



APPLICATION FOR PLANNING PERMISSION (20/00209/DPP) FOR CHANGE OF USE FROM PUBLIC HOUSE TO MIXED USE OF PUBLIC HOUSE/RESTAURANT AND HOT FOOD TAKEAWAY AND ASSOCIATED EXTERNAL ALTERATIONS INCLUDING INFILLING OF WINDOW OPENINGS AND FORMATION OF NEW WINDOW AND DOOR OPENINGS (RETROSPECTIVE) AT 119 HUNTERFIELD ROAD, GOREBRIDGE

Report by Chief Officer Place

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1 The application is for the change of use from public house to a mixed use of public house/restaurant and hot food takeaway and associated external alterations including infilling of window openings and formation of new window and door openings (retrospective) at 119 Hunterfield Road, Gorebridge. There have been 53 representations and consultation responses from the Council's Policy and Road Safety Manager and the Council's Environmental Health Manager.**
- 1.2 The relevant development plan policies are DEV2 and ENV18 of the Midlothian Local Development Plan 2017. At its meeting of 20 November 2018 the Committee adopted Supplementary Guidance on Food and Drink and Other Non-Retail Uses in Town Centres as the detailed policy position for these uses.**
- 1.3 The recommendation is to grant planning permission subject to conditions, including a condition restricting the hot food takeaway component of the application.**

2 LOCATION AND SITE DESCRIPTION

- 2.1 The application site comprises a single storey detached building which was historically used as a public house. The business is currently closed whilst internal works are undertaken and because of the COVID-19 public health emergency.**
- 2.2 The application premises comprises a T-plan building with a pitched roof, a flat roofed extension to the northern gable end and a small flat roof extension to the rear. The application building is primarily finished in an off-white render, with a painted dark brown base course and a slate pitched roof.**

- 2.3 There is associated land to the rear and side of the application premises that is enclosed by a high boundary fence. A section of this land has been used as a smoking area/beer garden associated with the main building.
- 2.4 The site is located in an area comprising a mix of retail and residential uses.

3 PROPOSAL

- 3.1 Retrospective planning permission is sought for the change of use from a public house to a mixed use premises, comprising a public house/restaurant and hot food take away.
- 3.2 The applicant's supporting statement states that the applicant has occupied the site for '*five years or so*'. The business is currently closed until the internal and external alterations have been completed.
- 3.3 The proposed hours of operation of the public house/restaurant are:
 - Sunday – Thursday 09.00 – 00.00
 - Friday – Saturday 09.00 – 01.00

The proposed hours of operation of the hot food takeaway are:
Monday – Sunday 16.00 – 23.00

The operating hours for a delivery service may differ from the hot food takeaway but remain within the hours of operation of the public house/restaurant.

- 3.4 Retrospective planning permission is also sought for external alterations to the building which have been partially completed. These works comprise the infilling of a window opening and alterations to a second window opening so as to form a large door opening with side panel windows. The proposed opening is to be installed with double leaf hard wood framed glazed doors with glazed side panels. The proposed door opening provides a separate access to the hot food takeaway 'side' of the building enabling this component of the business to operate independent of the pub/restaurant. The external alterations are to the flat roofed part of the building.
- 3.5 Whilst the public house/restaurant and the hot food takeaway have separate entrances there is a shared kitchen (which is planned to be enlarged) within the building. A new roof mounted outlet grille for the kitchen canopy extractor fan and roof mounted outlet grille for the fryer extractor fan are to be installed on top of the flat roof part of the building.
- 3.6 The supporting statement also outlines that the proposal would include a takeaway delivery service. It is considered that the delivery of food

from the restaurant would be an incidental use associated with the restaurant. The delivery of food served within the restaurant does not require separate planning permission provided it does not become the main focus of the business operations at the site.

- 3.7 The application is accompanied by:
- A supporting statement;
 - An operating plan;
 - A letter from the secretary/treasurer of the Arniston Improvement Trust (landlord); and
 - Appropriate plans/drawings.
- 3.8 The applicant also submitted four separate letters (from four separate properties with a total of eight signatures) of support for the application premises operating as a public house/restaurant and takeaway. The letters expressed concern over the premises re-opening solely as a public house due to the impact on neighbour amenity.

4 BACKGROUND

- 4.1 In December 2019 planning application 19/00813/DPP for the change of use from public house to restaurant and hot food takeaway and associated external alterations including infilling of window openings and formation of new window and door openings (retrospective) was withdrawn by the applicant.
- 4.2 In 2013 planning application 13/00402/DPP for the installation of replacement windows and infilling of existing door opening (retrospective) was granted planning permission. The officer's report states that the use of the premises is a public house.
- 4.3 In 2008 planning application 08/00429/FUL for the formation of door opening, alterations to windows and formation of hardstanding and erection of fence (part retrospective) was granted planning permission subject to conditions.
- 4.4 In 2005 planning application 05/00391/FUL for alterations and the extension to the public house was granted planning permission.
- 4.5 The current application has been called to Planning Committee for consideration by Councillor Johnstone due to the level of negative comments regarding the proposal from members of the public.
- 4.6 The current planning application is the result of an enforcement investigation relating to the unauthorised change of use to hot food takeaway (sui generis use) and alterations to the building.

