



Report of the Chief Planning Officer

Plans Panel North and East

Date: 30th July 2015

Subject: APPLICATION 11/03908/FU – Variation of condition 6 of approval 09/04265/FU to allow opening hours of 1600 to 2330 hours Monday to Saturday and 1600 to 2300 hours on Sundays at 12 Church Lane, Swillington, Leeds LS26 8DX

APPLICANT

Mr M Gill

DATE VALID

15/09/11

TARGET DATE

10/11/11

Electoral Wards Affected:

Garforth & Swillington

Yes

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

RECOMMENDATION: GRANT permission subject to the following conditions:

1. Time limit
2. Plans as approved
3. Hours of opening

Previous (unrelated) conditions also repeated and wording altered where necessary to reflect details agreed under separate condition discharge application.

1.0 INTRODUCTION:

- 1.1 This application is brought to Plans Panel North & East, as the application seeks variation to a condition attached to planning permission 09/04265/FU which was the result of a East Plans Panel decision at its meeting on 11th February 2010. Minutes from this meeting indicate that Members supported the application partly because the opening hours for the hot food takeaway would be restricted to match the existing opening hours of the adjoining Off-license. A direction was therefore added to the decision notice at Members request advising the applicant that any future

applications to extend the hours of opening would be unlikely to be viewed sympathetically.

- 1.2 Notwithstanding the above, it should be noted that the opening hours of the Off-license are not controlled by any planning conditions due to its historic nature and the Off-license and Hot food takeaway are now under separate ownership, albeit the previous applicant still has a landlord role.
- 1.3 The application was subject to a Plans Panel site visit on 25th June 2015, and the application was deferred from consideration at the Plans Panel in order that the Officer Report could be up-dated.

2.0 PROPOSAL:

- 2.1 The current authorised opening hours for the hot food takeaway is limited to 1700 to 2230 hours Monday to Sunday and the applicant originally applied to extend these to one hour earlier and one hour later, 7 days a week, resulting in opening hours of 1600 to 2330 hours. However, this was subsequently amended to 1600 to 2330 hours Monday to Saturday and 1600 to 2300 hours on Sundays in order to be more acceptable. The determination of the application has been delayed whilst issues relating to an unauthorised flue and proposed extension had been addressed.
- 2.2 The current advertised hours of opening are noted to be 16.30 to 22.00 hours Sunday – Thursday and 16.30 to 23.00 hours Friday to Saturday.

3.0 SITE AND SURROUNDINGS:

- 3.1 The application site consists of a large, detached, two storey, red brick property, formerly a dwelling house, occupying a spacious corner plot at the junction of Church Lane with Neville Grove.
- 3.2 The property has existing single storey extensions to both sides, including a large flat roof extension along the west side elevation and a single storey extension with mono-pitch roof along the east side elevation.
- 3.3 The extended property accommodates a mixed commercial and residential use, with an existing Off-licence at ground floor level and more recently a hot food takeaway within the single storey extension along the east side elevation of the property. Residential accommodation is situated above the shop which is understood to be occupied separate to the ground floor commercial uses.
- 3.4 The property has a car park to the front providing off-street parking for the commercial uses and an enclosed yard along the western side of the property, enclosed by high privet hedge and with a separate vehicular access off Neville Grove. The property also has an enclosed garden to the rear and east side of the property.
- 3.5 The surrounding area is predominantly residential in character and a small housing scheme (comprising of 8 properties) has in fact recently been constructed to the west (beyond the adjoining electricity sub-station) to the east on the former church hall site. A Fish and Chip shop can nevertheless be found on the adjacent corner of the Church Land and Neville Grove junction although its current opening hours

(albeit unrestricted in planning terms) are relatively short and are limited to lunch and tea times.

4.0 RELEVANT PLANNING HISTORY:

- 4.1 12/04591/FU - First floor side extension with enclosed stairs to form additional 1No. bedroom flat and incorporating ventilation duct to hot food take away. Application approved 09/03/15.
- 4.2 12/02840/FU - Alterations involving part ground floor and part first floor extension to form one flat and new chimney stack. Application withdrawn 23.08.2012
- 4.3 10/01212/COND – Discharge of conditions application for Nos. 3, 5, 9, 12, 13, 14, 15 and 17 of Planning Application 09/04265/FU, approved 30/04/10.
- 4.4 09/04265/FU – Change of use of part of living accommodation and part of shop to take away hot food shop, involving new shop front, flue to rear, new vehicular access and additional customer car parking to serve proposed takeaway shop/. Application approved 18/02/10.
- 4.5 08/06109/FU – Change of use of part of living accommodation and part of shop to takeaway hot food shop involving new shop front, new vehicular access and 4 additional car parking spaces. Application withdrawn 22/12/08.
- 4.6 08/04883/FU – Two storey side extension and part two storey, part first floor extension to other side and rear of shop, forming enlarged shop, with three 2 bedroom flats and one 1 bedroom flat over. Application approved 09/10/08.
- 4.7 08/02764/FU – Two storey side extension and part two storey, part first floor extension to other side and rear of shop, forming enlarged shop with four 2 bedroom flats and one 1 bedroom flat over. Application withdrawn 07/07/08.

5.0 PUBLIC/LOCAL RESPONSE:

- 5.1 The application was advertised by site notices posted on 21st October 2011. The publicity period expired on 11th November 2011.
- 5.2 One letter of representation (unsigned and no address provided) has been received expressing the following points/concerns:
- Unauthorised development has taken place
 - Extended hours of opening were raised as a concern with the original application

- 5.3 All material planning considerations arising from these comments are addressed within the appraisal section of this report.

6.0 HISTORY OF NEGOTIATIONS:

- 6.1 The applicant originally applied to extend the hours of opening to one hour earlier and one hour later than the existing, 7 days a week which would have resulted in opening hours of 1600 to 2330 hours Monday to Sunday. However, further to

discussions with officers the Sunday hours were reduced in order to make the application more acceptable to officers.

7.0 CONSULTATION RESPONSES:

7.1 Non-statutory

Highways – no objections in view of the off-street parking at the front of the shop, as such it would be difficult to justify an objection to a change in the opening hours.

Environmental Protection Team – an extension of the evening opening hours may lead to the increased potential for complaints relating to noise from patrons visiting the premises – therefore recommend opening hours are not extended. Confirmation provided that no complaints have been received by the department regarding the hot food takeaway use.

