



The Chief Planner  
Scottish Government

I refer to your letter of 29 November 2018 to the Interim Chief Reporter requesting a report from the Directorate of Planning and Environmental Appeals on the City of Edinburgh Council's intention to adopt its Supplementary Guidance on Developer Contributions and Infrastructure Delivery. My report is attached.

You [wrote separately to the council](#) to inform them of the preparation of this report. You stated in that letter that the reporter will be responsible for deciding whether any additional information and evidence is required to prepare the report.

Your officials provided me with the package of information provided by the council when it informed you by email on 7 September 2018 of its intention to adopt the supplementary guidance. This included:

- the version of the supplementary guidance which the council intends to adopt
- a summary of the representations received on the consultation draft and of the council's response to these
- a list of changes between the consultation and final drafts of the supplementary guidance, and
- a statement of conformity with the tests for planning obligations which are set out in Circular 3/2012: Planning Obligations and Good Neighbour Agreements.

The council's email also contained links to its appraisals on transport, education and primary care infrastructure which have informed the supplementary guidance, and to the action programme for the local development plan.

I have had regard to all of the above information in preparing my report. In addition to these materials I have also had reference to other evidence in the public domain such as the local development plan itself, its examination report, relevant legislation, Scottish Planning Policy and government circulars – I refer to these in the report as appropriate. Your officials sent me a number of other emails they have received by various parties (all or most of whom made representations on the consultation draft) about the supplementary guidance. However, these do not appear to raise any significant new issues which are not already raised in the consultation responses summarised by the council. In any event, I have taken no account of this additional correspondence in preparing my report. I have not had regard to the various appeal decisions which are referred to by some respondents and by the council, since these relate to the circumstances of individual planning applications rather than to the process of preparing the supplementary guidance itself.

I decided not to seek any further submissions from the council or those who made representations during the consultation process, although this would remain an option

should Ministers wish further evidence before deciding how to respond to the council's notification. This is because the material I have read is in my view sufficient to allow me to report back on the three specific matters you asked for the report to address. There are certain issues on which I cannot give a definitive and well-informed view, but that would likely still have been the case unless I sought very detailed additional evidence from parties. I do not think each and every issue raised in representations need be fully answered in order for me to respond in a proportionate manner to your request.

You requested that my report set out the following:

1. The consultation undertaken to date, and the way that views have been taken into account by the City of Edinburgh Council.
2. The methodology used to calculate contributions for education infrastructure.
3. Compliance of the supplementary guidance with Circular 3/2012.

In respect of the first element, I am aware that there has been more than one consultation draft of the supplementary guidance. But I restrict myself to the consultation on the most recent draft, as that is what the council's summary of the consultation responses relates to. In covering both the first and the third elements, I am required to look further than into the methodology for education contributions and to consider also, in particular, the approach in the guidance to both transport and healthcare contributions.

I have found it easiest to structure my report by considering generic, cross-cutting issues first and then considering the approach in the guidance to education, transport and healthcare contributions in turn. I return at the end to conclude on the 3 elements you ask me to consider. I do not address each of the representations one by one, but rather focus on what seem to me to be the main issues raised by the consultation process and by the approaches adopted in the supplementary guidance. The sub-headings in each chapter are based largely on the main issues raised in the consultation responses. For ease of reference, I have appended your letter to the end of my report.

*David Liddell*  
Principal Reporter

29 January 2019

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# **1 GENERAL AND CROSS-CUTTING ISSUES**

## **Does the level of contributions undermine development viability?**

1.1 Several respondents to the consultation raise this issue, both about this supplementary guidance but also more generally across Scotland. The difficulties in raising capital, combined with the size of contributions required, are said to threaten viability. Forth Ports states that the contributions sought in the guidance would render any further development of its land at Western Harbour, beyond the extant permission, unviable.

1.2 I return below to the justification for the level of contributions for education, transport and healthcare infrastructure. But as to whether what is being sought, for any particular development or for development more generally, would threaten its viability, I do not have before me the kind of detailed financial information that would demonstrate this. I do note, however, that section 3 of the guidance deals with viability and funding mechanisms and provides for the possibility of contributions being varied or even waived where there are abnormally high site preparation costs which threaten the viability of a development.

1.3 It is also stated that the costs of some items have increased during the time it has taken to progress the supplementary guidance to this point, and that it is unfair that developers should have to meet these increased costs. However, as the council points out, contributions for new infrastructure would naturally need to be based on the relevant costs at the time and costs in the guidance would anyway be subject to future inflation and (perhaps) revision. I do not find that any delay in adopting the guidance provides a strong reason for departing, now, from the principal of basing contributions on up to date assessments of costs.

## **Should the guidance mention other funding sources?**

1.4 Alternative sources of funds, such as the City Deal, are referred to by some respondents. It is argued that the guidance should highlight these, setting out when they can be utilised and ensuring developer contributions are therefore only sought when necessary. Section 3 of the guidance refers to the possibility of gap or forward funding being available in the event of viability concerns, and also that such funding may be required to deliver infrastructure projects in the action programme. The council says that, given the uncertainty in City Deal and other funding sources, it would be inappropriate to provide further detail in the supplementary guidance.

1.5 I do not think it is essential for the guidance to rehearse the circumstances where some other potential, currently unconfirmed, source of funding might reduce or remove the need for a contribution. Nor is the guidance the place to set out how and where money from other funding streams (like the City Deal), which would be subject to separate governance regimes, ought to be spent.

## **The council's role – carrying risk for infrastructure provision**

1.6 However I think it would have been open to the council to provide some further information in the guidance about alternative sources of funding – albeit these may be subject to change. It is noted by several respondents that the council gave a commitment during a hearing session of the local development plan examination that infrastructure

constraints would not be allowed to delay development. In allowing the plan to be adopted, the Minister wrote

'In part, I am reassured by the published statement that: "At the hearing the Council explained that it would carry the risk of the required infrastructure provision and this would not delay development" (Examination Report page 146 paragraph 96). I expect to see this assurance carried through to future decision making.'

1.7 Respondents want the guidance to re-affirm this commitment, confirming that the council will carry the risk of the required infrastructure provision so that development would not be delayed. The statement in the guidance that development should only progress subject to sufficient infrastructure being available/to be delivered is said to be contrary to such a commitment, as is the approach to the timing/phasing of education provision. There are also requests that the council should commit to front-funding infrastructure and then recoup the costs from developer contributions.

1.8 It is worth at this point noting some of the relevant content from the local development plan itself. Paragraph 103 explains that developer contributions are sought to enable the delivery of infrastructure at the appropriate time. Policy Del 1 says that 'development should only progress subject to sufficient infrastructure already being available or where it is demonstrated that it can be delivered at the appropriate time.'

1.9 The supplementary guidance repeats the above statement. When it comes to education provision, paragraph E of the guidance says that development should only progress where it is demonstrated that required education infrastructure can be delivered at the appropriate time. Paragraph F says that conditions may be used to phase development in line with the provision of new infrastructure. These statements seem to me to be entirely consistent with the principle established in the extract from policy Del 1 which I quote above.

1.10 However, paragraph 105 of the local development plan highlights the need for developer contributions to be realistic so that they do not impede development, stresses the importance of increasing the rate of new house completions, and says that mechanisms for forward and gap funding may also have to be considered. The following paragraph in the plan goes on to say that the supplementary guidance is to 'address the detail of these matters'. Policy Del 1 itself says that the guidance is, amongst other things, to provide guidance on the approach to the timely delivery of the required infrastructure and of the council's approach should the required contributions raise demonstrable viability concerns and/or where forward or gap funding may be required. Paragraph 143 of the local development plan says that the supplementary guidance will include 'possible approaches to forward and gap funding'. I am also mindful of the council's commitment (as relayed in the examination report) and of that reporter's expectation (page 763, paragraph 37) that the supplementary guidance would provide further clarity and detail in relation to the need for forward and gap funding.

1.11 In this context, I can well understand why there is disappointment from some respondents that the supplementary guidance does not provide more detail about how the council will aim to ensure that the provision of infrastructure will not unduly delay the progress of development. Section 3 does, as I note above, acknowledge that funding gaps may occur, but it does not say what would, could or may be done in response. It does not explain what the council's quoted commitment that 'it would carry the risk of the required

infrastructure provision and this would not delay development' would mean in practice. In this respect, my view is that the supplementary guidance falls short of what would reasonably have been expected on the basis of the contents of the local development plan (in particular policy Del 1) and the examination report. In responding to one representation, the council refers to £35m of potential capital funding for action programme projects to be used to front fund infrastructure in advance of the collection of developer contributions, yet there is no mention of this (or of how such an approach would work) in the supplementary guidance itself.

### **Is more infrastructure needed to make up housing shortfall?**

1.12 Conversely to arguing that too much is being sought through developer contributions, some development interests have also argued that the council's assessments of infrastructure requirements do not take into account the full extent of new infrastructure needed to make up the shortfall in housing completions. The concern is that further development (on unallocated sites) will now be rejected on the basis that there is no infrastructure to support them, it all being required for the allocated sites.

1.13 In responding, the council says that the infrastructure identified in the action programme is sufficient to support delivery of all the sites in the adopted local development plan, all other sites in the established housing land supply and other urban land with potential for housing development. I do not have information on the current position of the effective housing land supply. But regardless of that, I am not convinced it would be necessary for the supplementary guidance to plan for infrastructure provision to support development on (unidentified) sites beyond those categories the council has listed. To do so would seem to be at odds with a plan-led system, and it is not clear to me how it could be done effectively without knowing which sites to incorporate. Policy Hou 1 of the local development plan provides the basis for considering the infrastructure requirements for housing proposals on unallocated sites, pointing to the need to consider policies Del 1 (and its supplementary guidance) and Tra 8. For education infrastructure at least, paragraph C(ii) in part 2a of the supplementary guidance covers the arrangements for other sites not in the established supply. I do note, however, that some of the transport contribution zones for South East Edinburgh do seem to allow for the possibility of further greenfield releases there, on sites identified in the transport appraisal addendum as being amongst those which might come forward as further development proposals.

### **Dealing with windfall development**

1.14 Related to the issue above, questions are raised about how windfall sites (or increases in the capacity of allocated sites) would affect the arrangements for developer contributions. So, for example, if a number of sites in a zone are together to pay for an infrastructure intervention (like a school extension), what is the impact on these arrangements of a wholly new site being given planning permission within the same zone? Could these arrangements, as set out in the guidance, need to change as a result of a nearby windfall site gaining permission? One respondent suggested that windfall sites should be treated on a standalone basis rather than being required to make the contributions set out in the guidance.

1.15 The council responds by referring to paragraph C of part 2a of the guidance (the part dealing with education contributions). This says that if the education infrastructure interventions identified in the current action programme are sufficient to accommodate the

increase in pupil numbers, then the established 'per house' and 'per flat' rates would be applied to non-allocated sites. However if the identified infrastructure interventions would not be sufficient, then the council would consider whether these (and the associated contribution zones) need to be revised. If the established contribution rates would not cover the cost of the revised interventions, the developer of the new site would need to make up the difference.

1.16 The council also points to an intention to review the action programme on an annual basis, giving an opportunity to revise the infrastructure interventions and the associated costs (a point I return to below).

1.17 As I note above, the interventions and contributions in the guidance are based on assumed numbers of houses from allocated sites, sites in the housing land audit and other urban land considered to have capacity for development. Therefore the question is about how 'other' sites (greenfield sites or perhaps other urban sites not accounted for, or increases in the capacity of allocated sites) would be treated.

