

EAST AYRSHIRE COUNCIL

SPECIAL CABINET – 2 JULY 2008

DEVELOPER CONTRIBUTIONS – SUPPLEMENTARY PLANNING GUIDANCE

Report by the Depute Chief Executive/Executive Director of Corporate Support

1. PURPOSE OF REPORT

- 1.1 To consider various refinements to the approach to Developers Contributions approved on 24 October 2007 and to update Cabinet on the preparation of the Supplementary Planning Guidance.

2. BACKGROUND

- 2.1 The purpose of developer contributions is to ensure that:

- the level and quality of infrastructure, facilities and amenities enjoyed by existing residents is not compromised by new developments, and
- residents of existing and new developments have access to the highest standards of infrastructure, facilities and amenities possible.

- 2.2 For these objectives to be achieved a developer contributions report was approved by Cabinet on 24 October 2007. The report outlined key principles that the Council would follow and in particular that:

- contributions would be sought from housing developers through a legally binding planning (Section 75 or 69) agreement (there are separate approved procedures for windfarm developers and mineral operators) in accordance with Scottish Executive Circular 12/1996. In other words, the level of contribution requested must:
 - reflect the scale and type of development proposed;
 - be reasonable, and
 - relate to deficiencies in infrastructure, facilities and amenities arising directly from new development.
- projects for which developer contributions would be sought would be agreed by Cabinet and reviewed annually;
- four development contribution funds would be established based on investment corridor boundaries identified in the consultative draft Alteration to the East Ayrshire Local Plan;
- contributions would be sought on a flat rate per house;
- any expenditure utilising developer contribution funds would require to be aligned with, but not substitute, the Capital Plan and Revenue Planning processes, and
- that the Developer Contributions Officer and any other staff required to implement the policy would be funded directly by contributions received.

- 2.3 Cabinet also agreed that developer contributions received in accord with the above principles would be directed towards the provision of:
- education infrastructure
 - transportation infrastructure
 - community facilities
 - recreation and green space initiatives, and
 - town centre improvement projects.
- 2.4 Following approval of the approach taken in respect of developer contributions as outlined in the report of 24 October 2007, new developer contribution policies were formulated and incorporated into the finalised draft Alteration to the East Ayrshire Local Plan (the plan was approved in November/December 2007 and placed 'on deposit' and objections invited between 1 February 2008 and 18 April 2008) and work commenced on preparing Supplementary Planning Guidance (SPG). The purpose of the SPG was to set down in more detail the procedures that the Council would follow in implementing the developer contribution policy, provide a list of the projects on which developer contributions would be expended in accord with land allocations and phasing contained in the finalised draft Alteration, and indicate the level of charge.
- 2.5 Work on the Alteration to the Local Plan and SPG has enabled further consideration to be given to the subject. It is stressed that many of the principles outlined above remain but, as the SPG still requires to be incorporated into the local plan process to enable it to become a mandatory requirement of any planning consent and will be tested at a public examination or public local inquiry, it is recommended in the interests of clarity and robustness of policy, that a number of refinements to the approach approved in October 2007 are made.

3. PROPOSED REFINEMENTS

- 3.1 Given that the finalised draft Local Plan Alteration identifies housing sites (and lists for example notional housing capacities) to meet approved structure plan requirements to 2017, the type and range of essential infrastructure, facilities and amenities required for each investment corridor to 2017 can be established and be listed and fixed in the Local Plan Alteration and SPG from the outset. Costs for the projects on the list created for each fund can be established to allow accurate contribution rates to be calculated (subject to rises to cover inflation). The costs of the projects to be undertaken can be built up to a detailed stage and estimated as accurately as possible. This will allow developers to have a clear indication of the costs involved and will allow the developer contribution rates to be factored into developer's budgets with some degree of certainty. This approach is further re-enforced by Circular 12/1996, which states that 'by including policies in the development plan on the circumstances in which planning agreements would be sought there is an opportunity for the local community and the development industry to comment. In addition, developers may be able to anticipate the financial implications for development projects, for example in relation to land values'. If this refinement was adopted there would no longer be a requirement for a list of projects to be agreed on an annual basis with the consequential risk of developers refusing to contribute on the basis that the list could not be viewed

as being formally part of the local plan and hence mandatory. As agreed in October 2007, developers would continue to be able to opt to undertake a particular project from the approved list as an alternative to making a financial contribution and in exceptional circumstances could propose an alternative project to those on the approved list which would be fully considered by the Council. In all instances, there would be a requirement on the developer to make a contribution to the approved strategic project or projects.

3.2 Other than accommodating the above requirements it is recommended that there be no change to annual monitoring requirements as agreed in October 2007.