8.0 RELEVANT PLANNING POLICY

8.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications should be determined in accordance with the development plan unless material considerations indicate otherwise. The Development Plan for Leeds currently comprises the Core Strategy, saved policies within the Leeds Unitary Development Plan (Review 2006) and the Natural Resources and Waste Development Plan Document (2013).

Local Planning Policy

8.2 The Core Strategy is the development plan for the whole of the Leeds district. The following core strategy policies are considered to be relevant:

T2: Seeks to ensure that new development does not harm highway safety.

P4: Where a proposal involves evening opening, account will be taken of the proposal in relation to the proximity of the premises (and associated parking requirements), to nearby residential accommodation, the nature and character of the neighbourhood parade and existing noise levels.

8.3 The application site is not specifically designated within the saved UDP Review (2006). Nevertheless, the following policies are also considered to be relevant:

GP5: Seeks to ensure that development proposals resolve detailed planning considerations, including amenity.

8.4 No Natural Resources and Waste policies are also considered to be relevant:

National Planning Policy

8.5 The National Planning Policy Framework (2012) sets out the Government's planning policies for England and how these are expected to be applied. It sets out the Government's requirements for the planning system. The National Planning Policy Framework must be taken into account in the preparation of local and neighbourhood plans and is a material consideration in planning decisions.

8.6 The introduction of the NPPF has not changed the legal requirement that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The policy

guidance in Annex 1 to the NPPF is that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. The closer the policies in the plan to the policies in the Framework, the greater the weight that may be given. It is considered that the local planning policies mentioned above are consistent with the wider aims of the NPPF.

- 8.7 The NPPF gives a presumption in favour of sustainable development but also has a strong emphasis towards protecting amenity and balancing commercial interests.

9.0 MAIN ISSUES

1. Principle of development
2. Impact on residential amenity
3. Highways
4. Other issues

10.0 APPRAISAL

Principle of development

- 10.1 The principle of having a hot food takeaway in this location has already been established by the granting and implementation of the previous planning permission (09/04265/FU). Notwithstanding this, the acceptability of the extended opening hours proposed still needs to be assessed, primarily in accordance with Core Strategy Policy P4 which states that where a proposal involves evening opening, account will be taken of the proposal in relation to the proximity of the premises (and associated parking requirements), to nearby residential accommodation, the nature and character of the neighbourhood parade and existing noise levels.

Impact on residential amenity

- 10.2 Core Strategy Policy P4 addresses the issue of shopping parades and small scale food stores serving local neighbourhoods. A section of the policy deals with hot food takeaway shops and its main aim is to protect neighbouring residents living conditions, particularly in cases where amenity concerns are raised due to the close proximity of residential properties. Paragraph 5.3.19 of the Core Strategy sets out:

“Whilst A4 and A5 uses can be appropriate uses for parades of shops, their cumulative impact give rise to amenity concerns for nearby residents, including noise, disturbance, litter and car parking, which can occur when a number of such uses are located in close proximity to each other...”

- 10.3 The main part of the takeaway is housed within a single storey unit that forms part of a small parade of shops located on a corner plot. This relatively small unit has a generous forecourt. There is also an open area of land to the side (east) of the unit that is screened by a close boarded fence of approximately 2m height and the side boundary is enclosed by a mature hedge. Beyond this an electricity sub-station acts as a buffer between the site and the neighbouring detached house. In this case the nearest existing residential property is the flat above the off-licence although it is noted to be surrounded by other residential properties. An additional flat could also be provided directly above the hot food takeaway if the 2012 is implemented although as a new build appropriate sound insulation measures will be incorporated from the outset. On the opposite side of Church Lane are two storey semi-detached

houses. These are set a little way back from the road with their front gardens enclosed by a mixture of low walls/fences and mature planting.

- 10.4 In this case, where there is an established hot food take away, the principle consideration is the impact on residential amenity with opening later on an evening. The hours of opening as originally applied for in the previous application corresponded with the hours of opening of the adjoining Off-licence. A Direction was attached to the previous permission at the request of Panel Members advising that a proposal to extend the hours of opening would be unlikely to be viewed sympathetically. Part of the reason for this was because at the time a significant number of objections to the application had been received expressing amenity concerns.
- 10.5 In considering this current application for revised opening hours, officers are of the opinion it would be difficult to resist as the hours now sought through negotiation have been reduced and now amount to a relatively modest addition (of 30 minutes Monday to Saturday and 1 hours on Sundays) to those already being operated. Whilst it is acknowledged the existing opening hours are themselves already slightly in excess of those originally specified, the council's Environmental Protection Team have confirmed no complaints have been received and indeed the level of representations received to the current application seem to suggest amenity concerns have not been experienced. In addition, the modest size of the existing takeaway shop and it's general siting is such that the proposal will not result in an undue concentration of such uses which is also a concern of Core Strategy Policy P4.
- 10.6 In light of the above the proposal is considered to be acceptable on residential amenity grounds.

Highways

- 10.7 The proposal raises no specific road safety concerns given the amount of off-street car parking available within the forecourt area. As such, the proposed development is considered to be acceptable on highway grounds.

