

# Modification of Section 75 Planning Obligation

## KEY INFORMATION

**Ward** Maryfield

**Address**

Premises, Candle Lane  
Dundee

**Applicant**

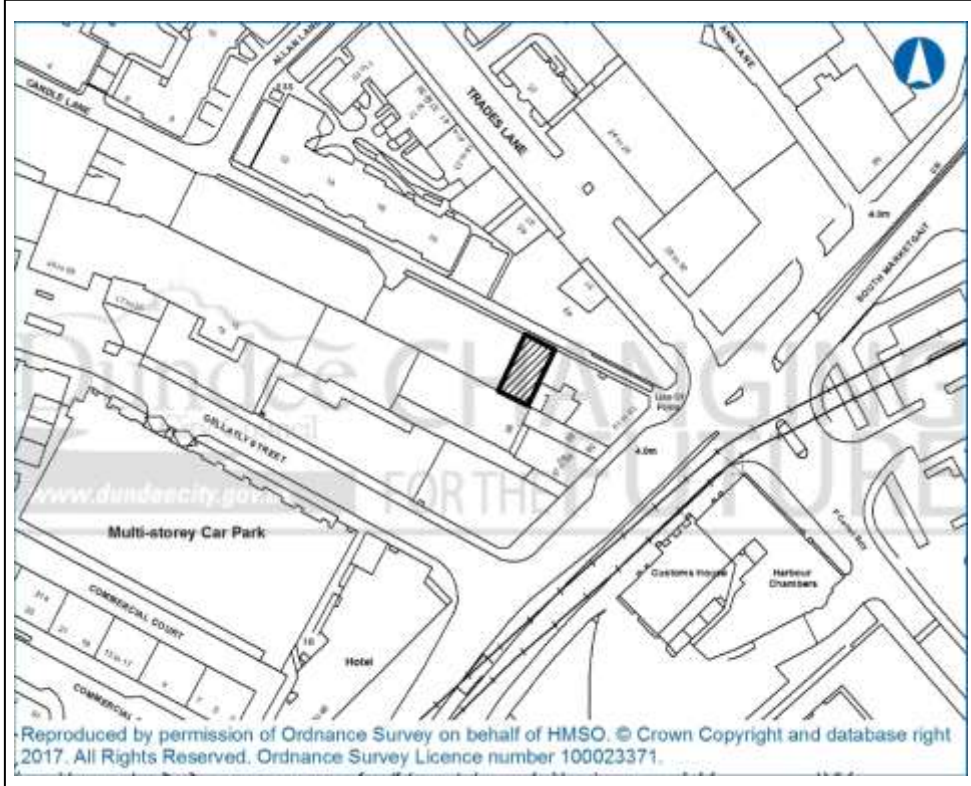
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**Agent**

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**Registered** 8 Sep 2017

**Case Officer** Craiq Swankie



## SUMMARY OF REPORT

- This application seeks consent to modify a Section 75 Planning Obligation to discharge Clause 4.1.1 which requires title of the Seamen's Chapel to be transferred to Tayside Buildings Preservation Trust upon completion of works to make the building wind and water tight. Modification of the Section 75 is required as the requirements of the obligation can no longer be met following the dissolution of the Tayside Buildings Preservation Trust in May 2017.
- The Section 75 Planning Obligation relates to planning permissions 05/00285/FUL for a flatted development at Candle Lane and 07/00645/FUL for a flatted development at The Seamen's Mission.
- The proposal satisfies the requirements of Circular 3/2012: Planning Obligations and Good Neighbour Agreements in terms of the modification of Planning Obligations.
- More details can be found at <http://idoxwam.dundee.gov.uk/idoxpa-web/applicationDetails.do?activeTab=documents&keyVal=OVWG8GGC0AX00>.

## RECOMMENDATION

It is recommended that this application should be **APPROVED** and the Section 75 Planning Obligation shall have effect subject to the modifications specified in the application.

