



Business Centre G.2 Waverley Court 4 East Market Street Edinburgh EH8 8BG Email: [planning.support@edinburgh.gov.uk](mailto:planning.support@edinburgh.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 100599939-001

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:	Sorrell Associates		
Ref. Number:		You must enter a Building Name or Number, or both: *	
First Name: *	Jim	Building Name:	The Green House
Last Name: *	Sorrell	Building Number:	41
Telephone Number: *	0131 343 3643	Address 1 (Street): *	St Bernard's Crescent
Extension Number:		Address 2:	
Mobile Number:		Town/City: *	Edinburgh
Fax Number:		Country: *	Scotland
		Postcode: *	EH4 1NR
Email Address: *	jimsorrell@sorrellassociates.co.uk		

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="Harem"/>	Building Number: <input type="text" value="227"/>
Last Name: *	<input type="text" value="Murdochy"/>	Address 1 (Street): * <input type="text" value="Portobello High Street"/>
Company/Organisation	<input type="text"/>	Address 2: <input type="text"/>
Telephone Number: *	<input type="text"/>	Town/City: * <input type="text" value="Edinburgh"/>
Extension Number:	<input type="text"/>	Country: * <input type="text" value="Scotland"/>
Mobile Number:	<input type="text"/>	Postcode: * <input type="text" value="EH15 2AN"/>
Fax Number:	<input type="text"/>	
Email Address: *	<input type="text" value="REDACTED"/>	

## Site Address Details

Planning Authority:	<input type="text" value="City of Edinburgh Council"/>
Full postal address of the site (including postcode where available):	
Address 1:	<input type="text"/>
Address 2:	<input type="text"/>
Address 3:	<input type="text"/>
Address 4:	<input type="text"/>
Address 5:	<input type="text"/>
Town/City/Settlement:	<input type="text"/>
Post Code:	<input type="text"/>

Please identify/describe the location of the site or sites

227-229 Portobello High Street Edinburgh EH15 2AN

Northing	<input type="text"/>	Easting	<input type="text"/>
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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 alterations, extension and use of a hot-food takeaway and office to form a restaurant

## 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.

See Planning Statement

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)

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)

Planning Statement plus 24 documents which are recorded in the contents page of the Statement

## Application Details

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

21/04749/FUL

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

10/09/2021

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

17/06/2022

## 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

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may select more than one option if you wish the review to be a combination of procedures.

Please select a further procedure \*

By means of inspection of the land to which the review relates

Please explain in detail in your own words why this further procedure is required and the matters set out in your statement of appeal it will deal with? (Max 500 characters)

Site visit is necessary to appreciate the context of the property within Portobello Town Centre and its relationship with residential neighbours

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 Jim Sorrell

Declaration Date: 16/09/2022

**227 & 229 Portobello High Street  
Edinburgh EH15 2AN**

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**Proposed Alterations, Extension and Use of  
Existing Hot-Food Takeaway and Office  
Premises to form a Restaurant**

**Planning Statement**

**Request to Review the Decision  
to Refuse Planning Permission,  
Application Ref 21/04749/FUL**

**For consideration by the Local Review  
Body of City of Edinburgh Council**

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On behalf of:

Mr Harem Murdochy

16<sup>h</sup> September 2022

**Sorrell Associates**  
planning | development | consultancy

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## SUPPORTING DOCUMENTATION

### Documents from Application 19/00020/FUL (the 'approved scheme')

- a) Proposed Layout plan
- b) Proposed Elevations
- c) Report of Handling
- d) Decision Notice, 2 April 2019

### Licensing Document

- e) Section 50 Certificate, 7 June 2019

### Documents Submitted with Application 19/04204/FUL (the 'current scheme')

- |  |                    |
|--|--------------------|
| f) Location Plan & Block Plan                      | Drawing 00 BLP     |
| g) Existing Floor Plan                             | Drawing 01         |
| h) Existing Roof Plan                              | Drawing 02         |
| i) Existing Rear & Side Elevations                 | Drawing 03         |
| j) Existing & Proposed Basement Plan               | Drawing 04         |
| k) Proposed Ground Floor Plan                      | Drawing 05         |
| l) Proposed Roof Plan, Elevation & Garden Section  | Drawing 06 amended |
| m) Proposed Floor Plan & Rear Elevation            | Drawing 07 amended |
| n) Photographs of Works in Rear Garden - Sept 2021 | Drawing 08         |
| o) Approved & Proposed Plans & Elevations          | Drawing 09         |
| p) Site Progress Photographs - June 2022           | Drawing 10         |

### Post-Submission Documents

- q) Consultation Response - Neighbour
- r) Consultation Response - Portobello Amenity Society
- s) Noise Impact Assessment by Sandy Brown Ltd, 17 May 2022
- t) Consultation Response - CEC Environmental Protection, 27 May 2022
- u) Email from John Tod to Murray Coulsen, 8 June 2022
- v) Planning Officers' Report of Handling
- w) Decision Notice, 17 June 2022

### New Document Submitted with Appeal

- x) 19/04204/FUL Approved & Proposed Plans & Elevations Drawing 09 amended

## SECTION 1 INTRODUCTION

### Background to the Proposal

- 1.1 This Planning Statement is submitted on behalf of Mr Harem Murdochy ('the applicant') regarding his proposal to alter and extend the property at 227-229 Portobello High Street and for its use as a restaurant (application reference 19/04204/FUL).

