



Appeal Decision

PLANNING &

Site visit made on 10 January 2005

- 2 FEB 2005

The Planning Inspectorate
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by Sue Turner RIBA, MRTPI, IHBC

SUSTAINABILITY

an Inspector appointed by the First Secretary of State

Date 31 JAN 2005

7.1.44

Appeal Ref: APP/D1780/A/04/1155312

16/17 Carlton Place, Southampton, SO15 2DY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Piers Kannangara against the decision of Southampton City Council.
- The application Ref:04/00230/FUL, dated 11 February 2004, was allowed on 8 April 2004 subject to conditions.
- The development permitted is demolition of existing rear extensions, alterations, new rear extension, No 17 first floor and second floor change of use from retail / office to A3 ancillary.
- The condition in dispute is No 10 which states that: Unless the Local Planning Authority agree in writing, the premises to which this permission relates shall not be open for business outside the following hours: 10:00am - 11:30pm unless otherwise agreed by the Local Planning Authority.
- The reason given for the condition is: To protect the amenities of the occupiers of adjoining residential properties.

Summary of Decision: The appeal is dismissed

Main Issue

1. I consider that the main issue in this case is the effect on the living conditions of occupants of adjacent residential properties, with particular reference to noise and disturbance, of varying condition 10 to allow opening of the premises between the hours of 1000 hours and 2400 hours with a further 30 minutes "drinking up" time.

Planning Policy

2. The development plan for the area includes the City of Southampton Local Plan 1995. Of the policies that have been drawn to my attention I consider that Policies ENV17 and S10 are particularly relevant to this appeal. Policy ENV17 (ii) seeks in part to ensure that development proposals do not have adverse effects on existing or future nearby development. Policy S10 (b) states that proposals for premises within the A3 use class will only be permitted if, amongst other things, appropriate conditions are imposed to prevent the generation of any undue noise or other forms of nuisance directly arising from the proposed use, in the interests of residential amenity.
3. My attention has also been drawn to the 2003 Revised Deposit Version of the Local Plan. As this plan has been the subject of a Local Plan Inquiry and has reached an advanced stage in the development plan process I will attach considerable weight to its objectives. In particular Policy SDP1(i) seeks to ensure that development does not unacceptably affect the amenity of the city and its citizens, whilst Policy RE18(i) seeks to ensure that appropriate planning conditions are imposed where necessary to prevent generation of any undue noise or other forms of nuisance directly arising from proposed A3 uses. Policy RE15 restricts residential development within the secondary retail frontages to the upper floors only.

4. Policy CLT14 of the emerging local plan seeks to control the location of A3 uses relating to the night time economy within the city centre. Paragraph 5.51 distinguishes between activities which are part of the early to mid evening economy and late at night activity. The appeal site lies within an area described in paragraph 5.52 as having a more diverse range of activities designed to appeal to a wider audience, making it a more appropriate location for early to mid evening activity.
5. Circular 11/95 deals with the use of conditions in planning permissions. It emphasises that conditions should only be imposed where they are necessary, reasonable and where they can be enforced.

Reasons

6. Carlton Place lies close to the city centre in an area which has a mix of uses, with shops, restaurants and public houses. The variety of uses and the predominantly small scale of buildings create a lively urban character. I observed that several properties along Carlton Place and in the surrounding area have residential accommodation on the upper floors, above the commercial uses. In particular No 18 Carlton Place, which is next door to the appeal property, has residential accommodation at first floor level.
7. The appeal property is a three storey building on the south side of Carlton Place. Planning permission has been granted for changes to the building to facilitate use of the whole of the ground floor area as licensed premises and allow the use of the upper floors of No 17 as ancillary A3 space. From the evidence submitted it is clear that the concentration of A3 uses in the surrounding area already generates a significant level of night time activity. However paragraph 5.47 of the emerging local plan identifies the need to manage the night time economy to ensure that night time disturbance is kept to a minimum whilst at the same time supporting the economic benefits of the night time economy.
8. The appellant has drawn my attention to several premises in the immediate vicinity which are open until after midnight. However the Council contends that many of the A3 uses in the surrounding area are historic uses or operate under old planning permissions without any conditioned opening hours. In order to retain the area around the site for early to mid evening activity the Council contends that it has recently sought to restrict new permissions for the use of premises as public houses to a closing time of 2330 hours.
9. Other conditions have been attached to the extant planning permission to control the level of amplified noise and other noise emanating from the premises. Thus it seems to me that the disputed condition would serve primarily to control noise and disturbance caused by customers leaving the premises. Altering the operating hours to those proposed by the appellant would allow customers to leave the premises as late as 0030 hours. Whilst I recognise that there are other premises in the area which close at this time and later, I consider that extending the operating hours of the appeal property as proposed would contribute to a shift towards additional late night activity in the locality and would lead to an increase in late night noise and disturbance in and around Carlton Place. In my view this would have a cumulative harmful effect on the living conditions of local residents and in particular on the occupants of the residential accommodation above No 18 Carlton Place.
10. I acknowledge that the existing A3 use of the site, which has unrestricted operating hours, could be continued. Furthermore I note that the area is designated for night time uses and that there is only limited residential use in the immediate surrounding area, with no

