

**Planning, Transport & Sustainability Division
 Planning and Rights of Way Panel 26 March 2013
 Planning Application Report of the Planning and Development Manager**

Application address: Former Castle Inn, Witts Hill SO18 4QA			
Proposed development: Demolition of existing conservatory to rear and replacement with single storey extension and installation of a new external staircase and door opening at first floor level			
Application number	13/00086/FUL	Application type	FUL
Case officer	Luan Dray	Public speaking time	5 minutes
Last date for determination:	18 March 2013	Ward	Bitterne Park
Reason for Panel Referral:	Request by Ward Member and five or more letters of objection have been received	Ward Councillors	Councillor White Councillor Baille Councillor Inglis

Applicant: Tesco Stores Limited	Agent: GL Hearn Ltd
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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. 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. 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). 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.

Policies - SDP1, SDP7, SDP9, SDP12 and REI6 of the City of Southampton Local Plan Review (March 2006), CS13 of the Local Development Framework Core Strategy Development Plan Document (January 2010).

Appendices attached			
1	Development Plan Policies	2	History

Recommendation in Full

Conditionally approve

1.0 The site and its context

- 1.1 The site is located on the corner of Midanbury Lane and Trent Road with its frontage facing Witts Hill. The site is currently occupied by a large detached two-storey building which was previously in use as a public house with landlord's living accommodation. Land surrounding the building includes existing hard standing for approximately 20 cars and land to the rear enclosed as a garden. The site currently has two vehicular access points, one from Trent Road and one from Witts Hill with a mix of brick wall and scaffold type ('keyclamp') boundary enclosure around the site.
- 1.2 The site is located within a predominately residential area with a parade of shops to the south east known as The Broadway. This parade has 2 convenience stores, a bakery, 3 takeaways, a post office and a chemist. There is one ATM in the parade.

2.0 Proposal

- 2.1 The application is seeking planning permission for the demolition of the existing conservatory to the rear (approved 1986) and to replace it with a flat roofed single storey rear extension with the installation of a new external staircase down to ground level and a new door opening at first floor level on the eastern elevation.
- 2.2 The replacement building will have the same footprint and floor area as the existing conservatory, however the roof will be flat, where the existing was pitched. No change in floor area is proposed. No windows are proposed on any elevation of the extension.
- 2.3 The staircase, hand rail and new door at first floor level are to ensure a means of escape.
- 2.4 The change of the use of the property from a pub (Class A4) to a retail unit (Class A1) unit does not require permission. This application refers only to the details outlined above and should be assessed on this basis.

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 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 South-East Plan- following the strategic environmental assessment of the abolition of the South East Plan the government announced on the 13 February that the Order to give effect to the abolition would shortly be laid before

parliament. Until the order is made the SE plan remains a material consideration but of very little weight.

4.0 Relevant Planning History

4.1 Planning approval was granted on the 5 December 2012 for shopfront alterations, installation of an ATM, an air conditioning unit, a chiller and associated plant along with advertisement consent. These works were for different elements involved in preparing the building for a retail purpose. The actual change of use to A1 retail did not require planning permission as it was permitted development. Thereby the Local Planning Authority was not in a position to control certain elements such as hours of trading, car parking layout, service hours etc.

4.2 A list of the relevant applications is included in ***Appendix 2***.

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 also undertaken which included notifying adjoining and nearby landowners and erecting a site notice (7 February 2013). At the time of writing the report 11 representations have been received from surrounding residents. The following is a summary of the points raised:-

5.2 Loss of trade for other local business

5.3 Response

The change of use from a pub to retail did not require planning permission and the use as a supermarket does not form part of this report. The impact on the trading levels of similar uses is a matter for the free market to determine rather than the planning system.

5.4 Not within permitted development rights

5.5 Response

Under the provisions of the Town & Country Planning (General Permitted Development) (Amendment) (England) Order 2010, Part 42, Class A, the applicant can make the changes to the building once the new use has been established.

5.6 Increase in traffic and delivery area has been relocated

5.7 Response

The potential for increased traffic and parking issues associated with the proposed development have been taken into account by the Highways Officer consulted as part of this application. The recommendation made below (see paragraph 5.12) is considered to address this issue.

