



**DEVELOPMENT AND TRANSPORT POLICY DEVELOPMENT AND SCRUTINY PANEL**

**SUPPLEMENTARY PLANNING GUIDANCE: DEVELOPER CONTRIBUTIONS FOR NON-DENOMINATIONAL PRIMARY SCHOOL INFRASTRUCTURE IN BROXBURN**

**REPORT BY HEAD OF PLANNING AND ECONOMIC DEVELOPMENT**

**A. PURPOSE OF REPORT**

The purpose of this report is to advise the panel of draft supplementary planning guidance (SPG) for developer contributions towards non denominational primary school infrastructure in the catchment area of Broxburn Primary School, which is needed to support the development plan strategy.

**B. RECOMMENDATION**

It is recommended that the panel:

- 1) notes the key principles to be included in the SPG and agrees to consultation being carried out; and
- 2) agrees that the outcome of the consultation, together with any revisions proposed to the SPG as a result of consultation, should be reported to the Council Executive for decision.

**C. SUMMARY OF IMPLICATIONS**

**I Council Values**

Focusing on our customers' needs; being honest, open and accountable; making best use of our resources; and working in partnership.

**II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)**

The implementation of the West Lothian Local Plan (WLLP) will require substantial funding for education infrastructure and substantial developer contributions. It is a key requirement of the WLLP that development should not proceed beyond existing infrastructure capacity and that planning permission should not be granted until relevant infrastructure is provided or committed. Policy 9 of the approved Strategic Development Plan (SDP) for Edinburgh and South East Scotland identifies a similar provision.

Policy IMP 3 of the WLLP requires developer contributions to help overcome education constraints and this is mirrored in Policy 9 of the SDP.

Policy IMP 17 of the WLLP indicates that planning agreements (now planning obligations) will be entered into where appropriate and that developer contributions will be sought in accordance with circular 12/1996 - Planning Agreements (this circular has been replaced by circular 3/2012).

Developer contributions may also be obtained through section 69 agreements under the Local Government (Scotland) Act 1973.

There are no SEA, equality, health or risk assessment issues.

|   |  |
|---|--|
| <b>III Implications for Scheme of Delegations to Officers</b> | None.  |
| <b>IV Impact on performance and performance Indicators</b>    | None.  |
| <b>V Relevance to Single Outcome Agreement</b>                | <p>Outcome 1 - Our children have the best start in life and are ready to succeed.</p> <p>Outcome 2 – We are better educated and have access to increased and better quality learning and employment opportunities.</p> <p>Outcome 3 – Our economy is diverse and dynamic and West Lothian is an attractive place for doing business.</p> |
| <b>VI Resources - (Financial, Staffing and Property)</b>      | <p>Residential developers will be required to make payments in accordance with the SPG.</p> <p>The SPG will apply to council owned sites that are to be developed for housing.</p>   |
| <b>VII Consideration at PDSP</b>                              | The D&T PDSP has not previously considered this SPG.   |
| <b>VIII Other consultations</b>                               | <p>Internal: Education, Finance, Estates and Legal.</p> <p>External: Community Councils, developers, landowners and Homes for Scotland will be consulted on the draft SPG.</p> <p>The draft SPG will also published on the council’s website during the consultation period.</p>   |

## **D. TERMS OF REPORT**

### **Background**

West Lothian Council adopted the West Lothian Local Plan (WLLP) on 13 January 2009. The plan proposes major housing growth and, as a consequence, a number of new schools and school extensions are required to support the local plan strategy.

The WLLP anticipates that the equivalent of two new streams of non-denominational primary school infrastructure will be required to support the CDA allocations in Broxburn (i.e. capacity for a further 462 pupils). It has also been determined that a relatively modest investment in recreational facilities at Broxburn Primary School could help reduce the scale of up front developer funding and would ensure that housing development got underway more quickly, in advance of the new school being provided. Specifically, this is to facilitate a multi-use games area or MUGA. This would address limitations resulting from the size of the main school hall and would enable the capacity of the existing school to be increased by 47 places, taking it up to 462. This would allow for up to 149 new houses to be provided within the catchment area of the school in the short to medium term.

