

REPORT TO: Cabinet

MEETING DATE: 10 December 2013

BY: Depute Chief Executive - Partnerships and Community Services

SUBJECT: Housing Land Supply: Interim Planning Guidance

1 PURPOSE

- 1.1 To recognise that East Lothian has a shortfall in its effective housing land supply and that early action should be taken to address this by approving interim guidance that would allow the Council to consider approving, in appropriate circumstances, housing development on land not allocated for that purpose.

2 RECOMMENDATIONS

- 2.1 It is recommended that:
- (i) Cabinet notes that the approval of SESplan's Strategic Development Plan has removed the previous context whereby the principle of the use of unallocated greenfield land for housing could be resisted;
 - (ii) Cabinet notes that SESplan policy provides for the principle of granting planning permission in appropriate circumstances for greenfield housing development, either within or outwith a Strategic Development Area, to maintain a five years' effective housing land supply;
 - (ii) The guidance detailed in Appendix One is approved as a material consideration in the assessment of planning applications for housing on land not allocated for this purpose in the development plan.

3 BACKGROUND

Housing Land Supply Issues

- 3.1 Scottish Planning Policy requires that a supply of effective land for at least five years should be maintained at all times to ensure a continuing generous supply of land for housebuilding. Recent planning appeal decisions, together with the modifications made by Scottish Ministers in their approval of SESplan's Strategic Development Plan, indicate a requirement to increase the amount of effective housing land available within Edinburgh and, more widely, the SESplan area. This position has now been supported by appeal decisions within East Lothian.
- 3.2 The Barbachlaw, Wallyford appeal decision accepted that, although there is an adequate supply of land allocated for new housing in East Lothian, there is an urgent need to make more of this land effective and to achieve more private house completions within the period before some of the other major sites in East Lothian are expected to deliver more houses in significant numbers.
- 3.3 Recent appeals against non-determination at Dovecot Farm, Haddington and Beveridge Row, Belhaven have been sustained. The lack of sufficient effective housing land in East Lothian was a material consideration in both cases. The Reporter dealing with the appeal against the Council's refusal of planning permission for housing at Aberlady Road, Haddington has indicated his intention to grant planning permission, subject to a section 75 agreement being put in place: housing land supply was a significant material consideration in the Reporter's decision.
- 3.4 A housing appeal at Ferrygate Farm, North Berwick, was recently dismissed on appeal. The Reporter raised site specific issues and placed some weight on the fact that North Berwick is not within a Strategic Development Area. However, he did accept that there was a clear need to bring forward more land for new housing in East Lothian to achieve and maintain a five-year supply of such land.
- 3.5 On the 27th June 2013, Scottish Ministers approved, with modifications, the Strategic Development Plan for South East Scotland (SESplan). This replaces the Edinburgh and the Lothians Structure Plan 2015 (ELSP) and introduces a significant change in the strategic planning policy context against which planning applications must be assessed.
- 3.6 Based on a previous decision of the Edinburgh and the Lothians Structure Plan Joint Liaison Committee (ELSPJLC) under the then extant ELSP, planning applications for housing on unallocated, greenfield land were not supported by the Council on principle. This was on the grounds that the ELSPJLC had agreed that ELSP Policy HOU10's (The Five-Year Housing Land Supply) trigger mechanism to release additional land should not be invoked as sufficient housing land was allocated and the

delivery issue was one of market failure. Consequently, such greenfield housing development was considered contrary to ELSP HOU8 (Development on Greenfield Land).

- 3.7 This is the position of principle that the Council took in determining planning applications at Barbachlaw, Ferrygate and Aberlady Road (Haddington). Since the ELSP has now been superseded, its Policies HOU8 and HOU10 are no longer available to the Council.
- 3.8 Given Reporters' decisions, it is no longer feasible to sustain an argument that East Lothian has an effective five year housing land supply, even where a significant part of the shortfall is down to market factors.
- 3.9 SESplan Policies 1A and 1B, Policy 5, Policy 6 and Policy 7 now comprise the relevant strategic planning policy context for housing. SESplan Policy 7 gives Councils discretion to grant planning permission, in appropriate circumstances, to greenfield housing development on unallocated land where a five year effective housing land supply does not exist.
- 3.10 SESplan Policy 7, as modified by Scottish Ministers, states:

“Maintaining a Five Year Housing land Supply

Sites for greenfield housing development proposals either within or outwith the identified strategic development areas may be allocated in local development plans or granted planning permission (our emphasis) to maintain a five years' effective housing land supply, subject to satisfying each of the following criteria:

a) The development will be in keeping with the character of the settlement and local area:

b) The development will not undermine green belt objectives; and

c) Any additional infrastructure required as a result of the development is either committed or to be funded by the developer.”

