

Development Management Sub Committee

Wednesday 18 March 2020

Applications for Planning Obligation 19/02500/OBL, 19/02498/OBL & 19/02506/OBL (Appeal References POA-230-2006-2007-2008) - Land 292 metres west of Gilmerton Station Road, Edinburgh Application for modification or discharge of Planning Obligation. Section 75 Agreement between CEC and Robert Robertson & Son dated 23 November 2017 – 16/03895/PPP

Item number

Report number

Wards

B16 – Liberton/Gilmerton

Summary

As these applications to modify planning obligations have been appealed, Scottish Ministers are now the decision-making body. The applications/appeals need to be considered with respect to Policy Del 1 of the LDP, the Action Programme, Supplementary Guidance and the advice contained in the Scottish Government Circular on Planning Obligations.

It is recommended that the Development Management Sub-committee agrees to the modifications sought in Application 2, subject to a unilateral obligation to cover infrastructure shortfall as specified below.

Links

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

Report

Applications for Planning Obligation 19/02500/OBL, 19/02498/OBL & 19/02506/OBL (Appeal References POA-230-2006-2007-2008) - Land 292 metres west of Gilmerton Station Road, Edinburgh Application for modification or discharge of Planning Obligation. Section 75 Agreement between CEC and Robert Robertson & Son dated 23 November 2017 – 16/03895/PPP

Recommendations

- 1.1 It is recommended that Committee agrees to the modifications sought in Application 2, subject to a unilateral obligation to cover infrastructure shortfall as specified below.

Background

2.1 Site description

The site is a development site within the south east of Edinburgh and is 18.6 hectares in area. It is roughly rectangular in shape and is bounded to the west by Lasswade Road and to the south by Gilmerton Station Road. On the opposite side of Lasswade Road are three single storey houses, which are within the green belt. To the north is Gilmerton Dykes Road with an established housing area beyond. To the east is land being developed under planning permission in principle has been granted for housing development on two sites at Gilmerton Station Road (LDP Proposal HSG 24) and Gilmerton Dykes Road (LDP Proposal HSG 23).

The site slopes from north to south and there is a 30-metre level difference between the highest and lowest parts of the site.

There are no features of notable interest on the site; the western boundary is denoted by a post and wire fence, while the northern boundary is a stone wall. There are some mature trees along the eastern boundary and most of these are outwith the application site boundary, with the exception of two mature sycamores in the northern part of the site.

2.2 Site History

19 April 2017 – planning permission in principle for residential development granted subject to amongst other things a planning obligation relating to education infrastructure requiring primary school and secondary school education interventions.

14 March 2019 – Application for matters specified in conditions 1,2 and 3 of planning permission in principle 16/03895/PPP for a total of 335 residential units (application number 18/02540/AMC).

27 May 2019 – Application 1 to modify planning obligation received (application number 19/02500/OBL).

27 May 2019 – Application 2 to modify planning obligation received (application number 19/02498/OBL).

27 May 2019 – Application 3 to modify planning obligation received (application number 19/02506/OBL).

02 August 2019 – appeals against non-determination of above applications lodged with Scottish Ministers (Appeal References POA-230-2006-2007-2008).

2.3 Status of the Applications

Given the three applications have been appealed, Scottish Ministers are now the decision-making body charged with considering the three appeals. These will be the subject to public inquiry and hearing sessions held between 23 and 27 March 2020.

In terms of the Scheme of Delegation (Appendix 6, paragraph 33), the Chief Planning Officer is authorised to respond to applications that have been appealed due to non-determination. Submissions have been made on behalf of the Council on the three extant appeals on this basis.

2.4 Description of the Proposals under Appeal

The requested modifications (subject to appeal) to the legal agreement seek to modify the level of financial contributions towards education infrastructure on the basis of three individual applications below:

Application 1 (DPEA Ref: POA-230-2007 & CEC Ref: 19/02498/OBL) seeks to modify the education contribution to non-denominational primary schooling by:

- (i) Removing any contribution towards the new Gilmerton Station Road Primary School;
- (ii) Making a proportionate contribution towards only 50% of the capital cost of the new Broomhills Primary School and a two-classroom extension at Gilmerton Primary School and
- (iii) Updating of the contributions towards denominational primary and nondenominational secondary schooling (payable in the Liberton/Gracemouth Education Contribution Zone and LG-1 Sub-Area) to accord with the Council's Finalised Draft Supplementary guidance on Developer contributions and Infrastructure Delivery (August 2018) ("the Finalised SG 2018").

