

**FALKIRK COUNCIL**

**Subject:** MODIFICATION OF PLANNING OBLIGATION UNDER SECTION 75 OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 ENTERED INTO IN RELATION TO PLANNING PERMISSION F/96/0775 AS VARIED BY A FURTHER PLANNING OBLIGATION UNDER THE SAID SECTION 75 ENTERED INTO IN RELATION TO PLANNING PERMISSION F/2000/0316 WHICH MODIFICATION IS TO ALLOW THE ERECTION OF CERTAIN BUILDINGS ASSOCIATED WITH THE DEVELOPMENT PERMITTED BY FALKIRK COUNCIL IN TERMS OF PLANNING PERMISSION P/10/0617/FUL AND TO ALLOW THE USE OF THE SITE AFFECTED BY PLANNING PERMISSION P/10/0617/FUL FOR THE PURPOSES OF ALLOTMENT GARDENS INsofar AS AFFECTING THE SUBJECTS REGISTERED UNDER TITLE STG67476. AT LAND TO THE NORTH OF BEANCROSS FARM, THE HELIX, FALKIRK FOR FALKIRK COUNCIL - P/13/0293/75M

**Meeting:** PLANNING COMMITTEE  
**Date:** 22 August 2013  
**Author:** DIRECTOR OF DEVELOPMENT SERVICES

**Local Members:** Ward - Lower Braes

Councillor Steven Jackson  
Councillor Malcolm Nicol  
Councillor Alan Nimmo

**Community Council:** Lower Braes

**Case Officer:** Allan Finlayson (Senior Planning Officer), Ext. 4706

**1. INTRODUCTION**

- 1.1 Members will recall that planning permission P/10/0617/FUL - Formation of Allotments with Ancillary Parking, Storage Buildings, Toilets, Sheds, Greenhouses, Hardstanding, Internal Track and Fencing, was approved at the meeting of the Planning Committee on 1 December 2010.
- 1.2 A request has been made to modify an existing planning obligation Section 75 of the Town and Country Planning (Scotland) Act 1997, as amended, which restricts the permitted land use and the erection of buildings on part of the application site.

- 1.3 The application site is located on land to the west of the M9 from junction 5 to junction 6 at Beancross, Falkirk. The grant of planning permission P/10/0617/FUL allowed for the formation of 65 allotments for use by members of the public.
- 1.4 The approved allotments are a part of the Helix environmental improvement proposals.
- 1.5 The Helix project is an urban fringe environmental improvement project funded, in part, by BIG Lottery Living Landmarks.

## **2. REASON FOR COMMITTEE CONSIDERATION**

- 2.1 Falkirk Council is a partner of the Helix Trust and is the applicant.

## **3. BACKGROUND TO SECTION 75 OBLIGATION / SITE HISTORY**

- 3.1 The application site is part of an overall area for which planning permissions have previously been granted for hotel, conference and leisure uses. Planning Permissions F/96/0775 (erection of hotel and conference facilities, interpretive centre and associated car parking and landscaping – outline); F/95/0972 (erection of restaurant and associated car parking and landscaping); and F/2000/0316 (erection of leisure complex – outline) refer. This area has now been developed with the introduction of hotel uses (Travel Lodge and Metro Inns).
- 3.2 In terms of a Section 75 Agreement registered in the Land Register on 24 March 1999 and associated with Planning Permission F/96/0775 referred to above, any buildings on an area which forms part of the western plot of the application site must be for leisure / tourist purposes. Moreover, there is an absolute prohibition on building on the land which is now to form the remainder of the application site. The said Section 75 Agreement was varied by a Minute of Variation registered in the Land Register on 1 October 2002 associated with planning permission F/2000/0316 referred to above, to allow erection of buildings for leisure purposes on a further part of the western portion of the application site. As things stand, the aforementioned Section 75 Agreement and Minute of Variation permit erection of buildings only on part of the western plot of the application site (and then only for leisure purposes). Erection of buildings on the eastern plot of the application site is prohibited.
- 3.3 Falkirk Council now proposes a modification to the aforementioned S75 Agreement as previously amended to:
  - Remove any prohibition on erecting buildings on these parts of the subjects of the aforementioned S75 Agreement as previously amended as form part of the application site. Specifically permit the structures and hardstanding for the purposes of allotment gardens on these parts of the subjects of the S75 Agreement as previously amended as form part of the application site. This would permit the allotments development; and
  - Permit P/10/0617/FUL to proceed and avoid any doubt over whether the buildings comprised in the said development are related to “leisure purposes” as envisaged by the existing S75 Agreement, which was entered into in the context of a proposed hotel development.

#### **4. REQUEST TO MODIFY THE S75 OBLIGATION**

- 4.1 New legislation introduced in February 2011 by the Planning etc (Scotland) Act 2006 requires that where a person against whom a planning agreement is enforceable wishes to modify or discharge an agreement they have to apply to the planning authority seeking their agreement for the modification or discharge. The provisions are set out in the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 and Annex to Circular 1/2010 published in February 2011.
- 4.2 On receipt of an application, the planning authority is required to notify the owner of the land and/or any person against whom the planning agreement is enforceable and to allow a period of at least 21 days for those interested parties to submit representations. The planning authority is not required to notify or consider representations from other parties.
- 4.3 The planning authority is to issue notice of their decision in respect of the application within two months of the date of validation. The applicant has a right of appeal to Scottish Ministers if the planning authority fails to give notice of its decision within the two month period.

