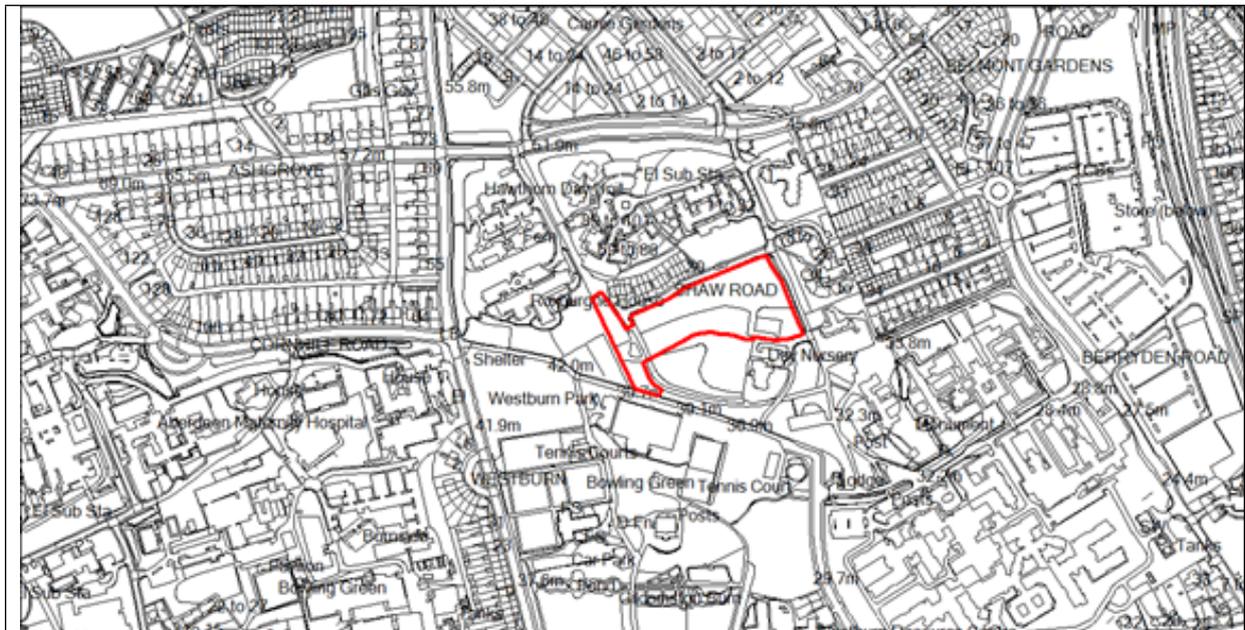


## Planning Development Management Committee Modification/Discharge of Planning Oblig

**160670:** Discharge of clause 3.1(Primary education) of Section 75 Legal agreemen relating to P140810 and P141696 at Land at May Baird Avenue, Aberdeen, ,

For: Cala Homes Aberdeen (North) Ltd

Application Date:	24 May 2016
Officer:	Gavin Evans
Ward:	Mid Stocket/Rosemount
Community Council:	Rosemount And Mile End
Advertisement:	n/a
Advertised Date:	n/a



Location Plan

**RECOMMENDATION: Refuse**

### **SITE DESCRIPTION**

This 1.2 hectare site is located on the western side of May Baird Avenue, which connects Ashgrove Road, to the north, with Cornhill Road and the Cornhill Hospital site to the south. The site lies immediately to the south of Shaw Road, and slopes to the south, incorporating a number of impressive mature trees which give the site a degree of enclosure from the north. The neighbouring residential area to the north includes the converted Elmhill House, an impressive B-listed building.

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A full site description forms part of the earlier report to committee for the associated application for planning permission, ref. P140810 and the associated P141696. This is appended for members' reference.

### RELEVANT HISTORY

Application Number	Proposal	Decision Date
P140810	46 apartments with associated car parking, landscaping and external works	20.08.15
P141696	Erection of 3 storey block of 15 low cost apartments with associated car parking, landscaping and external works	20.08.15

### DESCRIPTION OF PROPOSAL

This application relates seeks to modify an existing legal agreement in relation to an earlier grant of planning permission. Specifically, it seeks to remove an obligation to make financial contribution towards Primary Education facilities in the locality.

