

Planning and Rights of Way Panel 21st February 2017
Planning Application Report of the Service Lead – Infrastructure, Planning & Development

Application address: West Quay Shopping Centre and adjoining land, Harbour Parade and Portland Terrace.			
Proposed development: Non-Material Amendment sought to planning permission ref 13/00464/OUT to vary Condition 17 to allow extended working hours on Saturdays of 08:00 to 18:00 from 31 January 2017 to 31 July 2017 (09:00 to 13:00 on Saturdays currently permitted).			
Application number	17/00075/NMA	Application type	NMA
Case officer	Stephen Harrison	Public speaking time	5 minutes
Last date for determination:	13.02.2017	Ward	Bargate
Reason for Panel Referral:	Requested by the Service Lead – Infrastructure, Planning & Development given the strategic importance of the project	Ward Councillors	Cllr Bogle Cllr Noon Cllr Paffey
Referred to Panel by:	N/A	Reason:	N/A

Applicant: Hammerson (Watermark) Ltd	Agent: Barton Willmore
---	-------------------------------

Recommendation Summary	Conditionally Approve
-------------------------------	------------------------------

Community Infrastructure Levy Liable	Not applicable
---	-----------------------

Reason for raising NO OBJECTION

The development is acceptable taking into account the policies and proposals of the Development Plan as set out below. The request for a Non-Material Amendment seeks to extend construction hours on a Saturday to enable the development to be completed in less time. There will be a direct impact of this change on nearby residents but given the temporary nature, the project's completion being close, and the limited extension proposed this impact is deemed to be acceptable. Other material considerations, such as those listed in the report to the Council's Planning and Rights of Way Panel on 21st February 2017, do not have sufficient weight to justify a refusal of the application. In accordance with Section 38 (6) of the Planning & Compulsory Purchase Act 2004 a revision to planning permission 13/00464/OUT should therefore be granted.

The Development Plan for Southampton currently comprises the “saved” policies of the City of Southampton Local Plan Review (as amended 2015) and the City of Southampton Core Strategy (as amended 2015). The most relevant policies to this proposal are Policies SDP 1 (Quality of Development) and SDP 16 (Noise) of the Local Plan and Policy AP25 of the City Centre Action Plan which is the site specific policy for the land north of West Quay Road, including the Watermark site as supported by the Council’s current adopted Supplementary Planning Guidance and the guidance contained with the evolving National Planning Practice Guidance.

Appendix attached			
1	Breach of Condition Notice		

Recommendation in Full

Conditionally Approve - The proposed change sought by this request is considered to provide a Non-Material Amendment to the approved planning permission. All planning conditions applicable to the extant planning permission remain in force

Background

The Panel will recall that a similar request to extend Saturday working for the construction phase at Watermark Westquay was considered at the meeting in July 2016 (LPA 16/00944/NMA). The request was approved and gave permission to work for longer on Saturdays until 31st December 2016. The approved Minutes for this meeting state that:

The Panel expressed concern that the developer had been operating outside of the permitted working hours and wanted assurance that action would be taken if the contract continued to ignore the permitted hours, especially with regard to working on Sundays.

RECORDED VOTE to grant planning permission

FOR: Councillors Barnes-Andrews, Denness, B Harris, L Harris and Hecks

AGAINST: Councillors Mintoff and Shields

RESOLVED

- (i) that planning permission be granted subject to the conditions listed in the report.*
- (ii) the Panel requested that officers write to the contractors expressing dissatisfaction with the previous working outside the permitted hours and stating that this should not continue in the future particularly on Sundays.*

This application seeks to extend Saturday construction working until 31st July 2017. Since the last Panel the Council has also issued a Breach of Condition Notice (BoCN) against the applicant for repeatedly working beyond the agreed construction hours, and this BoCN remains in force meaning that any evidence of further breaches will result in the applicants being prosecuted by the Magistrates Court. The Council’s Planning Enforcement Officer is monitoring the situation.

1. The site and its context

- 1.1 The application site is the first phase of the Watermark Westquay development on land directly to the south of the West Quay Shopping Centre (WQSC), between Portland Terrace and Harbour Parade. The approved development of a cinema, additional leisure accommodation, Class A3, A4 and A5 uses and associated public realm improvements is under construction and is programmed for completion in early 2017.

