

# Development Management Sub-Committee Report

**Wednesday 6 December 2023**

**Application for Planning Obligation  
181 St John's Road, Edinburgh, EH12 7SL.**

**Proposal: Application for the Modification of Planning Agreement (Section 75) associated with planning permission 18/02831/FUL. Remove clauses to provide on site affordable housing and replace these with clauses seeking to make an off-site financial contribution as the construction costs of delivering the existing consent are non-viable for affordable housing developers.**

**Item – Committee Decision  
Application Number – 22/04607/OBL  
Ward – 00 - No Ward Number**

## **Reasons for Referral to Committee**

The application has been referred to the Development Management Sub-Committee because the proposal seeks to significantly modify the terms of that 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**

That affordable housing is no longer proposed to be provided on site because it is not financially viable and that a commuted sum is considered acceptable, as independent financial advice has been obtained, and a sum of £10,000 per unit (£87,500 in total) complies with LDP Policy Hou 6, NPF 4 Policy 16 and Non-Statutory Guidance on Affordable Housing where the commuted sum can be used within the ward or an adjacent ward.

The modification to the planning obligation, to provide a commuted sum, is acceptable and the legal agreement can be modified.

## **SECTION A – Application Background**

### **Site Description**

The site extends to an area of 0.56 hectares. It is located on the southeast side of junction between St John's Road and Manse Road.

The previous buildings, contained on the site, have now been demolished.

The site is located in the Corstorphine Town Centre, as defined in the Edinburgh Local Development Plan. The surrounding area is comprised of mixed use with a strong commercial presence on St John's Road and a residential character on Manse Road.

The south side of St John's Road is characterised by three-storey tenement blocks with ground floor shops. Manse Road is characterised by stone-built terraced houses and semi-detached cottages ranging from one-and-a-half storeys to two storeys in height.

The site is bound by the Manse and its curtilage to the south. The Manse is a large, detached dwelling set in a generous garden with mature trees. Manse Road is a one-way street where vehicles travel north onto St John's Road.

The site is located in the Corstorphine Conservation Area.

### **Description of the Proposal**

This application seeks to modify the planning obligation (dated 11 February 2020) regarding on-site affordable housing forming a part of that development, (reference 18/02831/FUL).

That permission was granted for the demolition of the existing buildings on the site and the construction of a mixed-use development, incorporating residential development, together with commercial (shops) floorspace (including a hot food takeaway use), car parking and associated works.

This application seeks to remove the existing clauses requiring the provision of on-site affordable housing units and to replace them with clauses providing the payment of a commuted sum to provide for off-site affordable housing provision.

The proposed form of replacement clauses, as proposed at this stage of the process, make no provision for when the monies would be paid in relation to the construction of the development, but does seek to limit its use to a period of 5 years for the date of payment.

The clauses contained in the original obligation that provide for financial contributions towards both land and infrastructure education costs are to remain unaltered.

### **Supporting Information**

- Supporting Statement; and
- Financial Appraisal.

## Relevant Site History

18/02831/FUL  
181 St John's Road  
Edinburgh  
EH12 7SL

Mixed use development incorporating residential development (Class 9 and sui generis flats) together with commercial floorspace (including Class 1, 2 and 3) and hot food takeaway (sui generis), car parking and associated works. (Amended).

Granted  
11 March 2020

18/02831/VARY  
181 St John's Road  
Edinburgh  
EH12 7SL  
Non-Material Variation application for 18/02831/FUL.  
VARIED  
8 June 2022

## Other Relevant Site History

### Pre-Application process

There is no pre-application process history.

### Consultation Engagement

Housing Management and Development (Affordable Housing)

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.

Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that planning decisions, including the modification or discharge of a section 75 agreement, be made in accordance with the development plan, unless material considerations indicate otherwise.

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 Liveable Places Infrastructure first Policy 16.
- LDP Strategy policy Del 1
- LDP Housing policy Hou 6

The non-statutory 'Affordable Housing Guidance (updated May 2021)' and is a material consideration that is relevant when considering the proposal.

NPF 4 Policy 16 (Quality Homes) encourages, promotes and facilitates the delivery of more high quality, affordable and sustainable homes, in the right locations, providing choice across tenures that meet the diverse housing needs of people and communities across Scotland.

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.