### SUPPORTING DOCUMENTS

All drawings and supporting documents listed below can be viewed on the Council's website at [www.publicaccess.aberdeencity.gov.uk](http://www.publicaccess.aberdeencity.gov.uk).

### CONSULTATIONS

Consultee	Date of Comments	Comments Made
Developer Obligations Team	25.07.16	Acknowledges that school is within capacity to 2017, but notes that it will go over capacity from 2018, with roll rising rapidly to 132% of capacity to 2022.  Highlights the methodology set out in the relevant SG, and concludes that the school will still go over capacity, warranting mitigation to accommodate extra pupils. In this case, space within annex building (above gym) will be reconfigured to provide additional teaching space.

### REPRESENTATIONS

12 letters of representation were received in relation to this application. These raise the following matters:

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- *Queries the approach taken to calculating maximum capacity. Reference to 'Determining Primary School capacity' by Scottish Govt;*
- *Express the view that 'maximum capacity' has been calculated based on general purpose spaces being given over to classroom space – to the detriment of pupils/teaching and inconsistent with the above guidance;*
- *Cites actual P1 intake in 2015 –*
- *Notes uncertainty in SRF due to oil industry downturn (less pupils likely to be in private education); and high proportion of out-of-zone pupils within this particular catchment;*
- *Disagrees with discharging the obligation at this early stage and points to the mechanism for unused contributions to be refunded in the agreement*
- *Current playground space is not big enough and new build schools would not be allowed with this size of playground*
- *Lack of accessible access if the pavement is realigned.*
- *Concern about the increase in traffic, citing the number of pupils who walk to school and the issues of crossing roads at various points.*

## **REASON FOR REFFERAL TO COMMITTEE**

The application has been referred to the Planning Development Management Committee because the original planning permission to which the s75 agreement relates was determined by the Planning Development Management Committee. Delegated determination is therefore precluded by the current scheme of delegation.

## **PLANNING POLICY**

### **National Policy**

Scottish Planning Policy (SPP)

### **Aberdeen City and Shire Strategic Development Plan (SDP) 2014**

Policy I1: Infrastructure Delivery and Developer Contributions

### **Supplementary Guidance**

Infrastructure and Developer Contributions Manual

### **Proposed Aberdeen Local Development Plan**

- Policy I1: Infrastructure Delivery and Developer Obligations

## **OTHER RELEVANT MATERIAL CONSIDERATIONS**

### **Planning Circular 3/2012: Planning Obligations and Good Neighbour Agreements**

Planning obligations made under section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended) should only be sought where they meet all of the following tests:

- *necessary to make the proposed development acceptable in planning terms (paragraph 15)*
- *serve a planning purpose (paragraph 16) and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans*
- *relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area (paragraphs 17-19)*
- *fairly and reasonably relate in scale and kind to the proposed development (paragraphs 20-23)*
- *be reasonable in all other respects (paragraphs 24-25)*

### **Interim Planning Advice: Planning Obligations**

This document is intended to supersede the existing 'Infrastructure and Developer Contributions Manual' as Supplementary Guidance in support of the 2017 ALDP. It is currently subject to public consultation, and therefore has not been formally adopted and does not carry the same weight as the extant SG. Nevertheless, it gives an indication of the intended direction of planning policy in relation to developer obligations.

Section 4.4 of this document relates to education contributions, stating that these will be sought from all residential developments where the capacity of a school will be exceeded as a result of the development, cumulatively along with other developments in the catchment, or where the roll is predicted to exceed capacity. This sets out the continued role of School Roll Forecasts in supporting this process. Contributions are calculated based on 'Maximum number of Pupils over Capacity x Relevant Rate' which is consistent with the current approach.

