

Response on behalf of West Craigs Limited

1 INTRODUCTION

- 1.1 We act for West Craigs Limited, and have been instructed by them to submit a response to Scottish Government following the City of Edinburgh Council's response dated 5 April 2019 to the Scottish Government's letter of 7 March 2019.
- 1.2 The Council has produced four different draft versions of its Supplementary Guidance (SG) following the adoption of the Edinburgh Local Development Plan in November 2016. Our clients have submitted responses to these drafts, and copies of those should already have been made available to you. For completeness, we enclose copies of our clients' submissions.
- 1.3 The Council's response is 39 pages and accompanied by a significant amount of supporting material. The response contains new explanations from the Council as to its approach, as well as new submissions of policy and fact. These submissions were not provided by the Council when responding to third party representations on the various different versions of the draft SG.
- 1.4 Our clients previously raised concerns regarding the Council's failure to undertake proper and meaningful consultation on its draft SG, constituting a failure to comply with the requirements of Section 22 of the Town and Country Planning (Scotland) Act 1997 and Regulation 27 of the Town and Country Planning (Development Planning) (Scotland) Regulations 2008. The extensive nature of the Council's response illustrates its failure to provide sufficient information during the consultation process.

2 QUESTION 1

LDP POLICY DEL 1 AND CIRCULAR 3/2012

- 2.1 In response to question 1, the Council make various submissions on policy Del 1 of the Edinburgh Local Development Plan, and Circular 3/2012. The purposes of these submissions is not entirely clear. However, the Council appear to be saying that, insofar as there is a difference between policy Del 1 and the Circular, preference should be given to policy Del 1. In the Council's submission, both the policy and the Circular are material considerations.
- 2.2 The purpose of Supplementary Guidance is explained in Circular 6/2013 on Development Planning at paragraph 135:
- "Scottish Ministers envisage that to allow plans themselves to focus on vision, the spatial strategy, overarching and other key policies and proposals, that much detailed material can be contained in Supplementary Guidance."*
- 2.3 Paragraph 139 sets out suitable topics for Supplementary Guidance, and states that Supplementary Guidance should not include: *"items for which financial or other*

contributions, including affordable housing, will be sought, and the circumstances (locations, types of development) where they will be sought”.

- 2.4 It is clear from Circular 6/2013 that it is not the function of Supplementary Guidance to seek to create new policy, but to provide further detail to existing policies within the LDP.
- 2.5 The Council do not specify in what way policy Del 1 may be said to differ from Circular 3/2012. Rather, their point appears to be that the requirement for Supplementary Guidance in policy Del 1 is, in itself, a justification for the current draft document. With respect, that submission cannot be correct. That policy Del 1 requires Supplementary Guidance does not remove the need to consider the content of the draft guidance, so that the planning authority, Scottish Ministers and other interested parties can consider its terms against the relevant legal requirements and national planning policy.
- 2.6 In any event, there are no submissions from the Council that policy Del 1 does not accord with the Circular. Indeed, policy Del 1 was substantially modified on the recommendation of the examination Reporters to ensure its compliance with the Circular. At paragraph 30 on page 761 of the examination report, the Reporters state:
- To achieve compliance with the 2012 Circular I consider revision of Policy Del 1 is required to establish the broad principles, including the items (generally) for which contributions will be sought and the occasions when they will be sought.”*
- 2.7 In our submission, if Ministers are of the view that the draft SG does not accord with the national planning policy contained in Circular 3/2012, then it follows that it will also fail to accord with the relevant parts of policy Del 1.
- 2.8 The Council also refer to the 2017 Supreme Court decision in *Aberdeen City and Shire Strategic Development Planning Authority v Elsick Development Co Limited*. The approach to the use of national planning policy such as Circular 3/2012 was considered at paragraphs 53 – 54 and 60 of that decision. As the Council has correctly identified, the Circular is policy not law. However, the Supreme Court did go further than the Council’s submissions on the application of national planning policy. In particular, they made it clear that, given the fact the Circular is an expression of national policy, if a decision maker is seeking to depart from its terms then they need to make that position clear and give reasons.
- 2.9 There are no submissions from the Council as to why a departure from the tests in the Circular would be justified in this case. Moreover, there were no submissions from the Council during the LDP process in respect that policy Del 1 did not accord with national planning policy. As noted above, the Examination Reporters recommended extensive modifications to policy Del 1 to ensure it did comply with the Circular.
- 2.10 Insofar as the Council are seeking to justify the draft SG, notwithstanding compliance or otherwise with the Circular, in our submission, their case has not been made out. Policy Del 1 was modified to ensure compliance with the Circular, and there was no suggestion to the contrary. The draft SG requires as a matter of law to conform to the LDP, including policy

Del 1. If the Council wished to put in place a policy document that did not accord with national planning policy then they were required to give reasons for doing so. That has not been done. The proposition that the draft SG should be adopted simply because there was a requirement for such a document in the LDP is not a good one.

POOLING OF CONTRIBUTIONS

2.11 On page 7 of their response, the Council say:

“In simple terms, within each contribution zone, contributions are pooled and along with any allocated front funding, are used to deliver each new piece of infrastructure at the appropriate time.”

2.12 Not all infrastructure within a contribution zone is needed for each development within that zone. For example, the LDP (as well as the draft SG and Action Programme) identify a requirement for a new primary school on site HSG 19. This primary school will serve new housing on sites HSG 19 and HSG20. West Craigs Limited’s appeal for residential development of the majority of site HSG 19 (DPEA reference PPA-230-2207) has been upheld subject to completion of a legal agreement securing developer contributions.

2.13 The Council’s position in respect of Site HSG 19 is that the developer contributions payable towards non-denominational primary school education should be calculated by reference to, and for the purposes of, delivering a new primary school. Whilst other non-denominational primary school infrastructure is also identified for the contribution zone (an extension to Gylemuir Primary School), it is not disputed that this school extension is not required either cumulatively or individually for development of sites HSG19 and HSG 20. The use of contributions from sites HSG 19 and HSG 20 to fund that extension would fail the “more than trivial” connection test set out in *Elsick*. This will likely be the case in other contribution zones.

2.14 The draft SG (page 14) confirms that unused contributions will be held for a period of years and then repaid if they have not been utilised. However, this commitment is undermined if contributions are used on a “pooled” basis, rather than for the infrastructure for which they were collected.

2.15 It also produces a disconnect between those developers paying contributions and the delivery of infrastructure. Using our clients and HSG 19 as an example, if contributions paid by developers of site HSG 19 for the new primary school were actually used by the Council to fund other, unrelated, primary school infrastructure within that zone, it is not clear how these funds would be replaced.

2.16 The Council intends to pool contributions across a contribution zone to deliver various different infrastructure. The Council appears to have acknowledged this this could include infrastructure that is not required for the development from which contributions have been secured. The Council’s response also confirms that it will apply contributions in accordance

with its own Action Programme timetabling requirements. This may not be linked to the infrastructure required for a development from which contributions have been secured.

2.17 Scottish Government's question 1 highlighted that "*planning obligations should clearly specify the purpose for which any contribution is required, including the infrastructure to be provided (Circular 3/2012)*".

2.18 The Council's response appears to confirm that it may not use contributions for the purpose for which they are originally required. This approach is not consistent with the requirements of Circular 3/2012.

3 **QUESTION 2**

3.1 At page 4 the Council relies on the text in paragraph 141 and appendix C of the LDP as setting the basis for education interventions. On the basis of this text, it is the Council's position that the LDP does not prescribe or limit what the school capacity of new school actions should be, and these are matters left to the SPG.

3.2 It is important to note that paragraph 141 does not form part of Policy Del 1, but both it and appendix C act as supporting text to Policy Del 1. Supporting text is an aid to the interpretation of policy, but should not be read as if it was policy or part of a policy (this was confirmed by the Court of Appeal in *Cherkley Campaign Limited v Mole Valley DC* [2014] EWCA Civ 567 – see paragraph 21 of the judgment).

3.3 The Council's reliance on supporting text as providing the basis for education interventions is erroneous and an incorrect application of the LDP and Policy Del 1 (interpretation of policy being a matter of law). Policy Del 1 paragraph 1(b) sets out the policy basis for education interventions and the use of contribution zones.

3.4 This error is of particular relevance to our clients and development of HSG 19. The "West Edinburgh – General Development Principles" (pages 56 – 60) of the LDP set out the requirements for various sites, including HSG 19. Paragraphs 123 and 124 set out infrastructure requirements, including education. This identifies a requirement for detailed assessment to determine whether additional non-denominational secondary capacity will be best provided at one or more of a number of schools (being The Royal High, Craigmount High, Forrester High).

3.5 The draft SPG does not reflect this requirement, and instead proposes a new secondary school in West Edinburgh. Policy Del 1 does not provide an LDP policy basis for this requirement. Paragraph 141 and appendix C of the LDP are not policy.

Contribution Zones

- 3.6 Policy Del 1 refers to the use of contribution zones to address cumulative impacts. In its response the Council has said that contribution zones are based on school catchment areas. That is incorrect. Not all education contribution zones follow existing or proposed school catchment areas.
- 3.7 In the context of west Edinburgh, the Council has not identified the location or proposed catchment area of a new secondary school. Nor have they confirmed which primary schools would feed in to the new secondary school.
- 3.8 The Council has also failed to apply its contribution zones consistently between development proposals. All sub-areas within the West Education Contribution Zone are expected to make contributions towards denominational primary and secondary school infrastructure. However, during the course of the hearings into the Garden District planning application (DPEA reference NOD-EDB-002), the Council's education officer advised that contributions towards denominational primary school infrastructure were not required (having previously been a requirement). This was on the basis the denominational primary school was not close enough to the site. This was despite the site being located within the West Edinburgh Education Contribution Zone.
- 3.9 This explanation has no basis in the LDP nor any of the various iterations of the draft SG (including the most recent version). For example, there is nothing in the LDP or draft SG to suggest contributions towards denominational schools will not be required from land within a contribution zone where the school is a certain distance from the site.
- 3.10 The Council's submissions to Scottish Ministers in the Garden District hearings adopted a case specific approach. This undermines the Council's cumulative approach (especially given the reference to the pooling of contributions) and is indicative of significant flaws in how contribution zones have been identified and applied to individual applications.

4 **QUESTIONS 3 AND 5(E)**

- 4.1 The Council relies on LDP Policy Hou 10 as the as the basis for healthcare contribution zones. It should be noted that the Council had originally sought to include healthcare within Policy Del 1 but was required to remove it following the LDP examination.
- 4.2 Policy Hou 10 includes various community infrastructure requirements, not only healthcare. There is nothing to explain why the Council has sought to include only one aspect of Policy Hou 10 in the draft SPG. Reliance on Policy Hou 10 is also at odds with the Council's answer to question 1 that the draft SPG has been brought forward to address a requirement of Policy Del 1.
- 4.3 In response to Question 5(e) the Council refer to general healthcare requirements. That there is a legal requirement to provide healthcare facilities is not of itself a justification for particular developer contributions.

4.4 The Council (page 36 of its response) relies on a primary care appraisal plan prepared by the Edinburgh Health Care and Social Care Partnership (April 2017 and updated December 2017) in support of its position.

4.5 The Council's responses repeat much of their submissions to the HSG 19 planning appeal, in which they sought developer contributions towards healthcare facilities. The Notice of Intention issued following that appeal held that:-

“there is no evidence as to whether the contribution is fair and reasonable in scale and kind to the proposal. In particular, there is no evidence to support the extent or boundaries of the contribution zones or whether these relate to practice boundaries. There is no evidence before us to justify the anticipated costs. These seem to be indicative at this stage particularly given that further options are still being explored which could result in changes to the boundaries and/or the proposed solution.”

4.6 Paragraphs 108 to 115 set out the Reporters' consideration of this issue.

4.7 Whilst the Council has provided examples of how it envisages healthcare contributions will operate, it has not sought to justify these in the context of West Edinburgh.

5 **QUESTION 4, 5(C) AND 5(D)**

5.1 The Council has produced technical information to support proposed transport interventions. Of particular relevance to West Craigs Limited is the West Edinburgh Transport Assessment. The detail in these documents was not subject to proper consultation with our clients and it has therefore not been possible to test the modelling or assumptions that underpin the Council's position.

5.2 It has become apparent that the Council has engaged with other parties on transport measures in West Edinburgh, including a proposal for a Link Road to serve Edinburgh Airport. The Council's approach is a matter of significant concern. The Council has not consulted with our clients on this matter, and so far as we are aware, there has been no public consultation or consultation with stakeholders.

5.3 We previously raised concerns about the Council seeking to introduce new infrastructure requirements through the SPG and Action Programme, and the risks that this posed in terms of compliance with the Environmental Assessment (Scotland) Act 2005 (this is detailed in the advice note annexed to Icen's submission of 3 February 2017). That note considered the SEA requirements relating to the proposed new secondary school. Similar considerations apply to the suggested proposals for a link road. This is not included in the LDP and was not subject to the SEA undertaken as part of that proposal.

5.4 The Transport Contributions spreadsheet dated April 2019 provided with the Council's response contains new information and raises a number of queries as to how the costs of new infrastructure are being calculated and those costs apportioned. For example:-

5.4.1 The “*Improved Crossings at Turnhouse Road and Maybury Road for designated cycle path*” is costed differently between the spreadsheet and the Action Programme 2019. There may also be duplication in provision in respect of Toucan Crossing works identified as part of this work package and the T17 junction works.

5.4.2 The “*Maybury Road Approach to Maybury Junction*” works also appear to be now included within the T17 junction works. These works were previously within the West Edinburgh Contribution Zone. Page 11 of the January 2019 Action Programme costs this infrastructure at £ 3.082m. There is no explanation from the Council as to why this significant item of transport infrastructure between Gogar and Maybury has been reallocated to the Maybury / Barnton Contribution Zone. This part of the road will carry traffic from the International Business Gate and Edinburgh Airport to/from Edinburgh. The fluidity in the Council’s allocation of infrastructure between contribution zones is indicative of the lack of robustness in its approach. Contribution zones can be used as a means of addressing cumulative impacts. For that to be the case, impacts and the required infrastructure should be identified and used to inform the extent of a contribution zone. The moving of infrastructure between zones without explanation is inconsistent with that approach, but indicative of zones being used as a means of charging developer contributions.

5.5 It would be useful to have clarification on these points from the Council.

6 QUESTION 5A

6.1 The Council’s response to this question provided a more detailed explanation as to how it had assessed education infrastructure requirements than it provided as part of the LDP process or consultation on the draft SPG. Unfortunately, in the main this consists of a series of assertions with very limited supporting information.

6.2 The Council has referenced the Liberton/Gracemount Contribution Zone in support of its approach. This is obviously of limited application to our clients, whose development is based in West Edinburgh.

6.3 The Council (page 19 of its response) refers to creation of Cumulative Assessment Areas (ie its Contribution Zones). It is agreed that developer contributions can be secured to address cumulative impacts, and this provides support for a cumulative assessment. However, cumulative assessments are not the same as cumulative contribution zones.

6.4 The Council goes on to say “*The Council’s cumulative approach is based on Cumulative Assessment Areas. These are based on the catchment area of one or more secondary school and its feeder primary schools.*” As noted above, the Council’s contribution zones do not all follow school catchment areas. The Council also appear to be saying they identified contribution zones as a first step, and then assessed impacts within these zones.

- 6.5 The difficulty is that there is very limited evidence from the Council as to its assessment of impacts on a cumulative basis. This lack of information is exacerbated by the fact the Council did not consult on its contribution zone boundaries.
- 6.6 The Council has also adopted an unrealistic worst case approach, in that it assumes that 100% of school children from the total of new development must be accommodated at the same time. In the case of West Craig's development at site HSG19, the Council has assessed impacts on the basis of the total number of children needing to be accommodated at the same time. This makes no allowance for build rates or the fact children will work their way through the school system, ie move from primary to secondary schooling and ultimately leave school. This has resulted in a significant overestimation of the impacts of new housing on school capacities.
- 6.7 The Council has also failed to provide any information on how rising rolls (growth from existing housing) will impact on capacity requirements. In the context of West Edinburgh, the Council is seeking contributions for a new secondary school with a capacity for at least 900 pupils. The Council acknowledges new children from new housing development will require only half of this capacity, and it has adjusted contributions towards this new school. However, it has not explained from where the other pupils will come.
- 6.8 Assuming the Council is not proposing to build and operate a school at 50% capacity, it must be anticipating additional requirements from existing housing. It is reasonable to assume this would have some impact on primary school provision. However, there is no information from the Council on this point. It should be noted that developers are expected to fund 100% of the new primary school to be located on site HSG 19. This illustrates that the Council does not expect there to be any requirement for children from existing housing to be accommodated in this new primary school. This juxtaposes with a proposal for a new secondary school, which is to provide spaces for 450 pupils that are not from new development.
- 6.9 The Council sets out an approach to assessing education infrastructure requirements on page 21:
- “Where additional capacity is identified as being required, the first step is to reconfigure existing accommodation. If this cannot be achieved extending existing schools is considered. However, given the scale and location of proposed housing developments as set out in the Local Development Plan, in some areas the only realistic option is the provision of a new school. The Council’s Education Appraisal sets out the identified actions and the explanation as to why they are required. The costs of each education action are set out in the current Action Programme.”*
- 6.10 This explanation does not, unfortunately, reflect the reality of the Council’s approach.
- 6.11 During the course of the hearings for our clients’ appeal, when asked about the assessment work done for its suggested new secondary school, the Council admitted it had not undertaken any meaningful assessment of how additional secondary school capacity could be provided. In particular, the Council confirmed it had not properly considered whether additional

secondary school capacity could be provided at one or more of the existing secondary schools (despite this being a stated requirement of the LDP). Indeed, the Council was unable to provide any response when asked by the appeal Reporters if it remained their intention to provide a new secondary school.

- 6.12 The Council's Education Appraisal provides only a cursory justification for a new secondary school. It fails to provide a justification for departing from what is set out in the LDP.
- 6.13 Whilst specific to west Edinburgh, this is indicative of the lack of information from the Council on education requirements.
- 6.14 A particular concern with the Council's approach is that it is seeking to make significant changes to infrastructure requirements and developer contributions on the basis of assessments and documents on which there is limited (if any) opportunity to comment – in this case an education appraisal and action programme.
- 6.15 Our clients' only opportunity to test the Council's approach has been through their own planning appeal and this SPG process. This has disclosed significant errors in the Council's approach, for example, the Council was required to recalculate contributions towards the suggested new secondary school, removing over £15 million of costs. In our clients' submission, the Council should not be permitted to make significant changes to infrastructure requirements unless it has completed the type of assessments set out in its response (as quoted above), and these have been subject to proper consultation and scrutiny.

7 **QUESTION 5(B)**

- 7.1 The Council's submission is that contingency costs are to address unknown costs and delays.
- 7.2 The Council has provided only limited cost estimates for new infrastructure, with its costings somewhat opaque. Given the level of costs being sought through developer contributions, it is reasonable to expect costings to be supported by detailed designs by suitable qualified professionals, including chartered quantity surveyors.
- 7.3 However, it is our understanding that CEC has used current cost plans (which include contingencies within them) and has added a further contingency to this. This gives rise to double counting.
- 7.4 No source is provided for the contingency range of 5-10%, and it is considered excessive. A contingency of up to 5% is considered more appropriate and standard practice.
- 7.5 In so far as contingency is required to address delays, the Council will also seek to apply indexation to developer contributions. It is not clear why contingency payments are needed over and above indexation payments for this reason.
- 7.6 We would also note that whilst the Council applies indexing to contributions payable to it, it does not apply this approach to land payments payable by the Council. Land costs are

expressed as a fixed sum in the draft SPG. This means there is no allowance for changes in land values. This appears to be an inconsistent approach on the part of the Council.

- 7.7 The Council also relies on the fact unused contributions may be repaid. However, the Council's position is that education contributions will be retained for up to 30 years. Repayment on these terms is not a meaningful response to the issue. Repayment provisions are also undermined by the Council's pooling of contributions which, if applied as suggested by the Council, would mean monies may be spent on different or multiple infrastructure items.



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3 February 2017

BY EMAIL

Dear Sir / Madam

**REPRESENTATION ON BEHALF OF WEST CRAIGS LTD –
DRAFT SUPPLEMENTARY GUIDANCE ON DEVELOPER CONTRIBUTIONS &
INFRASTRUCTURE DELIVERY – RESPONSE TO CONSULTATION**

We are pleased to submit representations to the above Consultation Draft Supplementary Guidance on behalf of our client West Craigs Ltd. For the avoidance of doubt, we have completed the online questionnaire also, however would point you to this correspondence (and enclosures) given the representation should be read as a combined submission. As part of this representation the following addendums are included: -

- Statement from Geddes Consulting on Education Requirements;
- Advice note from Burness Paull LLP on the draft guidance in respect of the Environmental Assessment (Scotland) Act.

Our clients' site at West Craigs (Maybury HSG19) is the single largest residential allocation in the LDP. Our clients have submitted a planning application for 1,400 new houses. They have also submitted proposals to the Council for delivery of a new Primary School on the site, and an extension to Craigmount High School.

We note that this draft Guidance has been completed following adoption of the Edinburgh Local Development Plan (2016) and as part of the requirement from the Examination into unresolved objections for the LDP completed by Reporters. This correspondence will refer to the appropriate page number and paragraph in the draft Guidance as appropriate.

The draft Guidance is intended to support delivery of the Council's Local Development Plan. During the course of the Local Development Plan Examination, the Council gave a commitment to Scottish Ministers that infrastructure constraints would not be allowed to delay development. This commitment was key to Scottish Ministers' decision to allow the plan to be taken forward to adoption. The Planning Minister noted: -

"In part, I am reassured by the published statement that "At the hearing the Council explained 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".

The Planning Minister's direction to the Council on future decision making applies to this draft Guidance.

Given the significance of this commitment both to the Council, the LDP Examination Reporters and Scottish Ministers it is appropriate that it is reflected in the draft Guidance. However, the draft Guidance is not clear on this point. The text at "Funding Mechanisms" is vague and oblique. Section 4 (Legal Agreements and use of monies) refers to timescales for delivery of infrastructure being agreed between the Council and the applicant.

The draft Guidance should be amended to include text reiterating the commitment the Council gave during the LDP process that the Council would carry the risk of required infrastructure provision, such that this will not delay delivery of development. Such a commitment does not, of course, prevent the Council from securing appropriate developer contributions.

Enclosed with this submission is an advice note from our clients' solicitors, Burness Paull. This highlights that the draft Guidance must be prepared in accordance with the Environmental Assessment (Scotland) Act 2005. No strategic environmental assessment of the draft Guidance has been undertaken. Whilst, in certain circumstances, supplementary planning guidance may be able to rely on the environmental assessment undertaken for the associated LDP, that is not the case here, as the draft Guidance includes specific proposals for a new secondary school for West Edinburgh, which represents a change from what was proposed in the LDP. The draft Guidance requires to be subject to environmental assessment to ensure compliance with the 2005 Act.

1. SECTION ONE - INTRODUCTION

The draft Guidance states that it *"takes account of Scottish Government Circular 3/2012 Planning Obligations and Good Neighbour Agreements and other relevant government advice on contributions and legal agreements"*.

So as to demonstrate the robustness of the draft Guidance, it is necessary to understand all guidance and advice that has been taken into account in its preparation. The draft Guidance should be amended to make clear what Government guidance and advice has been taken into account in its preparation.

Moreover, it is not enough to state that the draft Guidance "takes account" of the Circular: The draft Guidance must fully accord with the Circular. Our clients submit that the draft Guidance fails to comply with the Circular for reasons set out in this response.

References to the Circular are limited, and the draft Guidance fails to make any express reference to the five tests all planning obligations must meet to be valid, namely:-

- Necessary to make the proposed development acceptable in planning terms;
- Serve a planning purpose and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans;
- Relate to the development, either as a direct consequence of the development or arising from the cumulative impact of development in the area;
- Fairly and reasonably relate in scale and kind to the proposed development; and
- Be reasonable in all other respects.

Indeed, the draft Guidance purports to apply its own, alternative tests; stating (in the section headed *"What does this guidance do?"*) that the purpose of the Guidance is to ensure developers *"make a fair and realistic contribution to the delivery of necessary infrastructure provision and improvement"*

associated with development". This theme is repeated in Section 2 (Contribution Zones) where reference is made to the total cost of delivering infrastructure within zones being shared "*proportionally and fairly between all developments which fall within the zone*".

The inclusion of different tests for developer contributions is both unnecessary and unhelpful. It increases the risk of the draft Guidance and/or individual contributions sought under it being contrary to the tests set out in the Circular. As the Council will already be aware, supplementary guidance on developer contributions cannot lawfully impose obligations that do not accord with the Circular (see *Elsick Development Company v Aberdeen City and Shire SDA*).

The draft Guidance requires to be amended to include express reference to the five tests all planning obligations must meet to be valid. References to alternative approaches should be deleted to avoid confusion and the risk of legal invalidity. The Guidance should include a statement confirming that planning obligations will only be required where it can be shown the five tests in the Circular have been met.

SECTION TWO – DELIVERING THE EDINBURGH LOCAL DEVELOPMENT PLAN

2a Education Infrastructure Requirements and Contribution Zones

Our clients recognise that the contribution zone approach may be capable of being used to address cumulative infrastructure requirements. However, this approach must accord with the Circular. It is important to recognise the guidance in the Circular which provides at paragraph 21 that:

"Planning obligations should not be used to resolve existing deficiencies in infrastructure provision or to secure contributions to the achievement of wider planning objectives which are not strictly necessary to allow planning permission to be granted for the particular development".

There is no evidence in the draft Guidance or the LDP Education Infrastructure Appraisal (December 2016), which was used to determine the actions specified in the Action Programme, that the Council has considered the extent to which education infrastructure could be delivered through other mechanisms than the provision of new schools, for example, catchment reviews of existing schools.

Catchment reviews could be used to better utilise available capacity in existing schools before new schools or extensions to existing schools are needed. The education infrastructure set out in Annex 1 to the draft Guidance is presented as a strategic solution to the delivery of education infrastructure. There is no indication in the LDP Education Appraisal that any consideration has been given to the most cost-effective way of providing the education infrastructure required.

The draft Guidance should not require developers to make contributions to achieve the Council's wider strategic objectives, e.g. the delivery of new schools where these might not be necessary for the particular development in question.

Such an approach would be contrary to the terms of the Circular. The draft Guidance should state that contributions will only be sought in line with the Contribution Zone requirements where it is demonstrated that a proposed development would have a negative impact on existing infrastructure that cannot be accommodated within existing schools or that no alternative solutions have been provided by the developer to address a capacity issue arising from the impact of a particular development in a Contribution Zone.

There is a lack of information in the draft Guidance and Education Appraisal (updated December 2016) as to how the Council intends to make the best use of its existing education estate to serve new development proposals. The analysis in the Education Appraisal has not been subject to consultation. It appears that the Council has predetermined what additional infrastructure is required without considering the efficiencies that could be achieved through catchment reviews. There has

been no independent third party examination of the Council's Education Appraisal or any analysis of the assumptions which underlie the Appraisal. It cannot be relied on as the basis for calculating education contributions.

By way of illustration, in the Education Appraisal we note the Council have made various assumptions on the delivery of housing output. These assumptions were completed with little or no consultation with landowners and taking our client's site as an example the Housing Land Audit 2016 states the following for site HSG 19, Maybury:-

TOTAL	16/17	17/18	18/19	19/20	20/21	21/22	22/23	Post 2023
1850	0	0	25	50	100	100	150	1425

In our view this significantly underestimates the likely delivery of our client's site, this will in turn impact the Education Appraisal. The likely programming for site HSG 19 is more likely to be as follows:-

TOTAL	16/17	17/18	18/19	19/20	20/21	21/22	22/23	Post 2023
1850	0	50	100	150	150	200	200	1000

We enclose an analysis of the education requirements and associated infrastructure and costings for West Edinburgh, undertaken by Geddes Consulting. This analysis identifies a number of shortcomings in the approach that underpins the draft Guidance as it would be applied to HSG 19.

