

Development Management Sub-Committee Report

Wednesday 23 October 2024

**Application for Planning Obligation
Craigpark Quarry, 1 Craigpark, Ratho.**

Proposal: Section 75A application (agreements 17/02471/FUL + 20/00965/FUL) to remove the obligations to pay the Transport Contribution and to procure those Transport Works.

**Item – Committee Decision
Application Number – 24/04511/OBL
Ward – B02 - Pentland Hills**

Reasons for Referral to Committee

The application has been referred to the Development Management Sub- Committee because the proposals seeks to significantly modify the terms of the obligation and must be determined by the Development Management Sub- Committee.

Recommendation

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

Summary

The proposed requirement to provide a financial contribution towards the delivery of the footbridge is not considered to be necessary to ensure that the proposed development of the Wave Garden complies with the Development Plan. The requirement within the Section 75 Legal Agreement to seek contributions for the bridge therefore fails to comply with the necessity test as detailed within Circular 3/2012.

The proposed modification of the legal agreement in relation to the financial contributions linked to the delivery of the canal pedestrian bridge is considered to be acceptable and the legal agreement can be modified.

SECTION A – Application Background

Site Description

The application site is part of the disused Craigpark Quarry, at the western edge of the village of Ratho. The Quarry ceased operations in 1990.

The site measures approximately 23.4ha in area and is bound to the north by a strip of trees and shrubbery, next to the Union Canal, which is a scheduled ancient monument (Ref SM11097, added 15 Dec 2003), and by the Edinburgh International Climbing Arena to the northeast. It is bound to the west by agricultural land and to the south by Bonnington Quarry. To the east, the site is bound by the new Cala Homes residential development built as part of the quarry restoration.

The Union Canal is designated as a Local Nature Conservation Site and runs along the northern edge of the site and, to the southeast, the woodland formerly associated with Craigpark House (now demolished) is listed in the Inventory of Ancient, Long Established and Semi Natural Woodland of Plantation Origin (NCC 1991). The old cart road running eastwards from the quarry basin between the canal and the new housing has been reopened as part of the country park development.

Further south, beyond the application site, the countryside is designated as a Special Landscape Area.

Access to the site is via the Edinburgh International Climbing Arena Road, off Cliftonhall Road B7030 to the west.

Significant development has taken place on the site to implement the permission, and the new Leisure Facility is expected to open shortly.

Description of the Proposal

The application seeks to remove the obligations relating to the provisions within application 17/02471/FUL and 20/00965/FUL relating to financial contributions towards the delivery of a footbridge over the Union Canal.

The legal agreement requires the payment of a sum up to a maximum of £444,689 to be paid in accordance with Clause 4.3. This clause identifies the phased payment schedule and terms for the return of any funds not utilised by the Council within a 10-year period of payment.

Supporting Information

A supporting statement has been provided and is available to view on the Planning and Building Standards Portal.

Relevant Site History

21/06800/OBL
Craigpark Quarry
1 Craigpark
Ratho
Newbridge
EH28 8RJ

Section 75A application to remove redundant, superseded and discharged obligations, amend clerical errors and make updates to extant planning obligations. accepted and the agreement be modified
18 March 2022

20/00965/FUL
Craigpark Quarry
1 Craigpark
Ratho
Newbridge
EH28 8RJ

Detailed planning permission for the buildings and information relating to Condition 1 of planning permission 17/02471/FUL relating to an outdoor leisure facility and associated works
Granted
3 September 2020

17/02471/FUL
Craigpark Quarry
1 Craigpark
Ratho
Newbridge
EH28 8RJ

Outdoor leisure complex incl. water sport+training facilities infrastructure, access(pedestrian+vehicular),landscaping+ancillary works(full planning permission), ancillary class 1 (retail)+class 3 (food+drink) uses, tourism accommodation facilities (PPP).
Granted
4 July 2019

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:

a) the modification of the obligation is considered to be 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 Sustainable Places: Policy 13 Sustainable Transport
- NPF 4 Liveable Places: Infrastructure First Policy 18.
- LDP Strategy policy Del 1
- LDP Housing policy TRA 1

National Planning Framework 4 Policy 13 seeks to encourage, promote and facilitate development that prioritise walking, wheeling, cycling and public transport. In particular the policy supports proposals that provide direct easy access to local facilities via cycling networks. Policy 13 Part vii specifically advises that proposals should "take into account, at the earliest stage of design, the transport needs of diverse groups including users with protected characteristics to ensure safety, ease and needs of all users."

