

Developer Contributions towards Cemetery Provision

2019



DEVELOPER CONTRIBUTIONS TOWARDS CEMETERY PROVISION IN WEST LOTHIAN

Consultation Draft (June 2019)

INTRODUCTION

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 cemetery provision.
2. The anticipated level of growth set out in the LDP will require the provision of infrastructure to accommodate this. As such, there will be a requirement to replace or expand cemetery facilities in West Lothian over the lifetime of the LDP in order to cope with the expanding population generated by the scale of residential development planned over the LDP plan period and beyond.
3. This Supplementary Guidance (SG) covers requirements for developer contributions towards cemetery provision and supersedes all previous Supplementary Planning Guidance (SPG) relating to developer contributions towards cemetery provision. It requires that all housing proposals contribute towards cemetery provision in West Lothian. This SG will take effect from the date it was approved by the Council Executive [insert date]. The SG will be further revised as circumstances change. Factors which could lead to the SG being reviewed include the availability of updated information on costs for land acquisition and establishment of new or expanded cemeteries; and changes in the housing land supply.
4. This SG will not be applied retrospectively to sites which already have planning permission in principle or to applications for the approval of matters specified by condition without any requirement to contribute to general infrastructure, provided that the permission remains capable of being implemented. New planning applications, for similar developments on these sites (including applications for renewal of planning permissions), will however be required to comply with the terms of this SG and to policies set out in the LDP.
5. For the avoidance of doubt, this SG applies to council owned sites that may be brought forward for residential development, so the council will contribute to these costs in the same way as any other private landowners and developers.

LEGISLATIVE BACKGROUND

6. 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 of the Act 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.

7. 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.
8. 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.
9. 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)
10. This SG is consistent with the requirements of Circular 3/2012 and:
 - explains the reasons why new or expanded cemeteries are necessary;
 - identifies where these cemeteries are needed;
 - sets out the council's policy for securing developer contributions towards the costs of establishing these new or expanded cemeteries; and
 - sets out developer contribution rates.
11. The planning obligations set out in this SG will be secured by a Section 75 agreement concluded between the council and the applicant before the release of a planning permission. However, in cases where a relatively small financial contribution in relation to the overall development cost is involved, it may be possible to reduce the time and expense of concluding a legally binding formal Section 75 agreement. The council could collect the contribution through the exchanges of letters prior to the planning permission being released or through a section 69 Agreement.

DEVELOPMENT PLAN CONTEXT

Strategic Development Plan

12. The Strategic Development Plan (SDP1) for Edinburgh and South East Scotland sets the strategic policy context for the securing of developer contributions towards infrastructure. Paragraph 123 states:

“Developer contributions are important and will be required to assist in delivery and to address any shortfalls in infrastructure that arise as a direct result of new developments. LDPs will set out the broad principles for planning obligations including the items for which contributions will be sought and the occasions on which they will be sought. Mechanisms for calculating levels of contributions should be included in supplementary guidance with standard charges and formulae set out in a way that assists landowners and developers.”

13. Policy 9 provides the strategic policy support for the delivery of infrastructure as follows:

Policy 9 Infrastructure

The Strategic Development Plan identifies in Figure 2 and through its Action Programme infrastructure, including transportation infrastructure, required to deliver the development of the Strategy. Local Development Plans will:

- a. Safeguard land to accommodate the necessary infrastructure required to deliver the Strategic Development Plan as set out on Figure 2 and in the accompanying Action Programme;*
- b. Provide policy guidance that will require sufficient infrastructure to be available, or its provision to be committed, before development can proceed. Particular emphasis is to be placed on delivery of the strategic infrastructure requirements that are set out in Figure 2 and in the Action Programme; and*
- c. Pursue the delivery of infrastructure through developer contributions, funding from infrastructure providers or other appropriate means, including the promotion of alternative delivery mechanisms.*

Particular emphasis is to be placed on delivery of the strategic infrastructure requirements that are set out in Figure 2 and in the Action Programme.

West Lothian Local Development Plan (LDP)

14. The West Lothian Local Development Plan (LDP) was prepared within the context of Strategic Development Plan 1 (SDP1). Developer contributions towards infrastructure are referenced within policy INF1 of the LDP. This 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.

Policy INF 1 Infrastructure Provision and Developer Obligations

The council will seek developer obligations in accordance with Scottish Government Circular 3/2012 ('Planning Obligations and Good Neighbour Agreements'), as interpreted by emerging case law and amended by subsequent amendments and legislation, to mitigate the development's individual or cumulative impacts upon infrastructure, including cross-boundary impacts. Any such obligations will be concluded prior to the issue of planning permission.