As the analysis sets out, both pupil projections and the costs of new infrastructure are overstated. Moreover, it is apparent that the infrastructure identified is required wholly or in part meet the Council's own existing requirements, and not the requirements of the LDP. The analysis also highlights the failure to properly consider windfall sites. The approach taken in the draft Guidance puts a lesser burden on windfall sites – placing a premium on not being an allocated site. Such an approach is contrary to a plan led planning system.

The Council put forward its proposed approach in the recent appeal at Lasswade Road (*PPA-230-2152*).

The appeal site was a windfall site within the South East Edinburgh SDA and within the Liberton/Gracemount Education Contribution Zone. This appeal site was within the catchment area of Gilmerton Primary School and the dual feeder catchment for Liberton and Gracemount High Schools. This application was approved on appeal in November 2015.

The Council sought to apply its catchment area approach at appeal, and calculated that planning obligations in the region of £4 million were required. However, the Council had not determined the indicative areas for the potential catchment areas for the two new schools and it was not possible to clarify which new school pupils from the appeal site would attend. The Council also failed to determine what interim solutions would be provided to accommodate all pupils from all allocated sites in the Contribution Zone before the new schools would be built.

The appellants demonstrated that extensions to existing infrastructure could be used to address the requirements of the development. This required investment of approximately £2 million. The Reporter accepted the appellant's analysis and granted planning permission on this basis. This decision illustrates the risk inherent in the draft Guidance to significantly overstate the costs of planning obligations.

It is noted at paragraph D(ii) on page 4 that the Council will consider whether it is appropriate to revise the actions in the Action Programme and associated Contribution Zones if education infrastructure actions in the current Action Programme are not sufficient to accommodate an

increase in the cumulative number of new pupils expected as a result of a development. There is, however, no recognition of the fact that some developers may pay too much if the expected increase in number of pupils across all developments anticipated in a Contribution Zone does not materialise. It is not clear how contributions will be revised downwards and repaid to developers if windfall developments come forward at a later stage and to contribute to infrastructure within a Contribution Zone, and/or excessive contributions repaid to developers.

Circular 3/2012 requires that, *“where statutory supplementary guidance is being promoted, this should include 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”*.

The draft Guidance does not explain how infrastructure for which contributions are required will actually be delivered, nor how monies will be paid, how they will be used or how they will be returned to developers.

The draft Guidance states on page 5 that the *“education infrastructure capacity will be delivered at a time that is appropriate to ensure that new pupils can be accommodated within their catchment schools. The Council reserves the right to adjust the timing of the education delivery programme to take account of relevant circumstances”*. This statement gives no certainty to developers that contributions that they have signed up to pay will actually be used to deliver the infrastructure that is required for their development. The statement at Part F that *“if pupils from a new development cannot be accommodated until education actions have been delivered, conditions may be used to phase the development to reflect the delivery programme for the required infrastructure”* could be used to hold up the delivery of new housing. This is contrary to the assurances given by the Council to Scottish Ministers during the LDP examination process.

It is not clear what is proposed at 2D(iii). The draft Guidance says that it may be appropriate to establish a new Contribution Zone if a development comes forward that would require a new school to be added to the Action Programme. This would seem to run contrary to the tests in the Circular that a planning obligation must be necessary to make the proposed development acceptable in planning terms. If a development is acceptable in planning terms and does not require a new school, then it cannot be necessary for it to be required to make financial contributions for a new school, that is a requirement of another development.

Following paragraph 5 on page 4 the following text should be added:-

“Where a potential school site can be delivered by a landowner / developer this will be considered in conjunction with the Council. The cost of this being delivered would then be taken from any required contributions for the associated development”

Page 5

In the section titled, Delivery of Education Infrastructure, the following text should be added to the end of paragraph 3 as follows:-

To assist in the early delivery of education infrastructure developers / landowners will be encouraged to bring forward planning applications for education facilities to assist the local authority and avoid housing sites stalling.

Page 8 – Transport

With regards to site HSG 19 in the LDP it is set to contribute towards £4,320,000 towards a railway bridge and extensive footpath and underpass works linking HSG 19 to The Gyle, via the now completed Edinburgh Gateway. There are a number of issues with this, namely:

- The footpaths and A8 underpass have been delivered solely to support Edinburgh Gateway and funded via EGIP. These works are in no way linked to any LDP allocation, including HSG 19. Only the cost of the bridge and footpath linkage with the existing Tram Depot road and Edinburgh Gateway can reasonably be linked to LDP allocations, including HSG 19.
- It is unclear why the delivery of the bridge and footpath linkage is only being attributed as a site-specific transport action for HSG 19, when CEC is suggesting that IBG development and HSG 20 development requires this bridge link to support the overall educational needs within these allocations in regard to the location and accessibility of a new primary and a new secondary school.

In addition, HSG 19 is identified as paying £87,200 for the design fee towards the Maybury Junctions redesign for cycling and walking. This is not justified on two grounds. Firstly, changes at Maybury Junction are identified as Action T17 within the Maybury/Barnton Contribution Zone and as such should also be attributed to allocation HSG 20. Secondly, the T17 works include design, which must reasonably include any cycle/pedestrian facilities and operation.

Page 11 – Primary Healthcare

We note the provision of health care infrastructure was considered as part of the Examination into unresolved objections to the Edinburgh Local Development Plan (adopted 2016). The Reporter(s) concluded the following:-

Page 764, para 46 - 47

“The land use planning justification for the other items referenced in Del 1 relies on the work the Council has carried out on the assessment of transport, education and open space. Notably no such research or justification for seeking contributions towards health care provision has been provided in this examination.

In the absence of current information or justification of the scale of any additional provision that might be required, there is no certainty, at present, on the associated need for contributions. To add this requirement now, would, I consider, be contrary to the terms of the 2012 Circular. Consequently, I am not convinced that the list of items relevant to Policy Del 1 should be expanded to cover health care infrastructure”

It is clear from these conclusions that the Examination recommended that primary healthcare should not be considered as part of policy Del 1 in the adopted LDP. Appendix 4 suggests a figure of £6m for West Edinburgh in this regard. As concluded by the Reporter this is contrary to the terms of Circular 3/2012.

In this regard page 11 of the draft SPG should be removed.

3 VIABILITY AND FUNDING MECHANISMS

Policy Del 1 provides that the draft Guidance must include the Council’s approach should the required contributions raise demonstrable commercial viability constraints and/or where forward or gap funding may be required.

However, the text in the draft Guidance on this issue is less than clear, on page 12 it states that:

“Should gap and/or forward funding be required to deliver an infrastructure action in the Action Programme, this will be reported to the appropriate committee(s). This includes Planning Committee with the relevant application.

The financial impact of the Local Development Plan on capital and revenue budgets is reported annually to the Council's Finance and Resources Committee."

These statements do not provide any clarity on how the Council will address the issue where forward or gap funding may be required and does not provide any certainty to developers that it will be forthcoming, or that developments will not be stalled if the Council fails to deliver the infrastructure required.

Consistent with the commitment given by the Council during the LDP Examination, and relied upon by Scottish Ministers when approving the LDP for adoption, the draft Guidance should include a clear and unequivocal statement that the Council will carry the risk of the required infrastructure provision and this would not delay development. Failure to include such a statement would represent a failure by the Council to stand by its previous commitments, and place the draft Guidance in conflict with the basis on which the LDP was approved by Scottish Ministers.

4 LEGAL AGREEMENTS AND USE OF MONIES

It is noted that the Council is preparing a model legal agreement to be published with the finalised guidance. We trust that there will be an opportunity for developers to comment on the draft agreement, as other local authorities, such as Aberdeen City Council and Aberdeenshire Council have done.

In particular, we would hope that the Council will not include any requirement in any such model agreement for developers to cover the Council's costs for preparing and registering a planning agreement. Any requirement for developers to pay for the Council's costs of preparing and registering a planning obligation, in addition to its own legal costs, would be contrary to the decision of the English High Court in the case of *Oxfordshire County Council v Secretary of State for Communities and Local Government [2015] EWHC186 (Admin)*. In that case, the Court held that payment of monitoring/administration fee was not necessary to make a development acceptable in planning terms and that it is part of the planning authority's function to administer, monitor and enforce planning obligations and legal agreements and that there is nothing in the legislation or government guidance which suggests that authorities could claim administration or monitoring fees. These findings apply equally to the Scottish planning system. The cost to the authority of including legal obligations is covered by the statutory application fees. The Scottish Government is clear that local authorities have no power to require the developers pay an additional fee for planning obligations as such fees are not in themselves necessary to make a development acceptable in planning terms.

It should be noted that Angus Council proposed a requirement that developers pay the Council's legal fees for planning obligations in its guidance on planning obligations. The Scottish Ministers responded on 24 November 2016 with a direction advising that the guidance would not be adopted until it was amended to delete the sentence which advised that "*the costs of the preparation of the legal agreement and the applicant's own legal costs must be met by the applicant*". Similar directions have been issued by the Scottish Government to other local authorities who have included similar statements within their guidance.

At present, the City of Edinburgh Council requires applicants to enter into a fee undertaking before starting work on the terms of any legal agreement. This undertaking requires the applicant to pay the Council's legal fees (including external legal fees, even if the agreement is not ultimately completed). We consider that this approach is illegitimate and trust that any such requirement will not form part of the Council's model legal agreement or its procedures for new legal agreements.

5 AUDIT AND REVIEW

Section 5 states that applicants have the statutory right to apply to the Council for modification or discharge of a section 75 agreement. Given the uncertainty surrounding the Council's delivery programme, reliance on the section 75 modification process is not sufficient, and will lead to unnecessary costs for both the Council and applicants. The Council's review process must ensure variations and updates to planning obligations can be made as required, and that there is sufficient flexibility within the draft Guidance and the Council's model section 75 agreement to allow for review of contributions outwith the statutory process.

Summary

The Council has confirmed that it will take the risk on the delivery of infrastructure needed for the LDP, and will not allow this to delay delivery of new housing. This commitment should be made clear in the draft Guidance.

The draft Guidance does not confirm that developer contributions will only be required where these meet the tests in Circular 3/2012. It is an essential requirement of the draft Guidance that it conforms to the Circular. In its current form the draft Guidance would appear to be seeking contributions not in accordance with the Circular.

The inclusion of Primary Healthcare is contrary to the Reporters' recommendations and the LDP. As such, it requires to be deleted.

As the education assessment undertaken by Geddes Consulting illustrates, there are opportunities for significant efficiencies to be made in the delivery of infrastructure, both through the more efficient use of existing infrastructure and optimising how new infrastructure is provided. This represents an opportunity for more sustainable development, and will allow for significant cost savings, reducing the cost and risk burden for applicants and the Council.

The draft Guidance would benefit from a more focussed approach at a more local level. This is illustrated by the outcomes of the Council's more detailed assessment of the Liberton/Gracemount Education Contribution Zone. Likewise, the Reporter's decision in the Lasswade Road appeal (PPA-230-2152) highlight that the draft Guidance overestimates both the education infrastructure requirement, and associated costs.

Yours sincerely,



Ian Gallacher
DIRECTOR

cc. Mr S Buchanan, Cardross Asset Management
Mr C Whelton, Burness Paull LLP
Mr B Salter, Geddes Consulting

SG: Developer Contributions and Infrastructure Delivery Consultation Response on Education Requirements

Introduction

- 1.1 The Council has adopted its Local Development Plan (LDP) and is now seeking comments on its proposed statutory Supplementary Guidance (SG) on *Developer Contributions and Infrastructure Delivery*.
- 1.2 Geddes Consulting has been asked by West Craigs Limited to consider the proposals in the draft SG for the delivery of education infrastructure. West Craigs Limited is progressing the delivery of a site at the west of Edinburgh for 1,400 homes. This site is part of the allocated site in LDP (Ref: HSG 19). Other interested parties in the Maybury allocation include Taylor Wimpey (250 homes) and Rosebury Estates (90 homes).
- 1.3 The site is in the catchment of Corstorphine Primary School; Craigmount High School; Fox Covert RC Primary School and St Augustine's RC Secondary School. Based on the current 2016 School Projections, the capacity available at these Schools is as follows:

School	School Capacity	Pupils 2016	Forecast 2026	Action
Corstorphine Primary School	546	554	777	Solution to resolve capacity is being progressed
Craigmount High School	1,400	1,135	1,645	Solution to resolve capacity is being progressed
Fox Covert RC Primary School	217	171	259	Solution to resolve capacity is being progressed
St Augustine's RC Secondary School	900	661	1,000	Council concerned and will monitor position

- 1.4 The site lies within the West Education Contribution Zone. The Council's proposals to accommodate more pupils in this Zone include a new 21 class primary school secondary school within the allocated site; a new secondary school on the International Business Gateway site; additional secondary school capacity at St Augustine's RC High School; 3 class extensions to both Hillwood and Gylemuir Primary Schools, and a 5 class extension to either Fox Covert or St Joseph's RC Primary Schools.
- 1.5 Concern has been raised about the Council's lack of progress to deliver education solutions which will support the delivery of this allocated site. Accordingly, West Craig Limited has submitted applications for Planning Permission in Principle for the new primary school on its site and for an extension to Craigmount High School. Both of these measures have been necessary to ensure that the delivery of education infrastructure is not delayed to the extent that it inhibits housing completions on the site.
- 1.6 A Freedom of Information request was also made on behalf of West Craigs Limited by Burness Paul to help better understand the school projections.
- 1.7 In reviewing the SG, Geddes Consulting has had regard to the requirement that planning obligations must meet the tests in Circular 3/2012: *Planning Obligations and Good Neighbour Agreements*.
- 1.8 This SG replaces and updates a similar non-statutory SG which was finalised by the Council in December 2015.
- 1.9 This consultation response focuses on the Council's proposed planning obligations for additional education infrastructure as a result of the development strategy in the adopted LDP.

- 1.10 It is noted that the SG confirms in the opening paragraph to Section 2a that:
- Education infrastructure, including new primary and secondary schools, as well as school extensions, is required to support planned population and housing growth within the city.*
- 1.11 The scale of new housing development in the adopted LDP which is taken into account in the SG is nearly 6,200 homes. The Council estimates that pupils will be generated from around 2,600 homes with a further 2,700 flats. This is based on the Council's assumption of a 80:20 housing type mix of houses to flats.
- 1.12 Applying the Council's pupil generation rates to this scale of development, around 1,580 primary school pupils are expected from this scale of development with a further 1,030 secondary school pupils.
- 1.13 It should be noted that the overall primary school capacity is 34,448 pupils with 29,745 pupils in primary schools at 2016. Current spare capacity in the primary school estate is over 4,700 pupils. It is evident that 1,580 primary pupils from the sites allocated in the LDP could be accommodated in the existing primary school estate.
- 1.14 Applying the pupil generation rates to the 6,200 homes allocated in the LDP, around 1,030 secondary pupils are anticipated. The current secondary school capacity is 22,165 pupils in all secondary schools with a current school roll of 18,145 pupils. The available capacity is therefore 4,020 pupils. Again, the existing school estate should be able to cope with an additional 1,030 pupils from new housing.
- 1.15 The Council has assessed the total cost of the additional education infrastructure to be recovered by this SG at around £220M at 1st Qtr 2015 prices. All costs referred to the SG will be indexed linked.
- 1.16 This infrastructure will be built over an eight year period by the Council. The Council assumes that the full cost of the necessary education works will be funded by the allocated sites in the LDP.
- 1.17 The Council has identified 12 education contribution zones across the City as the method to collect financial contributions through planning obligations for new development within the City. Allocated sites in the LDP are identified within each of these zones. The Council has identified actions to address the impacts and the full cost of these actions is to be financed from new housing in the LDP.
- 1.18 What is not made clear in the SG is that the delivery of all of the education actions is based on the assumption that it will be built by the Council.
- 1.19 The SG is predicated on the basis that the education infrastructure will be funded by the sites allocated in the LDP. However, the Council is aware that its development strategy relies on additional homes being delivered by windfall sites. Nearly 4,700 homes on windfall sites are expected over the LDP period to 2026 [LDP page 22 Figure 7a *Current Anticipated Programming of the Land Supply (November 2015)*]. Some of the housing from these windfall sites will be included in the school projections as part of the effective housing supply. However, not all windfall sites in the Council's development strategy are committed development.
- 1.20 The impact of pupils from housing from windfall sites on education infrastructure is not referred to in the SG. It is uncertain whether the latest 2016 School Projections have allowed for pupils from the assumption about housing from windfall sites over the LDP period.

1.21 None of the financial contributions in each Education Contribution Zones in the SG refers to the possibility of pupils from future windfall sites. Although the SG states that the total cost of delivering infrastructure with the Zones will be shared proportionally and fairly between all developments which fall within the Zone, the impact of additional windfall sites has not been taken into account. A financial mechanism to secure planning obligations from future windfall sites is not therefore included in the SG.

Legislative background

1.22 Section 75 of the *Town and Country Planning (Scotland) Act 1997 (as amended)* makes provision for planning obligations from developments to mitigate its impact and allow the grant of planning permission.

1.23 All planning obligations must comply with the requirements set in Circular Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended). Circular 3/2012: Planning Obligations and Good Neighbour Agreements makes provision for planning obligations from developments to mitigate its impact and allow the grant of planning permission. All planning obligations must comply with the requirements of Circular 3/2012.

1.24 Circular 3/2012 provides a policy background relating to the circumstances where planning obligations can be used. The Circular establishes five policy tests which all planning obligations should meet. These are:

- **Necessary** to make the proposed development acceptable in planning terms;
- **Serve a planning purpose** and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans;
- **Relate to the development**, either as a direct consequence of the development or arising from the cumulative impact of development in the area;
- **Fairly and reasonably relate in scale and kind** to the proposed development; and
- **Be Reasonable** in all other respects.

1.25 Specifically, the Circular emphasises the need to establish a clear link between the development proposal and the mitigation offered as part of the developer's financial contribution. This is applicable whether the requirement for infrastructure is a result of a direct consequence or a cumulative impact. This clear link should relate in scale and kind to the proposed development.

1.26 In particular, and relevant for this SG is the Court of Session decision which quashed the Supplementary Guidance – Strategic Transport Fund, adopted by Aberdeen City and Shire Strategic Development Planning Authority (*Elsick Development Co Ltd v Aberdeen City and Shire Strategic Development Planning Authority and Goodgrun Ltd [2016]*). This Supplementary Guidance required developers to contribute towards the cost of transport improvements in Aberdeenshire.

1.27 In this case, the Cumulative Transport Assessment methodology was flawed because it based its assessment on the proportion of traffic from each new development using the transport improvements, and not the traffic from new developments as a proportion of the total traffic using the transport improvements.

1.28 This decision has important implications for planning authorities seeking cumulative financial contributions through supplementary guidance. Planning authorities must establish a clear-cut and direct link between new development and the improvements sought. Cumulative financial contributions will be lawful but only if the policy tests in Circular 3/2012 are met.

1.29 Planning authorities need to establish the required and direct link between new development and the planning obligations necessary to meet the improvements in education infrastructure.

1.30 The Court's decision states:

*...The STF [Strategic Transport Fund], and the requirement in the statutory Supplementary Guidance (SG) to contribute to it, may be regarded as a sound idea in political or general planning terms. It may be seen as an imaginative idea which allows advanced strategic planning objectives to be achieved in a structured manner, financed by new development. **That does not, however, permit the imposition of an obligation on a developer to contribute to an intervention which is simply not related to the proposed development** (paragraph 34) [our emphasis].*

1.31 The obligations arising from this SG are not solely based on specific impacts arising from developments within particular school catchment areas. Given the Court's decision, this type of approach would not meet the tests in Circular 3/2012.

1.32 In presenting its SG, the Council is responsible in demonstrating how each of the allocated sites in its approved LDP development strategy including the future potential for windfall sites, impacts on education capacity in the catchment schools; what direct action is needed to mitigate any impacts including cumulative impacts and explain the cost of this direct action. If there is a need for several developments to share proportionately in the cost of the solution then this should be made clear.

1.33 It should be a priority for the Council to identify existing spare capacity within its schools and to include the potential for school catchment reviews to utilise available capacity in neighbouring schools. Where school catchment reviews are proposed, the Council should identify the expected redistribution of pupils from one catchment to another.

1.34 This approach, when set down, provides the 'audit trail' to justify direct relationships to the cost of any mitigation in the calculation of any financial contributions.

1.35 It is necessary for the Council SG to demonstrate how its SG complies fully with the requirements and tests in Circular 3/2012.

Testing the non-statutory SG

1.36 The Council will be aware that this SG replaces the similar non-statutory SG, last updated as a finalised version, in December 2015.

1.37 The Council has had this non-statutory SG tested at appeal. For example, two appeals have been determined in the Council's Liberton/Gracemount Education Contribution Zone. Both of these appeals were sustained but in both cases, the Council did not obtain the scale of financial obligations sought by the non-statutory SG.

1.38 PPA-230-2151: *Land 115 metres south-east of 42 Gilmerton Dykes Road, Edinburgh* was an appeal by Miller Homes and Land Options East about the affordability of the cost of the required education planning obligation on the allocated site at Gilmerton Dykes Road. The required planning obligation using the methodology set out in the SG was £1,234,000 and the Appellants made the case that its proposal's viability could not support this cost.

1.39 The Appellants' offer was £610,000 based on an assessment of the development viability of the proposal. This sum included a planning obligation required for transport contributions of around £36,500. This reduced the balance for education to £573,500. This appeal decision was made in April 2016 and the lower sum of £573,000 was accepted by the Reporter.

- 1.40 *PPA-230-2152: Land 350 metres north-west of 328 Lasswade Road, Edinburgh* was an appeal by Wallace Land Investments for a windfall site within the South East Edinburgh SDA and within the Liberton/Gracemount Education Contribution Zone. This appeal site was within the catchment area of Gilmerton Primary School and the dual feeder catchment for Liberton and Gracemount High Schools. This windfall site was approved on appeal in November 2015.
- 1.41 In terms of compliance with the non-statutory SG on education, the Reporter concluded:
- The Report of Handling indicates that, for educational infrastructure, the site is within the 2nd PLDP South-east Gilmerton/Liberton Cumulative Assessment Area. It is within the catchment area of Gilmerton Primary School for non-denominational primary education, but there are proposals for two new primary schools in association with allocated housing sites in the 2nd PLDP. If planning permission were to be granted for this development the LDP Action Plan would need to be reviewed. Additional capacity already proposed for St Catherine's RC Primary School to cater for new pupil generation from the proposed allocated sites should be sufficient to also allow for this site. The costs of provision of secondary education infrastructure would need to be increased to cater for this site. The appellant has indicated its willingness to enter into a legal agreement with the council to provide a financial contribution towards the council's preferred option for increasing education infrastructure; including the option of funding the construction of an additional classroom and general purpose room at Gilmerton Primary School. The council has not included lack of educational capacity in its reasons for refusal, and I therefore conclude that this is an infrastructure matter that is capable of resolution (paragraph 39).*
- 1.42 The legal agreement concluded for this proposal was not based on the financial requirements set out in the non-statutory SG. The Council sought funding in excess of £4M based on the non-statutory SG. The final sum agreed was less than £2M. The offer made by the Appellant was an extension to Gilmerton Primary School and not a financial contribution to the funding for one or either of the new primary schools in the Education Contribution Zone.
- 1.43 This alternative offer arose because the Council had not determined the indicative areas for the potential catchment areas for these two new schools. Therefore it was not possible to clarify which new school pupils from the appeal site would attend. The Council also failed to determine what interim solutions would be provided to accommodate all pupils from all allocated sites in the Contribution Zone before the new schools would be built.
- 1.44 The Reporter also concluded that the amended financial contribution for education infrastructure (albeit substantially lower) was in accord with the requirements of Circular 3/2012.
- 1.45 These two appeal decisions for sites in the Liberton/Gracemount Education Contribution Zone highlight the challenges facing the implementation of this statutory SG. The full award of the cost of the education planning obligation was not awarded in either of these Appeal decisions, primarily because the Council did not provide a robust case with evidence for its financial contributions in accord with Circular 3/2012.
- 1.46 Overall, this non-statutory SG only provided statements of what the Council wants in terms of financial payment. There was no technical assessment to support the case for financial contributions. The non-statutory SG did not detail the audit trail justifying how the respective allocated sites in the LDP and windfall sites impact on the available education infrastructure. It failed to justify the financial contributions sought in accord with the requirements of Circular 3/2012.
- SG Methodology to assess planning obligations**
- 1.47 The explanation in the SG as to the methodology used by the Council to calculate the cost of the planning obligations is incomplete.

- 1.48 It explains that the impact of the approved development strategy in the adopted LDP has been assessed with reference to the *Education Appraisal* (updated December 2016).
- 1.49 The allocated sites approved in the Council's development strategy are apportioned into 12 education contribution zones. These education contribution zones are based on the catchment areas of existing primary or secondary schools.
- 1.50 Eight new school sites are required but only seven are safeguarded in the LDP. The proposal for the new secondary school site serving west Edinburgh in the SG is not a proposal within the LDP.
- 1.51 The Education Contribution Zone approach in the SG does not explain the implications of establishing new catchment areas for the eight new schools in the methodology adopted by the Council in assessing impacts. In particular, the number of existing pupils which will occupy places in each of the new schools has been ignored. This equally applies to highlighting the number of existing pupils being redistributed in any catchment area reviews necessary to utilise existing capacity in the school estate.
- 1.52 This is best illustrated with reference to the proposed reviews of the school catchment areas in the Liberton/Gracemount Education Contribution Zone which the Council reported to Committee in December 2016.
- 1.53 This highlights the multiple changes that can be made when seeking to best utilise available infrastructure capacity. The establishment of the new primary school's catchment area will be from Gracemount and Gilmerton Primary Schools. Existing pupils in these areas (Howden Hall, Mortonhall, Old Burdiehouse Road and Southhouse) as well as pupils from the new housing sites at Broomhills and Burdiehouse would transfer to the new school.
- 1.54 The new school will have 14 classrooms and be two stream but capable of expansion up to three stream (21 classrooms).
- 1.55 This catchment area review then frees up significant capacity in the existing Gilmerton and Gracemount Primary Schools. This is then used to accommodate pupils from other new housing developments.
- 1.56 At this stage in the school projection work, the Council can model actual and proposed catchment changes. What is estimated is that the number of existing pupils attending the new school at Broomhills is expected to be half of the school's capacity with the other half from new housing sites.
- 1.57 This detailed information should form part of any supplementary guidance as it demonstrates that the cost of building a new school is not just a direct impact of the LDP's development strategy. In many cases, the expectation would be that the Council funds its proportionate cost if the additional school capacity is required to meet growth in the school roll. If the SG lacks this clarity about this matter, it is then a matter for the house builders in the Zone to consider whether the full or disproportionate cost of the new school is solely a direct impact of the pupils from the two allocated sites at Broomhills and Burdiehouse.
- 1.58 The SG needs to have this level of detailed information across all Education Contribution Zones in order to comply with the tests in Circular 3/2012. Planning obligations cannot be used to resolve existing deficiencies in infrastructure provision or to secure contributions to the achievement of wider planning objectives which are not strictly necessary to allow planning permission to be granted for the particular development.

