



DEVELOPMENT AND TRANSPORT POLICY DEVELOPMENT AND SCRUTINY PANEL

SUPPLEMENTARY PLANNING GUIDANCE - DEVELOPER CONTRIBUTIONS FOR EXTENSION TO BATHGATE ACADEMY

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 for an extension to Bathgate Academy to provide an additional 110 school places to take it from 1,210 pupils to 1,320. The extension is needed to support the development plan strategy.

B. RECOMMENDATION

It is recommended that the panel:

1. agrees to consultation on the proposed contributions being carried out; and
2. agrees that the outcome of the 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)	<p>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.</p> <p>Policy IMP 3 of the WLLP requires developer contributions to help overcome education constraints and this is mirrored in Policy 9 of the SDP.</p>

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developer contributions will be sought in accordance with circular 12/1996 - Planning Agreements (this circular has been replaced by Circular 3/2012).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.

III Implications for Scheme of Delegation to Officers	None
IV Impact on performance and performance Indicators	The need for Section 69 and 75 legal agreements for some applications in securing developer contributions can result in the delay of processing some planning applications.
V Relevance to Single Outcome Agreement	<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>
VI Resources - (Financial, Staffing and Property)	<p>The developers of housing sites will be required to make payments in accordance with the SPG and this will help to support the council's capital programme for new schools and extensions to existing schools.</p> <p>The SPG will apply to council owned sites that are to be developed for housing in the catchment of Bathgate Academy.</p> <p>The council is committed to forward funding some of the education infrastructure identified in the SPG. The SPG sets out the policy context for recovering the council's costs for these projects.</p>
IV Consultations	<p>Internal: Education, Finance and Estates, Legal.</p> <p>External: Community Councils, developers, landowners and Homes for Scotland will be consulted on the draft SPG.</p>

The draft SPG will also published on the council's website during the consultation period.

D. TERMS OF REPORT

D1 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 Main Issues Report to the West Lothian Local Development Plan, which was approved for consultation by the council on 19 June, proposes a continuation of this strategy.

The extension at Bathgate Academy is needed to support the development plan strategy. The current indicative cost of the extension is £1.7m. To date £328,735 (as of May 2014) has been collected from developers for this project. The aim is to have the additional capacity at Bathgate Academy available for the start of the 2017/18 school session. The present rate is £2,437 per unit (index linked to RICS costs 1st quarter 2010). The proposed new rate is **£2,143**.

The council has already altered the requirements for education infrastructure from those identified in the WLLP by deciding to proceed with extensions at St. Margaret's Academy, Bathgate Academy and Linlithgow Academy. These projects help to support the development of sites allocated in the WLLP and will mean that there is also potential to support an element of windfall development.

In June 2008, the council decided to fund an extension to Bathgate Academy. In December 2008, the council re-affirmed its commitment to these three projects but decided to delay implementation given the severe slowdown in the housing market resulting from the recession.

It is noted that the rate of house building in West Lothian has fallen significantly as a consequence of the recession, although there is evidence that completions are increasing 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.

Further information on the council's approach to developer contributions can be found in its *Planning for Education SPG*.

It should be noted that the council has set up the West Lothian Local Infrastructure Fund to forward fund infrastructure that is necessary to support the development plan strategy. As the council is forward funding the Bathgate Academy extension through the Local Infrastructure Fund, developer contributions received in relation to this SPG for Bathgate Academy will be used to replenish the fund.

The draft SPG will require consultation with landowners, developers and with other relevant stakeholders. The outcome of the consultation will be reported to Council Executive in due course.

The draft SPG is attached as Appendix A.

E. CONCLUSION

The draft SPG sets out a strategy for securing the developer contributions required to provide new education infrastructure which will support housing growth in West Lothian.

Consultation will be carried out and the outcome reported to Council Executive.

F. BACKGROUND REFERENCES

Report to Development and Transport PDSP 9 October 2008 - The Effect of the Credit Crunch on the West Lothian Local Plan.

<http://coins.westlothian.gov.uk/coins/calendar.asp>

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

http://www.westlothian.gov.uk/media/downloadaddoc/1799514/1841832/1875738/spg_planningforeducation

Planning for Education SPG

http://www.westlothian.gov.uk/media/downloadaddoc/1799514/1841832/1875738/spg_planningforeducation

Interim Changes to Developer Contribution Policies, November 2008

<http://www.westlothian.gov.uk/media/downloadaddoc/1799514/1841832/1875738/2173476/interimchanges>

