

Planning and Rights of Way Panel 16th July 2019
Planning Application Report of the Service Lead - Infrastructure, Planning & Development

Application address: Quay 2000, Horseshoe Bridge, Southampton			
Proposed development: Closure of waterside walkway for public use:- Request to vary the planning obligation set out at The Second Schedule (Waterfront Access) of the Section 106 Agreement dated the 16th November 1998, allowing the Waterfront Access (the Walkway) gates to remain locked thus removing the ability for the general public to access the walkway for recreational purposes at all times.			
Application number:	19/00719/FUL	Application type:	FUL
Case officer:	Simon Mackie	Public speaking time:	15 minutes
Last date for determination:	N/A	Ward:	Portswood
Reason for Panel Referral:	Five or more letters of objection have been received	Ward Councillors:	Cllr Gordon Cooper Cllr Lisa Mitchell Cllr John Savage
Referred to Panel by:	N/A	Reason:	N/A
Applicant: Quay 2000 RTM Company Ltd		Agent: Robert Tutton Town Planning Consultants Ltd.	

Recommendation Summary	<ol style="list-style-type: none"> 1. Object to Submitted Request 2. Delegate to Service Lead – Infrastructure Planning & Development to vary the Planning Obligation and secure that the Waterfront Access (the Walkway) is reopened to provide public access over the walkway during the specified night-time hours.
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Community Infrastructure Levy Liable	Not applicable
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Reason for Granting Permission to Partially Vary the Planning Obligation

The closure of the Walkway is in breach of the Section 106 Agreement, dated the 16th November 1998 and contrary to the Council’s Planning Policy CLT 10 and CS 12 – Accessible & Attractive Waterfront, however this has to be balanced with the safety and residential amenity of the residents of Quay 2000 and the consultation response has demonstrated a distinct split between those in support of retaining the closure of the Walkway, which in the majority are residents of Quay 2000 and those opposed to the Walkway’s continued closure, referring to the importance of retaining access to the city’s waterfront.

Taking the overall result of the validated evidence provided and all consultation responses, coupled with the importance of not undermining the Council’s Planning Policy CLT 10 and

CS 12 – Accessible & Attractive Waterfront citywide, it is judged that the continued permanent closure of the Walkway is not an acceptable solution in planning terms and the issues of anti-social behaviour should be mitigated in partnership with all responsible bodies and authorities.

Therefore in seeking to mitigate the anti-social behaviour issues, a balanced solution to the proposed problem is suggested, whereby the Walkway is reopened to provide public access over the route but only during the hours of daylight. Such a solution would require the submission, by the Freehold Landowner / Right To Manage Company, of a Waterfront Access Management and Maintenance Plan, detailing within the methodology of how the night time closure of the Walkway would be managed and maintained in perpetuity, which would be secured by way of a variation to the Section 106 Agreement. For the avoidance of doubt the Waterfront Access Management and Maintenance Plan, would be subject to Council approval and any costs incurred by the Council in varying the original Section 106 Agreement will be covered by the applicant.

Appendix attached			
1	Development Plan Policies	2	Original Section 106 Agreement
3	Hampshire Constabulary Consultation Response	4	Danesdale Land Limited (Freehold Landowner) Consultation Response
5	Applicants Response to Hampshire Constabulary Consultation Response (see Appendix 3)		

Recommendation in Full

1. Reject the request to vary the planning obligation as contrary to CLT10 – Public Waterfront and Hards and CS 12 – Accessible & Attractive Waterfront;
2. Authorise the Service Lead – Infrastructure, Planning & Development to enter into a s.106 Deed of Variation (DoV), at the applicant’s expense, in accordance with the following heads of terms:
 - a. Amend the obligation to provide a waterfront walkway/cycleway for recreational purposes at all times subject to the Management Plan;
 - b. Submit a Management Plan for approval in writing by the Council within 1 month from the completion of the DoV; the Management Plan to ensure that the gate is unlocked in the morning (7am) and locked in the evening (7pm) every day, with an ongoing commitment to retaining waterfront access for wider public use and compliance with the approved Management Plan for the lifetime of the Development;
 - c. The gate to remain unlocked as agreed and no further means of enclosure erected on the land without prior written approval;
3. Authorise the Service Lead – Infrastructure, Planning & Development to take enforcement action in respect of any breach of the extant planning obligation if the DoV is not completed within 3 months from the date of this Panel meeting and/or the Management Plan hasn’t been agreed as required; and,
4. Authorise the Service Lead – Infrastructure, Planning & Development to take enforcement action in respect of any breach of the proposed planning obligation if the gate is not unlocked in line with the agreed amendment within 1 month from the written approval by the Council of the Management Plan.

