

Development Management Sub Committee

Wednesday 26 September 2018

Application for Planning Obligation 18/02853/OBL At Land At Edmonstone Estate, Old Dalkeith Road, Edinburgh Application to modify the existing Legal Agreement.

Item number	Item 4.4
Report number	
Wards	00 - No Ward Number

Summary

The principle and justifications for the requested modifications to the existing 14/00578/FUL legal agreement are acceptable and it is recommended that the application is approved. It is however, recommended that the resulting modified agreement should include an additional event before the revised agreement is considered to have taken effect. That is that the transfer of the land, covered by the 17/02722/FUL application, to Hillcrest Housing Association Limited should have taken place.

Links

Policies and guidance for this application	LDPP, LDEL01, LHOU06, LHOU10, LTRA08, LDES08,
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Report

Application for Planning Obligation 18/02853/OBL At Land At Edmonstone Estate, Old Dalkeith Road, Edinburgh Application to modify the existing Legal Agreement.

Recommendations

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

Background

2.1 Site description

The site is located to the north east of Old Dalkeith Road. It is immediately north of the junction of Old Dalkeith Road and Ferniehill Road and is south east of the Bio-Quarter. It is formed of the eight acre field and the former walled garden to Edmonstone House.

2.2 Site History

The relevant site history is:

11 October 2012 - planning permission was refused for a residential development with associated roads and landscaping (application number 12/01624/FUL). Planning permission was subsequently granted on appeal.

25 November 2014 - planning permission was granted to amend the existing permission under reference 12/01624/FUL, for a revision to the housing mix (application number 14/00578/FUL). The permission included a new legal obligation. This obligation included requirements; to make financial contributions for both education and transport; for on-site affordable housing; and to secure the provision of a new section of pavement on the Wisp, a footpath from the Wisp to Old Dalkeith Road and the relevant works under the Estate Management Strategy for the application site. The 14/00578/FUL permission included both the eight acre field and the adjacent walled garden sites. Evidence was provided by the applicants to confirm the 14/00578/FUL planning permission was taken up within the statutory period.

13 July 2017 - planning permission was granted for a new vehicular access onto Old Dalkeith Road (application number 17/02220/FUL).

22 December 2017 - a minded to grant decision to grant planning permission subject to the conclusion of an appropriate legal agreement for the walled garden site (application number 17/02722/FUL). The Agreement is currently being negotiated.

Main report

3.1 Description Of The Proposal

The application seeks to modify planning obligations concluded under the provisions of section 75 of the Town and Country Planning (Scotland) Act 1997, regarding the residential development of the site under the 14/00578/FUL planning permission.

The modifications are to reflect the changed proposals for the development of the eight acre field and the walled garden and the changed circumstances relating to obligations in the agreement since it was concluded. This includes changes in the ownership of the land and a change in access to the site.

It is proposed that the education contribution sums should be reduced from £282,370 to £210,494 to reflect the smaller number of units to be built under the 14/00578/FUL permission if the 17/02722/FUL application is granted planning permission and taken up. The phasing and trigger points for the payment of the contribution would remain unchanged. It is accepted that any agreed and approved modification to the agreement should not take effect until the 17/02722/FUL permission has been granted and taken up.

In terms of the transport obligations, there is a request to remove the obligation to construct a new footway on the Wisp as this improvement has already been completed. There is also a request for the removal of clauses requiring a financial contribution of £55,000 to be paid and setting out how this contribution was to be used. The applicants have suggested that these clauses are no longer required.

The application requests that the obligation to provide a public footpath from the Wisp at the East Lodge to the walled garden and eight acre field is deleted as this is not under the full control of the current proprietors.

The proposal includes the transfer of the on-site affordable housing provision to the walled garden part of the site but under the separate 17/02722/FUL application.

3.2 Determining Issues

Section 25 of the Town and Country Planning (Scotland) Act 1997 states - Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise.

Do the proposals comply with the development plan?

If the proposals do comply with the development plan, are there any compelling reasons for not approving them?