3.3 As indicated above, the finalised draft Alteration to the East Ayrshire Local Plan was approved in November/December 2007 and placed 'on deposit; and objections invited between 1 February and 18 April 2008. Objections were received from developers which included comments such as:

- any financial contribution which is made should be spent directly within the local area or settlement involved rather than become part of a general authority wide fund for expenditure; and
- contributions should only be required where shortfalls exist and should be related and proportional in scale and kind.

3.4 Circular 12/1996, states that there are four criteria to meet when seeking to secure a financial contribution through a planning agreement namely:

- Planning purpose
- Relationship to proposed development – '...firmly opposed to attempts by planning authorities to extract advantages or benefits or payments from landowners or developers which are unconnected with a proposed development'.
- Scale and kind
- Reasonableness – 'The provision of contributions towards public transport or community facilities may be acceptable provided the requirements are directly related to the development proposal with the need for them arising from its implementation. Agreements should not, however, be sought where connection does not exist or is too remote to be considered reasonable'.

3.5 The relevance of these criteria was highlighted in the recently published 'Report of Local Plan Inquiry into Objections to the finalised West Lothian Local Plan' (April 2008), which stressed the importance of the four criteria in respect of Developer Contribution principles.

3.6 Following further consideration of Circular 12/1996 and the objections received to the Local Plan, a review of the proposed developer contribution corridors was undertaken. Four developer contribution funds were initially proposed in October 2007 with boundaries matching those contained in the Local Plan Alteration but combining the A76 corridor and Doon Valley corridor into one. These corridors were merged in order that the larger housing allocations in the A76 Corridor and resultant developer contributions could potentially cross-fund projects in the Doon Valley area. In retrospect,

combining both investment corridors in the southern part of the Council's area would be contrary to the overarching principle that contributions should relate to deficiencies in infrastructure, facilities and amenities arising from the development. It is also considered that the impact of development in the Doon Valley would not have any appreciable impact on the A76 corridor. Accordingly it is suggested that five funds be established, one for each investment corridor.

- 3.7 Additionally, when the requirements of Circular 12/96 and the sites identified in the finalised draft Local Plan Alteration with the known infrastructure requirements arising there-from were considered further, it became clear that in some instances the impact of new development can be very localised whilst still contributing to wider corridor or council wide impacts. Accordingly within each investment corridor it is recommended for projects that are listed to meet specific requirements arising from new developments within a defined settlement or locality, that a proportion of the developer contribution funds arising are ring fenced for that project with the remainder being allocated to corridor wide or Council wide infrastructure projects.
- 3.8 Whilst the majority of developer contributions will be sourced from housing developers it is considered that contributions should be negotiated with developers of other sites identified in the finalised draft Local Plan Alteration (other than those identified for windfarms or mineral extraction as separate developer contribution arrangements are already in place for such developments). For retail, commercial and commercial leisure developments developer contributions will not be sought. However, it will be expected (as approved in October 2007) that developers will assist with individual projects as agreed by the Head of Planning and Economic Development. Notwithstanding, it is recommended that these projects relate to town centre improvements and align with the Developer Contribution approved projects.
- 3.9 In many cases intensification in the use of community facilities will arise. In some instances this will require either new facilities or extensions to the facilities to be provided and these should be funded by developer contributions. However, it is unreasonable to expect developers to fully fund projects if the facility is to be used also by existing residents outwith the proposed development; contributions must be appropriate to the scale of the development. Accordingly, there will be a requirement for the Council (or other external funding sources) to part fund these projects. In certain circumstances, it may also be necessary for the Council to financially front-load projects where the project is required to be delivered early in the life of the Local Plan Alteration and where not all contributions have been received because of a phased development approach.
- 3.10 In other cases intensification may require improvements to the facilities to enable greater use. It is recommended that it should be made clear that in these cases (e.g. enhanced drainage systems for playingfields) the enhancement should be funded by developer contributions.

4. EDUCATION PROJECTS

- 4.1 Decisions by Cabinet on 19 March 2008 in relation to the Better Schools: Better Learning Strategy has clarified the requirements for long term educational provision within parts of East Ayrshire. However, there is a requirement to consider education provision associated with new residential developments out with these areas. A new primary school will need to be provided to serve the north-west of Kilmarnock (primarily related to site 319H) and an extension will be required at Stewarton Academy. In the case of the north-west Kilmarnock site, the majority of the site currently lies within the catchment area of Kilmaurs Primary School, therefore, it is recommended that it would be prudent to review the boundaries of school catchments in the local area prior to construction of the new school and before adoption of the SPG on developer contributions. A similar exercise should also be considered for the primary schools in the south of Kilmarnock which may alleviate the need for a primary school extension at Annanhill in the longer term.

