



## Report of the Chief Planning Officer

### PLANS PANEL NORTH & EAST

Date: 9<sup>th</sup> February 2017

**Subject: 16/06524/FU – Change of use at ground floor from Bank (A2) to hot food takeaway (A5), with new shop front and extract flue to rear at 28 Austhorpe Road, Leeds, LS15 8DX**

#### APPLICANT

Mr S Roberts

#### DATE VALID

6th October 2016

#### TARGET DATE

10<sup>th</sup> February 2017

#### Electoral Wards Affected:

Cross Gates & Whinmoor

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 specified conditions:

1. Time limit
2. Development to comply with approved plans
3. Details of bin provision
4. Hours of opening 09.00 to 23.30 (Mon to Sat) and 23.00 (Sun & Bank Hols)
5. Servicing to take place after 9.00am.
6. Extraction equipment to be installed
7. Sound insulation scheme, between the HTFA and first floor
8. Plant and machinery details
9. Grease trap provision
10. No customer deliveries from the premises

## 1.0 INTRODUCTION

- 1.1 The application proposes a Change of use at ground floor from Bank (A2) to hot food takeaway (A5), with new shop front and extract flue to the rear. The application is reported to Plans Panel at the request of Councillor Peter Gruen on the grounds

of highway safety, impact on residential amenity and proliferation of hot food take-aways which will give rise to concerns affecting more than neighbouring properties.

- 1.2 A planning application for the change of use of vacant first and second floor former offices to three flats also appears on the Plans Panel agenda (16/05597/FU).

## **2.0 PROPOSAL:**

- 2.1 This application seeks permission for a change of use at ground floor from Bank (A2) to hot food takeaway (A5), with new shop front and extract flue to the rear. The takeaway will occupy the ground floor only (with the upper floors proposed for conversion into three flats (subject of a separate planning application ref. no. 16/05597/FU)).
- 2.2 The hot food take away proposes a closing time of 23.30hrs (Mon-Sat) and 23.00 hrs on Sundays and Bank Holidays.
- 2.3 Bin storage and cycle parking would be to the rear of the property.

## **3.0 SITE AND SURROUNDINGS:**

- 3.1 The application site refers to vacant ground floor previously occupied as offices (bank). The unit is located with a shopping parade fronting Austhorpe Road and is designated as Primary Shopping Frontage within the town centre at ground floor. The rear of the property abuts the Cross Gates shopping centre car park, with the applicant having a pedestrian right of way to the rear. There is a yard to the rear of the property where it is proposed to locate the bin storage area.
- 3.2 The adjoining property at No. 30 is Costa Coffee, with retail at ground floor with toilets at first floor. On the other side, at No. 26, the ground floor is a bookmakers with offices above. The shopping frontage is dominated by charity shops, with Costa Coffee, hairdressers and off licence adding to class A1 units, with a bookmakers, amusement arcade and Yorkshire Bank also in the parade.
- 3.3 The immediate area is commercial in character, with residential beyond.
- 3.4 To the front of the application property is a pedestrian crossing and associated carriageway restrictions. The application site is located within a commercial/retail location and adjoining first floors also appear to be in office use.
- 3.5 The site is located within the Cross Gates P1 town centre boundary (Core Strategy).

## **4.0 RELEVANT PLANNING HISTORY:**

### On-site (within town centre)

- 4.1 16/05597/FU- Change the use of vacant offices on the first and second floors of the building to three residential flats. Currently undetermined, and appears elsewhere on the Plans Panel agenda.
- 4.2 09/03414/FU - Installation of cash machine to front of Building Society. Approved 29.09.2009.

### Off-site

#### 4.3 54 Austhorpe Road

16/07317/FU - Variation of condition 4 of approval 15/04497/FU to allow opening hours to be 11:00 - 00:00 hours Sunday - Thursday, 11:00 - 02:00 hours Friday, Saturday and Bank Holidays. Refused 17.01.17 on the grounds of likely harm to interests of residential amenity.

- 4.4 15/04497/FU - Change of use and alterations of ground floor restaurant (use class A3) to take away hot food shop (use class A5). The opening hours of the premises are restricted to 08.00 to 23.30 hours Monday to Saturday and 12.00 to 23.00 hours on Sundays and Bank Holidays. Approved 22.09.2015.

#### 31 Austhorpe Road

- 4.5 07/00970/FU - Change of use of shop to hot food take away. The opening hours of the premises are restricted to 0800 hours to 2330 hours Monday to Saturday, and 1900 hours to 2300 hours on Sundays and Bank Holidays. Approved 07.06.2007.

#### 6 Back Austhorpe Road

- 4.6 32/12/03/FU - Change of use of shop to take away hot food shop and restaurant. The opening hours of the premises are restricted to 0800 hours to 2330 hours Monday to Saturday, and 1900 hours to 2300 hours on Sundays and Bank Holidays. Approved 01.04.2003.

#### 26 Austhorpe Road

- 4.7 Change of use from Shops (A1) to Betting Shop (A2). Allowed on appeal. The premises shall not be open for customers outside the following hours: -  
08:00 to 22:00 on Mondays to Saturdays ;09:00 to 22:00 on Sundays and Bank Holidays.

#### 24 Austhorpe Road

- 4.8 16/07509/FU - Change of use and alterations of first and second floor office and storage to one flat including rear dormer window. Approved 17.01.17.

- 4.9 13/03256/FU - Change of use from Class A1 (shops) to Class A2 (financial and professional services). Refused 05.09.2013 on the grounds of loss of retail frontage.

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

- 5.1 Revisions to the external flue have been sought to achieve compliance with relevant Defra guidance.

