1.0 SUMMARY

1.1 The application is for two single-storey extensions at a premises which is currently a pub with ancillary accommodation. The extensions are minor in terms of their scale and visual impact and are recommended for approval.

1.2 This application was previously presented to Committee in January 2014. It was deferred in order to carry out a site visit for Members; obtain further legal opinion; gain advice on highway matters; and investigate newts and asbestos on the site. The matter of the change
of use of the pub to a shop has become contentious but legal advice has shown that this does not require planning permission.

2.0 SITE DESCRIPTION

2.1 The Tramway Hotel premises is a substantial and attractive building of locally historic significance in a prominent location at the corner of Florence Road and London Road Pakefield. It is not a listed building and the site is not in a Conservation Area. It is currently in use as a pub on the ground floor with ancillary accommodation on the first floor and there is a car park to the rear.

3.0 PROPOSAL

3.1 The application is for two single-storey, rear extensions of the host building. These are indicated as being for use in association with a retail use of the premises. One extension is proposed in the current beer garden adjacent to Florence Rd. The other is proposed where there is an existing enclosed yard on the northeast side of the building. The existing trellis on the boundary with Florence Rd would be replaced by metal railings painted black. A parking layout for 13 cars (1 disabled space) is proposed at the rear.

4.0 NEIGHBOUR REPRESENTATIONS

4.1 The application has received strong opposition from the local community. At the time of writing 232 people have written in with their views: 225 objected, 4 made comments, and 2 were in support. The objectors raise the issues of:

- The premises is a not a pub but a hotel or a mixed use
- Loss of trade and jobs at existing businesses in the locality
- Traffic congestion from customers using the proposed shop
- Highway safety concerns arising from delivery lorries and customers driving to the proposed shop
- The intersection of roads is currently dangerous and increased parking and traffic in the area will exacerbate this
- Drawing trade away from the town centre
- Another supermarket is not needed in the area
- The local Post Office could be lost if the Spar supermarket was to close as a result of competition from the proposed shop.
- Loss of car parking spaces on the application site
- Shop signage will spoil the character of the building
- Loss of the historic interior of the building
- Loss of a local amenity
- Harm to the character of the area
- Requests for an article 4 direction to remove permitted development rights for a change of use.
- Refrigeration/air conditioning units could create noise nuisance
- Harm to the vitality of the area
- Objection to the flat-roofed design of the proposed extensions

4.2 A petition signed by around 2500 members of the public was submitted seeking Waveney District Council to refuse the planning application to turn the Tramway Hotel premises in to a Tesco Express store.

CONSULTEE COMMENTS (summarised)

4.3 WDC Environmental Health - Contaminated Land: The proposed development is within 250 m of a former landfill site, the nature of which is not known by this authority, and may
be at risk from the ingress of ground gas. The LPA may wish to consider bringing these facts to the attention of the applicant via a contaminated land informative and condition.

4.4 **WDC Environmental Health – General** (asked to comment on potential asbestos in the garage roof): The garage roof appears to be a cement based product, which could be removed without a license. There is unlikely to be a risk of high fibre release. It is a case of releasing the sheets and removing them. There may be a duty to notify the Health and Safety Executive.

4.5 **Suffolk Preservation Society**: Assert the premises is a hotel and not just a public house. Loss of the interior, whitening out of windows and signage will be harmful to the Victorian building. They object to the extensions on the basis lack of parking and difficulties with delivery vehicles. Customers in vehicles will cause congestion. The community do not want a Tesco store. The face of Lowestoft does not need any further change, there are many other buildings giving an air of dereliction and not being cared for.

4.6 **The Victorian Society**: The Tramway Hotel is a very handsome building. Variousy described in local press as “landmark” and “iconic”, it presents a vigorous exterior with strong character in a prominent location. The single-storey on the front of the building may well be a surviving off-license, an interesting and relatively rare survival. I have not been able to visit the building myself, but I am reliably informed that much of the historic interior survives.