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

Appendices/Attachments: One – Draft SPG

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26 June 2014

Appendix A

SUPPLEMENTARY PLANNING GUIDANCE - DEVELOPER CONTRIBUTIONS FOR EXTENSION TO BATHGATE ACADEMY

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. The Main Issues Report to the West Lothian Local Development Plan, which was approved for consultation by the council on 19 June, proposes a continuation of this strategy.
- 1.2 The purpose of this supplementary planning guidance (SPG) is to set out details of secondary school infrastructure works in Bathgate necessary to support further housing development. The SPG sets out developer contribution rates which will apply to all proposed housing developments within the catchment area of Bathgate Academy.
- 1.3 Bathgate Academy currently has capacity for 1,210 pupils and the school roll is currently below that level. However, the spare capacity is required to serve committed development within the catchment area (i.e. sites which already have planning permission). In June 2008, the council decided that it would forward fund an extension to Bathgate Academy and recover costs from developers as housing developments proceed. The school extension is needed to support the development plan strategy.
- 1.4 The catchment area for Bathgate Academy was reduced in 2010 following a catchment review of non-denominational secondary schools within the north and north-west of West Lothian with pupils in Seafield Primary School now within the catchment of Deans Community High School and pupils in Torphichen Primary School now within the catchment of Linlithgow Academy.
- 1.5 The smaller catchment area has reduced the forecast school roll for Bathgate Academy. However, if further development is to be supported in the catchment area, it will be necessary to extend Bathgate Academy. A feasibility study has been carried out to establish how the school can be altered and adapted to provide a capacity of 1320 pupils (an increase of 110 pupil spaces). The indicative cost for this extension is £1,700,000 based on first quarter 2012 prices.
- 1.6 Developer contribution rates required to recover the cost of the extension are set out below.
- 1.7 Actual payments will be index linked to the increases indicated in the RICS Building Cost Information Tender Price Index using first quarter 2010 as the base date.
- 1.8 Currently, £328,735 has already been paid towards the project by developers who have obtained planning permission. This has been taken into account in setting the contribution rate.

- 1.9 This SPG will be taken into account in the determination of all planning applications for housing within the catchment area of Bathgate Academy. For the avoidance of doubt, the SPG will apply to all planning applications submitted after 16 June 2008 when the council decided that developer contributions for Bathgate Academy would be necessary if further housing in the catchment area was to be supported. The policy will be revised as circumstances require.
- 1.10 It should be noted that the council has set up the West Lothian Local Infrastructure Fund to forward fund infrastructure that is necessary to support the development plan strategy. As the council is forward funding the Bathgate Academy extension through the Local Infrastructure Fund, developer contributions received in relation to this SPG for Bathgate Academy will be used to replenish the fund.

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 agreements. This indicates that planning agreements (now obligations) should only be sought where they meet all 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. The plan supports the delivery of infrastructure through developer contributions, funding from infrastructure providers or other appropriate means, including the promotion of alternative delivery mechanisms. Policy 9 of the SDP refers.
- 2.4 The adopted West Lothian Local Plan (WLLP) sets out a development strategy for West Lothian. It is proposed that this strategy is carried forward in the emerging West Lothian Local Development Plan. The success of the local plan development strategy is dependent on additional school capacity being provided. In accordance with Policy IMP 3 of the WLLP, legal agreements will be required to secure the provision of new schools or school 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 EXISTING PROVISION AND SCALE OF NEW PROVISION

- 3.1 This SPG will be taken into account in the determination of all planning applications for housing within the Bathgate Academy catchment from the date the SPG is

approved. The policy will be revised as circumstances require. Factors which could lead to the policy being reviewed include:

- updates to 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;
- updated school roll forecasts;
- changes in catchment areas;
- changes in the pattern of attendance at schools;
- changes in the type of residential units that are to be exempt from contributions;
- changes to the Strategic Development Plan;
- approval of the Local Development Plan; and
- any other significant matter that impacts on secondary school provision in the catchment area for Bathgate Academy.

4.2 It is noted that the rate of house building in West Lothian has fallen significantly as a consequence of the recession, although there is evidence that completions are increasing again. 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.

4.3 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.

4.4 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.

4.6 Further information on the council's approach to developer contributions can be found in its *Planning for Education* SPG.

5.0 FORECASTS

5.1 The approved 2012 base school roll forecast for Armadale Academy is shown below. These forecasts take account of the recent catchment review.

2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
901	882	801	788	815	847	876	917	936	996	1035	1049

2012 & 2013 are actual start of school session census rolls

5.2 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.

5.3 The forecasts for S1 intakes for Bathgate Academy are shown below in Table 2:

Year	S1	S1 Intake Limit
2012	133	220
2013	157	220
2014	155	220
2015	171	220
2016	177	220
2017	179	220
2018	186	220
2019	217	220
2020	199	220
2021	236	220
2022	218	220
2023	212	220

* 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:	0.1706 (rounded)
P7 to P1 Transfer rate:	0.9257 (rounded)
Stage migration factor:	0.9500
Number of units in Start of Session roll forecast:	924
Number of units programmed beyond the forecast period:	309

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

5.4 On the basis of the above assumptions, present school capacity is forecast to be fully utilised from school session 2021/22 onwards. Note the concern with potential undercounting in the approved 2012 base school roll forecast for the latter years of the time period noted in the March 2014 Education Executive report. 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 2020/21 school session. 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.

