

REPORT TO: East Lothian Council

MEETING DATE: 31 October 2017

BY: Depute Chief Executive (Partnerships and Communities)

SUBJECT: Housing Land Audit 2017 and Housing Land Supply: Interim Planning Guidance

1 PURPOSE

- 1.1 To notify Council of the current five-year effective housing land supply position within East Lothian, based on the agreed 2017 Housing Land Audit.
- 1.2 To provide advice to the Council on how the Housing Land Supply: Interim Planning Guidance should now be used in view of approval of the Council's finalised proposed Local Development Plan on 6 September 2016 and the agreed 2017 Housing Land Audit.
- 1.3 To approve that the revised Housing Land Supply: Interim Planning Guidance be a material consideration to be taken into account when determining planning applications for housing sites within:
 - the agreed 2017 Housing land Audit; and
 - the proposed Local Development Plan;

The associated revision is to ensure that the five year effective housing land supply is 'maintained', rather than in previous version of the guidance where the intention was to seek to provide an adequate supply of such land.

- 1.4 To advise the Council of the status that SDP1 Policies 6 and 7 should now be given when determining all other applications for planning permission for residential development on land not allocated for this purpose by the East Lothian Local Plan 2008, or that would be allocated for this purpose by the proposed East Lothian Local Development Plan should it be adopted in the format proposed.

2 RECOMMENDATIONS

2.1 It is recommended that:

- i. Council agrees to use the approved finalised proposed Local Development Plan as a material consideration that gives additional weight in favour of 'the general principle' of housing development on sites included within that emerging plan when it determines planning applications under the Housing Land Supply: Interim Planning Guidance. The approved finalised proposed Local Development Plan should be taken into account on a case-by-case basis with other material considerations as appropriate.
- ii. Council agrees SDP1 Policy 7 should only be applied when and where it is specifically needed *'in order to maintain an adequate five years'* supply of effective housing land'. The only locations where SESplan SDP1 Policy 7 should now be applied within East Lothian is to bring forward appropriate sites that are included within the finalised proposed LDP and the agreed 2017 Housing Land Audit, and thus the finalised proposed Local Development Plan;
- iii. Council agrees to use the advice set out in this report and the factors set out in the Housing Land Supply: Interim Planning Guidance at Appendix One as material considerations in the assessment of relevant planning applications for housing against SDP1 Policy 7 where such proposals are made for land not allocated for this purpose by the East Lothian Local Plan 2008.

3 BACKGROUND

Housing Land Supply Issues

- 3.1 Scottish Planning Policy (SPP) requires an adequate effective housing land supply for at least the next five years to be maintained at all times. Evidence on the amount of effective housing land available within an area for house building is to be taken from the annual housing land audit.
- 3.2 A number of planning appeal decisions issued since 2013, together with the modifications made by Scottish Ministers in their approval of SESplan's first Strategic Development Plan (SDP1) also in 2013, indicated that the adopted East Lothian Local Plan 2008 does not provide sufficient effective housing land and that there was a need to increase the amount of such land available within East Lothian. In recognition of this, since December 2013 the Council has been using Housing Land Supply: Interim Planning Guidance (IPG:HLS) to support appropriate proposals for housing development on land not allocated for that purpose by the East Lothian Local Plan 2008.
- 3.3 The purpose of the IPG:HLS is to set out material considerations that the Council should take into account when determining applications for planning

permission for housing development on land not identified as suitable in principle for this purpose by the adopted East Lothian Local Plan 2008.

3.4 The intention is that the guidance be used by the Council as a context to manage the housing land supply prior to the adoption of the emerging Local Development Plan (LDP) by approving planning permission for appropriate housing development proposals on suitable sites that comply with the IPG:HLS. This is to help maintain a five years' supply of effective housing land. The evolution of the IPG:HLS in parallel with the emerging LDP is as follows:

- The IPG:HLS has been in place since 10 December 2013. It was first approved by the Council after it approved the draft SESplan Supplementary Guidance Housing Land on 22 October 2013, which contained the agreed draft Housing Land Requirements for south east Scotland, including East Lothian;
- The Council approved for consultation its Main Issues Report on 28 October 2014 and updated its IPG:HLS on 16 December 2014;
- The Council approved its draft proposed LDP on 17 November 2015, subject to amendments. This decision set the context for the completion of the necessary technical work to accompany the finalised proposed LDP. The IPG:HLS was updated on 23 February 2016 to take into account the approval of the draft proposed LDP (as amended);
- The Council approved its finalised proposed LDP on 6 September 2016, and submitted the plan to Scottish Ministers for examination in public on the 4 of May 2017.

3.5 The Council has concluded a number of important steps in the preparation of its emerging LDP. As the finalised proposed LDP was developed, the Council identified additional effective housing sites that it wants to allocate to increase the supply of such land within East Lothian. The finalised proposed LDP is subject to unresolved representations and so has been submitted to Scottish Ministers for examination in public. The examination report is anticipated on 8 of February 2018, after which the LDP (incorporating any post-examination modifications as necessary) can be adopted by the Council.