4.7 Our primary concern however is that a process of conversion will inevitably result in the loss of a large proportion of the building’s historic interest and special significance. I am not in a position to comment on precise proposals, but I imagine externally that alterations to many of the windows will be suggested, perhaps with the introduction of obscured glass. The supermarket will also no doubt require large signs that will disfigure the hitherto well-preserved historic elevations. The ground floor of the building will also be completely gutted, along with many historic fittings that survive. Hotels and pubs are extremely difficult to convert as much of their interest is bound up with their function.

4.8 **Suffolk Police** (asked to comment on traffic and/or traffic incidents in the area): No comments to make regarding this matter.

4.9 **Natural England** (asked to comment on the issue of newts on the site): The Pakefield to Easton Bavents Site of Special Scientific Interest is in close proximity but does not represent a constraint in determining this application. The Local Planning Authority (LPA) is directed to standing advice on protected species. The authority should consider securing measures to enhance the biodiversity of the site from the applicant, if it is minded to grant permission for this application. This application may provide opportunities to enhance the character and local distinctiveness of the surrounding natural and built environment; use natural resources more sustainably; and bring benefits for the local community, for example through green space provision and access to and contact with nature.

4.10 **Suffolk Wildlife Trust** (asked to comment on the issue of newts on the site): No response received.

4.11 **South Lowestoft Safer Neighbourhood Team** (asked to comment on highway safety and parking issues): It is difficult to make a prediction about what if any problems would be caused by any increases in traffic volume, however overall we cannot envisage any significant issues arising. This is based on current levels of traffic flow, a lack of current congestion or parking issues, the adequate width of the road, sufficient yellow lines in adjacent roads and suitable off road parking for customers. We appreciate that at busy times, a full car park may lead to some customers abusing the parking restrictions, however the same can be said of the other two shops close by. Finally, with regard to pedestrian traffic, again we don’t foresee any significant issues here, given the provision of the pedestrian crossing situated very close by.
4.12 **Suffolk County Council Highways Department:** The SCC Area Highways Manager has not hitherto been made aware of any specific highways problems on and around the junction. A review of accident data over the last three years does not indicate any specific correlation with any highway infrastructure. Driver error is the cited cause of all the recorded accidents.

4.13 The highway area in the immediate vicinity of the Tramway includes a lay-by for the bus-stop. This area is subject to waiting restrictions at any time. Having regard to this, it is unlikely that customers here would park cars in the lay-by. It is proposed that the car-park for the store will have 13 spaces available, including one for disabled users, and two cycle stands, allowing for four cycles. This car-park would also be used for deliveries, and Autotrac plots have been submitted to illustrate the delivery movements. From the parking demand table submitted, which is based on survey data from a similar store, the parking provision will be able to accommodate the cars of customers during the peak hour.

4.14 Reference to the review of the Pakefield High School project Transport Assessment shows that the resulting additional vehicle trips on London Rd would be unlikely to result in any significant increase in hazard to road users.

4.15 it is not foreseen that the use of this building, including the extensions proposed, as a convenience store would give rise to any additional significant highway hazards in the vicinity of the junctions here.

**PUBLICITY**

4.16 The application has been the subject of the following press advertisement:

<table>
<thead>
<tr>
<th>Category</th>
<th>Published</th>
<th>Expiry</th>
<th>Publication</th>
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**SITE NOTICES**

4.17 The following site notices have been displayed:

- **WDC General Site Notice**
  - Reason for site notice: Potential Public Interest

**5.0 PLANNING POLICY**

5.1 Relevant policies of the Waveney Core Strategy (adopted January 2009) include: Policy CS02 "High Quality and Sustainable Design".

5.2 Relevant Development Management policies include DM02 “Design Principles” and DM14 “Local Shopping Centres”.

**6.0 PLANNING CONSIDERATIONS**

6.1 **Change of Use:** Many letters and e-mails have been received stating the premises is currently used as a hotel or in a *sui generis* mixed use. The agents have provided evidence to show the lawful use of the premises is a pub (A4 use) with ancillary letting accommodation. Legal advice obtained by the Council (see appendix A) agrees with the agent’s assessment. The Use Classes Order (2005) allows for A4 pubs to change to A1 shops therefore planning permission is not needed to use the premises as a shop.
6.2 **Principle of the development:** The site is within a “Local Shopping Centre” identified under policy DM14. This states that proposals for small scale retail uses will be encouraged, so the proposal is acceptable in principle.