These works are needed to support the development plan strategy and the current indicative cost is £8,390,000 (to be funded through the requirements of this SPG). Based on these indicative costs, an average developer contribution rate of £6,009 per residential unit has been established for non-denominational primary school provision. Actual payments will be index linked to the changes indicated in the RICS Building Cost Information Service Tender Price Index using the first quarter 2013 as the base date.

In August 2012, Council Executive agreed not to introduce denominational secondary school contribution rates based on the number of habitable rooms. It also agreed, on an interim basis that residential units containing less than three habitable rooms would be exempt from contribution. This SPG complies with this decision.

The draft SPG is attached as Appendix A.

## **E. CONCLUSION**

The draft SPG for developer contributions for new non-denominational primary school infrastructure in the catchment area of Broxburn Primary School will support housing growth in West Lothian. Consultation will be carried out and the outcome reported to the Council Executive.

The proposed developer contribution rates should help to improve the financial viability of housing developments planned within the catchment area of Broxburn Primary School.

## **F. BACKGROUND REFERENCES**

West Lothian Local Plan 2009

Strategic Development Plan for Edinburgh and South East Scotland (SESplan)

Scottish Government Circular 3/2012 - Planning Obligations and Good Neighbour Agreements <http://www.scotland.gov.uk/Publications/2012/12/1885>

Report to Education Executive on 16 June 2008 - Education Strategy to support the West Lothian Local Plan including pre-adoption modifications.

Report to Education Executive on 18 March 2014 - 2012 Base School Forecasts

Appendices/Attachments: One

Appendix 1 - Draft SPG

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15 May 2014

## **Appendix A**

### **SUPPLEMENTARY PLANNING GUIDANCE - DEVELOPER CONTRIBUTIONS FOR NON DENOMINATIONAL PRIMARY SCHOOL INFRASTRUCTURE IN THE CATCHMENT AREA OF BROXBURN PRIMARY SCHOOL**

#### **1.0 INTRODUCTION**

- 1.1 West Lothian Council adopted the West Lothian Local Plan (WLLP) in January 2009. The WLLP proposes major housing growth and, as a consequence, a number of new schools and school extensions are required to support the local plan strategy.
- 1.2 In August 2012, Council Executive agreed not to introduce denominational secondary school contribution rates based on the number of habitable rooms. It also agreed, on an interim basis that residential units containing less than three habitable rooms would be exempt from contribution. This SPG complies with this decision.
- 1.3 The purpose of this supplementary planning guidance (SPG) is to set out details of primary school infrastructure projects for the non-denominational sector in Broxburn which are required to support further housing development and the implementation of the WLLP. The SPG also sets out developer contribution rates which will apply to all proposed housing developments within the catchment area of Broxburn Primary School.
- 1.4 Separate guidance has been produced for the denominational sector.
- 1.5 The adopted West Lothian Local Plan (WLLP) sets out a development strategy for West Lothian. The success of the local plan development strategy is dependent on additional primary school capacity being provided.
- 1.6 The East Broxburn CDA is wholly embraced within the catchment area of Broxburn Primary School, which presently has capacity for 415 pupils and an actual school roll of 375 pupils (at start of academic year 2013/14). Full catchment area details can be viewed on the council's website at: <http://www.westlothian.gov.uk/education/schools/>
- 1.7 The WLLP anticipates that the equivalent of two new streams of non-denominational primary school infrastructure will be required to support the CDA allocations in Broxburn (i.e. capacity for a further 462 pupils). However, in advance of progressing with new build proposals, it has been determined that a relatively modest investment in PE facilities at Broxburn Primary School could help reduce the scale of up front developer funding and would ensure that housing development got underway more quickly, in advance of the new school being provided. This approach is not contrary to the local plan as the plan recognises the need for flexibility and states that infrastructure provided may vary from that stated in the plan. The scale of infrastructure being planned must also have regard to non-CDA housing allocations within the catchment areas of Broxburn Primary schools and make some allowance for the scale of windfall development that might be supported.
- 1.8 To support development in the East Broxburn CDA, and the implementation of the WLLP generally, it is now considered that the following primary school projects in Broxburn are required:

- Provision of a multi-use games area (MUGA) at Broxburn Primary School. This would address limitations resulting from the size of the main school hall and would enable the capacity of the existing school to be increased by 47 places, taking it up to 462 pupils. This would allow for up to 149 new houses to be provided within the catchment area of the school in the short to medium term. Clearly, this would require less capital outlay initially and would be cost effective in revenue terms compared with the costs associated with a new primary school.
  - Construction of a new two stream non-denominational primary school (with space for pre-school) and a total capacity of 462 pupils.
- 1.9 At this stage, the council wishes to ensure that there is some flexibility in how the primary school infrastructure projects are taken forward. This is necessary because of the current uncertainty about future house completion rates and the timing of developer contribution payments to fund school infrastructure projects. There is also uncertainty about potential catchment area changes. It should be noted that the scale of requirements for new build primary schools will be reviewed at various stages as housing developments progress.
- 1.10 Based on current forecast, it is estimated that the proposed works at Broxburn Primary School could support approximately 149 residential units. Subject to funding being available, the aim is to have the MUGA completed by summer 2014 and the first phase of a new build primary school coming on stream by August 2017.
- 1.11 This SPG will be taken into account in the determination of all planning applications for housing which lie within the catchment area of Broxburn Primary School from the date the SPG is approved. The SPG will be revised if there is a material change in circumstances. Factors which could lead to the SPG being reviewed include:
- updates in the Housing Land Audit;
  - higher or lower rates of house completion than that assumed in the Development Planning Housing Model;
  - availability of updated information on costs;
  - changes in assumptions about the child/house ratio as a result of the actual housing mix proposed;
  - demographic changes;
  - changes in the pattern of attendance at schools;
  - changes in the type of residential units that are to be exempt from contributions;
  - updated school roll forecasts;
  - changes in catchment areas;
  - changes to the Strategic Development Plan;
  - approval of the Local Development Plan; and
  - any other significant matter that impacts on non-denominational primary school provision in the catchment area of Broxburn Primary School.
- 1.12 At the time of writing (April 2014), the rate of house building in West Lothian has fallen as a consequence of the recession, although there is some evidence that completions are beginning to increase again. The general housing downturn has, nevertheless, been taken into account in the latest school roll forecasts. The council will continue to monitor the rate of house building and will further adjust school roll forecasts, as and when required, to reflect changes in the housing market.
- 1.13 With the recession resulting in a severe slowdown of the private sector housing market and creating difficulty for developers in raising finance to forward fund major infrastructure, the council will keep its education strategy under review and, where possible, be flexible.

- 1.14 Given the current financial constraints, it is essential that the council only brings forward additional capacity when it is needed. This will help developers manage their cashflow and likewise assist the council manage its revenue spend.
- 1.15 Based on current forecasts, it is anticipated that the provision of the MUGA at Broxburn Primary School will need to be in place for the start of the 2014/15 academic year.
- 1.16 Further information on the council's approach to developer contributions can be found in its *Planning for Education* SPG.