1.18 Assumptions about the rate of new housing development, the capacity of sites and future school rolls are, of course, subject to uncertainty and future change. An approach which seeks to set out a set of infrastructure interventions and mechanisms for developer contributions based on such assumptions needs to recognise that. Even without new sites, this is not an exact science, and there must be an expectation from all parties that some variation can be tolerated without revisiting the interventions and/or contributions. So it seems reasonable for the guidance to take the position that, unless it is necessary to make new arrangements, new sites and variations in site capacity can proceed on the basis of established interventions and contributions.

1.19 But what happens when revisions to interventions and contributions would be required as a result of a windfall development? The guidance puts the additional costs (if there are any) of any new arrangements for education infrastructure on the windfall development, so there should be no additional costs for the established sites. Therefore I assume (to be consistent with that approach) that it is not the intention that any new contribution zone or sub-area would apply to already established sites. The guidance does not clearly set this out however.

1.20 It is not stated, but I presume that the council would want to ensure that, when new arrangements are required, this does not cause any significant delay to the progress of established sites.

1.21 A question is raised as to whether, if a windfall development comes along and makes a contribution to, say, a school extension already identified in the guidance, the contributions from the established developments can be reduced accordingly. The guidance says (in part 4) that section 75 agreements can make provision for the repayment of unused contributions, and this would seem applicable to this kind of circumstance.

## **Can the council re-assign contributions to a different infrastructure intervention?**

1.22 At part 4 of the guidance it is stated that:

‘Whilst contributions may be required towards the delivery of a number of actions within a Zone, the Council may apportion money received from a particular development site to the delivery of infrastructure actions that have been prioritised in order to support early phases of development. Remaining or future moneys will then be used for the delivery of other actions set out within the Action Programme.’

1.23 So, for example, a hypothetical development may need to contribute, under the terms of the guidance, towards the costs of a primary school extension, a secondary school extension, a GP surgery and a junction improvement. My reading of the above extract is that where, say, the junction improvement is the most pressing intervention to allow development to proceed, all of the contribution from that development could be put towards it. Later developments in the same contribution zones would then make the contributions towards the other, less pressing interventions.

1.24 However, respondents contend that the sums received through developer contributions can only be used for the purpose for which they are sought, and otherwise should be returned. More clarity/justification is sought on the proposed approach.

1.25 The approach proposed by the council aims to help facilitate the delivery of the sites identified in the local development plan, and in that respect is to be commended. However, I have doubts about whether such an approach would accord with Circular 3/2012, and the necessary tests which are to apply to all planning obligations. It would seem to be taking funds raised for one purpose and spending them on a different one, even if on a piece of infrastructure which is required as the cumulative result of development, including the one in question.

## **Is the content of the guidance sufficiently grounded in the local development plan?**

1.26 In considering this question, it will be helpful to outline the relevant parts of the local development plan.

1.27 Paragraphs 103 to 106 of the local development plan explain that part of the approach to obtaining developer contributions will be through cumulative contribution zones. These are to be within defined areas for schools, transport infrastructure, public realm and greenspace actions, to be based on the transport and education appraisals and the council’s open space strategy. The zones are to be mapped through the supplementary guidance. This is to enable a clear understanding of what is required at the outset, provide the basis for the approach to developer contributions and set a clear foundation for the action programme (that to be updated annually). Paragraph 141 again refers to the transport and schools requirements being set out in Part 1 Section 5 of the plan, and also refers to Annex C as detailing the provisions for which contributions would be sought. Paragraph 145 states that there was at that time a lack of information on the scale of healthcare contributions and how they should be addressed, and that consequently any contributions for these would need to be considered on a case by case basis where a clear justification can be provided.



1.28 Policy Del 1 sets out in more detail the basis for the contributions to be included in the supplementary guidance:

- Transport infrastructure may include the infrastructure from Figure 2 of SESplan, the transport proposals in Table 9 of the local development plan, and the interventions specified in Part 1 Section 5 of the plan.
- Education infrastructure may include the new school proposals in Table 5 of the local development plan, and the potential school extensions in Part 1 Section 5 of the plan.
- Green space infrastructure may be as required by policies Hou 3, Env 18, 19 or 20.
- Public realm infrastructure and other pedestrian and cycle actions will be in the council's public realm strategy or noted as a site-specific action.
- Cumulative contribution zones will be established for education and transport infrastructure, and contribution zones for other actions will be established if they are relevant to more than one site

1.29 The supplementary guidance is to provide guidance on the required infrastructure in relation to specific sites and/or areas and the mapping of the cumulative contribution zones. It was acknowledged in the local development plan that the guidance may come too early to incorporate the findings of the Cumulative Impact Transport and Land Use Appraisal Working Group.

1.30 In the examination report (under Issue 21) the reporter's understanding (paragraph 7) was that 'it would not be appropriate to introduce new matters through the Action Programme or specify additional items of infrastructure or the means through which they are to be delivered without first establishing these through the development plan'. She also refers to Circular 6/2013 Development Planning which states that supplementary guidance should not include items for which financial or other contributions, including affordable housing, will be sought and the circumstances, locations and types of development where they will be sought - these instead being matters to be addressed in the plan itself.

1.31 The reporter goes on to note (paragraph 27) that paragraph 121 of SESplan states that mechanisms for calculating levels of contribution should be included in supplementary guidance in a way that assists landowners and developers. She considered (paragraph 30) that policy Del 1 should establish the broad principles, including the items (generally) for which contributions will be sought and the occasions when they will be sought. The supplementary guidance should establish the methods and exact levels of contributions. Changes to the plan were needed so that (paragraph 32) the likely scope of required mitigation relevant to specific areas and the need for further assessment is more transparent, enabling (paragraph 34) a direct link between policy Del 1 and the area specific mitigation and setting the parameters for the supplementary guidance.

1.32 The reporter's recommended modifications included General Development Principles relating to the scope of the required infrastructure provision in each of the main development areas, based on the initial assessment carried out by the council in its education and transport appraisals. More detailed assessment of these matters would be required through the preparation of the supplementary guidance, the cross-boundary transport study and through the master-planning/development management process for major developments. The General Development Principles are said to be referenced in the context of initial appraisals to provide some flexibility and scope for further refinement.

1.33 The examination report states that the plan should explain the nature of contribution zones and how these would apply. The contribution zones should, it is said, be identified in supplementary guidance, not the action programme, which should not introduce new matters or approaches which are not established through the development plan.

1.34 Since no research or justification for seeking contributions towards health care provision was presented to the examination, the conclusion was that the list of items relevant to Policy Del 1 should not include healthcare.

1.35 In the light of the above, in particular with regard to the contents of the local development plan itself, but having due regard to what is set out in the examination report, I think it is useful to consider the following questions, all of which are reflected in one or more of the representations on the draft guidance:

1. To what extent does the approach set out in the guidance (the zones identified and the interventions for which contributions are required) reflect what is set out in the relevant sections of the plan itself?
2. To what extent does (and should) the guidance provide certainty as to the contributions expected from each development site?
3. What is the appropriate means by which the zones, actions and contributions in the guidance can be amended, if need be, in the future?

### Education contributions

1.36 On the first of these questions, in respect of the education zones, the local development plan identifies the need for cumulative contributions in South East, South West and West Edinburgh, and in South Queensferry. Although the precise extent of the zones is not defined, this is clearly not city-wide.

1.37 The supplementary guidance identifies contribution zones, based on secondary school catchments (sometimes multiples thereof) across the whole of the city, albeit within parts of some of these zones no contributions are required. Therefore the geographical extent of the cumulative education contribution zones has been expanded from that foreshadowed in the local development plan. I summarise this below for each of the zones in the guidance, in the order they are presented:

**Boroughmuir/James Gillespies** – No cumulative contribution zone identified in the local development plan. Cumulative contributions required in the supplementary guidance for additional secondary and primary school capacity which are not identified in the plan.

**Castlebrae** – Part of the South East Edinburgh zone in the plan. Cumulative contributions in the supplementary guidance towards capacity at Castlebrae High School and a new Brunstone primary school, all identified in the plan. Cumulative contributions required towards capacity at Castlevie Primary School which are not identified in the plan.

**Craigroyston/Broughton** – No cumulative contribution zone identified in the plan. Cumulative contributions required by the supplementary guidance towards new non-denominational secondary school capacity and Roman Catholic primary school capacity which are not identified in the plan. Cumulative contributions also required

towards capacity at St Augustine's High School (these reflect the same contributions also required in the South Queensferry and West Edinburgh zones).

**Drummond** – No cumulative contribution zone identified in the plan. Cumulative contributions required by the supplementary guidance to primary school capacity which are not identified in the plan.

**Firhill** – No cumulative contribution zone identified in the plan. Cumulative contributions required by the supplementary guidance to capacity at Firhill Primary School which are not identified in the plan. Cumulative contributions also required towards capacity at St Augustine's High School (these reflect the same contributions also required in the South Queensferry and West Edinburgh zones).

**Leith/Trinity** – No cumulative contribution zone identified in the plan. Cumulative contributions required by the supplementary guidance towards additional capacity at Leith/Trinity Academies and Holycross Primary School which are not identified in the plan. Cumulative contributions also required towards a new Victoria Primary School. This is proposal SCH5 in the plan.

**Liberton/Gracemount** – Part of the South East Edinburgh zone in the plan. Cumulative contributions required by the supplementary guidance for several schools, all of which are identified requirements in the plan.

**Portobello** – No cumulative contribution zone identified in the plan. Cumulative contributions required by the supplementary guidance towards new primary school capacity which are not identified in the plan.

**Queensferry** – Queensferry development zone identified in the plan. Cumulative contributions required by the supplementary guidance for several schools, all of which are identified requirements in the plan.

**South West** – A South West development zone is identified in the plan. Cumulative contributions required by the supplementary guidance for additional capacity at Currie Primary School, as identified in the plan. Cumulative contributions also required in the supplementary guidance for additional capacity at Dean Park Primary School, which are not identified in the plan.

**Tynecastle** – No cumulative contribution zone identified in the plan. Cumulative contributions required by the supplementary guidance towards additional capacity at Balgreen Primary School which are not identified in the plan. Cumulative contributions also required towards capacity at St Augustine's High School (these reflect the same contributions also required in the South Queensferry and West Edinburgh zones).

**West** – West Edinburgh development zone identified in the plan. Cumulative contributions required by the supplementary guidance for several schools, all of which are identified requirements in the plan.

1.38 The various additional cumulative contributions identified in the supplementary guidance derive from the requirements set out in the latest version of the council's education appraisal. Respondents make comment on the quality of the evidence base

which this provides as justification for the contributions now required, and I return to that matter below. But the more general question to consider first is whether the extent of cumulative contributions now being sought through the supplementary guidance is sufficiently grounded in the local development plan itself, in the context of the sections of the plan I refer to above.

### Transport contributions

1.39 I turn now to the extent to which the approach to the cumulative transport contributions zones has been foreshadowed in the local development plan:

**Tram** - Proposal T1 in the plan safeguards land for long term extensions of the Edinburgh Tram to the waterfront, the south east, and Newbridge. Tram lines 1a, 1b and 1c are identified in SESplan Figure 1. Policy Del 1 provides for contributions to the existing and proposed tram network to be set out in the supplementary guidance. Paragraph 142 states that the council has already forward funded the completed section of the tram network and contributions will continue to be sought from future development which impacts on or creates a need for this infrastructure. On this basis the supplementary guidance maps the tram contribution zone based on distance to the tram line (existing and proposed) and stops, and a table is used to calculate contributions based on size and type of development and distance from the line/stops.