*e) Development proposals for new homes will be supported where they make provision for affordable homes to meet an identified need. Proposals for market homes will only be supported where the contribution to the provision of affordable homes on a site will be at least 25% of the total number of homes, unless the LDP sets out locations or circumstances where:*

- i. a higher contribution is justified by evidence of need, or*
- ii. a lower contribution is justified, for example, by evidence of impact on viability, where proposals are small in scale, or to incentivise particular types of homes that are needed to diversify the supply, such as self-build or wheelchair accessible homes.*

*The contribution is to be provided in accordance with local policy or guidance."*

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.

LDP Policy Hou 6 (Affordable Housing) states planning permission for residential development, including conversions, consisting of 12 or more units should include provision for affordable housing amounting to 25% of the total number of units proposed. For proposals of 20 or more dwellings, the provision should normally be on-site. Whenever practical, the affordable housing should be integrated with the market housing.

The supporting text to the policy states that the provision on an alternative site may be acceptable where the housing proposal is for less than 20 units or if there are exceptional circumstances.

The Affordable Housing Guidance sets out the criteria for when the payment of commuted sums in lieu of on-site provision will be acceptable. All the below criteria should be met:

- There are exceptional reasons to avoid on-site provision, such as the site being poorly located for affordable provision, where conversions do not lend themselves to affordable provision, where it is evidenced to be unviable or unfeasible or where there are other advantages to the Council in accepting a commuted sum such as achieving more, higher quality or better-located affordable units elsewhere; and
- The Council is confident that that the commuted payments can be spent on providing affordable units within the same area of the city within ten years of the payment being made; and
- The proposal is for less than 50 dwellings or is for a conversion.

The current section 75 agreement sets out in the Affordable Housing clauses the requirement for 25% of the total unit numbers to be affordable housing units. With various clauses in relation to the tenure, location, design standards and milestones. In the details of the original application the total number of residential units was to be 35 dwellings, with the number of affordable housing units to comprise 9 units of both one and two bed flats. That would equate to 25.71% provision, 25% equating to 8.75 units.

The supporting financial details of the development and the affordable housing paper have been reviewed. The applicant has provided details that with the present construction cost inflation the average cost of each unit on site would be £336,936 a figure significantly beyond the threshold for viability for a Registered Social Landlord (or RSL). That figure excludes any land value or profit.

The supporting documentation has been independently checked. On the basis of land value and construction costs this value equates to £10,000 per unit, therefore a total off-site affordable housing contribution of £87,500 for the 8.75 units (25% of the overall development).

The District Valuer recommends a commuted sum totalling £87,500. In this instance, and in the absence of any proposed trigger point for the payment of this contribution by the applicant, it is deemed that this would be full contribution payment (index linked from the date of the District Valuers determination (i.e. Quarter 2 of 2023)) made prior to the first commencement of construction of any part of the development on the site.

It is concluded that the proposed commuted sum meets the requirements of LDP Policy Hou 6, the criteria set out in the Affordable Housing Guidance, and NPF 4. Having considered the proposals we are satisfied with the information submitted and are confident that the commuted sum can be used within an agreed timeframe within the ward or an adjacent ward.

## **b) the proposal meets the tests of Circular 3/2012**

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.

### Necessity:

In terms of the 'necessity' test, the planning obligation should be necessary to permit the proposed development. With a financial contribution a planning condition cannot be used.

The proposal seeks to modify an existing legal agreement to change the requirements for affordable housing to use a commuted sum. The use of a planning obligation for this matter continues to be required. The use of an obligation is appropriate, thereby satisfying the 'necessity' test.

### Planning purpose:

The Circular states that planning authorities should satisfy themselves that an obligation is related to the use and development of land. This judgement should be rooted primarily in the development plan.

LDP Policy Hou 6 (Affordable Housing) sets out the parameters for assessing and requiring affordable housing whilst noting that provision should normally be on-site. The Affordable Housing Guidance provides further information on using the policy, including the circumstances for when a commuted sum will be acceptable.

NPF 4 Policy 16 (Quality Homes) encourages, promotes and facilitates the delivery of more high quality, affordable and sustainable homes, in the right locations, providing choice across tenures that meet the diverse housing needs of people and communities across Scotland.

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.

This test is met.

### Relationship to the proposed development:

Planning obligations must relate to the development being proposed. There should be a clear link between the development and any mitigation offered as part of the developer's contribution.

The information provided justifies a commuted sum in this instance and relates to the specific details of the development.

### Scale and kind:

In terms of the 'scale and kind' test, the Circular states that the planning obligation must be related in scale and kind to the proposed development.

The requirement for 25% affordable houses as part of the original application was acceptable in scale and kind and met the requirements of LDP Policy Hou 6 and NPF 4 policy 16.

