

Development Management Sub Committee

Wednesday 23 October 2019

**Application for Planning Obligation 19/04016/OBL
At 2 Gilmore Park, Edinburgh,
Application to Discharge section 75 Planning Obligations
(Ref 15/03129/FUL) without payment of the required tram
contribution.**

Item number

Report number

Wards

00 - No Ward Number

Summary

The applicants' request to discharge the planning obligation, in the absence of compliance with the tram financial contribution provisions, is not acceptable. It is therefore recommended that the request to discharge the planning obligation be refused.

Links

[Policies and guidance for this application](#)

Report

Application for Planning Obligation 19/04016/OBL At 2 Gilmore Park, Edinburgh, Application to Discharge section 75 Planning Obligations (Ref 15/03129/FUL) without payment of the required tram contribution.

Recommendations

1.1 It is recommended that this application be rejected for the reasons identified

Background

2.1 Site description

The application site comprises a former factory building that has now been converted into Edinburgh Printmakers, an arts charity, and the building renamed 'Castle Mills'.

The premises opened on 27 April 2019 with the building comprising two interlinking buildings with frontages onto both Dundee Street to the north and Gilmore Park to the east.

The building comprises 2,194 square metres of floor space, over two floors, providing creative hub studios, shop, cafe and two gallery spaces.

The building was listed category 'C' on 23 January 1998 (Listed Building reference: 44936) and was constructed between 1877 and 1894.

2.2 Site History

The relevant site history is:

30 June 2016 - Planning permission in principle was granted for a mixed use development over 3.3 hectares of land to the south of Fountainbridge/Dundee Street and to the north of the Union Canal (application reference 14/02814/PPP). That site boundary included the Edinburgh Printmakers building. It was subject to a planning obligation requiring, amongst other matters, financial contributions toward; the Tram (£1,158,368), Transport (£26,500), Education (£356,116), and Open space (£20,000). Those contributions were proportioned between the different commercial uses identified in the respective indicative zones set out in the masterplan. The Cultural/Leisure uses, located within two distinct parts of that site, covered the Edinburgh Printmakers site.

26 August 2016 - Planning permission was granted for the conversion of the existing building to form a Creative Hub for Edinburgh Printmakers including gallery, shop, cafe, office accommodation and print studio (application reference 15/03129/FUL). That permission was subject to a legal agreement with the Council that, on conclusion of a lease agreement with City of Edinburgh Council, Edinburgh Printmakers would conclude a planning obligation requiring a financial contribution towards the Council's Tram network.

Main report

3.1 Description of the Proposal

The request is for the discharge of the planning obligation without compliance with the provisions requiring the payment of a Tram Contribution.

The tram contribution payment is clause 3.1.1.1 which requires the developer to pay £59,064, indexed linked from the date of the agreement, on or no later than a date three months after the completion of construction.

Supporting Statement

The applicant has provided a supporting statement setting out their reasoned contention as to why the tram contribution should not be paid. These include; their establishment as arts charity, additional and unforeseen conversion costs, the lack of adjoining development following the collapse of EDI and the resultant lack of additional footfall in the vicinity of the site, and that the capital cost to pay the contribution represents resources that they do not possess.

This is available to view on the Planning and Building Standards Online Services.

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 discharge of the obligation, as proposed, is considered to be acceptable and
- (b) financial implications are acceptable.

a) The Discharge of the Obligation

This application and the relevant provisions of the obligation have to be considered against the tests set out in Circular 3/2012 (Planning Obligations and Good Neighbour Agreements). If just one of those tests is not met then the planning obligation should not be applied by the Council and the discharge request should be granted.

Necessity test

In terms of the 'necessity' test, the planning obligation should be necessary to permit the proposed development.

As identified in the planning history section above, these premises also form a part of a wider redevelopment proposal of the Fountainbridge South site.

That grant of planning permission in principle was the subject of a separate legal obligation requiring contributions for the different proposed uses zoned within the masterplan for the site, including 'Cultural/Leisure' uses, one area of which represents the Edinburgh Printmakers application site.

Prior to the conclusion of that planning permission in principle, a separate and detailed application was submitted for the development of the existing building on the Edinburgh Printmakers site (reference 15/03129/FUL). Accordingly, it was determined that a new and separate legal obligation was required to capture the proportionate contribution for that development, calculated based on the terms of the wider legal obligation provisions for the Fountainbridge South site.

The Council's policy for Tram Contributions is set out within the Supplementary Guidance, 'Developer Contributions and Infrastructure Delivery' finalised version, August 2018.

That policy calculates potential contributions based on three factors; the type of development, the distance from the tram route, and the size of the development.

