Local Government and Communities Committee

Planning (Scotland) Bill

Submission from Development and Environmental Services Limited

Note: this submission has been redacted in line with the Parliament’s policy on the treatment of written evidence.

1.0 Company Information

1.1 Development and Environmental Services Limited is a small Incorporated Scottish Company (No SC 322297) trading for more than 10 years. We are a family business working from Holly Cottage, Braeface Road, Banknock, Bonnybridge FK4 1UE with 2 Directors/Shareholders – Maureen Henderson is the Company Secretary and Dan Henderson is the Environmental & Development Director. We provide professional services such as Contaminated Land Assessments (mainly Phase 1); and act as Agents and prepare Supporting Statements for Planning Applications.

2.0 Background

2.1 Our clients are generally self-builders or SME's and most of our housing work concerns single self-build or very small developments. **We are strong supporters of self-build and have become increasingly concerned at unrealistic and unjustified demands from councils for excessive developer contributions.**

2.2 We are also unhappy about failures in respect of contaminated land matters – with some totally unnecessary Phase 1 reports being demanded yet, within the same council, a failure by Development Management to comply with PAN 33 – with their Building Standards Section being burdened with “last-minute” requests from council officers for contaminated land assessments which planning have failed to request.

2.3 A lack of transparency/open-ness is also a concern with **at least one Council refusing to identify those undertaking “Peer Review” of submitted Contaminated Land Assessment Reports and working on the basis of anonymity and secrecy.**

2.4 Given that the requests for unnecessary reports provide business/income for our company it should be appreciated that we have no advantage in raising these points and that we simply wish to ensure self-builders and small companies are not burdened with unnecessary costs.

3.0 Developer Contributions

3.1 The Bill contains provision for changes to planning obligations and for the introduction of an Infrastructure Levy. Self-builders and SME’s are already burdened with significantly higher construction costs because purchasing
single house and/or small plots is generally (on a proportionate basis) much more expensive than purchasing large housing development sites. Similarly, large builders can benefit from lower material and construction costs as a result of savings from bulk purchasing and operating/building on a much larger scale.

3.2 The Scottish Government (SG) is aware that the UK/Scotland are very near to “the bottom of the league” in respect of the number of self-build houses and we attended the SG Self-Build and Custom Build Homes event on 15 September 2016. One of the Main Issues considered at the Event was the role of Planning and it was concluded that (a) Planning Authorities require to be made fully aware of the virtues of self-build to encourage them to identify sites specifically for new initiatives; and the Planning Authorities should develop policies which protect self-builders from onerous Section 75 contributions. At that time self-builders in England were exempt from Planning Obligation payments, indeed the exemption applied to sites of up to 10(TEN) new houses – with the exemption level in designated rural areas being 5(FIVE). The “Agreements” were under S.106 of the English legislation which, we understand is “equivalent” to S.75.

3.3 We work across Central Scotland and have had dealings with several councils. We have noted huge differences in Planning Obligation Agreement policies and we have been astonished and seriously concerned at the arrangements within one council.

3.4 We first had contact with West Lothian Council (WLC) regarding an appeal to the DPEA relating to the refusal of a planning application. The Reporter soon issued a Notice of Intention stating that the application would be granted subject to a Planning Obligation Agreement (e.g. S.75). On scrutinising the WLC S.75 demands and policies we found very serious shortcomings – which we list in paragraphs 3.5 – 3.9 hereafter.

3.5A “Bathgate-Wide” non-denominational primary school contribution is currently demanded for NDPS Infrastructure in the Bathgate area. WLC started taking such contributions (£1080/unit) about 6 years ago and claim the contribution is justified by the Local Plan and a Report entitled “Funding for Key Infrastructure Projects” dated 22/03/2011. The 22/03/2011 Report mentions a “town-wide” approach and states that Supplementary Planning Guidance would be required if it were to be agreed. There is no recommendation in the Report to approve a Bathgate Wide approach. There is no mention in the Report of the £1080/unit figure - and no calculation in the Report explaining how the £1080/unit was calculated. No SPG explaining the Bathgate Wide Approach and the £1080 calculation has ever been drawn up and such an approach is contrary to the existing Councillor approved SPG entitled “Planning for Education” which advises that the need (or otherwise) for contributions will be based on school roll projections/pupil numbers; and be related to
catchment areas. We understand the WLC Scheme of Delegation does not allow Officers to introduce new developer contributions or new policies without Councillor approval. Interestingly, and unlike most other contributions, the Bathgate Wide NDPS contribution is not index linked –

3.6 The whole thing has been, and still is, a shambles with no credible explanation being provided concerning the £1080/unit calculation and who approved it.

