



Agenda Item 7

**MODIFICATION OF PLANNING
OBLIGATION UNDER SECTION 75 OF THE
TOWN AND COUNTRY PLANNING
(SCOTLAND) ACT 1997 ATTACHED TO
PLANNING PERMISSION P/12/0546/FUL
TO PROVIDE A MECHANISM WHICH
ALLOWS THE CONTRIBUTION AMOUNTS
PAYABLE TO REFLECT THE FINAL
NUMBER OF CONSENTED UNITS ON SITE
AT LAND TO THE SOUTH OF MYDUB
FARM, GLASGOW ROAD, DENNY FOR
AVANT HOMES (SCOTLAND MK)
LTD - P/18/0223/75M**

FALKIRK COUNCIL

Subject: MODIFICATION OF PLANNING OBLIGATION UNDER SECTION 75 OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 ATTACHED TO PLANNING PERMISSION P/12/0546/FUL TO PROVIDE A MECHANISM WHICH ALLOWS THE CONTRIBUTION AMOUNTS PAYABLE TO REFLECT THE FINAL NUMBER OF CONSENTED UNITS ON SITE AT LAND TO THE SOUTH OF MYDUB FARM, GLASGOW ROAD, DENNY FOR AVANT HOMES (SCOTLAND MK) LTD - P/18/0223/75M

Meeting: PLANNING COMMITTEE

Date: 15 August 2018

Author: DIRECTOR OF DEVELOPMENT SERVICES

Local Members: Ward - Denny and Banknock

Councillor Jim Blackwood
Councillor Fiona Collie
Councillor Paul Garner
Councillor Nigel Harris

Community Council: Denny and District

Case Officer: David Paterson (Planning Officer), Ext. 4757

1. DESCRIPTION OF PROPOSAL / SITE LOCATION

- 1.1 This application seeks to modify the Section 75 Planning Obligation attached to planning permission P/12/0546/FUL for Avant Homes' development on land south of Mydub Farm, Denny. The obligation provides a mechanism which allows the payment of developer contributions, in addition to any contributions already paid or scheduled, to reflect the final number of consented housing units prior to the completion of the 275th housing unit.
- 1.2 Any additional developer contribution towards the provision of education services and affordable housing, in addition to any contributions already paid or scheduled, would be paid prior to the completion of the 300th housing unit. This is provided always that no more than 299 housing units can be occupied until the relevant additional contributions have been paid.
- 1.3 In the event that the final number of consented units is less than the total of 319 units currently approved, and provided for in terms of development contributions, the landowners would be entitled to a repayment from the Council of the education contribution and affordable housing balancing payment, on their written request. This is to be paid not later than the completion of the 300th (or final, as the case may be) housing unit.

- 1.4 With respect to developer contributions towards the delivery of DEAR, clause 8.17 of the original Section 75 Obligation clarified the calculation procedures for the amount of residual developer contributions towards delivery of DEAR following the deduction of the cost to the developer of constructing part of DEAR obliged by the planning permission. This proposed modification would modify clause 8.17 to take into account any developer contributions payable in respect of any additional housing units, not already addressed, in determining the residual DEAR contribution.

2. REASON FOR COMMITTEE CONSIDERATION

- 2.1 The application requires consideration by the Planning Committee as the application to which the Section 75 Planning Obligation relates (ref. P/12/0546/FUL) was determined by the Planning Committee.

3. SITE HISTORY

- 3.1 Planning application P/12/0546/FUL for 307 new homes (including 46 affordable homes) and Denny Eastern Access Road (DEAR), including provision of greenspace, sustainable urban drainage and associated infrastructure was granted on 12 May 2015.
- 3.2 Planning application P/16/0633/FUL for the erection of 48 dwellinghouses (amendment to planning permission P/12/0546/FUL) was granted on 4 May 2017.
- 3.3 Planning application P/17/0356/75M for the modification of Planning Obligation under Section 75 of the Town and Country Planning (Scotland) Act 1997, attached to planning permission P/12/0546/FUL, insofar as the requirement to provide 46 units of affordable housing is removed in lieu of payment of an affordable housing commuted sum of £805,000 was granted on 16 August 2017.
- 3.4 Planning application P/18/0025/FUL for the substitution of house types and amendment of layout (amendment to planning permission P/12/0546/FUL) is a current application. This application is also on this agenda for consideration by the Planning Committee.

4. CONSULTATIONS

- 4.1 Corporate and Housing Services, the Transport Planning Unit and Children's Services have raised no objections.

5. COMMUNITY COUNCIL

- 5.1 The Denny and District Community Council has not made any representation on this application.

6. PUBLIC REPRESENTATION

- 6.1 No representations have been received.