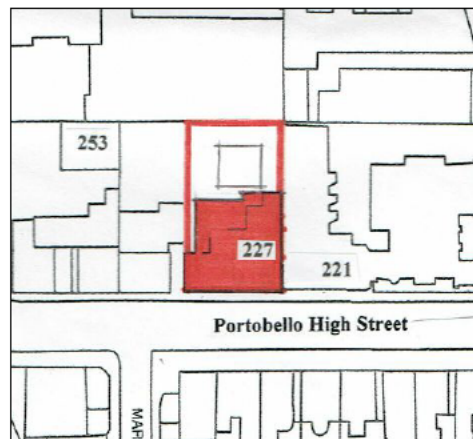


Fig 1 - Location of 227-229 Portobello High Street

- 1.2 The proposal was refused planning permission under delegated powers by planning officials of the City of Edinburgh Council ('the Council') on 17 June 2022 and Mr Murdochy is now seeking a review of that decision by the Council's Local Review Body ('LRB').
- 1.3 Under Section 43A of the Town & Country Planning (Scotland) Act the applicant has a period of three months following the refusal in which to request a review, in this case by 16 September 2022, and the review notice is being lodged within that timescale.
- 1.4 Mr Murdochy is an experienced and successful operator of restaurant, café and public house outlets in Portobello and Joppa. He wishes to extend his portfolio and his proposal is to develop the property for a new-concept high-quality restaurant which will operate as 'The Garden of Eden'.
- 1.5 He considers there is a particular opportunity for a high-end restaurant outlet in the area and believes it will be a positive addition to the existing Class 3 provision in Portobello High Street.

### Former Use of the Property

- 1.6 Bluebell Inn Public House - The property was originally a public house known as the Bluebell Inn. It is purported to have been the first licensed premises in Portobello when it opened in the late 19<sup>th</sup> century and it remained a popular venue for both local people and a wider clientele until it closed in the mid-1990s.
- 1.7 The pub comprised two ground floor buildings. No227 on the west side comprised the main body of the pub including its principal entrance, with No229 on the east side having a smaller floor area and joined internally with No227 by an opening in the mutual wall.

- 1.8 There is a residential flat above No 227 on the west side, which was intended for occupation by the pub landlord. There are no buildings above No229.
- 1.9 There is a large external yard to the rear of the two buildings and news articles about the pub refer to this having been used as a beer garden:  
<https://www.edinburghlive.co.uk/news/history/edinburgh-ghost-sign-uncovered-portobellos-23636693>



Fig 2 - Street view of the Bluebell Inn c1975 (source, Canmore). No 227 to the right, No229 to the left



