



## Report of the Chief Planning Officer

### NORTH AND EAST PLANS PANEL

Date: 1<sup>st</sup> October 2015

**Subject: 15/02635/FU & 15/02634/FU – Erection of permanent storage facility within car park and application to vary condition 1 (delivery hours) of previous approval 07/00605/FU relating to delivery hours at, Marks & Spencer, Horsefair, Wetherby, LS22 6NN**

#### APPLICANT

Marks & Spencer PLC

#### DATE VALID

13<sup>th</sup> May 2015

14<sup>th</sup> May 2015

#### TARGET DATE

8<sup>th</sup> July 2015

9<sup>th</sup> July 2015

#### Electoral Wards Affected:

**Wetherby**

Yes

Ward Members consulted  
(referred to in report)

#### Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

**RECOMMENDATION: GRANT PERMISSION for the storage facility (15/02635/FU) subject to the specified conditions.**

**REFUSE PERMISSION for the extended delivery hours (15/02634/FU) for the specified reason.**

#### 15/02635/FU (store)

1. Commencement of development within 3 years;
2. Development to accord with the approved plans;
3. Materials to match existing store/bike shelter;
4. Store not to be used for any purpose other than storage of empty delivery containers.

#### 15/02634/FU (hours)

The Local Planning Authority considers that the proposed extension of delivery hours would give rise to disturbance to occupiers of nearby residential properties through activities associated with commercial vehicles attending the site between

07:00 and 08:00 Monday-Saturday and 9.00-10.00 on Sundays, by reason of engine noise, reversing and other manoeuvring activities, noise from commercial trolleys and other retail paraphernalia and the activities of people carrying out the loading and unloading activities, at a time in the day that those residents can reasonably expect to not be disturbed by such activities. As such, the proposal is contrary to Policy P10 of the Core Strategy and saved UDP policy GP5.

## **1.0 INTRODUCTION**

- 1.1 The applications relate to the Marks and Spencer shop in Wetherby which has ongoing issues regarding its deliveries. Permission is sought for an additional storage building within the car park to house trays and cages and permission is also sought to allow delivery an hour earlier – 7am on weekdays and Saturday and 9.00am on Sunday and bank holidays.
- 1.2 Objections to both applications have been received from Wetherby Town Council and concerns being raised by a resident of Victoria Court Flats. Councillor John Procter has requested that the applications be considered by Plans Panel due to concerns about the impact on local residents.
- 1.3 The applications were deferred from the 27<sup>th</sup> August 2015 Panel to allow for a Members site visit. The applications were deferred again at the 1<sup>st</sup> October Plans Panel to allow M&S to meet with the Wetherby Ward Members. It is understood that M&S have arranged a meeting with Ward Members and this is arranged for a date between the publication of this report and the Panel meeting. Any implications arising from that meeting can be reported verbally at the Panel meeting.

## **2.0 PROPOSAL:**

- 2.1 The new storage unit which is proposed has a lean-to form and measures approximately 4.2m in width, 3.2m in depth and its eaves and ridge are 2.3 and 3.0m respectively. It will be constructed of timber boarding within a steel frame with a felt roof and the Marks and Spencer logo to its rear. It will be sited close to the store entrance within a parking bay.
- 2.2 The changes to the delivery times seek to allow deliveries to be received an hour earlier and varies a previously approved variation of condition application. The amended hours currently allow deliveries between 0800 and 1800 hours Monday to Saturday and 1000 to 1300 hours on Sundays and bank holidays. This application seeks to allow deliveries an hour earlier on all days; ie 0700 to 1800 hours Monday to Saturday and 0900 to 1300 hours on Sundays and bank holidays. A quiet delivery protocol has been included with the application.

## **3.0 SITE AND SURROUNDINGS:**

- 3.1 The application relates to the Marks and Spencer's store within Wetherby which is set to the south side of the commercial centre. It is part of a relatively recent mixed use development with commercial uses to the ground floor and flats above.
- 3.2 The parking and servicing/delivery area is set to the rear of the premises and is accessed from Victoria Street. The car park is shared between shoppers and residents with residents having dedicated bays.
- 3.3 Morrisons lies just to the north and other residential properties are situated to the south and east. The site lies within Wetherby's Conservation Area.

#### **4.0 RELEVANT PLANNING HISTORY:**

- 4.1 15/03256/ADV Six illuminated signs and seven non-illuminated signs  
**Approved**
- 13/03625/FU Variation of condition 21 of previous approval 07/00605/FU relating to delivery hours  
**Refused**
- 09/03684/FU Variation of condition 21 of application No. 31/61/01/FU, hours of delivery  
**Approved**
- 08/05674/FU Variation of condition 1 of permission reference 07/06837/FU (hours of pre-Christmas delivery)  
**Approved**
- 07/06837/FU Variation of condition 21 of permission 31/61/01/FU (hours of delivery)  
**Approved**

#### **5.0 HISTORY OF NEGOTIATIONS:**

- 5.1 Discussions have been held with M&S regarding the location of the proposed replacement storage facility to try and ascertain whether there is a less visible site than the store entrance. Officers have also sought to understand how/if the existing store is being used and whether it could be removed to reduce visual clutter.
- 5.2 M&S consider that a location closest to the shop entrance will minimise potential noise and disturbance and thus consider this is the best location. No information has been provided regarding the existing store nor its potential removal.
- 5.3 The concerns of Environmental Health officers in relation to the extended delivery hours have been forwarded to M&S. To date no response has been received.

