Supplementary Planning Guidance No.9

Developer Contributions to Upgrade the Water Supply at Gretna Border

October 2010
1. Introduction and Background

1.1 This Supplementary Planning Guidance outlines the approach and the mechanisms that will be used by the Council to secure infrastructure contributions from developers to upgrade the water supply at Gretna Border.

1.2 Development in Gretna, Gretna Green and Springfield has been limited for a number of years because of a lack of water supply. Some existing customers also experience reduced water pressure. Scottish Water and the Council have been working closely to find a solution that will resolve such issues.

1.3 Scottish Water has identified the following 3 phases of upgrades:
   - Phase 1 has resulted in the replacement of approximately 3.2 kms of water main from Winterhope water treatment works. This is designed to provide 50 connections and some improvement to the water pressure.
   - Phase 2 may involve the provision of a new water service reservoir or alternative solution. The delivery of this phase will be timed to meet the emerging demand for new housing. It will create capacity for approximately 100 connections and will further improve existing water pressure.
   - Phase 3 involves further pipe work upgrades. This stage will provide the capacity needed for the remaining sites identified in the Local Plan and will again be timed to meet the emerging demand for new housing. It will also be the final stage in improving water pressure for existing customers.

1.4 Under Scottish Waters current funding regime Phase 2 and 3 of the work would normally require to be paid for by developers and or landowners at an estimated cost of £3.2 million.

1.5 As there are a number of developers and landowners in the Gretna border area it would be difficult to co-ordinate and apportion payment.

1.6 To secure all 3 phases of the upgrade, the Council has agreed to pay Scottish Water a £500,000 contribution when work on phase 3 is initiated. Financial support from the Council enables Scottish Water to secure the funding to implement phases 2 and 3 and complete overall improvements to the mains water supplies at a total estimated cost of £5 million. The Council will then recoup its contribution through developer contributions which have been set at an affordable and realistic amount. Developers will only be required to pay a contribution once the 50 connections created by the phase 1 upgrade have been committed by Scottish Water.

1.7 It is important to note that without the financial support from the Council, Scottish Water would only be able to carry out phase 1 of the upgrade. If the Council were not able to provide the financial support, a developer, or a consortium of developers would need to be willing to fund the phase 2 upgrade at an estimated cost of £2.2 million. If a developer or a consortium were able to fund the upgrade they could only safeguard the connections the upgrade would create for their own use for a limited time period.

2. Legal and Policy Background

2.1 Section 75 of The Town and Country Planning (Scotland) Act 1997 empowers the local authority to enter into planning agreements with applicants and landowners to manage developer contributions.

2.2 Circular 1/2010 Planning Agreements provides Scottish Government advice on this matter. The circular makes it clear that planning agreements have a limited but useful role to play in the development management process but they should only be sought where they are required to make a proposal acceptable in land use planning terms. The agreement must be related to the development proposed and must be proportionate in scale and kind to the development being considered.
2.3 Conditions, including suspensive conditions, will be used wherever possible. In those cases where that is not possible it is a legitimate planning objective for the Council to utilise planning agreements to secure contributions towards the upgrade of the water supply. The legislation makes it clear that agreements should only be sought when the use of a planning condition is not appropriate.

2.4 Dumfries and Galloway Structure Plan policy D37 – Private Sector Contributions provides the development plan policy framework.

Contributions from developers will be sought for the provision of infrastructure, community facilities and environmental amenity related to appropriate development. These will accord with the policy and general principles set out in Scottish Office Circular 12/1996. Local Plans will identify sites where developer contributions will be sought to enable deficiencies in infrastructure or other facilities to be overcome.

Justification
The consequences of limited public sector funds for both infrastructure and construction is to place increased emphasis on the private sector. Contributions will be sought from developers towards basic infrastructure and facilities where this could be linked to the development proposed. It is anticipated such work is likely to be financed primarily through reductions in the price paid for the land.

Note that circular 12/1996 referred to in the ‘justification’ has been superseded by 1/2010.

3. IMPLEMENTATION

3.1 The requirement for developer contributions in respect of upgrading the water supply will be discussed with the landowner or developer at the outset, either at the initial pre-application meeting or as soon as the planning application has been submitted. These discussions will cover how much is to be paid and depending on the scale of the development what the best method will be to secure the payments, either via a suspensive condition or a planning agreement.

3.2 Phase 1 of the upgrade works happened irrespective of whether or not the Council made its financial contribution; it would therefore be unreasonable for the Council to ask for a developer contribution in respect of the first 50 connections.