In this instance, that calculation was based on the proposed uses identified by the applicant within the application proposal. This was deemed to fall within the category of 'Other Leisure Uses' in terms of the policy; Tram Zone 3 as the shortest walking distance between any part of the site and the nearest part of a tram stop between 500 and 750 metres (the site is 725 metres from the Haymarket stop) and the floor space to be provided by the development, 3,852sqm (gross floor space).

Accordingly, a contribution of £59,064 was calculated, a value that represented a proportionate part of the total 'Cultural/Leisure' requirement which had been calculated for the planning permission in principle application for the Fountainbridge South site.

The contribution would be payable either by the developer of the Edinburgh Printworks detailed application or, if developed as part of the wider site, by the developer as a result of the future AMC application (approval of matters specified in condition application).

Given that detailed position, policy Del 1 of the Edinburgh Local Development Plan 2016 requires that a legal obligation be concluded so as to capture that contribution; being the means necessary to mitigate the transport impact of the development on the local road network of this part of the city centre.

That agreement was suitably concluded and was clearly understood by the developer as part of their proposals for the detailed development of the site.

Therefore, the tram contribution obligation set out in this obligation is necessary to permit the development and mitigate any negative transport impacts.

Planning purpose test

In terms of the 'planning purpose' test, the obligation should be sufficiently related to the use and development of the site, rooted in the provisions of the development plan. As a result the developer should have been fully aware of the requirement prior to the submission of their application.

As noted above, the requirements for developers to contribute towards the Council's tram infrastructure policy is clearly set out in the Edinburgh Local Development Plan 2016 together with the associated Supplementary Guidance and Action Programme.

That policy represents a continuation of previous development plan policy, with the original tram contribution policy having been established in 2004 by the Council.

The quantum of the contribution is directly proportionate to the size and proximity of the Edinburgh Printmakers development to the Tram infrastructure and is clearly related to the use and development of the land in question.

Accordingly, the planning obligation complies with the 'planning purpose' test.

Relationship to the proposed development test

In terms of the 'relationship to the development' test, the development should either: create a direct need for particular facilities, place additional requirements on infrastructure (cumulative impact) or have a damaging impact on the environment or local amenity that cannot be resolved satisfactorily through the use of a planning condition or another form of legal agreement.

The consented development places additional requirements on infrastructure (cumulative impact) in respect of the local road network. The tram infrastructure was proposed by the Council as the means of ameliorating transport issues within the city by reducing reliance on the private car and assisting in the promotion of development along its route, especially within city centre areas.

Without the provision of the tram network, as an additional transport infrastructure improvement, the additional traffic impact of the proposed development on the existing public road network and public transport capacity would have had a detrimental impact such that the proposed development would have been refused planning permission.

Accordingly, this planning obligation complies with the 'relationship to the development' test.

Scale and kind test

In terms of the 'scale and kind' test, the Circular provides that the planning obligation must be related in scale and kind to the proposed development. In assessing the contribution account can be taken of the cumulative impact of a number of proposed developments, and obligations used to share those costs proportionately. An effect of such infrastructure investment may be to confer some wider community benefit but contributions should always be proportionate to the scale of the proposed development.

Given the cumulative impact assessment, included within the Council's Tram policy, the planning obligation is proportionate in both scale and kind to the very specific nature of the proposed development. The developer had full knowledge of the policy requirement of this planning obligation and, therefore, there is no argument that the payment of the contribution impacted unduly on the viability of the development of the site or that they were unaware of their requirement to pay regardless of their contention here that the financial nature of the operator somehow inhibits their ability to pay.

This test also expressly contemplates the use of planning obligations in those circumstances after the infrastructure has been built as set out by the Council, in both the development plan and the supplementary guidance, with regard to tram contributions.

At paragraph 23 the Circular states that; *"...Planning authorities should give consideration to the possibility of infrastructure being funded, and development thus enabled, through other mechanisms, with costs being recovered through staged payments as development progresses."*

Accordingly, this planning obligation complies with the 'scale and kind' test.

Reasonableness test

Finally, 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?

In response to these questions:

(i) yes - in order to overcome the detrimental transport impact of the development on the local road network the contribution towards the tram is necessary to permit the development and cannot be overcome by means of a condition or other legal agreement;

(ii) yes - this means of front-loaded infrastructure provision is necessary to permit the Council's proper planning of the city, including this development site;

(iii) yes - as above, the front-loading of the tram infrastructure, by the Council, has enabled the specific development of both this site and of the wider Fountainbridge South site, without which the development would not have been acceptable in planning terms; and

(iv) yes - the obligation mitigates the impact of the development on the existing public transport infrastructure.

Accordingly, the planning obligation complies with the 'reasonableness' test.