- 1.59 The methodology adopted in the SG applies pupil generation rates to the number of new homes proposed in each allocated site. These depend on the Council's assumption about the mix of flats and houses within each development. The outcome of the Council's school projections rely on this assumption, and it is one of key variables in the methodology.
- 1.60 If this assumption proves to be incorrect when the house builders confirm their preferred housing mix to meet market demand then the proposed educational requirements will differ.
- 1.61 The Council has not used the latest Housing Land Audit as the means to assess the future level of completions in each catchment area. Information has been compiled from other data which is no longer up to date. This includes sites from the Council's *Housing Land Study* (June 2014) as well as the LDP. This *Housing Land Study* refers to housing sites in Housing Land Audit 2013. It is best practice to use the latest audit when undertaking school projections. The data set used to factor outstanding completions from the windfall element of the Council's LDP development strategy is not known. This may be omitted from the school projections.
- 1.62 The pupil generation rates enable cumulative impacts to be assessed and proposals for school extensions or new schools to be proposed. These proposals or actions are then set out in the LDP's Action Programme and Appendix 1 of the SG.
- 1.63 Appendix 1 of the SG usefully summarises the actions required to be delivered. It sets out the total capital cost for each action; the delivery date for the action; the current status of the action in terms of the preparatory work undertaken by the Council and its contribution zone.
- 1.64 It also defines each zone by reference to a map and presents a summary of the action for each zone, listing proposed scale of development assumed by house type; the education actions and when each will be delivered and the contribution rate (cost to be paid by each new flat or house) within that particular zone.
- 1.65 Where land is required to be safeguarded for a new school site, the Council has estimated the cost of the land, its servicing and ground remediation costs. The SG does not explain how these costs are derived although it is understood that only simple cost assumptions have been made. This land purchase and site servicing cost is to be recovered from all sites within the zone (presumably on a proportionate basis).
- 1.66 It is noted that the SG makes provision to modify the requirements set out in the Action Programme and to modify the Education Contribution Zones as well. These qualifications are explained in page 4 and 5, paragraph D ii) and D iii) of the SG.
- 1.67 The SG does not provide an audit trail explaining the justification of the expected cost of the planning obligations. It is therefore not possible for any developer or house builder to properly understand what impact an allocated site will have on the available infrastructure and what the financial contribution sought will fund.
- 1.68 The SG refers to the *Education Appraisal* which is stated in the SG to have assessed the impact of growth set out in the LDP.
- LDP Education Appraisal**
- 1.69 Along with the SG, the Council has produced the LDP *Education Appraisal* (December 2016). This sets out how the Council *...proposes to implement the Council's Local Development Plan by explaining how the infrastructure required to support the growth of the city will be delivered* (paragraph 1.2). It acknowledges in paragraph 1.3 that as well as accommodating the pupils from

new housing development supported by the LDP, it takes into account the growing pressure from rising school rolls.

- 1.70 It acknowledges the need for school catchment reviews in the future for both new and existing schools to seek to manage existing capacity.
- 1.71 It also acknowledges that for secondary education, further assessment is required to determine the preferred option to deliver the secondary school infrastructure. This further work will require an update to the Action Programme and by implication the SG.
- 1.72 The Council also state in paragraph 2.3 that it will monitor changes in its requirements and make future changes as necessary to the Action Programme and by implication the SG.
- 1.73 The Council's methodology for undertaking its school projections is based on estimating pupils from the new allocated sites. The assumes pupil generation rates for non-denominational (ND) and denominational (RC) schools are as follows:

Pupil Generation Rates	Primary			Secondary		
	Total	ND	RC	Total	ND	RC
Per Flat	0.07	0.06	0.01	0.03	0.026	0.004
Per House	0.3	0.26	0.04	0.2	0.17	0.03

- 1.74 The Council assumes a ratio of homes to flats of 80:20 on greenfield sites allocated in the LDP. It applies different but unstated rates to housing at the International Business Gateway and Edinburgh Park/Gyle. No explanation is given as to why this information has not been provided. This is clearly needed to understand the basis of the SG in the West Edinburgh Contribution Zone.
- 1.75 Not all of the windfall sites in the Council's LDP strategy are consented and therefore part of the effective housing land supply as measured by the Housing Land Audit. No mention is made of an assumption to include pupils from the balance of homes on windfall sites.
- 1.76 These pupil generation rates translate into an overall assumption about pupils from new housing translates into 0.254 for primary schools and 0.166 for secondary schools (irrespective of housing type and denominational split).
- 1.77 A cross check on the validity of these pupil generation rates has been carried out. This has been done by estimating the total number of households in the City of Edinburgh planning authority area in 2016 and assessing the number of primary and secondary pupils at school in 2016.
- 1.78 The total number of households is estimated by reference to the number of homes in 2011 Census. This is 223,051 houses. A total of 19,517 completions have been reported in each of the six annual Housing Land Audits since 2011. Added together, this estimates the total number of households in Edinburgh as 239,743 at 2016.
- 1.79 The total number of primary school pupils in the Council area is 29,745 pupils. Dividing the total number of households by this estimate derives a pupil generation rate of 0.12 for primary school pupils per house. For secondary schools, the total school roll is 18,145 pupils. This derives a pupil generation rate of 0.08 secondary school pupils per house.
- 1.80 In both cases, the Council's pupil generation rate is double that derived from available information. If correct, this has significant issues for the future school projections. The Council needs to substantiate its choice of pupil generation rates.

- 1.81 Analysis of the Scottish Government’s Pupil Census data between 2011 and 2016 shows the total primary school roll in the Council area has increased from 25,041 pupils to 29,745 pupils. This is an increase of 4,704 pupils. This is well in excess of that generated through house building only.
- 1.82 By contrast, the number of secondary school pupils has decreased from 18,719 pupils to 18,145 pupils. This is a decrease of 574 pupils, despite the addition of 19,517 new homes in the Council area.
- 1.83 School projections have been modelled using the latest school rolls with projected catchment demand. It is not known how the Council’s school projection model works or what assumptions have been adopted in the modelling exercise undertaken for the Action Programme.
- 1.84 The programming of housing completions in each school catchment area is not known and cannot be verified.
- 1.85 Standard modelling assumptions which are not explained in the *Education Appraisal* include the following matters:
- P1 intake beyond the information available on births in the each catchment
 - Staged migration rates through each primary school class
 - P7 to S1 transfer rates
 - Staged migration rates through each secondary school class
 - P5 and P6 Stay on rates
- 1.86 Mention is made in paragraph 4.7 of an optioneering exercise but there is no further reference to its outcomes. Preference is made for extensions before new schools but no mention is made about conjoining extensions and catchment area reviews to minimise the need for new schools.
- 1.87 The Council highlights its preferences for the management and operation of its school estate and on its preference for scale of school to manage. This provides a rationale for the choice of extensions and new schools which are then promoted.
- 1.88 The Council acknowledges the need for a lead-in time to deliver a new school and accepts that this will be three years or more. Reference to school catchment area reviews is made but not to the strategy adopted by the Council to maximise available capacity, as highlighted above for the new primary school at Broomhills.
- 1.89 The Council provides a useful guide to the cost of delivering both new schools and school extensions in Section 5. These costs are based on information from the Scottish Futures Trust. All costs presented in the SG will be indexed.
- 1.90 The actions required in each education contribution zone are then described with reference to the projections undertaken. These projections are not part of the *Education Appraisal* and are therefore not available for review or further investigation.
- 1.91 It is noted that the projection methodology is based on the pupils generated by the pupil generation rate (refer to table above).

- 1.92 The Council's assessment does not provide information on what is happening in each school, defining trends and impacts on capacities without any of the LDP housing sites. This assessment is known as the baseline position.
- 1.93 It is probable that many of the Council education infrastructure requirements are already a result of pupils arising from ongoing population trends especially increasing P1 Intakes in particular areas, pupils from existing developments already approved by the Council and placing requests. As highlighted in the example of the new primary school at Broomhills, only around half of the new pupils will come from the two allocated sites in its catchment.
- 1.94 If existing school trends require action from the Council without taking into account the LDP sites then the Council would need to take its own action to resolve these matters. However, the *Education Appraisal* does not separately identify this 'baseline' impact.
- 1.95 Identifying the baseline position (without new development) is a key part of any methodology to determine planning obligations. This is necessary as Circular 3/2012 specifically requires as one of its tests that any financial contribution needs to be a requirement of a direct or cumulative impact from proposed development.
- 1.96 If this baseline stage in the assessment process is omitted then the SG cannot prove that it meets with all the tests in the Circular.
- 1.97 Accordingly, all impacts and actions now identified in the *Education Appraisal* are generated by both the impact from new development and ongoing trends including committed development.
- 1.98 The Council's methodology therefore does not define and set a financial obligation for any of the LDP allocated sites based solely on direct impacts. The reporting of the education impact assessments does not detail the necessary information to allow the tests in Circular 3/2012 to be satisfied.
- 1.99 Although the Council has not included any school projections in the *Education Appraisal*, school projections have recently been published. These school projections may explain the impacts on education infrastructure arising from the adoption of the Council's LDP.

2016 School Projections

- 1.100 In December 2016, the latest school roll projections were reported to the Council (*Developing a Vision for the Schools and Lifelong Learning Estate*).
- 1.101 This Report explains that the Council agreed to *The Children and Families Asset Management Plan* in December 2014. This *Asset Management Plan* has been updated on a six monthly basis since then. The Report provides an update of the work (25 Actions) set out in the 2014 *Asset Management Plan*.
- 1.102 A comprehensive set of projections for both primary and secondary schools has been produced for the period to 2026. This Report also explains the methodology for both primary and secondary school projections as two separate diagrams.
- 1.103 This Report however does not set out the modelling assumptions adopted for each of the individual school projections. It is therefore impossible to review the work carried out by the Council to understand what assumptions are applied and to verify the data used.
- 1.104 It is known that the Council has not used the latest Housing land Audit, as approved between the house builders and the Council. It is best practice to adopt the latest Housing land Audit to model expected completion rates from sites across the City.

1.105 It should be noted that the Council qualifies these projections stating that ... *the school roll projections are considered a strategic guide to the future which become more uncertain the further they are carried forward in time* (paragraph 3.9).

1.106 The overall summary of these primary and secondary school projections is as follows:

Primary School Estate

- The total capacity of the primary schools in the City is 34,448 pupils with a predicted pupil increase of 3,895 over the period from 29,745 in 2016 to 33,640 by 2026;
- The projected increase to 2026 does not breach the overall capacity of the city's primary schools;
- 88 primary schools have been modelled and 38 schools (over 40%) are expected to breach current capacity;

Secondary School Estate

- The overall capacity of all schools is 22,165 places with a predicted increase to 24,093 pupils from 18,145 pupils in 2016.
- The projected increase to 2026 does breach the overall capacity of the city's secondary schools;
- This is a projected increase of 5,948 secondary pupils which is significantly higher than the projected increase for the Primary School Estate of 3,895 pupils;
- 18 of the Council's 23 secondary schools (denominational and non-denominational schools) – nearly 80% - will breach their capacities over the period to 2026;

1.107 It should be noted that the projected increase in secondary pupils is 5,948 pupils compared to 3,895 primary school pupils. This suggests that secondary school rolls will fall in the future (beyond the projection period to 2026) as smaller primary class cohorts move through to secondary. These outcomes also confirm that the impacts arising are not solely attributable to new sites in the LDP.

1.108 Only windfall sites with planning permission or under construction are included in these projections. This does not include all 4,700 homes expected to be built as part of the Council's LDP development strategy. The housing type mix is based on the Council's assumption of 80:20 houses to flats mix. This may be incorrect.

1.109 The Report does not explain what actions are being taken to mitigate the breach in capacities across the school estate without any new development.

Lack of compliance with Circular 3/2012

1.110 The Council's methodology needs to meet the requirements of the five tests in Circular 3/2012 to secure the financial contribution as a planning obligation.

1.111 A detailed review of the work carried out by the Council confirms that the Council's methodology does not separate out trends in its pupil population and does not measure the underlying baseline capacity in its schools over its projection period. Accordingly, this methodology does not accord with Circular 3/2012.

1.112 There are different approaches to carrying out an education impact assessment for development planning purposes which would comply with Circular 3/2012.

1.113 The following methodology is recommended to the Council as a robust assessment which would comply with Circular 3/2012:

1. Establish the baseline position

The impact assessment should be based and presented for each individual secondary school and its feeder primary schools within its catchment area. This would be aggregated and presented for each Education Contribution Zone. The impact assessment of each secondary school forms the baseline building blocks in the education impact assessment process for each Contribution Zone.

- undertake individual projections for each of the feeder primary schools within the catchment area for each secondary school over a 12 year period. This would take into account local demographic trends such as births; primary stage migration rates into/out of the primary school; and additional pupils arising from existing committed housing developments in the catchment area using child per house ratios;
- house building would be factored in using data from the latest agreed Housing Land Audit. This would need to separately identify completions from windfall sites which are part of the LDP development strategy. LDP allocated sites which have planning consent should be excluded at this stage;
- Each individual primary school projection for P7 would then feed into the secondary school projection for the S1 classes; and
- The projection for the secondary school would also take into account transfer rates from the primary school to the secondary school; secondary stage migration rates into/out of the secondary school; stay on rates for senior classes at the school; and pupils arising from committed housing developments in the catchment area using child product house ratio.

This would be carried out for both denominational and non-denominational schools.

This approach would establish the baseline position. It allows the Council and developers to understand what capacity is available in the existing schools; the capacity for both P1 and S1 Intakes; if/when capacity is being reached by school; and what interim operational measures could be adopted to meet the existing demand i.e. refusing placement requests or altering catchment areas.

It also allows the Council to assess what measures (if any) it needs to take to address the underlying demographic trends over the projection period. This baseline assessment also represents the 'do nothing' scenario. Any capacity issues arising from this baseline approach would be the Council's responsibility to resolve.

This also helps define a future financial contribution due from the Council (if required) in any proposed solution to increase the capacity of the school estate by Contribution Zone.

2. Assess the impacts arising from the development strategy

The next stage is to assess the impacts arising from the new homes in the proposed development strategy. This should be based on the latest approved Housing Land Audit, with the programming of completions from each allocated site agreed within each catchment.

It is essential to model the impacts of the LDP's development strategy. This includes the LDP's allocated sites. Given that the distribution of the remaining houses from windfall sites is not

known, an assumption about this distribution is required as well across the Education Contribution Zones.

An agreed rate of housing completions on each allocated site is an essential component of the modelling process. Programming completions over the projection period allows interim capacity solutions to be designed and factored into the agreed delivery mechanism.

It is important that the Council works in partnership with developers and house builders, agreeing the annual rate of completions and factoring in the housing types proposed to be built. To date, the Council has not taken on board the programming for the Maybury site as proposed by West Craigs Limited.

The same methodology (as 1. above) would be applied to the projections for the feeder primary schools and each secondary school, including the programmed rate of housing completions from the Council's approved development strategy. This would be presented by Education Contribution Zone.

At this stage, the scale of impacts arising at each school from the new development within its catchment area would be known, as well as the timing of any capacity issues arising.

3. Optioneering

Having completed the education impact assessment, the Council can then commence determining the solutions it needs to adopt to maintain education capacity in each primary school and secondary school, taking account of existing demographics and the impact of new development.

Extensions to existing schools can be taken into account, including lead-in times required. Adjustments to catchment areas can be modelled and existing pupils redistributed.

If a new school is required, adjustments to catchment areas can be modelled and existing pupils redistributed.

Any changes to school catchment areas would be modelled at this stage, including the proposed but still indicative catchment area for a new school. This will demonstrate how amended catchment areas manage projected capacity, taking into account any existing housing (and its pupils) transfer into or out of a new catchment area.

The Council needs to agree the trigger for the transfer of land for the new school from an allocated site for education within the LDP, and factor in the lead-in time to build the first phase of the new school or, in due course, a further phased extension to the new school.

4. Adoption of the Preferred Solution

After consideration of the potential options which can be adopted to provide both interim and permanent solutions to managing education capacity, the preferred solution can be selected, tested and proven.

Thereafter, the preferred option can be reported, setting out the rationale and justification as well as providing an audit trail for the decision to adopt the preferred option. This solution can be costed in detail.

This would be the stage which would justify the proposed financial contributions and each Education Contribution Zone should be subject to separate supplementary guidance.

This is an important step in justifying the adoption of the planning obligations as it sets out the requirements necessary to meet all of the tests in Circular 3/2012.

The preferred option needs to take into account a range of interim measures as well as the agreed actions to reach the final solution. This ensures flexibility in the future to meet educational requirements.

5. *Monitoring*

One of the key issues after adopting the preferred option is the ongoing monitoring of the pupils in attendance at the relevant schools using the annual school census as well as updates to the actual completion rates on each site from updated Housing Land Audits.

This monitoring ensures that the modelling for the preferred option takes account of the rate of house building and the pupils projected to attend. This then allows the model to be updated and continues to reflect the most up to date information in the education projections.

This allows the planning obligation agreed for each individual site to adjust agreed triggers for financial contributions or building works if demographic or house building trends change during the projection period.

Long term school projections will prove to be unreliable given the range of variables being modelled. Monitoring and review in the medium term (perhaps every two years) allows impacts to be assessed which will guide the reasonableness of the planning obligations required.

- 1.114 The methodology used in the SG includes trends in its pupil population across its school estate and does not measure the underlying baseline capacity in its schools over its projection period. As a consequence, it does not measure the direct impacts of the LDP's approved development strategy.
- 1.115 The methodology chosen by the Council to calculate the planning obligations does not meet the tests in Circular 3/2012. Accordingly, it does not present a robust and evidenced case for the Council to defend.
- 1.116 Without substantial modification, this SG will be subject to continuous challenge as applications for the allocated and windfall sites are submitted for planning consent. Each application would simply undertake a school impact assessment of all schools in its catchment and provide a bespoke solution to remedy any infrastructure deficit. This was the approach adopted for the windfall site at Lang Loan.
- 1.117 It would equally apply to an allocated site as highlighted by the actions taken by West Craigs to secure planning permissions for its new primary school and an extension to Craigmount High School to help maintain capacity.
- 1.118 In the case of a need for a new school or an extension to an existing school, the Council needs to recognise that a broad indication of the new or amended catchment area needs to be provided, factoring in consequential changes to pupil attendances and their re-distribution at the schools affected.
- 1.119 Where existing pupils are expected to attend new schools then in accord with Circular 3/2012, the Council should be responsible for its proportionate share of the mitigation costs unless otherwise agreed with the developers and house builders within the Education Contribution Zone.

Windfall Sites in the LDP approved development strategy

- 1.120 The SG is predicated on the basis that the education infrastructure will be funded by the sites allocated in the LDP. This restricts the finding of the £220M Action Programme to around 6,200 homes.
- 1.121 The Council is aware that its LDP development strategy is based on additional homes from windfall sites as well as sites allocated in the LDP.
- 1.122 The scale of windfall sites promoted by the Council is defined in its LDP development strategy. Nearly 4,700 homes on windfall sites are expected over the LDP period to 2026 [LDP page 22 Figure 7a *Current Anticipated Programming of the Land Supply (November 2015)*]. The impact of pupils from housing on these windfall sites on education infrastructure is not referred to in the SG.
- 1.123 Some of these windfall sites will be part of the effective housing land supply as they will be consented or under construction. There are further completions required from future windfall sites needed to meet the LDP's windfall allowance as part of the development strategy. It is not known whether all pupils from windfall sites have been factored into the 2016 School Projections and how these are distributed across each Education Contribution Zone.
- 1.124 This is major omission from the SG given that the education infrastructure solutions are known to be based on accommodating pupils only from 6,200 homes allocated in the LDP.
- 1.125 None of the financial contributions in each Education Contribution Zones explicitly refers to windfall sites. There is no defined mechanism in the SG explaining how the impact of windfall sites will affect the cost of planning obligations. In some cases, the windfall site may reduce the overall cost per home if the proposed extension or new school can accommodate the additional pupils from the windfall site.
- 1.126 It should be noted that the non-statutory SG had a mechanism to address windfall sites and this was used in the determination of the site at Lang Loan.
- 1.127 If the Council has not factored the proposed scale of windfall sites into its 2016 School Projections and identified the required education actions to accommodate this scale of growth in the City, then this SG should not be implemented until this matter is considered and addressed.

Reliability of the Financial Assessment in the SG

- 1.128 There are a number of issues underpinning the financial credibility of the SG:
- The ability of the Council to forward fund the capital programme of over £220M at current prices,
 - The reliability of the financial information in the SG to be used in a legal agreement; and
 - Impact of planning obligations on the housing project's viability.

Financial risk

- 1.129 The financial risk of the delivery of the Education's Action Programme has been considered by the Council in January 2017. The Financial and Resources Committee considered a Report: *Edinburgh Local Development Plan Programme – Financial Assessment*.
- 1.130 The Report concludes that the Council has not made any financial provision for the works identified in the Action programme including the delivery of education infrastructure in its Capital Investment Programme 2015 - 2020 or the indicative five year plan 2019/20 – 2023/24.

- 1.131 This is contrary to the evidence presented at the LDP Examination where re-assurances were given that the funding for the necessary infrastructure was available.
- 1.132 The Council acknowledges that full cost recovery through developer contributions is not expected for a number of reasons.
- 1.133 The Council has yet to undertake the necessary work to clarify the potential income streams from developer contributions. This means that the Council does not yet understand the scale of forward funding it needs to make to deliver its education actions.
- 1.134 Given a typical three year lead-in time for many of the programmed education works, it is likely that a funding and programming crisis for education will emerge as pupils from consented housing sites enter the existing school estate.
- 1.135 The Council assumes that the full cost of the education infrastructure at £220M is solely due to the impact of new housing. This representation has sought to highlight that this is not necessarily the case. If the Council followed the methodology required to comply with the tests in Circular 3/2012, then the scale of investment it requires to make to address existing baseline capacity issues would be apparent.
- 1.136 All of the above is a significant and fundamental risk to delivery of the much needed new homes in Edinburgh. It impacts on the delivery of the Council's development strategy to the point that it will make investment in these new sites difficult if not impossible if the Council cannot deliver the required education actions in time to meet each individual house builder's construction programme.
- Reliability of financial information***
- 1.137 The Council acknowledges in the SG that its budgeted costs are not necessarily reliable.
- 1.138 The SG (page 5) confirms that the proposed delivery programmes may be subject to change *...Education infrastructure capacity will be delivered at a time that is appropriate to ensure that new pupils can be accommodated within their catchment schools.The establishment of any proposed new school...would be subject to a statutory consultation and could only be implemented following that process, if approved by the Council.*
- 1.139 If the public does not support the proposed changes to the catchment areas then the Council will be unable to take forward its education proposals. No consideration is given in the SG to what approach the Council would take in these circumstances. The SG is therefore wholly reliant on completion of a statutory process, the outcome of which cannot be confirmed at this stage.
- 1.140 Simple assumptions have been made about land and site servicing costs which may prove to be far off the mark. The SG explains that the servicing and remediation costs *...are only indicative and require additional exploratory works to provide a degree of assurance.* No explanation is provided for the land acquisition costs for any of the new schools. It is known that the Council will invite the District Valuer to assess a land value. A budget cost of £3,000,000 is assumed for all primary school sites based on a 2ha greenfield site. The same size of site will be purchased to provide opportunities to allow the school to expand.
- 1.141 Future updates to the costings in the SG will be required. As noted in the Liberton/Gracemount Education Contribution Zone, a potential saving of £15M may be possible in this Zone if the second primary school is no longer required at Gilmerton Station Road. It should be noted the SG would retain this funding for a period of between 10 and 30 years depending on the funding mechanism of the Broomhills Primary School.

- 1.142 It is evident from the ongoing work being undertaken by the Council to finalise solutions in each Education Contribution Zone that future costs are likely to be substantially different from those proposed in the SG. This will mean that legal agreements will need to be drafted to accommodate this flexibility. Ultimately, these obligations may be no more than an agreement to agree to an, as yet unknown, education solution with an unknown cost.
- 1.143 This approach and financial offer from the Council does not present a sound financial basis to enter into legal agreements with house builders and developers.
- 1.144 Currently, without more detailed modelling work addressing all the issues raised in this representation, it is considered that the budget costs in the SG have no more status than as a indicative financial framework. The lack of the necessary evidence base and scrutiny of these costs means it would not be appropriate to give them status within the development plan.
- 1.145 Accordingly, it is recommended that the financial aspects of the Education Infrastructure section in the SG are deleted.
- 1.146 Reliance on this information at this stage is premature. The work done to date should be consolidated and presented in a comprehensive technical report incorporating the latest 2016 school projections. This consolidated technical report would follow the methodology highlighted in this representation. This then would allow developers and housebuilders to fully understand the impact of their respective proposals on their catchment schools. This would also justify the mitigation measures required and the financial cost of the respective planning obligations for each proposal. This approach would accord with Circular 3/2012.
- 1.147 The individual school projections should be aggregated with each primary school aligned with its secondary school. This would allow trends in schools to be examined and implications for future capacity to be readily assessed. This will allow management solutions such as catchment area reviews to be identified more easily.
- 1.148 These projections should then be aggregated into Education Contribution Zones. This would create data sets, assumptions and projections which can be used to derive solutions to education capacity and ultimately, lay the foundations for supplementary guidance for each Education Contribution Zone.
- 1.149 It is evident that the optimal way forward for this Council is to prepare guidance on a Zone by Zone basis reflecting the individual and specific requirements of each Zone. This is the approach that should have been done through the LDP itself. The use of supplementary guidance for each individual Zone allows a more detailed approach to be taken with the consequence that a better understanding of what is required is achieved.
- 1.150 The work carried out by the Council in the South East Edinburgh SDA and Liberton/Gracemount Education Contribution Zone demonstrates the level of detail required. Only when the Council reaches the stage of defining the catchment reviews and understanding the potential redistribution of existing and future pupils from existing homes can a reliable assessment of the impact of new housing be applied.
- 1.151 The SG does not provide a robust basis on which to assess planning obligations and deliver infrastructure. The recommendation to the Council is that work is done at an individual Education Contribution Zone level, secured by SG. This would involve working in partnership with house builders and developers in each Zone to derive a detailed delivery plan for education infrastructure.

- 1.152 These individual SGs would be supported by modelling which takes account of all of the issues raised in this and other representations; and factor in the essential arrangements to manage school capacity including interim and permanent solutions.
- 1.153 This partnering approach would provide confidence to both the Council and the house builders/developers that best value solutions have been derived in a timely manner.

Impact on Development Viability and other matters

- 1.154 The SG (page 12) makes provisions to take into account particular circumstances which affect the viability of a proposal and in these circumstances, financial contributions towards physical and social infrastructure may be varied or waived. The SG also refers to forward or gap funding may be provided by the Council if there are demonstrable commercial viability constraints.
- 1.155 This support from the Council is welcome although more clarification on this matter is required.
- 1.156 It is noted that the Council intends to hold financial contributions made for education infrastructure for 10 years or 30 years. The Council explains that the 30 year period is required to repay infrastructure projects which have been delivered through revenue based funding mechanisms.
- 1.157 The SG should only collect funding from developers and house builders to resolve direct impacts. The expectation is that this funding will repay the capital cost of the works required. Once the Council has established the final costs of its school extensions or new schools, then as soon as the agreed payment is made over the timescale agreed, as set out in the legal agreement, financial contributions will cease.
- 1.158 Planning obligations which schedule payments and overpay the cost of the infrastructure works will require to be repaid as soon as the final costs of the project are known.
- 1.159 It is not appropriate for the SG (as part of the development plan) to put in place a policy that would entitle the planning authority to hold on to funds to for 10 or 30 year periods without any requirement to repay.

Delivery of the Action Programme

- 1.160 The Council is progressing the delivery of its Action Programme and this allows the testing of the proposals set out in the SG. The following examples highlight progress being made and how some of the issues raised in this representation are being addressed by the Council at a more detailed stage in the delivery process.

Queensferry Education Contribution Zone and West Education Contribution Zone

- 1.161 The Council in November 2016 reported on the replacement 1,200 capacity secondary school for Queensferry High School. It explained that the Council wished to maintain capacity at this level and not expand the replacement school to 1,400 pupil capacity.
- 1.162 It concluded that the long term operation of this new High School within this operational capacity is now dependent on the delivery of a new 600 pupil secondary school in west Edinburgh by 2023. However, it was concluded that as part of the catchment area adjustments necessary, it is likely that the Kirkliston area will transfer into the catchment area for the new secondary school in west Edinburgh. Unlike the reporting of modelling undertaken for the new primary school at Broomhills, no reference was made to the number of pupils which will be redistributed from Kirkliston to the new secondary school.
- 1.163 It should be noted that the Report to Committee concludes in paragraphs 3.5 and 3.6:

If the Kirkliston catchment change were progressed and approved and a new West Edinburgh High School is delivered through the infrastructure delivery mechanisms set up to support the LDP Action Programme then the revised projection for Queensferry High School ...[can be accommodated]. Based on the strategy outlined above... it is recommended that the new High School at Queensferry should be built to a capacity of 1200.

