

## **Notice of Review: 40-42 Hamilton Crescent, Newtongrange. Determination Report**

Report by Chief Officer Place

### **1 Purpose of Report**

- 1.1 The purpose of this report is to provide a framework for the Local Review Body (LRB) to consider a 'Notice of Review' for the erection of an extension at first floor level to form three flatted dwellings above existing shop and associated works at 40-42 Hamilton Crescent, Newtongrange.

### **2 Background**

- 2.1 Planning application 22/00720/DPP for the erection of an extension at first floor level to form three flatted dwellings above existing shop and associated works at 40-42 Hamilton Crescent, Newtongrange was refused planning permission on 2 December 2022; a copy of the decision is attached to this report.
- 2.2 The review has progressed through the following stages:
- 1 Submission of Notice of Review by the applicant.
  - 2 The Registration and Acknowledgement of the Notice of Review.
  - 3 Carrying out Notification and Consultation.

### **3 Supporting Documents**

- 3.1 Attached to this report are the following documents:
- A site location plan (Appendix A);
  - A copy of the notice of review form and supporting statement (Appendix B). Any duplication of information is not attached;
  - A copy of the case officer's report (Appendix C);
  - A copy of the decision notice, excluding the standard advisory notes, issued on 2 December 2022 (Appendix D); and
  - A copy of the key plans/drawings (Appendix E).
- 3.2 The full planning application case file and the development plan policies referred to in the case officer's report can be viewed online via [www.midlothian.gov.uk](http://www.midlothian.gov.uk)

### **4 Procedures**

- 4.1 In accordance with agreed procedures, the LRB:

- Have determined to undertake a site visit (only elected members attending the site visit can participate in the determination of the review); and
  - Have determined to progress the review by written submissions.
- 4.2 The case officer's report identified that there were four consultation responses and four representations received. As part of the review process the interested parties were notified of the review. One additional comment reinforcing a previous objection has been received. All comments can be viewed online on the electronic planning application case file.
- 4.3 The next stage in the process is for the LRB to determine the review in accordance with the agreed procedure:
- Identify any provisions of the development plan which are relevant to the decision;
  - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies;
  - Consider whether or not the proposal accords with the development plan;
  - Identify and consider relevant material considerations for and against the proposal;
  - Assess whether these considerations warrant a departure from the development plan; and
  - State the reason/s for the decision and state any conditions required if planning permission is granted.
- 4.4 In reaching a decision on the case the planning advisor can advise on appropriate phraseology and on appropriate planning reasons for reaching a decision.
- 4.5 Following the determination of the review the planning advisor will prepare a decision notice for issuing through the Chair of the LRB. A copy of the decision notice will be reported back to the LRB for noting.
- 4.6 A copy of the LRB decision will be placed on the planning authority's planning register and made available for inspection online.

## **5 Conditions**

- 5.1 In accordance with the procedures agreed by the LRB at its meeting of 20 June 2022, and without prejudice to the determination of the review, the following conditions have been prepared for the consideration of the LRB if it is minded to uphold the review and grant planning permission.
1. The development to which this permission relates shall commence no later than the expiration of three years beginning with the date of this permission.

***Reason:*** To accord with the provisions of Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning (Scotland) Act 2019).

2. Prior to the commencement of development, details of the location and materials of all wall, gates, fences or other means of enclosure to be erected shall be submitted to and approved in writing by the planning authority.

Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be agreed in writing with the planning authority.

***Reason:*** *These details were not submitted with the original application; in order to protect the character and appearance of the existing site and the surrounding area*

3. Development shall not begin until details, including a timetable of implementation, of ultra-fast fibre broadband have been submitted to and approved in writing by the planning authority. The details shall include delivery of ultra-fast fibre broadband prior to the occupation of the dwellinghouse. The delivery of ultra-fast fibre broadband shall be implemented as per the approved details.

***Reason:*** *To ensure the quality of the development is enhanced by the provision of appropriate digital infrastructure in accordance with the requirements of policy IT1 of the Midlothian Local Development Plan 2017.*

4. Prior to the commencement of development, a Noise and Vibration Impact Assessment shall be undertaken by a suitably qualified and competent acoustician to assess the impact of the combined effect of all noise and vibration sources on the residential properties arising from the ground floor commercial use, and submitted to and approved in writing by the planning authority. The noise impact assessment shall be carried out in terms BS 4142:2014+A1:2019 and Noise Rating Curves shall be used to assess plant noise. Vibration shall be assessed in terms of BS 6472-1:2008.

The report shall identify the minimum acoustic performance of the separating structure necessary to ensure that prospective residents are not adversely affected by intrusive noise and vibration from the commercial use. Thereafter the development shall be carried out in accordance with the approved details or such alternatives as may be agreed in writing with the planning authority.

5. Prior to occupation of the development hereby approved, the correct installation of the mitigation measures contained within the noise and vibration impact assessment report shall be validated by a suitably qualified and competent acoustician and the findings shall be submitted to and approved in writing by the planning authority.
6. The design and installation of all plant, machinery and equipment shall be such that the combined noise level shall not exceed NR 30 daytime (07:00 to 23:00 hrs) or NR 25 if the noise is tonal and NR 25 night-time (23:00 to 07:00 hrs) or NR 20 if the noise is tonal

when measured within any nearby living apartment and no structure borne vibration is perceptible within any living apartment.

***Reason for conditions 4, 5 and 6: To safeguard the amenity of the future occupants of the flats and neighbouring properties***

- 5.2 If the LRB is minded to uphold the review and grant planning permission for the proposed development it shall be subject to a legal agreement to secure developer contributions towards education infrastructure. The legal agreement shall be concluded prior to the issuing of the LRB decision. The legal agreement shall be concluded within 6 months of the resolution to grant planning permission, if the agreement is not concluded the review will be reported back to the LRB for reconsideration.

## **6 Recommendations**

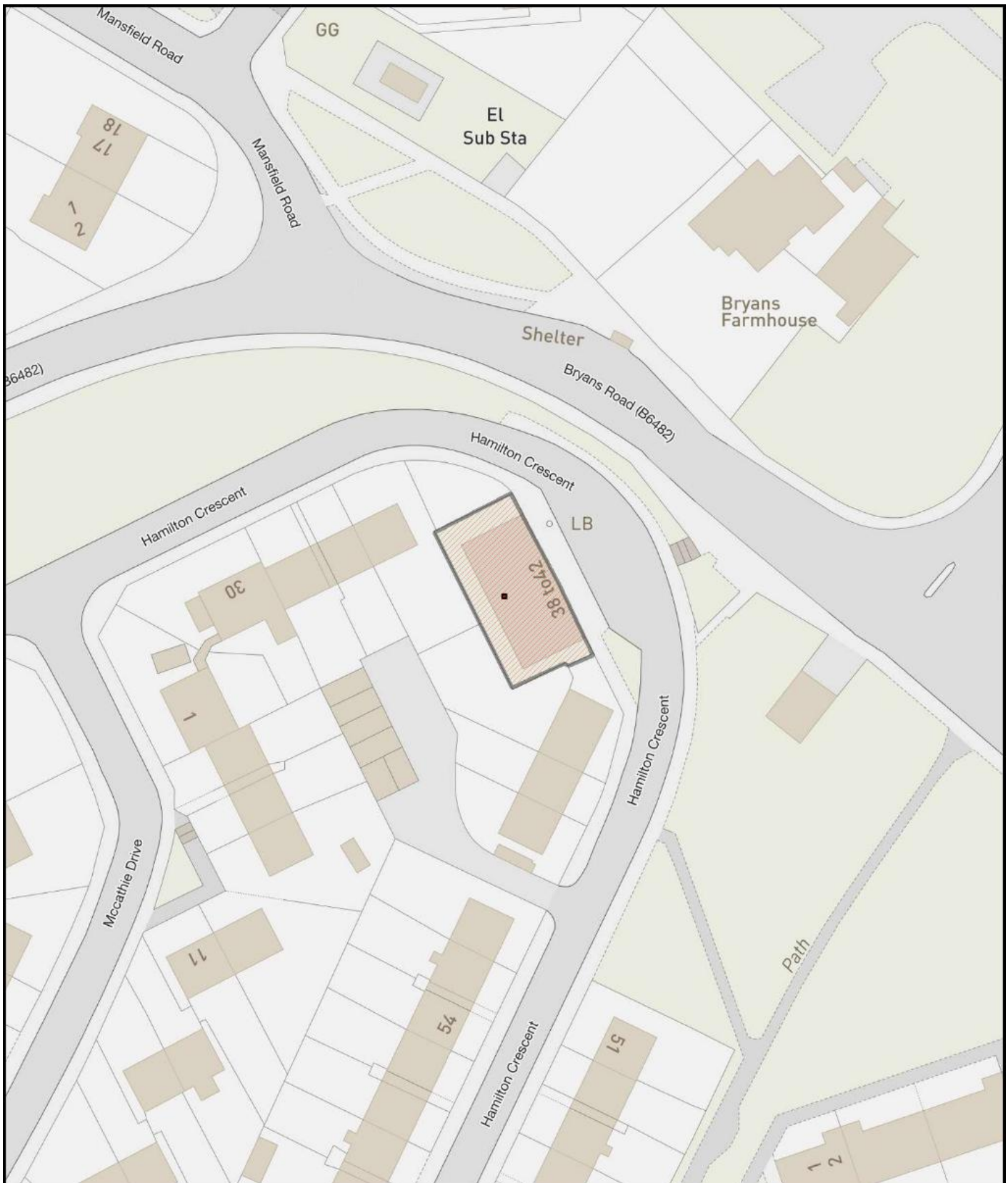
- 6.1 It is recommended that the LRB:
- a) determine the review; and
  - b) the planning advisor draft and issue the decision of the LRB through the Chair

**Peter Arnsdorf**  
**Planning, Sustainable Growth and Investment Manager**

**Date:** 22 February 2023  
**Report Contact:** Alison Ewing, Planning Officer  
[alison.ewing@midlothian.gov.uk](mailto:alison.ewing@midlothian.gov.uk)

**Background Papers:** Planning application 22/00720/DPP available for inspection online.

# Appendix A



**Education, Economy  
& Communities**  
Midlothian Council  
Fairfield House  
8 Lothian Road  
Dalkeith  
EH22 3AA

**Extension of building to form 3 flatted dwellings  
40 - 42 Hamilton Crescent, Newtongrange**

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File No.22/00720/DPP

Scale: 1:750





Fairfield House 8 Lothian Road Dalkeith EH22 3ZN Tel: 0131 271 3302 Fax: 0131 271 3537 Email: [planning-applications@midlothian.gov.uk](mailto:planning-applications@midlothian.gov.uk)

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100601542-004

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

## Applicant or Agent Details

Are you an applicant or an agent? \* (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

☐ Applicant ☒ Agent

## Agent Details

Please enter Agent details

Company/Organisation:

Ref. Number:

You must enter a Building Name or Number, or both: \*

First Name: \*

Building Name:

Last Name: \*

Building Number:

Telephone Number: \*

Address 1 (Street): \*

Extension Number:

Address 2:

Mobile Number:

Town/City: \*

Fax Number:

Country: \*

Postcode: \*

Email Address: \*

Is the applicant an individual or an organisation/corporate entity? \*

☒ Individual ☐ Organisation/Corporate entity

## Applicant Details

Please enter Applicant details

Title:	<input type="text" value="Mr"/>	You must enter a Building Name or Number, or both: *
Other Title:	<input type="text"/>	Building Name: <input type="text"/>
First Name: *	<input type="text" value="Haysam Khan"/>	Building Number: <input type="text" value="38-42"/>
Last Name: *	<input type="text" value="Sarwani"/>	Address 1 (Street): * <input type="text" value="Hamilton Crescent"/>
Company/Organisation	<input type="text"/>	Address 2: <input type="text"/>
Telephone Number: *	<input type="text"/>	Town/City: * <input type="text" value="Newtongrange"/>
Extension Number:	<input type="text"/>	Country: * <input type="text" value="United Kingdom"/>
Mobile Number:	<input type="text"/>	Postcode: * <input type="text" value="EH22 4BU"/>
Fax Number:	<input type="text"/>	
Email Address: *	<input type="text"/>	<input type="text"/>

## Site Address Details

Planning Authority:	<input type="text" value="Midlothian Council"/>
Full postal address of the site (including postcode where available):	
Address 1:	<input type="text" value="40-42 HAMILTON CRESCENT"/>
Address 2:	<input type="text" value="NEWTONGRANGE"/>
Address 3:	<input type="text"/>
Address 4:	<input type="text"/>
Address 5:	<input type="text"/>
Town/City/Settlement:	<input type="text" value="DALKEITH"/>
Post Code:	<input type="text" value="EH22 4BU"/>

Please identify/describe the location of the site or sites

Northing	<input type="text" value="664768"/>	Easting	<input type="text" value="333974"/>
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## Description of Proposal

Please provide a description of your proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority: \*  
(Max 500 characters)

Proposed 3No Apartments Over Existing Retail Units

## Type of Application

What type of application did you submit to the planning authority? \*

- ☐ Application for planning permission (including householder application but excluding application to work minerals).
- ☐ Application for planning permission in principle.
- ☐ Further application.
- ☐ Application for approval of matters specified in conditions.

