

Development Management Sub Committee

Wednesday 28 January 2015

**Application for Planning Obligation 14/04947/OBL
At Site 26 Metres West Of 7, Kew Terrace, Edinburgh
Application under section 75 for modification of planning
obligation (13/04207/FUL) to delete the safer routes to
schools contribution and amend the tram contribution.**

Item number	4.7
Report number	
Wards	00 - No Ward Number

Summary

The applicants' justification for the modification of the tram contribution is not accepted when considered against the relevant tests of Circular 3/2012 and the provisions of the adopted development plan and associated non-statutory guidance. However, their justification for the discharge of the safer routes to school contribution is accepted.

Overall, as the application comprises a single request for the proposed modification and discharge of the planning obligation the application, as identified by the applicant, it should not be accepted, the provisions of the tram contribution should continue to have effect and, therefore, the application be refused.

Links

[Policies and guidance for this application](#) LPC, CITT2, CITT3, NSG, NSDCAH,

Report

Application for Planning Obligation 14/04947/OBL At Site 26 Metres West Of 7, Kew Terrace, Edinburgh Application under section 75 for modification of planning obligation (13/04207/FUL) to delete the safer routes to schools contribution and amend the tram contribution.

Recommendations

1.1 It is recommended that this application be Refused for the reasons below.

Background

2.1 Site description

The application site is located on the southern side of Kew Terrace, part of West Coates a main arterial route into the city from the west. It is located between the junction of Kew Terrace with Balbirnie Place to the east and the former railway bridge, over West Coates, to the west.

It comprises a roughly triangular shaped area of cleared ground measuring approximately 1,663 square metres. The site is predominantly flat with the adjoining public roads but also includes an area of sloping land, part of the former railway embankment, within the southern and western parts of the site. The embankment now supports a pedestrian and cycle route.

The site was previously used as a petrol filling station.

The area is a mix of residential and commercial premises and uses

The former railway bridge to the west of the site is a category 'B' listed structure (listed on 24 July 1992, Ref: 30287) and the Kew Terrace building to the east of the Balbirnie Place junction is a category 'C' listed building (listed on 25 April 1977, Ref: 29200).

The embankment to the west of the site forms part of a Local Nature Conservation Site and Open Space as identified in the Edinburgh City Local Plan. The western part of the embankment also forms part of the safeguarded route of Tram Line 2.

This application site is located within the Coltbridge And Wester Coates Conservation Area.

2.2 Site History

The relevant site history is:

22 November 2000 - Planning permission was granted for the alteration and extension of a petrol filling station kiosk (reference 00/02125/FUL).

10 September 2008 - An application, made in retrospect, for a change the use of the site from a vacant and cleared petrol filling station to from a car/van hire business was refused and enforcement action authorised (reference 08/02165/FUL).

9 February 2009 - An appeal against the above refusal was dismissed by the Directorate for Planning and Environmental Appeals (reference P/PPA/230/1042).

June 2009 - Direct action was undertaken to secure the removal of vehicles and a prefabricated building from the site.

15 October 2009 - Planning permission was refused for a change of use to a vehicular hire business (reference 09/01551/FUL).

11 August 2010 - Planning permission was refused for a change of use of the site to a provide a car valeting service, including a new ground surface, new fencing and the installation of prefabricated buildings (reference 10/01420/FUL).

11 September 2013 - Planning permission was refused for the erection of a three-storey building to provide a proposed class 1, 2, 3 use together with residential units (reference 13/00939/FUL).

11 April 2014 - Planning permission was granted for a revised scheme to erect a three-storey building with a Class 1, 2 or 3 use on the ground floor with two floors of flatted dwellings above (reference 13/04207/FUL).

That grant of planning permission was subject to a legal agreement comprising financial contributions: (a) of £4,000 towards 'Safer Routes to School' to Roseburn Primary School; (b) of £5,000 for the full costs of a Traffic Regulation Order for works necessary within the public road; and (c) of £43,146 towards the costs of Tram Lines 1 and 2.

8 August 2014 - Planning permission was granted for a non-material variation to the above application comprised of: for minor modifications of the proposed building, taking into account construction sizes (reference 13/04207/VARY).

2 October 2014 - Planning permission was granted to delete the following conditions 1 and 2; 'limiting the use of the ground floor units to non-shop uses and preventing any future change of use of those units without planning permission granted by the Planning Authority' and the substitution of a new condition; 'permitting non-food retail sales of bulky goods' (reference 14/01596/FUL).

Main report

3.1 Description Of The Proposal

The application is for the modification or discharge of a planning obligation, under the provisions of section 75 of the Town and Country Planning (Scotland) Act 1997, comprised of; the deletion, in its entirety, of the 'Safer Routes to Schools' contribution of £4,000, and the amendment of the 'Tram' contribution from the agreed £43,146 to a sum of £20,346.

The planning obligation relates to a grant of planning permission for the development of the site for the erection of a three-storey building to comprise a ground floor unit of 279 square metres, conditioned for use as either a Class 1 non-food retail, Class 2 office or Class 3 restaurant use, with eight flatted dwellings on the two floors above.