1.164 In this Committee Report, the cost of the new Queensferry High School was discussed. The preferred option of the 1,200 capacity High School is expected to be £40.4M at current prices. Potential expansion of the capacity to 1,400 pupils was rejected.

1.165 The expected funding mechanism for the Council was outlined and it was noted in paragraph 3.15 that:

It is expected that any developers contributions will be received retrospectively and the Council will be required to front fund the project and meet any interim borrowing costs with the risk that developers' contributions may fall short of the required total.

1.166 The estimated cost of financial contributions from developers based on the SG is £8.839M with further contributions of £0.75M already agreed. The Report then highlights in paragraph 6.5:

This funding package assumes that all of the eligible developers' contributions will be attributed to the new Queensferry High School and will not be available for any additional capacity requirement at St Augustine's nor the new West Edinburgh High School noted in 3.5 above.

1.167 The Report concludes in paragraph 6.6 ...*There is a risk that the full level of developers' contributions will not be achieved from development or not received in line with the cash flow assumed in the model.*

1.168 The capital cost for the new secondary school in west Edinburgh is estimated in the SG as follows:

Item	Budget cost
Servicing and remediation costs	£6,489,180
Land acquisition costs	£3,000,000
Build costs	£19,293,885
Total	£28,783,065

1.169 This is the budget cost to deliver a 600 pupil capacity secondary school in west Edinburgh. The budget cost of this new secondary school at nearly £29M. This is equivalent to £47,972 per pupil.

1.170 The Council's cost for the new Queensferry High School is £40.4M for 1,200 pupil capacity school. This is equivalent to £33,667 per pupil.

1.171 It is noted that the Council considered an option of extending the new Queensferry High School to a 1,400 capacity school, equivalent to the size of the new Portobello High School and Craigmount High School. The additional cost to create an additional 200 pupil capacity is approximately £2.5M or equivalent to £12,500 per pupil. In terms of the total cost of the new secondary school, the cost per pupil for a 1,400 capacity school is £30,600 per pupil compared to £33,700 per pupil for the 1,200 capacity school. What this demonstrates is the larger capacity secondary schools represent significant value for money.

1.172 It is evident that there are significant cost savings in extending the existing secondary schools in the Queensferry and West Edinburgh Education Contribution Zones.

- 1.173 A new secondary school with a 600 capacity will not be able to provide the quality of curricular choice than the larger secondary schools.
- 1.174 In overall terms, a strategy based on delivering an additional secondary school capacity through a new school in West Edinburgh is four times more expensive than considering extensions to existing secondary schools serving west Edinburgh.
- 1.175 As part of this strategy to augment capacity, West Craigs has demonstrated that Craigmount High School can also be extended in its planning application.
- 1.176 Extending existing and proposed secondary schools in West, and Queensferry Education Contribution Zones offers better curriculum as well as value for money.
- 1.177 This value for money approach for the overall education infrastructure strategy was not fully explored in the Committee Report about Queensferry High School.
- 1.178 It is not possible to conclude that the proposed education programme represents value for money as any optioneering exercise has not been explained in a technical supporting report.
- Liberton/Gracemount Education Contribution Zone***
- 1.179 The Report to *Education, Children and Families Committee* in December 2016 highlighted the requirement for a school consultation process for the delivery of a new primary school in south east Edinburgh on the Broomhills site within the Liberton/Gracemount Education Contribution Zone.
- 1.180 This Report demonstrates how the implementation of the Action Programme will be carried forward. This is the required level of information and detail required to define the planning obligations required for supplementary guidance.
- 1.181 This Contribution Zone in the SG identifies the requirement to build two primary schools at allocated sites known as Broomhills and Gilmerton Station Road. The cost of the two stream school with nursery at Broomhills is budgeted at £18,844,749. The new school at Gilmerton Station Road is budgeted at £15,108,095 for a single stream school and nursery.
- 1.182 This Report highlights the range of requirements necessary to implement a new school, highlighting the significant changes to the existing catchment areas. It confirms which secondary school new school will be aligned (Gracemount High School) and highlights consequential changes to the catchment areas of six other schools. These catchment area changes will only be implemented in November 2019, ahead of the expected opening of the new school in August 2020.
- 1.183 Half the pupil capacity of the new primary school will be taken up with existing pupils and the other half from two allocated housing sites in the LDP.
- 1.184 What this Report highlights is that the delivery of the smaller school at Gilmerton Station Road may no longer be required, with a consequential saving of over £15M. This is a significant saving and welcome.
- 1.185 It does however mean that the potentially unnecessary financial contributions being sought could impact on the various house builders' development viability within the Contribution Zone.
- 1.186 This conclusion that two new primary schools are not required in this Zone has also been reached independently. Submissions made to the Reporter as Further Information Requests for Appeal *PPA-230-2152: Land 350 metres north-west of 328 Lasswade Road, Edinburgh* also highlighted that a modest extension to Gilmerton Primary School could accommodate most of the new housing allocated in the South East Edinburgh SDA.

- 1.187 This level of detailed work by the Council demonstrates that the SG and Action Programme is not a reliable enough guide to the education capacity solution for a particular Education Contribution Zone.
- 1.188 The need for flexibility is already highlighted by the Council in the SG and the *Education Appraisal*. The extent of the flexibility is such that the financial contributions are not reliable.
- 1.189 It is likely that the required and more detailed approach by the Council will highlight other potential education solutions and financial savings. This detail in the assessment process is however the right starting point to start to prepare supplementary guidance.
- 1.190 All of this confirms the potential for existing pupils unrelated to the impacts arising from the Council's LDP development strategy to be accommodated in a new school. This is not a direct impact from the LDP development strategy. Accordingly, the Council is required to fund its proportionate share of the cost of this capacity. Therefore, the full cost of this new secondary school is not solely the responsibility of the allocated sites in the LDP. This is not recognised in the SG.
- 1.191 What this highlights is that when the detailed work for practical delivery mechanisms associated in the procurement of a new school are taken into account by the Council, the Council's LDP Action programme and the SG do not set out nor meet the requirements of the policy tests in Circular 3/2012.

Summary of Representations about the SG

- 1.192 The SG should comprehensively set out the basis and rationale for payment of planning obligations. This should be supported by an audit trail that explains how each allocated site in the LDP impacts on the available education infrastructure and explains financial payments.
- 1.193 As this assessment demonstrates, the Council has not assembled and presented all necessary information to justify the approach contained in the SG. Data, assumptions and projections need to be reported for each secondary school and its feeder primary schools, and presented for each Education Contribution Zone in a transparent manner.
- 1.194 It is not possible to independently verify the Council's school projections and therefore the conclusions reached about the proposed mitigation measures remain untested and incapable of being tested.
- 1.195 The Council's pupil generation rates appear to be projecting too high a number of pupils from new housing and this needs to be investigated further by the Council.
- 1.196 The Council has omitted to clarify the number of pupils in all of the eight new schools and the proposed school extensions which will be from the allocated sites in the LDP and those pupils from existing homes.
- 1.197 If existing pupils are to attend these new schools as a result of catchment reviews, then it is evident the sites in the Council's LDP development strategy are not directly responsible for all of the impacts arising on the existing school infrastructure. Any capacity provided in the SG's school infrastructure which is unrelated to pupils from sites in the LDP is the financial responsibility of the Council to provide on a proportionate basis.
- 1.198 Accordingly, the methodology adopted in the *Education Appraisal* for school projections does not meet the tests in Circular 3/2012. In particular, it does not demonstrate the direct impacts of the Council's LDP development strategy.

- 1.199 The SG does not make reference to the mechanism which would apply to obtaining financial contributions from homes on windfall sites. It is unlikely that all of the 4,700 homes from windfall sites have been factored into the education infrastructure requirements and included in the 2016 School Projections.
- 1.200 There is no mechanism in the SG for financial contributions from windfall sites. This is a significant omission which needs to be addressed as a priority by the Council.
- 1.201 As explained above, the Action Programme now includes a new secondary school for west Edinburgh. This proposal does not represent best value and was not consulted upon as part of the LDP process.
- 1.202 On the basis of the investigations carried out, it is concluded that little or no weight can be attributed to this SG as a means to secure the correct financial obligations to provide additional education capacity as a result of the LDP's development strategy.
- 1.203 What is evident from this SG is that the responsibility for delivery the LDP's approved development strategy rests solely with the Council's timely delivery of its education actions to meet the requirements of the private sector's house building programme.
- 1.204 Since the Council expects to fund and deliver all of these actions (extensions and new schools), it has not explained how it will raise the capital funding for these works. The new schools and any extensions require to be built in advance of the pupils expected and therefore the Council will need to forward fund the actions. The financial implications associated with this funding are not referred to in the SG nor is available capacity guaranteed by the Council.
- 1.205 The examples above highlighting the Council's progress with the Action Programme demonstrate the difficulties which all parties have in depending on the SG as a reliable source of information about the costs associated with the delivery of the education actions.
- 1.206 It is also apparent that as the Council does more detailed assessments for its education planning, different options emerge which impact on the solutions identified for the Action Programme. This directly impacts on the SG. The possibility that the new primary school proposed for the Gilmerton Station Road site may be surplus to requirements is one example of changing circumstances. This is a potential saving of £15M for the Action Programme. It is also apparent that expansions of the secondary schools in west Edinburgh and Queensferry would provide a significantly more cost-effective solution than the establishment of a new secondary school.
- 1.207 What this highlights is that the city-wide SG for education infrastructure would require constant review to make sure that the financial obligations sought are kept up-to-date to meet the final solution. This underlines the need to produce individual supplementary guidance for each Zone.
- 1.208 Another concern is that the Council has not highlighted any interim measures it intends to adopt to accommodate pupils arising from the ongoing completion of homes from the LDP's allocated sites before permanent solutions are available. The Council has yet to explain how the existing capacity in the education infrastructure will accommodate pupils until such time as the new schools or extensions are built.
- 1.209 It is also known that the Council has still to assess and programme the projected income from the planning obligations set out in the SG. The Council is therefore not yet aware whether these obligations will meet the projected capital cost of over £220M for education over a period of eight years.

- 1.210 It is now known that the Council does not have the funding in place to deliver this programme of works.
- 1.211 As the Council has yet to assess the income it expects to receive from financial contributions, it therefore does not yet know how much it intends to borrow.
- 1.212 This financial strategy by the Council is at best naïve but could be potentially damaging to the delivery of much needed housing if there is no guarantee of capacity in the education infrastructure and consequently house building is delayed or stops.
- 1.213 It is concluded that the SG and associated work undertaken by the Council does not provide a reliable guide to the cost of delivery of the required education infrastructure.
- 1.214 It is therefore recommended that all financial aspects of the Education Infrastructure section in the SG are deleted. An alternative approach is required as recommended in this representation.
- 1.215 The work which has been carried out to date should be consolidated into a separate report along with the latest school projections. The individual school projections should be aggregated with each primary school aligned with its secondary school. This would allow trends in schools to be examined and implications for future capacity to be readily assessed. This will allow management solutions such as catchment area reviews to be identified more easily.
- 1.216 These projections should then be aggregated into Education Contribution Zones. This would create data sets, assumptions and projections which can be used to derive solutions to education capacity and ultimately, lay the foundations for supplementary guidance for each Education Contribution Zone.
- 1.217 The Council is urged to consider the guidance in this consultation response and undertake the further work to derive a higher degree of reliability in the solutions required and the cost of delivery, including an assessment of the current baseline and separately, the direct impacts of the LDP's development strategy.
- 1.218 If the Council does not make the modifications set out above then little weight can be attributed to this SG regarding education infrastructure. This will lead to future challenges to the financial obligations being sought in the SG which on the basis of past appeals, are likely to be successful.

- 1 Burness Paull is instructed by West Craigs Limited to review the Council's draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (the "Guidance").
- 2 The Guidance sets out requirements for the delivery of infrastructure actions which have been identified in the Action Programme as considered necessary by the Council to support the adopted Local Development Plan (LDP). Our clients are concerned that the Council has failed to comply with its duties under the Environmental Assessment (Scotland) Act 2005 (the "2005 Act") in preparing the Guidance. Under the 2005 Act the Council is required to carry out an environmental assessment of a qualifying plan or programme during its preparation. This is a matter that has been brought to the Council's attention.
- 3 The Guidance has been prepared to provide further detail on the Council's approach to the implementation of Policy Del 1 : Developer Contributions in the LDP. Policy Del 1 provides that development proposals will be required to contribute towards specified infrastructure provision where relevant and necessary to mitigate any negative additional impact. The policy states that the specified infrastructure includes, "*Education provision including the new school proposals from Table 5 and potential school extensions as indicated in Part 1 Section 5 of the Plan. Contribution Zones will apply to address cumulative impact*".
- 4 However, a number of the actions identified in the Action Programme and in the Annex to the Guidance (which is drawn from the Action Programme) are not proposals in the LDP. In particular, the development of a new secondary school within the International Business Gateway ("IBG") in the West Edinburgh Contribution Zone, as indicated on page 30 of the Guidance, is not a proposal in the LDP.
- 5 The LDP states that a high school extension will be required and that further detailed assessment will determine where the additional capacity would best be provided; either at the Royal High School, Craigmount High School or Forrester High School or a combination across some, or all, of these schools and/or an extension to St Augustine's (RC) High School. The development of an entirely new secondary school in West Edinburgh was not assessed in the Environmental Report prepared under the 2005 Act for the LDP.
- 6 Planning Advice Note 1/2010: Strategic Environmental Assessment of Development Plans states at paragraph 4.42 that:

"The Action Programme for the proposed plan is not expected to trigger the need for a further SEA, as it implements the contents of the plan which has already been assessed. Instead, Action Programmes can play an important role and ensure that any mitigation or monitoring proposals from the SEA are delivered alongside the plan."
- 7 While the Scottish Government's advice in the PAN is that strategic environmental assessment ("SEA") is not ordinarily required for Action Programmes, this is predicated on an understanding that the Action Programme will implement the contents of the LDP. However, the Council's Action Programme does not simply seek to implement the proposals in the adopted LDP, but goes beyond it by supporting the delivery of a new secondary school in West

Edinburgh, which was not identified in the LDP, or assessed in the Environmental Report relating to the LDP.

- 8 The Action Programme therefore constitutes a plan or programme for which strategic environmental assessment is required. No SEA has been undertaken in respect of the proposal for a secondary school in West Edinburgh. The Action Programme's failure to conform to the requirements of the 2005 Act also fundamentally affects the conformity of the Guidance, as the Guidance relies on the Action Programme to provide the framework of actions for which developer contributions will be sought.
- 9 Our clients are particularly concerned that the Council has failed to comply with its obligations under Section 14(2)(b) of the 2005 Act in that it has failed to consider or demonstrate that it has considered reasonable alternatives to the new secondary school.
- 10 The Guidance itself is also a qualifying programme for which SEA is required in terms of the 2005 Act. We consider that Council is required under the 2005 Act to carry out SEA of the Guidance and the Action Programme proposals which have not been assessed in the LDP Environmental Report, and to consult on the updated Environmental Report before it can lawfully adopt the Guidance.
- 11 We consider that the Guidance also fails to conform with Scottish Government guidance in Circular 6/2013: Development Planning. Paragraph 138 of the Circular notes that statutory supplementary guidance must be limited to the provision of further information or detail in respect of policies or proposals set out in the LDP. As noted above, the LDP does not identify the requirement for a new secondary school in West Edinburgh.
- 12 Paragraph 139 of the Circular states that matters that should not be included in supplementary guidance but be within the LDP itself include, "*Items for which financial or other contributions, including affordable housing, will be sought, and the circumstances (locations, types of development) where they will be sought.*" Matters that are suitable topics for Supplementary Guidance include exact levels of developer contributions or methodologies for their calculation.
- 13 The Circular is clear that it is the LDP which should identify the location of infrastructure requirements; Supplementary Guidance should only provide further detail as to the exact levels of developer contributions.
- 14 In conclusion, we submit that, as the Council has failed to comply with its obligations under the 2005 Act and the Guidance fails to conform with Scottish Government policy it should not be adopted in its current form.

John McNairney
Chief Planner
The Scottish Government
Victoria Quay
EDINBURGH
EH6 6QQ



28 September 2017

Dear Mr McNairney

**WEST CRAIGS LIMITED
CITY OF EDINBURGH COUNCIL – DEVELOPER CONTRIBUTIONS AND
INFRASTRUCTURE DELIVERY SUPPLEMENTARY GUIDANCE**

We act for West Craigs Limited, who are the owners of a large scale residential site allocated in the adopted City of Edinburgh LDP (site HSG19).

We understand that the City of Edinburgh Council wrote to you on 12 September 2017 with a proposed draft of their Supplementary Guidance on Developer Contributions and Infrastructure Delivery (the “SG”).

This was in response to your letter of 3 July 2017 to the Council directing that the previous version of the SG (March 2017) was not to be adopted in terms of Section 22 (8) of the Town and Country Planning (Scotland) Act 1997 (the “1997 Act”).

Our clients have significant concerns as to the terms of the Council’s updated draft SG and the manner in which it has approached this issue.

We enclose for ease of reference a copy of the representation submitted on behalf of our client to the Council’s original consultation.

The Council’s amendments to the draft SG have focused solely on the issue of the location of a new secondary school in West Edinburgh. The Council has deleted the reference to its proposed new

Aberdeen Edinburgh Glasgow

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secondary school being located within the International Business Gateway (IBG), and has amended the housing figures contained in the original draft SG. The Council has increased the per unit developer contribution figures payable by developers in the “West Education Contribution Zone”. These changes impact directly on the deliverability of site HSG 19.

Unfortunately, the Council has failed to consider and address other deficiencies in the SG as identified during the consultation response by various parties, including our client and the Scottish Government.

The Council appears not to have provided you with a copy of their officers’ report to its Housing and Economy Committee at which the draft SG was considered (dated 7 September 2017 – copy enclosed). That document sets out the officers’ interpretation and response to the Scottish Government direction of 3 July 2017 and provides some insight into their approach to the SG.

We would highlight paragraph 3.5 of the report in which officers stated that their approach to developer contributions and infrastructure delivery had been “tacitly endorsed by Scottish Ministers”. This would appear to be fundamental misunderstanding of the operation of Section 22(8) of the 1997 Act. In particular, officers do not appear to have appreciated that it was open to the Scottish Ministers to direct the Council to modify the SG as an alternative to directing that it could not be adopted.

Had the Scottish Ministers wished to approve elements of the SG then it would have been open to them to direct that the SG should be modified. The concept of “tacit approval” is, of course, not one that is recognised in the 1997 Act or associated regulations. It is apparent that the Council has embarked upon a minimal review of the SG predicated on a fundamental misunderstanding of the effect of Scottish Ministers’ direction.

Failure to Consult

The draft SG is, of necessity, materially different to that which the Council consulted on previously.

Section 22 of the 1997 Act sets out the procedure that a planning authority must follow before it can take forward supplementary guidance. There is a requirement on the Council to have undertaken adequate publicity of the proposal, and to ensure those who may wish to make representations to the authority were given the opportunity to do so.

The Council has undertaken no public consultation on its amended SG. Instead, the Council is relying on a further review by it of responses received in February 2017 to a previous version of the draft SG. That approach is, unfortunately, flawed.

The Scottish Ministers will note the very significant number of representations made by those with an interest in development in West Edinburgh to the original draft SG. As noted above, the amended draft SG retains proposals for a new secondary school on an unidentified site and also increases the per unit contributions payable from LDP allocated sites (including HSG 19) towards the provision of this new school. Had they been given the opportunity to do so, our clients would have made representations on these proposals.

The Council has no reasonable basis to assume that parties who made representations on the previous versions of the draft SG would not have wished to have made representations on this version.

Regulation 27 of the Town and Country Planning (Development Planning) (Scotland) Regulations 2008 (the “Regulations”) stipulates that the Council must provide the Scottish Ministers with a statement describing what steps the Council took to secure adequate publicity in terms of Section 22(3) (a) of the 1997 Act, representations made to the authority, and the extent to which any representations were taken into account in the preparation of the proposed supplementary guidance.

By failing to undertake any consultation on the amended draft SG the Council has failed to comply with the requirements under Section 22 of the 1997 Act and Regulation 27 of the Regulations. In the circumstances the Scottish Ministers, acting reasonably, cannot consider the Council to have complied with the requirements of regulation 27 of the Regulations. For this reason alone, we would submit that the Scottish Ministers should direct the Council not to adopt the SG until it has undertaken adequate publicity and consultation.

Failure to Comply with Scottish Ministers’ Direction

Your letter of 3 July 2017 set out the process that the Scottish Ministers wished the Council to take in response to the direction. The Scottish Ministers advised the Council that “**the Local Development Plan sets out that a masterplan for the IBG will demonstrate the relative balance of uses that would be appropriate for the site. Ministers consider that it would be premature to adopt the supplementary guidance before the masterplan process has concluded**” [emphasis added]. Notwithstanding this direction, the Council are now seeking to adopt supplementary guidance before the masterplan process has concluded. The officers’ explanation for this refusal to follow the Scottish Ministers’ direction is set out at paragraph 3.7 of the Committee report. It relies on pre-existing documentation and a lack of clarity on the part of officers as to what the masterplan was expected to include. This is not a proper justification or explanation for the Council’s refusal to follow the terms of the Scottish Ministers’ direction.

Failure to Accord with Local Development Plan

When responding to the previous draft of the SG both our clients and the Scottish Government raised concerns that proposal for a new secondary school in West Edinburgh did not accord with the adopted LDP, which does not identify a new secondary school in West Edinburgh but requires extensions to one or more of the existing three non-denominational catchment secondary schools. The updated draft SG repeats this failing by promoting a new secondary school in West Edinburgh.

Regulation 27(2) of the Regulations is clear that supplementary guidance may only deal with the provision of further information or detail in respect of policies or proposals set out in the local development plan and then only provided that those are matters which are expressly identified in the statement contained in the local development plan as matters which are to be dealt with in supplementary guidance. As there are no proposals in the LDP for a new secondary school in West Edinburgh the draft SG is contrary to Regulation 27(2).

The Committee report states that the Council is of the view extensions to existing secondary school capacity is no longer appropriate. The only evidence base for this position is the Council's Education Infrastructure Appraisal dated September 2017. However, that document does not contain sufficient evidence to support that contention.

In November 2016 when the Council adopted the LDP the Council considered that school extensions were appropriate. It is not clear from the Education Infrastructure Appraisal how the Council has managed to reach a different conclusion on the most appropriate solution within the space of less than a year. The Education Infrastructure Appraisal has not been subject to any consultation so there has been no opportunity for interested parties to scrutinise its conclusions, unlike the Appraisal that underpinned the conclusions in the LDP on education requirements. In any event, the September 2017 Education Appraisal, completely failed to consider the LDP approved route of dealing with non-denominational secondary school places, namely, extensions of the existing non-denominational secondary catchment schools.

As a consequence of the proposed new secondary school not being a proposal in the LDP, it was not included within the Environmental Report prepared by the Council to comply with its duties under the Environmental Assessment (Scotland) Act 2005. That remains the case. This issue is dealt with in detail in the annex to our client's consultation response of 3 February 2017.

Contributions Zones

The draft SG retains the concept of developer contributions zones. Our clients raised concerns as to the application of this approach in their original consultation response. Those concerns remain valid in respect of the updated draft SG.

We would refer the Scottish Ministers to the recent intentions letter issued by a Reporter in respect of an appeal for residential development in Edinburgh (copy enclosed). In that case the Reporter expressed significant reservations about the Council's contribution zone approach (see paragraphs 49 and 50) and declined to apply that approach to the development in question (see paragraphs 54 to 56).

Conclusion

The Council has failed to undertake reasonable consultation on the updated draft SG and for this reason we submit that the document cannot lawfully be taken forward to adoption. Moreover, the Council has refused to follow the terms of the Scottish Ministers' direction of 3 July 2017 and has also failed to address the fact that the draft SG does not accord with the adopted LDP (contrary to Regulation 27(2) of the Regulations). It also fails to comply with the requirements of the Environment Assessment (Scotland) Act 2005.

For these reasons we would ask that the Scottish Ministers direct the Council not to adopt the amended draft SG.

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a long horizontal stroke that tapers to the right.

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1 March 2018

BY EMAIL

Dear Sir / Madam

REPRESENTATION ON BEHALF OF WEST CRAIGS LTD

DRAFT SUPPLEMENTARY GUIDANCE ON DEVELOPER CONTRIBUTIONS & INFRASTRUCTURE DELIVERY – RESPONSE TO CONSULTATION

We are pleased to submit representations to the above Consultation Draft Supplementary Guidance on behalf of our client West Craigs Ltd. Our clients are the owners of the largest LDP allocated site in the City and are currently progressing proposals for the delivery of 1,400 new homes (including 350 new affordable homes), provision for a new primary school and transport improvements, including pedestrian and cycle improvements.

They have also submitted proposals to the Council for delivery of a new Primary School on the site, an extension to Craigmount High School and most recently an extension to Forrester High School and St Augustines High School.

Following the LDP Examination, the City of Edinburgh Council (CEC) were required to put in place statutory supplementary guidance within one year of adoption of the LDP. The Scottish Government directed that the previous two iterations were not capable of adoption.

The current draft is the third attempt by CEC to produce this SG, unfortunately our client continues to have concerns with this draft, including the failure to accord with the adopted Local Development Plan.

The current draft fails to take proper account of consultation responses and the advice from Scottish Government. As such, comments on the previous drafts remain relevant and unresolved.

For the avoidance of doubt, we have completed the online questionnaire, however would point you to this correspondence (and enclosures) given the representation should be read as a combined submission. A copy of our client's representations to the two previous drafts are enclosed and incorporated into this submission.

The Council's approach to the advice it received from Scottish Government is not clear. The Council appears to consider the Scottish Government's position on proposals for a new secondary school in West Edinburgh to be the only issue that required to be addressed. However, it is apparent that officers have also been willing to accept some of the Scottish Ministers' other comments on the draft, whilst rejecting other, more substantive points. No explanation for this selective approach and why Scottish Government's advice has not been followed is provided in the SG or Officer's Report. .

The draft SG continues to promote a new secondary school in West Edinburgh, contrary to the LDP approach – which has no reference to a new secondary school in West Edinburgh. The LDP expressly provides for extensions to existing secondary schools. This is the position that was consulted on as part of the LDP process, promoted by the Council through the LDP examination and considered and approved by the Reporters and Scottish Ministers.

As previously advised by our client's solicitors, Burness Paull LLP in correspondence dated 28 September 2017,

“Regulation 27(2) of the Regulations is clear that supplementary guidance may only deal with the provision of further information or detail in respect of policies or proposals set out in the local development plan and then only provided that those are matters which are expressly identified in the statement contained in the local development plan as matters which are to be dealt with in supplementary guidance. As there are no proposals in the LDP for a new secondary school in West Edinburgh the draft SG is contrary to Regulation 27(2).”

This failing was also identified by Scottish Ministers in their response of February 2017.

As stated in our previous representations to this draft SG given the proposed new secondary school was not a proposal in the LDP, it was not included within the Environmental Report prepared by the Council to comply with its duties under the Environmental Assessment (Scotland) Act 2005. That remains the case. This issue is dealt with in detail in the annex to this response, completed by Burness Paull LLP on 3 February 2017.

We note that this draft Guidance has been completed following adoption of the Edinburgh Local Development Plan (2016) and as part of the requirement from the Examination into unresolved objections for the LDP completed by Reporters. This correspondence will refer to the appropriate page number and paragraph in the draft Guidance as appropriate.