5 CONSULTATIONS

- 5.1 The Council's **Policy and Road Safety Manager** does not object to the application, but notes that while initially having concerns over the potential impact of the hot food takeaway element of this operation on the existing parking situation, the unit appears to have been operating for some time with no record of any major parking or road safety issues arising.
- 5.2 The Council's **Environmental Health Manager** advised that the consultation response provided for the previous planning application, 19/00813/DPP (which was withdrawn), was still relevant and applicable to this proposal. The consultation response raised concerns in relation to the introduction of a hot food takeaway use in close proximity to existing residential properties, as there is the potential for causing disturbance to neighbouring residents due to noise from plant and loss of amenity due to odour from cooking effluvia. Overall, the Council's Environmental Health Manager does not object to the application subject to conditions being attached to any grant of planning permission in relation to noise and ventilation.

6 REPRESENTATIONS

- 6.1 There have been 41 representations objecting to the application and 12 supporting it, all of which can be viewed in full on the online planning application case file. The concerns and comments noted within the submitted representations will be addressed within the planning issues section of this report.
- 6.2 A summary of the objections are as follows:
- The building was gifted to the community and should be used for a community use;
 - The building should be retained as a public house;
 - The building should be a Gothenburg public house with profits going to the community;
 - The building should be used as a community facility;
 - There is an over provision of hot food takeaways in the area;
 - The formation of an additional entrance will result in the hot food takeaway operating independently from the restaurant/public house;
 - The time the business has been operating without relevant permissions;
 - Works have taken place without planning permission;
 - The building is in a poor state;
 - The use of the building is limited to being a public house and cannot be used as a takeaway outlet as per the deeds;
 - There is significant pressure on the NHS as a result of poor health from a poor diet including from fast food restaurants;

- The adverse impact upon the character and external appearance of historic building of Gorebridge;
- The building should be listed or in a conservation area;
- The works impact on the external appearance of the building;
- Parking and road safety;
- The proposal will result in anti-social behaviour with youths gathering outside; and
- The proposal will result in an increase in litter.

6.3 The supporting representations can be summarised as follows:

- Gorebridge needs investment and jobs to be created and this proposal provides it;
- The development provides much needed facilities for the growing community;
- The proposal will provide somewhere for people to eat and socialise;
- Support the re-opening of the business due to the quality of the food;
- The re-instating of a pub would be no greater an advantage to the community than the proposal; and
- If the use was just a public house it would encourage alcohol abuse.

7 PLANNING POLICY

7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the Midlothian Local Development Plan 2017 (MLDP). The following policies are relevant to the proposal:

Midlothian Local Development Plan 2017 (MLDP)

7.2 Policy **DEV2: Protecting Amenity within the Built-Up Area** states that development will not be permitted where it would have an adverse impact on the character or amenity of a built-up area.

7.3 Policy **ENV18: Noise** states that the Council will seek to prevent noisy development from damaging residential amenity or disturbing noise sensitive uses. Where new developments with the potential to create significant noise are proposed, these may be refused or require to be modified so that no unacceptable impact at sensitive receptors is generated.

Supplementary Guidance: Food and Drink and Other Non-Retail Uses in Town Centres

7.4 Hot food takeaways will not be permitted in premises where there are residential properties on the floor or floors above or immediately on

either side, and on the floors above such adjacent properties. The only exception to this is where it can be demonstrated that the hot food takeaway will have no adverse impact on neighbouring residential amenity.

