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Finalised West Lothian Local Plan 2005

Supplementary Planning Guidance : School Start-up Costs (November 2006)

Response by Homes for Scotland

January 2007

1 Introduction

Homes for Scotland welcomes the opportunity to comment on the latest in a series of draft Supplementary Planning Guidance (SPG) documents issued by West Lothian Council in elaboration of policies proposed in the Finalised West Lothian Local Plan 2005.

Homes for Scotland has substantial concerns over this SPG in respect of:

- The prematurity of this SPG given that matters of principle are subject to objections which have yet to be heard at the Public Local Inquiry
- The extent to which the SPG actually seeks to define policy, which is a matter for the Local Plan, as opposed to set out the detailed approach to implementing policy
- An unjustified attempt to secure revenue funding from developers for matters which are properly the responsibility of the Local Authority
- The implied threat to withhold planning consent if developers do not fund all the defined costs, whether or not they comply with guidance and whether or not they are properly the responsibility of the Local Authority

2 Prematurity of the SPG

Homes for Scotland is concerned that the timing of this SPG is inappropriate. The Local Plan Inquiry has yet to consider detailed objections on developer contributions to school costs, and there is no doubt that matters of principle touched on in this SPG remain to be heard at the Inquiry. It is appreciated that the Council is seeking to elaborate on the Local Plan policy requirements as background to the Inquiry, but in trying to do so it has in fact introduced confusion into the process, as will be discussed in the next section of this response.

A principal use of SPG, as set out in SPP1, is to provide supporting detail to statutory development plan policies. It is not clear, therefore, how this SPG can serve this purpose until the Local Plan policy is approved. A further role of SPG may be to deal with urgent policy issues which cannot wait for a plan review, but clearly in this case the policy issue is contained within the Finalised Plan and is subject to detailed scrutiny through the Inquiry.

Further, SPP1 states that the public and other interest groups should be involved in preparing the SPG. That has clearly not been the case with this SPG, as none of the developer consortia involved in the CDA's have been involved in the preparation of the document. Indeed, the SPG is quite clear that it is to take immediate effect, despite ostensibly being published for consultation. It is not clear how meaningful any consultation can be in that context.

The Council should also bear in mind that the introduction of a Planning Gain Supplement looks increasingly likely. The intention of this is to clarify and simplify the process of developer contributions and replace the current and emerging plethora of local requirements being placed on developers. It may then be premature for West Lothian Council to be introducing a whole series of local requirements. The PGS is, it is understood, intended to provide a source of funding for key infrastructure including provisions such as education which are core responsibilities of Local Authorities. In any event, the development industry will wish clear and absolute assurances that, should the PGS be introduced, there will be no attempt to secure further funding for infrastructure through local policies for infrastructure to be funded via PGS monies.

3 Scope and Content of the SPG

Pan 49 Local Planning supports SPP1 in requiring that all policies for the development and use of land should be expressed through the development plan, and that SPG should provide supporting detailed guidance. However, this SPG appears to go beyond this defined role by providing further explanation of the Council's policy position, in particular by offering further interpretation of Structure Plan Policy HOU5 and paragraph 7.17 of the Finalised Local Plan. In so doing, it appears to introduce new policy considerations and to change the Council's previously-stated position in the Local Plan and pre-Inquiry Modifications.

Paragraph 7.17 of the Finalised Local Plan states that the costs of new schools to be met by developers will include "construction costs, professional fees, furnishing, fitting out **and other reasonable start-up costs associated with delivering the new schools and extensions.**" (my emphasis). Developers have understood the Council's position at Inquiry to be that all ongoing revenue costs would, rightly, remain the responsibility of the Council. However, this SPG now seeks to define a number of additional costs as start-up costs. The Council argues that Circular 12/1996 does not restrict developers contributions to capital alone, and more crucially that certain "clearly defined and time limited costs" (SPG paragraph 4.2) will have to be met by developers to remove the obstacles to the granting of consent.

There appears to be a shift in the Council's policy, and it now appears to wish to define additional revenue costs as start-up costs. It is not the role of SPG to introduce changes to the Council's policy stance. That should rightly be done through the Local Plan and should be the subject of appropriate Modifications which could be properly explored at the Public Inquiry.

It is also of concern that the SPG concedes that there is still more detail to be provided on various aspects of school specifications, designs and costs, and even the costs introduced in this SPG for the first time are described as "illustrative requirements" whose "potential scale" is set out in section 6.0.

4 Capital and Revenue Costs

The attempt to redefine certain costs as start-up costs is rejected by Homes for Scotland. In Local Government finance, there are clear distinctions drawn between capital and revenue funds, and there must be clarity to allow for the source of Council funds to be identified through Government grant and through Council Tax income. That said, there are circumstances where capital costs can be funded through revenue, but the converse (revenue costs funded through capital) can only occur in very limited circumstances. The most common would be where revenue costs such as salaries were clearly time-limited and could be supported through specific grants/capital allocations. A good example would be a dedicated and fixed-term appointment of a project officer for a capital project. It would appear that the Council is trying to use such a justification in its SPG.

