



DEVELOPMENT MANAGEMENT COMMITTEE

Report by Head of Planning, Economic Development & Regeneration

1 DESCRIPTION AND LOCATION

- 1.1 Application for the modification of planning obligation relating to planning permission 0694/FUL/12 in respect of payment of developer contributions at 17 Raw Cottages, Clifton Road, East Calder

2 DETAILS

Reference no.	0257/PO/17	Owner of site	Mr & Mrs Robertson
Applicant	Mr & Mrs Robertson	Ward & local members	East Livingston & East Calder Frank Anderson Carl John Dave King Damian Timson
Case officer	Tony Irving	Contact details	01506 282410 tony.irving@westlothian.gov.uk

Reason for referral to committee: Original application 0694/FUL/12 was decided by Development Management Committee.

3 RECOMMENDATION

- 3.1 Refuse the modifications.

4 DESCRIPTION OF THE PROPOSAL AND PLANNING HISTORY

- 4.1 This is an application under S75A of the Town and Country Planning (Scotland) Act 1997 to modify the terms of a planning obligation that the applicant entered into with the council for the payment of developer contributions in relation to a new house.
- 4.2 The applicant applied to build a house at Clifton Road in 2012 (0694/FUL/12). The site is within the core development area as identified in the West Lothian Local Plan.
- 4.3 That application was reported to Development Management Committee on 19 December 2012 with a recommendation to refuse permission on the basis that there was no agreement on developer contributions and that the design of the house was not acceptable. Committee decided to continue consideration of the proposal to allow discussion with officers on phased payment of contributions and to review the education contributions. Agreement was subsequently reached with the applicant to pay the contributions in five instalments. The application was reported back to Development

Management Committee on 27 February 2013 and it was granted subject to conclusion of a planning obligation for payment of contributions in phased payments.

- 4.4 The planning obligation was subsequently concluded with the applicant and planning permission for the house was granted on 23 August 2013.
- 4.5 The planning obligation requires the following contributions:
1. Denominational primary: £1643 indexed to Q1 2009.
 2. Denominational secondary: £1983 indexed to Q1 2010.
 3. Non-denominational secondary: £6633 indexed to Q1 2012.
 4. Town centre improvements: £250 indexed to Q1 2006.
 5. Cemeteries: £35 indexed to Q1 2006.
 6. A71 bus priority measures: £350.72 indexed to Q1 2002.
 7. A71 junction improvements: £215 and £22 indexed to Q1 2002.
 8. A71 Wilkieston north west bypass: £607 indexed to Q1 2012.
 9. East Calder town centre car park: £50 indexed to Q1 2012.
 10. Almondell and Calderwood country park: £250 indexed to Q1 2012.
 11. East Calder park improvement works: £500 indexed to Q1 2012.
- 4.6 The house is now built and occupied. The applicant has made the first of five payments required by the planning obligation and this has satisfied the payments for contributions denominational primary, denominational secondary and cemeteries.
- 4.7 The applicant is now disputing the need to make payments for non-denominational secondary, A71 bus priority measures, A71 junction improvements, A71 Wilkieston bypass and East Calder park improvement works and has provided a supporting statement that is attached to this report.
- 4.8 This application thus seeks to remove the requirement for contributions for non-denominational secondary, A71 bus priority measures, A71 junction improvements, A71 Wilkieston bypass and East Calder park improvement works. The total of these contributions is £8327.72.

5 PLANNING POLICY ASSESSMENT

- 5.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan, unless material considerations indicate otherwise.
- 5.2 The development plan comprises of the Strategic Development Plan for Edinburgh and South East Scotland (SESplan) and the West Lothian Local Plan (WLLP).
- 5.3 Relevant development plan policies are listed below.