evidence of any noise complaints relating to the use of the appeal premises. However the changes allowed under the extant planning permission would improve and enlarge the ground floor accommodation and enable the appeal property to be put to more intensive A3 use than at present. I consider that it would consequently generate more activity than the previous restaurant use and that allowing it to remain open until 0030 hours would fail to strike a reasonable balance between encouraging economic activity and maintaining the living conditions of local residents.

11. In determining this appeal I have had regard to the appellant's argument that some premises in the locality have only recently been granted permission to remain open significantly later than 2330 hours. I have also considered other examples that have been drawn to my attention, including some cases where there have been more vociferous local objections and where premises have been closer than the appeal site to more intensive residential use. However in the absence of detailed information regarding the exact circumstances at the other sites referred to I can attach little weight to them. I have therefore determined this appeal on the basis of its individual merits having in mind the circumstances at the appeal property and in the light of the relevant adopted and emerging local plan policies.
12. In conclusion, I consider that the removal of the disputed condition would have a harmful impact on the living conditions of the occupants of residential accommodation in the area surrounding the appeal site. On this basis I conclude that Condition 10 is both reasonable and necessary in order to meet the objectives of Local Plan Policies ENV17 and S10 and those of Policies SDP1 and RE18 and of the emerging Local Plan.

Other Matters

13. I have taken account of the appellant's suggestion that the extended operating hours could be limited to Thursday, Friday and Saturday nights only. However I consider that the harmful effect of later opening hours on the living conditions of nearby residents would be just as unacceptable on these nights as during the rest of the week. I am not, therefore, persuaded that the condition should be varied even for just part of the week.

