

Development Management Sub Committee

Wednesday 7 December 2016

**Application for Planning Obligation 16/04925/OBL
At Site 47 Metres South Of 24, Tennant Street, Edinburgh
Removal of the obligation to make payment of the Secondary
Education Contribution as defined in the Planning Obligation
referred to at Section 5 and as set out in the attached
statement.**

Item number	4.7
Report number	
Wards	00 - No Ward Number

Summary

The applicants' request to remove the obligation to make payment of the indexed secondary education contribution has been supported by current information from Children and Families. It is therefore recommended that the request to modify the agreement be accepted.

Links

[Policies and guidance for this application](#) NSDCAH, LDEL01,

Report

Application for Planning Obligation 16/04925/OBL At Site 47 Metres South Of 24, Tennant Street, Edinburgh Removal of the obligation to make payment of the Secondary Education Contribution as defined in the Planning Obligation referred to at Section 5 and as set out in the attached statement.

Recommendations

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

Background

2.1 Site description

The site is situated on backland to the west of Tennant Street and to the south of Bonnington Road. The site is accessed from the south end of Stanwell Street. The western boundary of the site abuts Bun-sgoil Taobh na Pairce (primary school) and Pilrig Park. The site is currently being redeveloped to provide new housing.

This application site is located within the Pilrig Conservation Area.

2.2 Site History

The relevant site history is:

2 July 2009 - outline planning permission granted for a mixed use development of the site including a care home, flatted residential accommodation and small business units (application reference 09/00845/OUT).

6 November 2009 - planning permission granted for approval of reserved matters in respect of the 09/00845/OUT outline permission (application reference 09/02121/AMC). A legal agreement was tied to this permission.

27 February 2013 - permission granted to vary a condition of approval of the 09/02121/AMC permission by extending the period to commence development from two to five years from the date of the grant of permission (application reference 12/00732/FUL). A legal agreement was tied to this permission.

17 June 2016 - planning permission granted to erect 13 dwelling houses and 20 flats with associated roads infrastructure and landscaping (application reference 15/02049/FUL). A legal agreement was tied to this permission.

10 October 2016 - an application was made to remove the obligation to make payment of the primary education contribution from the legal agreement tied to the 15/02049/FUL planning permission (application reference 16/04918/OBL).

10 October 2016 - an application was made to remove the obligation to make payment of both the primary and secondary education contributions from the legal agreement tied to the 15/02049/FUL planning permission (application reference 16/04922/OBL).

Main report

3.1 Description Of The Proposal

The application is for the modification of clause 1 and clause 3 of the planning obligation, made under the provisions of section 75 of the Town and Country Planning (Scotland) Act 1997, relating to the 'Secondary Education Contribution' indexed payment.

The relevant clause currently is a collective total of the primary education contribution and the secondary education contribution sums. The modification request would mean that all references to the secondary education contribution would be removed and the references to the primary education contribution would be revised so that they read as the (single) education contribution amounting to £40,839.

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

Planning permission was granted for the development of this site, which included at that time the requirement for a secondary education contribution as part of an overall education contribution. This secondary contribution element was to be applied towards the alleviation of accommodation pressures at Drummond Community High School, Edinburgh, to comply with development plan policies.

Communities and Families confirmed that it has recently concluded a revision to their school roll projections. These draft projections indicate for Drummond High School that there will be sufficient capacity to accommodate additional pupils from new developments expected in its area. Given this position Communities and Families is willing to accept this proposed modification.

The tests set out in Circular 3/2012 (Planning Agreements and Good Neighbour Agreements) have to be considered. If just one of the tests is not met, then in terms of the circular the planning obligation should not be applied.

The first test which is particularly relevant is the 'necessity test'. Is it necessary to make the proposed development acceptable in planning terms? Initially the financial contribution was considered necessary to alleviate accommodation pressures at Drummond High School and was therefore included in the original agreement. The circumstances have now changed. Communities and Families has now concluded that these accommodation pressures no longer apply. There is consequently no need to require this financial contribution to make the development acceptable in planning terms. This test is therefore not met.

