

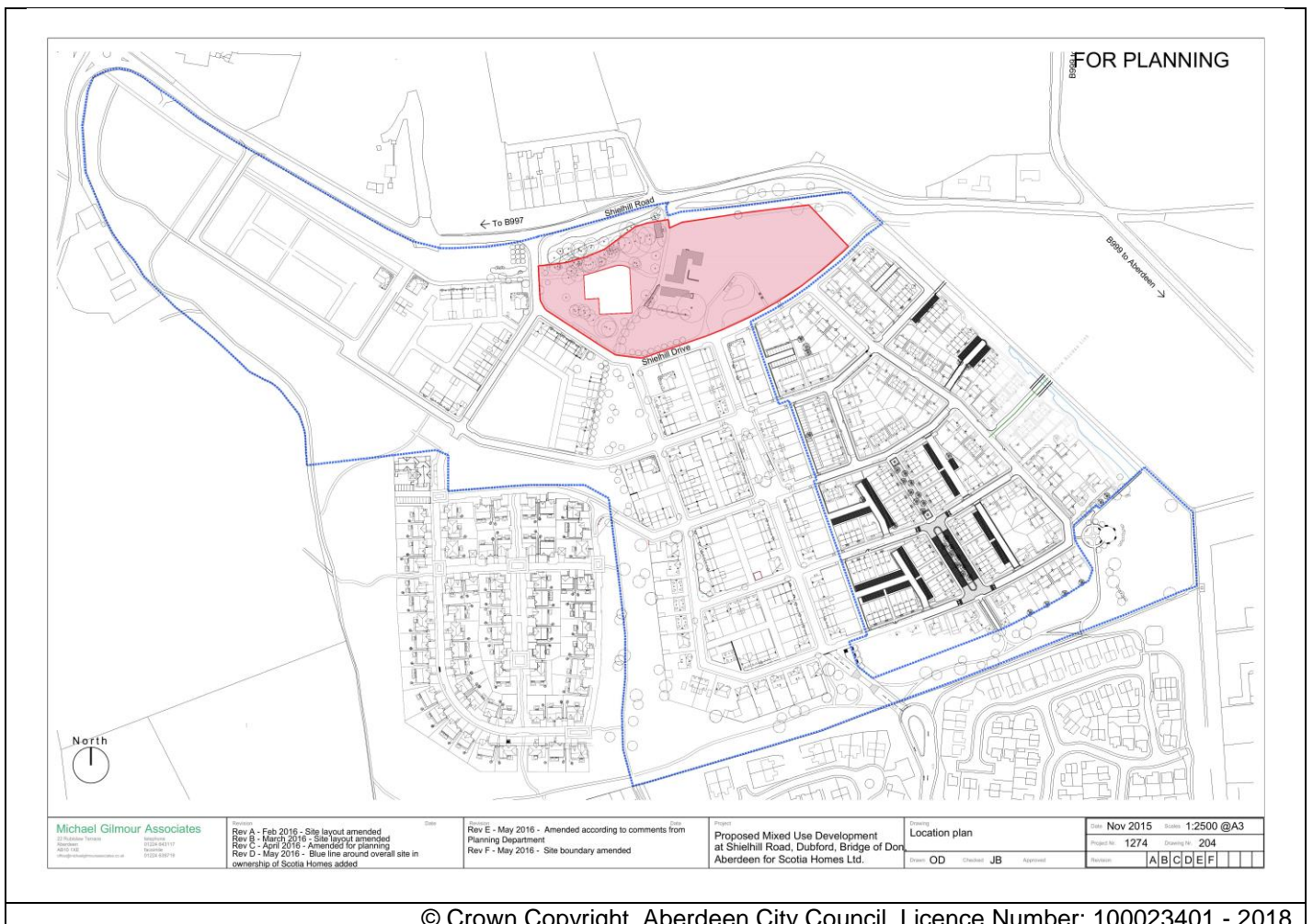


Planning Development Management Committee

Report by Development Management Manager

Committee Date: 21 June 2018

Site Address:	Land At Dubford, Bridge Of Don, Aberdeen,
Application Description:	Modification of planning obligation associated with planning permissions: Ref: 120722; 120723; 121422; 121387; and 141506, to remove clause 5 from the associated Section 75 agreement (relating to payment of a Strategic Transport Funding Contribution)
Application Ref:	180418/MPO
Application Type	Modification/Discharge of Planning Obligation
Application Date:	20 March 2018
Applicant:	Scotia Homes Ltd
Ward:	Bridge Of Don
Community Council	Bridge Of Don
Case Officer:	Robert Forbes



