

Development Management Sub-Committee Report

Wednesday 23 October 2024

**Application for Planning Obligation
20 Haymarket Yards, Edinburgh, EH12 5WU**

Proposal: Section 75A application for the Modification of Planning Obligations relating to planning permission 22/04595/FUL

**Item – Committee Decision
Application Number – 24/02784/OBL
Ward – 00 - No Ward Number**

Reasons for Referral to Committee

The application has been referred to the Development Management Sub-Committee because the modification seeks, in part, to reduce the total Tram contribution amount from that as authorised by Committee in its determination of the original planning application (reference 22/04595/FUL) at its meeting on 17 March 2023.

Recommendation

It is recommended that this application be **accepted, and the agreement be modified** subject to the details below.

Summary

It is confirmed that the proposed modification to the section 75 agreement, by means of;

- (i) Revision to the total tram contribution value.
- (ii) Alteration to the schedule of the tram contribution payments; and
- (iii) Revision to the definition of material commencement.

are acceptable and that the applicants' request for this limited modification of the planning obligation can therefore be accepted.

SECTION A – Application Background

Site Description

The application site is 0.59 hectares with a vacant 3 storey, 4,831sqm office built in 1998. The office is built on the site of the former railway goods yards associated with Haymarket Station constructed in the early 1840's. Herdman's Flour Mill, a 7 storey 1920s building stood on this site until it was closed and demolished in 1968.

The site levels sit at 50m AOD, 5m below Haymarket Terrace, adjacent to the tram line and railway, rising gradually towards Haymarket to the east. It includes soft landscaping, 25 semi-mature pine and birch trees around the perimeter and an electricity substation on the eastern boundary. Haymarket Yards currently has two lanes in bidirectional use.

The adjacent uses are primarily office developments however residential tenements are located to the north of the site on Haymarket Terrace. There is also a consented Purpose-Built Student Accommodation (PBSA) (application reference 21/04413/FUL) scheme planned on a vacant plot immediately north of the existing office.

The site is not within a conservation area; however, the boundary of the New Town Conservation Area and World Heritage Site lies to the north of Haymarket Terrace. Coltbridge and Wester Coates Conservation Area lies to the north and west of the wider Haymarket Yards area.

Description of the Proposal

The application seeks to modify the terms of a planning obligation, made under the provisions of section 75 of the Town and Country Planning (Scotland) Act 1997, regarding the development of the site and concluded with the Council in 2023.

That agreement contained restrictive obligations related to a financial tram contribution and for two traffic regulation orders (TROs) related to; redetermine sections of footway and carriageway, and to introduce waiting and loading restrictions.

This modification relates solely to the tram contribution in the form of.

- A reduced value of the tram contribution from £1,901,413 to £1,763,971 to correct an earlier error,
- A variation to the terms of the 'commencement (of development) date', and
- An amendment to the timings, value, and the number of the instalment payments.

A fourth modification has now been deleted by the applicant.

That modification sought to revise the date from which the contribution should be indexed from the date of signing on 4 September 2023 (Q3 2023) to a future date when the modification has been completed.

Supporting Information

Additional information has been submitted in justification of this request.

Relevant Site History

22/04595/FUL
20 Haymarket Yards
Edinburgh
EH12 5WU

Demolition of existing buildings and erection of mixed-use development comprising hotel (class 7) with ancillary cafe, office (class 4), and associated public realm, active travel links, landscaping, EV charging infrastructure, cycle and car parking, servicing, and access.

Granted
13 September 2023

24/00297/FUL
20 Haymarket Yards
Edinburgh
EH12 5WU

Erection of office (Class 4) and associated public realm, landscaping, and cycle parking.

Minded to Grant - Legal Agreement

Other Relevant Site History

No other relevant history.

Pre-Application process

There is no pre-application process history.

Consultation Engagement

Refer to Appendix 1 for a summary of the consultation response.

Publicity and Public Engagement

Date of Neighbour Notification: Not Applicable

Date of Renotification of Neighbour Notification: Not Applicable

Press Publication Date(s): Not Applicable

Site Notices Date(s): Not Applicable

Number of Contributors: 0

Section B - Assessment

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.

