

**Planning and Rights of Way Panel 14th November 2017**  
**Planning Application Report of the Service Lead - Infrastructure, Planning & Development**

<b>Application address:</b> 170 Portswood Road, Southampton			
<b>Proposed development:</b> Proposed change of use from shop (Class A1) to restaurant/takeaway (Class A3/A5) (with associated extraction flue)			
<b>Application number</b>	17/01414/FUL	<b>Application type</b>	FUL
<b>Case officer</b>	Vincent Haines	<b>Public speaking time</b>	5 minutes
<b>Last date for determination:</b>	30/11/2017 ETA	<b>Ward</b>	Portswood
<b>Reason for Panel Referral:</b>	More than 5 letters received from local residents	<b>Ward Councillors</b>	Cllr O'Neill Cllr Claisse Cllr Savage

<b>Applicant:</b> Mr K Awan	<b>Agent:</b> Concept Design & Planning
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<b>Recommendation Summary</b>	Conditional Approval
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<b>Community Infrastructure Levy Liable</b>	No
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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 as detailed in the report to the Planning & Rights of Way Panel on 14th November 2017 have been considered. The site is located within Portswood District Centre where change of use to ground floor A3/A5 use is policy compliant. The impacts of the scheme on the character of area and adjacent neighbouring properties 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 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). Accordingly the proposal complies with policies CS3, CS4 and CS19 of the Core Strategy (2015) saved policies SDP1, SDP4, SDP5, SDP7, SDP9, HE4, CLT15, REI5 and REI7 of the adopted City of Southampton Local Plan Review (Amended 2015), Parking Standards (2011) and the National Planning Policy Framework (2012).

<b>Appendix attached</b>		
1	Development Plan Policies	

## **Recommendation in Full - Conditional Approval**

### **1. The site and its context**

- 1.1 The application site is currently a vacant retail unit within the commercial frontage on the eastern side of Portswood Road, between a Superdrug Store and barbers. To the rear of the property is a small yard leading to a rough track providing a rear access to properties fronting this part of Portswood Road. The first floor of the property (not included in this application) is in use as a self-contained flat, which is accessed by an external staircase from the yard at the rear of the building.
- 1.2 The application site is located within the defined Portswood District Centre, which has a predominantly commercial character at this location with a good mix of retailing, financial services and eateries. Across the road is Piri Piri Chicken, which is licensed to trade between 7:30am and 11:30pm (Mon-Sat) and 7:30am to 11pm (Sun). The Tramstop Bar and Kitchen at 188 Portswood Road is licensed to trade until midnight (7 days/week) as is Sprinkles Gelato at 160 Portswood Road.

### **2. Proposal**

- 2.1 The application relates to the change of use of the ground floor of this building, which had been a Greggs bakery, to a restaurant and takeaway. Also included in the application is the installation of a stainless steel extraction flue on the rear of the building
- 2.2 The submitted plans show the restaurant laid out with 14 covers at the front of the unit with a servery and kitchen to the rear. The application is submitted by the prospective leasee of the ground floor. The use of the first floor is not part of this application. The application form states there will be two full time and three part time staff, adequate parking for two staff vehicles will be available in the rear yard which is accessed from a rear lane.
- 2.3 The application form states that the proposed opening hours will be 8.00am to midnight weekdays and 10.00 am to 11.00pm Sundays. However some confusion was created as the submitted Design and Access Statement provided in support of the application stated that opening hours would be 8.00am to 1.00 am every day. The applicants agent subsequently confirmed that this was an error and the intended opening hours are those stated in the application form. Any necessary signage will require separate advertisement consent.

### **4. Relevant Planning Policy**

- 4.1 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). The most relevant policies to consideration of this application are set out at **Appendix 1**.

- 4.2 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.
- 4.3 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/A5 uses will be permitted in District Centre locations. Similarly, policy REI7 (Food and Drink Uses) permits A3/A5 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. **There are no limits imposed through adopted policy on the maximum number of A3-A5 uses allowed within the District Centre.**
- 4.4 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.

## **5. Relevant Planning History**

- 5.1 There is no relevant planning history for this site.

