

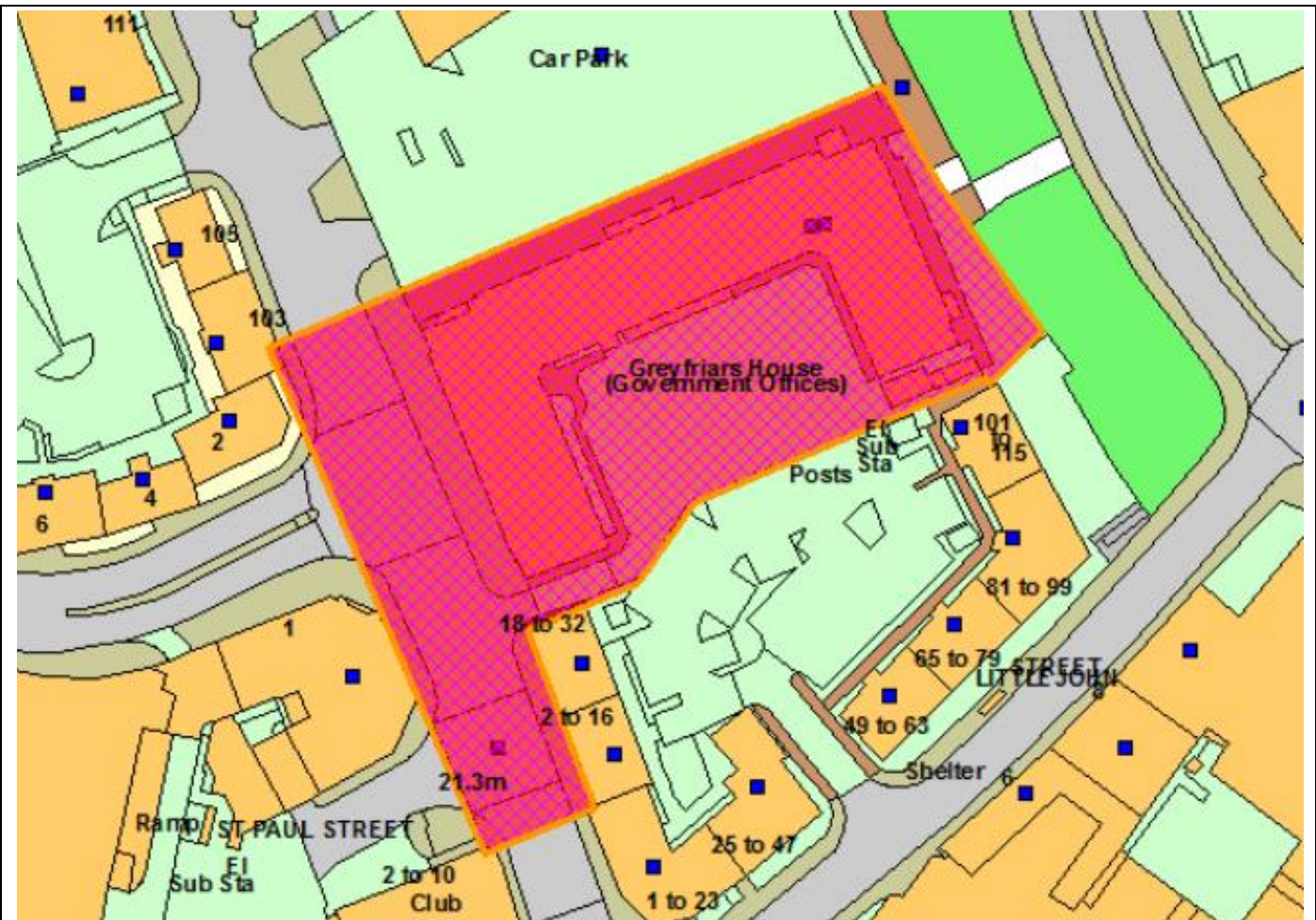


# Planning Development Management Committee

Report by Development Management Manager

**Committee Date:** 15 February 2024

<b>Site Address:</b>	54 Gallowgate, Aberdeen, AB10 1LU
<b>Application Description:</b>	Modification of planning obligation associated with 221435/S42 regarding affordable housing provision (Clause 5.1)
<b>Application Ref:</b>	231618/MPO
<b>Application Type</b>	Modification / Discharge of Planning Obligation
<b>Application Date:</b>	21 December 2023
<b>Applicant:</b>	TLW Trading Properties Limited
<b>Ward:</b>	George Street / Harbour
<b>Community Council:</b>	City Centre



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## **RECOMMENDATION**

Approve Modification

## **APPLICATION BACKGROUND**

### **Site Description**

The application site comprises a c. 4,000sqm gap site on the eastern side of Gallowgate, opposite its junction with Berry Street, which was formerly the site and curtilage of Greyfriars House, a mid-to-late 20th Century, three storey office building which was demolished in late 2020 / early 2021. The site also includes a c. 85m long section of the Gallowgate road carriageway and pavements adjacent to the building, extending to the south, toward Littlejohn Street.

