



APPLICATION FOR PLANNING PERMISSION 23/00791/DPP FOR THE ERECTION OF 12 FLATTED DWELLINGS; FORMATION OF CAR PARKING; AND ASSOCIATED WORKS AT LAND AT WINDSOR SQUARE, PENICUIK

Report by Chief Officer Place

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1 The application is for the erection of 12 flatted dwellings on land at Windsor Square, Penicuik. There have been nine representations from five different households and consultation responses from Scottish Water and the Council's Senior Manager Protective Services.**
- 1.2 The relevant development plan policies are policies 1, 2, 3, 6, 9, 13, 14, 15, 16, 18, 21, 22 and 23 of the National Planning Framework 4 (NPF4) and policies STRAT2, DEV2, DEV5, DEV6, DEV7, DEV8, TRAN5, IT1, ENV9, ENV10, ENV11, ENV16, IMP1, IMP2 and IMP3 of the Midlothian Local Development Plan 2017.**
- 1.3 The recommendation is to grant planning permission subject to conditions and the applicant entering into a modified planning obligation to secure contributions towards necessary infrastructure.**

2 LOCATION AND SITE DESCRIPTION

- 2.1 The application site comprises two parcels of land within an established residential area in Penicuik: an area of cleared ground that formerly accommodated a care home and a two storey house, and; an area of grassed public amenity space. The former care home was a modern single storey building with a footprint of 377 sqm. The house was a modern two-storey house which was originally used as accommodation for the caretaker associated with the care home and was laterally let as social housing. The care home and house were owned and operated by Ark Housing Association.**
- 2.2 The second parcel of land is an area of grassed amenity space measuring 1160sqm. The space is predominantly open with the exception of three small groupings of trees and hedges. The amenity space slopes uphill slightly from north to south and noticeably downhill from west to east. The eastern edge of the amenity space is approximately 2m lower than the western edge. The amenity space was for many years owned by the Council. Ark Housing Association purchased the land in May 2021.**

- 2.3 The immediate surroundings are entirely residential. The buildings are all modern two storey houses; mostly terraced with some semi-detached. The road layout at Windsor Square follows a one-way system round the square, with traffic moving in a clockwise direction. The street has on-street parking on both sides, with parking spaces marked out on the street on the inner edge of the curve.

3 PROPOSAL

- 3.1 It is proposed to erect 12 flats (10 two bed flats and two one bed flats) in three blocks of four flats. Two of the blocks will contain solely two bed flats and the buildings will be 18m wide, 8.5m deep, 5.4m tall to the eaves and 7.8m tall to the ridge of the roof. The remaining block will contain both one bed and two bed flats and that building will be 16m wide, 8.5m deep, 5.4m tall to the eaves and 7.8m tall to the ridge of the roof.
- 3.2 The walls of the buildings will be finished with white render and brown coloured fibre cement feature panels; the roofs will be finished with flat profile grey concrete roof tiles; and the windows will be dark grey uPVC units. Access to the upper flats will be via single storey porches on the front elevation of the blocks. Two of the blocks will be erected on land currently occupied by the curtilage of the former buildings; the third block will be situated at the northern side of the site on land that is currently open space. An area of open space measuring 644sqm will be retained at the eastern side of the site and an area of open space measuring 125sqm will be created at the western edge of the site. Parking will be via end on parking spaces in front of the buildings.
- 3.3 The 12 flats are to be affordable housing units provided by a Registered Social Landlord (RSL), Ark Housing Association. The units form part of the Council's Strategic Housing Investment Plan (SHIP).

Construction Methodology

- 3.4 The buildings will be constructed using a modular construction process. The ground floor of each building will comprise eight modules and the upper floor will comprise six modules. The modules are constructed off-site in a factory and are delivered to the site with internal partitions in place and the internal fit, including plumbing, electrics and decoration, completed. The modules are craned into place and the external finishes are completed on site. Modular construction systems provide improved build quality and reduced build times. The off-site construction also allows for improved manufacturing tolerances resulting in increased air tightness, which provides sustainability improvements.
- 3.5 The main modules are 6.8m in length and vary in width between 2.3m and 3.3m, and in height between 2.6m and 3.5m. The modules are delivered to site on articulated lorries and craned into position by a mobile crane. The modules will be delivered to site on a Tuesday and a Thursday, each block will require two delivery days to complete the module delivery process. Partial road closures will be required for the delivery of the modules and for sewer works.

- 3.6 The road closures will be achieved via the relevant consents from the Roads Authority and via localised traffic management. Road closures do not require planning permission. Construction of the blocks is scheduled to require 11 weeks of on-site works as opposed to 17 weeks that would be required for a typical timber kit construction process. It should be noted that the timber kit construction method that is widely used in Scotland also requires delivery of large, prefabricated timber structures to sites. Articulated lorries and mobile cranes are widely used in conventional timber kit construction methods.

4 BACKGROUND

- 4.1 Planning permission 572/86 was granted for the extension of the existing care home building to provide four extra bedrooms and the erection of a warden's house at 76 Windsor Square, Penicuik.
- 4.2 Planning permission 697/90 was granted for the construction of a vehicular access at 76 Windsor Square, Penicuik.
- 4.3 Planning application 18/00730/DPP for the erection of 20 flatted dwellings; formation of access roads and car parking; and associated works at land at Windsor Square, Penicuik was refused in January 2019. The reasons for refusal were as follows:
1. *The development would result in the loss of an area of open space that makes a positive contribution to the character and amenity of the surrounding area. The loss of the open space is contrary to policies STRAT2 and DEV2 of the Midlothian Local Development Plan 2017.*
 2. *The size, layout and allocation of private open space for the flats will provide an inadequate level of amenity for residents. The provision of private open space is contrary to policies DEV2 and DEV6 of the Midlothian Local Development Plan 2017*
 3. *The scale, proportions and design of the buildings are out of character with the surrounding area. The proposal is therefore contrary to policies DEV2 and DEV6 of the Midlothian Local Development Plan 2017.*
 4. *The development would result in a reduction in width of the existing road at Windsor Square. The impact on the width of the road is a material consideration in the assessment of the planning application.*
 5. *The development would create additional demand for parking while reducing the existing one-street parking capacity. The impact on parking is a material consideration in the assessment of the planning application.*
 6. *The development includes a formal pedestrian footway with a sub-standard width. Pedestrian safety is a material consideration in the assessment of the planning application.*
- 4.4 Planning permission 19/00510/DPP for the erection of 12 flatted dwellings; formation of access roads and car parking; and associated works at land at Windsor Square, Penicuik was approved by the Committee at their meeting in September 2020. Following the

registration of a legal agreement, to secure developer contributions, the consent was issued in June 2021.

- 4.5 A Prior Notification of the demolition of the dwellinghouse at 74 Windsor Square was submitted in January 2021. The demolition of the care home was permitted development and did not require Prior Notification. The buildings were demolished in September 2021.
- 4.6 The application has been called to Committee for determination by Councillor McCall. The reason for the call-in is to allow the Committee to examine the changes on the application in more detail.

5 CONSULTATIONS

- 5.1 **Scottish Water** does not object to the application. The water supply will be fed from Rosebery Water Treatment Works - there is currently sufficient capacity. The foul water drainage will be dealt with by Penicuik Waste Water Treatment Works. Scottish Water is unable to confirm current capacity at the Waste Water Treatment Works and consequently it is recommended that the applicant submit a Pre-Development Enquiry Form to Scottish Water to allow for assessment of capacity. It is not possible to reserve capacity for future developments – this will be subject to a separate regulatory process between the applicant and Scottish Water.
- 5.2 For reasons of sustainability and to protect Scottish Water customers from potential future sewer flooding, Scottish Water will not accept any surface water connections into the combined sewer system. There may be limited exceptional circumstances where Scottish Water allow such a connection for brownfield sites only, however this will require significant justification from the customer taking account of various factors including legal, physical and technical challenges.
- 5.3 In order to avoid costs and delays where a surface water discharge to the combined sewer system is anticipated, the developer should contact Scottish Water at the earliest opportunity with strong evidence to support the intended drainage plan prior to making a connection request. The evidence will be assessed in a robust manner and any decision will reflect the best option from environmental and customer perspectives.
- 5.4 The **Council's Education Executive Business Manager** offered no comment on the proposal.
- 5.5 The **Council's Senior Manager Neighbourhood Services (Roads)** offered no comment on the proposal.
- 5.6 The **Council's Senior Manager Protective Services** does not object to the application subject to conditions being attached to any grant of planning permission to secure site investigations and mitigation measures to address any land contamination; noise levels for air source heat pumps; and a Construction Environment Management Plan.

- 5.7 **Penicuik and District Community Council** offered no comment on the proposal.

6 REPRESENTATIONS

- 6.1 There have been nine representations, from five different households, objecting to the application all of which can be viewed in full on the online planning application case file. A summary of the objections are as follows:
- Flats are out of character with the existing housing in the area;
 - Existing problems with surface water drainage will be exacerbated by the proposed development;
 - The green space is a valuable play space for local children and its loss will have a detrimental impact on the local community;
 - The construction process will restrict access for road users and will restrict parking provision;
 - The development will create an increased demand for parking;
 - Parking is already difficult in the area;
 - The proposal will result in the felling of trees that were previously going to be retained;
 - The proposal will provide less open space than the existing consent.
 - The previous grant of planning permission resulted in four parking spaces being removed (the scheme actually resulted in the displacement of five spaces), the current application results in six spaces being removed. The square cannot afford the loss of parking spaces; and
 - Safety of children and vulnerable adults whilst trying to access their own homes.

7 PLANNING POLICY

- 7.1 The development plan is comprised of National Planning Framework 4 (2023) and the Midlothian Local Development Plan 2017.
- 7.2 The following policies are relevant to the proposal:
- National Planning Framework 4 (NPF4)
- 7.3 Policy **1 Tackling the climate and nature crisis**; sets out to encourage, promote and facilitate development that addresses the global climate emergency and nature crisis.
- 7.4 Policy **2 Climate mitigation and adaptation**; sets out to encourage, promote and facilitate development that minimises emissions and adapts to the current and future impacts of climate change.
- 7.5 Policy **3 Biodiversity**; sets out to protect biodiversity, reverse biodiversity loss, deliver positive effects from development and strengthen nature networks.
- 7.6 Policy **6 Forestry, woodland and trees**; sets out to protect and expand forests, woodland and trees.