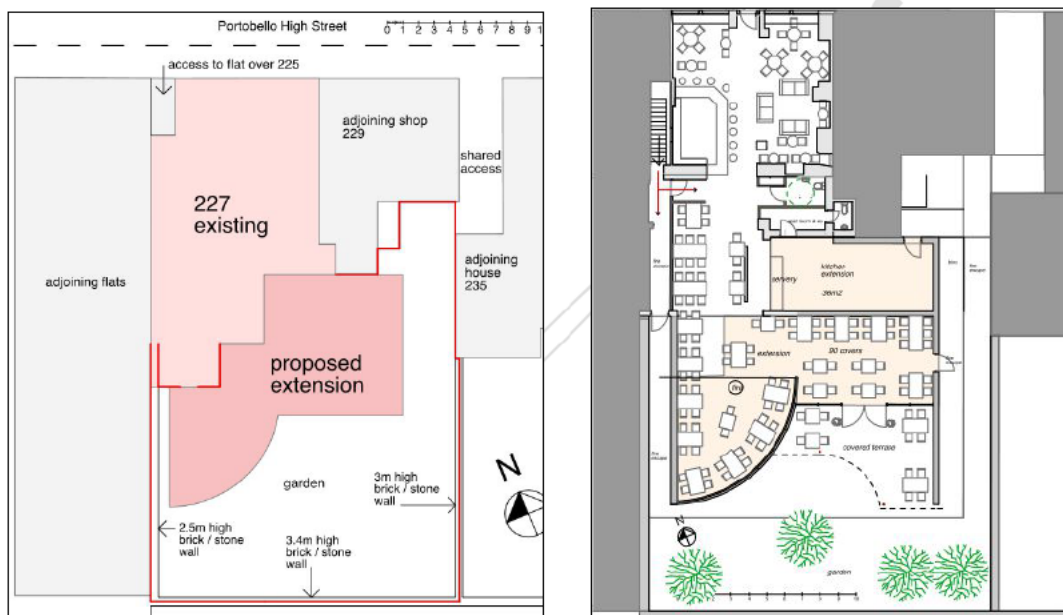
Fig 3 - Street view today

- 1.10 Hot Food Takeaway and Office Use - Following closure of the Bluebell Inn the property was split into separate ownerships.
- 1.11 No227 was converted to a hot food takeaway (planning approval ref 98/00179/FUL) and traded as Carlos fish & chip shop. The upstairs flat, accessed by a separate front door from the street, was acquired for private occupation.
- 1.12 No229 became a separate unit with the gap in the mutual wall closed up. It was initially used as a retail outlet and was then converted to Class 2 office use (planning approval 06/04793/FUL), being most recently occupied by Annan solicitors & estate agents.

## The Applicant's Proposals

### i) Initial Proposal 2019 - 'The Approved Scheme'

- 1.13 When no227 became available for sale it was purchased by Mr Murdochy in 2016, including ownership of the whole back garden area behind both outlets. Initially he continued operating a fish and chip shop, rebranded as Oscars. However he wished to develop it as a restaurant and he brought forward plans accordingly, submitting a planning application (ref 19/00020/FUL) in January 2019.
- 1.14 No229 was not in his ownership at that time and the proposal only related to no227. It comprised the conversion of the property, an extension to the rear and an outdoor terrace in the back garden with tables for serving meals to customers in addition to the tables inside.



**Figs 4 & 5 - Existing and Proposed Floor plan layouts of the approved scheme**

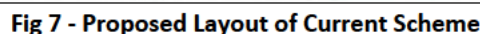


**Fig 6 - Rear elevation of approved scheme**

- 1.15 The appointed planning case officer determined that under Policy Ret11 of the Council's Local Development Plan (LDP) the proposed restaurant would be acceptable in terms of its impact on nearby residential neighbours.

1.20 Having started the building works to no227, the adjacent property at no229 then became available for sale and Mr Murdochy secured its purchase.

1.21 This provided the opportunity for the proposed restaurant to incorporate both parts of the property. Mr Murdochy instructed his architect John Tod to bring forward a revised design and a fresh planning application was submitted in September 2021.



- 6



- 1.23 The rear elevation of the new proposal has considerably less glazing than the approved scheme, but still includes folding doors giving access to the back garden which will be used for serving meals to customers. The proposal also includes works to upgrade the back garden by laying timber decking around a central sunken area, with a large amount of planting, shrubbery and trees throughout the garden.
- 1.24 Full details of the design are at para 50 below.

