



## **Agenda Item 7**

**DISCHARGE OF PLANNING OBLIGATION ATTACHED TO PLANNING PERMISSION P/07/0275/REM WHICH REQUIRED THE PAYMENT OF CONTRIBUTIONS TOTALLING £200,000 TO BE APPLIED BY THE COUNCIL TOWARDS COUNCIL PROJECTS, DEFINED IN THE SECTION 75 AGREEMENT AS ANY OR ALL OF (A) THE COUNCIL'S BO'NESS HIPPODROME PROJECT, (B) WORKS RELATED TO THE COUNCIL'S BO'NESS TOWNSCAPE INITIATIVE AND (C) FALKIRK COUNCIL INITIATED TOWN CENTRE REGENERATION PROJECTS IMPROVING THE ENVIRONMENTAL ASPECT OF BO'NESS TOWN CENTRE AT LAND TO THE NORTH OF 44 DRUM FARM LANE BO'NESS, HARBOUR ROAD, BO'NESS FOR JOHN MOUBRAY CADELL AND OTHERS - P/19/0207/75D**

**FALKIRK COUNCIL**

**Subject:** DISCHARGE OF PLANNING OBLIGATION ATTACHED TO PLANNING PERMISSION P/07/0275/REM WHICH REQUIRED THE PAYMENT OF CONTRIBUTIONS TOTALLING £200,000 TO BE APPLIED BY THE COUNCIL TOWARDS COUNCIL PROJECTS, DEFINED IN THE SECTION 75 AGREEMENT AS ANY OR ALL OF (A) THE COUNCIL'S BO'NESS HIPPODROME PROJECT, (B) WORKS RELATED TO THE COUNCIL'S BO'NESS TOWNSCAPE INITIATIVE AND (C) FALKIRK COUNCIL INITIATED TOWN CENTRE REGENERATION PROJECTS IMPROVING THE ENVIRONMENTAL ASPECT OF BO'NESS TOWN CENTRE AT LAND TO THE NORTH OF 44 DRUM FARM LANE BO'NESS, HARBOUR ROAD, BO'NESS FOR JOHN MOUBRAY CADELL AND OTHERS - P/19/0207/75D

**Meeting:** PLANNING COMMITTEE  
**Date:** 18 November 2020  
**Author:** DIRECTOR OF DEVELOPMENT SERVICES

**Local Members:** Ward - Bo'ness and Blackness

Councillor David Aitchison  
Councillor Lynn Munro  
Councillor Ann Ritchie

**Community Council:** Bo'ness

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

[View this Application on Public Access](#)

**1. DESCRIPTION OF PROPOSAL / SITE LOCATION**

- 1.1 This application seeks the discharge of a legal agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997. The Section 75 relates to reserved matters approval reference P/07/0275/REM for the development of 181 residential units at The Drum. Under the terms of the Section 75 the applicants offered to pay the Council a contribution of £200,000 towards the Council's Bo'ness Hippodrome project, works related to the Council's Bo'ness Townscape Heritage Initiative and, Bo'ness town centre regeneration projects. The payments were to be made in 3 instalments linked to the occupation of the 15<sup>th</sup>, 80<sup>th</sup> and 178<sup>th</sup> units granted under the reserved matters approval.
- 1.2 The application site comprises 11 hectares of land north of 44 Drum Farm Lane, Bo'ness.

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

- 2.1 Reserved matters application P/07/0275/REM was determined by the Planning Committee. The Committee refused the application. It was approved by Scottish Ministers on appeal with the related Section 75 agreement. In accordance with Standing Orders it is for the Planning Committee to determine the application to discharge the Section 75.

## **3. SITE HISTORY**

Site history directly relevant to the application site:-

- 3.1 F/91/0251 - Development of Land (60 ha/150 acres) for Housing Purposes Outline - Refused 17 March 1992.
- 3.2 F/2003/0042 - Formation of Temporary Construction Access - Deemed permitted development - 24 October 2003.
- 3.3 F/2004/0063 - Mixed Use Development Comprising Residential, Business, Hotel, Leisure Facilities and Ancillary Works - Allowed on Appeal 02 November 2004.
- 3.4 P/07/0152/VRC - Modification of Condition 1 of Planning Permission F/2004/0063 and Modification of Condition 3 to extend the permission period by a further 12 months - Granted 27 July 2007.
- 3.5 P/07/0275/REM - Erection of 181 Residential Units and Associated Landscape and Roadworks - Allowed on Appeal 14 September 2010.
- 3.6 P/07/0985/DMO - Demolition of Farmhouse and Ancillary Buildings - Granted 06 December 2007.
- 3.7 P/08/0915/OUT - Mixed Use Development Comprising Residential, Business, Hotel, Leisure Facilities and Ancillary Works (Renewal of Outline Consent Ref. F/2004/0063) - Granted 05 May 2009.
- 3.8 P/17/0497/FUL - Erection of 41 No. Dwellinghouses and all Associated Works - Granted 17 August 2018.
- 3.9 P/18/0432/FUL – Erection of 64 dwellinghouses and associated infrastructure – Granted 05.08.2020
- 3.10 P/19/0490/FUL – Formation of open space, regrading of ground and associated landscaping and boundary treatments at the south part of the central open space identified in the Drum masterplan – Granted 11.05.2020.