**Burdiehouse Junction** – within the South East Edinburgh development zone identified in the plan. Action T20, and the need for contributions referenced at page 65.

**Calder and Hermiston** – the South West Edinburgh sites are located in the southern part of the zone now identified. No reference to this action in the local development plan.

**Gilmerton Crossroads** – within the South East Edinburgh development zone identified in the plan. Action T19, and the need for contributions referenced at page 65.

**Straiton Junction** – within the South East Edinburgh development zone identified in the plan. Identified in Figure 2 of SESplan, and the need for contributions referenced at page 65 of the local development plan.

**Gilmerton Station Road/Drum Street** – within the South East Edinburgh development zone identified in the plan. Page 66 identifies 'Access and parking strategy for Drum Street' and 'junction improvement' at this location is noted on the map on page 71.

**Hermiston Park & Ride** – the South West Edinburgh sites are located in the southern part of the zone now identified. Need for contributions referenced on page 80 of the plan.

**Gillespie Crossroads** – Need for contributions referenced on page 80 of the plan.

**Lasswade Road/Gilmerton Dykes Street/Captain's Road** – within the South East Edinburgh development zone. Not referenced at page 65/66 of the plan or shown on the map on page 67. But need for junction improvements identified for site HSG39 on page 69.

**Lasswade Road/Lang Loan** – within the South East Edinburgh development zone. Not referenced at page 65/66 but shown as 'junction improvement' on map on page 67.

**Maybury/Barnton** – at the edge of the West Edinburgh development zone. Actions identified as proposals T16-18 in the plan and identified on pages 57 and 58 (map).

**Queensferry** – fairly near the South Queensferry development sites and identified on page 81 of the plan.

**South East Edinburgh (North)** – at the edge of the South East Edinburgh development zone, although Old Craighall junction is outwith it, in East Lothian. Identified in SESplan Figure 2 and on page 66 of the local development plan.

**Sheriffhall** – at the edge of the South East Edinburgh development zone. Identified in SESplan Figure 2 and as proposal T13 of the local development plan. Not referenced on pages 65/66 or shown on maps of the development sites.

**West Edinburgh** – Actions identified in SESplan Figure 2 and proposals T8-12 of the local development plan (also on page 57 although the reference numbers there are wrong). There is, for this zone, a separate page detailing total cumulative developer contributions amounting to £86m. There is also, it is said, a spreadsheet which would allow detailed calculation of the contributions required in each case, and the West Edinburgh Transport Assessment provides further background about the actions identified.

**Roseburn to Union Canal** – No contribution zone in the plan. Action is part of proposal T7 on the proposals map.

1.40 It can be seen then that the suite of transport infrastructure actions towards which cumulative contributions are sought is, though not identical to the zones and actions identified in the local development plan, more closely based on the details in the plan than is the case for cumulative education contributions.

### Healthcare contributions

1.41 I turn now to the healthcare infrastructure contribution zones. To recap on what I note above, the first part of policy Del 1 sets out the types of infrastructure provision which development proposals may be required to contribute to as a result of their impacts, either individually or cumulatively, and for which contribution zones may be established. Healthcare infrastructure is not one of these. The second part of the policy identifies these same types of infrastructure provision to be covered in the supplementary guidance. Again, healthcare infrastructure is not listed, nor is it listed in paragraph 104 of the plan which also refers to the supplementary guidance. Paragraph 145 says that the need for contributions towards other types of infrastructure, including health and community facilities, would need to be considered on a case by case basis, with policy Hou 10 being relevant.

1.42 On this basis, I do not see a strong grounding in the local development plan for the inclusion of cumulative contribution zones for healthcare infrastructure in the supplementary guidance. At paragraph 47 of Issue 21 (page 764) of the examination report, the reporter said the list of items relevant to policy Del 1 should not include health care infrastructure. I also note that, although healthcare infrastructure is listed in Appendix C of the plan as one of the types of infrastructure for which contributions may be sought, this appears to be at odds with the recommendations in the examination report (page 776) for this table, where healthcare infrastructure is not included.

1.43 I would also note that Regulation 27(2) of the Town and Country Planning (Development Planning) (Scotland) Regulations 2008 says that supplementary guidance 'may only deal with the provision of further information or detail in respect of the policies or proposals set out in that plan and then only provided that those are matters which are expressly identified in a statement contained in the plan as matters which are to be dealt with in supplementary guidance'.

#### Other contributions

1.44 For greenspace, Policy Del 1 says that contributions may be payable towards actions if required by Policy Hou 3, Env 18, 19 or 20. Contribution zones may be established where provision is relevant to more than one site. Only one cumulative contribution zone (South East Wedge/Little France) is identified in the supplementary guidance. This is action GS4 in the local development plan and is shown on the map on page 72.

1.45 For public realm, Policy Del 1 says that contributions may be required towards public realm and other pedestrian and cycle actions where these are identified in the council's public realm strategy or as a site specific action. Contribution zones may be established where provision is relevant to more than one site.

1.46 The supplementary guidance says that a new process is being developed to set priorities for public realm investment. The public realm annex to the guidance is to be updated (in fact provided for the first time) after this process is complete. It is not stated whether this will result in standard charges or a suite of contribution zones for public realm interventions. In the meantime, public realm contributions will not be pursued.

#### **Does/should the guidance provide certainty about the contributions expected from sites?**

1.47 This is the second of the three questions I identify at paragraph 1.35 above. Some respondents highlight what they see as gaps in the detail of the contribution zones, infrastructure interventions, costs and levels of contributions.

1.48 In respect of education infrastructure, the guidance shows which zone any development site would be in, sets out the infrastructure interventions required for each school (albeit in some cases there is more than one option for these), and sets a precise figure for the contribution per house or flat, as well as, where relevant, an allowance for land costs for new schools. In this respect, and on its face, the guidance provides a high degree of certainty about what is required.

1.49 At paragraph C(i) on page 4 it is stated that ‘if appropriate education infrastructure actions are identified in the current Action Programme, the contribution will be based on the established ‘per house’ and ‘per flat’ rate for the appropriate part of the Zone’. But there are actions for each zone in the supplementary guidance itself. Since that is based on the education appraisal (which in turn is based on the local development plan allocations and other sites with established development potential) I assume the intention is that, for such sites, the actions identified in the guidance itself ought to remain appropriate. But this statement does allow for the possibility that, for an allocated site, the required intervention(s) may be different from the one(s) identified in the guidance.

1.50 Paragraph C(ii) sets out what happens if the actions identified in the action programme are not sufficient to accommodate the cumulative increase in pupil numbers. This seems intended to cover the circumstances where new, unforeseen development sites emerge. My understanding is that such sites would contribute either on the same per unit basis as set out in the guidance or, if this is insufficient to provide the necessary school capacity required as a result of the additional site, a greater contribution may be required. I cover this ground at paragraphs 1.19 to 1.21 above. Although this provides less certainty about the contributions from any such ‘new’ sites, it seems a reasonable and plan-led approach.

1.51 I note that the costs for each of the education infrastructure interventions given in the supplementary guidance are indicative. Each has yet to be confirmed, and so they could vary from place to place. In responding to this point, the council says that the information on the costs of each action would be kept up to date through the action programme, along with further information about how they have been arrived at. However, Circular 3/2012 (paragraph 32) says that ‘methods and exact levels of contributions should be included in statutory supplementary guidance’. Paragraph 35 of that circular says that ‘where planning authorities propose to rely on standard charges and formulae, they should include these in supplementary guidance along with information on how standard charges have been calculated’. Circular 6/2013 contains advice along similar lines. Therefore albeit the action programme could provide different costs for the various education infrastructure interventions, it seems to me that, if following the advice in the circulars, any changes to the standard levels of contributions should be made through updates to the supplementary guidance itself. The council notes that Section 75 agreements can make provision for the repayment of costs, and applications can be made to vary such agreements through section 75A of the Act. These may provide mechanisms for the adjustment of contributions should they be shown to have been higher than was necessary.

1.52 There are more notable gaps in the information provided for transport contributions. Some of these gaps are presumably because, whilst the Cumulative Impact Transport and Land Use Appraisal Working Group has published its findings the resultant required interventions (and their costs) have not yet been confirmed. It is acknowledged in the local development plan that the supplementary guidance might come too early for the results of this work to be included. However I would have found it helpful, when reading the guidance itself, for some further explanation of the current position, and when and how these interventions are to be confirmed. I outline below the certainty and comprehensiveness of the information for each of the transport contribution zones in turn:

**Tram** – the map and table provide a comprehensive approach for calculating the contributions from developments within the zone, albeit any contributions necessary

from major developments outwith the zone are to be considered on a case by case basis.

**Burdiehouse Junction** – identified as ‘junction upgrade’ in the supplementary guidance. Cost given, and apportioned on a pro-rata basis (based on the expected number of units) to three allocated housing sites within the zone.

**Calder and Hermiston** – details of action and cost still to be established (although it appears from the zone map that the intention is for Microprocessor Optimised Vehicle Actuation (MOVA) traffic signals at the Hermiston Gate roundabout and the A720/Calder Road junction.

**Gilmerton Crossroads** – identified as ‘junction improvement’ in the supplementary guidance. Cost given, and apportioned on a pro-rata basis (based on the expected number of units) to three allocated housing sites within the zone. Here and for some other zones, it would have aided clarity to have included the local development plan reference numbers for the allocated sites.

**Straiton Junction** – details of action and cost still to be established.

**Gilmerton Station Road/Drum Street** – identified as ‘junction improvement’ in the map on page 71 of the local development plan. Cost given in the supplementary guidance, and apportioned on a pro-rata basis (based on the expected number of units) to three allocated housing sites within the zone.

**Hermiston Park & Ride** – contribution of £1,000 per unit identified.

**Gillespie Crossroads** – action not specified but presumably a junction improvement. Cost given, and apportioned on a pro-rata basis (based on the expected number of units) to three allocated housing sites within the zone.

**Lasswade Road/Gilmerton Dykes Street/Captain’s Road** – identified as ‘junction improvement’ on page 69 of the local development plan. No cost provided in the supplementary guidance, with contributions to be secured through section 75 agreements for ‘relevant sites’.

**Lasswade Road/Lang Loan** – identified as ‘junction improvement’ on the map on page 67 of the local development plan. No costs provided in the supplementary guidance, which says it is ‘to be delivered as integral part of either adjacent development secured by S75’.

**Maybury/Barnton** – identified as ‘junction improvements’ in the map on page 58 of the local development plan. Cost given in the supplementary guidance, and apportioned on a pro-rata basis (based on the expected number of units) to two allocated housing sites within the zone.

**Queensferry** – costs provided for additional cycle parking at Dalmeny Station and apportioned on a pro-rata basis (based on the expected number of units) to three allocated housing sites within the zone. Costs for additional car parking at the station yet to be established.



**South East Edinburgh (North)** – action (presumably junction improvement) at Old Craighall junction. Cost per unit (housing) and per m<sup>2</sup> (other developments) provided.

**Sheriffhall** – junction upgrade, but no costs given.

**West Edinburgh** – as I note above, there is a separate page detailing total cumulative developer contributions amounting to £86m for a list of transport actions. There is also, it is said, a spreadsheet which would allow detailed calculation of the contributions required in each case, and the West Edinburgh Transport Assessment provides further background about the actions identified.

**Roseburn to Union Canal** – presumably relates to new or improved foot/cycle path. Total cost, and cost per residential unit, given. Cost per m<sup>2</sup> for non-residential development yet to be confirmed.