If the proposals do not comply with the development plan, are there any compelling reasons for approving them?

3.3 Assessment

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

- a) the modification of the obligation, as proposed, is considered to be acceptable;
- b) the proposals have any equalities or human rights impacts;
- c) comments raised have been addressed; and
- d) the finance implications of the decision are acceptable.

a) Principle

In order for a planning obligation to be concluded or retained, its terms should comply with the five tests set out in the Scottish Government's Circular 3/2012 (Planning Obligations and Good Neighbour Agreements). These five tests are summarised below. If it fails any one of those tests then the obligation is inappropriate in planning terms and the planning obligation should be discharged.

- necessity test (necessary to make the development acceptable).
- planning purpose test (relate to the development plan).
- relationship to the development test (either directly or arising from a cumulative impact).
- scale and kind test (fairly and reasonably related to the proposal).
- reasonableness test (reasonable in all other respects).

(i) Education contribution.

With the subdivision of the site between the 14/00578/FUL permission and the 17/02722/FUL application, the proposed reduction in the contribution sum is acceptable and complies with the scale and kind test. Only 82 of the original 110 units are to be built under the 14/00578/FUL permission. The proposed reduction of the contribution sum from £282,370 to £210,494 is proportionate on a per unit basis.

The Communities and Families service has been consulted over this modification and has confirmed they have no comment to make about this proposed modification. This proposal is therefore considered acceptable.

(ii) New pathway on the Wisp.

Clause 4.1 requires the provision of a footway on a section of the Wisp. This footway has already been provided through a legal agreement tied to a different planning permission. It is therefore acceptable for this obligation to be discharged.

(iii) Transport contribution.

The transport contribution is required to contribute towards three areas of work which all relate to the Wisp. There is to be no vehicular access from the combined development sites to the Wisp as a new access has been approved from Old Dalkeith Road. There is an insufficient link with the Wisp for the contribution to comply with the "relationship to the proposed development test".

The Roads Authority has been consulted over this modification and has confirmed it has no objection to this proposed modification. It is therefore acceptable for clauses 4.4 and 4.5 not to be included in a modified agreement.

(iv) Footpath from the Wisp to Old Dalkeith Road.

The agreement obligation for this footpath to be created is a requirement within the Estate Management Strategy which incorporates this application site. In terms of the strategy, the owners of land over which this footpath could be built are obligated to provide it. The owners of the eight acre and walled garden sites do not own land through to the Wisp and are not in a position to completely construct the footpath. The retention of clause 5.3 would fail the reasonableness test. It is therefore acceptable for clause 5.3 to be discharged.

However, an appropriate footpath link is to be created under the 14/01057/PPP and 18/00508/AMC permissions covering adjoining land to the east and north east of the eight acre field and walled garden sites.

(v) On-site affordable housing.

The removal of clause 2 would remove any requirement for affordable units to be built on the residual eight acre field part of the application site. It is however, proposed that the necessary affordable housing provision is to be made under the subsequent 17/02722/FUL application for the walled garden site. The existing agreement would have secured 28 affordable units, meeting policy requirements. The 17/02722/FUL application is for 47 units all of which are proposed to be affordable. This amounts to a 36% affordable provision for combined applications.

The draft minute of variation document, provided with this application, includes a restriction that no more than 50% of the new units to be built on the eight acre field are to reach completion of construction before an affordable housing contract has been entered into to provide the 47 affordable units in the walled garden site.

Housing and Regulatory Services has confirmed that a contract was concluded between the applicants and Hillcrest Housing Association on 9 August 2018 for the affordable housing provision in the walled garden site. Hillcrest Housing Association Limited has confirmed to the Council that the walled garden site is to be transferred to them at the golden brick stage of the development. This means a point when the foundations have been laid and a course of brick or blockwork has been built onto these foundations.

Housing and Regulatory Services has accepted that in principle there is no objection to moving the affordable provision for the 14/00578/FUL permission to the 17/02722/FUL walled garden site.