What does your review relate to? \*

- ☐ Refusal Notice.
- ☐ Grant of permission with Conditions imposed.
- ☐ No decision reached within the prescribed period (two months after validation date or any agreed extension) – deemed refusal.

## Statement of reasons for seeking review

You must state in full, why you are seeking a review of the planning authority's decision (or failure to make a decision). Your statement must set out all matters you consider require to be taken into account in determining your review. If necessary this can be provided as a separate document in the 'Supporting Documents' section: \* (Max 500 characters)

Note: you are unlikely to have a further opportunity to add to your statement of appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account.

You should not however raise any new matter which was not before the planning authority at the time it decided your application (or at the time expiry of the period of determination), unless you can demonstrate that the new matter could not have been raised before that time or that it not being raised before that time is a consequence of exceptional circumstances.

The concerns raised within the Planning report were not discussed with the appliance or agent giving an opportunity of redesign, i.e. overlooking at stair access which is noted as not significant to the overlooking of the existing No36 property however significant to No44. Looking at the proposals 3No 1 Bedroom properties could have been provided with access adjacent to No36, this would increase the amenity, reduce impact on neighbouring properties and reduce the parking requirements.

Have you raised any matters which were not before the appointed officer at the time the Determination on your application was made? \*

☐ Yes ☐ No

If yes, you should explain in the box below, why you are raising the new matter, why it was not raised with the appointed officer before your application was determined and why you consider it should be considered in your review: \* (Max 500 characters)

No discussion with the appointed Planning Officer was made during the Planning process.



Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review. You can attach these documents electronically later in the process: \* (Max 500 characters)

Existing photos, plans, elevations and plans/elevation of proposed also attached.

## Application Details

Please provide the application reference no. given to you by your planning authority for your previous application.

22/00720/DPP

What date was the application submitted to the planning authority? \*

05/10/2022

What date was the decision issued by the planning authority? \*

02/12/2022

## Review Procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. \*

☐ Yes ☐ No

In the event that the Local Review Body appointed to consider your application decides to inspect the site, in your opinion:

Can the site be clearly seen from a road or public land? \*

☐ Yes ☐ No

Is it possible for the site to be accessed safely and without barriers to entry? \*

☐ Yes ☐ No

## Checklist – Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

Have you provided the name and address of the applicant? \*

☐ Yes ☐ No

Have you provided the date and reference number of the application which is the subject of this review? \*

☐ Yes ☐ No

If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? \*

☐ Yes ☐ No ☐ N/A

Have you provided a statement setting out your reasons for requiring a review and by what procedure (or combination of procedures) you wish the review to be conducted? \*

☐ Yes ☐ No

Note: You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. You may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and Drawings) which are now the subject of this review \*

☐ Yes ☐ No

Note: Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice (if any) from the earlier consent.

## **Declare – Notice of Review**

I/We the applicant/agent certify that this is an application for review on the grounds stated.

Declaration Name: Mr Scott Allan

Declaration Date: 10/01/2023

## MIDLOTHIAN COUNCIL

### DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

**Planning Application Reference:** 22/00720/DPP

**Site Address:** 40 - 42 Hamilton Crescent, Newtongrange, EH22 4BU

#### **Site Description:**

The application site comprises a single storey commercial building of pitch roof construction with flat roof element to the rear, located within a predominantly residential area. The property is located on the bend of Hamilton Crescent and is bound by residential properties to the rear, with Mansfield Road to the north east. There is a unit operating as a takeaway located to the east of the property, on the opposite side of Hamilton Crescent. The unit is currently utilised as a retail unit.

#### **Proposed Development:**

Extension of building at first floor level to form 3 flatted dwellings above existing shop and associated works

#### **Proposed Development Details:**

It is proposed to extend the existing building at first floor level to form 3 flatted dwellings above the existing shop unit. The proposed additional level will extend 2.4m above the pitch of the existing unit reaching a maximum height of 8m. The maximum eaves height is proposed to be 6.8m. The flats are proposed to cover the full length of the existing unit and be of pitched roof construction, at a width of 6.8m. There is an additional hipped roof section projecting to the rear of the roof to be 3.6m deep and 9.1m in length. This will project to the rear of the existing extent of built development at ground floor. The additional area of roof to the ground floor unit will be of flat roof construction and form means of access and amenity space associated with the dwellings proposed.

To the north west and south east elevations of the property it is proposed to install access stairs and associated platforms to allow access from the ground floor to the units at first floor. These will reach a maximum height of 3.6m to the north west elevation, and 3.3m to the south east elevation. The stairs include one landing platform half way up, with further landing platform at the top of the stairs. It is proposed to install balustrade of 1m in height to the stairs and landing platforms.

It is proposed to include balcony area to the rear of the first floor located externally on a flat roof section of the ground floor unit to be utilised for access to the flat, along with bike storage, and external amenity space associated with one of the flats. Flat no.3 will have private access at first floor level with balcony area of 6.9m<sup>2</sup>. This will be accessed via stairs located to the north west of the property. The stairs to the south east will serve as access points to flat no.1 and no.2 along with amenity space for flat no.1. The balcony area here will be 28.9m<sup>2</sup>. The balcony areas are separated

by the hipped roof segment of the proposed internal accommodation. The balcony areas are proposed to be bound by a fence to be 1.8m in height.

The accommodation at first floor level is proposed to feature 6 windows along the principle elevation with 2 windows serving each flat. To the rear it is proposed to install front door and singular window to both the north west and south east elevation of the projecting segment of the proposed accommodation. To the rear elevation it is proposed to install one window to at the western side, with a further three windows and access door to the eastern side of the elevation. No openings are proposed to the rear elevation which abuts the rear boundary of the unit.

The development is to be finished in off-white smooth render with grey hyperion cladding to the principle elevation. The roof is to be finished in grey concrete tiles with windows and doors to be grey upvc. The external stairs are proposed to comprise galvanised steel with 1.8m high composite clad fencing to be utilised at first floor level. No details of boundary treatments have been submitted.

The level of proposed external amenity space of each unit is as follows:

Flat no.1 – 11 m<sup>2</sup>

Flat no.2 – 17 m<sup>2</sup>

Flat no.3 – 17 m<sup>2</sup>

The proposals do not include the provision of any parking spaces. Refuse storage is to be located to the rear of each side elevation. The existing plant and machinery associated with the commercial unit at ground floor is to be relocated from the roof to the rear elevation of the unit at ground floor level.

### **Background (Previous Applications, Supporting Documents, Development Briefs):**

05/00490/FUL - Change of use from retail to hot food take away - 38 Hamilton Crescent, Newtongrange, Midlothian, EH22 4BU – Refused 2005

### **Consultations:**

The Council's **Senior Manager Neighbourhood Services (Roads)** recommends the application be refused due to road safety concerns over the failure to provide any resident or visitor parking in association with the proposals. A minimum of 3 residential spaces with 2 visitor spaces would be required for a development of this scale. Developments which have no independent parking put additional pressure on the limited number of on-street spaces presently available and can lead to an increase in inconsiderate or illegal parking in the surrounding area.

The Council's **Senior Manager Protective Services** has raised concerns about potential nuisance from the proposed relocation of plant and machinery associated with the commercial unit affecting the proposed attached, and existing nearby domestic properties through structure borne and airborne noise or vibration from plant.

The Council's **Education Resource Manager** confirms contributions would be required for education provision.

**Scottish Water** raised no objection to the proposals. The applicant should be aware that this does not confirm that the proposed development can currently be serviced.

### **Representations:**

Four representations have been submitting objecting on the following grounds.

- Privacy concerns with direct overlooking to rear gardens and existing residential properties;
- Privacy concerns with access and proposed external stairs proposed in line with windows of existing residential properties;
- Traffic concerns with increase in volume of traffic arising from the proposed development;
- Increase pressure on existing parking provision with associated road safety concerns;
- Traffic issues owing to deliveries to the existing shop at the site;
- Concern over access to the proposed dwellings;
- Concern over the level of amenity afforded to future residents of the proposed dwellings;
- Noise concerns relating to additional dwellings in area;
- Noise concerns over proposed access to dwellings;
- Noise concerns during construction period;
- Proposals would be detrimental to the character of the area with the site having never been in residential use;
- Loss of sunlight to gardens.

### **Relevant Planning Policies:**

The relevant policies of the **Midlothian Local Development Plan 2017** are;

**Policy DEV2: Protecting amenity within the built-up area** seeks to protect the character and amenity of the built-up area.

**Policy DEV5: Sustainability in New Development** sets out the requirements for development with regards to sustainability principles.

**Policy DEV6: Layout and Design of New Development** states that good design and a high quality of architecture will be required in the overall layout of development proposals. This also provides guidance on design principles for development, materials, access, and passive energy gain, positioning of buildings, open and private amenity space provision and parking.

**Policy DEV7: Landscaping in New Development** requires development proposals to be accompanied by a comprehensive scheme of landscaping. The design of the scheme is to be informed by the results of an appropriately detailed landscape assessment.

**Policy TRAN5: Electric Vehicle Charging** seeks to support and promote the development of a network of electric vehicle charging stations by requiring provision to be considered as an integral part of any new development or redevelopment proposals.

**Policy IT1: Digital Infrastructure** supports the incorporation of high speed broadband connections and other digital technologies into new homes, business properties and redevelopment proposals.

**IMP1: New Development** seeks to ensure that appropriate provision is made for a need which arises from new development. Of relevance in this case are education provision, transport infrastructure; contributions towards making good facility deficiencies; affordable housing; landscaping; public transport connections, including bus stops and shelters; parking in accordance with approved standards; cycling access and facilities; pedestrian access; acceptable alternative access routes, access for people with mobility issues; traffic and environmental management issues; protection/management/compensation for natural and conservation interests affected; archaeological provision and 'percent for art' provision; and

**IMP2: Essential Infrastructure Required to Enable New Development to Take Place** states that new development will not take place until provision has been made for essential infrastructure and environmental and community facility related to the scale and impact of the proposal. Planning conditions will be applied and; where appropriate, developer contributions and other legal agreements will be used to secure the appropriate developer funding and ensure the proper phasing of development.

The policy **DP2 Development Guidelines**, from the now superseded 2008 Midlothian Local Plan, set out the development guidelines that are to be applied for residential developments. The policy set the standards that should be applied when considering applications for dwellings. The guidance set out within this policy has been successfully applied to development proposals throughout Midlothian and will be reflected within the Council's Supplementary Guidance (SG) on Quality of Place which is currently being drafted.

### **Planning Issues:**

The main planning issue to be considered is whether or not the proposal complies with the development plan policies and, if not, whether there are any material planning considerations which would otherwise justify approval.