#### **5. CONSIDERATION OF REQUEST**

- 5.1 Details of the Section 75 Obligation and the request for its modification are provided earlier in the report.
- 5.2 No representations have been received from interested parties. INEOS (Grangemouth) has pipelines passing through the site. INEOS has indicated that the developer will require to consult with them to agree a method statement to ensure that standard conditions are satisfied for working in proximity to affected pipelines. The applicant's agent is aware of the INEOS pipeline location and has been informed of the requirement to contact INEOS to agree working methods.
- 5.3 A modification of the aforementioned S75 Agreement as previously varied to allow for the implementation of planning permission P/10/0617/FUL in respect of the erection of any buildings, access roads, parking areas, areas of hardstanding and fencing for the purposes associated with allotment gardens is considered to be acceptable.

**6. RECOMMENDATION**

- 6.1 It is recommended that the Planning Committee agree to modify the Section 75 Obligation restricting the site in order to permit development as approved by planning permission P/10/0617/FUL.**

**Pp**

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**Director of Development Services**

**Date: 13 August 2013**

**LIST OF BACKGROUND PAPERS**

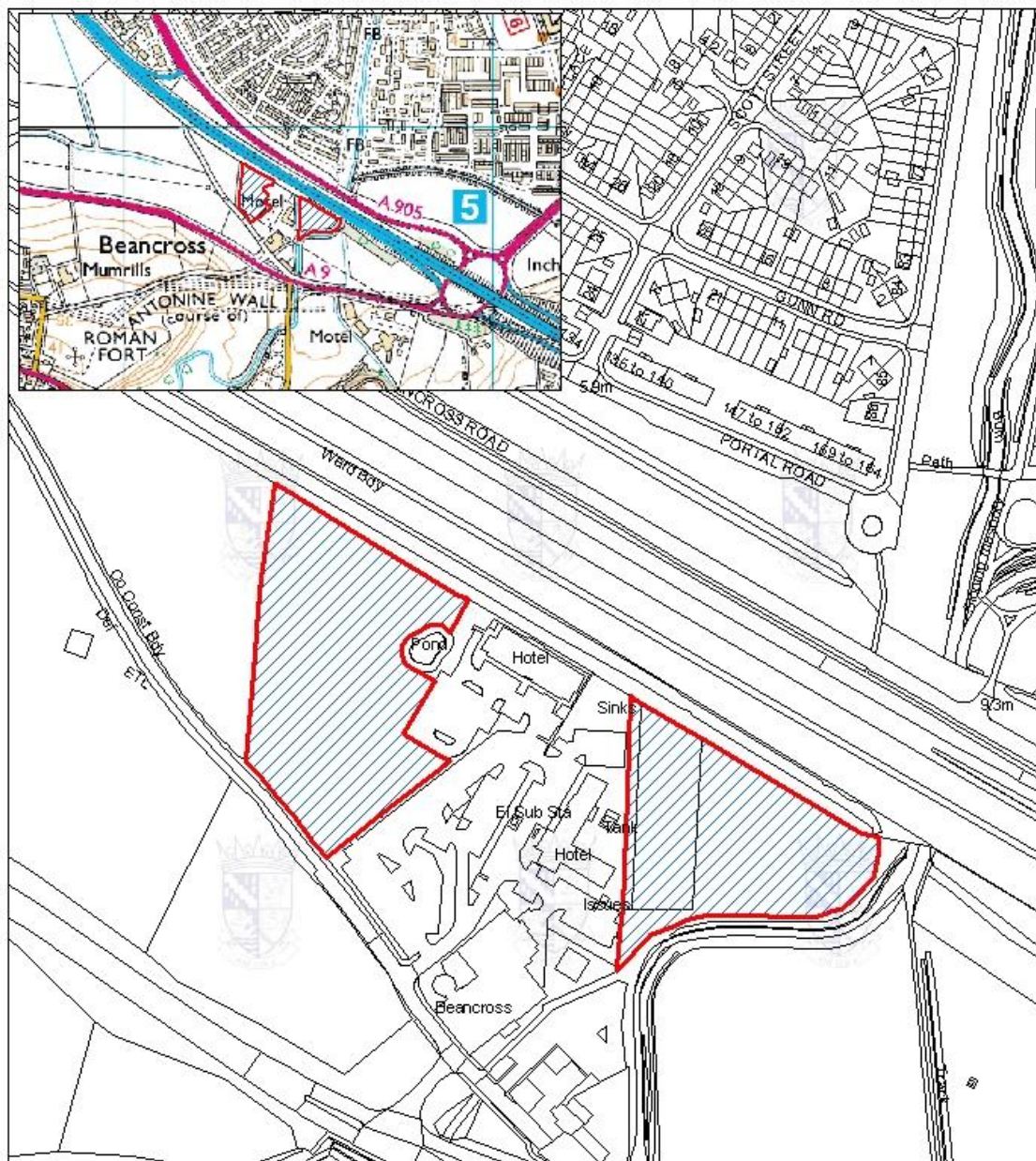
1. The Town and Country Planning (Modification and Discharge of Planning Obligation) (Scotland) Regulations 2010.
2. Annex to circular 1/2010 Planning Agreements, Planning Obligations and Good Neighbour Agreements (February 2011).

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504706 and ask for Allan Finlayson, Senior Planning Officer.

# Planning Committee

## Planning Application Location Plan **P/13/0293/75M**

This plan is for location purposes only. It should not be interpreted as an exact representation of the application site.



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