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# Appeal Decision

Site visit made on 7 November 2016

**by H Butcher BSc (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 05 December 2016**

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**Appeal Ref: APP/D1780/W/16/3154576**

**113 St Marys Road, Southampton, SO14 0AN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mr Geoffrey Holdham against Southampton City Council.
  - The application Ref 15/02483/FUL is dated 24 December 2015.
  - The development proposed is described as: "Change of use at first and second floor from part of bar/nightclub to residential comprising 6 flats (2 two bedroom, 3 one bedroom and 1 studio) Retain existing use of bar/nightclub on Ground Floor and 1 one bedroom flat on 3<sup>rd</sup> floor to be retained including alterations to facade."
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## Decision

1. The appeal is dismissed.

## Main Issues

2. The Council have confirmed in their appeal statement that, had they been in a position to do so, they would have recommended permission be granted subject to securing mitigation against harm to the Solent Special Protection Areas, a contribution towards site specific transport requirements, and a Highway Condition Survey. The main issues are therefore:
  - The effect of the development on the Solent Special Protection Areas (SPA);
  - Whether a financial contribution is necessary in respect of site specific transport requirements, and;
  - Whether an obligation to secure a highway condition survey is necessary.

## Reasons

### *Solent Special Protection Areas*

3. 113 St Marys Road is a three storey building on the corner of St Mary's Road and Clovelly Road. It is currently a bar/nightclub with additional conference facilities. There is also a one bedroom flat on site. The proposal includes the conversion of the first and second floors of the building.
  4. New housing development around the Solent creates additional recreational pressures. Research into the potential impacts of this on the Solent Special Protection Areas (SPA) was undertaken between 2009 and 2013. This found that increased disturbance to waders and wildfowl from recreational activity within the SPA reduces the birds' opportunities to feed, which impacts on their
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winter survival and completion of their migratory journey to their summer-time habitats. Mitigation measures, which are focused on visitor management, are therefore required to ensure that additional recreational activity arising from new housing development does not result in harm to the SPA. This is to be funded by a developer contribution of £176 per new dwelling.

5. Taking a precautionary approach, on the evidence before me, I consider that the proposal would, in combination with other development, cause harm to the SPA and this is a significant material consideration. The contribution sought would also appear to satisfy the three tests of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and paragraph 204 of the National Planning Policy Framework in that it is necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind.
6. I note that the appellant has no objection to making the required contribution but that their request to do this by way of a unilateral undertaking was turned down by the Council. Nevertheless, there is no mechanism before me to secure this contribution and I note the Council in their appeal statement do refer to the submission of a unilateral undertaking. Consequently I cannot be satisfied that the proposal would put in place adequate measures to mitigate any potential adverse effects to the SPA. It therefore conflicts with Policy CS22 of the Local Development Framework Core Strategy Development Plan Document (March 2015) (CS) which seeks to ensure development does not adversely affect the integrity of international designations, and that necessary mitigation measures are provided.

#### *Site Specific Transport Requirements*

7. Policy CS25 of the CS sets out that the Council will seek developer contributions towards directly related measures in order to deliver a high quality development. To this end the Council's Developer Contributions Supplementary Planning Document (April 2013) sets out that all residential developments involving a net increase of five or more dwelling units will trigger the need for site specific transport works.
8. In this case, the Council's Highway Team Leader has identified that the development is required to pay £6,000 to provide a new footway around the site which is considered, at present, to not be ideal for pedestrians. An obligation may only constitute a reason for granting planning permission if it meets the three tests set out above. It cannot be expected to resolve an existing problem.
9. Notwithstanding the above, it is appropriate to consider if there would be a net increase in trips as a result of the proposed change of use, in which case the proposal could materially exacerbate any existing problems. The appellant asserts that the proposed change of use is far less intensive than the current use as the nightclub is licenced for approximately 500 people. In conjunction with the existing conference facilities and residential flat I agree that six residential units would, in fact, reduce footfall along the footway around the site.
10. The Council have not specifically argued that the proposal would result in a net increase in trips. However they make the point that the flats would be used by a different type of user which would include persons of all ages and levels of

mobility. The Council also make the point that the trips generated would be at a different time of day. However, I consider that the age or mobility of the persons making the trips along the footway around the site, or the time of day in which these trips are carried out, is inconsequential. In any event, from what I observed on my site visit, this footway is already well used by persons of all ages and mobility who visit the area generally, and not specifically in connection with the appeal site.

11. I note the Council's comment that the proposed works to the footway would encourage sustainable travel choices for future occupiers. However, the footway is not in such a bad condition so as to discourage walking altogether. In any event, the accessible location of the site and the fact that the development does not provide parking facilities would in itself steer future occupiers towards more sustainable modes of travel.
12. For the above reasons I consider that an obligation to provide for a replacement footway around the site is not necessary to make the proposed change of use acceptable in planning terms. Nor can such works be said to be directly related to the development, or fairly and reasonably related in scale and kind. It would therefore fail to meet the relevant tests. The fact that the Council consider the amount sought to be proportionally fair when compared to other obligations sought from recent development in the vicinity does not alter my conclusions on this matter.

#### *Highway Condition Survey*

13. Repairing damage to the public highway attributable to development related traffic has, in the past, proved difficult for the Council to achieve. Part of the problem lies in identifying the perpetrator resulting in the Council having to fund any necessary repairs. Consequently the Council require a Highway Condition Survey obligation to be included in all of its Section 106 Agreements for new development. A survey area is identified and an initial survey undertaken prior to implementation of the development in order to assess the condition of the public highway at that time. Prior to occupation the same survey is undertaken and a comparison made. Any damage highlighted is reviewed with the Council and a reparation arrangement is agreed.
14. The area of highway adjacent to the appeal site is public highway and as such all manner of traffic will be using it during the survey period. Therefore the same problem of identifying who has damaged the highway would remain. For the survey to provide a truly accurate reflection of any damage from traffic specifically resulting from the implementation of the development, all other traffic would need to be restricted from the survey area during the survey period. However, this would be unreasonable given that the appeal site is located on a junction in a busy city centre location.
15. As outlined previously, planning obligations must meet the three necessary tests. Based on the above a Highway Condition Survey obligation would not meet these. Clearly such a survey is desirable on the part of the Highway Authority but it is not necessary to make the development acceptable in planning terms. It is also not directly related to the development as it concerns a public highway used by high volumes of traffic; the majority of which is not directly associated with the appeal site. Finally, given the ambiguity of the survey proposed in terms of identifying exactly who has caused damage to the highway, I find it would not be fairly and reasonably related in scale and kind.

I therefore conclude that an obligation to secure a highway condition survey is not necessary.

*Other Matters*

16. I have considered the effect of the proposal on the former St Marys Drill Hall; a grade II listed building located on the opposite side of Clovelly Road. The appeal building has had the majority of the original windows and doors filled in. The change of use would include the insertion of windows in a way which would mimic adjacent properties. This would improve the overall appearance of the building and also enhance the setting of the adjacent listed building. I therefore find no harm in this regard.
17. A contribution towards affordable housing was originally sought but this is no longer being pursued by the Council due to recent changes in government policy.

**Conclusion**

18. I give significant weight to the likelihood of significant adverse effects to the SPA as a result of the proposed development. Whilst I have concluded that a financial contribution in respect of site specific transport requirements is not necessary, nor is an obligation to secure a Highway Condition Survey, these matters do not outweigh the potential harm to the SPA. For this reason, and having had regard to all matters raised, the appeal is dismissed.

*Hayley Butcher*

INSPECTOR