

**Developer
Contributions
Towards
Public Art**

2019

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West Lothian Council

Supplementary Guidance

DEVELOPER CONTRIBUTIONS TOWARDS PUBLIC ART

1.0 Introduction

1.1 The West Lothian Local Development Plan (LDP) was adopted by the council on 4 September 2018. The LDP sets the pattern of development for West Lothian over the period 2014 – 2024 but also provides for longer term growth beyond this period. Housing land allocations within the LDP provide for 24,597 houses which will require substantial contributions towards associated infrastructure, included in which are contributions towards public art.

1.2 This Supplementary Guidance (SG) covers requirements for developer contributions towards public art and supersedes all previous Supplementary Planning Guidance (SPG) relating to developer contributions towards public art. It requires that all developers of larger housing schemes, particularly in the core development areas, retail schemes and certain other significant new developments and public buildings, to provide public art initiatives, or funding towards such initiatives, in order to enhance the new public realm and associated environments being created throughout West Lothian.

1.3 The council will work with developers and interested parties to deliver the development strategy set out in the West Lothian LDP and provide guidance on the levels of contributions required for a development proposal through the pre-application process.

2.0 Legislative Background

2.1 The Planning etc (Scotland) Act 2006 amends the Town and Country Planning (Scotland) Act 1997 by replacing the existing section 75 with a revised section 75 adding new sections 75A – 75G. Sections 75, 75A, 75B and 75C deal with planning obligations (previously known as planning agreements or section 75 agreements). A landowner may, in respect of land, either by agreement with the council or unilaterally, enter into an obligation (hereinafter referred to in this guidance as a “planning obligation or obligations”) restricting or regulating the development or use of the land. Sections 75D – 75G deal with good neighbour agreements. The new provisions and associated regulations came into operation on 1 February 2011. For the avoidance of doubt the regulations apply to all agreements made or in preparation prior to, and after this date.

2.2 Legal agreements can also be made under other legislation including the Local Government (Scotland) Act 1973, the Countryside (Scotland) Act 1967, Sewerage (Scotland) Act 1986 and the Roads (Scotland) Act 1984 and provide a possible alternative mechanism to secure developer contributions. They are useful where the nature of the contribution is relatively straightforward, involves a one-off payment and/or does not require to be secured through successors in title. For this reason they can help speed up the development process. The council has used, and will continue to use alternative agreements where appropriate and where they are considered to speed up the development process.

2.3 Scottish Planning Policy and planning circulars state that Planning Obligations can

be used to address the potentially negative impact of developments on infrastructure. Scottish Government Circular 3/2012: *Planning Obligations and Good Neighbour Agreements* sets out the basis for planning obligations which will be required to be met as a consequence of new development proposals.

2.4 The Circular 3/2012 sets out a number of policy tests for planning obligations, these are:

- necessary to make the proposed development acceptable in planning terms (paragraph 15)
- serve a planning purpose (paragraph 16) and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans
- relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area (paragraphs 17-19)
- fairly and reasonably relate in scale and kind to the proposed development (paragraphs 20-23)
- be reasonable in all other respects (paragraphs 24-25)

2.5 This Supplementary Guidance is consistent with the requirements of Circular 3/2012.

3.0 Development Plan Context

3.1 The West Lothian Local Development Plan (LDP) was prepared within the context of Strategic Development Plan 1. Developer contributions towards infrastructure are referenced within policy INF1 of the LDP. The SG provides further detail around this policy and describes when planning obligations will be sought, where exemptions may apply and the methodologies through which planning obligations have been calculated. The LDP provides for 24,597 houses, employment land and other development to meet community needs over the period 2014 – 2024 and beyond.

3.2 Public Art can increase public awareness of the heritage of an area and the environment and can stimulate a sense of identity and local pride in existing and new communities. Developer contributions for residential and retail developments where people live and shop has been key to providing public art in West Lothian. In support of this, LDP paragraphs 220-221 and policy ENV 34 set out the council's approach to public art.

