

# Development Management Sub Committee

Wednesday 25 April 2018

**Application for Planning Obligation 17/03909/OBL  
At 6 - 8 Market Street, Edinburgh,  
Application to Discharge the Planning Obligation (Section 75  
Agreement) attached to granting of planning permission  
14/04962/FUL**

<b>Item number</b>	4.17
<b>Report number</b>	
<b>Wards</b>	00 - No Ward Number

## Summary

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The applicants' have sufficiently made the case to justify discharging the provisions of the planning obligation and their request can therefore be accepted.

## Links

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

# Report

## **Application for Planning Obligation 17/03909/OBL At 6 - 8 Market Street, Edinburgh, Application to Discharge the Planning Obligation (Section 75 Agreement) attached to granting of planning permission 14/04962/FUL**

### **Recommendations**

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- 1.1 It is recommended that this application be accepted and the agreement be discharged

### **Background**

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#### **2.1 Site description**

The application site extends to 0.35 hectares on the south side of Market Street immediately adjacent to the City Art Centre.

To the west of the site, beyond Craig's Close, is the St Christopher's Hotel. On the opposite side of Market Street, to the north, is a nightclub and the Fruitmarket Gallery. To the south, fronting Cockburn Street, and set at a higher ground level than the application site, are four-storey tenement buildings with commercial uses at street level and residential above.

The site is in the Old and New Towns Edinburgh World Heritage Site.

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

#### **2.2 Site History**

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). That permission was subject to a planning obligation requiring that the structure be completed to first floor level by a specific time otherwise the Tram contribution clause would be triggered. The Tram contribution was off-set during the processing of the application following a viability report from the developer.

2 February 2017 - A modification of the planning obligation was granted, seeking an extension of the time period within which the developer was to complete up to the first floor level of the building structure (reference 16/03181/OBL). Although granted the planning obligation has not been modified by the developer.

## **Main report**

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

The application seeks the discharge of the planning obligation, made under the provisions of section 75 of the Town and Country Planning (Scotland) Act 1997.

The planning obligation makes provision for a Tram contribution of £218,667 to be paid so as to off-set the road traffic implications of the development.

However, given the details contained in a viability report from the developer, it was determined that the contribution would only be required to be paid in circumstance where: construction, comprising 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, had not been completed before 24 December 2016.

The Council's principle concern, and the reason for the insertion of this provision, was to encourage the construction of the site; one which had remained undeveloped for a significant period standing within a prominent, central location in the city centre.

The previous determination by the Council (reference 16/03181/OBL) gave permission for the developer to extend the relevant date from 24 December 2016 to 27 April 2017; although the developer has not concluded that modification.

### **Supporting Statement**

The applicant has provided a supporting statement setting out the background context to the application, the reasons for the delays that have been encountered during the construction process, the revision of the construction process whilst on site and their justification for exceeding the revised date of the clause. 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 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 Discharge of the Obligation is Acceptable

The purpose of a planning obligation is to enable the Council to enter into an agreement restricting or regulating development or the use of the land to mitigate against its impact on its immediate surroundings and existing infrastructure. An 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 as a hotel based on a scheme for which there was no off-street car parking provision and servicing would be carried out from a proposed lay-by within Market Street. A contribution was identified as being necessary towards the repayment of the Council's forward funded construction cost for the existing tram network. This was directly related to the scale of the development and its proximity to the constructed tram line.

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

During its determination 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 the hotel development at the margins of viability and therefore the tram contribution should be waived in full.

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."* However, given that this *"...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 identified very specific circumstances which, if met by the developer, would negate the requirement for the payment of the Tram contribution. Otherwise, the contribution was required to be made in full.

Following a previous application to modify the planning obligation (reference 16/03181/OBL) Committee agreed to extend the relevant date to 24 April 2017.

This application seeks the discharge of the planning obligation. The developer contends that it is no longer reasonable to impose a time limit for the completion of certain works by a specified date and that sufficient grounds exist for the obligation to be discharged in full.

The developer states that in addition to external factors an alternative method of construction was required for this site, compared with the usual method as envisaged in the planning obligation. The rear wall of the former building formed part of a retaining wall. A temporary propping structure had to be erected at ground floor level and parts of the construction process had to be completed from the top-down. Given the limitations of the section 75A determination process there was no recourse to amend the previous application to these changes.

They also state that there has been no material change in circumstances that would alter the terms of the 'open book' appraisal of relevant financial information as originally submitted and assessed by the Council.

On the facts of the matter the developer has failed to comply with the provisions of the planning obligation, as originally set out, or those as agreed by Committee in February 2017. Therefore, unless it is now determined to agree to discharge the planning obligation, the Council would be entitled to enforce the payment of the Tram contribution.

However, in the circumstances as set out in the planning application 'Report of Handling' (reference 14/04962/FUL) and the developer's financial viability analysis, the planning obligation requirement to have the first floor level of the building constructed by the end of 2016 was reasonable and met the provisions of the Circular tests. It is now evident that significant construction work has progressed on site, albeit not the works specifically required by the planning obligation, and that the initial concerns that the site would remain a prominent gap site have now been suitably allayed.

Having accepted the developer's original financial viability analysis, and given the evidence of progress on site, it is considered appropriate for the Council to accept the developers' contentions here and to accept the terms of this application and to agree to the discharge of the planning obligation without the payment of the Tram contribution.

#### 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' original viability case and the extent of development progress on the site are deemed to be sufficient justification for the removal of the Tram Contribution clauses and that the request for the discharge of this obligation can therefore be accepted.

It is recommended that this application be accepted and the agreement be discharged

### **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**

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

In permitting the obligation to be discharged the financial contribution of £218,667 towards the tram network will not be paid. The developer's financial viability case was originally accepted by Committee in its determination of the grant of planning permission for the development in January 2016.

#### **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

All the parties 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 have been notified and there has been no further correspondence received.

### **Background reading/external references**

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- 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 - Urban Area.**

**Date registered**

22 August 2017

**Drawing numbers/Scheme**

01,

Scheme 1

**David R. Leslie**

Chief Planning Officer

PLACE

The City of Edinburgh Council

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**Links - Policies**

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**Relevant Policies:**

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

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

**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

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No consultations undertaken.

## Location Plan

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