

Planning and Rights of Way Panel 23rd April 2019
Planning Application Report of the Service Lead - Infrastructure, Planning & Development

Application address: 142-144 Butts Road			
Proposed development: Proposed change of use of part of the ground floor from retail (A1 use) to hot food takeaway (A5 use) with installation of rear extraction flue and alterations to the shop front			
Application number:	18/02309/FUL	Application type:	FUL
Case officer:	John Fanning	Public speaking time:	5 minutes
Last date for determination:	15.02.2019	Ward:	Sholing
Reason for Panel Referral:	Five or more letters of objection have been received	Ward Councillors:	Cllr Wilkinson Cllr Bailie Cllr Guthrie
Referred to Panel by:	N/A	Reason:	N/A
Applicant: Mr A Ozdemir		Agent: Advoco Planning Limited	

Recommendation Summary	Conditionally approve
-------------------------------	------------------------------

Community Infrastructure Levy Liable	No
---	-----------

Reason for granting Planning 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. 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 39 - 42 and 46 of the National Planning Policy Framework (2018).

Saved Policies - SDP1, SDP16, REI7 of the City of Southampton Local Plan Review (Amended 2015) and CS13 of the Local Development Framework Core Strategy Development Plan Document (Amended 2015).

Appendix attached			
1	Development Plan Policies	2	Relevant Planning History

Recommendation in Full

Conditionally Approve

1. The site and its context

- 1.1 The application site contains a 2 storey building on the east side of Butts Road with its own forecourt. The property forms part of a brick built mixed use building with a relatively large single retail unit on the ground floor with residential units above. Adjacent to the site is a two storey flat roofed mixed use building with two commercial units at ground floor and flats above. Together the structures form a small parade with private forecourt to the front and a shared area for servicing, refuse storage and access to the first floor flats at the rear. The wider surrounding area is residential in nature.

2. Proposal

- 2.1 The application seeks consent for partial conversion of the ground floor of the existing commercial unit from Class A1 to Class A5 (takeaway) and the associated installation of extract/ventilation equipment to the rear of the premises.

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 at Appendix 1.
- 3.2 The National Planning Policy Framework (NPPF) was revised in 2019. Paragraph 213 confirms that, where existing local policies are consistent with the NPPF, they can be afforded due weight in the decision-making process. The Council has reviewed the Development Plan 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.

4. Relevant Planning History

- 4.1 A summary of the more recent planning history for the site is set out in Appendix 2 of this report.
- 4.2 The historic lawful use of the premises is as a retail unit (Class A1). An application was refused in 2015 for the subdivision of the premises into three Class A5 uses on the basis that it would represent an over-intensification of the unit resulting in harm to the amenities of neighbouring occupiers in terms of activity and associated traffic.

5. 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 (18.01.2019). At the time of writing the report 14 letters of objection from 11 separate addresses, 45 copies of a standard objection letter from 28 separate addresses and 5 letters of support have been received in relation to the application. The following is a summary of the points raised:

5.2 No need for takeaway in local area/inappropriate use

Response

The site does not lie within the defined local centre or otherwise has a particular use designation in the Councils policy documents. The key issues of

consideration will be the impact of the proposal on the character and amenities of the area and nearby occupiers in the context of a presumption in favour of sustainable development. The viability of the proposed use is a matter for the applicant to consider.

5.3 Nuisance to local residents as a result of parking/additional highways pressure/highways safety/noise and activity/litter

Response

The application relates to the subdivision of an existing commercial unit which (while currently vacant) has an existing impact on the surrounding area. The application will need to be judged into the context of whether the proposal represents a substantially harmful increase in intensity when compared to the existing use of the premises.

5.4 Takeaway use will result in smells and odour

Response

The Councils Environmental Health team has advised on a number of conditions which they believe are sufficient to mitigate noise and odour associated with the use to an acceptable level.

5.6 Potential for late night disturbance/anti-social behaviour

Response

The Policy were consulted on the application but have not commented on the proposal. It is noted that there do not appear to be any planning restrictions on the operation of the existing A1 use and this could currently therefore be operated on a 24 hour basis. However, it is accepted that the nature of the proposed use which does include operation into the evening requires some restriction. The proposed hours, to be controlled by condition are considered reasonable in the context of the surrounding street scene.

