

Planning Committee

2.00pm, Wednesday, 27 February 2019

Supplementary Guidance on Developer Contributions and Infrastructure Delivery - Update

Item number	6.1
Report number	
Executive/routine	
Wards	All
Council Commitments	1,4,10,11,12 and 15

Executive Summary

This report updates the Planning Committee on the consideration of the Supplementary Guidance (SG) on Developer Contributions and Infrastructure Delivery by Scottish Ministers.

Supplementary Guidance on Developer Contributions & Infrastructure Delivery - Update

1. Recommendations

- 1.1 It is recommended that the Committee notes the contents of this report.

2. Background

- 2.1 At its meeting of 12 December 2018, the Planning Committee agreed that it:
- 2.1.1 notes with concern the receipt of the letter from the Deputy Chief Planning Officer appointing a Reporter to scrutinise the robustness of the SG on Developer Contributions and Infrastructure Delivery;
 - 2.1.2 that this is a highly unusual situation and the prohibition on adopting the SG before 22 February 2019; and
 - 2.1.3 calls for a Report setting out the implications on this for the delivery of the Local Plan.
- 2.2 The background to the SG is summarised in the following timeline.

November 2016	Edinburgh Local Development Plan (LDP) adopted. Includes new policy as recommended by examination report (Del 1 Developer Contributions and Infrastructure Delivery) and requires SG to be prepared.
December 2016	Draft SG on Developer Contributions & Infrastructure Delivery approved and published for consultation.
March 2017	Finalised SG approved
April 2017	Finalised SG submitted to Scottish Ministers with consultation information and notice of intention to adopt.
July 2017	Scottish Ministers instruct Council not to adopt that SG, due to its reference to new secondary school in International Business Gateway (IBG) area.
September 2017	Re-finalised SG approved without reference to new school in IBG and submitted to Scottish Ministers with consultation information and notice of intention to adopt.

December 2017	Scottish Ministers instruct Council not to adopt that SG for a procedural reason: new guidance should have been prepared and consulted upon.
January 2018	New draft SG approved and published for consultation.
August 2018	Finalised SG approved.
7 September 2018	Finalised SG submitted to Scottish Ministers with consultation information and notice of intention to adopt.
October 2018	Scottish Ministers extend the statutory period within which Council cannot adopt the SG from 28 days to 56 days.
29 November 2018	Scottish Ministers extend the statutory period to 168 days (i.e. by 22 February 2019) and advise of instruction to a reporter in Directorate of Planning and Environmental Appeals (DPEA) to prepare a report.

3. Main report

- 3.1 The Council as Planning Authority is entitled to enter into agreements under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended) for the purpose of restricting or regulating the use or development of land. Such agreements can include financial provisions or ‘developer contributions’ where appropriate. Policy Del 1 of the Edinburgh LDP (adopted November 2016) provides the policy basis for seeking developer contributions. This policy ensures that new developments:
- 3.1.1 contribute to the infrastructure provision, where relevant and necessary, to mitigate any negative additional impact (either on an individual or cumulative basis) commensurate to the scale of the proposed development; and
 - 3.1.2 only progress subject to sufficient infrastructure already being available or where it is demonstrated that it can be delivered at the appropriate time.
- 3.2 Policy Del 1 requires the preparation of SG to provide more detail on how developer contributions will be secured. The purpose of the SG (as defined in Policy Del 1) is to set out:
- 3.2.1 the required infrastructure in relation to specific sites and/or areas;
 - 3.2.2 the approach to the timely delivery of the required infrastructure;
 - 3.2.3 the assessment of developer contributions and arrangements for the efficient conclusion of legal agreements;
 - 3.2.4 the thresholds that may apply;
 - 3.2.5 mapping of the cumulative contribution zones relative to specific transport, education, public realm and green space actions; and

- 3.2.6 The Council's approach should the required contributions raise demonstrable commercial viability constraints and/or where forward or gap funding may be required.
- 3.3 Once adopted, SG forms part of the development plan. Therefore, to ensure proper scrutiny of the guidance, before statutory SG can be adopted by a Local Authority, it must be sent to Scottish Ministers. After 28 days (or a time period specified by Scottish Ministers) have elapsed, the Authority may then adopt the guidance unless Scottish Ministers have directed otherwise.
- 3.4 As set out above, finalised SG was submitted to Scottish Ministers on 7 August 2018. On 29 November 2018, Scottish Ministers extended the statutory period to 168 days (i.e. by 22 February 2019) and advised that they had instructed a reporter in the Directorate of Planning and Environmental Appeals (DPEA) to examine the finalised guidance and produce a report on:
- 3.4.1 the consultation undertaken by City of Edinburgh Council and way that views have been taken into account;
 - 3.4.2 the methodology used to calculate contributions for education infrastructure; and,
 - 3.4.3 Compliance of the SG with Scottish Government Circular 3/2012, which relates to developer contributions.
- 3.5 The Scottish Government's letter of 29 November 2018 is attached as appendix 1. When DPEA reporters handle planning cases, it is usually in relation to local or strategic development plan preparation or applications for development or consent. The processes for these are set out in legislation. This is not the case on this occasion.
- 3.6 Clarification was sought from the DPEA with regards to the process of preparing the report. The DPEA advised that the request to assist Scottish Ministers in examining the SG was not part of DPEA's formal casework and that the Reporter did not consider that any further information from the Council was needed to complete the terms of his commission.

