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**Report of the Chief Planning Officer**

**NORTH AND EAST PLANS PANEL**

**Date: 3<sup>rd</sup> December 2015**

**Subject: APPLICATION 14/03167/FU Appeal by Mr Ardis Savarani against a decision to refuse planning permission for change of use of vacant ground floor shop (use class A1) to take away hot food shop (use class A5), Main Street, Collingham.**

**The Appeal was allowed**

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**Electoral Wards Affected:**

Harewood

Yes

Ward Members consulted

**Specific Implications For:**

Equality and Diversity

Community Cohesion

Narrowing the Gap

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**RECOMMENDATION:**

Members are asked to note the appeal decision

**1.0 BACKGROUND**

1.1 The application sought planning permission for the change of use of a vacant ground floor shop (Use Class A1) to a hot food take away shop (Use Class A5) at the former newsagents on Main Street in Collingham. The application was reported to the 27<sup>th</sup> November 2014 meeting of North and East Plans Panel at the request of Ward Councillor Rachael Procter, due to concerns over the hours of opening and the land use impact of the proposed change of use, and a site visit was conducted. There were 8 local objections to the application and the Parish Council also expressed concerns.

1.2 Planning permission was sought for the change of use of the newsagents shop to a hot food take away with proposed hours of opening of between 16:30 and 22:30 hours seven days a week and on bank holidays. A bin storage area was shown to the rear of the property within its curtilage. Following negotiated amendments to the application to show a brick enclosed flue to the rear of the property to deal with odour from the kitchen, and the agreement of the applicant to close at 21:30 on

Mondays to Wednesdays inclusive (22:30 Tuesday to Sunday inclusive) the application was recommended for approval.

1.3 Members considered the application and had specific regard to parking problems on Main Street, the existence of another hot food take away in the area that closed at 21:00 hours, and the need for robust conditions on opening hours in the interests of protecting residential amenity. In discussing opening hours the applicant's agent made representations to the Panel about viability. The Panel were of different views on the application and as a result it was deferred for a further report to be brought back to Panel addressing the applicant's preferred opening hours.

1.4 A report was subsequently brought to the 08<sup>th</sup> January 2015 meeting of the Panel, considering the applicant's preferred opening closing time of 22:30 hours Wednesdays to Sundays inclusive and 21:30 hours on Mondays and Tuesdays. A re-consultation exercise was carried out on the amended proposals and a further objection letter was received bringing the total to 9.

1.5 Officers concluded, whilst it was acknowledged that the proposal would make good use of what is currently an underused vacant shop premises, that the proposal would introduce a level of later evening use that would be harmful to the amenity of neighbours and that planning permission therefore ought to be refused. The Panel agreed and planning permission was refused for the following reason:

"The Local Planning Authority considers that the proposed A5 takeaway use by virtue of the later evening use of the premises and associated increase in late evening traffic movements and customer activity would result in a level of disturbance that would have an unacceptably adverse impact on the residential amenity of neighbouring residents. The application is therefore contrary to the requirements of saved Unitary Development Plan (Review) Policy GP5, criteria (i) and (ii) of adopted Core Strategy Policy P3 and guidance contained within the National Planning Policy Framework".

1.6 The refusal was appealed and considered by the written representations procedure. An application for costs was made against the Council. An unaccompanied site visit was held by the Inspector and the appeal was allowed in a decision letter of 29<sup>th</sup> October 2015. The costs decision is delayed and awaited at the time of writing this report.

## **2.0 ISSUES IDENTIFIED BY THE INSPECTOR**

2.1 The inspector identified that the main issue is whether the proposed change of use of the premises to a hot food take-away would safeguard the living conditions of neighbouring occupiers, having regard to noise and disturbance.