6.3 **The Extensions:** The rear extension adjacent to Flora Rd is clearly visible in the street scene. It would be positioned in the current beer garden and would not affect the current parking area. The plans have been amended to reduce the width of this extension slightly to give it a more subservient character. With cornice detailing to match the existing building and appropriate brickwork, the appearance is considered to be acceptable and in keeping with the character of the host building.

6.4 The proposed extension to the northeast of the building would be attached to the rear of, and screened by, an existing flat roof extension. It would not be visible in the street scene. It is also proposed to raise the roof of the existing flat roof extension by 40cm. A brick wall around 1.8 m high adjacent to the footpath at London Road Pakefield provides screening for this existing extension. It is not considered that raising the roof height would result in harm to the appearance of the street scene or character of the building.

6.5 The green stained wooden trellis forming part of the boundary wall by Florence Rd would be replaced with metal railings painted black. The proposed railings would be much more in keeping with the character of building and would be an enhancement for the site.

6.6 The scheme also includes the widening of the vehicular access to the car park by 1 metre and removal of a brick wall, fence and garage to the rear of the building. The widening of the access by 1 metre is not considered to be detrimental to highway safety. The removal of the fence, wall and garage would be a de-cluttering of the site and is supported.

6.7 **Signage:** The Town and Country Planning (Control of Advertisement) Regulations 2007 grants deemed consent for several different types of advertisements at business premises. This means they can be displayed without the need to apply to the Local Planning Authority for consent (subject to conditions set out in the Regulations). Deemed consent for advertisements can not be removed via a planning condition.

6.8 As such, a shop at this premises could display certain signs without needing consent from the Local Planning Authority. In many cases deemed consent applies to a shop the same as it would to a pub.

6.9 **Air conditioning and plant equipment:** This apparatus requires planning permission and the agents have confirmed that an application would follow for this.

6.10 **Asbestos in the Garage:** The agent has confirmed the garage roof is asbestos and this would safely removed by a specialist contractor. This accords with advice from WDC’s Environmental Health team.

6.11 **Biodiversity:** The agent has submitted findings from an ecologist, including a bat survey. The ecologist states that there are no records or evidence of any protected species. No ponds have been identified within 500 metres of the site and there is a lack suitable refuge and foraging habitats for Great Crested Newts on the site. They go on to say that the Pakefield School site (identified at the January Committee meeting) is outside the commutable distance for a Great Crested Newt and the urban environment would act as a barrier to migration. Standing advice from Natural England agrees with this assessment and it is not considered that there is a likelihood of Great Crested Newts being present on the site.

6.12 The bat survey found no evidence of bats on the site and all buildings were considered to offer negligible potential to support roosting bats. Opportunities to enhance biodiversity on this site are considered to be extremely limited.
6.13 Disabled Access: The agent has confirmed the front entrance to the store will be fully compliant with the Disability Discrimination Act.

6.14 Highway Issues: Members asked for the Highway dept. at Suffolk County Council to be consulted in response to concerns over highway safety; road traffic accident rates in the area; traffic volumes; and parking issues. The proposed extensions have a very minor impact on the capacity of the premises and do not affect the parking area. The following comments are therefore not a material consideration in determining this planning application for the extensions and may only be referred to as background information for the site.

6.15 The agent has submitted a transport statement since the last Committee meeting in support of their case. SCC Highways team have reviewed the transport statement, visited the site and referred to accident data and the Area Highways Manager. They do not foresee that the proposed use of the premises as a convenience shop, including the extensions, would give rise to additional significant highway hazards in the vicinity.

6.16 Suffolk Police and South Lowestoft Safer Neighbourhood Team were consulted and asked to comment with regard to highway safety matters. Suffolk Police had no comment to make and the Safer Neighbourhood Team concluded that they could not see any significant issues arising.

