

SPG

supplementary planning guidance

**A partnership approach to deliver the infrastructure
required to support the west lothian local plan
development strategy**



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Supplementary planning guidance

A PARTNERSHIP APPROACH TO DELIVER THE INFRASTRUCTURE REQUIRED TO SUPPORT THE WEST LoTHIAN LOCAL PLAN DEVELOPMENT STRATEGY

Introduction

1.1 West Lothian continues to undergo major transformation and is expected to remain the fastest growing area in Scotland over the next 20 years.

1.2 The Finalised West Lothian Local Plan 2005 (WLLP) was published in April 2005 and seeks to implement the requirements of the Edinburgh and the Lothians Structure Plan 2015 (E&LSP).

1.3 The WLLP supports a sustained level of growth with up to 25,000 new houses being planned for. This will place stress on existing infrastructure. Fundamental to the local plan strategy is the recognition that where infrastructure improvements are required as a direct result of proposed developments, these costs will be borne by developers and not by the local authority.

1.4 In accordance with the E&LSP, the WLLP makes it clear that planning permission will not be granted unless the necessary infrastructure is provided or committed. Furthermore, the council will set out suspensive conditions in planning permissions and include suspensive clauses in section 75 agreements to ensure that development does not proceed beyond infrastructure capacity.

1.5 To assist the process of infrastructure delivery, sufficient resources will need to be secured to fund the work of professional staff within the council.

Assistance with the Funding of Council Services

2.1 The scale of planned development in West Lothian is such that an extraordinary burden will be placed on council services, particularly those services which will be required to support Core Development Area (CDA) proposals at Armadale, Broxburn, Calderwood, West Livingston/Mossend and Winchburgh. This burden on council services makes the delivery of CDA proposals and other major housing developments particularly challenging.

2.2 The council has recognised that it has a vital role to play in co-ordinating the delivery of new schools and other key infrastructure projects which will have to be provided to enable development to proceed. Accordingly, the council has put in place a Development Plan Implementation Team (DPIT) to co-ordinate such projects and to liaise with developers on funding and delivery issues. A one off budget allocation of £450,000 was approved by the council's Policy Partnership and Resources Committee in May 2005 to kick start the work of the DPIT.

2.3 A further budget allocation of £400,000 was approved by the Policy Partnership and Resources Committee in February 2006 to fund development plan related feasibility and project work by the council's Construction Services unit.

2.4 The DPIT budget allocation has enabled additional staff to be recruited and progress is being made identifying specific infrastructure requirements and procurement options.

2.5 It is emphasised that the budget allocations made to date by the council are to kick start the process of delivering the infrastructure required to support the local plan strategy and there can be no guarantee that additional resources will be identified by the council for this purpose. Given the constraints on local government finance, it is anticipated that the council will not be in a position to fund all the professional services required to support the local plan strategy. Accordingly, it is anticipated that contributions from developers will be required in some instances to remove obstacles to the delivery of key infrastructure required to support proposed developments.

2.6 It is in the interests of the council and the development industry to minimise delays in bringing forward the allocations included in the WLLP and ensure that the local plan strategy can be successfully implemented. Therefore, it is envisaged that developers and the council will adopt a partnership approach to remove obstacles to the delivery of new infrastructure. Specifically, in appropriate cases, it is envisaged that the council will enter into agreements with developers which will result in developers contributing towards the provision of professional services by the council.

2.7 In accordance with the principles set out in Scottish Office Development Department circular 12/1996 (Planning Agreements), the council will only seek developer contributions for professional services where they are related to the proposed development, are reasonable and are related in scale and kind to the proposed development.

2.8 In many cases, feasibility work will require to be undertaken in advance of planning permission being granted to avoid unnecessary delay in development commencing. In such circumstances, where the developer is willing to fund the provision of professional services by the council in advance of planning permission being granted, it is envisaged that the council and the developer will enter into a contract which will set out the work to be carried out, identify a timescale for the work to be completed and outline the level of contribution being made by the developer and the timing of payments.

2.9 Contributions levels will need to be worked out on a case by case basis given the need to relate any contribution to the scale and kind of the proposed development.

2.10 Where appropriate, provision for developer contributions for the provision of professional services by the council will also be set out in Section 75 Agreements in appropriate cases.

2.11 Examples of the type of professional service provided by the council where developer contributions may be necessary include:

- preparing legal agreements and transferring land;
- promoting compulsory purchase orders, road closures etc;
- promoting education catchment area reviews;
- preparing strategic briefs, project briefs, and accommodation schedules for new schools;

- the provision of professional services to carry out feasibility studies for school extensions;
- the provision of professional services to manage and monitor the procurement of facilities on behalf of the council;
- undertaking independent assessment of development appraisals;
- the appointment of a compliance officer for monitoring compliance with legal agreements and planning conditions;
- road safety audits;
- traffic modelling; and
- obtaining expert advice to assess development proposals.