3.3 Policy ENV 34: (Arts & Development) of the LDP requires developers to fund, or contribute to the cost of, works of public art appropriate to the setting and scale of major developments and their surrounding area. Policy ENV 34 is set out below:

"In accordance with the council's Public Art Strategy and related Supplementary Guidance, developers of major residential and public buildings will be required to fund or contribute to the cost of works of art appropriate to the setting and scale of their surrounding area. Artists will be invited to contribute to environmental designs at an early stage.

The implementation of the M8 Art project on a site at Junction 3 and other suitable locations is promoted."

4.0 West Lothian Public Art Plan

4.1 In addition to the LDP, the council has prepared a Public Art Plan which has informed both the LDP and the terms of this SG. The SG should be read in conjunction with the council's Public Art Plan that was originally approved in 2008 and reviewed in 2013. The strategy outlines:

- the benefits of public art;
- its relationship to national policy and guidance; and
- sets the context for the commissioning, implementation, delivery and guardianship of new public art projects in West Lothian.

5.0 Schedule of Developer Contributions towards Public Art in West Lothian

5.1 All qualifying developments for developer contributions towards public art fall into one or more of a number of categories as outlined in the "Schedule of Developer Contributions to Public Art" set out in Table 1 below.

5.2 Within each category is the minimum anticipated value of developer provided public art project, or contribution the council will seek for the purpose of delivering public art according to the scale and type of development which will form the starting point for discussions between the council and developers.

5.3 Actual payments will be index linked to the increases indicated in the RICS Building Cost Information Service All in Tender Price Index using the second quarter of 2017 as the base date for indexation.

5.4 Some development proposals will fall into several of the categories (such as, for example, a new retail development with a major central public atrium) and in such cases the council's preference will be for solutions which have the maximum public benefit.

5.5 In all cases, the provision of public art or equivalent contribution should not be regarded as a substitute for high quality design and quality materials, or the provision of built features, landscaping or other elements that might be reasonably expected in any substantial or high profile development.

6.0 Delivery of public art

6.1 Developers must contribute to public art in two ways based on calculations from the Supplementary Guidance.

- a) Some may commission, implement and own the artwork(s),
- b) while others may agree to make a contribution to the council's Public Art Fund.

6.2 This fund is designed to assist the gathering of smaller contributions from a number of developments over time in order to support the commissioning of projects in the locality of the development. The detail and programming of developer led public art projects and contributions will be the subject of legal agreements between the developer/applicant and the council

6.3 Legal agreements will contain provisions that any developer who enters into a

legal agreement to commission and implement a public art project, but subsequently fails to meet the terms of the agreement, will be required to make an equivalent financial contribution to the councils Public Art Fund.

6.4 A statement outlining how developer / applicant intend to address the requirements for contributions towards public art should accompany any planning application for qualifying developments. Where the developer / applicant intend to commission and implement a project rather than make a financial contribution, the planning application should include a Public Art Plan. Guidance on the scoping and preparation of such plans is included in this Supplementary Guidance (see below).

7.0 Exemptions

7.1 Industrial, office, storage and other non-retail commercial development is generally exempt from formal developer requirements towards public art.

7.2 However, this exemption does not apply to large, high profile developments in prominent locations, particularly those visible from the M8 and other major roads and in the centre of Livingston at Almondvale, which are covered by LDP policy ENV 34 or where planning permission has been granted and are subject to developer obligations through a legal agreement – generally a Section 75 Agreement.

7.3 Overall, it is hoped that developers of all substantial development projects will give consideration to how they can make a public art contribution to benefit not only their specific proposal, but the evolving wider environment and economy of West Lothian.

8.0 Pre-application discussions

8.1 It is requested that all developers / applicants of qualifying planning applications should engage with the council at the earliest opportunity, preferably prior to submission of any application for planning permission.

