

**KEY INFORMATION****Ward** West End**Proposal**

Application under Section 42 of the Town & Country Planning (Scotland) Act 1997 (as amended) to amend Condition 8 of 08/00792/FUL to vary the period for the erection of the proposed wall to be erected at the West End of Hillside Terrace

**Address**

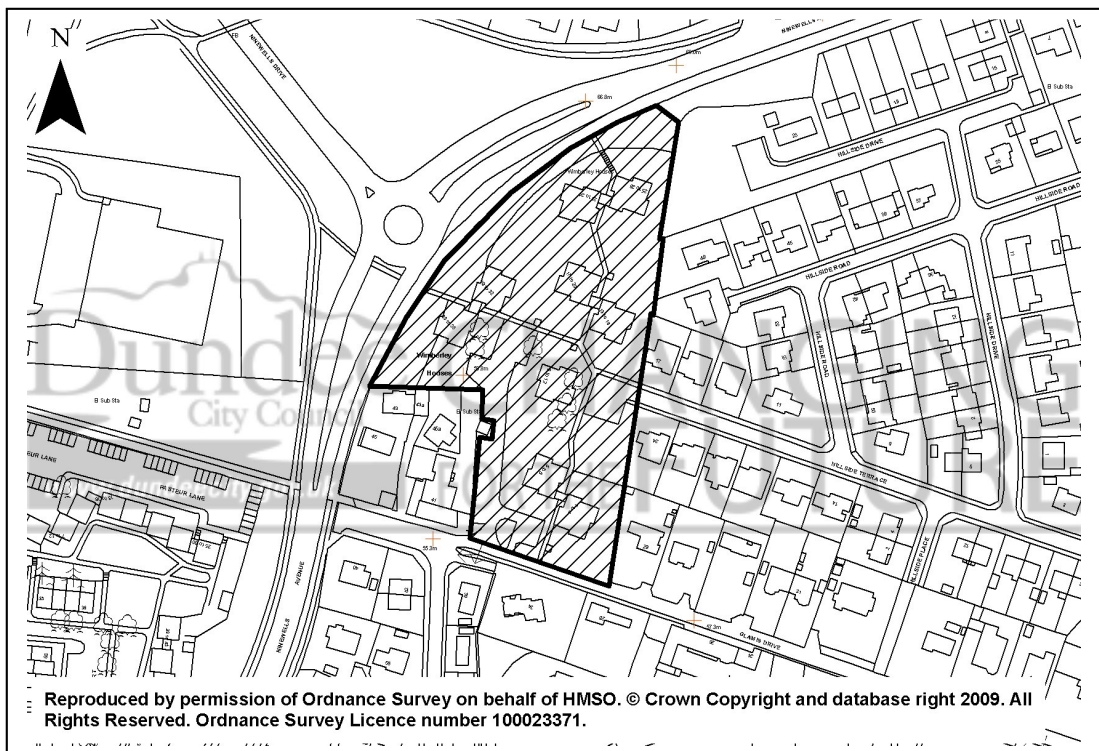
Wimberley Houses  
Glamis Drive  
Dundee

**Applicant**

Baker Street Properties Ltd  
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Stirling FK8 1BJ

**Agent**

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**Registered** 10 Mar 2010**Case Officer** D Gordon

## Proposed Variation of Condition on Wimberley Housing Development

An application under Section 42 of the Town & Country Planning (Scotland) Act 1997 (as amended) to amend Condition 8 of 08/00792/FUL to vary the period for the erection of the proposed wall to be erected at the West End of Hillside Terrace is **RECOMMENDED FOR APPROVAL** subject to conditions. Report by Director of City Development.

**RECOMMENDATION**

It is considered that there are material considerations of a sufficient weight that would justify a variation to Condition 8 attached to planning application 08/00792/FUL.

Therefore, the application is recommended for **APPROVAL**, but subject to the amended Condition 8 specified at the end of this report and not the variation sought by the applicants.

