



City of Edinburgh Council Developer Contributions and Infrastructure Delivery Supplementary Guidance

Homes for Scotland Response to Scottish Government

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Introduction

Homes for Scotland (HFS) welcomes the opportunity to provide comment on City of Edinburgh's response to the Scottish Government's questions in its letter of 7th March 2019.

HFS submitted representations to City of Edinburgh Council on its initial draft of the Supplementary Guidance on Developer Contributions and Infrastructure Delivery in February 2017 and provided further comments on the next draft of the guidance in February 2018.

This submission responds to each of the Scottish Government's questions and provides comment on the response provided by the Council to these questions in April 2019.

HFS does not believe that the City of Edinburgh Council draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery should be adopted in its current form, however we also recognise the importance of the delivery of new homes in Edinburgh and would be concerned if this was hindered in any way by the lack of adopted Supplementary Guidance in place.

As such, HFS requests that the Council is directed to produce alternative Supplementary Guidance that complies with the requirements of Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended), and the tests of Circular 3/2012 and sets out a more proportionate framework for seeking developer contributions. This should be carried out at the earliest opportunity, and it is important that the determination of planning applications is not delayed as a result of the lack of adopted SG in place.

HFS is concerned that the draft Guidance does not clearly set out a methodology, nor does the Council's response clarify any evidence, that there is more than a trivial connection between the particular development and the obligation sought. Without this clear evidence, the obligation is unlikely to be lawful due to failure to comply with S75 of the Act (as set out in paragraphs 61-63 of the Elrick Supreme Court judgement). This is key to compliance with the legislation and the tests of Circular 3/2012. HFS members accept the need to mitigate against the impact of the delivery of new homes but would emphasise that this mitigation should be proportionate and be compliant with legislation and the tests of Circular 3/2012. In the meantime, until appropriate guidance can be put in place, HFS seeks assurances from both the Scottish Government and the Council that new development will be facilitated through the planning system, and not hindered or postponed in any way.

We request that the Council calculates developer contributions on a bespoke case by case basis in the interim period until new acceptable guidance can be put in place. School roll projections and transport assessments should be used to calculate education and transport contributions on a case by case basis, and no healthcare contributions should be sought.

ISSUE 1 – The use of developer contributions

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 specify the purpose for which any contribution is required, including the infrastructure to be provided (Circular 3/2012).

The Council does not provide any justification within its submission to Scottish Government as to how its draft Supplementary Guidance (SG) complies with the provisions of Circular 3/2012.

The Council also states that the Elswick Supreme Court judgement confirms there must be more than a trivial link between the development and the infrastructure sought. However, the response does not go on to explain its approach adequately in relation to this point. No clarity is given as to whether the contributions sought from new development towards transport, education or healthcare infrastructure would have more than a trivial link between the development and the infrastructure sought, and

HFS does not dispute that the Local Development Plan (LDP) is a material consideration, however we challenge the Council’s position that if Scottish Government does not consider the draft SG to conform fully with the Circular, the Government should then apply greater weight to the LDP. It appears that the Council is dismissing compliance with the Circular as only one material consideration. We do not believe this to be the correct interpretation of the Elswick Supreme Court judgement.

The LDP sets a marker that there must be SG in place to deal with certain key aspects of the plan. This is a high-level framework within the LDP requiring a further stage of work to be done to draft, consult upon and adopt guidance relating to the policy hook within the plan.

Paragraph 51 of the Elswick judgement states *“the inclusion of a policy in the development plan, that the planning authority will seek such a planning obligation from developers, would not make relevant what otherwise would be irrelevant”*. It goes on to state later in the same paragraph that *“if a planning obligation, which is otherwise irrelevant to the planning application, is sought as a policy in the development plan, the policy seeking to impose such an obligation is an irrelevant consideration when the planning authority considers the application for planning permission”*.

HFS believes that as a matter of principle that cumulative contributions can be lawful, however the fact that the LDP sets out a framework for SG to be put in place to detail these cumulative contributions, is not justification for the detail of that SG which will follow. The SG will go into detail on the matter, and it is incumbent on that SG to be compliant with the relevant legislation and the tests of Circular 3/2012.

The Council refers more than once to the fact that LDP Policy Del 1 was amended by Scottish Government Reporters as a result of the LDP Examination. This reiteration seems futile and is not relevant to the questions asked by the Scottish Government. Irrespective of

the way in which the LDP policy was formed, that policy forms part of the adopted LDP. It was not the Reporters at the Examination process who introduced the concept of contribution zones, as these were established in the Council's earlier 2015 Developer Contribution and Affordable Housing Policy.