Other issues

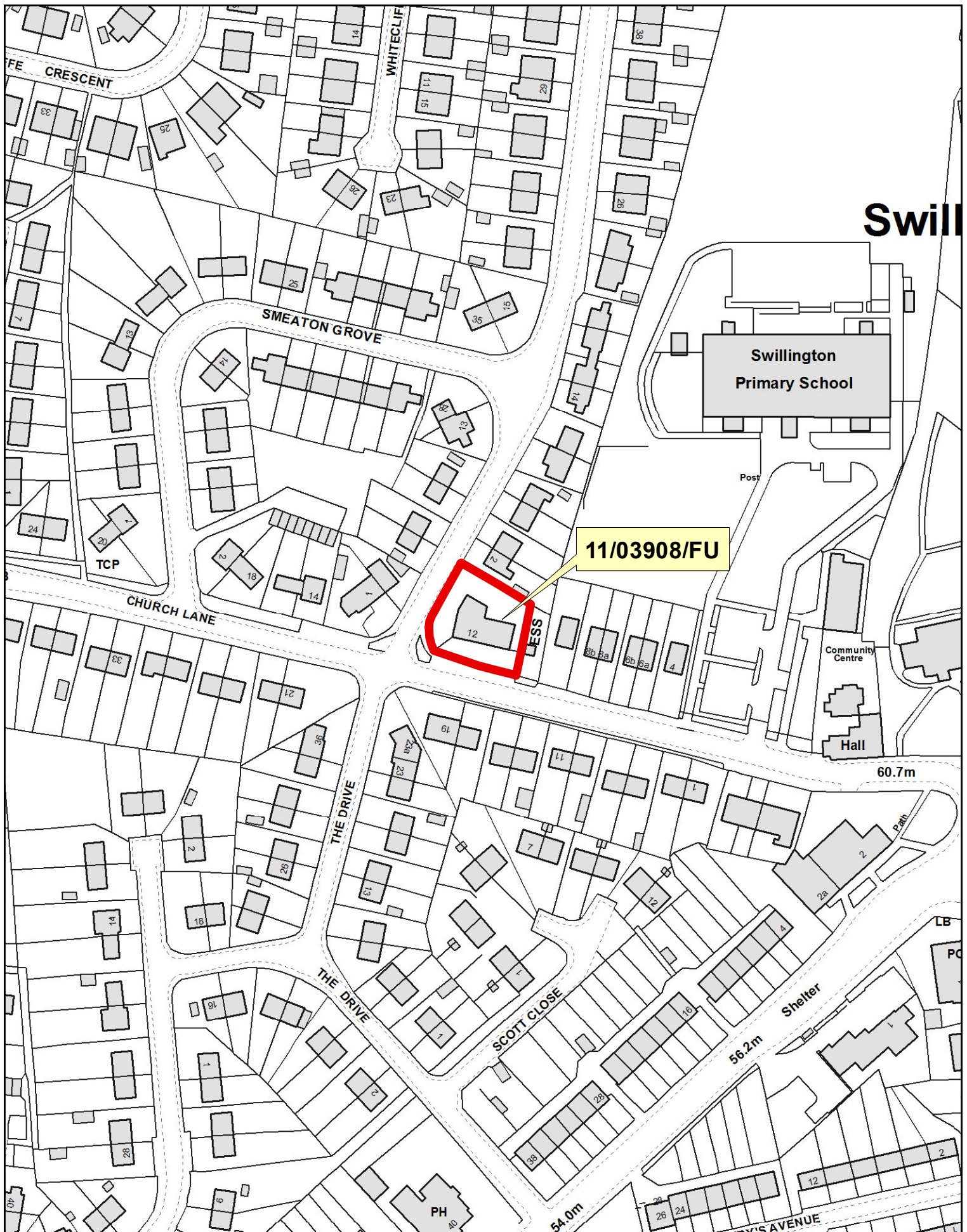
- 10.8 The existing flue at the site is noted to be unauthorised and not in accordance with the details agreed under the 2010 condition discharge application. This matter is therefore subject to separate and on-gong enforcement proceedings and is also flagged up as a concern in the third party correspondence received. Should the applicant choose to implement the 2012 permission for the development which includes a first floor flat a new flue will be required. However, if this is not the intention the applicant should revert to the agreed detail which is visually far more sympathetic than the current structure. An Enforcement Notice regarding this matter is likely to be served shortly.

11.0 CONCLUSION

- 11.1 For the above reasons, with consideration to all other planning considerations, including residential amenity and highways, the proposed development is considered to be acceptable and is recommended for approval subject to conditions.

Background Papers:

Application file: 11/03908/FU
Certificate of Ownership: the applicant Mr M Gill



NORTH AND EAST PLANS PANEL

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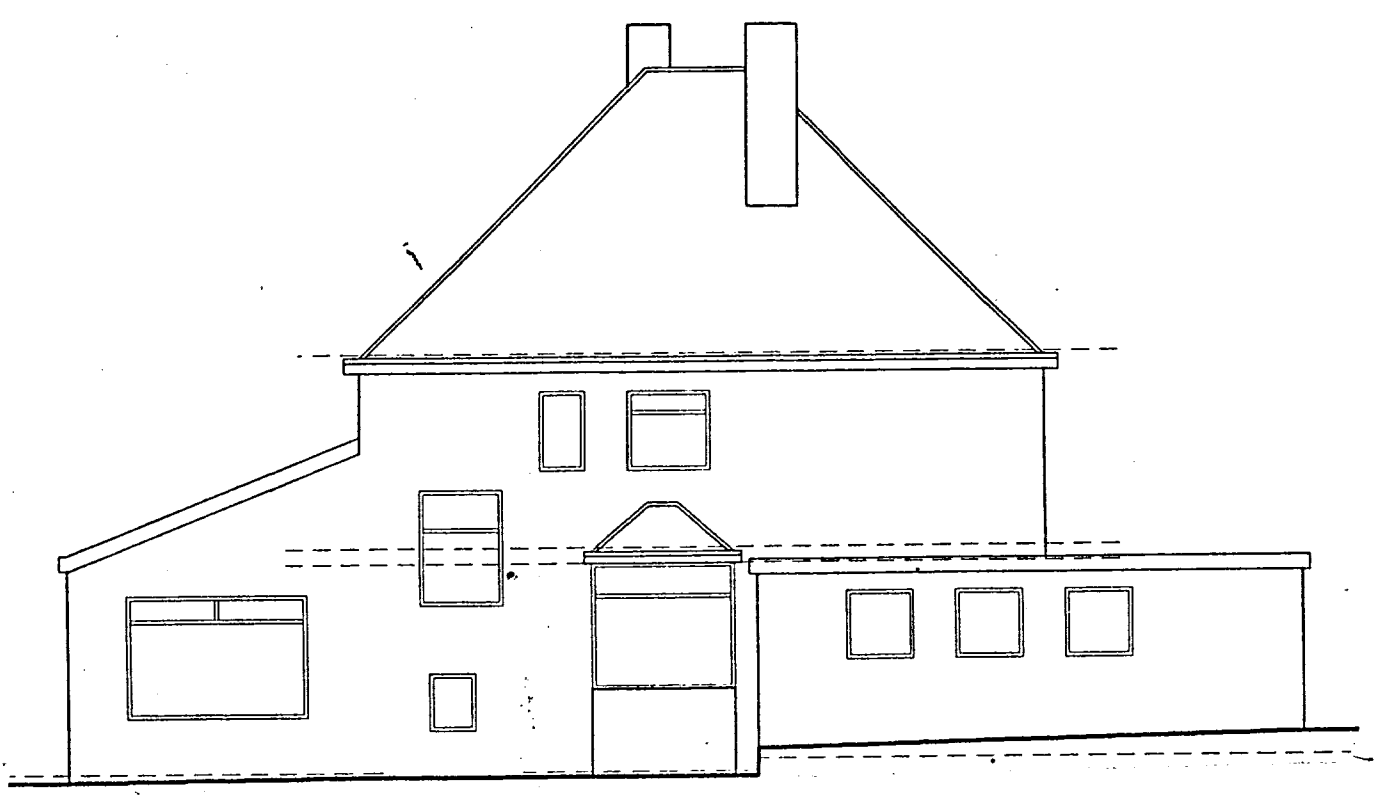
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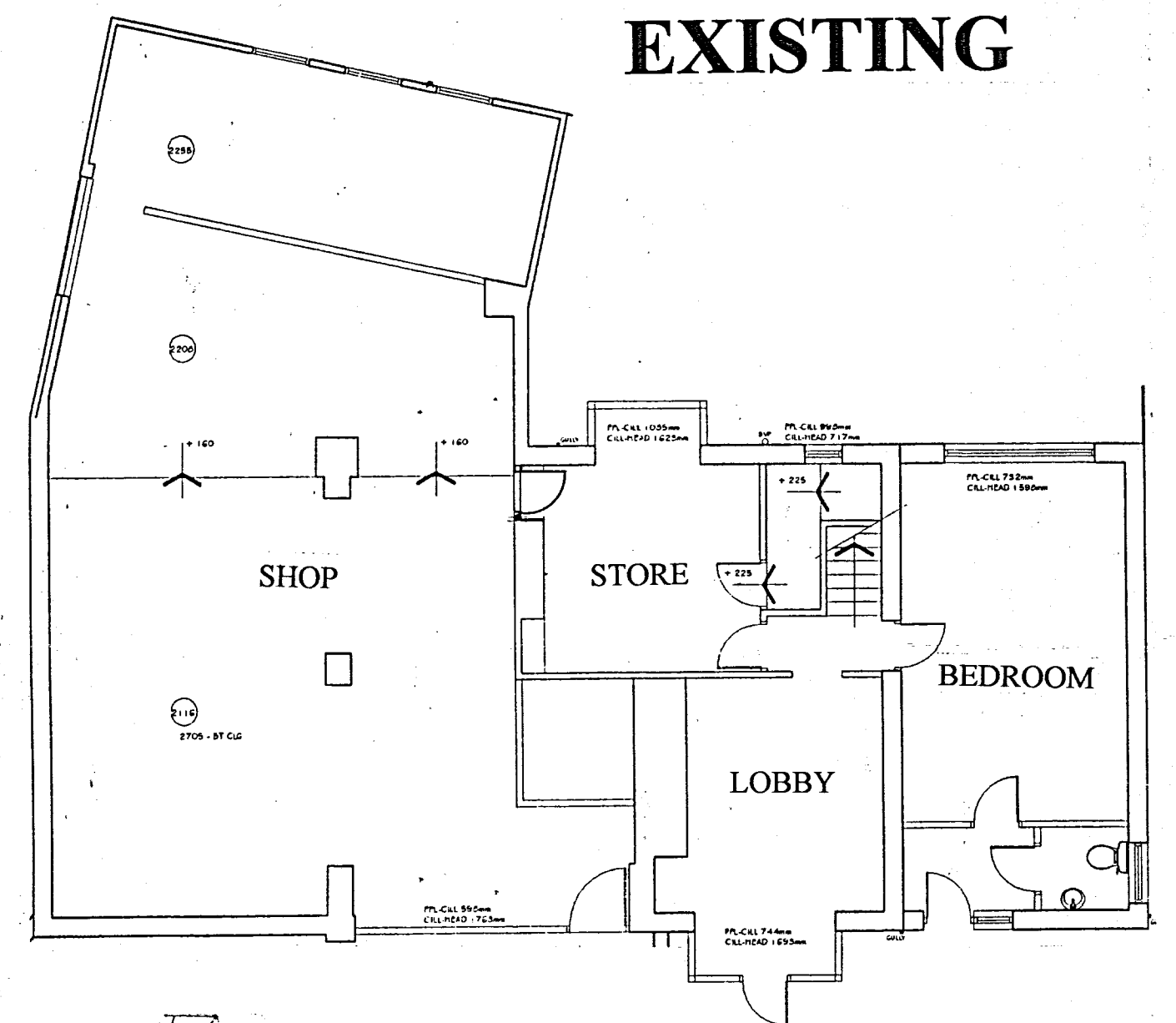
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12 DEC 2011
ADDITIONAL