6.17 Other Matters: Objectors have raised many concerns over issues which may arise from the change of use which include loss of a local amenity facility, harm to local businesses, lack of need for another supermarket, and impact on the character of the area. As the change of use is not part of the application and does not require planning permission they are not material considerations for this planning application. The building is not listed therefore the interior is not protected.

7.0 CONCLUSION

7.1 The two extensions are considered to be acceptable in their appearance and character. The change of use of the premises does not require planning permission and therefore the associated issues cannot be taken in to account.

8.0 RECOMMENDATION

Approval is recommended with the following conditions:

1. The development hereby permitted shall be begun within a period of three years beginning with the date of this permission.

   Reason: In accordance with Section 91 of the Town and Country Planning Act 1990 as amended.

2. The development hereby permitted shall not be brought into use until it has been completed in all respects strictly in accordance with drawing numbers 10149-211 revision D, 10149-211 revision B and 10149-211 revision A, received 13 December 2012, 10149-222 received 14th January 2014, 10149-223 received 5th February 2014 and 10149-251 revision B received 4th March 2014, for which permission is hereby granted or which are subsequently submitted to and approved in writing by the Local Planning Authority and in compliance with any conditions imposed by the Local Planning Authority.

   Reason: To secure a properly planned development.

3. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing
immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

4. Samples of all external facing materials shall be submitted to and approved by the Local Planning Authority before development commences. Development shall be carried out in accordance with the approved samples.

Reason: To ensure the satisfactory external appearance of the development.

**Background information:** See application ref: DC/12/1350/FUL at [www.waveney.gov.uk/publicaccess](http://www.waveney.gov.uk/publicaccess)

**Contact:** Dickon Povey, Planning and Enforcement Officer, (01502) 523054
APPENDIX A – Legal advice

IN THE MATTER OF

THE TRAMWAY HOTEL, PAKEFIELD, LOWESTOFT; HOTEL/PUB USE; CHANGE OF USE; WHETHER ANCILLARY.

REVISED ADVICE

1. This is a revised Advice following a visit to the Tramway Hotel that I carried out on Tuesday 18th February 2014. I was shown around both the downstairs and the first floor (but not the second floor) by the Landlord, Terry, who also answered a number of questions I had about the operation of the premises.

2. New paragraphs, and revisions, are in italics.

3. I am asked to advise on the position in respect of an application by Tesco Stores Limited (“Tesco”) for planning permission to redevelop premises known as the Tramway Hotel, situated in Pakefield, Lowestoft. Tesco wishes to turn the premises into a ‘retail convenience store’ (presumably one of its smaller ‘metro’ products). An important piece of information is that the planning application is in fact for what is known as ‘operational development’ (i.e. physical works) to extend the premises. It does not include any element of seeking permission for a ‘change of use’, for reasons that will become clear.

4. As such the primary question for the council in its statutory function as local planning authority is whether the planning application itself – i.e. the application for permission to carry out the works specified – is acceptable. I am told that there are no planning grounds to refuse the application: the proposed works of extension are not objectionable to the Council’s planning team.

5. However, it is no secret that the application is made to facilitate a change of use of the premises from its present operation to that of a retail convenience store. By itself that has no material relevance to the planning application, but is important background information, because the position of the applicant is that it does not need planning permission to carry out that change of use. It says that the premises currently has a lawful A4 use (as a public house), and if that is correct then as a matter of law no planning permission is required to change it into an A1 (retail) use because the Town & Country Planning (General Permitted Development Order) 1995 (as amended) has the effect of granting such a change ‘deemed’ planning consent.

6. It follows that, albeit not strictly relevant for the determination of the planning application, because there is some debate over whether that view of the legal position is correct, an important question that arises (or will at some stage arise) is what the lawful use of the site presently is.
7. The planning application was submitted to my client, Waveney District Council, on 16 November 2012. It has not yet been determined and, as with many such applications by Tesco, there appears to be considerable local opposition to the application.