1.2 The surrounding area is predominantly commercial in character although to the east of the site are houses on top of the Town Walls at Forest View and Cement Terrace. The Premier Inn hotel adjoins to the west on the opposite side of Harbour Parade.

2. Proposal

2.1 This is an application to amend a condition of the previous planning permission to extend the hours of construction working on Saturdays for a limited period from the date of Planning Panel to 31st July 2017. The previously approved hours (the standard hours for Saturdays) are between 09.00 and 13.00 hours. The proposal is to extend those hours to between 08.00 and 18.00. Two previous applications to extend the hours have been granted 15/02244/NMA and 16/00944/NMA.

2.2 The applicants have suggested that, following the commencement of development, there have been several delays to the construction programme as set out below:

- a) Overall the construction industry is facing high market demands of both the supply chain and skilled labour. Supply chain delays such as concrete deliveries (and other materials) have occurred leading to delays in the delivery programme;
- b) Minor delays result in site stoppages as part of the company's management procedures. These occur when there is a need to address any overriding risks to the site team and local environment on health, safety and environmental grounds;
- c) Design complexities of the development envelope have led to delays in detailing specifications for construction to continue;
- d) The original planning condition for Saturday working (9am to 1pm) is too restrictive for any significant tasks to be carried out effectively within this time period.

2.3 The applicant has confirmed that works on a Saturday outside the current permitted hours will not be undertaken until confirmation is received that this amendment is acceptable to the Council.

3. Relevant Planning Policy & Guidance.

3.1 The Development Plan for Southampton currently comprises the "saved" policies of the City of Southampton Local Plan Review (as amended 2015) and the City of Southampton Core Strategy (as amended 2015). The most relevant policies to this proposal are Policies SDP 1 (Quality of Development) and SDP 16 (Noise) of the Local Plan and Policy AP25 of the City Centre Action Plan which is the site specific policy for the land north of West Quay Road, including the Watermark site.

3.2 In 2009 the Government introduced a formal procedure for agreeing changes to an existing planning permission. Flexibility was offered for small changes to existing schemes without the need for applying again for the whole development.

A nominal planning fee and a 28 day target date applies, and it is for the Local Planning Authority to determine whether or not the requested changes can be treated as 'Non Material'. Further guidance on this relatively new process can be found within the 'National Planning Practice Guidance'. The Council can either 'object' (where there would be no right of appeal and the applicants would then need to make a planning application to formally vary the planning condition) or raise 'no objection' and issue a supplemental notice to the principal planning permission.

- 3.3 This procedure does not allow the Council, or the scheme's objectors, to revisit the planning merits of the original scheme as the planning permission will remain regardless of the decision made on the NMA application.

4. Relevant Planning History

- 4.1 In February 2014 outline planning permission was granted for a mixed use development including alterations to the West Quay Shopping Centre comprising Retail (Use Class A1, A2, A3, A4 and A5 - 19,500 square metres maximum floorspace); Hotel (Use Class C1 - 28,000 square metres maximum floorspace); Residential (Use Class C3 - maximum 260 flats); Leisure (Use Class D2 - 19,500 square metres maximum floorspace) including a Cinema; Offices (Class B1(a) - maximum 10,000 square metres floorspace); public open space; with associated car parking, access, highway, landscaping and other works including infilling the existing pedestrian subway in Bargate Street (13/00464/OUT refers)

- 4.2 Condition 17 of this permission reads as follows:

*APPROVAL CONDITION - Hours of work for Demolition/Clearance/Construction
All works relating to the demolition, clearance and construction of the development hereby granted shall only take place between the hours of;
Monday to Friday 08:00 hours to 18:00 hours (8.00am to 6.00pm)
Saturdays 09:00 hours to 13:00 hours (9.00am to 1.00pm)
And at no time on Sundays and recognised public holidays.
Any works outside the permitted hours shall be confined to the internal preparations of the buildings without audible noise from outside the building, unless otherwise agreed in writing by the LPA.*

Reason:

To protect the amenities of the occupiers of existing nearby residential properties

- 4.3 In July 2014 reserved matters approval was granted for Phase 1 of the Watermark West Quay development (14/00668/REM refers). It is this development which is currently being built.
- 4.4 In January 2016 an amendment was approved (15/02244/NMA refers) for an extension of the hours of working on a Saturday up until the end of July 2016.
- 4.5 In July 2016 a further amendment was approved (16/00944/NMA refers) for a similar extension of the hours of working on a Saturday up until the end of December 2016.
- 4.6 This application is to further extend the hours of construction until the end of July 2017.

