

REPORT TO: DEVELOPMENT MANAGEMENT COMMITTEE - 17 JANUARY 2011

REPORT ON: LARCH STREET (FORMERLY LARCHFIELD WORKS) - REQUEST TO WAIVE AND DISCHARGE SECTION 75 AGREEMENT

REPORT BY: DIRECTOR OF CITY DEVELOPMENT

REPORT NO: 6-2011

1 PURPOSE OF REPORT

- 1.1 To inform Committee of a request to waive and discharge the terms of a Section 75 Agreement relating to the prohibition of the use of new dwelling houses in Larch Street, Dundee as Houses in Multiple Occupation.

2 RECOMMENDATION

- 2.1 It is recommended that the Committee reject this request to waive and discharge the terms of the Agreement.

3 FINANCIAL IMPLICATIONS

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

4 BACKGROUND

- 4.1 Reference is made to Article 1 of the minutes of the City Development Committee of 26 April 2010 wherein the Members resolved to defer consideration of a request to waive and discharge the terms of a Section 75 Agreement relating to the prohibition of the use of 8 new houses in Larch Street, Dundee as Houses in Multiple Occupation. This deferral was requested by the applicant.
- 4.2 Reference is made to Article 111 of the minutes of the City Development Committee of 11 January 2010 wherein the Members resolved to defer consideration of a request to waive and discharge the terms of a Section 75 Agreement relating to the prohibition of the use of 8 new houses in Larch Street, Dundee as Houses in Multiple Occupation. This deferral was requested to allow the opportunity for the Council to consult with local residents on the terms of the proposal and for the committee to be advised of the extent of existing HMO's in the local area.
- 4.3 Reference is also made to Article 1(g) of the minutes of the Development Quality Committee of 19 June 2006 wherein the members resolved to approve outline planning application 06/00258/OUT for the erection of 8 new town houses on the site of the former Larchfield Works in Larch Street subject to the conclusion of a Section 75 Agreement prohibiting the use of the properties developed on the site as houses in multiple occupation.
- 4.4 Planning consultants acting on behalf of Zulco Limited as proprietors and developers of the 8 houses have now submitted a detailed statement in support of their clients' application. This includes a Financial Statement outlining the investment in the site and the economic impact of the Section 75 restrictions. The consultants consider the following material considerations should be taken into account:

- a the applicants were aware of the S75 agreement when they purchased the site;
 - b the applicants have contributed to the regeneration of the area;
 - c the applicants have tried to secure family occupation of the site without success and the houses are under occupied;
 - d the main reason for the application is that the applicants are unable to sell or rent to full occupancy;
 - e the applicants do not intend to change the planning use of the properties to HMOs;
 - f local residents were surveyed at the request of elected Members and only 4 objections were received from 238 properties; and
 - g the area over which the concentration of HMOs was assessed ignores industrial and derelict buildings which should have been included in the survey and this would have reduced the concentration of HMOs in the area.
- 4.5 The submitted Financial Statement outlines the investment in the site and the expected returns which have been adversely affected by the economic downturn. The solicitors began marketing the properties for sale in December 2007 but withdrew them from the market in June 2010. There has been no demand or interest shown in the properties for normal residential use. The solicitors advise that while the state of the property market will be a factor in that, it is clear that the fact that the Section 75 Agreement exists is an off-putting factor to potential purchasers who may be interested in the purchase of one of these properties with a view to occupation by 3 or more unconnected persons. They conclude by stating that Zulco Ltd still wishes to develop sites within the Dundee area but is restrained from carrying on its business because these units cannot be sold.
- 4.6 The Dundee Local Plan Review 2005 promotes new residential development in the Central Dundee Housing Investment Focus Area (in which the residential properties at Larch Street are located). However, many developments in this area were being purchased for multiple occupation purposes. In light of the proximity of higher education institutions, this was a particular issue in relation to the occupation of the units by students. Whilst such properties require to be licensed as HMOs, the houses can be occupied by up to 5 unrelated persons without requiring planning permission for use as an HMO.
- 4.7 The multiple occupation of new houses in the Central Dundee Housing Investment Focus Area made them unavailable to other sectors of the housing market. Furthermore, such occupation can increase pressure in residential areas for facilities such as parking, whilst the relatively “transient” nature of occupants does not contribute to a stable community. In order to achieve the objectives of the Central Dundee Housing Investment Focus Area and retain new residential development for occupation by families, it was considered appropriate that its occupation by 3 or more unrelated people be prevented. The Council has sought to secure this objective through the use of legal agreements as set out in the approved Supplementary Planning Guidance covering HMOs (approved November 2006 and reviewed February 2008). Agreements have been applied to all new residential development

within the Central Dundee Housing Investment Focus Area with little to no resistance to them.