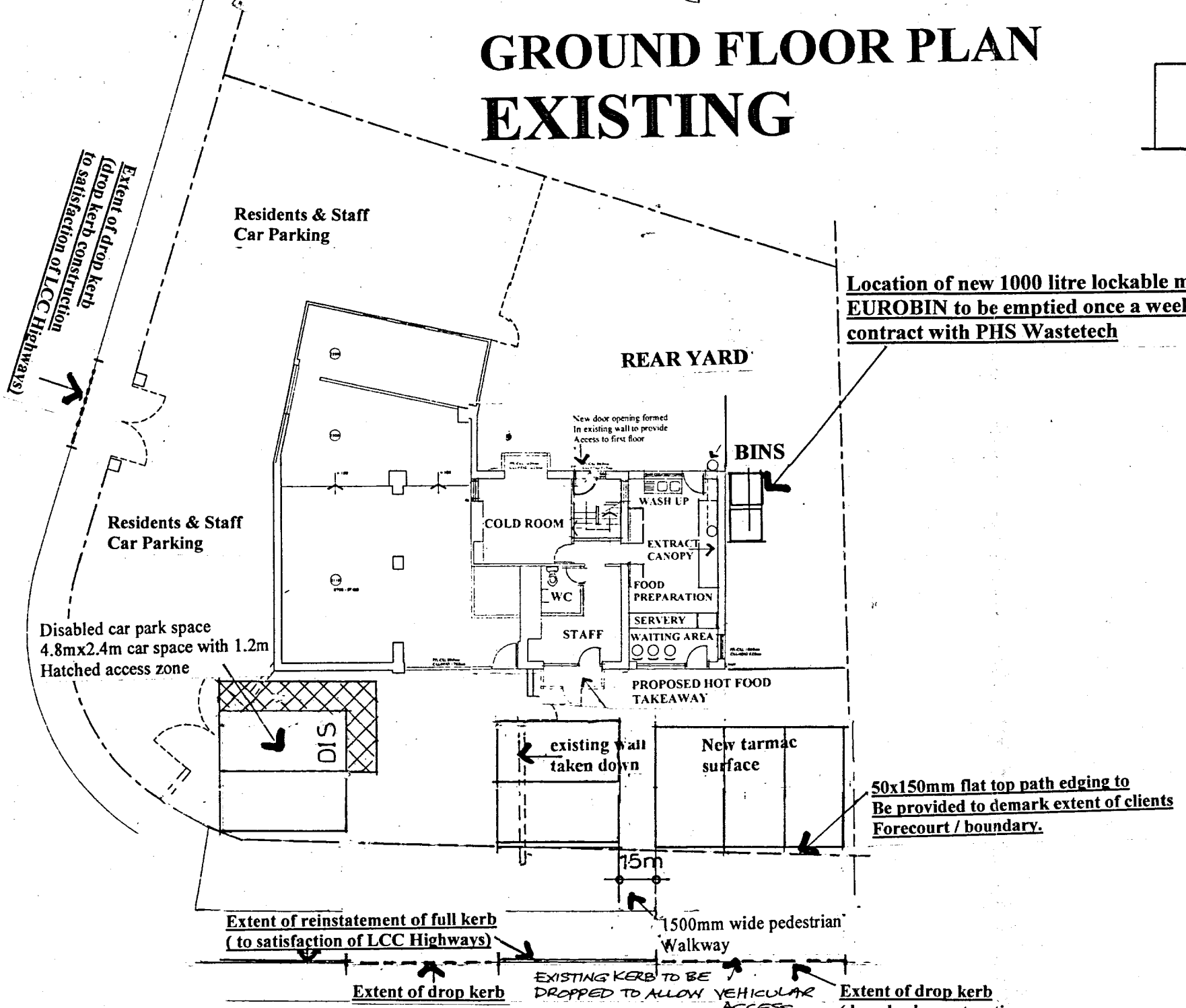
FRONT ELEVATION EXISTING



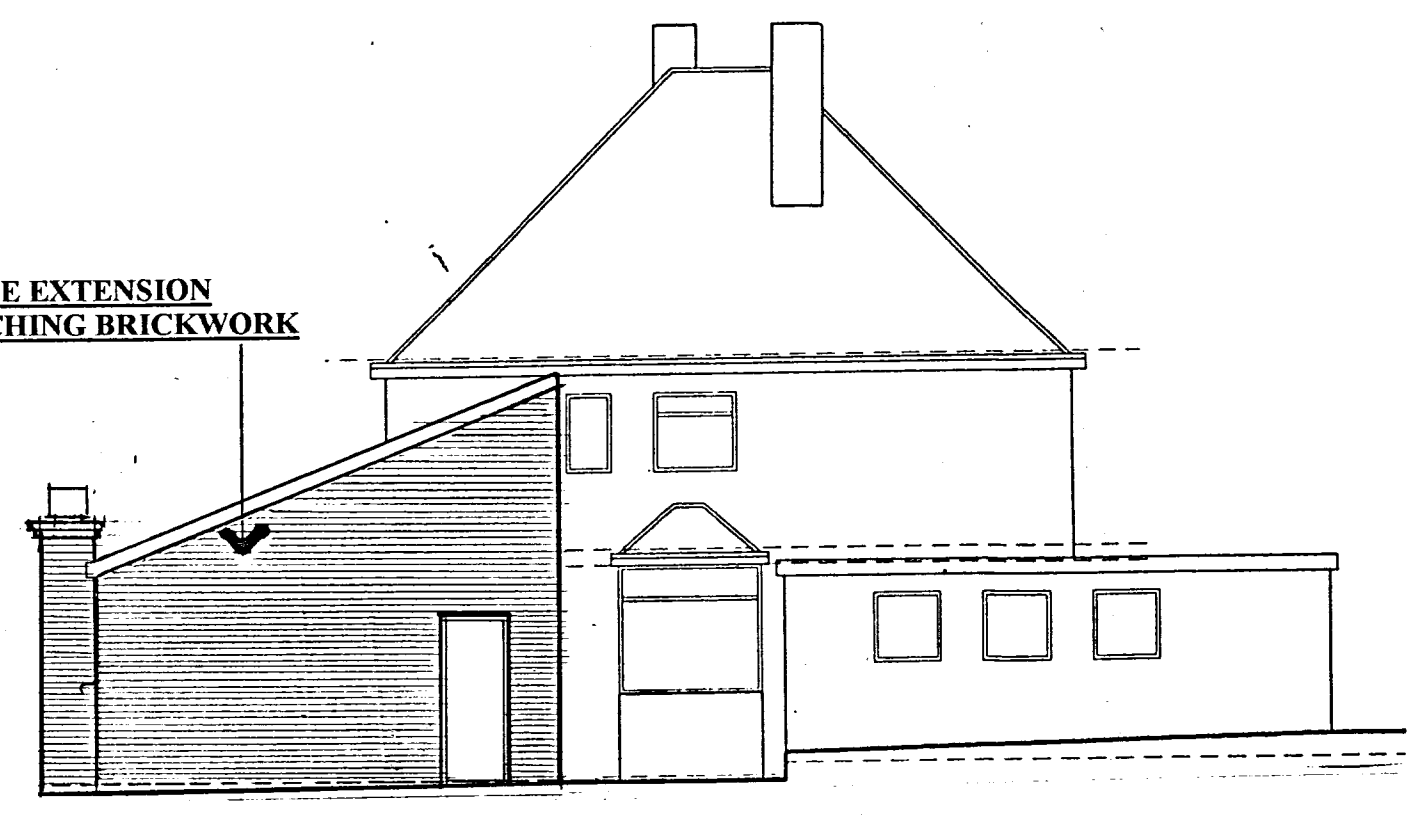
REAR ELEVATION



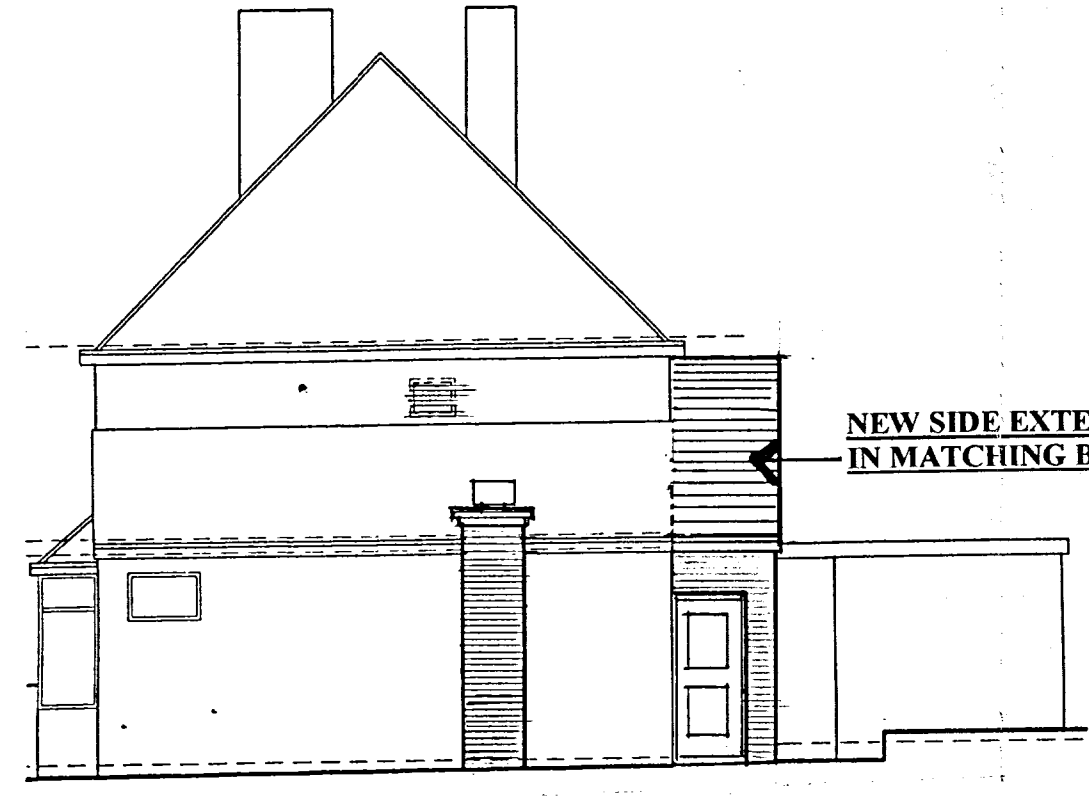
GROUND FLOOR PLAN EXISTING



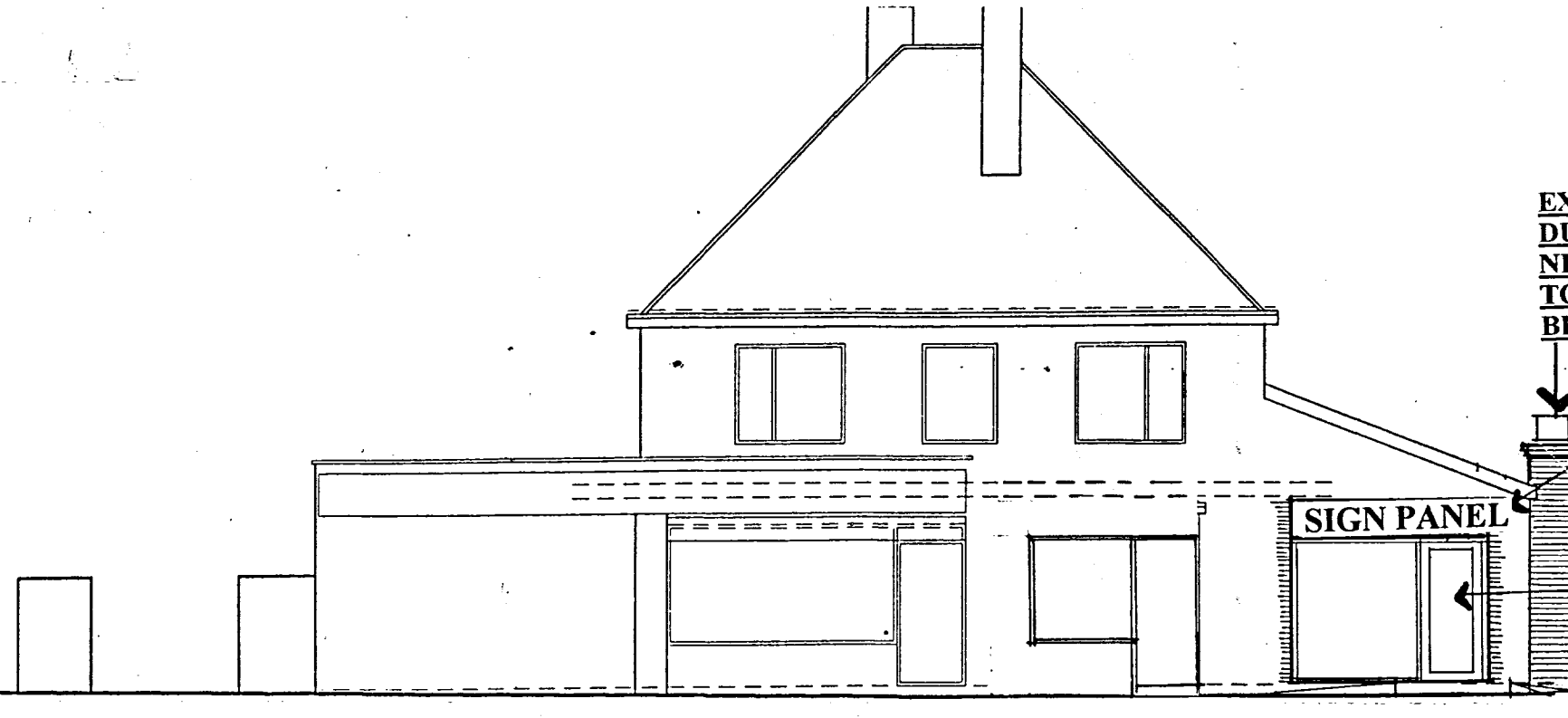
EXISTING/PROPOSED SITE PLAN



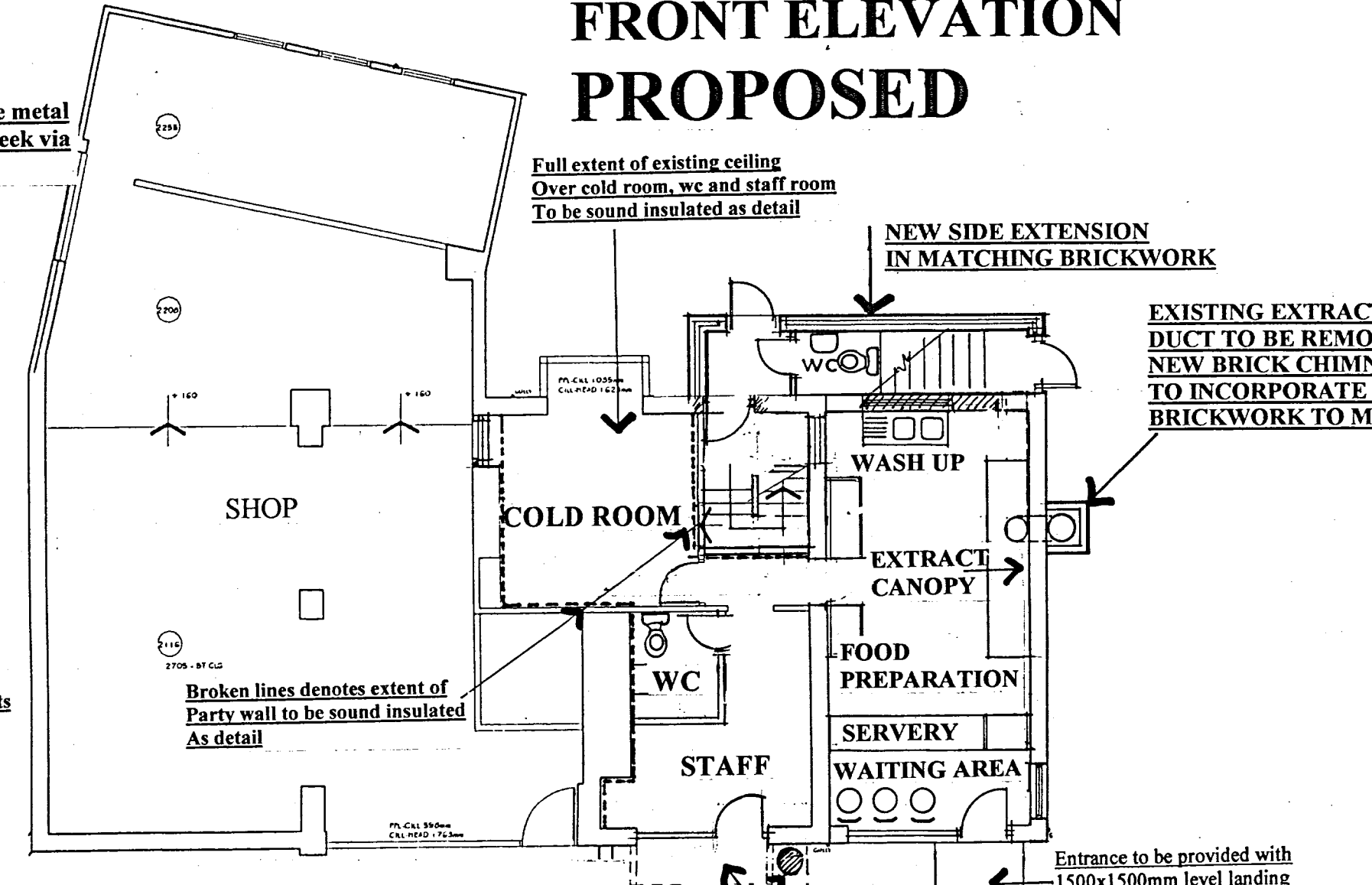
REAR ELEVATION



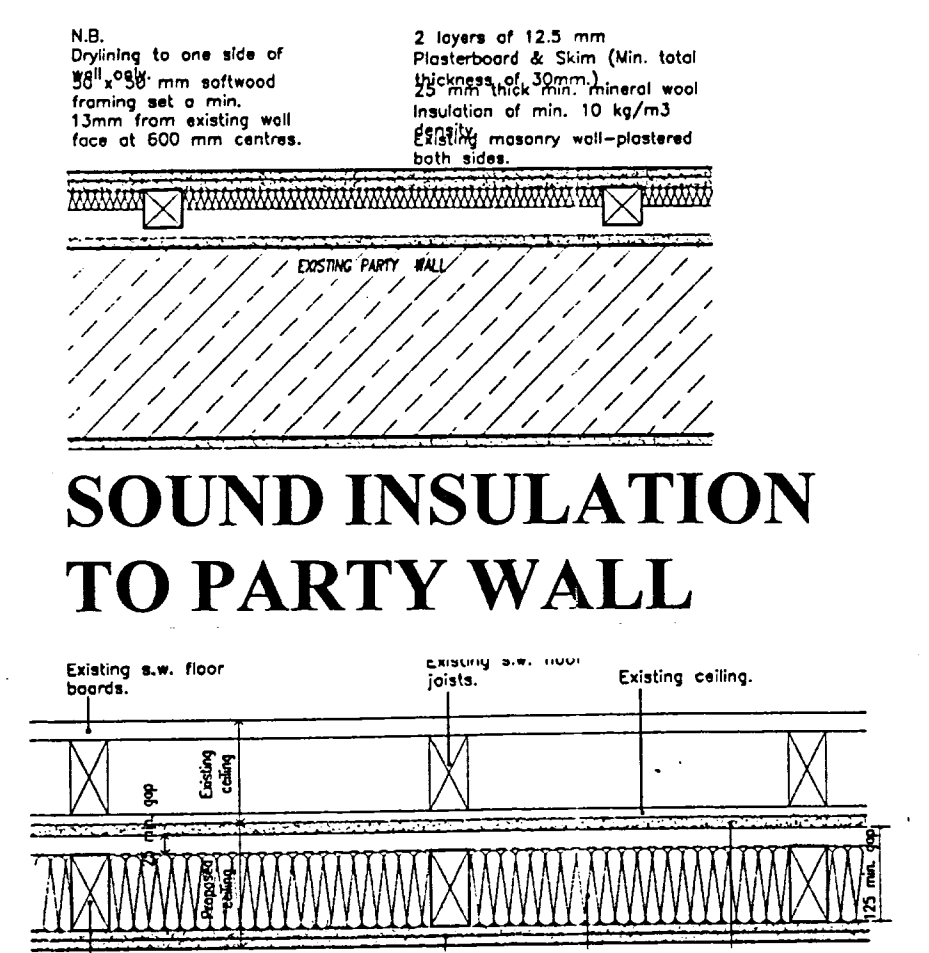
SIDE ELEVATION



FRONT ELEVATION PROPOSED



GROUND FLOOR PLAN PROPOSED



SOUND INSULATION TO PARTY WALL

SOUND INSULATION TO CEILING

REV F NOV 2011
As built rear extension added
Relocation of existing extract ventilation
Duct shown

REV E MARCH 2010
Details added in relation to discharge
Of Planning Conditions

REV D December 2009
Car parking arrangement altered to suit
Actual site boundary