The draft Guidance is intended to support delivery of the Council's Local Development Plan. During the course of the Local Development Plan Examination, the Council gave a commitment to Scottish Ministers that infrastructure constraints would not be allowed to delay development. This commitment was key to Scottish Ministers' decision to allow the plan to be taken forward to adoption. The Planning Minister noted: -

“In part, I am reassured by the published statement that “At the hearing the Council explained 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”.

The Planning Minister's direction to the Council on future decision making applies to this draft Guidance.

Given the significance of this commitment both to the Council, the LDP Examination Reporters and Scottish Ministers it is appropriate that it is reflected in the draft Guidance. However, the draft Guidance is not clear on this point. The text at “Funding Mechanisms” is vague and oblique. Section 4 (Legal Agreements and use of monies) refers to timescales for delivery of infrastructure being agreed between the Council and the applicant.

The draft Guidance should be amended to include text reiterating the commitment the Council gave during the LDP process that the Council would carry the risk of required infrastructure provision, such that this will not delay delivery of development. Such a commitment does not, of course, prevent the Council from securing appropriate developer contributions.

1. SECTION ONE - INTRODUCTION

Since the first version of the SG was issued, the Supreme Court has issued its judgment in *Elsick Development Company v Aberdeen City and Shire SDA*.

The Report to Committee provided members with an analysis of the Elsick case and its implications for the SG.

It is said in the Report that “*full regard has been had to the Elsick Decision*” in the preparation of the Guidance. In fact, there has been no change in the wording following the Supreme Court decision, and the SG confirms that it “*takes account of Scottish Government Circular 3/2012 Planning Obligations and Good Neighbour Agreements and other relevant government advice on contributions and legal agreements*”.

At paragraph 3.2.3 the Report to Committee states that the Scottish Government Planning Circular 3/2012 “*is only a material consideration*” and that it is a matter of planning judgement for the Planning Authority “*whether to follow it when requiring a Planning Obligation*”. It is correct that the Circular is a material consideration. However, a planning authority cannot choose to ignore or disregard the Circular. The Supreme Court was clear that a planning authority must have regard to the Circular.

The draft SG refers to and incorporates the Circular by reference. By so doing it seeks to incorporate the Circular into the Development Plan. This is not properly reflected in the advice in the Report to Committee.

The Report to Committee (paragraph 3.3) says that the contributions zone approach in the SG “*meets the Elsick legal test for planning obligation requirements by ensuring that contributions sought have more than a trivial connection to the relevant development*”. There is no evidence provided or referenced in support of this assertion, which has been found not to be the case in recent planning appeal decisions in Edinburgh.

Simply because contribution zones cover a smaller geographic area than those applied by the planning authority in the *Elsick* case is not a justification in itself. The SG relies on a generic geographic area approach with no assessment or consideration of site specific matters.

Whilst the draft Guidance includes text that regard has been had to the Circular, references are limited, and the draft Guidance fails to make any express reference to the five policy tests all planning obligations should meet to be valid, namely:-

- Necessary to make the proposed development acceptable in planning terms;
- Serve a planning purpose and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans;
- Relate to the development, either as a direct consequence of the development or arising from the cumulative impact of development in the area;
- Fairly and reasonably relate in scale and kind to the proposed development; and
- Be reasonable in all other respects.

The draft Guidance requires to be amended to include express reference to the five policy tests. The Guidance should include a statement confirming that planning obligations will only be required where it can be shown the five tests in the Circular have been met. Alternatively, if it is the Council's position that as a matter of policy it is not following national planning policy then a detailed

explanation for that approach must be provided. References to alternative policy approaches should be deleted to avoid confusion and the risk of legal invalidity.

SECTION TWO – DELIVERING THE EDINBURGH LOCAL DEVELOPMENT PLAN

2a Education Infrastructure Requirements and Contribution Zones

Previous appeal decisions have highlighted the failings in the approach in the draft guidance. No reference is made to these decisions, far less any attempt to address the issues identified by the Reporters.

Our clients recognise that the contribution zone approach may be capable of being used to address cumulative infrastructure requirements. However, this approach should accord with the Circular. It is important to recognise the guidance in the Circular which provides at paragraph 21 that:

“Planning obligations should not be used to resolve existing deficiencies in infrastructure provision or to secure contributions to the achievement of wider planning objectives which are not strictly necessary to allow planning permission to be granted for the particular development”.

There is no evidence in the draft Guidance or the LDP Education Infrastructure Appraisal (January 2018), which was used to determine the actions specified in the Action Programme, that the Council has considered the extent to which education infrastructure could be delivered through other mechanisms than the provision of new schools, for example, catchment reviews of existing schools. The Education Infrastructure Appraisal did not fully consider the options promoted by the Council during the LDP process. Catchment reviews could be used to better utilise available capacity in existing schools before new schools or extensions to existing schools are needed. The education infrastructure set out in Annex 1 to the draft Guidance is presented as a strategic solution to the delivery of education infrastructure. There is no indication in the LDP Education Appraisal that any consideration has been given to the most cost-effective way of providing the education infrastructure required.

The draft Guidance should not require developers to make contributions to achieve the Council's wider strategic objectives, e.g. the delivery of new schools where these might not be necessary for the particular developments in question.

Such an approach would be contrary to the terms of the Circular. The draft Guidance should state that contributions will only be sought in line with the Contribution Zone requirements where it is demonstrated that a proposed development would have a negative impact on existing infrastructure that cannot be accommodated within existing schools or that no alternative solutions have been provided by the developer to address a capacity issue arising from the impact of a particular development in a Contribution Zone.

There is a lack of information in the draft Guidance and Education Appraisal (January 2018) as to how the Council intends to make the best use of its existing education estate to serve new development proposals. The analysis in the Education Appraisal has not been subject to consultation and is partial. It appears that the Council has predetermined what additional infrastructure is required without considering the efficiencies that could be achieved through catchment reviews. There has been no independent third party examination of the Council's Education Appraisal or any analysis of the assumptions which underlie the Appraisal. It cannot be relied on as the basis for calculating education contributions.

We previously provided an analysis of the education requirements and associated infrastructure and costings for West Edinburgh, undertaken by Geddes Consulting. That analysis identified a number of shortcomings in the approach that underpins the draft Guidance as it would be applied to HSG 19.

Further analysis has also been undertaken in response to the Council's updated position with specific reference to a suggested new secondary school for West Edinburgh.

The appeal proposal will generate a total of 198 secondary non-denominational pupils. At a build out rate of 210 per annum, this will be 30 pupils per year. The LDP (page 57) identifies extensions to existing schools to accommodate pupils from LDP allocated sites in West Edinburgh. This is not a level that can be said to fairly and reasonably require a new school with a capacity of 900 pupils. Indeed, the Council's own evidence is that the LDP sites will account for approximately half of the capacity of a new school. Requiring LDP sites to make financial contributions towards new infrastructure which they do not necessitate is neither fair nor proportionate.

As the analysis sets out, both pupil projections and the costs of new infrastructure are overstated. Moreover, it is apparent that the infrastructure identified is required wholly or in part meet the Council's own existing requirements, and not the requirements of the LDP. The analysis also highlights the failure to properly consider windfall sites. The approach taken in the draft Guidance puts a lesser burden on windfall sites – placing a premium on not being an allocated site. Such an approach is contrary to a plan led planning system.

The Council put forward its proposed approach in the appeal at Lasswade Road (*PPA-230-2152*). A detailed analysis of the implications of that decision was provided previously and is attached with this submission.

More recently, a Reporter rejected the Council's attempt to apply the contribution zone approach to development of a site in Leith (*PPA-230-2201*). In that case the Reporter considered the draft Guidance to represent an approach contrary to the Circular.

During the course of hearing sessions on education infrastructure and policy convened by Scottish Ministers to consider a major residential development proposal (reference 15/04318/PPP), it was the education officer's evidence that the Council did not seek contributions towards denominational education infrastructure where a development was considered too remove from existing infrastructure. This was on the basis the Council expected denominational pupils to attend non-denominational schools that were closer to them. This evidence was put forward as representing the Council's general position based on previous experience. For clarity, detail on the Council's position should be provided, including the distances used by Council officers when deciding denominational school contributions are not required.

It is noted at paragraph D(ii) on page 4 that the Council will consider whether it is appropriate to revise the actions in the Action Programme and associated Contribution Zones if education infrastructure actions in the current Action Programme are not sufficient to accommodate an increase in the cumulative number of new pupils expected as a result of a development. There is, however, no recognition of the fact that some developers may pay too much if the expected increase in number of pupils across all developments anticipated in a Contribution Zone does not materialise. It is not clear how contributions will be revised downwards and repaid to developers if windfall developments come forward at a later stage and to contribute to infrastructure within a Contribution Zone, and/or excessive contributions repaid to developers.

Circular 3/2012 requires that, *"where statutory supplementary guidance is being promoted, this should include 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"*.

The draft Guidance does not explain how infrastructure for which contributions are required will actually be delivered, nor how monies will be paid, how they will be used or how they will be returned to developers.

The draft Guidance states on page 5 that the *“education infrastructure capacity will be delivered at a time that is appropriate to ensure that new pupils can be accommodated within their catchment schools. The Council reserves the right to adjust the timing of the education delivery programme to take account of relevant circumstances”*. This statement gives no certainty to developers that contributions that they have signed up to pay will actually be used to deliver the infrastructure that is required for their development. The statement at Part F that *“if pupils from a new development cannot be accommodated until education actions have been delivered, conditions may be used to phase the development to reflect the delivery programme for the required infrastructure”* could be used to hold up the delivery of new housing. This is contrary to the assurances given by the Council to Scottish Ministers during the LDP examination process.

It is not clear what is proposed at 2D(iii). The draft Guidance says that it may be appropriate to establish a new Contribution Zone if a development comes forward that would require a new school to be added to the Action Programme. This would seem to run contrary to the tests in the Circular that a planning obligation must be necessary to make the proposed development acceptable in planning terms. If a development is acceptable in planning terms and does not require a new school, then it cannot be necessary for it to be required to make financial contributions for a new school, that is a requirement of another development.

Following paragraph 5 on page 4 the following text should be added:-

“Where a potential school site can be delivered by a landowner / developer this will be considered in conjunction with the Council. The cost of this being delivered would then be taken from any required contributions for the associated development”

Page 5

In the section titled, Delivery of Education Infrastructure, the following text should be added to the end of paragraph 3 as follows:-

To assist in the early delivery of education infrastructure developers / landowners will be encouraged to bring forward planning applications for education facilities to assist the local authority and avoid housing sites stalling.

Page 8 – Transport

Amendments have been made (without explanation) to the text regarding the delivery of transport infrastructure. Specifically on page 8 the most recent iteration states *“Where the delivery of a transport action in the Action Programme has a Contribution Zone and/or requires land outwith the control of the applicant(s), the Council will, **if necessary**, collect contributions towards the action and deliver the action”*.

The new text is shown in bold. No further explanation is given as to what is meant by “if necessary”, how this will be assessed and by whom. It creates unnecessary ambiguity and uncertainty. It would also appear to represent a departure from the Council’s to ensure infrastructure delivery will not prevent or delay delivery of new housing.

The modification to the draft has been done without explanation and does not appear to have been supported during the previous consultation process. The Council were satisfied the wording was not needed in the previous draft and it should be deleted.

With regards to site HSG 19 in the LDP it is set to contribute towards £4,320,000 towards a railway bridge and extensive footpath and underpass works linking HSG 19 to The Gyle, via the now completed Edinburgh Gateway. There are a number of issues with this, namely:

- The footpaths and A8 underpass have been delivered solely to support Edinburgh Gateway and funded via EGIP. These works are in no way linked to any LDP allocation, including HSG 19. Only the cost of the bridge and footpath linkage with the existing Tram Depot road and Edinburgh Gateway can reasonably be linked to LDP allocations, including HSG 19. We would refer the Council to the expert technical analysis provided by Arup (see Document WCL 98 from appeal PPA-230-2207).
- It remains unclear why the delivery of the bridge and footpath linkage is only being attributed as a site-specific transport action for HSG 19, when CEC is suggesting that IBG development and HSG 20 development requires this bridge link to support the overall educational needs within these allocations in regard to the location and accessibility of a new primary and a new secondary school.

In addition, HSG 19 is identified as paying £87,200 for the design fee towards the Maybury Junctions redesign for cycling and walking. This is not justified on two grounds. Firstly, changes at Maybury Junction are identified as Action T17 within the Maybury/Barnton Contribution Zone and as such should also be attributed to allocation HSG 20. Secondly, the T17 works include design, which must reasonably include any cycle/pedestrian facilities and operation.

Page 11 – Primary Healthcare

We note the provision of health care infrastructure was considered as part of the Examination into unresolved objections to the Edinburgh Local Development Plan (adopted 2016). The Reporter(s) concluded the following:-

Page 764, para 46 - 47

“The land use planning justification for the other items referenced in Del 1 relies on the work the Council has carried out on the assessment of transport, education and open space. Notably no such research or justification for seeking contributions towards health care provision has been provided in this examination.

In the absence of current information or justification of the scale of any additional provision that might be required, there is no certainty, at present, on the associated need for contributions. To add this requirement now, would, I consider, be contrary to the terms of the 2012 Circular. Consequently, I am not convinced that the list of items relevant to Policy Del 1 should be expanded to cover health care infrastructure”

It is clear from these conclusions that the Examination recommended that primary healthcare should not be considered as part of policy Del 1 in the adopted LDP. Appendix 4 suggests a figure of £6m for West Edinburgh in this regard. As concluded by the Reporter this is contrary to the terms of Circular 3/2012.

In this regard page 11 of the draft SPG should be removed.

The primary healthcare assessment documents were not produced as part of the LDP process and have not been subject to public consultation. They are not planning policy documents. There is a lack of evidence to justify the contributions being sought through the draft Guidance.

3 VIABILITY AND FUNDING MECHANISMS

Policy Del 1 provides that the draft Guidance must include the Council's approach should the required contributions raise demonstrable commercial viability constraints and/or where forward or gap funding may be required.

However, the text in the draft Guidance on this issue is less than clear, on page 12 it states that:

“Should gap and/or forward funding be required to deliver an infrastructure action in the Action Programme, this will be reported to the appropriate committee(s). This includes Planning Committee with the relevant application.

The financial impact of the Local Development Plan on capital and revenue budgets is reported annually to the Council's Finance and Resources Committee.”

These statements do not provide any clarity on how the Council will address the issue where forward or gap funding may be required and does not provide any certainty to developers that it will be forthcoming, or that developments will not be stalled if the Council fails to deliver the infrastructure required.

Consistent with the commitment given by the Council during the LDP Examination, and relied upon by Scottish Ministers when approving the LDP for adoption, the draft Guidance should include a clear and unequivocal statement that the Council will carry the risk of the required infrastructure provision and this would not delay development. Failure to include such a statement would represent a failure by the Council to stand by its previous commitments, and place the draft Guidance in conflict with the basis on which the LDP was approved by Scottish Ministers.

4 LEGAL AGREEMENTS AND USE OF MONIES

The Council is preparing a model legal agreement to be published with the finalised guidance. We trust that there will be an opportunity for developers to comment on the draft agreement, as other local authorities, such as Aberdeen City Council and Aberdeenshire Council have done.

In particular, we would hope that the Council will not include any requirement in any such model agreement for developers to cover the Council's costs for preparing and registering a planning agreement. Any requirement for developers to pay for the Council's costs of preparing and registering a planning obligation, in addition to its own legal costs, would be contrary to the decision of the English High Court in the case of *Oxfordshire County Council v Secretary of State for Communities and Local Government [2015] EWHC186 (Admin)*. In that case, the Court held that payment of monitoring/administration fee was not necessary to make a development acceptable in planning terms and that it is part of the planning authority's function to administer, monitor and enforce planning obligations and legal agreements and that there is nothing in the legislation or government guidance which suggests that authorities could claim administration or monitoring fees. These findings apply equally to the Scottish planning system. The cost to the authority of including legal obligations is covered by the statutory application fees. The Scottish Government is clear that local authorities have no power to require the developers pay an additional fee for planning obligations as such fees are not in themselves necessary to make a development acceptable in planning terms.

It should be noted that Angus Council proposed a requirement that developers pay the Council's legal fees for planning obligations in its guidance on planning obligations. The Scottish Ministers responded on 24 November 2016 with a direction advising that the guidance would not be adopted until it was amended to delete the sentence which advised that *“the costs of the preparation of the legal agreement and the applicant's own legal costs must be met by the applicant”*. Similar directions have been issued by the Scottish Government to other local authorities who have included similar statements within their guidance.

At present, the City of Edinburgh Council requires applicants to enter into a fee undertaking before starting work on the terms of any legal agreement. This undertaking requires the applicant to pay the Council's legal fees (including external legal fees, even if the agreement is not ultimately completed). We consider that this approach is illegitimate and trust that any such requirement will not form part of the Council's model legal agreement or its procedures for new legal agreements.

We understand the Council would seek to retain education contributions for a period of 30 years before having to return unspent funds. This period is well in excess of any assessment the Council has undertaken as to the education requirements of new developments. We expect the basis for this timescale is linked to contracts the Council may enter into for the provision of new school infrastructure. If that is the case then contributions should only be retained for up to 30 years where the Council can demonstrate the funds are legally committed. It is not appropriate for the Council to have until at least 2048 to decide how to use contributions.

5 AUDIT AND REVIEW

Section 5 states that applicants have the statutory right to apply to the Council for modification or discharge of a section 75 agreement. Given the uncertainty surrounding the Council's delivery programme, reliance on the section 75 modification process is not sufficient, and will lead to unnecessary costs for both the Council and applicants. The Council's review process must ensure variations and updates to planning obligations can be made as required, and that there is sufficient flexibility within the draft Guidance and the Council's model section 75 agreement to allow for review of contributions outwith the statutory process.

Summary

The Council has confirmed that it will take the risk on the delivery of infrastructure needed for the LDP, and will not allow this to delay delivery of new housing. This commitment should be made clear in the draft Guidance.

The draft Guidance does not confirm that developer contributions will only be required where these meet the tests in Circular 3/2012. In its current form the draft Guidance would appear to be seeking contributions not in accordance with the Circular. This has been confirmed where the Council has sought to rely on the previous draft in appeals.

The inclusion of Primary Healthcare is contrary to the Reporters' recommendations and the LDP. As such, it requires to be deleted.

There are opportunities for significant efficiencies to be made in the delivery of education infrastructure, both through the more efficient use of existing infrastructure and optimising how new infrastructure is provided. This represents an opportunity for more sustainable development, and will allow for significant cost savings, reducing the cost and risk burden for applicants and the Council.

The draft Guidance would benefit from a more focussed approach at a more local level. This is illustrated by the outcomes of the Council's more detailed assessment of the Liberton/Gracemount Education Contribution Zone. Likewise, the Reporter's decision in the Lasswade Road appeal (PPA-230-2152) highlight that the draft Guidance overestimates both the education infrastructure requirement, and associated costs.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ian Gallacher', with a long horizontal flourish extending to the right.

Ian Gallacher
DIRECTOR

cc. Mr S Buchanan, Cardross Asset Management
Mr C Whelton, Burness Paul LLP

Your ref
Our ref 254681-00/CL
File ref

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For the attention of Craig Whelton

21 December 2017

Dear Sir

Application for Planning Permission in Principle at Turnhouse Road, Edinburgh (PPA-230-2207) – Pedestrian/Cycle Access between HSG 19 & Edinburgh Gateway

Introduction

This letter responds to the Council's stated requirements for the pedestrian/cycle linkage from the application site within allocation HSG 19 to Edinburgh Gateway and the destinations south of the A8 Glasgow Road, summarised in Table 3a of the Council's Action Programme (WCL003); namely the:

"Maybury Edinburgh Gateway Station pedestrian / cycle route including bridge over railway. Bridge & ramps, approx 80m: (based on 20m span and 5m width). Cyclepaths to Gyle (600m) (and underpass of A8), A8 (300m) and to Gogar Link Road (500m). WETA estimate £4,320,000."
(WETA estimate from Table 9.1 of WCL007).

The Council's estimated contribution has been identified, by the Council's own admission, without assessment of a bridge (WCL084) and in believing additional footpath/cycleway and underpass works are required to better connect Edinburgh Gateway to the south of the A8 Glasgow Road, as confirmed in their responses to Item 9. in WCL020 and Item d. in WCL050.

Firstly, we confirm why no additional works are required or justified to connect Edinburgh Gateway to the south of the A8 Glasgow Road.

Secondly, we provide a refinement of the cost estimate for the bridge and associated footpath/cycleway based on the location indicated by the LDP Maybury and Cammo Site Brief (WCL002), to which the Appellant remains willing to contribute their share as part of the HSG 19 allocation, in accordance with the Council's Action Programme (WCL003).

Assessment of Existing Edinburgh Gateway Connectivity

The enclosed technical note responds directly to the Council's position (Item 9. in WCL020 and Item d. in WCL050) that the 2016 Action Programme is correct to demand additional pedestrian and cycle linkage between the now completed Edinburgh Gateway facility and the destinations and non-car modes of travel south of the A8 Glasgow Road.

The technical note concludes that Edinburgh Gateway currently enjoys direct, segregated, signed, lit and unobstructed pedestrian and cycle access to the designated shared use facilities to the south of the A8 and the onward destinations such as The Gyle, Edinburgh Park and the wider catchment, including the city. There is no evidence to support the Council's stated position that further transport interventions are required to better connect Edinburgh Gateway and the south of the A8 Glasgow Road or that such additional interventions are in any way attributed to development within allocation HSG 19, including the application site.

Table 3c of the Action Programme (WCL007) confirms that the site specific contributions are attributed to all development within allocation HSG 19, where the application proposals represent a proportion of the HSG 19 development. This contradicts Item 01. of the Council's draft Heads of Terms for Planning Section 75, which states that the current application pay in full for the delivery of the bridge and footpath connections.

Refined Cost Estimate – LDP Site Brief Bridge Location

The Bridge Feasibility Study (WCL018) informed the Appellants' planning application on the basis that the Council had failed to commission such a study (confirmed by WCL084). Appendix D of WCL018 includes initial capital cost estimates for various bridge types at a number of possible bridge locations. Location 3 within WCL018 represents that indicated by the adopted LDP Maybury and Cammo Site Brief (WCL002).

Arup has extensive experience of footbridge design for Network Rail and other clients and has benchmarked data from similar structures to refine the cost estimate for a structure at Maybury. This includes recent tendering exercises for Abellio Scotrail and a review of modular Fibre Reinforced Polymer superstructure. The benchmarking has also been informed by consultation with an experienced rail contractor.

Table 1 summarises the resulting refined cost estimate for a steel and a composite 2m wide bridge that represents a standard Network Rail structure. This also considers the cost for a bespoke 4m wide bridge and ramp solution. Table 1 also summarises the initial cost estimate included in Appendix D of the Bridge Feasibility report (WCL018). Table 2 summarises our assumptions and caveats.

Table 1 indicates that the refined cost estimates are of a similar scale to the initial cost estimates identified in WCL018 and that the cost of the steel and GRP structures to the NR standard width are similar. The cost of a bespoke structure and ramp system is estimated to be considerably greater and will demand greater design scrutiny to ascertain if such a structure is viable in the location represented by the LDP Site Brief (WCL002).

Table 1 Refined Cost Estimate – LDP Site Brief Bridge Location (Location 3)

Cost Item	Type 1: NR Std 2m Wide Bridge & Ramps	Type 2: GRP Std 2m Wide Bridge & Ramps	Type 3: Bespoke 4m Wide Bridge & Ramps
Bridge - main span	£130,000 - £200,000	£142,000	£210,000 - £303,000
Bridge - founds / gen. civils	£132,000 - £150,000	£100,000	
Stairways	£53,000	£53,000	£53,000
Ramps @ 150m in Length	£274,000 - £308,000	£274,000 - £308,000	£600,000 - £1,500,000
4m wide footpath/cycleway	£85,000	£85,000	£85,000
Mob/Prelims/Design/Possess/Const	£125,000	£125,000	£150,000 - £200,000
Refined Estimate	£799,000 - £921,000	£779,000 - £813,000	£1,098,000 - £2,141,000
Initial Estimate @ Location 3 Appendix D, WCL018*	£500,000 - £750,000	£500,000 - £750,000	N/A

* Include 25% uplift for design/prelims/profit/contingency/profit/mobilisation. Estimate excluded footpath/cycleway costs.

Table 2 Assumptions and Caveats

No.	Assumption
1.	NR standard footbridge, stairways & ramps are designed for 2m width. Bespoke 4m wide design.
2.	A circa 15-16m span assumed to require NR land and consideration of issues such as signal sighting. Associated costs not included.
3.	5.4m headroom assumed, but subject to further assessment and agreement with NR.
4.	Estimated overall ramp length of 150m given the topography and headroom assumptions.
5.	A 4m wide footpath/cycleway connecting the bridge with Edinburgh Gateway and the road serving the Gogar Tram Depot to adoptable standard (bound, lighting, signage, kerbworks and earthworks). Estimate based on Arup benchmarking and SPONS Civil Engineering & Highways Works Price Book.
6.	Bridge and ramp estimation based on Arup benchmarking with the NR Standard Footbridge and GRP arcoBridge system, supplemented by SPONS Civil Engineering & Highways Works Price Book and NR contractor.
7.	The Type 3 estimate is not weighted for railway work.
8.	Cost estimate remains indicative. Will require further refinement and detailed surveys and approvals. Estimate excludes unforeseen or excessive utility protection/diversion, contamination and hazards, site/ground conditions, NR requirements or variations in local fabrication, material and labour costs, etc.

I trust that the enclosed is clear, however, should you have any queries or require further clarification please do not hesitate to contact me at this address.

Yours faithfully



Craig Latta
Associate

Enc Arup Technical Note dated 23 November 2017

Subject Review of Edinburgh Gateway Shared Access

Date 23 November 2017

Job No/Ref 254681-00/CL

1 Introduction

This Technical Note has been prepared to consider the veracity of the City of Edinburgh Councils' (CEC) response to 'Item 9' within the CEC letter dated 2 June 2017 (CEC020) and their response to 'Item d)' in their letter dated 21 June 2017 (WCL50).

1.1 Item 9 – CEC Letter dated 2 June 2017 (CEC020)

The CEC response to Item 9 states that:

“It is correct that there is already an underpass. However, it was not built as a shared use path, and it is not signed as such. It also feeds out into a retail car park, with obstructions such as bins at the end of the path, and no onward connection through the car park to complete the connection to the shared use footway by the tram stop. Therefore, the ‘Cyclepath to Gyle (600m)’ stated in the above Action Programme remains a valid element of this action and is needed to achieve the mitigation of transport impact of development in HSG 19. In this case the Council would be the delivery agent and is expecting financial contributions from developers.”

CEC bases its requirement for a new cyclepath to The Gyle on the understanding that:

- The Edinburgh Gateway A8 underpass is not a shared use path;
- There is no signage to indicate a shared use path;
- There is no onward connection to the shared use footway by the Gyle Centre tram stop (on South Gyle Broadway), but relies on;
- Passage through the retail park where the end of the path is obstructed by bins.

1.2 Item d) – CEC Letter dated 21 June 2017 (WCL50)

The CEC response to Item d) supports its response in CEC020, stating that the design and purpose of the A8 link and underpass delivered as part of Edinburgh Gateway are different to those associated with the LDP allocation of HSG 19. CEC state that the LDP actions:

“...include the formation of a continuous and high quality cycle route from within HSG 19 all the way to connect with an existing such route through Edinburgh Park and further into the city beyond. This is a different context and objective to that required of the Station development, therefore it is appropriate that the LDP and its Action Programme identify this action as arising from the allocation of HSG 19 Maybury.”

