

Issue 23	Developer Contributions	
Development plan reference:	<p><u>Chapter 3 Spatial Strategy</u> Infrastructure/Policy INF01 (page 12) <u>Chapter 5 Supporting Policies</u> Policy INF02 Developer Contributions to Community Infrastructure (page 46) Policy INF04 Open Space and New Residential Development (page 48) Policy INF05 Education and New Housing Development (page 48) Policy INF06 Healthcare and New Housing Development (page 49) Policy HSG02 Affordable Housing (page 43), Policy HSG09 Residential Care Homes (page 45)</p>	Reporter:
Body or person(s) submitting a representation raising the issue (including reference number):		
<p>Forth Ports plc (00020) Mactaggart and Mickel Ltd (00011) Gladman Developments Ltd (01258) Asda Stores Ltd (00856) SEPA (00968) Scottish Natural Heritage (00646) Ogilvie Homes Ltd (00614) I and H Brown Limited (00609) Mark Agnew (00835) Homes For Scotland (00284) AWG Property (00906) Hansteen Land Ltd (00772) McCarthy and Stone Retirement Lifestyles Ltd (01237)</p>		
Provision of the development plan to which the issue relates:	Policies dealing with developer contributions to infrastructure and the provision of affordable housing	
Planning authority's summary of the representation(s):		
<p><u>Policy INF01 - Strategic Infrastructure</u></p> <p>Forth Ports plc (00020/2002/004):- Policy INF02 and supporting paragraphs 3.11 - 3.16 make reference to requirements for developer contributions. However, this is not precise enough. The broad scope and principles behind the requirements and the circumstances where contributions are payable should be clearly defined and the detail on implementation provided in SPG.</p> <p><u>Policy INF02 – Developer Contributions to Community Infrastructure</u></p>		

Mactaggart and Mickel Ltd (00011/2004/006); Gladman Developments Ltd (01258/2001/004); Asda Stores Ltd (00856/2001/002):- The policy should contain more explicit reference to the five policy tests for planning obligations set out in Circular 3/2012 - Planning Obligations and Good Neighbour Agreements (CD06). The cursory reference to the Circular at the end of policy suggests that these planning requirements will only be considered as a last resort. Developer contributions should only be required where there is a proven demonstrable harm created by way of a development proposal, where alternative remedies are ineffective (such as conditions) and where there is a robust evidence base to support the allocation of funds to specific identified schemes which directly relate to the development proposed. More clarity is sought on whether the provisions of this section apply to residential development or to all development.

SEPA (00968/2001/002):- Figure 5.2 should be amended to ensure that Falkirk Council's duties as a responsible authority under the Water Environment and Water Services (WEWS) (Scotland) Act 2003 are met. The table should be expanded to enable developer contributions to be sought to secure improvement measures to the water environment. The improvement of the water environment through measures put in place during the development process are crucial to achieving the high level objectives of the Water Framework Directive and the water body specific measures in the Forth Area Management Plan. Not taking action to put a measure in place would be contrary to Falkirk Council's duties as a responsible authority under the WEWS Act.

Policy INF04 – Open Space and New Residential Development

Scottish Natural Heritage (00646/2001/009):- The policy is generally in accordance with the recommended approach in draft SPP 2013 (CD02)

Ogilvie Homes Ltd (00614/2001/005):- Sub-section (2) of Policy INF04 is not accepted. When existing open space facilities are being upgraded, appropriate maintenance arrangements will already be in place and therefore there is no reason why these existing arrangements cannot cover the upgraded facility.

Policy INF05 Education and New Housing Development

Gladman Developments Ltd (01258/2001/006):- Without a justified evidence base, Policy INF05 is unsound. Education provision with new housing can only be required where there is a proven demonstrable need and where there is a robust evidence base to support the provision of contributions/mitigation.

Policy INF06 – Healthcare and New Housing Development

I and H Brown Limited (00609/2001/003); Mark Agnew (00835/2001/001), Mactaggart and Mickel Ltd (00011/2004/007); Homes For Scotland (00284/2001/001); Ogilvie Homes Ltd (00614/2001/006):- Objection is made to Policy INF06 on the following grounds:

- It is not acceptable to seek contributions from new development for NHS primary care facilities through this policy. This is due to the fact that the NHS is funded by central government, the house building industry is still recovering from recession and the Supplementary Guidance which contains the details of

the policy is not yet available.