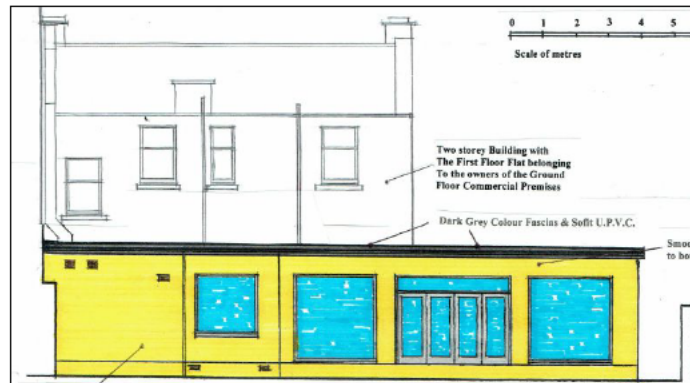


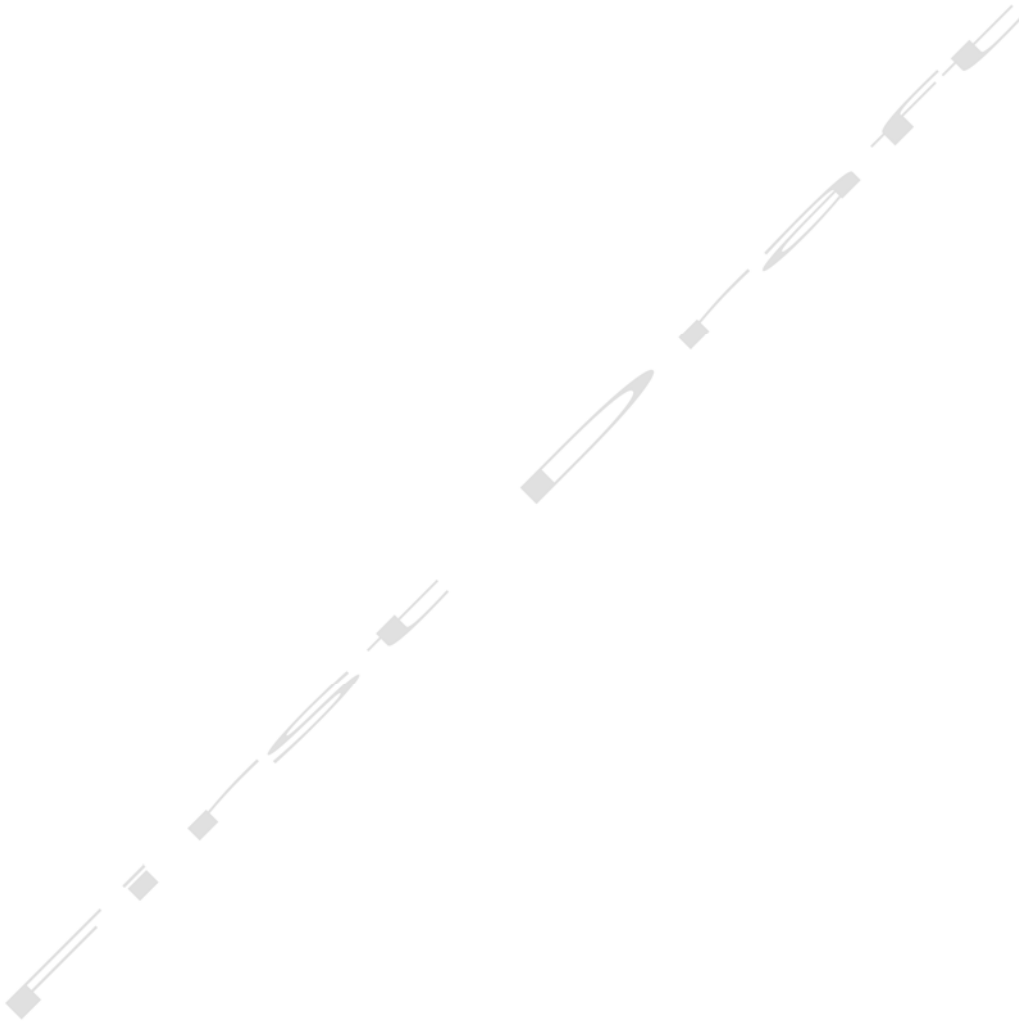
Fig 8 - Proposed rear elevation in the current scheme

- 1.25 **Planning Officer's Decision** - A different planning officer was appointed for the second application than for the first application and he took an entirely different approach. He ultimately formed the opinion that the restaurant would have an unacceptable impact on residential amenity and that planning permission should be refused.
- 1.26 The decision notice confirming the refusal was issued by the Council on 17 June 2022, under officers' delegated powers. Two reasons for refusal are stated in the decision notice:
- 1. The proposal is contrary to the Local Development Plan Policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as it would have a materially detrimental effect on the living conditions of nearby residents.**
- 2. The proposal is contrary to the Local Development Plan Policy Ret 11 in respect of Food and Drink Establishments, as it would be likely to lead to an unacceptable increase in noise and disturbance to the detriment of living conditions for nearby residents.**
- 1.27 Both of these reasons refer to the planning official's conclusion that the proposed restaurant will result in unacceptable impact on the living conditions of nearby residents. Further explanation is given in the Report of Handling which accompanies the decision notice that this is based on: '*Concerns that have been raised regarding the breakout noise from the rear extension and the lack of information regarding the flue and ventilation*'.
- 1.28 These 'concerns' reflect several matters raised in a consultation response from the Council's Environmental Protection department which relate predominantly to noise that might emanate from the rear of the restaurant either by the glazed doors being left open, or from conversations of customers sat at the external tables.
- 1.29 **Basis of Appeal** - The applicant considers that the restaurant will not cause undue disturbance to residential neighbours and we consider each of the matters raised by



Environmental Protection later in this Statement.

- 1.30 However the over-riding justification for approval is that the aspects which are now considered unacceptable, which relate mainly to the use of the rear garden, have already been found acceptable for the approved scheme. It is therefore illogical and inconsistent to refuse the current scheme.
- 1.31 This is particularly as works had been carried out to implement the approved scheme and it could still be built-out to completion with effectively the same rear door arrangement and use of the garden for dining. We expand on this below.