Rear Elevation and floor plan corrected

REV C NOVEMBER 2009
ACCESS OFFICERS REQUIREMENTS ADDED

REV B CAR PARK LAYOUT REVISED

REV A 20/10/2009
Internal ground floor rearranged
As required by client

Please note these drawings are for Planning and Building Regulation purposes only.

NOTE:
The contractor is to check and verify all building and site dimensions, levels and sewer invert levels at connection points before works commence.

All drawings must be read with and checked against any structural or other specialist drawings provided.

All works to comply with British Standards, Codes of Practice, current Building Regulations and carried out to the satisfaction of Building Inspector. All materials to comply with the relevant British Standards

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Client:
MR C CHRISTODOULOU

Project:
PROPOSED ALTERATIONS & CHANGE OF USE AT 12 CHURCH LANE SWILLINGTON LEEDS LS7 6DX

Drawing:
EXISTING & PROPOSED SITE PLAN, FLOOR PLANS AND ELEVATIONS

Scale: 1:100 & 1:200
Date: OCT 2008

Drawing No:
1495/20/ABCD/DEF

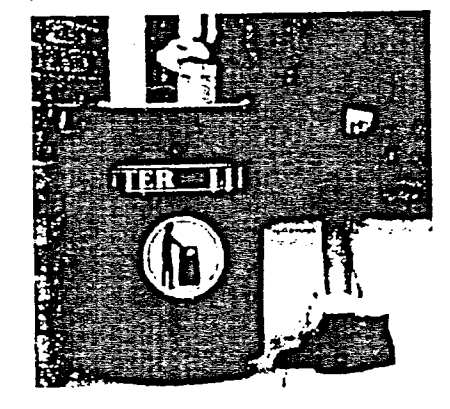
EXISTING EXTRACT VENTILATION DUCT TO BE REMOVED. NEW BRICK CHIMNEY STACK BUILT TO INCORPORATE NEW DUCT. BRICKWORK TO MATCH EXISTING

Sign panel and sign to be Subject of separate planning application

Existing door and window removed and new shopfront and entrance doors fitted.
New door and window to be Powder Coated Aluminium glazed in either laminated or toughened safety glass.
Shop windows to be fitted with trickle vents to provide ventilation at rate of 4000sq mm/M sq.