### **Relevant Planning History**

Application Number	Proposal	Decision Date
200246/PPP	Residential Development (circa 140 units) including demolition of existing building and associated access, parking, landscaping and infrastructure works	31.03.2021  Status: Approved conditionally with legal agreement
211588/S42	Removal of condition 18 (photographic survey) of planning permission in principle ref. 200246/PPP	17.12.2021  Status: Approved Conditionally
221435/S42	Variation of condition 18 (district heat network) of planning permission ref. 211588/S42 to allow scheme at any point in time and to allow potential alternative scheme	31.01.2023  Status: Approved Conditionally

## **APPLICATION DESCRIPTION**

### **Description of Proposal**

The proposal seeks to modify the existing planning obligation (Section 75 Agreement) associated with the most recent 'reminded' Planning Permission in Principle (Ref: 221435/S42) for up to 140 residential units. The application is made under Section 75A of the Town and Country Planning (Scotland) Act 1997 which allows for the modification and discharge of planning obligations and seeks to modify Clause 5.1 of the existing agreement in relation to affordable housing contributions.

Clause 5 (Affordable Housing) of the Section 75 sets out the requirement for 25% of the total number of units to be delivered as affordable housing, however Clause 5.1 states:

*'This Clause 5 shall apply only if the Development Commencement Date occurs later than the date being twelve (12) months after the date of the Decision Notice.'*

The applicant proposes to amend the wording of Clause 5.1 to state:

*'This Clause 5 shall apply only if the Development Commencement Date occurs later than 31 December 2026.'*

### **Amendments**

The applicant submitted an amended Supporting Statement.

## **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=S60XUABZIRE00>

- Covering Letter
- Supporting Statement
- Section 75 Legal Agreement
- Title Sheet

## **Reason for Referral to Committee**

The application has been referred to the Planning Development Management Committee because the Appointed Officer considers that the proposed modification of the existing Section 75 legal agreement is not in accordance with the original decision on application 200246/PPP, and subsequent related Section 42 applications and permissions 211588/S42 and 221435/S42.

## **CONSULTATIONS**

### **ACC - Developer Obligations –**

The city centre affordable housing waiver has been implemented to support the Council's overarching aim of increasing the resident population and footfall within the City Centre. To do this, the waiver temporarily removes the need to apply the normal affordable housing policy requirement of 25% provision to new development within the city centre boundary. This in turn supports the viability of new projects by reducing additional costs and encouraging investment. In turn, a time limit is applied to the waiver to encourage investment activity and delivery of the projects on-site and to minimise potential for “banking” of planning permissions. This requires that development is commenced within 12 months of the decision notice date for a development to benefit from the waiver. Aberdeen City Council agreed at their meeting of August 2022 to extend the use of the city centre affordable housing waiver until the end of 2025. If an application was determined on or prior to this date then the permission would benefit from a 12-month waiver. Any application where the decision notice is later than 31<sup>st</sup> December 2025 (regardless of when it was submitted or validated) would require to deliver the 25% affordable housing requirement (unless Council is minded to further extend the use of the waiver).

Any application for modification of planning obligations must be considered against the policy tests set out in Circular 3/2012 (Planning Obligations and Good Neighbour Agreements). The planning authority is permitted to take into account any changes in circumstances since the agreement was made along with any external factors which might mean that the obligation is no longer reasonable and the modification reflect a change that is considered appropriate.

In this instance, it is recognised that the site is taking longer to deliver than originally anticipated. The planning permission has already been reissued twice, thereby extending the timeframe for further applications and implementation. The 12-month waiver period runs with the date of the decision notice so is not currently tied to specific date. It is recognised that in this case the site benefits from planning permission in principle rather than detailed planning permission. We are not

aware of any other sites like this within the City Centre boundary. This means that further permissions in the form of Matters Specified in Condition (MSC) applications are necessary to implement the project. It is also noted the applicant and site proprietor is not themselves a developer who will deliver the project. The use of the 12-month time limit relating to the affordable housing waiver is therefore quite restrictive in this case and more so than it might usually be for a detailed planning permission. The applicant has provided a statement setting out how they have actively sought to find a developer for the site but a combination of factors has meant that they have not been able to implement the permission within a 12-month window currently allowed by Clause 5.1 (by 31<sup>st</sup> January 2024).