### **6.0 CONSULTATIONS:**

- 6.1 Highways – In view of the site location in the centre of Cross Gates (which has wide ranging Traffic Regulation Orders that control and restrict parking) and the small size of the existing commercial use a highway objection to the change of use would be difficult to justify in terms of having a material impact. Conditions recommended.
- 6.2 Flood Risk Management – Change of use would not result in any changes to surface water drainage arrangements. No objection.
- 6.3 Health & Safety Executive – site falls within the consultation zone but the HSE do not advise against the granting of planning permission on safety grounds in this case.

6.4 Environmental Protection Team – There is potential for disturbance to existing and future residents in relation to noise and odour. Noise from plant and extract equipment to be below background levels and Defra guidance for extraction equipment to be followed. Conditions recommended if minded to approve.

## **7.0 PUBLIC/LOCAL RESPONSE:**

7.1 The application has been advertised by Site Notice, dated 28<sup>th</sup> October 2016. Revised plans have been advertised by Public Access. The following representations have been received.

### Cross Gates Watch

7.2 There is no parking for customers nor any drop-off point for deliveries.

7.3 Space to the rear is restricted and cannot accommodate appropriate parking to serve the takeaway, the proposed flats and the required bin storage.

7.4 The proposed hours of opening are excessive, are greater than those restricted by planning conditions elsewhere in the centre and would adversely impact on residential amenity. The extract ventilation equipment will be noisy and impact on the nearby flats.

7.5 There is potential for disturbance to existing and future residents in the vicinity by noise made by patrons entering and leaving the premises per se and then, perhaps, congregating on the street, and from customers parking outside existing residential properties: the slamming of car doors, radios, beeping, voices, etc.

7.6 Litter and infestation by vermin.

7.7 Inadequate provision for deliveries. Transport Development Services observe that without dedicated off-street parking the use of delivery vehicles would not be appropriate.

7.8 The parking requirement for A5 uses is three times greater than that for A2 uses. Accordingly the Transport Development Services' response "In view of the ... existing commercial use it is considered that a highway objection to this proposal would be difficult to justify" is wrong. The proposal is contrary to the Council's Parking Guidelines.

### Adjoining occupier at 26 Austhorpe Road

7.9 The tenant at No. 26 has the benefit of a lease for the rear car park of the adjoining property at 26 Austhorpe Road and there is no current right of way that has been agreed by the Landlord in the lease for a third party to gain access for parking purposes over my client's land to 28 Austhorpe Road. As it exists at the moment, the current access to rear of 28 Austhorpe Road is too narrow to gain vehicular access for delivery parking etc., without access over that land which is not currently permitted. Therefore as it currently stands there can only be legal access for takeaway deliveries etc from the front of the building.

### Local residents (16 local households)

7.10 This application should be refused as at the present time there are 2 fish shops, 3 daytime sandwich shops, 5 restaurants (evening openings), 5 evening takeaway premises, 2 Public houses serving food all day, 5 daytime coffee shops which also serve food and have takeaway facilities and 1 ice cream parlour. Another takeaway could not possibly "enhance the vitality and viability of the area".

- 7.11 The area needs a more diverse selection of shops which would also promote economic growth as mentioned in the National Planning Policy Framework.
- 7.12 The premises may have been suitable for a bank. They are not suitable for a takeaway.
- 7.13 Cross Gates is not a town centre; it is a suburb of Leeds and is mainly residential.
- 7.14 There are no parking and delivery facilities at the front of the building to allow the operation of a takeaway business. Parking and delivery facilities at the rear of the building would be very limited. The proposal will exacerbate existing parking problems.
- 7.15 Cross Gates is an extremely busy shopping area and this generates extra traffic on an already very busy main road. Traffic jams causing tailbacks onto Station Rd and the Ring Road are daily occurrences and accidents have occurred, including deaths.
- 7.16 The premises are very close to a Pedestrian crossing and this will make stopping for whatever reason dangerous.
- 7.17 There is the potential for intrusive and distracting noise: customers entering and leaving the premises and congregating on the street; customers parking outside and near residential properties. This would be particularly bad in summer when residents' windows are open for ventilation.
- 7.18 The current takeaways we already generate too much rubbish. It encourages rats and other vermin. Every time one opens the hours allowed to operate are getting later and later. It is not necessary. These hours encourage people who have been drinking to call into them. If the customers are intoxicated they are rowdy causing unnecessary noise and disturbances for residents who live nearby.
- 7.19 Hot food establishments contribute to obesity.

## **8.0 PLANNING POLICIES:**

- 8.1 As required by Section 38(6) of the Planning and Compulsory Purchase Act 2004 this application has to be determined in accordance with the Development Plan unless material considerations indicate otherwise. The development plan currently comprises the adopted Local Development Framework Core Strategy (2014), those policies saved from the Leeds Unitary Development Plan (Review 2006) (UDP) and the Natural Resources and Waste Local Plan.
- 8.2 The Local Development Framework Core Strategy was adopted by the Council on 12<sup>th</sup> November 2014. The following policies contained within the Core Strategy are considered to be of relevance to this development proposal:
- 8.3 Core Strategy:  
T2 – accessibility  
P1 – identify town centres  
P2 – acceptable uses in a town centre.  
P10 - Design
- 8.4 UDP

The most relevant saved policies from the Leeds Unitary Development Plan Review are outlined below:

GP5 - Development control considerations including impact on amenity and highway safety

SF7 – Shopping Frontages (Primary)

Other Planning Policy:

- 8.5 The Street Design Guide Supplementary Planning Document was adopted by the Council in August 2009 and includes guidance relating to highway safety and design.

National Planning Policy

- 8.6 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.

