

**Planning, Transport & Sustainability Division
 Planning and Rights of Way Panel (EAST) 28 October 2014
 Planning Application Report of the Planning and Development Manager**

Application address: Tesco Express, 12-18 Cobden Avenue, Southampton, SO18 1FX			
Proposed development: Variation of conditions 5 (opening hours) and 9 (plant hours) of planning permission reference 07/00156/FUL to extend opening hours and use of the plant and service yard 2 hours extra per day to 6am - 00.00 (midnight) seven days a week			
Application number	14/01480/FUL	Application type	FUL
Case officer	Stuart Brooks	Public speaking time	5 minutes
Last date for determination:	06.11.2014	Ward	Bitterne Park
Reason for Panel Referral:	Request by Ward Member and five or more letters of objection have been received	Ward Councillors	Cllr White Cllr Baillie Cllr Inglis

Applicant: Tesco Stores Ltd	Agent: GL Hearn
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Recommendation Summary	Conditionally approve
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Reason for granting Permission

The development is acceptable taking into account the policies and proposals of the Development Plan as set out below. The proposal is judged not to materially harm the amenity and character of neighbouring occupiers in terms of disturbance from additional activities during the extended hours, whilst there are no material harm to road safety from additional traffic. Other material considerations have been considered and are not judged to have sufficient weight to justify a refusal of the application, and where applicable conditions have been applied in order to satisfy these matters. The scheme is therefore judged to be in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and thus planning permission should therefore be granted. In reaching this decision the Local Planning Authority offered a pre-application planning service and has sought to work with the applicant in a positive and proactive manner as required by paragraphs 186-187 of the National Planning Policy Framework (2012).

Policies - SDP1, SDP5, SDP10, SDP11, SDP16 of the City of Southampton Local Plan Review (March 2006) and CS3, CS13, CS18, CS19 of the Local Development Framework Core Strategy Development Plan Document (January 2010).

Appendix attached			
1	Development Plan Policies	2	Plans for previous permission

Recommendation in Full

Conditionally approve

1.0 The site and its context

- 1.1 This application site is located on the south side of Cobden Avenue (A335) within the Bitterne Park ward. The existing single storey building contains a supermarket (Tesco Express) with associated car parking to the side and enclosed servicing area to the rear.
- 1.2 The site is outside of, but in close proximity to, the Bitterne Triangle local centre. There is a row of commercial buildings leading up from the local centre to the north west including uses such as wholesale retail, garage services, and public house. There is a Church with cafe facilities opposite. However the uses immediately bounding the site to the south, west and east are a residential mix of flats and houses.
- 1.3 The south east boundary between the residential flats at Cobden Court is separated by a tall Coniferous hedge and close boarded fence adjacent to the resident's parking area. The car parking area of the adjoining residential property on Whitworth Crescent backs onto the site at significantly lower level with extensive boundary treatment and vegetation cover.

2.0 Proposal

- 2.1 Through the variation of conditions 5 (opening hours) and 9 (plant use) to the original permission for the foodstore, it is proposed to extend the hours of use of the premises and the plant and service yard for a further 2 hours every day of the week - 06.00 to 00.00 hours (midnight). The current approved hours are 0700 to 2300 meaning that an extra hour at either end of the working day is sought.
- 2.2 The existing delivery hours remain unchanged as controlled by LPA ref: 07/00156/FUL condition 6. They are as restricted to between 0700 and 2300 hours on any day.

3.0 Relevant Planning Policy

- 3.1 The Development Plan for Southampton currently comprises the "saved" policies of the City of Southampton Local Plan Review (March 2006) and the City of Southampton Core Strategy (January 2010). The most relevant policies to these proposals are set out at **Appendix 1**.
- 3.2 The National Planning Policy Framework (NPPF) came into force on 27th March 2012 and replaces the previous set of national planning policy guidance notes and statements. The Council has reviewed the Core Strategy

to ensure that it is in compliance with the NPPF and are satisfied that the vast majority of policies accord with the aims of the NPPF and therefore retain their full material weight for decision making purposes, unless otherwise indicated.

- 3.3 Saved policy SDP1(i) seeks to protect the amenity of local residents, whilst policy SDP16 will not permit noise generating development if it would cause an unacceptable level of noise impact.

4.0 Relevant Planning History

- 4.1 The site was redeveloped in 2006 as a single storey supermarket building (permission ref. 05/01645/FUL). An amended permission granted in 2007 (07/00156/FUL). See **Appendix 2** for approved plans and decision notice.