- 7.7 Policy **9 Brownfield, vacant and derelict land and empty buildings**; sets out to encourage, promote and facilitate the reuse of brownfield, vacant and derelict land and empty buildings, and to help reduce the need for greenfield development.
- 7.8 Policy **13 Sustainable Transport**; sets out to encourage, promote and facilitate developments that prioritise walking, wheeling, cycling and public transport for everyday travel and reduce the need to travel unsustainably.
- 7.9 Policy **14 Design, quality and place**; sets out to encourage, promote and facilitate well designed development that makes successful places by taking a design-led approach and applying the Place Principle.
- 7.10 Policy **15 Local Living and 20 minute neighbourhoods**; sets out to encourage, promote and facilitate the application of the Place Principle and create connected and compact neighbourhoods where people can meet the majority of their daily needs within a reasonable distance of their home, preferably by walking, wheeling or cycling or using sustainable transport options.
- 7.11 Policy **16 Quality homes**; sets out to encourage, promote and facilitate the delivery of more high quality, affordable and sustainable homes, in the right locations, providing choice across tenures that meet the diverse housing needs of people and communities across Scotland.
- 7.12 Policy **18 Infrastructure first**; sets out to encourage, promote and facilitate an infrastructure first approach to land use planning, which puts infrastructure considerations at the heart of placemaking.
- 7.13 Policy **21 Play, recreation and sport**; sets out to encourage, promote and facilitate spaces and opportunities for play, recreation and sport.
- 7.14 Policy **22 Flood risk and water management**; sets out to strengthen resilience to flood risk by promoting avoidance as a first principle and reducing the vulnerability of existing and future development to flooding.
- 7.15 Policy **23 Health and Safety**; sets out to protect people and places from environmental harm, mitigate risks arising from safety hazards and encourage, promote and facilitate development that improves health and wellbeing.

Other National Policy

- 7.16 The **Scottish Government's Policy on Architecture for Scotland** sets out a commitment to raising the quality of architecture and design.

Midlothian Local Development Plan 2017

- 7.17 Policy **STRAT2: Windfall Housing Sites** permits housing on non-allocated sites within the built-up area provided: it does not lead to loss or damage of valuable open space; does not conflict with the established land use of the area; has regard to the character of the area in terms of scale, form, design and materials and accords with relevant policies and proposals.
- 7.18 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.
- 7.19 Policy **DEV5: Sustainability in New Development** sets out the requirements for development with regards to sustainability principles.
- 7.20 Policy **DEV6 Layout and Design of New Development** requires good design and a high quality of architecture, in both the overall layout of developments and their constituent parts. The layout and design of developments are to meet listed criteria.
- 7.21 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.
- 7.22 Policy **DEV8: Open Spaces** states that the Council will seek to protect and enhance the open spaces identified on the Proposals Map. Development will not be permitted in these areas that would:
- A. Result in a permanent loss of the open space; and/or
 - B. Adversely affect the accessibility of the open space; and/or
 - C. Diminish the quality, amenity or biodiversity of the open space; and/or
 - D. Otherwise undermine the value of the open space as part of the Midlothian Green Network or the potential for the enhancement of the open space for this purpose.
- 7.23 Policy **TRAN5: Electric Vehicle Charging** seeks to promote a network of electric vehicle charging stations by requiring provision to be an integral part of any new development.
- 7.24 Policy **IT1: Digital Infrastructure** supports the incorporation of high speed broadband connections and other digital technologies into new homes.
- 7.25 Policy **ENV9: Flooding** presumes against development which would be at unacceptable risk of flooding or would increase the risk of flooding elsewhere. It states that Flood Risk Assessments will be required for most forms of development in areas of medium to high risk but may also be required at other locations depending on the circumstances of the proposed development. Furthermore it states that Sustainable urban drainage systems will be required for most forms of development, so that surface water run-off rates are not greater than in the site's pre-developed condition, and to avoid any deterioration of water quality.

- 7.26 Policy **ENV10: Water Environment** requires that new development pass surface water through a sustainable urban drainage system (SUDS) to mitigate against local flooding and to enhance biodiversity and the environment.
- 7.27 Policy **ENV11: Woodland, Trees and Hedges** states that development will not be permitted where it could lead directly or indirectly to the loss of, or damage to, woodland, groups of trees (including trees covered by a Tree Preservation Order, areas defined as ancient or semi-natural woodland, veteran trees or areas forming part of any designated landscape) and hedges which have a particular amenity, nature conservation, biodiversity, recreation, landscape, shelter, cultural, or historical value or are of other importance.
- 7.28 Policy **ENV16: Vacant, Derelict and Contaminated Land** supports the redevelopment of vacant and derelict land for uses compatible with their location. Developments will be required to demonstrate that the site is suitable for the proposed new use in terms of the risk posed by contamination and instability from historic uses.
- 7.29 Policy **IMP1: New Development** This policy ensures 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.
- 7.30 Policy **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.
- 7.31 Policy **IMP3: Water and Drainage** require sustainable urban drainage systems (SUDS) to be incorporated into new development.

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.

Principle of Development

- 8.2 As is noted above the development plan comprises National Planning Framework 4 (NPF4) and the Midlothian Local Development Plan 2017

(MLDP). Section 24(3) of the Town and Country Planning (Scotland) Act 1997 states that where there is an incompatibility between the provisions of the National Planning Framework and the provisions of a local development plan whichever of them is the later in date is to prevail. At present NPF4 is the more recent document and therefore it prevails where there is an incompatibility between NPF4 and the MLDP.

- 8.3 The application site is located within the built-up area of Penicuik where there is a presumption in favour of appropriate development. However, the site is not identified as an allocated housing site in the MLDP and as such the application is being considered as a windfall housing proposal. The relevant policies in relation to windfall housing are policies 16(f) of NPF4 and STRAT2 of the MLDP.

- 8.4 NPF4 Policy 16(f) states:

Development proposals for new homes on land not allocated for housing in the LDP will only be supported in limited circumstances where:

- i. the proposal is supported by an agreed timescale for build-out; and*
- ii. the proposal is otherwise consistent with the plan spatial strategy and other relevant policies including local living and 20 minute neighbourhoods;*
- iii. and either:*
 - delivery of sites is happening earlier than identified in the deliverable housing land pipeline. This will be determined by reference to two consecutive years of the Housing Land Audit evidencing substantial delivery earlier than pipeline timescales and that general trend being sustained; or*
 - the proposal is consistent with policy on rural homes; or*
 - the proposal is for smaller scale* opportunities within an existing settlement boundary; or*
 - the proposal is for the delivery of less than 50 affordable homes as part of a local authority supported affordable housing plan.*

*in the absence of any interpretation of 'smaller scale opportunities' Midlothian's Planning Service is taking the position that smaller residential developments are 10 or less units – this is subject to ongoing review based on appeal decisions across Scotland, but is based on a reasoned judgement regarding the impacts of different scales of development.

- 8.5 MLDP Policy STRAT2 states:

Within the built-up areas, housing development on non-allocated sites, including the reuse of buildings and redevelopment of brownfield land, will be permitted provided that:

- A. It does not lead to the or damage of valuable public or private open space;*

- B. *It does not conflict with the established use of the area;*
- C. *It has regard to the character of the area in terms of scale, form, design and materials;*
- D. *It meets traffic and parking requirements; and*
- E. *It accords with other relevant policies and proposals, including policies IMP1, IMP2, DEV3, DEV5 – DEV10.*

- 8.6 NPF4 Policy 16(f)'s reference to the deliverable housing land pipeline is a key difference from policy STRAT2 of the MLDP which makes no reference to housing land supply. Policy 16(f) is a more onerous approach to windfall housing than that set out in the MLDP and represents a clear incompatibility between the provisions of NPF4 and the MLDP.
- 8.7 A recent Scottish Ministers appeal decision at Mossend, West Lothian (PPA-400-2147) makes clear that Policy 16(f) is intended to be engaged from the date of NPF4's publication and that if the housing land pipeline has yet to be identified then *"the exception permitting development on unallocated sites in the circumstances set out in the first bullet of branch (f)(iii) is not engaged"*. The deliverable housing land pipeline in Midlothian will be identified once Midlothian Local Development Plan No2 (MLDP2) has established Local Housing Land Requirements (LHLR). Until a pipeline has been established there is *"a policy restriction on housing development on unallocated sites"* such as the application site. The appellant in the Mossend decision has appealed the decision (on procedural grounds) to the Court of Session. The hearing for the appeal took place on 24 January 2024, however at present no decision has been issued on the appeal.
- 8.8 As is noted in paragraph 8.4 above, at present Midlothian's Planning Service is taking the position that smaller scale development opportunities are those of 10 or less units, and therefore the proposed 12 units do not meet with the planning authority's interpretation of smaller scale development opportunities. Notwithstanding this position, it must be acknowledged that the scale of development is significantly below that of a major development and that in the absence of guidance from the Scottish Government there is scope for flexibility in the interpretation of smaller scale opportunities.
- 8.9 The extant 12 unit scheme (reference 19/00510/DPP) is referred to in Midlothian Council's Strategic Housing Investment Plan 2024/25-2028/29 (SHIP), however the SHIP identifies the scheme as being funded via the Scottish Government's Charitable Bond programme. As the scheme is not a local authority supported development it does not comply with the relevant bullet point exception within Policy 16(f). Notwithstanding this fact, it is clear that the scheme is an affordable housing development that has previously been granted planning permission and that the Council, in its roles as Housing Authority, is welcoming of.
- 8.10 The planning history of a site is a material consideration in the assessment of any planning application. The principle of housing development of the proposed scale has been established via the granting of planning permission 19/00510/DPP, which is still extant, and given the size of the current development and its status as affordable housing there are sufficient material considerations to

warrant support of the principle of the proposed development at this location.

- 8.11 The application site is situated within a residential area and as such the site is not inherently unsuitable for residential development and the consultations carried out have not highlighted any overriding reasons as to why the site could not be redeveloped for residential purposes. Generally, it is considered that a residential use of the site is compatible with the character of the area. The principal planning issues relate to the assessment of the appropriateness of the scale, mass and proportions of the development, the design, material finish, layout, amenity space, access and parking and impact on local amenity.