Overall application 1 proposed to reduce education financial contributions to £3,676,981.

Application 2 (DPEA Ref: POA-230-2006 & CEC Ref: 19/02500/OBL) seeks to modify the education contribution to non-denominational primary schooling by:

- (i) Removing any contribution towards the new Gilmerton Station Road Primary School;
- (ii) Making a proportionate contribution towards the total capital cost of the new Broomhills Primary School and a two-classroom extension at Gilmerton Primary School; and
- (iii) Updating of the contributions towards denominational primary and nondenominational secondary schooling (payable in the Liberton/Gracemount Education Contribution Zone and LG-1 Sub-Area) to accord with the Council's Finalised Draft Supplementary guidance on Developer contributions and Infrastructure Delivery (August 2018) ("the Finalised SG 2018").

Overall application 2 proposed to reduce education financial contributions to £5,118,841.

Application 3 (DPEA Ref: POA-230-2008 & CEC Ref: 19/02506/OBL) seeks to modify the education contributions to update them to the rates currently set out in the Finalised SG 2018 but otherwise making no in-principle modifications. Application 3 revises education financial contributions to £7,278,379.

2.5 Supporting Statement

The applicant has submitted one supporting statement to cover the three applications and Appeals. It seeks a sequential consideration of the three Appeals, its preference being the grant of Application 1, which failing the grant of Application 2, which failing the grant of Application 3.

2.6 Council submissions on Appeals 1, 2 & 3

It is our position that the reduced contributions sought in Application/Appeal 1 cannot be supported as provision of a single stream school (i.e.50% of Broomhills) provides insufficient education infrastructure. Such an approach would not be proportionate, and the reduced amount of education infrastructure would not be related in scale to the development.

It is our position, in discussion with Communities and Families, that Application/Appeal 2 proposals would not provide insufficient education infrastructure. Such an approach would not be proportionate, and the reduced amount of education infrastructure would not be related in scale to the development. The terms of Application/Appeal 2 are considered more fully in the main report.

Application/Appeal 3 raises no new planning matters and has been agreed as it accords with Policy Del 1 of the LDP, the Action Programme, and the Supplementary Guidance.

Main report

3.1 Description of the Proposal

The appellant is now seeking to amend the terms of Appeal 2, by granting an additional unilateral obligation, to potentially resolve it on terms acceptable to the Council. We are seeking authority from Committee to agree the Council's position, as planning authority, to this proposal to amend Appeal 2.

3.2 Reason for Referral to Committee

In terms of the Scheme of Delegation (Appendix 6, paragraph 34), the Chief Planning Officer is only authorised to enter into legal agreements with a developer that involve a financial sum not exceeding £250,000. The proposed additional unilateral obligation would exceed this threshold and approval from Committee is therefore required.

3.3 Determining Issues

As set out above, all three applications have been appealed to Scottish Ministers to determine. Section 75A provides the statutory framework for modifying an existing planning obligation. In considering such applications, the decision-maker can either determine that: the planning obligation continues to have effect without modification; is discharged; or is modified as set out in the application. Importantly, there is no administrative discretion to modify a planning obligation which differs from that set out in the application.

However, section 75 allows a landowner, at any time, to grant a unilateral planning obligation restricting or regulating the development or use of their land. Therefore, the proposal is a competent option.

3.3 Assessment

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

- (a) the modification or 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) The Modification of the Obligation is Acceptable

Policy Del 1 of the LDP requires developer contributions for necessary infrastructure and in relation to education provision includes new school proposals in Table 5 where contribution zones would apply to address cumulative impact.

Table 5 "School Proposals" of the LDP includes the provision of a second primary school at Gilmerton Station Road (Core 3.2). This is also the position in the most up-to-date LDP Action Programme. Education still consider that the second primary school is the most appropriate method to meet education need

In respect of Application/Appeal 2 it is our position, in discussion with Communities and Families, that there may be an argument, that on a planning basis having regard to the most up-to-date data (change in circumstances as outlined in the Circular) that the need for a second primary school at Gilmerton Station Road may not arise purely as a result of the development subject of this application or other developments in the contributions zone.