- General practitioners delivering primary care within Scotland operate as private business units with per head of capita funding received from the NHS. It would be unreasonable to place a financial burden upon developers for primary healthcare facilities when such practices operate as private business units.
- Healthcare is not governed by requirements such as catchments around the location of services, and the tendency in healthcare has been centralisation and specialisation. There is no immediate and automatic relationship between new development and the provision of new local facilities.
- Without the evidence of service deficiencies, pressures placed on services by new development, or programmes of new provision (of which the proposed LDP gives no indication), a planning authority could not make any developer obligation meet the 5 tests of Circular 3/2013 (CD06). It would be unable to demonstrate need or detriment, and would be unable to say what planning purpose was being met by an obligation.
- Homes for Scotland cite an appeal decision in England involving GP services which the planning authority claimed were under stress but no details were given on where that expansion might take place, when it might happen and whether funding from the Health Trust was available. The Inspector concluded that a developer contribution would be inappropriate 'since the use to which such a financial contribution would be put is currently unknown'.
- The policy is unreasonable and potentially beyond the powers and abilities of a planning authority to implement.

I and H Brown Limited (00609/2001/004):- Proposals Map 1 appears to suggest that the Banknock area has been identified as being deficient in primary health care facilities. As part of the planning application process, I&H Brown engaged with the Banknock Medical Centre to establish their future requirements for provision of services, without success.

Policy HSG02 – Affordable Housing

Gladman Developments Ltd (01258/2001/005):- Affordable housing requirements should be assessed on a site by site basis, with a fully justifiable evidence base (a HNDA which reflects the diversity of requirements within an area). The Local Authority should be open to negotiations to ensure the correct provision is provided without compromising the viability of the development proposal and have regard to financial obligations linked to particular developments, including any expectation that developers will contribute to infrastructure and supporting development such as schools or roads.

Hansteen Land Ltd (00772/2001/004):- The LDP should not set a benchmark contribution of 25% affordable housing for all sites. Affordable housing contributions need to be agreed on a site by site basis. The 2008 Blythe Valley decision in the House of Lords makes clear that the viability question means that contributions may have to be reduced. This flexibility is especially important when it is known that there are growth areas within Falkirk with high infrastructure costs.

AWG Property (00906/2001/010):- Policy HSG02 is supported.

Policy HSG09 - Residential Care Homes

McCarthy and Stone Retirement Lifestyles Ltd (01237/2001/001):- The wording of the policy HSG09 is too restrictive and should be improved. The current policy only supports one form of accommodation for the elderly - residential care homes. This ignores the other forms of housing for the 'active elderly' such as sheltered housing developments, bungalows and retirement flats. The Council clearly wish, in paragraph 5.15, to encourage a variety of accommodation for the elderly and therefore the Council should reconsider the terminology used and substitute the term 'Specialist Accommodation for the Elderly' in the policy.

Modifications sought by those submitting representations:

Policy INF01 - Strategic Infrastructure

Forth Ports plc (00020/2002/004):- Provide further details on the requirement for developer contributions.

Policy INF02 – Developer Contributions to Community Infrastructure

Mactaggart and Mickel Ltd (00011/2004/006):- Amend Policy INF02 to state at the outset of the policy that any planning obligation sought should comply with the five policy tests in Circular 3/2012.

Gladman Developments Ltd (01258/2001/004):- Delete Policy INF02.

Asda Stores Ltd (00856/2001/002):- Amend paragraphs 5.17 - 5.21 to clarify whether their provisions relate to housing or all development, and to recognise more clearly the tests from Circular 3/2012.

SEPA (00968/2001/002):- Amend supporting information to Policy INF02 by changing the title of the third provision in Figure 5.2 to 'Sustainable Water Management' and altering the associated circumstances where provision may be required to 'Sites where opportunities exist to provide sustainable flood management or water environment enhancement measures as identified through either flood risk assessments or the River Basin Management Plan and Forth Area Management Plan'.

Policy INF04 – Open Space and New Residential Development

Ogilvie Homes Ltd (00614/2001/005):- Amend Policy INF04 to take account of any existing off-site maintenance arrangements in calculating financial contributions.

Policy INF05 Education and New Housing Development

Gladman Developments Ltd (01258/2001/006):- Delete Policy INF05.