A Denominational Primary School (DPS) Education contribution of £423/unit has been demanded by WLC – and was still being demanded until only a few months ago. We could find no Council minute or SPG approving such a contribution and we wrote to WLC asking for their justification. We received a reply stating; -a) the contribution they had been demanding – only a few months ago – had now been “deprecated”; b) no SPG was ever prepared; and c) the council no longer holds information on how the £423/unit was calculated. Immediately prior to writing to WLC regarding this matter WLC had been demanding a £3384 (423 x 8) Denominational Primary School contribution in respect of an 8-house development. On receipt of our e-mail questioning the payment the demand was promptly dropped, and the contribution was suddenly “deprecated” with no explanation given.

WLC have been demanding developer contribution payments for a 110-pupil extension for Whitburn Academy and – when advising the Planning Department such a payment is necessary in respect of planning applications that are being processed the Education Department claim that a Decision was taken on 16/6/2008 by the Education Executive to approve the extension. We have checked the 16/6/2008 minutes and they reveal that no such decision was taken and that the Education Executive only “accepted in principle” the development of a SPG for contributions to extension works at Whitburn Academy. The 16/6/2008 Report also stated Whitburn Academy would be reaching capacity by 2019/2020 and the need for an extension was predicated on the “scale of overcapacity that may arise”. By the time the SPG was approved (8/2/2011) there had been a massive change in world economics with a huge downturn in construction. The Report accompanying the SPG made reference to the economic climate, stated that the policy would be revised as circumstances required; and actually stated that the school roll was well below the 1210 pupil capacity. Nonetheless the SPG was not only agreed – but “backdated” to 16/6/2008. The most up to date information
we have is that, far from the school being near to overcapacity, Whitburn Academy is hugely under occupied with vacant capacity for 446 pupils. WLC has completely failed to update their SPG to take proper account of pupil numbers.

3.9 WLC demand developer contributions for Denominational Secondary School (DSS) Infrastructure and an SPG was firstly approved in May 2005, with the current SPG approved on 29/6/2010 by the Council Executive. We understand that in 2008 the Reporters on the outcome of the Local Plan Enquiry Process recommended no change to the provision of additional Infrastructure for the denominational secondary sector – but that, despite this, the Head of Education (Development) advised it was appropriate to explore a range of options to build additional Secondary School capacity to meet current “anticipated needs” and alleviate development constraints. Whilst scrutinising DSS Education Contributions we found a Report considered by Councillors on 18/4/2013 entitled “Supplementary Planning Guidance – Developer Contributions for DSS Infrastructure”. The Report advised that the figures used in the current (29/6/2010) DSS SPG were incorrect in that the pupil numbers and the cost of Infrastructure works were too high – about 10 MILLION POUNDS TOO HIGH. Councillors considered a revised SPG/developer contribution and agreed that consultation should be carried out and that the outcome of the consultation should be reported to the Council Executive for Decision. The minuted Decision of 18/4/2013 was that; - (1) the contents of the Report are noted; (2) The Report should be forwarded to the next appropriate meeting of the Council Executive with the recommendation that it be approved. An Appendix to the Report entitled, “Contribution rates for denominational secondary sector” stated that the number of units(houses) expected to contribute is 17,315 - which was a reduction of 5,685 (ABOUT 25%) compared to the 23,000-figure stated in the “existing” SPG. It was also a reduction of 4,203 units from a 21,508-figure stated in a 7/8/2012 WLC Report just EIGHT MONTHS earlier. There was however no credible explanation as to why a reduction in 5685 houses will not also result in a much greater reduction in the number of pupil places that require to be provided, and thus a much lower level of provision of new Infrastructure. We are concerned that in some instances WLC are proposing to build Infrastructure at a scale that is excessive and thus not necessary. Because the SPG currently being used has not been updated it is not accurate and not fit for purpose. Further, WLC has known for almost 5 years that it was taking DSS developer contributions based on hugely inaccurate financial figures and incorrect pupil numbers and has done absolutely nothing to correct the position.

3.10 WLC demand developer contributions for a very wide range of “infrastructure” with many of the contributions being on a standard charge/unit basis. SG Guidance contained in Circular 3/2012 states that;
a. methods and exact levels of contributions should be included in STATUTORY supplementary guidance;
b. Where standard charges and formulae are applied they should reflect the actual impact of the development and be proportionate, and comply with the tests set out in circular 3/2012; and
c. Supplementary Guidance should not be applied until it has been formally agreed by the Authority. WLC have informed us that “the guidance is only guidance” and it is not a statutory/legislative requirement. Consequently, in some instances they have not taken account of the guidance and, for example, NONE of their Supplementary Guidance is statutory. From considering some of their standard (unit) charges we are certain that some are NOT proportionate, for example they apply the same unit charge to a 2-bedroom flat as they apply to a 6 or more-bedroom detached house. These unit charges consequently do NOT meet the tests in Scottish Government Circular 3/2012 of recommendations from Reporters WLC decided not to seek developer contributions for “a travel plan co-ordinator” and for “professional services” through Section 75 Agreements. The failures of WLC to review and update SPG’s has resulted in developer contributions being taken when there is simply no justification, for example cemetery contributions. WLC started taking cemeteries contributions on 16/6/2008 on the basis of a DRAFT SPG. A new policy became effective from 19/5/2009 when the SPG entitled “Developer Contributions Towards New Cemetery Provision in West Lothian” was approved. The (May 2009) SPG stated that there was cemetery capacity for periods of time ranging from 20 to 50 years within the 7 main West Lothian cemeteries – but the SPG still recommended the need for developer contributions. West Lothian Crematorium has been constructed and opened since the SPG was approved – but WLC have failed to take the changed circumstances into account. The National Records of Scotland show that there are 1470 deaths/year in West Lothian and the crematorium is capable of more than 1000 cremations a year (indeed possibly more than 1470?). The Scottish Government has passed legislation that encourages re-use of old/unused lairs within cemeteries and WLC have also failed to take this into account. There is no justification whatsoever for anybody to be burdened with a cemeteries contribution because the WLC SPG is out of date; not fit for purpose, and the contribution does not meet the 5 tests.