Plan	Policy	Assessment	Conform
WLLP	CDA 1 and CDA 2 Infrastructure and local facilities for CDA	The contributions required in the planning obligation are required to provide the necessary infrastructure and local facilities &	No

Plan	Policy	Assessment	Conform
	<p>These policies require infrastructure to be provided or committed before planning permission can be granted and contributions toward local facilities & amenities. The policies allow for planning conditions and legal agreements to be used to secure the funding and proper phasing of development and refer to the CDA Action Plan (appendix 7.1) that lists the requirements for each CDA.</p>	<p>amenities as set out in the CDA action plan.</p> <p>The house is within the CDA and contributes to demand on infrastructure and local facilities and amenities in the same manner as any other house in the CDA.</p>	
WLLP	<p>CDA 9 West Livingston / Mossend and Calderwood</p> <p>This policy sets out the key requirements of the master plan areas. It allocates two mixed use areas to accommodate 2800 residential units at Calderwood: Almondell and Raw Holdings West.</p>	<p>The contributions required in the planning obligation reflect the requirements of this CDA as set out in this policy.</p> <p>The house is within the CDA and contributes to demand on infrastructure and local facilities and amenities in the same manner as any other house in the CDA</p>	No
WLLP	<p>COM 9A Contributions for cemeteries</p> <p>This policy requires financial contributions towards new cemeteries.</p>	<p>This contribution has been paid and is not affected by the present application.</p>	Yes
WLLP	<p>IMP 2 Denominational secondary provision</p> <p>This policy requires developer contributions towards denominational secondary school provision.</p>	<p>This contribution has been paid and is not affected by the present application.</p>	Yes
WLLP	<p>IMP 3 Education constraints</p> <p>This policy states a presumption against housing developments where education constraints cannot be overcome due to a lack of funding but provides for the use of planning conditions and legal agreements to secure appropriate developer contributions for education facilities or to ensure development is phased to ensure</p>	<p>The applicant is disputing the need to pay toward a new non-denominational secondary school at East Calder. The CDA action plan sets out the requirement for this education infrastructure. While some existing capacity at West Calder High is being used by new housing in the CDA at East Calder and at West Calder, the local plan requires a new secondary school to enable full delivery of the CDA.</p>	No

Plan	Policy	Assessment	Conform
	facilities are in place.	Failure to contribute to this new school would compromise the ability to fully implement the CDA strategy and result in insufficient education infrastructure.	
WLLP	<p data-bbox="332 434 779 499">IMP14 Supplementary planning guidance</p> <p data-bbox="332 531 760 632">This policy requires compliance with the council's supplementary planning guidance.</p> <p data-bbox="332 663 667 699">The following SPG apply:</p> <ol data-bbox="381 730 779 1354" style="list-style-type: none"> 1. Planning for education. 2. Denominational secondary school infrastructure. 3. Developer contributions toward the provision of additional primary school capacity for the denominational sector in Broxburn, East Calder and Winchburgh. 4. School commissioning costs. 5. CDA developer contributions for town and village centre improvements. 6. Cemetery provision. 7. A71 developer contributions. 	Failure to contribute to non-denominational secondary, A71 bus priority measures, A71 junction improvements, A71 Wilkieston bypass and East Calder park would be in conflict with SPG on education and A71.	No

5.4 Other planning policy documents of relevance are

- West Lothian Local Development Plan Proposed Plan
- Scottish Planning Policy (SPP)
- Circular 3/2012 Planning obligations and good neighbour agreements

6 ASSESSMENT

6.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan, unless material considerations indicate otherwise. The development plan comprises of the Strategic

Development Plan for Edinburgh and South East Scotland (SESplan) and the West Lothian Local Plan (WLLP).