The remainder of this Technical Note considers the current pedestrian and cycle facilities, along with the available information from CEC to consider whether the CEC's stated position that additional transport infrastructure connections across the A8 is justified to supporting development within the allocated site HSG 19 Maybury.

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2 Edinburgh Gateway A8 Underpass

Photo 2.1 indicates the current A8 underpass delivered as part of the Edinburgh Gateway project. This is wide, lit and has no obstructions. This also indicates that the A8 underpass is not gated and is available for use at all times. There are no signs restricting cycle activity or signage to request that cyclists dismount. The underpass has the required geometric dimensions to function as a combined footpath/cycleway.

Photo 2.2 indicates the current signage at the northern end of the A8 underpass at Edinburgh Gateway. The signage identifies The Gyle, Edinburgh Park and Sighthill as key destinations through the A8 underpass for both pedestrians and cyclists. The signage indicates the route specifically for pedestrian and cycle use, similar to the sign pointing towards the designated off-road cycleway to the north of the A8.

Cycle racks are located to the north of the A8 underpass at Edinburgh Gateway, where there is no evidence to support the suggestion by CEC that the A8 underpass is anything other than a shared use facility. Contrary to the CEC response to Item 9, the signage identifies the A8 underpass as a shared use facility.

Photo 2.1 A8 Underpass Looking South



Photo 2.2 Directional Sign at Edinburgh Gateway

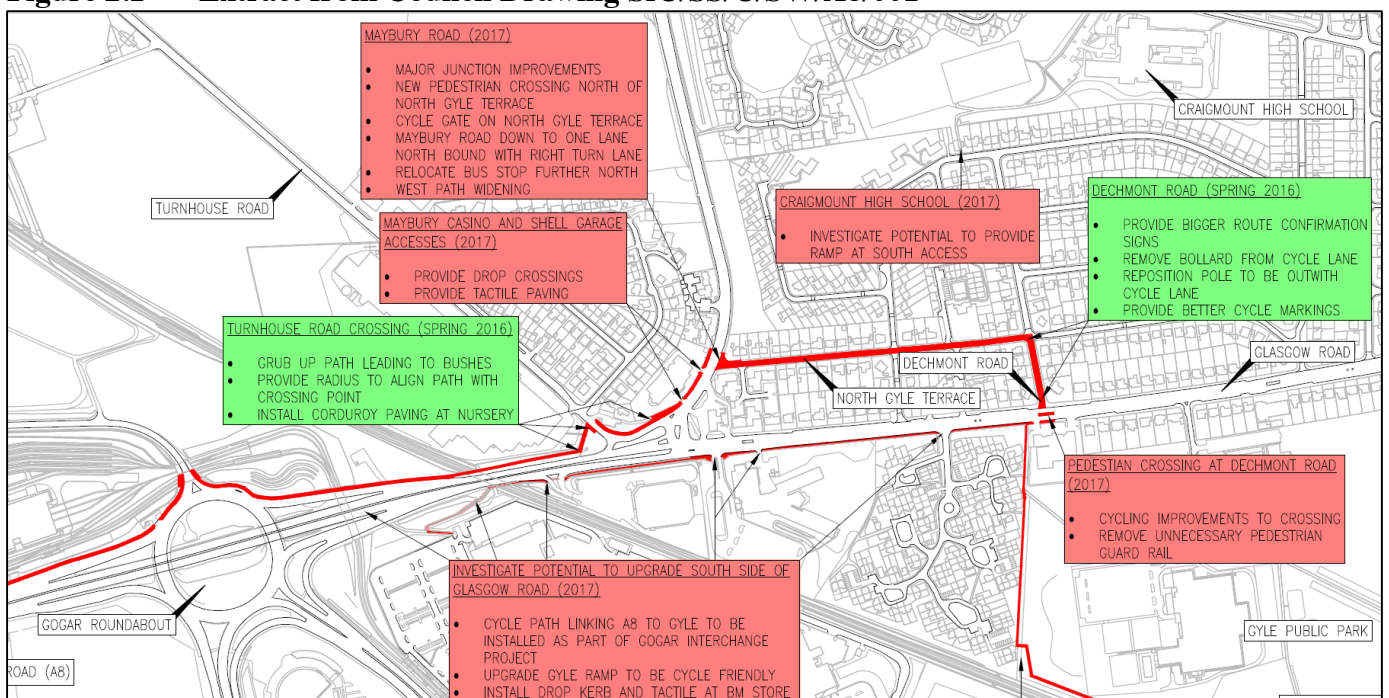


Figure 2.1 is an extract from the Council drawing SfC/SS/C/SW/A8/001 dated October 2015 and titled 'Route 9 Cycle Way (Newbridge to South Gyle) A8 Improvements'. This drawing remains on the Council's Cycling and Walking website and indicates the works that the Council continues to deliver in upgrading the A8 cycleway. The extract in Figure 2.1 confirms that by 2017, the:

"Cycle Path linking the A8 to Gyle to be installed as part of Gogar Interchange project".

The email trail in Appendix A is further confirmation that this 'cycle path' across the A8 has been delivered through the Edinburgh Gateway works.

Figure 2.1 Extract from Council Drawing SfC/SS/C/SW/A8/001



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3 Assessment of Obstructions at The Gyle

The CEC response to Item 9 states that obstructions such as bins negate the A8 underpass and the associated linkages as a suitable shared use facility. This is not borne-out by the current design and operation at the southern end of the underpass at The Gyle.

Photo 3.1 indicates the previous crossing facility at The Gyle prior to the completion of the A8 underpass. This indicates the surfaced, lit and signed ramp from the A8 cycleway passed by a series of recycling bins and crossed a service access to the retail units, however, the recycling bins did not at that time form a barrier to pedestrian or cycle accessibility.

Photo 3.1 Previous Access to The Gyle



Photo 3.2 indicates the current arrangement, where the recycling bins to the west of the crossing have been removed and a formal uncontrolled crossing (with tactile paving) has been applied to enhance the crossing between the A8 underpass and The Gyle.

Access to the southern A8 cycleway is retained by way of the steps and the ramp, as indicated by Photo 3.3, where there are no barriers or obstructions between Edinburgh Gateway, the A8 underpass and The Gyle. The CEC response to Item 9 is without merit on this matter.

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Photo 3.2 Current Connection with The Gyle Frontage



Photo 3.3 Current Connection with the A8 Cycleway (on the south side)

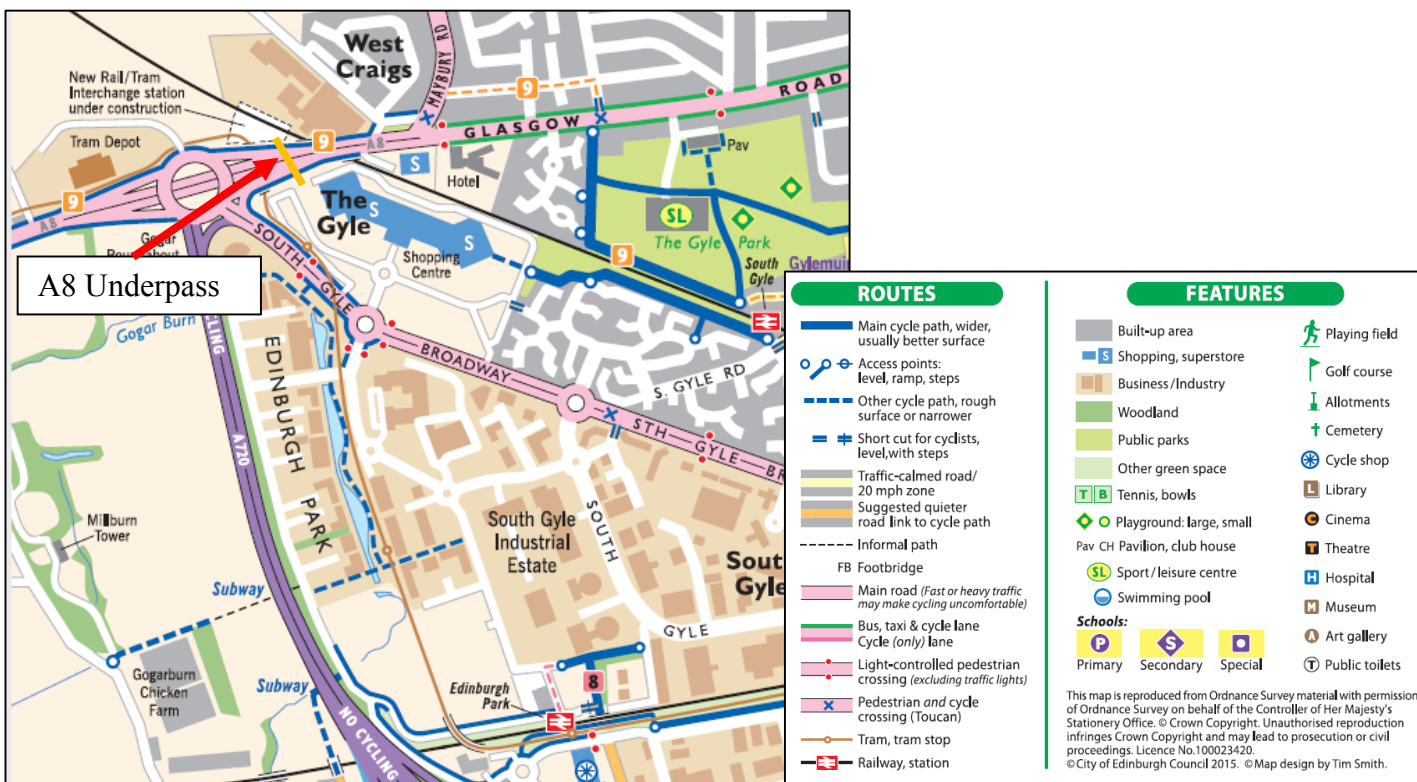


4 Designated Cycleways

Figure 4.1 is an extract from the Council’s ‘South West Edinburgh Walking and Cycling Routes Map’ that identifies the designated cycle routes on the A8 and South Gyle Broadway past the Gyle Central tram halt. This figure annotates the now completed Edinburgh Gateway as the ‘New Rail/Tram Interchange station under construction’.

Figure 4.1 indicates that the A8 underpass is connected to the A8 and the South Gyle Broadway off-road cycle routes by way of the steps and ramp indicated by Photo 3.3, providing direct access to Edinburgh Park, further into the city and the shared use footway adjacent to the Gyle Centre tram halt, as required by the CEC responses. The location of the Gyle Centre tram halt is indicated in Figure 4.1.

Figure 4.1 Designated Cycle Routes

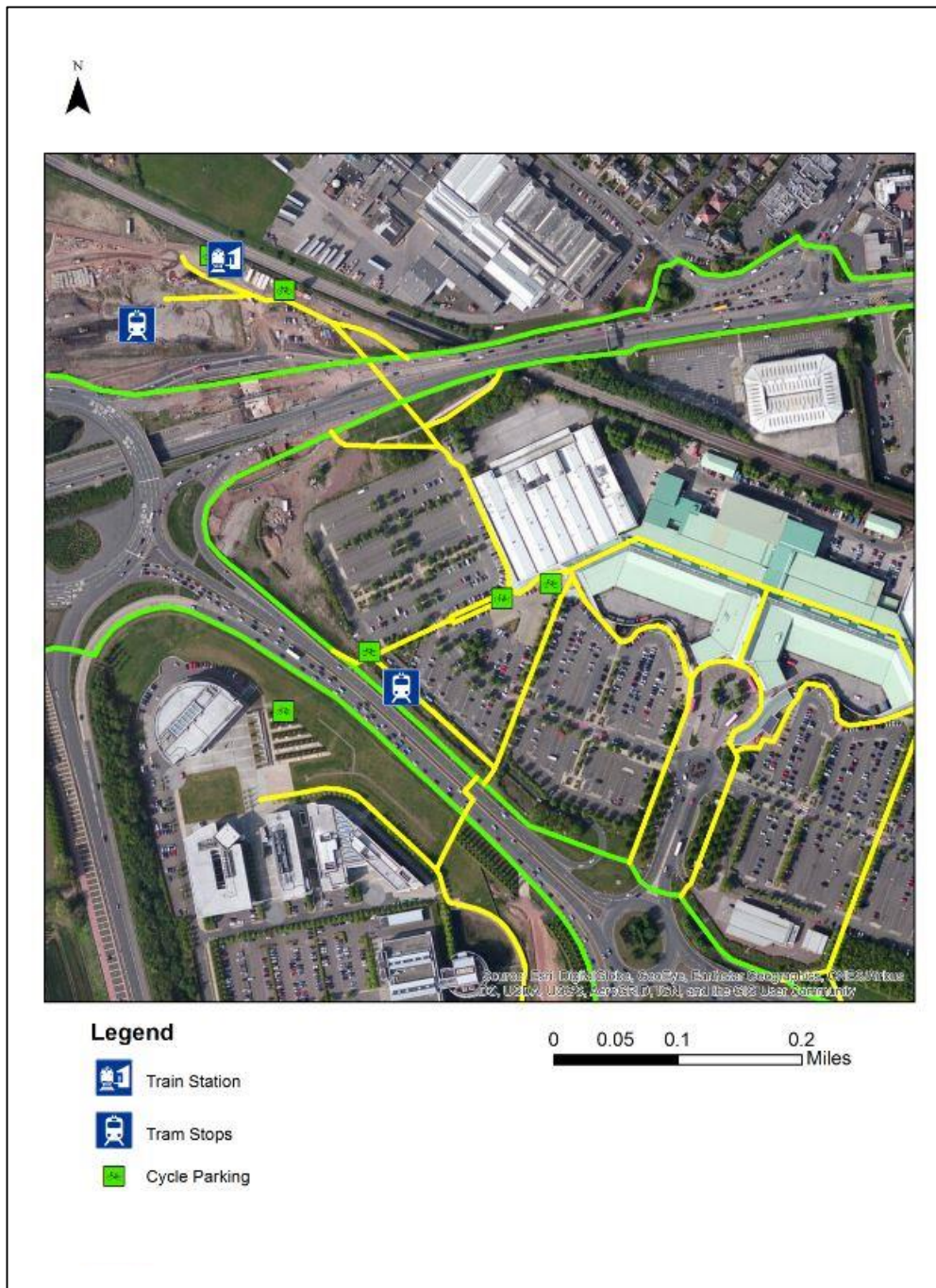


It is clear from Figure 4.1 that Edinburgh Gateway is directly connected to the designated shared use facilities on the A8 and South Gyle Broadway, contrary to the CEC response to Item 9.

5 Connectivity Through The Gyle Retail Park

In addition to the unobstructed and enhanced access between Edinburgh Gateway and the frontage of The Gyle, Figure 5.1 indicates that onward connectivity to the Gyle Centre tram halt and the designated shared use facilities on South Gyle Broadway is accommodated by the footpaths and crossings within The Gyle Retail Park. While these routes are not designated for shared use, they provide direct and alternative designated routes for pedestrians, as indicated by Photos 5.1 and 5.2.

Figure 5.1 Designated Connections through The Gyle



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Photo 5.1 Designated Footpath Providing Linkage with the Gyle Centre Tram Halt



Figure 5.2 Designated Footpath at the Gyle Centre Tram Halt



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6 Conclusion

The assessment of the current facilities and designations concludes that Edinburgh Gateway enjoys direct, segregated, signed, lit and unobstructed access to the designated shared use facilities to the south of the A8 and to the onward destinations such as The Gyle, Edinburgh Park and the wider catchment, including the city.

There is no evidence to support the CEC response to Items 9 and d) in CEC020 and WCL50 respectively, and no justification for additional transport infrastructure to connect Edinburgh Gateway to the south of the A8, as indicated in Table 3c of the 2016 Action Programme (CEC008) in regard to the allocated HSG 19 Maybury site.

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Appendix A

From: Bryan Mackie [<mailto:Bryan.Mackie@edinburgh.gov.uk>]
Sent: 23 November 2017 11:54
To: Stuart Buchanan <sbuchanan@cardrossam.co.uk>
Subject: RE: A8 CYCLE ROUTE

I'd say so. Have you cycled through the new underpass?

From: Stuart Buchanan [<mailto:sbuchanan@cardrossam.co.uk>]
Sent: 23 November 2017 11:31
To: Bryan Mackie <Bryan.Mackie@edinburgh.gov.uk>
Cc: Active Travel <ActiveTravel@edinburgh.gov.uk>
Subject: RE: A8 CYCLE ROUTE

Thanks Bryan

That looks to me as if all the cycle and footpath linkages between the new Gogar Interchange station and Gyle Shopping Centre have already been completed – is that CEC's position on this?

Regards

Stuart

From: Bryan Mackie [<mailto:Bryan.Mackie@edinburgh.gov.uk>]
Sent: 23 November 2017 11:17
To: Stuart Buchanan <sbuchanan@cardrossam.co.uk>
Cc: Active Travel <ActiveTravel@edinburgh.gov.uk>
Subject: RE: A8 CYCLE ROUTE

Hi Stuart,

You can take a virtual tour of the new station at [Edinburgh Gateway Station](#).

Kind regards,

Bryan Mackie

From: Judith Cowie **On Behalf Of** Active Travel
Sent: 15 November 2017 11:34
To: Bryan Mackie <Bryan.Mackie@edinburgh.gov.uk>
Subject: FW: A8 CYCLE ROUTE

Hi Bryan,

This came in from the mailbox this morning, do you have any info? Would you like it to be logged as an SR?

Thanks,
Judith

Subject Review of Edinburgh Gateway Shared Access

Date 23 November 2017

Job No/Ref 254681-00/CL

From: Stuart Buchanan [mailto:]
Sent: 15 November 2017 11:12
To: Active Travel <ActiveTravel@edinburgh.gov.uk>
Subject: A8 CYCLE ROUTE

Good morning

I see from your web site

http://www.edinburgh.gov.uk/info/20087/cycling_and_walking/1391/a8_route

that phase 3 involves “improving links in the Gyle / Gogar area including integration with the new rail/tram interchange and underpass”. Have these all been completed?

Where can I see details of them?

Thanks

Stuart Buchanan

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Area 2-H (South)
Planning and Architecture Division
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5 October 2018

Dear Sirs

**CITY OF EDINBURGH COUNCIL
SUPPLEMENTARY GUIDANCE - DEVELOPER CONTRIBUTIONS AND
INFRASTRUCTURE DELIVERY**

We understand that City of Edinburgh Council (“Council”) wrote to you on 7 September 2018 with their proposed Supplementary Guidance on Developer Contributions and Infrastructure Delivery (“SG”).

We are aware that you may have received representations on various aspects of the SG. We are writing to you in respect of a specific issue concerning the Council’s ability to retain developer contributions relating to education. This is an issue that is impacting on the terms of section 75 planning agreements.

For the reasons set out below, we would ask that Scottish Government direct the Council to modify the text regarding the retention of education contributions.

Education Contribution Repayment

Page 14 of the proposed SG states that:

“The Council will hold contributions towards education infrastructure for 30 years from the date of construction of new school infrastructure. This is in order for payments to be used for unitary charges

Aberdeen Edinburgh Glasgow

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Lawyers with offices in Aberdeen, Edinburgh and Glasgow.
A list of members is available for inspection at the firm’s registered office.

Live: 43251705 v 1

associated with infrastructure projects which have been delivered through revenue based funding mechanisms.”

The Council is already seeking to apply this text to s75 agreements under negotiation to insist that it can retain developer contributions towards education provision for 30 years before being required to refund unspent or unallocated monies to developers.

For information, the clause used by the Council in its section 75 agreements is as follows:

“In the event of the Education Contribution paid under Clause [●] hereof not being utilised in full by the Council within thirty years of the date of receipt of payment by the Council (or, if phased payments, the date of receipt of the last payment) then such contribution or the unused part thereof, as appropriate, together with any interest at the Prescribed Rate that has accrued thereon, shall be refunded to the Proprietors who paid it in terms of Clause [●] within 25 Working Days of a written request from the said Proprietors for repayment.”

The Council has consistently refused to commit to any shorter timeframe in which it will commit funds towards new infrastructure or indeed deliver the infrastructure to which contributions relate.

The Council’s response to concerns raised during consultation on the wording in the SG is that:

“... the funding mechanism for some new build schools means that the construction costs are repaid over a period of up to 30 years. This means that the financial impact of a new development may be spread over a 30 year period. In view of this, the Council may need to hold developer contributions for up to 30 years to meet these costs.”

That the Council may require to make payments over an extended period for infrastructure delivered through project finance (e.g. NPD or PFI/PPP) type models is understood.

However, the Council’s approach to this issue, goes beyond what is required to address it. The Council is seeking to rely on the wording in the SG to give it up to 30 years to allocate financial contributions towards any infrastructure provision.

If the Council are unable to use, or commit to use, education contributions within a reasonable timeframe (and we note that for all other contributions the Council propose a 10 year repayment timeframe), it calls into question the legitimacy of those contributions.

If development can be carried out without infrastructure being provided, or committed to, for another 30 years, it calls into question whether the infrastructure is actually needed to enable the development to proceed. Retention of contributions for such an extended period without any commitment to the provision of infrastructure would appear contrary to Circular 3/2012.

In the context of s75 agreements we have negotiated recently and are currently negotiating with the Council, this particular issue continues to arise. The Council resolutely refuses to deviate from the terms of the clause set out above, and does not accept that it should not have the right to retain monies for 30 years without using or allocating the contributions.

We would suggest wording

“The Council will hold contributions towards education infrastructure for a period of 10 years unless within that period it has committed contributions towards the provision of new school infrastructure. This is in order for payments to be used for unitary charges associated with infrastructure projects which have been delivered through revenue based funding mechanisms.”

This would allow the Council to retain contributions where it had committed funds within 10 years.

Conclusion

The Council has not responded in any meaningful way to concerns raised during consultation on the SG regarding the proposed repayment period for education contributions. The Council is already applying the text in the proposed SG to s75 agreements so as to give it up to 30 years to decide how to use education contributions. We would submit this approach is not consistent with the tests in the Circular.

For this reason, we would respectfully submit that the Scottish Government should direct the Council to modify this aspect of the SG to provide for a 10 year period to use or commit funds.

Yours faithfully



for and on behalf of Burness Paull LLP

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Notice of Intention by Trudi Craggs and Trevor Croft, Reporters appointed by the Scottish Ministers

- Planning appeal reference: PPA-230-2207
- Site address: 100 metres north east of 19 Turnhouse Road, Edinburgh, EH12 0AX
- Appeal by West Craigs Limited and Dunedin Canmore Housing Association against the decision by the City of Edinburgh Council
- Application 16/04738/PPP for planning permission in principle dated 3 October 2016 refused by notice dated 20 April 2017.
- The development proposed: residential development, up to a maximum of 1,400 units, and ancillary commercial (class 1 retail and class 2 financial and professional), including landscaping, access and services and all other ancillary development
- Application drawings: see annex 1 at the end of this notice
- Date of site visits by Reporters: 5 October 2017, unaccompanied, and 18 January 2018 accompanied
- Date of hearings: 24 and 25 January 2018

Date of notice: 30 April 2018

Notice of Intention

For the reasons given below we are minded to allow the appeal and grant planning permission in principle subject to the 23 conditions listed below, following the signing and registering or recording of a planning obligation under section 75 of the Town and Country Planning (Scotland) Act 1997, or some suitable alternative arrangement, covering the matters listed in paragraphs 120-121 below.

Preliminary

On 16 May 2017, the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 came into force. The 2017 regulations revoked the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 with certain exceptions. The 2011 Regulations continue to have effect for an application (and any subsequent appeal) for planning permission where the applicants submitted an environmental statement in connection with the application before 16 May 2017. That was done in this case. We are therefore determined this appeal in accordance with the 2011 regulations as they applied before 16 May 2017.



Reasoning

1. We are required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan for the area comprises the approved SESplan Strategic Development Plan 2013 and the Edinburgh Local Development Plan 2016. Having regard to the provisions of the development plan, the oral and written submissions and to our site inspections, the key issues in this appeal are (1) the impact of the proposal on the green belt; (2) the extent to which the proposal complies with the requirements of the site brief and design principles which form part of the development plan, particularly in relation to masterplanning and design; and (3) the impact of the proposal on transport and other infrastructure.

Impact on the green belt

2. The proposed site is located to the west of Maybury Road. The vast majority of the site forms part of housing proposal HSG19 – Maybury which is allocated in the local development plan as a housing-led development of around 1,700-2,000 houses. The remainder of the site forms part of the green belt to the north of Craigs Road, which is outwith the HSG19 allocation. The inclusion of this land within the site boundary and the consequential incursion into the greenbelt was one of the reasons the council refused the application.

3. The council considered that the potential impacts on the green belt had not been properly assessed and further that the development would undermine the greenbelt objectives, the nature of the urban edge and the special character of the city and the setting of Cammo Park Estate. In particular, the council concluded that the proposal would be contrary to *Strategic Development Plan Policy 12* and also the following policies of the local development plan: *Env 7 Historic Gardens and Designed landscapes; Env 10 Development in the green belt and the countryside; Des 9 a) and c) Urban Edge Development and Hou 1 Housing Development*.

4. The appellants confirmed in response to our request for further information that they did not intend to construct any housing on the greenbelt and accordingly, would accept the matter being regulated by either a condition or a planning obligation expressly prohibiting housing on the greenbelt. The council remained of the view that there should be no development on the greenbelt and had concerns about the legality of such a condition. However, it confirmed that in principle a planning obligation could be acceptable.

5. At the hearing session, the need for including the greenbelt within the red line boundary was discussed further. The appellants confirmed that in fact the land would only be used for potential access improvements. The council remained concerned because although a condition or planning obligation would prohibit housing, it would not prohibit the construction of other infrastructure including an access or link road from the Bughtlins roundabout, which we understand had been proposed earlier by the appellants and which was opposed by the council.

6. The appellants clarified that what was intended was improvements to the Craigs Road/Maybury Road junction and any consequential realignment of Cammo Walk rather than the construction of a link road. The appellants produced an indicative design for the junction improvements as part of their transport assessment. Separately, at the start of the hearing sessions, the council submitted an alternative indicative junction design which had been produced by Taylor Wimpey as part of its application over the eastern part of the HSG19 allocation which includes part of the appeal site. For both designs to be

implemented, it appears from the drawings that only a very small section of the greenbelt within the red line boundary would be required.

7. There is no evidence before us which justifies the inclusion of such a large area of greenbelt. Further the environmental statement did not assess the impact of development in the greenbelt; that was not disputed by the appellants. However, the appellants were not seeking approval for a junction design as part of their application. We note that the site brief does explicitly refer to and indicatively show on the plan the junction improvements at Craigs Road/Maybury Road and the new footpath/cycleway forming Cammo Walk. Such improvements would be a matter for the approval of the council through a subsequent application; the current proposal is not conditional on the road improvements taking place.

8. Taking all of this together, we consider that the use of the greenbelt, and consequently any impact on it, should be restricted and this can be done without undermining the proposal. We do not consider that it is sufficient simply to rely on the confirmations received from the appellants during the course of the hearing sessions. This would not give the council the comfort or protection it needs, nor would the permission reflect the intentions of the parties. We have considered the submissions from the parties regarding the use of a condition or planning obligation and find that planning obligations regulating and restricting the development on this land are necessary and reasonable. We comment on this further below.

9. Against that context, we turn to the policies referred to by the council in its decision notice. *Strategic development plan policy 12* relates to the definition and maintenance of the green belt around Edinburgh in the local development plan rather than providing criteria against which development proposals should be assessed. The policy is therefore strategic in nature and of little direct relevance to this proposal.

10. In relation to policy *Env 7*, we saw on our site visits the setting of the Cammo Park Estate and noted its topographical relationship with the proposed site, the green belt land within the red line boundary and the housing allocation HSG20, which lies to the east of the estate. Given the limited extent of green belt that may be required, that any road improvements would require the approval of the council and that further environmental information could be requested if required at that stage depending on the scope and extent of the development, we are content that the proposal would not be contrary to this policy.

