



Appeal Decision

Site visit made on 2 October 2025

by R J Redford MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 October 2025

Appeal Ref: APP/D1780/W/24/3352051

171-172 High Street, Southampton SO14 2BY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr M Kumar against the decision of Southampton City Council.
 - The application Ref is 20/01105/FUL.
 - The development proposed is described as the change of use of building to provide a 40 bedroom hotel and ancillary hair and beauty salon, nightclub (basement), wine bar (ground floor) and extensions and alterations to existing building, including a roof extension, together with a six storey rear extension and extension of existing basement, following demolition of part of the building at the rear.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The Council has judged the proposal to have an acceptable impact in accordance with relevant guidance and policies and would not adversely affect the setting and character of the listed building on the appeal site. This is supported by the granting of a Listed Building Consent (20/01106/LBC). Nevertheless, the Council also confirms that to mitigate various direct impacts, planning obligations would need to be secured via a section 106 agreement to include the following heads of terms:
 - i. Construction Traffic Management Plan
 - ii. Highway Survey
 - iii. Site specific highways works
 - iv. Travel Plan
 - v. Employment Skills
 - vi. Carbon Management
 - vii. Solent Disturbance Mitigation Project
 - viii. CCTV
 - ix. Late night community facilities
3. The appellant does not dispute the above position and has submitted a draft section 106 agreement. However, the Council have refused to endorse the agreement as the appeal site is under 3rd party finance, and the appellant has confirmed that party will not enter into such an agreement.
4. Accordingly, the main issues are whether the proposed development can secure adequate provision for highway safety, training and employment, carbon management, European protected habitat mitigation, and community safety matters without the use of planning obligations; and if any planning obligations are identified how they should be secured.

Reasons

Highway safety (heads of terms i, ii, iii, and iv)

5. The proposal would significantly increase the usage of the rear of the appeal site by introducing the hotel's main access to the side of the building accessible from Castle Way. This would mean an increase in pedestrian movement and vehicle drop-offs. As this area is currently used for a series of bus stops the potential of conflict between road users is already reasonably high, the increased movements from the proposal could further impact highway safety.
6. The Local Highway Authority (LHA) has stated works beyond the appeal site would be required to provide better separation between the bus stop and lay-by on Castle Way. This would ensure appropriate pedestrian access to the proposed hotel and increase highway safety for all users of the appeal site and bus stop. Therefore, securing such highway works would be necessary to make the development acceptable in planning terms, directly relatable to the proposed development and fairly and reasonably related in scale and kind. It would accord with requirements of Core Strategy (CS) Policies CS18 and CS25 insofar as they seek to improve citywide transport via infrastructure which includes pedestrian as well as vehicle access. As these works are on land beyond the control of the appellant and requires the appellant to enter into a separate agreement with the LHA, it would be most appropriate that these works are secured by obligation.
7. It would also be necessary to secure the Travel Plan (TP) by obligation. This is because it would need to run with the land once the development has been completed to ensure the access priority as laid out in the Local Plan Review (LP) Policy SDP4, is retained through the life of the proposed development. For similar reasons as the highway work, this obligation would also comply with CS Policies CS18 and CS25.
8. The appellant has included the Construction Traffic Management Plan (CTMP) and Highway Survey (HS) within their draft section 106 agreement. However, neither party has clearly justified why these could not be dealt with by condition as both the CTMP and HS would be limited to the construction phase of the proposal.
9. There is no substantive information to show how the CTMP or HS would put onus on the Council, require the entering of an agreement with a 3rd party, or require a financial contribution. Equally the need for the CTMP and HS has not been supported by any development plan policies. Therefore, it is unclear why it is necessary to secure them by obligation. Further the reasoning given by the Council for the HS alludes to its inability to secure highway repairs in the past rather than showing how it would be directly related to the development in question. Consequently, in this instance, it has not been demonstrated that the requirement for the CTMP or HS needs to be secured by obligation.
10. Nevertheless, in terms of highway safety, although it has not been shown that it is necessary to secure heads of terms i and ii by obligation, this does not negate the need to secure heads of terms iii and iv by obligation.

Training and employment (heads of term v)

11. The proposal would create over 1000 sqm of retail / leisure development. CS Policy CS24 requires such development to promote, amongst residents of the city who

can have difficulty entering or returning to the labour market, access to any jobs created by it. The Developer Contributions Supplementary Planning Document (SPD) states this could be achieved via an Employment and Skills Plan (ESP)¹ and would require a financial contribution to the Council to support and enable the actions within that ESP.

12. This would appear proportionate, necessary, and relevant in planning policy terms, and due to the need for a financial contribution it would be necessary to secure heads of term v by obligation.

Carbon management (heads of term vi)

13. CS Policy CS20, amongst other things, requires all development to be low carbon and this would be ensured via a sequential approach which may require a contribution to the Council's Carbon Offset Fund. The sequential approach would be dealt with via a Carbon Management Plan (CMP) and would be proportionate and relevant to that proposed. However, although the CMP does not need to be dealt with prior to approval, as it could require a financial contribution it would not be appropriate to condition.
14. Therefore, in terms of the carbon management, it would be necessary to secure heads of term vi by obligation.