- 6.2 The application site forms part of the Calderwood CDA allocation. The West Lothian Local Plan sets out the infrastructure and local facilities & amenities requirements that are required to serve the CDA. The contributions that are set out in the existing planning obligation reflect the requirements of the local plan as set out in the policies and supplementary planning guidance.
- 6.3 The applicant's case for not paying some of the required contributions is that the house is an individual self-build and not part of a large scale development and thus should be treated differently from volume housebuilders who will be developing the bulk of the CDA.
- 6.4 Local plan policy does not make any distinction between individual self-build projects and larger housing developments. Each residential unit in the CDA will place demands on infrastructure and on local facilities & amenities and thus contributions are required from all units unless there is an exemption as set out in SPG.
- 6.5 In this case there is no policy exemption that would justify non-payment of contributions for non-denominational secondary, A71 bus priority measures, A71 junction improvements, A71 Wilkieston bypass and East Calder park improvement works. The requirement for these contributions is fully required by local plan policy and SPG.
- 6.6 Circular 3/2012 Planning Obligations and Good Neighbour Agreements sets out the tests required for a planning obligation. These are:
1. Necessary to make the proposed development acceptable in planning terms.
 2. Serve a planning purpose and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans.
 3. Relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area.
 4. Fairly and reasonably relate in scale and kind to the proposed development.
 5. Be reasonable in all other respects.
- 6.7 The contributions that the applicant does not wish to pay (non-denominational secondary, A71 bus priority measures, A71 junction improvements, A71 Wilkieston bypass and East Calder park improvement works) meet all five tests of Circular 3/2012 and in particular relate directly to the CDA requirements as set out in the West Lothian Local Plan.

7 SUMMARY AND CONCLUSIONS

- 7.1 Development Management Committee has previously granted planning permission for a house subject to a planning obligation to secure payment of developer contributions. The applicant now wishes to modify the obligation to remove the requirement to pay contributions for non-denominational secondary, A71 bus priority measures, A71 junction improvements, A71 Wilkieston bypass and East Calder park improvement works.
- 7.2 It is concluded that there is no justification for non-payment of these contributions. The proposal would be contrary to policy of the West Lothian Local Plan that requires

infrastructure to be provided or committed and contributions toward local facilities & amenities.