Loss of Open Space

- 8.12 MLDP policy DEV8 (Open Spaces) states that the Council will seek to protect and enhance the open spaces identified on the Proposals Map. These spaces are generally public parks; civic spaces; recreation areas; and natural and semi-natural areas within built-up areas. The open space at Windsor Square is not one of the spaces identified on the Proposals Map as being protected under policy DEV8. Whilst the open space is not protected by policy DEV8 this is a reflection of its size rather than an assessment of its quality and amenity value to local residents.
- 8.13 The shape of the space, the fact that it is predominantly grassed and the excellent passive surveillance afforded by its central location within a group of houses all mean that the space is highly effective as a safe informal play space for children. While there are other larger open spaces and formal play areas in the wider surrounding area they are not as easy for younger unaccompanied children to access due to their distance from Windsor Square and the nature of the roads that must be crossed to access the areas. Many of the representations received have highlighted the benefits of the space and its importance to the local residents.
- 8.14 An earlier scheme for the site was for 20 flats and would have resulted in the complete loss of the open space. The loss of the space was one of the reasons for refusal of application 18/00730/DPP. The extant proposal (reference 19/00510/DPP) reduced the number of flats by eight and which allow for the retention of the majority of the open space. An area of 721sqm was to be retained, that represents 62% of the existing area. The current proposal will see a reduction in the size of the main space to 644sqm, however due to changes in garden layouts an additional public open space of 125sqm will be created at the western side of the site. In total the proposed layout provides 769sqm of public open space, which represents an increase of 8% on the previously approved scheme.
- 8.15 The spaces that will be provided will be of usable size and will continue to benefit from excellent passive surveillance. The main space will continue to be centrally located and this will allow it to be a valuable community space which helps to define Windsor Square's character as a "square" centred on a shared space. Whilst the proposal will result in a reduction of open space when compared to the

existing situation, this must be balanced against the provision of 12 modern social housing flats and the redevelopment of a vacant brownfield site. On balance the loss of a portion of the open space will not have a significant enough impact on the character and amenity of the local area to warrant refusal of the application.

Design, Layout and Finish Materials

- 8.16 The three blocks of flats will all be two storey buildings with conventional pitched roofs – this reflects the character of the existing dwellinghouses in Windsor Square. The buildings are conventionally proportioned and detailed and are in keeping with the character of the surrounding area. Whilst the designs and finish materials do not match those of the majority of the buildings at Windsor Square, it is common for urban streets to include a variety of designs and finishes reflecting different phases of development; the former care home building and caretaker's house were examples of this.
- 8.17 The form of the buildings is similar to the previous scheme with access to the upper floor via projecting porches on the front elevations. The use of white render as the main finish material of the walls is common to both schemes. The proposed scheme creates more variety to the principal elevations via the use of fibre cement panels as a detail feature. The previous scheme used red concrete pantiles as the roofing material, the proposed scheme uses flat profiled grey concrete roof tiles.
- 8.18 The proposed buildings are of similar dimensions to the previously consented scheme. The buildings in the current proposal are either 16m or 18m wide, the buildings in the previous scheme were 17.5m wide. The proposed buildings are 8.5m deep, as compared to the 8.8m of the previous scheme. The proposed buildings are 5.4m tall to the eaves and 7.8m tall to the ridge of the roof, the figures for the previous scheme are 5.5m and 8.8m.
- 8.19 Windsor Square, at present, does not have any flats, however the mixing of two storey houses and flats is a common feature of streets throughout Midlothian and beyond. The proposed development would constitute 23.5% of the housing units at Windsor Square and would not represent a significant change in character.
- 8.20 The blocks will have a strong relationship with the streetscape and this will maintain the existing streetscape character of the houses within the central portion of Windsor Square. The scale and location of the buildings will ensure that there will be no significant loss of daylight, sunlight or privacy when compared to the existing situation.

Drainage

- 8.21 The Scottish Water consultation response confirmed that it has no objection to the proposal. The response also confirms that there is sufficient capacity at Rosebery Water Treatment Works (this part of the response relates to the provision of water to the site). It is also confirmed that Scottish Water is unable to confirm current capacity at the Penicuik Waste Water Treatment Works (i.e. foul water waste); it is

recommended that the applicant submit a Pre-Development Enquiry Form to Scottish Water to allow for assessment of capacity. Finally, the response also confirms that Scottish Water will not accept connection of surface water drainage into their combined sewer system, except for limited exceptional circumstances on brownfield sites.

- 8.22 These are all common consultation responses from Scottish Water and do not indicate any fundamental issues with the application site. It is Scottish Water's standard approach to provide a no objection response for planning consultations and advise that the applicant should submit a Pre-Development Enquiry (PDE) to Scottish Water.
- 8.23 Engineers acting for the applicant calculated the surface water run-off that the previously consented development would generate and the capacity of the attenuation that would be required to ensure that discharge rates comply with Scottish Water standards. Provisional agreement was reached with Scottish Water for the relocation of the existing surface water drain that passes through the area of green space and for connection of the surface water drainage from the site into the Scottish Water network.
- 8.24 Enabling works to facilitate connections to utilities infrastructure (such as the relocation of the surface water drain) are a common part of the development process; usually details are provided at a post decision phase as part of the information submitted to discharge conditions and to secure a building warrant. Finalised details of the drainage scheme can be secured via condition.

Parking and Access

- 8.25 The proposed layout provides 12 allocated spaces in front of the flats and eight visitor parking spaces adjacent to the blocks. The provision is exactly the same as the previously consented scheme. The parking provision comfortably exceeds, by 67%, the Council's current parking standards for social housing which requires one space per flat. The additional parking will provide visitor parking comparable with private housing and will also provide an additional two spaces to compensate for a loss of two on street parking spaces. As is standard practice within Midlothian, finalised details of surfacing materials and lighting provision will be secured via condition and through the roads construction consent process (RCC).

Biodiversity

- 8.26 The Council screens all planning applications against a range of biodiversity constraints such as nature conservation sites, areas of ancient woodland and areas with recorded sitings of protected species. If the screening process identifies constraints within an application site the Council may ask an applicant to submit reports demonstrating that the constraints have been considered and, if necessary, mitigation measures prepared. Appropriate mitigation measures will then be secured by condition if planning permission is granted. The biodiversity screening process did not identify any biodiversity constraints that apply to this application site. A condition can be used

to secure appropriate measures to conserve, restore and enhance biodiversity.

Landscaping

- 8.27 Currently there are three trees and some areas of shrubs within the open space. There are two trees and various hedges/shrubs on the care home site. The trees will be felled to accommodate the development. As is standard practice a landscaping plan will be secured by condition; compensatory planting will be secured as part of the landscaping plan. The previous scheme also proposed that the trees and shrubs would be removed. The scale of the areas of trees and shrubs do not constitute areas of woodland that would require consideration under Policy 6 of NPF4.

Developer Contributions

- 8.28 Scottish Government advice on the use of Section 75 Planning Agreements is set out in Circular 03/2012: Planning Obligations and Good Neighbour Agreements. The Circular advises that planning obligations should only be sought where they meet all of the following tests:
1. Necessary to make the proposed development acceptable in planning terms (paragraph 15);
 2. Serve a planning purpose (paragraph 16) and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans;
 3. Relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area (paragraphs 17-19);
 4. Fairly and reasonably relate in scale and kind to the proposed development (paragraphs 20-23);
 5. Be reasonable in all other respects.
- 8.29 In relation to Midlothian Council, policies relevant to the use of Section 75 agreements (a form of planning obligation) are set out in the MLDP and Midlothian Council's Developer Contributions Guidelines (Supplementary Planning Guidance).
- 8.30 The previous development of which the principal element was the provision of 12 flatted dwellings was assessed in relation to the above guidance and it was considered that a planning obligation was required in respect of the following matters:
- The proposed development in conjunction with housing identified in the MLDP give rise to a need for additional primary school capacity in the Penicuik area. A proportionate contribution was sought;
 - The proposed development in conjunction with housing identified in the MLDP give rise to a need for additional secondary school capacity in the Penicuik area. A proportionate contribution was sought; and
 - The MLDP identifies the provision of the A701 Relief Road as being key to accommodating development within this transport

corridor. A proportionate contribution was sought.

- 8.31 A legal agreement, to secure the developer contributions detailed above, was registered in June 2021. If the Committee is minded to grant planning permission for the current proposal the legal agreement would need to be modified, to include the reference details of the current application, prior to the issuing of the planning permission.

9 RECOMMENDATION

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

The proposed development will be in keeping with the scale and character of the surrounding area; will provide adequate open space and parking provision; and will not have a significant detrimental impact on the residential amenity of the area. The site is within the built-up area of Penicuik where there is a presumption in favour of appropriate development. Furthermore, the proposed development complies with the relevant policies of National Planning Framework 4 and of the Midlothian Local Development Plan 2017.

- 9.2 Subject to:

- i) The modification of the legal agreement to include details of the current application.

The legal agreement shall be concluded within six months. If the agreement is not concluded timeously the application will be refused for non-compliance with MLDP policies IMP1 and IMP2.

and

- ii) the following conditions:

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. The development shall not begin until a scheme to deal with any contamination of the site has been submitted to and approved by the planning authority. The scheme shall contain details of the proposals to deal with any contamination and include:
- i. the nature, extent and types of contamination on the site;
 - ii. measures to treat or remove contamination to ensure that the site is fit for the uses hereby approved, and that there is no risk to the wider environment from contamination originating within the site;
 - iii. measures to deal with contamination encountered during

- iv. construction work; and
 - iv. the condition of the site on completion of the specified decontamination measures.
3. On completion of any required decontamination/ remediation works, referred to in Condition 2, and prior to any dwelling on the site being occupied, a validation report shall be submitted to the planning authority confirming that the works have been carried out in accordance with the approved scheme. No dwelling on the site shall be occupied unless or until the planning authority have approved the required validation.

Reason for conditions 2 and 3: To ensure that any contamination on the site is adequately identified and that appropriate decontamination measures are undertaken to mitigate the identified risk to site users and construction workers, built development on the site, landscaped areas, and the wider environment.