## SECTION 2 DEVELOPMENT PLAN POLICY CONTEXT

- 2.1 The well-known statutory process required by the Planning Act is for the planning application to be determined in accordance with the development plan unless material considerations indicate otherwise, and in this case the development plan principally comprises the Edinburgh Local Development Plan 2016 ('the LDP').
- 2.2 The property on Portobello High Street is within the designated Portobello Town Centre and is subject to relevant LDP policies relating to Shopping and Leisure. Policies relating to design and residential amenity are also relevant, and also regarding its location within the Portobello Conservation Area.

### Policy Ret1 'Town Centre First Policy'

- 2.3 This states that *'planning permission will be granted for retail and other uses which generate a significant footfall.'* This follows a *'town centre first sequential approach'* in which location within a designated town centre is given the highest priority.
- 2.4 In our opinion the proposed restaurant falls within this definition of appropriate uses within a town centre and should be regarded as acceptable as a matter of principle. In this context it will introduce a vibrant commercial outlet that will generate interest and customer footfall and contribute to the overall vitality and viability of the town centre.
- 2.5 It will also provide a renewed purpose for the former Bluebell Inn premises which was a focal point in the street for so many years and has been sadly missed by so many since its closure.
- 2.6 Compliance with Ret1 was not disputed by either of the planning officers handling the current proposal or the approved scheme.

### Policy Ret3 'Town Centres'

- 2.7 This refers to the high priority given by the Council to supporting retail uses within designated town centres.
- 2.8 The proposed restaurant is not a retail use. However it is relevant that the property has never been used as a shop, having been a pub, then a hot-food takeaway and a Class 2 estate agents office. Consequently the restaurant would not result in the loss of retail use and, in our opinion, should be regarded as being in compliance with Ret3.
- 2.9 This was specifically agreed by the planning officer in the Report of Handling for the current scheme.

### Policy Ret11 'Food and Drink Establishments'

- 2.10 This states: *'The change of use to a restaurant will not be permitted:*

*a) if likely to lead to an unacceptable increase in noise, disturbance, on-street activity or anti-social behaviour to the detriment of living conditions for nearby residents, or*

*b) in an area where there is considered to be an excessive concentration of such uses to the detriment of living conditions for nearby residents'*

- 2.11 Regarding Criterion b), it is Mr Murdochy's intention that his restaurant will introduce a high-quality facility offering a product very different to anything else in Portobello.
- 2.12 The Garden of Eden will focus on Mediterranean cuisine including a number of meat dishes, meze, and several vegan and vegetarian choices. It will also provide a high-standard breakfast buffet with specialist cheese/egg dishes and of a style comparable to Dishoom in the city centre. The restaurant will be licensed to serve alcohol with meals but its focus will be very much on its food service, not a drinking establishment.
- 2.13 The current provision of food and drink outlets in Portobello High Street comprises a mix of cafes, pubs, hot food takeaways and some restaurants but the applicant expects his restaurant to cater for a new, different market. It will certainly not result in a concentration of such outlets in terms of the policy.
- 2.14 It is not disputed by the planning officials that the proposed restaurant accords with Criterion b)
- 2.15 Criterion a) is referenced in the second reason for refusal and is a key consideration in this appeal. We address this in more detail in Section 3.
- Policy Hou7 'Inappropriate Uses in Residential Areas'
- 2.16 This states:  
*'Developments, including changes of use, which would have a materially detrimental effect on the living conditions of nearby residents will not be permitted.'*
- 2.17 This is referenced in the first reason for refusal and we address this in more detail below in parallel with Criterion a) of Ret11.
- Policy Des12 'Alterations and Extensions'
- 2.18 This confirms that *'Planning permission will be granted for proposals which:*
- a) comprise a design, form, materials and positioning that are compatible with the character of the building,*
  - b) do not result in unreasonable loss of privacy or natural light to neighbouring property,*
  - c) are not detrimental to neighbourhood amenity and character*
- 2.19 The proposal returns nos 227 and 229 into a single use for the first time since the Bluebell Inn closed and will achieve a vibrant and uplifting renewal of the property.
- 2.20 The frontage of the building will be returned to an appearance evoking the Bluebell. This includes removal of tile cladding to re-expose the original stonework and cast-iron columns. The frontage will then be re-painted a dark blue colour synonymous with the original Bluebell Inn facade.
- 2.21 The extension to the rear of the building will enable the interior to be reconfigured and opened-up to achieve an efficient layout for a modern restaurant purpose. The extension comprises 75sqm and will increase the existing 279sqm to a total floor area of 354sqm, representing a 26% increase.

