

DATA LABEL: PUBLIC



HOUSING SERVICES POLICY DEVELOPMENT AND SCRUTINY PANEL

AFFORDABLE HOUSING SUPPLEMENTARY GUIDANCE

REPORT BY HEAD OF HOUSING, CUSTOMER AND BUILDING SERVICES

A. PURPOSE OF REPORT

The purpose of this report is to update the panel on a review of the current Affordable Housing Supplementary Guidance (AHSG). The review is considered necessary in light of the existing housing emergency, changing economic landscape and reduction in funding.

B. RECOMMENDATION

It is recommended that the Panel:

1. Notes the council's current Affordable Housing Supplementary Guidance was adopted in 2019 and requires to be updated to reflect the housing emergency, changing economic landscape and reduced funding for affordable housing to ensure that the guidance continues to support the aims of the West Lothian Local Development Plan;
2. Notes and provides comment on the content of revised supplementary guidance on Affordable Housing attached at Appendix 1; and
3. Notes consultation on this guidance will be carried out in advance of the guidance being reported to Council Executive for decision and that the guidance will also be required to be submitted to Scottish Ministers for approval.

C. SUMMARY OF IMPLICATIONS

I	Council Values	<ul style="list-style-type: none"> • Caring and Compassionate • Open, Honest and Accountable • Collaborate, Inclusive and Adaptive
II	Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	Policy HOU 4 of the West Lothian Local Development Plan (LDP), adopted in 2018, requires developer contributions towards the provision of affordable housing. Detailed requirements for affordable housing contributions are set out in the Affordable Housing Supplementary Guidance 2018 (AHSG). This report outlines proposals to amend the AHSG in response to the housing emergency.
III	Implications for Scheme of Delegations to Officers	N/A
IV	Impact on performance and performance Indicators	N/A

V	Relevance to Single Outcome Agreement	We live in resilient, cohesive and safe communities.
VI	Resources - (Financial, Staffing and Property)	Residential developers are required to make payments in accordance with supplementary guidance where contributions in the form of land are not suitable.
VII	Consideration at PDSP	This is the first time PDSP has considered revising the current adopted Affordable Housing Supplementary Guidance.
VIII	Other consultations	N/A

D. TERMS OF REPORT

D.1 Background

The West Lothian Affordable Housing Supplementary Guidance (AHSG) was adopted by the council in May 2019. The affordable housing landscape has changed significantly since this policy was last reviewed. The council declared a Housing Emergency on the 28 May 2024 due to current pressures related to housing and homelessness occurring locally.

In February 2024, the Scottish Government announced a reduction to the Affordable Housing Supply Programme (AHSP) budget for 2024/25 and the current estimated budgets are £13.676m for 2024/25, £9.339m for 2026/27 and £4.67m for 2027/28. This has resulted in a significant reduction in what the council and Registered Social Landlords (RSLs) can deliver using AHSP this year and in the foreseeable future. The overall picture is one of high demand for housing, high numbers of potentially deliverable sites but lower levels of funding than anticipated.

The impact of the war in Ukraine and Brexit, as well as the long-term impact of the pandemic has seen costs in the construction sector increase significantly in recent years. Global prices for construction materials such as timber, steel and particleboard have increased due to increased demand, rising energy prices, and reduced supply. As it stands, there are multiple housing sites within West Lothian for which the Council are currently unable to allocate any capital or grant funding. This includes in excess of 1,600 units identified in the current Strategic Housing Investment Plan (SHIP). It is likely that the Council will need to consider accepting more land or commuted sums to allow development of new housing to move forward on occasions when there is a lack of public subsidy to commence the development of affordable housing on-site.

Under the transitional arrangements for NPF4, the deadline to adopt amendments to the Supplementary Guidance is 31 March 2025. Making changes now rather than waiting for the upcoming Local Development Plan 2 (LDP2) to be adopted would allow the Council to respond to the housing emergency sooner with actions that will help to deliver housing despite the challenges faced.

Amending the policy would also allow for the council to have better negotiating power when required to take a commuted sum due to a lack of funding to accept on-site provision. LDP2 is currently scheduled to be adopted in around three years' time, therefore minor amendments to the AHSG prior to this happening are considered to be justified due to the present housing emergency, changing economic climate and reduction in funding.