Considering the modification in the context of the planning permission in principle and the policy tests set out in Circular 3/2012; the Clause is considered to still be necessary and cannot be left open ended as otherwise loses its purpose of stimulating delivery through its temporary nature, which would not be appropriate. Without the waiver then the development would be liable to make a 25% affordable housing contribution and according to the applicant, would not be viable or attractive to developers in the current market. A compromise is therefore sought which allows the development to benefit from the waiver on a temporary basis but where there is more time available to the applicant to secure a developer, detailed consents and implement before expiry. This would maintain project viability and a level of attractiveness to the market making it more likely to be delivered. The timescale sought would be exactly 12 months from the expiry of the current waiver extension and so does not exceed the current waiver benefit period.

Based on the information provided by the applicant and having discussed with the Housing Strategy Team the specific circumstances around this proposal indicate that the request to modify Clause 5.1 is appropriate.

**City Centre Community Council** – No comments received.

## **REPRESENTATIONS**

It is not possible for third parties to make representations in respect of an application made under Section 75A.

## **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.

### **Development Plan**

#### **National Planning Framework 4 (NPF4)**

National Planning Framework 4 (NPF4) is the long-term spatial strategy for Scotland and contains a comprehensive set of national planning policies that form part of the statutory development plan.

- Policy 16 (Quality Homes)

## Aberdeen Local Development Plan 2023 (ALDP)

- Policy H5 (Affordable Housing)

## **Aberdeen Planning Guidance**

- Affordable & Specialist Housing

## **Other National Policy and Guidance**

- Circular 3/2012 – Planning Obligations and Good Neighbour Agreements:
  - Paragraph 74: *‘The planning authority should take into account any changes in circumstances; for example, it may be that external factors affecting the development mean that the obligation is no longer reasonable and that a modification to reflect the change in circumstances is appropriate. It is therefore important that the applicant clearly sets out their grounds for seeking a modification and the exact terms of the modification sought.’*

## **Other Material Considerations**

- City Centre Affordable Housing Waiver
- City Centre Masterplan (CCMP)

## **EVALUATION**

### **Assessment of Modification**

#### Site Planning History

Clause 5.1 of the Section 75 Legal Agreement linked to Planning Permission in Principle (Ref: 221435/S42) relates to affordable housing provision and requires the developer to provide 25% of the total number of units as affordable housing, unless the development is commenced within 12 months of the date that permission was granted (by 31<sup>st</sup> January 2023).

The 12-month waiving of the affordable housing otherwise required by Policies 16 (Quality Homes) of National Planning Framework 4 (NPF4) and H5 (Affordable Housing) of the Aberdeen Local Development Plan 2023 (ALDP) was applied via Clause 5.1 of the Section 75 obligation, in accordance with the Council’s City Centre Affordable Housing Waiver (the Waiver). The Waiver stipulates that in order for city centre housing developments of five or more units to not contribute any affordable housing, the permission must be implemented within 12 months of the date of the grant of planning permission. The Waiver is currently due to expire on 31 December 2025 (with any associated permissions implemented within 12 months, up to 31 December 2026 at the latest).

The original Planning Permission in Principle (200246/PPP) for the development of up to 140 residential units was granted conditionally and subject to a Section 75 legal agreement on 31<sup>st</sup> March 2021, with subsequent Section 42 applications for non-compliance with conditions approved on 17<sup>th</sup> December 2021 (211588/S42) and on 31<sup>st</sup> January 2023 (221435/S42) respectively. As such, given no initiation of development has taken place to date, the 12-month period following the most recent grant of permission is now complete, (on 30<sup>th</sup> January 2024). Accordingly, 25% affordable housing would now be required, should the development commence without modification of the agreement, following the necessary Approval of Matters Specified in Conditions.

