

# Development Management Sub Committee

Wednesday 23 November 2016

**Application for Planning Obligation 16/04186/OBL  
At Land At Kinleith Mill Road, Currie,  
Application for modification of planning obligation.**

<b>Item number</b>	4.5
<b>Report number</b>	
<b>Wards</b>	00 - No Ward Number

## Summary

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The applicants' justification for the modification of the provisions of 'affordable housing' Clause 10(k) would not have any detrimental impact on the provision of affordable housing on the development site, and is accepted.

## Links

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<a href="#">Policies and guidance for this application</a>	LDPP, PLDP51, PLDP56, LPRW, RWH2, RWH7, NSG, NSDCAH,
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# Report

## **Application for Planning Obligation 16/04186/OBL At Land At Kinleith Mill Road, Currie, Application for modification of planning obligation.**

### **Recommendations**

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- 1.1 It is recommended that the planning obligation to which this application refers is modified.

### **Background**

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#### **2.1 Site description**

The site is approximately 4.5 hectares of industrial land in the Water of Leith river valley. It was occupied by the Kinleith Mill industrial complex and has now been cleared of buildings and trees, as approved under planning permission 01/04622/FUL. It is currently secured by fencing.

The site is in two sections. The main (west) section lies to the south of the river. It is bounded on the north by the Water of Leith and on the south by the Water of Leith Walkway. The smaller (east) section is bounded on the south by the Water of Leith and on the north by the steep, tree-covered river valley slope.

The west section is accessed by two bridges over the river, one pedestrian only and one vehicular and pedestrian. It can also be reached from the Water of Leith Walkway. A publicly accessible path runs through the westernmost section of the site. The east section is accessed from Blinkbonny Road and then onto an unadopted road. Lanark Road West lies to the north and the Category B listed Kinleith Bridge (Ref 5706, listed 30 January 1981) carries Blinkbonny Road over the site.

There is a small area of the site at the western edge which is located within the green belt, Currie Conservation Area and a Site of Importance for Nature Conservation.

There is a Right of Way which runs from the unadopted road on the east of the site to the Water of Leith Walkway.

#### **2.2 Site History**

The relevant site history is:

9 April 2014 - planning permission in principle granted for residential development of the site (application reference 12/04126/PPP).

18 June 2014 - planning permission granted to vary condition 2 of planning permission 12/04126/PPP relating to building heights; including the conclusion of a legal agreement regarding matters of various transport issues and affordable housing (application reference 14/01704/PPP).

19 January 2015 - planning permission granted for approval of reserved matters in respect of a development comprising 89 residential units including associated access, parking and landscaping (application reference 14/03079/AMC).

28 April 2015 - Non material variation to the design layout granted permission was permitted (application reference 14/03079/VARY).

7 January 2016 - Non material variation comprising removal of the astragals to the windows, change in colour of the windows, minor modifications to the landscape design was permitted (application reference 14/03079/VAR2).

3 June 2016 - Non material variation comprising a revised fence line, amended parking layout and amended tree planting was permitted (application reference 14/03079/VAR3).

## **Main report**

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### **3.1 Description Of The Proposal**

The application is for the modification of clause 10(k) of the planning obligation, made under the provisions of section 75 of the Town and Country Planning (Scotland) Act 1997, relating to 'Golden Share' affordable housing provision on the site.

The relevant clause currently requires the following:

*"Affordable Housing (in part)*

*(k) A creditor of the Golden Share Eligible Purchaser, if he exercises any power of sale or takes an enforcement action in terms of a standard security over a Golden Share Dwelling, shall be entitled to market the property to the majority of the local Edinburgh Market (to the Council's satisfaction, all parties acting reasonably) for a period of one year and one day at the discount price, meaning a figure equal to or below the Approved Maximum Disposal Price. In the event that this marketing period fails to produce a buyer, a creditor shall then become entitled to proceed to sell a Golden Share Dwelling as an Open Market Dwelling. Any relevant Golden Share Dwelling sold in these circumstances shall be discharged from the terms of this Agreement.*

Specifically the modification seeks:

*"In Clause 10(k), regarding the maximum re-sale marketing period, to replace "one year and one day" with the period "13 weeks, or such other period as may be agreed", to bring this obligation into line with the Council's practice elsewhere, and to bring the agreement into line following recent changes brought in by mortgage lenders since the Section 75 was originally agreed.*

The application also seeks clarification concerning the 'Maximum Residual Savings'. This is the level of savings permitted for an individual to qualify as a 'Person in Housing Need' in terms of the affordable housing provisions of the legal agreement. As this is not a modification or a discharge of part of the planning obligation it should not form a part of this application. This will be progressed under a separate exchange of correspondence.