D.2 CURRENT POLICY FRAMEWORK

Relevant policies and guidance that have been produced or updated since the AHSG was adopted in 2019 includes:

1. National Planning Framework 4 which sets out national planning policies reflecting Scottish Ministers' priorities and requires proposals for new homes to make provisions for affordable homes to meet an identified need.
2. Transitional arrangements for National Planning Framework 4: Chief Planner letter - February 2023 which state, "As the development plan system transitions to one without statutory supplementary guidance, the Planning (Scotland) Act 2019 (Commencement No.11 and Saving and Transitional Provisions) Regulations 2023 provide for local authorities to continue to prepare and adopt supplementary guidance associated with LDPs until 31 March 2025. Supplementary guidance adopted under those provisions is to be treated as forming part of the development plan for the area to which the LDP relates".
3. The Planning (Scotland) Act 2019 (Commencement No. 11 and Saving and Transitional Provisions) Regulations 2023, as above.
4. Planning Circular 3/2012: Planning Obligations and Good Neighbour Agreements (revised 2020) which sets out the circumstances in which planning obligations (commonly known as Section 75 Agreements) can be used.
5. West Lothian Local Housing Strategy 2023-2028, 2023, which notes housing need varies between the nine local council wards in West Lothian, and sets priorities for affordable housing on an area by area basis.

D.3 PROPOSED AMENDMENTS

It is proposed that the AHSG be altered slightly to change the wording around calculation of commuted sums and timeframes for retaining land/commuted sums for affordable housing. A full copy of the amended AHSG is included in Appendix 1 with changes highlighted, however a summary of the proposed changes is set out below.

Commuted Sums

At present, paragraph 6.13 of the AHSG states that, *"The value of the commuted sum shall be equivalent to the affordable housing value of the land required to provide the percentage of serviced affordable housing land required for that site"*.

This requirement has resulted in low and occasionally negative figures for commuted sums, which goes against the original intention of the policy and the aim of the Local Development Plan (LDP) to deliver more affordable housing for West Lothian. It is also noted that basing the commuted sum value solely on the affordable land value is inequitable considering that if the land was not allocated for affordable housing the developer would then be able to build out the full site with market value properties.

In order to ensure that a more reasonable figure is calculated, it is proposed that the guidance is amended to remove the wording in paragraph 6.13. The guidance would still state in paragraph 6.12 that, *"In line with PAN2/2010, paragraph 22, the valuation of the commuted sum will be determined independently by the District Valuer (DV) or alternatively by an independent RICS Registered Valuer appointed by the council"*.

It is noted that the DV is currently reviewing the method of commuted sum calculation for the council and therefore the advice received from them will be in place prior to these changes being adopted.

Retention of Affordable Housing Land

It is also proposed that consideration be given to amending the AHSR to allow for any land transfers to be retained to support the development of affordable housing in perpetuity. This would involve amending Paragraph 5.13.

D.4 NEXT STEPS

Consultation will be carried out on the proposed amendments to the AHSG following consideration by the Panel. The consultation would run over an eight-week period during November/December 2024 and involve interested parties, including housing associations, developers, landowners and planning and surveying professionals.

It is necessary for the AHSG to be approved by Scottish Ministers, and the deadline for adopting an amended supplementary guidance is 31 March 2025, therefore the outcome of the consultation and proposed final AHSG will be reported to Council Executive for approval in January prior to submission to Scottish Government. Once approved by Scottish Ministers it will be presented to Council Executive on 4 March 2025 for formal adoption.

E. CONCLUSION

It is proposed that the Affordable Housing Supplementary Guidance be amended to allow for a more functional calculation of commuted sums and to allow contributions of land to be held for affordable housing in perpetuity. These amendments are considered to be justified in the light of the existing housing emergency, changing economic landscape, reduction in funding.

Making these changes now as an interim measure prior to the adoption of Local Development Plan 2 would allow the council to respond directly to the housing emergency with actions that will help to deliver affordable housing despite the financial challenges faced.

F. BACKGROUND REFERENCES

Affordable Housing Supplementary Guidance, 2019:

https://www.westlothian.gov.uk/media/34907/SG-Supplementary-Guidance-Affordable-Housing-Amended-and-Adopted-May-2019/pdf/Affordable_Housing_SG_May_2019.pdf

National Planning Framework 4 (NPF4), 2023:

<https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2023/02/national-planning-framework-4/documents/national-planning-framework-4-revised-draft/national-planning-framework-4-revised-draft/govscot%3Adocument/national-planning-framework-4.pdf>

Transitional arrangements for National Planning Framework 4: Chief Planner letter - February 2023: [Transitional arrangements for National Planning Framework 4: Chief Planner letter - February 2023 - gov.scot \(www.gov.scot\)](#)

The Planning (Scotland) Act 2019 (Commencement No. 11 and Saving and Transitional Provisions) Regulations 2023: [The Planning \(Scotland\) Act 2019 \(Commencement No. 11 and Saving and Transitional Provisions\) Regulations 2023 \(legislation.gov.uk\)](#)