Conclusions

14. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Formal Decision

15. I dismiss the appeal.

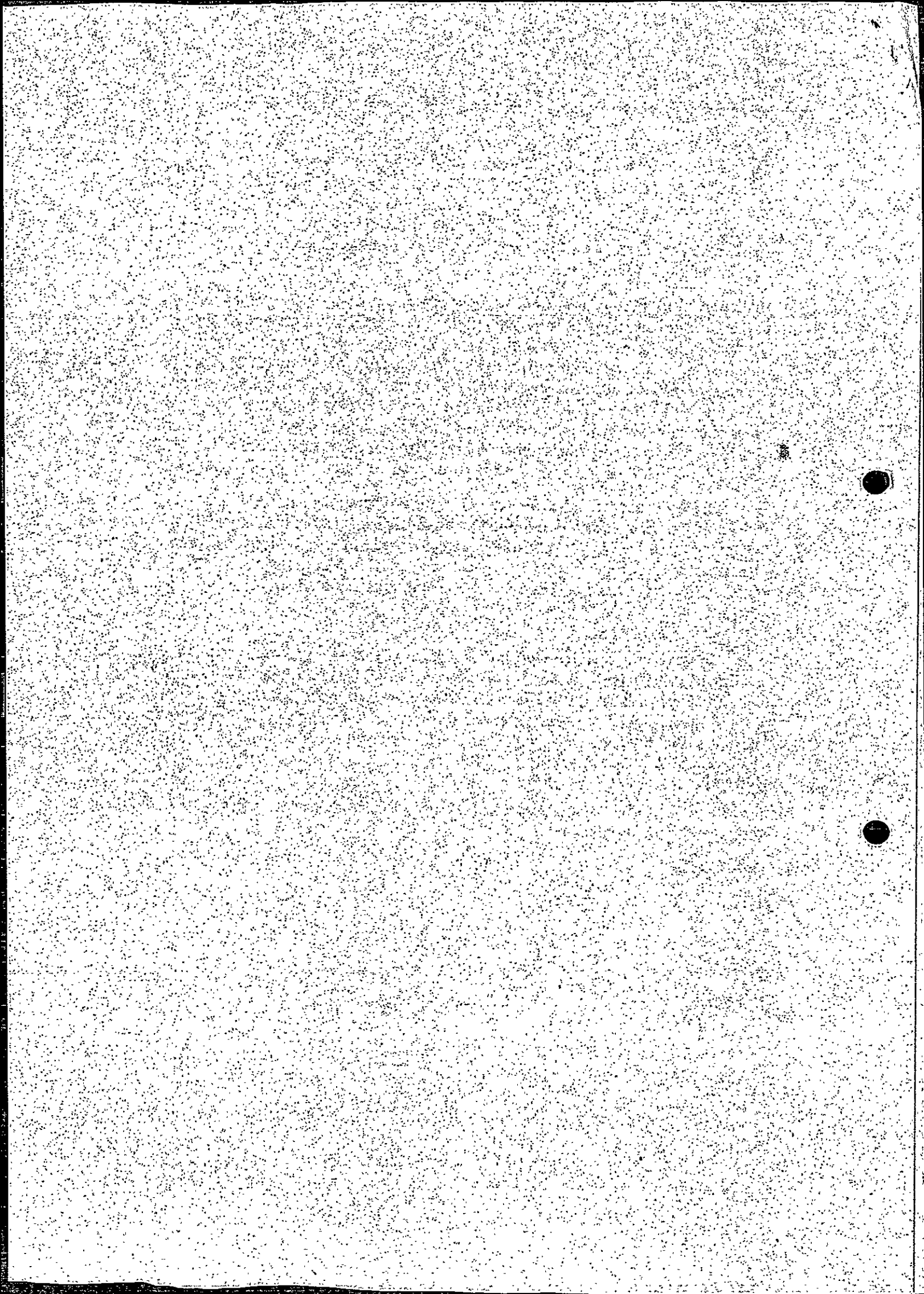
Sturmer

INSPECTOR

PLANNING &

- 2 FEB 2005

SUSTAINABILITY





Appeal Dismissed
31/4/05

DETERMINATION OF APPLICATION
TOWN AND COUNTRY PLANNING ACT 1990

Town and Country Planning (General Development Procedure) Order 1995

Piers Kannangara
 c/o Bob Dalton
 Merchant Design International
 Saxon House
 Saxon Wharf
 Southampton
 SO14 5QE

Appeal
against Condition
16/7/04

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: Demolition of the existing rear extensions and erection of a single storey rear extension to provide bar area involving installation new external staircase and condensers in connection with use of whole ground floor premises as a bar (Class A3). First and second floors of no. 17 Carlton Place to be used as ancillary A3 space.

Site Address: 16/17 Carlton Place Southampton SO15 2DY

Application No: 04/00230/FUL

In accordance with the plans and application submitted with the above FULL Application, subject to the following condition(s):

01.

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

REASON

To comply with S.91 of the Town and Country Planning Act 1990.

02.

The development hereby approved shall be implemented solely in accordance with drawings received by the Local Planning Authority.

REASON

To define the consent and for the avoidance of doubt.

03.

The existing building and/or structure shall be demolished and all resultant materials removed from the site before the development hereby approved is commenced unless otherwise agreed in writing by the Local Planning Authority.

REASON:

To secure a satisfactory comprehensive form of development and to safeguard the visual amenity of the locality.

04.

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 before the building is first occupied. The facilities shall include 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.

05.

No sound amplifying equipment which is audible outside the premises shall be installed in the premises without the prior written consent of the Local Planning Authority.

REASON:

In the interests of the amenities of nearby properties.

06.

All works relating to the construction of the development hereby granted, including the works to regrade the levels of the site, demolition and ground preparation prior to building operations shall only take place between the hours of 8am and 6pm on Monday to Friday and 9am to 1pm on Saturdays and at no time on Sundays or Bank 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 adjoining properties during the construction period.

07.

Before development commences a detailed scheme for the soundproofing of the building shall be submitted to and approved by the Local Planning Authority. Such agreed scheme of soundproofing shall be fully implemented to the satisfaction of the Local Planning Authority before the extension hereby approved is occupied.

REASON:

To protect the amenities of the surrounding area.

08.