- 4.2 07/00156/FUL Condition 5 states:

Hours of Use

Unless the Local Planning Authority agree otherwise in writing the premises shall only be used for the purpose hereby approved between 0700 and 2300 hours on any day.

REASON

To protect the amenities of neighbouring residential occupiers and the surrounding area.

- 4.3 07/00156/FUL Condition 9 states:

Service and plant yards

Unless the Local Planning Authority agree otherwise in writing the service yard and plant yard shall only be used between 0700 and 2300 hours on any day.

REASON

To protect the amenities of neighbouring residential occupiers and the surrounding areas.

5.0 Consultation Responses and Notification Representations

- 5.1 Following the receipt of the planning application a publicity exercise in line with department procedures was undertaken which included notifying adjoining and nearby landowners, and erecting a site notice (16.09.14). At the time of writing the report **7 representations** have been received from surrounding residents. The following is a summary of the points raised:

- 5.2 Comment

Impact of noise and late night disturbance to nearby residents from extended operation of plant equipment and activities associated with additional servicing, trolley parking, traffic, deliveries, comings and goings.

Response

The supermarket car park is screened from adjoining properties. The noise associated with the additional comings and goings earlier and later in the day is not considered to be materially harmful to the amenity of the neighbouring

occupiers. In particular, a terminal hour of midnight has been applied consistently for commercial and retail units elsewhere in the city, such as the Portswood Road (outside the district centre nearby residential properties) and Centenary Quay and, therefore, it is considered appropriate and consistent to accept the same hours in this location.

5.3 Comment

16 hours opening time is sufficient time allocation to make a profit. The other convenience store opens till 2200 in the local area.

Response

The assessment of the opening hours should be based on the impact it has on local amenity. Other local businesses open to 11pm. The nearby Bitterne Park Hotel is licensed until 00:30. Diamond Pizza within the local centre is licensed until 1am (2pm on Saturday). H Palace is licensed until 00:30 (midnight on Sunday). The Bitterne Balti is licensed until 2pm everyday. It is considered that an additional hour in this location is not considered to have a significant impact on the character of the area or the amenity of neighbours.

5.4 Comment

The store is already operating later than the hours proposed.

Response

The applicant is able to apply retrospectively to regularise the breach of planning control. The applicant has confirmed they have stopped trading during the unauthorised hours while the application is being determined and the Council can monitor the situation further in the event that this application is unsuccessful.

5.5 Comment

Causes traffic congestion already. There is currently a lack of parking capacity.

Response

The Highway Officer has raised no concern with regards to traffic impact and highway safety. The parking layout has already been approved under the original permission.

5.6 Comment

More packaging and littering including dumping of wired baskets on neighbouring land and increased opportunities for thieving.

Response

These are management issues which are the responsibility of the trader, and can be enforced against by other agencies under their own statutory legislation. These proposed change in hours will have little bearing on this issue.

Consultation Responses

5.7 **SCC Highways** - No objection.

5.8 **SCC Environmental Health** - No objection. In agreement with findings of noise report for plant equipment. Requested a management plan to control the noise from the car park during the hours applied, and delivery times to be controlled with the current condition.

6.0 Planning Consideration Key Issues

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

- Principle of development
- Impact on character and amenity
- Impact on highway safety

6.2 Principle of Development

6.2.1 The proposal seeks to extend the hours for an existing use, where there are no policy restrictions for the operating hours. It should be noted that the principle of the retail use is already established and, therefore, is not being reassessed under this application. The acceptability of the proposal is therefore subject to an assessment of the material harm caused by the additional activities associated with the existing use during the extended hours.

6.3 Impact on character and amenity

6.3.1 The movement of vehicles within the supermarket car park are screened from adjoining properties to the east and south by a close boarded fence and mature vegetation, including a tall hedge along the boundary with Cobden Court.

6.3.2 For comparison, the applicant has provided survey data showing average footfall from other express stores in Southampton and elsewhere in the country. This shows that the level of footfall during the periods between 06.00 and 07.00 and 23.00 and 00.00 (midnight) is significantly lower than the peak trading hours during the day. This is a strong indication that the additional activity in terms of comings and goings during the extended periods in the morning and evening will not materially harm the amenity of the neighbouring occupiers.

6.3.3 The Environmental Health Officer has raised a concern with regards to the proximity of the car park to local residents, given the potential for noise disturbance caused by patrons during the extended hours from accessing the car park, and noise from car doors, music, etc. As such, the Officer has requested a management plan to be further approved to control the noise from car park at all times applied for. The management of noise from the car park is not considered to be enforceable by condition nor relevant to

planning, given that these type of customer nuisances are primarily enforced under Environmental Health statutory legislation. Normally, the planning system would expect the land user to operate in a reasonable and respectful manner to its neighbour's in terms of customer and staff behaviour.