Other considerations

The applicant seeks to justify their application based on a number of other factors. These include: their establishment as arts charity; additional and unforeseen conversion costs; the lack of adjoining development following the collapse of EDI and the resultant lack of additional footfall in the vicinity of the site; and that the capital cost to pay the contribution represents resources that they do not possess.

Whilst these matters are not disputed, they are not material land use planning factors. As such they do not justify the removal of the legitimate planning obligation agreed for the development of the site and cannot be given any weight in the statutory assessment of this application.

b) Finance

If the obligation is discharged without the payment of the tram contribution of £59,064 (index linked) [*£67,190.26 (indexed as at 1 October 2019)*], not only would the Council be unable to recover this particular element of tram repayment but the argument presented by the developer would undermine the present policy implementation across other developments and consistency relating to applicants contributions. This would potentially undermine the Council's future ability to recover tram contributions in accordance with its longstanding and clearly established policy.

Conclusion

In terms of the Development Plan policies and the Supplementary Guidance, the Council has clearly identified the proper planned, cumulative impact case for the tram network infrastructure to be provided and for the payment of contributions related to this and other proposed development as appropriate in terms of its necessity, planning purpose, relationship to the development, scale and kind, and reasonableness.

Accordingly, there are no grounds for this application to be discharged without the developer having complied with those provisions.

Therefore, the planning obligation to which this application refers should not be discharged at this time.

It is recommended that this application be rejected for the reasons identified

3.4 Conditions/reasons/informatives

Conditions:-

Reasons:-

1. The proposal is contrary to the Local Development Plan Policy Del 1 in respect of Developer Contributions, as interpreted using the Supplementary Guidance on 'Developer Contributions and Infrastructure Delivery', as the erection of the Edinburgh Printmakers development on land within 750 metres of the closest tram halt (zone 3 of the Council's policy) is required to make a proportionate contribution towards the provision of that tram network. Without that contribution the proposed development would have a detrimental impact on the surrounding road network to the detriment of road safety.

Financial impact

4.1 The financial impact has been assessed as follows:

If the obligation is discharged not only would the Council be unable to recover this particular element of tram repayment but would undermine the present policy implementation across other developments. This would potentially undermine the Council's future ability to recover tram contributions in accordance with its longstanding and clearly established policy.

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 assessed 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

There are no other parties to this planning obligation that are required to be notified in accordance with the provisions of Regulation 5 of the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010.

Background reading/external references

- 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](#)

**Statutory Development
Plan Provision**

Edinburgh Local Development Plan - Within the
Central Area. City Centre proposals CC 3
Fountainbridge.

Date registered

26 August 2019

Drawing numbers/Scheme

01,

Scheme 1

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PLACE

The City of Edinburgh Council

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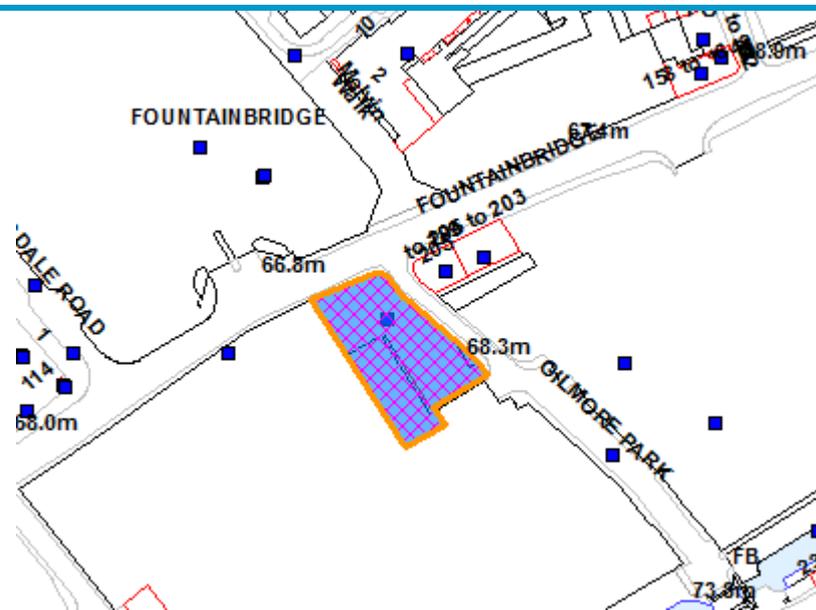
Links - Policies

Appendix 1

Application for Planning Obligation 19/04016/OBL At 2 Gilmore Park, Edinburgh, Application to Discharge section 75 Planning Obligations (Ref 15/03129/FUL) without payment of the required tram contribution Consultations

No consultations undertaken.

Location Plan



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