

EAST AYRSHIRE COUNCIL

CABINET – 13 JANUARY 2010

DRAFT SUPPLEMENTARY PLANNING GUIDANCE CONSULTATION

Report by Depute Chief Executive/ Executive Director of Corporate Support

1. PURPOSE OF REPORT

- 1.1 To present to Cabinet for consideration and approval, responses to comments received during a consultation period on three draft Supplementary Planning Guidance (SPG) documents prepared by the Head of Planning and Economic Development on Developer Contributions, Affordable Housing and Masterplanning.

2. BACKGROUND INFORMATION

- 2.1 At its meeting on 26 February 2009, Council agreed to approve the three SPG documents and authorised the Head of Planning and Economic Development to carry out a selective consultation process with the development industry and other stakeholders. Accordingly, a six week period of consultation was undertaken from 20 March – 1 May 2009. Letters were sent to 77 organisations/individuals and 13 of these replied with 7 responses being received on Affordable housing, 12 on Developer Contributions and 5 on Masterplanning. Summaries of the main points raised by respondents are contained within sections 3, 4 and 5 below.
- 2.2 The purpose of the SPGs is to provide clear guidance on how each of the relevant policies contained within the Alteration to the East Ayrshire Local Plan are implemented. On 8 October 2009, Council gave authorisation to forward a copy of the remaining unresolved objections to the Local Plan Alteration and a copy of the objections received in respect of the modifications made to the Local Plan to the Scottish Government's Directorate for Planning and Environmental Appeals (DPEA) for consideration through the Planning Examination process. As is stated in Paragraph 7.1 of this report, there are outstanding objections relating to both the Developer Contributions policy RES 29 and the Affordable Housing policy RES 31 which require to be resolved through the Examination process. Once the Examination is over and the Reporters have submitted their conclusions to the Council, the Council will proceed to adopt the plan and will make any changes to the SPGs as required.
- 2.3 For the information of Cabinet, the DPEA has advised that Scottish Ministers have appointed Miss Janet McNair MA(Hons) MPhil MRTPI and Mr Scott Ferrie MSc MRTPI to carry out the examination. It is expected that the conclusions of the Reporters will be submitted to the Council in late June 2010.
- 2.4 A schedule of the representations received from the consultation exercise, together with a suggested Council response to each point raised has been placed on the Member's Portal for information purposes. Final draft versions of all three SPGs incorporating those proposed changes which it is proposed the Council should make to the guidance as a result of the representations received have also been placed on the portal for the information of members.

3. SUMMARY OF RESPONSES RECEIVED: DEVELOPER CONTRIBUTIONS

3.1 With regard to the SPG on Developer Contributions, the main issues to which the responses relate comprise the following:

- the guidance does not conform to Circular 12/1996 which requires that planning agreements to secure developer contributions should be used only where there is a direct relationship between the development and the facilities to which funding will be directed. In this regard, it is argued by some respondents that there is no justification for developers in outlying settlements to make contributions to town centre regeneration projects in other communities;

Proposed Council response: Cabinet approved this approach to the Developer Contributions strategy and the full project list in December 2008. The Council is of the view that the document conforms to Circular 12/1996 as it is considered that there is a direct relationship between new houses built and all projects on the list.

- developer contributions are being directed to meet existing deficiencies in service provision rather than to meeting deficiencies that are anticipated to arise from new housing developments identified in the Alteration to the East Ayrshire Local Plan. This is considered by some respondents to be contrary to Circular 12/1996 which requires that there must be a clear link between the proposed development and the facility to which developer contributions will be directed;

Proposed Council response: The Council does not agree that contributions will be used to fund existing deficiencies in service provision. In her report to Cabinet on the 24th October 2007 in relation to Developer Contributions, the Depute chief Executive/Executive Director of Corporate Support confirmed that the provision of developer contributions did not negate the Council's responsibility to provide/improve Council facilities and, to this end, there was a continued requirement for the Council to undertake the improvement of infrastructure, facilities and amenities through other funding mechanisms. Work has been undertaken in compiling the project list to examine the effect that future housing development would have on local facilities and only those with a direct future impact were included on the list. It is also pointed out that, in most cases, housing developers will be required to fund a proportion of the projects only equal to the proportion of new houses to existing houses in each particular settlement/corridor.