For further information or advice please contact the council's Arts Officer:

[E-mail: camille.archer@westlothian.gov.uk](mailto:camille.archer@westlothian.gov.uk)

Arts Officer (Visual and Public Art),

West Lothian Civic Centre,

Livingston.

EH54 6FF

Telephone: 01506 - 281014

9.0 Public Art Plans

9.1 Where there is a requirement for developer contributions towards public art as set out in Table 1 of this SG and it is the intention of the developer to pursue a specific project, rather than make a contribution to council promoted projects through the Public Art Fund, the developers/applicants will be expected to submit a Public Art Plan (PAP)

to the council alongside their planning application.

9.2 In preparing the PAP, the developer/applicant should be aware of and satisfy the following best practice principles which are set out more fully in the council's Public Art Strategy:

1. Artists should be engaged at the earliest possible stage in the design process.
2. Developer/applicants should recognise that adequate time must be allowed for the artists to respond to the brief, for researching and developing their ideas and for dialogue with the commissioner and the council as planning authority as well as the local community.
3. The commissioned public art should have a relevance to the community it is intended to benefit, informed by knowledge of the needs and expectations of those affected.
4. Artistic quality should be paramount. The public art should never be a substitute for, or alternative to, design quality or other elements of a development such as landscaping.

NB: Plaques, or off-the-shelf items, do not constitute public art.

9.3 The precise scope of a PAP will vary with the scale and type of project, but will be expected to cover all of the following matters:

- A description of the proposed public art project, including its main aims.
- The specific objectives which have been set.
- How the success of the project will be measured.
- The process for selecting and appointing the artist(s).
- How artists have been/will be involved in the commissioning process and delivery of the project.
- A description of the work that will be realised through the involvement of artist(s).
- A statement of how the project will have local benefit. This should refer to any consultation, research undertaken, or community involvement. This may include those areas that the proposed project will have a positive impact on.
- How the project will be managed and by whom.
- The programme for implementing the project including key stages and timescales.
- The risks associated with the implementation of the project and how they will be minimised.
- The anticipated life span of the completed work.
- A statement on the public safety aspects of the project in implementation and on completion.
- How the project will be maintained and by whom.
- The threats to the future survival of the artwork and how its future maintenance will be supported.
- A budget for the art project including its overall cost, a detailed breakdown of cost elements and the sums allocated for maintenance.
- Details of the ownership of the completed work.
- How the project will be recorded and the artist's work archived.

- How the project will be publicised.

9.4 The council will assist developers/applicants in the preparation of a Public Art Plan where necessary. In the case of larger developments, the developer/applicant may wish to engage the services of an appropriately experienced public art consultant.

9.5 The council maintains an archive of examples of successful public art projects that may help stimulate thought as to how public art can make a significant contribution to new developments in West Lothian.

9.6 The council can also provide details of other sources of guidance and information on the subject of public art.

9.7 As outlined above, an early meeting with Development Management case officer and the Arts Development Officer to discuss the developer/applicant response to the public art requirement arising from their development is strongly recommended.

9.8 To discuss public art requirements please contact the Development Management case officer dealing with the planning application.

9.9 To discuss the scope and content of the Public Art Plan, please contact the Arts Development Officer (Visual and Public Art) as set out above.

Table 1: Schedule of Developer Contributions to Public Art

Actual financial payments will be index linked to the increases indicated in the RICS Building Cost Information Service All in Tender Price Index using the second quarter of 2017 as the base date.

RETAIL DEVELOPMENT

This applies to newly created retail floor space, but excludes changes of use to retail and sites which obtained outline planning permission prior to the date of approval of this Supplementary Guidance in Spring 2019.

Single development of retail floor space over 5,000m²

- A contribution of **£12 per m²** of gross development area

This category aims to capture the largest, high impact developments.