7.3 It is thus recommended that modification of the planning obligation be refused.

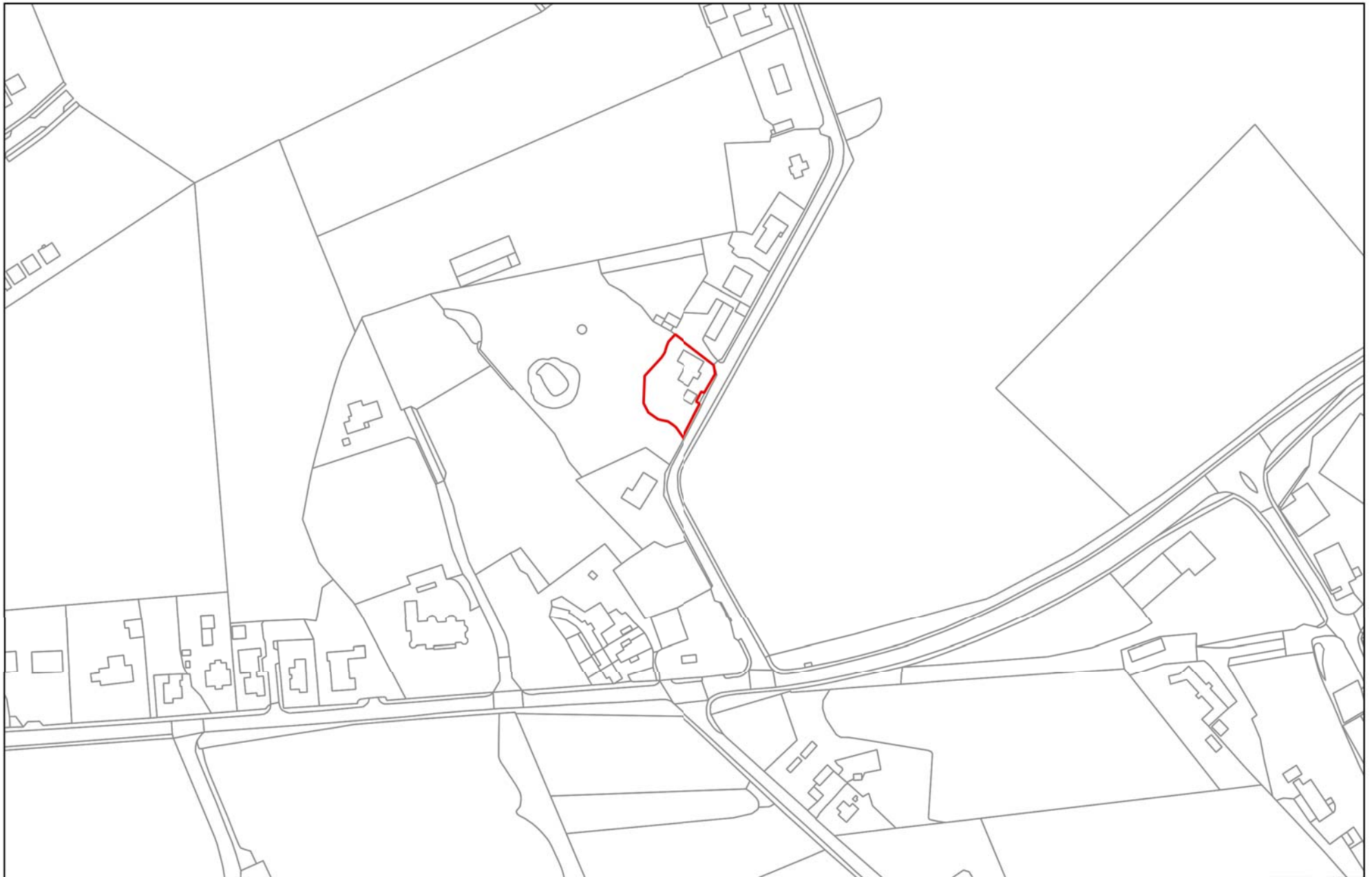
8 ATTACHMENTS

- Location plans
- Draft reasons for refusal
- Supporting statement from applicant
- Extract from existing planning obligation

Craig McCorriston

Head of Planning, Economic Development & Regeneration

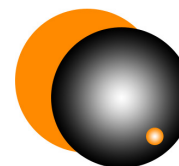
Date: 30 August 2017





0257/PO/17 DRAFT REASONS FOR REFUSAL

1. The proposed modifications to the planning obligation would result in not all required infrastructure being provided or committed and not all deficiencies in local facilities & amenities being remedied. The proposal is thus contrary to West Lothian Local Plan policies CDA1, CDA 2, CDA 9, IMP3, IMP14 and contrary to the following supplementary planning guidance: Planning for Education, School Commissioning Costs, Denominational Secondary School Infrastructure and A71 Developer Contributions.



14th March 2017

Ref: S/001/5.00/ER

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FAO Wendy McCorrison

**PROPOSED ERECTION OF NEW 1&1/2 STOREY DWELLING HOUSE ON LAND TO THE SOUTH WEST OF 19 CLIFTON ROAD, EAST CALDER, LIVINGSTON, EH53 OHJ – REF: 0694/FUL/12 –
-APPLICATION FOR MODIFICATION OF PLANNING OBLIGATION S75-**

Dear Wendy,

With reference to the above and our previous correspondence relating to the obligations we hereby enclose the proposed modifications which we feel should make the contributions more relatable to the construction of a single dwelling:

Under Paragraph 1.1 the owner is required to meet their obligations to pay the (1) denominational primary education contribution (2) Denominational secondary education contribution (3) the non-denominational secondary education contribution (4) Town Centre improvements contribution (5) cemeteries contribution (6) A71 Bus priority measures contribution (7) A71 Junction improvements contribution (8) A71 Wilkieston North West Bypass contribution (9) East Calder town centre car park contribution (10) Almondell and Calderwood country park improvement contribution and (11) East Calder park Improvement works contributions.

We would seek to delete sections (3), (6), (7), (8) and (11) and to replace the above with the following:

The owner is required to meet their obligations to pay the (1) denominational primary education contribution (2) denominational secondary education contribution (3) Town Centre improvements contributions (4) Cemeteries contribution (5) East Calder town centre car park contribution (6) Almondell and Calderwood country park improvement contribution.