- 2.22 In our opinion this will not be out of proportion with the original building. It is actually smaller than the previously approved scheme. Furthermore the original appearance of the building will still be apparent from the reinstated street elevation and the retention of internal walls.
- 2.23 The new rear elevation is to be clad with vertical timber lining boards made from natural larch, as shown on Drawings 7 & 9 (as amended). The timber provides a respectful contrast with the original building, whilst creating an ambiance for the substantial improvements to be carried out in the rear garden. The rear elevation is to be partially glazed comprising glazed dead panels and a folding door providing access to the garden. The east side elevation of the extension along the service passage accessing the street will be finished in white render. The flat roof of the extension will have a grey mineral felt finish.
- 2.24 The rear garden is to be landscaped in a manner that symbolises the owner's intention for an appearance and character synonymous with the Garden of Eden, as the restaurant will be known. The main feature of the garden is to be the significant provision of trees, plants and shrubs.
- 2.25 Timber decking is to be laid across the garden, around a large square sunken area providing a central feature which will be filled with plants. 'Planting walls' are to be installed along the garden's three boundary walls up to 2.2 metre height and several potted shrubs and plants will also be placed across the decking. Over time, these will provide a full enclosure of the garden in an established landscape.
- 2.26 As with the approved scheme there will be outdoor tables positioned on the decking so that in times of good weather customers can be served meals in the garden in the same manner as inside the building.
- 2.27 With all the above features the applicant considers the alterations and extension to the building and the use of the back garden will be fully compliant with Des12. It will be compatible with the character of the property and will make a positive improvement to the condition of the site and the character of the locality.
- 2.28 The building extension will have no impact on the privacy or natural daylight of neighbouring property which is already protected by the existing high boundary walls.
- 2.29 The planning officer agrees in the Report of Handling that the proposed scale, form and design comply with Des12.

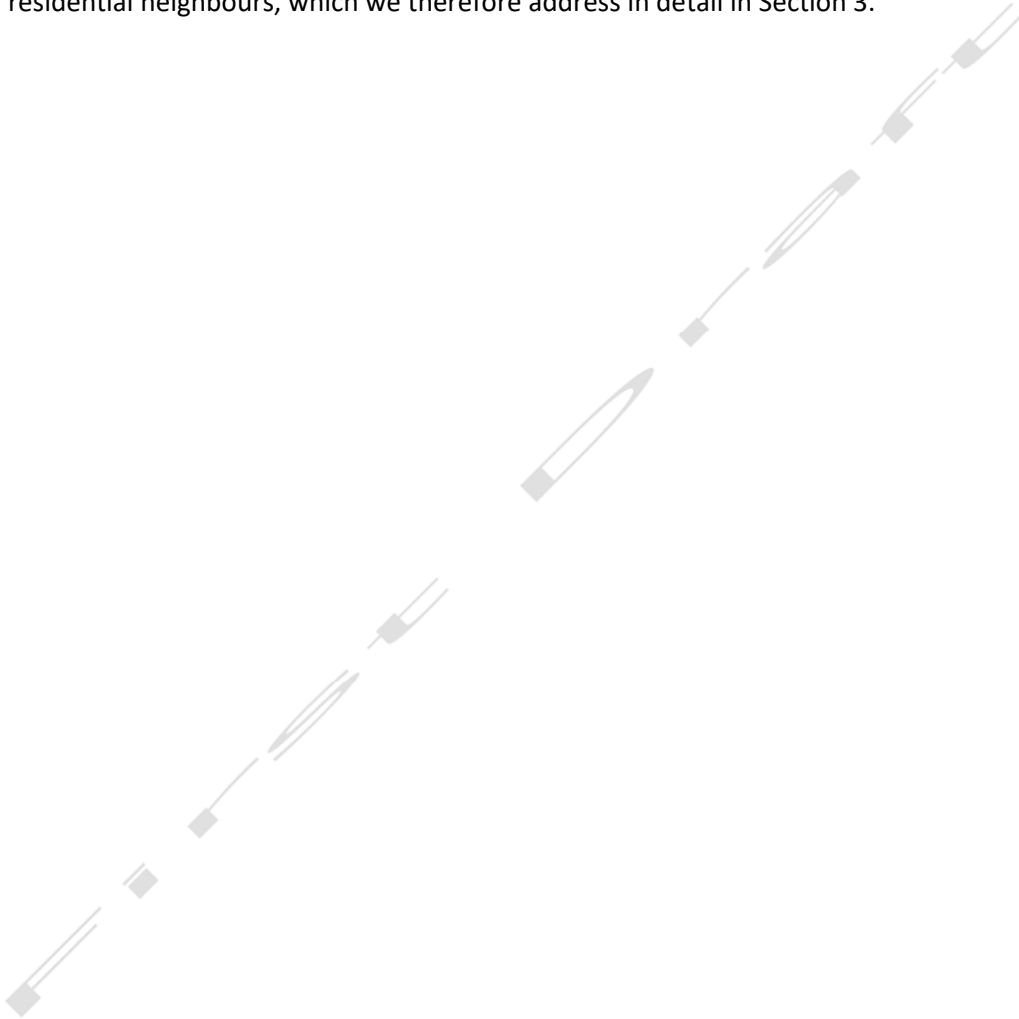
Policy Env6 'Conservation Areas - Development'

- 2.30 This requires proposals to preserve or enhance the character of the conservation area, with particular regard to any features that contribute to its character, and to use appropriate high standards of design and materials. This policy is relevant due to the site's location within the Portobello Conservation Area.
- 2.31 The proposal will provide a full upgrade of the property which will echo the character of its former use as the Bluebell Inn including the restorative treatment of the building façade. The rear extension and landscaping of the back garden are also considered to be improvements that will enhance the character and appearance of the conservation area.