## The Proposal

The applicant, who is also the landowner, seeks permission to modify Clause 5.1 of the Section 75 from:

*'This Clause 5 shall apply only if the Development Commencement Date occurs later than the date being twelve (12) months after the date of the Decision Notice.'*

to:

*'This Clause 5 shall apply only if the Development Commencement Date occurs later than 31 December 2026.'*

The justification for the proposed modification is due to several challenges that the applicant, who is not a developer, has faced in attempting and thus far failing to sell the site to a developer since the original grant of Planning Permission in Principle in March 2021. Some of the challenges that the applicant considers have hindered a potential sale for residential development include:

- Ownership – The landowner is not a housebuilder;
- Phasing complexities – The site will have to be constructed and marketed in three phases;
- Construction Issues – Time is required to identify and secure a suitable construction compound due to the constrained nature of the site;
- Site Preparation – Before committing to a site start, time and costs will be required to install services;
- Pre-start fulfilment of Conditions – Given the nature of the existing permission in principle, further Matters Specified in Conditions applications require to be prepared, submitted and approved - a significant undertaking which could take some time, given the amount of detail required, and are unlikely to be progressed in the absence of a committed developer;
- Other Section 75 Obligations – Including transport, healthcare, education and public realm;
- Density – The high density format of the proposed development would require a level of market certainty before a developer would commit to such a significant amount of units;
- Prevailing economic conditions.

One of the issues that the applicant notes has been raised by prospective purchasers of the site is that unlike with a detailed planning permission where the vast majority of detail is agreed at the time of determination, there is only a high-level planning permission in principle in place for the site at Gallowgate. Further 'Matters Specified in Conditions' (MSC) applications are required to finalise the detailed aspects of the proposed development before a site start can take place, and this process would only commence once a developer is committed to the site. Such applications are highly unlikely to be submitted speculatively.

The applicant considers that the 12-month timeframe within which any purchaser would have to lodge any MSC applications, obtain permission and then make a meaningful start to works on site (thus initiating development and benefitting from the Waiver), is restrictive and would come with significant risk to the developer.

Given the scale and complexity of the proposed development, with up to 140 flats proposed across three buildings (up to seven storeys in height) in a prominent and historic city centre location, the Planning Service acknowledges that the 12-month window for the submission and subsequent approval of one or more MSC applications to cover all detailed aspects of the proposed development is somewhat tight and could be seen as excessively risky to a prospective purchaser.

As such, and given the principle of the redevelopment of the highly accessible city centre brownfield application site for high density housing in a sustainable location remains fully compliant with the aims and policies of both NPF4 and the ALDP as well as the regeneration aims of the City Centre Masterplan, the Planning Service considers that the proposal to extend the period within which the development can benefit from the Waiver is reasonable and that a departure from the 12-month initiation of development stipulation of the Waiver is justified in this instance. It is also noted that there are no other large scale brownfield sites in the city centre that are in this position in terms of a Planning Permission in Principle, therefore the merits of this case and this recommendation are not considered to apply to any comparable sites and would not undermine the purpose of the Waiver.

It is also worth noting that as the Waiver is still active until 31 December 2025, were the applicant to reapply for permission in principle, a fresh 12-month time period for the commencement of development would apply to any new permission, provided consent is granted before 1 January 2026. Therefore whilst the proposed modification would not comply with the 12-month initiation of development stipulation, it would otherwise be compliant with the remainder of the Waiver's aims and stipulations, and would increase the likelihood of the site being sold and developed for a significant amount of housing which would help to regenerate the city centre.

The proposal has also been assessed by colleagues in Developer Obligations and Housing Strategy who both agree with the above conclusions, noting that the site-specific circumstances and the scale and complexity of the proposed planning permission in principle scheme, justify a departure from the 12-month stipulation of the Waiver in this instance.

## **RECOMMENDATION**

Approve Modification

## **REASON FOR RECOMMENDATION**

Due to the site-specific context and complexities of the application site and the proposed development, clause 5.1 of the Section 75 in respect of Planning Permission in Principle 221435/S42 is, in its current form, somewhat restrictive in terms of the 12 month timescale in which to ensure commencement of development and achieve compliance with the terms of the Council's City Centre Affordable Housing Waiver. The proposed modification of Clause 5.1, to extend the date by which the permission must be implemented in order to benefit from the Waiver, would reduce the risk taken on by any prospective purchaser of the site and enhance the potential of the site to be developed for high-density housing on a brownfield site in a highly accessible, sustainable city centre location, in accordance with the aims of National Planning Framework 4, the Aberdeen Local Development Plan 2023 and the City Centre Masterplan. Whilst not in accordance with the 12-month initiation of development stipulation, it is noted that no comparable sites exist, and the modification would also otherwise be compliant with the aims of the Waiver and Policies 16 (Quality Homes) of National Planning Framework 4 and H5 (Affordable Housing) of the Aberdeen Local Development Plan 2023. The proposed modification of Clause 5.1 is therefore considered to be acceptable.