
Report To:	The Planning Board	Date:	2 September 2020
Report By:	Head of Regeneration and Planning	Report No:	20/0001/MP Plan 09/20
Contact Officer:	David Ashman	Contact No:	01475 712416
Subject:	Discharge of planning obligation (refers to Planning Permission 15/0300/IC) at Land at 53, 54 and 55 Shore Street, Gourock		



SUMMARY

- The proposal presents no conflict with the Inverclyde Local Development Plan.
- No objections have been received.
- The recommendation is to **DISCHARGE THE SECTION 75 AGREEMENT.**

Drawings may be viewed at:

<https://planning.inverclyde.gov.uk/Online/applicationDetails.do?activeTab=documents&keyVal=QAVWW7IM00E00>

SITE DESCRIPTION

The application site comprises a gap in the Shore Street frontage between a 4 storey tenement to the north and a two and a half storey dwelling to the south. It was formerly occupied by a villa and an advertisement hoarding. The site steps up sharply from Shore Street beyond the solum of the former building and is unmaintained, although it is screened from public view on Shore Street by a

2.4 metres high timber screen fence. Amenity open space lies on the opposite side of Shore Street with the Gourock-Glasgow Railway Line beyond.

PROPOSAL

The applicant seeks discharge of an Obligation in the form of a Section 75 Agreement relating to the site at 53, 54 and 55 Shore Street, Gourock under the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010. The Obligation burdens the application site which was linked with the associated planning permission 15/0300/IC for residential development at Kirn Drive, Gourock but planning permission 15/0300/IC lapsed without implementation on 26 May 2019.

Clause 4 of the Planning Obligation sets out that:

"In the event that the Planning Permission lapses or is quashed, revoked or otherwise withdrawn prior to the Commencement of Development, any obligations in this Agreement shall lapse in their entirety and cease to be enforceable by any of the parties against the others."

The Applicant therefore requests that the Planning Obligation is discharged as it is no longer enforceable.

BACKGROUND

Planning permission 15/0300/IC was granted in May 2016 for the construction of 41 two storey terrace, semi-detached and detached houses, with associated roads, parking and landscaping within the grounds of the former Kempock House at Kirn Drive, Gourock. As the proposal was for a development of more than 20 dwellings and was a prescribed site in Schedule 6.1 to Policy RES4 of the 2014 Inverclyde Local Development Plan there was a requirement that the developer contribute to meeting affordable housing requirements in the Glasgow and the Clyde Valley Housing Need and Demand Assessment for Inverclyde.

It was concluded that the most appropriate form of provision were residential units off-site, specifically on the vacant site at 53, 54 and 55 Shore Street, Gourock. This was within the same housing market area and the site was within the control of the applicant, Baronial Consultancy Ltd, presently seeking discharge of the Obligation. In order to ensure delivery of the affordable housing provision (in this particular instance it was originally 9 flatted dwellings), a Section 75 Agreement was to be entered into among the applicant, the Council and a Housing Association to take forward delivery of the site.

Under the terms of the Section 75 Agreement, the applicant was to, within 3 months of works commencing at the Kirn Drive site, enter into an agreement to transfer the title of the site at Shore Street to Oak Tree Housing Association. The Housing Association was then to commence construction of the required flats within 24 months of the transfer of the title of the site to them and to complete construction within 48 months. If the applicant did not transfer title of the Shore Street site to the Housing Association within the required 3 months period then the applicant and the Council were to enter into an agreement to transfer the title to the Council. Furthermore, if the Housing Association did not complete the construction of the flats within the 48 month period then within a subsequent 12 months period they were to enter into an agreement to transfer the Shore Street site to the Council. All this was to be done at nil cost to the Council.

The Section 75 Agreement was registered and planning permission 15/0300/IC issued. This planning permission was, however, never implemented and a second planning permission, 16/0309/IC, for a smaller scale proposal was granted in April 2017. This is the main planning permission which was implemented on the Kirn Drive site. There were two subsequent amendments to this permission (planning permission 17/0144/IC for an amendment to the site entrance and 9 plots, granted in July 2017 and planning permission and 17/0297/IC for an

additional house, granted in February 2018) but for the purposes of the assessment of this application planning permission 16/0309/IC is the crucial one.

The Section 75 Agreement was amended to apply the Obligation for the affordable housing provision under planning permission 15/0300/IC to planning permission 16/0309/IC in April 2017. Planning permission was granted to the Housing Association in May 2017 for the construction of 8 new build flats at 53, 54 and 55 Shore Street. 8 rather than 9 flats was accepted to be the more feasible scale of proposal.

THE LEGISLATIVE POSITION

The Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 introduce a right to apply to the Council to have a Planning Obligation modified or discharged. They also introduced a right of appeal to the Scottish Ministers where a planning authority refuses an application or fails to determine it within the set time period of two months. It should be noted that it is more than 2 months since the application was submitted but the applicant has agreed to a non-statutory timescale extension in recognition of the delays and difficulties in the Planning Board sitting due to the Covid-19 situation.