## **3.0 SUMMARY OF COMMENTS MADE BY THE INSPECTOR**

3.1 The Inspector noted the location of the premises in relation to the A58 (Main Street) which runs through the centre of Collingham and that the premises are sat in an elevated position in comparison to the passing road. The Inspector noted the small vehicular forecourt in front of the appeal site and that it is located in a position close to an existing established local centre, with residential properties to the south and east.

3.2 In noting the Council's concerns regarding the impact of the proposed development on the living conditions of neighbours, and the generation of additional traffic

movements associated with the comings and goings of customers, the Inspector noted that the appellant as part of the appeal process had commissioned WYG to undertake a noise assessment (July 2015) to accompany their Grounds of Appeal. The Inspector noted that the Noise Assessment concluded that the difference between the existing and proposed scenarios would be less than 1 dB, with the effects of the change in noise level at all times of the week being established within or around the 'Lowest Observable Adverse Effect Level', as defined in the Noise chapter of the national Planning Practice Guidance.

- 3.3 The Inspectors own observations of the vicinity of the appeal site were that it was evident that some limited evening activity already occurs within the immediate area with the Fish & Chip takeaway (21:00) and the nearby Tesco Express and Half Moon Public House (23:00) and the relationship with the busy A58. The Inspector did not dispute that the hot food takeaway use would be different, principally in the evening, but was not persuaded that the impact of activities associated with the proposed use would be either unexpected or unreasonable in the context of the existing evening activity.
- 3.4 The Inspector reasoned that any additional coming and goings would be “unlikely to result in an unacceptable effect on the amenities of the neighbouring residential area”, with such movements “blending in with the existing noise environment and proximity to the A58”. They were satisfied that the reasonably sized waiting area for customers would assist in reducing any impact from customer activity. The Inspector dismissed the concerns of objectors in relation to the need for another takeaway in Collingham [no policy basis for that] and was satisfied that the new shopfront would not harm the setting of the Conservation Area.
- 3.5 Being satisfied that the proposed flue arrangements would address odour concerns, and whilst noting that litter could be a problem associated with a takeaway use but that the same may be said of a newsagent use, the Inspector was of the view that subject to appropriate conditions the proposed development would safeguard the living conditions of neighbouring occupiers. Satisfied that that the proposal would not conflict with saved UDPR (Review) policy GP5 and Core Strategy policy P3 or guidance within the National Planning Policy Framework.
- 3.6 In allowing the appeal the Inspector agreed with the Council’s recommended list of conditions, and placed a restriction on opening hours to between the hours of 16:30 and 22:30, Mondays to Sundays. Pre-commencement conditions attached also require details of the flue and emissions controls and their prior installation; details of a customer waste management strategy, and details of the shopfront. The Inspector also with the Council that permitted development rights for a change of use of the premises to a café or restaurant should be removed.

#### **4.0 IMPLICATIONS**

- 4.1 A costs claim was made following the appeal submission. This was rebutted. The costs decision is awaited. At the time of writing the Planning Inspectorate were unable to confirm when this would be released, though the implications of the decision will naturally be reported to Panel when it has been received.