- 8.7 Paragraph 23 of the NPPF is of particular relevance to this proposal, it states:

“Planning policies should be positive, promote competitive town centre environments and set out policies for the management and growth of centres over the plan period. In drawing up Local Plans, local planning authorities should:

- Recognise town centres as the heart of their communities and pursue policies to support their viability and vitality;
- Define a network and hierarchy of centres that is resilient to anticipated future economic changes;
- Define the extent of town centres and primary shopping areas, based on a clear definition of primary and secondary frontages in designated centres, and set policies that make clear which uses will be permitted in such locations;
- Promote competitive town centres that provide customer choice and a diverse retail offer and which reflect the individuality of town centres;
- Retain and enhance existing markets and, where appropriate, reintroduce or create new ones, ensuring that markets remain attractive and competitive;
- Allocate a range of suitable sites to meet the scale and type of retail, leisure, commercial, office, tourism, cultural, community and residential development needed in town centres. It is important that needs for retail, leisure, office and other main town centre uses are met in full and are not compromised by limited site availability. Local planning authorities should therefore undertake an assessment of the need to expand town centres to ensure a sufficient supply of suitable sites;
- Allocate appropriate edge of centre sites for main town centre uses that are well connected to the town centre where suitable and viable town centre sites are not available. If sufficient edge of centre sites cannot be identified, set policies for meeting the identified needs in other accessible locations that are well connected to the town centre;
- Set policies for the consideration of proposals for main town centre uses which cannot be accommodated in or adjacent to town centres;
- Recognise that residential development can play an important role in ensuring the vitality of centres and set out policies to encourage residential development on appropriate sites; and
- Where town centres are in decline, local planning authorities should plan positively for their future to encourage economic activity.”

## 9.0 MAIN ISSUES

1. Principle of development
2. Impact on residential amenity
3. Highways Implications
4. Impact on visual amenity

## 10.0 APPRAISAL

### Principle of development:

- 10.1 The site is within Cross Gates, which is designated as a Town centre in the Development Plan under Core Strategy policy P1. As such, Policy P2 is applicable, which states:

“Town centres offer shopping and services intended to meet weekly and day-to-day requirements. The uses set out below are acceptable in principle in and will be directed towards the centres listed in Policy P1 (which includes Cross Gates).

- Shops, supermarkets and superstores,
- Non-retail services,
- Restaurants and cafes, drinking establishments and hot food takeaways,
- Intensive leisure and cultural uses including theatres, museums, concert halls, cinemas, leisure centres, gyms and hotels,
- Health care services,
- Civic functions and community facilities,
- Offices,
- Housing is encouraged in centres above ground floor in the primary and secondary shopping frontages, or outside the shopping frontages, providing it would not compromise the function of the town centre.”

- 10.2 A hot food take away is an appropriate town centre use, under Policy P2. In terms of shopping frontage policy, the site is within the Primary Shopping Frontage as identified by policy SF7. This policy seeks to “ensure that these frontages continue to fulfil their essential role of providing convenient and accessible shopping facilities.” (para. A12.3.2 Vol2 UDP). In this case, however, there is no harm to shopping frontage policy as the previous use was as Class A2 (a bank), rather than a Class A1 use. In any case, even if the property was previously in Class A1 use, the specific shopping frontage is dominated by charity shops, with Costa Coffee, hairdressers and off licence adding to class A1 units, with a bookmakers, amusement arcade and Yorkshire Bank also in the parade. Class A3, A4 and A5 units are absent from the immediate shopping frontage. In terms of the local impact therefore noting the frontage policies operate on a parade by parade basis, there would be no objection in principle to a hot food take away in this location.
- 10.3 There are no policies within the development plan, other than shopping frontage policies which restrict the overall numbers of hot food establishments within town centres.
- 10.4 Accordingly, it is considered that the proposed takeaway use is acceptable in principle subject to other more detailed considerations which are appraised below.

### Impact on residential amenity:

- 10.5 General Policy GP5 sets out normal development control considerations and identifies the objectives it seeks to secure in terms of avoiding problems with environmental intrusion, loss of amenity, pollution, danger to health or life, highway congestion, promotion of energy conservation and prevention of crimes.
- 10.6 The application site lies within a commercial/retailing area although there are residential flats proposed (subject to outstanding application) to the upper floors of the property and it is recognised that future occupants would have a reasonable expectation that some level of disturbance from the commercial activities surrounding would occur.
- 10.7 The proposed hot food takeaway is to open 7 days a week, and late in the evening. The principal entrance to the property is from the front (facing Austhorpe Road) and therefore the general comings and goings at the site will take place at the commercial front. Given these circumstances, it is considered that subject to appropriate controls on opening hours the proposed hours of opening will not present serious or unexpected amenity issues for the upstairs residences. Further conditions are recommended in respect of sound insulation and details of the extract ventilation equipment to ensure the internal living environment of the neighbouring flats is respected. Furthermore, a revised plan has already been submitted which shows an increase in the height of the proposed flue to the rear to accord with the guidance contained within the relevant Defra guidance so as to address any cooking odours issues. The Environmental Protection Officer is supportive of this approach and accordingly officers consider this aspect of the development can be adequately controlled by conditions.
- 10.8 The application property has a yard area to the rear to accommodate bins and provide access to the kitchen area. The yard area is considered to be of reasonable size which given some organisation could accommodate an adequate area for bin storage and maintain access to the kitchen meaning that the activities associated with the operation of the business could be contained within the confines of the site and not be unduly disruptive to adjoining uses. The rear yard abuts a commercial car park, and there are no other residential uses at ground floor level.