- there is a lack of justification for, and background information relating to, the projects to which developer contributions will be directed. Concerns have also been expressed regarding a lack of community consultation on the Council's proposed project list;

Proposed Council response: Whilst a comprehensive detailed background justification document has not been prepared for all projects, each project can nevertheless be justified by the baseline review of current service and infrastructure provision and the assessment of the implications of the future housing land releases that was carried out during the preparation of the Developer Contributions Strategy. This included school capacity projections of primary and secondary schools until 2017, computerised traffic modelling and consideration of the Local Transport Strategy, a Leisure Facilities Study including an assessment of current provision and

likely requirements to accommodate future growth; and the development of an Open Space Strategy. It wasn't considered necessary or appropriate to consult the community in this instance.

- the front funding of projects listed in the SPG is no longer possible in the current economic climate and that developer contribution requirements may even render some developments unviable, thereby dissuading developers from building houses in East Ayrshire.

Proposed Council response: The Council fully appreciates that the country is experiencing an economic downturn and that this is having a detrimental impact upon the house building industry. Accordingly, a viability clause has been incorporated into the SPG on developer contributions which states that prospective developers may be permitted to negotiate a reduced contribution where it can be demonstrated that paying the full contribution would render their development unviable.

- the requirement for developer contributions being limited only to house builders as retail / business and commercial developers are exempt.

Proposed Council response: The decision that only housing developers are required to pay developer contributions was made by the Council's Cabinet on 24th October 2007 in order not to discourage retail or commercial leisure developments. However, it was stated in the same Cabinet report that retail and commercial leisure developers will be expected to assist with individual projects as agreed by the Head of Planning & Economic Development. Such developments are therefore not completely exempt from developer contributions.

- the requirement for Registered Social Landlords to pay developer contributions as they are government funded non profit making organisations.

Proposed Council response: It is the opinion of the Council that the provision of affordable housing has the same impact on service and infrastructure provision as general needs housing. In order to be fair and equitable, it is considered appropriate that developers of affordable housing as well as private developers are required to make appropriate developer contributions towards the provision of any new or expanded facilities and amenities or towards the implementation of any associated community initiatives as may be required to meet the needs of the future resident populations of the sites concerned. Should this requirement prove to make a development unviable, the Developer Contributions SPG contains a viability clause which allows developers to make a case for reduced developer contributions payment.

4. SUMMARY OF RESPONSES RECEIVED: AFFORDABLE HOUSING

4.1 With regard to the SPG on Affordable Housing, the main issues to which the responses relate comprise the following:

- the methodology used to calculate affordable housing projections does not follow the steps set out in Planning Advice Note 74 as the figures are not based on an up to date Housing Needs Assessment. It is stated that the original Housing Needs Assessment carried out in 2004 showed a surplus in affordable

housing therefore there should be no affordable housing requirements identified.

Proposed Council Response: The Council does not agree with this view. The Housing Needs Assessment (HNA) carried out to inform the first Local Housing Strategy in 2004 showed that, at that time, there was a surplus in affordable housing. Preparation of the Alteration to the East Ayrshire Local Plan commenced shortly after this during a period of steeply increasing house prices which was particularly prevalent in the northern part of East Ayrshire. When the issue of affordable housing was being addressed as part of the local plan alteration, it was clear that the affordability situation in East Ayrshire had changed significantly since completion of the HNA 2 years previously. Resources were not available to carry out another full HNA so soon after the first one. It was therefore considered more appropriate and better value to appoint consultants with expertise in these matters (Tribal Consulting) to carry out an affordable housing study which took the data collected and findings of the initial HNA and updated them to reflect the situation as at 2006/7. This study concluded that there is a shortage of affordable housing in Kilmarnock and the northern part of East Ayrshire. Together both of these studies were used to draft the affordable housing policy RES 31 of the local plan alteration and the associated SPG.

- the requirements of the affordable housing SPG will result in developments being unviable especially if the sites were purchased in advance of the affordable housing policy being implemented.

Proposed Council response: As with the Developer Contributions SPG, there is a viability clause within the Affordable Housing SPG which states that prospective developers may be permitted to negotiate reduced affordable housing provision where it can be demonstrated to the satisfaction of the Council that by meeting the Council's requirements, the development is rendered unviable. Documentation to prove that sites were purchased prior to the affordable housing policy will also be required by the Council.