5.6 The table below indicates the projected house build rates within the Bathgate Academy catchment.

2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024-2033
154	73	98	170	133	55	24	24	80	80	33	37	272

- 5.6 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*).
- 5.7 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.
- 6.0 FUNDING THE PROVISION OF THE ADDITIONAL CAPACITY AT BATHGATE ACADEMY**
- 6.1 Forward planning for an extension to Bathgate Academy commenced in 2008 and developer contributions have been sought since June 2008.
- 6.2 The extension is needed to support projected new housing development within the catchment and will raise the capacity of the school, when constructed, from the present 1,210 to 1,320. The 110 additional places should be funded through developer contributions.
- 6.3 Taking into account the principles in Scottish Government 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 Bathgate Academy.
- 6.4 The actual construction cost of the extension to the school at the present time is £1,700,000 to create the additional 110 pupil places required. The council has so far recovered £328,735.
- 6.5 Based on these indicative costs, a developer contribution rate of **£2,143** has been established. The methodology for establishing the level of contributions is set out in Appendix 2. The indicative costs include school commissioning costs.
- 6.6 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.
- 6.7 The level of contribution will be reviewed regularly to take account of any changed circumstances.
- 6.8 Developers should be aware that places at particular schools cannot be guaranteed.
- 6.9 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, the council will use reasonable endeavours to return surplus funds, on a pro-rata basis, those parties who made developer contributions towards the project. It may be necessary to adjust contribution rates as more details about the project become known.

- 6.10 Where landowners and developers have entered into legally binding section 75 agreements based on developer contributions rates for Bathgate Academy secondary school which are higher than those now proposed and these contributions have yet to be paid, they may choose either to submit section 75A applications seeking to modify these agreements or to accept that West Lothian Council will only require payment of the reduced amount of the developer contribution to be paid at the time when payment falls due. For the avoidance of doubt, where the rate of the developer contribution payment for Bathgate Academy has reduced, and that reduction is still applicable at the time when payment falls due, West Lothian Council undertake that they will, notwithstanding the terms of any section 75 agreement to the contrary, apply the reduced rate of developer contribution applicable at the time when payment falls due.
- 6.11 Whilst it is understood that developers of large sites will 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.

7.0 EXEMPTIONS

- 7.1 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 granted before 1 June 2008 (unless it is proposed to increase the number of residential units with more than two habitable rooms in which case a contribution will be based on the increase in the number of units with more than two habitable rooms). In circumstances where planning permission has been granted after 1st June 2008 and developer contributions for Bathgate Academy are payable but it is now proposed to increase the scale of housing or change the housing mix, additional contributions will be required based on the increase in the number of residential units with more than two habitable rooms [see example in Appendix (iii)]. 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 (1) – (3) above 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.

8.0 DETERMINATION OF PLANNING APPLICATIONS

- 8.1 Decisions on planning applications will be determined in accordance with the development plan unless material considerations indicate otherwise.

9.0 SECURING THE DEVELOPER CONTRIBUTIONS

- 9.1 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.
- 9.2 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.
- 9.3 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.

10.0 SCHOOL SPECIFICATION AND TIMESCALE

- 10.1 The council will decide the appropriate design, specification and procurement route for all education projects.

11.0 FURTHER INFORMATION

11.1 For further information or advice please contact:

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Appendix 1

Possible timing of project which will provide additional pupil capacity for Bathgate Academy

Year	Project	Capacity Increase
2020/21	Additional capacity at Bathgate Academy	110 places

Assumptions:

1. Forecast assumptions are sustained
2. Developer contributions are paid at appropriate stages

Appendix 2

Contribution rates for Bathgate Academy

At this stage, only **indicative costs** are available for the capacity increase noted above. The current indicative costs, based on first quarter 2011 prices are as follows:

Extension to Bathgate Academy	
Extension to school	£1,500,000
Commissioning costs	£200,000
Total to be funded by developers	£1,700,000
Deduct contributions already received at June 2014	-£328,735
Total amount outstanding	£1,371,265

This scale of infrastructure (110 additional pupil capacity) will support **644** residential units (including exempt residential units) within the current catchment area of Bathgate Academy.

It is assumed that 8.63% of the residential units will be exempt, so for the purposes of this SPG the total cost (£1,371,265) is divided by 640 (the total number of units likely to be contributing) to give an average developer contribution rate of £2,143 per residential unit.

Actual payments will be linked to the increases indicated in the RICS Building Tender Price Index using first quarter 2010 as the base date.