### **Principle of Development**

The site is located in a residential area within the built up area of Newtongrange where there is a presumption in favour of compatible developments and so the principle of development is supported, provided this does not detract materially from the character or amenity of the area and complies with any other relevant policies.

## Layout and Design

The proposed development seeks to create an additional storey to an existing single storey building. The surrounding area is predominantly characterised by two storey terraced housing of pitched roof construction. The creation of an additional level of accommodation at the site would be in keeping with the character of the surrounding area and would not appear as being disproportionate to surrounding development as viewed from public viewpoints.

The proposed materials provide for a modern design approach with use of smooth render, grey cladding and grey upvc windows, whilst respecting the existing character of the area. The proposed use of materials would not lead to the development being out of place with its surroundings.

## Amenity of future occupants

The proposed development seeks the creation of three flatted dwellings. Flatted properties should be provided with communal private open space conveniently located for the use of residents. The land supplied for this purpose should, in respect of this application, equate to 150 sqm. As submitted the proposals state that they will provide 45 sqm of amenity space in total in the form of three separate 'drying areas' – one per flatted dwelling. Two of these drying areas will be located to the rear of the building between the rear elevation of the shop premises and the boundary of the site, and one area will be provided at first floor level bound by the proposed 1.8m high balustrade. The proposed dwellings are not provided with an acceptable level of amenity ground.

Whilst the proposals fail to meet the standard with regard to provision of communal private open space, it is noted that the site is within proximity to existing open space which could be utilised by future residents, with Welfare Park located some 0.3km from the site. Additionally, whilst this policy requires the provision of outdoor space for new residential development, where an existing building is to be re-developed it can sometimes be appropriate to make allowance for the constraints of the particular site, if the amenity of the properties created and the overall quality of the development are otherwise of a high standard, with respect of outlook and the levels of daylight provided.

The design of the proposed dwellings with proposed 1.8m high fencing to the rear of the block will create an undesired perception of enclosure to the outlook of the dwellings, and will impact on the level of sunlight and daylight received to the windows at the rear of the proposed flats. The windows to the rear of the proposed dwellings serve both bedroom windows and kitchen windows and therefore these are considered to be habitable rooms where sufficient levels of daylight and sunlight should be facilitated.

On balance, it is concluded that the proposed level of amenity afforded to future residents through both internal standards and external open space provision is not acceptable.

### Amenity of the surrounding area

There is potential for significant impact to the amenity of existing properties in the vicinity of the site. The property at no.36 Hamilton Crescent sits at a lower ground level to the application site. The proposed flatted dwellings will therefore sit at an elevated level as viewed from the gardens of existing property. The proposed development will sit some 1.9m off the boundary of no.36 to the rear and will be very prominent when within the garden of no.36, leading to a detrimental impact to the amenity of the existing occupants. There is only 6m between the rear elevation of the application property and the rear elevation of no. 36. At two storey the proposed additional development will be very overbearing to the outlook from the garden of this property. It will also be overbearing to the outlook from a ground floor windows on the rear of this property which serve both a living room and kitchen.

The proposed balcony area at first floor level on the rear of the proposed flats will give rise to direct overlooking of the rear garden of this property at close proximity and will have direct views in to the ground floor kitchen window and first floor bedroom window at this property with a detrimental impact on the privacy of the existing property.

The proposed access steps and associated platform will allow views into the garden of no.36. However, due to the consideration of their primary function to provide access to the properties, the impact on the amenity of the neighbouring property at no.36 as a direct result of the access stairs is not significant.

Given the sitting of the application site and the property at no.36 the proposed development will result in increased overshadowing to the garden of no. 36 in the early morning however will not impact on sunlight to the garden in the afternoon and the impact is therefore not sufficient to warrant refusal of planning permission. VSC and daylight tests were undertaken to the rear ground floor windows of the property at no.36. The windows passed both tests and it is concluded that the impact of the proposals on the available daylight and sunlight to these rooms will again not be significant to warrant refusal of the application on this basis.

The proposals will have a detrimental impact to the amenity of the existing property at no.44. The proposed creation of an additional storey of accommodation at the application site will be prominent and overbearing as viewed from the kitchen window at no.44. Further, there is concern over the impact to the privacy of the occupiers at no.44 owing to the design of the proposals with access stairs and external landing/amenity space at the proposed dwellings being positioned some 5m from the property at no.44 and within direct line of sight to the bedroom window to the rear of the existing property. The proposed bedroom window of apartment two faces directly towards to existing dwelling. Additionally, the privacy of the existing property by way of overlooking to the kitchen window will be significant and lead to a detrimental impact on the amenity of the existing property.

Owing to the sitting of the application site the proposed development will not have a significant impact on the sunlight and daylight available to the existing property and garden at no.44.



The proposed development will be a prominent as viewed from no.32 and 34 Hamilton Crescent however will not be overbearing to the outlook of the house or garden. Although the proposed development will allow for increased levels of overlooking to the gardens of the properties at no.32 and 34 Hamilton Crescent it is a consideration that the gardens of these properties are of an open nature as existing with low level boundary treatments to neighbouring properties. The resultant increase in overlooking to these properties is therefore not significant.

The proposed windows to the front of the dwellings will not give rise to any increased overlooking to surrounding residential properties.

Due to the sitting of the property within the application site, and the proximity of the application property to surrounding neighbouring properties it is unlikely that issues of overbearing and privacy to neighbouring properties could be resolved through amended design or additional features.

### Parking and Road Safety

The proposed development fails to provide any resident or visitor parking in association with the proposals. A minimum of 3 residential spaces with 2 visitor spaces would be required for a development of this scale. Developments which have no independent parking put additional pressure on the limited number of on-street spaces presently available. It is concluded that the creation of three additional dwellings to the area with no associated parking provision would lead to an increase in inconsiderate or illegal parking in the surrounding area and lead to associated road safety concerns.

Traffic issues relating to the existing use of the site as a retail unit are not for consideration in relation to this application. The existing shop constitutes an existing approved use of the site.

### Other Matters

No details of boundary treatments or landscaping have been submitted in association with the application. Should permission be granted the submission of such details could be attached as conditions.

Should planning permission be approved, developer contributions would be required for two of the proposed flats (two bedroom units). Contributions would include towards education provision.

The noise arising from the creation of three additional dwellings in this location is not likely to have a significant impact on neighbour amenity. Noise linked to the construction period is controlled through legislation set by environmental health department at the council and is better controlled through their legislation rather than through planning measures and so a condition to control noise throughout the construction period will not be attached.

As part of the works associated with the planning application the existing plant machinery related to the existing ground floor commercial unit is proposed to be

relocated to the rear elevation of the property at ground floor level as identified on the submitted plans. The Council's Senior Manager Protective Services has raised concerns about potential nuisance from the proposed relocation of plant and machinery associated with the commercial unit affecting the proposed attached, and existing nearby domestic properties through structure borne and airborne noise or vibration from plant. On account of this, the potential impacts would further reduce the amenity of the proposed properties for future residents. Additionally, without adequate mitigation, the proposed relocation of the plant machinery may result negatively on the amenity of existing neighbouring properties. The planning authority therefore cannot be satisfied that the proposed relocation of plant and machinery would not result in an unacceptable impact on neighbouring amenity.

Overall, all relevant matters have been taken into consideration in determining this application. It is not considered that the proposal accords with the principles and policies of the adopted Midlothian Local Development Plan 2017 and is not acceptable in terms of all other applicable material considerations. Therefore, it is recommended that the application is refused.

**Recommendation:**

Refuse planning permission

**Reg. No. 22/00720/DPP**

Scott Allan  
36 Wallace Avenue  
Wallyford  
EH21 8BZ

Midlothian Council, as Planning Authority, having considered the application by Mr Haysam Khan Sarwani, 38-42 Hamilton Crescent, Newtongrange, EH22 4BU, which was registered on 5 October 2022 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

**Extension of building at first floor level to form 3 flatted dwellings above existing shop and associated works at 40 - 42 Hamilton Crescent, Newtongrange, EH22 4BU**

In accordance with the application and the following documents/drawings:

<u>Document/Drawing.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Proposed Elevations and Cross Section	2022-079-003A	04.10.2022
Proposed Floor and Elevations	2022-070-002A	05.10.2022
Existing Floor, Elevations, Illustrations and Site Plan	2022-079-001	05.10.2022
Location Plan	2022-79-000	05.10.2022
Illustration/Photograph	Planning Photos	05.10.2022
Supporting statement	Sun Study	05.10.2022

The reasons for the Council's decision are set out below:

- 1. The proposed development would have an overbearing impact to the properties at no.36 Hamilton Crescent no.44 Hamilton Crescent to the significant detriment of existing occupants.*
- 2. The proposed development will result in an unacceptable adverse impact on the residential amenity of surrounding properties and their associated garden ground, through significant adverse impact on privacy.*
- 3. The proposed flatted dwellings do not benefit from adequate usable amenity space for future residents as the proposal does not provide adequate external open space provision, and the proposed flats would have a poor outlook with an unacceptable standard of internal amenity for future occupants.*
- 4. The proposed development fails to provide any resident or visitor parking in association with the proposals. It has not been demonstrated to the satisfaction of the Planning Authority that the proposed dwellinghouses could be afforded an adequate level of off-street parking spaces. The proposed development would lead to an increase in inconsiderate or illegal parking in the surrounding area and would have a harmful impact on road safety within the local area.*

5. *For the above reasons the proposed development is considered to be an overdevelopment of the site and so does not comply with policies DEV2 and DEV6 of the adopted Midlothian Local Development Plan 2017. If the proposal were approved it would undermine the consistent implementation of the policies, the objective of which is to protect the character and amenity of the built-up area and ensure that good levels of residential amenity are achieved in new developments.*

Dated 2 / 12 / 2022

A handwritten signature in dark ink, appearing to be 'DR' with a stylized flourish.

.....  
Duncan Robertson  
Lead Officer – Local Developments  
Fairfield House, 8 Lothian Road, Dalkeith, EH22 3ZN



**The Coal  
Authority**

**Any Planning Enquiries should be directed to:**

Planning and Local Authority Liaison  
Direct Telephone: 01623 637 119 (Planning Enquiries)  
Email: [planningconsultation@coal.gov.uk](mailto:planningconsultation@coal.gov.uk)  
Website: [www.gov.uk/coalauthority](http://www.gov.uk/coalauthority)

**INFORMATIVE NOTE**

The proposed development lies within an area that has been defined by the Coal Authority as containing potential hazards arising from former coal mining activity at the surface or shallow depth. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and former surface mining sites. Although such hazards are seldom readily visible, they can often be present and problems can occur in the future, particularly as a result of new development taking place.

It is recommended that information outlining how former mining activities may affect the proposed development, along with any mitigation measures required (for example the need for gas protection measures within the foundations), is submitted alongside any subsequent application for Building Warrant approval (if relevant).

Any form of development over or within the influencing distance of a mine entry can be dangerous and raises significant land stability and public safety risks. As a general precautionary principle, the Coal Authority considers that the building over or within the influencing distance of a mine entry should be avoided. In exceptional circumstance where this is unavoidable, expert advice must be sought to ensure that a suitable engineering design which takes into account all the relevant safety and environmental risk factors, including mine gas and mine-water. Your attention is drawn to the Coal Authority Policy in relation to new development and mine entries available at:

[www.gov.uk/government/publications/building-on-or-within-the-influencing-distance-of-mine-entries](http://www.gov.uk/government/publications/building-on-or-within-the-influencing-distance-of-mine-entries)

Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires a Coal Authority Permit. Such activities could include site investigation boreholes, excavations for foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain a Coal Authority Permit for such activities is trespass, with the potential for court action.