3.6 However, the adopted East Lothian Local Plan 2008 alone does not provide sufficient housing site allocations to maintain an adequate supply of effective land for the next five years. If it alone were to be relied on, only a 3.0 years supply would exist within East Lothian. Further, if the Council were to wait until adoption (spring 2018) of the emerging East Lothian LDP to bring forward the additional effective sites therein, only a limited number of dwelling completions from those sites could contribute to the effective land supply for the next five years. That approach would also likely result in the supply of land that could be counted as effective over the next five year period being less than the minimum level expected by SPP – i.e. less than a five year supply.

3.7 Whilst there is no nationally prescribed method for how the adequacy of the five year effective housing land supply is to be calculated, the methodology used here is based on established practice, as applied in recent planning

appeal decisions in East Lothian. The steps of this calculation are also explained fully in Advice Box 1 of the Council's approved finalised proposed Local Development Plan.

- 3.8 For all of the above reasons, when the Council approved its Draft Proposed Local Development Plan on 17 of November 2015 it invited landowners and developers in control of sites that it wants to allocate for housing to engage collaboratively with Council officers to seek to address cumulative impact issues and constraints, and to identify appropriate mitigation solutions on a cumulative and site by site basis. The Council reiterated this message when it approved its finalised proposed Local Development Plan on 6 September 2016. Such engagement was invited in relation to all sites promoted by the emerging LDP.
- 3.9 The intention of this engagement is to ensure that appropriate solutions can be found to enable housing delivery on sites promoted by the Council to occur as early as possible following adoption of the LDP and thereby make an earlier contribution to the five-years' supply of effective housing land. The resources respective parties choose to invest in such collaborative working is clearly at their own risk, since confirmation of approach will only be certain following adoption of the LDP. However, the Council has made clear that it is willing to commit officer time to this engagement in the interests of delivering the additional homes required by SDP1 in the locations that it has decided are the most appropriate for residential development.
- 3.10 Following publication of the finalised proposed LDP, the 2017 Housing Land Audit was fully agreed with Homes for Scotland on 20 September 2017. The housing land audit records dwelling completions achieved and anticipated dwelling completions for the following five years. It provides an overall picture of the housing land supply position within East Lothian. The up-to-date 2017 Housing Land Audit (HLA) includes all the sites that the finalised proposed LDP seeks to allocate for housing development. This is on the basis that these sites have '*agreed residential development potential*' (see PAN 2/2010 paragraph 60). The 2017 Housing Land Audit is the first audit that finalised proposed LDPs new housing site allocations can be included within, and thus contribute to the effective housing land supply calculation.
- 3.11 Based on the up-to-date 2017 housing land audit, **the Council is now able to demonstrate a 6.17 years supply of effective housing land**. The basis for this conclusion is set out at Appendix Two of this report

Scottish Planning Policy

- 3.12 Importantly, in circumstances where the adopted plan is out-of-date, or where there is a shortfall in the five-year supply of effective housing land, Scottish Planning Policy (SPP) is clear that the adopted local plan policies will not be considered up-to-date. The East Lothian Local Plan 2008 is the adopted local plan for the area and it is more than five years old.

- 3.13 In these circumstances, SPP is clear that paragraphs 33 - 34 of SPP should be considered. These paragraphs confirm the primacy of the adopted East Lothian Local Plan 2008 in decision making, but are also clear that in circumstances where development plan policies are not considered up-to-date a significant material consideration in the assessment of planning applications will be the policy principles of SPP, including *'the presumption in favour of development that contributes to sustainable development'*.
- 3.14 As such, even though the Council can now demonstrate an adequate supply of effective housing land for the next five years, because the East Lothian Local Plan 2008 is more than five years old *'the presumption in favour of development that contributes to sustainable development'* continues to be a significant material consideration in the assessment of planning applications.
- 3.15 Yet SPP is clear that the aim of *'the presumption'* is to achieve the right development in the right place; it is not to allow development at any cost. Additionally, SPP only contains high level policy principles. It does not set out a vision or a spatial strategy for the planning of a local area. Importantly, windfall proposals for housing that may comply with the broad principles of SPP do not need to be approved because they are in line with SPP.
- 3.16 On the other hand, the Council's finalised proposed LDP sets out the sites that the Council proposes to allocate for housing as well as those sites or locations that it does not want to be developed for housing. It takes into account the principles of SPP, including its principal policies on sustainability and place-making. The finalised proposed LDP represents the Council's sustainable development strategy for East Lothian that it considers will ensure that the right development can occur in the right places to meet SDP1s Housing Land Requirements and maintain an adequate five-years' supply of effective housing land. The finalised proposed LDP has also been subject to an extensive programme of consultation and engagement locally. It represents the Council's 'settled view' on the future planning strategy for East Lothian.
- 3.17 As such, a significant issue for the Council is how *'the presumption in favour of development that contributes to sustainable development'* should now be applied with other relevant material considerations, including the Council's emerging LDP. This is especially so given that the Council can currently demonstrate an adequate five-years' supply of effective housing land, taking into account the sites that it proposes to allocate within its finalised proposed LDP, as evidenced by the agreed 2017 Housing Land Audit.
- 3.18 Importantly, this five-year effective housing land supply position exists because the anticipated start date and programming for the development of housing sites within the 2017 HLA can be facilitated by housing developers through the submission of appropriate development proposals in suitable locations, and by the Council through appropriate planning decisions, ***because*** the Council continues to have its IPG:HLS in place in respect of those sites.