#### **6.0 PUBLIC/LOCAL RESPONSE:**

- 6.1 The application has been advertised by site notice.
- 6.2 Wetherby Town Council raise concern regarding noise and disturbance and the efficacy and enforceability of the delivery protocol; attention is drawn to the Hallfield new car park. Concern is also raised regarding the loss of space within the car park.
- 6.3 Two letters of support have been received from residents of the Victoria Court flats. One other letter offers qualified support "subject to significant improvements in current standards of on site management of delivery noise levels". Included with this letter is a copy of an email to M&S highlighting elements of the delivery protocol which are not adhered to.

## 7.0 CONSULTATIONS RESPONSES:

- 7.1 Highways Note that the loss of a car parking space is not ideal but the harm this could cause would not warrant refusal.
- Environmental Health Object to the scheme noting that the applicant's own evidence reports that noise levels caused by deliveries are significant and will lead to high levels of disruption.

## 8.0 PLANNING POLICIES:

- 8.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are 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 relevant:

- SP1 Seeks to concentrate the majority of new development within the main urban areas and ensure that development is appropriate to its context.
- P10 Seeks to ensure that new development is well designed, respects its context and does not harm amenity.
- P11 Seeks to ensure that Leeds' heritage assets are protected and enhanced.
- T2 Seeks to ensure that new development does not harm highway safety.

The following saved UDP policies are also relevant:

- GP5: Seeks to ensure that development proposals resolve detailed planning considerations, including amenity.
- BD5: Seeks to ensure new development protects amenity.

### National Planning Policy

- 8.3 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.
- 8.4 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.

8.5 Sections 7 (design) of the NPPF is relevant to the consideration of this application.

## 9.0 MAIN ISSUES

- Neighbour Amenity
- Design and Character/Conservation Area
- Highway Safety
- Representations

## 10.0 APPRAISAL

### Neighbour Amenity

- 10.1 Core Strategy Policy P10 notes that developments should “[protect] ... residential and general amenity...”. Saved policy GP5 notes that extensions should protect amenity and policy BD5 notes that “all new buildings should be designed with consideration given to both their own amenity and that of their surroundings”.
- 10.2 The two applications which have been submitted both seek to address problems with the management of the deliveries at the M&S foodstore in Wetherby. At present there are empty crates and trays stacked outside the shop during the day because there is insufficient space within the shop to store the empties following each day’s deliveries. M&S also suggest that there is a problem with the timing of the early morning delivery as this coincides with early morning peak time travel and residents leaving the car park.
- 10.3 Residential flats are situated directly above the M&S shop and other residential properties situated on the surrounding streets leading into the car park/delivery area. Deliveries to the shop therefore have the potential to harmfully affect residential amenity through noise from engines, reversing and other manoeuvring activities, noise from commercial trolleys and other retail paraphernalia and the activities of people carrying out the loading and unloading activities at a time in the day that those residents can reasonably expect to not be disturbed by such activities. Environmental health officers have reviewed the application, the quiet delivery protocol and all other arguments presented by M&S and have concluded that the noise associated with the deliveries far exceeds reasonable limits and would harm residential amenity.
- 10.4 It is noted that Morrisons do have early delivery hours (6am) and M&S have drawn attention to this fact, pointing out the discrepancy in the approach of the authority between the two sites. However, the early delivery hours at Morrisons do harm residential amenity and Environmental Health have received many complaints about noise and disturbance during the early morning and late at night, with the latest complaint being received in June of 2015. Whilst the Local Planning Authority must determine like cases in a like manner, it must also ensure that decisions are based on an appropriate assessment of all evidence. It is clear that the early morning deliveries at Morrisons cause harm to residential amenity. The Morrisons store is located to the north side of the road, whereas M&S is situated directly beneath residential flats, which increases the potential for noise and disturbance. It is not considered reasonable to allow extended delivery hours for M&S when this would compound and worsen the harm caused by the Morrisons store.

- 10.5 It is also noted that the proposed delivery hours have previously been approved on a temporary basis covering the Christmas period in 2007, 2008 and 2009. M&S suggest that a temporary permission for 12 months would be a reasonable response to the concerns of Environmental Health as this would allow the impact of the change to be monitored and assessed without the risk of granting a permanent permission. However, as is outlined within the consultation from Environmental Health the levels of noise which the deliveries create is significant, being two – two and a half times above an acceptable sound level. This impact is considered to be significantly harmful and residents should not be subjected to this, even on a temporary basis.
- 10.5 Given the above it is not considered that even a temporary change in delivery hours can be supported. It is accepted that a 7am delivery would occur at a time when there are fewer vehicles on the road and thus there would potentially be less general conflict with traffic moving in/out of the car park and on surrounding roads, however it is not considered that this potential slight benefit to some residents of the flats would outweigh the substantial harm to the residential amenity of all residential properties in the near vicinity, even for a temporary 12 month period.
- 10.6 The new storage building does not raise significant concerns in respect of neighbouring amenity as it will not increase or intensify noise or disturbance. As such the storage facility is acceptable from a residential amenity perspective.