Under paragraph 1.1.1 The first payment of the developer contributions shall be the sum of £3661 and which shall be indexed by applying the appropriate indexation to the following developer contributions: (First) Denominational Primary Education Contribution £1,643 Indexed, (Second) Denominational Secondary Education Contribution £1,983 Indexed and Cemeteries Contribution, £35, Indexed. The whole sum payable under this part of this Agreement shall be paid on commencement of development.

We have currently satisfied the terms of this section under the current section 75 agreement having paid the requisite amount.

Under paragraph 1.1.2 The second payment of the developer contributions shall be the sum of £2,244.72 and which shall be Indexed by applying the appropriate indexation to the following developer contributions: (First) A71 Bus Priority Measures Contribution £350.72, Indexed, (Second) A71 Wilkieston North West Bypass contribution £607 Indexed, (Third) the A71 Junction Improvement contributions of £215 Indexed and £22 Indexed, (Fourth) the Town Centre Improvements £250 Indexed, (Fifth) the East Calder town Centre Park contribution £500 Indexed, (sixth) the Almondell and Calderwood Country Park Improvement Contribution of £250 Indexed, and (Seventh) the East Calder Town Centre Car Park contribution of £50 Indexed. The whole sum payable under this part of this Agreement shall be paid on the issue of a certificate of habitation for the development.

We would seek to amend the above and replace with the following:

- 1.1.1 The second payment of the developer contributions shall be the sum of £550.00 and which shall be indexed by applying the appropriate indexation to the following developer contributions: (first) the Town centre improvements £250 indexed, (second) the Almondell and Calderwood country park improvement contribution of £250 indexed, and (third) the East Calder town centre car park contribution of £50 indexed. The whole sum payable under this part of the agreement shall be paid three months after the issue of a certificate of habitation for the development.

In addition to the above and for clarity, the remaining sections pertaining to the obligations paragraphs 1.1.3, 1.1.4, and 1.1.5 shall be removed in lieu of the adjusted contribution amount and payment terms.

We accepted the terms of the original section 75 agreement under protest so that we could progress with the construction of our family home. This was with the understanding that West Lothian council were going to have a review of developer contributions relating to self-build properties due to the stark difference in the way in which they are funded, we are unsure at this juncture whether or not this process has been undertaken.

We have removed contributions which do not directly relate to or reflect the scale of our development. We have retained the contributions for the denominational primary and denominational secondary which were historic and as detailed in earlier correspondence, sums we expected to pay, before contributions were reviewed, along with cemeteries. We would also add that these contributions have now been paid in full and therefore we have satisfied the terms of section 1.1.1 under the current section 75 agreement. We hereby propose to pay our contributions to (4) town centre improvements, (9) East Calder town car park (10) Almondell and Calderwood Country Park which we feel are fair and not as a direct result of wider larger development of the CDA by national housebuilders.

We propose the removal of contributions towards a new non-denominational secondary school as the capacity at the time of planning approval for our house being granted was sufficient and still is. It is only through the continued approval of and construction of large housing developments and in turn the influx of new people and families to the area which drives the need for greater school capacity which ultimately may not serve the immediate needs of our children given recent discussions with education. This along with other infrastructure improvements have been removed, in particular the improvement of East Calder park, which we feel is primarily required due to the approval of developments in the Raw holdings area which essentially reduces the existing amenity of the parks and associated surrounding areas. All the contributions proposed to be removed are all driven by or as a consequence of the proposed construction of the Calderwood development and the subsequent development of other sites at Raw holdings now given consent adding a prospective 3000+ houses into the area. We are a single house but have ended up being classed alongside multi nationals without comparable capital or resources.

We previously had drawn your attention to a planning circular regarding the application of section 75 agreements, our position now as was back then is that we still feel the original terms and contributions of the agreement are not site specific and do not directly relate to our project.

Again we would argue that the construction of our house does not, as a direct consequence of the development, give rise directly to the need for many of these contributions.