8. Be that as it may, the application has been registered and will soon be determined.

9. The application is not itself for a change of use. This is because Tesco believes that the site benefits from lawful use as a public house (Use Class A4), and the Town & Country Planning (General Permitted Development Order) 1995 (as amended) (hereafter “the GPDO”) permits a change of use from A4 to A1 use. Tesco’s grounds for so believing are set out in a detailed letter from its lawyers, Ashurst, dated 4 October 2013.

10. I do not have any instructions on the merit or otherwise of the application itself although I am told that the planning officers do not consider the proposed extensions, per se, to be in any way objectionable and would not recommend refusal. However, I am asked to advise on whether Tesco is correct to suggest that the present lawful use is A4, or whether, instead, as is suspected by some, it is in fact operating as a sui generis mixed use of pub and hotel. I should add that there is some suggestion in some of the correspondence I have seen that the premises might, in fact, be in C1 hotel use. Obviously, that is further along the ‘scale’ from pub use at one end (A4), through mixed use (A1 and A4, so sui generis), to pure hotel use (C1). It follows that all of what I say below about whether it is in mixed use applies, a fortiori, to whether it is in ‘pure’ hotel use (C1).

11. If it were either of the latter two situations, then Tesco would additionally need planning permission for the change of use.

12. Putting that into practical terms: if Tesco, believing they have ‘deemed’ planning consent to change to A1 retail use, did so and began operating as a retail convenience store, then my client would have to make a decision as to whether to enforce against a breach of planning control. The first question it would have to address is whether in fact there has been a breach at all (i.e. are Tesco correct to say they have deemed consent?).

13. However, that would not be the only question: if it determined that there had been a breach of planning control – i.e. Tesco did not have consent, and required it – they would also have to consider whether it was ‘expedient’ to enforce. A crucial part of that would be whether, had Tesco in fact applied for planning permission for the change of use, they would have been likely to have been granted it. If the answer is yes – or probably yes – it is unlikely to be expedient to commence enforcement proceedings. Tesco, as recipient of an Enforcement Notice alleging change of use, would be entitled to argue (pursuant to ground (a)) that they should be granted planning permission in any event – and an Inspector would have to decide on the merits of that.
14. As such, it is clear to me that the question is one very much for the future, rather than now, but it would be sensible for my client to have a position on the question at this stage, so that if and when it in fact arises they are fully prepared.

15. I do not have any firm instructions at this stage as to the likelihood of such an application (or ground of appeal) being granted (or being successful). That would be a matter of judgment for the decision-maker and I cannot (and do not) express any view on it. Obviously, there would be little point (and a great deal of potential in wasted costs) if Tesco were pursued for not applying for a change of use in circumstances where, had they so applied, it would have been granted.

16. The site is presently occupied and run by LT Pub Management Limited, who lease the entire premises from the freeholder and employs Terry as landlord. When I went to visit, it was very clear that it functions as a public house on the ground floor. Unless specifically contradicted by other information or by my own observations, I advise in the basis that the description of the operation set out in Ashurst’s letter is broadly accurate.

17. That means that the following features exist:

(a) The ground floor is a traditional public house with a bar serving a range of alcoholic drinks including a range of beers on tap;
(b) There is a kitchen on the ground floor where meals are prepared at lunchtime, but not in the evenings. The average price of a meal is £5;
(c) There is no separate ‘restaurant’ area – meals are taken at the bar tables;
(d) The entrances at ground floor level all serve the ground floor ‘pub’. There are no dedicated entrances serving upper floors; there is one entrance – giving on to the car park – which Terry explained was available to be used by staying guests after hours, because it gave directly on to the stairs without having to go through the bar. However, it also serves a door into the main bar, which is the way I first entered the bar when I visited.
(e) There is no reception desk as you might see in a hotel. Terry explained that anyone arriving to check in would speak to the barmaid, who had a copy of the book;
(f) There is only one telephone line, which connects to the bar; and
(g) Upstairs there is residential accommodation: six rooms on the first floor which can be let, and accommodation on the second floor which is occupied by employees of the premises.