1. The site and its context

1.1 This request relates to a waterfront flatted development on Horseshoe Bridge, known as Quay 2000.

1.2 The planning consent for the construction of the flats, subject to the Section 106 Agreement, was granted on 16th November 1998, under reference 97/0581/2084/W and was registered as a land charge on the 20th November 1998, with the following planning obligation included at:

- Schedule 2 of the section 106 agreement provides for a footpath to be publicly accessible in perpetuity and maintained;

“To provide and thereafter maintain in accordance with a programme agreed with the council a waterfront walkway / cycleway within the 4m wide area of land shown coloured blue on plan 2 (“the walkway”)

“The Owner hereby grants to the council its successors in title all those authorised by it and the general public at large in perpetuity the right to use the land shown coloured blue on plans 2 and the walkway for recreational purposes at all times.”

1.3 Danesdale Land Limited are the current freehold landowner of the Quay 2000 site, with the long leaseholders of the building setting up a Right-to-Manage Company in 2008, which subsequently took over legal responsibility for the Freeholders management functions at the site.

1.4 The Walkway closure occurred in August 2018 and was as a result of the outlined incidents of anti-social behaviour recorded in the original submission by the Directors of the Quay 2000 Right-to-Manage Company Limited. As a response to this closure the Council wrote to the freehold landowner seeking a request to vary the relevant planning obligation, to allow the matter to be assessed and determined, subject to a full formal review and consultation. A formal request to vary the relevant planning obligation was submitted, after ongoing communication and correspondence with the various parties, on the 16th April 2019.

2. Proposal

2.1 A request has been lodged on behalf of the residents of Quay 2000 for the closure of the on-site waterside walkway for public use. Their request is to vary the planning obligation set out at The Second Schedule (Waterfront Access) of the Section 106 Agreement dated the 16th November 1998, allowing the Waterfront Access (the Walkway) gates to remain locked thus removing the ability for the general public to access the walkway for recreational purposes at all times.

3. Relevant Planning Policy

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) and the City Centre Action Plan (adopted 2015). The most relevant policies to these proposals are set out within policies CLT10 and CS 12 - Accessible & Attractive Waterfront of the Core Strategy.

3.2 All waterfront development sites should, where appropriate, achieve greater integration between the city and its waterfront through “improving the physical connections to and from the waterfront including provision of well designed, attractive and safe public access to the waterfront”

3.3 Paragraph 91 b) of the National Planning Policy Framework states:

Planning policies and decisions should aim to achieve healthy, inclusive and safe places which:

b) are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion – for example through the use of clear and legible pedestrian routes, and high quality public space, which encourage the active and continual use of public areas;

and is also supported by paragraph 127 f) which states that:

Planning policies and decisions should ensure that developments:

f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users⁴⁶; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

4. Relevant Planning History

4.1 The original Section 106 Agreement was completed in the 16th November 1998.

4.2 The current closure of the Walkway was initiated by the Quay 2000 RTM Company Ltd in August 2018 and remains closed.

5. Consultation Responses and Notification Representations

5.1 Following the receipt of the request a publicity exercise in line with department procedures was undertaken which included notifying adjoining and nearby landowners, placing a press advertisement on the 3rd May 2019 and erecting a site notice on the 3rd May 2019. A further consultation was undertaken when further information was made publically available from the 17th June 2019. At the time of writing the report, 90 representations have been received from surrounding residents. The following is a summary of the points raised:

5.2 Those in support of the proposal, generally residents of Quay 2000, were concerned that the anti-social behaviour experienced, as supported within the applicants submission, would resume should the Walkway be required to be re-opened

Response

The issue of Anti-Social Behaviour could be a reason to depart from the Council's core Planning Policies, although it is for all parties / relevant bodies to find mitigation, where possible. The consultation response from Hampshire Constabulary identified that the Walkway did not play a part in over half of the incidents reported, with many of the incidents starting on the slipway and adjacent grassed area. As such, less weight is afforded to the applicants arguments when assessed in the round against policies CLT10 and CS12.

- 5.3 Those objecting, including two ward councillors, raise concerns that access to this area of waterfront is an issue citywide and closing access to this water frontage would create a difficult precedent and undermine the Council policy to re-connect with the city's water frontage.

Response

Although the Council's policy is important and should be applied, due to the nature of the Walkway, in that, it merely wraps around the development site and the location of the more significant river walkway adjacent to the site, there is more scope to seek a compromise on this occasion, given the material considerations. So while a full closure should not be supported it seems reasonable that a more flexible solution is sought, so as to not undermine the waterfront policy but at the same time allow a more secure environment for the residents of Quay 2000. This is discussed in more detail in the Planning Consideration section of this report.

Consultation Responses

- 5.4 **Hampshire Constabulary** – the summarised response is that, since the closure of the gates, incidents in the area have still been reported and of all of the actual anti-social behaviour recorded the majority was instigated on the slipway and adjacent grassed area, with the “boardwalk” not playing a part in half of the incidents. Overall, the data held by Hampshire Constabulary *“does not show that the boardwalk has a disproportionate effect on the levels of crime and anti-social behaviour in the area, when compared with any other local transit route.”*

The full response is set out at Appendix 3 (Hampshire Constabulary) and the Applicants Response to the Hampshire Constabulary consultation response is at Appendix 5

- 5.5 **SCAAPS (Southampton Commons & Parks Protection Society)** - have also strongly objected to the continuing closure of the walkway commenting that *“the walkway is an important continuation of the small Priory Road Hard public open space giving local people access to the river front for recreation.* The reason advanced by the applicant for removal of the legal obligation is insufficient to justify denying the public an opportunity to enjoy access to an attractive stretch of river frontage

- 5.6 **Ward Councillors** – two of three Ward Councillors (Cllr Savage & Cllr Mitchell) have responded and commented that they objected to the request and in summary pointed out that:

“We don't have enough access to the waterfront in Southampton and the removal of more is unacceptable.