5.7 Contrary to previous refusal

Response

The application proposes a single A5 use rather than the three A5 uses proposed previously. This would ensure retaining around half the floor space for the existing A1 retail use. It is considered that the two applications are materially different and will be considered on its own merits in the context of both the previous refusal and current local and national planning policies.

5.8 Insufficient notification and consultation on application

Response

Letters were sent out to nearby properties and a site notice was posted. The application has received substantial representation letters so it would appear local residents were aware of the scheme. It is considered that the Council has undertaken its statutory responsibility in terms of consultation on the proposal.

5.9 Wider health implications of takeaway use

Response

The Council seeks to promote a healthy and active city with its planning policies but also has seeks to provide a vibrant and sustainable commercial environment, supporting employment opportunities for local residents. It is not clear that the proposed use will have a specific identifiable harmful impact on the health and wellbeing of nearby residents and as such it is not felt that an application could be refused on this basis.

5.10 **Increased fire risk**

Response

The new use will be required to comply with all normal health and safety regulations outside of the remit of the Local Planning Authority.

5.11 **Impact on value of neighbouring properties**

Response

The amenity impacts on neighbouring properties can be considered as part of the application but direct impact on value of neighbouring properties is not a material planning consideration.

5.12 **Inaccuracies in plans**

Response

A set of amended plans were submitted following the initial submission to address alterations required to the refuse arrangement and extract equipment.

5.13 **Inaccuracies on application form (Q6, 7, 9)**

Response

The applicant advised in Q6 that the use is not currently vacant. It was at the time of site visit. The applicant advised in Q7 that no new external materials would be required as a result of the proposal. The application proposes relatively minor alterations to the existing frontage (installation of a new door). Any advertisement alterations would be covered separately. The applicant advised in Q9 that car parking was not relevant to the proposal. This is true in so much as the applicant is relying on the existing parking arrangement and not proposing any alterations in this regard. Notwithstanding the above the Council will assess and consider the impacts of development as it identifies them.

5.14 **Applicant has other takeaway properties in the City**

Response

The Local Planning Authority considers the principle of the use being considered. The identity of the individual applicant or the number of properties owned is not a material consideration in the assessment of the proposal.

5.15 **There are covenants on the land which restrict the type of commercial premises which can operate**

Response

The grant or refusal of planning permission does not have an impact on separate legal provisions which an occupier may need to address prior to occupation (for example - consent from owner, licenses, covenants). This is a matter for the occupier and relevant parties to resolve and falls outside the remit of the planning system.

5.16 **Letters of support**

- Need to places to eat and drink in local area
- Provide jobs in local area

Response

The site does not lie within a designated local centre or other commercial zone so the proposal will be considered taking into account the balance of impacts and benefits associated with the use.

5.17 **Highways** – The applicant has identified that the proposed A5 use would have a similar demand to the existing A1 use being replaced. Broadly this is considered true with a direct one for one replacement however it is not considered that the applicant has substantiated this in the context of the subdivision of the existing premises. The applicant has proposed no parking on the forecourt. The existing arrangement (with no dropped kerb and access from the side) does create conflict with other units, though it is noted there is no evidence to suggest historically that this has resulted in accidents.

5.17.1 No objection is raised in terms of removal of car parking on the frontage though a servicing plan should be sought to identify how servicing will be managed to the rear. Trip generate is similar between Class A1 and A5 uses but it is unclear from the currently submitted information if the proposal will result in any increase. There are parking restrictions in the surrounding area however a parking survey would allow potential overspill parking amenity issues to be considered in more detail.

5.18 **Environmental Health** – No objection subject to a number of suitable conditions to secure further details of extract equipment, refuse and operational details.

5.19 **CIL** – Not liable.

5.20 **Licensing** – No comment.

5.21 **Police** – No comment.

6.0 Planning Consideration Key Issues

6.1 The application relates to the change of use of the existing premises from a retail use to a partial use as a Class A5 use (hot food takeaway). The site is currently vacant, with a previous application for the conversion of the premises into 3 separate takeaway uses being refused on two key issues:

- Intensification of use and associated impacts on amenities of neighbouring residents from additional noise and disturbance associated with the uses
- Intensification of existing highways and parking issues in the surrounding area

6.2 The current application proposes a partial conversion of the premises with around half the floor space being retained for the retail use and the remaining floor space being for a new proposed takeaway use.