The roof area of the extension hereby approved shall not be used as a balcony, sitting out area, roof garden or similar activity without the grant of a further specific planning permission by the Local Planning Authority.

REASON:

To prevent overlooking and loss of privacy to adjoining properties.

09.

Any existing access to the site shall be stopped up and abandoned and footway and verge crossings shall be reinstated immediately after completion of the new access.

REASON:

In the interests of highway safety.

10.

Unless the Local Planning Authority agree in writing, the premises to which this permission relates shall not be open for business outside the following hours :-
10.00am - 11.30pm unless otherwise agreed in writing by the Local Planning Authority.

REASON:

To protect the amenities of the occupiers of adjoining residential properties.

11.

The premises shall only be used for food and drink purposes as specified in the Description of Development above and for no other purpose whatsoever, including a night club or dance hall or for any other purpose falling within Class D2 of the Schedule to the Town and Country Planning (Use Classes) Amendment Order 1991, (or in any equivalent provision in any statutory instrument revoking or re-enacting that Order).

REASON:

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

12.

The development to which this consent relates shall not be brought into use in full or in part until secure, covered space/changing facility has been laid out within the site for 3 bicycles to be stored for the benefit of the residents/staff in accordance with the plans to be submitted to and approved in writing by the Local Planning Authority. The cycle storage/changing facility hereby approved shall thereafter be retained on site for that purpose.

REASON:

To encourage cycling as a sustainable form of transport.

13.

No doors or gates shall open onto the public highway.

REASON:

In the interests of vehicular and pedestrian safety.

14.

The materials and colours to be used for the fenestration on the front elevation and external surfaces of the extension hereby approved shall be as specified in the approved drawing no:06 and planning application form unless otherwise agreed in writing by the Local Planning Authority.

REASON:

To ensure a satisfactory appearance for the development.

15.

Notwithstanding the approved plans the precise design and materials to be used for the windows on the front elevation of the building shall be submitted and approved the

Local Planning Authority before the development commences. The development shall then be implemented in accordance with the approved details.

To ensure that the character of the Conservation Area is enhanced.

16.

The existing Flue on the rear elevation of the building shall be painted to match the colour of the building before the extension is first brought into use.

To enhance the character of the Conservation Area.

17.

The development hereby approved shall be implemented solely in accordance with drawing no.06 received by the Local Planning Authority.

REASON

To define the consent and for the avoidance of doubt.

REASON FOR APPROVAL: The proposal is in accordance with Policies SDP1, SDP7, SDP9, HE1, RE15 and RE18 of the City of Southampton Local Plan Review Revised Deposit Draft (Feb 2003).