The Council states (page 7 section below diagram) that contributions are pooled within each contribution zone and that infrastructure is delivered using these pooled contributions together with allocated front funding. It then goes on to state that "*future monies collected through developer contributions are then used to a) replace the front funding so it can be used for another action, and, b) allocated to the delivery of next action based on timetable set out in the Action Programme*". There is no clarity given here as to how this process meets the tests of Circular 3/2012, nor how there is more than a trivial connection between the development in question and the obligation sought (again, we reference paragraphs 61-63 of the Elsieck judgement in this regard). Contributions must be made towards specific infrastructure interventions that relate to the development in question and serve a planning purpose. Therefore, the contributions should only be used to replace front funding for that specific infrastructure intervention for which it was intended. Points a) and b) do not make this clear, therefore we do not know if this is the Council's practice. These statements could be interpreted as the contributions replacing front funding for any intervention (whether relevant to the proposed development and exact contributions made or not), and that further monies could be spent on another action identified in the Action Programme whether or not that is in the relevant contribution zone, or related to the proposed development and the reason for those contributions being made in the first place.

ISSUE 2 – Connection with adopted Local Development Plan (LDP)

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.

Education infrastructure interventions required through the SG must be compliant with the tests of Circular 3/2012. Also, again relating to paragraph 51 of the Elswick judgement, the Council must seek contributions which are relevant through the SG – *“the inclusion of a policy in the development plan, that the planning authority will seek such a planning obligation from developers, would not make relevant what would otherwise be irrelevant”*. In other words, despite an LDP policy stating that obligations will be sought towards appropriate education infrastructure interventions, it is for the SG to then set out relevant requirements. If the requirements of the SG are not relevant, and do not meet the tests of the Circular, HFS does not believe them to be appropriate.

In this case, HFS believes that the Council’s methodology for the calculation of education infrastructure requirements is flawed.

The Council’s approach is overly simplistic. It does not take into account the phasing of new development, existing capacity within the education estate, nor the baseline position (how the school estate will change over time without the addition of new homes).

As a result, the mitigation measures required within the SG are overly onerous, and do not reflect an accurate position of the projected need as a result of new development.

HFS accepts that a contribution zone approach to the delivery of education infrastructure can be appropriate, but that zones must be based on school catchments. In the Council’s example, the diagram on page 19 seems to demonstrate the relevant contribution zone, which is the same as the boundary for the Liberton and Gracemount secondary school catchment areas. However, on closer inspection, it becomes clear that this is not the contribution zone, but a map of the 2 school catchment areas. The Liberton / Gracemount Education Contribution Zone does not map across to the exact catchment areas of the two secondary schools. No justification has been provided by the Council for the boundaries of the contribution zones to explain what criteria was used in setting these boundaries, and the reasoning behind it.

The Council does not acceptably set out the process of options it should be taking into consideration of the required mitigation as a result of new development. Reconfiguration of existing accommodation should be the first option, followed by consideration of extensions to existing schools, then catchment reviews, and finally the construction of a new school as the final option. If the Council determines that a greater number of pupils should be planned for, over and above those generated as a direct impact from the relevant proposed developments, it should be responsible for the cost of the additional infrastructure provision, with the developer paying proportionately for its impact.

In the example provided by the Council, extensions to Gracemount and Gilmerton primary schools to take each to three stream schools could increase the capacity overall by approximately 300 pupils. This would more than meet the needs of the additional 223 pupils expected in these two schools as set out in the roll projection forecasts in the table on page 20 of the Council’s response.

However, because of the Council’s flawed and over simplified methodology, it has calculate that 599 primary pupils will be generated by the new development proposed in the Plan, as a

whole, and as such plans for a much more onerous mitigation (table in page 22) which would provide for an additional 630 pupils. Because the Council's methodology does not take into account phasing or existing capacity of the relevant schools, it has substantially overestimated the number of pupils required (when compared with the school roll projections in the earlier table) and as such is requiring a significantly higher contribution from developers than is necessary.

HFS does not believe the methodology explained in the Council's response is compliant with the tests of Circular 3/2012 and is fundamentally flawed. The contribution sought by the Council must reflect the actual impact of that particular development on education infrastructure.