Assessment

To address these determining issues, it needs to be considered whether:

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- (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

National Planning Framework 4 (NPF 4) was adopted by the Scottish Ministers on 13 February 2023 and forms part of the Council's Development Plan. NPF 4 policies supports the planning and delivery of Sustainable Places, Liveable Places and Productive Places and are the key policies against which proposals for development are assessed. There are several policies in the Edinburgh Local Development Plan (LDP) that are equivalent to policies within NPF 4. The relevant policies to be considered are:

- NPF 4 Liveable Places: Infrastructure first Policy 18
- LDP Strategy policy Del 1

NPF 4 Policy 18 (Infrastructure first) encourages, promotes, and facilitates an infrastructure first approach to land use planning, which puts infrastructure considerations at the heart of placemaking. Those provisions are to be in full compliance with the relevant Circular tests with regards to each development and determination made by the planning authority.

LDP Policy Del 1 (Developer contributions and infrastructure delivery) requires development to contribute to the specified infrastructure provision where relevant and necessary to mitigate any negative additional impact (either on an individual or cumulative basis) and where commensurate to the scale of the proposed development. In order to provide further detail on the approach to implementation of this policy and to provide the basis for future action programmes the policy states that Supplementary Guidance will be prepared to provide guidance on a number of matters including the required infrastructure in relation to specific sites and/or areas.

The terms of a planning obligation, section 75 Agreement, are required to meet the tests as set out in Circular 3/2012 (Planning Agreements and Good Neighbour Agreements). If just one of the tests is not met, then in terms of the circular, those planning obligation provisions should not be applied by the Council.

The terms of the existing obligation are made based on the specific impacts arising from the proposed office development. As they were deemed unacceptable in land use planning terms the obligation is required to ensure contributions towards those Tram works that would effectively mitigate them. The payment of the contribution is timed such that the proposed development is suitably restricted or regulated by the obligation.

Firstly, it has already been conceded to the developer that an error was made, in the Report of Handling of the planning application for the development, with regards to the total tram contribution value relevant to the scale of the proposed development.

The Council's 'Developer Contributions and Infrastructure Delivery', supplementary guidance August 2018, identifies that in the process of calculating a potential tram contribution for a material change of use that figure will be based on the contribution for the proposed use, or uses, minus that for the lawful use of the land or any existing buildings on the site. Where the resultant contribution value is positive then that figure will be the total required for the proposed development.

The Report of Handling figure quoted related, incorrectly, to the proposed office use (of 23,212sqm of floorspace) at £1,606,270 plus that for a 97-bed hotel at £295,143, a total of £1,901,413.

The correct values, confirmed by the Council's Transport Planning Officers, should have been for proposed office use of 23,212sqm plus a 197-bed hotel (correct size) at £603,214, a total of £2,209,484, minus that for the existing office use to be demolished (of 4,831sqm of floorspace) at £445,513, a total of £1,763,971.

Accordingly, that specific modification, to the total tram contribution, which corrects that as set out in the Report of Handling, is agreed here.

Further, the developer's justification behind the remaining modification provisions includes the timing requirement of the agreement, to take account of recent market conditions which have made funding difficult due to high inflation and high interest rates. It is also noted that pre-construction costs have increased which have impacted on the original phasing and cash flow projections. Accordingly, the modifications are required to ensure the continued viability of the development.

The applicant also identifies that development commenced on site on 13 September 2023, in accordance with the original obligation definition and that of the Planning Act, but for the above reasons it is requested that those definitions in the obligation are amended to regularise matters related to commencement of the construction of the development.

Further reference is made to the provisions of the SG where it is anticipated that such applications may be required. Also, the proposed wording to the commencement date is referenced to an existing approved obligation for a mixed-use development at 2-14 Bonnington Road Lane & 200 Bonnington Road (reference 20/01932/FUL) where the same wording was accepted by the Council in the negotiated provisions of that obligation.

