

**Planning, Transport & Sustainability Division**  
**Planning and Rights of Way Panel 4<sup>th</sup> August 2015**  
**Planning Application Report of the Planning and Development Manager**

<b>Application address:</b> 225 Portswood Road			
<b>Proposed development:</b> Change of use of ground floor from retail (class A1) to restaurant/café (class A3), Installation of a new shop front, extract flue and AC units to rear.			
<b>Application number</b>	15/01285/FUL	<b>Application type</b>	FUL
<b>Case officer</b>	Kieran Amery	<b>Public speaking time</b>	5 minutes
<b>Last date for determination:</b>	13.08.2015	<b>Ward</b>	Portswood
<b>Reason for Panel Referral:</b>	More than five letters of objection and a referral from Cllr O' Neill have been received.	<b>Ward Councillors</b>	Cllr Paul O'Neill Cllr Matthew Claisse Cllr Linda Norris

<b>Applicant:</b> Mr Jinfeng Chen	<b>Agent:</b> Mr Les Weymes
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<b>Recommendation Summary</b>	<b>Conditionally approve</b>
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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 proposed change of use from A1 to A3 within this secondary retail frontage is supported within Portswood District Centre. The proposed hours of operation are not considered materially harmful to highway safety, or the character and amenity of the local area, whilst preserving the character of the adjacent conservation area and the amenities of occupiers of nearby residential properties. 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, SDP16, HE1, RE4, RE15, RE17 of the City of Southampton Local Plan Review (March 2006) and CS13, CS14, CS18, CS19 of the Local Development Framework Core Strategy Development Plan Document (January 2010) as supported by the Portswood Residents Gardens Conservation Area Appraisal and Management Plan.

<b>Appendix attached</b>			
1	Development Plan Policies	2	Planning History
3	Permitted Hours of Operations		

## **Recommendation in Full**

### **Conditionally approve**

#### **1.0 The site and its context**

1.1 The site is located within the Portswood District Shopping Centre which is predominantly characterised by a range of commercial uses, including food and drink premises. The site is bounded by a service track to the rear which runs alongside the rear gardens of the residential properties in Abbots Way. The boundary of the Portswood Residents Gardens Conservation Area follows the rear edge of the gardens of these properties.

1.2 The application site itself is situated between a café and a betting shop and comprises a two-storey building, containing a commercial unit at ground floor, originally comprising a Use Class A1 charity shop (now vacant). The first floor is occupied by a residential unit.

#### **2.0 Proposal**

2.1 The proposal is for the change of use from retail (class A1) to a restaurant/café oriental dessert boutique (class A3), the installation of a new powder coated aluminium shop front, and an extract flue and air conditioning units to the rear. The unit provides just over 100 sq.m of floor space. The proposed hours of use are between 11.00 and 23.00 Monday to Sunday.

#### **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 27<sup>th</sup> 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 Policy CS3 of the Core Strategy supports the role of District Centre in meeting the week to week needs of the local community. Saved policy REI5 (District Centres) sets out that ground floor A3 uses will be permitted in District Centre locations. Similarly, policy REI7 (Food and Drink Uses) permits A3 uses in District Centre locations providing that suitable conditions are used to control the impact on amenity to local residents from disturbance and nuisance caused by cooking odours and noise. Saved policy CLT15 of the Local Plan accepts the principle of night-time uses within District Centre Locations.

3.4 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 to nearby sensitive noise uses.

3.5 Saved policy HE1 (New Development in Conservation Areas) states that where development is adjacent to a conservation area, it will only be permitted where the character or appearance of the area is preserved or enhanced. The Portswood Residents' Gardens Conservation Area Appraisal and Management Plan (PRGCA) sets out a strategy for preserving and enhancing the conservation area.

#### **4.0 Relevant Planning History**

4.1 The relevant planning history is set out in **Appendix 2**. There have been no recent applications relating to this premises.