This view is substantiated by the recent appeal decision at Ocean Drive, Edinburgh (appeal reference PPA-230-2201) by the Port of Leith Housing Association where the Reporter concluded that in the case of the appeal site, he was "*not satisfied that the proposed education contributions meet the tests in Circular 3/2012 with regard to relationship to the proposed development and being fairly and reasonably related in scale and kind to the proposed development*" (paragraph 56, page 11 of the Notice of Intention).

3 The Council is asked to specify the basis upon which healthcare contribution zones are contained within the supplementary guidance.

This response relates to both questions 3 and 5a.

Homes for Scotland does not believe that the Council's methodology for the calculation of contributions towards healthcare facilities within the draft Supplementary Guidance, nor the principle of healthcare contributions meets the tests of Circular 3/2012.

Letter from Scottish Ministers to Local Authorities:

HFS notes the Council's reference to a joint letter from Jeane Freeman MSP and Kevin Stewart MSP in March 2019 to all local authority Chief Executives and Health Board Chief Executives. The links between successful placemaking and positive health and wellbeing outcomes for communities are well documented, and HFS agrees with statements in the letter which refer to the wider physical and mental health and wellbeing benefits that can be achieved through greater collaboration between Planning Authorities and Health Boards to achieve greater understanding between the Planning Authority and Health Boards (which have key agency status in the planning process). However, there is nothing within this letter which states (explicitly or implicitly) in any way that the capital cost of delivering GP practices should be passed on to the applicant as a developer obligation. Rather, the letter quite rightly states that both Planning Authorities should "*make the most of informal and formal opportunities to work together to ensure that new development and primary care services can be delivered in a mutually supportive manner*". This letter is also dated significantly after the guidance was drafted, therefore it is difficult to see how it can be used as justification for the Council's approach.

Further, the Council states in paragraph 4 of the section relating to "Background" on page 35 of its response, that given NHS Lothian is a key agency, and its role as a key agency has "resulted in the Local Development Plan Primary Care Appraisal", that there is therefore "currently a statutory basis for the work the Council has done". HFS queries the Council's assertion that the relevant health board being a key agency in the planning process gives a statutory basis for requiring healthcare contributions associated with the delivery of new development in the City. This "statutory basis" is not explained, and HFS would argue that

there is no formal statutory basis for which healthcare contributions towards the capital costs of building healthcare practices can be sought.

General Practice Service Provision:

The Council goes on to set out its understanding of the delivery of GP services in Edinburgh. The second paragraph of this section "**GP services in Edinburgh**" (top of page 36 of the Council's response) notes that GP practice premises "*may be independently owned, leased by the practice or leased by the health board...*". HFS would note that the Scottish Government is currently working, through policy and financial commitment, to support the reduction in risk to GP practices through ownership or lease of their premises. The National Code of Practice for GP Premises, published by Scottish Government in 2017 (attached), sets out the Government's plan to facilitate the viability of GP practices and increasing financial stability by making a fund available to support GP surgeries through a transition period which will result in local Health Boards taking over responsibility for ownership or tenancy of GP practice premises. There is current Scottish Government financial commitment to this work and the Code (paragraph 9.3) anticipates that the transition to the new model where GPs no longer own their premises, having passed this burden to the local Health Board, to be complete by 2043. NHS Sustainability Loans to support this period of transition have begun to come through to GP practices now. Therefore, in Edinburgh it is anticipated that NHS Lothian will take control of the ownership or tenancy of GP practice premises over time.

It is important to consider the nature of healthcare provision in Scotland. GP practices themselves act as private businesses, and the NHS itself as an organisation is funded through central government funding.

HFS therefore does not believe that any burden should be placed on the developer through a developer obligation to contribute wholly or proportionately towards the capital costs of delivering a GP practice to a centrally funded Health Board who may be the end owner or tenant of the premises, or to a private business owning, leasing or operating such a facility.

The burden to cover any funding shortfall that may hinder the provision of new primary healthcare facilities should not fall to the development industry. Further, primary healthcare provision should not be for the Council to provide for, nor should it be for developer contributions to meet the cost of any necessary facilities. The delivery of more homes is a national priority and the positive effect on health and wellbeing that the delivery of new homes brings to an area should be recognised and supported.

Recent Appeal Decisions:

There are two noteworthy Planning Appeal Decisions which deal specifically with the issue of healthcare contributions in Edinburgh.

The first is the appeal reference PPA-230-2201 at Ocean Drive, Edinburgh by the Port of Leith Housing Association. The Reporter issued his Notice of Intention on 21st September 2017, and the decision notice was issued on 5th January 2018.