Policy INF06 – Healthcare and New Housing Development

I and H Brown Limited (00609/2001/003); Mark Agnew (00835/2001/001), Mactaggart and Mickel Ltd (00011/2004/007); Homes For Scotland (00284/2001/001); Ogilvie Homes Ltd (00614/2001/006):- Delete Policy INF06.

I and H Brown Limited (00609/2001/004):- Amend supporting information to clarify how a primary health care deficiency within the Banknock area has been established.

Policy HSG02 – Affordable Housing

Gladman Developments Ltd (01258/2001/005):- Amend Policy HSG02 and Figure 5.1 to state that affordable housing can only be required where there is a proven demonstrable need and where there is a robust evidence base to support the percentage allocations requested.

Hansteen Land Ltd (00772/2001/004):- Amend Policy HSG2 to remove the specified percentage of affordable housing.

Policy HSG09 - Residential Care Homes

McCarthy and Stone Retirement Lifestyles Ltd (01237/2001/001):- Amend Policy HSG09 by deleting references to 'Residential Care Homes' and substituting 'Specialist Accommodation for the Elderly'.

Summary of responses (including reasons) by planning authority:

Policy INF01 - Strategic Infrastructure

Forth Ports plc (00020/2002/004):- Policy INF01 is an overarching policy which sets out the Council's approach to the delivery of infrastructure. It outlines the variety of funding mechanisms which may be employed to delivery the infrastructure, including developer contributions. The policy, and supporting paragraph 3.15, clearly states that the role of developer contributions is set out in supporting policies and supplementary guidance. The relevant policies are contained in the Supporting Policies section of the LDP and comprise Policies INF02, INF04, INF05 and INF06. The appropriate proposed supplementary guidance is referred to in the policies themselves or the supporting text, and is fully listed in Appendix 3. Figure 5.2 provides a detailed list of the range of infrastructure provision which may be subject to developer contributions. The Council therefore contends that further details on the requirement for developer contributions are already provided in the LDP. For this reason, the Council does not agree to modify the plan in response to this representation.

Policy INF02 – Developer Contributions to Community Infrastructure

Mactaggart and Mickel Ltd (00011/2004/006); Gladman Developments Ltd (01258/2001/004); Asda Stores Ltd (00856/2001/002):- The Council does not accept that the reference to Circular 3/2012 (CD06) should be listed first in the factors determining the nature and scale of developer contributions. The list is not intended to be read as a hierarchy of factors of diminishing importance but rather that they are all factors which the Council will take into account, subject to relevance. It is also maintained that it is not necessary to spell out the five national policy tests within the LDP policy. This in line with government advice to avoid repetition of government policy within development plans, and developers can easily obtain access to the full text of Circular 3/2012.

The request by Gladman Developments to delete Policy INF02 is not accepted. Deleting the policy would imply that developer contributions are no longer seen as relevant to funding the provision of infrastructure. The proposed LDP makes it clear that, in a climate of diminished resources in both the public and private sectors, there will be an imperative to exploit a number of alternative mechanisms (paragraph 5.17). However there remains a need for the developer contribution mechanism where development will create or exacerbate deficiencies in, or impose new burdens on, existing infrastructure. Having a policy on developer contributions is in line with advice in SPP (CD01, paragraph 27) which states that the approach to the use of planning agreements/obligations should be set out in development plans.

It is accepted that the supporting text to the policy at paragraph 5.17 gives prominence to the role of new housing development in potentially adding to burdens on community infrastructure, as this type of development will be pre-eminent in putting pressure on certain services, such as education, health and community facilities. However, the Council contends that the policy itself is clear that developers in general, including retailers, will be required to make contributions in relevant circumstances.

For these reasons, the Council does not agree to modify the plan in response to these representations.

SEPA (00968/2001/002):- It is accepted that Falkirk Council has duties as a responsible authority under the Water Environment and Water Services (WEWS) (Scotland) Act 2003 and, importantly, that the Town and Country Planning (Scotland) Act 1997 is classified as a designated piece of legislation by the Scottish Government in statutory instruments implementing the WEWS Act (CD129 Schedule 2). This means that the planning authority, as distinct from the local authority, has to consider the use of mechanisms, such as developer contributions sought through S75 planning obligations, as a means of funding appropriate measures to enhance the water environment, albeit this will be dependent on the tests of Circular 3/2012 (CD06) being met. In this context, the extension of the provision under Table 5.2 is considered appropriate. Therefore, if the Reporter is minded to recommend that the plan be amended in line with this representation, the Council would not take issue with the amended wording.