Where appropriate developer obligations have been secured, planning permission will normally be granted. In all cases, the council will consider the economic viability of proposals alongside options of phasing or staging payments from developers.

Development will not be permitted to commence unless:

- a. funding (including any contributions from developer obligations) for necessary infrastructure is fully committed and that infrastructure is capable of being delivered; or*
- b. phasing to manage demand on infrastructure has been agreed; or*
- c. in advance of all necessary infrastructure requirements being fully addressed, sufficient infrastructure is available in the interim to accommodate the development.*

Only where infrastructure constraints, identified by the council in conjunction with relevant authorities, cannot be overcome, will there be a presumption against development.

Infrastructure requirements are identified in Appendix Two and further details will be provided in subsequent supplementary guidance and the Action Programme. Any related planning obligations will require to meet the policy and legal tests set out above. Proposed sites for new infrastructure are listed in Chapter 6.

Note: Supplementary Guidance explaining how developer obligations will be implemented will be developed during the Plan period.

15. Paragraphs 115 – 117 (page 30) of the LDP make specific reference to cemetery provision and developer contributions. For ease of reference these are set out below:

“115. There will be a requirement for additional cemetery provision to cope with the expanding population generated by the substantial residential development planned for West Lothian over the plan period.

116. Where appropriate, the council may seek developer contributions towards the provision of new and expanded cemeteries across West Lothian. Proposals for new cemeteries or cemetery extensions will be assessed on their merits and in particular with regard to the impact of such use on the water environment.

117. Supplementary guidance will be prepared by the council, setting out how developer contributions towards cemetery provision are to be calculated”.

EXISTING CEMETERY PROVISION

16. The council manages and maintains all council owned cemeteries, churchyards and war memorials. There are currently 33 burial grounds, including cemeteries and churchyards in West Lothian reflecting the dispersed settlement pattern of the area. Of these burial grounds, 21 are cemeteries and 12 are churchyards. There are an additional 4 churchyards that are maintained by other organisations. Of the 21 cemeteries, 11 are in regular use and 10 are no longer open for new lairs. Further details are available from the council's Operational Services.
17. The council has a statutory obligation under the Burial and Cremation (Scotland) Act 2016 to provide and maintain cemeteries and burial grounds. The 2016 Act was designed to integrate previous legislation, however, where the Act does not provide legislative guidance, previous legislation would still apply. This mainly concerns responsibility for churchyards. Relevant legislation relating to these matters is as follows:
- The Burial Grounds (Scotland) Act 1855
 - Church of Scotland (Property and Endowments) Act 1925
 - The Church of Scotland (Property and Endowment) Amendment Act 1933
 - Cremation Act 1902
 - Cremation Act 1952
 - Cremation (Scotland) Regulations 1935
 - Cremation (Scotland) Regulations 1952
 - Cremation (Scotland) Regulations 1967
 - Cremation (Scotland) Amendment Regulations 1985
 - The Cremation (Scotland) Amendment Regulations 2003
18. Currently, capacity for 20+ years exists at the main operational cemeteries listed below. This capacity also includes the proposals set out in Table 1.

Armadale (Woodbank extension)
Bathgate (Boghead)
East Calder (Almondell)
Fauldhouse Extension
Kirknewton
Linlithgow (Kingscavil)

Livingston (Adamrae)
Uphall (Loaninghill)
West Calder (Hermand Park)
Whitburn (Blaeberry)
Winchburgh

19. Based on current demand, and due to developments within cemeteries over the last 10 years, no cemetery is expected to reach capacity in the next 10 plus years. However, where anticipated capacity is expected to be reached in the longer term (10 plus years) there is a need to develop and adopt strategies to ensure sufficient burial provision for the period covered by the LDP and beyond to allow the council to meet its statutory requirements.