The agreed obligation was concluded with a requirement that the Tram contribution was to be paid in accordance with a payment schedule of;

- The Commencement Date shall not occur until payment of the First Instalment £47,535.
- The Second Instalment £475,353 shall be paid within an additional four months.
- The Third Instalment £475,353 shall be paid within an additional eight months.
- The Fourth Instalment £475,353 shall be paid within an additional twelve months.
- Occupation of any Commercial Unit shall not occur until the payment of the
- Fifth Instalment £427,819.

The applicant, for the above reasoning, now proposes that the payment schedule be modified such that the main proportion of the contribution be paid at the point in the development where the development will require the tram infrastructure to mitigate its principal impact.

The proposed schedule would be;

- £100,000 paid prior to the revised 'commencement' of development
- £500,000 no later than 12 months post the commencement payment, and
- £1,163,971 prior to first occupation of any part of the proposed development.

Finally, the existing obligation also provides that the 'Commencement Date' is defined as; that date on which the development is initiated by the carrying out of any 'Material Operation'; which itself is defined as; an operation in accordance with Section 27 of the Town and Country Planning (Scotland) Act 1997.

For the reasons provided related to the viability of the development, and to seek to rectify the earlier commencement of the development on the site, the applicant proposes to modify the wording of the obligation to exclude 'Enabling Works' on the development site. This is defined as; demolition, clearance and remediation work, or site investigation works. The result is that commencement would be from the commencement of construction of the proposed building(s).

An assessment of the acceptability of these proposed modifications, in the accord with the Circular tests, are as follows:

Necessity test

In terms of the 'necessity' test, the planning obligation is necessary to permit the proposed development.

The Edinburgh Local Development Plan Policy Del 1, requires contributions to the existing and proposed tram network, explaining that, 'contributions will continue to be sought from future development which impacts on or creates a need for this infrastructure'. The subsequent 'Supplementary Guidance' provides further detail including how the Council intends to repay £23 million of the more than £700 million costs, borrowed by the Council to fund construction of the tram network, through the use of developer contributions. It details how a proportionate share of that sum is to be attributed to relevant existing and future developments.

The corrected calculation of the tram contribution (£1,763,971) was calculated based on the development on the site within contribution zone 1 (sites within 250 metres of the tram network). The site is located adjacent to the tram line and within close proximity to the tram stop at Haymarket.

Accordingly, the planning obligation and the proposed modification complies with the 'necessity' test.

Planning purpose test

In terms of the 'planning purpose' test, the planning obligation is sufficiently related to the use and development of the land and rooted in the provisions of the development plan.

The quantum of the contribution, as amended, is directly proportionate to the size and proximity of the proposed development to the Tram infrastructure and satisfies the test that it is clearly related to the use and development of the land in question.

Accordingly, the planning obligation and the proposed modification complies with the 'planning purpose' test.

Relationship to the proposed development test

In terms of the 'relationship to the development' test, the planning obligation development should either: create a direct need for particular facilities, place additional requirements on infrastructure (cumulative impact) or have a damaging impact on the environment or local amenity that cannot be resolved satisfactorily through the use of planning conditions or another form of legal agreement. A planning obligation could be used provided it would clearly overcome or mitigate those identified barriers to the grant of planning permission.

The consented development places additional requirements on infrastructure (cumulative impact) in respect of the tram network. The tram infrastructure was proposed by the Council as a means of ameliorating transport issues within the city by reducing reliance on the private car and assisting in the promotion of development along its route.

Without the provision of the tram network, as an additional transport infrastructure improvement, the additional traffic impact of the proposed development on the existing public road network and public transport capacity would have had a detrimental impact such that the proposed development would have been refused planning permission.

Accordingly, the planning obligation and the proposed modification complies with the 'relationship to the development' test.

Scale and kind test.

In terms of the 'scale and kind' test, the Circular provides that the planning obligation must be related in scale and kind to the proposed development. In assessing such contributions, planning authorities may take into account the cumulative impact of a number of proposed developments, and use obligations to share costs proportionately. An effect of such infrastructure investment may be to confer some wider community benefit, but contributions should always be proportionate to the scale of the proposed development.