Alan Sayle
Development Control Manager

8 April 2004



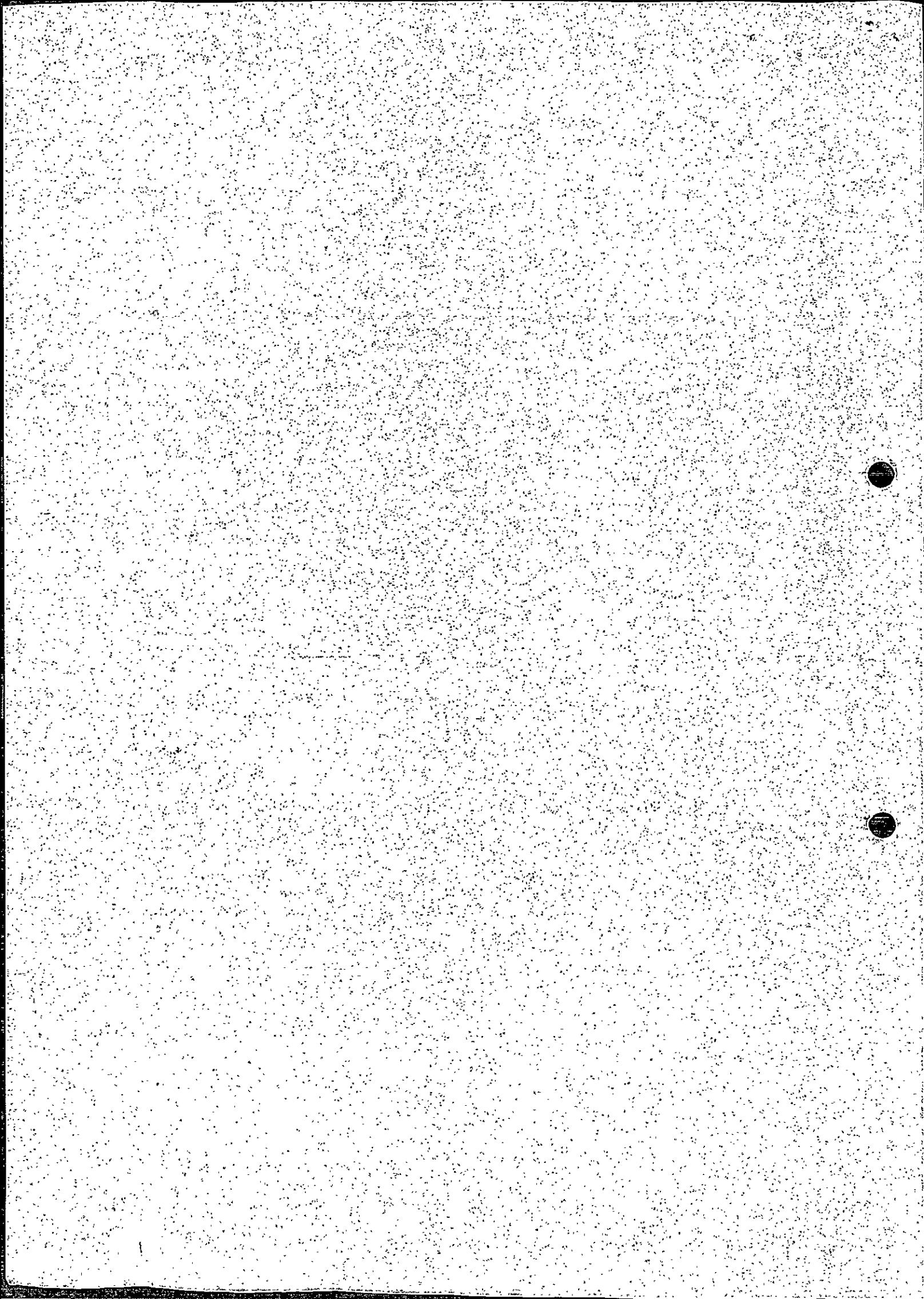
If you have any further enquiries please contact:
David Randall

