

PERTH AND KINROSS COUNCIL

Strategic Policy and Resources Committee

12 June 2019

CHANGES TO DEVELOPER CONTRIBUTIONS AND AFFORDABLE HOUSING SUPPLEMENTARY GUIDANCE

Report by Executive Director (Housing & Environment) (Report No. 19/171)

PURPOSE OF REPORT

The Developer Contributions and Affordable Housing Supplementary Guidance is required to be updated in line with Local Development Plan 2. This provides an opportunity to undertake a review of Guidance and make clarifications to improve consistency in its application.

This report provides an overview of the main modifications proposed to the Guidance which have been considered by Executive Officer Team and the Planning Member Officer Working Group. It recommends that these changes are approved by this Committee, prior to public consultation.

1. BACKGROUND

- 1.1 This report provides an overview of the key modifications and clarifications to the current adopted Developer Contributions and Affordable Housing Supplementary Guidance. Perth & Kinross is one of the forerunners across Scotland in terms of the development and application of Developer Contributions Policy and Supplementary Guidance. The approach taken by the Council is being used as a model by a number of other Local Authorities. Developer contributions are secured through the determination of planning applications where necessary to mitigate the impact of new development. The contributions can either be physical delivery on site (such as part of the Cross Tay Link Road at Bertha Park) or through a financial payment. The underlying Council Policy supporting developer contributions is contained in the Local Development Plan Policy PM3: Infrastructure Contributions. In order to support the policy implementation, the Council has developed Statutory Supplementary Guidance which has been reviewed and is the subject of this report.
- 1.2 The Developer Contributions and Affordable Housing Supplementary Guidance (the current Guidance) was considered by Enterprise and Infrastructure Committee on 23 March 2016 (Report No 16/133 Refers), and adopted as statutory Supplementary Guidance in September 2016. Through the review of the Local Development Plan (LDP), all Supplementary Guidance is required to be reviewed and consulted upon prior to re-adoption along with the new LDP. This review provides an opportunity to make modifications and clarifications to the document, to improve consistency of application. The main modifications are set out in this report, but smaller clarifications are not

specified, as they do not change the approach to the current Guidance application.

- 1.3 The Scrutiny Committee have held a number of sessions reviewing the current Guidance, and the outcome of these sessions has also informed the proposed changes. The Executive Officer Team and Planning Member Officer Working Group have also been presented with the proposed changes to the Supplementary Guidance and the recommendations contained in this report are based on the feedback received. The updated Guidance will be referred to as 'the revised Guidance' for the remainder of this report.

2. PROPOSALS

- 2.1 All new residential dwellings or new non-residential buildings are considered against the requirements of the current Guidance, which includes the replacement or reuse of those buildings which have fallen out of use through non-occupation or decay. The current Guidance sets out the terms whereby a building would be considered to be 'in use' and therefore exempt from the current Guidance requirements. However, it was considered that the current Guidance does not provide sufficient clarity. The revised Guidance proposes a modification, and now includes that a redundant/ or non-occupied residential building will be considered to be 'in use' if Council Tax has been paid within the 7 year period, prior to the submission of a planning application. In the case of non-residential buildings, this 'in use' criterion is where non-domestic rates have been paid in the 12 months prior to submission of the planning application. A 7 year period for residential buildings has been used as this relates to the time it takes for pupils to move through the primary school system. The revised Guidance will provide further clarity to applicants and allow for more consistent application.
- 2.2 The current Guidance sets out a general requirement of the information which is to be provided by applicants who seek to reduce the contribution requirement, on the basis that the payment of the contribution would make the project unviable and unable to proceed, and where the Council deems that this requires the submission of a Viability Statement. Not enough detail is currently provided to applicants on what the Council would seek to be included within the Viability Statement, and the revised Guidance addresses this issue by specifying the required information for this process. In addition, in line with the majority of other local authorities in Scotland, the assessment of Viability Statements, will now be independently undertaken by the District Valuer, at the applicants cost. This has the benefit of providing an independent expert view on the information provided, as a basis of the viability claim. The Council will use the report from the District Valuer as a basis of any decision, but will not be bound by it. These changes will help provide further clarity to applicants and improve the application of the revised Guidance.