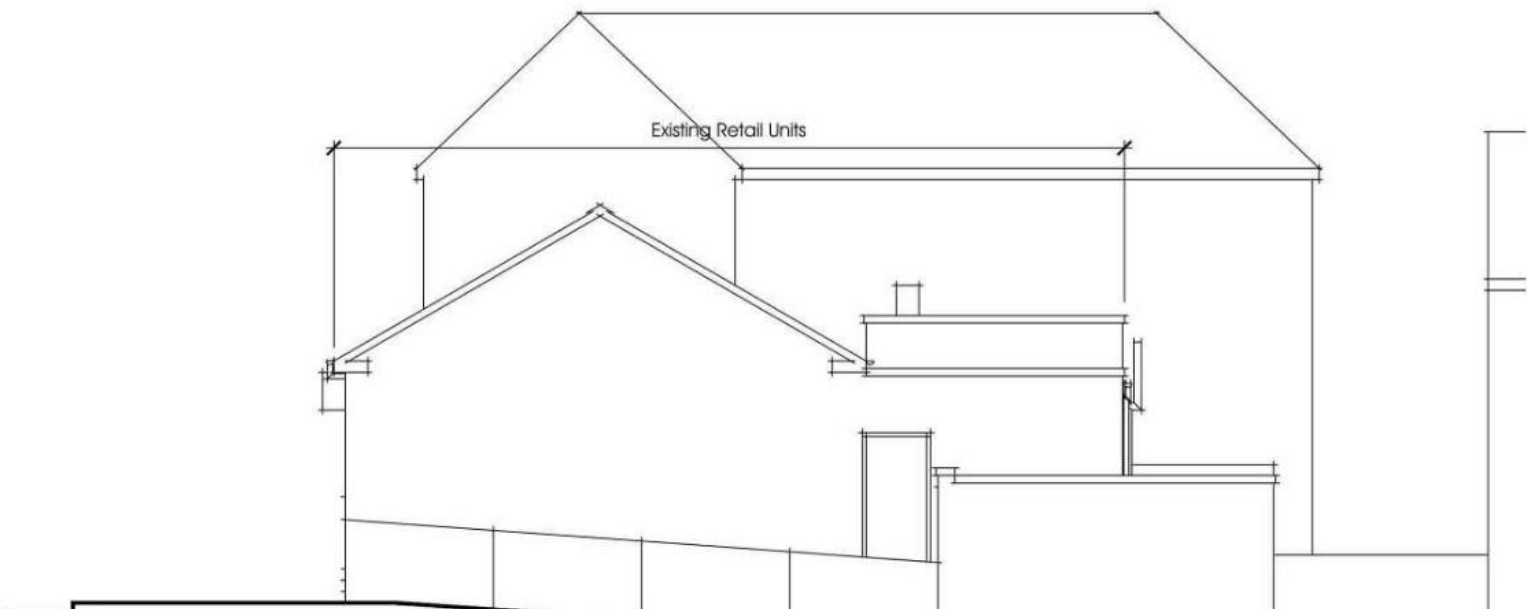
If any coal mining features are unexpectedly encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848. Further information is available on the Coal Authority website at: [www.gov.uk/government/organisations/the-coal-authority](http://www.gov.uk/government/organisations/the-coal-authority)

**Informative Note valid from 1st January 2021 until 31st December 2022**





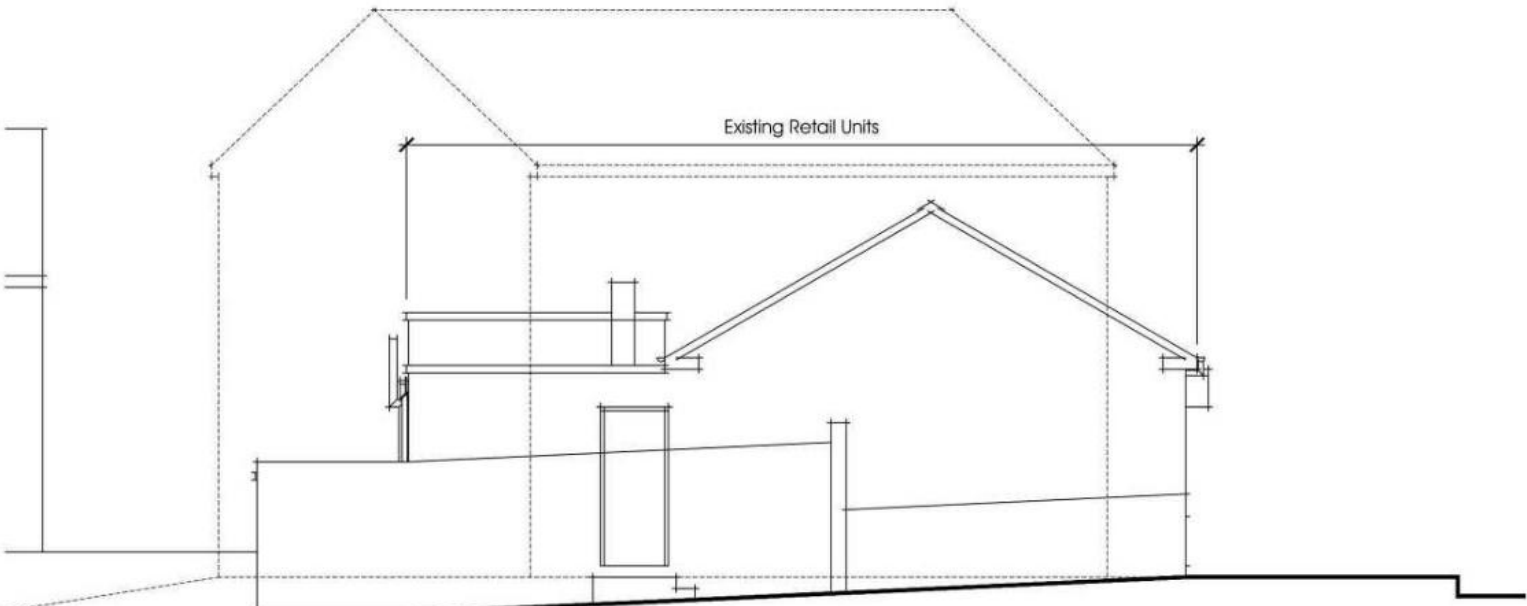
Existing North East Elevation | 1:100



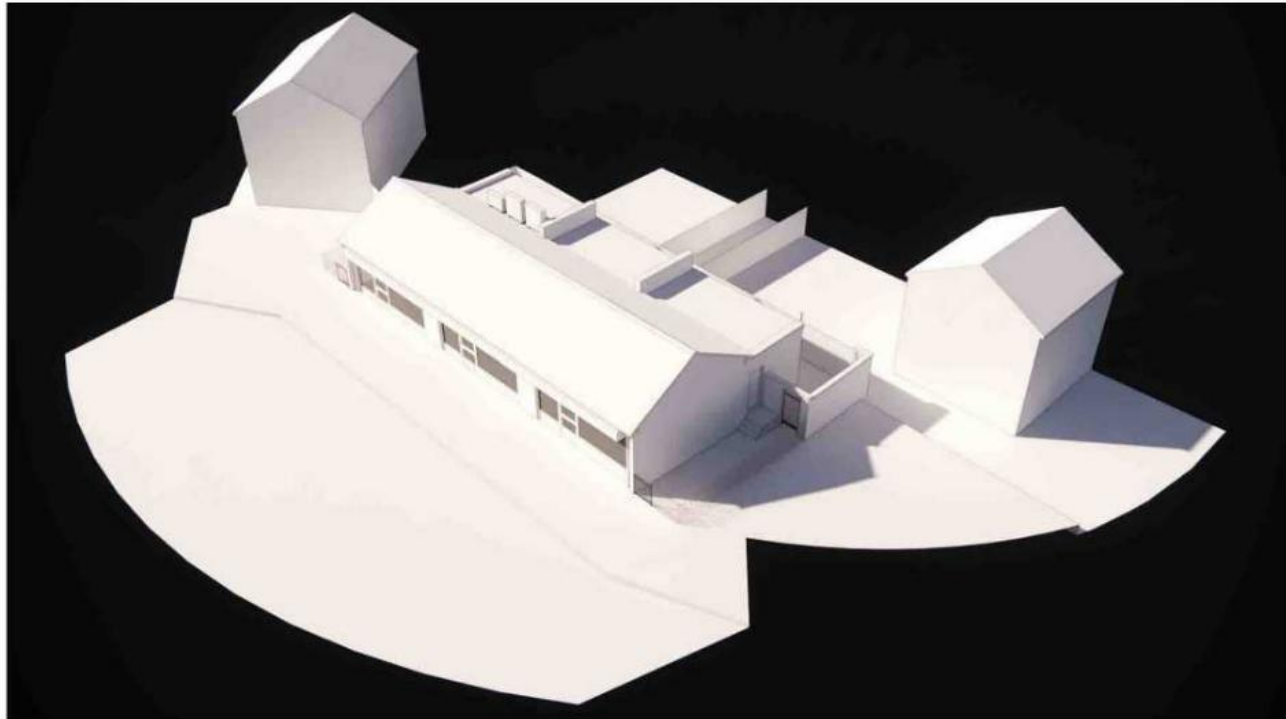
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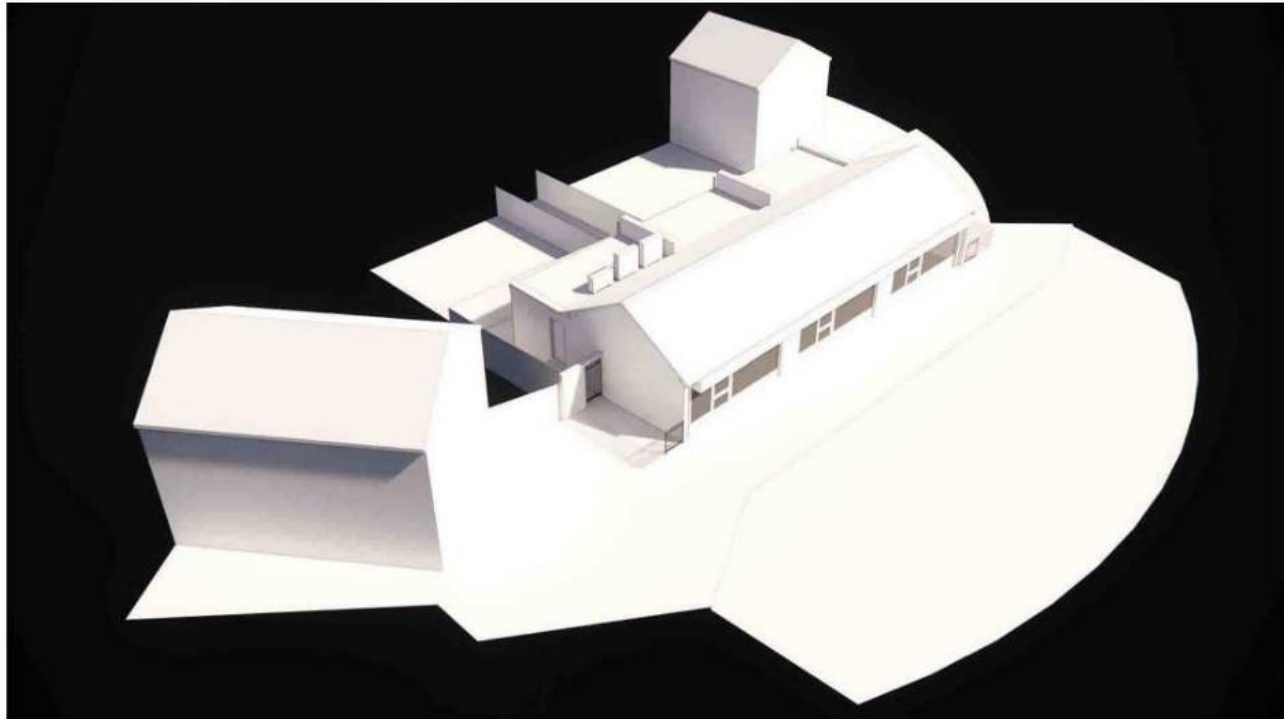
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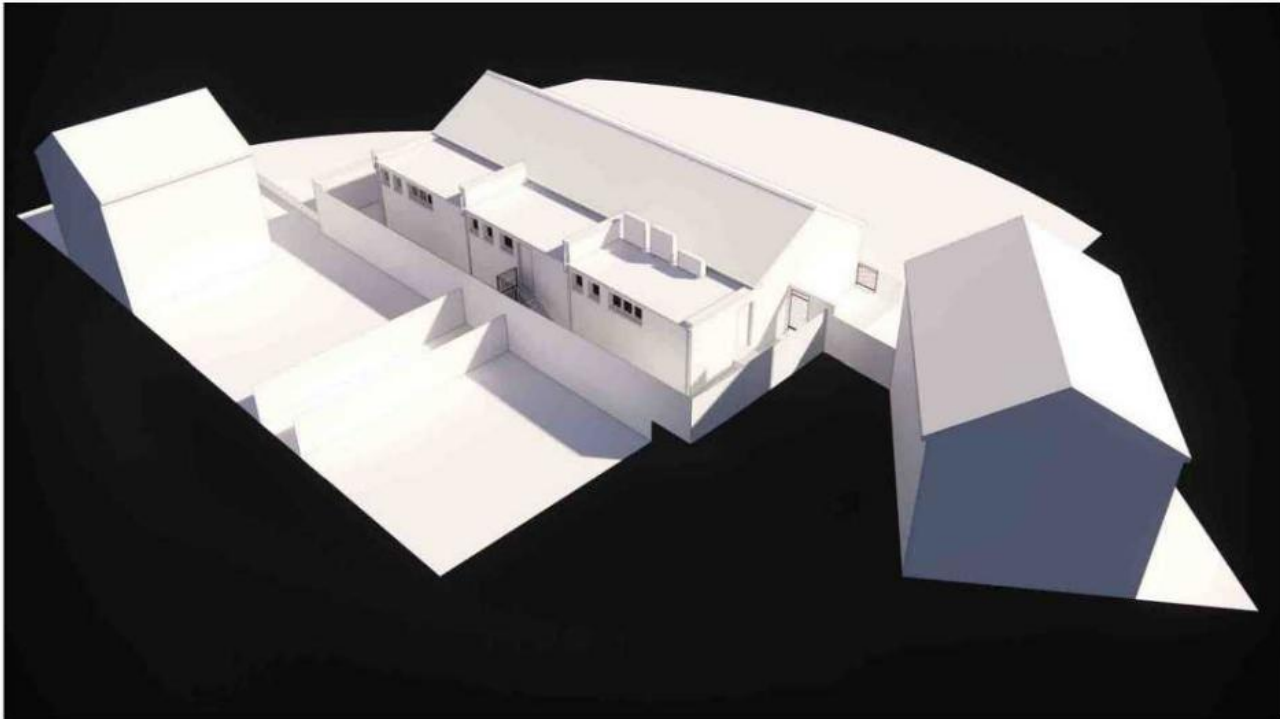
Existing South East Elevation | 1:100