- 3.11 Following SESplan's approval, and in the light of its Examination report and these recent appeal decisions, the Council's resistance to the principle of housing applications on greenfield land not allocated for housing is unlikely to be supported at appeal. The new East Lothian Local Development Plan is unlikely to be approved much before mid/late 2016: waiting to address the issue through its preparation and adoption would mean (a) a further two year period during which the Council is at risk of planning by appeal (and potential awards of costs against it) and (b) a housing land requirement that will simply increase to an amount that is undeliverable during the period (with consequent plan failure).
- 3.12 The approach now recommended is to embrace SESplan Policy 7 and take early and decisive action now by supporting planning applications

for housing on greenfield land in situations where, other than for the land's non-allocation in the development plan:

- (i) The proposed development would not otherwise be a significant departure from the provisions of the Development Plan (including SESplan's Policy 7), and
 - (ii) the land is demonstrably able to deliver early house completions and therefore support the effective housing land supply in the short term.
- 3.13 This approach should be supported by criteria against which such planning applications would be assessed, to ensure that the Council was prepared to support only those that were, in the first instance, consistent with these two principles.
- 3.14 In adopting this approach, it should be emphasised that this does not mean that any location or scale of greenfield housing land proposal is acceptable. While SESplan Policy 7 provides planning authorities with discretion to grant planning permission to maintain a five years' effective housing land supply this does not override other relevant Development Plan policy. The housing land supply issue is a material consideration. However, the weight to be given to this policy in determining an unallocated, greenfield housing application would depend on (a) the extent to which the proposal satisfies other provisions of the Development Plan and (b) the extent to which it satisfies the Council's criteria for assessing housing applications on unallocated, greenfield land, including the proposal's scale in relation to the size of the existing settlement.
- 3.15 The particular issue currently facing East Lothian is in the delivery of housing in the short-term to 2019. Slippage in the programming of existing large housing allocations (such as Wallyford and Letham Mains) is pushing more anticipated completions into the period 2019-2024 at the expense of completions up to 2019. Deliverable sites that can start and complete quickly, preferably well before 2019, are required.

SESplan Supplementary Guidance on Housing Land

- 3.16 In approving SESplan, Scottish Ministers require the preparation of Supplementary Guidance to confirm the distribution of the assessed SESplan housing requirement across local development plan areas for the periods 2009-2019 and 2019-2024. Scottish Ministers require this Supplementary Guidance to be approved by June 2014. Until this guidance is approved, the Council has no definitive housing requirement against which to measure the effectiveness of its five year housing land supply.
- 3.17 A consultative draft Supplementary Guidance on Housing land was approved for consultation by SESplan on 30th September 2013 for ratification by the six member authorities. This draft Supplementary Guidance proposes a distribution between the six member authorities of the additional housing numbers required by Scottish Ministers in the plan

periods 2009-2019 and 2019-2024. East Lothian Council ratified SESplan's decision on 22 October 2013. On this basis, the East Lothian Local Development Plan would require to plan for the delivery of 6,250 new homes over the period 2009-2019 and a further 3,800 homes over the period 2009-2024. House completions anticipated from the current housing land supply over these periods would contribute to this requirement.

- 3.18 The following table considers the implications of this requirement on the Council's current five year effective housing land supply.

Table 1: East Lothian Five Year Housing Requirement 2012/13 to 2016/17

		2009-2024	steps
1	Draft SESplan Supplementary Guidance housing requirement for East Lothian	10,050	
2	House completions 2009 to 31/3/2012	1,107	
3	Balance to deliver between 2012/13-2023/24	8,943	1-2
4	Required annual average completion rate over this 12 year period	745	3/12 years
5	Balance to find in 5 year period 2012/13 to 2016/17 (the most recent agreed five year effective housing land period)	3,725	4 * 5 years
6	Completions expected between 2012/13 and 2016/17 ¹	2,064	
	Additional housing requirement to 2016/17 (in addition to Audit 12 programming)	1,661	5-6

- 3.19 If the housing distribution by authority in SESplan's draft Supplementary Guidance is approved in its current form, then the above table indicates that East Lothian's consequential 2012/13 to 2016/17 five year housing land supply requirement (3,725 homes) will be short by 1,661 homes on the basis of the programming of house completions in agreed Housing Land Audit 12. Further land capable of delivering this amount of additional completions is needed if a five year effective housing land supply is to be secured.

