

6 June 2019

Supplementary Guidance on Developer Contributions and Infrastructure Delivery

City of Edinburgh Council response to comments by Consultees

Introduction and Preliminary Matters

The Council notes the terms of the Consultation Responses received in relation to the Council's further supporting information received by the Scottish Ministers on 5 April 2019. The Council considers that these responses raise matters which are directly relevant to the Scottish Ministers request for further information and clarifications dated 7 March 2019 and these are addressed below.

However, the responses also raise new matters which are not directly relevant to the Scottish Ministers request for further information or repeat points that have already been raised and addressed in the Council's previous submissions to the Ministers. In this regard, the Council relies on its previous submissions and does not consider that such matters merit any further comment at this time.

The Council also considers that reference in the consultation responses to specific DPEA Appeal decisions on individual applications that turned on their own particular facts and circumstances are not helpful in considering the general principle of whether the Supplementary Guidance should be adopted as a whole.

As such, the Council are responding solely to the matters directly relevant to the Scottish Ministers request for further information and the five Issues detailed therein.

The Council reaffirms that it is content that the Consultation outlined in its Submission for adoption by the Scottish Ministers was sufficient and that all necessary information was made available to the Ministers. However, it has come to the Council's attention that the original submissions by the Council in September 2018 have not been uploaded to the portal.

The Council's full submission is publicly accessible here -

http://www.edinburgh.gov.uk/downloads/file/12377/council_submission_to_scottish_government_september_2018

Question 1.

Section 4 (page 14) of the supplementary guidance states that: 'Whilst contributions may be required towards the delivery of a number of actions within a Zone, the Council may apportion money received from a particular development site to the delivery of infrastructure actions that have been prioritised in order to support early phases of development. Remaining or future monies received will then be used for the delivery of other actions set out within the Action Programme.'

The Council is asked to clarify the intention of this statement, in light of the requirement that planning obligations should clearly specifying the purpose for which any contribution is required, including the infrastructure to be provided (Circular 3/2012).

Reference is made to the Council's further supporting information received by the Scottish Ministers on 5 April 2019 on this question. The Council wishes to clarify that the reference to pooling and to "other actions set out within the Action Programme" means another action set out within the Action Programme within the Contribution Zone in which the development is located.

In this way, all developer contributions are spent on actions or interventions within a tightly defined area within Edinburgh in the locality of the development site and related to the development. The main thrust of that part of the Supplementary Guidance is to acknowledge that the Council will, where appropriate, front-fund and prioritise infrastructure when required to facilitate development. The reference to remaining or future monies being used for delivery of other actions set out within the Action Programme does not imply that they will be used for actions unconnected with the development from which funding is obtained.

The Council confirms that it is satisfied that its Supplementary Guidance and use of Contribution Zones is compliant with the Elsieck judgement. In contrast to the use of developer contributions in Elsieck, contribution zones are clearly tied to the developments in tightly, clearly defined zones within the City of Edinburgh with each development having an impact on the infrastructure interventions which are to be funded by the developments. Accordingly, the Council is satisfied that there will be more than a trivial connection between the development and the obligation sought.

The Council also reiterates that it is satisfied that its adopted LDP and the supplementary guidance comply with circular 3/2012. Reference is made to the Council's Statement of Conformity, Enclosure 4 of the Council's September 2018 submissions.

Question 2.

The Council is asked to specify which education interventions (for which contributions are sought within the supplementary guidance) / cumulative education contribution zones have a basis in the adopted LDP. This is with reference to section 27(2) of the Town and Country Planning (Development Planning) (Scotland) Regulations 2008.

Reference is made to the Council's further supporting information received by the Scottish Ministers on 5 April 2019 on this question and the Council's approach set out in the Education Appraisal.

However, the Council as Education Authority would like to clarify the following made by the 3rd party submissions:

- School roll projections can only provide a guide to future school pressures. They are based on rolling forward historic data and trends about the percentage of pupils who choose not to attend their catchment school. Therefore, projections may be subject to change, and the further out projections extend, the less reliable they are likely to become. The sole reliance on school roll projections therefore, could underestimate the amount of infrastructure required to accommodate the number of pupils that will be generated and mean that the impact of the development cannot be mitigated.
- In respect of the Contribution Zone boundaries, to the Council reiterates that the Cumulative Assessment Areas and Contribution Zones / Sub-Areas are based on Edinburgh's school catchment areas. They are based on groupings of primary school catchment areas within each Zone that will benefit from the same set of actions. No zone boundaries overlap each other. Areas of the city that do not currently have a catchment area, or that currently have dual catchment status, have been assigned to the most appropriate zone.

