

# Modification of Occupancy Restrictions

## KEY INFORMATION

**Ward** West End

**Address**

21 and 23-25 Perth Road  
Dundee

**Applicant**

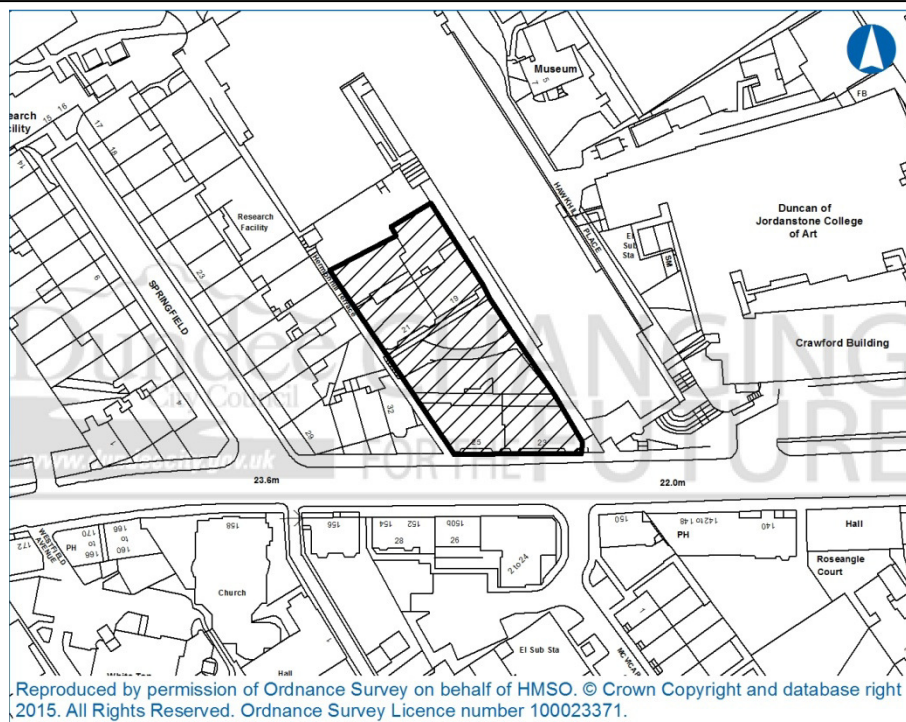
Ms B Rome  
The Barn  
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Ayrshire

**Agent**

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Emeldad MacLean  
Ballinard House  
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**Registered** 7 Sep 2015

**Case Officer** Paul Macari



## SUMMARY OF REPORT

- This application seeks consent to modify the terms of a Section 75 Obligation to remove the restriction on the use as HMOs of two flats in a development which was approved by planning permission 10/00092/FULL and replace it with a restriction for student housing.
- The proposal satisfies the requirements of Circular 3/2012: Planning Obligations and Good Neighbour Agreements in terms of the modification of Planning Obligations.
- More details can be found at: <http://idoxwam.dundee.gov.uk/idoxpa-web/applicationDetails.do?activeTab=documents&keyVal=NUCXXUGC06600>.

## RECOMMENDATION

It is recommended that this application should be **APPROVED** and the Section 75 Obligation shall have effect subject to the modifications specified in the application.

## 1 DESCRIPTION OF PROPOSAL

1.1 To request that Committee determine an application to modify the terms of a Section 75 Obligation to remove the restriction on the use as HMOs of two flats in a development which was approved by planning permission 10/00092/FULL and replace it with a restriction for student housing.

1.2 The S75 Obligation relates to Planning Application 10/00092/FULL approved by Dundee City Council on 24 May 2011 for "Proposed Change of Use from University Buildings to Form Residential Use including Alterations to Building" at 21, 23 and 25 Perth Road, Dundee. The application was approved subject to a S75 Obligation prohibiting the use of the properties as Houses in Multiple Occupation (HMO). "Houses in Multiple Occupation" is defined in the S75 Obligation as "a House occupied by more than two Qualifying Persons, being persons who are not all members of the same family."



Figure 1 – 19-21 Perth Road

1.3 The proposal seeks consent to modify the S75 Planning Obligation to remove the prohibited use (Title Number ANG57308: Entry 3 (3.1)) from Nos 21A and 21E, Perth Road, Dundee, DD1 4HU and substitute this with a restriction of the use of the properties to occupation by students. This shall be implemented by varying the minute of agreement to include the following:

The Properties for Student Occupation shall be used and occupied only by students enrolled in and undertaking a full-time course of study at one of the establishments situated within the local government area of Dundee providing Higher Education or Further Education and for no other purpose whatsoever. At any time during a Vacation Period the Properties for Student Occupation shall be used and occupied only by students, as aforesaid or business conference or recreational visitors to the City of Dundee in association with business, educational conference or tourist events and for no other purpose whatsoever.

1.4 In accordance with the Council's Scheme of Delegation this application requires to be determined by the Development Management Committee.

## 2 SITE DESCRIPTION

2.1 The site is located to the north side of Perth Road and comprises of 3 storey tenement style building with an adjoining 2 storey house which is a Category B Listed Building on the east. These buildings are accessed from a pedestrian access path approximately 50 metres from Perth Road. The Listed house is now known as 19 Perth Road. The building to the south, which fronts onto Perth Road, comprises numbers 23 and 25 Perth Road and these are traditional tenements. There is no off-street parking for any of the properties.

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### 3 POLICY BACKGROUND

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3.1 The following plans and policies are considered to be of direct relevance:

**DUNDEE LOCAL DEVELOPMENT PLAN**

Policy 14: Student Accommodation

Policy 15: Houses of Multiple Occupation

**SCOTTISH PLANNING POLICY, PLANNING ADVICE NOTICES AND CIRCULARS**

Circular 3/2012: Planning Obligations and Good Neighbour Agreements

3.2 There are no other plans, policies and non-statutory statements that are considered to be of direct relevance.

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### 4 SITE HISTORY

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4.1 Planning permission was granted, subject to a Section 75 Obligation, by the Development Management Committee on 17 May 2010 for "Change of Use from University Buildings to Form Residential Use including Alterations to Building" in respect of properties at 21, 23 and 25 Perth Road - 10/00092/FULL refers. The Section 75 Obligation was not signed until 19 May 2011, following which the planning permission was issued on 24 May 2011. The partner Listed Building application was approved as a delegated matter on 17 May 2010 (Ref: 10/00093/LBC).

4.2 A planning application was submitted, on 5 August 2011, for alterations to the attic floor of 23 and 25 Perth Road to provide 4 flats with the installation of 13 rooflights - 11/00416/FULL refers. The application was approved subject to conditions on 30 December 2011. The flats on the first 3 floors of 23 and 25 Perth Road have now been developed with the 4 additional attic flats forming a development of 14 x 3 bed flats and 2 x 2 bed flats.

4.3 Application ref: 12/00360/MDPO was consented by the Development Management Committee on 22 October 2012 to modify the terms of a Section 75 Obligation to remove the restriction on the use as HMOs of 14 flats and one house in a development which was approved by planning permission 10/00092/FULL and replace it with a restriction for student housing. The modification to the S75 Obligation consented the use of the properties at 19, 23A, 23B, 23C, 23D, 23E, 23F, 23G, 25A, 25B, 25C, 25D, 25E, 25F and 25G Perth Road, Dundee as student housing.

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### 5 PUBLIC PARTICIPATION

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5.1 This is not a planning application and does not require to be notified to neighbouring properties.

5.2 In accordance with Regulation 5 of the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 this Department has notified the parties with an interest in the S75 Obligation identified by the applicant.

5.3 No objections or representations have been received.

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## 6 CONSULTATIONS

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- 6.1 No consultation responses have been received.

## 7 DETERMINING ISSUES

- 7.1 **Section 25 of the Act provides that an application for planning permission (other than for a national development) shall be determined in accordance with the development plan unless material considerations indicate otherwise.**

### THE DEVELOPMENT PLAN

#### APPLICANT'S CASE

- 7.2 The Section 75 Obligation restricts the occupation of the application of properties by more than 2 unrelated people. Application Ref: 10/00092/FULL granted permission for the building at 21 Perth Road to be converted into six flats. The approved flats comprised of two bedrooms, a lounge, kitchen and bathroom. The applicant has however, used the lounge as a third bedroom in both flats. The flats are currently occupied by students, with the applicant's daughter about to vacate Flat 21E. This application is therefore seeking to authorise the use of the two flats for student accommodation, as "Houses in Multiple Occupation" (HMO).
- 7.3 The building in which the application properties are located is adjacent to the University of Dundee campus, and retains a close physical and visual link and association with the University, not only due to its former 'campus' location, but also through the retained communal pedestrian access, which is shared by both the properties. The visual association is re-enforced on site by the library, which faces directly onto the site and overlooks the properties that are the subject of this application. Despite the properties being sold by the University, there are no physical distinguishing features which divorce the properties from the University and the sense of place is still very much that of 'University Campus'. This is reinforced by the application site being bound by the Matthew Building/Duncan of Jordanstone to the north and east.
- 7.4 There are a range of land uses to the south, including a public house, restaurant, and residential properties. Further residential properties are located off Springfield to the west. Many of these properties have, historically, been associated with University student accommodation and further University buildings can be seen to the north of Springfield. The site has immediate access to public transport and is well located for walking to the Universities, local facilities and City Centre. Both Dundee University and the University of Abertay are within a 1-10 minute walk of the flats.
- 7.5 The applicant argues that the approval of application ref: 12/00360/MDPO demonstrates that:
- the site is in a student campus location and there is no demand for properties for family accommodation. The Section 75 is ineffective in achieving this purpose;
  - the use of the properties as student accommodation is in accordance with Policy 14 (Student Accommodation) of the Dundee Local Development Plan;

- the modification would result in high quality student accommodation close to the University which would alleviate demand elsewhere on properties more suitable for family housing; and
- the 2 properties would have a negligible impact on the overall provision of student accommodation in the city and would contribute to the range and choice of student accommodation in an appropriate location.

## **OBSERVATIONS**

- 7.6 Proposals to discharge, modify or enter into Planning Obligations should comply with the following five tests in Circular 3/2012: Planning Obligations and Good Neighbour Agreements - necessity, planning purpose, relationship to the development, scale and kind, and reasonableness.
- 7.7 The Council's assessment of this application with regard to the tests required by Circular 3/2012 is as follows:

### **A - NECESSITY**

- 7.8 The Circular is written for the benefit of planning authorities that are considering whether, in order for planning permission to be granted, a planning obligation is required. However, this is an application to modify an existing planning obligation and there is no option to impose a planning condition. Accordingly, a planning obligation remains necessary in this regard in order to ensure that this restriction will bind successors in title and therefore satisfies this test.

### **B - PLANNING PURPOSE**

- 7.9 The Obligation should serve a planning purpose. Planning permission was granted for the conversion of these former University offices for residential use. A Section 75 Obligation to prevent HMO use was discussed and agreed with the applicant to restrict the use of flats as approved by planning permission 10/00092/FULL although the layouts indicated that 14 out of the 18 flats originally approved would only have 2 bedrooms. However, the internal layouts have been amended to provide 3 bedroom flats. The flats will remain in residential use but the proposed modification seeks to limit their occupation to students as defined in other similar legal obligations which apply to student accommodation elsewhere in the City.
- 7.10 Policy 15 (Houses of Multiple Occupation) is intended to provide a robust and clear approach to dealing with HMOs. Whilst it is recognised that this type of property is an important element of the housing stock, the potential impact on existing residential properties requires careful consideration. The restriction on the use of premises as HMOs serves a valid planning purpose in terms of the impact of the use on issues such as parking, garden ground and residential amenity. The use of a legal obligation to restrict the use of these properties as HMOs did serve this valid planning purpose.
- 7.11 The proposed modification to restrict the properties to student housing would meet the Council's policies in respect of issues of parking and amenity space for such a use, particularly given the location of the site with regard to the University campus. For this reason, it is considered that the modifications proposed to the obligation would also serve a planning purpose and would satisfy this test.

### **C - RELATIONSHIP**

- 7.12 Planning permission was granted for the conversion of these former University offices for residential use. The effect of the existing obligation is to restrict the manner in which the development may be occupied, which was perceived by the Development Management Committee to be a barrier to planning permission being granted. The proposed modification substitutes an alternative restriction on the occupation of the properties. It has no wider effect and therefore this test is satisfied.

#### **D - Scale and Kind**

- 7.13 The scale and kind test requires obligations to be proportionate to the scale of the development and to address any objectionable implications of the development itself. Policy 15 of the Local Development Plan seeks to prevent any new residential development in close proximity to higher education institutions being occupied by three or more unrelated people in order to increase opportunities to live in this accessible location and take advantage of the benefits that this offers. The existing obligation is so worded to achieve this objective. The justification for the proposed modifications to this obligation is that the only interest in these properties is for student occupation. This is as a direct result of the proximity of the site to University premises. In terms of attracting interest from families and non-student occupants the site lies more than 50 metres from Perth Road with access taken from a footpath and has no parking facilities. The site is directly adjacent to the University and well within the 15 minutes walking distance identified in Policy 14 of the Local Development Plan for student housing.
- 7.14 The modification sought by the applicant will increase the number of residents in each flat by one. The application properties are situated in a development bounded by University premises to the east and north and Springfield to the west which contains offices and HMOs closely associated with the University. Given this location, use of the properties as student accommodation is unlikely to have an adverse impact on the residential amenities of other residents. The Council considers that the proposed modification to the obligation is related in scale and kind to the development.

#### **E - REASONABLENESS**

- 7.15 The Circular requires that the obligation should be reasonable in the particular circumstances of the case. The annex to Circular 1/2010 confirms that external factors affecting the development need to be taken into account when judging whether an obligation remains reasonable.
- 7.16 The applicant's case is noted above and the Council's response to the arguments is as follows:
- the site is in a student campus location and there is no demand for properties for family accommodation. The Section 75 is ineffective in achieving this purpose.
- 7.17 The Committee Report for application 10/00092/FULL dated 17 May 2010 justifies the use of a Section 75 Obligation to restrict use of the properties as HMOs in order to reduce the impact on residential amenity and Policy 15 of the Local Development Plan also justifies the use of legal agreements to ensure that new residential developments are available to other sectors of the housing market. However, it is recognised that these properties are very close to University property and adjoin Springfield which contains many HMOs. Had the original planning application been for student accommodation rather than residential accommodation, it is very likely that planning permission would have been granted with a legal obligation to restrict occupation to students as proposed in this application.

- the use of the properties as student accommodation is in accordance with Policy 14 (Student Accommodation) of the Dundee Local Development Plan.

7.18 This is agreed.

- the modification would result in high quality student accommodation close to the University which would alleviate demand elsewhere on properties more suitable for family housing.

7.19 Properties with planning permission for use as student housing or without restrictions on multiple occupation are unlikely to be offered for sale or rent at a level which would attract family or non student occupation and it seems unlikely that modification of this Section 75 obligation would have this result. However, it is agreed that the development does provide high quality accommodation close to the University.

- the 2 properties would have a negligible impact on the overall provision of student accommodation in the city and would contribute to the range and choice of student accommodation in an appropriate location.

7.20 The text to Policy 14 (Student Housing) of the Local Development Plan notes that it is important that the supply of student housing is managed to guard against a surplus. In this particular case, due to the location of the properties, it is concluded that the use of the application properties for student housing rather than in accordance with the terms of the existing obligation will result in potentially an additional 2 persons occupying these properties. It is concluded that approval of this particular modification will not affect the supply in any significant way.

7.21 **Having taken into account all the relevant matters, the approval of this application would be reasonable and meets this test.**

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## 8 CONCLUSION

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8.1 Taking account of the proposals above and the exceptional circumstances whereby the properties are almost surrounded by University premises, the approval of the proposed modification of the original S75 Obligation applicable to the properties at 21A and 21E Perth Road, Dundee would be reasonable and will result in a development which will comply with the relevant policies in the Dundee Local Development Plan in respect of student housing.

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## 9 RECOMMENDATION

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9.1 It is recommended that this application should be approved and the Section 75 Obligation shall have effect subject to the modifications specified in the application.