- 3.20 Allowing for lead-in times it is likely to be 2017 before any house completions can be anticipated from sites allocated in an approved East Lothian Local Development Plan. Consequently only a limited

¹ Source –Housing Land Audit 12 Programming

contribution of house completions from new local development plan allocations could realistically be set against this figure. It is for this reason that the Council should be prepared to take action now by being prepared to approve planning applications for housing that meet the criteria detailed in the Appendix to this report.

- 3.21 The Council's estimate of its effective land supply will be reviewed annually and the contribution of land released under this interim policy monitored to ensure that there is a control over the amount of land released. This will minimise the risk of over-provision and any consequent constraint on the Council's flexibility to make housing land allocations through its local development plan to meet specific objectives, for example, directing growth to the most sustainable locations or optimising community regeneration.
- 3.22 Until the SESplan Supplementary Guidance is approved, the Council should nevertheless adopt a cautious approach to the release of non-allocated sites, particularly where the scale and impact on the character of an existing settlement or the local area is an issue.

Proposed Site Assessment Criteria

- 3.23 The recommended criteria against which planning applications for housing on land not allocated for this purpose should be assessed are detailed in Appendix One to this report.
- 3.24 This guidance would be applied with immediate effect to new applications for planning permission and to those that have been registered and are presently undetermined.

4 POLICY IMPLICATIONS

- 4.1 In appropriate circumstances this guidance would allow the Council to support planning applications for housing that are not consistent with site-specific development plan policy

5 EQUALITIES IMPACT ASSESSMENT

- 5.1 This report is not applicable to the well being of equalities groups and an Equalities Impact Assessment is not required.

6 RESOURCE IMPLICATIONS

- 6.1 Financial - none
- 6.2 Personnel - none
- 6.3 Other - none

7 BACKGROUND PAPERS

7.1 DPEA Planning appeal decisions

- PPA-210-2037, Dovecot Farm, Haddington
- PPA-210-2036, Ferrygate Farm, North Berwick
- PPA-210-2031, Beveridge Row, Belhaven
- PPA-210-2018, Barbachlaw, Wallyford
- PPA-210-2031, Aberlady Road, Haddington

7.2 SESplan Strategic Development Plan, June 2013

7.3 Letter of approval of SESplan Strategic Development Plan, Scottish Government, June 2013

7.4 SESplan Supplementary Guidance on Housing land, October 2013

7.5 Report by Depute Chief Executive (Partnerships and Services for Communities) to 22 October 2013 meeting of East Lothian Council, *SESplan Supplementary Guidance on Housing Land*

7.6 Housing Land Audit 12 (2012/13 to 2016/17)

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Appendix One

East Lothian Council Interim Planning Guidance pending approval of East Lothian Local Development Plan

Criteria against which planning applications for housing on land not allocated for this purpose will be assessed

In assessing planning applications for housing the Council will have regard in the first instance to the Development Plan status of any site. This is the SESplan Strategic Development Plan and the East Lothian Local Plan 2008 (ELLP).

In the case of a planning application for housing on a site where the principle of such a use is not specifically supported by the Development Plan, the Council accepts that the availability of an effective supply of housing land is a material consideration. In the case of a greenfield site, SESplan Policy 7 would be applicable. The weight the Council affords its terms, and the terms of other Development Plan policies, to individual planning applications will depend on the extent to which the proposed development is able to satisfy the following criteria:

1 Effectiveness

The Council will require convincing evidence that, were planning permission to be granted, then the site would be immediately effective or capable of being so well within a period of five years from the anticipated determination date.

2 Scale

This guidance does not apply to planning applications for single or small groups of houses in the open countryside since SESplan Policy 7 refers to the 'character of the settlement and local area', requiring proposals to adjoin existing settlements.

The upper size limit of the proposed development must be such that, were the Council to grant planning permission, it would not be of a scale that would prejudice the Council's subsequent flexibility to consider and determine the amount and location of housing land release through the Local Development Plan process. It must not be so large that it would prejudice future decisions on development plan requirements and how these would be best dealt with up to 2019 and beyond.

The scale should also be such that it can contribute to short term needs, that is, the site must be capable of being substantially built out within any

five year period starting from its anticipated planning application determination date.