**2.0 LEGISLATIVE AND POLICY CONTEXT**

- 2.1 Section 75 of the Town and Country Planning (Scotland) Act 1997 allows planning authorities to secure developer contributions, through the use of planning obligations, to overcome obstacles to the granting of planning permission.
- 2.2 Scottish Government Circular 3/2012 (Planning Obligations and Good Neighbour Agreements) sets out current policy on planning obligations. This indicates that planning obligations should only be sought where they meet all of the following tests:
  - Necessary to make the proposed development acceptable in planning terms.
  - Serve a planning purpose and, where it is possible to identify infrastructure provision requirements in advance, should be relevant 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.
  - Fairly and reasonably relate in scale and kind to the proposed development;
  - Be reasonable in all other respects.
- 2.3 The approved Strategic Development Plan for Edinburgh and South East Scotland (SDP) requires sufficient infrastructure to be available, or its provision to be committed, before development can proceed. It also supports the delivery of infrastructure through developer contributions, funding from infrastructure providers or other appropriate means, including the promotion of alternative delivery mechanisms.
- 2.4 The adopted West Lothian Local Plan (WLLP) sets out a development strategy for West Lothian. The success of the local plan development strategy is dependent on additional primary school capacity being provided. In accordance with Policy IMP3 of the WLLP, legal agreements will be required to secure the provision of new schools or extensions and associated community facilities from developers where this is directly attributable to serving their proposed housing development. Policy IMP17 of the WLLP also requires legal agreements to be in place to secure key infrastructure.

**3.0 FORECASTS**

- 3.1 The approved 2012 base school roll forecast for Broxburn Primary School is shown below:

| 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 |
|------|------|------|------|------|------|------|------|------|------|------|------|
| 362  | 375  | 395  | 390  | 403  | 430  | 470  | 491  | 520  | 551  | 596  | 640  |

2012 & 2013 are actual start of school session census rolls

- 3.2 The council produces a housing model called the *Development Planning Housing Model* (DPHM) which shows where and when new house building is expected to take place over the next 20 years. The above school roll forecasts are based on programmed completions as set out in the West Lothian DPHM 2012. This acknowledges the fact that much of the proposed housing within local plan allocations will take place in the latter period of the current development plan.
- 3.3 Table 1 below shows the projected start of session school roll for Broxburn Primary School together with the relevant capacity.

Table 1

| <u>Year</u> | <u>Broxburn Primary School Roll</u> | <u>Capacity*</u> |
|-------------|-------------------------------------|------------------|
| 14/15       | 395                                 | 462              |
| 15/16       | 390                                 | 462              |
| 16/17       | 403                                 | 462              |
| 17/18       | 430                                 | 587              |
| 18/19       | 470                                 | 587              |
| 19/20       | 491                                 | 587              |
| 20/21       | 520                                 | 587              |
| 21/22       | 551                                 | 693              |
| 22/23       | 596                                 | 693              |
| 23/24       | 640                                 | 693              |

\* It is proposed that additional accommodation is always planned to be available 1 year in advance of forecast need and that the additional accommodation caters for 3-4 years of school roll growth which, is necessary to avoid unnecessary disruption for pupils.

### **Assumptions**

Child per house ratio for non-denominational primary school, 0.3156 (rounded)

Stage migration factor for Broxburn Primary School, 0.9784 (rounded)

Number of units in Start of Session Roll forecast for Broxburn Primary School, 871

Number of units programmed beyond the forecast period: 1,192

Forecasts are based on the current pattern of attendance. This is likely to change when new schools are provided.

- 3.4 On the basis of the above assumptions, present school capacity is forecast to be fully utilised from school sessions 2014/15 onwards, depending on the actual class organisation that is possible. The council will aim to secure developer contributions and/or identify funding which ensures that additional capacity is in place for the start of the 2014/15, 2017/18 and 2023/24 school sessions. It should be noted that spare capacity can be taken up by placing requests; likewise, housing completions could occur sooner than expected so it is possible that capacity could run out sooner than predicted. There may also be alternative or intermediate short term capacity options noting that budget, pupil safety and school detriment would require very careful consideration.
- 3.5 The council uses well established and robust methods for estimating the number of children resulting from new developments, including household survey as well as cross matching of its pupil placement information (as set out in the SPG Planning for Education).