Question 3.

The Council is asked to specify the basis upon which healthcare contribution zones are contained within the supplementary guidance. This is with reference to section 27(2) of the Town and Country Planning (Development Planning) (Scotland) Regulations 2008.

Reference is made to the Council's further supporting information received by the Scottish Ministers on 5 April 2019 on this question.

The Council notes that in the LDP examination report and in relation to the appeal decisions DPEA reference PPA-230-2207 and PPA-230-2201 the Reporters accepted the principle of collecting developer contributions towards healthcare infrastructure could in principle be justified.

Policy Del 1 was amended by recommendations from the Scottish Government Reporters following the LDP examination process. Reference is made to the Council's submissions of 5 April 2019, the Council has subsequently carried out its healthcare assessment which has provided has the basis for the inclusion of healthcare provisions in the supplementary guidance.

The Council wishes to clarify that every individual application for planning permission will be assessed on its merits. A contribution recommended by the guidance will only be required if in the particular circumstances of the application it is justified having regard to the supplementary guidance and other material considerations.

Question 4.

The Council is asked to specify which transport interventions (for which contributions are sought within the supplementary guidance) have a basis in the adopted LDP. This is with reference to section 27(2) of the Town and Country Planning (Development Planning) (Scotland) Regulations 2008.

Reference is made to the Council's further supporting information received by the Scottish Ministers on 5 April 2019.

However, the Council would like to clarify the following.

- Reference is made in the consultation responses to the Council is using its Action Programme as a means to seek contributions that are not specified within the SG. In this regard, Part 2B of the SG sets out that some identified transport interventions relate only to single development sites and these are only shown in the Action Programme.
- WETA is a background document prepared by external professionals for consideration by the responsible authority to use. It informed the Action Programme and SG and these were consulted on. The WETA costs are dated when the study was last refreshed in 2016, and are the baseline costs only, while the Action Programme updates the costs each year when it is published and includes contingency and design costs.

Question 5.

The Council is asked to provide further information on the following aspects of the supplementary guidance:

a) The approach taken to identify the impacts on school roll projections resulting from new development associated with the adopted LDP and the resultant contributions sought. This is with reference to planning obligations relating to the development being proposed and contributions sought being in scale and kind to the proposed development.

Reference is made to the Council's further supporting information received by the Scottish Ministers on 5 April 2019 on this question and the Council's approach set out in the Education Appraisal and the Council's further submissions on Education methodology set out in response to Question 2 above.

b) The origin and purpose of applying a 7.5% contingency cost to the estimated costs of new education infrastructure as set out in the Education Appraisal (January 2018). This is with reference to setting out how standard charges have been calculated and the need for planning obligations being related in scale and kind to the proposed development.

Reference is made to the Council's further supporting information received by the Scottish Ministers on 5 April 2019 on this question. The Council is content that the 7.5% contingency applied to the school infrastructure actions is acceptable. The use of contingency in the costing and delivery of infrastructure is standard practise in Scotland.

c) The evidence base which informed the transport contribution zones set out in the supplementary guidance, including, specifically the basis upon which contributions are sought from development for particular interventions and the extent of contribution zones. This is with reference to planning obligations relating to the development proposed.

No additional comments provided by third party submissions

d) The basis for setting the level of transport contributions for developments within contribution zones and the extent to which an assessment of impact has been taken into account. This is with reference to planning obligations relating in scale and kind to the proposed development.

No additional comments provided by third party submissions

e) The basis for both setting the extent of the healthcare contribution zones and the level of healthcare contributions required. This is with reference to the need for planning obligations to relate to the development being proposed and to be in scale and kind to the proposed development.

Reference is made to the Council's further supporting information received by the Scottish Ministers on 5 April 2019 and the Council's further submissions on healthcare set out in response to Question 4 above.

City of Edinburgh Council

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