5.7 Increase in size is unfair to other local business

5.8 Response

The application is determined against the principle of the development whether it is in keeping with the property and residential amenity.

5.9 ***Car parking increased onto north east boundary***

5.10 **Response**

The agent has advised that the extent of the hard surfacing can be increased up to 50sqm under the provisions of the Town & Country Planning (General Permitted Development) (Amendment) (England) Order 2010, Part 42, Class C. The loss of this amenity space was conditioned in application 12/01634/FUL to remain as amenity space:-

“The existing amenity area on the north part of the site shall be retained and enclosed by a close boarded fence as indicated on plans numbered P103-4 dated 17.10.12.

REASON

To prevent vehicle and pedestrian access on this land and to ensure a amenity area is retained to protect residential amenity of adjoining properties”.

The agent for Tesco's has claim this condition should not have been imposed as it was not within the red line site, but instead within land edged blue. The agent also considers it is not relevant to the development sought and thus does not meet the tests of a planning condition under Circular 11/95. Advice from Legal services is that Section 72(l)(a) of the Town and Country Planning Act 1990 (as amended) amplifies the general power to impose conditions in section 70(1)(a) It makes clear that the local planning authority may impose conditions regulating the development or use of land under the control of the applicant even if it is outside the site which is the subject of the application. The courts have held that the question whether land is under control of an applicant is a matter to be determined according to the facts of the particular case, and is not dependent on the existence of a freehold or leasehold interest: only such control over the land is needed as is required to enable the developer to comply with the condition). See further comment in 5.13 below.

5.11 ***Lost of architectural features and work already started on the site***

5.12 **Response**

Applications to alter the shopfront and to install an ATM and chiller were approved in December 2012.

Consultation Responses:

5.13 **SCC Highways** – Would wish to see the access out onto Wiggs Hill closed, and the verge crossing reinstated, and the access from Trent Road improved. This would aid highway safety and reduce down the points of potential conflict. However, with no increase in the useable floor area and the application not involving a material change of use of the land, it is not considered reasonable to require the access from Trent Road to be improved to allow all vehicular movement via this point and existing access onto Wiggs Hill should be stopped up and abandoned footway/verge crossings should be reinstated with full height kerbs.

5.14 **Response**

Unless a condition fairly and reasonably relates to the development to be permitted, it will be *ultra vires*. A condition must be justified by the nature of the development permitted or its effect on the surroundings. This is a planning

application for operational development, not for the use of the pub as a shop which already has the benefit of deemed consent without any restrictions requiring a service management plan. It would be wrong to impose conditions requiring a service management plan for an existing shop simply to meet a need that already exists despite the desirability of these objectives in planning terms, as the need for the action would not be created by the new development.

- 5.15 **SCC Environmental Health (Pollution & Safety)** - No objections in principle, but recommend conditions relating to controlling hours of work and prohibiting bonfires on site during the build.

6.0 Planning Consideration Key Issues

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

- The principle of the development
- Impact on residential amenity
- Impact to the host building

6.2 Principle of development

- 6.2.1 The proposed extension is to the rear of the site and will have little or no impact on the visual character of the unit or the surrounding area, having less mass, but the same footprint as the conservatory being demolished. The insertion of a new door at first floor will not harm the original building, as it is not listed nor within a Conservation area and will not be visible from the public realm.

- 6.2.2 The change of use of the building from a public house to a supermarket does not form part of this application. There is limited control due to the permitted development rights that currently exist. As the proposal is only for a new structure/alterations, the LPA cannot control the car parking and service location.

6.3 Residential amenity

- 6.3.1 The proposal will be sited to the rear and will have little to no impact on the residential amenity currently enjoyed by the occupiers of nearby properties.

- 6.3.2 The insertion of a new door opening and an external staircase to the rear for access are not a permanent means of entrance or exit, and the site is well screened along the west boundary by conifers.

6.4 Impact to the host building: scale and massing

- 6.4.1 The extension has the same floor area and being flat roofed will be lower than the existing conservatory, which was pitched. Therefore the proposed extension is lower in height thereby reducing its impact on neighbours.