#### Design and Character

- 10.7 As noted above the application site is located within Wetherby's Conservation Area. S72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a statutory duty upon the decision maker to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. That statutory framework is reinforced by the National Planning Policy Framework (the Framework) at Section 12. Core Strategy policy P11 and saved UDP policy N19 reflect this special duty and seek to ensure that development is appropriate to its context and preserves the city's heritage assets. This duty is also carried forward in Core Strategy policy P10 and saved UDP policy GP5 which seek to ensure that development is of high quality.
- 10.8 The new storage building does not raise significant concerns regarding visual amenity. It is a relatively modest structure which is similar to the other storage/ancillary buildings situated around the store and as such it will appear appropriate within its context. The building will be located close to the store entrance and thus is in a visually prominent position. It is possible that the provision of three ancillary buildings (two stores and a cycle store) as well as the covered trolley bar within the relatively modest car park area could result in visual clutter. However, ancillary structures are not uncommon within commercial/supermarket contexts and as the structure will be in keeping with the others within the area no significant visual harm is anticipated.
- 10.9 As such the applications are acceptable in this regard.

#### Highway Safety

- 10.10 Core Strategy Policy T2 notes that developments be situated in accessible locations and should ensure that adequate parking provision is required. Highway officers raise no objection to the amended delivery hours, noting that traffic levels

will be lower before 8am. Officers note that the loss of a parking space within the car park is not ideal, but given the town centre location and the NPPF's exhortation that development should only be refused where the cumulative impacts would be severe, a refusal is not warranted.

10.11 As such the applications are acceptable in this regard.

#### Representations

10.12 All material considerations raised through representations have been discussed above.

### **11.0 CONCLUSION**

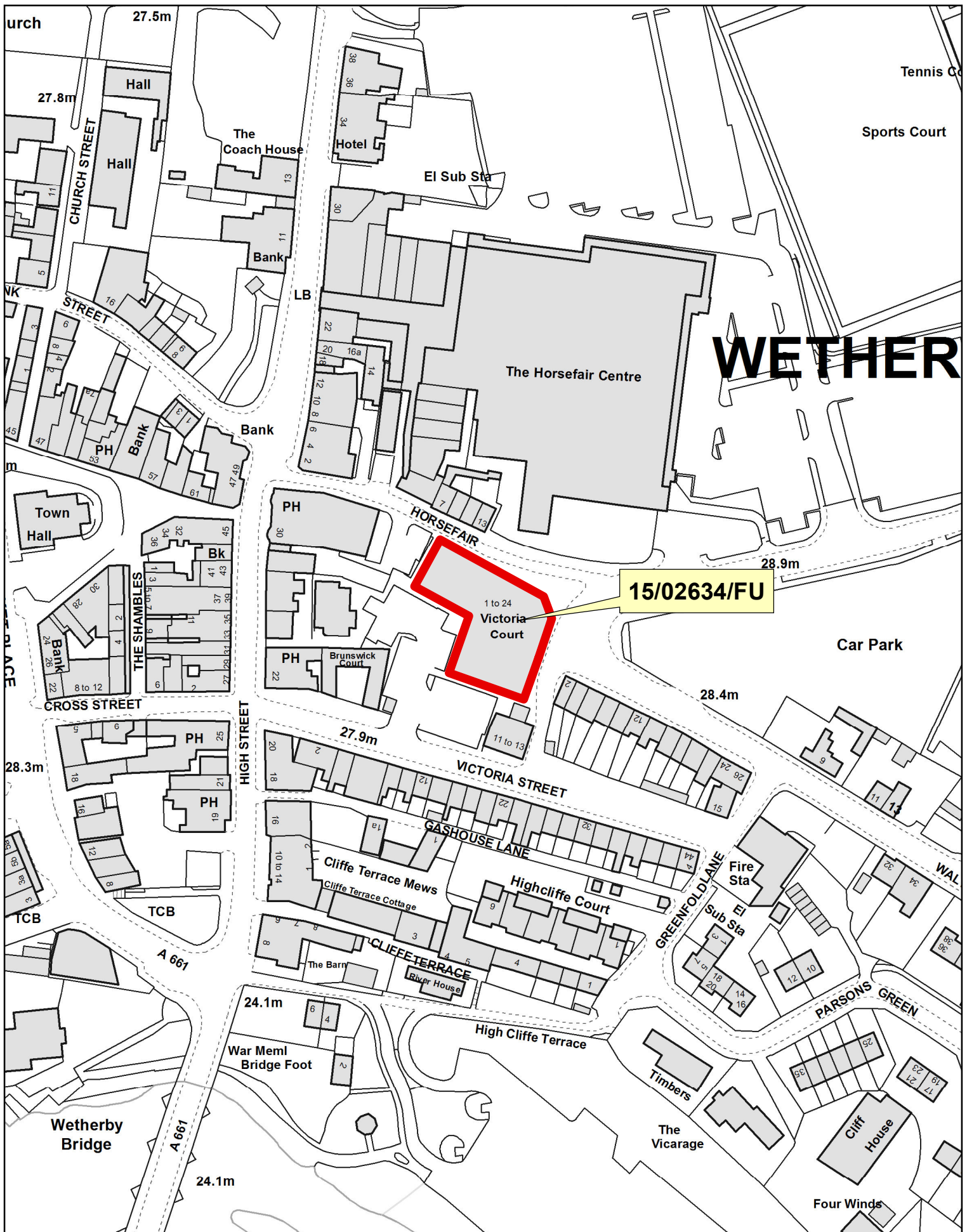
11.1 Whilst the application for the new store is therefore considered to be acceptable, it is considered that the amended delivery hours would cause severe harm to residential amenity. As such the application is fails to compliant with the relevant policies and guidance and refusal is recommended.