11. Further, we do not consider that policy *Env 10* is directly relevant to this proposal. Similarly, *Des 9* relates to development on sites at the greenbelt boundary. Although it has relevance to the site within the allocation and is considered below, it is not relevant to the area within the greenbelt itself. Turning to policy *Hou 1*, given that the appellants have confirmed that there would be no housing on the land within the green belt the proposal would not be contrary to this policy

12. Taking all this together we find that although the site includes an area of green belt, by restricting the use of that land through planning obligations, the proposal would not be contrary to the development plan.

Masterplanning

13. The local development plan contains the Maybury and Cammo Site brief – development principles. The introductory text states that comprehensive masterplanning and phasing of development will be required drawing upon place-making and street design

principles to create distinctive and sustainable urban communities at the gateway to the city.

14. Paragraph 47 of the local development plan also provides further guidance on masterplanning. Masterplans should be prepared by developers as part of the planning application process to demonstrate how their proposals meet design and place-making objectives and site-specific requirements. It goes on to say that masterplans should also provide information on the mix of uses, how a development relates to the surrounding area and, where relevant, proposals on an adjacent site and development phasing.

15. Both parties also referred to various national and local guidance on masterplanning in particular PAN 83 Masterplanning and Edinburgh Design Guidance. The appellants submitted an indicative masterplan with their application. They also provided a design and access statement, a landscape overlay plan, site zones plan, plots plan and a phasing plan to the council prior to the determination of the application.

16. Prior to determination, a meeting took place between the parties to try to find a way forward to deal with the council's concerns about the masterplan. However, no further iteration of the masterplan was produced by the appellants and we understand that there was no further constructive engagement between the parties. The council strongly suggested that Architecture and Design Scotland be engaged to chair a design forum; however, for a variety of reasons, this was not arranged.

17. At the hearing, we discussed the process which had been undertaken and reference was made to other applications within the city where masterplanning had been carried out. The parties agreed that there is not one prescribed method for developing a masterplan. The appellants explained that they had followed the simplified process flowchart set out in PAN83. However, the council did not consider that there was sufficient evidence that this was the case.

18. While it did accept that some masterplanning had been done, the council was critical of the outputs. In particular, the masterplan did not cover the whole of the allocated site; there was insufficient information particularly in relation to landscaping and drainage and there was no certainty that solutions could be found which would satisfactorily deal with both these aspects while reflecting the requirements of the site brief.

19. The concern is that the masterplan does not show how both these elements, which the council considers are strategic issues, relate to each other. No landscape strategy was submitted with the application as required in terms of the council's Edinburgh Design Guidance. There was no drainage design either.

20. In essence, the council considered that the information that they required to assess the application had simply not been provided. If this information was not provided as part of the planning application stage, key aspects of the design would not be considered and developed strategically across the site. Rather, they would be progressed at a sub-site level leading to an inconsistent and incoherent design.

21. We accept that it would have been helpful to have had a landscape strategy and drainage design, but there is no evidence before us that demonstrates that solutions to both cannot be found. Indeed, the council's flood officer accepted that the technical evidence demonstrates that the proposed site would not be at risk of flooding and would comply with local development plan policy *ENV 21 Flood protection*.

22. However, while we find that the appellants did have regard to the process suggested in PAN83, and did provide high level details in relation to the mix of uses, the site's

relationship to the surrounding area (which we deal with below) and development phasing, we do not consider that the masterplanning was as comprehensive or as thorough as it ought to have been and that is reflected in the outputs. Accordingly, we do have some sympathy with the concerns expressed by the council.

23. It is reasonable to conclude, having considered the evidence before us, in particular from the hearing sessions, that had there been more constructive engagement and dialogue between the parties during the application stage, many of the council's concerns may have been addressed.

24. Despite our observations on the process and the outputs, having considered the site brief and design principles in turn at the hearing, we find that the masterplan broadly complies with these. However, we consider that it is necessary for further masterplanning to be undertaken to ensure that solutions to these strategic issues are dealt with at a site wide level. We consider that this can be dealt with by condition. We deal with this further below.

Design

25. The design policies of the local development plan also focus on place making. Policy *Des 1 Design Quality and Context* states that planning permission will be granted for development where it is demonstrated that the proposal will create or contribute towards a sense of place. Design should be based on an overall concept that draws upon positive characteristics of the surrounding area.

26. This is echoed in policy *Des 4 Development Design – impact on setting*, which provides that new development will be expected to have similar characteristics to the surrounding buildings and urban grain. It goes on to state that the siting and design of development should be guided by views within the wider landscape and an understanding of local landscape character, including important topographical features.

27. In terms of policy *Des 9 Urban Edge Development* paragraph c), development at the green belt boundary will only be allowed where it includes landscape improvement proposals that will strengthen the green belt boundary and contribute to multi-functional green networks by improving amenity and enhance biodiversity.

28. The council considered that there was insufficient information to conclude that these policies were met. The information submitted as part of the landscape and visual impact assessment had not demonstrated that the proposal would conserve and enhance the landscape setting and special character of the city or include landscape improvements which would strengthen the green belt boundary. In turn the appellants referred to their design and access statement and also the assessment of their masterplan against *Designing Streets*.

29. The design and access statement shows the overall design concept, the evolution of the design and the factors including constraints which affected it. It shows how the design draws on the characteristics of the surrounding area and reflects surrounding buildings and development particular to the east of the site.

30. On our site inspections we noted that there were very few features of note on the site and the surrounding area. The proposed site consists of agricultural land, gently undulating to the north of Turnhouse Road where it rises to Craigs Road, with open views to the Pentlands and to the north. The site brief recognises this; it states that development must respect the ridgeline of Craigs Road and elevated slopes within the site. The appellants provided a plan, showing building heights against the site's topography.

31. Further the site brief also sets out what is required by way of boundary treatment along Craigs Road, adjacent to the green belt. The design principles also require the creation of green corridors and networks across the site. The masterplan broadly adheres to these principles by including a 30m green corridor along Craigs Road as well as a green corridor running north to south through the site.

32. While we accept that the design has been developed in line with Designing Streets and reflects the existing patterns of settlements to the east of the site, there was an opportunity in this case to use creative and innovative design to create a sense of place. We do not consider that this has been fully achieved. We would expect that, through the detailed design process, aspects of the design could be improved to enhance the place-making and the proposed site's relationship with the surrounding area.

33. As the site is allocated in the local development plan, the principle of development has been accepted. The design broadly reflects the requirements of the site brief and demonstrates that the boundary improvements required by the site brief can be achieved. However, similarly to the masterplanning process and outputs, we have some sympathy with the council's concerns about the overall design. Despite this we find that while the current design could be improved, it would be unreasonable to conclude that it would be contrary to policies *Des 1, Des 4 and Des 9c*.

34. The council refused the application in part on the basis that it was contrary to policy *Des 2 Co-ordinated design*. As referred to above, the eastern part of the site is also included within the red line boundary for the Taylor Wimpey application which is currently being considered by the council but has not yet been determined.

35. The appellants advised that this section was included within the red line to show the access links and relationship between the two proposals but that no development would be undertaken on this area under the appeal proposal. Indeed, there is no evidence before us which would demonstrate that the effective development of this adjacent land would be compromised.

36. At the hearing it was also accepted and agreed that the proposal would not compromise the development of the green corridor or the pedestrian/cycle bridge link in the locality identified in the local development plan. The delivery of the bridge is dealt with below. Accordingly, we conclude that the proposal would not be contrary to policy *Des 2*.

37. Policy *Des 3 Development Design – Incorporating and Enhancing Existing Potential Features* states that planning permission will be granted where it is demonstrated that existing characteristics and features worthy of retention on the site and in the surrounding area have been identified, incorporated and enhanced through the design. The explanatory text makes it clear that existing features include built structures, archaeology, trees and woodland, landscape character, views and biodiversity.

38. The council considered that there was insufficient information to assess how West Craigs farmhouse and steading and West Craigs farm cottage could be incorporated and enhanced through the design process and for that reason concluded that the application was contrary to policy *Des 3*.

39. On our site inspections we saw the buildings at West Craigs farm and noted their relationship with the site. These buildings are on that part of the site which is also covered by the Taylor Wimpey application. The appellants have confirmed that in terms of the development which would be permitted by the appeal proposal, there would be no requirement to demolish these buildings.

40. The appellants would not be developing this area and accordingly there would be no surrounding development into which these existing buildings could be incorporated. The cultural and heritage assessment had been updated following the submission of the application and the impact of the development on these properties has been assessed.

41. Given that it is accepted by the parties that these buildings are worthy of retention, subject to the imposition of a condition, which we deal with below, we find that the proposal would accord with policies *Env 8 Protection of Important Remains* and *Env 9 Development of Sites of Archaeological Significance*.

42. We note that policy *Des 3* applies to more than just existing buildings. On our site inspections we saw that there were some mature trees and hedges which may be worthy of retention. We also saw the buildings at Meadowfield Farm and the Turnhouse cottages, all of which the appellants have confirmed would be retained and incorporated in to the development. Subject to the imposition of conditions to ensure that these features are retained where practicable, we are satisfied that this proposal would comply with policy *Des 3*.

43. Policy *Des 7 Layout Design* was also referred to by the council in its reasons for refusal. The council considered that a comprehensive approach to the layout had not been demonstrated. Although we consider that the design could be improved, as mentioned above, the masterplan adheres to the design principles in the site brief regarding the provision of open space, public buildings and access and connections.

44. We accept that further information is required in relation to the drainage design. However, there is no evidence before us that any of the requirements of this policy are insurmountable. We consider that the matters set out in this policy would be more appropriately dealt with at the detailed design stage, through the evolution of the masterplan and the design. Accordingly, we conclude that this proposal would not be contrary to policy *Des 7*.

45. The parties accepted that the proposal would comply with policies *Des 5 Development Design – Amenity* and *Des 6 Sustainable Buildings*. We accept this assessment.

46. Overall, having assessed the proposal against the design policies on the development plan, we conclude that subject to the imposition of conditions, the proposal accords with them.

Transport

47. The council found that the proposal would be contrary to local development plan policy *Tra 10 New and Existing Roads* as the proposed link road to the Bugtlines roundabout could prejudice new road and network improvements including the implementation of proposal T17 of the local development plan. T17 relates to the proposed junction improvements to Craigs Road/Maybury Road.

48. As mentioned already, the appellants confirmed that they would not be constructing a link road and we are content that this can be properly regulated by a planning obligation. Further the indicative junction design shows one option for delivering the junction improvements envisaged by the site brief. Taking all this together, we are not persuaded that this proposal would prejudice proposal T17. We therefore conclude that the development would not be contrary to policy *Tra 10*.



49. The council also found that the proposal would fail to provide a pedestrian/cycle bridge link between the site and Edinburgh Gateway in the location identified in the local development plan and accordingly would be contrary to policy *Tra 8 Provision of Transport Infrastructure*. We note that the indicative masterplan identified the location of a possible bridge as well as the existing bridge. The parties agreed at the hearing that the possible bridge location was generally in the location identified in the local development plan.

50. On our accompanied site inspection we visited this location and there did not appear to be any constraints on the site which would prevent the delivery of the bridge, although we understand that there may be further technical considerations, as set out in a report by Arup submitted by the appellants. They would require to be addressed through further engineering and design work.

51. However, all of the evidence before us demonstrates that the proposal could provide a bridge in this general location. The delivery mechanism was discussed and this is dealt with below. We therefore conclude that the proposal would not be contrary to policy *Tra 8*.

Other material considerations

52. Scottish Planning Policy (SPP) introduces a presumption in favour of development that contributes to sustainable development. At paragraph 28, the aim of the policy is to achieve the right development in the right place; it is not to allow development at any cost. Paragraph 29 sets out guiding principles.

53. Paragraph 32 states that proposals that accord with up to date plans should be considered acceptable in principle and consideration should focus on the detailed matters arising.

54. In this case the vast majority of the site forms part of an allocation in the local development plan and as we have concluded above, the proposal accords with the plan. While we accept that, as this is an application for planning permission in principle, there are matters of detail which would require further consideration and development, we are satisfied that that can be dealt with by condition. We therefore find it reasonable to conclude that by allowing this appeal, development would be delivered in the right place, as identified through the local development plan process.

55. It would make efficient use of existing capabilities of land, buildings and infrastructure; support the delivery of accessible housing, business, retailing and leisure development and support delivery of infrastructure including transport and education, all in accordance with the principles set out in SPP.

56. Representations were received from Corstorphine Community Council, Cramond and Barnton Community Council, Spokes and local residents. We have had regard to these. At the hearing Mr and Mrs Matthews, residents of Lennie Cottages, expressed concerns about the increase in traffic along Craigs Road, particularly along the section of road immediately in front of the cottages. We saw on our site inspections the proximity of the road to the houses, its width, gradient and layout as well as the extent of on-street parking immediately in front of the cottages.

57. The Matthews explained their concerns had already been raised as part of the examination into the local development plan. They accepted that the site was allocated in the development plan but wanted to ensure that proper consideration was given to how the impacts from the increase in traffic could be mitigated.

58. In response the appellants indicated at the hearing that they would be willing to introduce measures to mitigate or avoid potential impacts on Lennie Cottages. One way of doing this would be to move the junction between Craigs Road and Turnhouse Road slightly to the east. The council accepted that this may be an appropriate solution. The site brief requires the widening of Craigs Road on the southern edge to facilitate all vehicle movements and policy *Des 7* requires safe and convenient access and movement in and around the development. The potential solution could be incorporated as part of this work.

59. We concluded above that the proposal would comply with the site brief and policy *Des 7* and we do not consider that the residents' concerns would justify departing from those conclusions. However, we welcome the appellants' commitment and the council's support. We consider that this can properly be dealt with by condition and we comment on this further below.

Conditions

60. Proposed conditions were discussed at a hearing session. Each party had proposed its own set of conditions although there was considerable overlap between them. Following the hearing, the parties sought to agree the conditions. The council suggested 21 conditions be imposed if planning permission was to be granted.

61. Other than conditions 1 and 7, these conditions were agreed with the appellants. In relation to condition 1, we note that while in principle the appellants do not accept that further masterplanning is necessary, they have no objection to the condition should we conclude otherwise.

62. We have based the conditions set out below on those agreed between the parties although we have made some minor amendments for consistency and clarity to ensure that they meet the six tests set out in *Circular 4/1998: The use of conditions in planning permissions*.

63. For the reasons set out above, we accept the council's position that condition 1, which requires the submission of a masterplan, is necessary and reasonable. Conditions 2, 3, 4 and 5 supplement condition 1 and so we also consider that these are necessary. They provide precision and clarity to what is required as part of the masterplan.

64. As this is an application for planning permission in principle we agree that condition 6 is necessary. We note that the parties have agreed that class 1 retail and class 2 office should be a maximum gross floor space of 300 square metres. This was discussed at the hearing and the parties' confirmed their positions in writing following the close of the hearing.

65. We note that the site brief refers to a maximum of 800 square metres gross floor space. As the site is only part of the overall allocation, we consider that it is reasonable for the maximum gross floor space to be less than that anticipated in the site brief. For that reason, we are content to include this requirement in condition 6.

66. We have not imposed the council's proposed condition 7 in relation to a servitude through the Rosebury Estate. We accept the appellants' position that this is not necessary nor reasonable and could preclude other drainage solutions being considered.

67. The remaining conditions are either required to ensure that the proposal complies with policy or to deal with specific requirements of statutory consultees, namely Network Rail and Edinburgh Airport Limited. In all these cases, we accept that the conditions are

necessary and reasonable. We have also added a further condition, condition 21 in relation to Turnhouse Road. This is dealt with below.

68. The parties also proposed a direction extending the life of the planning permission and nine informatives which were discussed at the hearing sessions. Given the scale of the proposal and that it would be delivered in phases, most likely by different developers, we consider that the timescales proposed in the direction are reasonable. It will be incorporated in our final determination notice in the event of our granting planning permission in principle.

69. As for the informatives, in relation to matters 2 and 3, as this will be a phased development, we are required to impose a condition requiring a notice of completion at the end of each phase of the development. This is dealt with by condition 22. We do not consider that informative 4 is required. The remaining informatives are acceptable and are incorporated at the end of this notice.

Planning obligations

70. The council is seeking various obligations from the appellants in relation to affordable housing, Edinburgh tram, other transport infrastructure, education infrastructure and healthcare infrastructure. In addition as mentioned above, the council is seeking to restrict the development of land within the greenbelt through obligations. All of these matters were discussed at the hearing session and subsequent to that the parties sought to agree these where possible. Both parties submitted further written submissions after the hearing sessions setting out their final respective positions.

71. The majority of the obligations being sought are agreed between the parties. However as discussed at the hearing session, even where agreement has been reached, we consider that we need to be satisfied that the obligations comply with local development plan policy as well as *circular 3/2012 Planning Obligations and Good Neighbour Agreements* and the recent Supreme Court decision of *Aberdeen City and Shire Strategic Planning Authority v Elsick Development Company Limited* which the appellants specifically drew to our attention.

72. *Policy Del 1 Developer contributions and Infrastructure Delivery* states that proposals will be required to contribute to infrastructure provision where relevant and necessary to mitigate any negative additional impact (either on an individual or cumulative basis) and where commensurate to the scale of the proposed development. The policy goes on to specifically identify transport and education infrastructure.

73. After the adoption of the local development plan, the council prepared supplementary draft guidance. However, the Scottish Ministers directed in July 2017 that this should not be adopted. Accordingly, the council has prepared further supplementary guidance and an updated action programme both of which were considered by the council on 18 January 2018. This supplementary guidance is currently being consulted on and, as yet, it has not been adopted. In those circumstances, we consider that it is appropriate to take account of the guidance but to give it reduced significance to it.

74. We deal with affordable housing first. *Policy Hou 6* of the local development plan provides that planning permission for residential development consisting of 12 or more units, as is the case here, should include provision for affordable housing amounting to 25% of the total number of units proposed. The policy's supporting text provides that the details of the provision will be a matter for agreement between the developer and the council.

75. We note that one of the appellants is Dunedin Canmore Housing Association which delivers affordable housing. However, we do not think that is sufficient on its own to guarantee the delivery of affordable housing. We consider that it is right for there to be planning control over the matter to deal with the types of housing to be provided and the location and timing of the provision of affordable housing.

76. Given the size of the site and that the actual number and location of the affordable housing would only be known as further details are submitted, on a phase by phase basis, we accept that a planning agreement is necessary to ensure that the requisite level of affordable housing and the benefits that come with that would be delivered. We are satisfied that this contribution complies with policy and meets the tests in the circular.

77. Turning to contributions for transport infrastructure, limb (a) of policy *Del 1* identifies the following transport infrastructure provision: the strategic infrastructure from SESplan Figure 2; the transport proposals and safeguards from Table 9 of the local development plan, including the existing and proposed tram network; other transport interventions as specified in part 1 section 5 of that plan and to accord with policy *Tra 8*. Further it states that contribution zones will apply to address cumulative impacts.

78. Dealing first with the contribution to the tram project, we note that both the existing route and the extensions are referred to in Table 9. The supplementary guidance also includes those sections of the tram project which have already been constructed. The purpose of the obligation is to gather contributions to offset the borrowing/forward funding secured by the council in order to construct the tram which has opened up development sites.

79. In this case the council is seeking a contribution of £1,384 per unit based on residential use in zone 1. This contribution has been agreed between the parties. The guidance indicates that contributions for large developments will be negotiated separately. There is no suggestion that this contribution would not accord with circular 3/2012. Having considered the circular, we are satisfied that this contribution is necessary given the reliance of the development on the Edinburgh Gateway tram stop in order to make the site accessible and to mitigate the predicted traffic impacts of the proposal.

80. The contribution serves a planning purpose, is identified in the development plan, relates to the proposal development and is fair and reasonable in scale and kind to the development. There is also a clear and strong relationship between the contribution and the development. For all these reasons, we consider that this contribution complies with policy, the circular and lesson from the judgement for the *Elsick* case. Therefore we consider that this contribution is justified.

81. Turning to the pedestrian/cycle link bridge, the parties have agreed that this would be provided by way of obligation. It is agreed that in the first instance the appellants are to progress with the delivery of the bridge. If they deliver the bridge a proportion of the cost of the bridge, would be deducted from the total transport contributions payable by the appellants. If the appellants are unable to deliver the bridge the council can step in and do so. In that circumstance, the appellants are to make a proportionate contribution towards the cost of the bridge. Until the bridge is constructed the western most part of the site cannot be occupied.

82. The need for the link bridge is set out in the site brief and in the action programme. We are also satisfied that this contribution complies with circular 3/2012 particularly as the contributions are linked to the area of the site relative to the total area of the allocation. We therefore consider that this obligation is justified.

83. The parties agree that the site is within the Maybury/Barnton transport contribution zone; we concur. The contribution has been agreed between the parties and we are satisfied that it is necessary and reasonable and in all other respects meets the tests in circular 3/2012. We also considered this in light of the *Elsick* decision. In this case there is a strong connection between the proposal and the improvements which would be delivered by the contribution and we find that the contributions are fair and reasonable in scale and kind to the proposed development.

84. However, in addition to that transport contribution, the council is seeking a further contribution in respect of the redesign of Maybury Junction for cycling and walking which is a separate item in the action programme.

85. We note that under the actions for the Maybury/Barnton contribution zone, the further details for Maybury junction state *"increase junction capacity... better provision for pedestrians and cyclists..."*. Under delivery it states *"Initial design work completed."* Taking all this together it is not clear why this additional contribution towards the redesign is required. Therefore, we are not persuaded that it is necessary or justified.

86. The parties have agreed contributions in respect of city car club and traffic regulation orders. These are referred to in the supplementary guidance and what is being sought reflects the guidance. We accept that these are required in order to mitigate the impact of the proposal and that they comply with the terms of the circular.

87. The council is seeking an obligation to construct a 2 metre wide public footway along the southern side of Turnhouse Road. The site brief highlights that there is an opportunity to change the character of Turnhouse Road through street design. Separately it also provides that proposals should address a new footway/cycleway along the south-west side of Turnhouse Road.

88. This element of transport infrastructure is also identified in the action programme, which indicates that it would be delivered as an integral part of development secured through planning condition.

89. We note that the council is seeking to restrict occupation of the development until this footway is completed. This is similar to the terms of condition 20 in relation to Craigs Road. However, we note that in both cases, in terms of the action programme, the improvements are only required to be in place by 2023. That would suggest that such a restriction could not be justified.

90. But given the importance of safe access into, through and across the site, the fact that several phases of the development may commence simultaneously and that both roads are strategically important in terms of place making we conclude on balance that this restriction is justified.

91. However, we are not persuaded that this requires an obligation rather than a condition. In terms of circular 3/2012, paragraph 15 states that planning conditions are generally preferable to a planning or legal agreement. In addition, the obligation being sought is very similar to the condition regarding Craigs Road and there is no evidence to justify why the improvements to Turnhouse Road should be dealt with differently. We therefore have imposed a further condition, condition 21, which replicates the broad thrust of the proposed obligation amended to achieve consistency with condition 20 in relation to Craigs Road.

92. We now deal with education. For education, part (b) of the policy identifies the education infrastructure provision which includes the new school proposals set out at table

5 and the potential school extensions listed in part 1 section 5 of the local development plan. Similarly to transport infrastructure, contribution zones will apply to address cumulative impact.

93. The proposed new primary school which would be provided on the site is listed in table 5 as proposal SCH 6. We note that there are no new secondary school proposals in the table. Part 1 section 5 at page 57 also lists the new primary school as well as extensions to Fox Covert Roman Catholic primary school, possible high school extensions at either The Royal High School, Craigmount High School or Forrester High School and the extension to St Augustine's Roman Catholic high school. Again, there is no reference to a new secondary school in west Edinburgh.

94. The broad principles are agreed between the parties except in relation to the contribution towards the new non-denominational secondary school. However, the level of the contributions is in dispute for all education contributions with the exception of the contribution towards the extension to the denominational primary school.

95. The draft supplementary guidance was helpful when considering the level of contribution given the conflicting written evidence from the parties in this regard. As mentioned above the supplementary guidance produced by the council in March 2017 following the adoption of the local development plan was never adopted. This was in accordance with a direction from Scottish Ministers on 3 July 2017 who were concerned about the inclusion of a new secondary school in west Edinburgh within the area adjacent to Edinburgh Airport at the International Business Gateway site.

96. The most recent supplementary guidance for consultation, which was considered by the council on 18 January 2018, was informed by an education infrastructure appraisal and the updated action programme and represents the most up to date requirements of the education authority within the council.

97. Section 2a says that the council will assess the cumulative impact of all new developments on education infrastructure. Accordingly, education contribution zones have been identified and per house and per flat contribution rates established. The zones are based on the catchment areas of the schools. The infrastructure requirements are set out in annex 1 with costings and delivery dates. There is a map of each contribution zone which identifies the associated actions and contributions. Therefore we consider that the council has established a direct link between the development and the obligation.

98. The actions for the west Edinburgh contribution zone are: three primary school classes at Gylemuir primary school; new secondary school; new primary school at the site; additional secondary school capacity at St Augustine's Roman Catholic high school (which also falls within the Tynecastle contribution zone); and four Roman Catholic primary school classes at Fox Covert or St Joseph's Roman Catholic primary school.

99. The action programme also requires three primary school classes to be delivered at existing west Edinburgh non-denominational schools. It is not clear whether this is the same as the contribution towards 3 classes at Gylemuir primary school and therefore there may be duplication and an element of double counting when calculating the contributions.

100. The site falls within the sub area W-1 of the contribution zone. Paragraph c of section 2a provides that the "full contribution" is based on all identified actions. The "primary school contribution" is based on identified actions for non-denominational and

Roman Catholic primary schools. It is again not clear whether this reflects the actions identified in the supplementary guidance or in the action programme.

101. Considering all this together, we find that a contribution towards the new primary school is justified and accords with the tests set out in circular 3/2012. We also find that a contribution towards the denominational primary school is also justified. However, it is not clear why two separate contributions are being sought given the definition of “primary school contribution” in the guidance.

102. Accordingly, we find that there should be one contribution for both elements. In terms of the guidance, for both elements the contribution would be £2,307 for a flat and £9,958 for a house. However, given our concerns regarding the possibility of double counting, the council should satisfy the appellants that there is no double counting or if there is double counting these figures should be adjusted downwards accordingly. Given the terms of the supplementary guidance and the action programme the parties should be able to identify the relevant costs and from that agree the appropriate primary school contribution.

103. In addition, a primary school land contribution would have been payable towards a new primary school site had the appellants not been providing the serviced site. However, as they are providing that land, an amount equal to its value, which is agreed at £4.75 million, less the land contribution which would have been payable, should be off set from the total education contribution.

104. In relation to the non-denominational secondary school contribution, we do not consider that the need to contribute towards the new secondary school or the level of contribution in that regard has been fully justified given the requirements in the local development plan, the status of the supplementary guidance and the fact that the development of the new school is at such an early stage with feasibility studies being carried out and no site having yet been identified.

105. Further, having consider the education infrastructure appraisal, it appears that that the existing schools identified for extensions do have some capacity which could be augmented through extensions, all of which would mitigate the impact of the proposal. Accordingly, we find in principle that a contribution should be made to those extensions as required in terms of the local development plan. In terms of the denominational secondary school, we find that in principle a contribution should be made towards an extension to St Augustine’s Roman Catholic high school. We consider that both contributions would meet the tests set out in circular 3/2102.

106. However, we are again not persuaded that the level of contribution required for the actions set out above should be the amount stated in the draft guidance. We understand that that figure includes a contribution towards the new secondary school, which we have found above is not justified. Therefore, the council again requires to justify the level of contribution being sought; from the costs identified in the action programme we consider that the parties should be able to agree the appropriate contribution towards these two actions.

107. In summary, while we accept that education contributions are justified and should form part of the section 75 obligation, the parties should seek to agree the levels of contribution based on our conclusions above.