- 6.3.4 A terminal hour of midnight has been applied consistently for commercial units on main roads elsewhere in the city, such as Portswood Road outside the district centre adjacent to residential properties and, therefore, it would be appropriate to accept the same hours in this location. As such, a retail premises operating these hours is not considered to be out of character with the local area.
- 6.3.5 The applicant is not seeking to extend the hours of deliveries and, therefore, no further disturbance will be caused by delivery vehicles outside the hours of 07.00 and 23.00 during the day. The presence of staff on site is controlled by a condition on the extant permission specifying that no staff shall be present 30 minutes before or after the opening and closing times. A condition also specifies that the existing ATM shall not be used outside the shop trading hours (meaning that these hours would also change as part of this application – see condition 12 below).
- 6.3.6 The service yard is to the rear of the site and well concealed from the adjoining properties. The yard is situated on the far side away from Cobden Court, and the adjoining residential property on Whitworth Crescent has a car parking area immediately adjacent to the service yard. As such, it is considered that the amenity of the neighbouring occupiers will not be materially harmed by the service yard activities during the extended hours.
- 6.3.7 The plant equipment at ground floor level is well concealed within the enclosed service yard. The Environmental Health Officer is in agreement with the findings of the noise assessment carried out. This demonstrates that their noise levels are not harmful to the local residents given that they are operating below the background noise levels as required by British Standard 4142:1997.
- 6.3.8 Following an inspection of the site officers are satisfied that suitable arrangements for storage and collection of trade waste have been put in place that meet the requirements of condition 1 under the extant permission. This consists of a small eurobin permanently stored in the service yard and is collected from the car park, whilst packaging materials are collected once delivery vehicles have emptied.

6.4 Impact on highway safety

- 6.4.1 The layout of the parking and access arrangement for the premises has already been established and, therefore, is not being reassessed under this application. The Highway Officer has commented that the proposed extension of opening hours to one hour each end of the day will have only a minimal additional impact on the public highway. It is considered that traffic levels at that time of the morning and night are relatively low and there does

not appear to be many reported accidents (reported accident and casualties in Southampton stats map 2011-2013) in front of this site and the junction to warrant any major highway safety concerns.

6.5 Outstanding matters

6.5.1 Given that the previous application granted retrospective permission, there are a number of time limited conditions which were imposed. There is no record to indicate that these conditions were satisfied and, therefore, these conditions have been re-imposed where it is considered reasonable and expedient to do so in terms of the breach of planning control.

7.0 Summary

7.1 In summary, the proposal is judged not to materially harm the amenity and character of neighbouring occupiers in terms of disturbance from additional activities during the extended hours, whilst there are no material harm to road safety from additional traffic.

8.0 Conclusion

8.1 In conclusion, the variation of condition to the original permission as proposed is judged to be acceptable. All conditions from the previous permission should be re-instated.

Local Government (Access to Information) Act 1985 **Documents used in the preparation of this report Background Papers**

1(a), 1(b), 1(c), 1(d), 2(b), 2(d), 4(vv), 7(a), 9(a), 9(b)

SB for 28/10/14 PROW Panel

PLANNING CONDITIONS

01. APPROVAL CONDITION - Storage/Removal of Refuse Material

The existing arrangement for storage and removal of refuse from the premises shall be retained whilst the use hereby approved is in duration. The facilities shall include means to allow efficient collection of refuse and accommodation for the separation of waste to enable recycling.

REASON

In the interests of visual amenity, the amenities of future occupiers of the development and the amenities of occupiers of nearby properties.

02. APPROVAL CONDITION - Bollards

The bollards as shown on the approved plans of this planning permission 07/00156/FUL shall be retained. Such bollards shall be kept in upright positions during times when the store is in operation.

REASON

In the interests of pedestrian and highway safety.

03. APPROVAL CONDITION - Surface water disposal

Details of the means of surface water disposal shall be submitted to and approved in writing by the Local Planning Authority in consultation with Southern Water within 2 months of the date of this planning permission. The means of surface water disposal agreed shall be fully installed and operational within 2 months of the Council's approval and thereafter retained.

REASON

To ensure a satisfactory standard of development and there is no disposal to a public sewer.

04. APPROVAL CONDITION - Car parking, access and cycle parking

The parking spaces, vehicular access to them and cycle parking/shower facilities as shown on the approved plans under permission 07/00156/FUL shall be retained on site for the development only.

