

## Modification of S75 Planning Obligation to Remove Prohibited House in Multiple Occupation Restriction

### KEY INFORMATION

**Ward** West End

**Address**

21F Perth Road  
Dundee  
DD1 4HU

**Applicant**

Mr D Blyth

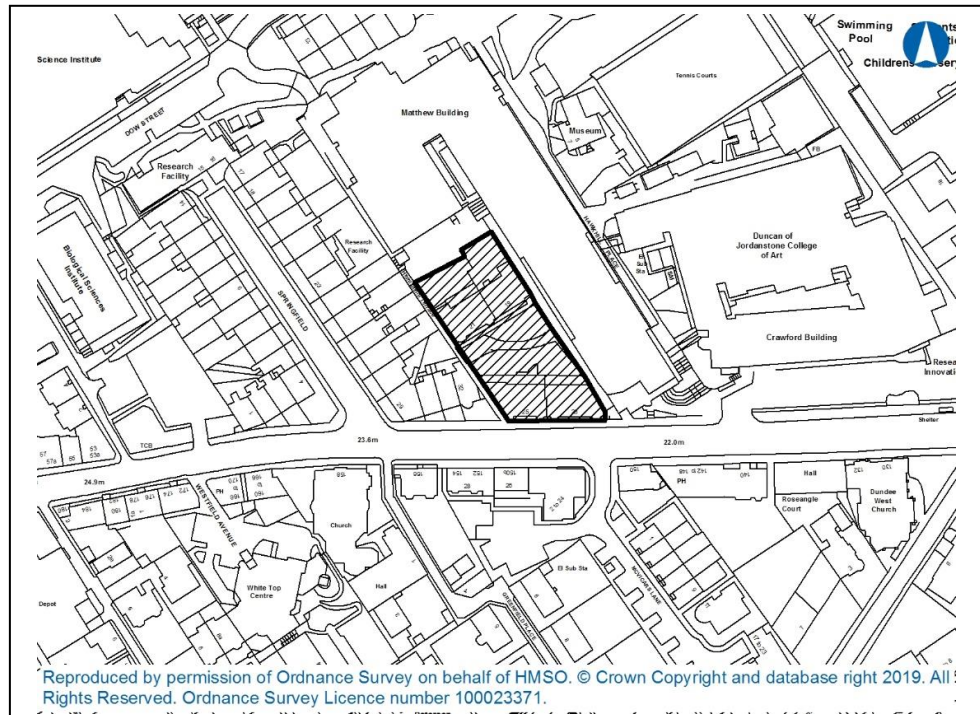
**Agent**

Emac Planning LLP

**Registered** 2 April 2019

**Report by Head of Planning  
& Economic Development**

**Contact:** Claire Myles



### SUMMARY OF REPORT

- Planning permission is sought for the modification of a S75 Planning Obligation associated with planning permission 10/00092/FULL to remove the prohibited use as a House in Multiple Occupation from a flat at 21F Perth Road and substitute this with a restriction to occupation by students.
- The proposal satisfies the requirements of Circular 3/2012: Planning Obligations and Good Neighbour Agreements in terms of the modification of Planning Obligations.
- No representations have been received in relation to the application.
- In accordance with Dundee City Council's scheme of delegation, this application is to be determined by the Development Management Committee.
- More details can be found at: <http://idoxwam.dundee.gov.uk/idoxpa-web/simpleSearchResults.do?action=firstPage>.

### 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 proposal relates to Planning Application 10/00092/FULL approved on 24 May 2011 for “Proposed Change of Use from University Buildings to Form Residential Use including Alterations to Building” at 21, 23 and 25 Perth Road, Dundee, DD1 4HU.
- 1.2 The application was approved subject to a S75 Obligation prohibiting the use of the properties as Houses in Multiple Occupation (HMO). A “House in Multiple Occupation” is defined in the S75 Obligation as ‘a house occupied by more than two qualifying persons, being persons who are not all members of the same family’.
- 1.3 The Planning Obligation was registered in title on 26 May 2011. A modification is sought to remove the prohibited use registered in title under ANG57308: Entry 3 (3.1) from 21F Perth Road, Dundee, DD1 4HU and substitute this with a restriction to occupation by students.
- 1.4 It is requested that the Minute of Agreement is varied under S75A of the Act to include the following insertion to address the above request:

“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.”
- 1.5 The applicant has submitted the following in support of the application:
  - Planning Statement.