- 7.5 Consideration will be given to the cumulative effect of additional hot food takeaway establishments on the vitality and viability of the town centre. The dominance of any one use in town centres could have a detrimental impact on their health and character. Planning permission will not be granted if this is assessed to be seriously harmful to the surrounding town centre. Hot food takeaways in town centres will not be supported where 50% or greater of ground floor commercial units within 100 metres of the unit are in use as hot food takeaways.
- 7.6 The adopted supplementary guidance states that the proximity of hot food takeaways to secondary schools encourages school pupils to eat unhealthy food. It is recognised that the planning system is limited in restricting access to unhealthy foods, as it is not possible to restrict the sale, from shops, of unhealthy foods to school pupils. However, it is reasonable and appropriate for the Council to prevent provision of new premises (including temporary vehicles/structures) and the change of use of premises to hot food takeaways on account of the adverse impact that they have on the diets of young people and the health of communities. Hot food takeaways will not be permitted where they fall within 400 metres of the curtilage of a primary or secondary school.
- 7.7 Planning applications for class 3 uses, (food and drink as defined in the Town and Country Planning (Use Classes)(Scotland) Order 1997), for the consumption of food and drink on the premises will be considered on their individual merits, taking the following factors into account: the size of the proposed establishment; the relationship to adjoining uses particularly residential properties; its likely traffic generation and parking provision; and, its acceptability in terms of other relevant planning policies of the MLDP.
- 7.8 The supplementary guidance states that conditions will be imposed, as appropriate, restricting the hours of opening of the premises; requiring the provision of adequate ventilation equipment; or otherwise as necessary to ensure that the use does not have an adverse environmental impact on its neighbourhood.
- 7.9 Such proposals may include an element of takeaway trade provided that it remains clearly ancillary to the principal use of the premises for the consumption of food and drink on the premises. This is unless they fall within the 400m 'no hot food takeaway buffer' around primary and secondary schools or there are other material planning concerns which require there to be no takeaway element, such as road safety.
- 7.10 Planning applications which would lead to the loss of a public house from a town centre must demonstrate that the premises are no longer

viable as a public house and that the replacement use will either protect or enhance the vitality and viability of the town centre by providing a facility with similar opportunities for social interaction.

8 PLANNING ISSUES

- 8.1 The main issue to be determined is whether the proposal accords with the development plan unless material planning considerations indicate otherwise. The representations and consultation responses received are material considerations.
- 8.2 The proposed change of use seeks to reuse an existing building that was historically a public house. The applicant's supporting statement states the current business has been operating at the premises for '*five years or so*'. However the mixed use does not have the benefit of planning permission and is therefore unauthorised. The application is retrospective. The premises is currently closed until refurbishment works have been completed.

Principle of the Public House/Restaurant

- 8.3 The food and drink use class (class 3) groups together a range of uses where food or drink is sold for consumption on the premises - for example restaurants, cafes and snack bars. The building is currently a public house which is a *sui generis* use which allows for the premises to operate primarily as a public house where the primary purpose is for the sale of liquor for consumption on the premises. However, it is noted that the current public house use would also allow for the sale of food for the consumption on the premises at an ancillary level to the public house.
- 8.4 Currently, the premises could re-open as a public house and offer food for consumption on the premises at an ancillary level without the requirement for any planning permission. Therefore, the use of the building as a restaurant and public house is already partly established.
- 8.5 It is considered that the use of the building as a restaurant and public house is of a similar character to the existing permitted use. The proposal to operate a public house/restaurant would not have an adverse impact on the amenity of the area. There are no material planning considerations that would otherwise warrant the refusal of the premises being used as a restaurant and public house.

Principle of Hot Food Takeaway

- 8.6 With regards to the proposed food takeaway element of the proposal, hot food takeaways are classed as a *sui generis* use and raise different environmental issues, such as litter, noise, longer opening hours and extra traffic and pedestrian activity, from those raised by other class 3 uses. Furthermore, the Council is concerned that the proximity of hot

food takeaways to schools encourages school pupils to eat unhealthy food.

- 8.7 Hot food takeaways will not be permitted in premises that are located within residential areas where there are residential properties above or immediately on either side. The premises are located on the corner of a residential area with neighbouring dwellings located in close proximity adjacent to the application site; the closest flatted dwellings are approximately 7 metres to the west, rear of the application premises.
- 8.8 A hot food takeaway in this location may result in a harmful loss of residential amenity. As noted above, the Council's Environmental Health Manager offered no objection to the proposed change of use subject to conditions being attached in relation to noise and ventilation. Should the principle of a hot food takeaway be considered acceptable then conditions could be attached, as appropriate, restricting the hours of opening of the premises; requiring the provision of adequate ventilation equipment; or otherwise as necessary to ensure that the use does not have an adverse environmental impact on its neighbourhood. Therefore, the proposed hot food takeaway will not result in a harmful loss of residential amenity.
- 8.9 Hot food takeaways in town centres will not be supported where 50% or greater of ground floor commercial units within 100 metres of the unit are in use as hot food takeaways. Whilst the application site is not located within a town centre, there is still a requirement to ensure that the proposed hot food takeaway does not result in over-provision. There are five units located within 100 metres of the application site; a retail shop, a restaurant/takeaway, a bakery, a chemist and a betting office which was recently granted planning permission to change its use to a gym. Of the commercial units at this part of Gorebridge, less than half are in food provision use. Given the provisions of the adopted supplementary guidance, the proposed hot food takeaway would not result in 50% or more of the units being used as a hot food takeaway and so it is considered that the proposal would not result in the over-provision of this type of use in this part of Gorebridge.
- 8.10 The application site is located approximately 130 metres from the curtilage of Gorebride Primary School. The supplementary guidance is clear in stating that hot food takeaways within 400 metres of the curtilage of a primary school will be not granted planning permission. This is to address the adverse impacts such uses have on the diets of young people and the health of communities. The use of the application site as a hot food takeaway, even in part, is not an acceptable use for the premises due to the close proximity to Gorebridge Primarily School and the resultant non-compliance with the adopted supplementary guidance.
- 8.11 Within the applicant's supporting statement it is noted that the application is for a public house/restaurant with the hot food takeaway operating on an ancillary basis. It is proposed that the hot food

