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Dear Kate

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
NOTICE OF INTENTION TO ADOPT SUPPLEMENTARY GUIDANCE – DEVELOPER
CONTRIBUTIONS AND INFRASTRUCTURE DELIVERY**

I refer to your correspondence of 7 September 2018 certifying notice of the City of Edinburgh Council's (CEC) intention to adopt the supplementary guidance titled 'Developer Contributions and Infrastructure Delivery'.

The Scottish Ministers, under section 22(8) of the Town and Country Planning (Scotland) Act 1997, hereby direct the City of Edinburgh Council not to adopt and issue the Supplementary Guidance 'Developer Contributions and Infrastructure Delivery'.

Reasons for Direction

The reasons for this direction are set more fully out in the Annex to this letter. The direction is given because:

- the inclusion of details of healthcare actions, contributions and contribution zones within the Supplementary Guidance does not meet the requirements of regulation 27(2) of The Town and Country Planning (Development Planning) (Scotland) Regulations 2008. These matters are not expressly identified in a statement contained in the plan as matters which are to be dealt with in Supplementary Guidance;
- it has not (on the evidence presented) been demonstrated that the contributions sought through the Supplementary Guidance, in particular levels of education and road transport contributions:
 - fairly and reasonably relate in scale and kind to the proposed development;
 - reflect the actual impacts of, and be proportionate to, the proposed development;
- as presented, the Supplementary Guidance does not provide sufficient certainty that contributions sought on the basis of it will be always be used for the purpose for which they were gathered.



Relationship to proposed development

Over and above the reasons identified above, Ministers also have concerns over the level of information provided to demonstrate the drawing of the cumulative contribution zones, within which development will be required to pay contributions towards infrastructure actions. This relates in particular to education and road transport contribution zones as set out in Annex 1 and 2 of the Supplementary Guidance. Circular 3/2012 is clear that contributions should relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development. In order to establish this, it is important to have a robust evidence base to demonstrate this relationship.

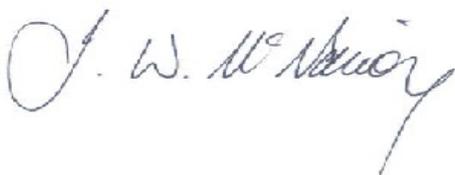
Infrastructure First

The Scottish Ministers are keenly aware that infrastructure delivery is one of the biggest challenges facing Local Authorities at this time. Almost all development requires some form of infrastructure to support it or to meet the needs of its users and it is important that development mitigates its impacts. The Scottish Planning Policy highlights the importance of ensuring that investment in necessary new infrastructure is addressed in a timely manner to support the development delivery. However, it is important that, where contributions are sought from development, they are appropriately evidenced to provide confidence and a greater amount of certainty in the planning system.

The provision of necessary infrastructure has been a key element of planning reform. Through the Scottish Government's review of the planning system, the infrastructure first approach to planning and development has been identified as a priority. As part of the post-Bill work programme we will be taking stock of the effectiveness of existing mechanisms, such as planning obligations, before exploring new approaches such as the infrastructure levy or different approaches to land assembly.

We would be happy to meet with you to explore your experience of developing this Supplementary Guidance and to discuss how we can support you (and other authorities) in the preparation of development plan policies and guidance on developer contributions.

Yours sincerely



JOHN MCNAIRNEY
Chief Planner

ANNEX

Ground 1 – Connection between LDP and inclusion of healthcare matters in the Supplementary Guidance

Regulation 27(2) of the Town and Country Planning (Development Planning) (Scotland) Regulations 2008 states that '*Supplementary guidance adopted and issued under section 22(1) of the Act in connection with a particular strategic development plan or local development plan may only deal with the provision of further information or detail in respect of the policies or proposals set out in that plan and then only provided that those are matters which are expressly identified in a statement contained in the plan as matters which are to be dealt with in supplementary guidance.*'

This means that in order for such further information or detail to be set out in Supplementary Guidance there must be a statement in the LDP in which those matters are expressly identified as matters which are to be dealt with in Supplementary Guidance.

The CEC response (5 April 2019) to this issue highlights wording within policies Del 1 and Hou 10 within the adopted LDP, as the basis for the connection.

Policy Del 1 sets out that proposals will be required to contribute to certain infrastructure provision to mitigate negative impacts. The policy goes on to identify these infrastructure types as transport, education, green space and public realm. Section 2 of Policy Del 1 states that in order to provide '*...further detail on the approach to implementation of this policy...*', Supplementary Guidance will be prepared to provide guidance including on:

a) The required infrastructure in relation to specific sites and/or areas etc.

On this basis, we consider that Section 1 of Policy Del 1 sets out the infrastructure types for which developer contributions will be sought, with Section 2 identifying that further detail will be set out in Supplementary Guidance in relation to these infrastructure types. Health infrastructure is not listed in Section 1 of Policy Del 1.