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## 2 SITE DESCRIPTION

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- 2.1 The application site is located on the north side of Perth Road, immediately to the west of Duncan of Jordanstone College of Art and Design.
- 2.2 No 21F Perth Road is a flat located within a B-listed 3 storey traditional stone tenement which is linked to the B-listed Hermonhill House, No 19 Perth Road. The properties underwent conversion in 2011 and 2012 (10/00092/FULL). No 21 Perth Road was converted into 6 flats and Hermonhill House was restored into a five bedroom house.
- 2.3 The application site fronts communal garden ground which is shared with traditional tenements to the south at 23 and 25 Perth Road which were converted into 12 flats (10/00092/FULL).
- 2.4 There is no off-street parking for the properties. A pedestrian path to the east and west provides access to the application site from Perth Road.
- 2.5 The application site is located in the University Conservation Area.



Figure 1 – Site Photograph



Figure 3 – Site Photograph

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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:

**TAYPlan 2016-2036**

The application raises no issues of relevance.

**DUNDEE LOCAL DEVELOPMENT PLAN 2019**

Policy 15: Student Accommodation

Policy 16: Houses in Multiple Occupation

**SCOTTISH PLANNING POLICY, PLANNING ADVICE NOTICES 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 10/00092/FULL - planning permission was granted, subject to a Section 75 Obligation, by the Development Management 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. 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 (10/00093/LBC).
- 4.2 11/00416/FULL - a planning application was approved subject to conditions on 30 December 2011 for alterations to the attic floor of 23 and 25 Perth Road to provide 4 flats with the installation of 13 rooflights. The flats on the first 3 floors of 23 and 25 Perth Road were developed with the 4 additional attic flats forming a development of 14 x 3 bed flats and 2 x 2 bed flats.
- 4.3 12/00360/MDPO - was approved by the Development Management Committee on 22 October 2012 to modify the terms of a Section 75 Obligation 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. The modification to the S75 Obligation consented the use of the properties at 19, 23A, 23B, 23C, 23D, 23E, 23F, 23G, 25A, 25B, 25C, 25D, 25E, 25F and 25G Perth Road, Dundee as student housing.
- 4.4 15/00642/MDPO – was approved by the Development Management Committee on 16 November 2015 to modify the terms of a S75 Planning obligation associated with 10/00095/FULL to remove the prohibited HMO use and substitute this with a restriction of the use of the properties to occupation by students at 21A and 21E Perth Road, Dundee.
- 4.5 16/00092/MDPO - was approved by the Development Management Committee on 18 April 2016 to modify the terms of S75 Planning Obligation associated with planning permission 10/00092/FULL, to remove the prohibited use as a House of Multiple Occupation (HMO) and substitute this with a restriction of the use of the property to occupation by students at 21D Perth Road, Dundee.

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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.

## 7 DETERMINING ISSUES

### Applicant's Case

- 7.1 Planning Application Ref: 10/00092/FULL for the change of use of Nos. 21 (including Hermonhill House), 23 and 25 Perth Road from University Buildings to residential use including alterations was granted by the Planning Authority in May 2010. The approval allowed for a total of 19 residential units, subject to an agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 that the "Use of the Subjects or any part thereof as a House in Multiple Occupation is prohibited now and in all time coming."
- 7.2 The properties underwent conversion in 2011 and 2012. Hermonhill House was restored into a five bedroom house and No 21 was converted into 6 flats and 23 & 25 Perth Road into 12 flats.
- 7.3 The floor plans submitted with the application in 2010 illustrated that the accommodation within each flat comprised two bedrooms, a lounge, kitchen and bathroom. The applicant has however, used the lounge as a third bedroom in the flat. This application is therefore seeking to authorise the use of the flat for student accommodation, as a "House in Multiple Occupation" (HMO).
- 7.4 The building in which the application property is located is adjacent to the University of Dundee campus, and retains a close physical and visual link and association with the University, not only due to its former "campus" location, but also through the retained communal pedestrian access, which is shared by the properties. Despite the properties being sold by the University, there are no physical distinguishing features which divorce the properties from the University and the sense of place is still very much that of "University Campus". This is reinforced by the application site being bound by the Matthew Building/Duncan of Jordanstone to the north and east.
- 7.5 There are a range of land uses to the south, including a public house, restaurant, and residential properties. Further residential properties are located off Springfield to the west. Many of these properties have, historically, been associated with University student accommodation and further University buildings can be seen to the north of Springfield. The site has immediate access to public transport and is well located for walking to the Universities, local facilities and City Centre. Both Dundee University and the University of Abertay are within a 1-10 minute walk of the flats.