takeaway would not operate as a separate business and this is further ensured by the title deeds. The supporting statement also noted that the primary school that is located within 400 metres of the application site does not allow for pupils to leave at lunch time and that the operating hours for the takeaway are outwith the school's hours. Whilst this is a material consideration, the recently adopted supplementary guidance clearly states that hot food takeaways, even on an ancillary basis, will not be permitted where they fall within 400 metres of the curtilage of a primary or secondary school. There is no policy support for a hot food takeaway to operate in any capacity at the application site. Therefore, a condition will be used to ensure that the premise does not operate as a hot food takeaway in any capacity.

Principle of Delivery of Food

- 8.12 Within the applicant's supporting statement, it is stated that the proposed change of use would include the delivery of food from the premises. The delivery of food from restaurants is an evolving area given the growth of food delivery platforms across the country. Whilst the hot food takeaway use is not acceptable and, in this case, it is recommended that it be refused by the use of a planning condition it is considered that the delivery of food served within the restaurant would be an incidental use associated with the restaurant. Therefore, the delivery of food served within the restaurant does not require separate planning permission.

Parking and Road Safety

- 8.13 There is no provision for off-street parking and nor is it possible to provide any off-street parking due to the lack of availability of land. The Council's Policy and Road Safety Manager did not object to the application, but noted that while initially having concerns over the potential impact of the hot food takeaway element of this operation on the existing parking situation, the unit appears to have been operating for quite some time with no record of any major parking or road safety issues arising. Therefore, there are no road safety concerns as a consequence of the development proposal, although this has been raised as an issue of concern by representors.

External Alterations

- 8.14 The proposed external alterations seek to form a second entrance which will provide a separate access to the proposed hot food takeaway. Whilst the hot food takeaway is considered to be unacceptable in planning terms, this does not, in itself, warrant the refusal of the external alterations. The interior of the building can be reconfigured without the requirement of planning permission.
- 8.15 The proposed external alterations are limited to the flat roof part of the building which is a later addition. The application building is not a listed

building nor is it located within a conservation area. The in-filling of a window and formation of a double leaf door opening with glazed side panels will not have an adverse impact upon the character or appearance of the building or area. The flat roofed extension is an obvious later addition with different window dimensions and design to the original building and, as such, the installation of a double leaf hardwood framed glazed door with glazed side panels will have a negligible impact on the character of the building. Details of the external colour of the double leaf doors and side panels have not been detailed within the submitted plans. A condition can be attached to any grant of planning permission requiring this detail to be submitted to the planning authority for prior written approval. Overall, the external alterations do not have a detrimental impact on the character of the surrounding area and do not impact on the amenity of any neighbouring properties.

Other matters

- 8.16 All material planning considerations raised by the representors are addressed above or as follows.
- 8.17 Concerns relating to the ownership or matters within the title deeds are not material planning considerations. These are separate legal matters outwith the assessment of this planning application.
- 8.18 Some representors make suggestions on how the building should be used. Again, this is not a material planning consideration. The planning application has been assessed on the basis of the proposals as submitted.
- 8.19 Concerns relating to the impact of the proposed development upon the character and appearance of the building were assessed above. It is noted that some representors felt that the building should be listed or that the building should be in a conservation area. It is noted that the building is not listed nor is it located within the conservation area and therefore there is no requirement for listed building consent or conservation area consent. Furthermore, it is noted that an application to designate the application property as a listed building was submitted to Historic Environment Scotland. Historic Environment Scotland concluded that whilst the building is of local and social interest, it is not of sufficient special architectural or historic interest which would result in it being listed. Public houses of the 19th and 20th centuries are a common building type in Scotland and this example has been substantially altered since its original construction.
- 8.20 Concerns regarding potential anti-social behaviour as a result of the proposed use are speculation and are not a material planning consideration.

- 8.21 Concerns relating to litter and bin storage at the site are a material consideration and should planning permission be approved for the hot food takeaway, further details of a waste management plan would be required.

9 RECOMMENDATION

- 9.1 That planning permission be granted for the following reason:

The development will not have an adverse impact on the character of the area or on the amenity of neighbouring land and buildings and therefore complies with policies DEV2 and ENV18 of the Midlothian Local Development Plan 2017 and the adopted Supplementary Guidance for Food and Drink and Other Non-Retail Uses in Town Centres.