REASON

To ensure provision of vehicular access and car parking, to avoid congestion in the adjoining area, to protect the amenities of the area and to encourage cycling as a sustainable form of transport.

05. APPROVAL CONDITION - Hours of Use – AMENDED BY THIS PERMISSION

Unless the Local Planning Authority agree otherwise in writing the premises shall only be used for the purpose hereby approved between 0600 and 0000 hours (midnight) on any day.

REASON

To protect the amenities of neighbouring residential occupiers and the surrounding area.

06. APPROVAL CONDITION - Deliveries

Unless the Local Planning Authority agree otherwise in writing deliveries shall only take place between 0700 and 2300 hours on any day.

REASON

To protect the amenities of neighbouring residential occupiers and the surrounding area.

07. APPROVAL CONDITION - Staff on premises

No staff shall be present on the premises 30 minutes before or after the permitted opening and closing times.

REASON

To protect the amenities of neighbouring residential occupiers and the surrounding areas.

08. APPROVAL CONDITION - Specified Use

The premises shall only be used for purposes specified within Class A1 of the Schedule of the Town and Country Planning (Use Classes Order) 2005 as amended (or in any equivalent provision in any statutory instrument revoking or re-enacting that Order) and for no other purpose whatsoever including any other ancillary use unless otherwise agreed in writing by the Local Planning Authority.

REASON

To enable the Local Planning Authority to retain control over the development in the interests of the amenities of the area.

09. APPROVAL CONDITION - Service and plant yards – AMENDED BY THIS PERMISSION

Unless the Local Planning Authority agree otherwise in writing the service yard and plant yard shall only be used between 0600 and 0000 hours (midnight) on any day.

REASON

To protect the amenities of neighbouring residential occupiers and the surrounding areas.

10. APPROVAL CONDITION - Noise from plant

The rating level of noise emitted by all fixed plant on the site shall not exceed 42 dB(A) between 2300 to 0700 and 48 dB (A) at other times. The noise levels shall be determined 1 metre from a facade containing a bedroom window at the nearest existing noise sensitive property. Noise measurements shall be in accordance with BS 4142:1997.

REASON

To protect the amenities of occupiers of neighbouring residential properties.

11. APPROVAL CONDITION - No Windows

Unless the Local Planning Authority agree otherwise in writing no further windows shall be constructed in any elevation of the building except as shown on the approved plans.

REASON

To protect the amenity and privacy of the adjoining properties.

12. APPROVAL CONDITION - ATM

The Automatic Teller Machine shall not be in operation outside of store trading hours.

REASON

In the interests of crime prevention and to protect the residential amenities of occupiers of Cobden Court at unsocial hours.

13. APPROVAL CONDITION - Contamination

Clean, uncontaminated soil, subsoil, rock aggregate, brick rubble, crushed concrete and ceramic shall only be permitted for infilling and landscaping on the site. Any such materials imported on to the site must be accompanied by documentation to

validate their quality and be submitted to the Local Planning Authority within 3 months of the date of this permission.

REASON

To ensure no ground contamination risk to human health and the environment are introduced onto the development.

14. APPROVAL CONDITION - Contamination

Within 6 months of the decision date the developer shall satisfy the Local Planning Authority that all significant land contamination risks associated with the development have been successfully addressed through the implementation of a scheme of remediation to be agreed in writing by the Local Planning Authority.

REASON

To identify unacceptable risks to human health and the environment and ensure remediation of the site is to an appropriate standard.

15. APPROVAL CONDITION - Development in accordance with Plans

The development hereby approved shall be implemented solely in accordance with drawing nos.P500, P501B, P202C received by the Local Planning Authority on 2 February 2007 unless otherwise amended through discharge of any of the attached planning conditions to be agreed in writing with the Local Planning Authority.

REASON

To define the consent and for the avoidance of doubt.

POLICY CONTEXT

Core Strategy - (January 2010)28

CS3	Promoting Successful Places
CS18	Transport: Reduce-Manage-Invest
CS19	Car & Cycle Parking

City of Southampton Local Plan Review – (March 2006)

SDP1	Quality of Development
SDP5	Parking
SDP10	Safety & Security
SDP11	Accessibility & Movement
SDP16	Noise

Supplementary Planning Guidance

Parking Standards SPD (September 2011)

Other Relevant Guidance

The National Planning Policy Framework 2012



DETERMINATION OF APPLICATION
TOWN AND COUNTRY PLANNING ACT 1990

Town and Country Planning (General Development Procedure) Order 1995

Alsop Verrill LLP
2 Milliners House
Eastfields Avenue
London SW18 1LP

Decision



In pursuance of its powers under the above Act and Regulations, Southampton City Council, as the District Planning Authority, hereby gives notice that the application described below has been granted:

CONDITIONALLY APPROVED

Proposal: Redevelopment of the site by the retention of a single-storey retail store with associated car parking and servicing area (amendment to previous proposal SCC ref: 05/01645/FUL dated 31.05.06).