1.53 It can be seen that there are some gaps in the information provided, and some differences in approaches between the zones - for example some costs being per unit, some being assigned to sites on the basis of expected numbers of units; in some zones the allocated sites are listed, for others they are not. However, gaps and variations aside, when information is provided it does appear to provide certainty

1.54 Paragraph A on page 8 of the supplementary guidance says that contributions from allocated sites will be sought as specified in the action programme and Annex 2 of the guidance. The reference here to the action programme appears to me to introduce some uncertainty and to depart from the principle that the approach to contributions is to be established through the local development plan and the supplementary guidance, not through the action programme. It may be the case, however, that the intention is that the action programme will only provide further details (like timescales, and who is responsible for delivery) and would not change the actions and costs already set out in the supplementary guidance.

1.55 The point is raised that, where the transport contribution between sites is apportioned on the basis of their expected number of housing units, there is no provision made in the guidance should the actual number of houses built be different. The council advises that it used the mid-point of the site capacity range for each site as identified in the local development plan, and that this remains appropriate. Had the transport contributions been on the basis (like the education contributions) on a price per unit, then this might have provided both certainty of costs and the flexibility to deal with variations in site capacity. That might, however, provide less certainty that, overall for each zone, sufficient contributions would be secured to provide the necessary transport infrastructure intervention. It may be that the individual section 75 agreements made for each site would in fact take account of the actual number of units to be built, but that question is outwith the scope of my report.

1.56 For greenspace, as I note above, only one cumulative contribution zone is identified – South East Wedge/Little France. This provides a total project cost and the contribution required per dwelling. Costs for non-residential development are yet to be established.

1.57 In respect of healthcare infrastructure, the status of many of the interventions are 'exploring options'. Despite that, a cost per dwelling for each of the contribution zones is identified. In that respect, certainty is provided.

### **Amending the zones, actions and contributions in the guidance**

1.58 This is the third question I identified at paragraph 1.35. The council, in responding to consultations, notes the provision to modify the zones, infrastructure interventions and the charges which apply through the action programme. It is stated that the supplementary guidance (including annexes) would be updated following changes to the action programme. As I note above, in my view the appropriate place for setting out the zones, actions and contribution rates is the supplementary guidance itself. To do otherwise would create uncertainty and a lack of transparency. The council has consulted on the supplementary guidance, including the annexes, under the requirements of Section 22(3) of the Act and Regulation 2 of the Development Planning Regulations. It seems to me that, in order to make any substantive changes to the guidance, including to the annexes, the council would need to follow the same statutory procedures again, giving the opportunity for representations to be made on the revised guidance and having to notify Ministers before adopting it. I am not aware whether the council has considered the need to do this. It would be likely to add significantly to the time taken to review the guidance, a factor which ought to be borne in mind if the council intends regular reviews.

1.59 There is also the separate, but related, consideration about the extent to which one or more future reviews of the guidance would affect the level of certainty for developers and communities which it was intended to bring.

### **Section 75 agreements must restrict or regulate the development or use of land**

1.60 Respondents highlight this requirement from Section 75 of the Act, in particular in the light of the Supreme Court decision on the Elsieck case. In response the council says that its model section 75 agreement requires contributions to be made prior to the commencement of development and therefore regulates the development of land. In any event, this question is beyond my scope in considering the supplementary guidance itself.

### **Format and clarity of the supplementary guidance**

1.61 One suggestion made is that the allocated sites should be shown within the zones. Provided this could be done without unduly cluttering the maps, I agree that this would have been helpful, in particular if it clarified which sites were to contribute. Likewise, I would tend to agree with the suggestion that it would have been clearer for the amounts of the secondary school contributions to have been set out in each education zone map rather than having to calculate these by subtracting the primary school contribution from the full contribution.

1.62 One respondent argued that the details of policy Del 1 (and also Tra 8) should be replicated in the supplementary guidance. But since the supplementary guidance and the local development plan need to be considered as a whole – both would be part of the development plan – I see no real need for this.

## **2 EDUCATION CONTRIBUTIONS**

### **The evidence for the need for contributions**

2.1 Several respondents make the claim that, for education but also for transport and healthcare, which I return to below, the supplementary guidance and associated appraisals do not sufficiently demonstrate that the cumulative contributions being sought comply with the 5 tests for Section 75 agreements set out in Circular 3/2012.

2.2 Respondents seek clearer evidence showing the extent and degree of current deficiencies in school capacities so that this can provide a baseline to consider any additional requirements as a result of new development. The guidance needs, it is said, to set out the direct impact allocated sites would have on education capacity of schools and set out the action required to mitigate this, including cumulative action. Respondents consider that there is a lack of evidence to separate out the impacts on school rolls from new development from that from existing development and rising rolls more generally. I have sympathy with these concerns - this is an important factor if the tests in the Circular are to be met.

2.3 There are comments made by some respondents about the particular approaches at specific sites or areas, including at Western Harbour, Leith, the International Business Gateway and West Craigs. However I do not have the kind of information before me to comment at this level of detail, and I therefore restrict myself to the more general matters raised by the approach in the supplementary guidance and the evidence from the education appraisal.

2.4 It is also argued that the guidance needs to demonstrate that the best use of existing infrastructure would be made before the need for new infrastructure is required – that it should identify existing spare capacity and say how this will be used. It is asked what other options were considered (such as catchment reviews), why has the proposed approach been taken, and how has it been demonstrated that this is the most cost-effective means of resolving capacity issues?

2.5 The supplementary guidance does not itself set out the evidential basis for its proposed approach to cumulative contributions. It is the education appraisal which the council puts forward as the detailed justification for its proposed approach, and that (or an earlier version of it – the August 2018 version is the one I refer to below) was available to respondents during the consultation process. However, in my view the appraisal does not provide the kind of comprehensive and detailed evidence for the approach to cumulative education contributions which interested developers and landowners would wish to examine. I do not doubt the council's intention only to require contributions on the basis of the additional impacts from the new housing development, indeed this is stated in the final paragraph on page 5 of the guidance. My concerns are instead about the evidence presented. Paragraphs 4.1-4.10 of the appraisal outline the methodology followed, but do not in my view provide the kind of detail which allows full scrutiny of that in the context of the tests in the circular, and nor do the subsequent sections in the appraisal covering each of the zones.

2.6 The education appraisal reports (section 3) rising primary school rolls in recent years. These rises are projected to continue, as are secondary school rolls (which have been falling in recent years).

2.7 In addition to the education appraisal I read the council's December 2016 report to the Education, Children and Families Committee providing school roll projections - [committee item 7.1](#) on the council's website. This document is referred to both in the education appraisal itself and in the council's response to the consultations on the draft supplementary guidance. It provides some further information about how the projected school rolls are calculated.

2.8 At paragraph 3.6 of that report, it is explained that the primary school projections are informed by data including catchment birth data, catchment population analysis, housing data (from the Housing Land Audit and known development information) and from National Records of Scotland 2014-based population projections. The school rolls are shown in the tables at Appendix 2 of the report.

2.9 I am not aware what particular housing sites are included in that housing data. Since the school roll projections are said by the council to be the basis for the need for contributions from new housing development in the local development plan, I assume that the housing allocations (or some of them at least) are included in that data.

2.10 One issue raised by respondents is the potential for double counting between general projections of population growth and the additional population from new housing development. I can at least see the potential for such double counting. The amount of land allocated for housing in the local development plan follows on from the requirements of SESplan (and its housing land supplementary guidance), which is informed by a Housing Need and Demands Assessment. So in one sense development plan housing allocations need to be seen as a response to expected (or desired) increases in population, not as a wholly separate influence on population change. However I do not have detailed evidence on these matters, so it would be fruitless to speculate further on this particular issue. And I would acknowledge the point that it is through the development plan allocations that the precise location of much of the population increase within the city is determined, and therefore which particular schools or zones would be affected by this.

2.11 In any event, what the council's committee report does not show (and nor does the education appraisal) is, for each school, what proportion of the projected future roll is expected to come from pupils from the housing allocations in the local development plan. Therefore it does not show whether, and if so to what degree, for each school, the new housing development is forecast to give rise or contribute to accommodation needs which cannot be met from within the existing school estate. It may be reasonable to assume that the majority of increases in the projected roll of a school, in particular one with significant new development expected to take place within its catchment, will be from pupils on newly built houses and flats. But without showing what this component is projected to be, the basis for the requested contributions is not completely transparent.

2.12 It may be that this kind of more detailed evidence is available to the council, indeed I expect that it would need to be, in order to have provided the basis for the proposed approach. If the component of the projected roll for each school which comes from new housing is based on the council's assumptions about the rate of new housing delivery and the pupil generation rates per house and flat, then it ought to be possible to show this kind of information. It may be that it would be the kind of information provided to justify section 75 agreements at the time they are to be agreed. But it is not evidence which I or the

respondents to the consultation process are party to, and therefore I cannot answer some of the questions they raise.

2.13 It could perhaps be argued that, since all the housing development supported in the local development plan and on other land with housing potential would, collectively, significantly exceed the existing capacity of the school estate, therefore there is no particular need to demonstrate, for each site and for each school, what the effects of development would be. But the council's approach is more subtle than that, seeking to deal with the issues on a zonal basis. Therefore I would have expected to see more evidence to demonstrate, at the least, the cumulative effects of development zone by zone.

### **The justification for the approach in each zone**

2.14 Paragraph 2.1 of the education appraisal says that it will be necessary to redraw school catchment boundaries to align new developments to existing schools with spare capacity or greater expansion potential. I think this clearly demonstrates the intention to make best use of existing school capacity. In my view it is for the council to decide how to make best use of the school estate. Although reducing the costs of interventions may be one driver in this, it would not necessarily be the only one. Therefore I am not persuaded that the council would need to show, for example, that the approach it proposes is the lowest cost one.

2.15 But I would have expected, since the extent, pattern and amounts of developer contributions are contingent upon it, a more detailed justification for the approach the council wishes to pursue. The supplementary guidance shows what zones (and sub-areas) the council has decided to employ, the suite of interventions for each, and the implications of this, in cost per dwelling, for each development site within the sub-areas. The education appraisal provides more detail, showing for each zone the capacity of the schools and the number of pupils estimated to come from the various development sites. But it does not detail how those new pupils will affect the rolls of the listed schools and what that means for their ability to cope. There is some narrative explanation of what effects are predicted and of the proposed solution for each zone but this falls short of the more quantitative analysis of the capacity issues caused by development and of how the solutions proposed will resolve them which developers and landowners could reasonably expect to see as justification for the very specific set of actions and contribution rates set out for each zone/sub-area.

2.16 Some respondents argue that the guidance should show the planned changes to the catchment areas (even if only broadly) and what this means for future pupil numbers at each school, from both existing pupils/housing areas and from new development. Whilst I acknowledge the council's point that catchment area reviews are subject to statutory consultation processes which cannot be pre-empted, information along these kinds of lines (properly caveated) would at least have helped to show more about the council's proposed approach in each zone and why this is considered by the council to be an appropriate response to the capacity issues raised.

2.17 I do not go as far as to agree with some respondents who stated that there should be more evidence on the alternative options which the council might have considered, or that the guidance should allow for alternative options to be put forward on a case by case basis. As I state above, I think the council is entitled to plan a way forward for the school estate which it considers will be best suited to its future needs, and not to encourage one-off,

bespoke solutions which could throw that plan into doubt. It would still be open to the council to consider alternative school capacity solutions put forward by developers on a case by case basis, but it would not be in the interests of certainty and a planned approach to encourage this through the supplementary guidance.