7. DETAILED APPRAISAL

- 7.1 Under section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning etc. (Scotland) Act 2006), planning obligations are secured through an appropriate legal document to bind the owners and future owners of particular subjects. They may secure payment of a financial contribution to mitigate the impacts of development on land use, the environment and infrastructure.
- 7.2 Section 75A of the 2006 amendment establishes a formal process by which a party to the planning obligation may apply to discharge or modify the obligation.
- 7.3 Scottish Government Circular 3/2012 (Planning Obligations and Good Neighbour Agreements) sets out the circumstances in which planning obligations and good neighbour agreements can be used. The circular states that planning obligations should only be sought where they meet all of the following tests: -
- Necessary to make the proposed development acceptable in planning terms (the necessity test).
 - Serve a planning purpose and, where it is possible to identify infrastructure provision requirements in advance, should relate to Development Plans (the planning purpose test).
 - Relate to the proposed development either as a consequence of the development or arising from the cumulative impact of the development in the area (the relationship to the proposed development test).
 - Fairly and reasonably relate in scale and kind to the proposed development (the scale and kind test).
 - Be reasonable in all other aspects (the reasonable test).
- 7.4 The proposed modification to the planning obligation is considered to meet all the tests of circular 3/2012.
- 7.5 The purpose of the proposed modification is to secure an arrangement which addresses any further amendment to the layout of the development, notwithstanding any developer contributions already paid or scheduled, without modification to the Section 75 Obligation for each individual amendment. Any increase in the total number of consented housing units would be assessed to determine any appropriate developer contributions prior to the completion of the 275th housing unit at the site. Any appropriate contributions payable prior to the completion of the 275th housing unit as proposed would be calculated on the basis of the appropriate level of contribution at that time.

8. CONCLUSION

- 8.1 It is therefore recommended that Committee agree to modify the Section 75 Planning Obligation attached to planning permission P/12/0546/FUL in accordance with the details as set out within the application, the reason being that the proposed modification is considered to satisfy all of the policy tests of Scottish Government Planning Circular 3/2012 'Planning Obligations and Good Neighbour Agreements'.**

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pp Director of Development Services

Date: 7 August 2018

LIST OF BACKGROUND PAPERS

1. Falkirk Local Development Plan.
2. Scottish Government Planning Circular 3/2012 'Planning Obligations and Good Neighbour Agreements'.

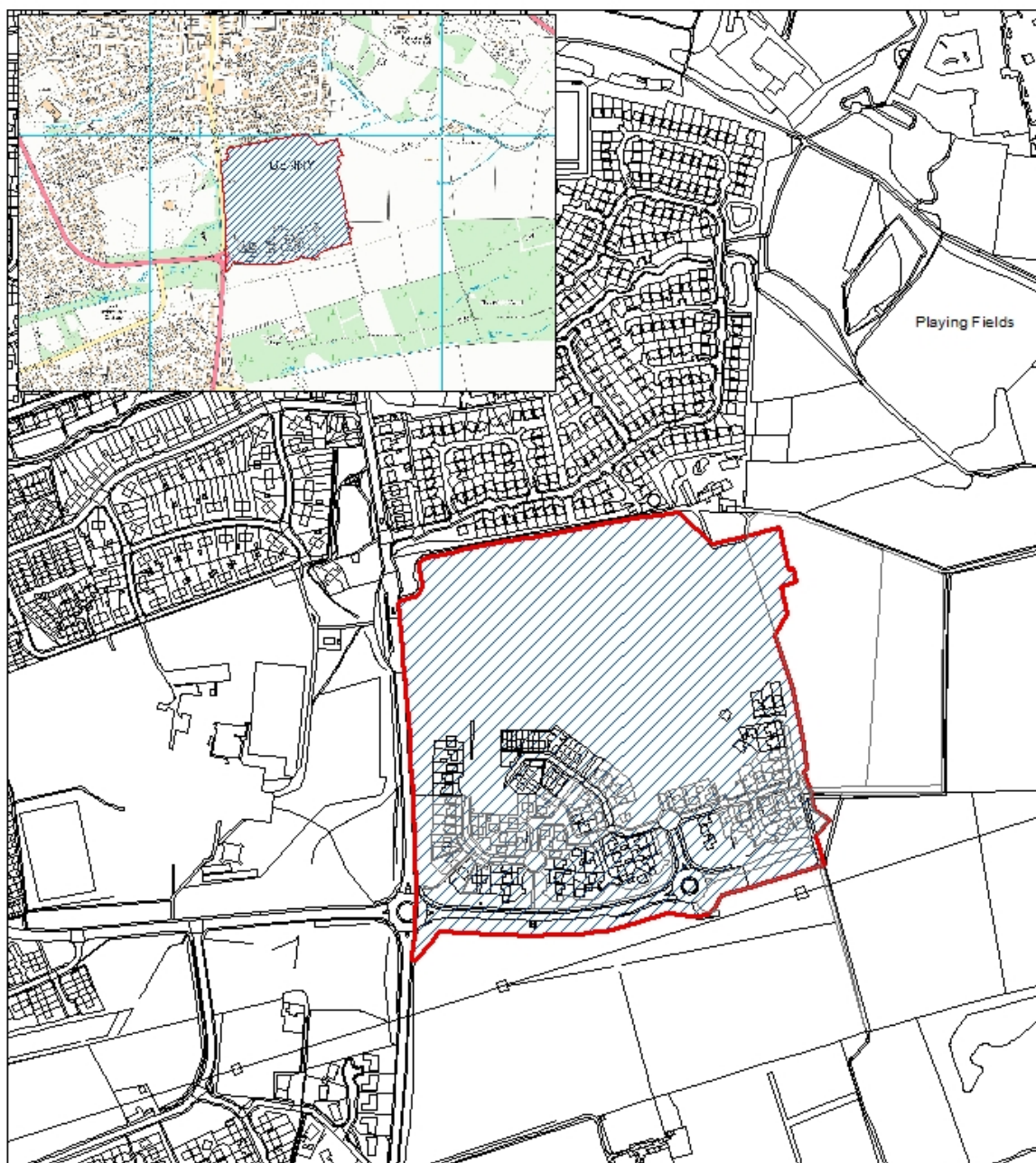
Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 504757 and ask for David Paterson, Planning Officer.

Planning Committee

Planning Application Location Plan

P/18/0223/75M

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



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