This is a guide to potential areas where contributions may be required rather than an exhaustive list.

2.12 The council's approach to partnership working is set out in the Finalised WLLP 2005 at paragraphs 7.38, 12.76, 12.72 and Policies CDA 4 and IMP 17. It should be noted that the precise wording has been amended by pre-inquiry changes 34 and 348.

2.13 It is recommended that developers engage early with the council on these matters to avoid unnecessary delay in the provision of key infrastructure.

2.14 A paper prepared by the council's Construction Services unit explaining its role in relation to determining the briefing and procurement process for Development Plan related projects is attached as Appendix 1.

2.15 A paper prepared by the council's Legal Services unit outlining charges for the preparation of section 75 agreements and the provision of other legal services is attached as Appendix 2.

2.16 The council intends to prepare further guidance on its approach to partnership working in due course.

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APPENDIX 1

West Lothian Council: Construction Services

THE PROFESSIONAL SERVICE ROLE IN RELATION TO THE BRIEFING AND PROCUREMENT PROCESS FOR PROJECTS RELATED TO THE IMPLEMENTATION OF THE DEVELOPMENT PLAN

The model plan

1.1 The RIBA outline Plan of Work has become recognised throughout the construction industry as an acceptable framework for managing the delivery of projects. The Model Plan breaks the design/construction process into appropriate work stages and is essentially a tool for planning and co-ordinating activities.

1.2 The first work stages A and B (the feasibility stages) encapsulate the professional service role under consideration in this paper. Due to their nature, they are normally subject to a time charge fee reimbursement arrangement.

Work Stage A : Appraisal

2.1 The purpose of Work Stage A: Appraisal – is to clarify the project objectives and determine the best way of proceeding. It identifies the client’s requirements and possible constraints on development by initiating a sequence of briefing tasks in relation to the management of the procurement process as a whole.

2.2 Briefing follows a sequential decision-making process:

- Statement of need
 - Option appraisal
 - Strategic brief
 - Project brief
 - Post-project evaluation
- a) **Statement of need** – The statement of need is the client’s own first effort to define what is required. It will usually be prepared by the client. It is essential background for briefing consultants, explaining how the project fits within the client’s organisational objectives and the business plan.
- b) **Option appraisal** – The aim of an option appraisal is to identify ways of meeting the requirements defined in the statement of need, as well as possible sites, and to test them. This process, part financial feasibility and part design feasibility, is carried out by the client in collaboration with Construction Services.
- c) **Strategic brief** – The strategic brief lays out the client’s argument and rationale for the project. It states:
- To whom the strategic brief is addressed and what is requested of them
 - How the project relates to its role or mission statement, its objectives and business plan.
 - The context – why the project is necessary and what current problems it will solve
 - What broadly will be provided and how it will support activities

- Size and costs – both capital and operating, whole-life costing
- The business case for the project
- Programme and milestone dates
- Quality requirements of the new space – materials, durability and maintenance
- Environmental objectives
- Statutory compliance implications
- Political, community, corporate and future service delivery implications.

The exercise will probably be carried out by the clients and aims to ensure that the project is financially deliverable within established work programmes and timescales.

- d) **Project brief** – Once the strategic brief has been approved, subject to any necessary amendment, work can start on the project brief. This is addressed to the design team; it sets down the requirements that the design is to satisfy. The project brief is the *bible* against which the design is assessed until the completion of production information. It may also form the basis of requirements for specialist consultants and sub-contractors in some nontraditional procurement paths.

Project briefing is a dynamic consultative process undertaken and developed collaboratively by the client and appointed design team over the initial plan of work stages up to the end of stage D.

The aim is to produce a document which defines the problem to which the design will be a solution.

- e) **Post-project evaluation** – Post-project evaluation occurs once construction is complete and the project has been commissioned and occupied by the users for several months. It should not happen until the users have had time to settle into the new building, and have recovered from the disruption of occupation. Questions are asked in three categories:
- How successful was the process of briefing and design, and what lessons can be learnt?
 - How well did the various participants perform?
 - How effective was communication between them?

This review is unlikely to be successful unless it is carried out in a collaborative, non-blaming way.

- Does the building meet the objectives and requirements stated in the briefing documents, both as a design solution and in terms of the operation of its various systems?

This is a technical review of the building against objectives, requirements and benchmarks. It may include a technical review of the performance of services systems and an analysis of their costs in use in the first year.