#### **Background Papers:**

Application files

15/02634/FU & 15/02635/FU

Certificate of ownership: Certificate A signed by the agent



# NORTH AND EAST PLANS PANEL

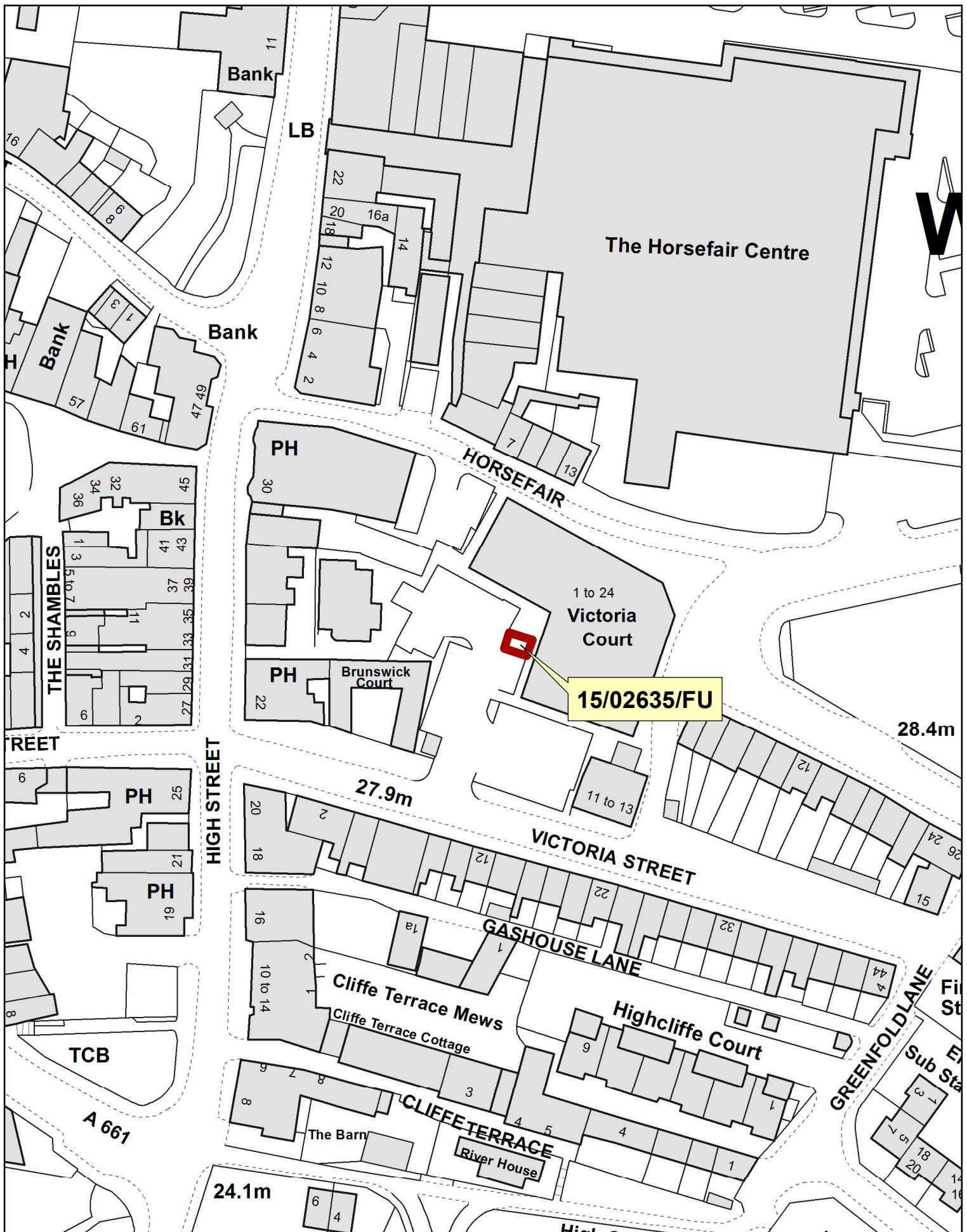
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SCALE : 1/1500