Site Address: 12 - 18 Cobden Avenue Southampton SO18 1FX

Application No: 07/00156/FUL

In accordance with the plans and application submitted with the above FULL Application, subject to the following conditions:

01. Storage/Removal of Refuse Material

Details of satisfactory facilities to be provided for the storage and removal of refuse from the premises shall be submitted to the Local Planning Authority within 1 month of the date of this planning permission. The facilities shall include means to allow efficient collection of refuse and accommodation for the separation of waste to enable recycling.

REASON

In the interests of visual amenity, the amenities of future occupiers of the development and the amenities of occupiers of nearby properties.

02. Bollards

The bollards as shown on the approved plans shall be installed within 1 month of the date of this planning permission and be retained thereafter. Such bollards shall be kept in upright positions during times when the store is in operation.

REASON

In the interests of pedestrian and highway safety.

03. Surface water disposal

Details of the means of surface water disposal shall be submitted to and approved in writing by the Local Planning Authority in consultation with Southern Water within 1 month of the date of this planning permission.

REASON

To ensure a satisfactory standard of development and there is no disposal to a public sewer.

04. Car parking, access and cycle parking

The parking spaces; vehicular access to them and cycle parking/shower facilities as shown on the approved plans shall be retained on site for the development only.

REASON

To ensure provision of vehicular access and car parking, to avoid congestion in the adjoining area, to protect the amenities of the area and to encourage cycling as a sustainable form of transport.

05. Hours of Use

Unless the Local Planning Authority agree otherwise in writing the premises shall only be used for the purpose hereby approved between 0700 and 2300 hours on any day.

REASON

To protect the amenities of neighbouring residential occupiers and the surrounding area.

06. Deliveries

Unless the Local Planning Authority agree otherwise in writing deliveries shall only take place between 0700 and 2300 hours on any day.

REASON

To protect the amenities of neighbouring residential occupiers and the surrounding area.

07. Staff on premises

No staff shall be present on the premises 30 minutes before or after the permitted opening and closing times.

REASON

To protect the amenities of neighbouring residential occupiers and the surrounding areas.

08. Specified Use

The premises shall only be used for purposes specified within Class A1 of the Schedule of the Town and Country Planning (Use Classes Order) 2005 as amended (or in any equivalent provision in any statutory instrument revoking or re-enacting that Order) and for no other purpose whatsoever including any other ancillary use unless otherwise agreed in writing by the Local Planning Authority.

REASON

To enable the Local Planning Authority to retain control over the development in the interests of the amenities of the area.

09. Service and plant yards

Unless the Local Planning Authority agree otherwise in writing the service yard and plant yard shall only be used between 0700 and 2300 hours on any day.

REASON

To protect the amenities of neighbouring residential occupiers and the surrounding areas.

10. Noise from plant

The rating level of noise emitted by all fixed plant on the site shall not exceed 42 dB(A) between 2300 to 0700 and 48 dB (A) at other times. The noise levels shall be determined 1 metre from a facade containing a bedroom window at the nearest existing noise sensitive property. Noise measurements shall be in accordance with BS 4142:1997.

REASON

To protect the amenities of occupiers of neighbouring residential properties.

11. No Windows

Unless the Local Planning Authority agree otherwise in writing no further windows shall be constructed in any elevation of the building except as shown on the approved plans.

REASON

To protect the amenity and privacy of the adjoining properties.

12. ATM

The Automatic Teller Machine shall not be in operation outside of store trading hours.

REASON

In the interests of crime prevention and to protect the residential amenities of occupiers of Cobden Court at unsocial hours.

13. Contamination

Clean, uncontaminated soil, subsoil, rock aggregate, brick rubble, crushed concrete and ceramic shall only be permitted for infilling and landscaping on the site. Any such materials imported on to the site must be accompanied by documentation to validate their quality and be submitted to the Local Planning Authority for approval prior to occupancy of the site.

REASON

To ensure no ground contamination risk to human health and the environment are introduced onto the development.