Manifestation to all glazed areas to comply with Part M of current Building Regulations

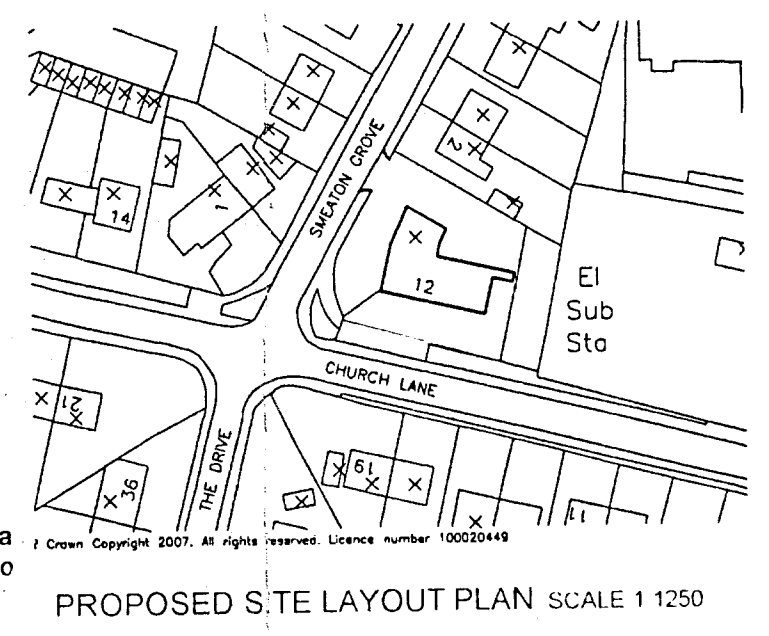
Full extent of existing ceiling Over cold room, wc and staff room To be sound insulated as detail

EXISTING EXTRACT VENTILATION DUCT TO BE REMOVED. NEW BRICK CHIMNEY STACK BUILT TO INCORPORATE NEW DUCT. BRICKWORK TO MATCH EXISTING



Admiral Litter Bin

Admiral Litter Bin
A stylish, open-topped Litter Bin with a textured finish. Supplied with a coated steel liner with twin drop handles. The Durapop material bin resists vandalism and the textured finish is a deterrent to fly posters. Bin features two attractive, circular Bin-it™ motifs
Litter bin min 66 litre capacity bin secured to floor and emptied



PROPOSED SITE LAYOUT PLAN SCALE 1:250