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## 1 DESCRIPTION OF PROPOSAL

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- 1.1 The application seeks the modification of a S75 Planning Obligation associated with planning permissions 05/00285/FUL and 07/00645/FUL, to discharge the requirement for the title of the Seamen's Chapel to be transferred to Tayside Building Preservation Trust upon completion of works to make the Category B listed building wind and water tight.
- 1.2 Planning application 05/00285/FUL sought permission for the erection of 30 new flats on Candle Lane and conversion of the upper floors of Seamen's Mission to 8 flats. Planning application 07/00645/FUL sought permission to convert The Seamen's Mission into 12 flats. Both applications were approved by the Council's Development Management Committee in June 2008 subject to a Section 75 Planning Obligation.
- 1.3 The Planning Obligation was registered under Title ANG31686 on 20th June 2008, and the following modification is sought; modification of S75 Planning Obligation to discharge the requirement for title of the Seamen's Chapel to be transferred to Tayside Buildings Preservation Trust upon completion of works to make the building wind and water tight.
- 1.4 It is requested that the Minute of Agreement is varied under S75A of the Act to discharge Clause 4. Clause 4 states "Immediately following completion of the Seamen's Chapel Works the Second Owners shall validly convey title to the Seamen's Chapel to the Tayside Buildings Preservation Trust at nil consideration" with evidence of the transfer to be formally submitted to Dundee City Council.
- 1.5 In accordance with the Council's Scheme of Delegation this application requires to be determined by the Development Management Committee.

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## 2 SITE DESCRIPTION

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- 2.1 The Seamen's Chapel is located towards the south end of Candle Lane, Dundee. The Chapel is a significant component of Unicorn House (the former sailor's home) and has been a long standing building at risk. The stone building, which was constructed in 1881 is of traditional design and is Category B listed. The original roof has been removed and windows and doors are covered by timber boards. No internal floors remain.
- 2.2 The surrounding area includes a mixture of uses. To the north is a yard and car park, to the east are commercial properties and to the south and west is a mix of residential and commercial properties.
- 2.3 The site is contained within the Central Conservation Area.

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## 3 POLICY BACKGROUND

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- 3.1 The following plans and policies are considered to be of direct relevance:

**DUNDEE LOCAL DEVELOPMENT PLAN 2014**

Policy 9: Design of New Housing

Policy 48: Listed Building

**SCOTTISH PLANNING POLICY, PLANNING ADVICE NOTES AND CIRCULARS**

Circular 3/2012: Planning Obligations and Good Neighbour Agreements

- 3.2 There are no other plans, policies and non-statutory statements that are considered to be of direct relevance.

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## 4 SITE HISTORY

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- 4.1 Planning application 05/00285/FUL and associated application for listed building consent 05/00282/LBC sought permission for the erection of 30 new flats on Candle Lane and conversion of the upper floors of Seamen's Mission to 8 flats.
- 4.2 Planning application 07/00645/FUL sought permission to convert The Seamen's Mission into 12 flats.
- 4.3 Both planning applications were approved by the Council's Development Management Committee in June 2008 subject to a Section 75 Planning Obligation. The Planning Obligation was registered in title on 20 June 2008.
- 4.4 Planning application 15/00760/FULL sought permission to erect 30 flats. The application was approved subject to conditions by development management committee in December 2015.
- 4.5 Planning application 16/00818/FULL and associated application for Listed Building Consent 16/00817/LBC for the conversion of the Seamen's Chapel to 2 flatted dwellings were approved subject to conditions in December 2016.

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## 5 PUBLIC PARTICIPATION

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- 5.1 This is not a planning application and does not require to be notified to neighbouring properties.
- 5.2 In accordance with Regulation 5 of the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 this Department has notified the parties with an interest in the S75 Obligation identified by the applicant.
- 5.3 No objections or representations have been received.

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## 6 CONSULTATIONS

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- 6.1 No consultation responses have been received.