### **Should contributions be levied only for the catchment school(s) for a development?**

2.18 The principle of cumulative contribution zones is established in the local development plan under policy Del 1 and its supporting text. It is argued by some respondents, however, that housing development should only be required to contribute to education infrastructure actions within the school catchment area of the development concerned. I would acknowledge that a cumulative approach could be restricted to individual school catchment areas. However I am not convinced that it must be.

2.19 Respondents argue elsewhere that catchment reviews should be used to change catchment areas of schools to free up (and therefore make most efficient use of) existing capacity. This to me is an acknowledgement that catchment areas need not be fixed and can be used, as indeed the council intends, to best accommodate new development. I think it is difficult to argue that the council cannot then go further and set out how it would use the capacities and catchment areas of a number of schools together to make best use of these across a larger area. Separate legislation governs the process of changing school catchment areas. It has not been put to me that, specific development sites having been allocated in the local development plan, the council cannot now propose catchment changes to those schools where allocated housing sites fall within them. Aside from any approach to cumulative contributions, the council would want to continue to manage the school estate (including the approach to catchment areas) to ensure it meets future requirements, including but not limited to those arising from new housing development. Therefore it seems to me that the extent of a catchment area at any point in time cannot be considered to be a strictly limiting factor on the extent to which a development within it can be said to raise school capacity issues in a wider context.

### **Should school capacity be ‘first come first serve’?**

2.20 One respondent argues that school capacity should be apportioned to developments on a first come first served basis – any existing spare capacity would be allocated to the first developments to progress, with only the balance of new development after capacity has been taken up being required to contribute to the further school capacity then needed. Whilst this might be an approach the council could have pursued had it wished, it does not seem to me to fit so well with the principle of cumulative contribution zones, as established in the local development plan, when compared to the proposed approach of spreading a more even share of the costs across all developments.

### **Assumptions about travel to school thresholds**

2.21 In forecasting the extent to which Roman Catholic pupils will go to a Roman Catholic secondary school rather than a non-denominational school, the council takes account of distance to the school. So for some developments which are at greater distance to a Roman Catholic school, all secondary pupils are assumed to go to the nearer non-denominational school instead. One respondent asked for more information on what distance the council applies in making such an assessment, but I am not aware of any answer to this which the council may have provided.

## **Land and development costs for new schools**

2.22 The council advises that it commissioned an independent assessment of land costs for the sites for the new schools identified in table 5 of the local development plan. These estimated costs for each school site are set out on page 18 of the supplementary guidance, but with the caveat that they are indicative only. The cost of the land is to be shared by all the developments within the zone or sub-area where the new school site is located. The supplementary guidance adds these land costs (where they apply) to the per unit contributions identified.

2.23 One respondent expresses the view that contributions to these land costs from all developers in a zone/sub-area should be at residential value, whereas Homes for Scotland expressed the view that it should be at existing or final use value. It is not clear to me from the council's responses whether or not the valuation used is at residential value - the costs on page 18 vary from just under £500,000 per hectare at Granton Waterfront to about £2.4m per hectare at Maybury. On the basis of a cumulative approach to meeting education capacity constraints, and a consistent per-unit contribution for all the sites contributing towards the same education action, I can see that basing contributions for land costs for schools on residential value could be considered an equitable approach. In any event, it would have been helpful had the guidance provided more explanation of the basis for the assumed costs for land.

2.24 In addition to the cost of the land, the table on page 18 also provides estimated costs (again indicative) for remediation and other abnormal development costs for each school.

2.25 Respondents consider that the estimated remediation/abnormal costs are too high, and one suggests that it may be better for the developer to remediate the land rather than that cost be added to the contributions. On the latter point, the council's response indicates that this could be done, with the costs credited against that overall developer contribution.

2.26 In response to criticisms that the size requirements for new school buildings have been increased from the previous draft of the guidance, the council advises that these have, in the finalised version, reverted to the previous size for primary schools, and that the allowance of 11m<sup>2</sup> per secondary school pupils is based on Scottish Government guidance. I do not have the kind of detailed evidence before me which would allow me to reach a view on whether the sizes of school sought by the council are appropriate. However, as the statutory education authority, I would expect the council to be in the best position to reach an informed and reasonable view on this matter. Section 5 of the education appraisal provides further information about the assumed space requirements and costs of new schools.

2.27 The supplementary guidance says that these land and remediation costs, and the costs of the build works themselves, will vary from the estimates. This would mean that the amounts of the contributions levied would be different from those set out in the guidance.

## **Pupil Generation Rates**

2.28 The basis for the council's assumptions about the 'pupil generation rates' from new housing development has been questioned. The education appraisal explains (paragraph 4.3) that these are based on the average numbers of pupils generated by new development over a ten year period. Although I have not seen the raw data for this I see no reason to

suppose that the figures provided by the council, acting in its capacity as education authority, are not appropriate.

### **Retaining contributions for 30 years**

2.29 There is much criticism of the statement in the supplementary guidance that contributions towards education infrastructure may be held by the council for up to 30 years. It is argued that this is far too long, and any infrastructure for which contributions have been paid should be delivered in a much shorter timeframe. However it is stated in the supplementary guidance that this 30 year period is from the date of construction of the new infrastructure. It is explained that this is because of the need to accommodate revenue-based funding mechanisms where the project will be delivered but then the capital cost is repaid as part of a longer-term funding arrangement. I see no difficulty with this in principle. The contribution would be paid by the developer and go towards new school infrastructure which is then delivered. Whether that contribution is paid immediately to the school provider or whether it is held by the council for a longer period and used in stages as part of such a longer-term finance arrangement would not, it seems to me, materially affect the basis for seeking the contribution in the first place.

### **7.5% contingency costs**

2.30 The education appraisal applies a 7.5% contingency to the estimated costs of new education infrastructure. Homes for Scotland queries the basis for this, which the council says is to enable the risk of contributions not meeting construction costs due to inflation uplift. Since the costs in the guidance are index linked, I am not clear why a contingency would also be needed to account for inflation, although I can understand that it may be prudent to build in some contingency for unexpected site-specific costs. Clarification would have been helpful.



### 3 TRANSPORT CONTRIBUTIONS

#### The evidence base

3.1 As with the education contributions, respondents assert that there has been a failure to provide sufficient evidence to properly demonstrate the impacts of new development on transport infrastructure or to justify the cumulative contributions sought. It has not been shown, it is stated, that there is a more than trivial link (again referencing the Elswick case) between the developments in the local development plan and the infrastructure actions to which they are to contribute. Nor are the expected costs justified in the supplementary guidance.

3.2 The basis for what are described as the 'large' cumulative contribution zones for transport infrastructure is also questioned. Some of the infrastructure actions are said to be remote from the developments which are to contribute towards them. It is stated that the relationship between each development, its transport impacts and the actions to which it is to contribute to have not been set out. In particular noting that there is to be a standard charge per (expected) housing unit in each zone, regardless of the location (and therefore impact) of any particular development site.

3.3 The council refutes this, pointing to the transport appraisals. In relation to the cumulative contribution zones used, it says that these are in fact relatively small, tightly drawn zones which ensure more than a trivial connection between the developments and the actions to which they must contribute.

3.4 One respondent considers that the supplementary guidance should confirm when the necessary actions require to be carried out, but it seems to me that this would normally be a matter addressed through planning conditions or obligations or in the action programme.

3.5 In providing my observations on these matters, I refer first to the transport appraisals which the council refers to, and which seek to provide (along with the development plan itself) the main justification for the approach taken in the supplementary guidance.

3.6 The original transport appraisal for the local development plan is dated March 2013. It was based on the first proposed plan. Subsequent to that, the SESplan housing land supplementary guidance was adopted, requiring greater amounts of housing land to be allocated, incorporated into a second proposed plan. The adopted local development plan included yet more sites, and the capacity of some of the earlier proposed sites had changed. Therefore an addendum to the transport assessment was published in November 2016, after the local development plan had been adopted, to reflect the changes since the first appraisal. I have had regard to both the addendum and the original appraisal. I have not considered in any detail the West Edinburgh Transport Appraisal nor the results of the Cumulative Impact Transport and Land Use Appraisal Working Group, as these would not significantly affect the main conclusions I reach.

3.7. It is explained first of all (in the original transport appraisal) that it was prepared to inform the local development plan and its action programme. The stated purpose of the appraisal was to assess the impact of the local development plan strategy on the transport network, and to identify the transport interventions required to ensure that the strategy does not have an unacceptable negative impact on the transport network.

3.8 The appraisal explains how trip generation rates for each development were derived, and that baseline modal split assumptions were based on census and household survey data. As well as the impacts from local development plan sites, the impacts of earlier, committed sites and of changes in traffic levels more generally were also included. A gravity model was used to identify the distribution of trips to/from homes and workplaces, and allowing for the effects of distance between these. Professional judgement was used to assign the proportion of trips to particular roads.

3.9. Three scenarios are modelled. The first of these can be given limited weight because it ignores the benefits of various transport interventions which are described as 'committed'. Scenario 2 assumes these committed schemes are implemented. The consultants undertaking the work held workshops with council officers and these then informed a list of further potential interventions. A number of criteria were used in selecting these interventions, including facilitating a shift to more sustainable forms of transport, reducing the impacts from travel, and deliverability. Account was taken of the five tests for planning conditions. Scenario 3 assumes that these other potential interventions are also implemented. The mode shares in scenarios 2 and 3 (and therefore the assumptions about vehicle trips on each route) are estimates based on professional judgement of the likely effectiveness of the interventions included, rather than detailed modelling.

3.10 The addendum appraisal updated this analysis in the light of the final suite of housing and other development allocations in the adopted local development plan. It is worth referring to some of these in considering the question (raised by several respondents) of to what extent the appraisals (and of course the local development plan itself) justify the proposed approach in the supplementary guidance.

3.11. The original appraisal says that, for the two strategic development areas where significant new development is proposed (West Edinburgh and South East Edinburgh) there are some common interventions that more than one site would benefit from.

3.12. In West Edinburgh, the five sites included in the original appraisal were Maybury 1 and 2 (now a single local development plan allocation), the International Business Gateway, Edinburgh Park and Cammo. The common interventions include improvement schemes at the Maybury, Barnton and Craigs Road junctions (T16-18 in the local development plan). In appendices B and C of the appraisal (where the interventions required for each site are identified), only the Maybury site is required to contribute to all of these three junction improvements. For Cammo it is just Maybury and Barnton, for the International Business Gateway it is Maybury, and Edinburgh Park need not contribute to any of them.

3.13. The capacity of the Maybury site had increased significantly by the time the addendum appraisal was prepared. The addendum says that the interventions identified previously would remain appropriate but that it is 'even more essential' that the Maybury and Barnton junction improvement schemes are provided. The **Maybury/Barnton contribution zone** (which covers the Maybury, Barnton and Craigs Road junctions) identifies only the Cammo and Maybury sites as contributors, and with both sites seemingly contributing to all 3 schemes. Given the relatively large number of interventions identified for **West Edinburgh** and the further transport appraisals for that area, I have not sought to look into the fine detail of the evidence for that zone.

3.14. Amongst the additional sites included in the addendum are those at South Queensferry (HSG32 and HSG33). For both of these, helping to provide enhanced car and cycle parking at Dalmeny Station are identified requirements. This is consistent with the **Queensferry** Transport Contribution Zone in the supplementary guidance, although I note that the Springfield site (HSG1 – identified in the local development plan as an existing housing proposal) is also included as a contributor in the guidance.