(vi) Other considerations

Until the walled garden site has been transferred to a Registered Social Landlord (RSL) there is a slight risk to the Council that the walled garden is sold to another party, especially after planning permission is granted for the 17/02722/FUL walled garden application. To avoid this risk, it is recommended that the proposed minute of variation includes a further event before the modified agreement is considered to have taken effect. This should be that the 17/02722/FUL agreement land should have been transferred to Hillcrest Housing Association.

Hillcrest Housing Association Limited has been awarded grant funding through the Affordable Housing Supply Programme for the walled garden development. The 47 affordable units will be secured by the grant offer as none of these 47 units can be disposed of by Hillcrest without prior permission of the Council and the Scottish Housing Regulator. This control would only exist if Hillcrest Housing Association Limited has become the owner of the walled garden land.

To secure these provisions more effectively, a modified legal agreement under the 14/00578/FUL permission, should not take effect until the walled garden ownership has been transferred to Hillcrest Housing Association Limited. With the required adjustment as to when a modified agreement takes effect, the proposed removal of clause 2 can be accepted in this instance.

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.

d) Finance

The proposed modifications to the existing obligation will result in a reduced education contribution and the removal of the transport contribution. The education sum will still be indexed to the date of payment. The new sum reflects the residual number of units to be built under the 14/00578/FUL after the walled garden site is being developed under a different permission. This modification would have no financial implications for the Council.

The removal of the transport contribution cannot be considered to have any financial implication for the Council. The requirement for the payment is no longer applicable or justified and can no longer be expected from the owners of this application site. The same requirements are however, included in other legal agreements tied to different planning permissions.

Conclusion

In conclusion, it is recommended that the planning obligation to which this application refers is modified in accordance with the provisions of the application subject to the revised drafting to the minute of variation.

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

3.4 Conditions/reasons/informatives

Conditions:-

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 application would mean that, at the point any modified agreement took effect, a reduction to the education contribution would be necessary to reflect the reduced numbers of new residential units to be built on the development site. The contribution expected would reduce from £282,370 to £210,494. However, this would be compensated for by an additional £182,931 education contribution required under a new legal agreement for the 17/02722/FUL application.

The application also requires the removal of the £55,000 transport contribution. This discharge is considered acceptable as the obligation no longer complies with the Scottish Government planning obligation circular. The development of both application sites will no longer sufficiently impact on works to the Wisp, for which the contribution had been originally required.

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

A meeting was held with the applicants and their lawyers with regard to the consultation responses received for the previous 18/01835/OBL application at which it was agreed that a revised application would be needed.

8.2 Publicity summary of representations and Community Council comments

No representations have been received.

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 - Special
Landscape Area: Edmonstone House and Nature
Conservation Site.

Date registered

19 June 2018

Drawing numbers/Scheme

David R. Leslie

Chief Planning Officer

PLACE

The City of Edinburgh Council

Contact: Ian Williams, Senior Planning Officer

E-mail:ian.williams@edinburgh.gov.uk Tel:0131 529 3752

Links - Policies

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.

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

LDP Policy Hou 10 (Community Facilities) requires housing developments to provide the necessary provision of health and other community facilities and protects against valuable health or community facilities.

LDP Policy Tra 8 (Provision of Transport Infrastructure) sets out requirements for assessment and mitigation of transport impacts of new development.

LDP Policy Des 8 (Public Realm and Landscape Design) sets criteria for assessing public realm and landscape design.

Appendix 1

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Consultations

Housing and Regulatory Services

Hillcrest Housing Association Ltd have confirmed that they have entered in to a contract to deliver 47 affordable homes at Edmonstone Estate and in total 129 new homes are to be built over the 14/00578/FUL and 17/02722/FUL application and permission sites. This means that more than the 25% policy requirement for affordable housing will be provided over the combined sites.

