

Development Management Sub-Committee Report

Wednesday 21 August 2024

**Application for Planning Obligation
Land 445 Metres North Of 103 Newcraighall Road, Edinburgh,**

**Proposal: Application for the modification of a Planning Obligation
(Section 75A) associated with planning permission in principle
reference 16/04122/PPP**

**Item – Committee Decision
Application Number – 24/01623/OBL
Ward – 00 - No Ward Number**

Reasons for Referral to Committee

The application has been referred to the Development Management Sub-Committee because the applicant is The EDI Group Limited, an arm's length company of the City of Edinburgh Council, and the proposal seeks to significantly modify one of the terms of the obligation as specified in the Edinburgh Local Development Plan 2016 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

It is confirmed that the proposed modification to the section 75 obligation, by means of a revision to the time before which the new bridge works are to be completed on the site, is acceptable and that the applicants' request for this limited modification of the overall planning obligation can therefore be accepted.

SECTION A – Application Background

Site Description

The site covers approximately 55 hectares of greenfield land in the Brunstane area of east Edinburgh. It comprises agricultural land with some grassland, scrubland, and mature trees at the site boundaries.

The site is accessed via an existing field track access from Gilberstoun near Brunstane House. Informal paths enter the site from the south, east and north, and the East Coast Mainline Railway (ECML) traverses the site. An existing bridge, for agricultural use, forms a vehicle crossing into the eastern fields of the site. Areas of dense woodland exist to the north of the site, along the John Muir Way, and beyond the eastern site boundary Newhailes House, gardens and Designed Landscape. The site undulates sloping from west to east with a 10-metre slope down from the railway line to the north-east corner of the site. The overhead power lines have recently been removed from the eastern field.

To the north is the John Muir Way, a recreational footpath adjacent to the Brunstane Burn, and a Local Nature Conservation Site. Beyond this, there is a mix of uses including residential, Edinburgh College, and cemetery grounds adjoining the proposed access to Milton Road East.

The southern boundary is formed by a disused railway embankment that now carries a footpath/cycle path, part of National Cycle Route 1 (NCR1), and a high voltage transmission line follows the same route. There are also residential properties of the Newcraighall north site immediately to the south of NCR1 and other residential properties accessed from Newcraighall Road. A bowling club is located on Newcraighall Road to the south of the site.

Residential properties forming the Gilberstoun area are along the western boundary of the site with some mature woodland. There is a strip of scrubland with some mature trees which is a Nature Conservation Site separating the proposed development from existing residential properties.

There are two Scheduled Monuments (SMs) within the site - Brunstane Enclosure within the western field (reference No.10580, designated on 14 January 2003) and Brunstane Moated site within the western field (reference No. 4112, designated on 25 January 1978.)

The application site boundary is along the listed boundary walls of several of the adjoining properties - Brunstane House, Portobello Cemetery, Newhailes and Wanton Walls Steading.

Description of the Proposal

The application seeks to modify the existing planning agreement, 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 2020.

The 2020 agreement contained several restrictive obligations:

- On-site Affordable Housing provision
- Education Infrastructure contribution
- School land site provision
- Transport Works and Contributions
- Various Road junction works, signalling and contributions.
- Existing bridge works
- New bridge construction
- Cycle parking.

- Bus Support and stop works.
- Healthcare contribution

The specific modification proposed here relates to the existing clause 2.6.3 which requires:

"The New Bridge Works shall require to have been completed to the satisfaction of the Council (acting reasonably) prior to the earlier of

- a) *any Residential Unit within the New Bridge Works Trigger Area; or*
- b) *more than 665 Residential Units within the Development, reaching a Relevant Milestone."*

The applicant seeking to modify this to require:

"The New Bridge Works shall require to have been completed to the satisfaction of the Council (acting reasonably) prior to more than 665 Residential Units within the Development reaching a Relevant Milestone."

Supporting Information

- Supporting Statement; available to view on Planning and Building Standards Online Services.

Relevant Site History

22/03946/AMC

Land 445 Metres North Of 103 Newcraighall Road
Edinburgh

Approval of matters specified in conditions 1 in part, 2, 5, 6, 7, 8 and 9 in part, 10, 11, 13, 14 and 15 of planning permission 16/04122/PPP for the erection of 676 dwellings including affordable housing, local centre comprising class 1, 2, 3, 4, 10 and 11 and associated access, landscaping, open space, and infrastructure.

Approved
10 July 2023

23/07343/AMC

Land 445 Metres North Of 103 Newcraighall Road
Edinburgh

Approval of matters specified in conditions 1, 2, 5, 6, 7, in part 8, 9, 10, 11, 12 and 13, of planning permission 16/04122/PPP for a replacement school for Newcraighall Primary School (3-stream, 630 pupils) - a new Passivhaus, ultra-low energy school, with an adjoining Nursery (128 children). All accommodation will be within the one, two-storey building and exceed a total gross external floor area (GEFA) of 5,000sqm. The development also includes landscaped school grounds and sports pitch. The school is situated in the centre of the wider New Brunstane Masterplan development Planning Reference 16_04122_PPP (as amended).