Highways implications:

- 10.9 The application site has an established office use which generated its own car parking demand. The representations received and the relevant parking requirements are acknowledged, however the Council's parking SPD (Table 1) states that outside the Leeds city centre 'Core' and 'Fringe' the expected number of car parking spaces is 1 space per 3sqm of GFA. The accompanying text at paragraph 9.4.1 states:-
- "Outside the Core and Fringe, the standards define the expected levels of parking, allowing for flexibility for reduced or increased parking dependant on the individual location, expected levels of car ownership, public transport accessibility, walking catchment, and specific end user. It should be noted that significant departures from the expected levels of parking may be accepted where clear and justifiable reasons can be demonstrated and that there will be no detrimental impact on surrounding streets".
- 10.10 In view of the nature of the application which is a change of use of a small existing commercial unit it cannot be demonstrated that the application would have a material impact on the Cross Gates Centre.
- 10.11 Additionally, the NPPF states that:



“Developments should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.”

- 10.12 The applicant has also agreed to carry out deliveries after the morning peak, i.e. after 9.00am. There are currently no restrictions on when deliveries can take place, therefore, this is a benefit which needs to be taken into account in the decision making process.
- 10.13 The poor accident record along Austhorpe Road highlighted by objectors is acknowledged by highways, and has been given full consideration in the assessment of the application.
- 10.14 With all of this in mind, there is no objection to the proposal on highway safety grounds. Although concerns have been expressed from local residents and a Ward Councillor about the number of such outlets within the town centre already and that they run counter to the wider health agenda which is a material planning consideration, Members may recall similar issues were raised and debated as part of the previous Panel meeting in January when a similar hot food takeaway application was considered in Town Street, Garforth. In response, officers advised supplementary guidance was in the process of being developed to address these concerns but it was at a very early stage and accordingly could be afforded no real weight at this time. In respect of the impending guidance, the first draft is due to be considered by Development Plans Panel on 7<sup>th</sup> March 2017.

Impact on visual amenity:

- 10.15 The proposed flue is to the rear of the site, abutting a large car park, albeit which contains an entrance into the Cross Gates shopping centre. It is considered that being to the rear of the premises, a proposed flue is reasonable within the commercial setting, and would not be visible from Austhorpe Road which is the main public thoroughfare. It is noted that there are other similar flues to the rear of premises along the Austhorpe Road frontage.
- 10.16 The proposed shopfront is an aluminium shopfront, with reasonable proportions and design. The proposed illuminated sign would need to be subject to a separate application for advertisement consent but its general positioning and size relative to the shop front is considered to be acceptable.
- 10.17 It is considered there would be no harm to interests of visual amenity, and the proposal accords with Core Strategy Policy P10.

CIL

- 10.18 The development is not liable for CIL, as the proposal is a change of use application.

