

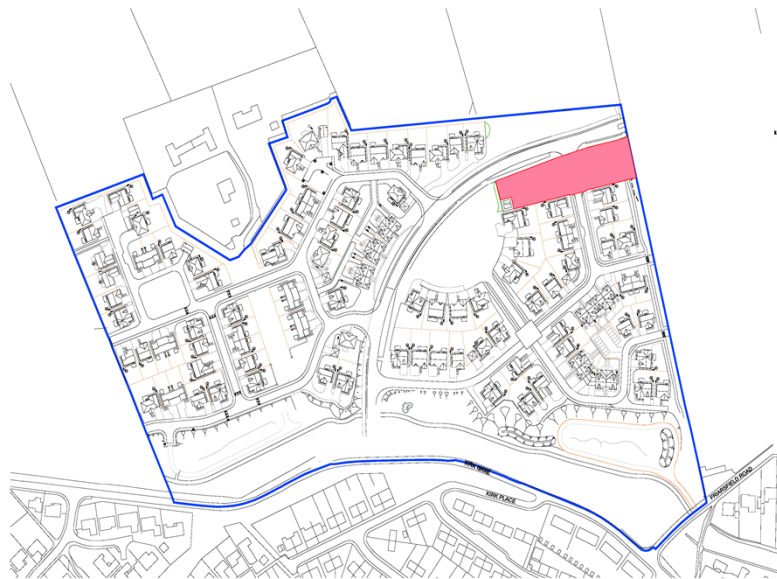


Planning Development Management Committee

Report by Development Management Manager

Committee Date:

Site Address:	Friarsfield Road/Kirk Brae, Land To The North, Cults (part Of OP41) , Aberdeen AB15 9QL
Application Description:	Modification of planning obligations associated with P140272 to modify the definition 'application' to include additional application ref.181106/DPP to the obligations
Application Ref:	181749/MPO
Application Type	Modification/Discharge of Planning Obligation
Application Date:	5 October 2018
Applicant:	Cala Management LTD
Ward:	Lower Deeside
Community Council:	Cults, Bieldside And Milltimber
Case Officer:	Nicholas Lawrence



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

RECOMMENDATION

Approve Modification

APPLICATION BACKGROUND

Site Description

The application refers to one specific part of the Friarsfield Opportunity Site (OP41) as set out under the extant Local Development Plan and its predecessor and is, in part, being developed out.

OP41 is bounded to the north by countryside and to its southern, eastern and western boundaries by residential development that fronts Friarsfield Road.

The site itself occupies the north-eastern aspect of the site approved under application reference 140272 to the south of the proposed link road. The site is bounded to the east, south and west by approved residential development and aspects of open space; and to the north by the link road and beyond by playing fields and countryside.

Relevant Planning History

Application Number	Proposal	Decision Date
140272	Residential development of 107 private dwellings and 12 affordable apartments and ancillary works	Decision Issued 10.12.2016
170882/MPO	Modification of planning obligation associated with application 140272 (Cults Park) to allow an alternative offsite affordable housing provision at 132 - 134 and 142 King Street	Approved 07.03.2018
181106/DPP	Residential development comprising two terraces each of 5 dwellings	Willingness to approve subject to modification of legal agreement

APPLICATION DESCRIPTION

Description of Proposal

The application relates to a grant of planning permission for residential development (Application reference 140272) that was issued on the 10th of December 2016 with attendant legal agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997, as amended, (the Act) to secure a number of developer obligations and delivery of the link road. Section 75A of the Act allows for a person against whom a planning obligation is enforceable to apply to the Local Planning Authority to have the obligation either modified or discharged.

This application seeks the modification of the legal agreement relating to Application 140272. The requested modification is to vary the legal agreement. The cumulative effect of the variations of the legal agreement will allow application reference 181106/DPP to be linked to the obligations originally undertaken under the legal agreement for Application 140272. Application 181106/DPP has yet to be determined but would in effect vary planning permission 140272. The variation of the legal agreement will also allow for any further planning permissions which vary 140272 to be similarly incorporated as well as any applications to vary or remove planning conditions.

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=PG4HSXBZ01700>.

- Section 75A Agreement (Minute of Variation)

Reason for Referral to Committee

This application is referred to the Planning Development Management Committee (the Committee) because it seeks to vary a legal agreement in relation to a planning application (i.e. application reference 140272) previously determined by the Committee.

CONSULTATIONS

None

REPRESENTATIONS

Applications to vary or discharge planning obligations under Section 75A of the Act are not open to public comment and there are no other interest parties identified by the applicant.

MATERIAL CONSIDERATIONS

Legislative Requirements

Section 75A of the Act allows for a person against whom a planning obligation is enforceable to apply to the Local Planning Authority to have the Obligation either modified or discharged. In determining such requests, the Local Planning Authority must consider the application on its own merits and reach each decision in accordance with the terms of the Development Plan, unless material considerations indicate otherwise. Any modification should be considered against the tests set out in Circular 3 of 2012 (Planning Obligations and Good Neighbour Agreements).

The Local 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(s) set out in the application (i.e. the proposed modification is either approved or refused).

National Planning Policy and Guidance

- Circular 3 of 2012 (Planning Obligations and Good Neighbour Agreements)

EVALUATION

The original legal agreement associated with planning application reference 140272 did not include a clause allowing any variations to be granted in line with the terms of the original legal agreement. By granting this modification any future applications for variations of conditions/ changes of house types and other associated matters could be determined under the terms of the original legal agreement.

The obligations under the legal agreement relating to 140272 would not be linked to the new application 181106/DPP without the variation of that legal agreement.

The proposal would therefore meet the aims of Circular 3 of 2012, and there are no reasons as to why the modification should not be granted in this instance.

RECOMMENDATION

Approve Modification

REASON FOR RECOMMENDATION

It is necessary for the incorporation of application 181106/DPP into the legal agreement and have the obligations of that legal agreement apply to application 181106/DPP. The variation would allow any further applications/variations to be determined under the provisions of the original legal agreement without further modification of the legal agreement associated with planning application 140272.