CEC response highlight paragraphs 141 and 145 of the adopted LDP. Paragraph 141 makes reference to Appendix C of the adopted LDP stating that it contains provisions for which contributions will be sought. Appendix C includes primary healthcare infrastructure as an infrastructure item for which contributions may be sought, however, neither it or paragraph 141 include an express reference to further detail being contained in Supplementary Guidance. Within paragraph 145, reference is made to development having an impact on health and community facilities. This paragraph goes on to identify that due to a '*lack of information on the scale of such requirements*', '*...any requirement would need to be considered on a case by case basis...*'. In our view there is no reference within paragraph 145 which provides a basis upon which health contribution matters are included within the Supplementary Guidance.

Policy Hou 10 of the LDP establishes the principle that housing development will only be granted where there are '*associated proposals to provide any necessary health and other community facilities relative to the impact and scale of development proposed*'. Within the CEC response (dated 5 April 2019) it is highlighted that the intention of this policy is to '*ensure new housing development goes hand in hand with the provision of a range of community facilities*'. The ability of CEC to seek developer contributions on the basis of the policy adopted in the LDP is not disputed. However, Policy Hou 10 makes no specific reference to health contribution matters being set out in Supplementary Guidance.

Overall, in relation to Policies Del 1 and Hou 10, we consider that healthcare contributions are not matters which are expressly identified in a statement contained in the plan as matters which are to be dealt with in Supplementary Guidance.

As the elements of the Supplementary Guidance which relate to healthcare actions, zones and contribution levels do not have a connection within the LDP, as required by regulation 27(2) of the Town and Country Planning (Development Planning) (Scotland) Regulations 2008, we do not consider these elements to be Supplementary Guidance. It is open to CEC to bring forward these elements as non-statutory planning guidance.

Ground 2 – Contributions in scale and kind of proposed development

Planning obligations made under section 75 of the Town and Country Planning (Scotland) Act 1997 should only be sought where they meet all of the tests identified within Circular 3/2012. One of the tests relates to the need for planning obligations to fairly and reasonably relate in scale and kind to the proposed development. Paragraph 33 of the Circular goes on to highlight that where standard charges and formulae are applied to individual developments, they should reflect the actual impacts of, and be proportionate to, the development and should comply with the general tests set out in the Circular.

Education Contributions

The Supplementary Guidance explains that CEC has assessed the impact of the growth set out in the LDP through an Education Appraisal (August 2018). To do this, assumptions have been made regarding new housing development (housing output) and pupil generation rates expected from new housing sites.

The additional information (5 April 2019) provided by CEC in relation to Liberton / Gracemount contribution zone, includes the estimated pupil generation rate and the school roll projections which includes new housing sites. This example sets out that it is the estimated pupil generation which is the basis for determining the education mitigation required, for which contributions are then sought from development within the contribution zone. In this case an estimated 599 non-denominational primary pupils will result from new housing sites, which will require a new 14 class Primary School and a 7 class Primary School (with a capacity of 630 pupils) with contributions sought for the full estimated cost of these actions.

It is unclear what role the school roll projections have in the assessment of impact and following on from that, the calculation of contributions. In the example given (Liberton / Gracemount contribution zone), there would appear to be a disconnect between the estimated pupil generation and the actual impact of that figure on the school roll projection over time which does not appear consistent with the fact that contributions are sought to cover the full cost of the identified actions. There is a lack of clarity on the approach taken to identify the distinct impacts on school roll projections resulting from new development from that of existing development and wider influences on rising rolls. Within the projected school rolls there is no information provided, for each school, showing what proportion of the projected future roll is expected to come from pupils from the housing allocations in the LDP.

Taking the above into account, the information provided with (and in support of) the Supplementary Guidance is not sufficient to demonstrate the actual impact that new development will have on the school estate over time and as such is insufficient to demonstrate that the contributions sought are proportionate to scale of impact.

Transport Contributions

The Supplementary Guidance highlights a series of transport contribution zones. A number of the road transport contribution zones identify specific actions which are costed. The cost of the transport action(s) within these zones are apportioned (via a % share) between housing sites within the zones. These zones effectively apply a flat rate contribution.

The additional information supplied by CEC (5 April 2019) confirms that for the 'Costed Contributions Zones' contributions are based on an assessment of impact as per LDP Transport Appraisal based on number of housing units.

The methodology in these zones seeks developments to make the same per-unit contribution towards an action, but does not provide evidence to demonstrate that their actual per-unit impacts are also the same. Although this approach has benefits in terms of simplicity, in order to demonstrate that contributions are fairly and reasonably related in scale and kind to the development, the relative impact of each development requiring the action should also be a factor, not simply the number of units in a development. This would most likely require more detailed transport assessment, for example, taking account of proximity to the action.

Ground 3 – Apportioning of contributions

Page 14 of the Supplementary Guidance highlights that contributions collected for certain interventions (or actions) within a zone may be apportioned to deliver infrastructure interventions which have been prioritised to enable early phases of development. It then goes on to say that *'remaining or future monies received will then be used for the delivery of other actions set out within the Action Programme'*. As it stands, Ministers do not consider that this wording within the Supplementary Guidance provides sufficient certainty that contributions will always be used for the purpose for which they were gathered. Planning obligations must relate to the development being proposed.