- 3.19 As such, in the context of *'the presumption'* within SPP, the IPG:HLS should continue to apply to sites within the 2017 housing land audit and thus that are proposed to be allocated by the finalised proposed LDP because this is needed 'in order to maintain' an adequate five years' supply of effective housing land.

SESplan Strategic Development Plan

- 3.20 Scottish Ministers approved the SESplan's Strategic Development Plan (SDP1) on 27 June 2013 and its associated Supplementary Guidance on Housing Land on 18 June 2014. This has confirmed the distribution of housing requirements for the SESplan area and for East Lothian.
- 3.21 As such, SDP1 Policies 1A and 1B, Policy 5, Policy 6 and Policy 7 provide the up-to-date strategic planning policy context on the supply of housing land. In accordance with SDP1 Policy 5 and SESplan's Supplementary Guidance on Housing Land, the emerging LDP for East Lothian is to plan for the delivery of 10,050 homes in the period 2009 – 2024, with an interim requirement for 6,250 new homes up to 2019 (with balance of 3,800 in the period 2019-2024).
- 3.22 SDP1 Policy 6 requires that East Lothian Council maintain a five years' effective housing land supply at all times. This is to be based on the SDPs Housing Land Requirements as set out in SDP1 Policy 5 and the associated Supplementary Guidance on Housing Land. SDP1 Policy 6 also states that the Council may grant planning permission for the earlier development of sites which are allocated or phased for a later period in the LDP, but in this respect it is not wholly relevant because the LDP is not yet operative.
- 3.23 In the context of these SDP1 policy requirements, and if there is a shortfall of effective housing land, SDP1 Policy 7 gives Councils discretion to approve planning permission, in appropriate circumstances, for housing development on greenfield land not allocated for that purpose. In adopting this approach, it should be emphasised that it does not mean any location or scale of greenfield housing land proposal is acceptable in principle in the context of SDP1 Policy 7.
- 3.24 While SDP1 Policy 7 provides planning authorities with discretion to grant planning permission *'in order to maintain'* a five years' effective housing land supply this does not override other relevant statutory development plan policy, including those of the East Lothian Local Plan 2008. These policies are still to be taken in to account when determining planning applications, and weighed against other relevant material considerations. The housing land supply issue is, however, a significant material consideration to be taken in to account when determining such applications, and in deciding where and when to apply SDP1 Policy 7 in order to maintain an adequate effective housing land supply.

3.25 SESplan Policy 7 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.”*

3.26 Importantly, the use of SDP1 Policy 7 is not mandatory; it is discretionary, as indicated by the use of the word ‘may’ within the opening paragraph of the policy. The choice as to whether and how to apply the policy correctly is qualified within Policy 7 itself, in the sense that Policy 7 should only be applied when and where the application of it is needed **‘in order to maintain’** an adequate five years’ supply of effective housing land.

3.27 Accordingly, the only sites to which SESplan Policy 7 should now apply within East Lothian are those that are included within the agreed 2017 housing land audit and thus the finalised proposed LDP. This is because these are the sites that are currently needed ‘in order to maintain’ an adequate five year effective housing land supply within East Lothian.

3.28 As discussed at paragraph 3.6 above, waiting until the adoption of the emerging LDP to address the effective housing land supply issue (spring 2018) and the allocation of sites therein would mean (a) a further 6 month period during which the Council is at risk of planning by appeal (and potential awards of costs against it) and (b) a housing requirement that will increase to a level that may be undeliverable during the LDP period with increased likelihood of on-going plan failure when the new LDP is operative.

3.29 Accordingly, the approach recommended is that the Council continues to embrace SDP1 Policy 7 in advance of the adoption of the East Lothian LDP, but only by supporting the principle of appropriate proposals for housing development on greenfield land in situations where, other than for the land’s non-allocation for housing in the adopted East Lothian Local Plan 2008:

- (i) The site is included within the agreed 2017 housing land audit, and the finalised proposed Local Development Plan;
- (ii) the proposed development would not otherwise be a significant departure from the provisions of the Development Plan (while ensuring consistency with SESplan’s Policy 7 itself);

- (iii) the land is or can be made effective and is demonstrably able to deliver early house completions to contribute to the five-year effective land supply (and thus support for the principle of the proposal may be justified because it could increase the 5-year effective housing land supply, and the site could be substantially completed within this period);
- (iv) the proposal, consequent on its scale or impact (on an individual or cumulative basis), would not prejudice existing local plan allocations (which SDP1 requires to be carried forward and not undermined) or the strategy or proposals of the emerging LDP (taking in to account prematurity and prejudice considerations of SPP).

3.30 As such, to ensure that the Council supports only those proposals that are, in the first instance, consistent with these overarching principles, and to ensure it is consistent in its assessment of such proposals, its approach should be supported by further criteria against which the principle of such planning applications would be assessed. The IPG:HLS at Appendix One draws relevant factors together and translates them into material considerations that should be applied in the assessment of planning applications. The proposal to which support may be given at this stage should be assessed on a case by case basis against these factors.