- 2.32 The planning officer agrees in the Report of Handling that the proposals represent only minor building alterations and would not have a detrimental impact on the conservation area, compliant with Env6.

**Overview of Planning Policy Compliance**

- 2.33 There is broad agreement that the proposals satisfy the large majority of relevant policies from the Council's Local Development Plan. The proposed restaurant use and the intended building works and landscaping would bring about positive benefits and we invite the LRB to place considerable weight on these matters.
- 2.34 The only aspect disputed by the planning officer regards the impact on amenity of residential neighbours, which we therefore address in detail in Section 3.



### SECTION 3      IMPACT ON LIVING CONDITIONS OF NEIGHBOURING RESIDENTS

- 3.1 Policies Ret11 and Hou7 are almost identical in requiring demonstration that the restaurant proposed under the current application:

*'is unlikely to result in an unacceptable increase in noise, disturbance, on-street activity or anti-social behaviour to the detriment of living conditions for nearby residents.'*

- 3.2 As detailed in Section 1, the Council officials consider the amenity of residential neighbours is likely to be unacceptably disturbed by the operation of the restaurant due to *the breakout noise from the rear extension and the lack of information regarding the flue and ventilation*.
- 3.3 The matters regarding the flue and ventilation require a technical solution and are addressed in the following section.
- 3.4 The matters regarding potential breakout noise relate to noise that might emanate from the rear of the restaurant either by the glazed doors being left open, or from conversations of customers sat at the external tables. However before considering these in detail, the applicant considers it is unreasonable that this should be taken into account as a matter of principle.

#### **Planning Justification - Matters of Principle**

- 3.5 The principle justification for the applicant's case, and which the LRB is asked to take into account, relates to the following two points:
- i) ***it is inconsistent and illogical to refuse planning permission for the current proposal based on matters which have already been found acceptable in the approved scheme***
- 3.6 The similarity between the approved scheme and the current scheme is demonstrated by the respective floor plans in Fig 9.
- 3.7 Both include the provision of restaurant tables in the outside back garden area, at which customers would be served meals in the same way as if they were inside. Both schemes also include a folding glazed door in the rear elevation of the extended building to provide access to the back garden for both customers and restaurant staff. The current scheme has a smaller rear extension of the building which results in a slightly larger back garden area, but both proposals are quoted as providing a total of 90 covers in the restaurant as a whole.
- 3.8 We have explained in Section 1 that these matters were taken into account for the approved scheme by the case officer and the proposal was found to be acceptable.
- 3.9 He considered the restaurant use would result in a **reduction** in any potential nuisance that might be caused by contrast with the previous use as a pub and a hot food takeaway, which he regarded as more onerous in terms of potential nuisance. This is a fundamental and legitimate consideration under Policy Ret11.

- 3.10 He also considered the proposed use of the rear garden area would be appropriate given its relatively secluded situation with 'very few overlooking neighbours'.