Primary Education

- 2.3 The methodology has been updated for projecting which schools will have a capacity constraint and will be subject to contributions from new residential

developments within their catchments. The contributions are used to fund additional primary school capacity to accommodate the additional pupils from the new residential development. The approach in the current Guidance takes an annual snapshot of the school capacity at one point during the year. This does not take account of the fluctuation in the school roll, which can take place between each review, or the longer term trends in the school capacity. It is proposed that, rather than take a position based upon a single point in the year, a longer term view, based on previous trends, is used. The revised Guidance includes a provision that a contribution will be sought where a school has been operating at above 80% capacity for 5 of the previous 7 years at the time of each annual review, and projected to be operating at above 100% capacity, taking account of extant planning consents and LDP Site allocations. This revised approach takes account of annual fluctuations in the school rolls, making it more accurate in terms of future education investment planning.

- 2.4 The contribution level has been updated to take account of the School Estate Strategy and Investment Programme projects which have been completed. The original contribution level was calculated in 2009 and was subject to review in 2012 and 2016 taking account of inflation. The revised 2018 contribution rate has decreased by £1,296 which better reflects the current costs associated with improvements to the school estate. Appendix 1 provides sets out the contribution calculations.

Primary Education Contribution	2016 Contribution Rate	2018 Contribution Rate	Difference
Per new Dwelling	£6,460	£5,164	-£1,296

- 2.5 In line with the current Guidance, single bedroom dwellinghouses are exempt from contributing towards primary education, but conversion of a single bedroom dwelling to create additional bedrooms would be subject to a contribution. This approach is to counter applicants seeking a single bedroom dwelling and then extending it soon after to create additional bedrooms, in order to circumvent the payment of a primary education contribution. It has been identified that this approach can disproportionately impact on the viability of applicants seeking to extend their properties. In order to improve its application, the revised Guidance includes a provision that if a proposal to increase the number of bedrooms in a single bedroom dwellinghouse is made more than 7 years after the completion of the original dwellinghouse then it will be exempt. If the change is made within 7 years of the original completion, then each case will be determined on its own merits by Council Officers, taking account of the scale of the proposal and any relevant considerations at the time of the original planning consent. If the dwelling would remain as affordable in value, then it would be exempt from making a contribution. The revised approach is considered to be fair and proportionate.

Transport Infrastructure

- 2.6 Section 6 of the revised Guidance, Transport Infrastructure, secures a proportionate contribution from new development across the Perth Housing Market Area towards the delivery of a package of infrastructure measures including the Cross Tay Link Road. The current Guidance contribution level is based upon the 2013 costs estimates of the projects. These costs have been reviewed in 2018.

2018 Cost Estimates

Element	Cost £(million)	Project Status
Cross Tay Link Road ("CTLR")	£118m	Committed Capital Project
A9/A85 Crieff Road junction improvements	£49.6m	Committed Capital Project
Total	£167.4m	
Park and Ride	£4m	Identified in Perth Transport Futures

- 2.7 In 2016, a Legal Challenge was raised against the adopted Aberdeen City and Shire Strategic Transport Fund Supplementary Guidance. Aberdeen City and Shire lost the challenge on the basis that it did not provide a sufficient link between the new development and the infrastructure for which the contributions were being sought, and the Guidance was overturned. The approach taken by Perth & Kinross Council to the Transport Infrastructure contributions is materially different and the Council sought expert Legal Opinion on the current Guidance in 2017, which confirmed this position. This Legal Opinion did, however, highlight that the justification for contributions towards the Park & Ride scheme was weaker than the other elements of the package and that a stronger methodology for defining the boundary where the current Guidance is applied would enhance the robustness of the approach.
- 2.8 Work has been undertaken to provide a further justification of the contributions towards the Park and Ride. It is viewed that a more robust approach is required to assess the impact of new development on the Park & Ride Scheme, on a site by site basis, rather than take a geographical approach. The Executive Officer Team agreed that in light of the increased cost estimates detailed in 2.6 above, the Park & Ride scheme should be removed from the overall package of measures. The revised Guidance will identify that, where new development has demonstrated benefit from the Park & Ride schemes, then it may still be required to contribution on an individual basis.
- 2.9 Updated transport modelling work has been undertaken to establish the impact of development in the LDP 2 on the road network around Perth. The revised modelling identifies a 50% additional impact of sites on the road network from developments identified in LDP 2 compared to the current Guidance, which is based on a 61% impact on the road network, arising from

the developments identified in LDP 1. The remaining 50% of the impact is not related to the LDP 2 sites but come from background traffic growth or sites which have planning consent, such as Bertha Park, where a contribution towards transport infrastructure has been secured. This approach is proportionate and in line with Circular 3/2012: Planning Obligations and Good Neighbour Agreements. The updated Transport Infrastructure contribution levels, excluding the Park & Ride Scheme and based on a new traffic impact of 50% is as follows:

New Development Land Use	2016 Contribution per m² - Full Rate	2018 Contribution per m² - Full Rate	Difference
Retail	£123	£154	+ £31
Employment	£11	£14	+ £3
Other non-residential use	£43	£48	+ £5
Residential	£3,549 per unit	£3,657 per unit	+ £108
Residential - Affordable	£1,775 per unit	£1,828 per unit	+ £53

- 2.10 In line with the Legal Opinion, the methodology for defining the contributions area boundary has been reviewed in the revised Guidance. The boundary will now be defined based on the percentage of trips likely to be made from a settlement to Perth. This data stems from the Census 2011 travel to work data. In order to ensure that settlements can be shown to have a discernible impact on the Perth Road infrastructure, the contribution boundary will only include settlements which are identified to have a percentage of trips to Perth of 12% or more. Settlements which fall below this threshold will be exempt. The 12% figure has been identified as the majority of the main settlements which fall above this level, are out with the Perth Housing Market Area or have a significantly lower percentage, such as Longforgan, which has a percentage of trips of 3%. The contributions are split into two levels - the full contribution rate and the reduced contribution rate. The reduced rate which is a 25% reduction in the contribution level will apply to settlements with a percentage of trips of 12% - 19%. Settlements with a percentage of trips of more than 19% or above will fall under the full contribution rate. Appendix 2 sets out the revised contribution boundaries.
- 2.11 An analysis of the financial impact of the proposed revised contribution boundaries has been carried out. It shows that only two LDP allocated sites will be removed from the contribution requirement (H24 Inchtute & H45 Murthly) with a total allocation of 92 units. This would reduce the expected total contributions by up to £300,000. In turn, the full contribution area has been extended to cover additional settlements such as Abernethy and Bankfoot which will increase the contributions total received from these settlements. It is projected that the revised boundary would have a minimal impact on the overall projected level of contributions ingathered.

Affordable Housing

- 2.12 The key principles of the Affordable Housing section of the current Guidance have not changed but have been updated to provide further clarification to applicants and improve the application when assessing planning proposals. The Affordable Housing Commuted Sum has been updated. This Commuted Sum reflects the difference in building plot value between a plot for private sale and a plot for affordable housing. Commuted Sum payments are required where it is not appropriate to provide affordable housing on-site within a development. This may be due to the site being of a smaller scale (generally below 10 units) or in a location which would not maximise the benefit of affordable housing delivery. The Commuted Sum levels have been revised to reflect the updated figures as a result of a review undertaken by the District Valuer Service in January 2019 and implemented in line with the current Guidance from 1 April 2019.

3. CONCLUSION AND RECOMMENDATIONS

- 3.1 This report provides an overview of the key modifications and clarifications to the current adopted Developer Contributions and Affordable Housing Supplementary Guidance. These are:
- residential buildings will be considered to be ‘in-use’ where Council Tax has been paid in the 7 year period prior to submission of a planning application. Non-residential buildings will be considered in use where ‘Non-domestic’ rates have been paid in the 12 month period prior to submission of a planning application;
 - greater guidance on the requirements where a Viability Statement is required;
 - updated methodology for projecting which schools will have a capacity constraint and will have contributions applied within their catchments;
 - modified position on application of Guidance to single bedroom dwellinghouse extensions;
 - revised Primary Education Contribution level;
 - revised Transport Infrastructure Contribution levels;
 - revised Transport Infrastructure Contribution boundary.
- 3.2 The revised Developer Contributions and Affordable Housing Supplementary Guidance will be made available for a statutory period of public consultation in September 2019. The outcome of the consultation will inform any proposed changes to the Guidance which will then be presented to Committee for formal approval in late 2019.
- 3.3 It is recommended that the Committee:
- (i) considers and makes comments on the content of the report;
 - (ii) agrees the recommended modifications to the Developer Contributions and Affordable Housing Supplementary Guidance to be made available for public consultation in September 2019;

(iii) requests a report back to this Committee on the outcomes of the public consultation and any changes to the Supplementary Guidance.

Author

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Approved

Name	Designation	Date
Barbara Renton	Executive Director (Housing and Environment)	17 May 2019

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1. IMPLICATIONS, ASSESSMENTS, CONSULTATION AND COMMUNICATION

Strategic Implications	Yes / None
Community Plan / Single Outcome Agreement	Yes
Corporate Plan	Yes
Resource Implications	
Financial	None
Workforce	None
Asset Management (land, property, IST)	None
Assessments	
Equality Impact Assessment	None
Strategic Environmental Assessment	None
Sustainability (community, economic, environmental)	None
Legal and Governance	None
Risk	None
Consultation	
Internal	Yes
External	None
Communication	
Communications Plan	Yes

1. Strategic Implications

Community Plan/Single Outcome Agreement

- 1.1 This report supports the Community Plan/Single Outcome Agreement strategic objectives of promoting a prosperous, inclusive and sustainable economy; and creating a safe and sustainable place for future generations.