3.3 Developments that require more than 50 connections before the first 50 connections have been taken up will be advised when their application is submitted what the maximum amount they be required to pay is. They will also be advised that this amount could decrease by the time the application is approved as other developments requiring a connection may not have been approved in the meantime.

3.4 The Council are only seeking developer contributions until the £500,000 (index linked to an appropriate construction industry index from the date of payment to Scottish Water) plus any legal costs is repaid.

3.5 The Council will incur additional costs in drawing up each planning obligation, the average cost incurred by the Council in preparing a planning obligation agreement is £600–£800. The Planning, Housing and Environment Committee have agreed that this additional cost is added to the initial Council outlay and that developer contributions are paid to the Council until the full cost is reimbursed. To minimise this cost it is proposed to use a standard Planning Agreement template, a draft of which is attached as an appendix to this guidance.

3.6 Large schemes will be given the option of phasing their development and paying the contribution prior to work commencing on each phase. These schemes will require a planning agreement to be entered into and planning permission will only be issued once the planning agreement has been concluded. Preparation of the agreement will be progressed during the processing of the planning application to minimise the risk of any delay in issuing the planning permission.

3.7 For smaller schemes (i.e. development of less than 10 units) that do not require to be phased, or where the developer is able to pay the contribution prior to commencement of development, planning permission will be granted subject to a suspensive condition. The suspensive condition will require the developer contribution to be paid to the Council prior to work commencing on site. This will remove the need for a planning agreement and will reduce any risk of delay.
3.8 Contributions will be required in respect of all planning applications including planning permission in principle.

3.9 As the water supply improvement works for which the financial contribution is required are not in the control of the applicant, Scottish Water has given a guarantee to the Council (as the planning authority) that the works will be done within the time period allowed in the planning permission for the commencement of development. This ensures that the requirement for the planning agreement is reasonable.

3.10 The table below lists the amount of developer contribution that will be required for each type of development. They were agreed by the Council’s Planning, Housing and Environment Committee on 14 April 2009. The payment rates will be index linked (using the appropriate construction costs index) once the Council has made its payment to Scottish Water. The rates will then be reviewed on an annual basis from date of implementation.

<table>
<thead>
<tr>
<th>Type of Development</th>
<th>Amount to be paid per connection</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential</td>
<td>£1,250 per connection</td>
</tr>
<tr>
<td>Commercial</td>
<td>£1,250 per 500 square metres</td>
</tr>
<tr>
<td>Industrial</td>
<td>£1,250 per 500 square metres</td>
</tr>
<tr>
<td>Retail</td>
<td>£1,250 per 500 square metres</td>
</tr>
<tr>
<td>Business</td>
<td>£1,250 per 500 square metres</td>
</tr>
<tr>
<td>Nursing/Residential Care Home</td>
<td>£1,250 per 10 bed spaces</td>
</tr>
</tbody>
</table>

3.11 Developers will be able to make their payments to the Council by cheque or electronic means.

3.12 The water supply issue has been ongoing for a number of years which has resulted in some developers using boreholes to serve their development. Scottish Water has advised that any properties wishing to move from a borehole to a public supply should contact them in the first instance. These connections will be required to make a developer contribution to the Council if they are not within the first 50 connections.

4. MONITORING

4.1 Take up of the 50 connections created by the phase 1 of the upgrade will be monitored by Scottish Water and the information will be passed to the Council and reported to the Planning, Housing and Environment on an annual basis until those connections have been taken up. This will provide clarity to developers so they know when they will be required to start paying the developer contribution to the Council.

4.2 The Council will work with Scottish Water to monitor take up of connections created by phase 2 and 3 of the upgrade works. This will be reported back to the Planning, Housing and Environment Committee every 3 years until developer contributions have repaid the £500,000 (increased by the construction costs index) plus any additional costs incurred by the Council in drawing up legal agreements. Again this will provide certainty to developers so they know when they no longer have to pay a developer contribution to the Council.
APPENDIX 1
DRAFT/

MINUTE OF AGREEMENT

between

THE DUMFRIES AND GALLOWAY COUNCIL

and

[developer to be detailed]

2010

Re:

B M Kearney
Head of Legal Services
Dumfries and Galloway Council
Council Offices
Buccleuch Street
DUMFRIES
DG1 2AD

FAS 1255 L/P/(ref to add)
MINUTE OF AGREEMENT

between

THE DUMFRIES AND
GALLOWAY COUNCIL

having their principal offices at
Council Offices, English
Street, Dumfries DG1 2DD

and

[Developers to be named and
designated]