The Reporter states in the Notice of Intention that "*the fact that primary healthcare is not a council-provided service results in difficulty in demonstrating compliance with circular 3/2012*" (paragraph 61, page 12). Regarding the cost of healthcare to be provided by developers within the area in question for the particular application before him, the Reporter goes on to state that "*there is no evidence on whether that proportion represents a fair and reasonable relationship in scale and kind to the various residential developments that are anticipated [...] it may, but it may not*" (paragraph 61, page 12).

There is also the issue that the planning authority cannot determine a GP surgery catchment area or indeed whether a new surgery as a private business will be formed at all, which raises questions about the ability of the planning authority to adequately meet the tests of Circular 3/2012. The Council states in its response to Scottish Government that Healthcare Contribution Zones have not been defined on the basis of GP practice boundaries, but have been based on the inclusion of “developments that are expected to have an impact on existing practices that are unable to accommodate the additional patients generated by the new development without new infrastructure and therefore are required to make proportionate contributions to fund additional infrastructure required”. However the question remains then over where this new surgery would be, the timescales for its formation, and the catchment boundary for that new service would be, given that the Council has no control over the formation of a new GP practice, the location of it, the timescales for delivery, nor the catchment area for that practice.

This point is also picked up by the Reporter in the Ocean Drive planning appeal case where he states *“clearly it is not for the council to establish a new surgery. Nor is it for the council to establish the new surgery’s practice boundary (i.e. catchment area). That raises a question mark about the correctness of the practice capacity of 10,000 persons on which the council relies. [...] that figure of 10,000 is a fundamental component of the calculation that takes the council to the amount of contribution it seeks for this particular development. There is no indication before me that the specified requirement or the calculations on which it is based are supported by those who would be responsible for providing the new surgery. These points confirm the view that a fair and reasonable relationship in scale and kind between the required contribution and the appeal project has simply not been established”* (para 62, page 13).

In this appeal, the Reporter determined that the contributions sought do not meet the “scale and kind” test of Circular 3/2012.

The second relevant appeal decision is appeal reference PPA-230-2207 at Turnhouse Road, Edinburgh by West Craigs Ltd and Dunedin Canmore Housing Association. The Reporter issued her Notice of Intention on 30th April 2018. Paragraphs 108 – 115 of the Reporter’s Notice of Intention specifically relate to healthcare contributions.

The Reporter, in this case, found that *“there is no evidence as to whether the contribution is fair and reasonable in scale and kind to the proposal. In particular, there is no evidence to support the extent or boundaries of the contribution zones or whether these relate to practice boundaries. There is no evidence before us to justify the anticipated costs.”* (paragraph 114, page 15). The Reporter goes on to confirm (paragraph 115, page 15) that *“a fair and reasonable relationship in scale and kind between the required contribution and the proposal has not been established. The obligation would therefore fail one of the tests set out in Circular 3/2012 and accordingly the requirement for a healthcare contribution should form no part of the Section 75 obligation in this case.”*

The Council’s response to the Scottish Government’s questions relating to healthcare contributions does not add any further clarity to address the issues raised by both Reporters in the above planning appeal cases.

HFS raised concern at the principle of healthcare contributions together with the detail in the draft SG provided by City of Edinburgh Council in consultation responses submitted in February 2017 and February 2018. We maintain these concerns, and do not believe that the Council’s approach to seeking healthcare contributions from new developments meets the tests set out within Circular 3/2012.

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.

Similar to our comments on the education interventions within the SG, HFS considers that transport contributions must be clearly set out within the SG and adequately demonstrate the connection between a particular development and the intervention sought. We do not believe this has been done adequately. Little evidence is provided by the Council in its response on the actual evidence base for the transport contribution zones.

No justification has been provided by the Council for the boundaries of the contribution zones to explain what criteria was used in setting these boundaries, and the reasoning behind it.

We do not believe that evidence has been provided by the Council to demonstrate that existing traffic levels and baseline growth have been factored in to the assessment of infrastructure requirements and allocated a proportionate share of the cost of any new infrastructure. It appears that it has simply been assumed that new infrastructure requirements are only required because of new development and therefore all costs are apportioned to new development. If this is not the case, it is not clear from any evidence provided by the Council.

HFS also notes that the Council is using its Action Programme as a means to seek contributions that are not specified within the SG, and with no evidence provided to substantiate their requirement. Obligations sought should not be a shopping list of requirements, but must be based on sound evidence of need, with a robust evidence base to support this, and be clearly linked with the development in question.