- 7.6 The Supporting Planning Statement sets out the applicant's case to demonstrate that:
- 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;
  - the use of the properties as student accommodation is in accordance with Policy 15 (Student Accommodation) of the Dundee Local Development Plan 2019;
  - the modification offers an opportunity to live in small scale, private student accommodation in close proximity to the Universities which would alleviate demand elsewhere on properties more suitable for family housing;
  - the property would have a negligible impact on the overall provision of student accommodation in the city; and
  - that demand already exists for this flat as student accommodation and this is demonstrated by the fact that the flat has been occupied by students for the last 7 years.
- 7.7 Further it highlights the Planning Authority's support for the previous application for the same modification to the S75 Obligation, in relation to the specified flats at 21 (A), 21(E), 21(D), 23 and 25 Perth Road and Hermonhill House is a material consideration in support of this proposal.

### **OBSERVATIONS**

- 7.8 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.
- 7.9 The Council's assessment of this application with regard to the tests required by Circular 3/2012 is as follows:

#### **A – NECESSITY**

- 7.10 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**

- 7.11 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 to provide 3 bedroom flats. The flat would remain in residential use but the proposed modification seeks to limit occupation to students as defined in other similar legal obligations which apply to student accommodation elsewhere in the City.
- 7.12 Policy 16 (Houses of Multiple Occupation) 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.

- 7.13 The proposed modification to restrict the property 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. In terms of impact on amenity it is recognised that all of the adjoining properties within 19, 21 and 23 Perth Road are now in use as student accommodation. Therefore the application site is no longer viable as a form of mainstream residential accommodation. 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**

- 7.14 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 property. It has no wider effect and therefore this test is satisfied.

### **D – SCALE AND KIND**

- 7.15 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 16 of the Local Development Plan seeks to prevent any new residential development in close proximity to higher education institutions being occupied by four 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 flat provided 2-bedroom accommodation, when the S75 Agreement was signed, however, the lounge is now being used as a third bedroom and this represents a material change in circumstances. The justification for the proposed modifications to this obligation is as a direct result of the proximity of the site to University premises and the opportunity to live in small scale, private student accommodation that it offers. In terms of attracting interest from families and non-student occupants the site is accessed by a steep path and steps from Perth Road and has no parking facilities. In addition, the adjoining properties within the development are being used as student accommodation. Other units within the flatted block (21A, 21D and 21E) have been subject to a similar application to modify the S75 Planning Obligation which has been supported by the Planning Authority. Whilst the proportion of HMO properties in this census output area already exceeds 12.5% of total residential stock, this particular property is situated in a development bound 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 property as student accommodation is unlikely to have an adverse impact on the residential amenities of other residents. Additionally, the proposal would be for a three person HMO which falls below the scale that would require planning permission and consideration in accordance with Policy 16. 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 3/2012 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 is as follows:
- 7.18 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. However, 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.
- 7.19 Policy 15 (Student Accommodation) of the Local Development Plan requires proposals to demonstrate a need in the area for this type of accommodation to ensure there is not an oversupply. The site history shows a demand for student accommodation within this site and the applicant's statement notes that the flat at 21F Perth Road has been occupied by students for the last 7 years. In this particular case, due to site specific circumstances, it is concluded that the use of the application property for student housing rather than in accordance with the terms of the existing obligation would not affect the supply in any significant way. The application offers high quality private student accommodation in an area of proven demand adjacent to the University. The proposal is in accordance with Policy 15 (Student Accommodation).
- 7.20 It is accepted that the amenity of the application property as a form of mainstream residential accommodation has been compromised by the other flats within the development being used as student accommodation. Taking account of this factor and by virtue of a lack of parking facilities and garden ground the application property is not an attractive form of residential accommodation for non-students.
- 7.21 It is agreed that, as outlined in the Applicant's Supporting Information, a material consideration in support of this proposal is the Planning Authority's support for the previous application for the same modification to the S75 Obligation, in relation to the specified flats at 21, 23 and 25 Perth Road and Hermonhill House. Specifically units within the flatted block (21A, 21D and 21E) have been subject to a similar application to modify the S75 Planning Obligation which has been supported by the Planning Authority. The property is situated in a development bound 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 property as student accommodation is unlikely to have an adverse impact on the residential amenities of other residents.
- 7.22 **It is concluded from the foregoing, having taken into account all the relevant matters, the approval of this application would be reasonable and meets this test.**

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## 8 CONCLUSION

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- 8.1 Taking account of the proposals above and the exceptional circumstances whereby the property is almost surrounded by University premises, the approval of the proposed modification of the original S75 Obligation applicable to the property at 21F Perth Road, Dundee would be reasonable and will result in a development which will comply with the relevant policies in the Dundee Local Development Plan in respect of student housing.

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## 9 RECOMMENDATION

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