

REPORT TO: DEVELOPMENT MANAGEMENT COMMITTEE - 17 SEPTEMBER 2012

REPORT ON: COURTHOUSE APARTMENTS, JOHNSTONE STREET, DUNDEE - APPLICATION TO MODIFY SECTION 75 AGREEMENT (REF: 1200379/MDPO)

REPORT BY: DIRECTOR OF CITY DEVELOPMENT

REPORT NO: 353-2012

1 PURPOSE OF REPORT

1.1 To inform the Committee of an application under Section 75A (2) of the Town and Country Planning (Scotland) Act 1997 to modify the terms of a Section 75 Agreement relating to the prohibition of the use of the student accommodation outwith the academic year and to seek the views of Committee as to how the application should be considered.

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 Planning application ref: 03/00203/FUL sought planning permission for the erection of a flatted residential development for student accommodation (122 beds) at land to the north of Johnston Street, Ward Road, Dundee. This application was approved subject to the completion of a Section 75 planning Obligation and conditions.

4.2 The purpose of the Section 75 planning obligation was to restrict the occupation of the building to full time students during the academic year and business, tourist or conference visitors outwith this period. The Section 75 planning obligation was signed on 12 September 2003 and planning permission granted on 29 March 2005.

4.3 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 Agreements"). 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. Section 75B 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 is not retrospectively applicable and therefore only relates to Section 75 Planning Obligations concluded after 1 February 2011.

4.4 On 14 November 2011, a further Statutory Instrument came into force which attempted to clarify the legal position by providing that a pre 1 February 2011 agreement is to have effect as if made under Section 75, as it existed after that date. However, it is considered appropriate that, given the doubts regarding how the courts may interpret or treat the legislation, the Committee gives its views on the merits of this application without prejudice to any arguments on the legality of the legislation.

- 4.5 The applicant submitted a formal application under Section 75A of the Town and Country Planning (Scotland) Act 1997 on 15 June 2011 seeking to modify the terms of an Agreement entered into under the replaced Section 75 and registered on 12 September 2003.
- 4.6 The applicant has stated that the reasoning behind the submission of application ref: 12/00379/MDPO is due to the changing nature of the purpose built student accommodation market and the responsiveness of letting practices across the city to deal with this situation. This has meant that there is a need for purpose built student accommodation outwith the academic year for students whose residence in the city remains after the academic year has finished.
- 4.7 The purpose of this application to modify the Section 75 planning obligation attributed to planning application ref: 03/00203/FUL to provide dedicated purpose built student accommodation for those students who remain in full time education and continue to study/work and reside in the city outwith the academic year in addition to the provision of dedicated and purpose built accommodation for full time students during the academic year and business, tourist or conference visitors outwith this period.
- 4.8 The applicant has requested that the wording of the original Section 75 planning obligation is modified to read:

"The accommodation shall be used and occupied during the academic year of the institution in question from time to time ("The Academic Year") only by students enrolled in and undertaking a course of study at a higher or further education establishment. At any time outwith the Academic Year, the accommodation may be occupied by business, conference or recreational visitors in association with business, conference or tourist events as well as any students whose occupation continues outwith the academic year."

- 4.9 Planning Obligations should comply with the following 5 tests in Circular 1/2010: Planning Agreements: necessity, planning purpose, relationship to the development, scale and kind, and reasonableness. The Council's assessment of the 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 control the use of the purpose built student accommodation. It is concluded that the necessity test is satisfied.

b Planning Purpose

Policy 9 (Student Housing) of the Dundee Local Plan Review 2005 stipulates that proposals involving the creation of student housing will be the subject of Section 75 Planning Obligations to restrict occupancy to students unless a higher education institution was a partner in the proposed development, in which case planning conditions would be appropriate.

In this particular instance the student accommodation proposed by planning application ref: 03/00203/FUL was a private development and was not a joint venture between a developer and any of the City's higher or further education establishments. Accordingly, planning permissions for the erection/creation of purpose built student accommodation have been the subject of specific conditions or Section 75 legal Obligations to enforce such restrictions. It is concluded that the relationship test is satisfied.

The effect of the obligation is to restrict the occupancy of the student accommodation so that it cannot be used at any time for mainstream housing.

Principally the reasoning behind this was because the individual units within the student accommodation proposed by planning application ref: 03/00203/FUL were not of a sufficient internal size, did not benefit from the required level of garden ground or off-street car parking provision and therefore would not have afforded residents a satisfactory level of environmental quality and amenity if allowed to operate as mainstream residential accommodation.

c Relationship

The effect of the 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. 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 proposed development and to address any objectionable implications of the development itself rather than attempt to remedy existing problems. Policy 9 of the adopted Local Plan seeks to prevent the use of purpose built student accommodation for mainstream residential purposes. It is this objectionable impact that the obligation seeks to address, and it does so by restricting the occupation of the development itself.

e Reasonableness

The Circular requires that the obligation should be reasonable in the particular circumstances of the case. The applicant entered into the obligation in 2003 in full knowledge of the details and developed the approved student accommodation which operates successfully. The application has not been submitted on the basis that the applicant's business is suffering loss or failing to secure student tenants as a result of the restrictions. The application is submitted on the basis that there is a requirement to provide accommodation for students in higher or further education who reside in the City for work or study outwith the academic year. As noted above, the Council considers that approval of this application represents a reasonable compromise as noted above and meets this test.

5 CONCLUSION

- 5.1 Taking account of the proposals above, it is considered that the modification of the original Section 75 planning obligation shall not undermine the original reasoning for approving planning application ref: 03/00203/FUL, the restrictions put in place by the original Section 75 planning obligation or impact on the original purpose and use of the student accommodation at Courthouse Apartments, Johnston Street, Dundee. This is because the modification of the original Section 75 planning obligation will in addition to the provision of dedicated and purpose built accommodation for students during the academic year and business, tourist or conference visitors outwith this period, provide dedicated purpose built student accommodation for students who undertake a course of further or higher education or remain in full time education and continue to study/work and reside in the city outwith the academic year.
- 5.2 It is considered that taking into account all the relevant issues above, the Committee is recommended to approve the application and the Section 75 Obligation shall have effect subject to the modifications specified in the application.

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, 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.

8 BACKGROUND PAPERS

- 8.1 Section 75 Agreement - Minute of Agreement 2003.
- 8.2 Dundee Local Plan 2005.
- 8.3 The Planning etc (Scotland) Act 2006.
- 8.4 Application ref: 03/00203/FUL which was reported to the Development Management Committee on 30 June 2003.

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CW/PM/KM

4 September 2012

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