

# Development Management Sub Committee

Wednesday 24 October 2018

**Application for Planning Obligation 18/05214/OBL  
At Land Adjacent To 194, Fountainbridge, Edinburgh  
Application for modification of s75 Agreement relating to  
planning consent 15/02892/PPP**

<b>Item number</b>	4.3
<b>Report number</b>	
<b>Wards</b>	B09 – Fountainbridge/Craiglockhart

## Summary

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The proposed modified clause is acceptable and the applicants' request for the modification of the 2016 planning obligation can therefore be accepted.

## Links

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

# Report

## **Application for Planning Obligation 18/05214/OBL At Land Adjacent To 194, Fountainbridge, Edinburgh Application for modification of s75 Agreement relating to planning consent 15/02892/PPP**

### **Recommendations**

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

### **Background**

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#### **2.1 Site description**

The site forms part of the redundant brewery which lies on the north side of Fountainbridge, now known as Springside (formerly known as Fountain North). The wider site has now been partly built out to both the west and to the east. The application site, of approximately 2.15 hectares, covers the central area of the wider site.

The site is bounded to the west by Dryden Road, linking Dundee Street and the West Approach Road, with two large blocks of student accommodation lying beyond. Fountain Park Leisure Complex lies behind these. To the east lies Melvin Walk a pedestrian access route linking Fountainbridge with the West Approach Road. The Springside flatted development is on the opposite side. Beyond these lie the tenemental streets of Upper Grove Street, Brandfield Street and Grove Street.

To the north is the West Approach Road and to the south is Dundee Street/Fountainbridge. Beyond the West Approach Road, to the north, is Morrison Crescent, a residential development of affordable dwellings. To the south of Fountainbridge/Dundee Street is the remaining part of the brewery site which has also been partially built out with student accommodation within its western part.

#### **2.2 Site History**

The relevant site history is:

6 December 2006 - outline planning permission was granted for a mixed use development on the wider brownfield site (application reference 05/00106/OUT).

6 December 2006 - a planning legal obligation was concluded for the outline permission.

4 June 2007 - reserved matters consent issued for public realm works (application reference 06/05235/REM).

18 April 2013 - discharge of the 2006 planning obligation and its replacement with a modified agreement taking account of the £18 million of losses sustained by the proprietor and the future apportionment of any net profit in excess of 15% (application reference 13/00480/OBL).

13 December 2016 - planning permission in principle was granted for a mixed use development of residential, Class 1 (Retail), Class 2 (Financial, Professional and other services), Class 3 (Food and Drink), Class 4 (Business), and/or Hotel/Class 7; including detailed matters for the siting and maximum height of building blocks, points of vehicular access, location of pedestrian routes, detailed matters for the North block (building A1) and a new public square and pavilion building (application reference 15/02892/PPP).

13 December 2016 - a planning legal obligation was concluded for this planning permission in principle, one that mirrored the 2013 planning obligation.

## **Main report**

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

The application seeks the modification of the planning obligation, made under the provisions of section 75 of the Town and Country Planning (Scotland) Act 1997, regarding the mixed use development of the Fountain North site and concluded with the Council on 13 December 2016.

That obligation comprises principle clauses that require:

Clause 2: Developer contributions calculated with regards to the distributable profit earned by the developer based on the relevant disposal of the site and/or buildings. Of that the Council's proportion was 4.7% subject to a maximum set at the original contribution of £895,570. The clause also provides that the developer shall make the accounts for each phase available to the Council but provided that the information always remains commercially confidential, and

Clause 3: Affordable housing setting a maximum number of open market residential completions of 416 before the requirement of 25% of the subsequent residential completions being affordable units. The clause also included for circumstances where the affordable housing provision shall be made by means of a financial contribution.

This application seeks to modify the agreement by means of the discharge of Clause 2 but ensures that the provisions of Clause 3 remain in force.

### **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) finance implications of the decision.

#### **a) The Modification of the Obligation is Acceptable**

The Council's planning records confirm that the subject site was sold by the developer in October 2017 in accordance with the terms of the planning obligation as a single entity. The developer at that time provided the Council with the full details as required by the methodology set out in the planning obligation. Those records confirm that the sale receipts did not result in a distributable profit and that consequently no contribution was required to be paid.

Accordingly, it is appropriate to delete clause 2 from the 2016 planning obligation.

Therefore this request 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) Finance**

The contribution clause has been fulfilled by the developer. Accordingly, there would be no financial implications to granting these modifications to the 2016 obligation.

#### **Conclusion**

The proposed modified clause is acceptable and the applicants' request for the modification of the 2016 planning obligation can therefore be accepted.

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

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

The contribution clause has been fulfilled by the developer. Accordingly, there would be no financial implications to granting these modifications to the 2016 obligation.

## **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**

The application, to discharge an obligation, is required to be notified to any other parties to the original agreement, in accordance with the provisions of Regulation 5 of the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010.

The necessary notifications were carried out under the Regulations and no representations have been 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**

23 August 2018

**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.

Draft Developer Contributions and Infrastructure Delivery SG sets out the approach to infrastructure provision and improvements associated with development.

# Appendix 1

## Application for Planning Obligation 18/05214/OBL At Land Adjacent To 194, Fountainbridge, Edinburgh Application for modification of s75 Agreement relating to planning consent 15/02892/PPP

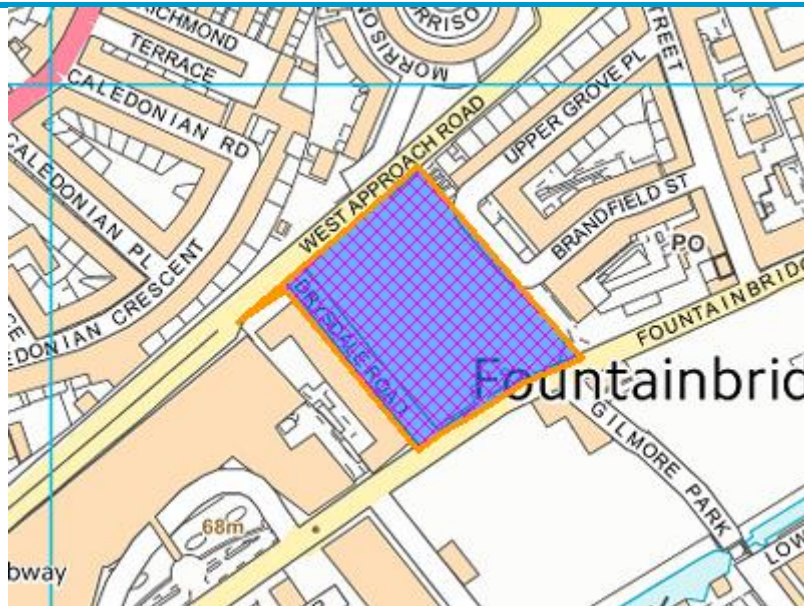
### Consultations

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No Consultations received.

### Location Plan

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