Approved
27 June 2024

24/01696/AMC

Land 445 Metres North Of 103 Newcraighall Road
Edinburgh

Approval of matters specified in conditions 1 (in part), 2 (a-h, j-l, m (i-vi)), and 5 of planning permission 16/04122/PPP for the erection of 128 dwellings including affordable housing, and associated access, landscaping, open space, and infrastructure.

16/04122/PPP

Land 445 Metres North Of 103
Newcraighall Road
Edinburgh

Proposed residential development (including class 8 residential institutions, class 9 houses and sui generis flats) primary school (class 10 non-residential institutions) local centre (including class 1 retail, class 2 financial services, class 3 food and drink, class 10 non-residential institutions and class 11 assembly and leisure), green network, access and transport links, infrastructure and associated ancillary works (as amended.)

Granted

20 November 2020

Other Relevant Site History

No other relevant history.

Pre-Application process

Pre-application discussions took place on this application.

Consultation Engagement

Transportation Planning

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

Publicity and Public Engagement

Date of Neighbour Notification: 4 April 2024

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, 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.

This application seeks to modify a single provision within the wider section related to Transport infrastructure provisions for the residential led development of this allocated housing site, Brunstane HSG29.

The provisions of clause 2.6.3 seeks the completion of the new bridge works prior to the earlier of either any residential unit within the defined 'new bridge works trigger area' or more than 665 residential units being completed. Essentially, the developer seeks to remove the first of these trigger points from the clause.

The most recent iteration of the LDP Action Programme, considered by Planning Committee for adoption on 19 April 2023 requires, at action TR-SA-HSG29-3, 'a network of high-quality pedestrian/cycle routes through sites,' ... 'at least two pedestrian/cycle railway crossing points shall be provided within the site,' ... south of and in addition to the improvements to the (original agricultural) bridge before the 665th unit.'

As part of the first 'application of matters specified by condition' (AMC or AMSC) reference 22/03946/AMC, subsequent to the original 'planning permission in principle', details were provided and approved for the details of this new bridge identifying how it was to be completed within the wider scheme of residential development proposed within the vicinity of the new bridge.

This modification application also includes those approved plans which also identifies platform pad space and provision for the two necessary crane locations and construction of the main deck landing of the bridge on site without impact on the neighbouring residential plots. As such this modification also seeks to capture those areas, both to the east and west of the railway line, are to be excluded from the land necessary for the neighbouring residential development.

It would appear that the inclusion of the new bridge works trigger area was necessary to ensure that there was no conflict between the provision of the residential development and the associated works and that space necessary for the construction of the bridge.

The details as approved by the approval of the 2023 AMC application and those included within the provisions of this modification application will suitably ensure that such a conflict has been avoided whilst maintaining the restrictions contained in the Council's policy documents.

It is noted that Transport Planning have requested that this modification application be refused.

They state that:

"The obligation was drafted after extensive negotiation and was considered reasonable and necessary to enable the applicant to commence development while also giving the Council reassurance that necessary infrastructure was in place.

Planning permission was granted subject to the terms of the legal obligation. Retention of the land-related trigger will ensure that the development complies with the requirements of NPF4, in particular policy 18 and the principle of Infrastructure First."

As stated above the policy position that requires the bridge to be completed and available for use before the completion of the 665th residential unit will remain as the trigger for the provision of the bridge and its associate connectivity between the east and west of the development site. That trigger will also ensure that access will be available prior to the intended development of the eastern part of the site effectively when the bridge will be necessary as at present there is no requirement for the additional bridge capacity.

Consequently, those concerns are accounted for within the terms of the modification here.

In terms of the five Circular tests the proposed modification will continue to satisfy all of the requirements of the five circular tests including the planning purpose, necessity and the scale and kind relationship.

Accordingly, the proposed modification of this planning obligation is appropriate and can be agreed in this instance.

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 2020 obligation.

CONCLUSIONS

In conclusion, the applicants' request for the limited modification of the 2020 legal obligation is accepted and accordingly this application should be approved.

It is recommended that this planning obligation to which this application refers be suitably modified.

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: 3 April 2024

Drawing Numbers/Scheme

01-07

Scheme 1

David Givan
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Appendix 1

Summary of Consultation Responses

NAME: Transportation Planning

COMMENT: The application should be refused.

The section 75 agreement was drafted after extensive negotiation and was considered reasonable and necessary to enable the commencement of development while giving the Council reassurance that necessary infrastructure was in place.

DATE: 14 June 2024

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

Location Plan