## **6. Consultation Responses and Notification Representations**

- 6.1 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 (29.09.17).
- 6.1.1 **Notification Representations:** Objections have been received from 7 local residents, the majority of who live in either Russell Square or Abbots Way to the north west of the Portswood Road District Centre area. Whilst these properties do not lie in the immediate vicinity of the site several objectors' state they are affected by disturbance from the persons returning from late night opening establishments in Portswood Road as well as parking outside their homes. The grounds of objection are summarised below as well as the officer response:

- 6.1.2 **There are already too many "takeaways" and restaurants in the District Centre and there is no need for another.**

### Response

*The site is located within the Portswood District Centre as identified in the City of Southampton Local Plan Review where Policy REI 5 provides A3/A5*

*uses at ground floor will be permitted. The policy is intended to strengthen and enhance such centres and the policy does not place any limit on the level of A3/A5 uses that can be accommodated in the area. See also the Planning Considerations – Section 7 below for further discussion.*

- 6.1.3 The Design & Access Statement proposes opening hours of 8 am to 1 am, later than the other "takeaways" in the area and adding to disturbances to local residents. It will also lead to other similar establishments wanting to extend their hours.**

Response

*As explained above the applicant's agent has confirmed that the Design and Access Statement incorrectly stated the opening hours and they are 8.00am to midnight weekdays and 10.00 am to 11.00pm Sundays. The late night closing is therefore consistent with other similar premises in the District Centre.*

*The surrounding area has a mixed residential and commercial character and a restaurant use is acceptable in principle within Portswood District Centre. The application proposes a closing time of 12:00, which 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 midnight will not present any further material harm to the amenity of local residents, whilst recognising the relationship between the District Centre and its residential neighbours.*

- 6.1.4 An additional "take away" will add to the noise and disturbance from customers using it as well Increased litter.**

Response

*This is dealt with in the Planning Considerations – section 7 below.*

- 6.1.5 Noise from the extractor flue, for such long hours ,would be unacceptable for nearby residents**

Response

*This is dealt with in the Planning Considerations – section 7 below – and has been reviewed by the Council's Environmental Health Officer. The site is located within the District Centre where food and drink uses are supported in principle. There is existing background noise from neighbouring commercial uses and road traffic within the District Centre. A planning condition is recommended to ensure that any mechanical extraction equipment is acoustically treated to prevent adverse noise disturbance.*

- 6.1.6 There is no parking and the residents already suffer the noise if visitors retrieving their cars late at night from residential streets where parking is not prohibited.**

Response

*Staff parking will be available on site. Overspill parking from the District Centre into neighbouring residential areas will not be exacerbated by one additional restaurant/; takeaway and the previous A1 use did not benefit from*

*its own customer parking.*

## 6.2 Consultation Responses

6.2.1 **Environmental Health Officer:** In their initial comments raised no objection to the proposed change of use subject to conditions. The EHO revisited the application in light of the objections received from local residents and made the following comments;

- 1) The noise levels quoted by the applicant/agent for the flue (38dB at 3 metres) are appropriate for the area and the type of installation, and unlikely to be a statutory nuisance. Any concerns or problems going forward can be addressed and will be dealt with where appropriate under the Environmental Protection Act. The installation and maintenance of the system, as always, is key to its performance and noise levels, and any deficiency will be apparent and the occupier required to make improvements.
- 2) It is unlikely at the noise levels given, and the distance between the objectors and the application site that the former will be affected by activities.
- 3) Noise on the street is a matter for the police to deal with and I am unable to comment further.
- 4) Litter is a problem in the City generally and I understand the objectors concerns, but the provision of litter bins at appropriate intervals should help - the issue is for the customer to act responsibly as the business cannot be held responsible for the cartons etc., once they have left the premises. I do not think that alone this is reason for an objection by Environmental Health.
- 5) The opening hours on the application form are given as midnight weekdays and 23.00 hours on Sunday - NOT 01.00 as in the supplementary design and access statement and hence why no objection on hours was made by EH.

### 6.2.2 **Portswood Central Residents Association:**

Object on the following grounds -

1. Extended opening hours until 01am. This would add to the antisocial behaviour we have to tolerate in this area due to alcohol consumption.
2. Noise of leaving the venue at this time of the morning
3. Setting a precedence against other establishments if having a late licence. The venues should have the same closing time weekdays and 23.00 hours Sunday etc., are the preferred terminal hours by EH. Any deliveries should be between 8am and 9pm

## 7. Planning Consideration Key Issues

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

- Principle of Development;
- Impact on Residential Amenity
- Impact on the character of the area and;

