

REPORT TO: CITY DEVELOPMENT COMMITTEE - 15 AUGUST 2011

REPORT ON: NEW LEGISLATION RELATING TO SECTION 75 PLANNING OBLIGATIONS AND THE IMPLICATIONS FOR UNDETERMINED APPLICATIONS WITH OUTSTANDING LEGAL AGREEMENTS

REPORT BY: DIRECTOR OF CITY DEVELOPMENT

REPORT NO: 353-2011

1 PURPOSE OF REPORT

- 1.1 This report outlines changes to the legislation governing planning agreements and obligations which make provision for applications to be made for obligations to be modified or discharged and also provide for a right of appeal to Scottish Ministers where a planning authority either refuses the application or fails to determine it within 2 months.
- 1.2 There are a number of planning applications which the Committee has resolved to approve subject to the conclusion of a Section 75 Agreement. This report seeks to ascertain the position of the Council on these applications in the light of the new legislative provisions.

2 RECOMMENDATION

- 2.1 It is recommended that the Committee:
 - a authorises the Director of City Development in conjunction with the Depute Chief Executive (Support Services) to proceed to conclude all the outstanding Section 75 Agreements as Planning Obligations where the applicant is willing to do so, in the knowledge that at a future date the Obligation may be the subject of an application (and a subsequent appeal) seeking to modify or discharge it; and
 - b authorises the Director of City Development in cases where the applicant no longer wishes to pursue the application or enter into the Obligation to seek the withdrawal of the application or failing that to report the matter back to Committee seeking further instruction.

3 FINANCIAL IMPLICATIONS

- 3.1 There are no direct financial implications arising from the approval of this report.

4 BACKGROUND

- 4.1 The Planning etc (Scotland) Act 2006 amended the 1997 Act by replacing the existing Section 75 with a revised Section 75 and adding new sections including Sections 75A, 75B and 75C which deal with Planning Obligations (previously known as planning agreements).
- 4.2 Section 75A establishes a formal process whereby a person against whom a planning obligation is enforceable can apply to the planning authority to have that obligation either modified or discharged. S75B provides for a right of appeal to Scottish Ministers where a planning authority either refuses the application or fails to determine it within 2 months.

- 4.3 The Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 sets out the procedures for making applications under S75A.
- 4.4 Any planning obligation concluded after 1 February 2011 is subject to the provisions of S75 A and B. At present the Council has 18 applications with outstanding S75 Agreements (listed in Appendix 1 to this Report). When the Committee initially resolved to approve these applications subject to a Section 75 Agreement it did so in the knowledge that there were no provisions to formally apply to the Council to have them modified or discharged or any subsequent right of appeal to the Scottish Ministers. This is no longer the case.
- 4.5 This report seeks to ascertain the views of the Committee on these applications and whether it is content for the agreements to be concluded in circumstances where they can subsequently be challenged.
- 4.6 Circular 1/2010 - Planning Agreements sets out the criteria for seeking planning agreements (they must be necessary, serve a planning purpose, relate to the proposed development and be reasonable). The Council takes all these criteria into account in deciding to impose planning agreements and therefore should be in a good position to defend any subsequent applications or appeals seeking to modify or discharge agreements it concludes. In these circumstances it is considered that the new legislative provisions providing for a right to apply to modify or discharge agreements and to appeal any negative decision will not have a major impact in practical terms and it is therefore recommended that the Committee agrees to continue to conclude these outstanding agreements irrespective of the new legislative provisions.
- 4.7 Some of the applications with outstanding S75 Agreements have been with the Council for some time without any recent activity. In cases where the applicant no longer wishes to pursue the application or conclude the agreement it is proposed to seek the withdrawal of the application or failing that to report the matter back to Committee seeking further instruction.

5 POLICY IMPLICATIONS

- 5.1 This Report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management. There are no major issues.

6 CONSULTATIONS

- 6.1 The Chief Executive, Depute Chief Executive (Support Services) and Director of Finance have been consulted and are in agreement with the contents of this report.

7 BACKGROUND PAPERS

- 7.1 The Planning etc (Scotland) Act 2006 (Sections 75, 75A, 75B and 75C - Planning Obligations).
- 7.2 The Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010.

- 7.3 Circular 1/2010 - Planning Agreements and Annex to Circular 1/2010 - Planning Agreements: Planning Obligations and Good Neighbour Agreements.