**11.0 CONCLUSION:**

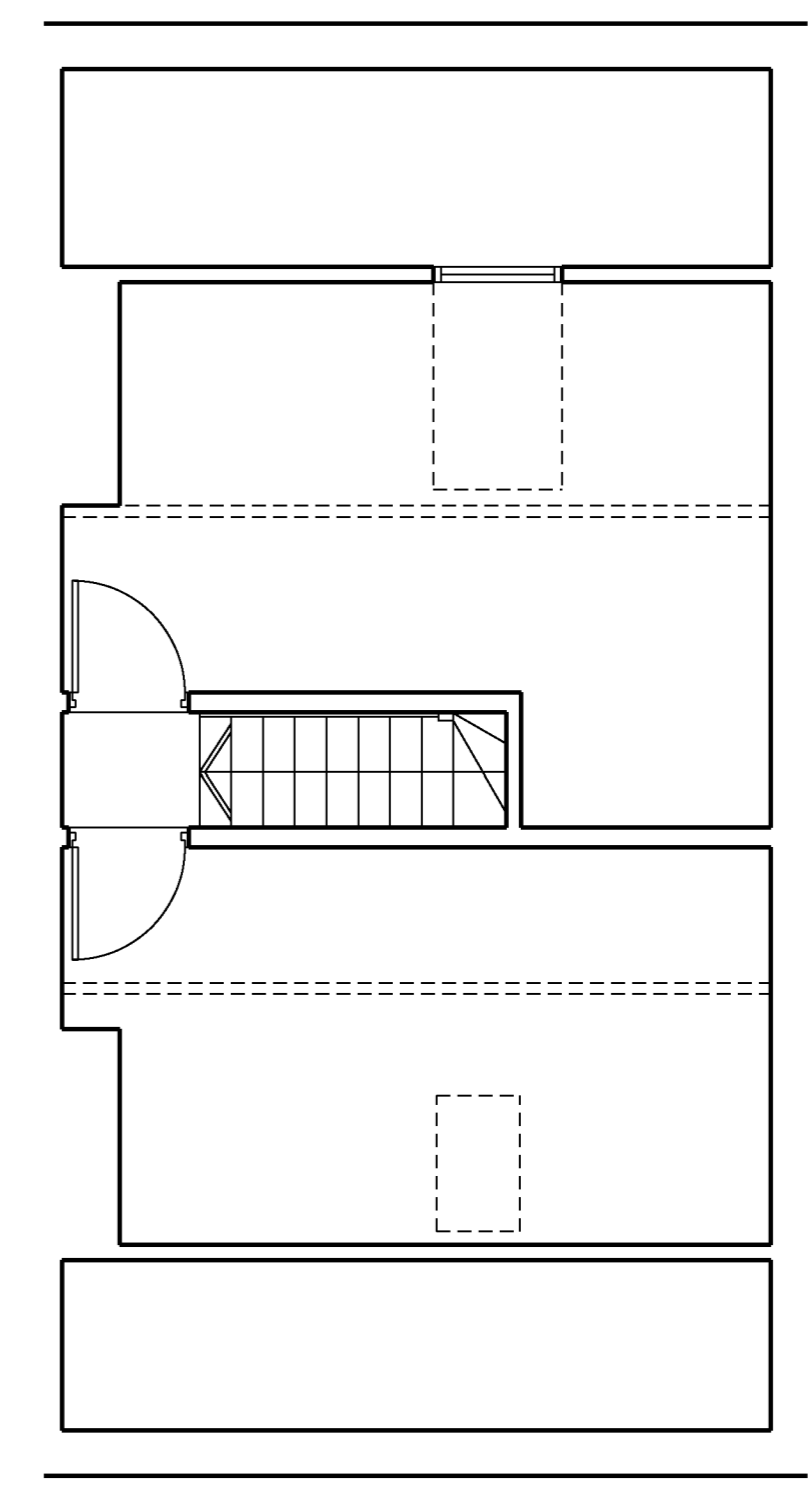
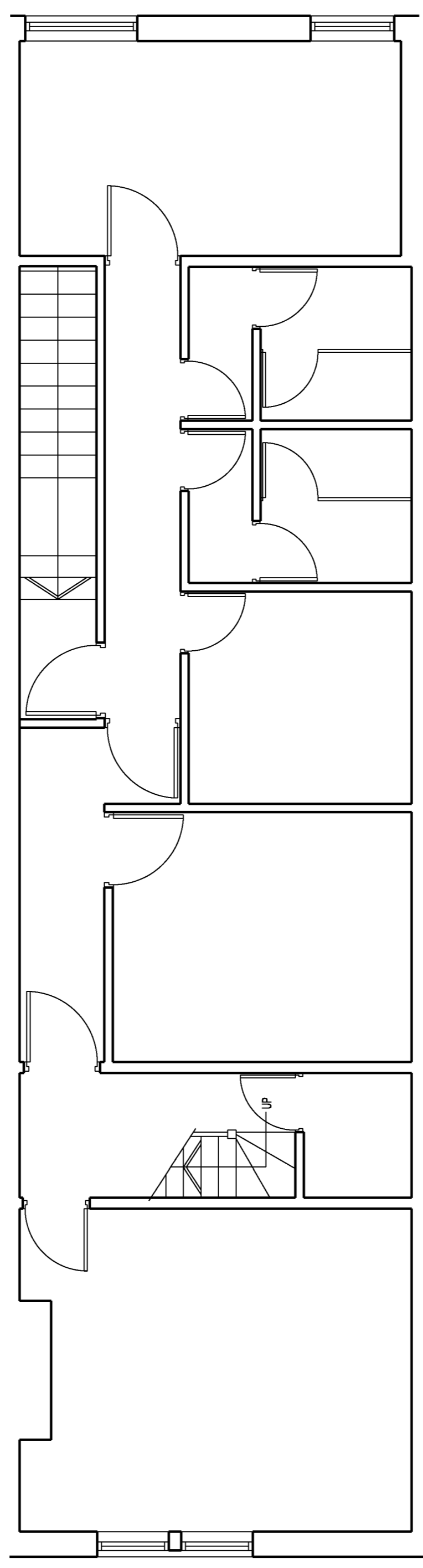
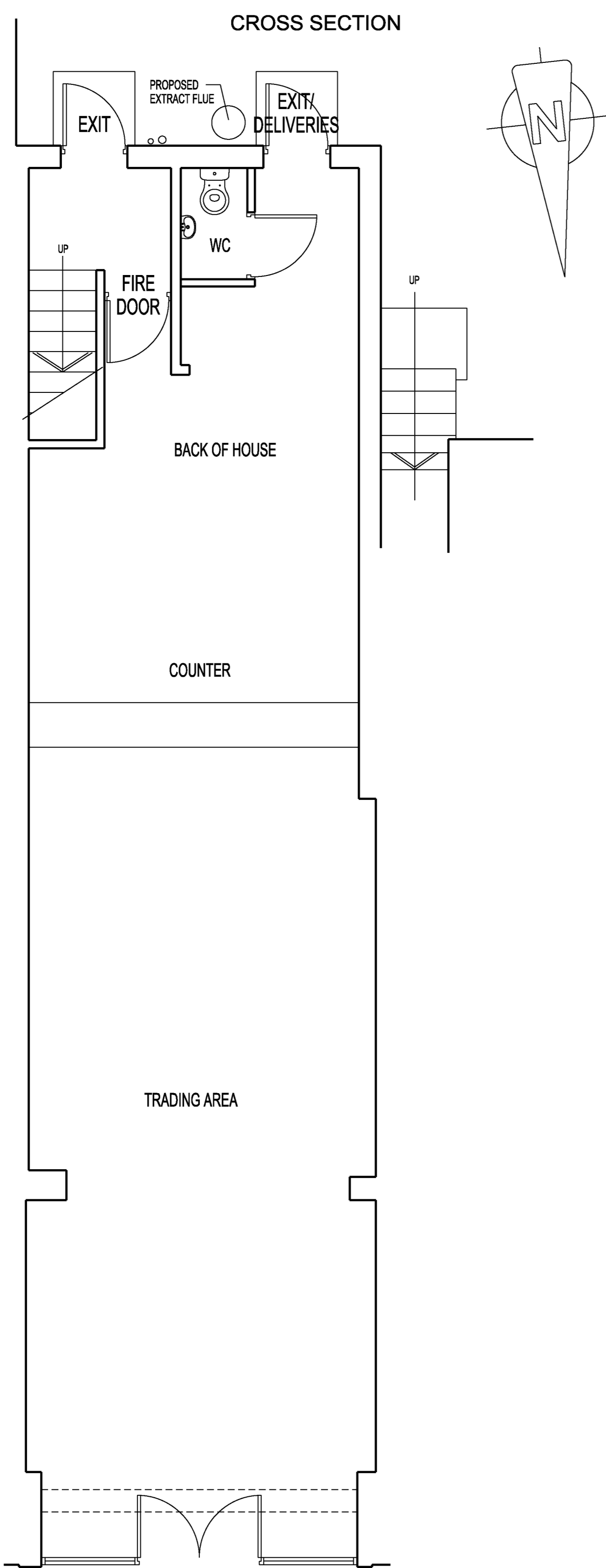
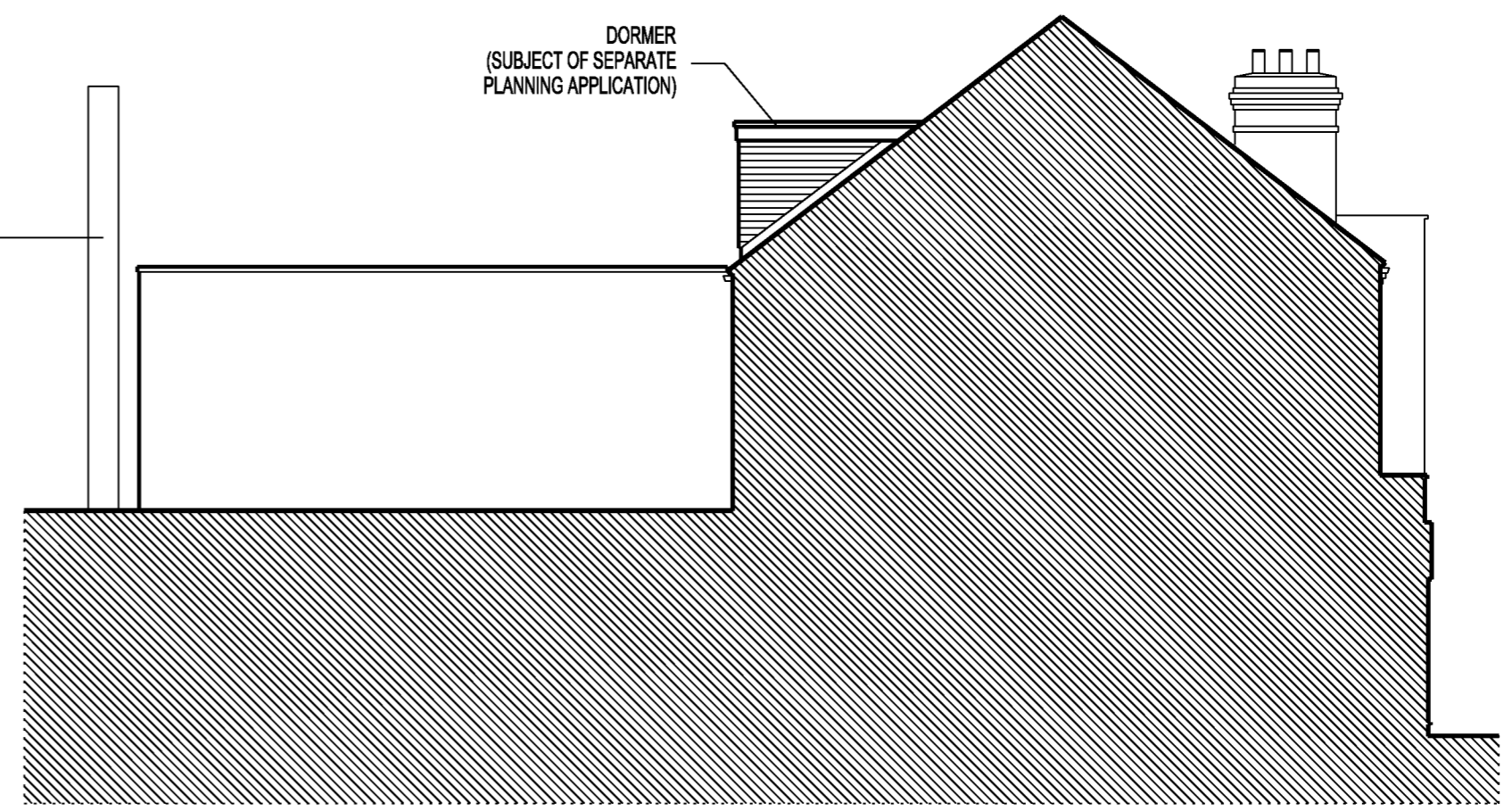
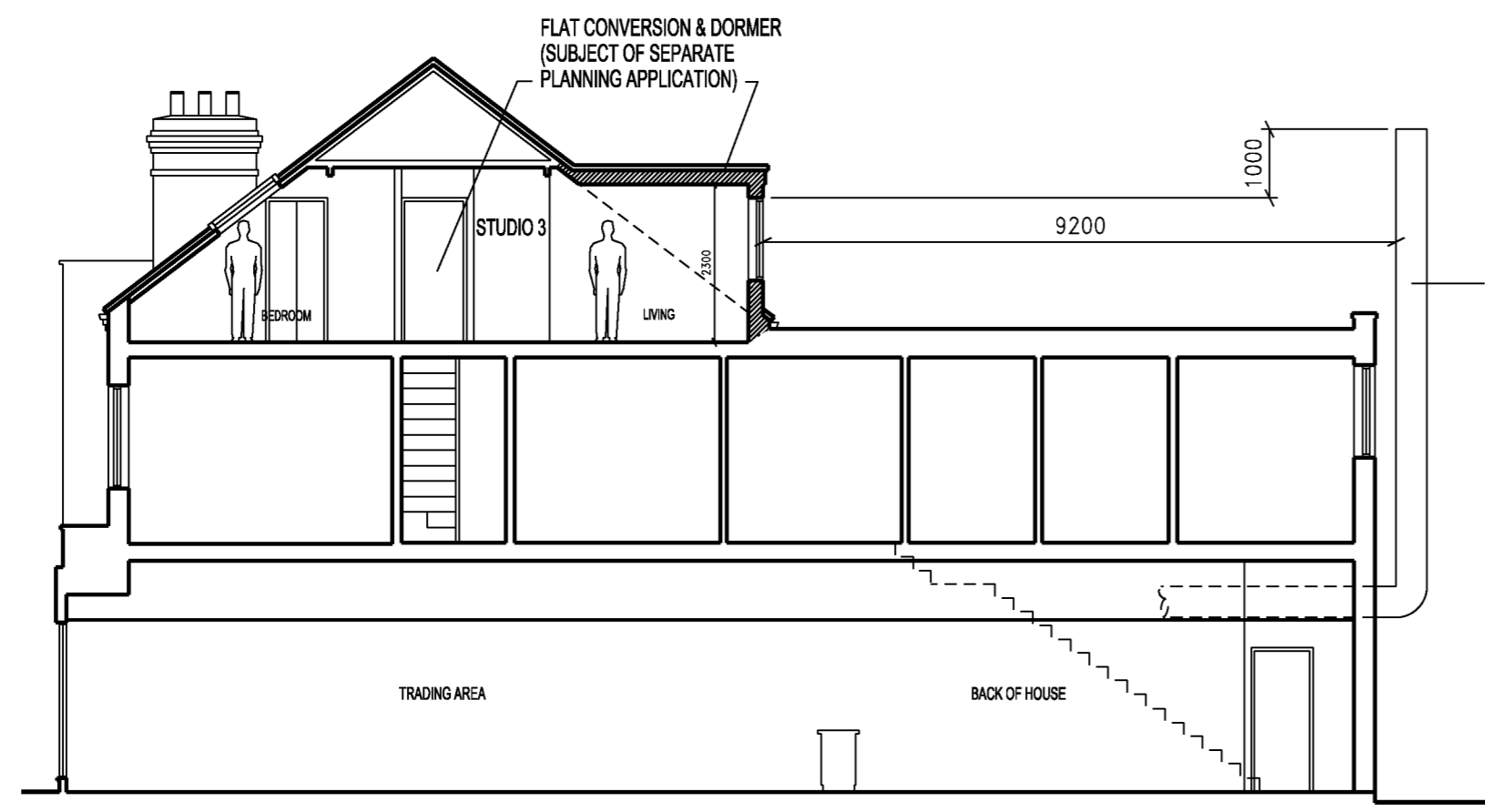
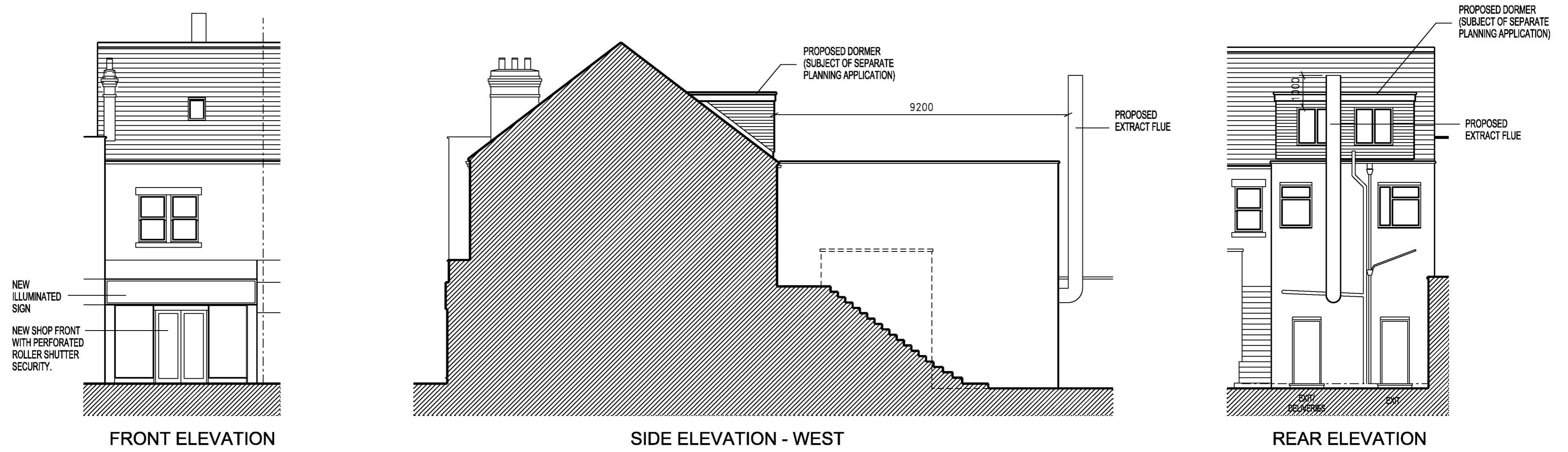
- 11.1 Overall, the proposed development will not result in any greater loss of retail in this particular frontage of the Cross Gates town centre. The nature of the use, in its context within an identified town centre is considered to be compatible, without creating undue problems in terms of the residential amenity of neighbouring and/or nearby occupiers. No parking is proposed but no highway objection is raised given the previous use and its town centre location. The position of the extraction ventilation equipment will not adversely impact on the appearance of the property. Accordingly,