- 3.11 P/19/0567/FUL – Formation of area of public open space and associated landscaping (forming the northern part of the central area of open space identified in the Drum masterplan), formation of sustainable urban drainage (SUDS) basin, formation of footpaths and installation of drainage infrastructure – Granted 13.12.2019.

Relevant planning history relating to the wider Drum residential development:-

- 3.12 F/98/0543 - Installation of Service Road and Drainage Infrastructure - Granted 04 November 1998.

#### **4. CONSULTATIONS**

- 4.1 No consultations relevant.

#### **5. COMMUNITY COUNCIL**

- 5.1 No representation has been received from the Bo'ness Community Council.

#### **6. PUBLIC REPRESENTATION**

- 6.1 Two letters of objection have been received. The concerns raised by the objection letters are:-
- The developer contribution could still be used to make improvements to community facilities in Bo'ness
  - The developer contribution could be used to maintain areas of open space at earlier phases of The Drum residential development.
  - It appears that the applicant is endeavouring to renege on the obligations of the Section 75 Agreement.

#### **7. BACKGROUND TO DISCHARGE OF SECTION 75 PLANNING OBLIGATION**

- 7.1 Reserved matters approval P/07/0275/REM was granted by Scottish Ministers in 2010 following conclusion of a Section 75 agreement. The Section 75 and staged payments are dependent on the occupation of the 15<sup>th</sup>, 80<sup>th</sup> and 178<sup>th</sup> units consented by reserved matters approval P/07/0275/REM.
- 7.2 Since 2010, reserved matters approval P/07/0275/REM, has been superseded by other detailed planning permissions for the build out of The Drum as detailed in section 3 of this report. None of the payments have been made to the Council. There is no prospect of the payments under the Section 75 being made to the Council. There is no obligation on the applicants and land owners to pay the Council the monies.

## **8. REQUEST TO DISCHARGE THE SECTION 75 PLANNING OBLIGATION**

- 8.1 The applicants request that the Section 75 be discharged as it is no longer necessary, does not now serve any planning purpose and it is therefore not reasonable for the obligation to continue in force as a burden on the land title.

## **9. CONSIDERATION OF REQUEST**

- 9.1 Scottish Government Circular 3/2012, 'Planning Obligations and Good Neighbour Agreements', advises that planning authorities should take into account any changes in circumstances which mean that the obligation is no longer reasonable and should be discharged.
- 9.2 Planning Obligations should only be sought where they meet all of the following tests:-
- Necessary to make the proposed development acceptable in planning terms;
  - Serve a planning purpose and, where it is possible to identify infrastructure provision requirements in advance, should relate to Development Plans;
  - Relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area;
  - Fairly and reasonably relate in scale and kind to the proposed development;
  - Be reasonable in all other respects;
- 9.3 Circumstances have changed since reserved matters approval was granted in 2010. That approval cannot now be implemented such that payments would be due to the Council for the purposes outlined in the Section 75. There is no prospect of the monies being received. The Section 75 is therefore not necessary and serves no planning purpose.
- 9.4 The proposed payments were offered voluntarily by the applicants. It was not something sought at the time by the Council. In relation to the advice and guidance in circular 3/2012 it is also unusual to have a Section 75 that relates to an application for approval of reserved matters. More normally if a Section 75 is deemed necessary it is attached to an outline planning permission or detailed planning permission. Even if monies were due to be paid it is doubtful whether the terms of the Section 75 could be enforced.
- 9.5 In relation to the advice and guidance in circular 3/2012 it is also questionable whether the purposes for which the monies were to be paid relate to the reserved matters development that was approved on appeal or could be said to be needed to mitigate the impacts of that development. The payments would not relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area.

## **10. PUBLIC REPRESENTATIONS**

- 10.1 There is no prospect of the monies being received by the Council. The Section 75 relates to a development which cannot now be built. There is no obligation on the applicant and land owner to make the payments to the Council. The terms of the Section 75 are no longer applicable.

## **11. CONCLUSION**

- 11.1 The Section 75 planning obligation attached to reserved matters approval P/07/0275/REM is not considered to meet the tests set out in planning circular 3/2012, 'Planning Obligations and Good Neighbour Agreements'. This is due to a change in circumstances. Also, because the purposes for which the monies were to be offered to the Council do not relate in scale and kind to the development that at the time was being proposed.