6.3 The site does not lie within an identified local centre but is situated in a small row of commercial premises situated in a wider residential context. There are a mix of different property types in the surrounding area, with flats to the rear and at first floor level in the application site and more typical family residential dwellings in the surrounding area. No objection is raised to the principle of a takeaway use subject to the development not having a disruptive or harmful impact on the residential amenities in the surrounding area in the context of the existing commercial frontage.

6.4 Intensification of use

6.4.1 The application proposes subdividing an existing commercial unit. The site is currently vacant but could be reoccupied as a retail unit (Class A1) without the need for further planning permission. In the previous consent it would be found that the subdivision of the premises to form 3 units (with multiple units opening until 23.00) would represent a harmful form of development. The current application seeks subdivision of the premises into 2 units with a proposed terminal hour of 22.00.

6.4.2 It is considered that the change in the nature of use, when considered in the context of the impacts associated with the existing commercial use of site would not represent such a substantial increase in intensity so as to justify refusing the application. While there will be an increase in associated servicing it is considered that the takeaway use of the premises would represent a change in the impacts associated with the commercial operation of the site rather than representing a substantially harmful increase.

6.4.3 The site has been vacant and it is considered that the proposed change would hopefully help make the remaining section of the site more viable for future occupation. The reduction in scope from the previous application is considered sufficient to mitigate the previous concerns regarding intensification of use. Other concerns relating to the specific operation of the site will be addressed below.

6.5 Amenities and facilities

6.5.1 The application will involve the installation of extract/ventilation equipment associated with the new use. Plans originally submitted showed the extract equipment in positioned immediate proximity to windows serving the first floor residential units. The equipment has subsequently been moved away from these windows to another section of the building. The Councils Environmental Health team have identified a number of conditions they would seek to secure but have advised that they are broadly happy that subject to these conditions the use can be made acceptable.

6.5.2 The rear of the site provides access to some of the upper floor residential units. The application proposes to make use of the existing area to the rear of the site to provide servicing and refuse storage for the use. A condition is proposed to secure a refuse and servicing management plan to ensure that servicing is undertaken in a fashion as to ensure minimal impact on highways and local residents.

6.6 Parking and highways

6.6.1 Local residents have raised significant concerns regarding extant parking issues in the surrounding area, particularly raising concerns that further intensification of the commercial activity in this area will exacerbate existing conflict between customers and immediate local residents.

6.6.2 Parking is restricted in the area around the site, with a section to the front of the shops allowing short stay parking. The Councils Highways team have not raised specific objection to the proposal but have noted that parking on the immediate forecourt does appear to be an existing feature of the site. They have identified this situation does cause conflict with pedestrian users of the highway but note that there is no evidence of accidents as a result of this existing arrangement. The applicant has outlined they do not propose to utilise the available forecourt due to concerns with the access (there being no dropped kerb to the immediate frontage of the site). No objection is proposed to this arrangement subject to conditions to secure details of how servicing will be undertaken to the rear of the property to ensure highways impacts are minimised.

6.6.3 The Councils highways team have also highlighted that the applicant has not undertaken a parking survey in the surrounding area or provided indicative trip generate data regarding substantive change between the existing lawful A1 use of the site and a potential smaller A1 use and the A5 use proposed. Broadly, it is considered that the parking restrictions in the surrounding area will restrict parking in the immediate street scene around the site. With reference to the previous topic in relation to the intensification of the site, it is considered that the

pattern of visits will likely be different than the existing larger A1 use of the site but it is not considered that the impacts will be as focused and exaggerated as the previous application for 3 units. Overall it is not considered that there would be such substantial harm associated with additional visits to the site as to justify refusing the application on this basis.

7. Summary

For the reasons outlined above it is considered that taking into account the differences with the previously refused scheme and considering the proposal on its own merits, it is not felt that the issues raised in the previous reasons for refusal would still result in such significant harm as to justify refusing the application. Other issues are considered capable of being controlled and mitigated through the use of conditions. As such the application is recommended for conditional approval.

8. Conclusion

It is recommended that planning permission be granted subject to the conditions set out below.