3.15. In South East Edinburgh the original appraisal included six sites and there are common interventions which are said to apply to 'various groups of sites'. The addendum considered capacity changes to some of these sites, but also some additional sites. There are multiple, overlapping transport contribution zones in the supplementary guidance in South East Edinburgh, so it is easiest to consider each of these in turn, in the order they appear in the map pages in the guidance:

**Burdiehouse Junction.** Broomhills (HSG21) and Burdiehouse (HSG22) are listed in the supplementary guidance as contributors. There are no other allocated sites within the zone, but the guidance also assumes a contribution from development of unallocated land identified as 'East of Burdiehouse'. This is all consistent with the details for these sites given in the transport appraisals.

**Gilmerton Crossroads.** Gilmerton Dykes Road (HSG23), Gilmerton Station Road (HSG24) and The Drum (HSG25) are listed in the supplementary guidance as contributors. No other sites are identified as contributors, albeit North of Lang Loan (HSG39) may slightly jut in at the southwest edge of the zone. This is all consistent with the details for these sites given in the transport appraisals.

**Straiton Junction.** Details of the action and cost are still to be established. There are no sites identified within the supplementary guidance as being contributors, although the sites at Broomhills (HSG21) and Burdiehouse (HSG22) would fall within it, as might the southwest tip of North of Lang Loan (HSG39)

**Gilmerton Station Road/Drum Street.** As with the Gilmerton Crossroads zone, Gilmerton Dykes Road (HSG23), Gilmerton Station Road (HSG24) and The Drum (HSG25) are listed in the supplementary guidance as contributors. There are no other allocated sites within the zone. The Gilmerton Dykes Road site is not identified in the appraisals as having to contribute towards this junction improvement, but the other two sites are.

**Lasswade Road/Gilmerton Dykes Road/Captain's Road.** No cost for this action is given in the supplementary guidance. It is stated that contributions are to be secured through section 75 agreements for 'relevant sites'. The supplementary guidance does not identify which sites that may be, although the transport appraisal addendum identifies the site at North of Lang Loan (HSG39) and the unallocated land at Lasswade Road as requiring to help towards this junction improvement. The sites at Gilmerton Dykes Road (HSG23), Gilmerton Station Road (HSG24) and Ellen's Glen Road (HSG28) are all within the zone.

**Lasswade Road/Lang Loan.** The supplementary guidance says this is to be delivered as an integral part of 'either adjacent development' and secured by a section 75 agreement. No cost is given. The transport appraisal update says that the site at North of Lang Loan (HSG39) is to replace this roundabout with a

signalised junction. It also identifies the need (should they be developed) for contributions towards this from the unallocated sites at East of Burdiehouse and Lasswade Road.

**South East Edinburgh (North).** The supplementary guidance identifies that this relates to contributions towards improvements to the Old Craighall Junction, with estimated costs of only £16.84 per unit, derived from draft guidance prepared by East Lothian Council. Although not identified in the guidance, the sites at Newcraighall North (HSG26), Newcraighall East (HSG27) and Brunstane (HSG29) are all within the zone. The original transport appraisal does not identify the need for the Newcraighall sites to contribute towards this action. The appraisal addendum, for the Brunstane site, identifies the need to 'review operation of A1/Newcraighall Road junction and help provide improvements, if deemed necessary.'

**Sheriffhall.** The supplementary guidance does not identify a cost for this junction upgrade, or the sites which would be expected to contribute. The sites at Edmonstone (HSG40), Edinburgh Bioquarter (Emp2), Moredunvale Road (HSG50) and (partially) the Drum (HSG25) are within the zone. Grade separation of this junction is noted in the original transport appraisal as a relevant committed intervention for the Moredunvale Road site, with 'minor impact', as it is in the addendum for Edmonstone, Brunstane (HSG29) and The Wisp (HSG41).

3.16 In respect of the other transport contribution zones, the transport appraisals assist as follows.

3.17 **Calder and Hermiston.** The supplementary guidance does not provide details of this action or its cost. A wide zone is identified to the west, but it is not stated which sites would be contributors.

3.18 **Hermiston Park & Ride.** The supplementary guidance specifies a contribution of £1000 per unit. A fairly wide zone is drawn to the west and south of Hermiston, but the sites which are to be contributors are not identified. The extension to the park and ride is identified as a relevant committed intervention with 'minor impact' for Riccarton Mains Road (HSG35), Curriemuirend (HSG31), Curriehill Road (HSG36), Newmills Road (HSG37) and Ravelrig Road (HSG38).

3.19 **Gillespie Crossroads.** This zone extends west along the A70 from the Gillespie Crossroads. The supplementary guidance identifies the need for contributions from Newmills Road (HSG37), Curriehill Road (HSG36) and Ravelrig Road (HSG38), all in accordance with the transport appraisal addendum. The sites at Riccarton Mains Road (HSG35), Curriemuirend (HSG31) are also within this zone but not identified as contributors in the supplementary guidance. The original transport appraisal identifies the need for the site at Curriemuirend to help towards the Gillespie Crossroads Scheme.

3.20 Table 10 of the appraisal addendum shows predicted road traffic levels assuming there are no transport infrastructure interventions beyond those considered as already 'committed' (scenario 2). Total increases in traffic by 2025 (assuming all the local development plan and other committed development sites are complete) range from 9.2% on the A71 Calder Road to 66.8% on Lasswade Road (although each road of course starts from a different baseline level of traffic, Lasswade Road for example being the quietest road included, the A720 city bypass being the busiest). The percentage of this increase from the

baseline arising from the local development plan sites on their own ranges from zero (on the A702 Biggar Road) to 58%, again on Lasswade Road. The largest absolute increases due to the local development plan sites, in vehicle numbers, are on the A8 Glasgow Road and A90 Queensferry Road. All of the key corridors identified in the appraisals are forecast to experience increase in vehicular traffic volumes of more than 5%. Of the 14 roads included, 12 are forecast to see increases exceeding 10.0%.

3.21 Table 13 of the appraisal addendum shows predicted traffic levels assuming all the additional interventions are implemented (scenario 3). Total increases in traffic by 2025 range from 8.9% on the A71 Calder Road to 61.8% on Lasswade Road. The percentage of this increase from the baseline arising from the local development plan sites on their own ranges up to 53.4%, again on Lasswade Road. The largest absolute increases due to the local development plan sites, in vehicle numbers, remain on the A8 Glasgow Road and A90 Queensferry Road. All of the key corridors are still forecast to experience traffic increase of more than 5%. Of the 14 roads, 10 are now forecast to see increases exceeding 10.0%.

3.22 I note above that the appraisals were prepared to inform the local development plan (although the addendum post-dated the plan's adoption) and its action programme. I take no issue with that purpose, but it is worth noting that the appraisals are now put forward as the background evidence for the supplementary guidance. As the supplementary guidance would, in effect, be the basis on which subsequent planning obligations for specific sites (based, in some zones, on precise costs set out in the guidance) would rest, this is a slightly different purpose. To serve that purpose, a more detailed, quantitative approach might be expected so as to demonstrate compliance with the tests for planning obligations set out in Circular 3/2012.

3.23 The original appraisal stated that the suite of interventions identified for scenario 3 (some of which are the basis for the interventions in the contribution zones in the supplementary guidance) were those required to ensure that the overall local development plan strategy did not have an 'unacceptable' negative impact on the transport network.

3.24 However the appraisal does not identify what is unacceptable. At the point of determining which interventions to apply for scenario 3, it is explained that various criteria were used in selecting these additional interventions. At that stage this was necessarily and understandably an exercise which required qualitative, professional judgement. For those interventions that facilitate a shift in favour of more sustainable transport modes, the resulting modal shifts set out in the appraisal in scenario 3 derive from an assessment of what the results of applying these interventions would be, not from target levels which the interventions were designed to achieve. I do not take issue with this pragmatic approach, but it is relevant to a consideration of how, when considering the case for section 75 agreements for contributions towards some of these interventions, the necessary tests set out in Circular 3/2012 can be shown to be met.

3.25 For the junction improvements which are identified in the appraisals, I can again understand why a qualitative and pragmatic approach was taken, but this does affect the ability, now, to understand more about the benefits (for example in lengths of queues, journey times and so on) that these interventions would deliver. Again that may be relevant in considering whether they are needed to make the cumulative transport effects of the local plan development strategy 'acceptable'.

3.26 The appraisals explain that, in selecting the interventions, regard was had to the necessary tests for a planning condition. Any planning obligations based on the cumulative contributions in the supplementary guidance will need to meet the tests set out in Circular 3/2012, including being necessary to make the development acceptable in planning terms and fairly and reasonably relating in scale and kind to the proposed development.

3.27 In relation to necessity, it is worth considering what guidance the local development plan has to offer. Policy Del 1 itself is couched in fairly general terms, requiring contributions where relevant and necessary to mitigate any negative impact, either individually or cumulatively, and where commensurate with the scale of the development. Paragraph 270 of the local development plan refers to mode share targets set out in the local transport strategy, but I am not aware how these relate to the improvements in mode share which some of the interventions in scenario 3 were judged likely to deliver. Policy Tra 8 is also worded in general terms, requiring that individual and cumulative transport impacts can be addressed so far as this is relevant and necessary. It also requires that the transport infrastructure in Table 9 of the plan and in the general and site specific development principles has been addressed, as relevant to the proposal. Paragraph 285 then states that these details take into account the impact of development proposals as far as is known at the time, but that further assessment is required to inform the detail of the necessary transport proposals and other interventions.

3.28 This context puts significant weight on delivery of the infrastructure items listed in the plan itself. Beyond that, it requires a planning judgement to be made in respect of when the impacts of development are considered to be at 'acceptable levels'. The appraisal addendum shows that, in terms of mode share, the interventions for scenario 3 show anticipated improvements. But there is no detailed explanation of why, site by site or as a whole, this renders the mode share of the proposed developments acceptable when it otherwise might not have been.

3.29 The effects of the interventions on the amount of traffic on each route are predicted in the appraisals. The appraisals assign trips to routes, but they do not show direction of travel or specify the increases in traffic at specific junctions. The effects on the safe and efficient operation of the road network as a result of the junction improvements amongst the scenario 3 interventions are not explained. I am not aware, excepting the additional analysis for West Edinburgh, of any further assessment beyond the transport appraisal and its addendum such as may be envisaged under the terms of paragraph 285 of the plan.

3.30 Turning now from the analysis in the transport appraisals to the supplementary guidance, and acknowledging that there is guidance provided in the local development plan itself, it would have been helpful to have had an explanation of the basis for how the content of the plan and the evidence in the appraisals was used to inform the approach in the supplementary guidance to the cumulative contribution zones. For example, showing how the appraisals translate into the zonal approach taken, and explaining why each particular set of developments are contributing to each particular intervention.

3.31 I am not aware of any detailed explanation for the basis, in defining the extent of most of the zones relating to junction improvements, for using a 1km radius. Nor why elongated zones were identified for the Gillespie Crossroads junction improvement (albeit I assume this is because traffic from development sites stretched out westwards along the A70 would pass through this junction) and for the Sheriffhall zone. Likewise why the South East Edinburgh (North) zone is an irregular shape rather than one based on distance to the

Old Craighall junction, and why the Calder and Hermiston Zone is fairly widely drawn. The zones relating to public transport interventions (Hermiston Park & Ride and South Queensferry) are also not based on simple distance to the intervention. I do not say that the shapes of these various zones are inappropriate, simply that I am unaware of the basis for the geographies identified. Since the extent of the zones affects which developments need to make a contribution, this is not, in my view, an insignificant matter.

