

Caltongate Section 75 Agreement

Development Management Sub-Committee

29 August 2012

1 Purpose of report

- 1.1 To seek Committee approval to enter into a Section 75 agreement with Artisan Real Estates Investors in relation to the Caltongate development.

2 Summary

- 2.1 The new Caltongate developer, Artisan REI (hereinafter referred to as Artisan), has approached the Council for the purpose of agreeing the terms of a Section 75 agreement in connection with this development. Artisan is not bound by the terms of the original agreement entered into with Mountgrange (Caltongate) Ltd (hereinafter referred to as Mountgrange) as a result of the administration process. Artisan is willing to enter into a new agreement in order to ensure that necessary infrastructure required in connection with the development is delivered. It is recommended that Committee authorises council officials to enter into a Section 75 agreement on the terms set out below.

3 Main report

Background

- 3.1 The Council issued several planning permissions (07/00560/FUL, 07/00101/FUL, 07/01287/FUL, 07/04400/FUL, 07/01237/FUL, 07/01288/FUL and 07/01241/FUL) collectively known as the Caltongate development in October 2008. The Council entered into an agreement with Mountgrange, the developer at that time, requiring them to deliver or contribute towards a number of infrastructure needs.
- 3.2 The agreement provided for affordable housing (25% of total units), education contributions (secondary school and denominational primary school), transport contributions (City Car Club, real-time bus information, green travel plan, pedestrian crossings, St Mary's Street junction, New Street closure and East Market Street junction), a community facility, affordable business space, Canongate flats (relocation costs), tram contribution and a public realm

contribution (Calton Steps, Calton Road Railway Bridge, and other improvements).

- 3.3 In March 2009, Mountgrange were put into administration with Deloitte appointed as the administrators. As part of the administration process the land owned by Mountgrange, at New Street and Calton Road, was sold to Artisan. The agreement entered into by Mountgrange was not registered against title. This was programmed to happen once the purchase of the Council land, required in connection with the development, was completed. That transaction did not complete prior to Mountgrange being put in administration. As a result the terms of the agreement are not binding on successors in title and Artisan is not legally obliged to meet the terms of that agreement. Nonetheless, Artisan has approached the Council with a view to entering into a new agreement to ensure that necessary infrastructure is delivered, if the existing planning permissions are taken forward.
- 3.4 In December 2011, the Council approved the sale of the Council land, required for the Caltongate development, to Artisan.

Proposed Terms of the Section 75 Agreement

- 3.5 The developer, Artisan is willing to enter into a Section 75 agreement with the Council. The heads of terms of the new agreement, and how it differs from the original agreement, are set out below. Relevant policies are set out in Appendix A.

Affordable Housing

- 3.6 The original agreement made provision for 25% of the residential units to be affordable. This requirement will also be provided in the proposed new agreement, and is in line with current policy.

Schools Infrastructure

- 3.7 The original agreement made provision for financial contributions towards denominational primary school and non-denominational secondary school capacity. Artisan has stated that it is willing to also meet this requirement. However, colleagues in Children and Families have indicated that they are now only seeking a contribution towards non-denominational secondary school capacity. This change will be reflected in the new agreement although the level of contribution will remain the same. This is in accordance with current policy.

Affordable Business Space

- 3.8 The original agreement made provision for 1,840 square metres of affordable business space, of which 645 square metres was attributable to the loss of the Canongate Venture. Artisan has stated that in the current market there is little scope for delivering this amount of affordable business space. However, Artisan is willing to deliver 645 square metres of space in the event that the Canongate Venture is redeveloped. While this is a reduction from the original agreement, this remains compliant with current policy.

Community Facility

- 3.9 The original agreement required the developer to provide a community facility and to pay a financial contribution towards the running costs of the facility. Artisan is willing to meet these previous requirements but would like some flexibility on where the facility is provided. This is in accordance with current policy.

Transport

- 3.10 The original agreement made provision for pedestrian crossings at East Market Street and Canongate, real time bus information within the development, the closure of New Street, and the upgrading of the traffic signals at St Mary's Street. Artisan is willing to meet these previous requirements. However, the original sum required for the St Mary's Street junction was £130,000. Artisan has indicated that they are willing to offer £40,000 as they do not consider the £130,000 to be necessary. Colleagues in Transport have agreed with this position on the basis that some flexibility in the way the contribution can be used is accepted. This is in accordance with current policy.

Tram Contribution

- 3.11 The original agreement required the developer to pay a financial contribution towards the tram project. The original amount agreed was £583,431. Further financial contributions (considered within the ambit of the tram policy) towards improvements to the Calton Steps (£262,850) and the Calton Road railway bridge (£123,500), were also required. Artisan have indicated that they are not willing to make a contribution at this level as they do not believe that the development will rely on, or benefit from, the tram to such an extent, that this amount is justified. They have also pointed out that since the time of the original agreement the Council has curtailed the extent of the tram system currently being delivered. Nonetheless, Artisan accepts that the Council has a policy on tram contributions and, accordingly, is willing to make a contribution of £50,000.

Public Realm

- 3.12 The original agreement made provision for public realm improvements in and around the site including on-going management arrangements. The financial value of these works is estimated at £6.5 million. It also required the developer to make financial contribution towards improvement to the East Market Street and Jeffrey Street junction (£25,000). Artisan has stated that they are willing to provide the public realm improvements required under the previous agreement, but with the exception of the East Market Street and Jeffrey Street junction.

Re-use of Stone

- 3.13 The original agreement made provision for the masonry from the Council vehicle depot on East Market Street to be re-used (or offered to the Council for use) in the event that the building is demolished. Artisan has stated that they are willing to meet this provision.