In the recent Ocean Drive planning appeal (detailed above under question 3), the Reporter finds that the Council's LDP, SG and Action Programme establish a "*strategic basis for cumulative contributions*" but "*that basis does not explain the connection between the individual development proposed in this case and the totality of transport actions in the contribution zone. Circular 3/2012 requires a connection to be established with the individual development*" (paragraph 50, page 10).

Given that within each contribution zone a flat charge applies, contributions are therefore not necessarily proportionate with the actual impact resulting from the particular development in question. We do not believe this to be compliant with the tests of Circular 3/2012 and more importantly, it has not been demonstrated that there is more than a trivial link between developments and the contribution sought (again referencing paragraphs 61-63 of the Elsieck judgement in this regard).

ISSUE 3 – Further Information Required

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

See HFS 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).

HFS does not consider it appropriate to include a 7.5% contingency cost for each education intervention. We raised this as an issue within our February 2017 and February 2018 representations to the Council on the different drafts of the SG. We do not believe there is evidence to support such a high contingency. Indeed, East Lothian's contingency is significantly lower than this, and we query such a variation in percentages across neighbouring authorities.

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

See HFS response to Question 4 above.

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

See HFS response to Question 4 above.

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.*

See HFS response to Question 3 above.

**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.

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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.

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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.

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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.

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

**Homes for Scotland Representation
February 2018**

Introduction

Homes for Scotland (HFS) welcomes the further opportunity to comment on the revised draft Developer Contributions & Infrastructure Delivery Supplementary Guidance (SG) and our submission consists of this written response, together with Appendix 1, comments made in February 2017 on the previous draft SG.

Healthcare

HFS has consistently argued that healthcare contributions should not be sought through developer obligations as the NHS as an organisation is funded through central government funding, and the burden should not be placed upon the home building industry to cover the cost of centrally funded facilities.

We maintain this position, and would also refer to a recent appeal decision at Ocean Drive, Edinburgh (appeal reference PPA-230-2201) by Port of Leith Housing Association, Notice of Intention issued 21 September 2017, and decision notice issued 5 January 2018) for a number of other points. Within the Reporter's Notice of Intention for the Ocean Drive planning appeal, the Reporter comments that "*the fact that primary healthcare is not a council-provided service results in difficulty in demonstrating compliance with circular 3/2012*" (para 61, page 12). Regarding the cost of healthcare to be provided by developers within the area in question for the particular application before him, the Reporter goes on to state that "*there is no evidence on whether that proportion represents a fair and reasonable relationship in scale and kind to the various residential developments that are anticipated [...] it may, but it may not*" (para 61, page 12).

Therefore, whilst we maintain our objection to the principle of seeking healthcare contributions, we consider that where healthcare contributions are to be sought, these clearly set out the direct relationship between the development and the intervention.

The difficulty is then the issue that the planning authority cannot determine a GP surgery catchment area or indeed whether a new surgery as a private business will be formed at all, which raises questions about the ability of the planning authority to adequately meet the tests of Circular 3/2012. This point is also picked up by the Reporter in the Ocean Drive planning appeal case where he states "clearly it is not for the council to establish a new surgery. Nor is it for the council to establish the new surgery's practice boundary (ie catchment area). That raises a question mark about the correctness of the practice capacity of 10,000 persons on which the council relies. [...] that figure of 10,000 is a fundamental component of the calculation that takes the council to the amount of contribution it seeks for this particular development. There is no indication before me that the specified requirement or the calculations on which it is based are supported by those who would be responsible for providing the new surgery. These points confirm the view that a fair and reasonable relationship in scale and kind between the required contribution and the appeal project has simply not been established" (para 62, page 13).

The Reporter in this case determined that the contributions sought do not meet the “scale and kind” test of Circular 3/2012. Whilst this is an appeal decision for one specific development, it is replicable for many other developments across the city. HFS considers that the Reporter’s conclusions in this appeal set a precedent and should be taken into consideration in the redrafting of the SG.

We also query the proportionality afforded to healthcare interventions within the Guidance. In a number of instances, 100% of the cost of the intervention is sought from developers without any consideration given to the existing homes within catchment / contribution zones.

We note that there is a policy hook within the Local Development Plan for healthcare contributions to be sought, however the recent Elswick Supreme Court Decision highlights an important point that irrespective of a policy hook within a plan, a contribution which is not lawful cannot be sought through developer obligations.

As such, HFS argues that the SG should be redrafted to exclude healthcare contributions as it will be extremely difficult for the planning authority to adequately demonstrate the “scale and kind” test of the Circular when it is not in control of the formation of new GP practices, nor the catchment / boundary areas for them.