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 history and development of the site is important to consider in the assessment of the requirement for the proposed footbridge. The original concept behind the delivery of a pedestrian footbridge was detailed within the application for the delivery of housing on the western extent of Ratho accompanied by the restoration of the quarry face and surrounding land to a country park. In relation to the provision of a bridge linking to the Edinburgh International Climbing Arena (EICA) it is stated :

"A future link to provide access across the Union Canal to improve access to the towpath on the opposite side of the canal and the climbing centre would therefore need to be dealt with by a separate planning application and an application for Scheduled Ancient Monument Consent on resolution of third party ownership issues. The developers propose a contribution of £100,000.00 for the bridge via a section 75 agreement. This would be required before any works start on the houses and would revert back to the applicant if not used within 10 years of this date. In the event of a new bridge not being forthcoming, access across the canal to the climbing centre and towpath could be achieved over the existing vehicular access to the Ratho Adventure Centre."

As the site has evolved and the country park proposals have changed to the leisure scheme incorporating the Wave Garden the provision of footbridge has continued within the Legal Agreements associated with the permissions. Additional funding of £444,689 was brought forward by the developers of the now Wave Garden to support the provision of the bridge to be delivered by the Council.

The Council advanced an application (20/01091/FUL) for the provision of a pedestrian bridge over the canal in close proximity to the EICA. The proposals did not provide a linkage between the footbridge and the canal towpath that sits at a lower level. A comprehensive Transport Assessment was submitted in support of the original planning application reference 17/02471/FUL, and the development was fully assessed for its impact upon the surrounding transport network. At that stage, the applicant demonstrated that the proposal could be accessed by modes other than the car and the requirements of policy Tra 1 (Location of Major Travel Generating Development) of the LDP were met.

In the original application for the development of the wider site there was a modest contribution to the delivery of a footbridge. It was also acknowledged that in the event that the new bridge was not forthcoming, access across the canal to the climbing centre could be achieved over the existing vehicular access to the EICA. NPF 4 Policy 13 seeks to support developments in line with sustainable travel hierarchies and where appropriate direct, easy and safe links can be provided to the walking/ cycling networks. The proposed bridge would not provide the direct connection to the canal as envisaged. There is a significant land level change down to the canal.

In addition there are a significant number of trees along the canal banking that would require to be removed or the root structure undermined. The ability to provide a fully accessible connection down to the canal within this location is extremely constrained.

Scottish Government Circular 3/2012 (updated 18 November 2020) - Planning Obligations and Good Neighbour Agreements. The circular explains that obligations are to be promoted in strict compliance with the five policy tests. These tests relate to necessity; planning purpose; relationship to the development; scale and kind; and reasonableness.

In terms of the 'necessity' test, the planning obligation should be necessary to permit the proposed development. The provision of the proposed bridge is not necessary to make the proposed development of the Wave Garden acceptable in compliance with the Development Plan. Whilst the provision of the bridge is desirable to provide access to the canal from the south it is not necessary to make the development acceptable. Accordingly, in terms of the five Circular tests the requirement no longer satisfies the test that the contributions *"be necessary to make the proposed development acceptable in planning terms"* and therefore it is appropriate to make the requested modification and permit this application. As the proposals do not meet the requirements of the necessity test there is no requirement to consider the other test set out in the circular.

b) There are any other material considerations which must be addressed?