4. Development shall not begin until a scheme of hard and soft landscaping has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
- i existing and finished ground levels and floor levels for all buildings, roads, parking areas and paths in relation to a fixed datum;
 - ii existing trees, landscaping features and vegetation to be retained; removed, protected during development and in the case of damage, restored;
 - iii proposed new planting including trees, shrubs, hedging and grassed areas;
 - iv location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
 - v schedule of plants to comprise species, plant sizes and proposed numbers/density;
 - vi programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping shall be completed prior to the development being occupied. Any tree felling or vegetation removal proposed as part of the landscaping scheme shall take place out with the bird breeding season (March-August); unless a suitably qualified ecologist has carried out a walkover survey of the felling/removal area in the 48 hours prior to the commencement of felling/removal, and confirmed in writing that no breeding birds will be affected;
 - vii proposed car park configuration and surfacing;
 - viii details of the location, design, height and specification of proposed street lighting within the development;
 - ix proposed footpaths; and
 - x proposed cycle parking facilities.

All hard and soft landscaping shall be carried out in accordance with the scheme approved in writing by the planning authority as the programme for completion and subsequent maintenance (3vi). Thereafter any trees or shrubs removed, dying, becoming seriously

diseased or damaged within five years of planting shall be replaced in the following planting season by trees/shrubs of a similar species to those originally required.

Reason: *To ensure the quality of the development is enhanced by landscaping to reflect its setting.*

5. Development shall not begin until details and, if requested, samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures have been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority.

Reason: *In the interest of protecting the character and appearance of the area.*

6. Development shall not begin until details of the provision and use of electric vehicle charging stations have been 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 approved in writing with the planning authority.

Reason: *To ensure the development makes provision for sustainable transport measures.*

7. Development shall not begin until details, including a timetable of implementation, of superfast fibre broadband have been submitted to and approved in writing by the planning authority. The details shall include delivery of superfast fibre broadband prior to the occupation of the building. The delivery of superfast 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.*

8. Development shall not begin until details of a scheme to deal with surface water drainage has been 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 approved in writing with the planning authority.

Reason: *To ensure that the development is provided with adequate surface water drainage.*

9. Development shall not begin until details of a scheme to conserve, restore and enhance biodiversity throughout the development has been 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 approved in writing by the planning authority.

Reason: *To protect biodiversity, reverse biodiversity loss, deliver positive effects from the development and strengthen nature networks.*

10. Development shall not begin until details, including a timetable of implementation, of “Percent for Art” have been 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 approved in writing by the planning authority.

Reason: *To ensure the quality of the development is enhanced by the use of art to reflect its setting.*

11. No development shall begin in any part of the site until the following additional procedures have been completed:

- a) The developer has submitted to the planning authority details of the measures it proposes to ensure that all the flats/dwellings built on the site are occupied in perpetuity only as affordable housing as defined in the Midlothian Local Development Plan 2017;
- b) The planning authority has approved the measures, submitted to discharge requirement 11 a) above, in writing; and
- c) The developer has provided documentary evidence to the planning authority that the measures that the planning authority has approved are in place and the planning authority has confirmed in writing that the provision that has been made is satisfactory.

Reason: *The application has been assessed on the basis that the development provides affordable housing and this condition is essential in order to ensure that the flats/dwellinghouses remain available for occupation by people on modest incomes to meet locally the identified needs of people who cannot afford to buy or rent housing generally available on the open market.*

12. Development shall not begin until a Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the planning authority. The CEMP shall include:
 - i. details of a construction access;
 - ii. signage for construction traffic, pedestrians and other users of the site;
 - iii. controls on the arrival and departure times for construction vehicles, delivery vehicles and for site workers (to avoid school arrival/departure times);
 - iv. details of piling methods (if employed);
 - v. details of any earthworks;
 - vi. control of emissions strategy;
 - vii. a dust management plan strategy;
 - viii. waste management and disposal of material strategy;
 - ix. a community liaison representative will be identified to deal with the provision of information on the development to the local community and to deal with any complaints regarding construction on the site;

- x. prevention of mud/debris being deposited on the public highway;
- xi. material and hazardous material storage and removal;
- xii. controls on construction, engineering and any other operations (to take place between 0700 to 1900hrs Monday to Friday and 0800 to 1300hrs on Saturdays);
- xiii. details of the location and content of any soil or rubble stockpiles; the dimensions of each stockpile; the expected after-use for each stockpile; and
- xiv. details of measures to control surface water run-off from the site during construction.

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

Reason: *In order to control the construction activity on the site, ensure environmental impact during the construction period is acceptable and to ensure appropriate mitigation is in place.*

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date:	19 April 2024
Application No:	23/00791/DPP
Applicant:	Ark Housing Association, The Priory, Canaan Lane, Edinburgh
Agent:	Andy Corrigan, Connect Modular, Block 2 Caponacre Industrial Estate, Cumnock
Validation Date:	17 January 2024
Contact Person:	Graeme King, Planning Officer
Email:	graeme.king@midlothian.gov.uk
Background Papers:	17/00740/DPP; 19/00510/DPP
Attached Plans:	Location plan, indicative site layout and elevation plans.



**Planning Service
Place Directorate**

Midlothian Council
Fairfield House
8 Lothian Road
Dalkeith, EH22 3AA

Erection of 12 flatted dwellings; formation of car parking; and associated works. Land At Windsor Square Penicuik

Reproduced from the Ordnance Survey map with the permission of the controller of Her Majesty's Stationary Office. Crown copyright reserved. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings.

Midlothian Council Licence No. AC0000811376 (2024)

File No. 23/00791/DPP

Scale 1:800



FACADE SPECIFICATION

ITEM 1 The roof structure consists of 20 & 35 Deg pitched roof with Flat profile interlocking roof tiles (Colour Anthracite).

ITEM 2 The windows and Door to consist of PVCu, Dark Grey Ral 7016 external finish with a universal white coloured internal finish. The windows are of various opening styles, all of which conform to the current British Standard recommendations. The frame is 62mm multi-chambered profile fitted with a 28mm double glazed units with Silver spacer bar. Toughened glass where required. Silver lockable locking handle with a child proof catch.

ITEM 3 Base Course to be Dark Grey facing brick to match flashing.

ITEM 4 Main Elevation to be White
Render.

ITEM 5 All rainwater goods and S.V.P. terminators to be black PVCu.

ITEM 6 Soffits and fascias finished with white PVCu.

ITEM 8 Contrast Elevations to be **Clay**
Brown C03 Cedar cladding.

[illegible]

Block 2, Caponaire Industrial Estate, Cumnock KA18 1SH
t: 01292 591715
e: enquiries@theweehousecompany.co.uk

www.theweekhousecompany.co.uk

Residential Development
Windsor Square, Penicuik

ARK HA

Drawing

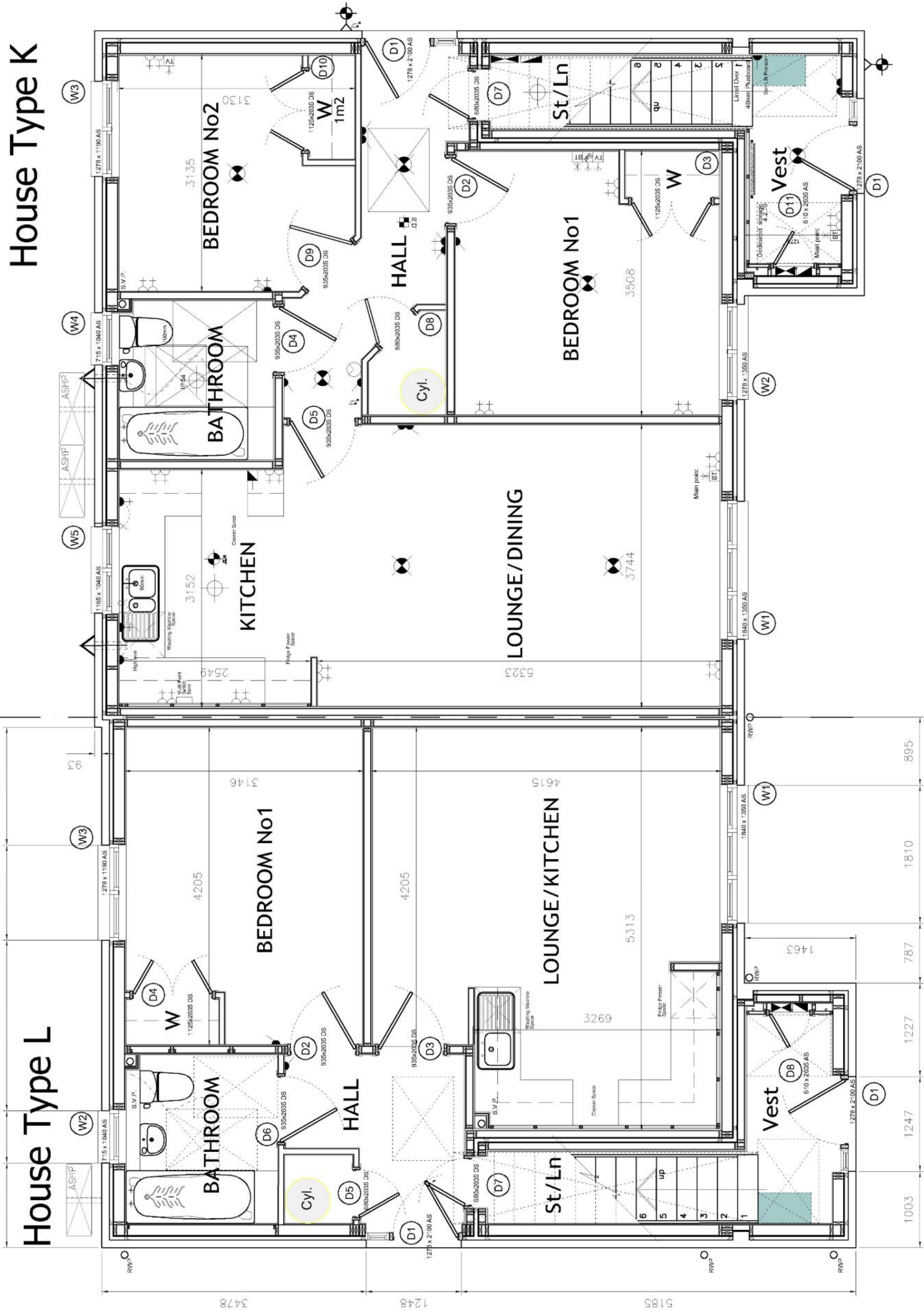
SITE PLAN

Scale	1:200	Drawn By	A.G.C.	Checked
Date	Jul 23	Drawing No	ABA_OS_01 A2 @ 1-200	

[illegible]