IT IS HEREBY CONTRACTED AND AGREED between THE DUMFRIES
AND GALLOWAY COUNCIL incorporated in terms of The Local Government
etc (Scotland) Act 1994 and having their principal offices at Council Offices,
English Street, Dumfries, the planning authority for the area of Dumfries and
Galloway in terms of that Act and for the purposes of The Town and Country
Planning (Scotland) Act 1997 (who and whose successors as planning
authority are hereinafter referred to as “the Council”) and [Developers be
named and designated] (who and whose successors as heritable proprietors
of the subjects hereinafter described are hereinafter referred to as “the
Developers”) in manner following:-
WHEREAS The Council is planning authority for the area of Dumfries and Galloway as aforesaid;

AND WHEREAS The Developers are the heritable proprietors of the subjects hereinafter described;

AND WHEREAS The Developers have made an application (reference to be inserted) to the Council for planning permission for (details of development to be inserted) on the Subjects hereinafter described;

AND WHEREAS In order to improve the water supply and pressure in the Gretna, Gretna Green and Springfield areas of The Dumfries and Galloway Region, the Council are committed to contributing a sum of £500,000 to Scottish Water to facilitate the advancement of Phase 3 of the network upgrades in these areas subject to Scottish Water investment in the total expenditure of Phases 1 and 2 and Scottish Water meeting any additional expenditure over £500,000 for Phase 3 provision;

AND WHEREAS It has been agreed by the Council that as a result of the Council’s contribution to resolve the said water supply and pressure limitations thus
facilitating future development in the Gretna, Gretna Green and Springfield areas, a developer contribution would apply to all planning applications in these areas registered after the water connections created by the Phase 1 upgrade had been committed by the said Scottish Water with the said contribution paid to the Council prior to work commencing on site by or on behalf of the developer, said contribution being £1250 per residential property, £1250 per 500 square metres of commercial, industrial, retail or business development and £1250 per 10 bed spaces created in a nursing/residential care home, said contributions being index linked from the date of payment of the £500,000 contribution by the Council to Scottish Water;

AND WHEREAS The Council is entitled, in terms of Section 75 of the said 1997 Act to enter into an Agreement with any person interested in land in their area (in so far as the interest of that person binds the land) for the purposes of restricting or regulating the development or use of the land either permanently or during such period that may be prescribed in the Agreement;
AND WHEREAS The Council are minded to grant the said application for planning permission subject to the conclusion of an Agreement in terms of Section 75 of the said 1997 Act in respect of the subjects hereinafter described;

AND WHEREAS The Developers have agreed with the Council to enter into such an Agreement in respect of the subjects hereinafter described;

NOW THEREFORE The Developers hereby agree and do hereby bind themselves and their successors and assignees whomsoever to comply with the undermentioned conditions with regard to ALL and WHOLE (full conveyancing description to be inserted) all as the said subjects are hereinafter referred to as “the Subjects”.

AND DECLARING THAT The said conditions are as follows, videlicet:-

(First) Prior to the commencement of work on the Subjects pursuant to full planning permission issued or to be issued in respect of the said application (ref (insert plan application reference)), the Developers shall pay to the
Council the developer contribution of £ \( \text{(figure to be inserted)} \). No development shall be commenced on the Subjects until the said contribution has been paid to the Council.

(Second) Notwithstanding any other provision of this Agreement, neither this Agreement nor any other Agreement between the Council and the Developers shall or may fetter the Council in its capacity as planning authority in the proper exercise of its discretion and judgement in the determination of any application made to it for planning permission or any other permission or consent.

(Third) This Agreement may be enforced by the Council against the Developers.

(Fourth) The obligations created hereby may be terminated, amended, discharged or partially discharged by the written agreement of the Council and the Developers. The Council shall be obliged to grant a discharge or partial discharge hereof on payment or partial payment of the developer contribution.

(Fifth) Any dispute of any kind which may arise between the Council and the Developers regarding the terms of this
Agreement shall be referred to the decision of a sole Arbiter to be appointed by the Chairman for the time being of The Royal Institution of Chartered Surveyors in Scotland on the application of either the Developer or the Council and the decision of such arbiter, including any award of expenses, shall be final and binding on the disputing parties and failing such award of expenses, the costs of any such arbitration shall be borne equally by the disputing parties.

(Sixth) This Agreement shall be construed in accordance with and governed by the laws of Scotland and the Council and the Developers hereby prorogate the jurisdiction of the Court of Session in Scotland.

(Seventh) The Developers shall pay their own expenses hereof plus outlays properly and reasonably incurred as well as any registration dues and the provision of extracts hereof [if requested] for each party.

(Eighth) The parties hereto consent to registration hereof for publication as well as for preservation and execution: IN WITNESS WHEREOF