The following material planning considerations have been identified:

Emerging policy context

On 5 April 2024 the Planning and Environmental Appeals Division published its report into the examination of the Proposed City Plan 2030 and supporting documents in terms of Section 19 of the Town and Country Planning (Scotland) Act 1997. On 27 June 2024 the Council accepted the recommendations and modifications required to the Proposed City Plan 2030.

On 10 September 2024 Scottish Ministers issued a Direction under section 20(5) of the Town and Country Planning Scotland Act 1997 that City of Edinburgh Council consider modifying the proposed City of Edinburgh Local Development Plan 2, City Plan 2030 as detailed within the annex to the direction. The required modifications are being reviewed and will be considered at a further meeting of the Planning Committee and then further Full Council.

At this time in the context of the consideration of this particular application limited weight can be given to the relevant policies of City Plan 2030 until the adoption of the plan.

Equalities and human rights

Due regard has been given to section 149 of the Equalities Act 2010. No impacts have been identified.

Consideration has been given to human rights. No impacts have been identified through the assessment and no comments have been received in relation to human rights.

Transport and Environment Committee

On the 15 August 2024 the Transport and Environment Committee Business Bulletin reported on the wider delivery implications of the proposed bridge over the canal. At this meeting it was outlined that one of the key drivers for the provision of the bridge was to carry sewage from the Wave Garden development. At that stage developer sought alternative arrangements for sewage leaving site. The bridge project was put on hold at this point. An alternative arrangement for the sewage was put in place and coupled with Sustrans challenges on the gradients the project was not progressed. It was highlighted that there is an existing road bridge that links to the EICA that can provide access.

Any other funding arrangements would not be material to the consideration of this application to discharge the obligations as linked to the planning application.

Conclusion in relation to identified material considerations

None of the identified material considerations outweigh the proposals compliance with the Development Plan.

Overall conclusion

The proposed requirement to provide a financial contribution towards the delivery of the footbridge is not considered to be necessary to ensure that the proposed development of the Wave Garden complies with the Development Plan. The requirement within the Section 75 Legal Agreement to seek contributions for the bridge therefore fails to comply with the necessity test as detailed within Circular 3/2012.

The proposed modification of the legal agreement in relation to the financial contributions linked to the delivery of the canal pedestrian bridge is considered to be acceptable and the legal agreement can be modified.

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

Background Reading/External References

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

Further Information - Local Development Plan

Date Registered: 16 September 2024

Drawing Numbers/Scheme

**David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council**

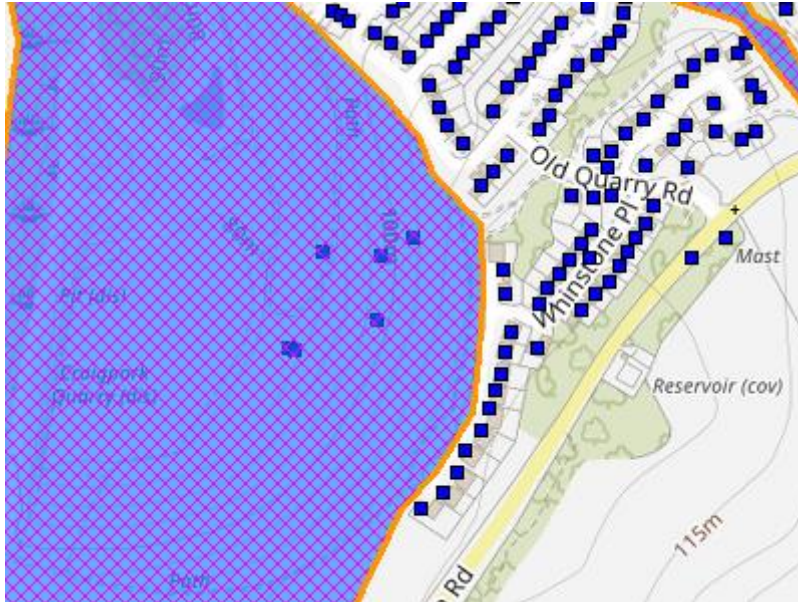
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Appendix 1

Summary of Consultation Responses

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

Location Plan



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