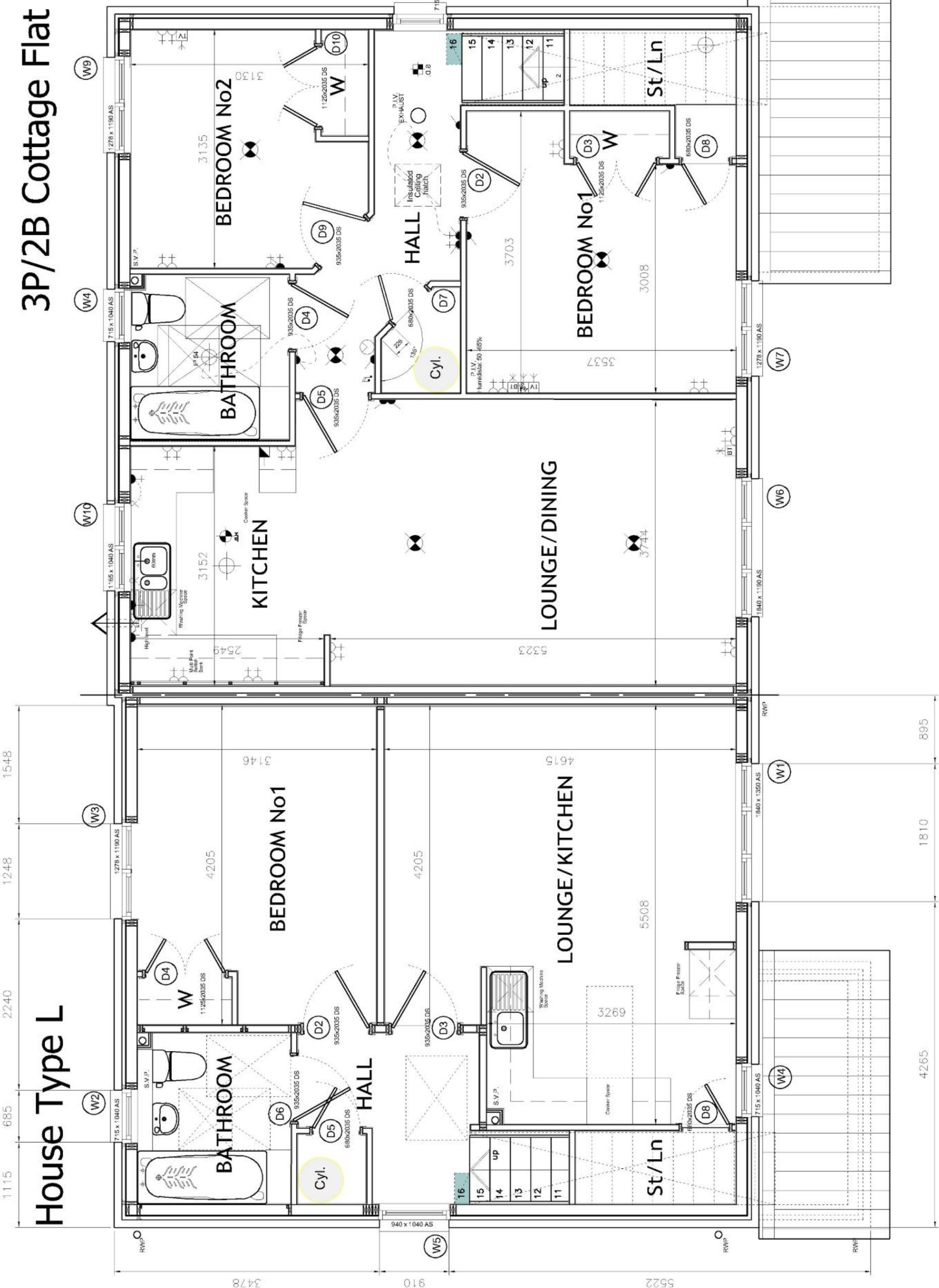
SITE LAYOUT PLAN 1:200

Metres @ 1:200



GROUND FLOOR PLAN
2P/1B Cottage Flat
49.4 m2 (532 sft)

GROUND FLOOR PLAN
66.5 m2 (716 sft)



1ST FLOOR PLAN
54.8 m2 (590 sft)

FIRST FLOOR PLAN
72.3 m2 (779 sft)

REVISIONS

Rev.	Date	Detail



Block 2, Caponaire Industrial Estate, Curmeck KA18 1JSH
t: 01292 591715
e: enquiries@thefirsthousecompany.co.uk