The planning obligation requires the provision of three separate contributions:

- a safer routes to school financial contribution of £4,000 towards improving cycling and walking routes to Roseburn Primary School;
- a financial contribution of £5,000 for the costs of the necessary Traffic Regulation Orders associated with works within the adjoining public road; and
- a Tram financial contribution of £43,146 towards the Tram Project.

It was entered into by the Council, as the Planning Authority, the applicant 83 S Ltd., and a separate third party on 1 April 2014.

It should be identified that the tram contribution figure is comprised of two parts; a residential element of 8 units at £22,800 and a retail element of 279 square metres at £20,364.

The applicant justifies his application as follows:

Safer routes to school

The development proposes eight studio/one-bedroom flats that are of an insufficient size to attract families with school-age children. Accordingly, there is no relationship between the development and the provision of safer routes to school. Therefore, there is no 'necessity' for this contribution related to this development.

Tram

The previous use of the site, as a petrol filling station, included a retail shop extending to 80 square metres floor space. Accordingly, the calculation of the tram contribution should be made based on the size of the proposed retail floor space, 279 square metres, minus the previous retail shop floor space, 80 square metres; an area of 199 square metres. This is below the threshold for retail floor space for which tram contribution should be applied.

Therefore, the tram contribution should be reduced to that figure related solely to the residential element of the application of £20,364.

3.2 Determining Issues

There are no determining issues.

3.3 Assessment

To address these determining issues, the Committee needs to consider whether:

- (a) the modification and discharge of the agreement, as proposed, is considered to be acceptable;
- (b) the proposals have any equalities or human rights impacts; and
- (c) comments raised have been addressed.

a) The Modification and Discharge of the Agreement is Acceptable

The purpose of a planning obligation is to enable the Council, as the Planning Authority, when determining a planning application, to enter into such an obligation restricting or regulating that development or use of the land; and that obligation may not be modified or discharged except by agreement between the planning authority and a person against whom that obligation is enforceable.

Planning permission was granted, based on the requirements for financial contributions towards; safer routes to school, Traffic Regulation Orders and Tram, in order to permit the development in accordance with policies Tra 2 and Tra 3 of the Edinburgh City Local Plan. Development on the site has not commenced at this time.

The applicants' proposed modification of this planning obligation is therefore required to be considered against the provisions of the development plan, as interpreted using the non-statutory guidance on 'Developer Contributions and Affordable Housing', and against the provisions of the five tests, as set out in paragraph 14 of Circular.

Necessary to Make the Proposed Development Acceptable in Planning Terms

Policy Tra 3 of the Edinburgh City Local Plan requires that:

"Where the proposed tram network will help to address the transport impacts of a development, a contribution will be sought towards its construction and associated public realm works.

and

"Contributions will continue to be sought after construction works are completed and until associated borrowings have been repaid."

The level of those contributions is set out in the non-statutory guidance on 'Developer Contributions and Affordable Housing'. The application site is located at the foot of the former railway embankment where Tram Line 2 is proposed and therefore falls within zone 1 of the tram contributions sections of the guidance.

It was calculated that the contribution for this application would be £43,146 comprised of two elements; a residential element of £22,800 and a retail element of £20,364.

This application seeks to justify the removal of the retail element, albeit that the incorrect figure has been referred to, resulting in a request for payment reduced to £20,364. This figure should be £22,800, the residential element.

Transport makes reference to permitted exemptions from such financial contributions, as contained in the guidance. Either:

- i) Small developments that fall below the threshold, shown in the Table, will not be expected to provide a contribution unless they are clearly part of a phased development of a larger site; or
- ii) In the event of a developer contributing land towards the development of the tram system, the amount of the contribution required under this mechanism may be reduced.

Neither of these exemptions applies in this case.

The applicant makes the argument that as there had previously been an area of retail floor space, as part of the former petrol filling station, on the site that this should be deducted from the proposed retail floor space area and that only the residual floor area should be used in the contribution calculation. They identify the residual area to be 199 square metres, an area below the threshold set at 250 square metres in part (a) above.

Consequently, they argue that the retail element to the tram contribution figure is not necessary to make the proposed development acceptable in planning terms.

However, in planning legal terms once a building or structure is demolished it should be treated as if it had not existed, unless that demolition is an integral part of the proposed development scheme for the site.

In the planning history of this site it is clear that the former petrol filling station site had been cleared from the site, including the buildings when the retrospective application for the use of the site as a car/van hire business was assessed and refused in retrospect on 10 September 2008 (reference 08/02165/FUL).

Consequently, the retail element of the contribution was correctly based on the 279 square metres of retail floor space proposed as part of the overall development of the site. This is above the threshold and therefore compliant with the provisions of the development plan policy, as interpreted using the non-statutory guidance on 'Developer Contributions and Affordable Housing'.

In terms of this part of the Circular tests the requirement for the retail element to the tram contribution figure is necessary.

Serve a Planning Purpose

The direct link made in the development plan, at policy Tra 3 and the associated non-statutory guidance on 'Developer Contributions and Affordable Housing', clearly identify that the retail element to the tram contribution figure serves a valid planning purpose.