Local Government (Access to Information) Act 1985

Documents used in the preparation of this report Background Papers

1. (a) (b) (c) (d) 2. (b) (d) (f) 4.(f) (g) (vv) 6. (a) (b)

Case Officer Initials for 23/04/19 PROW Panel

PLANNING CONDITIONS

01. Full Permission Timing Condition (Performance)

The development hereby permitted shall begin no 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. Hours of Use (Performance)

The Class A5 use hereby approved shall not be open to the public outside the following hours:

Monday-Sunday - 12:00-22:00 (midday to 10PM)

Reason: To protect the amenities of adjoining residential occupiers.

03. Servicing management plan (Pre-Occupation)

Prior to the first occupation of the use hereby approved a servicing management plan shall be submitted to the Local Planning Authority to include details of how the servicing arrangement for the premises will be undertaken. Any management plan will include a restriction of deliveries to the property outside of the following hours:

08:00-19:00 (8AM-7PM)

Reason: To ensure highways safety and the amenities of nearby occupiers.

04. Litter bin (Performance)

A litter bin shall be provided on the site within the customer area of the floor space and made available for use of patrons of the hot food takeaway hereby approved during trading hours.

Reason: To prevent littering in the surrounding area.

05. Noise plant and machinery

The use hereby approved shall not commence until an acoustic report and written scheme to minimise noise from plant and machinery associated with the proposed development, including details of location, orientation and acoustic enclosure, has been submitted to and approved in writing by the Local Planning Authority.

Reason: To protect the amenities of the occupiers of existing nearby properties

06. Extract ventilation - Control of noise, fumes and odour

No development shall take place until a written scheme for the control of noise, fumes and odours from extractor fans and other equipment have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details and findings.

Reason: To protect the amenities of the occupiers of existing nearby properties

07. Noise and vibration - Internal noise sources

The use hereby approved shall not commence until the building has been constructed / modified to provide sound insulation against internally generated noise (noise includes vibration) in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority. The building shall be designed and maintained so that doors and windows can be kept shut, with alternative means of ventilation provided.

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

08. Refuse & Recycling (Performance)

Before the development hereby approved first comes into occupation, the storage for refuse and recycling shall be provided in accordance with the plans hereby approved and thereafter retained as approved.

Reason: In the interest of visual and residential amenity.

09. 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 - (as amended 2015)

CS13 Fundamentals of Design

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

SDP1 Quality of Development

SDP4 Development Access

SDP5 Parking

SDP16 Noise

REI7 Food and Drink Uses (Classes A3, A4 and A5)

REI8 Shopfronts

Supplementary Planning Guidance

Residential Design Guide (Approved - September 2006)

Parking Standards SPD (September 2011)

Other Relevant Guidance

The National Planning Policy Framework (2012)

The Southampton Community Infrastructure Levy Charging Schedule (September 2013)

Relevant Planning History

15/01864/FUL, Change of use from retail (class A1) to 3x take away units (class A5) with new shop front and installation of extract flue to side.
Refused, 03.12.2015

REASON FOR REFUSAL - Loss of amenities

Having regard to the predominantly residential location of the site, which is not within an identified Local or District Centre where the Council would normally encourage food and drink uses to be located, the provision of three separate hot food takeaway uses (Use Class A5) would materially harm the amenities of the neighbouring and nearby residential occupiers. In particular, the noise and disturbance arising from the intensity and nature of the comings and goings associated with the proposed uses would result in a level of activity which would be discordant within a residential area. Furthermore, the proposed hours of operation would result in disturbance in late evening when residents would expect to enjoy the peace and quiet of their homes in the evenings. As such, the proposal would be contrary to saved policy SDP1(i), REI7 and SDP16 of the Local Plan Review (amended March 2015).

