

Stirling Council

Agenda Item No. 9

Planning & Regulation Panel

Date of Meeting: 3 August 2021

Non Exempt

(Appendix 3 EXEMPT from publication)

Park of Keir Development

Purpose & Summary

The purpose of this report is to bring the section 75 agreement (the “S75 Agreement”) negotiated between the Council, Park of Keir Partnership Ltd (the “Developer”) and Allan Duncan King (the “Landowner”) before the Council’s Planning and Regulation Panel (the “Panel”) for scrutiny. At Council on 15 March 2018, Council resolved that the S75 Agreement would be referred to Panel for scrutiny.

Following the scrutiny of Panel, officers will exercise delegated authority under G5 of the Chief Executive’s Scheme of Sub-Delegation before passing to the Scottish Ministers.

Recommendations

Planning & Regulation Panel is asked to:

1. note the contents of this report; and
2. note the terms of the S75 Agreement found at **Appendix 1**.

Resource Implications

The purpose of the S75 Agreement is to mitigate the impact of the development on local communities and the Council. This report details how the S75 Agreement reached with the Developer and the Landowner exceeds the minimum conditions imposed by the Scottish Ministers in their Notice of Intention.

Legal & Risk Implications

Section 75 of the Town and Country Planning (Scotland) Act 1997 allows a planning authority to enter into a legally binding contract with developers. The purpose of such agreements is to regulate the use of land or secure a financial contribution toward identified infrastructure impacted by the proposed development.

The legal position is set out at **Appendix 3 (Exempt)**.

1. Background

Planning History

- 1.1. The history of the planning application is fully narrated in the note provided by CMS Cameron McKenna Nabarro Olswang LLP dated 15 July 2021 and found at **Appendix 2**. It is briefly repeated here.
- 1.2. In July 2014, the Park of Keir Partnership submitted an application to the Council for planning permission in principle for a development (the "Development"). The application was refused by the Panel on 8 December 2015, in line with the recommendation of the Chief Planning Officer. The basis for refusal was that the Development would be contrary to the Local Development Plan (the "LDP"). The Developer appealed the Panel's decision to the Scottish Ministers. In most cases the Scottish Ministers delegate their powers to determine such an appeal to a Reporter. In this instance they confirmed that they would determine the appeal themselves, taking into consideration the report submitted by their Reporter. A public inquiry was held in Dunblane which included hearing sessions and site inspections. The Reporter issued his report to the Scottish Ministers in December 2016.
- 1.3. The Reporter recommended that the appeal be refused and that planning permission for the Development should not be granted. However, the Scottish Ministers decided to allow the appeal and grant planning permission on the basis that the proposals were of national importance. This was subject to planning conditions and the conclusion of a suitable legal agreement.
- 1.4. The Notice of Intention issued on 30 August 2017 contained the conditions that formed the basis for the negotiations for the S75 Agreement. The conditions form a baseline minimum that the Scottish Ministers expect the Developer to meet in order to obtain planning permission. It is not open to the Council to unilaterally alter those baseline conditions. Since the Notice was issued, the Council has been engaged in negotiations with the Developer to conclude a suitable agreement which captures those conditions in a legally enforceable document.

Requirements for the Legal Agreement

- 1.5. The S75 Agreement can be found in full at **Appendix 1**. The contents of the S75 Agreement are fully explained in the note found at **Appendix 2**. The S75 Agreement is now finalised and has been signed on behalf of the Developer and Landowner. When it is signed by the Council, the S75 Agreement will be registered in the Land Register. The current deadline from Scottish Ministers for submission of the agreement to the Keeper of the Land Register is 31 August 2021.

Scrutiny Process

- 1.6. The negotiation of the S75 Agreement was a confidential legal process. However, the Council committed to providing Panel members the opportunity for scrutiny of the agreement before it was signed. On 15 March 2018, Council resolved as follows:-

Council recognises the desire of the communities of Dunblane and Bridge of Allan to see a transparent process over the negotiation of conditions relating to the planning application for the development of Park of Keir. Council resolves:

- *that the Council confirms its desire that the negotiations on the conditions set by the ministers are open and transparent; and*

- *that in the process an appropriate committee/panel of the Council is given the opportunity to scrutinise any agreement prior to it going to ministers.*
- 1.7. Updates on the progress of negotiations were provided to the Chair and Vice Chair of the Panel, the Convener and Vice Convener of the Council's Environment & Housing Committee and the Leader of the Council. Updates were also provided to the Community Councils for Dunblane and Bridge of Allan and to local ward members on 4 and 15 May 2018, 7 February 2019 and 22 August 2019. There has been more recent communication with the Bridge of Allan and Dunblane Community Councils in responses to emails. By the end of 2019, the agreement was substantially concluded but the Developer required time to cost the obligations and to ensure that sufficient commercial financing was in place. With the intervening coronavirus pandemic, this took longer than expected and there has consequently been an extended period of relative inactivity during which there was nothing further to report to members or to the public.

2. Considerations

- 2.1 The conditions contained in the Notice of Intention are baseline conditions and the Council has no ability to unilaterally change them. These conditions are the minimum that the Scottish Ministers require to be contained in the S75 Agreement.
- 2.2 Paragraph 3.2 of the note at **Appendix 2** contains detail of how the S75 Agreement meets those minimum requirements or surpasses them. It can be seen that in many instances the Council has negotiated an improvement on the baseline condition for the benefit of the community or has obtained an enforceable commitment ensuring the Developer's and Landowner's compliance.
- 2.3 Further considerations are set out in a confidential legal advice note which can be found at **Appendix 3 (Exempt)**.

3. Implications

Equalities Impact

- 3.1 This application was assessed in terms of equality and human rights. Any impact has been identified in the Consideration/Assessment section of this report.

Fairer Scotland Duty

- 3.2 This section is not applicable.

Climate Change, Sustainability and Environmental Impact

- 3.3 An Environmental Impact Assessment is not required.

Other Policy Implications

- 3.4 Not applicable.

Consultations

- 3.5 Not applicable.

4. Background Papers

- 4.1 Planning Application file 14/00455/PPP. File can be viewed online at: [View Application](#)

5. Appendices

- 5.1 **Appendix 1** – S75 Agreement between Stirling Council and Allan Duncan King and Park of Keir Partnership
- 5.2 **Appendix 2** – Background note by CMS Cameron McKenna Nabarro Olswang LLP dated 15 July 2021.
- 5.3 **Appendix 3** – Legal advice note by CMS Cameron McKenna Nabarro Olswang LLP dated 20 July 2021 – **EXEMPT.**

6. Exempt Information

- 6.1. Appendix 3 to this report is exempt under Paragraph 12 of Schedule 7A of the Local Government (Scotland) Act 1973, as it contains confidential legal advice provided to the Council in connection with a matter affecting the authority.
- 6.2. The Council has sought external legal advice on the S75 Agreement. Legal advice attracts legal privilege and is confidential between a legal advisor and their client. Therefore this appendix is being withheld from public view. Any requests for future disclosure of this advice would be subject to analysis at that time in terms of the available exemptions in the Freedom of Information (Scotland) Act 2002.

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Details of Convener(s), Vice Convener(s), Portfolio Holder and Depute Portfolio Holders (as appropriate) consulted on this report:	Cllr Alasdair MacPherson Cllr Danny Gibson
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Wards affected:	Ward 3
Key Priorities:	N/A
Key Priority Considerations:	N/A
Stirling Plan Priority Outcomes: (Local Outcomes Improvement Plan)	N/A