Given the cumulative impact assessment, the planning obligation is proportionate in both scale and kind to the very specific nature of the proposed development. The developer had full knowledge of the policy requirement of this planning obligation and therefore, there is no argument that the payment of the contribution impacted unduly on the viability of the development of the site.

This test also expressly contemplates the use of planning obligations in those circumstances after the infrastructure has been built; as set out by the Council, in both the development plan and the supplementary guidance, with regard to tram contributions.

At paragraph 23 where it states that; *"Planning authorities should give consideration to the possibility of infrastructure being funded, and development thus enabled, through other mechanisms, with costs being recovered through staged payments as development progresses."*

Accordingly, the planning obligation and the proposed modification complies with the 'scale and kind' test.

Reasonableness test

Finally, in terms of the 'reasonableness' test, the Circular provides a number of questions of which a negative answer to any one of those questions would generally render a planning obligation inappropriate.

- (i) Is an obligation, as opposed to conditions, necessary to enable a development to go ahead?
- (ii) In the case of financial payments, will these contribute to the cost of providing necessary facilities required as a consequence of or in connection with the development in the near future?
- (iii) Is the requirement in the obligation so directly related to the regulation of the proposed development that it should not be permitted without it?
- (iv) Will the obligation mitigate the loss of, or the impact upon, any amenity or resource present on the site prior to the development?

The proposed modification would not impact on any of these questions and so the planning obligation complies with the 'reasonableness' test.

Other considerations

There are no other matters here that would directly impact on whether the proposed modification would detrimentally impact on the Council policy requirements here.

b) Equalities and Human Rights Impacts

This application has no impact in terms of equalities or human rights.

c) Finance

There would be no financial implications to granting this modification to the 2023 obligation as the modification to the total value of the tram contribution here rectifies an error in the terms of the original Report of Handling and the related consultation response.

CONCLUSIONS

In conclusion, the applicants' request for the modifications of the 2023 legal obligation are accepted and accordingly this application should be approved.

It is recommended that the planning obligation to which this application refers should be modified as requested.

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

Conditions

Reasons

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.

Background Reading/External References

To view details of the application go to the [Planning Portal](#)

Further Information - Local Development Plan

Date Registered: 12 June 2024

Drawing Numbers/Scheme

01

Scheme 1

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

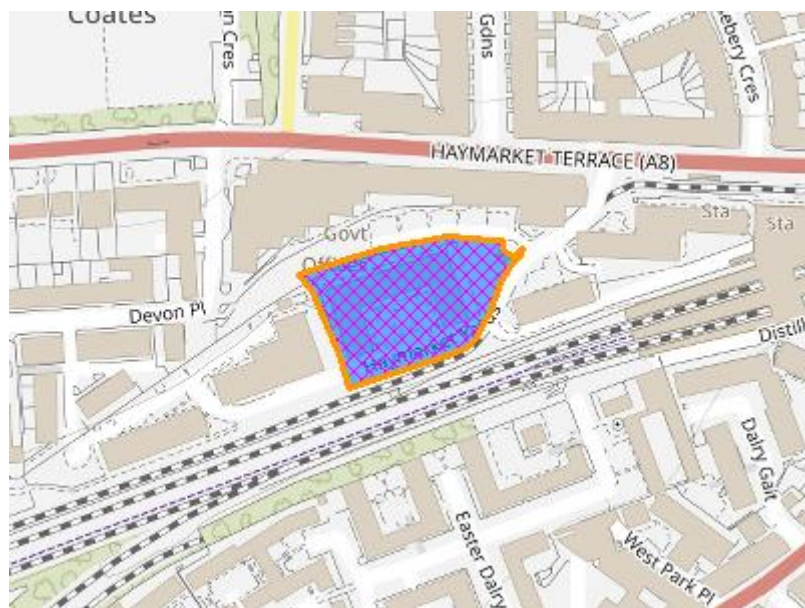
Contact: John Maciver, Senior planning officer
E-mail: john.maciver@edinburgh.gov.uk

Appendix 1

Summary of Consultation Responses

The full consultation response can be viewed on the [Planning & Building Standards Portal](#).

Location Plan



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