14. Contamination

The developer shall satisfy the Local Planning Authority that all significant land contamination risks associated with the development have been successfully addressed through the implementation of a scheme of remediation to be agreed in writing by the Local Planning Authority.

REASON

To identify unacceptable risks to human health and the environment and ensure remediation of the site is to an appropriate standard.

15. Surface water drainage

No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant risk to controlled waters.

REASON

To protect groundwater beneath the site and the surface waters to the west of the site as SUDS can increase the potential for pollution if located in contaminated ground.

16. Development in accordance with Plans

The development hereby approved shall be implemented solely in accordance with drawing nos.P500, P501B, P202C received by the Local Planning Authority on 2 February 2007 unless otherwise amended through discharge of any of the attached planning conditions to be agreed in writing with the Local Planning Authority.

REASON

To define the consent and for the avoidance of doubt.

Reason for granting Permission

The development is acceptable taking into account the policies and proposals of the Development Plan as set out below. Other material considerations do not have sufficient weight to justify a refusal of the application. In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended), Planning Permission should therefore be granted.

Policies - SDP1, SDP5, SDP7, SDP9 and REI 1 of the City of Southampton Local Plan Review (March 2006).

Note to Applicant

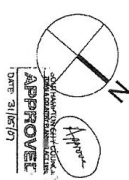
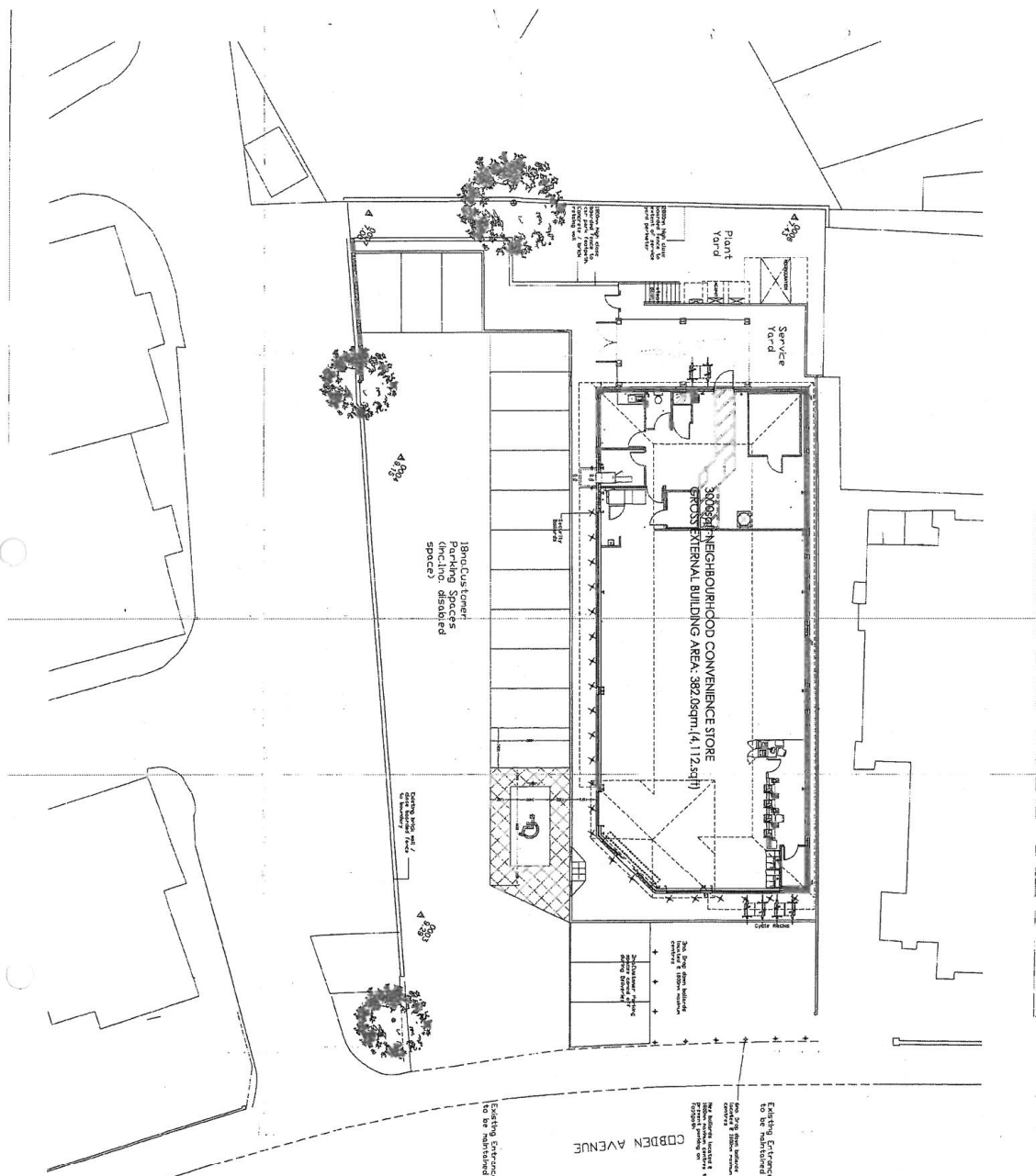
A formal application for connection to the water supply is required in order to service this development. Please contact Southern Water's Network Development Team. (Water) based in Chatham, Kent or www.southernwater.co.uk



