

**REPORT TO: DEVELOPMENT MANAGEMENT COMMITTEE - 22 OCTOBER 2012**  
**REPORT ON: SECTION 75 OBLIGATION - PERTH ROAD, DUNDEE - 12/00360/MDPO**  
**REPORT BY: DIRECTOR OF CITY DEVELOPMENT**  
**REPORT NO: 405-2012**

## **1 PURPOSE OF REPORT**

- 1.1 To request that Committee determine an application to modify the terms of a Section 75 Agreement to remove the restriction on the use as HMOs of 14 flats and one house in a development which was approved by planning permission 10/00092/FULL and replace it with a restriction for student housing. Members should note that the current terminology for such an agreement is "a Section 75 obligation" and this report will use the current terminology hereafter.
- 1.2 Clause 3.1, the subject of this application, is as follows:
- a "Use of the Subjects or any part thereof as a House in Multiple Occupation is prohibited now and in all time coming."
- 1.3 The interpretation of the meanings of the words in the obligation are as follows:
- a "House" includes/means any part of a building, being a part which is occupied or intended to be occupied as a separate dwelling and in particular includes a flat;
- b "House in Multiple Occupation" means a House occupied by more than two Qualifying Persons, being persons who are not all members of the same family; and
- c "Qualifying Persons" means persons whose only or principal residence is the House in Multiple Occupation, and for that purpose a person undertaking a full-time course of further or higher education who resides during term time in a House shall during the period of that person's residence, be regarded as residing there as his only or principal residence.
- 1.4 The application seeks approval for the following modification to Clause 3.1 in respect of the application properties only:
- a "The Properties for Student Occupation shall be used and occupied only by students enrolled in and undertaking a full-time course of study at one of the establishments situated within the local government area of Dundee providing Higher Education or Further Education and for no other purpose whatsoever. At any time during a Vacation Period the Properties for Student Occupation shall be used and occupied only by students, as aforesaid or business conference or recreational visitors to the city of Dundee in association with business, educational conference or tourist events and for no other purpose whatsoever";
- b "Further Education" shall have the meaning attributed to this term by the Education (Scotland) Act 1980 and the Further and Higher Education (Scotland) Act 1992 and any amendment thereto;
- c "Higher Education" shall have the meaning attributed to this term by the Further and Higher Education (Scotland) Act 1992 and any amendment thereto;
- d "a Vacation Period" means any vacation period of any one of the establishments situated within the city of Dundee providing Higher Education or Further Education; and
- e "Properties for Student Occupation" means the properties comprising 19, 23A, 23B, 23C, 23D, 23E, 23F, 23G, 25A, 25B, 25C, 25D, 25E, 25F and 25G Perth Road, Dundee.

## **2 RECOMMENDATION**

- 2.1 It is recommended that the Committee approves the application on the basis of and for the reasons set out in this report and that the planning obligation is to have effect subject to the modifications specified in the application.

## **3 FINANCIAL IMPLICATIONS**

- 3.1 There are no financial implications associated with this report.

## **4 BACKGROUND**

### **4.1 Site Description**

The site is located to the north side of Perth Road and comprises 2 blocks. The block to the north, originally known as 21 Perth Road is a 3 storey tenement style building with an adjoining 2 storey house which is a Category B Listed Building on the east. These buildings are accessed from a pedestrian access path approximately 50 metres from Perth Road. The Listed house is now known as 19 Perth Road. The building to the south, which fronts onto Perth Road, comprises numbers 23 and 25 Perth Road and these are traditional tenements. There is no off-street parking for any of the properties.

- 4.2 Planning permission was granted, subject to a Section 75 Obligation, by the Development Quality Committee on 17 May 2010 for "Change of Use from University Buildings to Form Residential Use including Alterations to Building" in respect of properties at 21, 23 and 25 Perth Road - 10/00092/FULL refers. The Section 75 Obligation was not signed until 19 May 2011, following which the planning permission was issued on 24 May 2011. The partner Listed Building application was approved as a delegated matter on 17 May 2010 (Ref: 10/00093/LBC).
- 4.3 A planning application was submitted, on 5 August 2011, for alterations to the attic floor of 23 and 25 Perth Road to provide 4 flats with the installation of 13 rooflights - 11/00416/FULL refers. The application was approved subject to conditions on 30 December 2011. The flats on the first 3 floors of 23 and 25 Perth Road have now been developed with the 4 additional attic flats to form a development of 14 x 3 bed flats and 2 x 2 bed flats. The Listed House at 19 Perth Road forms part of the properties, which are the subject of this application.
- 4.4 The 6 flats in 21 Perth Road have already been sold and do not form part of this application to vary the terms of the Section 75. This application also does not apply to the 2 x 2 bed flats noted above as they would not accommodate 3 unrelated individuals.