7.0 Summary

- 7.1 The provision of the extension is judged to be supportable in the context of the scale and location of the development. Competition for trade between similar uses is a matter for the free market to dictate, not the planning system. As no

change of use application was required there is very little that can be done to control the site in terms of parking, access and deliveries.

8.0 Conclusion

8.1 Subject to the imposition of the suggested conditions attached to this report, the proposal would be acceptable. The application is therefore recommended for approval.

Local Government (Access to Information) Act 1985

Documents used in the preparation of this report Background Papers

1 (a) - (d), 2 (b) (d), 5 (vv), 6 (c), 7 (a) & 9 (a)-(b)

LD2 for 26/03/13 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 - Materials to match [Performance Condition]

The materials and finishes to be used for the external walls, windows (including recesses), drainage goods and roof in the construction of the building hereby permitted shall match in all respects the type, size, colour, texture, form, composition, manufacture and finish of those on the existing building.

Reason:

To enable the Local Planning Authority to control the development in detail in the interest of the visual amenities of the locality and to endeavour to achieve a building of high visual quality and satisfactory visual relationship of the new development to the existing.

03. APPROVAL CONDITION - 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 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.

04. APPROVAL CONDITION - Bonfires [Performance Condition]

No bonfires are to be allowed on site during the period of demolition, clearance and construction.

Reason:

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

05. 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.

Note to Applicant

Performance Conditions: Your attention is drawn to the performance conditions above which relate to the development approved in perpetuity. Such conditions are designed to run for the whole life of the development and are therefore not suitable to be sought for discharge. If you are in any doubt please contact the Council's Development Control Service.

POLICY CONTEXT

Core Strategy - (January 2010)

CS13 Fundamentals of Design

City of Southampton Local Plan Review – (March 2006)

SDP1 Quality of Development
SDP7 Urban Design Context
SDP9 Scale, Massing & Appearance
REI6 Local Centres

Other Relevant Guidance

The National Planning Policy Framework 2012

Relevant Planning History

1017/28 - ERECTION OF A GARAGE – CAP - 13.02.1962

1204/P7 - Extension of car park – CAP - 24.10.1961

1207/4 - ALTERATIONS – REF - 24.10.1961

Reason for refusal: - the proposed alterations, and especially the proposed display window, would detract from the appearance of the building in that they would destroy the symmetry of the original design.

1207/4R1 - ALTERATIONS TO AN EXISTING PUBLIC HOUSE – CAP - 28.11.1961

1207/4R2 - Installation of a window for new off-licence – CAP - 26.06.1962

1335/44 - ALTERATIONS AND ADDITIONS – CAP - 06.09.1967

1463/186 - ALTERATIONS AND ADDITIONS – REF - 18.10.1973

Reasons for refusal: - 1. The proposal to provide live entertainment, including music and dancing, would be likely to lead to noise and disturbance to adjoining residential properties, particularly late at night, to the detriment of the amenities of these properties. 2. The proposal would be likely to generate traffic to the premises for which inadequate car parking facilities are available. The proposal would therefore give rise to the parking of vehicles in adjoining residential side streets, resulting in extra activity and noise particularly late at night.