Planning Circular 3/2012: Planning Obligations and Good Neighbour Agreements (revised

2020): [Planning Obligations and Good Neighbour Agreements \(Revised November 2020\): Circular 3/2012 \(www.gov.scot\)](http://www.gov.scot/circulars/3/2012)

West Lothian Local Housing Strategy 2023-2028:
https://www.westlothian.gov.uk/media/57550/Local-Housing-Strategy-2023-2028/pdf/Local_Housing_Strategy_2023_-_2028.pdf

Appendices/Attachments: Amended Affordable Housing Supplementary Guidance

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SG
supplementary
guidance

Affordable Housing

2018



West Lothian
Council

AFFORDABLE HOUSING SUPPLEMENTARY GUIDANCE

1.0 Introduction and Purpose of Guidance **Purpose of Guidance**

- 1.1 To achieve appropriate levels of affordable housing in the plan area for those households which cannot afford a market solution to meet their housing needs, developers of market housing will be required to make affordable housing contributions as set out in Policy HOU 4 of the West Lothian Local Development Plan (LDP), unless a specific exemption applies.
- 1.2 The purpose of this document is to assist developers fulfil their planning obligations in respect of the provision of affordable housing via the Planning system by providing detailed guidance on the operation of Policy HOU 4 and fulfil the council's aspirations to meet needs for affordable housing of all tenure types identified in Scottish Planning Policy (2014).

The Need for an Affordable Housing Policy

- 1.3 Policy HOU 5 of the Strategic Development Plan for South East Scotland (SDP) identifies a benchmark figure of 25% affordable housing i.e. 25% of the total number of housing units per housing site should be provided as affordable. However, the SDP recognises that each local authority area has its own characteristics and variations in need and therefore allows for each to set out an appropriate approach to provision, compliant with Scottish Planning Policy 2014 (SPP 2014) and taking into account council house waiting lists and Housing Need and Demand Assessment (HNDA) evidence.
- 1.4 Decent, affordable housing is amongst the most basic of human requirements. Historically, local authorities were the principle providers of housing to those households excluded from the private housing market through inability to compete. West Lothian Council and other Registered Social Landlords (RSLs) build and manage affordable rented housing.
- 1.5 Scottish Government policy and guidance suggests that the planning system should make a contribution to addressing shortages of affordable housing by securing contributions from the private house building industry.

Context

- 1.6 A Housing Need and Demand Assessment (HNDA 1) was produced in 2009 to provide empirical evidence on the scale of housing need in the Edinburgh City Region and was used to inform the first South East Scotland Strategic Development Plan (SDP 1) and the subsequent Local Development Plans of each of the six SESplan authorities.
- 1.7 Although a new Housing Need and Demand Assessment has been produced (HNDA 2) and incorporates more up to date population growth data no weight has been attached to it in preparation of this guidance. This is on account of this supplementary guidance having to be consistent with the current SDP 1 (which is based on HNDA 1).

- 1.8 The West Lothian Housing Strategy 2012 – 2017 (LHS) outlined the policy context and requirements for affordable housing in West Lothian. The LHS set out the Council's strategic direction and priorities for housing across all tenures. A replacement LHS for 2017 -2022 has been approved by the Council.
- 1.9 The HNDA 1 showed a serious shortfall of affordable housing across most areas of West Lothian. This situation is expected to continue until at least 2032.
- 1.10 Since 2007, West Lothian Council has completed two programmes which delivered 800 new build council houses and is currently progressing its 1000 houses programme which commenced in 2013. A new programme of 250 new build council houses is currently being planned. Registered Social Landlords (RSLs) have had more modest programmes, due mainly to restricted funding and have averaged 65 units per year in West Lothian since 2011/2012. There will be a substantial increase in the level of funding over the next 3 years and RSL's will play a major role in the provision of new affordable homes.
- 1.11 The combined new build output of the Council and other RSLs is well short of meeting unmet housing need in West Lothian, and this may continue to be the case throughout most of the LDP Plan period (2014-2024). To address this unmet housing need the council requires the assistance of private developers of market housing. The mechanism for obtaining such assistance is the planning system, unless specific exemptions apply.
- 1.12 Affordable housing contributions will normally be secured via Planning Obligations.
- 1.13 Section 2 of this document sets the national and local policy context for the provision of affordable housing. Section 3 provides evidence and information on the housing need that this supplementary guidance (SG) seeks to address and Section 4 provides detailed guidance on the operation of West Lothian Council's Affordable Housing Policy. Section 5 sets out how valuations of affordable housing land and commuted sums will be calculated. Section 6 provides basic guidance on process. Section 7 notes how the guidance affects the existing Core Development Areas and section 8 notes when the guidance will next be reviewed.