18. In addition, it is said that previous leases all permit no more than a primary public house use with ancillary food production and letting accommodation.

19. Ashurst’s letter sets out some financial information about the operation of the premises. The ground floor ‘pub’ appears to be the primary generator of income from the premises. The current tenant of the premises, LT Pub Leasing Limited, includes only wet sales, machine income and modest ‘other income’ in its calculations of turnover. The total this year was £99,218. Ashurst’s letter says that income from letting the accommodation and from the kitchen (food sales) is considered insignificant and is left to the Property Manager to deal with. I have to say that such a claim gives me some
cause for concern: for tax purposes I am certain that the income deriving from food sales and accommodation cannot be insignificant – but in any event that is what is said.

20. For some reason those income streams are not fully quantified in the letter, but it is suggested that they amount to a maximum of £52,000 pa (under £1000 a week) for food sales, and maximum £20,800 (£400 a week) for lettings. That combined figure – said to be insignificant ‘in business terms’ - is not very much less than the wet sales turnover figure, as it happens – but I don’t think much turns on that.

21. For what it is worth, Terry confirmed this arrangement to me in person. He said that LT Pub Management pays him a percentage of the total ‘wet sales’ turnover. That is his remuneration, together with the accommodation on the second floor. In addition, he lets rooms on the first floor, for which he keeps all turnover thus generated, and out of which he pays for e.g. cleaning. Thirdly, he pays LT Pub Management Ltd a fixed sum each week to hire the kitchen; again, he keeps any income generated from use of the kitchen, from which he pays for any staff (for example the chef).

Advice

22. The key question is whether it can be said that the ‘hotel’-style operation on the first floor is such that in fact the true present operation amounts to a mixed use of pub on the ground floor and hotel on the first floor (which would be a sui generis use), or whether the rooms on the first floor are in fact ancillary to the primary pub use.

23. No-one appears to suggest (I think quite correctly) that the premises is in fact two planning units. The entire premises clearly amounts to a single planning unit.

24. As acknowledged by Richard Amor, who visited the site in December 2012, and as described by ‘Development Control Practice’, the use of some areas of a public house for the letting of residential accommodation is both traditionally part of an ‘inn’ operation, and generally accepted as capable of being ancillary to the primary public house function.

25. That is relevant because, as set out by Ashurst, a crucial question is whether a secondary activity is something ‘ordinarily incidental’ to the primary use – which is a question of functional relationship rather than, necessarily, scale. In the Harrods case referred to in the letter, the court held that a helipad on the roof for the sole use of the chairman was not ‘ordinarily incidental’ to the department store use and so could not be ancillary. It was not what you expected to see as a part of a department store. Because it has been specifically queried, I will add that I refer to the Harrods case not because of its factual similarity to the present case – it is entirely different – but because of the proposition of law that it is authority for: that something ancillary must, in the first instance, be ‘ordinarily incidental’ to the primary operation. Of course, the obvious point is that in the Harrods case the helipad was held to be not ordinarily incidental, so it ought to be clear to anyone reading my advice that I do not rely on that case as any kind of factual precedent for my view.

1 Harrods Ltd v SSETR [2002] JPL 3121, CA
26. The same cannot be said of accommodation above pubs: that is very traditionally seen and so this first question must be answered in Tesco’s favour. Although Ashurst deal with this question extensively in their letter (at paragraphs 43-55) I consider that it is a straightforward question permitting of only one answer: that letting accommodation is capable of being ancillary to a pub use.

27. The second question is not so straightforward. It is whether, as a matter of fact and degree, the claimed ancillary operation here is so extensive or significant that it cannot properly be described as ancillary to the primary use. If it is so extensive and significant, it would mean the use is sui generis. I deal with the answer to this second question below.

28. I agree that what the premises is ‘called’ is irrelevant. Just because you call something a hotel does not make it one in planning terms – the question is always as to what in fact goes on there.