1467/24 - ERECTION OF A NEW BRICK CRATE STORE – CAP - 27.11.1973

860793/E - NEW ENTRANCE LOBBY TO FRONT AND GLAZED CONSERVATORY AT REAR – CAP - 24.09.1986

911358/E - INSTALLATION OF 7 NO LANTERNS TO FRONT ELEVATION AND 2 NO FLOODLIGHTS FIXED TO POST SIGN – CAP - 23.12.1991

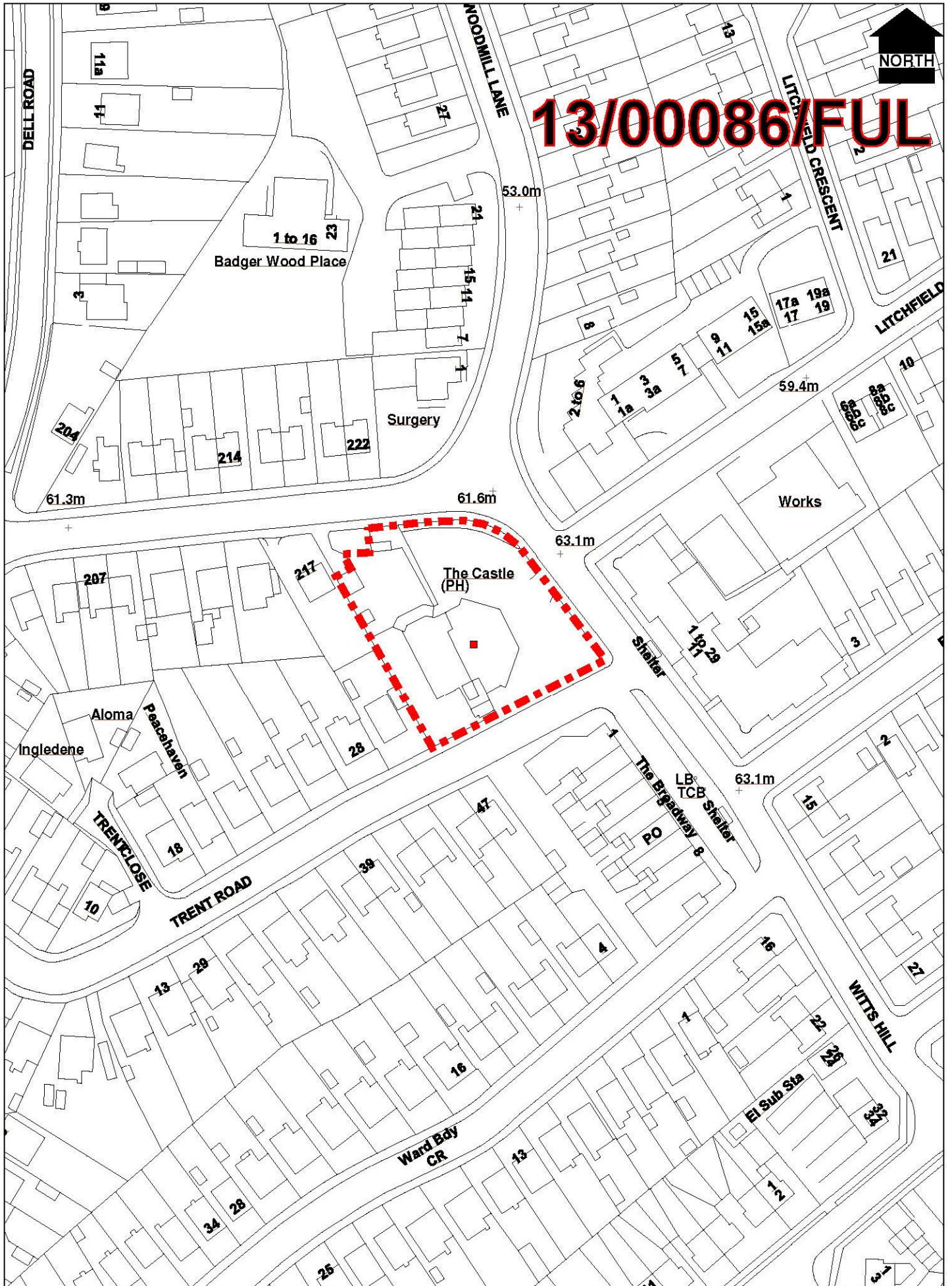
980919/E - RETENTION OF ROOF-MOUNTED RADIO ARIEL – CAP - 19.11.1998

12/01633/FUL - Alterations and installation of a new shopfront - CAP 05.12.2012

12/01634/FUL - Installation of plant equipment, air-conditioning units and an external chiller enclosed by a 2.4m high fence. CAP 05.12.2012

12/01639/FUL - Installation of an ATM to the North East elevation and two security bollards. CAP 05.12.2012

12/01704/ADV - Advertisement consent sought for 3 externally illuminated fascia signs , 1 internally illuminated projecting sign and replacement signage to existing totem sign - CAP 05.12.2012



13/00086/FUL

Scale : 1:1250

Date : 13 March 2013

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