Whilst I sympathise with residents who have been bothered by anti-social behaviour this is a problem that the whole of St Denys is facing at the moment.”

“Access to the water and the views available is an important amenity to the local population. All waterside developments should have access to water frontage for this reason and the removal of this right as standard may undermine the planning principle. In general planning terms, the threat of ASB is not normally enough to threaten a development. Mitigation should take place.

At the very least, the river access should be maintained through hours of daylight for the amenity enjoyment of local people as per the original plans.”

6.0 Planning Consideration Key Issues

6.1 The key issues for consideration in the determination of this planning request:

- Accessible & Attractive Waterfront
- Impact on waterfront access;
- Residential amenity;
- Precedent;
- Panel Options;

6.2 CS 12 - Accessible & Attractive Waterfront of the Core Strategy

6.2.1 The Council has a duty to enforce its own planning policies and ensure that these are not undermined disproportionately by individual decisions for individual sites. The retention of waterside access is a policy requirement and was a material consideration when the original Quay 2000 planning application was determined and remains a core planning policy requirement for all new waterfront development.

6.3 Impact on waterfront access

6.3.1 The Panel need to determine the impacts that the specific proposal have on the availability of waterfrontage within the city and to the general public. In this specific scenario the Walkway wraps only around the site and currently does not directly link up with any other waterfront walkway, save for the slipway to the north and Horseshoe Bridge to the south.

6.4 Residential amenity

6.4.1 Anti-Social Behaviour is a material consideration (policy SDP 10 Safety & Security) but, given the need for waterfront access in the city and lack of strong objection from the police, should not be a sole reason to depart from Council policy and it is the duty of all relevant parties / bodies to mitigate the impact of these issues.

6.5 Precedent

6.5.1 Panel need to be aware that any closure of waterfront access may undermine the city-wide policy and set precedents that are difficult to resist on other waterfront developments and sites.

6.6 Panel Options

6.6.1 Panel has at least three options available to it

1. Do nothing and allow gates to remain closed and waterfront access be denied, whether on a temporary or permanent basis
2. Refuse request and enforce current planning obligation by way of injunction
3. Allow the compromise position, which allows for the waterfront access to be provided during daylight hours and closed during the hours of darkness, subject to a Variation to the original Section 106 Agreement and secured by the submission and approval of Waterfront Access Management & Maintenance Plan

6.6.2 Option 3 is recommended

7. Summary

- 7.1 Anti-social behaviour is an issue and it is unfortunate for all residents who have to experience this, however, it seems that in this situation much of the anti-social behaviour experienced occurs mainly at night, during the hours of darkness and also stems from the Slipway area adjacent to the site and not from the Walkway itself, albeit this may not offer any comfort for the residents who experience the anti-social behaviour first hand. However, having reviewed the consultations and given weight to all, it is judged on balance, that to allow the closure of the Walkway on a permanent basis would not be a reasonable or proportionate decision to take and will deprive the wider population from public access to the city's waterfront.
- 7.2 However, even though a full closure is not reasonable, on balance allowing the closure of the Walkway during night time hours will mitigate the impact of much of the anti-social behaviour but will also not undermine the Council's policy of access to the city's waterfront. As no details are provided as to how the gates would be locked / opened and maintained, it is proposed that a management plan is submitted to the Council within for approval and implementation, detailing how the gates would be managed and maintained.

8. Conclusion

- 8.1 It is therefore recommended that the request to fully close the Walkway is rejected
- 8.2 However, allow a partial closure of the Walkway, during night time hours, subject to a Variation to the original Section 106 agreement, the details of which will be set out within the submission and subsequent approval of a Waterfront Access Management and Maintenance Plan, secured within the Deed of Variation to the original Section 106 Agreement. All costs relating to the variation and provision of night-time closure should be borne by the applicant.

Local Government (Access to Information) Act 1985

Documents used in the preparation of this report Background Papers

1 (a-d) 2 (b) & (d) 4 (g) 6 (a) & (b)

SM for 16/07/19 PROW Panel

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POLICY CONTEXT

Core Strategy - (as amended 2015)

CS25 The Delivery of Infrastructure and Developer Contributions

City of Southampton Local Plan Review – (as amended 2015)

CLT10 Public Waterfront and Hards

CLT11 Waterside Development

CLT12 Waterside Open Space

SDP10 Safety & Security

Supplementary Planning Guidance

Residential Design Guide (Approved - September 2006)

Planning Obligations (Adopted - September 2013)

Other Relevant Guidance

The National Planning Policy Framework (2012)