Policy INF04 – Open Space and New Residential Development

Ogilvie Homes Ltd (00614/2001/005):- With regard to the issue of maintenance of upgraded off-site facilities, it would be a matter of course that any existing arrangements for maintenance would be taken into account in calculating a financial contribution. The question of how much upgrading was required and how far existing maintenance arrangements covered this, would be a matter of fact and degree. This would be determined by agreement at the time of an application. However the Council believes it is prudent and reasonable for the policy to set out the possibility of such a contribution arising in order for developers to build this into their development appraisal model. The associated SG will provide further explanation and guidance on the operation of the policy and the scale of financial contributions, similar to that set out in the existing Public Open Space, Falkirk Greenspace and New Development SPG (CD31).

For this reason, the Council does not agree to modify the plan in response to this representation.

Policy INF05 Education and New Housing Development

Gladman Developments Ltd (01258/2001/006):- The Council considers that Policy INF05 is appropriate. This policy carries forward a similarly worded policy from Falkirk Council Local Plan (CD10, Policy SC14, page 48) which has been in operation for several years. There is an associated SPG on Education and New Housing Development which was introduced in 2007 and updated in 2011 which has also been applied for several years (CD32). This SPG forms the basis for proposed SG10 Education and New Housing Development which will implement the provisions of Policy INF05. The current Local Plan policy and associated SPG were challenged by objectors and endorsed by the Reporter at the Falkirk Council Local Plan Inquiry in 2009 (CD12, page 51).

The evidence base for the policy is contained in section 6 of Technical Report 4: Strategic Constraints (CD24), which sets out the pressures on school capacity generally in Falkirk Council area, and in particular locations which have experienced considerable housing growth in the last decade. This evidence base has been updated more recently through Technical Report 4 Revised - Update to School Capacity (CD25). The current SPG, which will be carried forward into the new SG, sets out the circumstances where developer contributions for education capacity may be required and provides a clearly evidenced tariff for such contributions. The Council carries out school roll projections on an annual basis which take into account new house building rates, as well as birth rates and Primary 1 enrolments. The particular circumstances of schools whose catchment areas encompass development sites are provided to developers at the application stage. Due to annual changes in the various pressure factors and the large number of schools experiencing capacity pressures this information is not susceptible to detailed exposition in the development plan. The Council, therefore, contends that a justified evidence base is available.

For this reason, the Council does not agree to modify the plan in response to this representation.

Policy INF06 – Healthcare and New Housing Development

I and H Brown Limited (00609/2001/003); Mark Agnew (00835/2001/001); Mactaggart and Mickel Ltd (00011/2004/007); Homes For Scotland (00284/2001/001); Ogilvie Homes Ltd (00614/2001/006):- The Council considers that Policy INF06 is appropriate. The Council has been in discussion on the issue of community growth and its implications for primary health care facilities with NHS Forth Valley since 2008. Since 2010 these meetings have been on a more formal footing after the Health Board was designated as a 'key agency' (CD03 paragraph 152). The settlement areas where pressures on primary healthcare facilities, such as doctors' and dentists' surgeries, have generated most community concern are principally Bonnybridge/Banknock, Denny and the Polmont area. Most recently NHS Forth Valley has undertaken to carry out an analysis of facility expansion needs in the light of committed and proposed housing growth identified in the proposed LDP. This work will provide the evidence base required to underpin Policy INF06 and assist in formulating the

terms of Proposed SG11 Healthcare and New Development. Forth Valley NHS undertook a similar exercise which has informed the content of Stirling Council's Proposed Supplementary Guidance on Healthcare Facilities (CD130).

It is not accepted that the structure and funding of NHS prevents the application of the principles of S75 obligations to enhance its facilities, in contrast to those of the Council. The Council is very mindful of the terms of Circular 3/2012 (CD06) and that any detrimental impact on service provision has to be clearly linked to proposed new housing development. The calculation of an appropriate developer contribution remains key, but NHS Forth Valley is confident that a robust formula based on actual proposed projects can be worked out.

The Council, therefore, contends that the use of developer contributions for healthcare facilities is capable of meeting the terms of Circular 3/2012 and an evidence base is in preparation. For this reason, the Council does not agree to modify the plan in response to this representation.