'Planning Circular 1 2010: Planning Agreements' cites the following tests that should be carried out before entering into a section 75:

RELATIONSHIP TO PROPOSED DEVELOPMENT TEST

(Extract)- Planning agreements must relate to the development being proposed. Where a proposed development would create a direct need for particular facilities, place additional requirements on infrastructure (cumulative impact) or have a negative impact on the environment or local amenity that cannot be resolved satisfactorily through the use of planning conditions.

SCALE AND KIND TEST

18. Planning agreements must be related in scale and kind to the proposed development. In assessing any contributions planning authorities may take into account the cumulative impact of development over time. The effect of such infrastructure investment may be to confer some wider community benefit but contributions should always be proportionate to the scale of the proposed development. Attempts to extract excessive contributions from developers towards the costs of infrastructure or to obtain extraneous benefits are unacceptable.

19. Planning agreements should not be used to resolve existing deficiencies in infrastructure provision or to secure contributions to the achievement of wider planning objectives which are not strictly necessary to allow permission to be granted for the particular development. Situations may arise where an infrastructure problem exists prior to the submission of an application for planning permission. Where the need to improve, upgrade or replace that Infrastructure does not arise directly from the proposed development then planning authorities should not, generally, seek to address this through a planning agreement. It is Generally inappropriate to grant planning permission for a development which would demonstrably exacerbate a situation which was clearly already unsatisfactory.

20. It is essential that planning authorities understand the implications of a planning agreement on the viability of a development. Entering into an agreement is likely to have financial consequences. Cash flow can also be affected where substantial sums of money have to be paid before a development proceeds or at an early stage in construction. Where a planning agreement requires financial contributions, staged payments in line with the construction programme can help avoid prejudicing the overall viability of a project.

The Scottish Government refers to a recent Study carried out by NASBA (national self-build association) on an action plan aimed at promoting the growth of self-build housing. Within this report reference is made to developer contributions and recommends that local planning authorities take a proportionate approach and limit the amount of conditions placed on relatively minor domestic planning permissions in relation to section 106 agreements (English equivalent to section 75 agreements).

At present and as a true indication of how self-build projects differ hugely from developer led mass development we by virtue of the way in which self-build mortgages work currently are awaiting some retention on the project which is not released until a completion certificate is issued and certain aspects of the project approved by the designated surveyor.

We therefore are self-funding many elements of the build to get to this stage and clear off loans from family members given to progress along with money borrowed on credit cards. Any money paid in contributions comes directly out of the funding for the actual construction of the house, there is no scale of economy and there will be no eventual profits which in the case of developers would help lessen the impact of such contributions on the overall feasibility of a project.

We were unfortunate to be the first single house self-build dwelling to be proposed in the CDA since the contributions were altered in August 2012. Our application was submitted early October 2012 we seen an increase in what our original perceived cost would be from £3661 to £12538.72 an increase of £8877.72. This amount is indexed linked and from what we can see currently we expect an increase on each stage of approximately £1000, which brings to real world cost to us in at around £17,500.00. We feel that the policy being adopted by WLC with regards to developer contributions is too broad and it is within their remit to be able to adjust developer contributions / conditions on a case by case basis.

We understand the requirement for developer contributions, however we feel that they should relate directly to the project and be fair and representative in scale. The changes we have detailed above, are, in our opinion a much more proportionate amount which directly relate to our house.

In addition to the contributions we are being asked to make we are also paying a substantial rate of council tax. The previous year when we made out contribution to the council under section 1.1.1 of the current agreement this payment in addition to the annual council tax rate meant that the council received somewhere in the region of £7000.00 in a year, which is a considerable amount.

Essentially our position is very much the same as it was when we initially questioned the extent of contributions required for a relatively small project when we were in front of the development management committee in January and March 2013. Our beliefs remain unchanged in that the application of these contributions is flawed and is in no way specific or related to each individual application in scale or kind.

I trust that the above is in order, should you have any questions or require additional information please do not hesitate to get in touch.

Yours faithfully,

A black rectangular redaction box covering the signature of Euan T J Robertson.