5. SUMMARY OF RESPONSES RECEIVED: MASTERPLANNING

5.1 With regard to the SPG on Affordable Housing, the main issues to which the responses relate comprise the following:

- the requirement for masterplans to be prepared for sites of between 50 and 100 units is onerous and unnecessary.

Proposed Council Response: The requirement for a masterplan to be prepared and submitted for sites of 50 units will only be required in certain circumstances such as if the development is in a sensitive area, is a housing site with an area extending to 2 hectares or greater (this constitutes a major development under the new planning system) or is an extension to an existing housing development.

- the requirement for indicative costs of a proposed development to be provided as part of a required masterplan, as this information is considered to be commercially sensitive

Proposed Council response: This requirement is fully in line with Planning Advice Note 67: Housing Quality. The Council need only to be satisfied that the development's basic economic assumptions are soundly conceived. Full development appraisals will not be sought.

6. CONCLUSION

- 6.1 No significant amendments to the content of the SPGs are considered necessary as a result of comments received and the responses to the comments in Section 3, 4 and 5 maintain the existing Council position. It has, however, been considered expedient to introduce a viability clause into the developer contribution and affordable housing SPGs to state that prospective developers may be permitted to negotiate a reduced contribution where it can be demonstrated that the payment of a full contribution, or the payment of both a developer contribution and making an affordable housing provision would render a development unviable. Most of the proposed changes relate to points of clarification only.

7. THE WAY FORWARD

- 7.1 Should Cabinet agree the proposed responses to comments received, all three SPGs will be finalised as non-statutory guidance and will become a material consideration in the determination of planning applications. Given that there are outstanding objections to the local plan alteration which relate to both the Developer Contributions and Affordable Housing policies, further changes to the SPGs may be required following the Local Plan Examination.
- 7.2 Upon adoption of the local plan alteration, the Council will commence preparation of a new local development plan under the Planning etc. (Scotland) Act 2006. It should be noted that under this new legislation, Supplementary Guidance can be adopted by Councils to become a statutory document forming part of the local development plan.

8. FINANCIAL IMPLICATIONS

- 8.1 There are no financial implications arising from this report.

9. LEGAL IMPLICATIONS

- 9.1 There are no legal implications for the Council as a result of this report.

10. POLICY IMPLICATIONS

- 10.1 There are no direct policy implications arising as a result of the Council's approval of this report. However, once approved by the Council, the Supplementary Planning Guidance will formally become a material planning consideration in the Council's consideration and determination of relevant planning applications.

11. COMMUNITY PLAN IMPLICATIONS

- 11.1 There are no community plan implications for the Council as a result of this report.

12. RISK MANAGEMENT IMPLICATIONS

- 12.1 There are no risk management implications for the Council as a result of this report.

13. RECOMMENDATIONS

13.1 It is recommended that Cabinet agrees:

- (i) to approve the suggested Council responses to the comments received on the three SPGs:**
- (ii) to authorise the Head of Planning and Economic Development to make any necessary alterations to the three draft SPGs to take account of the Council's position in light of the consultation responses;**
- (iii) to agree that once the SPG's have been finalised that they will form non-statutory guidance which will be considered a material consideration in the determination of planning applications; and**
- (iii) to otherwise note the contents of the report.**

Elizabeth Morton

Depute Chief Executive / Director of Corporate Support

17 December 2009 (EF/)

BACKGROUND PAPERS

1. Report to Council of 26 February 2009 entitled 'Alteration to the East Ayrshire Local Plan, Draft Supplementary Planning Guidance'
2. Draft Supplementary Planning Guidance – Developer Contributions – February 2009
3. Draft Supplementary Planning Guidance – Affordable Housing – February 2009
4. Draft Supplementary Planning Guidance – Masterplanning – February 2009
5. Report to Council of 8 October 2009 entitled 'Alteration to the East Ayrshire Local Plan, Outstanding Objections to the Local Plan and Objections Received in respect of Agreed Modifications'

For further information on the contents of this report, please contact Emma Fyvie, Senior Planning Officer on (01563) 576756.

Implementation Officer: Alan Neish