## **EVALUATION**

### **Background**

Planning permission was granted for 46 mainstream flats (ref. P140810) and 15 associated affordable units (P141696), subject to conclusion of a legal agreement to secure the following matters:

- *25% affordable housing provision on adjoining land, as described in application P141696*
- *Developer contributions in relation to Primary Education in line with the assessment carried out by the Council's Developer Obligations team; and the Strategic Transport Fund (STF) as advised by Roads Development Management*

- *Participation in a Car Club, including leasing and associated administrative costs for a single vehicle for a period of 3 years, in order to mitigate the identified shortfall in car parking.*

### **Change in Circumstances**

Paragraph 74 of the relevant Circular 3/2012, relating to Planning Obligations and Good Neighbour Agreements, highlights that in considering applications made under s75A to modify or discharge obligations, planning authorities should take into account any changes in circumstances, citing the example of external factors affecting the development meaning that the obligation is no longer reasonable and that a modification to reflect that change in circumstances is appropriate.

The applicants contend that developer obligation relating to primary education, which was at that time partly based upon the 2013 School Roll Forecasts (SRF), is no longer justified. This position is based on the publication of more recent 2014 SRF which indicate greater capacity at the local Skene Square Primary School than had been previously envisaged.

The applicants anticipate that their development will be completed and fully occupied by June 2017, and therefore contend that this allows them to utilise the capacity identified in the updated 2014 SRF. Their submissions also stress that a number of other large scale developments within the catchment for this school have not been delivered within the anticipated timescales and therefore it is their opinion that the school will continue to have capacity beyond 2018. Based on these factors, the applicants consider that the obligation relating to contributions to Primary Education are no longer warranted, and fail to satisfy the tests set out in Circular 3/2012. Specifically, it is claimed that the contributions are no longer necessary for the development to be acceptable in planning terms; do not serve a clear planning purpose; and, given the evident capacity within Skene Square Primary School, it would be unreasonable for the planning authority to maintain a requirement for this payment. Officers accept that the publication of updated School Roll Forecasts represents a material change in circumstances, and that it is fair and reasonable that the updated School Roll Forecasts are taken into account in assessing whether this obligation remains warranted.

### **Methodology for assessing Education obligations**

The Council's approach to assessing infrastructure requirements and developer contributions necessary to accompany new development is set out in the '*Infrastructure and Developer Contributions Manual*', which is adopted Supplementary Guidance and therefore carries the same weight as the policies contained within the Local Development Plan.

Section 9 sets out the methodology applied to Education, with section 9.4 specifically stating that *'requirements are based on the anticipated number of pupils from a proposed development and their effect on the Primary and Secondary school rolls serving that development averaged out over a 5 year period from the anticipated development start date'*.

Based on the above, paragraph 9.4 continues to state that *'new build (which includes the conversion of non-teaching spaces where practicable) accommodation should be*

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*provided where the school roll forecast trend is for it to grow beyond its current capacity or it is already above capacity'. The Developer Obligations Team has carried out a revised assessment, based on the publication of 2014's School Roll Forecasts. The revised assessment establishes that, whilst there is capacity at the Skene Square Primary School up to 2017, the impact of the development on education provision is not restricted to that one snapshot in time. Based on the established practice of averaging out the impact over 5 years following the development start date, the school is still projected to go over capacity from 2018, with a rapidly rising school roll reaching 132% of capacity by 2022.*

Based on the established methodology set out in the Council's adopted Supplementary Guidance, the school roll is forecast to exceed the capacity of the school and additional pupils attributable to the development at May Baird Avenue/Shaw Road would add to this over-capacity issue in four of the five years assessed. The SG therefore requires that the development make financial contribution equivalent to £23,000 per pupil generated, which equates to £92,000 as stated in the existing planning obligation. On that basis, the contribution remains necessary to make the development acceptable in planning terms; would serve a clear planning purpose; would relate directly to impact arising as a consequence of the development or as a cumulative impact of development within the Skene Square School catchment area; and remains fair and relates reasonably in scale and kind to the proposed development. Officers acknowledge the change in circumstances as a result of the publication of updated school roll forecasts, however this does not materially alter the level of contribution that is payable in relation to mitigating impact on Primary Education. The existing obligation therefore remains valid, and there is no apparent justification for modification of the agreement as sought.