29. I agree also that the relative turnover generation of each ‘part’ of the business is not conclusive either, although may well be indicative. In this case we are told that the letting of accommodation generates a maximum of £20,000 or so in a year – around a fifth of the turnover generated by wet sales, and proportionately even less when income generated from food sales is added.

30. The fact that the financial arrangements mean that income from the lettings is treated differently to the income derived from the wet sales is not relevant here. As a matter of fact, so too is the income from food sales – both at breakfast and at lunchtimes. The real point is that the way in which the occupier/operator chooses to deal with the various income streams cannot, itself, be determinative of the planning use of the site.

31. It is clear, at the very least, that the arrangement is not one of Person A deriving an income from the letting, and Person B deriving an income from the pub, and the two operations being run separately; instead it is Terry (who is paid something akin to a salary to run the pub) who accounts for the additional income from lettings and the meals – whether pub customers at lunchtime or staying guests - and keeps the surplus after paying the costs. In truth it is little more than a method of remunerating him.

32. In addition the lack of a reception desk, separate entrance, dedicated phone line etc. all point in my view strongly to the lettings element being a part of the overall pub operation. Nothing at all that I saw on my visit changes this view: on the contrary it completely confirmed it. The barmaid would be the person to whom a potential staying guest would address themselves upon arrival.

33. I cannot see that the fact that the letting accommodation amounts to six rooms taking up the entire first floor of the building tells us very much, either. Such an arrangement would appear to be relatively normal in a pub with rooms above. I certainly don’t see it as so extensive as to take that element of the operation out of ‘ancillary’ status itself.

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2 Which is plainly part of the pub use, in my view.
34. Nothing else that I have seen – including on my visit to the Tramway Hotel on 18 February 2014 - suggests that it is a mixed use, or that the letting of accommodation on the first floor is of such intensity as to take it out of being ‘ancillary’ to the pub use. Indeed, although of lesser cogency in my view, the remainder of the points made by Ashurst\(^3\) seem, at least, to be valid.

Conclusions

35. I agree with Emma Dring, and with Ashurst, that the overwhelmingly likely lawful use of the site is as a public house, albeit with ancillary residential accommodation above. I can see no real basis for suggesting otherwise.

36. Residential accommodation is clearly capable of being an ancillary use to a primary pub use.

37. On the facts of this case as I know them, the evidence points strongly to the residential accommodation being ordinarily incidental to, and ancillary to, the primary pub use. Although there are unusual elements (such as the way income from the lettings is treated) none of them suggest to me that the lettings element of the operation is of such extent or intensity as to amount to a separate independent use.

38. I also agree with Emma Dring that if the Council’s position is maintained (contrary to my view) it is likely to face challenge. It could not refuse to determine the planning application on this basis: the planning application is for operational development which I understand is not unacceptable. Instead the Council would probably have to serve an enforcement notice alleging a change of use – which would be met with an appeal, and in respect of which I think the Council would be very likely to lose on ground (c), which would be the forum for arguing that it had deemed planning permission. It may well also succeed on ground (a).

39. I have not considered in any detail the separate, but related question of whether the change of use application, if contrary to Tesco’s present view that one is not needed, were to be made, would be granted on its planning merits. I understand that the policy support for resisting the loss of premises such as this one would be slight. It is situated within a ‘local shopping area’ in the development plan, where retail use is supported. The protection for ‘community facilities’ in the development plan is limited to procedural protection – there must be a consultation process – and it is far from certain that these premises would be considered a ‘community facility’. If such an application would be hard to resist in any event, then the Council should be even more circumspect about pursuing the suggestion that an application is required.

40. It remains my firm view, then, that the Council should confirm to Ashurst that it no longer seeks to suggest that an application for permission for a change of use is required. It must then determine the planning application.

41. Please do call if I can advise further, or if there are matters arising.

\(^3\) For example, about reliance on the pub kitchen, about the VOA rating and so on.
IN THE MATTER OF

THE TRAMWAYS, PAKEFIELD, LOWESTOFT;
HOTEL/PUB USE; CHANGE OF USE;
WHETHER ANCILLARY.

============
ADVICE
============

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