#### **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 (26.06.15). At the time of writing the report **10** representations have been received. The following is a summary of the material considerations raised:

##### **5.1.1 Comment**

**The proposal would have an adverse impact on amenity of nearby residential properties from noise disturbance caused by patrons returning home as they walk through nearby residential streets.**

##### Response

A restaurant use is acceptable, in principle, in this mixed commercial and residential area. The application proposes a closing time of 23:00 which is slightly earlier than the 12:00 closing that is typically considered to be acceptable within Portswood District Centre. Indeed, there are a number of late night premises in the local area, including food and drink uses, which operate until midnight, including premises that the Council has approved and those which have been approved by the Secretary of State at appeal. Therefore, it is considered that allowing the premises to operate until 23:00 will not present any further material harm to the amenity of local residents.

##### **5.1.2 Comment**

**There is already an over provision of fast food outlets, snack bars and restaurants in the district centre.**

##### Response

The Council's adopted Development Plan policies recognise that food and drink uses can play an important role in maintaining the vitality and viability of retail centres and as such, support them in this location. The adopted Development Plan policies do not set a limit for the number of non-retail uses or food and drink uses within the District Centre. Night-time uses are an integral part of city life but in recognition of the impacts that such uses can have on residential amenity, the Council's policies guide them to City, Town and District Centre locations. Furthermore, it is considered that the nature of the use, as a restaurant, is less disruptive to residential amenity, than other late night uses within the vicinity of the site.

5.1.3 **Comment**

**The extractor fans are unsightly and would harm the character of the conservation area.**

Response

The mechanical equipment would be located to the rear of the site and would not be readily visible from public vantage points within the Conservation Area. A condition is, however, recommended to secure screening of the equipment.

5.1.4 **Comment**

**Delivery and other vans are used more frequently in the late evening, restrictions should be placed on the opening hours on the times at which deliveries may be made.**

Response

A condition is suggested to ensure that deliveries to the site take place within the day, to reduce the impact on residential amenity.

5.1.5 **Comment**

**The extractor fan and air conditioning units do not seem to be regulated appropriately and would cause a harmful level of background noise. The equipment would also create unpleasant fumes and odours which would affect the enjoyment of the gardens in Abbots Way.**

Response

Environmental Health have confirmed that the specifications and maintenance for the extraction equipment is suitable and conditions are imposed to secure their provision in accordance with the agreed details.

## 5.2 Consultation Responses

5.2.1 **SCC Environmental Health** - No objection in principle as the use is fitting for a high street location. The applicant has provided comprehensive detail of the specifications and maintenance for the extraction system which is deemed suitable if this scale of extraction system is indeed required. It seems to be excessive for removal of steam as opposed to odour and grease neither of which are likely to be produced by the intended use and the specification and size of the system and hence flue size could be reduced as to minimise potential noise and the visual effect (see condition 04, below).

5.2.2 One concern is the proximity of the air conditioning units to the windows of the first floor flat and feel this should be reviewed, perhaps at the same time as the intended acoustic tests are carried out to determine if additional insulation is required to the ceiling between the commercial and residential parts of the premises. Suggest conditions to address this (see condition 03 below).

5.2.3 **SCC Historic Environment** – The proposed air conditioning and extraction units do face the rear of the Conservation Area. Whilst they would be visible from some rear gardens, and obliquely from the rear access way, this in itself would not have a significant impact on the setting of the Conservation Area. It is recommend that the applicant is required to screen the equipment (condition 05 refers).

## **6.0 Planning Consideration Key Issues**

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

- (i) Principle of Development;
- (ii) Impact on residential amenity;
- (iii) Impact on the character of the area and;
- (iv) Impact on highway safety

### 6.2 (i) Principle of Development

6.2.1 The principle of the A3 restaurant use in Portswood District Centre is supported by saved Local Plan policies REI4 (Secondary Retail Frontages) and REI5 (District Centres). The proposed development would occupy a vacant retail unit, formerly a charity shop, which is welcome in terms of enhancing the vitality and viability of the centre. Furthermore, saved policy CLT15 of the Local Plan supports night-time uses in Portswood District Centre. The principle of development is, therefore, acceptable.

### 6.3 (ii) Impact on residential amenity

6.3.1 The commercial uses within Portswood High Street have historically co-existed with the residential communities nearby. The rear of the site backs onto the rear gardens of the residential properties within Abbots Way separated by a service track. Food and drink uses play a role in the city's economy and the Council's policies guide such uses to the city, district and local centres.