PROPOSED NEW CEMETERY PROVISION

20. The LDP sets out specific requirements for new/extended cemetery provision. These are set out in Table 1 below:

Table 1: LDP Proposals for Cemetery Provision in West Lothian

LDP reference	Address	Requirement	Estimated Cost	Implemented
P-6	Hardhill Road Cemetery, Boghead, Bathgate	Land safeguarding for extension to cemetery	£750,000	
P-50	Adamrae, Livingston	Land safeguarding for extension to cemetery	£750,000	
P-74	Loaninghill, Uphall	Land safeguarding for extension to cemetery		Yes
P-85	Blaeberryhill Road, Whitburn	Land safeguarding for extension to cemetery	£1 500,000	
P-95	Winchburgh CDA	Land safeguarding for extension to cemetery	£1,000,000	
	Fauldhouse Extension	Extension area is within the boundary of the cemetery	£500,000	

21. Limited funding is available to the council to acquire, establish, landscape and service new cemeteries with car parking and site accommodation. The council intends to forward fund these new cemeteries and collect developer contributions over time in respect of the provision made. The council has also forward funded work to cemetery provision at Armadale, East Calder, Fauldhouse, Mid Calder and West Calder and requires to re-coup costs.
22. Costs associated with these projects and developer contributions received to 31 March 2019 are set out in Table 2.

Table 2: Cemetery Provision Forward Funded by West Lothian Council

Location	Project Cost	Contributions received to 31 March 2019
Woodbank Cemetery extension, Armadale	£629,000 between 2006/07 & 2012/13	
New cemetery, East Calder	£1,966,000 between 2011/12 & 2017/18	
Cemetery extension, Fauldhouse	£1,099,000 between 2006/07 & 2013/14	
New cemetery (Hermand Park) West Calder	£1,023,000 between 2006/07 & 2014/15	
TOTAL	£4,717,000	£118, 028

23. The council's current capital programme sets aside £9,000 towards cemetery provision for the period 2018/19 to 2027/28. This cost will be used for determining the level of developer contributions. The precise cost of acquiring, servicing and laying out the various cemeteries has yet to be established. This can only be established once a site is identified and acquired and a brief is prepared for individual cemetery site requirements. This may be different depending on the operational requirements of existing cemeteries.
24. Taking into account the principles in Circular 3/2012 that developer contributions secured through planning agreements should be reasonable in all respects and should reflect the scale of development and the likely impacts it will generate, the approach adopted in this SG is that developer contributions should be based on the likely impact that each development is likely to have on the need for cemetery space.
25. There is a degree of choice for people as to which cemetery they may wish to use. Consequently, it is not possible to establish specific "catchment" areas related to cemetery provision for specific settlements. A more strategic response to cemetery provision across West Lothian is required. Hence, a standard charge will apply to all new housing across the area to allow the service to be provided to all main communities.
26. Based on this indicative overall cost, developer contributions of £106 per house have been established (see Appendix A for housing land supply and the methodology for calculating the level of developer contribution).
27. Actual payments will be index linked to the increases indicated in the RICS Building Cost Information Service Tender Price Index using the fourth quarter 2017 rates as a base date. The levels of contribution will be reviewed at regular intervals to take account of changed circumstances.

Exemptions

28. The only circumstances where developers will be exempt from this policy will be sites where planning permission has been granted prior to the date of Council Executive approval of this SG (unless it is proposed to increase the number of houses on the site in which case a contribution will be required based on the increase in the number of units). In these circumstances, the previous rate of £35 per unit will apply.

Supplementary Planning Guidance

Developer contributions towards cemetery provision in West Lothian

APPENDIX A

A	Established housing land supply in West Lothian (Housing Land Audit 2017)	24,873
B	Unconsented supply	8,994
C	Constrained	2,349
D	Existing housing stock	79,112
E	Total potential land supply (A + D)	103,985

Developer Contribution Rate

(Combined costs from Table 1 (indexed to 4th quarter 2017) and Table 2 above (£6,453,947 + 4,717,000)

Estimated cost of local cemetery provision £11,170,947

Total contributions received to 31 March 2019 = £118, 028

Balance remaining £11,052,919

Therefore based on houses without permission (8,994) divided by total houses (103,985), multiplied by the remaining cost of the cemeteries (£9,332,849) and divided by the remaining houses (8,994) derives the cost contribution per house = £106.29

For the purposes of this policy, this figure has been rounded to a contribution of £106 per house (including flats).

(NB: this would see a council contribution of c. £10,069,046 on the existing housing stock and sites already with planning permission, and developer contributions of £953,364 on the remaining housing allocations).

For a typical 50 unit development the financial contribution would be £5,300 (plus indexation).

[SG] Developer contributions towards cemetery provision in West Lothian

Approved by West Lothian Council Executive **DATE TO BE INSERTED**
Subsequently adopted as Supplementary Guidance (SG) **DATE TO BE INSERTED**

Further Information

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