The second relevant test is the 'reasonableness test'. Is it reasonable in all respects to require this financial obligation to be paid? As the justification for the obligation, to alleviate accommodation pressures at the school is no longer considered necessary, it cannot be thought reasonable to still require the contribution to be paid. This test has also not been met.

As both of these tests are not met, the obligation to make the secondary education financial contribution is no longer appropriate.

Accordingly, the proposed deletions and modifications to clauses 1 and 3 are considered acceptable. They would mean that the indexed secondary education contribution would no longer be required and the existing primary school contribution would become the sole education contribution. These changes are compliant with the provisions of the development plan, the relevant non-statutory guidance and the provisions of the planning circular, and are 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 considered acceptable. A modified planning obligation would need to be concluded to reflect the modifications specified in the application.

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

3.4 Conditions/reasons/informatives

Informatives

It should be noted that:

1. Please submit an engrossed Discharge or Minute of Variation (as appropriate) in accordance with the terms of this Decision Notice for execution and registration by the City of Edinburgh Council along with the required registration forms and registration fee. Submissions should be sent to The City of Edinburgh Council, Legal Services, 4 East Market Street, Edinburgh, EH8 8BG.

Financial impact

4.1 The financial impact has been assessed as follows:

The requested modification to the existing legal agreement obligations would mean that an indexed £59,597 contribution would no longer be paid. The use for this sum was solely to be applied towards alleviating accommodation pressures at Drummond Community High School. The use of this sum at this school and for the specified purpose is no longer considered to be necessary.

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 have been no pre-application discussions other than a courtesy telephone call from the applicants to say the application was going to be made.

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](#)
- [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.**

Date registered

10 October 2016

Drawing numbers/Scheme

John Bury

Head of Planning & Transport
PLACE
City of Edinburgh Council

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Links - Policies

Relevant Policies:

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.

LDP Policy Del 1 (Developer Contributions and Infrastructure Delivery) identifies the circumstances in which developer contributions will be required.

Appendix 1

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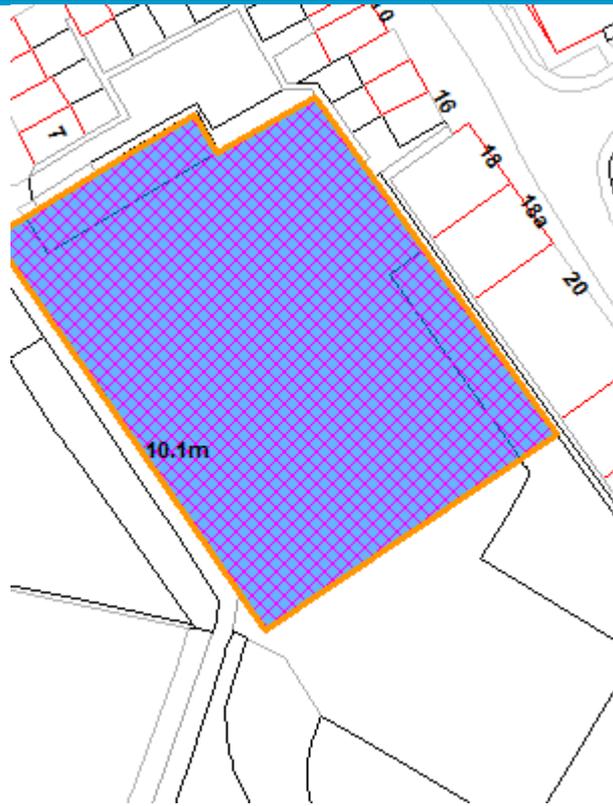
Consultations

Children and Families

Secondary School

The Children and Families section of the Council have, following meetings and an exchange of correspondence, confirmed that they have recently concluded a revision to their school roll projections. These draft projections indicate for Drummond High School that there will be sufficient capacity to accommodate additional pupils from new developments expected in its area.

Location Plan



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