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## 7 DETERMINING ISSUES

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- 7.1 **Section 25 of the Act provides that an application for planning permission (other than for a national development) shall be determined in accordance with the development plan unless material considerations indicate otherwise.**

### THE DEVELOPMENT PLAN

The provisions of the development plan relevant to the determination of this application are specified in the Policy Background section above.

## APPLICANT'S CASE

- 7.2 Application reference 16/00818/FULL granted permission for the Seamen's Chapel on Candle Lane to be converted into two flats. The floor plans submitted with the application illustrate that the accommodation in each flat comprised two bedrooms, a lounge/kitchen area and bathroom. The Category B listed Seamen's Chapel is currently in a derelict state with no roof and significant repairs to external walls required. This application seeks to discharge Clause 4.1 of the Section 75 Planning Obligation as Tayside Buildings Preservation Trust are no longer able to taken on title of the building upon completion of works to make the building wind and water tight. Following approval of 16/00818/FULL and 16/00817/LBC the future of the building can be secured by alternative means, through conversion of the Seamen's Chapel into two flats.
- 7.3 The applicant argues that the existing Section 75 Planning Obligation and approval of application ref: 16/00818/FULL demonstrates that:
- due to a lack of clarity in the requirements of Clause 4 regarding the works required and the transfer of title as agreed in the Section 75 Planning Obligation, the applicant and Tayside Buildings Preservation Trust were unable to reach agreement on the progression of works;
  - following dissolution of the Tayside Buildings Preservation Trust the requirements of the Section 75 Planning Obligation can no longer be met;
  - conversion of the Seamen's Chapel to flats and the associated works, including repairs to the category B listed building are in accordance with Policy 9 (Design of New Housing), Policy 48 (Listed Buildings) and Policy 50 (Development In Conservation Area) of the Dundee Local Development Plan; and
  - the proposed modification to the Section 75 Planning Obligation would allow for the flatted development as approved under 16/00818/FULL to be progressed, ensuring the at risk Category B listed building is made wind and water tight and brought back into use.
- 7.4 Proposals to discharge, modify or enter into Planning Obligations should comply with the following five tests in Circular 3/2012: Planning Obligations and Good Neighbour Agreements - necessity, planning purpose, relationship to the development, scale and kind, and reasonableness.
- 7.5 The Council's assessment of this application with regard to the tests required by Circular 3/2012 is as follows:
- A - NECESSITY**
- 7.6 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**
- 7.7 The Obligation should serve a planning purpose. Planning permission was granted for the conversion of the Seamen's Chapel for residential use. A Section 75 Planning Obligation requiring the title of the Chapel to be transferred was discussed and agreed with the applicant to ensure the building which is at risk was made wind and water tight. Since the Section 75

agreement was signed, the Tayside Buildings Preservation Trust have been dissolved and planning permission has been granted for two flats within the Seamen's Chapel.

- 7.8 Policy 48 (Listed Buildings) is intended to ensure alterations to listed buildings are undertaken sensitively and alternative uses are considered where necessary to ensure their future. It is recognised that the Seamen's Chapel is an important building on Candle Lane and within the Central Conservation Area. The requirement for the building to be made wind and water tight and for the title to be transferred served a valid planning purpose in terms of securing the future of a building which was a long standing building at risk. The use of a legal obligation to ensure the title was transferred prior to work beginning on the new build phase of works approved under 05/00285/FULL did serve this valid planning purpose.
- 7.9 The Section 75 Planning Obligation required the title to be transferred prior to the new build phase as approved under 05/00285/FULL. This requirement can no longer be met following the dissolution of the Tayside Buildings Preservation Trust and as planning permission as granted under 05/00285/FULL has now expired without being implemented.
- 7.10 The proposed modification of the S75 Obligation to discharge the requirement for the title to be transferred to Tayside Buildings Preservation Trust would meet the Council's policies in respect of issues of preservation of a listed building and securing the future of a building which is at risk. Discharging this requirement would allow for the site to be developed into two flats. The proposed flats would result in the building being brought back into use and appropriately repaired securing the buildings future.
- 7.11 As the requirements of the S75 are no longer achievable this element of the Planning Obligation does not serve a planning purpose. It is therefore considered that the modification proposed would have no detrimental impact on the proposals. The remaining Clause of the Section 75 Planning Obligation which prohibits HMO use serves a planning purpose and is to remain. The modifications would satisfy this test.