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MPG/CW/KM

3 August 2011

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APPENDIX A

UNDETERMINED APPLICATIONS WITH OUTSTANDING LEGAL AGREEMENTS

| Ref No | Location | Proposal | Date Applications Considered | Reason For Section 75 |
|--------------|---|---|------------------------------|--|
| 02/00552/COU | 31 South Tay Street, Dundee, DD1 1NP | Change of use from offices to bar/restaurant with elevational alterations. Application on hold pending legal agreement | 27 January 2003 | Public right of passage through vennel |
| 03/00618/FUL | Kingsway West, Dundee | Proposed development of 270 dwellings and a residential retirement home with associated landscaping, servicing and access | 27 October 2003 | Off-site roadworks Compensatory flood storage areas Links to future adjoining development sites Maintenance of open space Education and open space contributions |
| 05/00026/FUL | Land to West of Ainslie Street, West Pitkerro Industrial Estate, Dundee | Erection of retail unit and warehouse | 28 March 2005 | Exclusion of Class 1 Retail Use at existing unit |
| 06/00184/COU | 20 Exchange Court, Exchange Street, Dundee, DD1 3DE | Change of use from vacant unit to 2 flats | 22 May 2006 | HMO prohibition |
| 06/00313/FUL | Wallace Craigie Works, 2 Wallace Street, Dundee, DD4 6BB | Demolition of buildings, alterations to existing buildings and erection of 15 townhouses and 131 flats | 26 March 2007 | HMO prohibition |
| 07/00036/FUL | South Gray Village, Dykes of Gray Road, Dundee | Erection of 230 dwellings with associated landscaping access and infrastructure | 21 April 2008 | Financial contributions for infrastructure education and open space Phasing of development and maintenance of open space and drainage areas |

| Ref No | Location | Proposal | Date Applications Considered | Reason For Section 75 |
|--------------|---|--|------------------------------|---|
| 07/00190/FUL | South Gray Village, Dykes of Gray Road, Dundee | Engineering works for surface water outfall | 21 April 2008 | Provision and maintenance of sustainable drainage |
| 07/00219/COU | 36-40 Seagate, Dundee, DD1 2EJ | Conversion of 1st, 2nd, 3rd and 4th floors to 24 flats and construction of new escape stair links and plant | 16 June 2008 | HMO prohibition |
| 07/01126/COU | 80 High Street, Dundee, DD1 1SD | Change of use to form 24 residential units | 18 June 2007 | HMO prohibition |
| 08/00048/FUL | 40 Perth Road, Dundee, DD1 4LN | Conversion of stores to two maisonette flats (lower ground floor rear) | 17 March 2008 | HMO prohibition |
| 08/00046/FUL | 40 Perth Road, Dundee, DD1 4LN | Conversion of 2 offices and stores to two maisonette flats (lower ground floor front) | 17 March 2008 | HMO prohibition |
| 08/00171/COU | 11, 12 & 13 Springfield, Dundee, DD1 4JE | Redevelopment to Provide 7 Flats with Internal and External Alterations | 18 August 2008 | HMO prohibition |
| 08/00346/FUL | Land at 2A Glenagnes Street and 215/217, Blackness Road, Dundee | Demolition of dwelling houses and erection of 10 flats | 17 November 2008 | HMO prohibition |
| 08/00669/FUL | 281 Perth Road, Dundee, DD2 1JS | Conversion of 3 storey townhouse into 2 flats, velux windows and skylight added to roof. Single storey building at rear to be demolished and provision of secure and sheltered parking and entrance gate | 17 November 2008 | HMO prohibition |

| Ref No | Location | Proposal | Date Applications Considered | Reason For Section 75 |
|---------------|--|---|------------------------------|---|
| 08/00863/FUL | The Glass Pavilion, The Esplanade, Broughty Ferry, Dundee, DD5 2EP | Extension and refurbishment of existing restaurant and ground floor, erection of 2 new storeys of residential accommodation above, consisting of 4 holiday let apartments at first floor and 2 holiday let apartments at second floor level | 16 February 2009 | Restriction to holiday let apartments only |
| 09/00154/FUL | Peterson House, 25 Roseangle, Dundee, DD1 4LS | Refurbishment of Former Student Residences into Residential Flats, partial demolition and the formation a car park | 18 May 2009 | HMO prohibition |
| 10/00155/FULL | 283 Perth Road, Dundee, DD2 1JS | Change of use from 1 house to 2 houses with alterations to provide parking, rooflights, windows and patio doors | 21 June 2010 | HMO prohibition |
| 10/00298/FULM | Land to East of Nursing Home, Linlathen Road, Dundee | Erection of supported living community, comprising of 60 flats and communal facilities | 18 October 2010 | Restriction to older occupants. Contribution for footpath link Making adjoining building wind and watertight. Early delivery of project. |