## Supporting Statement

The applicant has provided a supporting statement to justify the reasoning behind the application for a modification. This is available to view on the Planning and Building Standards Online Services.

### 3.2 Determining Issues

Section 75A(1)(a) of the Town and Country Planning (Scotland) Act 1997 states - A planning obligation may not be modified or discharged except, by agreement, between the planning authority and a person against whom that obligation is enforceable.

In determining such an application for the modification or discharge of a planning obligation, the specific provision should be considered against the five policy tests set out in Planning Circular 3/2012. These tests relate to: necessity, planning purpose, relationship to the proposed development, relationship to scale and kind and reasonableness.

### 3.3 Assessment

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

- (a) the modification or discharge of the obligation, 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 of the Obligation is Acceptable

The purpose of a planning obligation is to enable the Council, when determining a planning application, to enter into such an obligation restricting or regulating that development or the use of the land to mitigate against its impact on its immediate surroundings and infrastructure; 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, under the provisions of section 75A of the Town and Country Planning (Scotland) Act 1997, as amended.

Planning permission was granted for the development of this site including the provision of sufficient affordable housing provision to comply with the development plan policies.

Those provisions provide a degree of flexibility with regard to the means of tenure, including "Golden Share". This is a form of unsubsidised low cost house ownership, identified in the Council's Developer Contributions and Affordable Housing guidance.

At the time that the obligation was finalised, a creditor of the Golden Share Eligible Purchaser, was entitled to market the property for sale to the Edinburgh Market but was restricted to sell at the discount price for a minimum of one year and one day. If after that time that marketing failed to obtain a buyer the creditor would then be entitled to market the property at the full market value and be discharged from the terms of the agreement, as a whole.

The Council's Housing and Regeneration Section has accepted the applicant's position in respect of the duration the property may be marketed, stating:

*The section 75 amendment alters the restrictions for re-sale of Golden Share homes, reducing the re-sale marketing period to 13 weeks. This only affects resale, not the initial (first) sale of the homes by the applicant.*

*The addition of a 13 week re-sale clause is acceptable, and this is in line current practice; an approach established through consultation with both lenders and Scottish Government. Without these changes, mortgage lenders will not lend to eligible purchasers and therefore homes would not be able to be sold to meet the purposes of this accepted affordable tenure.*

Accordingly, this modification to Clause 10(k) will continue to secure the provision of affordable housing on the site in line with current practice. It is compliant with the provisions of the development plan, the relevant non-statutory guidance and the provisions of the planning circular, and is therefore acceptable.

#### 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' modification request is accepted and therefore the planning obligation is to have effect subject to the modifications specified in the application.

It is recommended that the planning obligation to which this application refers is modified.

## **Financial impact**

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### **4.1 The financial impact has been assessed as follows:**

There are no financial implications to the Council.

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## **Risk, Policy, compliance and governance impact**

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

## **Equalities impact**

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### **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**

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### **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**

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### **8.1 Pre-Application Process**

There is no pre-application process history.

### **8.2 Publicity summary of representations and Community Council comments**

There are no other parties to this planning obligation that are required to be notified in accordance with the provisions of Regulation 5 of the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010.

## **Background reading/external references**

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- To view details of the application go to
- [Planning and Building Standards online services](#)
- [Edinburgh City Local Plan and Rural West Edinburgh Local Plan](#)
- [Planning guidelines](#)
- [Conservation Area Character Appraisals](#)
- [Edinburgh Local Development Plan](#)
- [Scottish Planning Policy](#)

**Statutory Development  
Plan Provision**

**Edinburgh Local Development Plan (as Modified) -**  
Within the defined urban area of Currie.

**Rural West Edinburgh Local Plan -** The proposal site is a designated housing site (HSG1) in the Rural West Edinburgh Local Plan. A small area of the site, at the western edge, is also designated by the Rural West Edinburgh Local Plan as green belt, Currie Conservation Area and a Site of Importance for Nature Conservation.