I and H Brown Limited (00609/2001/004), Banknock is not specifically identified as deficient in healthcare facilities on Proposals Map 1 (or in any text). However the potential improvement of healthcare facilities in that locality was raised in 2008, and in February 2012 draft condition 28 was attached to a 'minded to grant' planning consent (P/10/0360/PPP) for development at Cannerton Brickworks, which includes reference to making provision for healthcare as follows: 'Land or floor space for the relocation of the existing health centre to the proposed Village Centre shall be set aside in accordance with details and a timescale to be agreed in writing by this Planning Authority, unless it is demonstrated to the satisfaction of the Planning Authority that there is no need for land or floorspace for this purpose.' (CD62). It is accepted that precise requirements in Banknock have not yet been determined. It is hoped that the requirements in Banknock and in the other localities mentioned above will be identified through the current collaborative work with NHS Forth Valley.

The justification for any upgraded health facilities in Banknock will be set out in the proposed SG11 and therefore the Council does not agree to modify the Plan itself in response to this representation.

Policy HSG02 – Affordable Housing

Gladman Developments Ltd (01258/2001/005); Hansteen Land Ltd (00772/2001/004):- With regard to the issue of a robust evidence base raised by Gladman Developments, the Council completed a Housing Need and Demand Assessment, in common with every other local authority, in 2011 (CD38). This HNDA received 'robust and credible' status from Scottish Government in October of that year (CD09). Prior to the HNDA being prepared the Council undertook a series of housing needs assessments which informed earlier policy on affordable housing. Policy HSG02 carries forward interim revised Policy SC4 from the Falkirk Council Local Plan which was approved in 2011 and was derived from the HNDA evidence. An associated revised SPG was approved in 2013 (CD33) and this provides the basis of proposed SG12 Affordable Housing.

The HNDA establishes the overall levels of housing need in Falkirk and sets out the different levels of need within the 9 settlement areas. From this the two tier

percentage requirement (15% and 25%) in Policy HSG02 for the provision of affordable housing has been derived, linked to the scale of need levels calculated in the HNDA. Rounded percentages for contributions were chosen to ease the transparency of policy requirements and are consistent with SPP policy advice.

The Council contends that there is a proven and credible evidence base for the policy, approved by Scottish Government, in the form of the HNDA.

It should be noted here that the comment by Hansteen that there is a single benchmark figure of 25% for all sites is incorrect – there are two percentage figures as cited above which apply only to sites with a capacity of 20 units and above. The form of the actual provision of affordable housing on any one site will be a matter for negotiation at the planning application stage, so to that extent the concern by Gladman that the issue is dealt with on a site by site basis will be met. The role of the development plan and SG is to set the overall framework.

With regard to the issue of development viability this is a matter that would be taken into account at the planning application stage. Proposed SG12 will cover that issue in a similar manner to section 5 of the current Affordable Housing SPG (CD33).

For these reasons, the Council does not agree to modify the plan in response to these representations.

Policy HSG09 - Residential Care Homes

McCarthy and Stone Retirement Lifestyles Ltd (01237/2001/001):- The Council accepts that there is a growing range of options to cater for the housing needs of the elderly population. The Council's HNDA in section 5 provides the evidence base for how the Council wishes to address the issue (CD38).

Overarching social policy at a national and Council level is that, as far as possible, elderly people should remain in their own homes for as long as possible. This is the overwhelming expressed preference of elderly people surveyed during the HNDA preparation, with a concomitant very low demand for specialist accommodation. The current policy response of the Council is to provide for adaptations of existing homes and is not likely to build any more specialist accommodation, now termed Housing with Care and formerly known as sheltered housing. Indeed some Council-run sheltered housing has been demolished due to lack of demand. In recent times the Council has experienced 'demand' for elderly accommodation only in the form of proposals for care homes. Thus Policy HSG09 is framed to address this demand.

There have been no enquiries or applications for private sheltered accommodation for the elderly, such as provided by the McCarthy and Stone, in the Falkirk Council area in recent times. The HNDA did not find any shortage of bespoke accommodation for the elderly in this area. Therefore the Council is content that any future application for such accommodation can be assessed against the general windfall housing Policy HSG03.

For these reasons, the Council does not agree to modify the plan in response to this representation.

Reporter's conclusions:

Reporter's recommendations: