

Application for Discharge of Planning Obligation

KEY INFORMATION

Ward West End

Address

Hawkhill Court
Mid Wynd
Dundee

Applicant

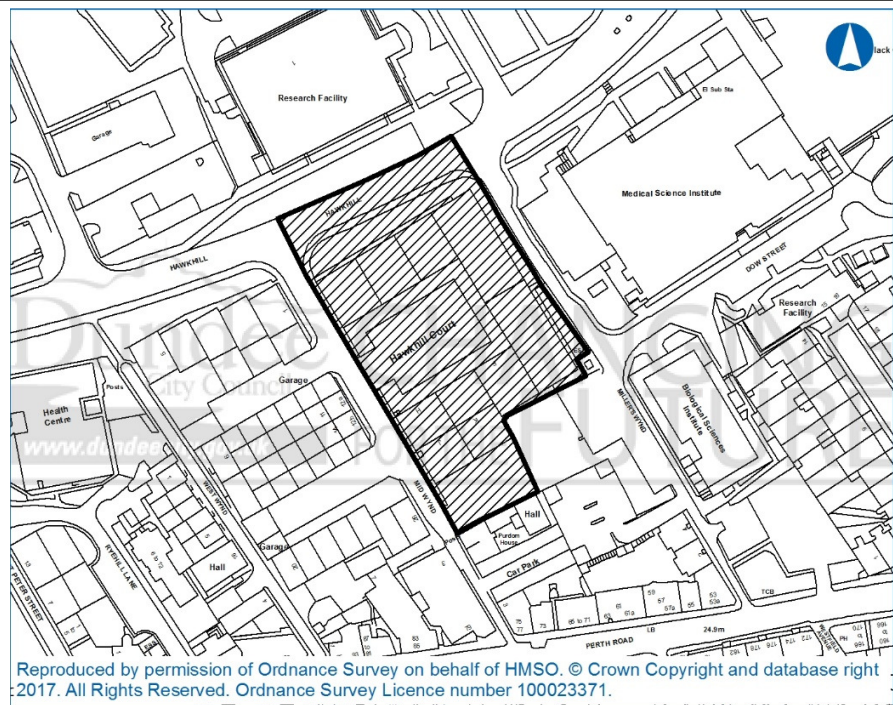
Lindores(Hawkhill)Ltd C/O
RSM Restructuring Advisory
LLP
First Floor Quay 2
139 Fountainbridge
Edinburgh EH3 9QG

Agent

Sarah Baillie
HBJ Gateley, Cornerstone
107 West Regent Street
Glasgow

Registered 22 Feb 2017

Case Officer Claire Myles



SUMMARY OF REPORT

- The application seeks consent to discharge a Section 75 Planning Obligation in its entirety as the planning permission 05/00033/FUL to which it relates has lapsed without commencement of development.
- The proposal satisfies the requirements of Circular 3/2012: Planning Obligations and Good Neighbour Agreements in terms of the discharge of Planning Obligations.
- More details can be found at <http://idoxwam.dundee.gov.uk/idoxpa-web/simpleSearchResults.do?action=firstPage>.

RECOMMENDATION

It is recommended that this application should be **APPROVED** and that the planning obligation is discharged for planning permission 05/00033/FUL to which it relates.

1 DESCRIPTION OF PROPOSAL



Figure 1 – Central View



Figure 2 – South Elevation

- 1.1 The application seeks the discharge of a Planning Obligation associated with planning permission 05/00033/FUL as the planning permission to which it relates has lapsed without the commencement of development.
- 1.2 Planning Application 05/00033/FUL was approved by Dundee City Council on 27 June 2005 for a “Proposed Residential Development at Hawkhill Court” comprising 18 town houses and 82 flats. The application was approved subject to a S75 Obligation prohibiting the use of the properties as Houses in Multiple Occupation. The term “Houses in Multiple Occupation” is defined as “a House occupied by more than two Qualifying Persons, being persons who are not all members of the same family.” The decision was issued on 8 April 2008 following the conclusion of a S75 obligation restricting HMO’s in the development.
- 1.3 The Planning Obligation was registered under title number ANG8738 on 8 April 2008. It is requested that the Planning Obligation is discharged under S75A of the Act as per paragraph four of the Minute of Agreement, the Planning Obligation is deemed “pro non scripto” as the planning permission has lapsed, without the commencement of development and therefore its terms are not enforceable.
- 1.4 The owner of the site Lindores (Hawkhill) Ltd is in liquidation.
- 1.5 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 application site is located to the west of the City Centre on the south side of Hawkhill. The site is bounded on the east by Millers Wynd and to the west by Mid Wynd. There are existing vacant industrial units on the site.



Figure 3 – Vacant Industrial Units

3 POLICY BACKGROUND

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

SCOTTISH PLANNING POLICY, PLANNING ADVICE NOTES 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.

4 SITE HISTORY

4.1 Planning application reference 84/01146/ADV for the erection of illuminated signs was approved in 1984.

4.2 Planning application reference 05/00033/FUL sought planning permission for the erection of 18 townhouses and 82 flats at Hawkhill Court, Mid Wynd, Dundee. The Development Management Committee approved this application in June 2005 and the decision was issued in April 2008 following the conclusion of a S75 obligation restricting HMO's in the development.

4.3 An application was received under Section 42 of Town and Country Planning (Scotland) Act 1997 as amended, planning application reference 13/00190/FULL, to vary condition 1 of planning application reference 05/00033/FUL to extend the permitted commencement date of the development to within 6 years from the date of the original permission 28 April 2008.

4.4 Permission was granted on 14 May 2013 to vary condition 1 of planning application reference 05/00033/FUL to extend the permitted commencement date of the development to within 6 years from the date of the original permission 28 April 2008.

5 PUBLIC PARTICIPATION

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

5.2 No letters of representation have been received.

6 CONSULTATIONS

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.**

7.2 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, serve a planning purpose, relate to the development, scale and kind, and reasonableness.

- 7.3 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 discharge, in entirety, an existing planning obligation.
- 7.4 The Council's assessment of this application with regard to the tests required by Circular 3/2012 is as follows:

A - NECESSITY

- 7.5 The Circular outlines that a Planning Obligation is only necessary where successors in title need to be bound by the required obligation, for example where phased contributions to infrastructure are required.
- 7.6 As per paragraph four of the Minute of Agreement, the Planning Obligation is deemed "pro non scripto" as the planning permission has lapsed as per Condition 1 of planning permission reference 05/00033/FUL which was varied under planning application reference 13/00190/FULL. The planning permission has lapsed without the commencement of development and therefore the terms of the Planning Obligation are not enforceable.
- 7.7 The application to discharge the Planning Obligation satisfies this test.

B – PLANNING PURPOSE

- 7.8 The Planning Obligation should serve a planning purpose. As the original planning permission has lapsed without the commencement of development there is no planning purpose to serve. The terms of the Planning Obligation are not enforceable.
- 7.9 The application to discharge the Planning Obligation satisfies this test.

C – RELATIONSHIP

- 7.10 Planning Obligations must relate to the development being proposed. The original planning permission has lapsed without the commencement of development. There is therefore no relationship to the Planning Obligation.
- 7.11 The application to discharge the Planning Obligation satisfies this test.

D – SCALE AND KIND

- 7.12 Planning Obligations must be related in scale and kind to the proposed development. The planning permission has lapsed without the commencement of development and no relationship exists.
- 7.13 The application to discharge the Planning Obligation satisfies this test.

E – REASONABLENESS

- 7.14 Planning Obligations should be reasonable in the circumstances of the particular case. As outlined above the original planning permission has lapsed without the commencement of development. There is no relationship to the Planning Obligation as there is no development in place. As per paragraph four of the Minute of Agreement, the Planning Obligation is deemed "pro non scripto".

- 7.15 The application to discharge the Planning Obligation satisfies this test.
- 7.16 The proposal complies with the five tests set out in Circular 3/2012: Planning Obligations and Good Neighbour Agreements.

8 CONCLUSION

- 8.1 The proposal to discharge a Planning Obligation associated with planning permission 05/00033/FUL complies with the five tests set out in Circular 3/2012: Planning Obligations and Good Neighbour Agreements.
- 8.2 The Planning Obligation is deemed “pro non scripto” as the planning permission has lapsed, without the commencement of development and therefore its terms are not enforceable.
- 8.3 There is no reason to not support this application however any future applications for redeveloping the site for housing would be assessed against Local Development Plan policies and restrictions prohibiting the use of the properties as Houses in Multiple Occupation would be applied.

9 RECOMMENDATION

- 9.1 It is recommended that this application should be approved and the Section 75 Obligation discharged.