the proposals are considered to be acceptable and to comply with policies P2, P10, SF7 and GP5 and are therefore recommended for approval, subject to conditions.

**Background papers:**

Application files: 16/05587/FU & 16/06524/FU

Certificate of Ownership: Mr S Roberts



NOTE:  
 DETAILS OF ANY EXTERNAL EXTRACT VENTILATION SYSTEM SHALL BE SUBMITTED AND APPROVED IN WRITING BY THE LPA PRIOR TO ITS INSTALLATION.

A SOUND INSULATION SCHEME DESIGNED TO PROTECT THE AMENITY OF EXISTING NEARBY OCCUPANTS AND FUTURE OCCUPANTS OF THE PROPOSED RESIDENTIAL DEVELOPMENT FROM NOISE EMITTED FROM THE PROPOSED A3 USE. THIS SCHEME SHALL BE SUBMITTED TO LPA AND APPROVED PRIOR TO CONSTRUCTION.

PLANT & MACHINERY SHALL NOT OPERATE UNTIL A SCHEME TO CONTROL NOISE EMITTED FROM THEM HAS BEEN APPROVED IN WRITING BY THE LPA AND INSTALLED AS APPROVED.

GROUND FLOOR PLAN

FIRST FLOOR PLAN

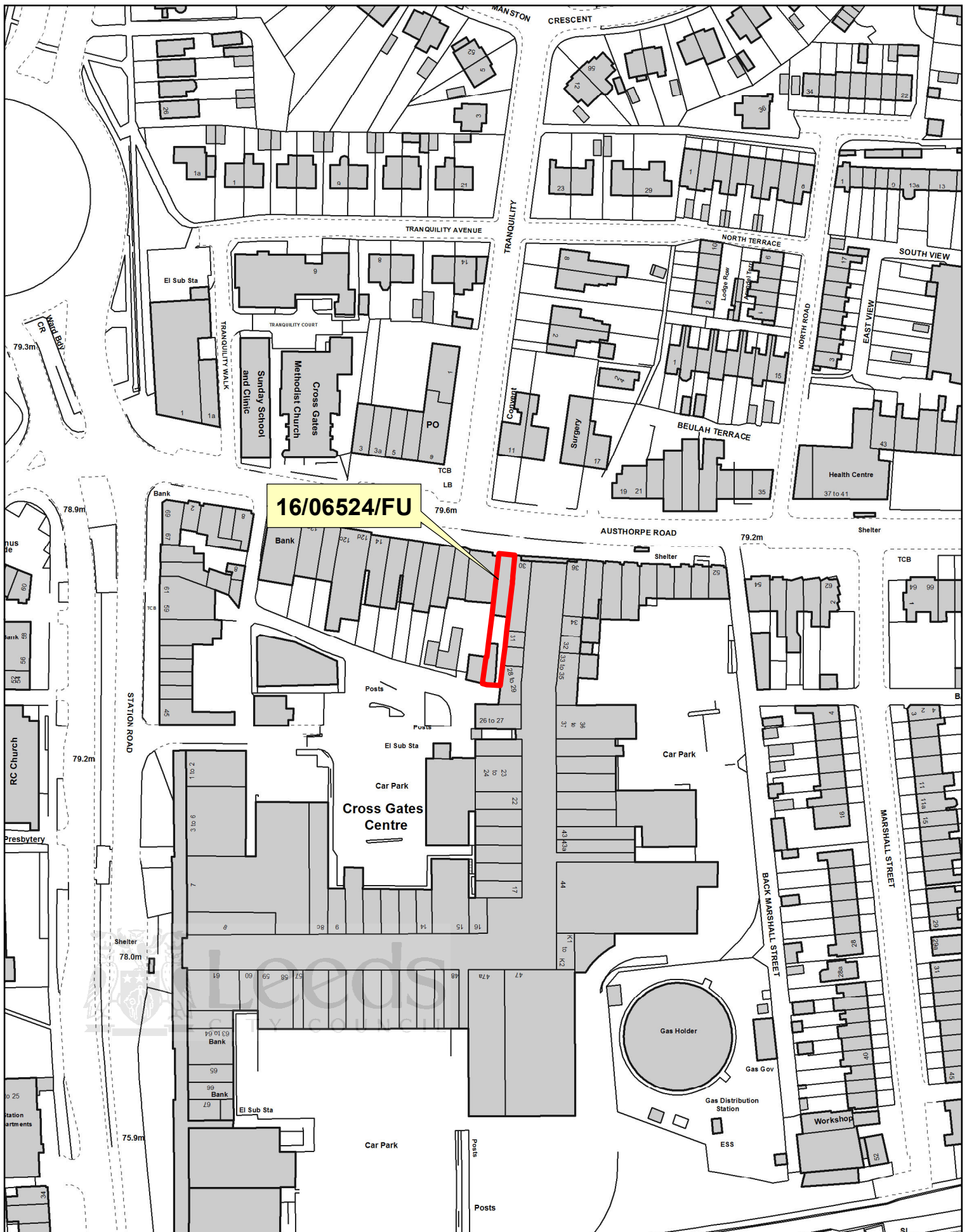
SECOND FLOOR PLAN

# PROPOSED - A3 UNIT (GROUND FLOOR)

28 AUSTHORPE ROAD, CROSSGATES, LEEDS

SCALE 1:50 @ A1 1:100@A3

REVISION B



# NORTH AND EAST PLANS PANEL

© Crown copyright and database rights 2016 Ordnance Survey 100019567

PRODUCED BY CITY DEVELOPMENT, GIS MAPPING & DATA TEAM, LEEDS CITY COUNCIL

SCALE : 1/1500