Euan T J Robertson
B.Arch

This is the Schedule referred to in the foregoing Minute of Agreement among The West Lothian Council and Mr & Mrs. Robertson

Part 1

AGREEMENT AREA

The area of land that comprises the Agreement Area being the land that will be bound by the terms of this Agreement and being the subjects: ALL and WHOLE that area of ground lying to the west of Clifton Road, East Calder and extending to Six hundred and Forty three square meters or thereby in the County of Midlothian, which area of ground is shown outlined and hatched in red on the plan annexed and executed as relative to the disposition by Mrs Edith Margaret Hogg or Robertson and Linn Robertson, in favour of the said Euan Thomas James Robertson dated 8th and Recorded in the division of the General Register of Sasines for the County of Midlothian on 15th both days of May 2013

Part 2


PAYMENT OF DEVELOPER CONTRIBUTIONS


- 1.1 The Owner shall meet their obligations to pay the (1) Denominational Primary Education Contribution, (2) Denominational Secondary Education Contribution (3) the Non-Denominational Secondary Education Contribution (4) Town Centre Improvements Contribution (5) Cemeteries Contribution (6) A71 Bus Priority Measures Contribution (7) A71 Junction Improvements Contribution, (8) A71 Wilkieston North West Bypass Contribution, (9) East Calder Town Centre Car Park Contribution (10) Almondell and Calderwood Country Park Improvement Contribution, and (11) East Calder Park Improvement Works Contribution by paying those developer contributions in instalments as follows:
- 1.1.1 The first payment of the developer contributions shall be the sum of £3661 and which shall be Indexed by applying the appropriate indexation to the following developer contributions: (First) Denominational Primary Education Contribution £1,643 Indexed, (Second) Denominational Secondary Education Contribution £1,983 Indexed and Cemeteries Contribution, £35, Indexed. The whole sum payable under this part of this Agreement shall be paid on commencement of development.
- 1.1.2 The second payment of the developer contributions shall be the sum of £2,244.72 and which shall be Indexed by applying the appropriate indexation to the following developer contributions: (First) A71 Bus Priority Measures Contribution £350.72, Indexed, (Second) A71 Wilkieston North West Bypass contribution £607 Indexed, (Third) the A71 Junction Improvement contributions of £215 Indexed and £22 Indexed, (Fourth) the Town Centre Improvements £250 Indexed, (Fifth) the East Calder Town Centre Park contribution £500 Indexed, (sixth) the Almondell and Calderwood Country Park Improvement Contribution of £250 Indexed, and (Seventh) the East Calder Town Centre Car Park contribution of £50 Indexed. The whole sum payable under this part of this Agreement shall be paid on the issue of a certificate of habitation for the development.

19 Clifton Road East Calder Section 75 Agreement

- 1.1.3 The third payment of the developer contributions shall be the sum of £2,211 which sum shall be indexed by applying the appropriate indexation to the sum of £2211 being that portion of the developer contribution for Non-Denominational Secondary Education payable under this part of this Agreement. The whole sum payable under this part of this Agreement shall be paid prior to the first anniversary of the issue of the certificate of habitation for the development.
- 1.1.4 The fourth payment of the developer contributions shall be the sum of £2,211 which sum shall be indexed by applying the appropriate indexation to the sum of £2211 being that portion of the developer contribution for Non-Denominational Secondary Education payable under this part of this Agreement. The whole sum payable under this part of this Agreement shall be paid prior to the second anniversary of the issue of the certificate of habitation for the development.
- 1.1.5 The final payment of the developer contributions shall be the sum of £2,211 which sum shall be indexed by applying the appropriate indexation to the sum of £2,211 being that portion of the developer contribution for Non-Denominational Secondary Education payable under this part of this Agreement. The whole sum payable under this part of this Agreement shall be paid prior to the third anniversary of the issue of the certificate of habitation for the development.


Signature: West Lothian Council (please sign above line ↑)


Signature: Mr Robertson (please sign above line ↑)


Signature: Mrs Robertson (please sign above line ↑)