2.0 Policy Context

2.1 At the time of writing, the relevant policy and guidance includes:

- **Planning Advice Note 2/2010 Affordable Housing and Housing Land Audits**, which provides advice and information on how the planning system can support the Scottish Government's commitment to increase the supply of affordable housing.
- **Planning Circular 3/2012**, which sets out the circumstances in which planning obligations (commonly known as Section 75 Agreements) can be used and how they can be concluded efficiently.
- **West Lothian Local Housing Strategies 2012-2017 and 2017-2022** (LHS 2012-2017 and LHS 2017-2022), which sets out the council's assessment of key trends, local pressures and challenges in housing across West Lothian across all tenures.

The LHS sets out the council's preferred policy outcomes, and actions which will help the council and partners to work towards these outcomes.

- **Valuation of Land for Affordable Housing Scotland (RICS GN/100, 2013)**, which informs the approach to be taken in the valuation of sites for which there is a requirement to provide affordable housing (either through an Affordable Housing Policy or Section 75 Planning obligation).
- **Residential Design Guide (2017) Supplementary Guidance**, which sets out recommended design parameters for residential developments in West Lothian.
- **Scottish Planning Policy 2014 (SPP 2014)**, which sets out national planning policies reflecting Scottish Ministers' priorities for operation of the planning system and for the development and use of land.

- 2.2 Where new guidance is issued by the Scottish Government and other relevant parties in future the Affordable Housing Supplementary Guidance will be updated to reflect this.

West Lothian Council Local Development Plan

- 2.3 Policy HOU 4 of the West Lothian Local Development Plan sets out the council's policy priorities in respect of affordable housing contributions that will be required from private developers. HOU 4 also notes that the availability of affordable housing continues to be a major issue for West Lothian and will become more problematic over the Plan period 2014-2024.
- 2.4 The Policy categorises the nine council wards into three priority areas, based on the level of housing need, as identified in the LHS. Priority 1 areas have the highest level of need, and priority 3 the lowest level of need. Details of the requirements for affordable housing are set out in tables 4a and 4b below.
- 2.5 All affordable housing will be required to conform to the design guidance in the LDP and in the *Supplementary Guidance: Residential Design Guide (2017)* and any future updates to that Guidance.
- 2.6 New policy documents may be produced between updates to the affordable housing guidance. Developers should note that it is their responsibility to check for such documents, and ensure that any proposals are compliant with them.

3.0 Housing Need in West Lothian

- 3.1 Policy Hou 4 of the LDP was informed by the HNDA 1 based LHS 2012-2017 and notes housing need varies between the nine local council wards in West Lothian. Based on this data the LHS 2012 -2017 and its successor 2017 -2022 set priorities for affordable housing on an area by area basis (Table 1 as contained in Policy Hou 4). Account was also taken of the relative demand for affordable housing in the Priority 3 area and the need to stimulate private housing activity in order to assist regeneration plans.

Table 1 – Area Priorities for Affordable Housing Investment

Priority 1 -	Broxburn, Uphall and Winchburgh, East Livingston & East Calder, Linlithgow, Livingston North, Livingston South.
Priority 2 -	Armadale & Blackridge, Bathgate, Whitburn & Blackburn.
Priority 3 -	Fauldhouse & Breich Valley.

Source: West Lothian Local Housing Strategy, 2012-2017

- 3.2 In compliance with PAN 2/2010 (Paragraph 12) the Council's LHS included housing supply targets covering all tenures and was based on the findings of HNDA 1. Although there is a broad range of tenures applicable to Affordable Housing (see Section 4.12) PAN 2/2010 makes it clear that it is for the Council, using the policies and proposals of the LHS, to determine the need for different types and sizes of affordable housing. The Affordable Housing Supply Targets by Tenure are contained within Table 6 of the LHS 2012/17. There is evidence to support a target range of 60% -100% of all new affordable housing needing to be for social rent. In order to deliver social housing the Council will remain flexible in terms of this target range. Developers may wish to offer the options of other forms of tenure. Each proposal will be considered on merit but due account must be taken of the HNDA studies which show the financial position of those in housing need.
- 3.3 New information on housing need that may become available during the period covered by the Local Development Plan may be incorporated into any future revisions of this supplementary guidance.
- 3.4 As of 31 March 2024, 11,269 applicants were on the common housing register.