Illustrative examples:

Very large retail complex 30,000m ²	£360,000
Large retail development 15,000m ²	£180,000
Retail building 10,000m ²	£120,000
Retail development 5,000m ²	£60,000

Alternatively, developers/applicants can arrange to provide public art of an equal value at their own cost implemented in accordance with a Public Art Plan approved as part of the planning application and including acceptable arrangements for long term maintenance of the art work.

Single development of retail floor space 1,500m² - 4,999m²

- A contribution of **£8 per m²** of gross development area

Illustrative examples:

Supermarket development at 4,000m² =
£32,000

Medium supermarket development at 3,000m² = £24,000

Small supermarket at 1,500m² = £12,000

In the case of this scale of development (generating between £12,000 and £32,000), it would be appropriate with all but the largest developments to add the financial payments to the West Lothian Public Art Fund as it would be most difficult to achieve a significant on-site public art element from such a low financial contribution. Such contributions will not be accepted as a substitute for design or material quality.

Single development of retail floor space 500m² - 1,499m²

- A contribution of **£4 per m²** of gross development area

In this category, the contribution is set lower to avoid discouraging new small-scale retail developments.

Illustrative examples:

Small shops development at 800m² = £3,200

With this scale of developments (with a maximum contribution of £4,995) it will always be appropriate to add the contribution to the West Lothian Public Art Fund as it would again be most difficult to achieve a significant on-site element at such a low contribution. Such contributions should not be a substitute for design or material quality.

RESIDENTIAL DEVELOPMENT

This applies to all new build housing, but excludes changes of use to residential and sites which obtained outline planning permission prior to the date of approval of this Supplementary Guidance in Spring 2019.

(NB: all social housing developments and other affordable housing sites delivered in accordance with the council's affordable housing policy, continue to be exempt from public art contributions for a period of two years from January 2018 to 31 December 2019).

Single residential developments (mainstream private) of 50 or more houses

- A contribution of **£250 per unit**.

This category is designed to apply to large-scale housing developments. However, for very large development schemes and Core Development Areas see the additional considerations set out below.

Illustrative examples:

Development of 500 houses	£125,000
Development of 250 houses	£62,500
Development of 100 houses	£25,000
Development of 50 houses	£12,500

Note: Alternatively, developers / applicants can arrange to provide public art of an equal value at their own cost implemented in accordance with a Public Art Plan approved as part of the planning application and including acceptable arrangements for long term maintenance of the art work. Contributions or public art projects should not be a substitute for design or material quality, or the provision of normally anticipated elements such as landscaping or entrance features.

Single residential developments (mainstream private) of 10 - 49 houses

- A contribution of **£150 per unit**.

Illustrative examples:

Development of 49 houses	£7,350
Development of 25 houses	£3,750
Development of 10 houses	£1,500

Note: With this scale of development it would be appropriate to make a contribution to the West Lothian Public Art Fund as it would be impractical to achieve a significant on-site public art element at such a low contribution.

Contributions should not be a substitute for design or material quality, or the provision of normally anticipated elements such as landscaping or entrance features.

Core Development Areas (Armadale, East Broxburn & Winchburgh and West Livingston - Gavieside & Mossend - and Calderwood) or other large scale strategic housing developments such as at “Heartlands” Whitburn, which might be undertaken in a series of smaller packages.

- The requirements will be negotiated with the above standards as a guide.
- In such large-scale residential schemes, developers will be expected to include highly developed Public Art Plans as part of their overall proposals for the new communities being created.

OTHER QUALIFYING DEVELOPMENT

This refers to new build projects only, but excludes changes of use and sites which obtained outline planning permission prior to the date of approval of this Supplementary Guidance in Spring 2019.

The precise level of contributions will be negotiated on a case-by-case basis.

Public buildings such as schools, hospitals, sheltered housing

- Integration of artwork with the design concept where it can be enjoyed by the public and users / residents.
- This includes projects developed or promoted by the council.