© Crown Copyright. Aberdeen City Council. Licence Number: 100023401 - 2018

RECOMMENDATION

Approve Modification

APPLICATION BACKGROUND

Site Description

The subject site is located at the northern edge of the built up area of Bridge of Don. It comprises a major housing development, known as 'Dubford', which has significantly progressed over recent years, with many areas complete and a large number of the properties occupied. Various phases have been developed not only by the applicant, but also others, including Barratt and CALA.

Relevant Planning History

Application Number	Proposal	Decision Date
141506	Erection of 115 units (Scotia)	20.06.16
131614	Erection of 76 units (CALA)	05.01.14
121422	Mixed use development (41 Scotia units)	27.09.13
121387	Erection of 191 dwellings (Barratt)	19.09.13
120722	Erection of 109 units (Scotia)	19.09.13

APPLICATION DESCRIPTION

Description of Proposal

The application seeks to modify the existing s.75 (legal obligation) to remove the requirement for payments to be made to the Strategic Transport Fund (STF) by the lead developers at Dubford (i.e. Scotia Homes Ltd).

Supporting Documents

All drawings and supporting documents listed below can be viewed on the Council's website at:

<https://publicaccess.aberdeencity.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=P5WBG8BZ02E00>.

- Supporting Letter;
- Legal report

Reason for Referral to Committee

The application has been referred to the Planning Development Management Committee because the Community Council object and the recommendation is one of approval.

CONSULTATIONS

ACC - Roads Development Management Team – Note that the requirement for STF contributions has been quashed by the Supreme Court. Advise that further strategic transport assessment is not required for the above referenced planning applications (relating to the approved Dubford development), as such matters were assessed and mitigations identified and required by the associated planning permissions. These improvements included:

- B997/Shielhill Road Junction (Alterations in current geometry);
- B999 Priority Junction / Shielhill Road (Forward Visibility);
- B999 Priority Junction / Shielhill Road (Junction alterations);
- B999/Denmore Priority Junction (Ghost Island);

- A90(T)/B999 Roundabout (Increasing the entry width on the western, northern and eastern arms);
- A90 (T)/B997 Roundabout (Increasing the entry width on the western, eastern and southern arms with an increase in the flare length on northern arm);
- A90 (T)/Woodside Road (west) priority junction (Increasing the width of Woodside Road);
- Denmore Road / Woodside Road priority junction (Increasing the entry width on Woodside Road);
- A90 (T)/A956 Roundabout (Increasing the entry width on all approaches to the roundabout); and
- Works on Scotstown Road to form a cycle track;

Aberdeen City and Shire Strategic Development Planning Authority (SDPA) – No comments;

Bridge of Don Community Council – Object on the grounds that the parent planning permissions were approved inclusive of STF and that the developer wishes to remove this requirement, and also the traffic impact of the development requires to be reassessed via an application for planning permission.

REPRESENTATIONS

None

MATERIAL CONSIDERATIONS

Legislative Requirements

Section 75A of the Town and Country Planning (Scotland) Act 1997 allows for a person against whom a planning obligation is enforceable to apply to the planning authority to have the obligation either modified or discharged. In determining such requests, the planning authority must consider the application on its own merits and reach a decision in accordance with the terms of the development plan, unless material considerations indicate otherwise. Any modification should be considered against the policy tests set out in Circular 3/2012 (Planning Obligations and Good Neighbour Agreements). The planning authority may determine that the obligation be modified as per the proposed modification or continue in its current form. It cannot determine that the obligation should be subject to any modification other than the modification set out in the application – i.e. the proposed modification is either approved or refused.