4.0 Detailed Guidance on the Operation of the Affordable Housing Policy

Status of the guidance

- 4.1 This guidance, once approved by Scottish Ministers, will form supplementary guidance to the West Lothian Local Development Plan (LDP). Planning applications for developments that do not comply with the guidance may not be supported.

Alignment with national policy and guidance

- 4.2 This supplementary guidance is aligned with national policy and guidance in terms of:
- The definition of affordable housing
 - Acceptable affordable housing tenures
 - Housing design
 - Methodology for calculation of commuted sums and valuation of land

Definition of Affordable Housing

- 4.3 The council accepts the broad definition of affordable housing set out in SPP 2014 as being *"housing of a reasonable quality that is affordable to people on modest incomes."*

- 4.4 For below market home ownership options the Council defines 'affordable housing' as (no higher than): Lower Quartile House Price, 2.8x income multiplier, 80% loan to value ratio with an assumed deposit of 20%.

How the affordable housing contribution will be calculated

- 4.5 The terms of this supplementary guidance apply to all flatted residential development and all residential development falling within Class 9 of the Use Classes (Scotland) Order 1997. The affordable housing contribution required will be calculated as a percentage of the total number of units on each site. The total housing units on a site is comprised of the total of market housing units and affordable housing units of any tenure. For the avoidance of doubt where the conversion of existing buildings involves a change of use and/or an extensive amount of work (structural changes, extensions, major internal or external works, roof replacement etc) to make it suitable for housing then each individual unit will be counted towards the total number of units on the site. If there is no change of use or the works are minor in nature (rewiring, new finishes etc) then the units will be deemed to be existing dwellings and exempt from the policy.

Application of the Affordable Housing Policy and Supplementary Guidance

- 4.6 All new planning applications for residential development registered following approval of this supplementary guidance by Council Executive will be required to meet the requirements of this guidance. If planning permission for a site has lapsed, any new planning application will be required to meet the requirements of this supplementary guidance.
- 4.7 In circumstances where a site already has the benefit of planning permission and the developer wishes to increase the number of residential units on the site by more than four units, the new application will be assessed against the requirements of the West Lothian Local Development Plan and this supplementary guidance.

5.0 Thresholds and percentage requirements

- 5.1 The percentages of the total number of housing units on sites in the three priority areas identified in the LHS and CDAs are set out in tables 4a and 4b.
- 5.2 No contribution will be sought on sites where the total site capacity or increase in numbers in a revised application is for 1-4 residential units. **For the avoidance of doubt it will not be acceptable for developers to split up sites into two or more smaller sites to avoid the transfer of land or circumvent the thresholds set out in this guidance.**
- 5.3 In the LHS priority 1 area, sites with 24 units or less will be expected to contribute a commuted sum. For sites with 25 or more units, on site serviced land will be required unless there is a sound case to agree to any of the alternatives set out in paragraph 5.7 or 5.8 of this guidance. In the LHS priority 2 areas, sites with 39 units or less will be expected to contribute a commuted sum. For sites with 40 units or more, on site serviced land will be required unless there is a sound case to agree to any of the alternatives set out in paragraph 5.7 or 5.8 of this guidance. In the Fauldhouse and Breich Valleyward (LHS priority 3 area), sites with less 59 units or less will be expected to contribute a commuted sum. For sites with 60 units or more, on site serviced land will be required unless there is a sound case to agree to any of the alternatives set out in paragraph 5.7 or 5.8 of this guidance.

5.4 **Table 4a – Percentages of Affordable Housing Required and Commuted Sum Thresholds:
New Sites**

Council Ward	LHS Priority Area	Affordable Housing Requirement (%)	Commuted Sums Threshold (No. of Units)	Minimum % of affordable housing that should be social rent
Broxburn, Uphall and Winchburgh	1	25%	<25	60%
East Livingston and East Calder	1	25%	<25	60%
Livingston South	1	25%	<25	60%
Livingston North	1	25%	<25	60%
Linlithgow	1	25%	<25	60%
Bathgate	2	15%	<40	60%
Armadales and Blackridge	2	15%	<40	60%
Whitburn and Blackburn	2	15%	<40	60%
Fauldhouse and Breich Valley	3	10%	<60	100%

5.5 **Table 4b – Percentages of Affordable Housing Required and Commuted Sum Thresholds:
Existing Core Development Areas**

Core Development Areas				
Council Ward	LHS Priority Area	Affordable Housing Required (%)	Commuted Sums Threshold	Minimum % of Affordable Housing that should be social rent
Armadales and Blackridge	2	25%	See Note*	60%
Livingston South and Fauldhouse	2 + 3	25%	See Note*	60%
Winchburgh and East Livingston	1	25%	See Note*	60%

*Note - in exceptional circumstances, commuted sums may be negotiated as part of the affordable housing obligations in CDAs.