- 3.6 Education forecasting entails making assumptions about the rate of house build, stage migration factors, child per house ratios and transfer rates. The timing of education infrastructure projects could, therefore, vary from those indicated in Appendix 1 if trends differ significantly from those assumed.

#### **4.0 FUNDING THE PROVISION OF THE ADDITIONAL CAPACITY**

- 4.1 It is expected that the new education infrastructure in the catchment area of Broxburn Primary School will be entirely funded through developer contributions. This is because all committed development can be accommodated within the existing capacity of the school and the additional capacity is needed to support further housing.
- 4.2 Taking into account the principles in SG Circular 3/2012 *Planning Obligations and Good Neighbour Agreements* 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 which is adopted in this policy is that developer contributions should be based on the likely impact that each development will have on the demand for places at Broxburn Primary School.
- 4.3 To establish developer contribution rates for primary education infrastructure in Broxburn, it is necessary to consider the Broxburn Primary School MUGA and the new build non-denominational primary school projects together to establish a contribution rate for non-denominational primary school provision.
- 4.4 The precise cost of the new education infrastructure has yet to be established. This can only be done once project briefs have been finalised and the projects have been subjected to a tendering process. The council's Construction Services unit has provided indicative costs based on first quarter 2013 prices for the projects. These should be used at this stage for determining the level of developer contributions and are set out in Appendix 2.
- 4.5 Based on these indicative costs, an average developer contribution rate of **£6,009** for a residential unit has been established. The methodology for establishing the level of contribution is set out in Appendix 2. The indicative costs include school commissioning costs.
- 4.6 Actual payments will be index linked to the changes indicated in the RICS Building Cost Information Service Tender Price Index using the first quarter 2013 as the base date.
- 4.7 The levels of contribution will be reviewed regularly to take account of changed circumstances.
- 4.8 Developers should be aware that places at particular schools cannot be guaranteed.
- 4.9 In circumstances like this, where the need to provide new education infrastructure arises as a result of several proposed housing developments, there is a need for the council to establish an indicative budget cost for the works deemed necessary and to publish developer contribution rates. An appropriate contingency is built into the budget cost. This is necessary to safeguard the council's position as the council should not be expected to carry the financial burden of unexpected development costs. If surplus funds are left over once the projects have been completed, these will be repaid, on a pro-rata basis, to those parties who made the contributions towards the project. It may be necessary to adjust contribution rates as more details about the project become known.

- 4.10 Whilst it is understood that developers of large sites may not be in a position to make all their contributions up front, the council will need to have sufficient funds in place for each project before committing to a contract to build that project. Thus, whilst some phasing of payments is likely to be acceptable, some developers will need to make large payments at appropriate stages to ensure that constraints can be overcome. As a general principle, if one party makes overpayments to forward fund education infrastructure in order to overcome a constraint and other applicants later benefit from this, the council will seek to refund the overpayments to the party who made them once contributions are received from the other applicants who have benefited and it is clear that surplus funds are available.

## **5.0 EXEMPTIONS**

5.1 The only circumstances where developers will be exempt from this policy will be:

- a) Sites which already have the benefit of a live planning permission and that permission has not expired unless it is proposed to increase the number of units or change in the housing mix. Where there is an increase in the number of units or change in the housing mix, the need for contributions will be assessed on a case by case basis and any contributions sought will be in proportion to the additional demand for school places which is generated. The existing and proposed demand for school places will be established by applying the child per house ratios set out in Appendix 1.
- b) Sheltered housing, purpose built student housing and other types of housing designed or approved for special population groups which do not include children within the resident's household.
- c) Sub-division of existing residential units provided no more than one of the resultant units has more than two habitable rooms. Where more than one of the resultant units has more than two habitable rooms, the first residential unit with more than two habitable rooms will be exempt but a full contribution will be payable for each of the other residential units with more than two habitable rooms.
- d) Sites where it is proposed to (1) demolish existing occupied residential units or (2) demolish existing houses which have been vacant for less than two years at the time that a planning application is submitted to replace them or (3) replace houses which have been demolished but were previously occupied within the two years leading up to the submission of a planning application being submitted to replace them, provided in all cases that there is no increase in the number of residential units. Where there is an increase in the number of units, additional contributions will be required based on the increase in the number of residential units with more than two habitable rooms.
- e) Residential units that contain less than three habitable rooms.

