

To: Planning and Climate Change Policy Board

On: 19 March 2024

Report by: Chief Executive

Heading: S75 Agreements - Update

1. Summary

- 1.1 This report seeks to provide an update in respect of S75 agreements which are currently being negotiated by officers following a decision being made in relation to the respective planning application.
 - 1.2 S75 agreements secure planning obligations which seek to mitigate the impacts of a proposed development and make it acceptable in planning terms. They can be used to secure financial contributions to, or in-kind provision of, necessary new social and community infrastructure to support new developments.
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2. Recommendations

- 2.1 It is recommended that the Board:
 - (i) Note the ongoing negotiations which are taking place in respect of securing planning obligations which will be secured by a Section 75 agreement, in accordance with Section 75 of the Town and Country Planning (Scotland) Act 1997.
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3. Background

- 3.1 Planning obligations seek to mitigate the impacts of a proposed development and make it acceptable in planning terms.

They can be used to secure financial contributions to, or in-kind provision of, necessary new social and community infrastructure to support new developments.

- 3.2 Obligations are usually entered into in accordance with Section 75 of Town and Country Planning (Scotland) Act 1997, as amended, and are commonly referred to as S75 Agreements. They are often used where a planning condition or another form of legal agreement would not be appropriate to address the impact of the development in question.
- 3.3 Planning obligations can be entered into between a person with an interest in the land and the planning authority; or via a unilateral undertaking by a person with an interest in the land. S75 agreements run with the land and the obligation continues to be enforceable against any subsequent owner of the land until such time as the details of the agreement are fully discharged by the local planning authority.
- 3.4 Scottish Government's policy on Planning Obligations is expressed in Circular 3/2012 (Planning Obligations and Good Neighbour Agreements - Revised 2020). The Circular sets out five tests which must be met when seeking to secure a planning obligation:
 - Necessary to make a proposal acceptable in planning terms (and overcome a barrier to the approval of planning permission);
 - Serve a planning purpose where it is possible to identify infrastructure provision requirements to advance, should relate to development plans;
 - Be related to the proposed development either as a direct consequence of it or arising from the cumulative impact of development in an area;
 - Fairly and reasonably relate in scale and kind to the proposed development (provide or contribute to the provision of infrastructure that would not be necessary were it not for the development, on a proportionate pro-rata basis as appropriate, but not to resolve existing deficiencies); and
 - Be reasonable in all other respects.
- 3.5 A number of planning applications have been approved subject to a Section 75 agreement being put in place. For information, it should be noted that planning consent is not issued until such times as the Section 75 agreement has been signed and registered as required.
- 3.6 The following applications are currently subject to Section 75 negotiations:
 - 19/0749/PP: Erection of residential development comprising 96 dwellings, with associated open space, roads, access, landscaping, engineering and infrastructure works at **40 Rannoch Road, Johnstone**;
 - 22/0178/PP: Residential development comprising 59 dwellinghouses and 24 flats, including access, drainage, landscaping and associated works at a site between **Sandieland Wood and Florish Road, Erskine**; and
 - 22/0481/PP: Erection of residential development comprising 64 dwellings with associated road and drainage infrastructure at **former St. Brendans Social and Recreation Club, Stirling Drive, Linwood**.

19/0749/PP: 40 Rannoch Road, Johnstone

- 3.7 The above noted application relates to the erection of a residential development comprising 96 dwellings, with associated open space, roads, access, landscaping, engineering and infrastructure works.
- 3.8 The application was approved subject to conditions and a S75 legal agreement at the meeting of the Communities, Housing and Planning Policy Board in January 2022.
- 3.9 The S75 legal agreement seeks to secure the provision of affordable housing units by way of 8 affordable homes.
- 3.10 Following the Board decision, a draft S75 agreement has been exchanged between all parties concerned. However, to date, no agreement has been reached.
- 3.11 Negotiations are ongoing between officers and representatives of the applicant and concern the mechanism and triggers associated with the delivery of the 8 affordable housing units.

22/0178/PP: Site between Sandieland Wood and Flourish Road, Erskine

- 3.12 The above noted application relates to the erection of residential development comprising 59 dwellinghouses and 24 flats, including access, drainage, landscaping and associated works.
- 3.13 The application was approved subject to conditions and a S75 agreement at the meeting of the Planning and Climate Change Policy Board in November 2022.
- 3.14 The S75 agreement is required to secure the following:
 - 24 affordable flats;
 - Financial contribution in respect of education provision within the school catchment; and
 - The provision of a formal pedestrian crossing point on Florish Road, Erskine.
- 3.15 Following the board decision, a draft S75 agreement has been exchanged between all parties concerned. However, to date, no agreement has been reached.
- 3.16 Negotiations had been ongoing in respect of a financial contribution towards education provision and the details relating to the formal pedestrian crossing point on Florish Road. Delays however had been encountered as a result of the wider education issues relating to school estate within the catchment in question.
- 3.17 Furthermore, we would advise that following the demise of the applicant, Stewart Milne Group Ltd, no further discussions have been had and in this

regard we are awaiting confirmation from the administrator or any new developer / landowner on how they wish to proceed.

22/0481/PP: Former St. Brendans Social and Recreation Club, Stirling Drive, Linwood

- 3.18 The above noted application relates to the erection of a residential development comprising 64 dwellings with associated road and drainage infrastructure.
- 3.19 The application was approved subject to conditions and a S75 agreement at a meeting of the Planning and Climate Change Policy Board in November 2023.
- 3.20 The S75 agreement is required to secure the following:
- Financial contribution in respect of enhancements to an offsite play park to the north of Gilmartin Road, Linwood and associated tree planting;
 - Financial contribution in respect of education provision within the school catchment; and
 - The provision of affordable housing in line with the respective LDP policies.
- 3.21 Following the board decision, details of the applicant's legal representatives have been requested to allow discussions relating to the S75 agreement to commence. To date, officers have not been able to obtain such details and as such discussions relating to the S75 agreement have been delayed.

Implications of the Report

1. **Financial** – Should the S75 agreements be signed and registered planning consent will be issued and thereafter any financial contributions will require to be paid to the Council in line with the respective agreement. Payments received would then be released to the appropriate service as required to meet the obligations set out in the associated legal agreement or, if not spent in accordance with the agreement, returned to the applicant where applicable.
2. **HR & Organisational Development** – None.
3. **Community/Council Planning** – None.
4. **Legal** – S75 agreements require to be negotiated in line decision made at the respective Board meeting and thereafter registered as appropriate following agreement and signing. Thereafter obligations will require to be discharged or varied where appropriate when monies have been spent or returned.
5. **Property/Assets** – None.
6. **Information Technology** – None.

7. **Equality & Human Rights -**

- (a) The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.

8. **Health & Safety** – None.

9. **Procurement** – None.

10. **Risk** – None.

11. **Privacy Impact** – None.

12. **COSLA Policy Position** - None.

13. **Climate Risk** – None.

Author: David Love, Chief Planning Officer
Tel: 07483410182; Email: david.love@renfrewshire.gov.uk