# NORTH AND EAST PLANS PANEL

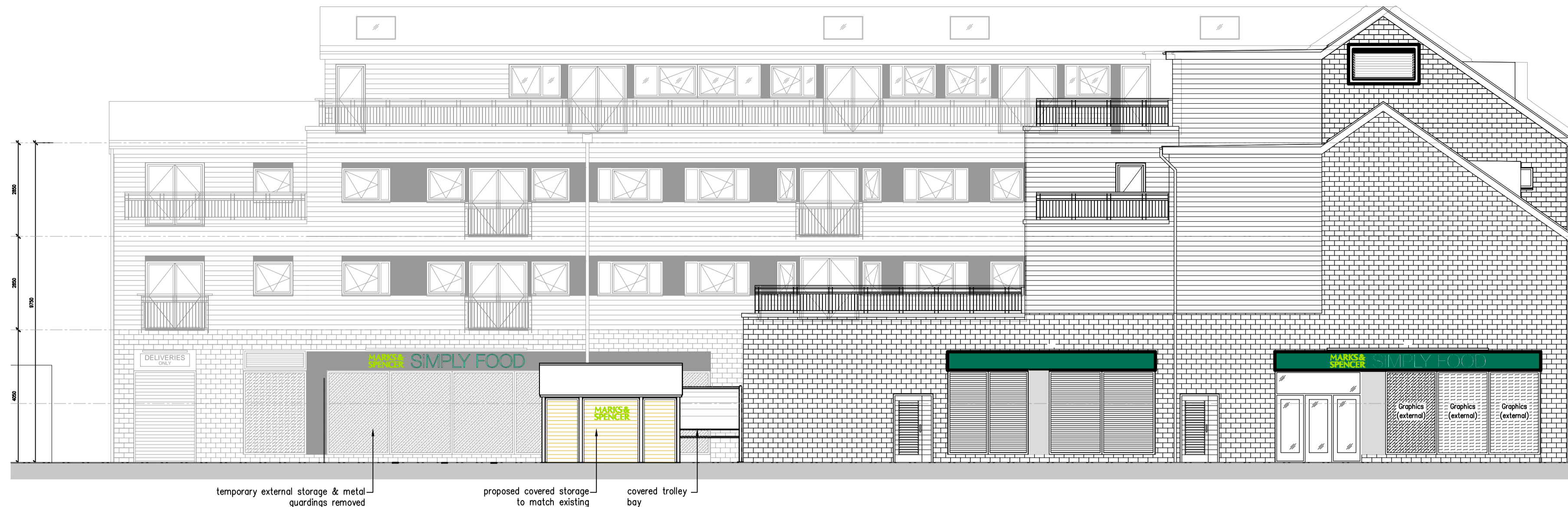
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