Given the most up to data is just projections, there remains a risk that there will not in reality be adequate education infrastructure as outlined in the LDP and Action Programme if contributions are reduced on that basis. However, taking account of the current status of the Council's Supplementary Guidance, it is considered it would be reasonable to agree to a reduction of the contributions based on the latest projections. Such reduction would require to be subject to the contributions still being able to be used to provide a second primary school at Gilmerton Station Road if required.

Using the latest projections, there is calculated to be a need for at least an additional four classroom extension at Gilmerton Station Primary School and not the two-classroom extension purported in Application/Appeal 2.

The appellant has agreed to meet the shortfall in education infrastructure provision (two classrooms) through a unilateral undertaking. As Scottish Ministers do not have administrative discretion to alter the modification as sought in the applications, this position may be acceptable in principle, on the basis of updated data, and would allow the appeal proceedings to concentrated on Application/Appeal 1 above.

If the Committee is content to support this proposal the ultimate decision on whether to grant Application/Appeal 2, with or without this amendment, would still rest with Scottish Ministers.

b) Equalities and Human Rights Impacts

Having considered the modification proposal and the obligations in the agreement which are to be retained, the application has no impact in terms of equalities or human rights.

c) Comments Raised

No representations from relevant parties to the agreement were received concerning this proposal.

Conclusion

In conclusion, it is recommended that Committee agrees to the modifications sought in Application/Appeal 2, subject to a unilateral obligation to cover infrastructure shortfall as specified above.

Financial impact

4.1 The financial impact has been assessed as follows:

Application/appeal 3 has been agreed which revises the education financial contributions to £7,278,379. In the event Application/appeal 2 was agreed subject to a unilateral obligation to cover infrastructure shortfall as specified above, the overall education financial contributions would only be reduced to £5,227,492.

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 considered 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

There is no pre-application process history.

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](#)
- [Edinburgh Local Development Plan](#)
- [Scottish Planning Policy](#)

Statutory Development	Urban Area
Plan Provision	
Date registered	27 May 2019
Drawing numbers/Scheme	None

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Links - Policies

Relevant Policies:

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

Finalised Draft Supplementary Guidance on Developer Contributions and Infrastructure Delivery (Aug 2018) gives guidance on the situations where developers 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.

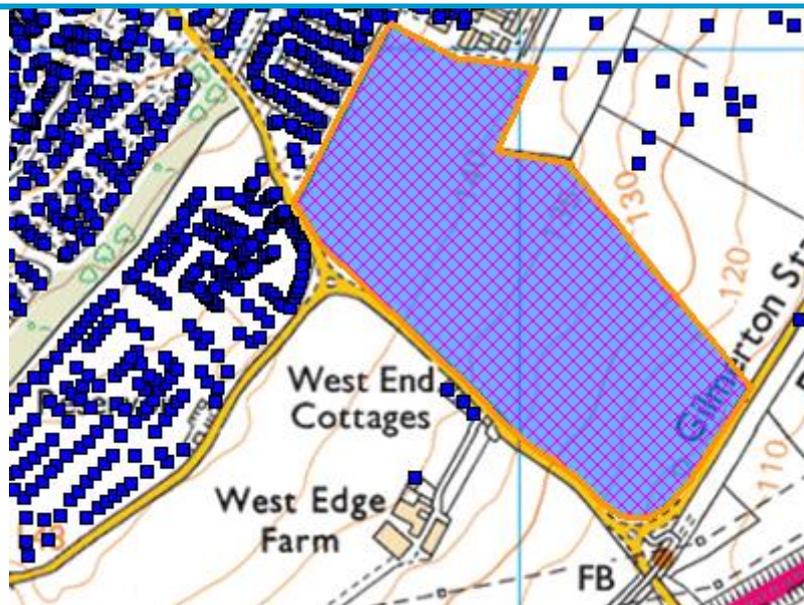
Appendix 1

**Application for Planning Obligation 19/02500/OBL
at Land 292 Metres West Of 10, Gilmerton Station Road,
Edinburgh.
Land at Lasswade Road West Edge Farm,
Edinburgh(Agreement Subjects modification of section 75)**

Consultations

None.

Location Plan



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