

Development Management Sub Committee

Wednesday 23 November 2016

**Application for Planning Obligation 16/03181/OBL
At 6 - 8 Market Street, Edinburgh,
Modification of planning obligation, seeking a modest
extension of time within which to comply with one of the
terms of the obligation.**

Item number	4.6
Report number	
Wards	00 - No Ward Number

Summary

The applicants' have sufficiently made the case to justify the proposed modification to Clause 2.3 of the obligation for the Tram contribution trigger date. The request is to change this from 24 December 2016 to 24 April 2017 and it is recommended that the revised date is accepted.

Links

[Policies and guidance for this application](#) LPC, CITCA1, CITT2, CITT3, NSG, NSDCAH,

Report

Application for Planning Obligation 16/03181/OBL At 6 - 8 Market Street, Edinburgh, Modification of planning obligation, seeking a modest extension of time within which to comply with one of the terms of the obligation.

Recommendations

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

Background

2.1 Site description

The application site measures approximately 0.35 hectares and is located on the south side of Market Street immediately adjacent to the City Art Centre (a category A-listed building, reference: 30139; listed: 12 December 1974). Part of the site was occupied by an unlisted 4-storey, stone-built garage of 1930s origin and the part facing onto Market Street is offset from the road edge. The site includes part of the public footway.

The application site includes an existing courtyard, accessed via Anchor Close, which sits substantially higher than Market Street and is supported by a large retaining wall. A number of trees are growing along this wall. Craig's Close, which is a narrow stepped close, linking Market Street and Cockburn Street and delineating the western boundary of the site, is also included.

To the west of the site, beyond Craig's Close, is the five-storey St Christopher's Hotel, (a category B-listed building, reference: 49065; listed: 19 December 2002). Directly to the north and on the opposite side of Market Street are two-storey stone-built buildings, accommodating a range of uses including the 'Electric Circus' nightclub and the Fruitmarket Gallery. To the south of the site fronting Cockburn Street are four-storey stone-built buildings, with commercial uses at street level and residential above. Those buildings at 31-33, 35-39 and 41-45 Cockburn Street are all category B-listed (references: 30079, 30080 and 30081 listed: 12 December 1974).

The development of the site commenced on 6 June 2016.

The site is in the Edinburgh World Heritage Site.

This application site is located within the Old Town Conservation Area.

2.2 Site History

The relevant site history is:

21 July 2015 - Conservation area consent was granted for the demolition of the former garage building (reference 14/04963/CON).

23 December 2015 - An application was submitted seeking a non-material variation to the development of the site, comprising various changes to the western side and southern main facade of the building, including the roof; that application remains undetermined (reference 14/04962/VARY).

25 January 2016 - Planning permission was granted for the demolition of the former garage building and redevelopment of site as a hotel with ground floor retail and commercial units, eight-storeys in height with a total floor area of 4,753 square metres (reference 14/04962/FUL).

25 January 2016 - A planning legal obligation was concluded associated with the above development.

The legal agreement made provision for a Tram contribution of £218,667 indexed to off-set the road traffic implications of the development.

Main report

3.1 Description Of The Proposal

The application is for the modification of that part of the planning obligation, made under the provisions of section 75 of the Town and Country Planning (Scotland) Act 1997, relating to the Tram Contribution and comprised of Clauses 2.1 to 2.4.

Those clauses require the following:

"Tram Contribution

2.1 Prior to the Date of Occupation, the Proprietors shall pay to the Council the Tram Contribution [means the sum of TWO HUNDRED AND EIGHTEEN THOUSAND SIX HUNDRED AND SIXTY SEVEN POUNDS (£218,667) STERLING] Indexed to the date of payment, which Tram Contribution shall be applied to the Tram Project.

2.2 The Council shall on receipt of the Tram Contribution use the Tram Contribution towards payment of the funding strategy monies borrowed by the Council for the purpose of the Tram Project.

2.3 The obligation to pay the Tram Contribution in terms of Clause 2.1 shall be waived in the event that construction of the Development including the below-ground substructure, the ground floor load bearing construction, the ground floor walls, the columns and all other load bearing elements up to the level of the first floor has been Completed before 24 December 2016.

2.4 Where the Proprietors anticipate that Clause 2.3 shall apply they shall provide a minimum of 21 days written notice to the Head of Planning and Building Standards of the predicted date on which the Development will be presented for inspection for the purposes of Clause 2.3."

Specifically the modification seeks an extension to the date for the completion of the first floor structure of the building from 24 December 2016 (18 months from the date of the Committee determination) to 24 April 2017 thereby waiving the associated requirement to pay the Tram Contribution until that new date.

There are no other modifications proposed to any other provisions of the original planning obligation proposed by the applicant.

Supporting Statement

The applicant has provided a supporting statement setting out the background context to the application and their justification for the 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) Whether 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 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 redevelopment of this site based on a format for which there was no off-street car parking provision and that hotel servicing would be carried out from a proposed lay-by with Market Street. Based on those requirements a developer contribution was identified as being necessary towards the repayment of the Council's forward funded construction cost for the existing tram network, directly related to the scale of that development and its proximity to the tram line as constructed.

As identified in the 'Developer Contributions and Affordable Housing' guidance that contribution equated to £218,667, indexed linked to the date of payment.

During the assessment of the application the developer provided financial viability evidence, reviewed by means of an 'open book' assessment, to support their position that the proposed Tram Contribution would detrimentally impact on the development leaving it at the margins of viability and therefore it should be waived.

The Development Management Sub Committee report identified that ; *"This information, which has been reviewed on an open book basis by external assessors, demonstrates (to a satisfactory extent) that there are significantly high development costs associated with developing this site which would impact adversely on the viability of the development. External assessors have concluded that the development is at the margins of viability and this viability would be further challenged if the tram contribution is required."* The report goes on to state, given that this is a "... prominent gap site within the Old Town has been vacant for many years ... it is recommended that the developer contribution for tram is not sought if the development can be commenced within an 18 month period of a Committee decision."

Accordingly, Committee accepted the very specific circumstances within which the development of the site could be undertaken so as to negate the trigger for the identified Tram contribution.

This application seeks to modify the agreement by extending the date, at which construction should be made to the first floor level, by fourth months to 24 April 2017; so as to have the effect of ensuring that the Tram contribution would not have to be paid until that date.

The applicant seeks to justify the proposed modification in terms of a cumulative impact resulting from the following factors:

- the time taken to conclude the planning legal agreement;
- the developer has made every effort to progress the development to meet the trigger point specified in the legal agreement;
- a number of external factors, related to the complexities of the site development, have affected progress, including on site archaeological findings;
- the potential for inclement winter weather; and
- the financial viability of the development remains at risk if the Tram contribution has to be paid.

The development of the site is now meaningfully underway with a contract let. This justification is accepted in this instance.

As such the modification to the planning legal agreement can be agreed.

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' proposed modification request is considered appropriate.

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

Financial impact

4.1 The financial impact has been assessed as follows:

If the obligation is modified as requested then the financial contribution of £218,667 indexed, towards the tram network would not be paid.

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

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

- 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 City Local Plan - Within the Central Area.

**Second Proposed Edinburgh Local Development
Plan** - Within the Central Area.

Date registered

28 June 2016

Drawing numbers/Scheme

John Bury

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Links - Policies

Relevant Policies:

Relevant policies of the Edinburgh City Local Plan.

Policy Ca 1 (Central Area) sets criteria for assessing development in the Central Area.

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

No consultation has been undertaken.

Location Plan



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