David Rothery *DR*
Development Control Manager

31 May 2007

If you have any further enquiries please contact:
David Randall



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SUSSEX COUNCIL

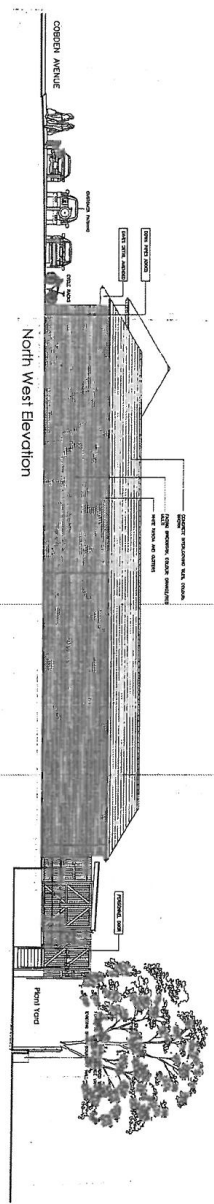
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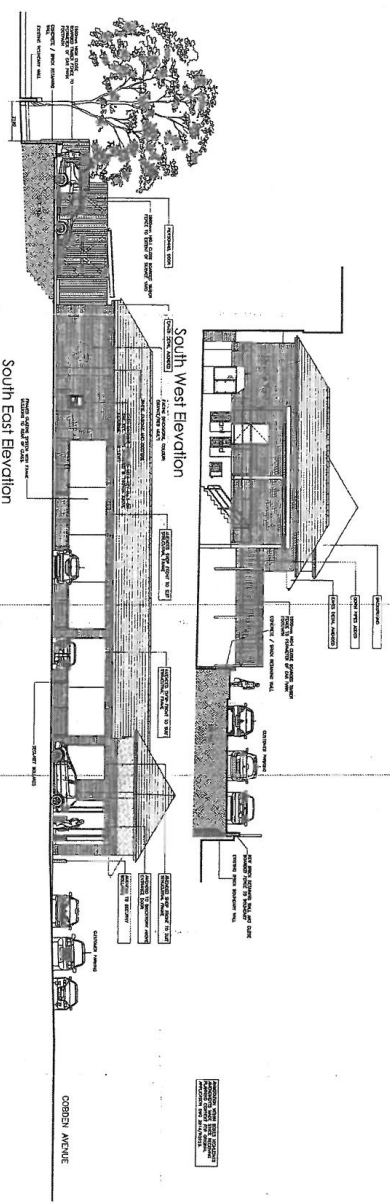
PLESSER INVESTMENTS
100 BUNN STREET
HOBART TASMANIA 7000
ARCHITECTS

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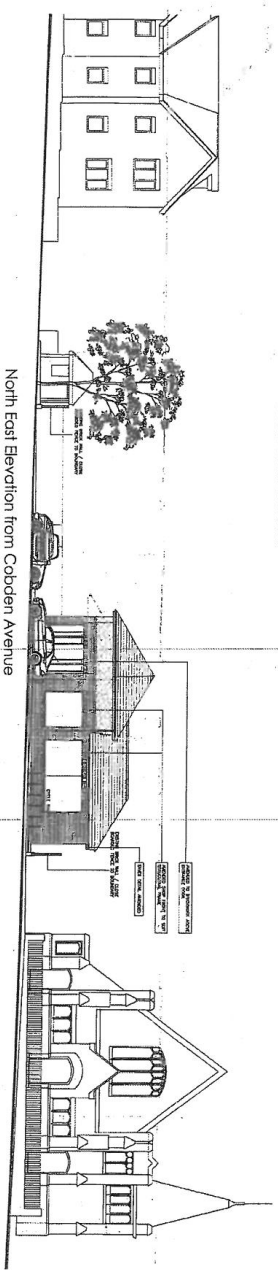
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North West Elevation