Implications for delivery of the LDP

- 3.7 As set out above, statutory SG, once adopted, has the status of being part of the development plan for planning decisions. Scrutiny of the SG by Scottish Ministers helps ensure transparency in the Council's approach to the collection of developer contributions.
- 3.8 SG which has been prepared and is progressing towards adoption can still have weight as a material consideration. It can therefore be used in the determination of planning applications and pre-application advice. That has been the case with this guidance prior to and during the Scottish Ministers' consideration of it.
- 3.9 The lack of formally adopted SG does present a risk in terms of delivery of infrastructure and a financial risk to the Council and other public bodies, in that the

SG is required to be prepared by the LDP, and individual planning decisions may be at greater risk of challenge until the Guidance has development plan status.

- 3.10 The 'infrastructure provision' to which new developments are required to contribute towards and the costs associated with these actions are set out in the current LDP Action Programme (adopted January 2019).
- 3.11 The SG also takes a cumulative approach to infrastructure assessment and delivery. This is because a 'first come first served' approach does not allow consideration of the true scale of growth set out in the LDP. A cumulative approach allows for good overall infrastructure planning.
- 3.12 However, Policy Del 1 of the adopted LDP would still require new developments to contribute towards the delivery of the infrastructure required to support the LDP. This includes strategic infrastructure required by the Strategic Development Plan, public realm and other pedestrian and cycle actions, tram and other public transport actions, other road network proposals, education provision, including new school proposals, and green space actions. The provisions of Policy Del 1 would also allow the Council to ensure that new development does not proceed without sufficient infrastructure being available or demonstrated that it can be delivered at the appropriate time.
- 3.13 In addition, Policy Del 1 is supported by other policies in the adopted Plan. Policy Tra 8 (Provision of Transport Infrastructure) requires new development to address identified local and city wide individual cumulative transport impact, including Tram, and Hou 10 (Community Facilities) which requires new developments to provide any necessary health and other community facilities relative to the scale and impact of development. Policy Del 1, and government guidance Circular 3/2012 Planning Obligations and Good Neighbour Agreements, would also allow for contributions to be collected on a cumulative basis.
- 3.14 Therefore, even without formal adoption of the finalised SG, new developments in Edinburgh would still be required to contribute towards the infrastructure provision required to support the delivery of the LDP, albeit with a greater degree of risk than would be the case with adopted Guidance.

4. Measures of success

- 4.1 The measure of success is an efficient and effective approach to land use planning, which ensures that new developments are suitably served by supporting infrastructure.

5. Financial impact

- 5.1 There are no direct financial impacts arising from this report.

6. Risk, policy, compliance and governance impact

- 6.1 This report does not raise any concern in relation to risk, policy, compliance and governance. Risks relating to the relevant Supplementary Guidance are managed as part of the governance for the LDP Action Programme.

7. Equalities impact

- 7.1 There is no requirement to undertake an assessment at this time.

8. Sustainability impact

- 8.1 There are no perceived sustainability impacts arising from this report.

9. Consultation and engagement

- 9.1 There is no need for additional consultation in relation to this report.

10. Background reading/external references

- 10.1 Supplementary Guidance: Developer Contributions and Infrastructure Delivery, [Report to Planning Committee](#), 22 August 2018
- 10.2 [Edinburgh Local Development Plan](#), November 2016

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11. Appendices

- 11.1 Appendix 1 – Letter from Scottish Government, 29 November 2018



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Kate Hopper
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The City of Edinburgh Council

By email:
kate.hopper@edinburgh.gov.uk

Our ref: A22831039
29 November 2018

Dear Kate

**The City of Edinburgh Council
Supplementary Guidance on Developer Contributions and Infrastructure Delivery**

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

The Scottish Ministers are of the view that the requirements for infrastructure in our capital city, and contributions towards its costs, are very significant matters. Decisions relating to statutory guidance on such an important subject area must be robust and informed by proper consideration of available evidence.

It is noted that CEC has taken steps to address the terms of our previous direction by removing reference to a new secondary school in the International Business Gateway. However, Ministers are now concerned that this raises additional questions relating to education infrastructure and the consequent calculation of planning obligations to address the impacts of future development. Until that has been properly considered, Ministers are not minded come to a conclusion on whether or not they wish to intervene prior to the CEC proceeding to adopt the statutory guidance.

During scrutiny of the Planning (Scotland) Bill, Ministers have expressed their concerns about the adoption of supplementary guidance, which will form part of the statutory development plan, without proper scrutiny. Consistent with this view, the Minister for Local Government, Housing and Planning has now instructed an independent Reporter from the DPEA to examine the guidance and produce a report setting out:

- The consultation undertaken to date, and the way that views have been taken into account by the City of Edinburgh Council;
- The methodology used to calculate contributions for education infrastructure; and



- Compliance of the supplementary guidance with Circular 3/2012.

The Reporter will be responsible for deciding whether any additional information and evidence is required to prepare this report. The report will inform Ministers' decision on whether or not they wish to intervene prior to the adoption of the supplementary guidance.

To allow this further work to be undertaken, the Scottish Ministers have decided to further extend the period for the consideration of the document for an additional 84 days. The Scottish Ministers hereby direct under Section 22(7) of the Town and Country Planning (Scotland) Act 1997 that section 22 (6) of that Act is to apply as regards to the Supplementary Guidance on Developer Contributions and Infrastructure Delivery submitted to Scottish Ministers, with the substitution of the period of 168 days for the period of 28 days mentioned in that section. In terms of this direction section 22 (6) provides (subject to any further direction under section 22 (7)) that your authority may not adopt the supplementary guidance before 22 February 2019.

Yours sincerely

Fiona Simpson
Assistant Chief Planner