**SUMMARY OF REPORT**

- Planning permission, (in terms of Section 42 of the Town & Country Planning (Scotland) Act 1997 (as amended)) is sought to vary a planning condition for the erection of a wall at the west end of Hillside Terrace in full accordance with a confirmed Stopping Up Order prior to the commencement of development works on a former student housing site. This condition was placed on planning application 08/00792/FUL that was approved permission on 15 April 2009.
- The condition was attached to the application to ensure that a wall of a suitable design and appearance was lawfully erected in an appropriate location in order to prohibit vehicular and pedestrian access to the development site from Hillside Terrace to the east.
- There is no requirement to undertake the statutory neighbour notification procedure for proposals submitted under Section 42 of the 1997 Act. Objections to the application have been received from 6 households in Hillside Terrace. The objectors raise a number of issues but are primarily concerned about the potential impact any delay in the erection of this wall may have on the future development of the site.
- A Stopping Up Order application has been submitted and has been referred to the Scottish Ministers for consideration. It is understood that this is to be the subject of a Public Inquiry due to the existence of unresolved objections to this proposed stopping up of a road.
- The application is recommended for Approval, subject to the variation specified at the end of this report, as there are material considerations of sufficient weight that would justify the qualified support of this proposal.

## DESCRIPTION OF PROPOSAL

Permission is sought under Section 42 of the Town and Country Planning (Scotland) Act 1997 to modify Condition 8 attached to planning application 08/00792/FUL which granted permission to change the use (with alterations) of 9 blocks of former student accommodation to 36 private dwelling houses.

At present Condition 8 requires, in part, that:

"For the avoidance of doubt, the proposed wall to be erected on the west end of Hillside Terrace shall be lawfully erected in accordance with a confirmed Stopping Up Order and in full accordance with approved details, prior to the commencement of development works".

The applicants have requested the following modification to Condition 8:

"For the avoidance of doubt, the proposed wall to be erected on the west end of Hillside Terrace shall be erected in full accordance with approved details, prior to the sale and or occupation of properties Nos. 25, 26, 27 and 28 as identified in red on Drawing No. 1248-101 Revision C dated 9 March 2010".

The Members are advised that properties 25 - 28 referred above are contained within former accommodation block that is located in the north east corner of the development site.

A request from a local Member that this application be referred to this Council's Development Quality Committee for determination was been received within the prescribed period. In this respect, and because six objections have been received, the application is prohibited from being determined by an 'appointed officer' under the Council's Scheme of Delegation.

## SITE DESCRIPTION

The 'red edge' of the original application site measures approximately 1.32 hectares in area and is bounded to the west by Ninewells Avenue. To the east are the residential properties of Hillside Drive, Hillside Road and Hillside Terrace.

The south side of the site is bounded by Glamis Drive beyond which lie further residential properties.

The site slopes generally in a north to south direction. It formerly accommodated 9 residential blocks of student accommodation with 4 residential units per block. Works on the conversion of the 2 south most blocks on the site ie fronting onto Glamis Drive, have been completed and the properties are currently for advertised sale. Each building on site



is two storeys in height.

The site was previously, in part, accessed from Hillside Terrace to the east. The west end of Hillside Terrace has now been fenced off with security fencing following the commencement of development works on the site. There is evidence of large boulders across Hillside Terrace that also prevents access into the site.

Vehicular and pedestrian access into the site is taken from Glamis Drive to the south. Recent improvement works, in accordance with approved details, have been carried out to this access. The approved car parking improvements for this part of the site have also been fully implemented.

The site enjoys a mature landscape setting with a significant tree belt

located on the western boundary of the site. The southern section of the site fronting onto Glamis Drive has recently undergone additional landscaping works. The site is the subject of a confirmed Tree Preservation Order.

## POLICY BACKGROUND

### Dundee and Angus Structure Plan 2001-2016

There are no policies relevant to the determination of this application.

### Dundee Local Plan 2005

There are no policies directly relevant to the determination of this application.

### Scottish Planning Policies, Planning Advice Notes and Circulars

There are no statements of Government policy relevant to the determination of this application.

### Non Statutory Statements of Council Policy

There are no non statutory Council policies relevant to the determination of this application.

## SUSTAINABILITY ISSUES

There are no specific sustainability policy implications arising from this application.

## SITE HISTORY

08/00540/COU - Conversion of Student Accommodation to Dwelling Houses - Refused 20 October 2008

08/00792/FUL - Change of Use of Student Accommodation to Dwelling Houses - Approved 15 April 2009.

## PUBLIC PARTICIPATION

There is no requirement to undertake the statutory neighbour notification procedure for applications made under



Section 42 of the Town and Country Planning (Scotland) Act 1997.