### **Proposed Aberdeen Local Development Plan**

The Proposed ALDP was approved for submission for Examination by Scottish Ministers at the meeting of the Communities, Housing and Infrastructure Committee of 27 October 2015 and the Reporter has now reported back. The proposed plan constitutes the Council's settled view as to what should be the content of the final adopted ALDP and is now a material consideration in the determination of planning applications, along with the adopted ALDP. The exact weight to be given to matters contained in the Proposed ALDP (including individual policies) in relation to specific applications will depend on whether:

- these matters have been subject to comment by the Reporter; and
- the relevance of these matters to the application under consideration.

The Reporters response does not affect policies in a manner that is relevant to this application. In relation to this particular application proposal policies in the Proposed LDP are not materially different from those in the adopted LDP.

Approval to adopt the LDP was given by the Full Council at their meeting of 14 December 2016. The actual adoption date is likely to be around the third week in January 2017.

### **Interim Planning Advice**

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The proposed 'Planning Obligations' Supplementary Guidance, as noted above, does not yet have full weight, and during this consultation phase will be termed 'Interim Planning Advice', by nevertheless represents a material consideration in the Planning Authority's assessment. As with the policy approach to infrastructure and developer contributions, this does not introduce any fundamental or material change to the process of assessing education contributions.

### **Matters Raised in Representations**

The approach taken to assessing capacity and associated contributions is consistent with the Council's relevant supplementary guidance. Officers understand that this assessment is based upon the area of existing teaching space, and does not include other general purpose areas. In this instance, the contributions sought were intended to be utilised to convert non-teaching space in order to make it available for teaching purposes, thereby extending the functional capacity of the school.

It is noted that actual 2015 P1 intake may differ from the projections made in the 2014 SRF, however this is the document that is used for the purposes of assessing developer obligations. This standard approach is consistent with the Development Plan and the associated Scottish Government guidance.

It is noted that the existing planning agreement includes a mechanism for unused funds to be returned to a developer if not utilised within 7 years, however the planning authority is nevertheless obliged to consider whether the obligation itself remains warranted, based on the tests set out in Circular 3/2012, as detailed above.

Comments relating to existing playground space are acknowledged, however it should be understood that the scope of this application extends only to the development's impact on education provision and teaching space capacities. Any existing deficiencies in playground space is a matter for the Education Authority. Similarly, the accessibility of the school and the potential increase in traffic from the development are matters that were considered at the time planning permission was granted, and are not material to the legitimacy of the existing planning obligation.

### **Conclusion**

Paragraph 72 of Circular 3/2012 states that, *'in determining an application for modification, the planning authority may determine that the obligation be modified as per the proposed modification or should continue in its current form. The legislation does not permit the planning authority to determine that the obligation should be subject to any modification other than the modification, or modifications, set out in the application.'* This report demonstrates that the obligation remains justified, based on the methodologies set out in the Development Plan. It is therefore recommended that the application be refused.

**RECOMMENDATION: Refuse**

**REASONS FOR RECOMMENDATION**

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Having had regard to the updated 2014 School Roll Forecasts, it has been established that there remains an impact arising from the proposed development that would result in the local Skene Square Primary School operating beyond capacity within the 5 year period subject to assessment under the methodology set out in the Council's 'Infrastructure and Developer Contributions Manual' supplementary guidance, and therefore requiring mitigation.

The need to take account of the updated School Roll Forecasts, which represent a material change in circumstances, is recognised, however it is considered that the obligation for financial contributions towards increased capacity within the school nevertheless remains applicable and still satisfies the tests set out in Circular 3/2012. It is therefore considered that this application to modify the existing agreement and remove the obligation relating to Primary Education would not accord with the provisions of policy I1 of the Local Development Plan or the associated 'Infrastructure and Developer Contributions Manual' Supplementary Guidance, nor the related provisions of policy I1 of the emerging 2016 Local Development Plan (as modified) and its associated 'Planning Obligations' Interim Planning Advice, and should therefore be refused.