- 4.8 During consideration of the outline planning application for the 8 houses in question in 2006, it was considered appropriate by virtue of the size and type of the proposed houses and their proximity to the University of Dundee campus area, to restrict the use of the properties to mainstream housing only. This restriction was discussed in full and agreed with the applicants at that time and this acceptance was reported to the Members of the Council's Development Quality Committee that approved the application on 19 June 2006. It is considered that without this agreement being in place it is unlikely the outline application would have been offered the support of the Council. The applicants have now requested the waiver and discharge of this Agreement.
- 4.9 As instructed by the Members of City Development Committee in January 2010, the views of the occupiers of the surrounding residential properties have been sought on this proposed waiver and discharge of the Section 75 Agreement. Taking account of the surrounding land use characteristics, it was considered that the most appropriate area for this consultation was the predominantly residential area bounded by Horsewater Wynd in the east, Brook Street to the north, Edward Street to the west and Blackness Road to the south. This area accommodates 238 residential properties, 67 of which have active HMO Licenses (ie 28% of the residential properties). This suggests that the area is dominated by mainstream housing in accordance with the objectives of the Central Dundee Housing Investment Focus Area. This also clearly demonstrates that the current provision of HMO accommodation in this local area already significantly exceeds the recommended 12.5% maximum concentration of such accommodation within the total residential stock of any Census Output Area within the Central Dundee Housing Investment Area (Policy HMO2 of Supplementary Planning Guidance on Houses in Multiple Occupation 2006 (revised 2008) refers).
- 4.10 The Larch Street properties under consideration are located towards the east side of this identified consultation area. Each individual residential household was advised, in writing, of the request to use the properties in Larch Street as Houses in Multiple Occupation. To date, 4 objections to the proposal have been received from local residents on the grounds that:
- a the proposal is contrary to the provisions of the Development Plan and the Councils approved Supplementary Planning Guidance on Houses in Multiple Occupation;
 - b the use of the properties for multiple occupation purposes will further exacerbate disturbance and nuisance to the detriment of the residential amenities of the area;
 - c the proposal will have a significant detrimental impact upon traffic and car parking in the surrounding area;
 - d the proposal would set an undesirable precedent for other properties in the city that are similarly covered by a Section 75 Agreement relating to the prohibition of HMO occupancy; and

- e that prospective purchasers of a number of the properties in question withdrew their interest due to the restrictions on occupancy imposed by the terms of the Section 75 Agreement.
- 4.11 When the revised Report containing the results of the consultation was placed before the City Development Committee of 26 April 2010 the applicants requested a deferral and planning consultants have submitted a detailed supporting statement as noted in paragraphs 4.4 and 4.5 above. In response to that statement, the Council considers that:
- a the current economic circumstances and the financial circumstances of the applicants are not sufficient to justify the waiving of the S75 and this would set an unacceptable precedent for other developers and owners to seek the same relaxation for the many residential developments approved, subject to similar S75 agreements, in the City Quay and West End;
 - b it is important to retain the mixed character of the area which includes both family properties and HMOs to encourage the future redevelopment of the remaining vacant and derelict buildings. The removal of the restrictions would tend to result in an area wholly given over to HMO use which would be detrimental to the area and to the amenities of occupants; and
 - c the application does not relate to the planning use but to the S75 restrictions which were the subject of an agreement between the parties which the applicants confirm they were aware of when they purchased the site.
- 4.12 Members may recall that the Supplementary Planning Guidance was prepared and approved following widespread concern that new housing, which was regenerating the Inner City, was being used for multiple occupancy. Since the Guidance was approved in November 2006, many developments have been approved subject to the same Section 75 Agreements which this application seeks to remove. The economic justification set out on behalf of Zulco Ltd could be put forward by many other developers in the current economic climate. Whilst this is a relatively small site of only 8 houses, a decision by this Committee to approve this request could set an unacceptable precedent for other larger developments which could have far reaching implications for the City.

5 CONCLUSION

- 5.1 Taking into account all the relevant issues above, it is considered that the terms of the current Section 75 Agreement are compliant with the Council's stated aims in the control of houses of multiple occupation in this part of the city and are consistent with the Section 75 agreements which have been concluded with many other developers. As instructed, the surrounding residential properties have been consulted with regard to the proposal. Four objections to the proposed waiver and discharge has been received while no letters of support have been received. There is concern that the use of these properties as additional houses in multiple occupation in this area would further erode the Council's objectives to retain new residential properties in the Dundee Housing Investment Focus Area for occupation by families. The justification submitted on behalf of the applicant is not supported for the reasons given in this report.

6 POLICY IMPLICATIONS

- 6.1 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.

7 CONSULTATIONS

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

8 BACKGROUND PAPERS

- 8.1 Article 1 of the minutes of the City Development Committee of 26 April 2010.
- 8.2 Article 111 of the minutes of the City Development Committee of 11 January 2010.
- 8.3 Article 1(g) of the minutes of the Development Quality Committee of 19 June 2006.
- 8.4 Section 75 Agreement Minute of Agreement 2006.
- 8.5 Dundee Local Plan 2005.
- 8.6 Supplementary Planning Policy Guidance - Houses in Multiple Occupation (November 2006, reviewed February 2008).
- 8.7 Letters of Objection.

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MPG/CW/EJ

23 December 2010

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