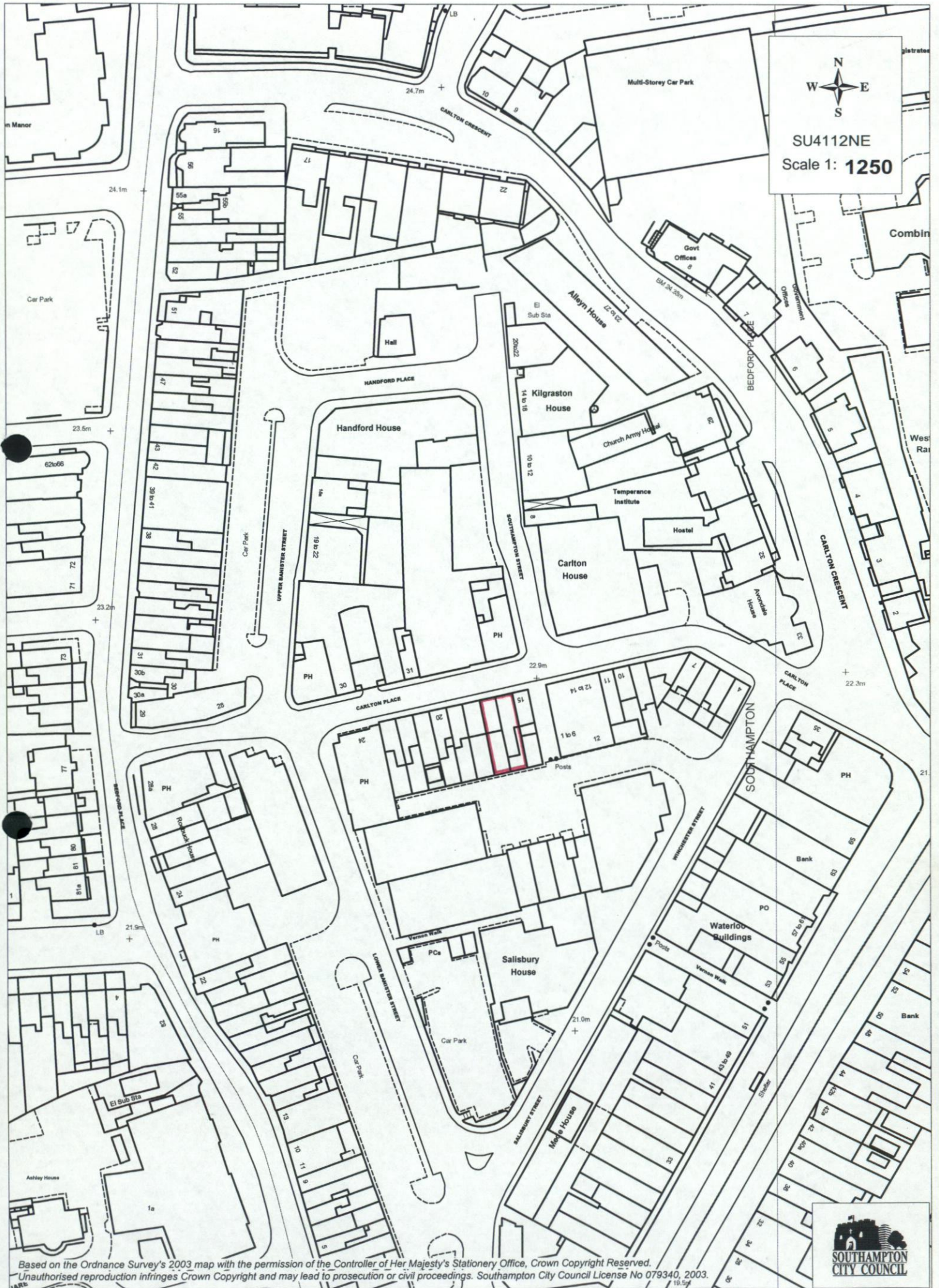
NOTES

1. This permission relates to Planning Control only. Approval under the Building Regulations may also be required and should you be in any doubt about this, please contact Building Control Services, Tel. 023 8083 2558. Any other necessary consent must be obtained from the appropriate authority. Special attention is drawn to the fact that this permission does not relate to the display of advertisements and separate consent is required under the Town and Country Planning (Control of Advertisements) Regulations. Development affecting buildings of special Architectural or Historical interest is also subject of separate Listed Building Consent. Any queries should be made to Development Control Service as indicated below.
2. This permission has been granted on the basis of all the information submitted by the applicant shown on the plans accompanying the application. Any material misstatement or wrong information may invalidate the permission.
3. If the applicant is aggrieved by the decision of the District Planning Authority to approve the proposed development, subject to conditions, they may appeal to the Secretary of State for the Environment, Transport and the Regions in accordance with Section 78 of the Town and Country Planning Act 1990, within three months of the date of decision. (Appeals must be submitted on a form available from the Planning Inspectorate, 3/07 Kite Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol BS2 9DJ). The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the District Planning Authority, or could not have been granted other than subject to the conditions imposed by it having regard to the statutory requirements, to the provisions of the Development Order and to any directions given under that Order.
4. If permission to develop land is granted subject to conditions, whether by the District Authority or by the Secretary of State, and the owner of the land claims that the land has become incapable of reasonable beneficial use by the carrying out of any development which has been or would be permitted, they may serve on the Council a purchase notice requiring the Council to purchase their interest in the land in accordance with the provisions of Part IV of the Town and Country Planning Act 1990.
5. In certain circumstances, a claim may be made against the District Planning Authority for compensation, where permission is granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which compensation is payable are set out in Section 114 of the Town and Country Planning Act 1990.
6. Attention is drawn to the provisions of Section 12 of the Hampshire Act 1983 relating to access for the Fire Brigade, and you are advised to contact Building Control Services as set out in Note 1.
7. For those developments which are covered by Sections 4,8 and 8A of the Chronically Sick and Disabled Persons Act 1970, the attention of developers is drawn to the relevant provisions of the Act and to the British Standards Institution Code of Practice for Access for the Disabled to Buildings (BS 5810:1979) or the Department of Education and Science Design Note 18 "Access for the Physically Disabled to Educational Buildings". (Section 4 of the 1970 Act covers buildings or premises to which the public are to be admitted; Section 8 relates to Educational Buildings and Section 8A covers shops, offices, railway premises and factories).

Please address any correspondence in connection with this form quoting the application number to:

Development Control Service, Southampton City Council, Civic Centre SOUTHAMPTON, SO14 7LS





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