- How satisfied are the clients and building users with the new space?

Does it work well for them? If we could repeat the process, is there anything which the client would like done differently? Is it fit for purpose? The purpose of the review is to obtain client/

building user feedback on the outcome of the briefing and design process and whether their aspirations have been met.

Post occupancy evaluation provides essential feedback information for incorporation into the briefing process for future projects and continuous improvement of the design service.

Option appraisal

3.1 The option appraisal process is a technique for setting objectives, creating and reviewing options and analysing their relative costs and benefits. Option appraisal should help develop a value for money solution that meets the project objectives. The HM treasury Green Book (2003) provides best practice guidance on option appraisal and acknowledges that the exercise should be proportionate to the proposals in question by short listing options for consideration and not eliminating the optimal solution.

3.2 An effective option appraisal should help answer the following questions:

- Have all relevant factors in deciding what the project should be, been taken into account?
- Should the project go ahead?
- What is the best way to carry out the project?

3.3 Every option appraisal should cover the following process stages:

- define objectives
- develop options
- gather information
- assess options
- analyse options
- consultation
- choose preferred option
- reporting

3.4 This whole option appraisal process forms part of a suite of documentation produced by the Scottish Executive on Scotland's School Estate and provides a good practice framework to assist local authorities to appraise investment and select the option which will best meet objectives.

3.5 When defining the objectives for school redevelopment it is recognised that educational objectives must be aligned with community objectives to realise a school's site potential by considering co-locating community health and social work services on the same campus, the objective being to improve the delivery of health and social services from more suitable facilities and bring together different community groups to contribute to area regeneration.

Work Stage B : Strategic briefing

4.1 The preparation of the strategic brief by the client organisation confirms its specification of requirements and constraints for the project from which the outline design will be developed.

4.2 It should be in sufficient detail for an appointed design team/developer organisation to carry out its duties as it is likely to form the contractual basis of future procurement routes.

4.3 It is the responsibility of the council's client organisation in collaboration with Construction Services to prepare the strategic brief and consider the following range of subjects:

- User requirements
- Schedules of accommodation
- Site information
- Design and material quality
- Facilities management
- Environmental services
- Sustainable design and development policy
- Whole life costing
- Timetable of critical events
- Target cost/cashflow constraints
- Procedures, time and cost controls
- Professional appointments
- Partnering
- Construction procurement
- Value management policy

Funding the in-house professional service role

5.1 In order to develop the feasibility stages – Work Stages A and B in sufficient detail to allow the subsequent design and construction phases to be carried out efficiently and cost effectively by others, significant input is required by the in-house professional team.

5.2 It is envisaged that contributions towards the cost of this service will be necessary by future developer/construction organisations as part of the Development Plan delivery process.

5.3 It is proposed that the feasibility cost is determined as a lump sum time charge with time sheet verification on an area by area basis generated by Construction Services' Professional business management system.

5.4 A *Construction Services Partnering Agreement: Plan of Work* is available from Bill Plummer, Design Manager. This explains the briefing and procurement process for projects in more detail.

APPENDIX 2

West Lothian Council: Legal services

FUNDING THE PROVISION OF PROFESSIONAL LEGAL SERVICES

Introduction

1.1 West Lothian Council is intent on bringing forward a wide range of development within West Lothian. Much of the development will require agreements under Section 75 of the Town and Country Planning (Scotland) Act 1997 and under Section 69 of the Local Government (Scotland) Act 1973. In addition there are likely to be occasions when other legislation will require to be used to assist development taking place.

1.2 The work required to put in place developer agreements for the many developments that are going to take place during the life of the new West Lothian Local Plan, will be considerable.

Developer agreements

2.1 The resources available to Legal services to implement developer agreements within a reasonable timescale are limited. As a result to enable developer agreements to be put in place as and when they are required, much of this work will require to be outsourced.

2.2 The cost of outsourcing and the cost of legal services monitoring the progress and the content of the developer agreements will require to be underwritten by the developers.

2.3 Legal services will monitor the work being carried out by the firms to whom the outsourced work is placed.

2.4 Where agreement cannot be reached for work to be carried out by external firms of solicitors, it may well result in delays to the granting of planning permission.

2.5 It is anticipated that legal services and the external firm to be involved in the preparation of the Section 75 or Section 69 agreement will be instructed at an early stage of the application. This would be in anticipation of much of the work being carried out in parallel with the consideration of the planning application.

2.6 If the application for planning permission were to be refused, the work in connection with the Section 75 agreement will not be taken further. The developer would, however, remain liable for all legal costs and outlays in connection with the agreement.