**Date registered** 26 August 2016

**Drawing numbers/Scheme** ,

**John Bury**

Head of Planning & Transport  
PLACE  
City of Edinburgh Council

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**Links - Policies**

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**Relevant Policies:**

**Relevant policies of the Proposed Local Development Plan.**

Second Proposed LDP Policy Hou 1 (Housing Development) supports housing on appropriate sites in the urban area, and on specific sites identified in the plan.

Second Proposed LDP Policy Hou 6 (Affordable Housing) requires 25% affordable housing provision in residential development of twelve or more units.

## **Relevant policies of the Rural West Edinburgh Local Plan.**

Policy H2 says that housing development will be supported on sites HSP1 to HSP8

Policy H7 states that planning permission for residential development, including conversions, consisting of 12 or more units, should include provision for affordable housing amounting to 25% of the total number of units proposed.

## **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

## **Application for Planning Obligation 16/04186/OBL At Land At Kinleith Mill Road, Currie, Application for modification of planning obligation.**

### **Consultations**

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#### **Housing and Regeneration**

##### *Affordable Housing Terms of S.75 Agreement*

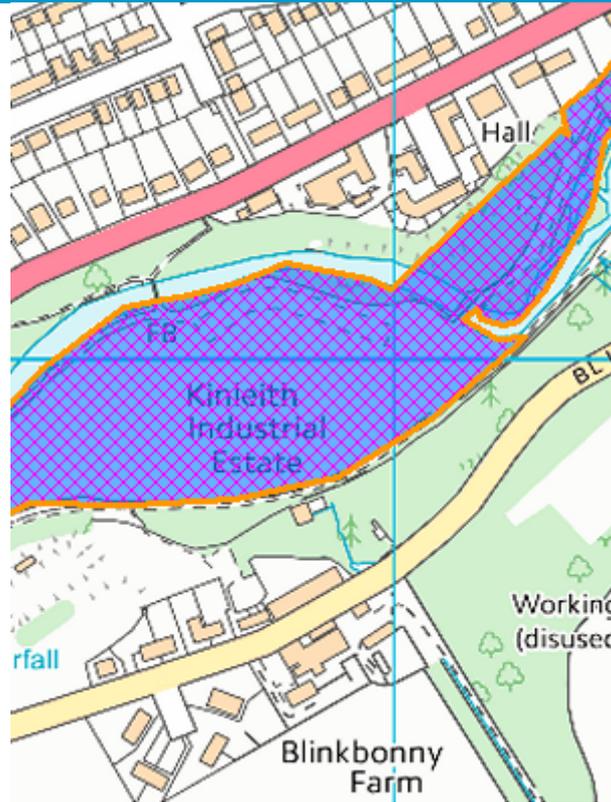
*This application is for an amendment to the terms for the approved residential development consisting of 89 homes (12/04126/PPP). The applicant agreed to provide 22 affordable Low Cost Home Ownership units (25%) on site, secured through S.75.*

*As lending practices have changed since this agreement was signed, an amendment to the maximum re-sale marketing period of Golden Share homes is now sought. Existing terms in the S.75 are that the re-sale of homes should be marketed for a period of up to one year and a day. The S.75 amendment alters the restrictions for re-sale of Golden Share homes, reducing the re-sale marketing period to 13 weeks. This only affects resale, not the initial (first) sale of the homes by the applicant.*

*The addition of a 13 week re-sale clause is acceptable, and is in line current practice; an approach established through consultation with both lenders and Scottish Government. Without these changes, mortgage lenders will not lend to eligible purchasers and therefore homes would not be able to be sold to meet the purposes of this accepted affordable tenure. The savings clause should include "no more than £6,000 or £16,000 for people of pensionable age", according with current guidance set out by HM Government.*

## Location Plan

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