

SCOTTISH BORDERS COUNCIL

PLANNING AND BUILDING STANDARDS COMMITTEE

26 MARCH 2018

APPLICATION FOR MODIFICATION OF A PLANNING OBLIGATION

ITEM:	REFERENCE NUMBER: 17/01757/MOD75
OFFICER:	Carlos Clarke
WARD:	Galashiels and District
PROPOSAL:	Modification of planning obligation pursuant to planning permissions 12/00811/FUL, 13/01109/FUL, 14/00412/FUL and 14/01227/FUL
SITE:	Land adjacent Craigpark Gardens, Galashiels
APPLICANT:	Eildon Housing Association
AGENT:	None

SITE DESCRIPTION

The site is located at the south-easterly end of, and to be accessed via, Craigpark Gardens, an established residential street. It is bound to the north-east by a wooded area, and to the south-east and south-west by residential properties. As noted below, the site is subject to past and current planning applications for dwellinghouses totalling eleven detached and semi-detached units. To date, nine houses have been approved of which two (Plots 1 and 2) have been built.

PROPOSED DEVELOPMENT

This application seeks approval of a modification of Section 75 legal agreements relating to three planning consents for seven houses on this site (one of the applications (13/01109/FUL) was withdrawn). The applicants have purchased Plot 2 (already built) and the remainder of the site. The houses will be operated as affordable units by the applicants and, therefore, they seek removal of development contributions applicable to the units. These are required towards the Borders Railway reinstatement, schools (St Peter's Primary School and Galashiels Academy) and affordable housing.

PLANNING HISTORY

Relevant applications and consents include:

00/01119/FUL – Erection of ten dwellinghouses approved in October 2000

12/00811/FUL – Erection of three dwellinghouses (Plots 1-3) approved in June 2014

13/01109/FUL – Erection of six dwellinghouses (plots 4-9) – withdrawn

14/00412/FUL – Change of house type on Plot 3 and erection of four houses on plots 7-10 (renamed Plots 6-9) approved in February 2015

14/01227/FUL – Amendments to Plots 1 and 3 approved in December 2015

15/00832/FUL - Erection of two houses on Plots 4 and 5 approved in August 2016

17/01328/FUL – Erection of seven houses (replacing consented Plots 3 - 6) - withdrawn

17/01709/FUL – Erection of four houses (on approved Plots 4 and 5) – currently being processed

REPRESENTATION SUMMARY

None

APPLICANT'S SUPPORTING INFORMATION

The application is supported by copies of the relevant legal agreements

DEVELOPMENT PLAN POLICIES:

Local Development Plan 2016

IS2 Developer Contributions

IS3 Developer Contributions Related to the Borders Railway

HD1 Affordable and Special Needs Housing

OTHER PLANNING CONSIDERATIONS:

Circular 3/2012 Planning Obligations and Good Neighbour Agreements

SPG Affordable Housing 2015

SPG Development Contributions 2011 (updated 2018)

CONSULTATION RESPONSES:

Scottish Borders Council Consultees

Legal Services: Note that there is also a planning obligation in respect of 15/00832/FUL but that modification of this agreement is not sought in the application. If the Development Management Service is satisfied in terms of policy that it is appropriate to modify these agreements, it is advised that if any of the dwellinghouses to be developed under the various permissions have already reached any of the relevant milestones referred to in the agreement (i.e. sale, completion, occupation, habitation), then contributions in respect of those plots may be due depending on the terms of the particular obligation and the particular plot or plots relates to. In addition, if approved, each planning obligation will require to be modified to delete the clause relating to developer contribution amounts (and ancillary clauses) and replace this clause with an obligation to provide on-site affordable housing to prevent the units being sold or rented at market price.

KEY PLANNING ISSUES:

Whether or not the proposed modifications would be consistent with Circular 2/2012 with respect to necessity; planning purpose; relationship to the development; scale and kind; and reasonableness.

ASSESSMENT OF APPLICATION:

Principle

This application seeks a modification to legal agreements affecting seven dwellinghouses (plots 1-3 and 6-9). Plots 4 and 5 were consented under planning approval 15/00832/FUL

and are not subject to the proposed modification. The applicants do not propose to develop Plots 4 and 5, but instead have applied for a separate planning approval to develop four houses on those two plots (17/01709/FUL).

The legal agreements were required in order to ensure that the developments complied with the Local Development Plan (then the 2011 plan) and related supplementary planning guidance with respect to development contributions towards the Borders Railway, affordable housing and local schools. The agreements are considered, in their current form, to meet the five tests of Circular 2/2012.

This application seeks to modify the agreements such that the contributions are not payable for all but one of the plots (Plot 1), since these would now be owned and managed as affordable housing. The principle of the modification is agreeable, provided it allows the modified agreements to still meet the five tests.

Circular 2/2012 tests

To seek contributions for schools, railway or affordable housing from residential developments that comprise affordable housing would not comply with the five tests of Circular 2/2012. This is because supplementary guidance on Development Contributions explicitly exempts affordable houses from such contributions. Affordable housing developments are not exempt from contributions for play facilities, but such contributions are only sought from developments of ten or more houses. Only seven houses are affected here, and only nine have been approved overall, so far. Should 17/01709/FUL be approved (bringing the overall total to eleven), then contributions towards play facilities from the two extra units in that part of the development will be due by means of a legal agreement for that consent.

The applicants are a Registered Social Landlord, so their ownership and management of the houses will meet the Council's criteria for affordable housing. The agreements would need to be modified by replacing the development contribution requirements with a clause that requires that the units be managed as affordable housing. This is necessary and reasonable if the development is still to comply with the Local Development Plan 2016 and related supplementary planning guidance. The clause would also have a direct planning purpose, would relate appropriately to the development and be proportionate in scale and kind. It would, therefore, meet the tests of Circular 2/2012.

Plot 1 is, however, not subject to the proposed modification as it is in private ownership. At the time of writing, contributions are still due from that development for schools and the Borders Railway (not affordable housing, since it is the first unit in the development). The applicants intend to pay the contributions for Plot 1. The final version of the modified agreements will, therefore, account for Plot 1 depending on the status of contributions required for it.

CONCLUSION

The proposed modification would remove the requirement for development contributions from six of the seven approved dwellinghouses (excluding Plot 1). This would be subject to a replacement clause requiring that the dwellinghouses be owned and managed by the applicant (a Registered Social Landlord) or other RSL as affordable housing. This modification would allow the development to remain compliant with the Local Development Plan 2016 and related supplementary policy guidance.

RECOMMENDATION BY CHIEF PLANNING OFFICER:

I recommend the application is approved subject to a clause requiring that the units be owned and managed by the applicants, or other Registered Social Landlord, as affordable housing, with the exception of Plot 1 which shall remain bound by the original contributions (pro rata).

Approved by

Name	Designation	Signature
Ian Aikman	Chief Planning Officer	

The original version of this report has been signed by the Chief Planning Officer and the signed copy has been retained by the Council.

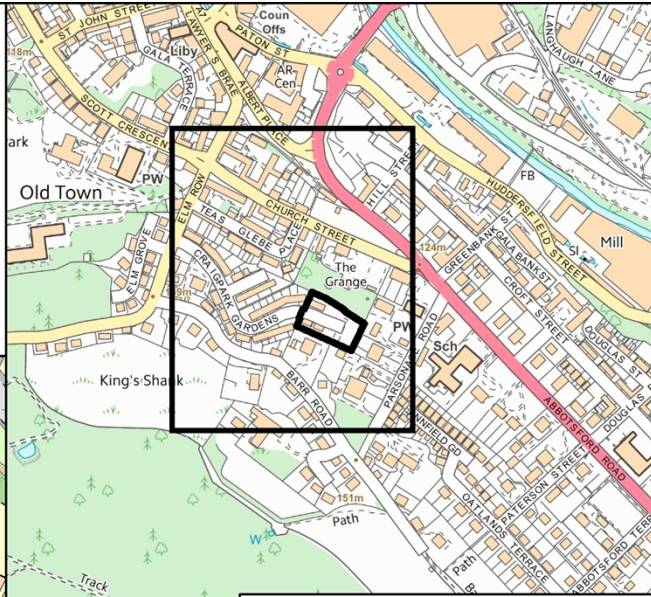
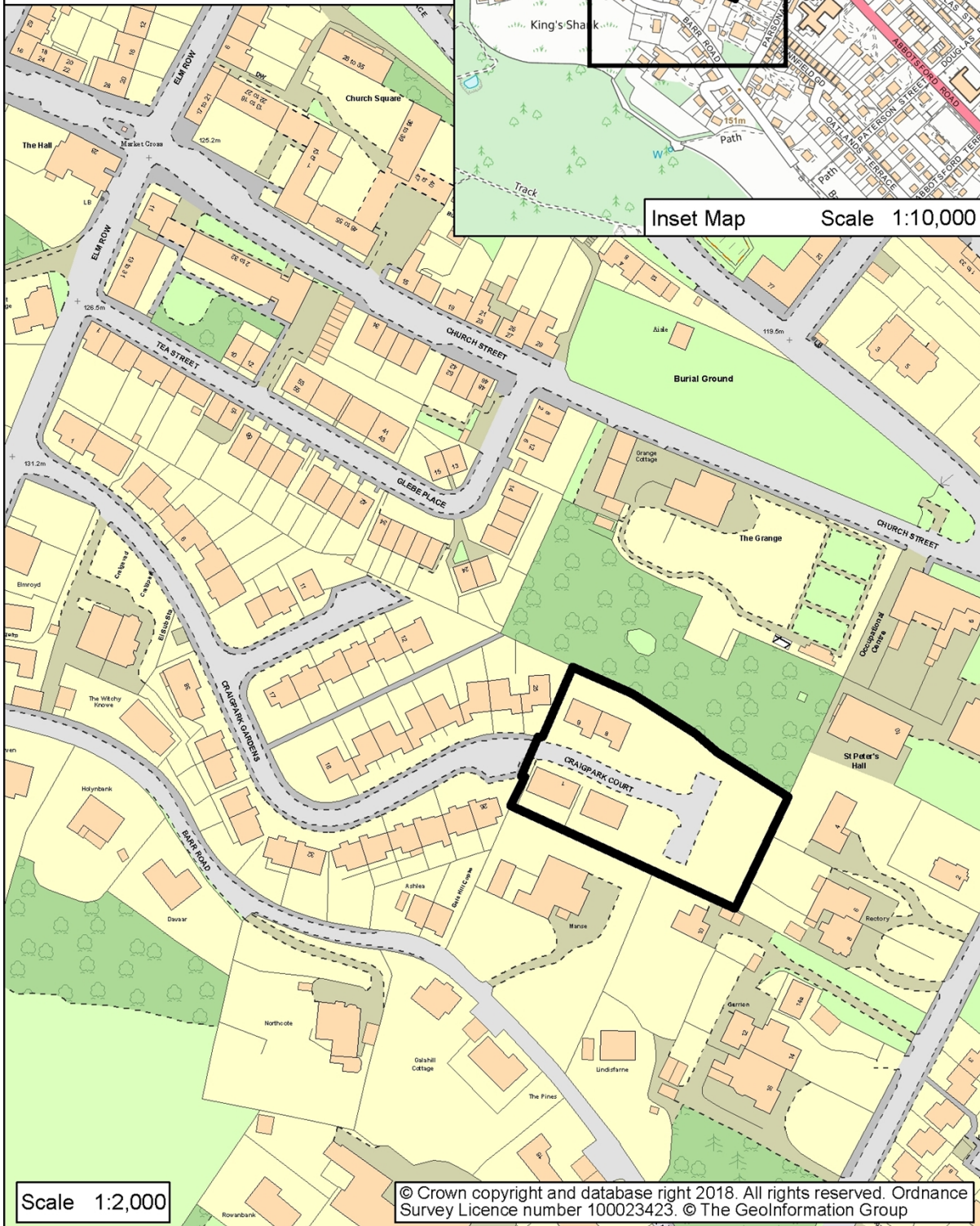
Author(s)

Name	Designation
Carlos Clarke	Team Leader Development Management



17/01757/MOD75

Land Adjacent
Craigpark Gardens
Galashiels



Inset Map

Scale 1:10,000

Scale 1:2,000

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