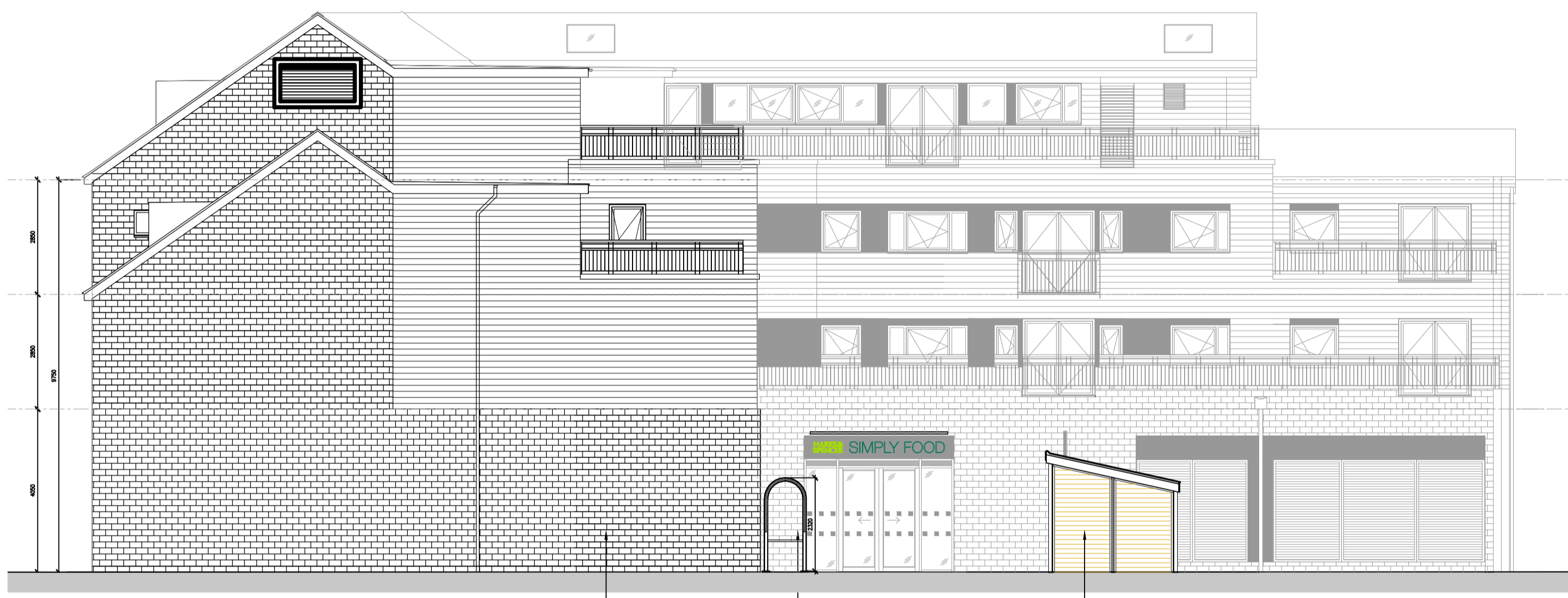
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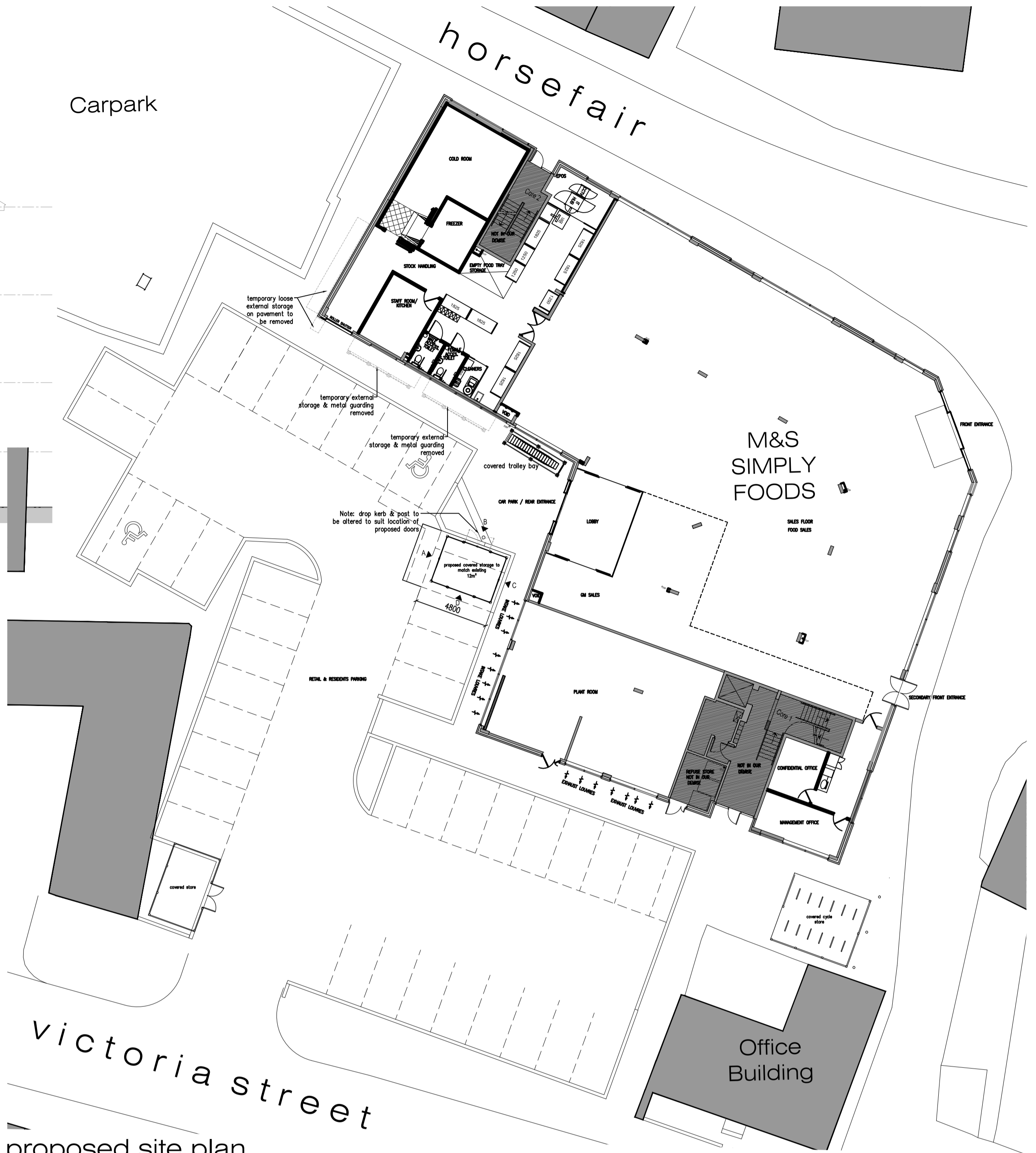




