

T: 0131-244-0237  
E: chief.planner@gov.scot

Stephen Lovell  
Principal Planning Officer  
Development Planning & Environment  
West Lothian Council

**By Email:** [DPgeneral@westlothian.gov.uk](mailto:DPgeneral@westlothian.gov.uk)  
[Steve.Lovell@westlothian.gov.uk](mailto:Steve.Lovell@westlothian.gov.uk)

Our ref: A32608925  
24 March 2021

Dear Stephen

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

I refer to your correspondence of 18 January 2021 certifying notice of West Lothian Council's (WLC) intention to adopt the supplementary guidance titled 'Developer Contributions Towards Transport Infrastructure'.

Scottish Ministers give notice that the supplementary guidance 'Developer Contributions Towards Transport Infrastructure' may not be adopted until modifications specified in the Annex to this notice have been made.

**Reasons for Direction**

The direction is given because:

A801 Corridor

The supplementary guidance contains details regarding developer contributions towards the upgrading of the A801. However, the supplementary guidance also states that "*developer contributions towards dualling of the A801 cannot be justified at this time*" (para 27, page 41). On that basis, it is considered that certain sections referring to A801 contributions should be removed, in the interests of transparency and users of the guidance.

M9 Junction 3 and Linlithgow

The supplementary guidance seeks contributions covering the full cost of proposed slip roads at Junction 3 of the M9, and junction improvements in Linlithgow town centre, to be split equally between six development sites identified in Table 14 of the guidance.

The supplementary guidance itself indicates that planned developments (see Tables 12 and 13) other than those in Table 14 contribute to the need for the proposed slip roads and

junction improvements. Additionally, the transport modelling report appended to the guidance suggests that some of the forecast increase in traffic demand in the area is associated with planned new development located within neighbouring Falkirk Council. Furthermore, the modelling suggests that the development sites from which contributions are proposed to be sought contribute a relatively small proportion of the traffic that is anticipated would use the west facing slip roads.

On that basis, it has not (on the evidence presented) been demonstrated that there is sufficient justification for seeking the full estimated cost of the proposed slip roads (and town centre junction improvements) from the sites identified in Table 14 of the supplementary guidance. It has not been demonstrated that such contributions would fairly and reasonably relate in scale and kind to the proposed development or reflect the actual impacts of, and be proportionate to, the proposed development as required by Circular 3/2012.

#### Planning Obligation Legal Costs

Para 6.2 of the supplementary guidance states: *“It is likely that developers will need to contribute to the cost of preparing legal agreements if delays are to be avoided”*. We note that there are no provisions in current regulations for the payment of charges relating to the drafting or conclusion of legal agreements under section 75 of the Town and Country Planning (Scotland) Act 1997. It is not considered appropriate that the supplementary guidance should refer to the potential payment of such charges.

#### Drafting Error

As confirmed by the planning authority, the text “£20 per dwelling” in Table 15 (page 32) of the supplementary guidance has been included in error and should be removed.

#### **Development Planning Regulations**

For the avoidance of doubt, prior to adopting this document as supplementary guidance, your Authority should satisfy itself that it has met the requirements set out in the Town and Country Planning (Development Planning) (Scotland) Regulations 2008.

In particular, we would bring to your attention the need to comply with section 27(2) of the above regulations, which state that supplementary guidance adopted and issued under section 22(1) of the 1997 Act (in connection with a particular local development plan), may only deal with the provision of further information or detail in respect of the policies or proposals set out in the 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.

**Yours sincerely**

**John McNairney**  
**Chief Planner**

CC: [Fiona.McBrierty@westlothian.gov.uk](mailto:Fiona.McBrierty@westlothian.gov.uk)

## ANNEX

### WEST LOTHIAN COUNCIL – SUPPLEMENTARY GUIDANCE – DEVELOPER CONTRIBUTIONS TOWARDS TRANSPORT INFRASTRUCTURE

#### MODIFICATIONS REQUIRED

##### A801 Corridor

Modify the supplementary guidance in the following way:

- Remove paragraphs 5.22 to 5.28 (inclusive);
- Remove figures 1 and 2;
- Remove Tables 5, 6 and 7.

##### M9 Junction 3 and Linlithgow

Modify the supplementary guidance in the following way:

- Remove paragraphs 5.44 to 5.55 (inclusive);
- Remove Tables 12, 13 and 14.

##### Seeking costs for legal expenses:

Modify the supplementary guidance in the following way:

- Remove the third (last) sentence of paragraph 6.2.

##### Drafting Error

Modify the supplementary guidance in the following way:

- Remove the text: “£20 per dwelling” from Table 15 (page 32) of the supplementary guidance.