3.31 The discretionary use of SDP Policy 7 to support planning applications for residential development on an unallocated, greenfield housing site should therefore depend on (a) the extent to which the proposal satisfies other relevant provisions of the statutory Development Plan, and (b) the extent to which it satisfies the Council's criteria for assessing housing applications on unallocated, greenfield land, including as the proposal's scale, set out at Appendix One and (c) any other relevant material considerations as appropriate.

Using the Emerging LDP when determining planning applications

3.32 In parallel with the Housing Land Supply: Interim Planning Guidance, the Council should increase the degree of support it gives to the strategy and sites of the finalised proposed LDP as it advances through the remaining stages towards its adoption. In so doing, a significant consideration will be a need to avoid prejudicing the preparation, final content or ability to deliver the emerging East Lothian Local Development Plan as discussed below.

Finalised Proposed Local Development Plan

3.33 The Council considered and amended a draft proposed LDP on 17 November 2015. Following this decision and the conclusion of the associated technical work, the Council then approved its finalised proposed LDP on 6 September 2016. The finalised proposed LDP represents the Council's 'settled view' on what it wants the adopted content of the plan to be, taking into account the Main Issues Report consultation responses.

- 3.34 Having considered representations to the finalised proposed LDP received during the associated representation period, the Council then decided on 28 March 2017 to submit the finalised proposed LDP without modifications to Scottish Ministers for examination in public. This was done on 4 of May 2017. The examination began on 8 of June 2017 and it is on-going. The examination report is anticipated on 8 of February 2018.
- 3.35 When approving the latest version of the IPG:HLS on 23 February 2016 (to take into account the approval of the draft proposed LDP (as amended)) the Council also accepted a series of recommendations on how the IPG:HLS should be applied in decision making with other material considerations as the proposed LDP is developed. The Council agreed to place increasing weight on the proposed LDP as it progresses through its stages towards adoption. The Council has placed increasing emphasis on supporting the principle of residential development on appropriate finalised proposed LDP allocations as the LDP has been developed. The Council also agreed to further strengthen this position once the sites of the finalised Proposed LDP are included within a Housing Land Audit as '*sites with agreed residential development potential*' (paragraph 5.5 of covering report of the 2016 revision refers). This means their anticipated contribution to the effective housing land supply can be taken into account in the overall effective land supply calculation.
- 3.36 However, at the same time the Council also acknowledged that where representations to the finalised proposed LDP are relevant to an issue that could affect the determination of a planning application, the finalised proposed LDP should carry less weight in the determination of such applications. Unresolved representations may result in changes being made to the plan following the recommendations from the examination report.
- 3.37 As such, it would be unreasonable to place significant weight on disputed aspects of the LDP when determining such applications. This could apply to sites that the Council wants to allocate for housing, and / or to policies that may support or seek to restrain housing development. In such circumstances, the finalised proposed LDP should be taken into account on a case-by-case basis as a material consideration with others as appropriate, including representations to the plan as well as prematurity and prejudice considerations.
- 3.38 Notwithstanding this, when determining applications at this stage, it would be reasonable for the Council to consider whether there are acceptable means of delivering the identified mitigation that will address the cumulative impact of development in the area (see paragraphs 3.42 – 3.49 below) and to take steps to secure this prior to the approval of any planning permission. This will include the provision of infrastructure as needed to support the development of all the sites within the agreed 2017 housing land audit and thus finalised proposed LDP on an individual and cumulative basis as appropriate.
- 3.39 For the avoidance of doubt, as described above, the application of SESplan SDP1 Policy 7 is not mandatory, it is discretionary. It should only be applied when and where it is needed 'in order to maintain an adequate five years'

supply of effective housing land'. Whilst each planning application must be considered on its own merits, the only sites to which SESplan Policy 7 and the Council's IPG:HLS should now be applied to are those within the agreed 2017 housing land audit and thus the finalised proposed Local Development Plan. This is because these are the sites that are currently needed 'in order to maintain' an adequate five year effective housing land supply in East Lothian.

- 3.40 Consequently, the Council's should continue to apply its IPG:HLS to residential development proposals for sites as they are proposed to be allocated within the finalised proposed LDP in order to facilitate the 2017 housing land audit programming as best it can, in order to maintain an adequate five years' supply of effective housing land.
- 3.41 Furthermore, considering that the Council is now able to demonstrate more than a five-years' supply of effective housing land based on the agreed 2017 housing land audit, it will also now seek to resist other proposals for residential development on sites where the principle of such development is not supported by the adopted East Lothian local plan 2008, or where this would not be supported by the finalised proposed LDP if it were adopted in the format proposed.

Considerations related to prematurity and prejudice

- 3.42 SPP states that where a plan is under review (as is the case here) decisions should not prejudice an emerging plan by predetermining the scale, location or phasing of development central to the emerging plan.
- 3.43 This is a consideration that is very likely to apply where the development is so substantial, or its cumulative effect (e.g. with other existing and / or emerging proposals) would be so significant, that to grant permission would undermine the plan making process. Such considerations related to prematurity and prejudice will become even more relevant closer to plan adoption – e.g. at proposed Local Development Plan stage etc.
- 3.44 It is important to note that these considerations are equally relevant to larger scale proposals that are supported by the emerging plan as well as those that are not – the outcome of any examination of the emerging plan is not yet known, and to approve planning permission for a large scale proposal (even if supported by the Council at this stage) may prejudice the ability of the examination Reporter to recommend that it be replaced by another.
- 3.45 Prematurity and prejudice considerations can also apply in situations where a proposed development, even small scale, is dependent on an infrastructure solution that is necessary to accommodate the impact of development proposed by the emerging plan, on an individual or cumulative basis, but for which a solution has not yet been confirmed through the examination.
- 3.46 The same considerations would apply if the early approval of sites associated with the finalised proposed Local Development Plan strategy were to occur without the requisite contributions being provided towards additional

infrastructure capacity that arise as a consequence of the strategy overall – doing so could compromise the funding base for the infrastructure, and potentially prejudice the deliverability of the finalised proposed LDP.