proposed south - south east elevation  
scale 1:100



proposed west - south west elevation  
scale 1:100

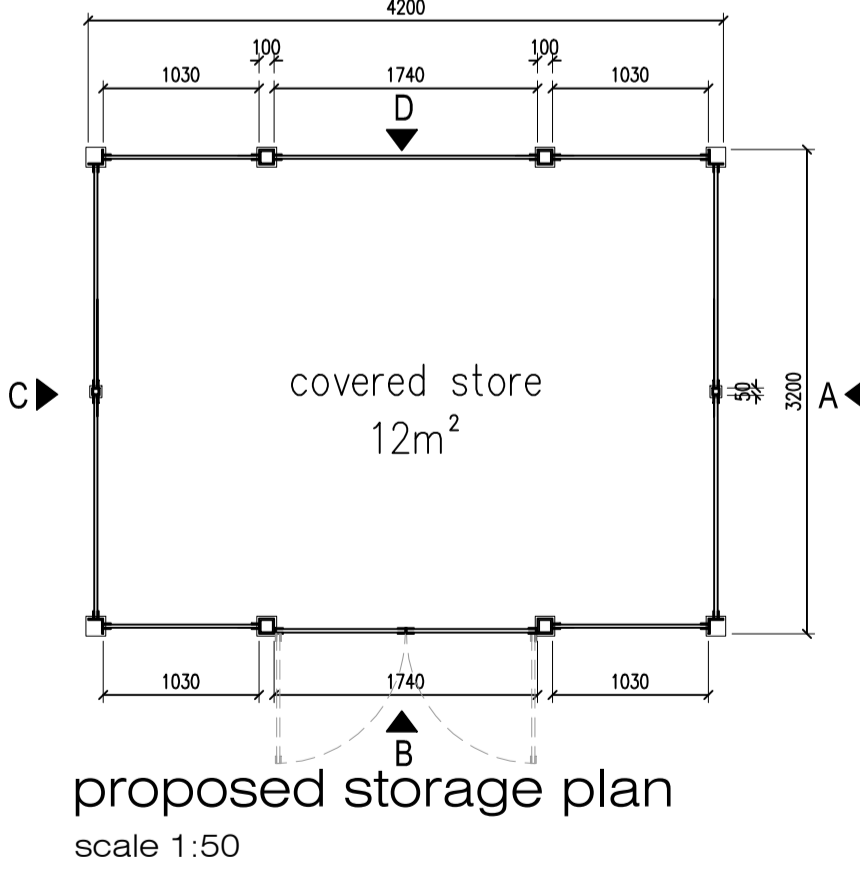


proposed site plan  
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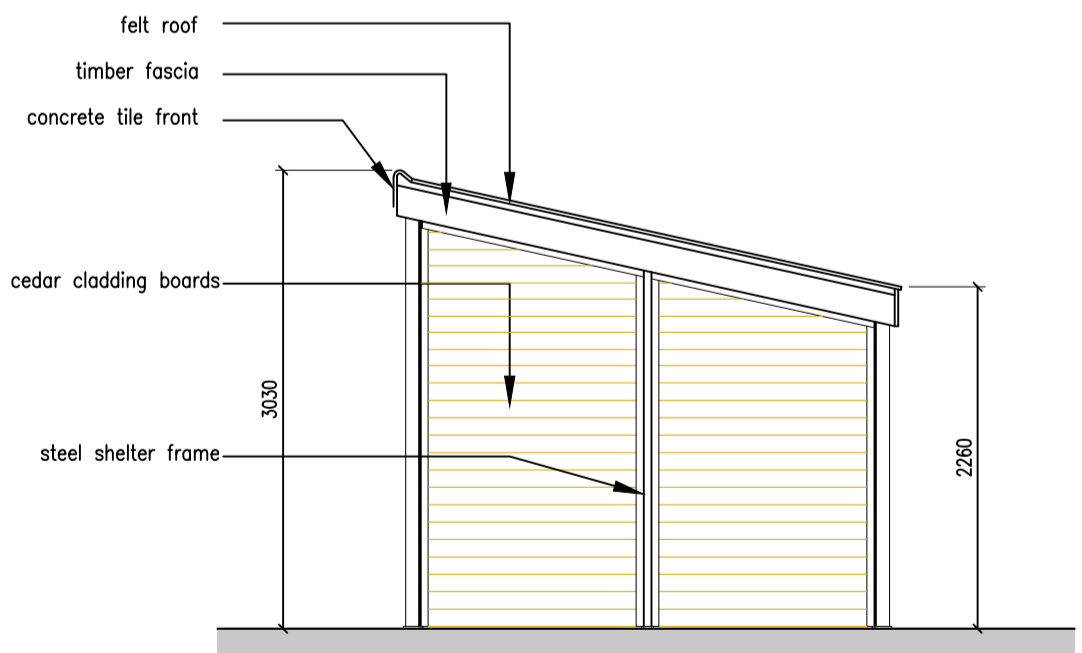
**NOTES**

**SOURCE INFORMATION:**  
This drawing has been generated from information provided by others. It is the responsibility of the contractor to check the accuracy of this information on site.

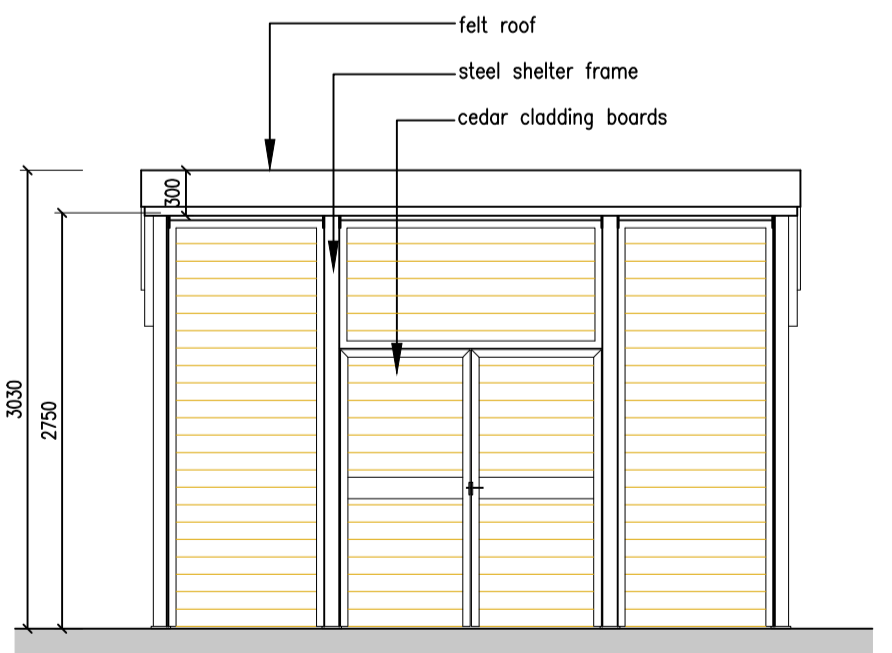
**Lewis and Hickey drawings**  
Proposed elevations: G2859-121 Rev 5 (dated 23.05.06)  
GA Plan: G2859-104 Rev 2 (dated 23.05.06)  
Location Plan: G2859-127 (dated 05.06.06)