## **5 CHANGES TO LEGISLATION**

- 5.1 On 1 February 2011 new legislative provisions came into force whereby the Planning etc (Scotland) Act 2006 amended the 1997 Act by replacing the existing Section 75 with a new Section 75 and added new sections including Sections 75A, 75B and 75C which deal with Planning Obligations (the replaced version of Section 75 provided for "Planning Obligations"). 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. The Council considers that the new legislation only relates to S75 Planning Obligations concluded after 1 February 2011.

## 6 APPLICANTS CASE

### 6.1 Reason for the Application

The applicant has converted the buildings and 14 of the 16 flats now have 3 bedrooms. The Listed house is now 19 Perth Road and it has been converted into a 5 bedroom house. The Section 75 Obligation restricts the occupation of these properties by more than 2 unrelated people. The only demand for these properties has come from students or their families due to the location close to the University campus. The Section 75 prohibits the full occupancy of the properties and the financial viability of the purchase of the property. The flats which have been sold have been substantially discounted under market value and this is not financially viable for the remainder of the site.

### 6.2 Justification for the Application

- a The site is in a student campus location and there is no demand for properties for family accommodation. The Section 75 is ineffective in achieving this purpose.
- b The use of the properties as student accommodation is in accordance with Policy 9 of the Dundee Local Plan Review.
- c The proposed modification would secure other desirable planning objectives, including full occupation of the properties - including the 5 bedroom Listed house.
- d The modification would result in high quality student accommodation close to the University which would alleviate demand elsewhere on properties more suitable for family housing.
- e The 15 properties would have a negligible impact on the overall provision of student accommodation in the city and would contribute to the range and choice of student accommodation in an appropriate location.

## 7 OBSERVATION

### 7.1 Circular 1/2010 : Planning Agreements sets out five tests against which any obligation should be assessed and the Council's observations with regard to these tests is as follows:

#### a Necessity

The Circular is written for the benefit of planning authorities that are considering whether, in order for planning permission to be granted, a planning obligation is required. However, this is an application to modify an existing planning obligation and there is no option to impose a planning condition. Accordingly, a planning obligation remains necessary in this regard in order to ensure that this restriction will bind successors in title and therefore satisfies this test.

#### b Planning Purpose

The Obligation should serve a planning purpose. Planning permission was granted for the conversion of these former University offices for residential use. A Section 75 Obligation to prevent HMO use was discussed and agreed with the applicant to restrict the use of flats as approved by planning permission 10/00092/FULL although the layouts indicated that 14 out of the 18 flats originally approved would only have 2 bedrooms. However, the internal layouts have been amended and the attics converted to provide predominantly 3 bedroom flats. The 5 bedroom house is unchanged. The flats will remain in residential use but the proposed modification seeks to limit their occupation to students as defined in other similar legal obligations which apply to student accommodation elsewhere in the City.

The Council's Non Statutory Supplementary Planning Policy Guidance is intended to provide a robust and clear approach to dealing with HMOs. Whilst it is recognised that this type of property is an important element of the housing stock, the potential impact on existing residential properties requires careful consideration. The restriction on the use of premises as HMOs serves a valid planning purpose in terms of the impact of the use on issues such as parking, garden ground and residential amenity. The use of a legal obligation to restrict the use of these properties as HMOs did serve this valid planning purpose.

The proposed modification to restrict the properties to student housing would meet the Council's policies in respect of issues of parking and amenity space for such a use, particularly given the location of the site with regard to the University campus. For this reason, it is considered that the modifications proposed to the obligation would also serve a planning purpose and would satisfy this test.

c Relationship

Planning permission was granted for the conversion of these former University offices for residential use. The effect of the existing obligation is to restrict the manner in which the development may be occupied, which was perceived by the Development Management Committee to be a barrier to planning permission being granted. The proposed modification substitutes an alternative restriction on the occupation of the properties. It has no wider effect and therefore this test is satisfied.

d Scale and Kind

The scale and kind test requires obligations to be proportionate to the scale of the development and to address any objectionable implications of the development itself. SPPG Policy HMO4 seeks to prevent any new residential development in the Central Dundee HIFA being occupied by three or more unrelated people in order to increase opportunities to live in this accessible location and take advantage of the benefits that this offers. The existing obligation is so worded to achieve this objective.

The justification for the proposed modifications to this obligation is that the only interest has come from purchasers for student occupation. This is as a direct result, in respect of the flats, of the proximity of the site to University premises. With regard to the house, it lies more than 50 metres from Perth Road with access taken from a footpath, which would be unlikely to appeal to residents seeking mainstream housing. The site is directly adjacent to the University and well within the 15 minutes walking distance identified in Council policy for student housing.