Assessment

- 3.14 In normal circumstances, the Council would consider the need for a Section 75 agreement in conjunction with the determination of a planning application (or applications). In this instance, due to the sequence of events set out above, the planning permissions have already been issued. However, it is important that this matter is still given proper consideration. In considering whether to agree to enter into a new legal agreement, the Committee needs to consider whether the proposed provisions are necessary to make the development acceptable in planning terms. The Council cannot enter into Section 75 agreements to secure benefits that are unrelated to the development. While the Council's ability to negotiate alternative or additional infrastructure requirements is limited, consideration should also be given to whether there are any other impacts arising from the development that require mitigation.
- 3.15 The infrastructure requirements for the Caltongate development were assessed in the Committee reports relating to each of the planning permissions (references provided above) and were considered to be appropriate. There have been no changes to development plan policy since this time.
- 3.16 The majority of provisions that were originally sought are still being offered by Artisan. These provisions are being offered (see above) on the same basis or with revisions that are still in accordance with planning policy. The provisions offered in relation to affordable housing, schools, affordable business space, the community facility, and transport all fall within this category. Accordingly, it is considered that there remains a sound justification for securing these requirements, and that this is acceptable in planning terms.
- 3.17 In relation to the public realm requirements, while the contribution of £25,000 to improve the East Market Street and Jeffrey Street junction is not being offered, the totality of the improvements that are being offered, meets with policy requirements. Since the Caltongate development was granted, supplementary guidance has been approved in relation to public realm. The amount that would be sought, taking account of the guidance, would be £1.6 million whereas the value of what is to be delivered is estimated at £6.5 million. While this is effectively in excess of the policy position, it is appropriate to enter into an agreement on this basis, as the public realm is closely linked to the development itself.
- 3.18 The tram contribution being offered is considerably lower than the amount previously required by Committee. However, at the current time there is not a Section 75 agreement in place regarding the Caltongate development, and this offer represents an improvement on the current position.
- 3.19 The agreement will serve to facilitate the Caltongate development.

4 Financial Implications

- 4.1 The approval of this report will allow the Council to secure a legal agreement to deliver the infrastructure requirements arising from the Caltongate development. If the development were to proceed without this agreement, it is

likely that the Council would need to deliver these infrastructure requirements. It should be noted that the tram contribution agreed with the previous developer of the site has not been taken into account in recent assumptions regarding the tram budget and funding strategy. There are not considered to be any unacceptable financial implications arising from this report.

5 Environmental Impact

- 5.1 The environmental impact of the Caltongate development has been considered separately through the planning application process. As stated above, the approval of this report will allow the Council to secure a legal agreement that will deliver supporting infrastructure or mitigation measures. Accordingly, there are not considered to be any unacceptable environmental implications arising from the approval of this report.

6 Conclusions

- 6.1 The proposed new Caltongate Section 75 agreement will facilitate the Caltongate development and ensure that supporting infrastructure is provided. Given that there is currently no Section 75 agreement in place, and having regard to the current economic climate, the proposed agreement is considered to be a positive step in delivering new development.

7 Recommendations

It is recommended that the Committee approves this report and authorises Council officials to conclude the new Section 75 Agreement in accordance with the heads of terms specified in this report.

John Bury
Head of Planning

Appendices	None
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Wards affected	City Centre

Background Papers None

Appendix A – Planning Policy

Edinburgh City Local Plan

Relevant Policies:

Policy Hou 7 (Affordable Housing) requires planning permission for residential development to contain affordable housing provision amounting to 25% of the total number of units proposed.

Policy Com 1 (Community Facilities) requires planning permission for residential development to contain provision for any necessary community facilities.

Policy Com 2 (School Contributions) requires new housing development which would lead to an additional demand for schools places that cannot be met in schools serving the development to make a financial contribution to meet the cost of providing the necessary additional places.

Policy Tra 2 (Planning Conditions and Agreements) requires, where appropriate, transport related conditions and/or planning agreements for major development likely to give rise to additional journeys.

Policy Tra 3 (Tram Contributions) requires, where appropriate, transport related conditions and/or planning agreements for major development likely to give rise to additional journeys.

Relevant Non-Statutory Guidelines:

Non-Statutory Guidelines on Developer Contributions and Affordable Housing gives guidance on the situations where developers will be required to provide affordable housing and/or will be required to make financial or other contributions towards the cost of, providing new facilities for schools, transport improvements, the tram project, public realm improvements and open space.

SfC Diversity Officer Group

Planning and Building Standards

Equality & Rights Impact Assessment Proforma
(details of proposal/service/policy review)

<p>Proposal Service or Policy Review</p>	<p>Consultation Process – Who and Actions taken</p>	<p>Evidence of due regard to public sector equality duties (2010)</p>	<p>Impact on Human Rights Legislation</p>			<p>Impact on Poverty Inequality Targets</p>	<p>Justification</p>
<p>To enter into a Section 75 agreement in relation to the Caltongate development.</p>	<p>Considerable public consultation was undertaken in connection with the planning applications. This proposal reflects the outcomes of that process and secures the necessary infrastructure requirements.</p>	<p>This will secure improvements to the physical environment and as a result will offer benefits to all sectors of society.</p>	<p>1. Life</p>	<p>Compliant and positive contribution.</p>	<p>N/A</p>	<p>N/A</p>	
			<p>2. Health</p>	<p>Compliant and positive contribution.</p>			
			<p>3. Physical security</p>	<p>Compliant and positive contribution.</p>			
			<p>4. Legal security</p>	<p>Compliant.</p>			
			<p>5. Education & learning</p>	<p>Compliant and positive contribution.</p>			
			<p>6. Standard of living</p>	<p>Compliant and positive</p>			