- 3.47 Importantly, however, there may be situations where cumulative impact issues can be overcome for housing proposals of an appropriate scale in suitable locations that would not undermine the finalised proposed LDP (and may help deliver it) and that would contribute towards the maintenance of an adequate five-years' supply effective supply of housing land.
- 3.48 Such proposals may be supported on the proviso that the necessary cumulative impact assessment has been undertaken (based on accommodating all relevant proposals of the finalised proposed Local Development Plan) and if any necessary mitigation can be provided and will be funded by the developer on a proportionate and pro-rata basis as appropriate. Such proposals would need to be assessed on a case by case basis, taking into account all relevant material considerations.
- 3.49 To avoid decisions that would be premature to or prejudice the emerging plan, the factors set out in the Housing Land Supply: Interim Planning Guidance should therefore only be used to determine appropriate housing proposals in suitable locations that, if approved, would not undermine significant decisions on where large scale developments should occur and that would not compromise how additional infrastructure capacity could be funded and delivered on an individual or cumulative basis.

Post Examination Report

- 3.50 Once the finalised Proposed Local Development Plan has been examined and the report of examination has been received, the Council will have before it the finalised proposed Local Development Plan and any amendments that it may need to make to the LDP consequent on the findings of the examination. The finalised proposed Local Development Plan and any recommendations to modify it, taken together, should reflect the plan that the Council can adopt.
- 3.51 However, at this stage adoption of a modified plan is subject to some limited exceptions, for example where a recommended modification to the finalised proposed Local Development Plan should not be followed consequent on the findings of further environmental assessment. As such, once the plan has been modified as appropriate, and this further technical work has concluded, the finalised proposed Local Development Plan (as modified) should carry significant weight as a material consideration.

Post Adoption

- 3.52 The key stage will be the Council's adoption of an up-to-date Local Development Plan as soon as possible on conclusion of the above steps. This will provide up-to-date development plan coverage in the area, and fully reaffirm the primacy of the development plan in decision making.

- 3.53 The adopted Local Development Plan will set out where new housing development can occur to meet the SDP1 requirements. It will also allow the Council to resist proposals for housing development in locations where the plan does not provide for this, provided the plan makes available sufficient effective housing land for the next five years on an on-going basis.

Proposed Site Assessment Criteria

- 3.54 Notwithstanding the need to make more effective housing land available in the area than set out in the East Lothian Local Plan 2008, the Council should adopt a cautious approach to the release of non-allocated housing sites. Matters of prematurity and prejudice need to be carefully considered on a case-by-case basis. The scale of proposals and the ability to provide infrastructure capacity to non-allocated sites without undermining existing allocations or those of the emerging LDP will also be key considerations.
- 3.55 To help ensure a prudent approach the recommended considerations that should be taken into account when determining planning applications for housing development on land not allocated for this purpose by the East Lothian Local Plan 2008 are detailed in Appendix One to this report. These material considerations should 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 application of the material considerations set out in the Housing Land Supply: Interim Planning Guidance would allow the Council to support planning applications for housing that are not consistent with site-specific policies of the East Lothian Local Plan 2008.

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-210-2049, Land at Lempockwells Road, Pencaitland
- PPA-210-2047, Ferrygate Farm, North Berwick
- PPA-210-2043, Land at Old Craighall, Musselburgh
- PPA-210-2038, Land West of 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, May 2014

7.5 Letter of approval of SESplan Supplementary Guidance on Housing Land, Scottish Government, June 2014

7.6 Report by Depute Chief Executive (Partnerships and Services for Communities) to 28 October 2014 meeting of East Lothian Council, *SESplan Supplementary Guidance on Housing Land*

7.7 East Lothian Council LDP: Main Issues Report (October 2014)

7.8 East Lothian Council Draft Proposed LDP (as amended) (November 2015)

7.9 Housing Land Supply: Interim Planning Guidance (December 2013)

7.10 Housing Land Supply: Interim Planning Guidance (December 2014)

7.11 Housing Land Supply: Interim Planning Guidance (February 2016)

7.12 Housing land Audits 2009/10 – 2016/17

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Appendix One

East Lothian Council

Housing Land Supply: Interim Planning Guidance

Factors against which planning applications for housing on land not allocated for this purpose will be assessed pending adoption of East Lothian Local Development Plan

In assessing planning applications for housing the Council will have regard in the first instance to the statutory 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 statutory Development Plan, the Council accepts that the maintenance of an adequate supply of effective housing land is a significant 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 all of the following material considerations:

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 substantially complete within five years.

2 Scale

This guidance does not apply to planning applications for single houses 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.