www.thefirsthousecompany.co.uk

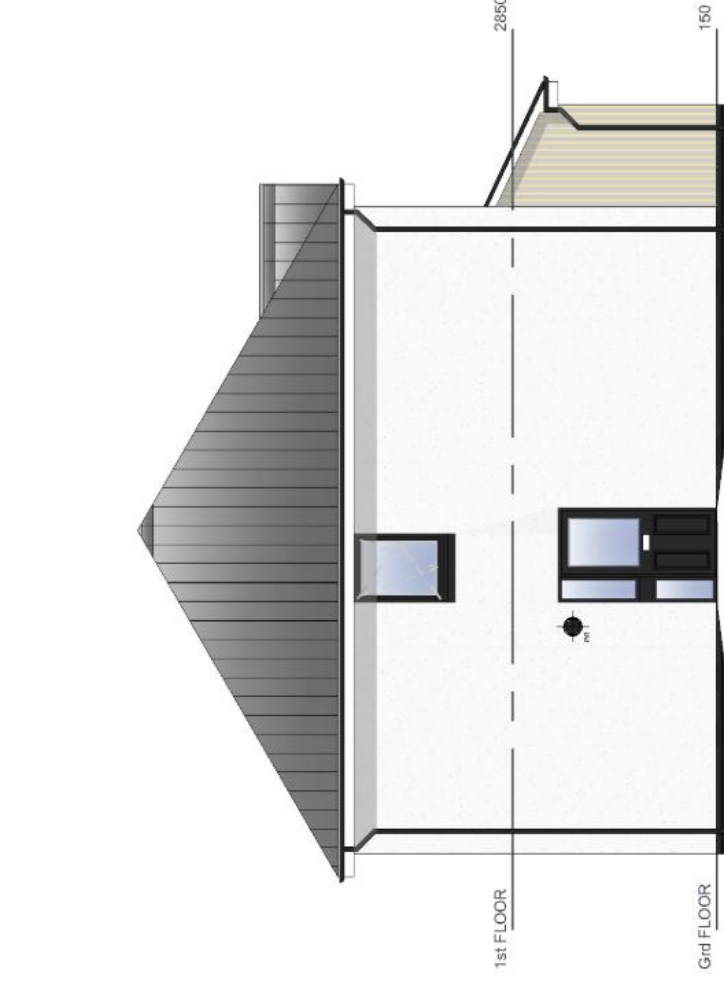
Project

AKA
Windsor Square, Penicuik

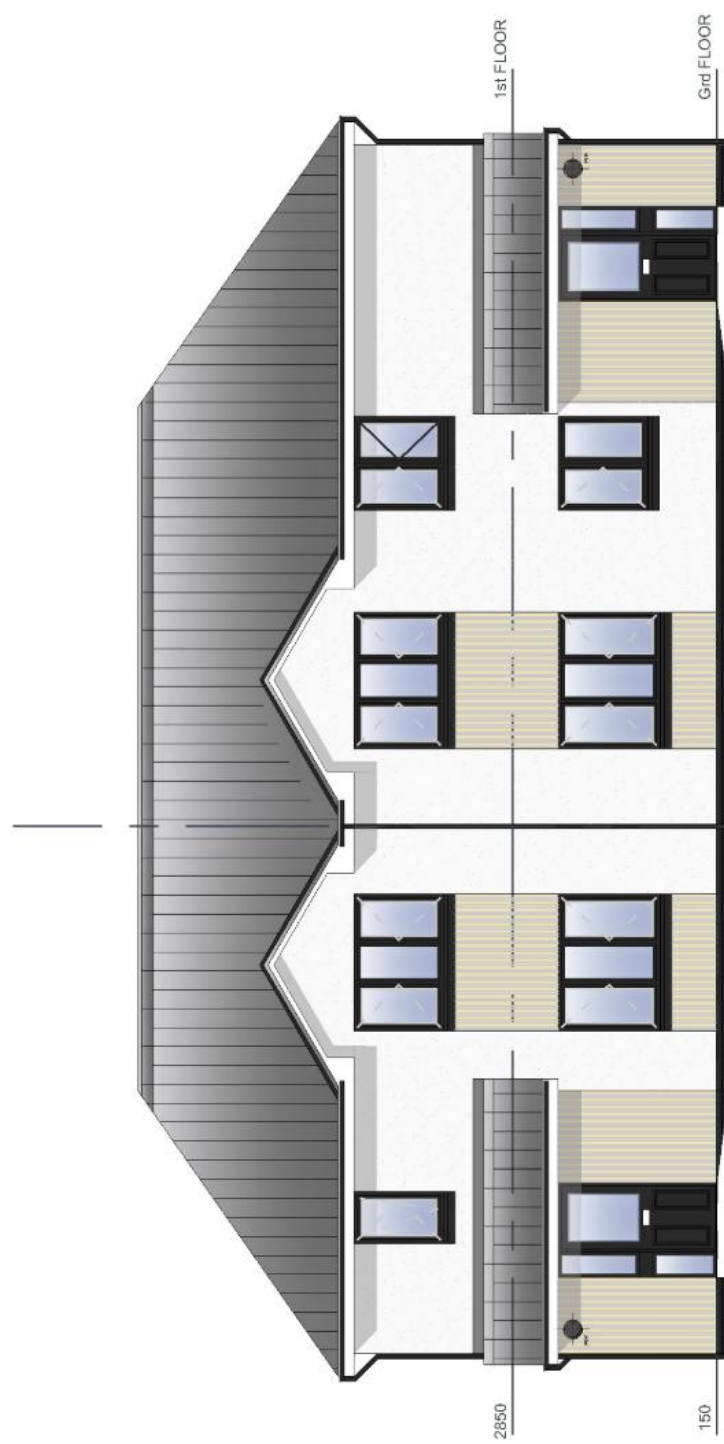
Drawing

AKA Block No 1

Scale	Drawn By	Checked
1:50	A.G.C.	
Date	Drawing No	
Jun 23	BLK1_GA_02	



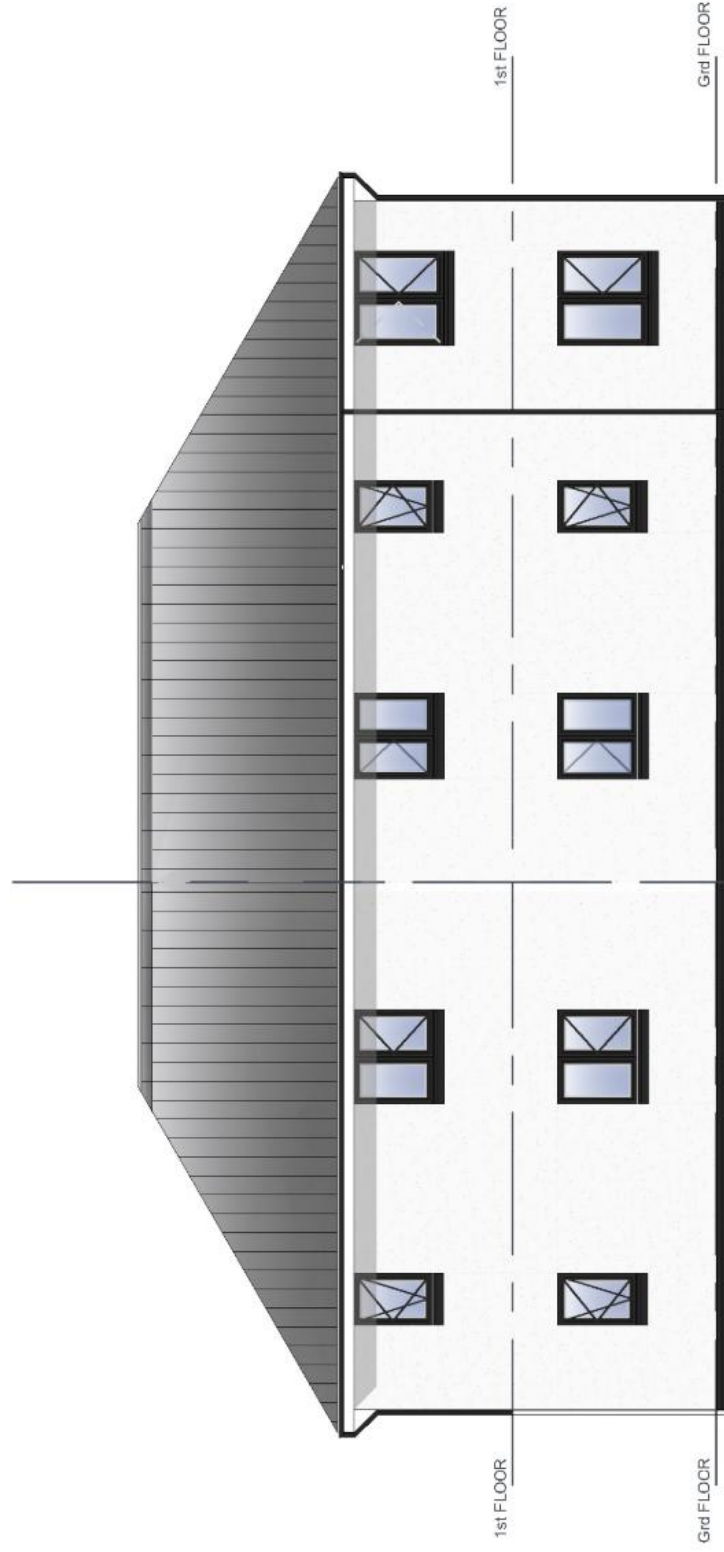
SIDE ELEVATION



FRONT ELEVATION

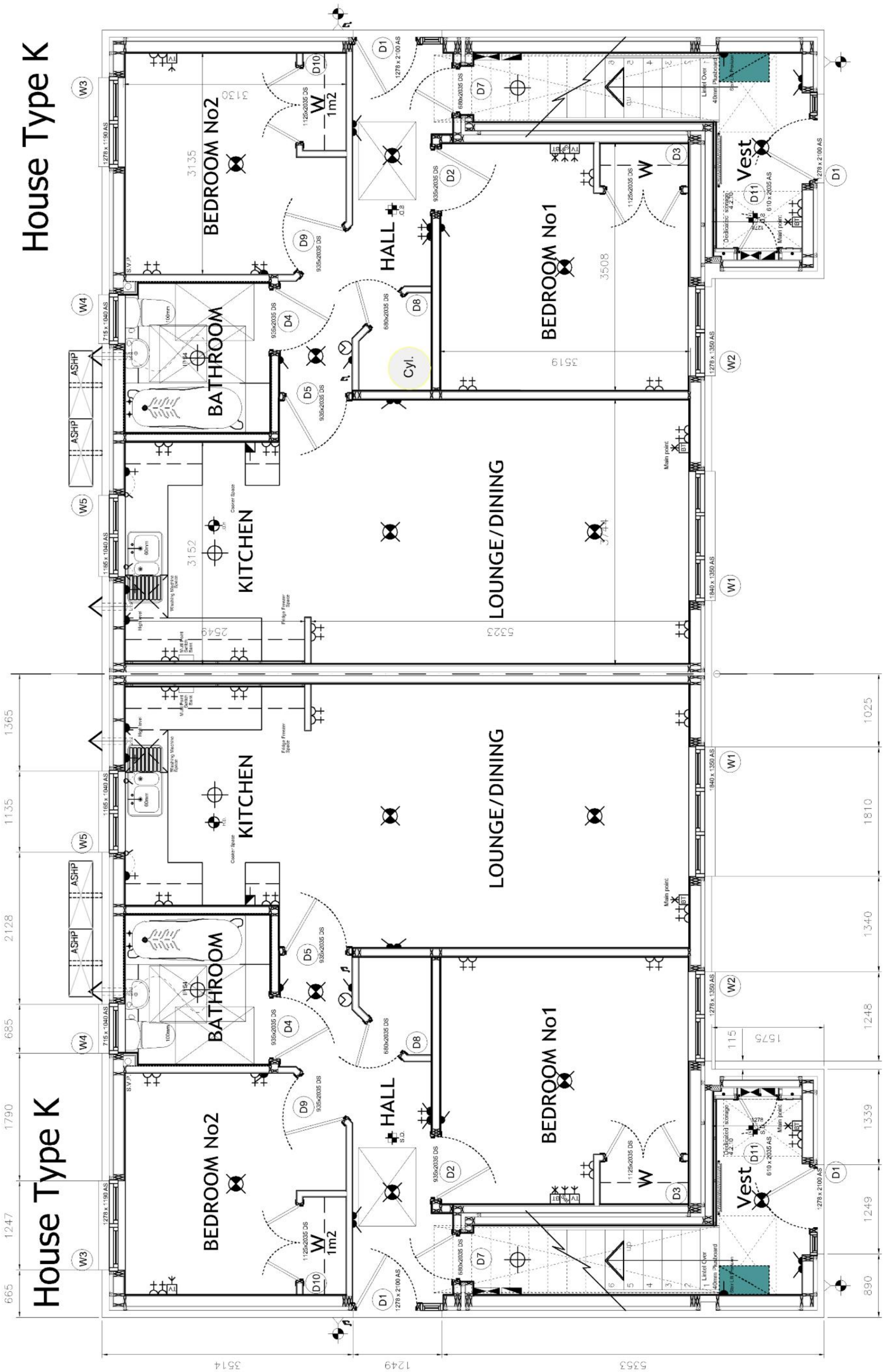