Consequently, as a general rule (but subject to the scale of the existing settlement), the Council will only consider a site that, in its totality, does not exceed 200 houses. Planning applications that are a consequence of the subdivision of a larger site into smaller applications in order to meet this maximum will be resisted. The actual number of houses permissible on any one site or within any one settlement will be assessed against the scale and character of the specific settlement. Other than in the main towns, the maximum permissible will therefore be significantly less than this maximum capacity.

3 Timing

If the proposal is otherwise acceptable, the Planning Authority may direct that the duration of planning permission is for a period of less than 3 years. This is intended to reinforce the Council's requirement that sites must be developed in the short term and not land banked.

Applicants must also be aware that renewal of such a planning permission might not be permitted.

In this regard the Council will require convincing evidence that a housebuilder has an interest in the site such that it can reasonably be followed through within the duration of any planning consent, so that early completions may be anticipated.

4 Development Plan Strategy

In situations where infrastructure capacity is available and the site is/can be made effective, any grant of planning permission must not prejudice the delivery of the existing Development Plan strategy. For example:

- (i) It must not take infrastructure capacity from, or compromise the ability to provide infrastructure to, existing housing land allocations that do not yet have planning permission or are committed but have not yet started, and
- (ii) it must not be dependent on the prior provision of infrastructure required by existing housing land allocations that do not yet have planning permission or are committed but have not yet started.

5 Locational Considerations

As a general principle, this guidance only applies to housing applications that form an appropriate extension to an existing settlement defined in ELLP2008. The guidance does not apply to otherwise isolated

development in the countryside, to which the terms of ELLP2008 Policy DC1 (Development in the Countryside and Undeveloped Coast) will continue to apply.

Sites identified to contribute to the short-term housing land supply will also contribute to SESplan's strategic housing requirements, once finally distributed in full. Consequently:

- 5(i) Sites within the East Lothian Strategic Development Area as defined in SESplan's Strategic Development Plan, June 2013², may be acceptable, subject to criteria 1-4 (above) being met, and provided that:
- a. the site is a consolidation of or an appropriate extension to an existing settlement identified in the East Lothian Local Plan 2008, and its scale and nature is in keeping with the scale and character of that settlement and the local area, and
 - b. infrastructure is available or can be made available within a timescale that allows for early house completions, and
 - c. the site's development for housing is consistent with all other relevant Development Plan policies.
- 5(ii) Sites outwith the East Lothian Strategic Development Area may be acceptable, subject to criteria 1-4 (above), the provisos noted in 5(i) above and the following additional provisos:
- a. the settlement is well-served by public transport, and
 - b. existing facilities and services are both available and accessible within the settlement such that the need to travel is minimised;
 - c. the extent to which the additional housing would help make a demonstrable and necessary contribution to sustaining or improving educational, social or community facility provision within the local area may also be a material consideration
- 5(iii) The proposed development must not use land that is allocated for another specific use unless: there is no reasonable prospect of that use being realised; the desirability of securing housing outweighs the retention of the allocated use, or a housing use on a part of the site would help deliver the allocated use on a significant remainder of the site.

Only in the most exceptional circumstances will a housing use be supported on undeveloped land allocated for a business or industrial use under Classes 4, 5 or 6 of the Town and Country Planning (Use Classes)(Scotland) Order 1997, specifically where:

² Broadly defined as area 5 in Figures 1 and 4, and as described in paragraph 48, of SESplan's Strategic Development Plan, June 2013,

- a. the housing development provides appropriate services to unserviced business/industrial land, thereby facilitating the take-up of employment land, and
- b. the delivery of housing on a part of that land does not prejudice the continued use of the remainder of the allocated area for the business/industrial use, and
- c. the housing does not in the Council's view prejudice the supply of employment land in East Lothian, and
- d. the location is in all other respects a suitable one for housing.

Where necessary, the Council will require the landowner and/or developer to enter into legal agreements to ensure these objectives are met. Unilateral obligations may also be considered.

For the avoidance of doubt, this guidance does not override the provisions of ELLP2008 Policy ENV2 (Town and Village Centres, Other Retail or Mixed Use Areas).

- 5(iv) The proposed housing use must be compatible with adjoining or nearby existing uses and the amenity to be enjoyed by the residents of the proposed new housing must not be harmed by such existing uses.
- 5(v) The proposed housing use must be contained within robust, defensible boundaries and must not set a precedent for subsequent future expansion, the principle of which would be more appropriately considered through a development plan review.

**Policy & Projects
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East Lothian Council**

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