- 4.7 A further request for extended hours was withdrawn earlier this year when officer's advised that overnight working could not be supported:
- 4.8 16/02226/NMA – Withdrawn 10.01.2017
Non material amendment sought to planning permission ref 13/00464/OUT to vary condition 17 to allow extended working hours of 08:00 - 18:00 Monday - Saturday and 23:30 - 08:00 Monday - Saturday for Harbour Parade side of the building from 28 December 2016 to 31 January 2017.

5. Consultation Responses and Notification Representations

- 5.1 The Government's National Planning Practice Guidance explains that '*as an application to make a non-material amendment is not an application for planning permission, the existing Town and Country Planning (Development Management Procedure) (England) Order 2015 provisions relating to statutory consultation and publicity do not apply. Therefore local planning authorities have discretion in whether and how they choose to inform other interested parties or seek their views*'.
- 5.2 Once officers were comfortable that the submitted request could be considered as a NMA a publicity exercise in line with department procedures was undertaken which included notifying adjoining and nearby landowners (75 letters sent). At the time of writing the report **6 objections** (from 3 addresses) have been received from surrounding residents. The following is a summary of the points raised.
- 5.3 **Understand that the development is considered important to the city, but feel there must be a balance between this and the wellbeing of those residents living nearby. The development has been very disruptive and local residents have experienced months of noise, dust and late night disturbance with works carrying on into the evenings and at weekends. The developer in question has repeatedly shown utter contempt for both the residents of this area and conditions laid out in their existing planning permission. The council have a duty to protect the amenities of the occupiers of existing nearby residential properties.**
- 5.4 Response
It is unfortunate, but inevitable, that large scale regeneration projects of this nature result in some degree of noise and disturbance to adjoining occupiers, but officers do not condone the working outside of approved hours. This is a busy city centre location where the prevailing character is commercial in nature; the exception being Forest View and Cement Terrace where there are a total of 13 houses directly facing the development site. Like many projects this one has experienced delays due to adverse weather etc. An extension of the working hours on a Saturday only is not considered to be unreasonable given the nature of the surroundings. The BoCN is now served, and effective, meaning that the reported experience of neighbouring residents should no longer be repeated. Any further breaches will be reported to the Magistrates Court.
- 5.5 **At the previous meeting the Panel agreed amongst themselves that a city centre area such as the one under discussion is naturally very noisy on a Saturday and thus such work would have no impact. This is not the case at all, and even with the new development open now, the area is a pleasant and quiet area even on Saturday afternoon.**

5.6 Response
See response above

5.7 **Hammerson cannot be trusted to act in good faith with regard to planning permission and this latest application will allow them to work well beyond what is on paper.**

5.8 Response
The applicants are seeking an addition hour in the morning and five hours in the afternoon. See response above.

Consultation Responses

5.9 **SCC Environmental Health (Pollution & Safety)** – in response to application 16/00944/NMA raised no objection in principle to this application, but the applicant must ensure that the following comment is adhered to, 'Any works outside the permitted hours shall be confined to the internal preparations of the buildings without audible noise from outside the building, unless otherwise agreed in writing with the LPA.' To ensure there is no audibility of works outside of the building will require regular and frequent checks be carried out with an action plan in place that is followed to stop the works and hence the noise immediately if they are audible. Ideally written logs should be kept of these checks for inspection by the Council. Any works on the site are still controlled by the requirement not to cause noise nuisance, whatever the time of day. I should add that all works cannot be expected to be silent/inaudible but activities need to be controlled as to minimise both noise and dust. Controls include using best practicable means; adopting good work practices; good control of the workforce (to minimise loud voices, misuse of equipment and vehicles); planned maintenance of equipment, machinery and plant, and organisation of work to take into consideration that the noisier works which should take place in the middle of the day rather than early morning or late afternoon/evening. It is unfortunate that the works are taking longer than anticipated requiring this extension, but it will hopefully shorten the period overall during which construction continues to take place.