- Impact on highway safety

## 7.2 Principle of Development

- 7.2.1 Paragraph 23 of the NPPF states that planning policies should identify primary shopping areas and set policies that make clear which uses will be permitted in such locations. The site is located within the Portswood District Centre as identified in the City of Southampton Local Plan Review. Policy CS3 of the Core Strategy supports the role of District Centre in meeting the week to week needs of the local community.
- 7.2.2 Policy REI5 of the Local Plan sets out the uses which will be acceptable and explains that A3/A5 uses at ground floor will be permitted. The policy is intended to strengthen and enhance such centres and the policy does not place any limit on the level of A3/A5 uses that can be accommodated in the area. This is also consistent with paragraph 70 of the NPPF which states planning policies and decisions should ensure that established shops, facilities and services are able to develop and modernise in a way that is sustainable, and retained for the benefit of the community. The proposed development would bring this vacant building back into use and would, therefore, support the vitality and viability of the District Centre. Furthermore, saved policy CLT15 of the Local Plan supports night-time uses in Portswood District Centre. The principle of development is, therefore, acceptable.

## 7.3 Impact on Residential Amenity

- 7.3.1 Policy REI7 (Food and Drink Uses) permits A3/A5 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. 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.
- 7.3.2 The overriding concern of third party objectors to this application is the impact of having a concentration of takeaway outlets and other establishments which are open into the late evening in the Portswood District Centre. These impacts are stated as noise and rowdy behaviour from persons returning home in the late evening and early hours through the neighbouring residential streets after visiting establishments in Portswood Road, the associated litter and indiscriminate parking.
- 7.3.3 From the comments received this impact is not specific to the application site itself but to the wider area and it is not considered the change of use the subject of this application will, on its own, exacerbate the situation. Concerns over the hours of opening extending beyond that of other similar establishments in Portswood Road have been clarified above.
- 7.3.4 One comment relates to the potential for noise disturbance to neighbouring residents from the extractor. The Council's Environmental Health Officer

considers the noise levels quoted in the application for the flue (38dB at 3 metres) are appropriate for the area and the type of installation, and unlikely to be a statutory nuisance.

7.3.5 Given the above the proposed restaurant /takeaway use will not lead to any significant change to the impacts on residential amenity referred to by objectors given the nature of permitted late night uses in the District Centre.

#### 7.4 Impact on the character and appearance of the area

7.4.1 Bringing a vacant building back into use is to be encouraged in principle and the provision of the extraction flue to the rear of the building is deemed appropriate.

#### 7.5 Impact on highway safety

7.5.1 No public car parking is available to serve the unit however, the site is located on a main bus route (with a bus stop outside) 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 public car parking is considered to be acceptable. Staff parking is available and the servicing arrangements can be retained; whilst acknowledging that an A3/A5 use will create fewer trips than the existing retail use.

### 8. Summary

8.1 The provision of a restaurant/takeway use within the Portswood District Centre is in accordance with the Council's adopted Development Plan policies. No external alterations are proposed other than a rear flue and therefore the change of use is 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. A similar conclusion was reached when the panel considered applications ref 14/01981/FUL at 253 Portswood Road, 15/01285/FUL at 225 Portswood Road and 16/02101/FUL.at 267-271 Portswood Road.

### 9. Conclusion

9.1 In conclusion, the proposal accords with the Council's policies and guidance and subject to the conditions below is recommended for approval.

#### **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), 4(f), (g), (vv), 6(a), (b), 7(a)

**VH for 14/11/17 PROW Panel**

#### **PLANNING CONDITIONS**

### **01. Full Permission Timing Condition**

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. 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.

### **03. Refuse & Recycling (Pre-Commencement)**

Prior to the commencement of development, details of storage for refuse and recycling, together with the access to it, shall be submitted to and approved in writing by the Local Planning Authority. The storage shall be provided in accordance with the agreed details before the use is first occupied and thereafter retained as approved.

Reason:

In the interests of visual amenity, the amenities of the occupiers of nearby properties and in the interests of highway safety.

### **04. Hours of Opening (Performance)**

The use hereby permitted shall not be open to customers outside the following hours:

Monday to Saturday 08.00 to 00.00 hours

Sundays and Public Holidays 10.00 to 23.00 hours

Reason:

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

### **05. Extract Ventilation (Performance)**

Prior to the first commencement of use, the cooking extraction system shall be installed and made operational in accordance with the ventilation/extraction statement submitted with the planning application and shall thereafter be retained and maintained as approved.

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

### **06. Litter Management**

A litter bin shall be provided within the premises prior to the first use of the building for a takeaway and shall, thereafter, be managed.

Reason:

In the interests of providing users of the takeaway a convenient location to dispose of their rubbish.