*Definition:*

*For the purposes of this SPG, a habitable room shall be defined as any enclosed room intended for human occupation, excepting any room used solely as a kitchen, bathroom, toilet, washroom, utility room, shower room, hall and stair.*

## **6.0 SECURING THE DEVELOPER CONTRIBUTIONS**

- 6.1 Developer contributions may be secured by means of a Section 75 Agreement concluded between the applicant and the council, prior to the issue of planning permission. In some cases, the use of a Section 69 Agreement under the Local Government (Scotland) Act 1973 may be more appropriate.
- 6.2 In some cases, where relatively small sums of money are involved, it may be possible to avoid formal Section 75 Agreements and Section 69 Agreements and for the council to collect contributions through an exchange of letters prior to planning permission being granted.
- 6.3 Wherever possible, the council will allow developers to make phased payments. Planning conditions to phase housing developments may be necessary in some cases to ensure that infrastructure thresholds are not exceeded.

## **7.0 SCHOOL SPECIFICATION AND TIMESCALE**

- 7.1 The new build school designs will need to have regard to the Design Guidance for new schools approved by the council in October 2006.
- 7.2 A Statement of Need for the anticipated primary school project in Broxburn has been prepared by the council. Based on this Statement of Need, accommodation schedules will be prepared. The budget cost plans produced by the council's Construction Services unit have been based on the Statement which has been prepared.
- 7.3 The council will need to ensure that the school project meets the relevant building and education statutes, regulations and guidelines pertaining at the time and that the school has appropriate provision.
- 7.4 The council will decide the appropriate procurement route for all education infrastructure projects.

## **8.0 FURTHER INFORMATION**

- 8.1 For further information or advice please contact:

For planning enquiries -

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## APPENDIX 1

### Possible timing of projects which will provide additional primary school capacity in the catchment area of Broxburn Primary School

| Year    | Project  | Increased Capacity |
|---------|--|--------------------|
| 2014/15 | Broxburn Primary School MUGA                         | 462                |
| 2017/18 | New build (first phase 2 stream school and nursery)  | 125                |
| 2021/22 | New build (second phase 2 stream school and nursery) | 231                |

Assumptions:

1. Forecast assumptions are sustained
2. Build rate is as per the DPHM
3. Developer contributions are paid at appropriate stages
4. Satisfactory progress is made on school consultation

## APPENDIX 2

### Contribution rate for projects which will provide additional primary school capacity in the catchment area of Broxburn Primary School

At this stage, only indicative costs are available. The current indicative costs based on first quarter 2013 prices are as follows:

Estimated non-denominational primary school costs

|   |            |
|---|------------|
| Broxburn Primary School MUGA            | £50,000    |
| New build (2 stream school and nursery) | £8,250,000 |
| School commissioning costs              | £539,000   |
| Total to be funded by developers        | £8,839,000 |

This scale of infrastructure will support 1,610 residential units (excluding exempt residential units) within the current catchment area of Broxburn Primary School.

It is assumed that 8.63% of the residential units will be exempt, so for the purposes of this SPG the total cost (£8,839,000) is divided by 1,471 (the total number of units likely to be contributing) to give an average developer contribution rate of £6,009 per residential unit based on first quarter 2013 prices.

Actual payments will be linked to the Building Tender Price Index using first quarter 2013 as the base date.