5. WATER AND SEWERAGE INFRASTRUCTURE

- 5.1 Water and sewerage infrastructure to service developments are normally considered as part of the planning process. Developments would not be recommended for planning approval unless water and sewerage infrastructure to Scottish Water standards is provided.
- 5.2 A computer based model of the Irvine Valley sewer catchment has been built and a similar model dealing with water supply in the Kilmarnock area is currently being developed. These models will enable the most practicable solution to water and sewerage provision to be identified for specific sites in the context of identified development requirements to 2017.
- 5.3 On the basis of information supplied to date by Scottish Water all of the sites identified to 2017 can be developed or will not be delayed as a result of infrastructure constraints that are the sole responsibility of Scottish Water. It is considered therefore that developer contributions should not be used for water and sewerage infrastructure.

6. AFFORDABLE HOUSING

- 6.1 The provision of affordable housing within communities within the Glasgow Link Corridor and Kilmarnock is a separate policy requirement of the finalised draft Local Plan Alteration and accordingly is not considered a developer contribution in its own right.

7. FINANCIAL MONITORING AND INTERNAL AUDIT

- 7.1 It is anticipated that the level of developer contributions received by the Council in the coming 10 years will be significant, however cognisance should be taken of the recent fall in the housing market and that many of the sites identified in the Local Plan Alteration (as finalised) are subject to objection and are likely to be discussed at a public local inquiry/examination. For these reasons a fall of contributions received, at least in the short term, may be experienced. Nonetheless, it is suggested that robust and transparent financial monitoring and reporting procedure are considered at the outset.

Discussions have already taken place with the Finance Service to develop appropriate systems.

8. NEXT STEPS

- 8.1 Progress with developing the Developers Contributions Policy must be linked to those steps that need to be taken to progress the Local Plan Alteration. The attached flow chart outlines the recommended stages.
- 8.2 As a first step it is recommended that an initial list of projects to be funded by developer contributions as per the criteria is prepared by the Developer Contributions Officer together with estimated project costs. This will be presented to Cabinet in August 2008 for consideration.
- 8.3 On approval of the project list by Cabinet, the projects with estimated costs will be incorporated into the draft Developer Contributions Supplementary Planning Guidance which will form the basis of an initial consultation exercise with the development industry. Comments from developers on the draft SPG will be reported to Cabinet in October/November (see below).
- 8.4 In addition, once the developer contribution projects are approved by Cabinet, more detailed costings will be sought. It is suggested for reasons of transparency and independence from the Council and to ensure full co-operation by developers, that external cost consultants be appointed to carry out this exercise.
- 8.5 The Supplementary Planning Guidance mentioned in paragraph 8.3 above, will then be amended to take account not only of comments made by the development industry but also the detailed costings from the external cost consultants. At this stage it will provide full details of the projects, associated costs and resultant Developer Contribution rates. Once the amended Supplementary Planning Guidance is approved by Cabinet, it will formally be incorporated within the Local Plan Alteration as a modification. This will enable the project list and developer contribution rates to be subject to full consultation/objection and for any objections to be discussed at any future local plan inquiry or examination before being formally adopted within the Local Plan Alteration by the Council. Adoption by the Council of the Local Plan Alteration will help to secure planning agreements for developer contributions because they will be a requirement for conformity with the Plan.
- 8.6 Once the Local Plan Alteration (as modified) is approved by Cabinet in line with paragraph 8.5 above, it will be used with the existing Development Plan and other material considerations as an assessment tool in the determination of all planning applications.

9. LEGAL IMPLICATIONS

- 9.1 Legal Services have been actively involved in discussions over the Developer Contribution Policy. Subject to the outcome of a Public Examination or Public Local Inquiry into the Local Plan Alteration, they are currently satisfied that it complies with planning law and policy.

10. FINANCIAL AND PERSONNEL IMPLICATIONS

- 10.1 The financial obligations (both capital and revenue) of the developer contribution projects require to be fully considered by Cabinet once the project list has been finalised and costed following which personnel implications will require to be fully explored.

11. COMMUNITY PLANNING ISSUES

- 11.1 It is considered that with the scope of developer contributions, the resultant projects will assist in meeting the themes of the Community Plan.

12. RECOMMENDATIONS

It is recommended that Cabinet:

- i) agrees the proposed refinements to the Developer Contribution Strategy;
- ii) agrees that there be a review of school catchment boundaries for specific schools;
- iii) agrees that a draft list of projects to be funded by developer contributions be drawn up for consideration by Cabinet; and
- iv) agrees to the proposed steps with regard to the approval process of the Developer Contributions Policy/Supplementary Planning Guidance (as set out in section 8 of the report).

Elizabeth Morton

Depute Chief Executive/Executive Director of Corporate Support

16 June 2008

BACKGROUND PAPERS

Finalised Alteration to East Ayrshire Local Plan – December 2007

Developer Contributions - Cabinet Paper – 24 October 2007

Any person wishing further information on this report should contact Karl Doroszenko or Alison Brown, on Tel No. (01563) 576751/ 576253 respectively.

Implementation Officer: Alan Neish, Head of Planning and Economic Development

DEVELOPER CONTRIBUTIONS – NEXT STEPS