SIDE ELEVATION



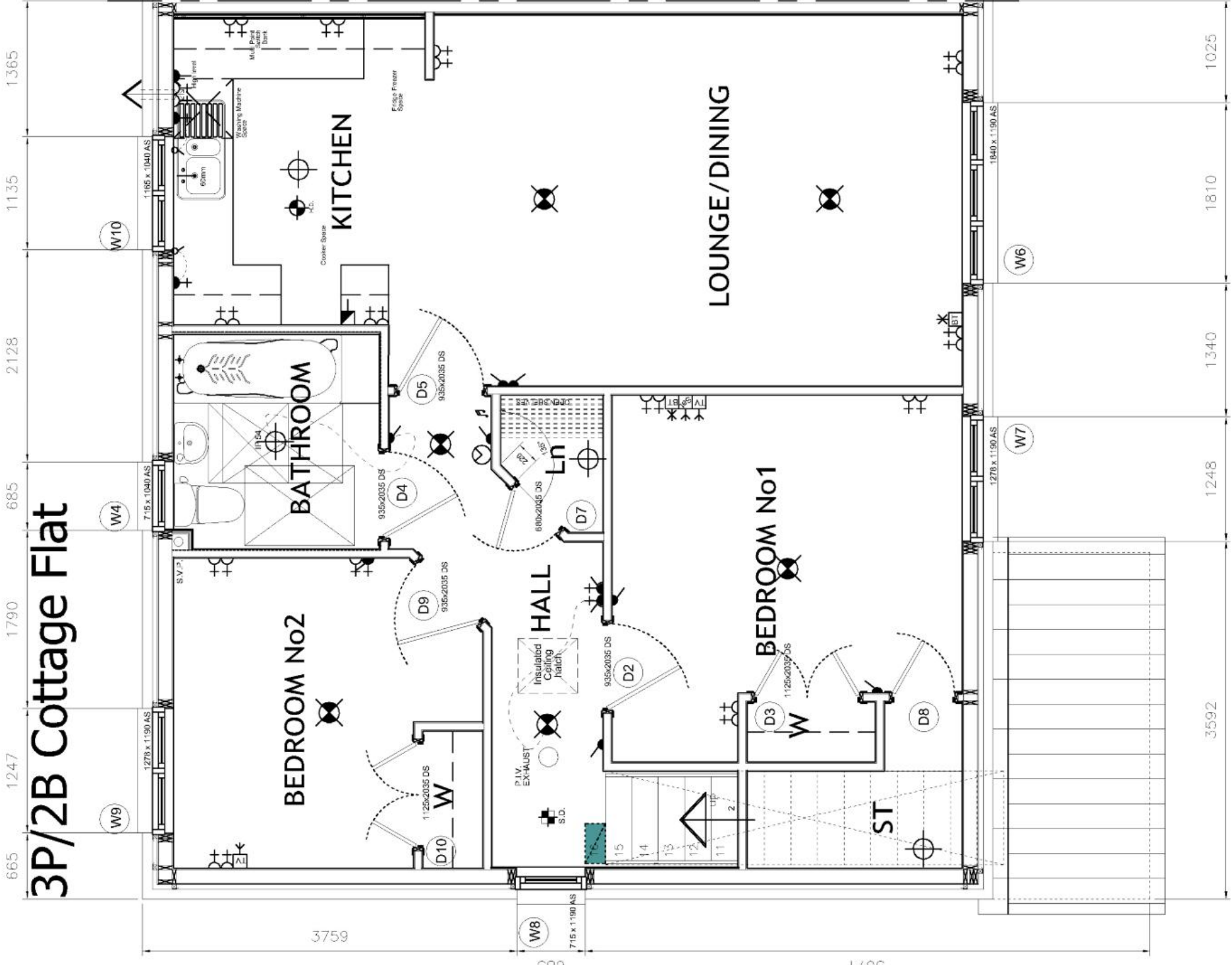
REAR ELEVATION

House Type K



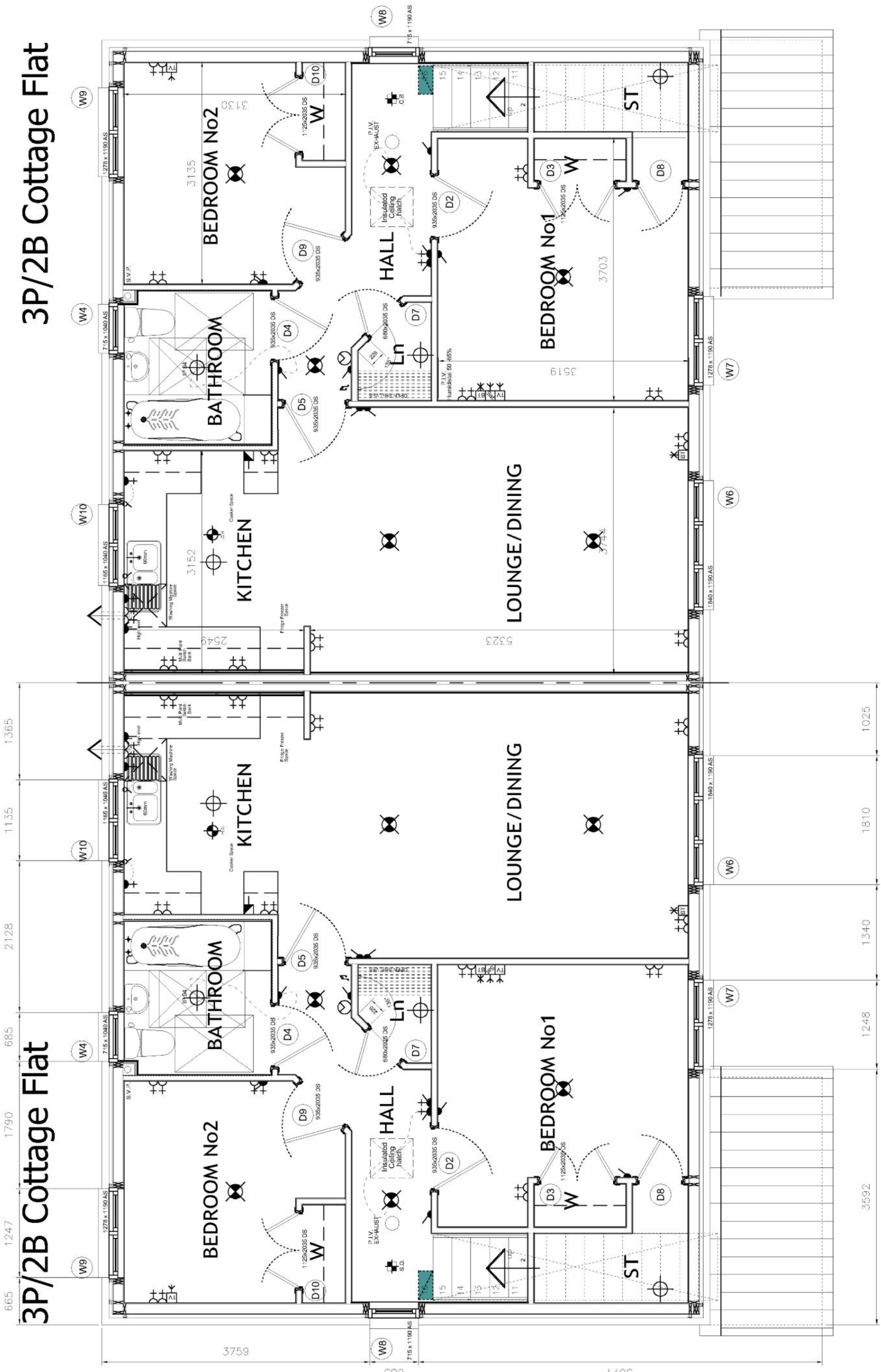
GROUND FLOOR PLAN
66.5 m² (716 sft)

House Type K



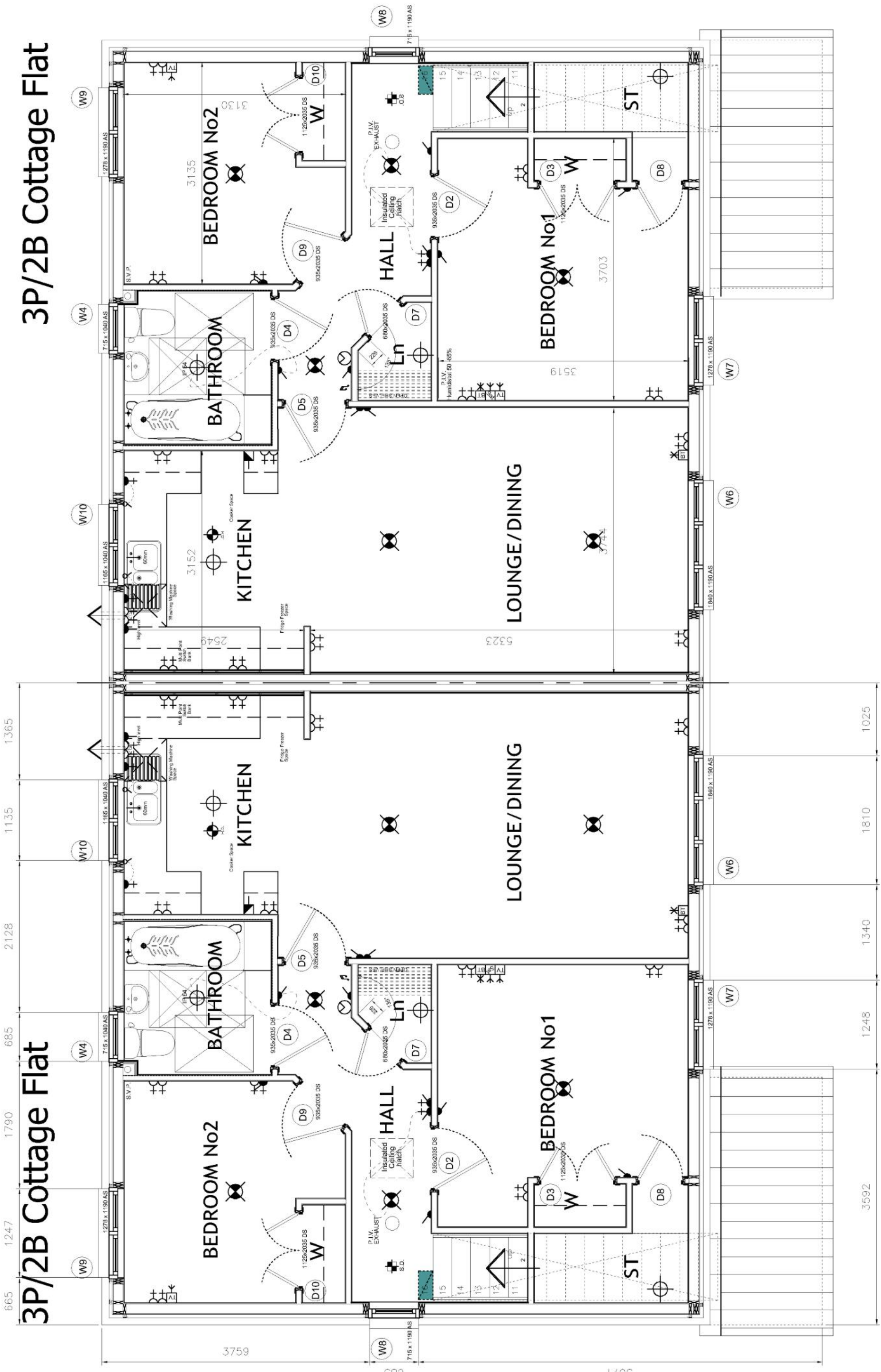
GROUND FLOOR PLAN
66.5 m² (716 sft)

3P/2B Cottage Flat



FIRST FLOOR PLAN
72.3 m² (779 sft)

3P/2B Cottage Flat



FIRST FLOOR PLAN
72.3 m² (779 sft)