**POLICY CONTEXT**

Core Strategy - (as amended 2015)

CS3            Town, District and Local Centres  
CS19          Car & Cycle Parking

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

SDP1          Quality of Development  
SDP4          Development Access  
SDP5          Parking  
SDP7          Urban Design Context  
SDP9          Scale, Massing & Appearance  
SDP16        Noise  
HE4          Local List  
CLT15        Late night uses in Town, District and Local Centres  
REI5          District Centre  
REI7          Food and Drink Uses

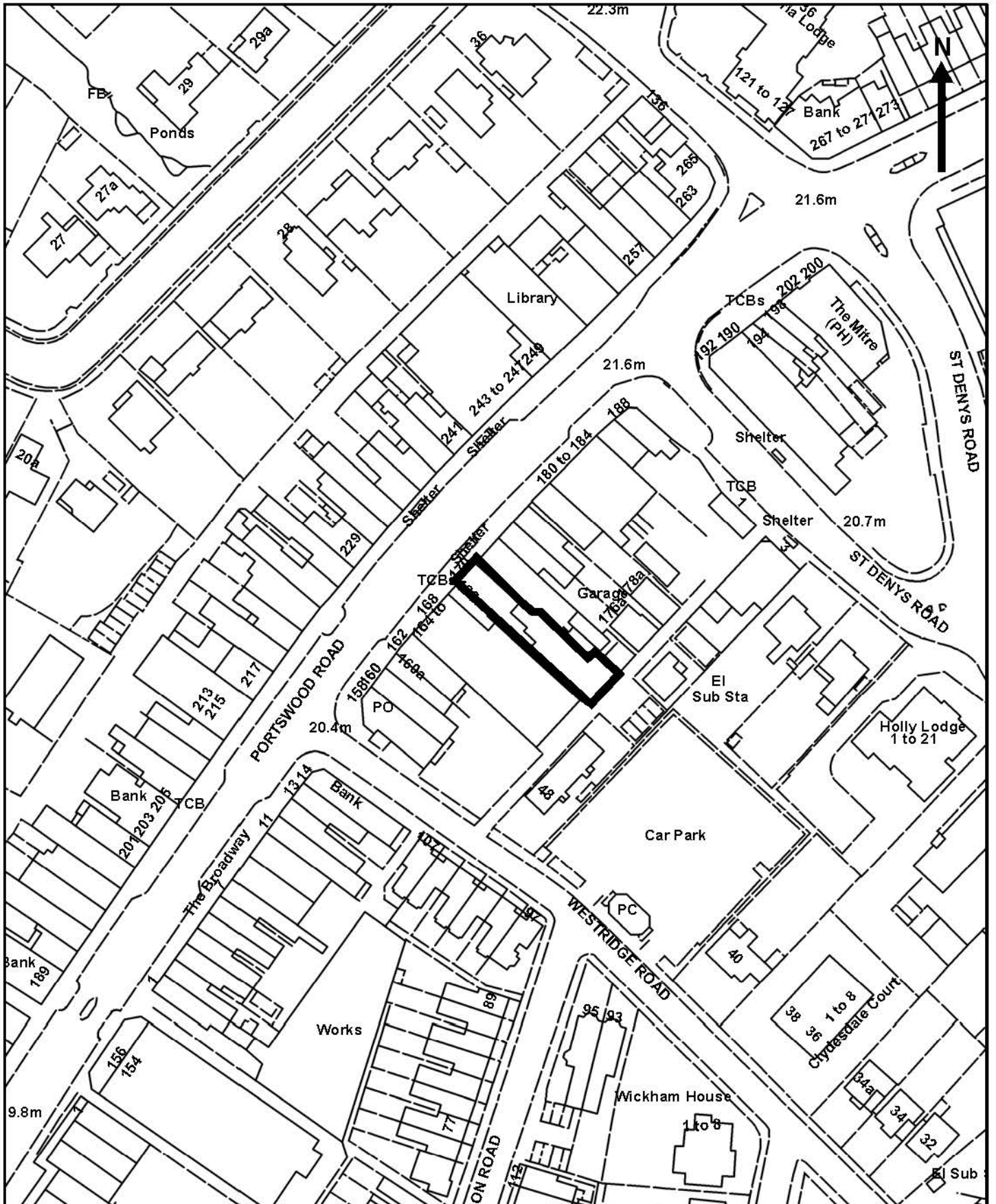
Supplementary Planning Guidance

Parking Standards SPD (September 2011)

Other Relevant Guidance

The National Planning Policy Framework (2012)

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