6.3.2 In terms of the proposed mechanical equipment, as set out above, Environmental Health are satisfied that this can be provided without having a harmful impact on nearby residential properties, providing operational details are secured by conditions. Environmental Health have stated that the speculations and maintenance for the extraction equipment is suitable, however the size of the extraction flue may be excessive for the removal of steam, as the proposed use is unlikely to generate odours and grease. Environmental Health have suggested that the size of the extraction flue could be reduced in order to minimize the level of noise pollution caused (see condition 04 below). Environmental Health have also raised concerns over the proximity of the air conditioning units close proximity to the windows of the first floor flat above the retail unit. They have advised that this could be revised during the commencement of acoustic tests and have suggested conditions to secure this (recommended condition 03).

6.3.3 In terms of the proposed hours of use, it is considered the closing hours of 23:00 is appropriate within a District Centre location and it is noted, the application proposes lesser hours of operation than is typically considered to be acceptable in such locations (**Appendix 3** refers).

6.3.4 Overall, a restaurant use is not considered to be overly disruptive to residential amenity when compared with other late night uses within the locality. The proposed closing hour of 23:00 would accord with other similar uses within the District Centre which have a midnight closing hour, and moreover, is considered to be an appropriate termination time within commercial centres of this nature. As such, it is considered that the proposed hours of operation would not adversely affect the amenity of local residents.

#### 6.4 (iii) Impact on the character of the local area

6.4.1 The proposed external alterations to the premises are minor and would be generally consistent with the other commercial premises within the street. The Council's policies recognise that food and drink uses can support the vitality and viability of the District Centre and, along with the City Centre, District Centres represent the most sustainable locations for late night uses in the city. Furthermore, the comings and goings to and from the premises would be widely dispersed over the large surrounding residential area so not to have a noticeable impact on the character of the local area.

6.4.2 There is an existing area to the rear of the premises used for refuse storage which can be collected from the service track. A condition is suggested to screen the extract equipment to improve the appearance of the premises when viewed from the rear of the site.

6.4.3 There is a distinctive physical and visual separation between the buildings forming part of Portswood District Centre and the Portswood Residents Gardens Conservation Area and the premises would not be readily visible from public vantage points within the Conservation Area. As such, the Council's Historic Environment officer has not objected to the application and the character of the conservation area would not be adversely affected.

#### 6.5 (iv) Impact on highway safety

6.5.1 No customer car parking is proposed to serve the unit however, the site is located on a main bus route and there are car parks available within the vicinity of the site. Furthermore, the nature of the District Centre is to meet the needs of the local community and so the provision of no car parking is considered to be acceptable. One car parking space would be retained to the rear of the site for use by staff and again, given the accessibility of the site to public transport, this is considered to be sufficient.

### **7.0 Summary**

7.1 The provision of a restaurant use within the Portswood District Centre is in accordance with the Council's adopted Development Plan policies. Furthermore, the proposal would bring a vacant unit back into active use which would have a positive impact on the vitality and viability of the Centre. The external alterations are considered to be in keeping with the site and surroundings and with the imposition of the conditions suggested below, the proposal would not have a harmful impact on residential amenity.

### **8.0 Conclusion**

8.1 The proposal is judged to have an acceptable impact and, therefore, can be supported for conditional approval.

**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)

**KA for 04/08/15 PROW Panel**

**PLANNING CONDITIONS**

**01. APPROVAL CONDITION - Full Permission Timing Condition - Physical works**

The development works hereby permitted shall begin not later than three years from the date on which this planning permission was granted.

**Reason:**

To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).

**02. APPROVAL CONDITION - Hours of business**

The ground floor A3 restaurant use hereby approved shall not be open for customers outside the following hours of 11:00-23:00 Monday to Sunday.

**Reason:**

In the interests of protecting the amenity of the occupiers of the nearby residential properties.

**03. APPROVAL CONDITION – Soundproofing Measures (internal noise source) [Pre-Commencement Condition]**

Prior to the commencement of the development hereby approved, a scheme for soundproofing of the restaurant to prevent noise disturbance to the first floor residential units, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include details to minimise noise disturbance from the air conditioning units hereby approved. The soundproofing measures shall be implemented before the use hereby approved commences and thereafter retained as approved.