Architectural Illustration 01 | NTS



Architectural Illustration 01 | NTS



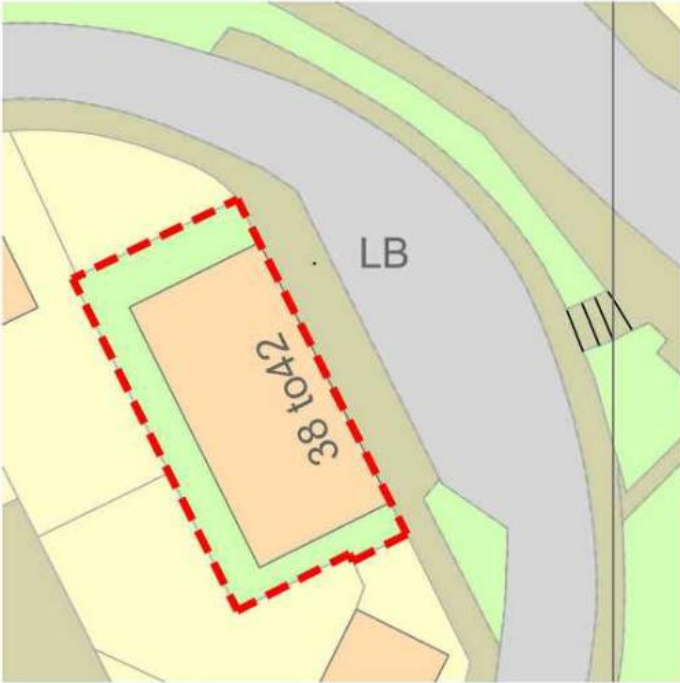
Architectural Illustration 01 | NTS



Architectural Render 01 | NTS

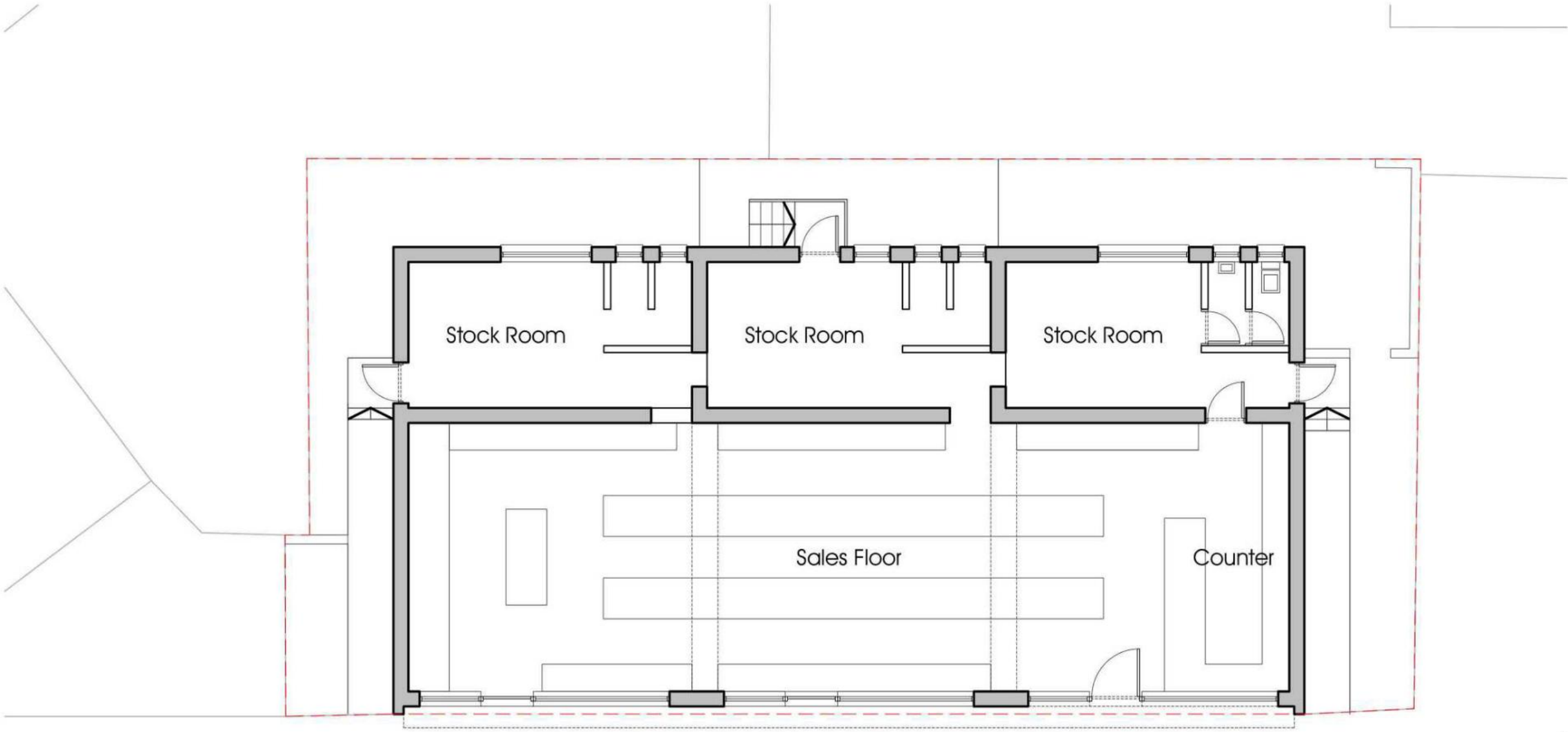


Location Plan | 1:1250

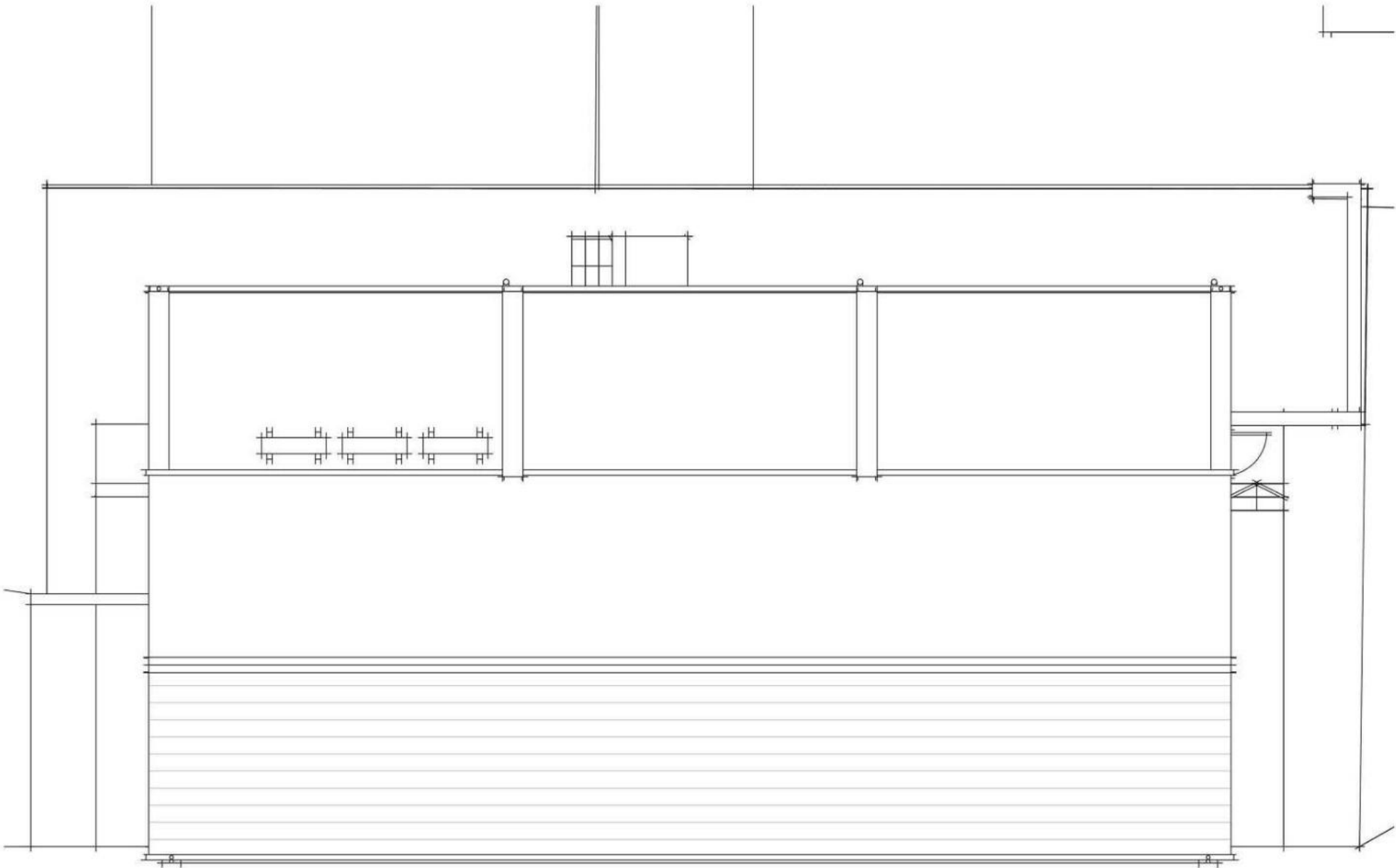


Block Plan | 1:500

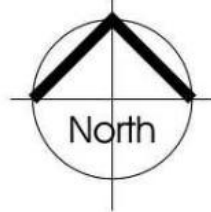
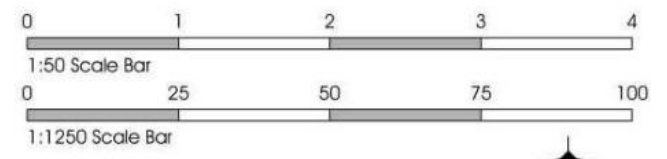
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Existing Shop Layout | 1:100