Subject to the following conditions:

1. No hot food takeaway use or activity, either as a primary or ancillary use, shall take place from the premises subject to the application to which this condition is attached.

Reason: *The application premises is located within 400 metres of the curtilage of Gorebridge Primary School and, as such, the hot food takeaway element of the proposal does not comply with adopted policy; so as to ensure that the planning authority retains effective control over the use of the premises in order to comply with the Supplementary Guidance for Food and Drink and Other Non-retail Uses in Town Centres in relation to public health. The use of the premises as a hot food takeaway raises significant road safety concerns.*

2. Notwithstanding the plans hereby approved, details of the external colour of the double leaf door and side panel frames shall be submitted to the planning authority for prior written approval. Thereafter these features shall be installed as approved by the planning authority.

Reason: *In the interest of protecting the character and appearance of the application building and area so as to comply with policy DEV2.*

3. The design and installation of any plant, machinery or equipment shall be such that the combined noise level complies with NR25 (or NR20 if the noise is tonal) when measured within any living apartment and no structure borne vibration is perceptible within any living apartment.
4. Within three month from the date of this decision notice, details of the extract ventilation system, including a drawing showing its

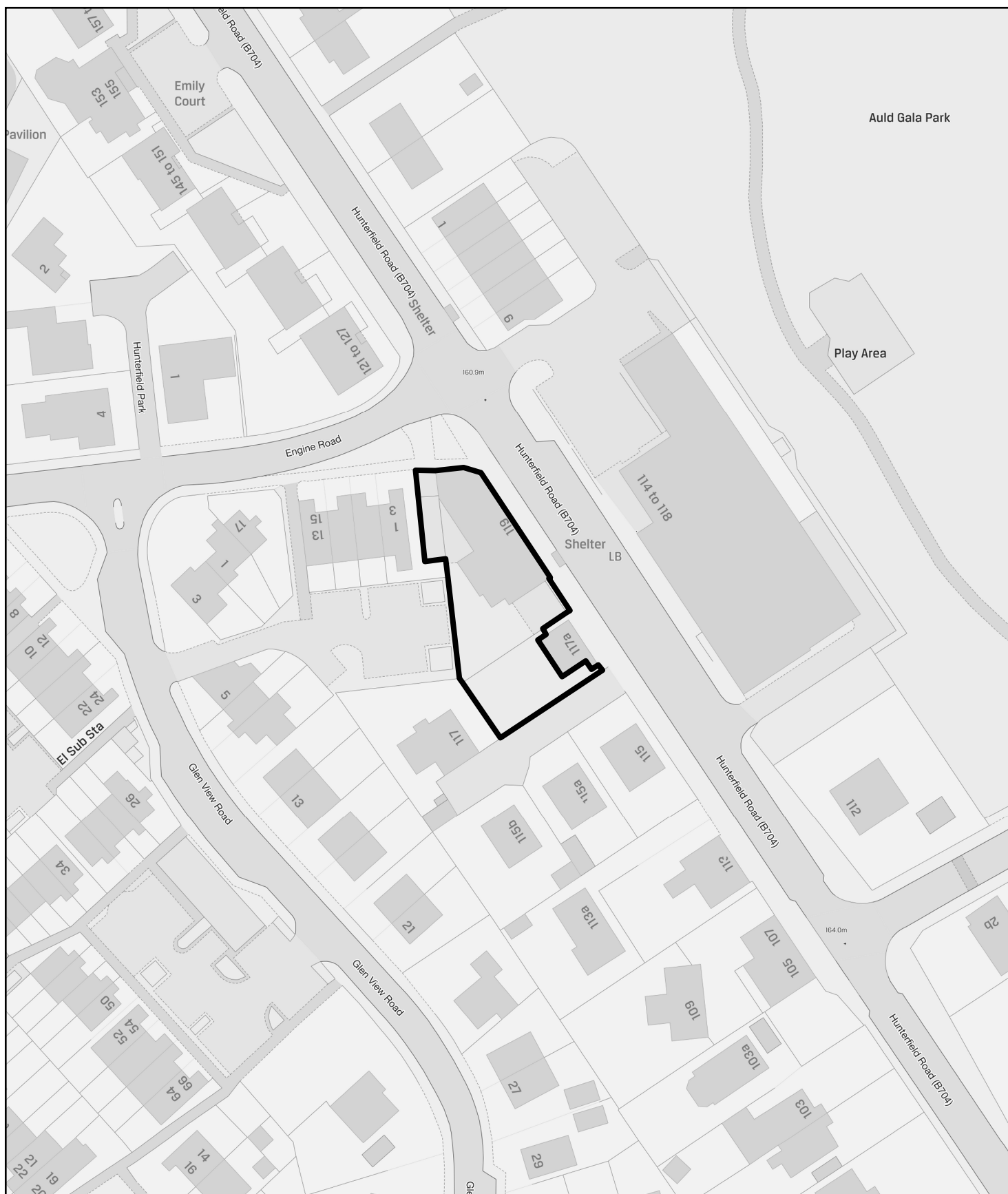
location, external appearance and finish shall be submitted to and approved in writing by the planning authority. The use shall not start trading until the approved details are operational in accordance with that approved in writing by the planning authority.