## **12. RECOMMENDATION**

- 12.1 **It is recommended that the Planning Committee agree to Discharge the Planning Obligation.**

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**pp Director of Development Services**

**Date:** 6 November 2020

### **LIST OF BACKGROUND PAPERS**

1. Objection received from Mr Craig Arthur, 2 Muirhouses Crescent, Bo'ness, EH51 9DH on 20 April 2019.
2. Objection received from Ms Emily Benbow, 37 Hillside Grove, Bo'ness, EH51 9RL on 23 May 2019.

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

## **Policy Schedule**

There are no policy considerations in terms of the Falkirk Local Development Plan.

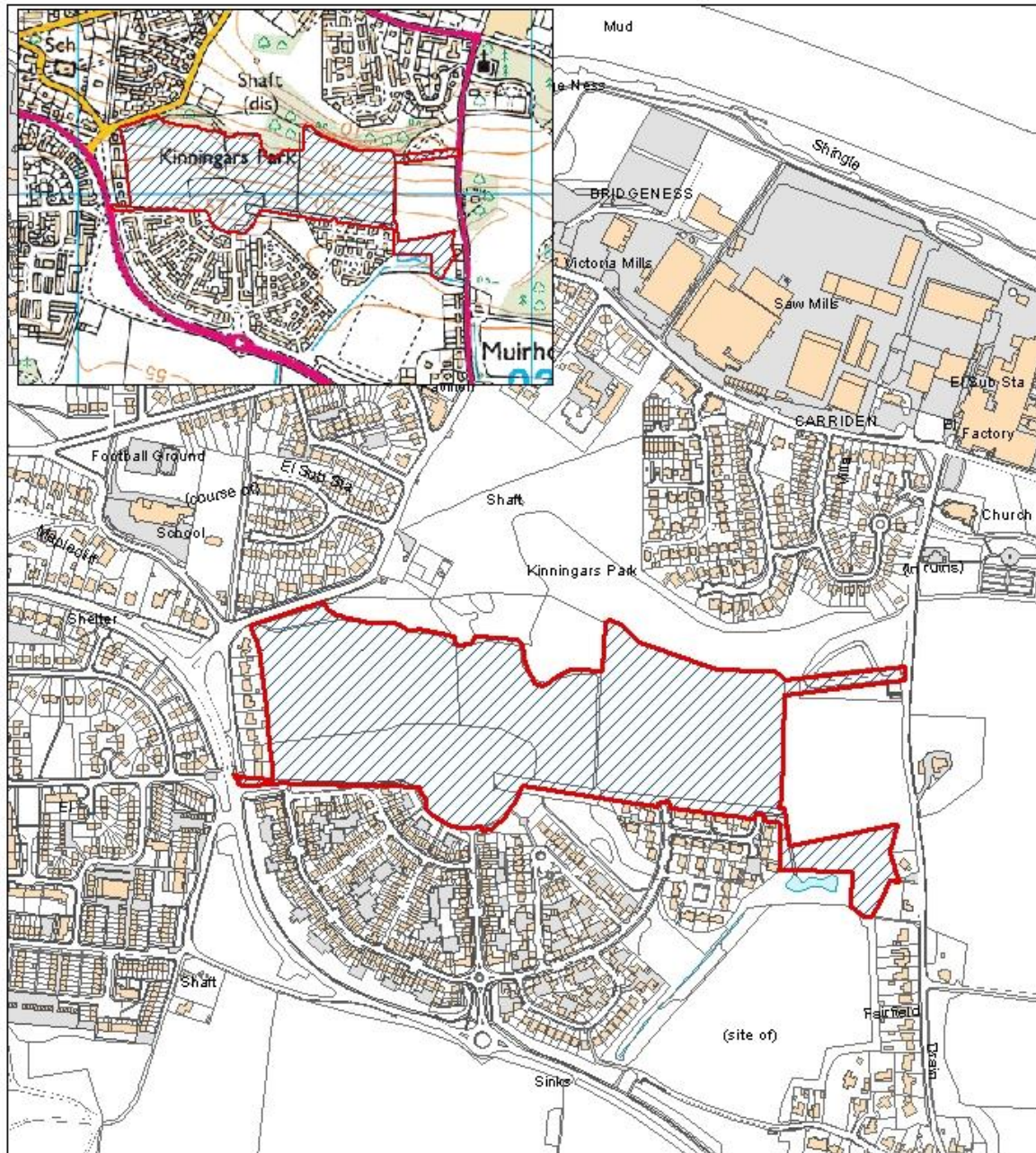


# Planning Committee

## Planning Application Location Plan

**P/19/0207/75D**

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



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