Existing Roof Plan | 1:100



Revision: Description: Date:

*Scott Francis Allan*  
Architectural Design

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Mobile: 07790 846 990 | Email: scott@ego3d.co.uk  
Facebook.com/scottfrancisallan

**Planning Permission**

Project:  
**Proposed 3No Apartments Over Existing Retail Units**  
**38-42 Hamilton Crescent,**  
**Newfongrange, EH22 4BU**

Client:  
**Haysam Khan Sarwani**

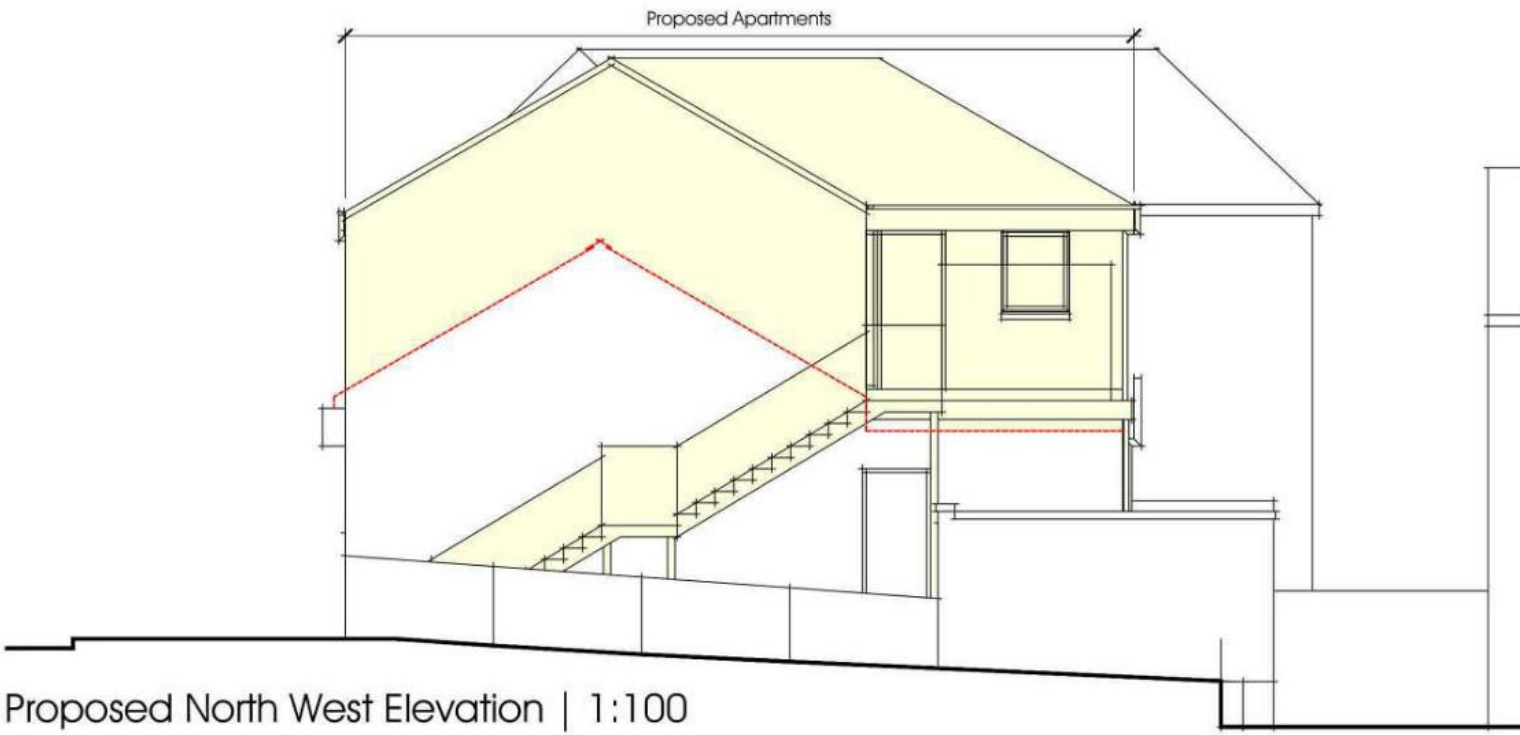
Drawing:  
**Existing Floor Plans, Site Plan, Elevations and Illustrations**

Drawing No:	Scale:	Date:	Name:	Sheet Size:
2022-79-001	As Noted	Sept 2022	SFAllan	A1