Objections to the proposal have been received from six households in Hillside Terrace. The main areas of concern that have been expressed by the objectors are listed below:

- 1 it is not the intention of the developer to build the wall;
- 2 the applicants have failed to comply with conditions attached to the approved planning application;
- 3 there should be no deviation from the approved conditions until a decision is given by the Scottish Ministers on the Stopping Up Order application;
- 4 Hillside Terrace will be used as a works access into the site if the building of the wall is delayed;
- 5 should this application be approved, the site may remain undeveloped for a considerable period of time before the wall is built; and
- 6 the applicants have carried out the unauthorised removal of trees from the site.

The Members will already have had access to these letters and the points raised are considered in the 'Observations' Section of this Report.

## CONSULTATIONS

No adverse comments have been received from Consultees.

## OBSERVATIONS

## STATUTORY REQUIREMENTS

### The Development Plan

This application requests permission to modify a condition attached to a previously approved planning application 08/00792/FUL under Section 42 of the Town and Country Planning (Scotland) Act 1997. As such, it is only the terms of this condition that are subject to consideration in this report. No new issues or areas of concern in terms of development plan policies are raised.

## Other Material Considerations

The other material considerations to be taken into account are as follows:

### Planning History of the Site

The Members may recall that a planning application to change the use of 9 blocks of former student accommodation to 36 private dwelling houses (with alterations) on the site currently under consideration was placed before the Development Quality Committee for determination on 19th January 2009. Forming part of this application was the erection of a 2 metre high wall at the west end of Hillside Terrace that would prohibit vehicular and pedestrian access through the application site. It was considered that this barrier would potentially reduce excessive on street car parking on Hillside Terrace and the



surrounding streets by workers and visitors using the site as a direct route to Ninewells Hospital located to the west. The applicants were aware, at that time, of the requirement to submit a Stopping Up Order application for these works.

The proposals attracted 45 objections and 64 letters of support.

The application was granted permission on 15th April 2009 subject a number of conditions including Condition 8 which required that:-

"Any existing accesses that are no longer required as part of the proposed development shall be made good to the satisfaction of the planning authority. Details of these alterations shall be submitted to and approved in writing by the planning authority prior to the commencement of development works. For the avoidance of doubt, the proposed wall to be erected on the

west end of Hillside Terrace shall be lawfully erected in full accordance with a confirmed Stopping Up Order and in full accordance with approved details, prior to the commencement of development works".

The applicants' agents submitted the required Stopping Up Order applications to this Council for the closure of Hillside Terrace on 26 May 2009. Objections to this proposal have been received and consequently the Order cannot be confirmed (or otherwise) without first having been referred to the Scottish Government who are required to give those making an objection the opportunity to be heard by a person appointed by them. The Stopping Up Order has been referred to the Scottish Government and, at the date of writing, no decision on this matter has been received.

This Council noted that work started on site in August 2009 without formally discharging the terms of Condition 8 above. The applicants were advised of this breach. These works took place during a period of significant economic downturn when construction work on the majority of housing sites throughout the city virtually ceased overnight. With this in mind, it was not considered expedient to pursue action at that time and request the cessation of works on one of the few remaining construction sites in the city.

In order to attempt to resolve matters the applicants agents have submitted the current application under Section 42 of the Act, the terms of which are detailed in the 'Description of Proposal' Section of the Report above. In support of this application the agents have advised, amongst other things, that the time taken to resolve the Stopping Up Order application is totally unsatisfactory given the present economic challenges to the construction industry, with the status of the whole project now in jeopardy. They further advise that the proposed amendment to the wording to Condition 8 as submitted will allow the applicant to complete and sell the initial phase of the development and as such ensure its progression, whilst ensuring that a measure of control is kept and the required wall will be completed prior to the sale /

occupation of the last four properties on the site.

## Impact on the Surrounding Area

It is considered that the proposed extension of time request will not increase noise or the volume of traffic in the surrounding area. The west end of Hillside Terrace is currently closed to traffic by virtue of security fencing and large boulders thus reducing traffic movement and excessive on street car parking in the area to the benefit of a number of the local residents.