The Circular does state that entering into an obligation can have financial consequences for developers and may make proposals uneconomic.

In this circumstance, the modification to provide a commuted sum in lieu of onsite affordable housing provision meets the scale and kind test as it is tailored to this specific development.

### Reasonableness:

In terms of the 'reasonableness' test, the Circular provides a number of questions of which a negative answer to anyone 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?

Taking these questions in turn:

- i) Yes, the obligation cannot be secure through a condition.
- ii) Yes, the commuted sum would be utilised elsewhere in the area.
- iii) Yes, an obligation is required, or it fails the policy requirement for affordable housing.
- iv) Residential led mixed use development that converts a number of former industrial buildings. Affordable housing is required by the LDP and NPF 4

The affordable housing policy is well established and in assessing the supporting information for the proposed commuted sum it is reasonable to take this approach.

The tests of the circular are met.

### **c) There are any other material considerations which must be addressed?**

The following material planning considerations have been identified:

#### Emerging policy context

On 30 November 2022 the Planning Committee approved the Schedule 4 summaries and responses to Representations made, to be submitted with the Proposed City Plan 2030 and its supporting documents for Examination in terms of Section 19 of the Town and Country Planning (Scotland) Act 1997. At this time little weight can be attached to it as a material consideration in the determination of this application.

#### 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.

#### Public representations

None received.

#### **Conclusion in relation to identified material considerations**

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

#### **Overall conclusion**

That affordable housing is no longer proposed to be provided on site because it is not financially viable and that a commuted sum is considered acceptable, as independent financial advice has been obtained, and sum of £10,000 per unit (£87,500 in total) complies with LDP Policy Hou 6, NPF 4 Policy 16 and Non-Statutory Guidance on Affordable Housing where the commuted sum can be used within the ward or an adjacent ward.

The modification to the planning obligation, to provide a commuted sum, is acceptable and the legal agreement can be modified.

### **Section C - Conditions/Reasons/Informatives**

The recommendation is subject to the following;

#### **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: 13 September 2022**

#### **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](mailto:john.maciver@edinburgh.gov.uk)

## Summary of Consultation Responses

NAME: Housing Management and Development (Affordable Housing)

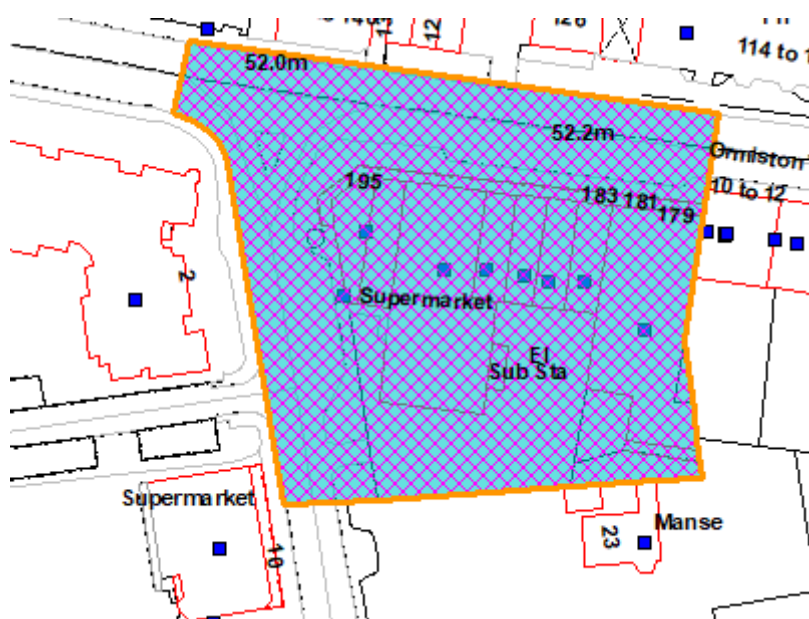
COMMENT: The applicant seeks amendments to the existing Section 75 agreement to reflect that the affordable housing will not be able to be delivered onsite.

- The costs of the development have been independently checked and verified.
- The average construction cost exceeds £335,000 per home, and it is not viable for a RSL to deliver onsite affordable housing at that cost. The funding shortfall is at least £1 million for the 8.75 affordable homes required.
- The high construction costs rule out other methods on onsite delivery, such as low-cost home ownership.
- The District Valuer has calculated a commuted sum based on land value.
- Their recommendation is a commuted sum of £87,500 in total or £10,000 per affordable housing unit required.
- The sum would be secured through a Section 75 legal agreement.

DATE: 14 June 2023

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

## Location Plan



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