5. The design of the extract ventilation system approved in terms of condition 4 shall either ensure that:
- cooking effluvia are ducted to above the level of the adjacent pitched roof of the application premises; or
 - effluvia are expelled with a minimum upwards velocity of 15 metres per second.

Reason for conditions 3 - 5: To safeguard the amenity of the surrounding area, so as to comply with adopted policy ENV18.

Peter Arnsdorf
Planning Manager

Date:	18 August 2020
Application No:	20/00209/DPP
Applicant:	Mr Paolo Morellie
Agent:	N/A
Validation Date:	17 March 2020
Contact Person:	Whitney Lindsay
Tel No:	0131 271 3315
Background Papers:	19/00813/DPP, 13/00402/DPP, 08/00429/FUL, 05/00391/FUL
Attached Plans:	Elevations



**Planning Service
Place Directorate**
Midlothian Council
Fairfield House
8 Lothian Road
Dalkeith
EH22 3AA

Change of use from public house to mixed use of public house/restaurant and hot food takeaway and associated external alterations including infilling of window openings and formation of new window and door openings (retrospective) at 119 Hunterfield Road, Gorebridge, EH23 4TU

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File No: 20/00209/DPP

Scale: 1:1,000



22/02/2018

Client:

P. Morelli Esq.,

Project:

Proposed Alterations to
The Hunterfield Tavern,
119 Hunterfield Road, Gorebridge.

Title:

Existing North & East Elevations
Proposed North & East Elevations

Scale: A1 @ 1:50
Date: 11.08.19
Drawn by: H.D.J.A.

Drawing No.:

1953 - 07A

IN-BUILT DESIGN

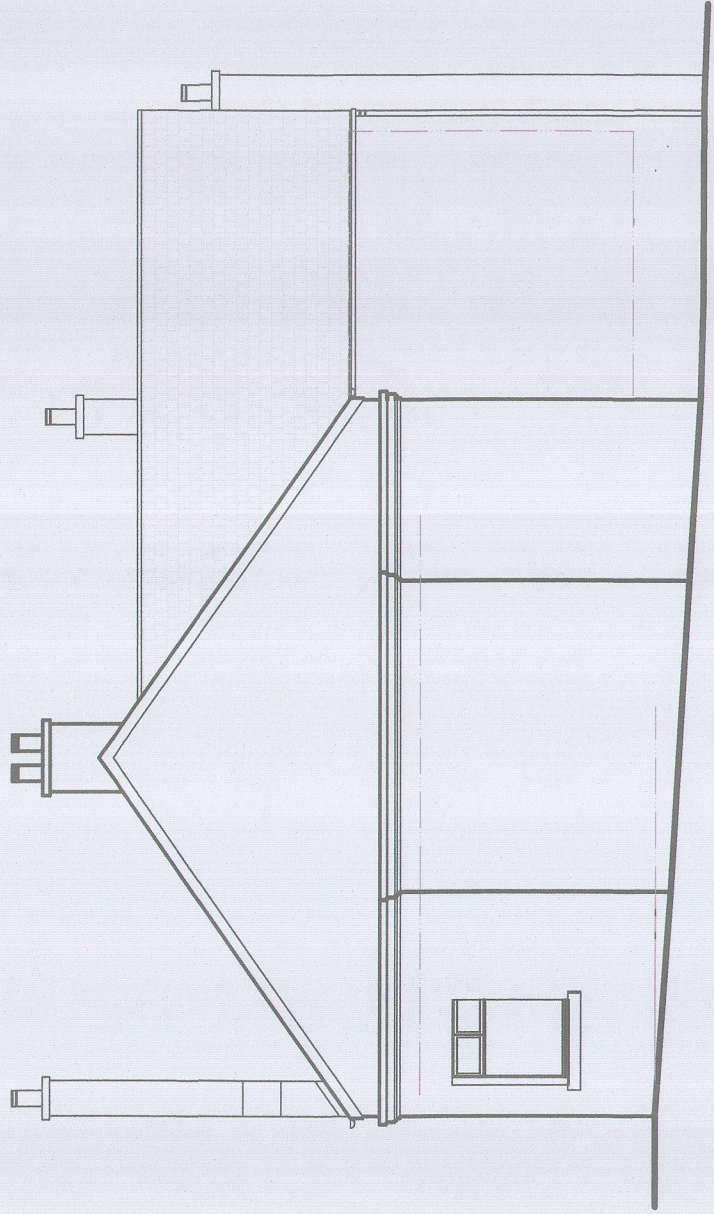
30 Bruntsfield Gardens,
Edinburgh, EH10 4DZ.
Tel. 0131 228 1755
Fax. 0131 288 1765

We hereby certify that this is a true copy of the plan,
referred to in the Application for Planning Permission /
Building Warrant.