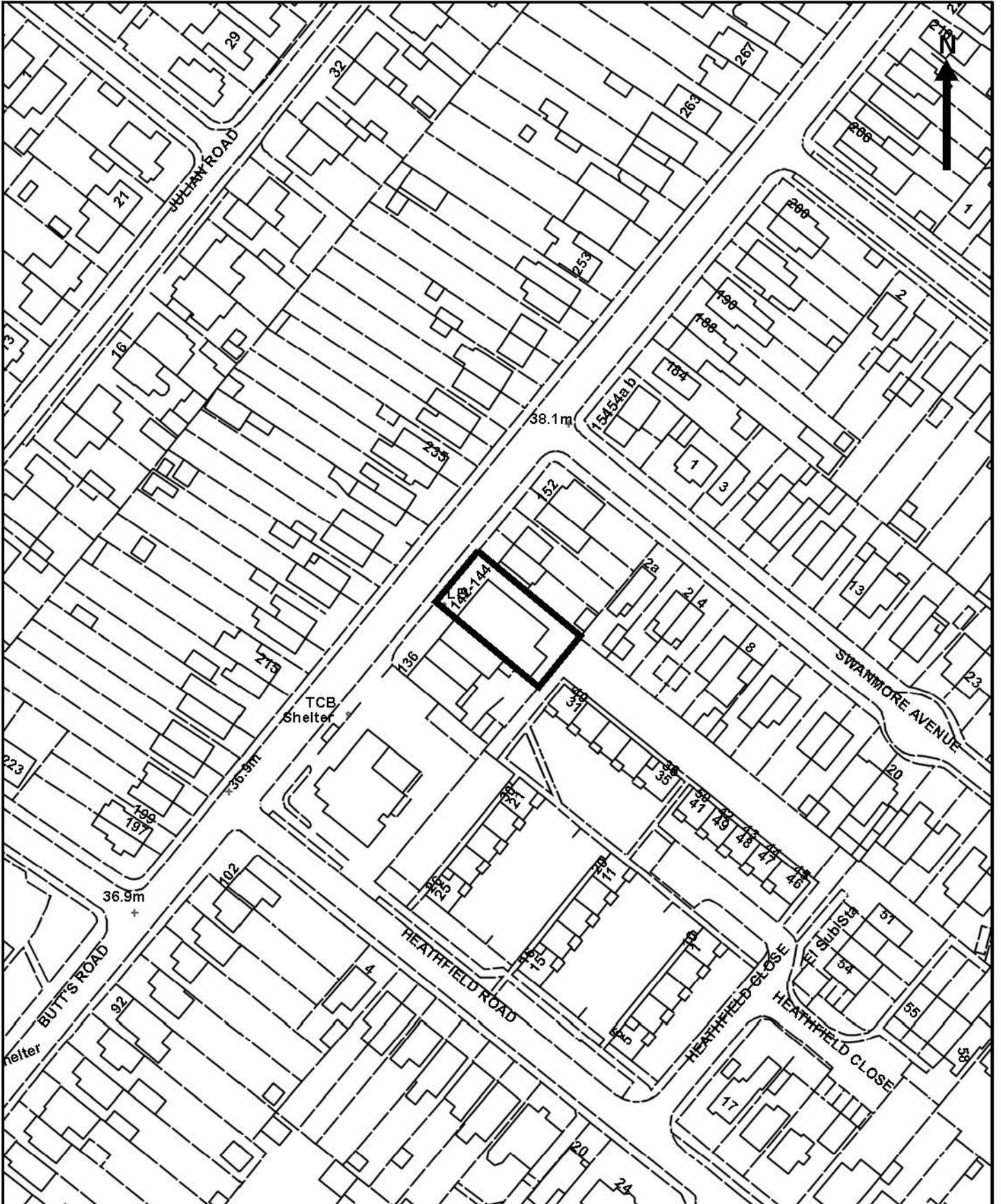
REASON FOR REFUSAL - Highway and Parking

The proposed development, by reason of the level and nature of traffic movements to and from the site would have a detrimental impact on the safety of other highway users, having regard to the existing congestion and vehicle movements resulting from vehicle parking, the nearby bus stop and on-street parking restrictions. Furthermore, the application proposes significantly less parking than permitted by the Council's adopted Car Parking Standards Supplementary Planning Document and it has not been adequately demonstrated that the parking demands generated by the development could be accommodated on the application site. As such, the proposal would adversely affect the safety and convenience of the other users of the adjoining highway and prove contrary to the provisions of Policy SDP1 of the City of Southampton Local Plan Review (Amended 2015), Policy CS19 of the Southampton Core Strategy Development Plan Document (amended 2015) and as supported by the Council's Parking Standards Supplementary Planning Document 2011.

06/01470/FUL, Installation of through the wall ATM.
Refused, 07.12.2006

04/01992/FUL, Installation of an air conditioning/ refrigeration unit to the rear and shop front alterations.
Conditionally Approved, 10.05.2005

04/01640/FUL, Installation of new shop front, ATM and trolley bay to front and air conditioning/refrigeration unit to rear.
Refused, 13.12.2004



Scale: 1:1,250

©Crown copyright and database rights 2014 Ordnance Survey 100019679