3.32 The requirement that contributions in planning obligations must be related to the scale of the development proposed is also relevant to the question of how the zones are drawn. The logic behind linking the scale of the contribution to the number of units at each site is clear. But it is arguable that, to be fully justified, where several developments are making the same per-unit contribution to an intervention (or to a number of them) it should be demonstrated that their per-unit impacts would also be identical.

3.33 Some respondents question why, for a contribution zone based on a single intervention, each site would make the same per-unit contribution regardless of its distance from the junction. Again, some further explanation of this in the guidance or some other supporting evidence would have been helpful.

3.34 In respect of the costs of each intervention (and therefore the scale of the contributions required) I have no reason to doubt that, where costs are supplied for junction improvements in the supplementary guidance, that they are based on reasonable evidence. But it would have been helpful to have seen further evidence explaining the basis for them.

3.35 There are other matters of detail on which I would have found it helpful to have seen an explanation as to why the supplementary guidance seems to depart from what is foreshadowed in the local development plan and/or the transport appraisals. For example:

- There is no explanation as to why the contribution per unit for the Hermiston Park & Ride is £1,000.
- In the Maybury/Barnton zone, both the Cammo and Maybury sites would contribute to all three junction improvements identified. This is slightly different from the recommendations in the appraisals.
- In the South Queensferry zone, the site at Springfield (HSG1) is to make a contribution but this does not seem to be foreshadowed in either the appraisals or the local development plan itself.
- In the Gilmerton Station Road/Drum Street zone, the Gilmerton Dykes Road site (HSG23) is a contributor but this requirement is not (as it is for the other 2 sites in this zone) identified in the transport appraisals.
- It is not entirely clear to me how the contributions are to be handled in the Lasswade Road/Gilmerton Dykes Street/Captain's Road zone. Although several sites are within this zone, the appraisal and the local development plan identify only the allocated site at North of Lang Loan (HSG39) and the unallocated site at Lasswade Road as needing to make a contribution. Therefore it may be that, if both are developed, both would contribute.
- Likewise, I assume that, for the Lasswade Road/Lang Loan zone, North of Lang Loan would be the only contributor (although this does not appear to be identified as a requirement for this site in the local development plan) unless one or both of the unallocated site were also to gain planning permission.
- In the Gillespie Crossroads zone, I am not clear why the site at Curriemuirend (HSG31) (despite this requirement being included in the local development plan and

the appraisals) is not a contributor nor, for that matter, the site at Riccarton Mains Road (HSG35) which is also within this zone.

3.36 Since the Straiton, Sheriffhall and Calder & Hermiston junction zones say that the costs and actions are still to be established and do not identify which sites would be contributors, I make the assumption that it would be for a future iteration of the supplementary guidance to set out what, if any, cumulative contributions would be required from these zones.

### **Which categories of development are covered by the cumulative contribution zones?**

3.37 Respondents ask what categories/scales of development (other than housing) would be required to make a contribution towards the transport actions in the cumulative contribution zones. Table 1 of the supplementary guidance does not identify any particular category of development. At page 8 it is stated that other development proposals will be considered on a case-by case basis. Albeit it would have been open to the supplementary guidance to provide more details, I think the council is entitled to take this approach, including in considering whether the existing lawful use of the site needs to be taken into account in deciding the need for developer contributions.

### **Cumulative assessment in transport appraisals**

3.38 For development proposals which are not allocated sites or within the contribution zones identified, the supplementary guidance says that transport assessments must be prepared, with cumulative assessments which take account, amongst other things, of developments proposed in current planning applications and in Proposal of Application Notices. It is argued by some respondents that this is unreasonable, and assessments should only consider development which is committed or supported by the council through the local development plan allocations. In responding, the council points to the glossary definition of 'cumulative impact' in Scottish Planning Policy, which includes developments proposed in 'valid applications which have not been determined'. Although the council points out that Proposal of Application Notices can lead to valid applications thereafter, and that the need to identify cumulative impacts of development is identified in the local development plan itself, I do not find that the glossary item in Scottish Planning Policy lends support to requiring development proposed on Proposal of Application Notices to be included in cumulative assessments.

### **Exemptions from making contributions**

3.39 Network Rail and the Port of Leith Housing Association both argue that they should be excluded from the contributions on the basis that they are publicly owned or funded. The council in response says that the impacts of development require to be mitigated regardless of who the developer/landowner is. I see no imperative that the supplementary guidance make particular categories of developer or landowner exempt from the need to make contributions.

### **Trams**

3.40 Respondents raise several issues in relation to the provisions in the supplementary guidance for cumulative contributions towards the tram system.



3.41 It is argued that, since it is uncertain that the future extension of the tram network will proceed, it is premature and unnecessary to seek contributions towards this at the present time. It is also argued that there is no basis to seek contributions towards those parts of the tram network which have already been delivered, in particular as the costs of that over-ran. However, quite aside from what the supplementary guidance may say, Policy Del 1 in the local development plan already establishes that contributions may be required towards the existing and proposed tram network.

3.42 One respondent contends that the basis for the contributions should be distance from the tram stops alone, not from the line itself. I am not aware of any specific response from the council on this question. For my part, I would have thought that distance to specific stops, rather than to the line more generally, would be the more obvious indicator of a site's accessibility (and likely use of) the tram network, albeit I would acknowledge that the vicinity of the line itself (and of trams passing along it) would serve as an obvious reminder of this travel choice.

3.43 The Scottish Property Federation does not agree with the approach to tram contributions (set out in paragraph F of page 7 of the supplementary guidance) from major developments outwith the defined tram contribution zones. I find the wording of that paragraph to be a little opaque, but the general principle that every such proposal should be considered, in respect of its impacts on the tram system, on its merits would appear to be a reasonable one.

3.44 It is also argued that, for developments close to tram stops, requirements to support other transport infrastructure should be reduced accordingly, due to the higher proportion of trips generated by that development using (and due to the additional need to contribute towards the cost of) the tram network. However that seems to me to be a matter which could be considered through individual transport assessments.

3.45 On matters of detail, I note that the supplementary guidance identifies the need for contributions based on various distances to tram stops/line, the type of development and its scale. I have not seen detailed comments seeking to call into question the basis for this approach, but on the other hand I have not seen the evidence from the council in support of it – for example how the location, scale and type of development (and the cost of the tram line itself) has informed the assessment of the levels of contributions required. I do not assert that the approach taken cannot be justified, but simply that detailed evidence for this is not to be found in the transport appraisals.

## **4 HEALTHCARE CONTRIBUTIONS**

4.1 I record above that I do not see a strong basis in the local development plan for the inclusion of cumulative contribution zones for healthcare infrastructure in the supplementary guidance. Despite that conclusion, I consider below some of the other issues raised by respondents in relation to healthcare contributions.

### **The principle of developer contributions for healthcare infrastructure**

4.2 Homes for Scotland and other respondents argue, in principle, against the notion of developer contributions towards healthcare facilities. It is stated that the National Health Service is funded by central government and so it is not appropriate to seek developer contributions and that the council cannot control delivery of services provided by the National Health Service and/or private businesses.

4.3 I note, however, that the principle of healthcare contributions was, to some degree, considered through the local development plan examination process (Issues 21 and 23). Paragraph 145 of the plan concedes that 'whilst it may be appropriate to seek contributions for such provision any requirement would need to be considered on a case by case basis where a clear justification can be provided in the context of Circular 3/2012'. Policy Hou 10 provides that 'planning permission for housing development will only be granted where there are associated proposals to provide any necessary health and other community facilities relative to the impact and scale of development proposed', thereby providing a planning purpose for the provision of healthcare facilities.

4.4 Therefore it seems to me that the question is not whether, in principle, it can be appropriate for developer contributions to be made towards healthcare infrastructure (the local development plan would seem to establish that it could be) but whether the approach proposed by the council in the supplementary guidance is justified. Again, I do not seek to respond to site-specific matters given the lack of detailed evidence which I have about these.

### **The evidence base**

4.5 As with the other categories of infrastructure actions, respondents contend that there is insufficient justification for the new and extended facilities which are said to be required, with a lack of evidence to show why new capacity is required, to justify the costs for these set out in the guidance and to explain the basis for the proportion of these costs to come from developer contributions. There are also criticisms of the zonal approach taken, as general practices are said to have no fixed catchment area boundaries. Respondents also state that there should be no contribution of payments towards facilities run by what are essentially private businesses.

4.6 Although, again, there is not a detailed justification for the proposed approach in the supplementary guidance itself, I have had regard to the council's primary care appraisal.

4.7 The appraisal describes a situation where there is now a requirement in Edinburgh for new and expanded healthcare facilities since all the available capacity has been used up but the city continues to expand with new housing development. More and more practices have been closing their lists to new patients due to capacity issues. The appraisal also explains how, in recent years, short term measures have been put in place to make

incremental, generally small improvements to facilities to increase capacity, and with funding having been made available for this. However this is seen as a temporary measure and, whilst the appraisal shows the ongoing measures being taken to make the most out of the existing estate, more significant investment is needed to accommodate future housing development.

4.8 I have no reason to doubt the veracity of what is stated in the appraisal in setting out this context. It appears to me to demonstrate that a pragmatic approach has been taken to making the most out of existing infrastructure, but there is now a broad view amongst the healthcare agencies and providers involved that more significant investment is needed to accommodate the substantial amounts of development supported in the local development plan.

4.9 The supplementary guidance states clearly that any developer contributions would only be required to accommodate patients from new developments, not to resolve pre-existing capacity constraints. But it would have been better had the appraisal provided a more quantitative analysis to demonstrate why it is the case that the existing suite of healthcare facilities cannot accommodate the development proposed in the plan, and therefore why new capacity is required. It is asserted that this is the case, and the qualitative and narrative information in the appraisal would seem to bear this out, but I can understand why landowners and developers would want to see more a quantitative, geographically disaggregated analysis of the position to better demonstrate why, in each area, new development will require new infrastructure. The supplementary guidance says that existing local practice catchment areas and capacity were reviewed to assess what available capacity existed before identifying what new infrastructure is required for new development. But the appraisal does not provide the detail of that analysis, instead focussing more on what has been decided must be done as a result of it.

4.10 Setting that point aside, I discuss below the more detailed coverage of each of the four broad zones for healthcare provision identified in the appraisal and the guidance, and the justification for the approaches proposed there. For each, the number of new patients is calculated at 2.1 per dwelling, based on data on average household sizes. Albeit that, as Forth Ports points out, flats and studio apartments may have smaller numbers of residents, it does not appear to me unreasonable to proceed on the basis of an average household size. On the other hand it is stated in the appraisal that actual population increases would be higher if the new developments include (as would seem likely) family housing, but not what the response would be if this is the case.

4.11 For **North West Edinburgh**, based on the 2016 housing land audit, the table 'Housing Land Audit and Delivery Programme 2016 in the appraisal shows expected population (and therefore new patients) from new development of around 7,000 between 2016 and 2021 and a further 7,000 between 2021 to 2026.

4.12 The supplementary guidance identifies 5 infrastructure actions (11-15 in the table on page 56/57) for this zone – 3 new practices, one extension and one refurbishment. The total number of patients supported by these actions is 28,000, and the whole cost of these are to be from development. This is twice the number of new patients forecast by 2026 in the table in the appraisal. The costs per dwelling range from £105 per dwelling for Parkgrove to £1,050 in West Edinburgh, based on the anticipated costs of each of the actions identified.

4.13 The map on page 61 of the supplementary guidance shows the extent of the contribution zones, within which contributions would be required at the rates set out in the guidance.