**Reason:**

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

**04. APPROVAL CONDITION – Revised Extraction Equipment [pre-commencement condition]**

Prior to the commencement of the development hereby approved, unless otherwise agreed in writing, revised details of extraction equipment shall be submitted to and approved in writing by the Local Planning Authority. The equipment shall be installed as approved before the use first commences and thereafter retained as approved.

**Reason:**

The specification of the extract equipment appears to be excessive for the nature of the cooking processes involved and a smaller scale system could be used to reduce the impact on the character and appearance of the area and the noise impact of the system.

**05. APPROVAL CONDITION – Screening for Extraction Equipment [pre-commencement condition]**

Prior to the commencement of the development hereby approved, details of screening for the extraction equipment shall be submitted to and approved in writing by the Local

Planning Authority. The screening shall be installed as approved before the use commences and thereafter retained as approved.

Reason:

In the interests of the character and appearance of the area.

**06. APPROVAL CONDITION - Hours of work for 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 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 Local Planning Authority.

Reason:

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

**07. APPROVAL CONDITION - Approved Plans**

The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule attached below, unless otherwise agreed in writing with the Local Planning Authority.

Reason:

For the avoidance of doubt and in the interests of proper planning.



**POLICY CONTEXT**

Core Strategy - (January 2010)

CS3	Town, District and Local Centres
CS13	Fundamentals of Design
CS14	Historic Environment

City of Southampton Local Plan Review – (March 2006)

SDP1	Quality of Development
SDP7	Urban Design Context
SDP16	Noise
SDP17	Lighting
HE1	New Development in Conservation Areas
REI4	Secondary Retail Frontages
REI5	District Centres
REI7	Food and Drink Uses (Classes A3, A4 and A5)
CLT15	Night time Uses

Supplementary Planning Guidance

Parking Standards SPD (September 2011)

Portwood Residents Gardens Conservation Area Appraisal and Management Plan

Other Relevant Guidance

The National Planning Policy Framework 2012

**Relevant Planning History**

1553/M22 – Change of use of ground floor from shop and stock rooms to building society office/agency and first and second floors from residential to offices. Refused 24/04/1979.

**Reasons for refusal**

1. The application premises lie in an area which is allocated primarily for shopping use in the Authority's approved Development Plan, and the proposed use would therefore be inappropriate and in conflict with the provisions of the plan.
2. The area in which the premises are situated is essentially retail in character and the proposed use, if permitted, would result in the loss of retail floor area and result in a non-retail frontage to the detriment of the amenities of the area.
3. Agreement to the proposed loss of retail floor space would make it difficult to resist similar proposals in the future which would tend to erode further the retail character of this important district shopping centre.
4. The proposal is contrary to the Local Planning Authority's general policy of resisting the incursion of office use into established shopping centres such as the Portswood District Centre and it is considered that the number of existing building society offices represents an adequate level of provision of building society offices for the centre.

1561/M28 - Installation of a new shopfront - CAP 27/11/1979

980014/W – Change of use from a retail shop (class A1) to Bakery and coffee shop (mixed use) and erection of a single storey rear extension. Refused 15/05/1998.