Corporate Plan

- 1.2 This report contributes to the achievement of the Council's Corporate Plan Priorities:

- i) Giving every child the best start in life;
- ii) Developing educated, responsible and informed citizens;
- iii) Promoting a prosperous, inclusive and sustainable economy;
- iv) Supporting people to lead independent, healthy and active lives; and
- v) Creating a safe and sustainable place for future generations.

- 1.3 This report relates to all of the above.

2. Resource Implications

Financial

- 2.1 The Head of Finance has been consulted in the preparation of this report. The recommendations of this report will not raise any immediate financial implications. It is identified that the revised Primary Education Contribution level and the revised Transport Infrastructure Contribution Boundary may reduce the projected future level of contributions ingathered but they reflect a robust position. The level of contributions received through the Guidance corresponds to the level of future development delivered through the housing market and while past trends can be used to estimate future build rates this does not guarantee future delivery levels. The operation of the Guidance will continue to be monitored to ensure it meets its stated objective.

3. Assessments

Equality Impact Assessment

- 3.1 Under the Equality Act 2010, the Council is required to eliminate discrimination, advance equality of opportunity, and foster good relations between equality groups. Carrying out Equality Impact Assessments for plans and policies allows the Council to demonstrate that it is meeting these duties.
- 3.2 The function, policy, procedure or strategy presented in this report was considered under the Corporate Equalities Impact Assessment process (EqIA) with the following outcome:
- i) Assessed as **not relevant** for the purposes of EqIA

Strategic Environmental Assessment

- 3.3 The Environmental Assessment (Scotland) Act 2005 places a duty on the Council to identify and assess the environmental consequences of its proposals.
- 3.4 The matters presented in this report were considered under the Environmental Assessment (Scotland) Act 2005 and pre-screening has identified that the Plans, Programmes or Strategies (PPS) will have no or minimal environmental effects, it is therefore exempt and the SEA Gateway has been notified. The reason(s) for concluding that the PPS will have no or minimal environmental effects is that The Supplementary Guidance provides a methodology for the calculation of Developer Contributions towards funding Primary Education, A9 Junction Improvements, transport infrastructure and securing Affordable Housing. It is not directing development or adding to any other part of the adopted Local Plans or Proposed Plan.

Sustainability

- 3.5 Under the provisions of the Local Government in Scotland Act 2003 the Council has to discharge its duties in a way which contributes to the achievement of sustainable development. In terms of the Climate Change Act, the Council has a general duty to demonstrate its commitment to sustainability and the community, environmental and economic impacts of its actions.
- 3.6 The proposal contained within the report are assessed to have a positive impact on sustainability, particularly with regard to delivering transport infrastructure encouraging sustainable modes of transport.

Legal and Governance

- 3.7 The Head of Legal and Governance has been consulted and no legal implications have been identified.

Risk

- 3.8 None.

4. Consultation

Internal

- 4.1 The Head of Legal and Governance Services and the Head of Finance have been consulted on the preparation of this report

5. Communication

- 5.1 The proposed Supplementary Guidance will be made available for a period of consultation with all external stakeholders from September 2019. The outcome of the consultation will inform future modifications of the Guidance.

2. BACKGROUND PAPERS

- 2.1 Developer Contributions and Affordable Housing Supplementary Guidance 2016
- 2.2 Primary Education and New Housing Developer Contributions Policy 2009
- 2.3 Enterprise and Infrastructure Committee 25 March 2009; Report 09/169 - Finalised Primary Education and New Housing Contributions Policy
- 2.4 Enterprise and Infrastructure Committee 07 November 2012; Report 12/506 – Transport Infrastructure Developer Contributions
- 2.5 Enterprise and Infrastructure Committee 02 April 2014; Report 14/149 – Transport Infrastructure Developer Contributions

3. APPENDICES

- 3.1 Appendix 1 – Primary Education Contributions – A methodology for calculating the Cost per Pupil for new school developments.
- 3.2 Appendix 2 – Transport Infrastructure – Revised Boundary
- 3.3 Appendix 3 – Revised Developer Contributions and Affordable Housing Supplementary Guidance