2.7 Developers should note that agreements made under Section 75 of the 1997 Act or under S69 of the 1973 Act are voluntary agreements between the landowner and the council. The purpose of the S75 agreement is to permanently restrict or regulate the use of the land affected by the planning permission. The undertakings, restrictions and conditions contained in the Section 75 Agreement will be recorded in the Sasine Register or registered in the Land Register and will form real and heritable burdens on the land affected by the planning permission, in all time coming.

2.8 It is important that to understand that as a Section 75 agreement runs with the land, it is more than just a contract or agreement between the developer and the Council. It is a contract or agreement that will bind all future owners of the land affected by the planning permission. This means that the restrictions on the use of the property, which have been agreed between the developer and the Council, apply not only against the original landowner, but apply against all future landowners.

2.9 If the landowner wishes to sell or dispose of all or part of the land or property that is affected by the Section 75 agreement, such a sale or disposal will be subject to the whole terms of the Section 75 agreement. While the Section 75 agreement is in existence, the land cannot be sold or disposed of unless the new owner of the land agrees to accept and comply with the terms of the Section 75 agreement.

2.10 The Section 75 agreement is enforceable by West Lothian Council against the owners of the land and their successors in title. This means that where any landowner is in breach of any of the terms and provisions of the Section 75 agreement, the Council can take enforcement action against them.

2.11 An agreement made under Section 69 of the 1973 Act does not affect the land and is not binding on future landowners. It is the case though that when an agreement is entered into under S69 of the 1973 Act, the obligations under the agreement are met in full before the planning consent is issued. Accordingly Section 69 agreements are most suitable where the developer is in a position to make a cash payment to the council which would implement the requirements of the agreement.

2.12 To enable a Section 75 agreement to be prepared, certain papers will require to be produced by the developer.

2.13 The following items will be needed:

- a) The following items will be needed: the title deeds for all of the land that is affected by the planning application; the title deeds for all of the relevant land must show that the applicant/landowner is infert in the land. That means that the applicant/landowner must have a good recorded or registered title to the land. Where the land that is to be subject to a Section 75 agreement straddles more than one local authority, complications will arise and there can be no guarantee in such a case that a Section 75 agreement can be competently entered into.
- b) Plans clearly showing the land affected by the planning application and showing any additional land to be tied to the Section 75 agreement. The plans should be to a 1:1250 scale. The plans should clearly show the land affected by the planning permission outlined red and it should also show any other land to be tied to the agreement as outlined blue. Five copies of each plan are required.
- c) Title deed searches. The title deed searches in the Sasine or the Land Register over the land affected by the planning permission and any additional land affected, will require to be brought down to a date as close as possible to the date when the Section 75 agreement is completed and is sent for recording/registration. These searches require to be produced at the applicant or landowner's expense. It would be the applicant/landowner's solicitor who would normally arrange for the searches to be obtained.

- d) If the land is affected by a standard security, the consent of the heritable creditor to the granting of the Section 75 agreement will be required. The heritable creditor will also be required to sign the Section 75 agreement as a consenter. A copy of the letter showing that the heritable creditor consents to the granting of the Section 75 agreement must be produced before the draft agreement is finalised. The applicant/landowner requires to meet all costs in connection with obtaining the consent of the heritable creditor.
- e) If the land is subject to a lease the consent of the landowner/landlord will be required. The landowner/landlord will also be required to sign the Section 75 agreement as a consenter. A copy of the letter showing that the landowner/landlord consents to the granting of the Section 75 agreement must be produced before the draft agreement is finalised.
- f) At settlement the solicitor for the landowner will be requested to grant in favour of West Lothian Council, a letter of obligation undertaking to produce to the Council within 12 months a final report or search over the subjects confirming the recording/registration of the Section 75 agreement.

2.14 All costs and outlays in connection with producing the land certificate or the title deeds, up to date searches and the consent of any heritable creditor or landlord all require to be met in full by the applicant/landowner.

2.15 It is only once the Section 75 or Section 69 agreement has been fully agreed signed by the applicant/landowner and all consenters and has been presented for recording/registration with the Registers of Scotland, that the planning permission can be released. No work to implement the planning consent should be carried out until the planning permission has been issued. Section 69 Agreements are not registered in either the land register or the sasine register.

Other legislation

3.1 Where the provisions of other legislation are required to be used to assist the delivery of a development, for example the promotion of a compulsory purchase order, the promotion of a road closure order or the like, the provisions mentioned above as to the costs thereof being met by developers will apply.

3.2 It is the intention of the council to co-operate with developers to ensure prompt and efficient delivery of developments within West Lothian.

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