Publicly accessible buildings with atriums, courtyards

- Artwork in the publicly accessible areas where it can be enjoyed by all users.

Publicly funded schemes such as National Lottery supported projects

- Appropriate art components in publicly accessible areas.

Single prominent developments in traditional town and village centres

- Small artwork or hand crafted components on facades such as carvings, gates, and date stones.

Single developments in prominent locations in the landscape

- Individual artworks of an appropriate scale and location.

Single developments in prominent locations adjacent to the strategic road network

- Individual artworks of an appropriate scale and location.

- Note that West Lothian Local Development Plan (2018) Policy ENV 34 promotes the implementation of a public art project on a site at M8 - Junction 3, Livingston and at other suitable locations on the M8.

New developments in historic areas or buildings constructed in a historic fashion

- Artistic, hand crafted date stones or other devices designed to reveal the age of the building and enhance the character of the area.

Use of Developers contributions to part-fund the West Lothian Council Arts Development Officer (Visual and Public Art) post

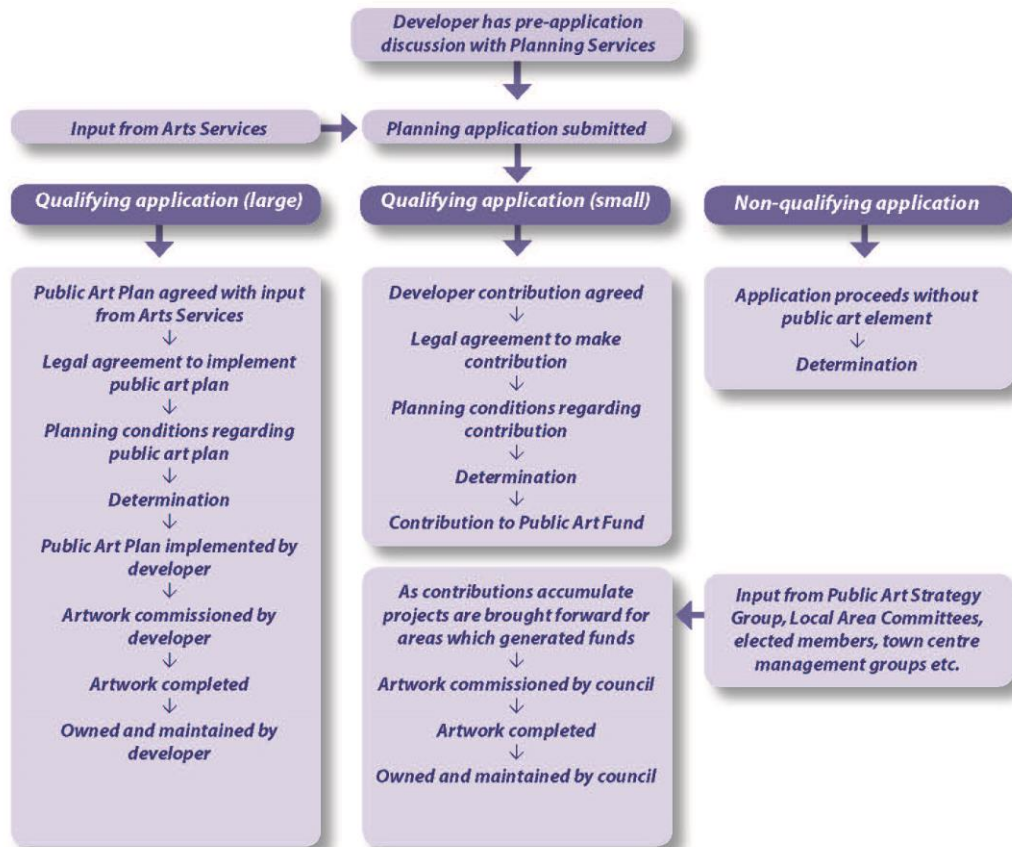
From developers contributions made to the West Lothian Public Art Fund, the council will use £25k per annum to contribute towards the 0.5 FTE cost of the West Lothian Council Arts Officer (Visual and Public Art) post. This contribution will be kept under review. The post will:

- Lead recruitment of artists on behalf of the council and / or developers;
- Chair the quarterly meetings of the Public Art Strategy Group;
- Assist developers in preparing their Public Art Plans, where required;
- Assist Development Management in negotiating financial contributions towards public art;
- Negotiate with developers/applicants and others the ownership or guardianship of each artwork;
- Advise on the involvement of artists, planning conditions, briefs and agreements for the commissioning of public art;
- Assess and make recommendations on the maintenance requirements for each proposed public artwork;
- Promote awareness of the benefits of public art across West Lothian;
- Maintain knowledge of practising artists in the field of public art;
- Record, evaluate and celebrate the success and impact of public art in West Lothian;
- Advise other council services on public art matters;
- Benchmark with others on public art strategy and performance;
- Liaise with national public art development agencies and organisations;
- Develop and maintain an awareness of best practice in public art elsewhere;
- Help develop local artists and craft workers as potential participants in public art projects;
- Establish and maintaining a database of all public art in West Lothian and an archival record of all projects as they are completed;
- Report to the council's Culture and Leisure Policy Development and Scrutiny Panel on public art projects and associated initiatives, such as the "Grassroots" public art grants scheme funded from the WL Public Art Fund; and
- Liaise with the council's Transportation Services (Structures Unit) and Property Services on public safety issues, and help assess the risk of each proposed artwork for insurance purposes.

10.0 The public art process

10.1 The flowchart below indicates the principal routes towards the successful implementation of public art schemes.

West Lothian Public Art Process Flowchart:



10.2 Many cases, particularly those linked to a substantial development, will see developers/applicants submitting a Public Art Plan as part of their application. This will require early recognition by the developer/applicant of their responsibilities and close liaison with the council officials in both Arts and Planning Services.

10.3 In some situations the need for public art will already be highlighted in advance through a planning brief, conditions of sale or the Core Development Area master planning process.

10.4 After an appropriate Public Art Plan has been agreed along with all other planning matters, the application will be referred to committee for approval and, if granted, consent will be issued with appropriate planning conditions and / or legal agreements designed to ensure the effective implementation of the public art project.

10.5 In all but exceptional circumstances such projects will be the responsibility of the developer during and after implementation. In most situations the artwork will remain in the ownership of the developer. Only in exceptional circumstances will the council take ownership of public art.

10.6 With smaller schemes, which are not of a scale to support a discreet public art project, the developer will be expected to make a contribution to the Public Art Fund. This requirement will be negotiated by Planning Services and made a formal requirement through planning conditions and/or legal agreements.

10.7 In time, this will see some projects initiated and implemented directly by the council using the West Lothian Public Art Fund. Such projects are likely to remain in council guardianship after completion.

10.8 There will also be projects that are wholly independent initiatives of developers or landowners and there is also scope for publicly funded projects delivered by other means.

10.9 Where site specific public art is under discussion the project will be brought to the relevant Local Area Committee for information and input.

10.10 During implementation the council will monitor the project and ensure that records are made of progress at key stages.

10.11 On completion, the council will check the project before confirming that the outcome is satisfactory. Information recorded during implementation and on completion will be archived and held by the council.

10.12 Formal opening and publicity will be arranged as appropriate with the contribution of the developer/applicant/funder given due recognition.

10.13 The council will continue to monitor projects after completion to ensure that the agreed maintenance regime is in place.

10.14 Should any proposals come forward for the decommissioning of existing public art then this will be considered by the West Lothian Public Art Strategy Group that will refer the matter to the relevant scrutiny panel and Local Area Committee as appropriate. Where agreed, disposal will be in accordance with an approved method.

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