## Financial Viability

While the cost of a proposed development is not a material consideration, the planning consequences of the financial viability of a proposed development can be considered. There is a real potential that the lack of financial viability can result in developments being abandoned before completion, sterilising the site against future development and leaving the local authority with a problem of how the site should be managed. The applicants have advised in their submission that the present economic challenges to the construction industry and the length of time taken to determine the Stopping Up Order application has placed the project in jeopardy.

## Provision of Suitable Access

Access into the development site is to be taken from Glamis Drive to the south, the details of which have been agreed in consideration of the approved planning application. Works on this access have now been carried out in full accordance with the approval plans. This is considered to be entirely sufficient to service the entire development site without any further need for additional access points, including the access from Hillside Terrace located to the east.

## Objections

The proposal has attracted objections from 6 households in Hillside Terrace. The main issues raised are detailed in the 'Public Participation' Section of this Report above. The main issues appear to be more directed towards the developer and what has happened/may happen on the site rather than the planning merits of the proposal.

The issues that have been raised are as follows:

- 1 It is not the intention of the developer to erect the wall.

There has not been at any time during correspondence/discussions with the applicants' agents any suggestion that the developer is unwilling to put the wall in place in accordance with the approved drawings. It is only the timing of these works that are currently the subject of this application.

- 2 The applicants failed to comply with conditions attached to the approved planning application

This matter has been discussed and discharged in the 'Planning History of the Site' above.

- 3 There should be no deviation from the conditions until a decision is given by the Scottish Ministers on the Stopping Up Order.

It is unclear at the time of writing how long it may take for a decision to be taken by the Scottish Ministers on this matter and indeed it may be a number of months before this matter is finally resolved. It is considered that the provision of a partially completed and unoccupied site for an unspecified period of time in this location would not be to the specific benefit of any party.

- 4 Hillside Terrace will be used as a works access if the building of the wall is delayed.

It is understood that this is not the intention of the developer. Hillside Terrace is currently closed by security fencing and a line of large boulders. Immediately beyond the west end of Hillside Terrace the developer has formed a car parking area which includes new kerbing. This would make any access from Hillside Terrace into the site very difficult to achieve without the expense of altering the development works that have been carried out. However, there are no conditions attached to the approved planning application that would prohibit the use of Hillside Terrace as a works access into the site.

- 5 Should this application be approved, the site may remain undeveloped for a considerable period of time before the wall is built.

It is considered that this would also be the case if the application was wholly resisted.

- 6 The applicants have carried out the unauthorised removal of trees from the site.

This matter is currently being pursued separately with the Council's Forestry officer.

## Stopping Up Order

The submitted Stopping Up Order application has been referred to the Scottish Ministers for consideration. Due to the submission of letters of support for and objections to the proposed closure, it is understood that a public inquiry is to be held. The requirement for a Stopping Up Order to close the west end of Hillside Terrace has been taken into account in the consideration of this application.

It is concluded from the foregoing that, on balance, the material considerations support a qualified grant of permission. However, it is considered that the amendments requested by the applicants is inappropriate due to the uncertainty of the length of time it may ultimately take to complete the development works. It is also concluded that reference to works being carried out in accordance with confirmed Stopping Up Order should not be removed from any permission granted.

In this respect, an amended variation has been agreed with the applicants. This reflects and is commensurate with the works that have already been carried out on the site and will allow for the potential sale and occupation of the 2 blocks on the Glamis Drive frontage that have been completed while awaiting the outcome of the Stopping Up Order application. This will also prohibit any further works on the site until the outcome of the Stopping Up Order is known.

It is therefore recommended that planning permission be granted with conditions.

## Design

There are no design issues raised by the proposed modification to the condition in question.

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## CONCLUSION

It is considered that there are material considerations of sufficient weight that would justify the qualified support of this application. These considerations relate particularly to the financial viability of the project during these specific economic times.

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## RECOMMENDATION

It is recommended that consent be GRANTED subject to the following variation of the last sentence of Condition 8:

- 8 The proposed wall to be erected at the west end of Hillside Terrace shall be lawfully erected in accordance with a confirmed Stopping Up Order and in full accordance with approved details prior to the commencement of development works on properties Nos 9 to 36 as identified on James Paul Associates Drawing "Existing & Proposed Site Layout and Location Plan", Reference 1248-101 Revision C dated 9 March 2010.

## Reason

- 1 In the interests of the safe vehicular entry to and exit from the site and in the interests of pedestrian safety.