The development at the Walled Garden site (17/02722/FUL) will consist of 47 affordable homes with 28 homes for social rent and 19 homes for mid-market rent. Hillcrest Housing Association Ltd has been awarded grant funding through the Affordable Housing Supply Programme which is managed by the City of Edinburgh Council on behalf of the Scottish Government.

The affordable housing will be secured by the terms of the grant offer which means that the affordable housing cannot be disposed without prior permission of the Council and the Scottish Housing Regulator. Hillcrest Housing Association Ltd has confirmed that missives to purchase conditional on agreement of the Building Contract was signed on behalf of Hillcrest Housing Association Ltd at 9 August 2018. It is accepted in terms of affordable housing policy that affordable housing on-site provisions will have been met at the point the land is transferred to a Council accepted Registered Social Landlord. Hillcrest Housing Association Limited is a Council approved RSL. The applicant should be asked to confirm the date of the transfer of the affordable housing land to Hillcrest Housing Association and provide the required documentation. The modified agreement should not take effect until the transfer has taken place.

Given this situation we have no objections to the S75 modification application.

Communities and Families

The Planning service has advised that the revised contribution will be a proportionate share of the original Education Contribution, based on the number of units that will now be delivered under the original consent. The contribution will reflect the indexing arrangements of the original agreement. The Communities and Families service has no comment to make regarding the proposal.

Transportation

No objections to the application.

Note:

The proposed application amends the existing Legal Agreement dated 17 October 2014 (registered 09/12/14, Ref.14/49433) to delete works on The Wisp and at its junction with Old Dalkeith Road which are no longer required as part of this development due to the revised access point on Old Dalkeith Road. It also deletes redundant definitions.

Planning Initiatives

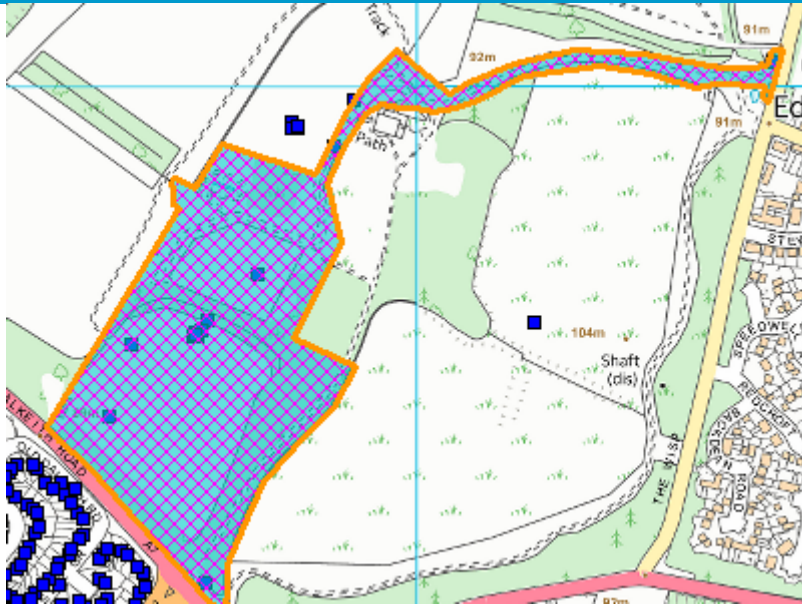
The suggestion by the applicant in the 18/01835/OBL application to alter the section 75 by deleting clauses 5.1- 5.4 of the agreement is unacceptable. The Estate Management Strategy and the existing agreement clause 5.1 only require a proprietor to comply with the obligations in the strategy including any part of the footpath to the Wisp on their site. The proprietor would not be expected to build any pathway beyond their property boundary. There is therefore no need for the suggested new draft strategy relating to land only "lying within their control".

The two links in the approved Estate management plan look possible because the site plan indicates a link in the centre of the site and the access path around the SUDS looks like it could be used to provide the other link to the west of the site. Therefore to comply with the plan they would need to submit details indicating how they would ensure the required pedestrian access beside the SUDS and into the adjacent field (details of gates etc).

Legal and Risk

No consultation response has been received.

Location Plan



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