The actual number of residential units permissible on any one site or within any one settlement will be assessed against the scale and character of the specific settlement. However, the Council will only consider approving a development proposal that, in its totality, does not exceed 300 residential units. Other than in the main towns where the upper limit will apply, the maximum permissible will therefore be significantly less than this maximum

site capacity. 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.

This also reflects 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 determination date so that it can contribute to the five year housing land supply. At the same time, it must not be so large that it would prejudice future decisions on development plan requirements and how these would be best dealt with in the short term and beyond.

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 permission, 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, or that of the emerging LDP as it is developed. For example:

- (i) It must not take infrastructure capacity from, or compromise the ability to provide infrastructure to, existing housing land allocations of the adopted local plan 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 and delivered the necessary infrastructure; and
- (iii) it must not prejudice the ability to provide infrastructure capacity for proposals emerging through the LDP as it is developed, or be dependent on the potential provision of infrastructure capacity associated with any emerging LDP strategy or site.

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, as set out in its Supplementary Guidance on Housing Land¹. 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. development of the site would not undermine green belt objectives, and
 - b. the site is 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
 - c. infrastructure is available or can be made available (see also criterion 4) within a timescale that allows for early house completions, and
 - d. 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 on all or part of the site; a housing use on a part of the site would help deliver the allocated use on a significant remainder of the site; or the desirability of securing housing outweighs the retention of the allocated use.

¹ SESplan Supplementary Guidance on Housing Land May 2014 (ratified by East Lothian Council October 2014).

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,

Mixed use proposals, including residential development, for undeveloped land allocated for business or industrial use under Classes 4, 5 or 6 of the Town and Country Planning (Use Classes) (Scotland) Order 1997 will be expected to:

- a. provide appropriate services to unserviced business/industrial land, thereby facilitating the take-up of employment land, and
- b. not prejudice the continued use of the remainder of the allocated area for the business/industrial use, and
- c. not prejudice, in the Council's view, the supply of employment land in East Lothian, and
- d. demonstrate that 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. The introduction of new homes should not be compromised by or compromise the consideration of potential new land allocations, including potential employment allocations, set out in the emerging LDP as it is developed.
- 5(v) The proposed housing use must be capable of being 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.

**Planning Service
Partnerships and Services for Communities
East Lothian Council**

31st October 2017

Appendix Two

How the Adequacy of the 5-year Effective Housing Land Supply has been Assessed

Introduction

B.1 There is currently no nationally or regionally prescribed method for how the adequacy of the five-year effective housing land supply should be calculated. However, the Council's Draft Proposed Local Development Plan sets out a methodology for this based on established practice, including as applied in recent planning appeal decisions within East Lothian, as well as the current principles set out in the Scottish Government's planning advice note PAN 2/2010.

Background

B.2 SDP1 was prepared under SPP 2010, which expected the SDP to set a housing requirement to 2024, and to identify how much land '*should be capable of development*' by 2019 – i.e. there was no need to set a housing requirement for the period up to 2019. However, the outcome of the SDP Examination was that the current SDP sets two housing requirements, one for the whole plan period to 2024 and one 'interim' requirement up to 2019.

B.3 Consequently, when approving SDP1, Scottish Ministers required SESplan to prepare Supplementary Guidance on Housing Land to confirm the distribution of the SDP housing requirement across Local Development Plan areas for the period 2009-2024, with an interim requirement also to be introduced for the period up to 2019.

B.4 In accordance with SESplan's Supplementary Guidance on Housing Land, the East Lothian Local Development Plan Housing Land Requirement is 10,050 homes in the period 2009 – 2024, with an interim Housing Land Requirement of 6,250 homes up to 2019. Whilst need and demand and rates of development can change significantly under different economic conditions, the SDP1 housing requirements cannot change when the SDP is operative. They are based on HNDA estimates of housing need and demand that are approved as housing requirements by the Scottish Government.

B.5 House completions achieved and anticipated from the established housing land supply over these periods, including from land allocated by the East Lothian Local Plan 2008, can contribute to meeting the SDPs requirements in addition to new land allocations to be made by the emerging Local Development Plan. However, delays in confirming the distribution of the housing requirement at SDP level has delayed LDP preparation in East Lothian and thus the timescales within which additional land can be allocated by the Council.

B.6 If the Council is to maintain an adequate supply of effective housing land for the next five years it should continue to release additional housing land earlier than can be achieved through the plan-making process. This is why the Council has been operating Housing Land Supply: Interim Planning Guidance since December 2013.

Current Method for Assessing the Adequacy of the 5-Year Effective Housing Land Supply

National and Regional Planning Policy

B.7 There is currently no nationally or regionally prescribed calculation method for how the numerical adequacy of the five year effective housing land supply should be carried out. Importantly, however, SESplan's Supplementary Guidance on Housing Land was approved by Scottish Ministers on the proviso that a modification was made to it to remove a sentence which read:

'Member authorities will base their calculation of the five year land supply on the period 2009-2024, taking into consideration housing completions.'