However, it is clear that the costs identified in the schedule in paragraph 6.2 are not time-limited costs. Staff costs and building costs will recur throughout the life of the schools and should therefore be seen as revenue responsibilities to be met by the Council. It may be appropriate to see some costs for furniture, equipment and so on as capital costs, but it is certainly not legitimate to suggest that their future replacement in an unspecified future year (Year (n)) is a start-up cost.

Homes for Scotland is clear that the duty to provide educational services rests with the Council under Statute, and that the duty to meet revenue costs also lies with the Council, which has open to it a number of funding streams to support revenue costs. Budget management of revenue is therefore a matter for the Council. While it is acknowledged that Section 69 of the Local Government Act offers a vehicle for developers to contribute to any aspect of Local Government services, that is a different matter to a requirement to do so in land-use planning terms. This issue will be explored further in section 5.

Further arguments used by the Council are that these costs only arise because of the demands on school accommodation arising from new development, and that the resources provided under these headings will be under-utilised pending the build-up of pupil numbers in the schools. The first of these is misleading, since the Council itself is clear that the new schools capacity will in part be used to redefine existing catchments and ease pressures in existing schools. Therefore it cannot be the case that the new accommodation will be needed solely to meet the demands created by new development, and the initial costs could not therefore be attributed 100% to developers.

The second is also unrealistic. School buildings will be phased so as to avoid substantial under-used buildings; it is entirely possible that some sharing of campuses between schools could take place in early years; and it is understood that the Council itself has not yet clarified how the Denominational schools are to be provided and phased. In all these circumstances, the Council does not seem to be in a position to assert that there will be underused capacity or to define where this might be.

5 Planning Issues

The Council make it clear in the SPG that failure to meet the obligations set out in the SPG will be grounds for refusal of planning consent, on the basis that developers are not complying with Structure Plan HOU5. HOU5 states that “planning permission should not be granted for housing development until all relevant infrastructure is provided or its funding committed.” As already discussed, a major problem with this is that the Council is still seeking to define “relevant infrastructure”, and is doing so not just through the Local Plan but through this and other SPG’s, as well as apparently shifting its position through the Inquiry period. None of this offers the clarity or certainty which developers seek through the planning system. Homes for Scotland categorically rejects the position that revenue items of cost constitute “relevant infrastructure”.

The Council seeks support from Circular 12/1996, arguing that the start-up costs must be met in order to remove an obstacle to development taking place. While it may be true that there is an obstacle to be overcome, Homes for Scotland’s position is that this is an obstacle which falls to the Council to overcome. Circular 12/1996 is clear that Councils should not treat an applicant’s need for planning permission as an opportunity to obtain a benefit, financial or environmental, which is unrelated in nature, scale or kind to the development proposed.

Circular 12/1996 also clarifies the role of planning agreements in the development process. Section 75 of the Planning Act is often used to secure developer contributions, but the primary purpose of S.75 is to allow agreements restricting or regulating the use of land. Commonly S.75 is used to grant consent subject to developer contributions to the necessary or enabling infrastructure, and this is accepted as a procedure where the contribution is justified. However, an Agreement cannot be used to secure additional unjustified benefits. Therefore the implied threat within the SPG to withhold planning consent unless all the specified contributions are forthcoming is, in Homes for Scotland’s view, in excess of the terms of Circular 12/1996 as they relate to Planning Agreements.

Circular 12/1996 also clarifies the role of agreements under Section 69 of the Local Government (Scotland) Act. This allows Councils the scope “to do anything...which is calculated to facilitate...the discharge of their functions.” It may be that developer contributions in excess of the strict scope of Circular 12/1996 could be negotiated under this legislation, but it is clear that S.69 is not related to the granting of planning consent in the same way as S.75. Therefore any attempt to negotiate or secure the provisions of this SPG under S. 69 could not be used as a basis for withholding planning consent on the grounds of non-compliance with Policy HOU5 of the Structure Plan.

6 Conclusions

Homes for Scotland has objected to many of the previous SPG's issued by the Council ostensibly to support and clarify the policies of the Finalised West Lothian Local Plan. The objections have generally argued that the requirements for developer contributions proposed are excessive in terms of Circular 12/1996 and not related to the planning issue. Further, the process of trying to introduce these requirements piece by piece during the period when the policy basis in the Local Plan is still under debate at Public Inquiry is flawed. Finally, the introduction of this array of SPG's is taking place in the context of the probable emergence of a Planning Gain Supplement administered at Central Government level.

These criticisms apply equally to this SPG. In addition, this SPG now represents an attempt by the Council to amend policy outwith the Local Plan process, and to redefine capital and revenue costs in an unacceptable way. For all these reasons, therefore, Homes for Scotland strongly opposes the introduction of this SPG.