The Regulations allow a planning authority to approve or refuse such an application but not to determine that the Obligation should be subject to any modification other than set out in the application. The planning authority is required to take into account any changes in circumstances which mean that the Obligation is no longer reasonable. An application for discharge or modification of an Obligation has to be assessed against the same criteria for the creation of an Obligation. These are set out in Circular 1/2010 as follows:

- Necessity
- Planning purpose
- Relationship to proposed development
- Scale and kind
- Reasonableness

These form the basis of my assessment of the proposal.

DEVELOPMENT PLAN POLICIES

No consideration of development plan policies is required in this instance.

CONSULTATIONS

No consultations were required.

PUBLICITY

The nature of the proposal did not require advertisement.

SITE NOTICES

The nature of the proposal did not require a site notice.

PUBLIC PARTICIPATION

No representations were received.

ASSESSMENT

The Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 introduced a right to apply to the Planning Authority to have a Planning Obligation modified or discharged.

In assessing this application to discharge the Obligation the history of developments has to be examined.

As noted above, the Section 75 Agreement was amended with the aim of re-applying the burdens associated with the original 15/0300/IC planning permission. Unfortunately, it is not possible to now enforce the Obligation as the applicant was not notified of the amendment which was the result of the 16/0309/IC planning application. The sequence of events has to be explained in order to understand how this situation has arisen.



Whilst planning application 16/0309/IC for the Kirn Drive site was under consideration planning application 16/0262/IC for the proposed 8 flats at 53 Shore Street was also under assessment. As part of the planning application process an applicant is required to make a site ownership declaration confirming that they are the owners of an application site or identify who the owner(s) is/are and notifying them accordingly. The Housing Association notified Merchant Homes as the owners of the Shore Street site and declared this on the ownership certificate. No correspondence was received from Merchant Homes or the Housing Association to indicate that this was not the case. Indeed, most of the application plans for planning application 16/0309/IC at Kirn Drive were by Merchant Homes and it appeared that Merchant Homes had been appointed to build out the sites at Kirn Drive and Shore Street, with Baronial Consultancy Ltd having sold on their interest in the Shore Street site. Unfortunately that was an incorrect presumption. It is now clear that the Housing Association made an incorrect statement in their ownership certificate and that Baronial Consultancy Ltd, in fact, retained site ownership at 53, 54 and 55 Shore Street.

Baronial Consultancy Ltd therefore did not receive the appropriate notification under the Modification and Discharge of Planning Obligations procedure to vary the Section 75 Agreement and therefore, legally, the burden no longer applies to the applicant and cannot be enforced. It is also the case that planning permission 15/0300/IC to which the existing burden on the Shore Street site applies has now lapsed. On this basis the applicant seeks discharge of the obligation.

With regard to the assessment criteria set out in Circular 1/2010 it would now be unreasonable of the Council to hold the applicant to the requirements in the Obligation.

Notwithstanding this, the Board should also be aware of developments and considerations subsequent to the above events which provide a context for their decision.

Whilst mindful of the requirements of the Section 75 Agreement and the subsequent procedural issues which have been uncovered, the Housing Association still intended to build out planning permission 16/0262/IC. However, in November 2018 they advised the Council that the construction cost per flat rendered the development unviable and that they would not build the flats for which they had obtained planning permission. This was corroborated recently by a volume housebuilder who had considered constructing the flats as approved. The advice provided was that the condition of the site, the level of retention which would be required and the relationship with the adjacent buildings on either side made the construction approved under planning permission 16/0262/IC commercially unviable. Whilst it was not obvious at the time the application was under consideration, subsequent events indicate that the development economics suggest the site could not be developed as anticipated by planning permission 16/0262/IC and that there would probably require to be a commercial element to any proposal for the site to ensure an ongoing financial return. This would inevitably reduce the number of flats if, indeed, any could viably form part of a future development proposal.

It therefore follows that, if the terms of the Section 75 Agreement had been fully implemented, the Council could potentially have inherited a gap site with significant barriers to a development of the nature anticipated by planning permission 16/0262/IC.

The solution to securing the provision of an affordable housing element associated with the private housing development at Kirn Drive on a remote site was seen as a unique approach but should such an arrangement be proposed in the future then the Council is now better placed to ensure that a fully detailed and costed project would need to be presented to provide the necessary level of confidence that a development could be delivered.

The Board should also be aware that under the adopted 2019 Inverclyde Local Development Plan the previous policy of seeking an affordable housing provision within this part of the built-up area of Inverclyde no longer applies. The requirement for an affordable housing contribution from all private housing development sites across all of Inverclyde was removed, so as to enhance the viability of private house development on these sites, and also because through the land allocated by the Plan and the More Homes Scotland programme, it was considered likely that targets for affordable housing could be reached without the need for an area wide affordable housing policy. The Board will be aware that the housing chapter of the Local Development Plan was recently quashed by a Court of Session decision. It is not considered that this changes the position of there being no policy seeking an affordable housing provision within this part of Inverclyde.

Taking all of these matters together, therefore, it is concluded that it would be unreasonable to retain the burden of the Section 75 Agreement as the 15/0300/IC planning permission to which it relates has lapsed and that, therefore, the Obligation should be discharged.

RECOMMENDATION

That the Section 75 Agreement in respect of the site at 53, 54 and 55 Shore Street, Gourock be discharged.

Stuart Jamieson
Head of Regeneration and Planning

Local Government (Access to Information) Act 1985 – Background Papers. For further information please contact David Ashman on 01475 712416