108. Turning to the healthcare contribution, in terms of appendix C to the local development plan, contributions may be sought for primary healthcare infrastructure

capacity from housing developments in identified contribution zones. Paragraph 145 states that while the council recognises that the scale of proposed developments may also impact on other infrastructure including health and community facilities, there is a current lack of information on the scale of such requirements and how they should be addressed. Therefore, any requirement for a contribution would require to be considered on a case by case basis where a clear justification can be provided in the context of circular 3/2012.

109. The draft supplementary guidance says at section 2e that a primary health care appraisal has been prepared by Edinburgh Health and Social Care Partnership. Assumptions were made as to the amount of new development which will come forward and from this the number of new patients expected from the developments was identified.

110. The guidance goes on to state that the appraisal indicated that additional infrastructure will be required to accommodate the cumulative number of additional patients. To ensure that the total cost of delivering the new primary healthcare infrastructure is shared proportionately and fairly, healthcare contribution zones are identified. The site is within the west Edinburgh contribution zone.

111. Annex 4 sets out the healthcare actions. One of the actions is a new practice to mitigate the impact of new development in west Edinburgh including from the site. It is anticipated that it would be co-located with the new primary school. From the table, we note that the timescale for delivery is still to be confirmed and there is only an estimated cost of £4 million at this stage. Further it seems that options are still being explored. We also note that funding is identified as coming from "H&SC Partnership/developer".

112. The table goes on to set out developer contribution rates. Surprisingly, for this purpose, it is assumed that all of the costs would be paid for by development in the local development plan. It is assumed that these developments would create 8,000 new patients. This equates to £500 per patient.

113. Taking this figure and using a dwelling figure based on average 2.1 persons per household, the contribution is £1,050 per dwelling. With 1,400 dwellings proposed on the site, the total contribution would be £1,470,000. The appellants resist this contribution. They consider that the council has not provided sufficient information to demonstrate that the contribution sought is fairly and reasonably related to the development.

114. We are satisfied that the proposal would create a direct need for healthcare facilities. However, there is no evidence as to whether the contribution is fair and reasonable in scale and kind to the proposal. In particular, there is no evidence to support the extent or boundaries of the contribution zones or whether these relate to practice boundaries. There is no evidence before us to justify the anticipated costs. These seem to be indicative at this stage particularly given that further options are still being explored which could result in changes to the boundaries and/or the proposed solution.

115. There is no evidence to justify the assumption of 8,000 new patients; and it is unclear the proportion of funding which is being sought from developers given that the guidance suggests that there may be some funding from the H&SC Partnership. All these points confirm our view that a fair and reasonable relationship in scale and kind between the required contribution and the proposal has not been established. The obligation would therefore fail one of the tests set out in circular 3/2012 and accordingly the requirement for a healthcare contribution should form no part of the section 75 obligation in this case.

116. We are satisfied that the obligation in relation to the future adoption of trees and shrubs within the boundaries of any future road is necessary to ensure the proper

management and maintenance of the planting. We therefore find that this obligation is justified.

117. Regarding the restriction of the land in the greenbelt, we note that the terms of the obligation are agreed however the plan referred to is not. Given our comments above, in particular the limited extent of the land which may be required for the junction improvements and the fact that it is agreed that this land would only be used for the works necessary to provide the junction improvements identified in the site brief, we accept the council's view that an obligation which restricts the use of the land to the works required for the junction improvements should only relate to the small area of the greenbelt land which may be required for that purpose.

118. The remainder of the land should be subject to a more restrictive obligation as proposed by the council to the effect that no development would take place on that part. The plan should be amended accordingly to reflect this. We consider that this is justified and necessary in order to ensure that the proposal complies with policy.

119. We have considered the parties' submissions regarding the use of a condition or an obligation to regulate this matter. Given the importance of this matter, we think that the restriction should run with the land. This should give the council the protection it seeks should the land be split up and developed by a number of developers.

120. In summary, on planning obligations, we conclude that the contributions agreed between the parties towards affordable housing, the Edinburgh tram, the pedestrian/cycle link bridge, the Maybury/Barnton transport improvements, the city car club, traffic regulation orders and landscaping are all justified and should be secured by way of a section 75 agreement.

121. We also conclude that education contributions are in principle justified. However, the level of contribution requires further clarification in line with our comments in paragraphs 101–103 and 105-106. In relation to the greenbelt we find, for the reasons set out above that two obligations are necessary to properly regulate this area. Finally, we do not accept that obligations to make a further contribution towards the costs of the redesign of Maybury junction for cycling and walking or in relation to the provision of a footpath along Turnhouse Road are justified. In respect of the latter, we have imposed this as a new condition for the reasons set out above.

The environmental impact assessment

122. The proposal requires environmental impact assessment. A comprehensive environmental statement was submitted with the original application and advertised in accordance with the regulations. The environmental information addresses the direct and indirect effects of the proposed development on: geology and soils; land use, agriculture and infrastructure; hydrology, drainage and water quality; air quality and odour; noise and vibration; ecology, nature conservation and biodiversity; cultural heritage; landscape and visual impact; pedestrians cyclists and community amenity; social-economic and community effects; traffic and transport; and disruption due to construction.

123. We have considered carefully the conclusions set out in the environmental statement. The impacts in general are considered to be low. A significant impact relates to loss of green belt, but at the time the environmental statement was prepared the new

local development plan, which removed part of the green belt, had not been adopted. Under the new plan this impact is effectively mitigated.

124. We have referred above to issues relating to landscape and visual effects, cultural heritage sites, local communities, individual dwellings and historic sites. There would be no significant effects that could not be addressed by mitigation achieved through conditions. So far as the other topics addressed in the environmental information are concerned, the then applicants concluded that there would be no significant adverse effects or that any significant effects could be mitigated by way of appropriate conditions.

125. The council has commented on the environmental impact assessment in its committee report. Although it raises a number of issues, particularly in relation to air quality on main roads, it proposes mitigation through conditions to counteract potential impacts. None of the reasons for refusal referred to significant adverse environmental impacts. Where environmental impacts are referred to, such as the setting of the Cammo Park Estate and West Craigs farmhouse, steading and cottage, these would be mitigated by way of conditions. The concerns that have been raised by the council will be addressed through the further work to be carried out under the matters specified in conditions through the permission in principle procedures.

126. None of the bodies responsible for advising on the other matters addressed in the environmental statement is maintaining an objection to the proposal, subject to the imposition of appropriate mitigation, which we have included in our conditions. We accept there would be no significant effects on the natural environment that could not be mitigated through conditions, and that there would not be any other significant residual effects of an adverse nature on the environment. There would be significant socio-economic benefits from the provision of 1,400 new homes. Net additional one off and full time equivalent jobs would generate economic value to the Edinburgh economy of £94 million in salaries and £192 million in gross value added over a 25 year period.

127. Subject to the mitigation referred to, we have no evidence before us to conclude that any outcomes from the environmental statement would make the proposal contrary to the development plan or would otherwise justify the refusal of planning permission in principle.

Conclusion

128. Taking all of the above together we conclude that the development is allocated in the local development plan, complies with the site brief and design principles and accords with the relevant policies of the development plan as set out above. There are no other material considerations which would lead us to alter our conclusions. Consequently, we are minded to grant planning permission in principle subject to the 22 conditions listed below.

129. This is also subject to the completion of a planning obligation to cover the matters noted in paragraphs 120 and 121 above. We will accordingly defer determination of this appeal for a period of 16 weeks to enable the relevant planning obligation (either an agreement with the planning authority or a unilateral obligation by the appellants under section 75 of the Town and Country Planning (Scotland) Act 1997 or some suitable alternative arrangement as may be agreed by the parties) to be completed and registered or recorded, as the case may be. If, by the end of the 16 week period, a copy of the

relevant obligation with evidence of registration or recording has not been submitted to this office, we will consider whether planning permission should be refused or granted without a planning obligation.

Trudi Craggs
Reporters

Trevor Croft

Proposed conditions

1. No development shall be undertaken on site, and no applications for the approval of matters specified in conditions (as required by condition 6 below) shall be submitted, until a detailed masterplan for the site has been submitted to and approved in writing by the Planning Authority. That masterplan should be supported by an Urban Design Framework derived from comprehensive site analysis and the findings of an agreed Environmental Statement and other supporting information (e.g. a transport appraisal, flood assessment, tree survey and landscaping strategy).

Reason: In order to secure an integrated layout and satisfactory urban design for the site as a whole, restrict the quantum of development to that appropriate to the site characteristics and to that assessed by the associated Environmental Statement.

2. The masterplan shall include a tree survey and tree constraints plan in the form specified in BS 5837:2012. The constraints plan should clearly mark all services adjacent to trees below 1.5m depth and influence the location of development. It shall also include a Tree Protection Plan in accordance with BS5837:2012 "Trees in relation to design, demolition and construction" shall be submitted to and approved by the Planning Authority demonstrating how trees to be retained on the site will be protected. That Tree Protection Plan shall include protection measures for the trees on the site during the construction period by the erection of fencing, in accordance with clause 2 of BS 5837:2012 "Trees in relation to design, demolition and construction". Those tree protection measures must be maintained during the entire development period and not altered or removed other than with the express written consent of the Planning Authority.

Reason: In order to secure the suitable retention and protection of the trees on the site both during and following completion of the development

3. The masterplan shall include a landscape framework document for the whole of the site. The landscape framework document shall include a statement confirming that the proposed landscape design is acceptable to Edinburgh Airport. The framework plan and cross sections shall, at a minimum, include the following:

- i. The height of development platforms and the existing and proposed land levels across the site;
- ii. Cross sections across the site including the effect of the development height on the ridge and across key elements within the site including the main road/green corridors/minor roads/boundaries indicating the quality of landscape elements and planting types/cycle routes and pedestrian routes/sustainable urban drainage systems (SUDS/flood landscape elements);

- iii. Proposed woodland areas and species mix and the species of trees and shrubs that will be used throughout the site;
- iv. The type and form of hard landscape design that is to be used across the site in order that there is consistency with elements such as signage/paving/benches;
- v. The type and form and quality of the landscape boundaries that are to be used throughout the site. Stonewalls and hedges shall be proposed reflecting the landscape heritage of the site;
- vi. The type of spaces and connecting green corridors that are being formed and the character of these places;
- vii. The findings of the ecology report should be incorporated into the landscape strategy;
- viii. The type and character of the view corridors, frames views that are being formed by the planting location;
- ix. Cycleways and pedestrian links;
- x. Strategic location on the plan of the integrated sustainable urban drainage scheme (SUDS) elements for flood events up to 1:30 plus climate change;
- xi. Strategic location on the plan of the Flood Landscape Areas (areas between the 1:30 plus climate change to the 1:200 plus climate change events). These areas to be below ground solutions; and
- xii. The design and configuration of the masterplan must reflect that of both the historic Meadowfield Steading and West Craigs Farm, including public open spaces, all external materials and finishes.

The approved landscape framework document shall be adhered to in full and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise first agreed in writing by the Planning Authority.

Reason: In order to achieve and secure an appropriate form of integrated landscaping across the entire site to a high standard, appropriate to the location of the site.

4. The masterplan shall also include for the retention and restoration of the unoccupied cottage buildings at 17, 19, 21 & 23 Turnhouse Road, 25 Turnhouse Road and 124 & 126 Turnhouse Road within the overall development of the site as a whole.

Reason: In order to ensure the retention of these properties and the contribution that they make to the historic character of these parts of the site.

5. Prior to the submission of any applications for the approval of matters specified in conditions (other than in relation to conditions 1 – 4 above), a phasing framework shall be submitted for the approval in writing by the Planning Authority. The phasing framework shall include a plan identifying individual phases of development. Thereafter, reference to phases in subsequent conditions relates to the identified phases within this phasing framework. The phasing framework shall include the following items and the timing of their delivery for each phase:

- i. the location of development phases;
- ii. the minimum and maximum number of residential units;
- ii. open space, landscaping, play provision, woodland management, and SUDS;
- iv. pedestrian, cycle and vehicular links;

The delivery of individual plots and phases will then be carried out in accordance with the approved phasing framework.

Subsequent applications for each phase of the development shall be accompanied by the following supporting information:

- i. an updated phasing plan;
- ii. an updated Transport Statement the scope of which will be agreed in writing with the Planning Authority;
- iii. a Design and Access statement, detailing the layout, streets and spaces, accessibility, safety and security, sustainability and energy efficiency;
- iv. an updated Landscape and Visual Impact statement;
- v. details of management and maintenance of the landscaping, allotments, SUDS and open space; and
- vi. surface water management strategy.

Reason: To ensure the site is designed, developed and delivered cohesively.

6. Prior to the commencement of works on site for each phase of the development, details of the under-noted matters shall be submitted to and approved in writing by the Planning Authority, in the form of a detailed layout of that phase of the site and include detailed plans, section and elevations of the buildings and all other structures.

Approval of Matters:

- (a) residential unit numbers;
- (b) details of the siting, design and height of development, including design of all external features and glazing specifications (including acoustic capabilities);
- (c) design and configuration of public and open spaces, all external materials and finishes, and details of the play equipment;
- (d) car and cycle parking, access, road layouts and alignment, including a Stage 2 Quality Audit, classification of streets, servicing areas, street lighting and electric charging points;
- (e) footpaths and cycle routes, including proposed multi-use paths and the signage of pedestrian and cycle access links, including lighting details;
- (f) waste management and recycling facilities;
- (g) surface water management plan and sustainable urban drainage scheme (SUDS);
- (h) site investigation/decontamination arrangements;
- (i) full details of sustainability measures in accordance with Edinburgh Standards for Sustainable Building;
- (j) details of the location and layout of the commercial premises (class 1 'retail' and class 2 'office' (excluding the proposed healthcare premises) within the site to a maximum gross floor space of 300sqm;
- (k) hard and soft landscaping details, including:
 - (i) boundary treatments (overall site and individual plots);
 - (ii) walls, fences, gates and any other boundary treatments;
 - (iii) the location of new trees, shrubs and hedges;
 - (iv) a schedule of plants to comprise species, plant size and proposed number/density;
 - (v) programme of completion and subsequent maintenance;
 - (vi) existing and proposed services such as cables, pipelines, substations;
 - (vii) other artefacts and structures such as street furniture, including lighting columns and fittings, and play equipment;
 - (viii) details of phasing of these works; and
 - (ix) existing and finished ground levels in relation to Ordnance Datum.

Reason: In order to accord with the statutory requirements of the Town and Country Planning (Scotland) Act 1997 and to enable the Planning Authority to consider these matters in detail.

7. No development shall take place on the site until a scheme or schemes for the restoration and rehabilitation of the existing properties at 17, 19, 21 and 23 Turnhouse Road, 25 Turnhouse Road and 124 and 126 Turnhouse Road has first been submitted to and approved by the Planning Authority and those works shall have been completed prior to the first occupation of the 50th new residential property within that phase of the site within which those properties sit, hereby granted planning permission.

Reason: In order to ensure the retention of these properties and promote their rehabilitation as residential properties.

8. No development shall take place on the site until the applicant has secured the implementation of an archaeological conservation plan for the Turnhouse Road Milestone and Turnhouse Road direction-stone (GUARD site CHS 31) which has been submitted by to and approved in writing by the Planning Authority.

Reason: In order to safeguard the interests of archaeological heritage.

9. No demolition or other means of development shall take place on the site until a written scheme of investigation has been submitted to and approved in writing by the Planning Authority. No demolition or other means of development shall take place on each phase of the site until the applicant has secured the implementation of a programme of archaeological work (historic building recording, excavation, analysis, reporting, publication, preservation, public engagement) in accordance with the approved written scheme of investigation.

Reason: In order to safeguard the interests of archaeological heritage.

10. No development shall take place on site until an updated Extended Phase 1 Habitat Survey has been undertaken. No development shall take place on each phase of the development until an updated Extended Phase 1 Habitat Survey for that phase has been undertaken and the findings incorporated into a detailed Landscape and Habitat Management Plan (LHMP) for that phase of the site which shall be submitted to and approved in writing by the Planning Authority. Thereafter, those measures identified in the approved LHMP shall be implemented in full as part of the development of the relevant phase of the site.

Reason: Since the original ecological issues were first addressed those provisions have and overtime will become out dated. Prior to the commencement of development on the site there is a requirement to reappraise those findings to ensure an up to date LHMP.

11. Prior to the commencement of construction works on site:

(a) A site survey (including initial desk study as a minimum) must be carried out to establish to the satisfaction of the Planning Authority, either that the level of risk posed to human health and the wider environment by contaminants in, on or under the land is

acceptable, or that remedial and/or protective measures could be undertaken to bring the risks to an acceptable level in relation to the development; and

(b) Where necessary, a detailed schedule of any remedial and/or protective measures, including their programming, must be submitted to and approved in writing by the Planning Authority.

Any required remedial and/or protective measures shall be implemented, within their respective phase of the overall development, in accordance with the approved schedule and documentary evidence to certify those works shall be provided to the satisfaction of the Planning Authority.

Reason: In order to ensure that the site is suitable for redevelopment, given the nature of previous uses/processes on the site.

12. Where a phase of the site is adjacent to the operational railway line, no development shall commence in that phase until a scheme detailing a suitable trespass proof fence, of at least 1.8 metres in height to be installed on the site adjacent to Network Rail's boundary for its entire length and including provisions for its future maintenance and where necessary renewal, has been submitted to and approved in writing by the Planning Authority, and thereafter the boundary fence shall be erected only in full accordance with such approved details.

Reason: In the interests of public safety and the protection of Network Rail infrastructure.

13. All surface or foul water arising from the development must be collected and diverted away from Network Rail Property. Any Sustainable Urban Drainage Scheme should not be sited within 10 metres of the railway boundary and should be designed with long term maintenance plans which meet the needs of the development. Details of the design and construction of any drainage scheme shall be submitted to and approved in writing by the planning authority before the commencement of development. The development shall be carried out only in full accordance with such approved details.

Reason: To protect the stability of the adjacent railway cutting and the safety of the rail network.

14. No development shall be carried out on any of those parts of the site located within 150 metres of the operational railway line until such time as a noise impact assessment, including an assessment of the potential for occupants of the development to experience noise nuisance arising from the railway line and where a potential for noise disturbance has been identified proposals for the attenuation of that noise, has first been submitted to and approved in writing by the Planning Authority.

Thereafter, the approved noise attenuation scheme shall be implemented in full, within each of the relevant phases of the overall development, prior to the first occupation of any property within those relevant phases and shall thereafter be retained in accordance with the approved scheme.

Reason: To ensure that occupants/users of the development do not experience undue disturbance arising from nearby noise sources.

15. At least two months prior to the commencement of any works a site specific construction environmental management plan (CEMP) must be submitted for the written approval of the Planning Authority.

At least two months prior to the commencement of any works within a phase of the site, a phase specific CEMP for that phase shall be submitted to and approved in writing by the Planning Authority and all work shall be carried out in accordance with the approved plan include the following provisions:

- i. risk assessment of potentially damaging construction activities;
- ii. identification of “biodiversity protection zone”;
- iii. practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
- iv. the location and timing of sensitive works to avoid harm to biodiversity features;
- v. the times during construction when specialist ecologists needs to be present on site to oversee works;
- vi. responsible persons and lines of communication;
- vii. the role and responsibilities on site of an Ecological Clerk of Works (ECoW) or similarly competent person; and
- viii use of protective fences, exclusion barriers and warning signs.

Reason: To control pollution of air, land and water.

16. Development shall not commence until a Bird Hazard Management Plan has been submitted to and approved in writing by the Planning Authority. The submitted plan shall include details of:

- i. monitoring of any standing water within the site, temporary or permanent;
- ii. sustainable urban drainage schemes (SUDS) - Such schemes shall comply with Advice Note 6 ‘Potential Bird Hazards from Sustainable Urban Drainage schemes (SUDS) (available at <http://www.aoa.org.uk/policy-safeguarding.htm>);
- iii. management of any flat/shallow pitched/green roofs on buildings within the site which may be attractive to nesting, roosting and “loafing” birds. The management plan shall comply with Advice Note 8 ‘Potential Bird Hazards from Building Design’;
- iv. reinstatement of grass areas;
- v. maintenance of planted and landscaped areas, particularly in terms of height and species of plants that are allowed to grow;
- vi. which waste materials can be brought on to the site/what if any exceptions, e.g. green waste;
- vii. monitoring of waste imports (although this may be covered by the site licence);
- viii. physical arrangements for the collection (including litter bins) and storage of putrescible waste, arrangements for and frequency of the removal of putrescible waste; and
- ix. signs deterring people from feeding the birds.

The Bird Hazard Management Plan must ensure that flat/shallow pitched roofs be constructed to allow access to all areas by foot using permanent fixed access stairs ladders or similar. The owner/occupier must not allow gulls to nest, roost or loaf on the building. Checks must be made weekly or sooner if bird activity dictates, during the breeding season. Outside of the breeding season gull activity must be monitored and the roof checked regularly to ensure that gulls do not utilise the roof. Any gulls found nesting, roosting or loafing must be dispersed by the owner/occupier when detected or when requested by Edinburgh Airport Airside Operations staff. In some instances it may be necessary to

contact Edinburgh Airport Airside Operations staff before bird dispersal takes place. The owner/occupier must remove any nests or eggs found on the roof.

The Bird Hazard Management Plan shall be implemented as approved, on completion of the development and shall remain in force for the life of the building. No subsequent alterations to the plan are to take place unless first submitted to and approved in writing by the Planning Authority.

Reason: It is necessary to manage the development in order to minimise its attractiveness to birds which could endanger the safe movement of aircraft and the operation of Edinburgh Airport.

17. No building or structure erected within the development site shall exceed the heights specified in the 'Edinburgh Airport - Anticipated Maximum Ridge Heights' document, October 2014, as set out in the Edinburgh Airport consultation letter dated 7 December 2016 (Edinburgh Airport Ref: EDI2609)

Reason: Development exceeding these heights would penetrate the Obstacle Limitation Surface (OLS) surrounding Edinburgh Airport and endanger aircraft movements and the safe operation of the aerodrome.

18. No development shall take place until full details of soft and water landscaping works have been submitted to and approved in writing by the Planning Authority, details must comply with Advice Note 3 'Potential Bird Hazards from Amenity Landscaping & Building Design' (available at <http://www.aoa.org.uk/operations-safety/>). These details shall include:

- i. any earthworks;
- ii. grassed areas;
- iii. the species, number and spacing of trees and shrubs;
- iv. details of any water features;
- v. drainage details including SUDS - Such schemes must comply with Advice Note 6 'Potential Bird Hazards from Sustainable urban Drainage Schemes (SUDS) (available at: <http://www.aoa.org.uk/policy-safeguarding.htm>); and
- vi. others that the applicant or the Planning Authority may specify and having regard to Advice Note 3: Potential Bird Hazards from Amenity Landscaping and Building Design and Note 6 on SUDS].

No subsequent alterations to the approved landscaping scheme are to take place unless submitted to and approved in writing by the Planning Authority. The scheme shall be implemented as approved.

Reason: To avoid endangering the safe movement of aircraft and the operation of Edinburgh Airport through the attraction of birds and an increase in the bird hazard risk of the site.

19. Development shall not commence until details of the Sustainable Urban Drainage Schemes (SUDS) have been submitted to and approved in writing by the Planning Authority. Details must comply with Advice Note 6 'Potential Bird Hazards from Sustainable Urban Drainage Schemes (SUDS)'. The submitted Plan shall include details of:

- i. attenuation times;
- ii. profiles & dimensions of water bodies; and

iii. details of marginal planting.

No subsequent alterations to the approved SUDS scheme are to take place unless first submitted to and approved in writing by the Planning Authority. The scheme shall be implemented as approved.

Reason: To avoid endangering the safe movement of aircraft and the operation of Edinburgh Airport through the attraction of Birds and an increase in the bird hazard risk of the site. For further information please refer to Advice Note 6 'Potential Bird Hazards from Sustainable Urban Drainage Schemes (SUDS)' (available at: <http://www.aoa.org.uk/operations-safety/>).

20. No development shall take place on site until a detailed scheme for the widening of that part of Craigs Road forming part of the site, to provide a 7.3 metre wide carriageway with a 2 metre wide verge on its northern side and a 4 metre wide combined footway/cycleway on its southern side within the site boundary, has been submitted to and approved in writing by the Planning Authority. The detailed scheme shall consider measures, including the realignment of Craigs Road, to mitigate any impacts on Lennie Cottages. The approved scheme shall thereafter be formed laid out and constructed and be available for use prior to the occupation of the first phase of any part of the development within the site at no cost to the council

Reason: To ensure an appropriate means of vehicular access between the site and the surrounding public road network to a standard that would accommodate the traffic generated by that development and existing traffic levels.

21. No development shall take place on site until a detailed scheme for the provision of a 2 metre wide public footway along the southern side of Turnhouse Road (in an easterly direction from the site boundary to the eastern access junction with the Saica premises) has been submitted to and approved in writing by the Planning Authority. The approved scheme shall thereafter be formed laid out and constructed and be available for use prior to the occupation of the first phase of any part of the development within the site at no cost to the council

Reason: To ensure an appropriate means of pedestrian and cycle access into and through the site.

22. As soon as possible after each of the phases of the development approved under condition 6 above is completed (except for the last or final phase, in respect of which notice shall be given under section 2B(1) of the Town and Country Planning (Scotland) Act 1997) the person who has completed any phase shall give written notice of the completion of that phase to the planning authority.

Reason: To accord with section 27B(2) of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

Proposed informatives

1. No development shall take place on the site until a 'Notice of Initiation of Development' has been submitted to the planning authority stating the intended date on

which the development is to commence. Failure to do so constitutes a breach of planning control, under Section 123(1) of the Town and Country Planning (Scotland) Act 1997.

2. Charging outlet (wall or ground mounted) should be of the following minimum standard:

Type 2 (EN62196-2), Mode 3 (EN61851-1) compliant and be twin outlet. With the ability to supply 22 kW (32 Amps) AC - Three Phase power and have the ability to be de rated to supply 11 kW to each outlet when both are in use. Where this is not possible then 7 kW (32 Amps) AC - Single Phase chargers that have the ability to deliver power of 7 kW capacity to each outlet simultaneously.

3. The scheme will be designed in accordance with BS8233:2014 'Guidance on sound insulation and noise reduction for buildings - Code of Practice' to attain the following internal noise levels:

Bedrooms - 30dB LAeq, T and 45dB LAfmax, and Living Rooms - 35 dB LAeq, D

Where;

T = Night-time 8 hours between 23:00 - 07:00 hours, and

D = Daytime 16 hours between 07:00 - 23:00 hours

Construction phase mitigation measures to be included in any detailed consents.

4. Given the nature of the proposed development it is possible that a crane may be required during its construction. We would, therefore, draw the applicant's attention to the requirement within the British Standard Code of Practice for the safe use of Cranes, for crane operators to consult the aerodrome before erecting a crane in close proximity to an aerodrome. This is explained further in Advice Note 4, 'Cranes and Other Construction Issues' (available at: <http://www.aoa.org.uk/operations-safety/>).

5. The development is close to the aerodrome and the approach to the runway. We draw attention to the need to carefully design lighting proposals. This is further explained in Advice Note 2, 'Lighting near Aerodromes' (available at: <http://www.aoa.org.uk/operations-safety/>). Please note that the Air Navigation Order 2005, Article 135 grants the Civil Aviation Authority power to serve notice to extinguish or screen lighting which may endanger aircraft.

6. In regard to planning condition 16, the breeding season for gulls typically runs from March to June. The owner/occupier must obtain the appropriate licences where applicable from Scottish Natural Heritage before the removal of nests and eggs.

Annex 1: Application drawings

LOC (01) F Site location plan

PL (01) E Proposed masterplan

PL (02) E Proposed masterplan in context

PL (03) B Masterplan on topographical survey

PL-04 A Existing site sections (1 of 2)

PL-05 A Existing site sections (2 of 2)

PL-06 A site sections: cut and fill