Education

HFS acknowledges that the costings for schools have increased whereby the previous guidance used the 2012 index point, and the new guidance now uses a more up to date point. However, there are a number of queries we would raise with regard to the new education infrastructure costings and figures.

Firstly, the school size has been increased from the previous guidance to this new draft guidance, with no explanation provided as to the increase in size of the floor area of these schools. For example, for a 21-class primary school and 120 nursery, the size has increased by 500sq metres from 4,900 sq metres to 5,483 sq metres. Scottish Schools for the Future metrics should require just over 4,000 sq metres for the primary school floor area, and even taking into consideration the nursery floorspace required, the primary school floor area set out in the guidance far exceeds what would actually be necessary for the school. HFS suggests that the floor area for each required school or extension should not be larger than it needs to be to ensure that additional costs are not laid on the developer with no adequate explanation provided as to why this floorspace is required.

HFS notes that the secondary school space requirement per pupil has increased from 10 sq metres to 11 sq metres within the new draft SG. No explanation has been provided for this increase. This will result in the cost per pupil required to be paid by the developer to increase.

HFS queries the requirement for contributions to be made to a 7.5% contingency for each education intervention and suggests these should be removed.

We also query the land value costs set out within the draft guidance. It seems that these may be based on residential value, however this land has not and will not be used for residential development, therefore it is only appropriate for existing use value or final use value (school) to be used. The current land values set out in the draft SG are over inflated and should be reduced. We also query the service and remediation costs set out. We seek

clarity on where these costs have come from, and suggest that they are set too high, and are unrealistic. These costs should also be amended in the final guidance to reflect evidenced estimates of servicing and remediation costs.

Evidence must be set out within the SG for each of the education infrastructure interventions sought, and the clear reasons for new development to contribute the costs set out within the guidance. This is not currently as transparent as it should be, and could lead to misunderstanding. For example, we note that there is a requirement for a new 14/15 class primary school and 80 nursery to be provided which will be Victoria Primary School Phase 1. Costs for that whole school are set out as an Education Action under Annex 1 and the Leith Trinity contribution zone attributed to those costs. However, in this case we understand that this primary school is a relocation, not a new school. It is not clear within the draft SG what (if any) responsibility the Council is accepting for its appropriate share of existing pupils which will be relocated from one school to another. Furthermore, in this example, we understand that there is a Section 75 agreement in place offering the land for free, therefore costs should not then be set out within the draft SG for the land cost and service and remediation for this school. This is just one example of the lack of clarity within the SG, and therefore the significant potential for misunderstanding on all sides.

We also query the ability of the contribution zones to adequately meet the tests of Circular 3/2012. Home builders should only be required to contribute to education infrastructure interventions within the school catchment of their development, and the guidance should clearly set this out. The recent Ocean Drive appeal decision picks up this point regarding education contributions, and the Reporter concluded that in the case of the appeal site, he was *“not satisfied that the proposed education contributions meet the tests in Circular 3/20-12 with regard to relationship to the proposed development and being fairly and reasonably related in scale and kind to the proposed development”* (para 56, page 11). The Reporter’s findings here should be taken into account by the Council, and the guidance redrafted accordingly.

Transport

Closely related to education contributions, transport contributions must be clearly set out within the SG and adequately demonstrate the connection between a development and the intervention sought. Transport contributions should not be sought for an intervention with little or no relationship to the proposed development. HFS does not consider that the relationship between contributions and individual developments is specifically set out within the draft SG as there is a flat charge within contribution zones.

The recent Ocean Drive planning appeal decision deals with this issue whereby the Reporter finds that the Council’s LDP, SG and Action Programme establish a *“strategic basis for cumulative contributions”* but *“that basis does not explain the connection between the individual development proposed in this case and the totality of transport actions in the contribution zone. Circular 3.2012 requires a connection to be established with the individual development”* (para 50, page 10). HFS considers that this appeal decision should be taken into account by the Council, and the guidance amended accordingly to ensure that Transport contributions adequately meet the tests of the Circular.

Conclusions

This response sits alongside the representation made in February 2017 to the previous draft

Developer Contributions & Infrastructure Delivery Supplementary Guidance. This representation is attached as Appendix 1 to this response.

Homes for Scotland is happy to meet with City of Edinburgh Council to discuss this submission in more detail at any stage. We reiterate our previous comments that HFS is ultimately 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.

Appendix 1

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 abnormal, 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.

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