European protected habitat mitigation (heads of term vii)

15. The appeal site is located in proximity to multiple European protected sites (EPS). It is approximately 560m to the west of the Solent and Dorset Coast Special Protection Area (SPA); 860m from a section of the Solent and Southampton Water SPA and Ramsar site; 3.6km from the Solent Maritime Special Area of Conservation (SAC); and 4.8km from the New Forest SAC, SPA and Ramsar site².
16. Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (Habitat Regulations) requires an appropriate assessment to ensure that the development would not adversely affect the integrity of such habitats. The Council has undertaken an in-depth Habitat Regulation Assessment, Screening Matrix, and Appropriate Assessment Statement as part of the planning application. This concludes that the proposal, by introducing overnight sleeping accommodation in the form of a hotel, would lead to increased recreational pressure from additional tourists on the EPS and so would likely adversely affect the integrity of the EPS in combination with other projects.
17. The Council however has a long-established Solent Disturbance Mitigation Project (SDMP) which is supported by financial contributions in line with the Solent Recreation Mitigation Strategy (SRMP) which would offset any likely adverse effect to the EPS. This form of mitigation is supported by Natural England, and it is confirmed as being £3,610 for the proposal.
18. It follows that the effect of the proposal on the EPS would be sufficiently mitigated by such a financial contribution. It would be necessary to make the development acceptable in planning terms; and is fairly and reasonably related in scale to the

¹ Also described by the Council as a Training and Employment Management Plan

² According to the Habitat Regulation Assessment, Screening Matrix and Appropriate Assessment Statement undertaken by the Council.

development, in compliance with CS Policy CS22, as far as it requires new development to meet the Habitat Regulations.

19. Therefore, in terms of the effect of the EPS and the requirement to pay a financial contribution, would mean it is necessary to secure heads of term vii by obligation. However, this could be in the form of a unilateral undertaking rather than a bilateral agreement, as there is no requirement for the Council to be bound to this obligation.
20. It is noted that in the associated reason for refusal the Council has referred to LP Policy SDP12 which relates to landscape and habitat creation and management, and the Planning Obligations SPD which does not refer to the SDMP or SRMP. These have not been determinative in this issue.

Community safety (heads of terms viii and ix)

21. The proposal would provide natural surveillance to the front and rear of the appeal site as well as along the proposed side access. Appropriate lighting could be conditioned, as could the control of the proposed installation of a private CCTV system. Therefore, the proposal could comply with CS Policy CS13 and LP Policy SDP10, both of which seek to promote safe and secure public realms by ensuring appropriate safety measures are included in new development.
22. Nevertheless, the Council also considers that it is necessary for a financial contribution of £10,000 towards community safety facilities and £5,000 towards CCTV, citing Policy AP8 of the City Centre Action Plan. However, there is no substantive justification as how these figures have been reached and how they would be proportionate to that proposed.
23. Accordingly, in terms of community safety and taking account of the proposed safety measures, it has not been shown that it is proportionate, relevant, and necessary to secure heads of terms viii and ix by obligation.

Securing the identified obligations

24. From the above main issues, it is evident that the proposed heads of terms iii, iv, v, vi, and vii are obligations which would be proportionate, necessary, and relevant to the proposal.
25. Planning obligations should run with the land and need to be legally binding and enforceable. Although some of those identified could be secured by unilateral agreement, a number would require the Council to agree and act on certain clauses. As such the most appropriate mechanism to secure these obligations would be a bilateral agreement in accordance with section 106(1) of the Town and Country Planning Act 1990 (as amended). As clarified within Planning Obligations: good practice advice Guidance³ at section 4, normally all persons with an interest in the land affected by a planning obligation – including freeholders, leaseholders, holders of any estate contracts and any mortgagees – must sign the obligation, and that all persons title to the land can be confirmed via an up-to-date copy entry or entries from the Land Registry, in effect at the time of signing.
26. Nevertheless, even were there no question about who should sign the section 106 agreement, the simple fact that it has not been signed means the obligations are

³ Issued by the Planning Inspectorate, published 21 April 2022, last updated 5 February 2025

not secured and they are necessary to make the proposal acceptable. Equally there is no assurance that all parties with an interest in the land would sign the draft section 106 agreement within a reasonable time frame nor has any other mechanism been identified to secure the necessary obligations. Therefore, there is insufficient certainty to ensure the reasonable use of a condition negatively worded or otherwise⁴, to require the signing of a section 106 agreement.

Other Matters

27. It is gratifying to see that the appellant has worked with the Council to ensure many issues were dealt with prior to the decision notice being issued specifically on technical matters, but it is recognised the delay in providing a decision and the legal wrangling related to the obligations has added years to the development process. Although regrettable this does not alter the planning merits of the scheme.

Conclusion

28. Whilst I have found that some of the proposed obligations could be dealt with by other mechanisms, this does not negate the need for those identified to be secured by a bilateral section 106 agreement to ensure the proposal accords with the development plan. With no other material considerations worthy of sufficient weight, including the National Planning Policy Framework, which would indicate a decision otherwise, the appeal should, therefore, be dismissed.

RJ Redford

INSPECTOR

⁴ Described by the appellant as an Arsenal condition and otherwise known as a Grampian condition.