5.10 **SCC Highways** – No objections

6. Planning Consideration Key Issues

6.1 The key issues for consideration in the determination of this planning application are the importance of this key project for the city weighed against the impact on the amenities of local residents.

6.2 In 2009 the Government set out a formal procedure and guidance (“Greater Flexibility for Planning Permissions”) to enable applicants to secure confirmation from the Local Planning Authority (LPA) that minor changes to a consented scheme are acceptable without the need to obtain a further planning permission.

6.3 No definition of what constitutes a “Non-Material Amendment” is provided. The National Planning Policy Guidance explains that *“this is because it will be dependent on the context of the overall scheme – an amendment that is non-material in one context may be material in another”*. The guidance explains that the LPA should be content that the proposed changes do not significantly alter the

permission.

- 6.4 The planning permission for this site is subject to a condition with the standard working hours across the city. For Saturdays, the hours are 09.00 to 13.00. This does not mean that no works can take place on the site outside of these hours but any such works should not be audible outside the buildings. Complaints have been received from local residents that the approved hours of work have been exceeded, including some works being carried out on Sundays. Following investigations of these complaints, the contractor has confirmed that no future works will take place on Sundays and a BoCN has been served meaning that any further breaches can now be followed up with prosecution action at the Magistrate's Court. The previous breaches should not influence a decision on whether or not Saturday working (as proposed) is acceptable.
- 6.5 Environmental Health and Planning Officers have been monitoring the site and been in regular contact with the contractors and the complainants. The ability to take action through planning powers and/or environmental protection legislation will be possible irrespective of the outcome of this application. Members' attention is drawn to the previous comments of the Environmental Health team as set out above.
- 6.6 This is a busy city centre location where background noise levels are high(er) including throughout the day on a Saturday. Permission has previously been granted (twice) for an extension of the Saturday hours up until the end of December 2016. In the circumstances, it is considered that a further limited period extension can be granted for Saturday working up until the end of July. In reality the applicants expect the scheme to have been completed well before July. This is an important regeneration project for the city centre and the developer is hoping to have the development completed shortly. The previous permission and NMA included an additional condition restricting deliveries to the site on Saturday afternoons and it is recommended that this condition is imposed again.
- 6.7 Should the Panel consider that the requested change cannot be supported a refusal could be issued. There is no right of appeal for NMA applications and the applicant would then need to apply for a formal variation of the permission where a similar objection could then be appealed. In reality, with the scheme nearing completion, it is not considered likely that this alternative approach would be pursued.

7. Summary

- 7.1 Extending the working hours on a Saturday is, again, considered to be reasonable in the circumstances of this case and the predominantly commercial nature of the surroundings.

8. Conclusion

- 8.1 That the application be approved for a limited period.

Local Government (Access to Information) Act 1985

Documents used in the preparation of this report Background Papers

1 (a), 1 (b), 1 (d), 2 (b), 2 (e).

SH for 21.02.2017 PROW Panel

PLANNING CONDITIONS

For a temporary period expiring on 31 July 2017 Condition 17 of planning permission ref: 13/00464/Out is amended to read as follows:

17. Hours of work for Demolition / Clearance / Construction [Performance Condition]

All works relating to the demolition, clearance and construction of the development hereby granted shall only take place between the hours of:

Monday to Saturdays 08:00 hours to 18:00 hours (8.00am to 6.00pm)

And at no time on Sundays and recognised public holidays.

Any works outside the permitted hours shall be confined to the internal preparations of the buildings without audible noise from outside the building, unless otherwise agreed in writing by the LPA.

Reason

To protect the amenities of the occupiers of existing nearby residential properties

At the end of this period the permitted hours of work shall revert to that permitted by Condition 17 of outline planning permission reference 13/00464/OUT.

Add additional condition

APPROVAL CONDITION - Hours of deliveries to the site [Performance Condition]

No deliveries or collections of goods and materials shall take place after 13.00 on Saturdays for the duration of the extension of the hours of working hereby approved.

Reason

To limit traffic problems at peak hours on the highway network.