Relate to the Proposed Development, either Directly or Arising from a Cumulative Effect

The size, form and nature of the proposed development relate directly to the need for this element of the planning obligation.

Fairly and Reasonably Relate in Scale and Kind to the Proposed Development

Based on the floor area figures and the relevant site history the retail element to the tram contribution figure relates fairly and reasonably to the impact of the development of this site.

Be Reasonable in all other Respects

The provisions of the planning obligation make appropriate provisions for the implementation of Tram Line 2. It states that:

"In the event that the Council decides not to proceed with the Tram Project or if the Tram Project has not commenced by 31 December 2020, the Council shall be entitled to use the Tram Contribution for the provision of alternative public transport improvements serving the Development."

It also meets all of the other considerations with regard to it being reasonable in all other respects and therefore is appropriate to this specific development.

With regard to the 'Safer Routes to School' contribution of £4,000 Transport has identified that given the type of residential properties proposed in this development, the increase in school trips is not likely to be significant. Therefore, it is accepted that this can be deleted from the planning obligation requirements in this instance.

Overall, the proposed modification and discharge of the terms of the planning obligation, as a single request made by the applicant, cannot be agreed to and therefore the application should be refused.

b) Equalities and Human Rights Impacts

This application has no impact in terms of equalities or human rights.

c) Public Comments

No representations were received concerning this proposal.

Conclusion

In conclusion, the applicants' justification for the modification of the tram contribution is not accepted when considered against the relevant tests of Circular 3/2012 and the provisions of the adopted development plan and associated non-statutory guidance. However, their justification for the discharge of the safer routes to school contribution is accepted.

Overall, as the application comprises a single request for the proposed modification and discharge of the planning obligation the application, as identified by the applicant, it should not be accepted, the provisions of the tram contribution should continue to have effect and, therefore, the application be refused.

It is recommended that this application be Refused for the reasons below.

3.4 Conditions/reasons/informatives

Reasons:-

1. The proposal is contrary to Edinburgh City Local Plan Policy Tra 3 in respect of Tram Contributions, as interpreted using the non-statutory guidance on Developer Contributions and Affordable Housing, as the retail element of the planning obligation contribution was correctly calculated with regard to the scale of the retail floor space proposed as part of the overall development of the site and that it is compliant with the provisions of the development plan policy, as interpreted using the non-statutory guidance on 'Developer Contributions and Affordable Housing'.

Financial impact

4.1 The financial impact has been assessed as follows:

If the obligation is modified and discharged, as proposed by the applicant, the safer routes to school contribution of £4,000 and part of the tram contribution of £20,364 would not be paid by the applicant.

Risk, Policy, compliance and governance impact

5.1 Provided planning applications are determined in accordance with statutory legislation, the level of risk is low.

Equalities impact

6.1 The equalities impact has been assessed as follows:

The application has been assessed and has no impact in terms of equalities or human rights.

Sustainability impact

7.1 The sustainability impact has been assessed as follows:

This application is not subject to the sustainability requirements of the Edinburgh Design Guidance.

Consultation and engagement

8.1 Pre-Application Process

There is no pre-application process history.

8.2 Publicity summary of representations and Community Council comments

The application, to modify and discharge an obligation, has been notified in accordance with the provisions of Regulation 5 of the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010.

No representations have been received.

Background reading/external references

- To view details of the application go to
- [Planning and Building Standards online services](#)

**Statutory Development
Plan Provision**

Edinburgh City Local Plan - Urban Area, Local Nature Conservation Site, Protected Open Space, designated Conservation Area and Tram Route Safeguard.

Date registered

28 November 2014

Drawing numbers/Scheme

01,

Scheme 1

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Links - Policies

Relevant Policies:

Relevant policies of the Edinburgh City Local Plan.

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 3m (Tram Contributions) requires contributions from developers towards the cost of tram works where the proposed tram network will help address the transport impacts of a development.

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.

Appendix 1

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Consultations

Transport

Further to the Transport consultation response of 20 December 2013, they do not support the application to reduce the tram contribution.

Tram contributions

The tram contribution, as identified in the obligation, is in line with Council policy: "Contribute the sum of £43,146 towards the Edinburgh Tram project in line with Council Policy based on 8 dwellings zone 1 (£22,800) 279 square metres retail zone 1 (£20,346)."

The Council's policy on developer contributions permits exemptions for the following reasons only:

"A Small developments falling below the thresholds shown in the Table will not be expected to provide a contribution unless they are clearly part of a phased development of a larger site. In such cases the Council will seek to agree a pro-rata sum with the applicant.

B In the event of a developer contributing land towards the development of the tram system, the amount of the contribution required under this mechanism may be reduced. Each application will be considered on its individual merits, taking into account factors such as the value of the land, its condition, and the location of existing and proposed services."

Neither of these exemptions applies in this case.

Safer routes to school

Given the type of residential properties proposed in this development, the increase in school trips is not likely to be significant. Therefore, it is accepted that the 'Safer Routes to School' contribution of £4,000 can be deleted in this instance.

Location Plan



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