The modifications sought by the applicant could increase the number of residents in the two tenement blocks by 14 and in the listed house by 3. The flats and the house are in a development bounded by University premises to the east and north and Springfield to the west which contains offices and HMOs closely associated with the University. Given this location, use of the properties as student accommodation is unlikely to have an adverse impact on the residential amenities of other residents.

The Council considers that the proposed modification to the obligation is related in scale and kind to the development.

e Reasonableness

The Circular requires that the obligation should be reasonable in the particular circumstances of the case. The annex to Circular 1/2010 confirms that external factors affecting the development need to be taken into account when judging whether an obligation remains reasonable.

The applicants case is noted above and the Council's response to the arguments is as follows:

- i "The site is in a student campus location and there is no demand for the properties for family accommodation. The Section 75 is ineffective in achieving this purpose."

The Committee Report for application 10/00092/FULL dated 17 May 2010 justifies the use of a Section 75 obligation to restrict use of the properties as HMOs in order to reduce the impact on residential amenity and Policy HMO4 also justifies the use of legal agreement to ensure that new residential developments are available to other sectors of the housing market. However, it is recognised that these properties are very close to University property and adjoin Springfield which contains many HMOs. Had the original planning application been for student accommodation rather than residential accommodation, it is very likely that planning permission would have been granted with a legal obligation to restrict occupation to students as proposed in this application.

- ii "The use of the properties as student accommodation is in accordance with the Dundee Local Plan Review."

This is agreed.

- iii The proposed modification would secure other desirable planning objectives including full occupation of the properties including the 5 bedroom Listed house.

The occupancy restriction does not prevent the flats from being occupied and full occupation of properties is not, of itself, a planning objective.

However, the location of the 5 bedroom Listed House on a pedestrian access path approximately 50 metres from Perth Road, does present particular problems with regard to its sale or rent to a family or to no more than 2 unrelated persons. One alternative would be to redevelop the house as two or more flats, in accordance with the relevant policies in the Local Plan, which could then be occupied by no more than 2 persons. The applicant states that this option has been investigated and has identified the adverse impact on the character of the building which would result from the necessary conversion works. The use of the house for student accommodation would help to retain the character of the Listed Building in accordance with Council and national planning guidance.

- iv "The modification would result in high quality student accommodation close to the University which would alleviate demand elsewhere on properties more suitable for family housing."

Properties with planning permission for use as student housing or without restrictions on multiple occupation are unlikely to be offered for sale or rent at a level which would attract family or non student occupation and it seems unlikely that modification of this Section 75 obligation would have this result. However, it is agreed that the development does provide high quality accommodation close to the University.

- v The 15 properties would have a negligible impact on the overall provision of student accommodation in the City and would contribute to the range and choice of student accommodation in an appropriate location.

The text to Policy 9 - Student Housing notes that it is important that the supply of student housing is managed to guard against a surplus. The applicant quotes a study of student accommodation provided by another applicant in respect of an appeal for student accommodation in 2010. That study noted that a total of 3,978 student rooms have been approved since the Local Plan was adopted.

- 7.2 In this particular case, due to the location of the properties, it is concluded that the use of 14 flats and 1 x 5 bedroom house for student housing rather than in accordance with the terms of the existing obligation will result in potentially an additional 17 persons occupying these properties. It is concluded that approval of this particular modification will not affect the supply in any significant way.
- 7.3 Having taken into account all the relevant matters, the Council considers that approval of this application would be reasonable and meets this test.

## **8 CONCLUSION**

- 8.1 Taking account of the proposals above and the exceptional circumstances whereby the properties are almost surrounded by University premises, it is considered that approval of the proposed modification of the original S75 planning obligation applicable to the planning permission (10/00092/FULL) for conversion of the properties for residential development would be reasonable and will result in a development which will comply with the relevant policies in the Dundee Local Plan Review 2005 in respect of student housing.
- 8.2 It is considered that taking into account all the relevant issues above, the Committee should approve the application and the Section 75 Obligation shall have effect subject to the modifications specified in the application.

## **9 POLICY IMPLICATIONS**

- 9.1 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.

## **10 CONSULTATIONS**

- 10.1 The Chief Executive, the Director of Corporate Services and Head of Democratic and Legal Services have been consulted and are in agreement with the contents of this report.

## **11 BACKGROUND PAPERS**

- 11.1 Report 10/00092/FULL to the Development Management Committee on 17 May 2010.
- 11.2 Listed Building application 10/00093/LBC - approved as a delegated matter on 17 May 2010.
- 11.3 Section 75 Obligation - signed on 19 May 2011.
- 11.4 Dundee Local Plan Review 2005.
- 11.5 Application 11/00416/FULL - alterations to provide 4 additional flats at 23 and 25 Perth Road - approved as a delegated matter on 30 December 2011.

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9 October 2012

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