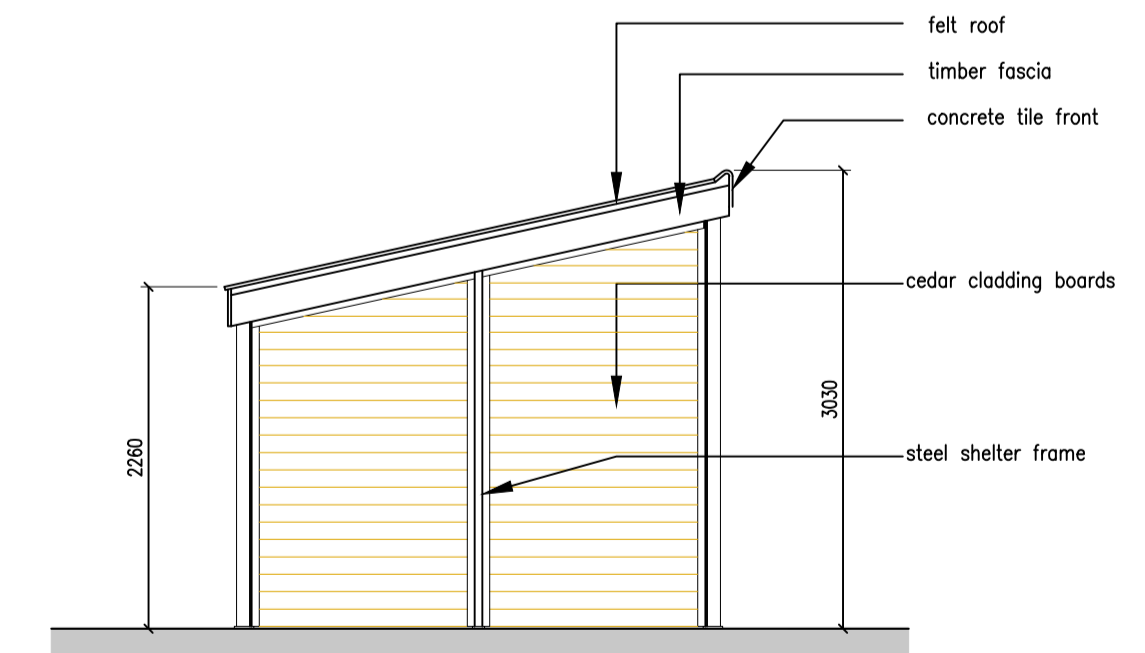
proposed storage plan  
scale 1:50



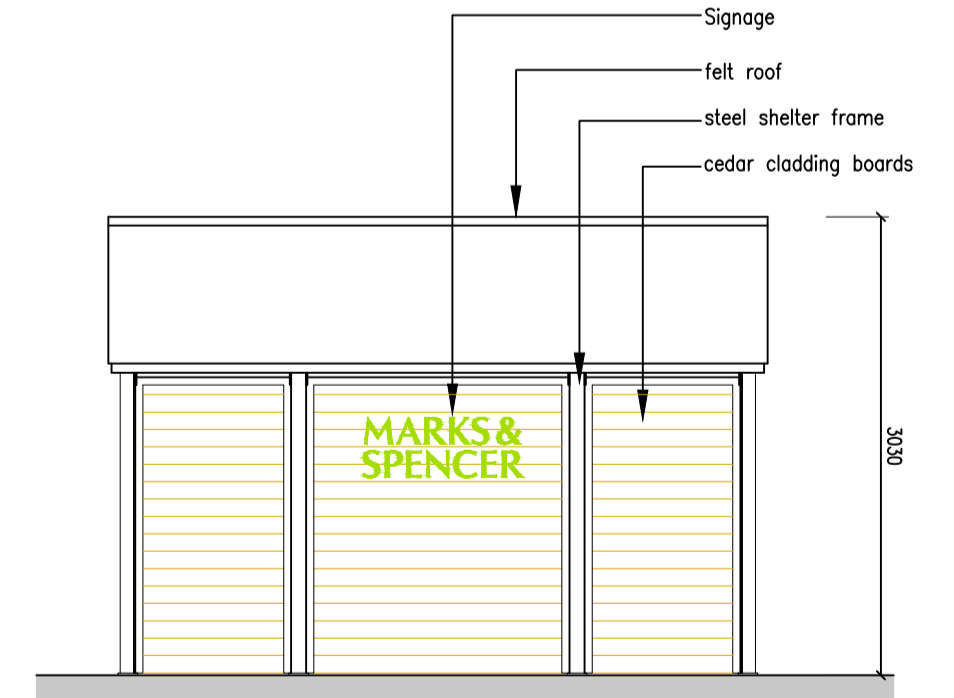
proposed storage elevation A  
scale 1:50



proposed storage elevation B  
scale 1:50



proposed storage elevation C  
scale 1:50



proposed storage elevation D  
scale 1:50



STORE NAME  
**Wetherby**

COUNTRY  
**UK**

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CONSULTANT **Audas**



CONSULTANT PROJECT No **07143**

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REV	DATE	DESCRIPTION	DRAWN	CHECKED
01	11.12.2014	Cedar cladding boards extended full height of storage unit. Elevation reference letters illustrated on 1:50 storage plan.	EmS	EmS

PROJECT  
**M & S Simply Foods  
Wetherby**

DRAWING  
**External Storage Facility  
Proposed Site Plan, Elevations & Storage**

SCALE	PAPER SIZE	DATE	
As Noted	A1	20.10.2014	
STORE NUMBER	PROJECT No	DISCIPLINE CODE	DRAWING No
9108	SML000 W		14.003
DRAWN	CHECKED	STATUS	REV
EmS	EmS	I	01