National Planning Policy and Guidance

Scottish Planning Policy encourages delivery of new housing. Para 109: *“Planning can help to address the challenges facing the housing sector by providing a positive and flexible approach to development.”*

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:

1. necessary to make the proposed development acceptable in planning terms (paragraph 15);
2. serve a planning purpose (paragraph 16) and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans;
3. 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);

4. fairly and reasonably relate in scale and kind to the proposed development (paragraphs 20-23); and
5. be reasonable in all other respects (paragraphs 24-25).

Aberdeen Local Development Plan (2017)

H1: Residential Areas

T2: Managing the Transport Impact of Dev

I1: Infrastructure Delivery & Planning Obligation

OP10: Dubford

Supplementary Guidance and Technical Advice Notes

- Dubford Development Framework;
- Transport and Accessibility;
- Planning Obligations

Other Material Considerations

The Supreme Court decision of 25/10/2017 in relation to STF is of key relevance. The Court confirmed that STF guidance (“Delivering Identified Projects Through a Strategic Transport Fund”), as approved by the SDPA in December 2011 and ratified by ACC EPI Committee in March 2012 was unlawful as it failed to meet statutory requirements for planning obligations (as set out in Planning Circular 3/2012). The guidance remains quashed so that the SDPA cannot lawfully collect STF monies, nor use the monies for the purposes set out in the legal obligation.

- Local Transport Strategy

EVALUATION

Principle of Development

In light of the recent Supreme Court decision, it is no longer legally competent for the Planning Authority to require STF contribution from developers. Therefore, there is no reasonable option but to agree to the modification as requested (i.e. removing clause 5 of the existing section 75 obligation). The Council’s Roads Officers have no objection to the requested variation and do not require further technical assessment to be undertaken in this case as this was assessed through determination of the relevant planning applications at Dubford. As it is not within the scope of this application to reconsider the planning permissions to which the section 75 obligation relates, it would not be reasonable to require further transportation assessment in this case.

As there is no requirement in this instance to re-assess the transport impact of the development at Dubford, in determining this application, there is no need to have regard to the related land use and transportation policies / supplementary guidance set out above. Allowing the variation is consistent with the positive and flexible approach to delivery of housing set out in Scottish Planning Policy.

As STF guidance has been quashed, it no longer forms part of the development plan and is not a material consideration in determination of the application. There is no other supplementary guidance or policy within the development plan which requires payment of STF contributions. In this case, the development plan policies are not of relevance to the proposed variation. The Supreme Court decision is an overriding material consideration which justifies approving the variation.

In the event that the modification is refused, it is likely that an appeal against such a decision would be submitted and it is also likely that this would result in a claim for costs against the Council on the grounds of unreasonable behaviour.

Community Council Comments

In light of the recent Supreme Court decision, it is no longer legally competent for the Planning Authority to require STF contribution from developers. Therefore, there is no reasonable option but to agree to the modification as requested (i.e. removing clause 5 of the existing section 75 obligation).

The Council's Roads Officers have no objection to the requested variation and do not require further technical assessment regarding transport impact to be undertaken in this case as this was assessed through determination of the relevant planning applications at Dubford.

Equalities Impact Assessment

An Equalities Impact Assessment is not required because the proposed development is not considered to give rise to any differential impacts on those with protected characteristics. In coming to this assessment the Planning Authority has had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010, to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and to foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

RECOMMENDATION

Approve Modification

REASON FOR RECOMMENDATION

In light of the recent Supreme Court decision, it is no longer legally competent for the Planning Authority to require STF contribution from developers. Therefore, there is no reasonable option but to agree to the modification as requested. The Council's Roads Officers do not require further technical assessment to be undertaken in this case, as transport impact mitigations have earlier been identified and are required to be undertaken. As it is not within the scope of this application to reconsider the planning permissions to which the section 75 obligation relates, as requested by the Community Council, it would not be reasonable to require further transportation assessment in this case.