REVISIONS

Rev.	Date	Detail



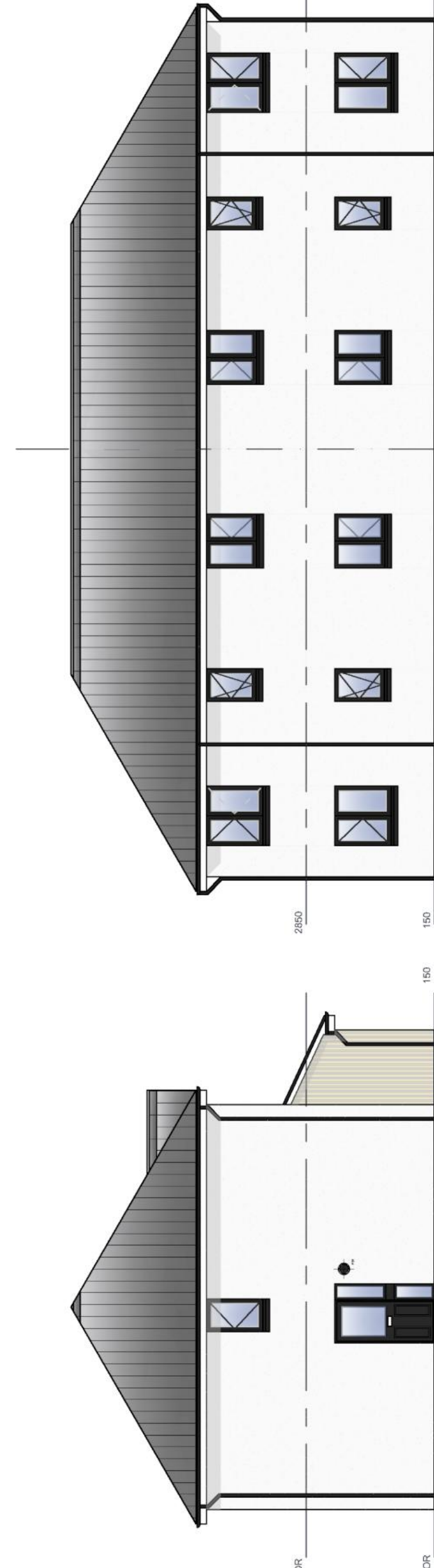
Block 2 Caponsacre Industrial Estate, Ayrshire KA18 1SH
t: 01292 593715
e: enquiries@theweehousecompany.co.uk
www.theweehousecompany.co.uk

Project
AKA
Windsor Square, Penicuik

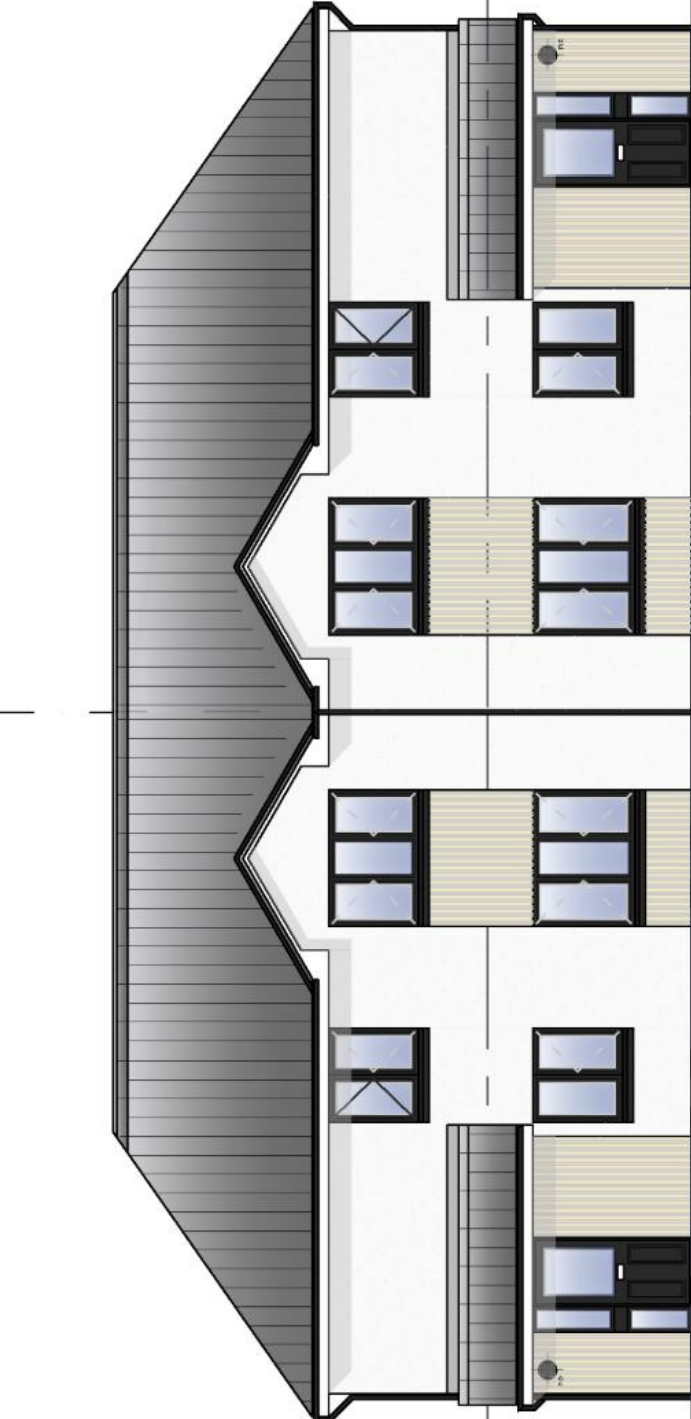
Drawing

AKA Block No 2 & 3

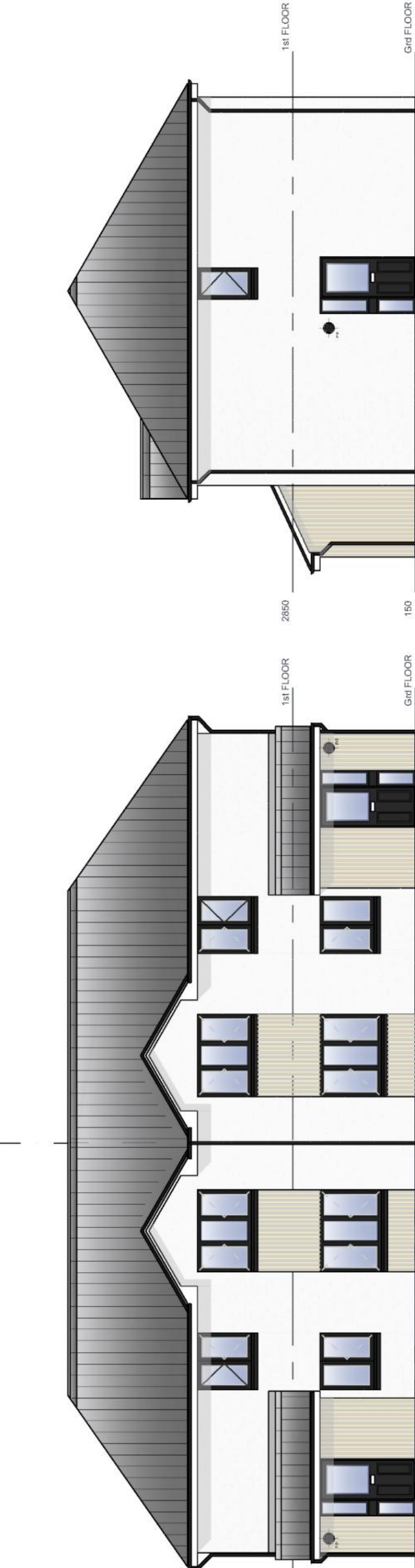
Scale	Drawn By	Checked
1:50	A.G.C.	
Date	Drawing No	
Jun 23	BLK2-3_GA_02	



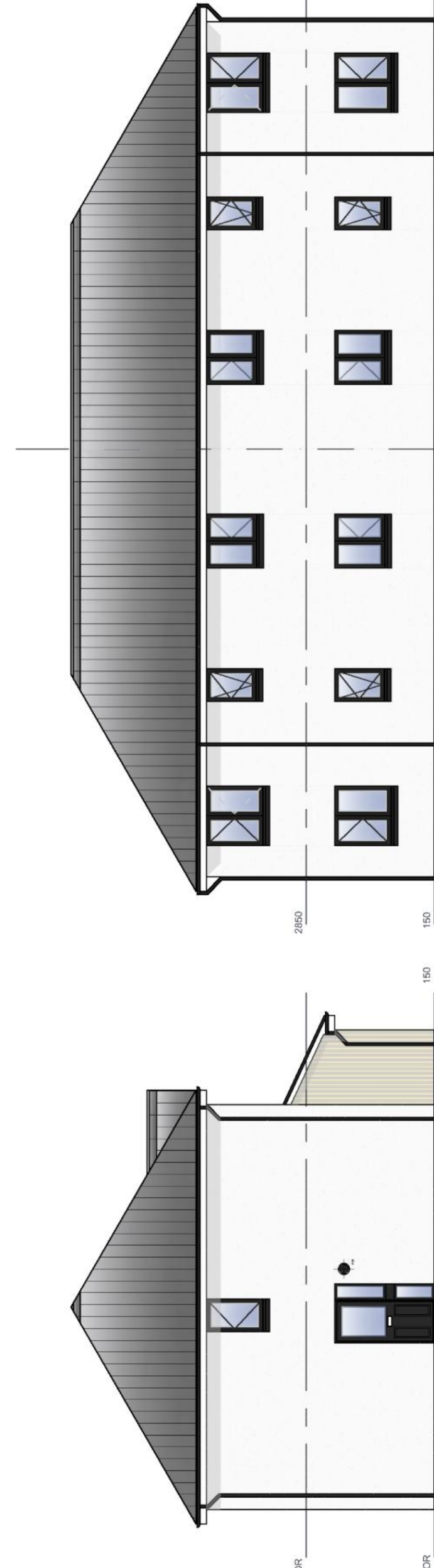
SIDE ELEVATION



FRONT ELEVATION



SIDE ELEVATION



REAR ELEVATION

BLOCK No2 & 3