classes 4, 5 and 6 have been deemed exempt to support economic growth and to attract business to Fife. However, these uses generate traffic, and will have an impact on the transport infrastructure and we query the appropriateness of requiring the private home building industry to subsidise this. We support the efforts of Fife Council in attempting to drive its economy forward and be ‘open for business’, however we consider that the Council itself should cover the necessary infrastructure costs for the exempt uses if it wishes to exempt these uses from the requirement for planning contributions, rather than requiring the home building industry to pay proportionately more than it should.
- 5.3 We query the inclusion of paragraph 3.9 to the section on exemptions. If the Council’s settled position is for a suite of exemptions, it should not be able to remove exemptions as and when it sees fit. The home building industry requires clarity, certainty and transparency to the developer obligations process. We suggest that paragraph 3.9 is deleted unless clear parameters can be provided to ensure that all developers have certainty over the types of development which are exempt or which require to contribute.

6. HEALTHCARE CONTRIBUTIONS

- 6.1 Table 2 on pages 7-11 is incomplete, and should be reissued. It is not possible to read all of the text in this figure. This is of particular importance as the section which is unreadable relates to healthcare facilities. Homes for Scotland disagrees with the principle of charging the homebuilding industry for the provision of healthcare facilities.
- 6.2 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.

- 6.3 Paragraph 2.5 suggests that where land is to be provided for healthcare facilities, or the direct provision of schools, this will “*include the transfer of land by the relevant developer to the Council at nil cost*”. We do not consider that the Council should assume ‘nil value’ as standard for transfer of land and that in line with the approach for affordable housing, land should be valued by the District Valuer.
- 6.4 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.

7. RAIL CONTRIBUTIONS

- 7.1 Paragraph 4.15 states that developer contributions towards rail may be calculated by the Council. Homes for Scotland fundamentally disagrees with the inclusion of contributions towards rail improvements. 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. Network Rail has an operator, who pays to operate the franchise as a commercial organisation, charging customers for use of the service. The increase in passengers over time as the population of Fife increases will, in turn, increase the revenue to the franchisee, and it is for Network Rail to seek any necessary remuneration from the operator to account for this and to increase the reinvestment back into the network to cover any necessary improvements.
- 7.2 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.
- 7.3 If the Council requires information on rail statistics and strategies, this information could be provided by Network Rail, SEStrans, Transport Scotland or service providers.

8. VIABILITY

- 8.1 Homes for Scotland has no issue with the process by which developers can seek a development appraisal through the District Valuer if it is considered that the “*economics of the development and requirements for planning obligations will be greater than the development is able to bear...*” (paragraph 3.11). However it is important that if the development appraisal shows that a site is not viable, and this appraisal is carried out by the DV or another credible source, this assessment must be accepted by the Council. If the Council is able to reject this appraisal, it undermines the cost, time and effort of the developer in obtaining the assessment.
- 8.2 It is essential that the Council recognises the viability issues faced by home builders, and the impact that developer obligations can have on the ability to deliver. A land owner will not sell the land if the value is too low, and if development costs mean that the developer cannot meet the land owner’s minimum requirements, development will not happen. There are allocated sites in Fife, including sites within the SESplan development corridor which have remained undeveloped through several plan cycles. This is, no doubt, down to viability and the Council must make efforts to assist and enable development in these areas, or seek to allocate development in more viable areas in future plans.
- 8.3 Through discussion with Members, we have set out below two worked examples of contributions based on information and requirements set out within the draft guidance – one for Dunfermline Core, and the other for Kirkcaldy Core. It was difficult to provide examples of per-unit costs for other areas as there is not enough information upfront within the draft guidance. We note that these costs will increase once local infrastructure contributions (if required) are added on top of these strategic infrastructure and education costs.

Financial Contribution	Rate per House	Total
Dunfermline Core Zone		
<i>Primary School (2 stream)</i>	Fixed cost	£12,930,000
<i>Secondary School contribution</i>	£6,286	£6,286,000
<i>Strategic Transport</i>	£4,990	£4,990,000
<i>Public Art</i>	£300	£300,000
TOTAL		£24,506,000
Cost per private home		£24,512

Financial Contribution	Rate per House	Total
Kirkcaldy Core Zone		
<i>Primary School (2 stream)</i>	Fixed cost	£12,930,000
<i>Secondary School contribution</i>	£2,282	£2,282,000
<i>Strategic Transport</i>	£6,997	£6,997,000
<i>Public Art</i>	£300	£300,000
TOTAL		£22,515,000
Cost per private home		£22,515

*contribution based on 3-bed home for purposes of the worked examples and on 1,000 units. This assumes a requirement for a 2 stream primary school at £12.9m.

- 8.4 It is clear from these estimated example calculations that the levels are significant per home at £24,500 and £22,500 for Dunfermline Core and Kirkcaldy Core areas respectively, plus the potential additional costs of local infrastructure requirements. In the context of the lower land values in Fife, and the coal mining legacy which requires additional groundworks studies and mitigation measures on a number of sites, these levels of contributions will seriously impact on the viability of sites across Fife.

9. GENERAL COMMENTS

- 9.1 We query the wording in paragraph 3.1 regarding **bonds** “*bonds and legal security will also be agreed...*” We do not support the use of bonds in this case, and suggest that this section is deleted, or at the very least softened to indicate that bonds ‘*may*’ be required rather than ‘*will*’ be required. The home building industry is seeking to work in a collaborative manner with the Council to deliver new homes and should not be expected to underwrite the delivery of key infrastructure. The delivery of needed homes in Fife is undermined by the Council’s preferred process of seeking a bond from the home builder.
- 9.2 Paragraph 3.5 deals with **windfall**. We do not consider that windfall has been factored fully or adequately. We request further explanation and evidence on the methodology used by Fife Council in relation to windfall, and query the methodology relating to under and over 50 unit windfall sites. We consider that where the Council seeks to carry out further assessment of the impact of windfall development, this cannot unnecessarily hold up the determination of planning applications, and must meet all tests of Circular 3/2012.
- 9.3 Homes for Scotland queries whether spending 9% of any interest on monitoring and management of the developer contributions is a legitimate use of funds. While the interest may be minimal in the current economy, these funds should be used towards the necessary infrastructure requirements rather than on monitoring etc.

9.4 We welcome the removal of the requirement to provide employment land on residential sites; however the remaining requirement for a contribution to the loss of any employment land should be subject to a review of whether the employment land is surplus to requirement. If there is an oversupply of employment land or it is not efficiently used, a contribution should not be required.

Prepared by:

Name: Nikola Miller
Title: Principal Planning Advisor
Email address: n.miller@homesforscotland.com

Homes for Scotland
5 New Mart Place
Edinburgh
EH14 1RW
Tel: 0131 455 8350
Web: www.homesforscotland.com
Twitter: @H_F_S