South West Elevation



South East Elevation



North East Elevation from Cobden Avenue

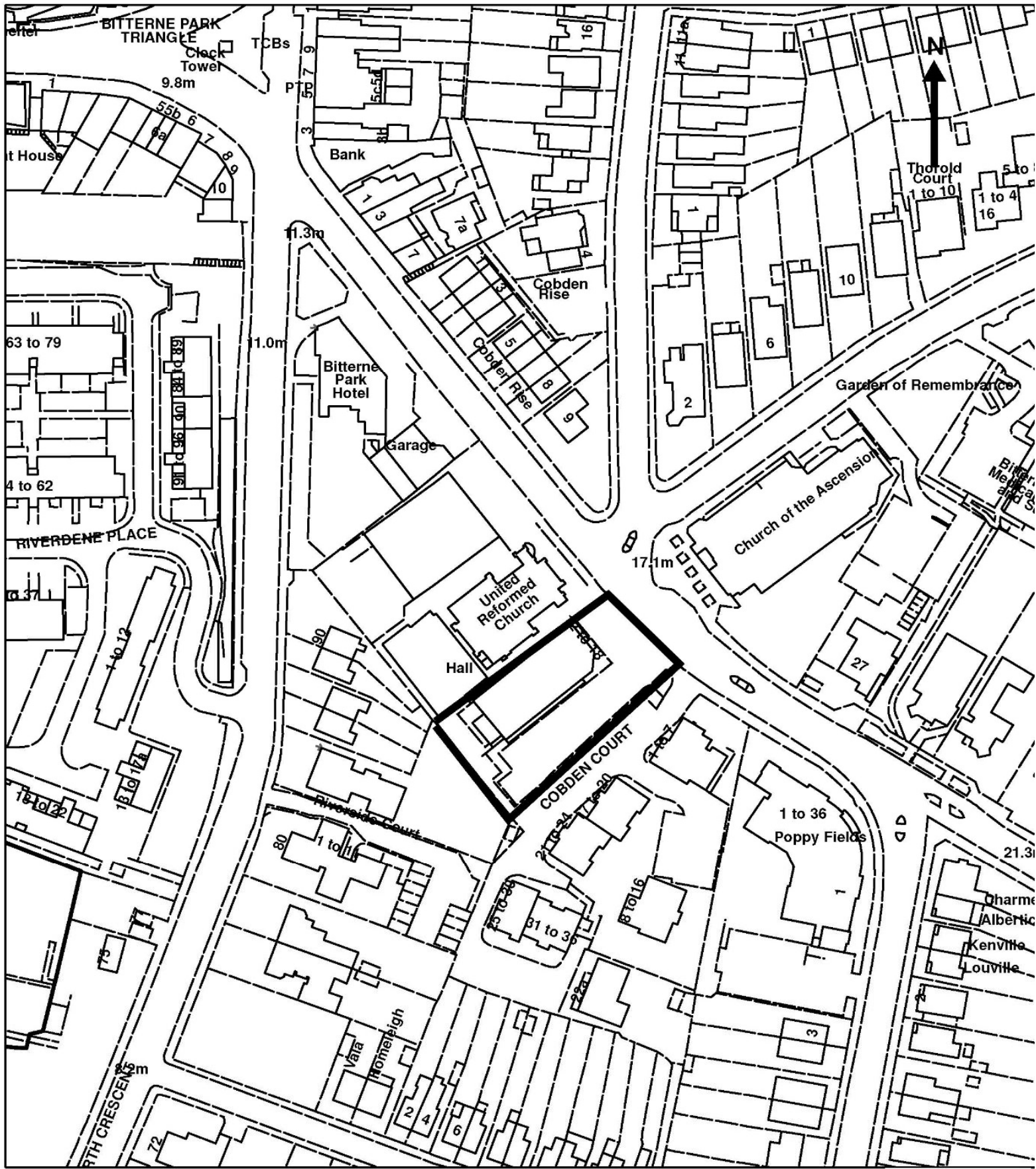
APPROVED
 DATE: 3/15/2011
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THE BIRCHALL ARCHITECTS
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PROJECT: PLEESBY INVESTMENTS
 ADDRESS: COBDEN AVENUE
 SHEET: GENERAL ELEVATIONS
 DATE: 09/14/2009
 DRAWN BY: [Name]
 CHECKED BY: [Name]

14/01480/FUL



Scale: 1:1,250

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