#### **Background Papers:**

Application files: 14/03167/FU



# NORTH AND EAST PLANS PANEL

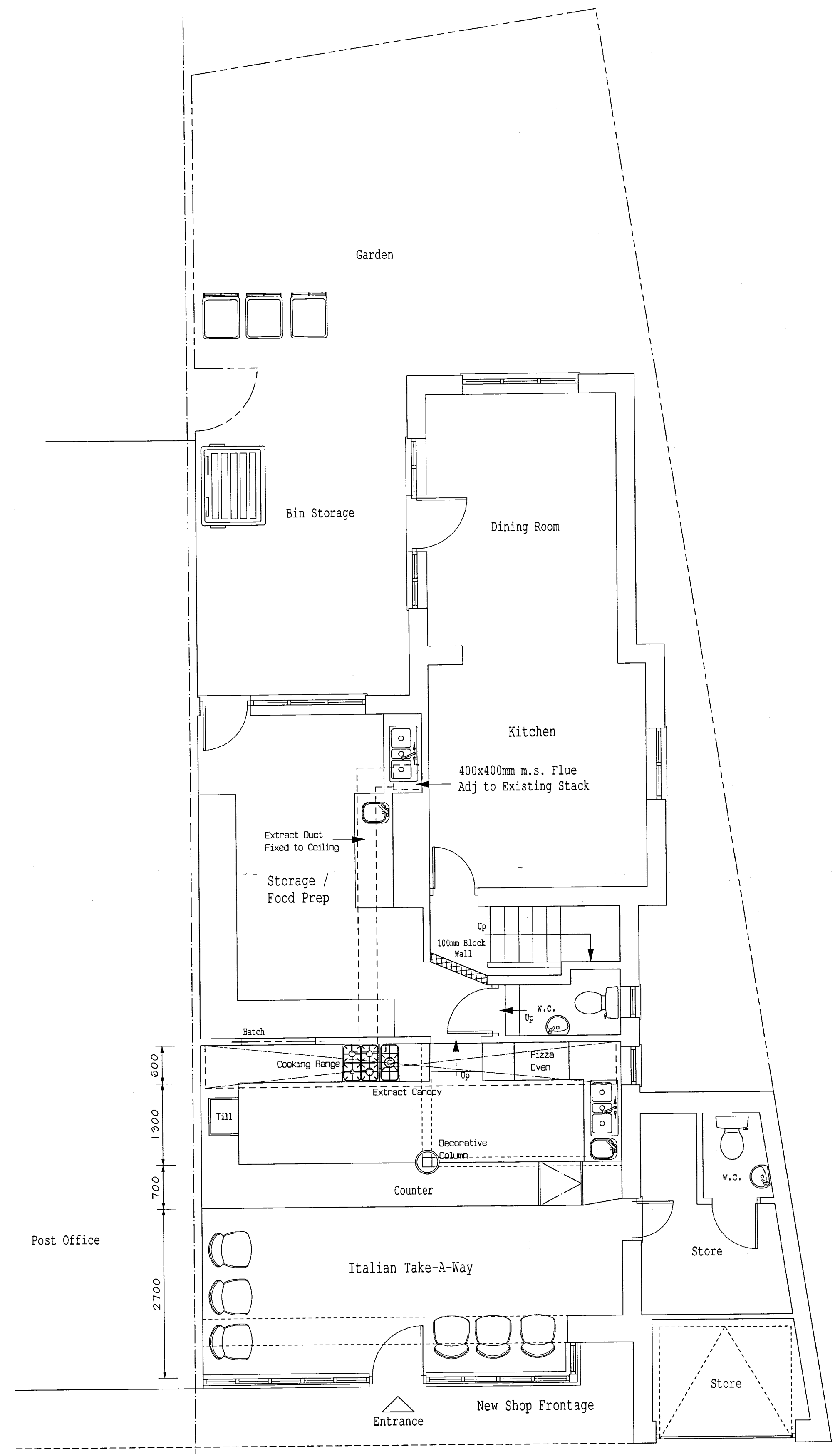
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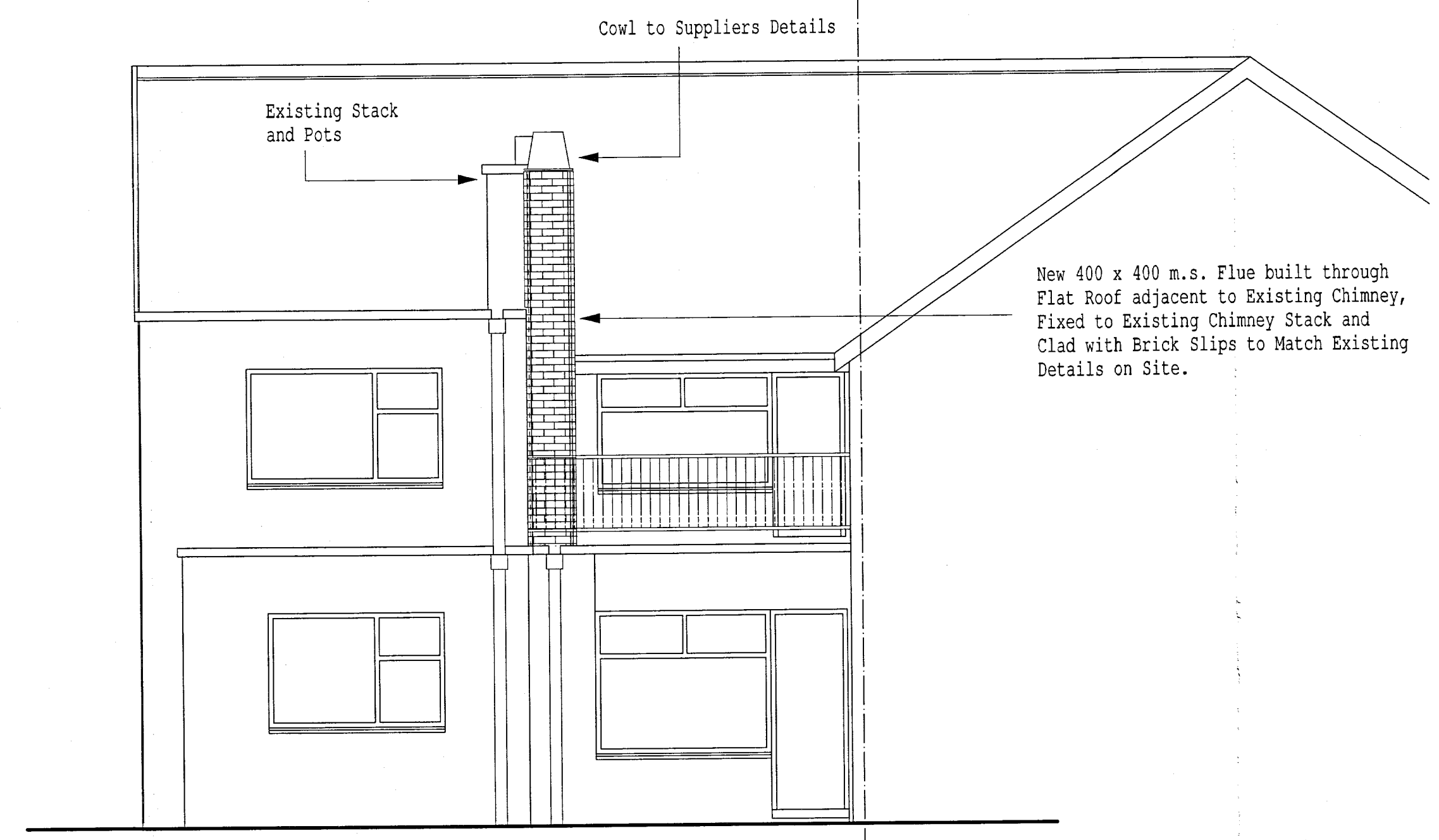
SCALE : 1/1500



LEEDS CITY COUNCIL  
29 JUL 2014  
**REVISED**



Proposed Ground Floor



Proposed Rear Elevation



Proposed Front Elevation

REV.	DATE	REVISION	BY
B	29.07.14	External Flue Added	J.C.
A	22.07.14	Entrance Door to Flat Amended	J.C.

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CLIENT  
Mr Ardis Savarani

PROJECT  
Proposed Italian Take A Way  
Main Street  
Collingham  
Wetherby

DRAWING  
Proposed Ground Floor Plan & Elevations

SCALE	DATE	DRAWN
1:50 At A1	May 2014	J. C.

DRAWING NO.	DWG. NO.	REV.
	02	B