Tenures which will be considered as affordable housing

5.6 The council will accept the following tenures as affordable housing:

- Social rented housing
- Shared ownership
- Shared Equity (subsidised)– equity stake retained by RSL or Scottish Government
- Low Cost Housing for Sale
- Mid-Market Rent

Social rented housing - Housing provided at an affordable rent and owned and managed by the council or another RSL. There is HNDA evidence to suggest that the majority, at least 60 % of Affordable Housing Need in West Lothian, should be targeted at an increase in social rented housing.

Shared ownership – the owner purchases a pro indiviso share of the dwelling and pays an occupancy payment to an RSL.

Shared equity – subsidised - The owner purchases a majority share of the dwelling (typically 60%). The remaining stake (typically 40%) is purchased by the Scottish Government or an RSL. The owner pays no rent for the equity stake, owns the property outright and is responsible for ongoing maintenance. Should the property be sold in future the proceeds would be split between the owner and the public sector equity holder in proportion to the original equity shares.

Low cost housing for sale - A dwelling sold at a below market price, affordable, level. This may be subsidised, or unsubsidised. Low cost housing for sale may be built at higher densities, or be smaller sized properties than average, but must conform to *Supplementary Guidance: Residential Design Guide (2017)* and any subsequent updates. Low cost home ownership properties will normally require to be maintained as affordable in perpetuity (unless there are particular circumstances which warrant a limited time period) by attaching conditions to the Land Certificate for the property that will restrict future sale prices.

Mid-Market Rent (MMR) - Housing let at rents which are higher than social rents, but lower than full market rents for the equivalent property. Usually MMR properties will be developed or managed by RSLs. Where joint ventures between developers and RSLs are being considered, the council's Housing Strategy & Development section will require to approve these arrangements in advance.

The hierarchy of affordable housing land transfers

- 5.7 Where land is to be transferred, the order of preference for affordable housing contributions will be:
1. On-site serviced land, transferred to the council or a nominated RSL. For the West Lothian Local Development Plan period (and subject to the thresholds set out in tables 4a and 4b) this form of contribution will be the default position and variations will only be considered in exceptional circumstances.
 2. Off-site serviced land within the same settlement, transferred to the Council or a nominated RSL.
 3. Off-site serviced land elsewhere in West Lothian, transferred to the council or a nominated RSL.
- 5.8 Contributions in the form of completed units to the council or RSL's will be considered provided there is clear evidence that this would assist in meeting housing need, and where this would be compliant with public procurement regulations.

- 5.9 The precise form of affordable housing to be provided on any particular site will be decided by the council in discussion with the developer and taking account of the potential demand for specific housing types or tenures based on the appropriate housing need and demand evidence.
- 5.10 The council, as planning authority, will have final decision as to the form of affordable housing on any site and will exercise this right reasonably.

Commuted Sums

- 5.11 In exceptional circumstances and for sites where there are sound reasons for not transferring part of the land, for example poor access to public transport / community facilities, and there is no suitable alternative land to transfer, a financial contribution to the council (a commuted sum) will be acceptable.
- 5.12 Where it can be demonstrated that the lack of public subsidy is resulting in the council or RSLs being unable to commence the development of affordable housing, within a period of three years from the date the private housing commences, the council may accept a commuted sum rather than the transfer of land to the council or an RSL.

Return of affordable housing contributions to developers in exceptional circumstances

- 5.13 Where the affordable housing contribution is in the form of land, that land shall be retained to support the development of affordable housing in perpetuity.
- 5.14 Where the affordable housing contribution is in the form of a commuted sum if the commuted sum has not been spent within 5 years of the payment date then the commuted sum will normally be returned to the developer unless an alternative timescale for spending the money is agreed between the parties.

Notes on serviced land in all locations

- 5.15 All land transferred should be:
- Clearly defined on a plan at a scale not less than 1:500;
 - Fully serviced to the site boundary (such services shall include, but are not limited to; BT, foul and surface water drainage, gas, electricity and mains water supply);
 - Benefit from an appropriate planning permission;
 - Be free of development constraints such as contamination, bisecting services or any other physical or infrastructure issue that would prevent development or restrict the number of units or built form achievable on the site;
 - Be suitably flat formed or level to original ground level;
 - The developer will (at the developer's cost) provide the council or our nominated third party with a detailed site investigation report and topographical survey and those documents shall be formally assigned to the council or our nominated third party as part of the land transfer.