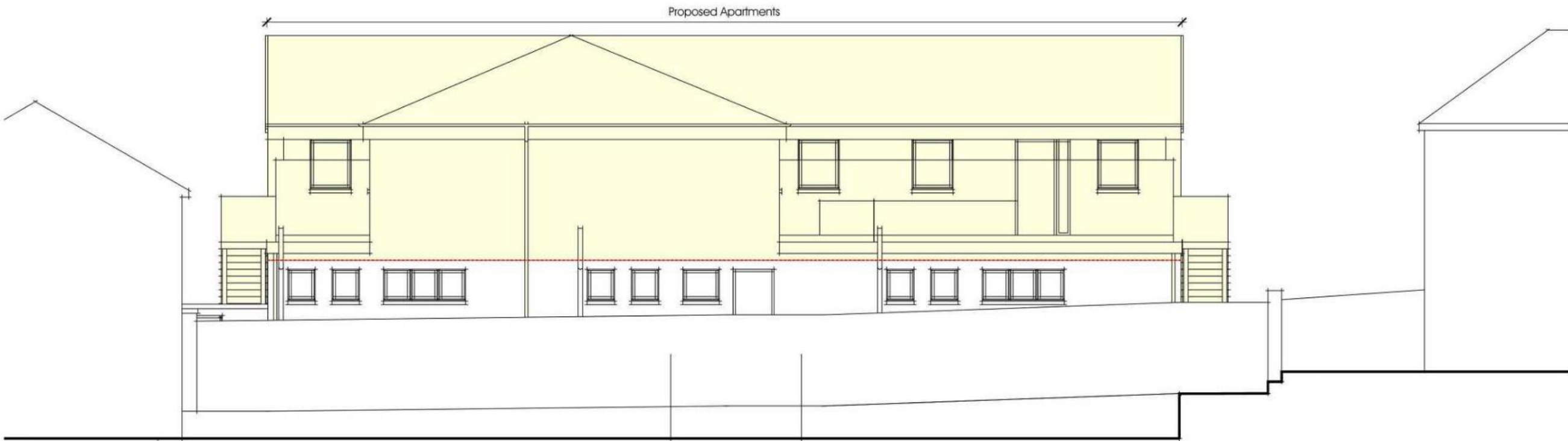




Proposed North East Elevation | 1:100



Proposed North West Elevation | 1:100



Proposed South West Elevation | 1:100



Proposed South East Elevation | 1:100



Architectural Illustration 01 | NTS



Architectural Illustration 01 | NTS



Architectural Illustration 01 | NTS



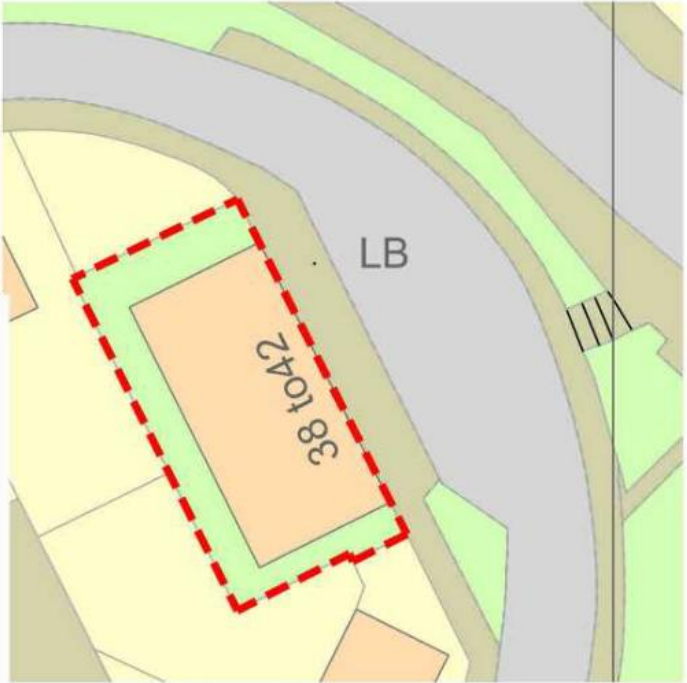
Architectural Render 01 | NTS

REFUSED  
02.12.2022  
22/00720/DPP

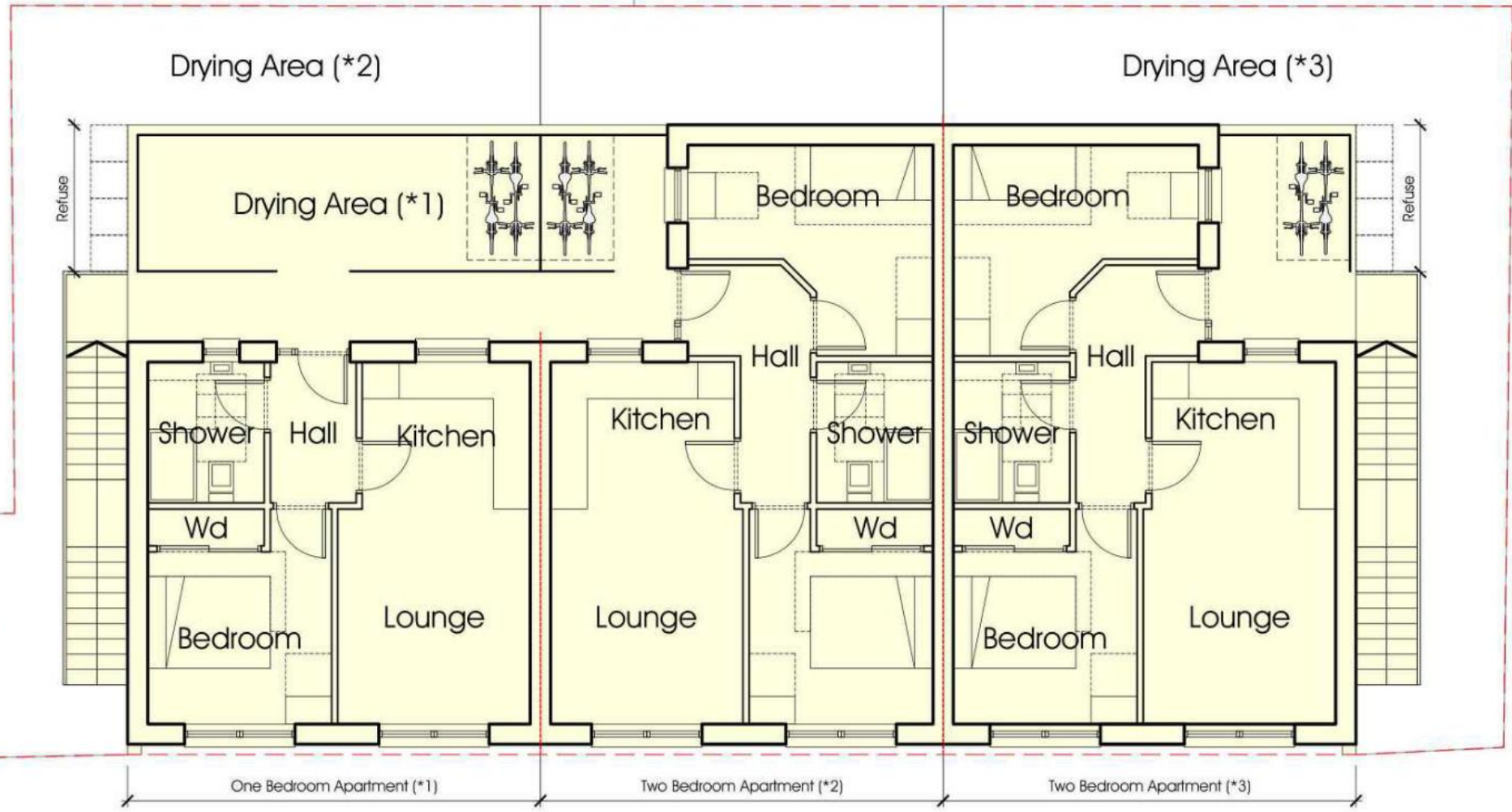
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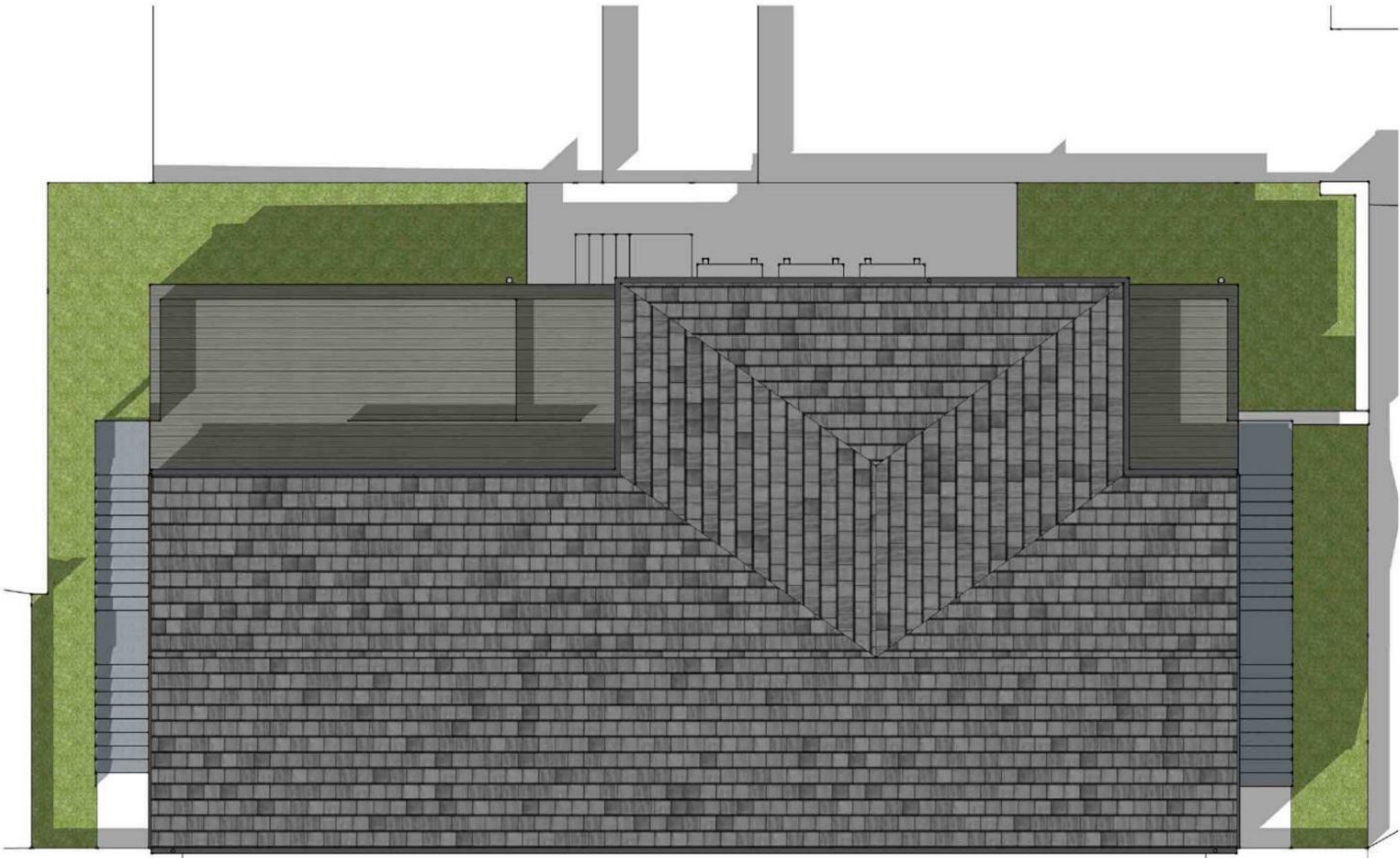
Location Plan | 1:1250



Block Plan | 1:500

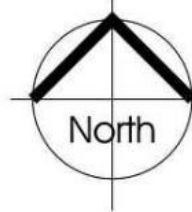
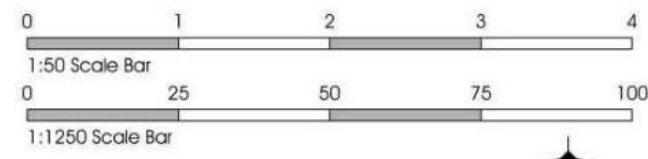


Proposed Apartment Layouts | 1:100



Proposed Roof Plan | 1:100

- Material Specification:
- External Walls - Extension
  - 1 Smooth Render (Off White)
  - 2 Hypalon Cladding (Grey)
  - Roof
  - 1 Concrete Roof Tiles (Grey)
  - 2 Soffit and Fascia (Grey)
  - Windows and Doors
  - 1 Double Glazed PVC Window/Doors (Grey)
  - Gutter and Down Pipes
  - 1 PVC Gutters (Black)
  - 2 PVC Down Pipes (Black)
  - Access
  - 1 Galvanized Steel External Stair
  - Fencing
  - 1 1800mm High Composite Clad High Level Fencing
  - Cycle Stores
  - 2 No Per Apartment
  - Areas:
  - Total Site Area:
  - Area: 300sqm
  - Development Area:
  - Area: 202sqm
  - Apartment 01:
  - Area: 37sqm
  - Drying Area: 15sqm
  - Apartment 01:
  - Area: 51sqm
  - Drying Area: 17sqm
  - Apartment 01:
  - Area: 51sqm
  - Drying Area: 17sqm



Rev | A | Updated for Planning  
Revision: Description: Date: 04/10/2022

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#### Planning Permission

Project:  
Proposed 3No Apartments Over Existing Retail Units  
38-42 Hamilton Crescent,  
Newfongrange, EH22 4BU

Client:  
Haysam Khan Sarwani

Drawing:  
Existing Floor Plan, Elevations and Illustrations

Drawing No: 2022-79-002A Scale: As Noted Date: Sept 2022 Name: SFAllan Sheet Size: A1