B.8 This would have required planning authorities to base their calculation of the adequacy of the five-year effective housing land supply over the period to 2024, taking in to account completions achieved since 2009 – i.e. to ensure enough effective land was available to meet the housing requirement for the whole plan period. Scottish Ministers took no issue with this calculation method. However, their approval letter continued to state in relation to that sentence:

'While it may be considered to provide useful further information or detail, the inclusion of this also gives rise to a potential inconsistency between SESplan itself and the supplementary guidance.'

B.9 The inconsistency referred to is that the method of calculation set out did not take into account the SDP1 'interim' housing requirement introduced by Scottish Ministers when they approved the SDP. The letter goes on to say that the Development Planning Scotland Regulations require that:

'for a matter to be included in supplementary guidance that will form part of the development plan it must be expressly identified in a statement contained in the plan as matters which are to be dealt with in supplementary guidance. It is not considered that the inclusion of the 2nd sentence of paragraph 3.13 complies with this requirement'.

B.10 Scottish Ministers directed that SESplan's method for calculating the adequacy of the five year effective housing land supply be removed from the Supplementary Guidance on Housing Land to ensure consistency with SDP1. However, they offered no alternative calculation method in their approval letter.

Planning Advice Note 2/2010: Affordable Housing & Housing Land Audits

B.11 The current drafting of Scottish Government Planning Advice Note 2/2010: Affordable Housing & Housing Land Audits has led to established practice on how this calculation is normally carried out within East Lothian.

B.12 Based on this national advice, the approach to assessing whether the supply of effective housing land is adequate for the next five years is based on if enough housing land is programmed to be developed in the next five year period to meet the

remaining housing requirement set for the whole plan period once it is apportioned pro-rata (annualised) over the next five years, taking into account dwelling completions achieved since the based date of the SDP (2009/10).

B.13 The assessment is based on the housing land audit and normally carried out by comparing the programme of dwelling completions anticipated for the next five years to the recalculated housing requirement for the same period. If insufficient land is programmed to be developed to meet the recalculated housing requirement for that period then there is perceived to be a shortfall of effective housing land. The recalculation method subtracts dwelling completions achieved since the base date of the SDP (2009), divides the remaining requirement over the number of years of the plan period remaining, and then multiplies that annualised figure by five.

B.14 However, as explained above, SDP1 sets an overall housing requirement to 2024 as well as an 'interim' one to 2019. This means when the recalculation takes place under SDP1, if less than five years of the first plan period remain (as is now the case here as only 2 years remain) any shortfall from the first plan period should be added to the relevant sum of annualised requirement(s) for the second plan period (rather than spreading the shortfall up to 2019 over the remaining plan period overall to 2024). The steps of this calculation are explained fully in Advice Box 1 of the Council's approved Draft Proposed Local Development Plan (as amended).

B.15 Low levels of market demand / mortgage availability can significantly affect the 'marketability' of sites, and thus the number of house sales that can be achieved and thus the number of dwelling completions that can be programmed from the land supply in any five year period, even if the land is otherwise 'unconstrained'. Economic conditions since 2008/09 have resulted in low levels of completions across Scotland and within East Lothian. This has significantly affected the 'recalculation' of the housing requirement and delayed the programme of housing development during this period. Additionally, based on current Scottish Government planning advice PAN 2/2010, even if a whole site (or part of a site that is under construction) is programmed to start and / or be developed slower than it could under better economic conditions, only the houses from land which is programmed to be built in the next five years contributes to the five-year 'effective' land supply, even if the site (or balance of it) is 'unconstrained' and could be developed for housing faster.

B.16 Current national planning advice expects the method for assessing the adequacy of the five-year effective housing land supply to be based solely on quantitative assessment, even though fluctuations in wider economic conditions can significantly influence the amount of 'unconstrained' land that can be counted as 'effective'. This has been confirmed in the outcome of recent planning appeal decisions. Current Scottish Government advice allows very little weight, if any, to be placed on wider material considerations (such as qualitative economic factors) when assessing if there is enough effective housing land available for the next five-years.

B.17 In terms of meeting the SDPs housing requirements, lower levels of dwelling completions have been achieved since 2009 and are programmed to be delivered up to 2019/20 when compared to the rate and volume of development that would now be needed to meet the recalculated (compounded) SDPs housing requirement for the area, particularly within the period to 2019. The scale of the on-going shortfall in

anticipated house completions **over the next two years** up to 2019 is 1,533 homes. In general terms the lead-in to site start and dwelling completions from application seems to be around 18/24 months³. At the time of writing⁴ there are less than 18 months of the first SDP period up to 2019 remaining. Notwithstanding this, the matter of whether or not there is sufficient effective housing land available is a question that relates to the available supply of such land over the **next five years, not two years**.

B.18 In this regard the intention of PAN 2/2010 is that the overall Housing Requirement of the plan should be delivered over the entire plan period, and that the adequacy of the five year effective supply should also be measured against the overall Housing Land Requirement for the entire plan period (i.e. 2009 – 2024) – i.e. it should not be measured against the ‘interim’ Housing Requirement or Housing Land Requirement with an expectation that the requisite number of homes be delivered within that period only. Put another way, any shortfall in dwelling completions should be able to be made up in later years of the plan period, consistent with maintaining an on-going (‘rolling’) five-year effective housing land supply.