- The land must be free of any financial burdens relating to implementation of the planning permission including all servicing costs and financial contributions towards infrastructure.
- The land must be free of any environmental constraints, particularly any statutory designations such as TPO's which would restrict the design or number of units to be built.

5.18 Where the percentage requirement for affordable housing on any site results in a fraction, in the case of land this will be rounded to the nearest whole number – e.g. 5.25 units would result in a contribution of land suitable for 5 units; 5.75 would result in a contribution of land suitable for 6 units; and 5.5 would also result in a contribution of land suitable for 6 units.

Design Requirements for Affordable Housing and site areas required

5.19 Where the affordable housing contribution is in the form of land, the area required for the provision of affordable housing must be capable of accommodating a specified housing mix of minimum standard house types to be provided by the Council, or by an RSL approved by the Council, at the initial stages of discussion.

Developers must provide a layout plan which clearly demonstrates that the affordable housing mix can be comfortably accommodated on the affordable housing land whilst conforming to the council's requirements on plot sizes. The council would then formally confirm if the area proposed is acceptable.

In line with PAN 2 /2010 the council requires that affordable housing should be indistinguishable from the general mix of other houses on a site in terms of style and layout, use of materials, architectural quality and detail.

Section 75 and Section 69 Agreements

5.20 All affordable housing contributions will be secured by legal agreement between the council and the applicant/landowner (usually under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended)) which will require to be concluded prior to the issuing of planning consent.

A Planning Obligation Agreement could be an agreement under S75 of the Town and Country Planning (Scotland) Act 1997 (S75 Agreement) or an agreement under S69 of the Local government (Scotland) Act 1973 (S69 Agreement).

A S69 Agreement is a simple contract between the developer, the landowner and the council which would set out that all developer obligations will need to be implemented prior to planning being granted.

Accordingly S.69 agreements are not suitable for transactions where the developer wishes to stage payments over a period of time. However these agreements may be the preferred form where the affordable housing contribution is in the form of a commuted sum, and the developer wishes to pay the entire amount in advance of, or simultaneously with, planning consent being issued.

A S75 Agreement will be registered in the Registers of Scotland and will be a burden on the title to the land. This means that the S75 Agreement will run with the land. Details relating to transfer of land and payment of developer contributions will be negotiated on a case by case basis.

These legal agreements will typically specify:

- The mechanism and timescale for the delivery of the affordable houses as agreed between the developer and the council or nominated RSL;
- A plan showing the area to be transferred for the affordable housing contribution;
- The agreed housing mix and affordable housing tenure on any particular site;
- Conditions to be included in missives to ensure housing remains affordable in perpetuity;
- A restriction which prevents more than an agreed number of private/market units to be constructed and/or occupied before the affordable housing land is transferred to the council or nominated RSL.

6.0 Guidance on Valuation of Affordable Housing Contributions

6.1 Valuation of Land

6.2 Valuations for land will be calculated in line with national guidance and best practice. e.g. Planning Advice Note 2/2010 Affordable Housing and Housing Land Audits and best practice RICS Guidance Note 100/2013 Valuation of land for affordable housing Scotland

6.3 Land shall be transferred either at a value relating to its end use for affordable housing or by agreement between the developer and the council or an RSL nominated by the council, at a lower value. The value shall be independently determined by the District Valuer or alternatively by an independent RICS Registered Value appointed by the council. The Valuation shall reflect the location, the type of affordable housing and any other factor which will influence the value (PAN 2/2010, paragraph 19).

6.4 The council requires that affordable housing contributions in the form of land will be valued with regard to RICS Guidance Note 100/2013 Valuation of land for affordable housing Scotland and any replacement or updated version thereof as may be issued from time to time.

Such a value should take account of the availability of funding for the affordable housing.

6.5 A residual valuation of land for affordable housing will not be negative, but may be Nil (RICS, 2013, paragraph 9.3).

6.6 The requirement for a proportion of a site to be set aside for affordable housing or provision of a commuted sum will affect the economics of a proposed development. Developers should therefore take the requirement for affordable housing into account when negotiating land values with site owners. It is recognised that contributions to affordable housing requirements is one of a number of financial obligations which will be placed on the private sector in bringing forward development. In most cases, the scale of development will also require additional education provision. These requirements are 'non-negotiable' in that development cannot take place without them. The council has previously indicated its intention to require all of the developer contributions from developers to be paid and there is an expectation that land values will be negotiated accordingly.