### **C - RELATIONSHIP**

- 7.12 Planning permission was granted for 30 new build flats on Candle Lane and conversion of the upper floors of Seamen's Mission to 8 flats. The effect of the existing obligation is to ensure the Seamen's Chapel is made wind and water tight and title transferred to Tayside Buildings Preservation Trust. The Chapel, which is located in between the above application sites remains a building at risk. The proposed modification would discharge the requirement for the building to be made wind and water tight and transferred to Tayside Buildings Preservation Trust as this can no longer be achieved following the trusts dissolution. The discharging of this requirement would allow the developer to progress works on approved planning application 16/00818/FULL for the development of two flats at Seamen's Chapel and allowing for works to repair the building to commence. Remaining Clauses of the Section 75 Planning Obligation prohibition of HMO use would remain, the proposal has no wider effect and therefore this test is satisfied.

### **D - SCALE AND KIND**

- 7.13 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. Policy 48 of the Local Development Plan seeks to secure the long term future of listed buildings. The existing obligation is so worded to achieve this objective.
- 7.14 The justification for the proposed modifications to this obligation is that following the granting of planning permission for the conversion of Seamen's Chapel an appropriate development can be progressed which secures the future of the B listed building. As the existing obligation

requires title of the Seamen's Chapel to be transferred once the building is wind and water tight the flatted development cannot currently be commenced by the applicant. In addition, as the Tayside Buildings Preservation Trust has been dissolved and as planning permission (05/00285/FULL) for the new build element has expired, the applicant cannot meet the requirements of the obligation.

- 7.15 The modification sought by the applicant will discharge the requirement for title of the building to be transferred and allow work to commence on a change of use to flats. The proposed repair works to the building and change of use to a flatted dwelling as granted permission under 16/00818/FULL and 16/00817/LBC would ensure the property is appropriately repaired and secure the long term future of a listed building at risk. The Council considers that the proposed modification to the obligation is related in scale and kind to the development.

### **E - REASONABLENESS**

- 7.16 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.
- 7.17 The applicant's case is noted above and the Council's response to the arguments is as follows:
- 7.18 The existing Section 75 agreement is clear in the requirements of the obligation. Prior to commencement of work on the New Build Phase completion of the Seamen's Chapel works shall take place to make the building wind a water tight. Immediately following completion of these works the title of the Seamen's Chapel shall be conveyed to the Tayside Buildings Preservations Trust at nil consideration.
- 7.19 However, as planning permission for the new build phase has expired and the Tayside Buildings Preservation Trust have dissolved, it would be reasonable to discharged the requirements of Clause 4.
- 7.20 The preservation of the building has been secured by way of subsequent permissions 16/00818/FULL and associated Listed Building Consent 16/00817/LBC which ensure the building is appropriately repaired and brought back into use.
- 7.21 **Having taken into account all the relevant matters, the approval of this application would be reasonable and meets this test.**
- 7.22 **It is concluded from the foregoing that the modifications to the Section 75 Planning Obligation should be approved.**

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## **8 CONCLUSION**

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- 8.1 Taking account of the proposals above and the circumstances whereby the applicant can no longer transfer the title to Tayside Buildings Preservation Trust, the approval of the proposed modification of the original S75 Obligation applicable to the property at Seamen's Chapel, Candle Lane, Dundee would be reasonable and will allow for a development to be progressed which complies with the relevant policies in the Dundee Local Development Plan in respect of listed buildings.

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## **9 RECOMMENDATION**

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- 9.1 It is recommended that this application should be approved and that Clause 4.1.1 of the Section 75 Planning Obligation is discharged.