B.19 Nonetheless, the Council has set out in proposed LDP Advice Box 1 a calculation for measuring on an on-going basis the adequacy of the five-year effective housing land supply that takes into account the ‘interim’ Housing Land Requirement set by SDP1. Using the calculation method set out within Advice Box 1 of the finalised proposed LDP, and based on the 2017 housing land audit, the Council can demonstrate a 6.17 years supply of effective housing land as shown in Tables 1a – 1d below.

Assessment of East Lothian’s five-year effective housing land supply

B.20 The following table uses the current method for assessing the adequacy of the five-year effective housing land supply situation within East Lothian, taking into account the SDPs interim requirement up to 2019:

Table 1a: Dwelling Completions 2009 - 2017	
Completions 2009 - 10	193
Completions 2010 - 11	481
Completions 2011 - 12	433
Completions 2012 - 13	214
Completions 2013 - 14	383
Completions 2014 - 15	334
Completions 2015 - 16	427
Completions 2016 - 2017	599
Total Completions 2009 - 15	3064

Source: Housing Land Audits 2009-10-2016/17

³ Homes for Scotland Procedure Note - Housing Land Audits: Homes for Scotland Procedures (May 2015) <http://www.homesforscotland.com/Portals/HomesForScotland/Planning/Housing%20Land%20Audits%20-%20HfS%20Procedures%20-%20May%202015.pdf?ver=2016-02-12-120218-257>

⁴ October 2017

Table 1b: Housing Land Requirements & Need and Demand 2024 - 32

Step			Information Source	Steps
1	East Lothian Housing Land Requirement to 2024	10,050	SESplan SGHL	N/A
2	Housing Land Requirement 2009-2019	6,250	SESplan SGHL	N/A
3	Housing Land Requirement 2019 - 2024	3,800	SESplan SGHL	N/A
4	HoNDA Signpost 2024 - 2032	3,820	SESplan HNDA Need & Demand	N/A
	HLR to 2024 plus Need & Demand '2024-32	13,870		

Table 1c: East Lothian Proposed LDP Supply v's Requirement

Step			Information Source	Steps
5	Completions 2009/10-2014/17	3,064	HLA Completion Schedules 2009/10 – 16/17	N/A
6	Supply 2009/10 – 2018/19 (+ 42 windfall and - 3 demolitions)	4,717	See HLA 2017	N/A
7	Supply 2019/20 – 2023/24 (+ 105 windfall and - 8 demolitions)	7,252	See HLA 2017	N/A
8	Supply 2024/25 – 2031/32 (+ 110 windfall and - 12 demolitions)	3,718	See HLA 2017	N/A
9	Remaining requirement 2016/17-2018/19	3,186		Step 2 – Step 5 = Step 9
10	Remaining requirement 2019/20-2023/24	3,800	SESplan SGHL	N/A
11	Shortfall / Surplus 2009/10 – 2018/19	1,533		Step 2 – Step 6 = Step 11
12	Shortfall / Surplus 2019/20 – 2023/24	-3,452		Step 3 – Step 7 = Step 12
13	Shortfall / Surplus 2024/25 – 2031/32	102		Step 4 – Step 8 = Step 13

A negative number indicates a surplus of housing land against the housing requirements.

Table 1d: Maintaining an Effective Five Year Housing Land Supply

Step			Information Source	Steps
14	Housing Land Requirement 2009 - 2024	10,050	SESplan SGHL	N/A
15	Remaining Housing Land Requirement to 2019	3,186	Step 9	N/A
16	Remaining Requirement to 2024	6,986		Step 1 – Step 5 = Step 16
17	Annual Requirement to 2019	1,593		Step 9 / 2 (years) = Step 17
18	Annual Requirement 2019 to 2024	760		Step 10 / 5 (years) = Step 18
19	Remaining Requirement to 2019	3,186	Step 9	N/A
20	Five Year Effective Land Supply Target	5,466		Step 9 + Step 18 (x 3 years) = Step 20

21	Effective Land Supply to 2019 (plus windfall (42 units) and demolitions allowance (3 units))	1,653	See HLA 2017	1,614 (anticipated completions 2017 – 19) + 42 (windfall) -3 (demolitions) = 1,653
22	Five Year Effective Land Supply (plus windfall (105 units) and demolitions allowance (8 units))	6,750	See HLA 2017	6,653 (anticipated completions 2017 – 22) + 105 (windfall) -8 (demolitions) = 1,653
23	Shortfall / Surplus in Effective Supply to 2019	1,533		Step 19 – Step 21 = Step 23
24	Shortfall / Surplus in Effective Five Year Supply	-1,284		Step 20 – Step 22 = Step 24
25	Number of Years Supply	6.17		Step 22 / Step 20 x 5 (years) = Step 25

A negative number indicates a surplus of housing land against the housing requirements.

Monitoring & Review

B.21 The effective land supply will be monitored and reviewed periodically, including once the Local Development Plan is adopted.

B.22 The contribution of land released under Housing Land Supply: Interim Planning Guidance will also be monitored to ensure that there is a control over the amount of land released. In that context the use of the Housing Land Supply: Interim Planning Guidance will also be reviewed, and if necessary the guidance may need to be revoked / its use suspended.

B.23 Any changes to national planning advice on the matter will also be monitored and taken in to account, particularly if this would review the basis for assessing the adequacy of the five-year effective housing land supply.