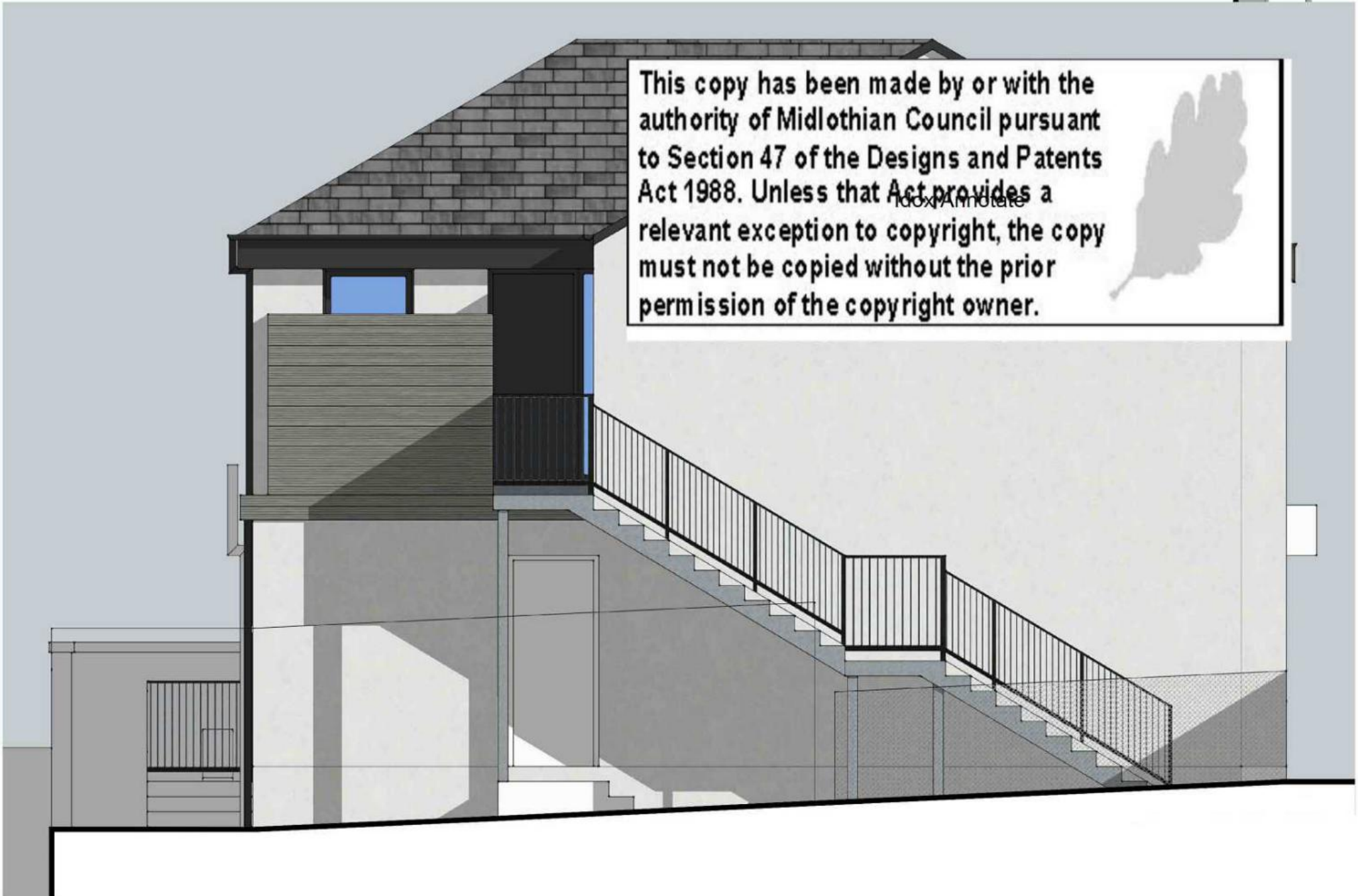
Proposed North East Elevation | 1:50



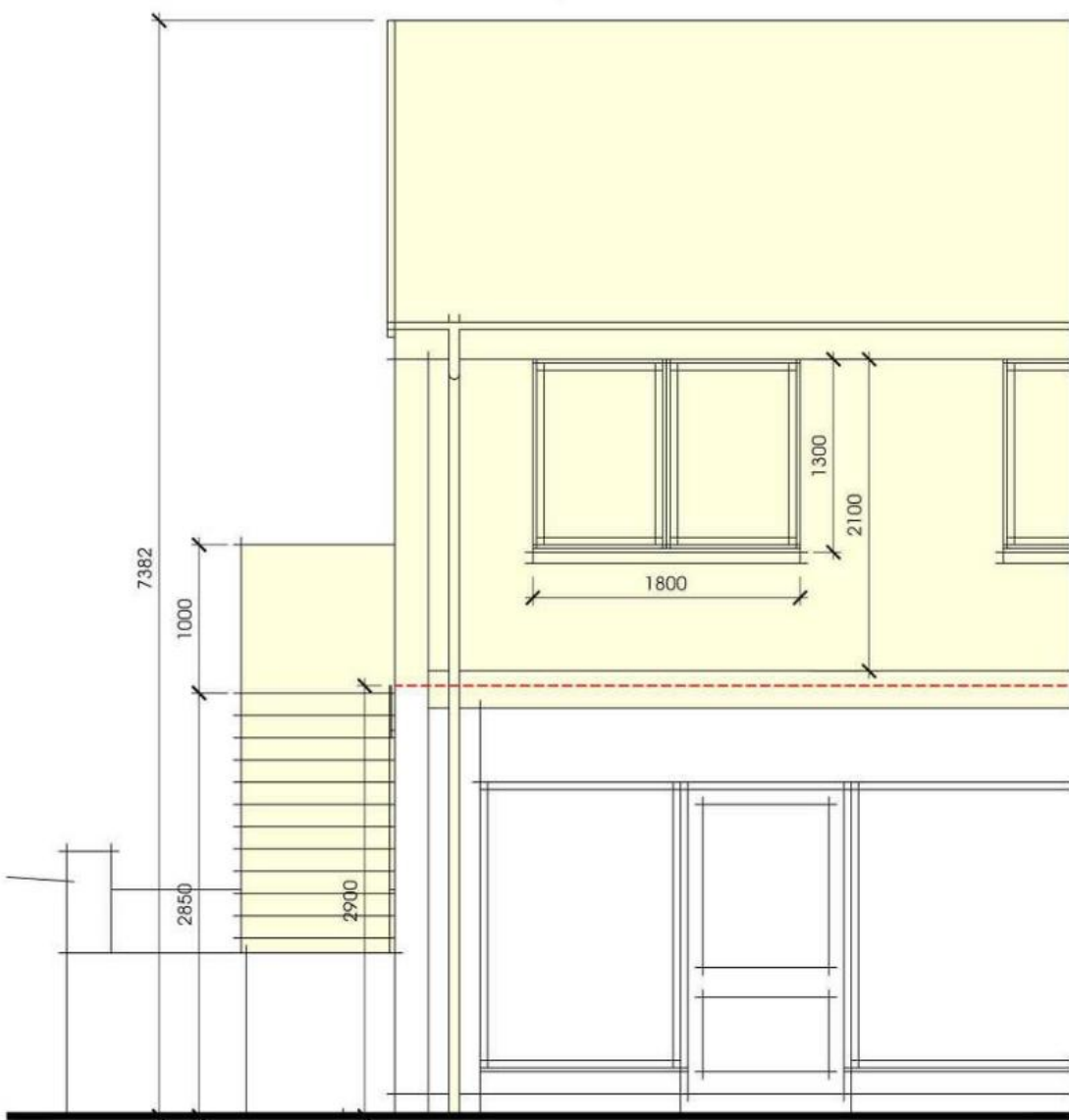
Proposed North West Elevation | 1:50



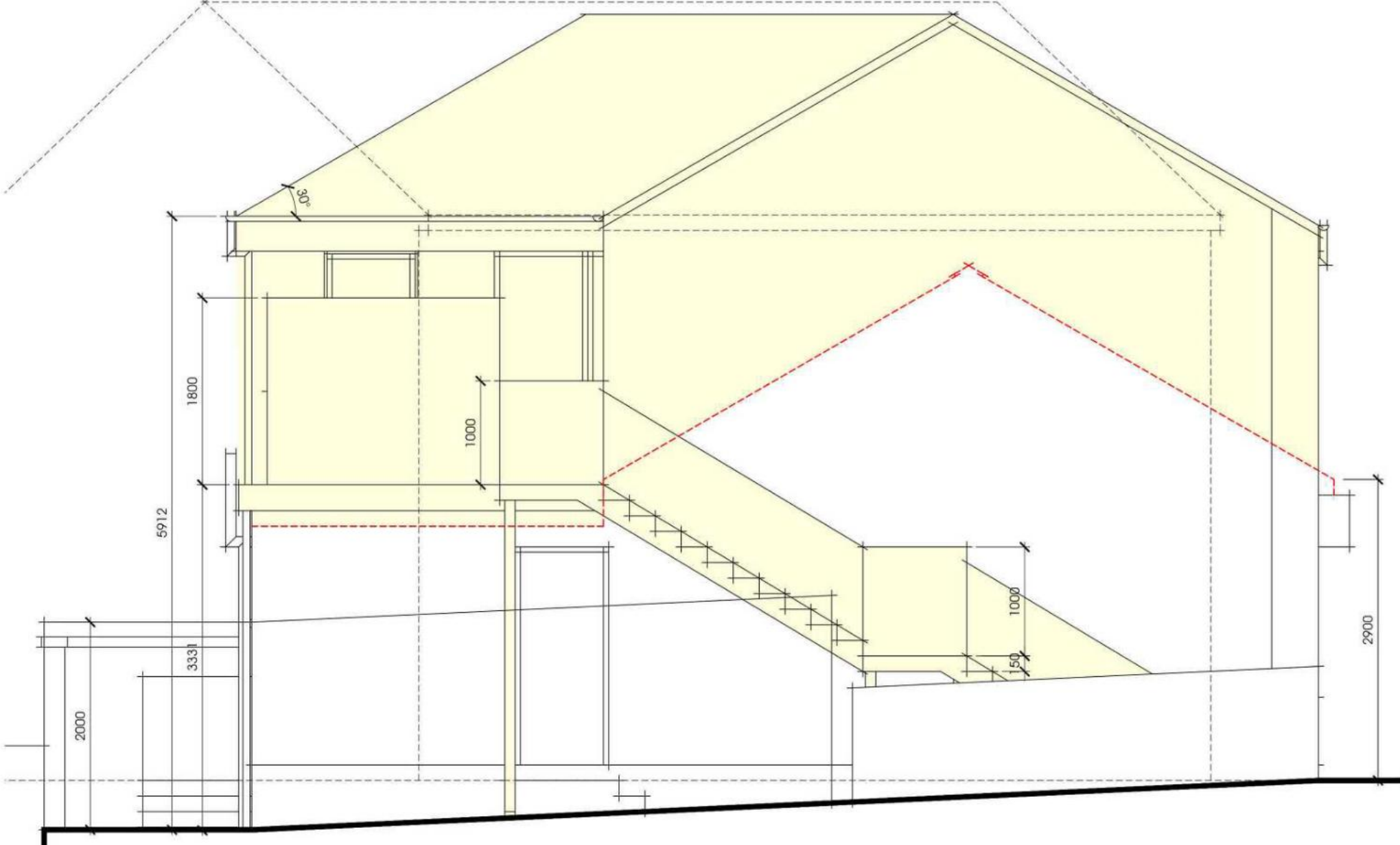
Proposed South West Elevation | 1:50



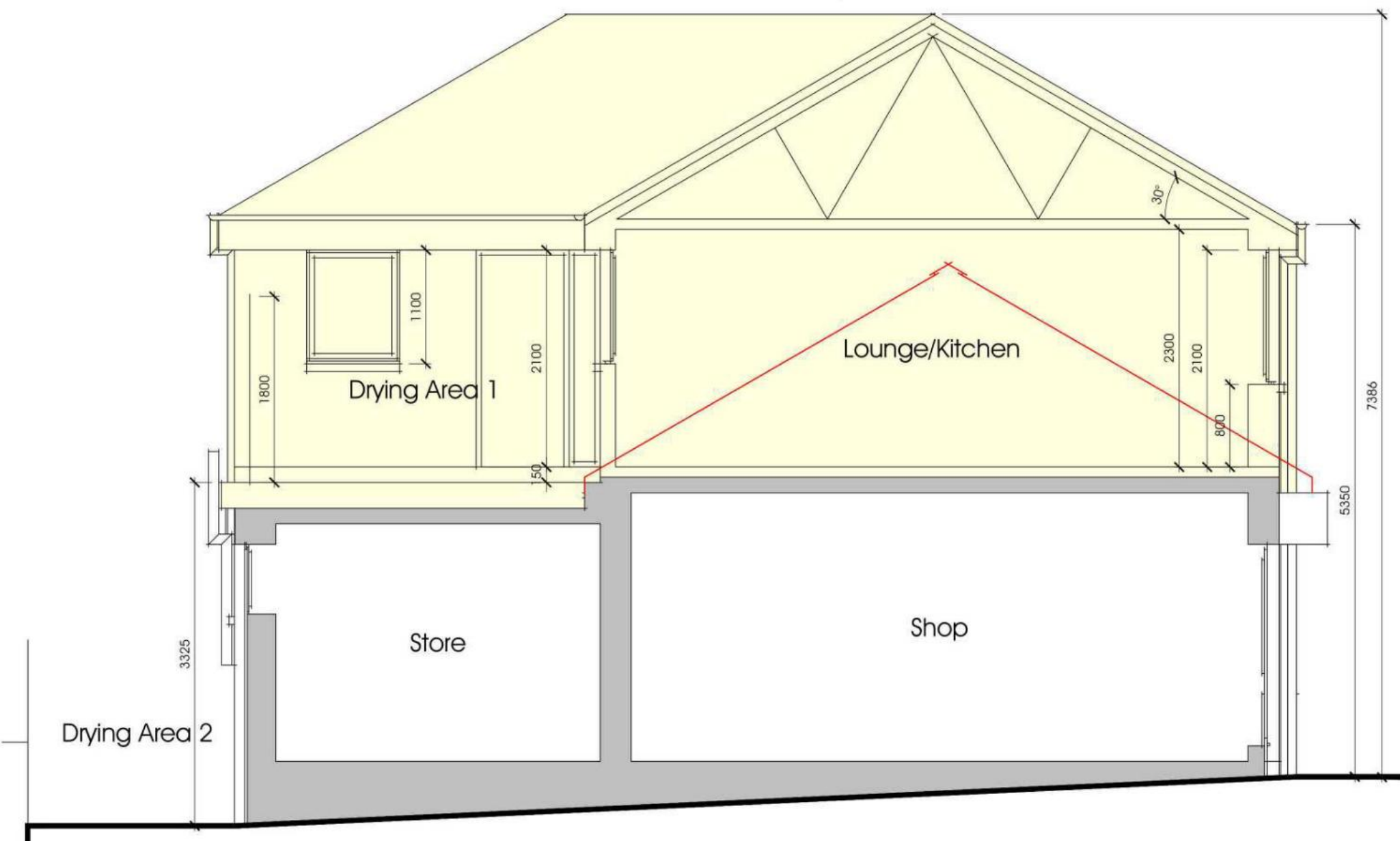
Proposed South East Elevation | 1:50



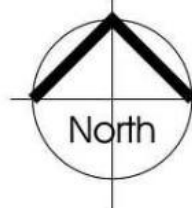
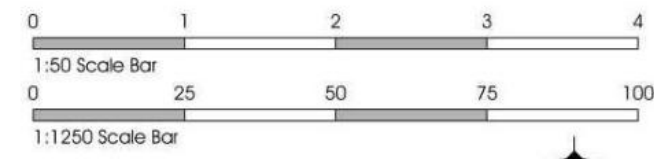
Proposed North East Elevation - Dimensions | 1:50



Proposed South East Elevation - Dimensions | 1:50



Proposed Cross Section 1:50



Rev / A Updated for Planning 03/10/2022  
Revision: Description: Date:

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**Planning Permission**  
Project:  
Proposed 3No Apartments Over Existing Retail Units  
38-42 Hamilton Crescent,  
Newfongrange, EH22 4BU

Client:  
Haysam Khan Sarwani

Drawing:  
Proposed Elevations

Drawing No. 2022-79-003A Scale: As Noted Date: Sept 2022 Name: S.F. Allan Sheet Size: A1