3.11 In determining the need for new infrastructure, a robust justification should be provided based upon the best information available. We have looked at National Records of Scotland data. We note the projected population increase for the West Lothian Council area for 2017 – 2027 is 8956 and that the increase for the 0 – 15 age group is 568; the increase for the 65 – 74 age group is 2677; and for the 75+ the increase is 6034. The fundamental point is that growth in population in West Lothian
(and across Scotland) is overwhelmingly within the older age groups. The number of households in West Lothian at 2017 is 76,724 and the projection for 2027 is 82,208 – an increase of 5484 equivalent to about 550 per year. In 2017 there were 23,900 “one adult with no children” households, the projected figure for 2027 is 27,634 – an increase of 3734 which equates to a 40% increase within West Lothian (Scotland figure is 35%). These are very basic Scottish Government statistics/projections. On the matter of population and household statistics – they indicate population growth will be due to a large increase in older people; and that almost 70% of the increase in the number of households will be because of more “one adult/no children” households. All of the foregoing seems to us to conflict with the picture painted by WLC in (generally “out of date”) Supplementary Planning Guidance and associated Reports and Policies. In short – we have fundamental reservations about the quality and accuracy of much of the information and assumptions being used by WLC. Although we have used WLC as an example in our submission – and it is therefore important that checks and balances are in place to drive out the poor performance such as that being delivered by WLC.

An objective of the Bill is to reduce bureaucracy – so that the planners are better equipped to enhance our communities. Using WLC as an example, the poor service provision is not the fault of the front-line Planning Officers, or Planning Officers a bit further up the pecking order, it is due to a lack of leadership and direction. The systemic failures relating to: - the out of date policies and SPG’s; not complying with SG Guidance have occurred because the “top” officers have not done their jobs. Cultural change is required urgently – and there is no need to wait on a Bill or any legislative change. The Scottish Government should confront failing councils – such as West Lothian – when their performance is unacceptable.

4.0 Contaminated Land

4.1 From recent experience we understand that procedures for dealing with Contaminated Land issues prior to and in the course of Planning Applications in at least one council area, and possibly more, – involves (a) planning technicians deciding if the Contaminated Land/Environmental Health section should be consulted; (b) contaminated land reports being assessed by anonymous external “Peer Reviewers”; and (c) developers...
being confronted with requests for contaminated land reports, by Building Standards (at the belated request of CL/Environmental Health) AFTER planning consents have been granted and with no or inadequate consideration having been given to contaminated land issues.

4.2 **Assessment of some/most contaminated land reports, in at least one council and possibly more, is undertaken by anonymous “Peer Reviewers” (who do not communicate with the authors of the submitted reports) and with the names and professions of the “Peer Reviewers” kept secret by the Council - from the planning applicant; the agent; and report authors.** We believe the poor arrangements we describe may be due to action by the council(s) to “speed up” determination of planning applications after delays caused by “questionable” requests for CL Reports by their own colleagues.

4.3 **Transparency and openness are the bedrock of sound governance and consideration of contaminated land issues by anonymous persons is unacceptable and should cease.** All planning applications, and indeed potential applications, should be considered in the context of possible land contamination at the earliest stage of possible development - and by a suitably qualified Officer.

5.0 **Our Objectives**

5.1 **Self- builders and SME’s undertaking one-off or very small projects should not be burdened with developer contributions or with an Infrastructure Levy.** The extremely poor arrangements we cite as examples are due, in the main, to Scottish Government Guidance

5.2 **Consideration of contaminated land issues should start at the earliest stage of any development and should not involve anonymity.** The poor arrangements we have described are contrary to guidance (such as PAN 33) and result in developers being confronted with contaminated land demands at the “end” of the planning process – rather than at the “start”. The shortcomings we describe delay new housing and new development and thus adversely affect the Scottish Economy.

5.3 **We want to ensure public monies are spent wisely.** We openly admit that the statistics we have considered are limited, however they seem to suggest the possibility that some unnecessary school infrastructure is being proposed - and that a higher level of capital expenditure should, perhaps instead, be directed to the needs of the growing elderly population.