Date: _____

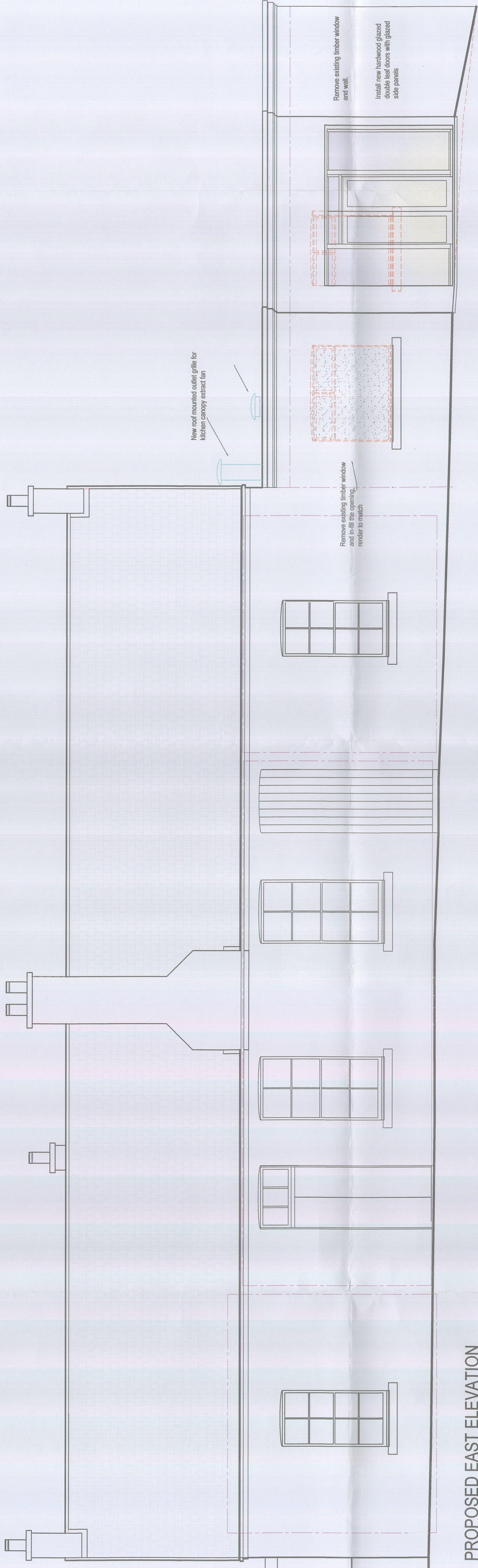
Signed: _____

Rev. A: 28.10.19 Air extract valves added

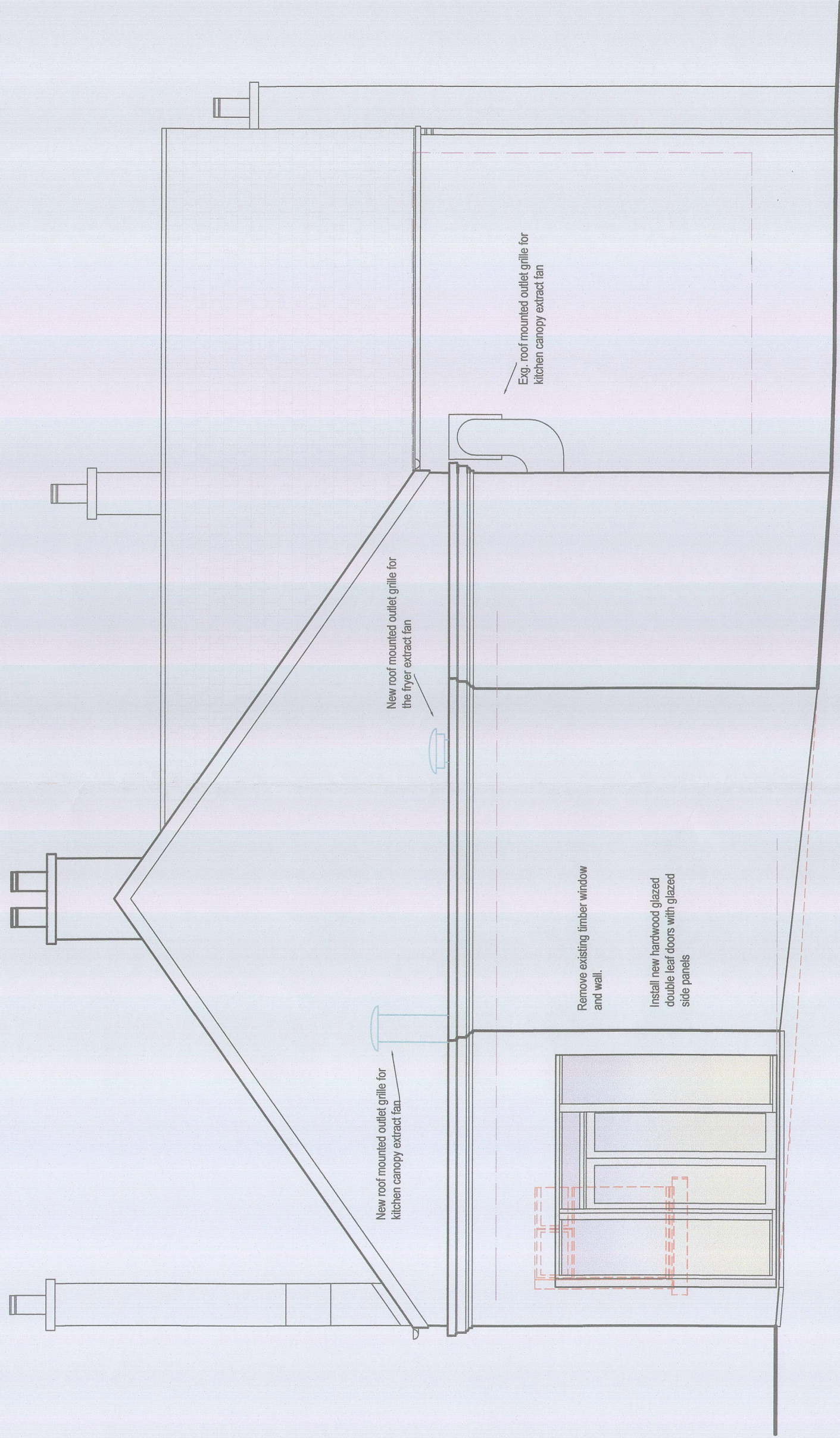


EXISTING EAST ELEVATION

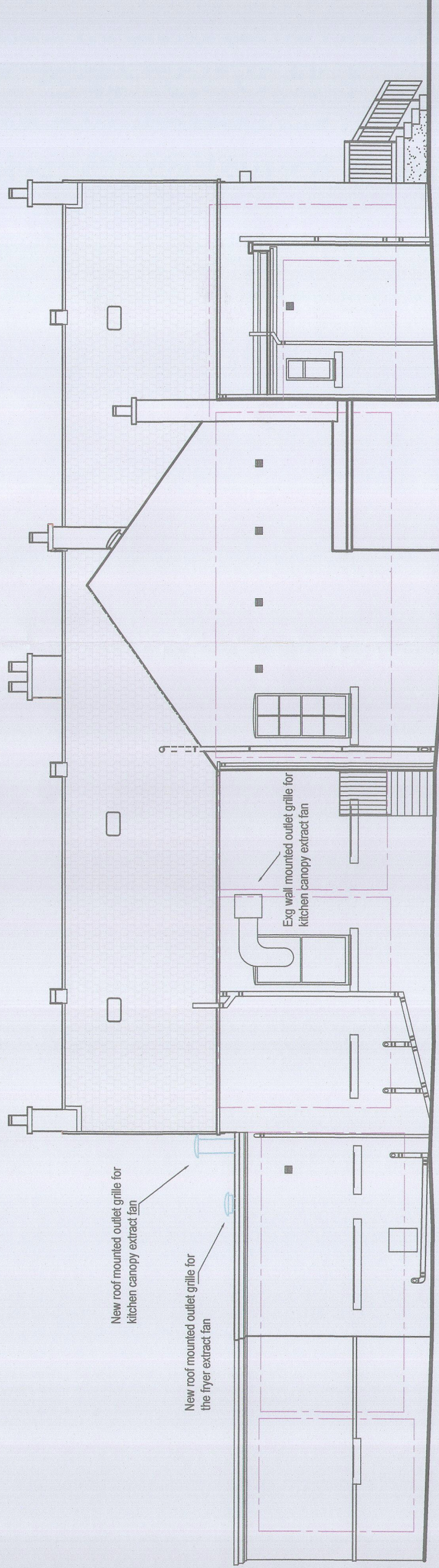
EXISTING NORTH ELEVATION



PROPOSED EAST ELEVATION



PROPOSED NORTH ELEVATION



PROPOSED WEST ELEVATION

This drawing was prepared to obtain Planning Permission and / or Building Control and this Firm's liability ends on receipt of a decision from the Planning and / or Building Control Departments.

Contractor not to deviate from the approved drawing, without informing this office. Contractor to ensure that all work is carried out in accordance with the Building Regulations and to the satisfaction of the Building Control Department.

All sizes and dimensions to be verified on site.

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