- 6.7 On sites where the affordable housing requirement will result in an unacceptably low residual valuation as a result of unforeseen issues, whether on site or externally, developers **may** in exceptional circumstances be permitted to make an affordable housing contribution at a lower rate or the requirement for affordable housing may be removed completely.
- 6.8 Where such an exemption is being sought, the developer would be required to demonstrate to the council that the information regarding the issue that threatens viability only came to light after purchase, explain why due diligence was not successful in identifying the issue(s) and demonstrate via a full open book process that the low return claimed is not a result of an unrealistic purchase price for the land after taking into account the application of the affordable housing guidance and any other site specific requirements.
- 6.9 Open book disclosure of the financial appraisal for the development should include projected sales income, development costs, land value, overheads and profit. The council will normally hold such information in the strictest confidence and for the sole purpose of assessing the claimed exemption to the affordable housing guidance.
- 6.10 Where there is disagreement as to the economic viability of a proposed development, the matter may be referred to an independent expert appointed by the council at the developer's expense. In these circumstances, any financial information will be treated on a confidential basis.

Valuation of Commuted Sums

- 6.11 Valuations for commuted sums will be calculated in line with national guidance, e.g. *Planning Advice Note 2/2010 Affordable Housing and Housing Land Audits* and best practice RICS Guidance Note 100/2013 *Valuation of land for affordable housing Scotland*.
- 6.12 In line with PAN 2/2010, paragraph 22, the valuation of the commuted sum will be determined independently by the District Valuer (DV) or alternatively by an independent RICS Registered Valuer appointed by the council. Wherever possible the relevant parties should agree to appoint and instruct a valuer, failing agreement on which the value should be appointed by the Chairman of the RICS in Scotland.
- 6.13 All valuation fees will be shared equally between the council and the applicant. The council will instruct the valuation and the applicant will be informed of the likely valuation fee and their share of costs.
- 6.14 Where the percentage of affordable housing required on a site results in a fraction of units, the valuer will value the fraction in the commuted sum valuation.

7.0 Process

- 7.1 Planning applications are likely to progress most smoothly where developers establish the delivery mechanism for the affordable element at an early stage and establish tenure requirements at the outset.
- 7.2 Whilst the information in this guidance should be a useful starting point, applicants should engage with the council's Planning and Housing services at the earliest possible stage on aspects of potential site development including number of affordable housing units, tenure, type and design of housing and the method of delivery.
- 7.3 The Planning Service will consult with colleagues in the council's Housing Service in order to determine the most appropriate form of affordable housing contribution in the location, the housing mix that is required to meet housing need in the locality, the size of standard house types to be built and hence the area of land that will be required.
- 7.4 This information will be communicated to the applicant for consideration and agreement. Joint meetings may be arranged to discuss and seek agreement on the type of affordable housing contribution, timescales and how all eventualities will be dealt with.
- 7.5 When a jointly agreed position is reached the council's Legal Services will be instructed to draw up the draft legal agreement, for consideration and agreement.
- 7.6 The legal agreement must be signed by all interested parties and recorded/registered with the Keeper of the Registers of Scotland in advance of the issue of planning consent.

8.0 Existing Core Development Areas

- 8.1 The existing Core Development Areas (CDAs) at Armadale, East Broxburn/Uphall/Winchburgh and Livingston and the Almond Valley are identified in the LDP for mixed use development including housing. Existing arrangements in terms of affordable housing contributions including percentage contributions, as set out in previous supplementary guidance, and thresholds for sites located in these areas will continue.
- 8.2 In addition to the 15% land contribution for sites within CDAs, the council will continue to require 10% of house completions within the CDA to be affordable in terms of the definition given in SPP 2014 and PAN 2/2010.

Provision of low cost home ownership options within the CDAs should improve the overall housing choice available in West Lothian, particularly to those on lower incomes. The additional requirement should ensure the provision of mixed communities with a range of house types and tenures. Section 75 agreements will seek to ensure that affordable houses contributing to the additional 10% requirement remain affordable in perpetuity unless there are particular circumstances which warrant a limited time period.

- 8.3 It is recognised that contributions to affordable housing requirements is one of a number of financial obligations which will be placed on the private sector in bringing forward development in the CDAs. In most cases, the scale of development will require additional

education provision, improvements to road and transport infrastructure together with a range of community and environmental improvements. Many of these requirements are 'non-negotiable' in that development cannot take place without them. The council has previously indicated its intention to require all of the above developer contributions from developers and there is an expectation that land values will be negotiated accordingly.

9.0 Monitoring and Review

- 9.1 The operation of this supplementary guidance will be monitored on an ongoing basis and where necessary amended as appropriate.
- 9.2 The guidance will be formally reviewed every five years to align with the Local Development Plan timescale.

March 2025

NB: This guidance was modified in response to the declaration of a Housing Emergency in West Lothian on 28 May 2024.