4.14 For **North East Edinburgh**, the table in the appraisal shows expected population from new development of around 8,000 between 2016 and 2021 and a further 4,500 between 2021 to 2026.

4.15 The supplementary guidance identifies 5 infrastructure actions (1-5 in the table on page 56/57) for this zone – 4 new practices and one small scheme across 2 existing practices. The total number of patients supported by these actions is 43,500, of which 19,500 are from (and to be paid for by) new development. It is not clear to me why this is significantly larger than the number of new patients forecast by 2026 in the table in the appraisal. The costs per dwelling are £945 for the new practices, and only £60 per dwelling for the small scheme.

4.16 The map on page 58 of the supplementary guidance shows the extent of the 5 contribution zones.

4.17 For **South East Edinburgh** the table in the appraisal shows expected population from new development of around 4,200 between 2016 and 2021 and a further 3,100 between 2021 to 2026.

4.18 The supplementary guidance identifies 2 infrastructure actions (6 & 7 in the table on page 56/57) for this zone – 1 new practice and 1 'reprovision of existing premises'. The total number of patients supported by these actions is 12,000, of which 7,000 are from (and to be paid for by) new development. This is consistent with the number of new patients forecast by 2026 in the table in the appraisal. The costs per dwelling are £945 for the new practices, and only £60 per dwelling for the small scheme.

4.19 The map on page 59 of the supplementary guidance shows the extent of the 2 contribution zones.

4.20 For **South West Edinburgh** the table in the appraisal shows expected population from new development of around 4,500 between 2016 and 2021 and a further 1,700 between 2021 to 2026.

4.21 The supplementary guidance identifies 3 infrastructure actions (8-9 in the table on page 56/57) for this zone – 1 new practice and 2 extensions. The total number of patients supported by these actions is 21,000, of which 4,500 are from (and to be paid for by) new development. This is less than the number of new patients forecast by 2026 in the table in the appraisal. The costs per dwelling are £945 for the new practices, and only £60 per dwelling for the small scheme.

4.22 The map on page 50 of the supplementary guidance shows the extent of the 3 contribution zones.

4.23 It is not clear to me why the forecast numbers of new patients from development in each broad zone in the tables in the appraisal do not tally consistently with the stated total numbers of new patients from new developments by 2026 (and from which contributions would be required) in the table on pages 56/57 of the supplementary guidance. For the

broad North West and North East zones the latter number is higher, for the South West it is lower, for the South East the figures match fairly well.

4.24 It may have been in the interests of clarity (so that the basis of the contributions could be more readily understood) if the same tables in the appraisal (and/or the supplementary guidance itself) had listed which development sites would be required to make contributions towards each of the actions listed. Although 4 broad zones are set out, one for each sector of the city, in fact the contributions are levied towards (and therefore the sums for these are dependent on the costs of) each specific infrastructure intervention.

### **Catchment areas**

4.25 The supplementary guidance states that the healthcare contribution zones have not been defined on the basis of individual catchments since practice boundaries have no statutory status, and because they overlap. However by defining areas for each particular action and for contributions (see the maps on pages 58-61 of the guidance) the supplementary guidance links each development site to one infrastructure action only. So, in effect, this defines clear (not overlapping) boundaries for these, some of which are fairly close to each other - for example zones 1-3 in Leith/Granton, 4 & 5 at Craigmillar/Brunstane, 14 & 15 at Muirhouse/Crewe and 12 & 13 at Parkgrove/East Craigs/West Edinburgh.

4.26 Since it is acknowledged in the supplementary guidance that, in reality, catchments are not discrete and do overlap, it would have been helpful for more information to have been provided to justify this approach to the catchment areas. This is the case because, for example, the per unit contribution required for the West Edinburgh zone is 10 times the amount required at the nearby Parkgrove zone, and the contribution for the Niddrie action is more than 15 times that required for the nearby Brunstane action. Related to this, I also note that the appraisal raised the prospect (paragraphs 4.6 and 4.7) of rationalisation of current catchments with the potential for overlapping boundaries.

### **Costs**

4.27 In respect of the actual costs per action identified in the supplementary guidance, the appraisal says that, as a guide, each 1,000 patients would require approximately 90m<sup>2</sup> of floorspace. Section 5 of the appraisal outlines estimated costs:

- Costs for small and intermediate schemes (£0.01m to £0.1m) based on recent developments of this scale.
- Intermediate schemes (£0.1m to £0.5m) based on recent developments of this scale.
- Refurbishment/re-design (£0.5m to £1.2m).
- New build – indicative costs based on Scottish Futures Trust metrics.

4.28 As a crude rule of thumb, it is stated that the cost of provision could be estimated at £500k per 1000 patients. Although it is acknowledged that actual costs will vary from action to action (which presumably could be reflected in any Section 75 agreements ultimately signed) the guidance does therefore seem to provide costs and contributions which are based on reasonable assumptions for each type of action.

## **Developer contributions for private businesses/practices**

4.29 On page 11 of the supplementary guidance it is explained that:

‘The Public Bodies (Joint Working) Scotland Act 2014 requires health boards and local authorities to integrate health and social care services. In Edinburgh, the integration of the services from City of Edinburgh Council and NHS Lothian is now under the authority of the Edinburgh Integration Joint Board (IJB). The planning, resources and operational oversight for the range of NHS and local authority care services, including primary care, is the responsibility of the Edinburgh Health and Social Care Partnership (EHSCP), which is governed by the Edinburgh IJB.

The majority of the current 72 practices in Edinburgh are independent contractors, with eight directly managed by EHSCP/NHS Lothian. Irrespective of whether they are independent contractors or directly managed, EHSCP work with all GPs to plan future primary care provision and develop healthcare actions in response to the implications of the LDP.’

4.30 To the patient, it would seem to matter little whether their primary healthcare provider is a private practice or not, since all the practices are delivering NHS services. The appraisal explains that some practices have closed lists in recent years, and narrates a process whereby incremental improvements and extensions have been made to practice facilities over the years in order to boost capacity and accommodate new patients. I get no sense that this is an environment where a practice is likely to be able or to want, in response to new development, to raise capital so as to extend a facility in order to take on the resultant new patients. I am not convinced these differences across the city in the status of practices should affect the ability to seek developer contributions.

## **5. CONCLUSIONS**

5.1 I return at this point to the three matters I was asked to report on

### **The consultation undertaken to date, and the way that views have been taken into account by the City of Edinburgh Council.**

5.2 I have set out in the sections above the main issues raised in the consultation responses to the draft supplementary guidance, and my own views on these. The list of proposed changes to the draft version shows that the council made various amendments in response to the consultations received. Changes relate, amongst other things, to the information on the costs of some of the interventions, a further explanation for the basis of the approach to healthcare contributions and the removal of the transport contribution zones in north Edinburgh.

5.3 But the main observation I would make is that, as can be seen from my comments above, there are many questions raised about the evidence and justification for the approach in the supplementary guidance which, to my mind and on the basis of the evidence I have examined, remain unanswered. If there is further evidence for the approach taken, beyond the appraisals and the local development plan itself, then I have not seen it. It may be the case that this fuller evidence in support of the contributions being sought would be provided at the planning application stage, before section 75 agreements are made. But I would have expected to see more of the evidence in support of the supplementary guidance itself, since this will be the basis for any cumulative contributions which are required.

### **The methodology used to calculate contributions for education infrastructure.**

5.4 I cover this matter in chapter 2 above. In summary, in my view neither the supplementary guidance or the appraisal provide the kind of detailed evidence for the approach to cumulative education contributions which I would expect interested developers and landowners would wish to examine, or to allow full scrutiny of the approach to the calculations. This applies in relation to identifying the contribution to school capacity issues from new development and then justifying the approach to be taken in each contribution zone.

### **Compliance of the supplementary guidance with Circular 3/2012.**

5.5 I note below what seem to me to be the key elements of the circular, which sets out the circumstances in which planning obligations can be used, in relation to the supplementary guidance. Paragraphs 30 to 35 of the circular explain the role of plan-led approach in relation to planning obligations.

5.6 The circular requires that broad principles for planning obligations, including the items for which contributions will be sought and the occasions when they will be sought, are set out in the development plan.

5.7 The local development plan envisages that there may be a need for contributions towards all of the types of infrastructure which are covered in the supplementary guidance. However, and as I note above, I do not think that the plan provides a strong basis for the

inclusion of cumulative contribution zones for healthcare infrastructure in the supplementary guidance.

5.8 The circular states that methods and exact levels of contributions should be included in statutory supplementary guidance. Where planning authorities propose to rely on standard charges and formulae, they should include these in supplementary guidance along with information on how standard charges have been calculated, how monies will be held, how they will be used and, if applicable, how they will be returned to the developer.

5.9 Although there are gaps for some contribution zones (which I presume would need a further iteration of the supplementary guidance to resolve), on the face of it the supplementary guidance does, where contribution rates are given, provide exact levels of contributions. I do note however that the costs of some of the various infrastructure interventions are subject to further confirmation, and this could affect the level of the contributions which are ultimately required from a development.

5.10 In respect of 'methods' for the cumulative contributions, notwithstanding my comments above about the evidence and justification for some of these and about the approach taken in each case, the supplementary guidance sets out an approach for each of the different types of infrastructure (the approach to any contributions towards public realm infrastructure would need a further iteration of the guidance). Standard charges to be applied are set out in the supplementary guidance, although not for all zones where, again, a further iteration of the guidance would be required rather than seeking to amend/provide these through the action programme. The supplementary guidance provides information about how monies will be held and how they may be used, and it says that planning obligations can make provision for the repayment of unused contributions if the actual costs of delivering infrastructure are lower than anticipated.

5.11 I am doubtful though, about the extent to which the supplementary guidance can be said to fulfil an expectation that it include sufficient information about how these standard charges have been calculated. As I note in the chapters above, I do not think that even the appraisals provide this. Likewise, I have not seen sufficient evidence that I can say with confidence that the approaches applied in the guidance will reflect the actual impacts of, and be proportionate to, the developments in question, as required by paragraph 33 of the circular.

5.12 In relation to the 5 tests for planning obligations set out in the circular, I have set out above my significant concerns about whether the supplementary guidance fully demonstrates that any contributions in planning obligations based upon it would be necessary to make proposed developments acceptable in planning terms and whether the scale of the contribution would fairly and reasonably relate to the development in question. I do not think that it does.



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Acting Chief Reporter  
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Our ref: A22831020

29 November 2018

Dear Karen

**The City of Edinburgh Council  
Supplementary Guidance on Developer Contributions and Infrastructure Delivery**

On 7 September 2018 the City of Edinburgh Council certified notice of their intention to adopt the Supplementary Guidance on Developer Contributions and Infrastructure Delivery. This document relates to infrastructure provision in our capital city and contributions towards its costs. As such, this is a significant matter, requiring comprehensive consideration before a decision can be made on whether or not the Scottish Ministers wish to intervene.

To inform this decision, the Minister for Local Government, Housing and Planning has asked me to instruct DPEA to prepare and submit a report, if possible before 8 February 2019, setting out:

- The consultation undertaken to date, and the way that views have been taken into account by the City of Edinburgh Council;
- The methodology used to calculate contributions for education infrastructure; and
- Compliance of the supplementary guidance with Circular 3/2012.

Officials in my team will provide you with the relevant background information they hold on the supplementary guidance. I would be grateful if you could keep them informed if there are any issues arising from the timescale set out above.

Many thanks for your assistance.

**John McNairney**  
Chief Planner

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