

# Development Management Sub Committee

Wednesday 31 July 2019

## Application for Planning Obligation 19/00398/OBL At Land Adjacent To, New Street, Edinburgh Application for the discharge of a planning obligation clause relating to Car Club provisions

Item number

Report number

Wards

00 - No Ward Number

### Summary

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The proposed discharge of the clause 5 provisions of the 2014 planning obligation are acceptable and the applicants' request for their modification can therefore be accepted.

### Links

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[Policies and guidance for this application](#)

# Report

## **Application for Planning Obligation 19/00398/OBL At Land Adjacent To, New Street, Edinburgh Application for the discharge of a planning obligation clause relating to Car Club provisions**

### **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 comprises the Caltongate/New Waverley development, an overall area of around 2.35 hectares.

It is bounded to the north by Calton Road, to the east by Tolbooth Wynd, to the south by the Canongate and to the west by New Street and Cranston Street.

A number of the elements of this overall development have now been completed including the hotel fronting Canongate, the two hotels on East Market Street, and the redevelopment of the Arches fronting Jeffrey Street and East Market Street. The office building fronting New Street is nearing completion.

The site is within the Edinburgh World Heritage Site.

This application site is located within the Old Town Conservation Area.

#### **2.2 Site History**

The relevant site history is:

29 January 2014 - Development Management Sub-Committee was minded to grant planning permission subject to an appropriate legal obligation for development on the northern part of the wider Caltongate/New Waverley development (the PA3 and PA4A applications) (application number 13/03407/FUL).

27 March 2014 - A legal obligation was concluded and planning permission granted for the above application.

23 April 2018 - Development Management Sub-Committee granted planning permission, subject to a legal agreement and the upfront payment of contributions, for the erection of an office development and associated uses (the former PA3 site) (application number 17/04118/FUL).

25 April 2018 - A section 75A application was approved to modify the March 2014 legal obligation by discharging clauses 6, 7, 11 and 14 as well as Schedules Parts 4, 5, and 6 (application number 17/05747/OBL).

## **Main report**

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

This application seeks to modify the planning obligation, made under the provisions of section 75 of the Town and Country Planning (Scotland) Act 1997, regarding the development of the Caltongate/New Waverley and concluded with the Council on 27 March 2014.

The planning obligation has already been authorised to be modified with the discharge of various clauses and schedules under the provisions of the 2018 grant of modification (Reference 17/05747/OBL).

The developer now seeks to modify the planning obligation further by means of a formal discharge of clauses 5.1 and 5.2 requiring the provision of a Car Club contribution to facilitate a number of spaces at locations within and adjoining the application site.

This application relates solely to this clause of the obligation.

### **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 modification of the obligation, as proposed, is considered to be acceptable; and
- (b) finance implications of the decision.

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

The planning obligation, issued with the grant of planning permission for the office building fronting New Street, included the payment of contributions, including a Car Club contribution of £18,000 and an associated TRO contribution of £4,000. Those payments, made prior to the grant of planning permission, superseded clauses 5.1 and 5.2 of the 2014 planning obligation.

Accordingly, it is appropriate for the proposed modification, to delete clause 5 from the 2014 planning obligation. Therefore, this request can be agreed in this instance.

#### b) Finance

The Car Club clause, subject of this application, to provide the necessary contribution has been fulfilled by the developer. Accordingly, there would be no financial implications to granting this modification to the 2014 obligation.

#### Conclusion

In conclusion, the applicants' request to modify the 2014 legal obligation is accepted and the planning obligation should be modified accordingly.

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 Car Club clause, subject of this application, to provide the necessary contribution has been fulfilled by the developer. Accordingly, there would be no financial implications to granting this modification to the 2014 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**

Pre-application discussions took place on this application.

### **8.2 Publicity summary of representations and Community Council comments**

The application, to modify and 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](#)

<b>Statutory Development Plan Provision</b>	<b>Edinburgh Local Development Plan - Urban Area.</b>
<b>Date registered</b>	30 January 2019
<b>Drawing numbers/Scheme</b>	01,  Scheme 1

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## **Links - Policies**

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# Appendix 1

## Application for Planning Obligation 19/00398/OBL At Land Adjacent To, New Street, Edinburgh Application for the discharge of a planning obligation clause relating to Car Club provisions

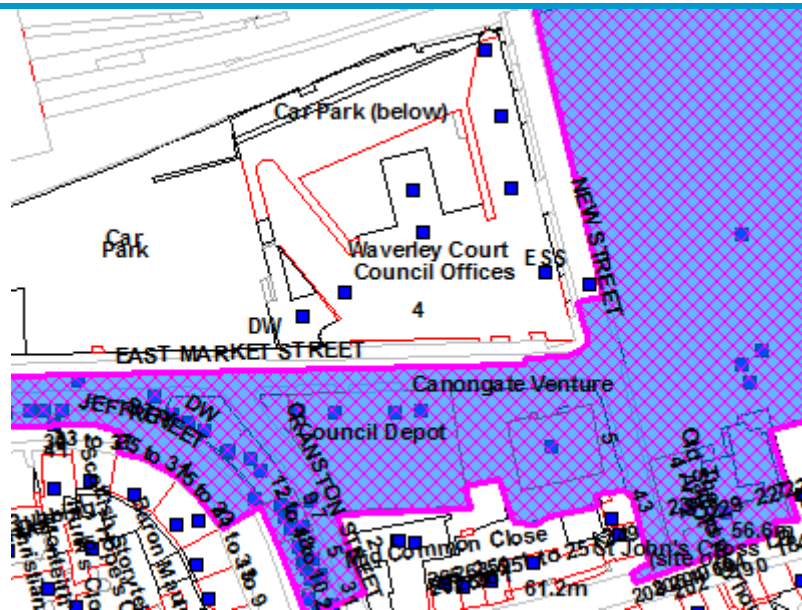
### Consultations

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No consultations undertaken.

### Location Plan

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