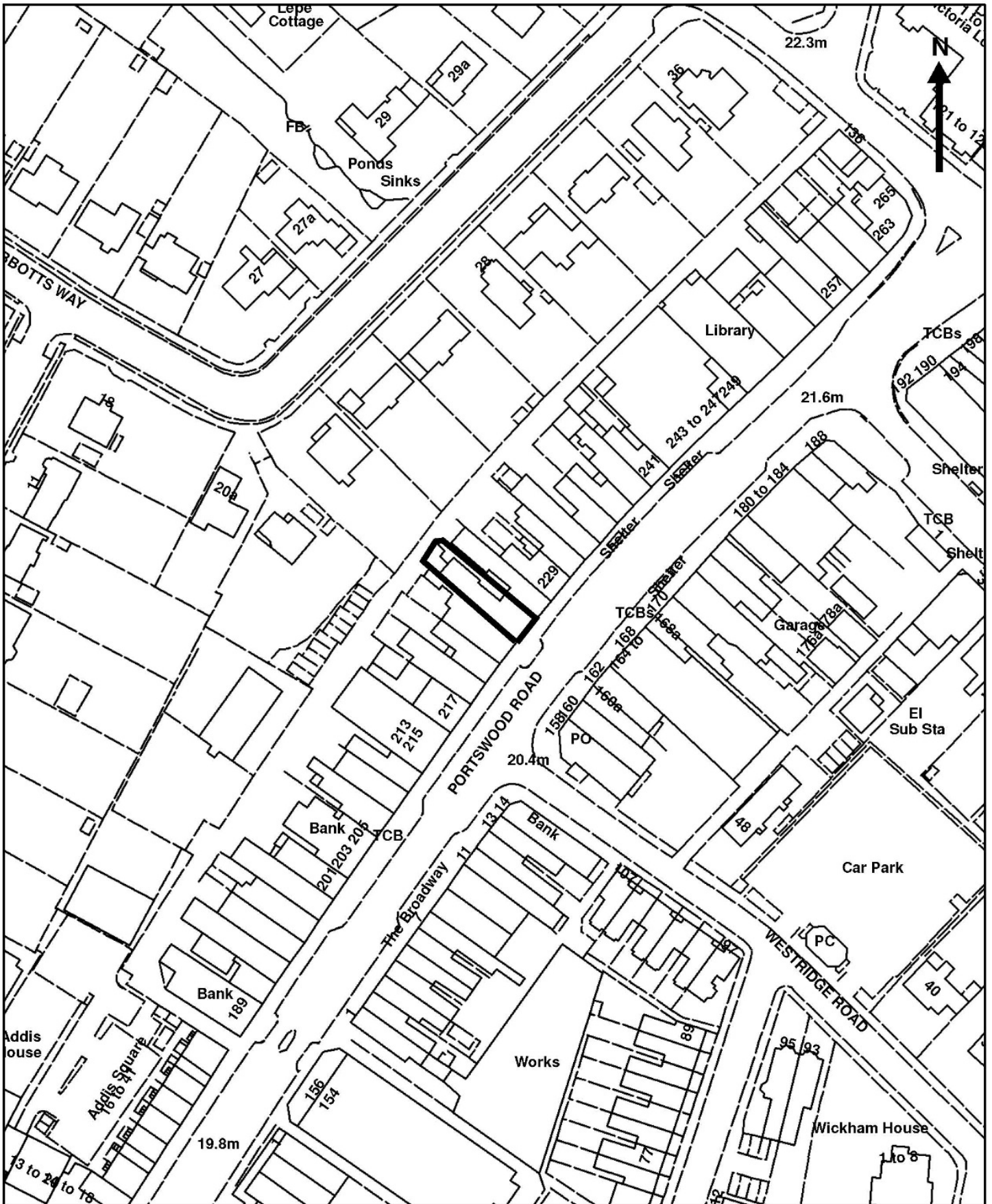
**Reason for refusal**

1. The proposed rear extension would result in the loss of the existing on-site parking space for the residential flat above the premises. This would cause increased demand for on-street parking in the area, and would be detrimental to the amenities of the residential unit concerned. Accordingly the proposal would be contrary to Policy GP1 and T33 of the city of Southampton local plan.

**Table 1: Permitted Hours of Operation in Portswood**

<b>Address</b>	<b>Application Reference</b>	<b>Permitted Hours</b>
The Brook Inn	05/01220/VC	11:00 to 1:30 Monday to Thursday 11:00 to 2:30 Fridays & Saturdays 12:00 to 00:30 Sundays
Units 5-6 The Portswood Centre	07/02055/VC	09:00 to 00:00 daily
Unit 7 The Portswood Centre	09/01208/FUL 14/01355/FUL	08:00 to 1:00 Sundays to Thursdays 08:00 to 2:00 Fridays and Saturdays
29-31 Portswood Road	13/00796/FUL	11:00 to 00:00
104 Portswood Road	12/00785/FUL	09:00 to 00:00
160 Portswood Road	12/00618/FUL	07:00 to 00:00 daily
253 Portswood Road	14/01981/FUL	07:00 to 00:00 daily
265 Portswood Road	99/01025/VC	Sundays until 00:00 Fridays and Saturdays until 01:00

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