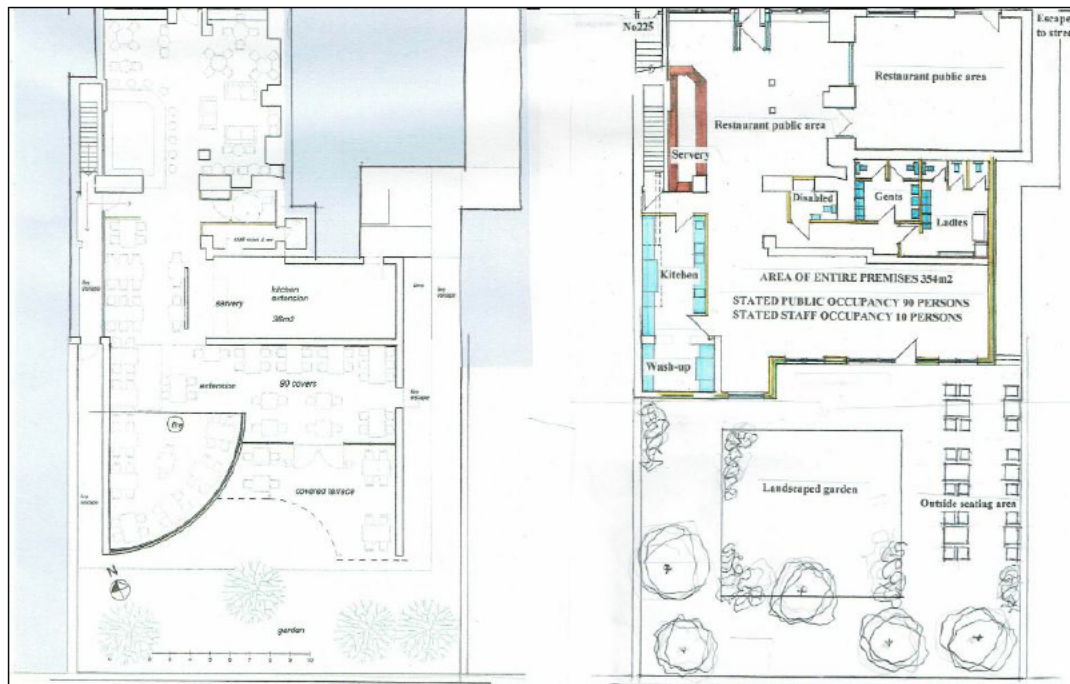


Fig 9 - floor layouts of the approved scheme (left) and the current scheme (right).  
External tables shown are illustrative

- 3.11 As these matters have already been found acceptable with a directly similar arrangement, the applicant finds it remarkable, and procedurally deficient, that the current scheme can now be found unacceptable.
- ii) *the planning consent for the approved scheme remains extant and could still be completed, including use of the back garden area.*
- 3.12 Following the granting of consent for the approved scheme on 2 April 2019 Mr Murdochy started work on the restaurant conversion of no227.
- 3.13 The construction programme was then interrupted, particularly due to the Covid lockdown, and had not been completed by the time he submitted the current planning application for nos227-229.
- 3.14 As the two schemes are broadly comparable, he anticipated that achieving planning permission for the new proposal would be uncontroversial, and so he decided to continue the construction with the plans for the new scheme for nos227/229, even though this was before the current application had been determined.
- 3.15 In retrospect he knows that this was a risk. However he would ask the LRB to accept that he did not intend to flout planning regulations and, honestly anticipating a second approval, simply believed this approach would save time in delivering the new restaurant.
- 3.16 There is evidence from two sources that the approved scheme was implemented. The first is the issuing of an alcohol licence by the Council to Mr Murdochy for no227 through the

approval of a Section 50 Certificate on 7 June 2019, and which makes reference to the planning consent (19/00020/FUL) having been 'lawfully taken up'. The Certificate is being submitted with this appeal for inspection by the LRB.

- 3.17 The second source is by visual inspection of the interior of no227 when the LRB members carry out a site visit. In the front section of no227 the following will be noted:
- the west gable wall has been exposed back to the original brickwork;
  - the suspended ceiling has been stripped out to reinstate the original ceiling height';
  - 'sound block' plasterboard with sound proofing insulation has been installed on the ceiling;
  - reconstituted cornicing has been installed around the edge of the ceiling.
  - the east wall has been plaster-boarded and sealed. This is particularly relevant because the securing of this wall was only proposed in the approved scheme whereas under the current proposals this wall will again be removed to create a 'through room' between 227 and 229.
  - The front part of no227 presently comprises a shell ready for fitting out.
- 3.18 By contrast the rear part of no227 has been extended as proposed under the current scheme, comprising a smaller footprint than the approved scheme. The walls and ceiling are structurally complete including all windows and the folding door in the rear elevation, although the interior remains a shell and is not yet fitted out. Externally the timber lining has been completed on the rear elevation and the timber decking in the back garden has also been constructed as per the current scheme.
- 3.19 To fully implement the approved scheme would require taking down much of the rear extension already constructed and re-building according to the plans for the approved scheme, with a larger rear extension, different elevational design, and smaller back garden.
- 3.20 Mr Murdochy does not wish to do this and it would be very costly. However if the LRB upholds the planning refusal, he would have no choice but to revert to the approved scheme and complete it as initially proposed. Of course, this would still include the back garden being operated as part of the restaurant and the folding doors occasionally being opened to enable access for customers.
- 3.21 The applicant considers it must be preferable for the improved restaurant scheme to be completed rather than for him to revert to the approved scheme, particularly as there would be no discernible difference in the impact on amenity of neighbours. The current scheme includes significant improvements to the layout of the property and to its operation as a restaurant and it would be a more attractive facility for the Portobello community.
- 3.22 For all these reasons Mr Murdochy considers it makes no sense to refuse the current scheme. He does not understand why the status of the approved scheme was not taken into account or given due weight by the planning officials. He considers this was an error, and the LRB is asked to correct the position.
- 3.23 If the LRB agrees with these matters of principle, there is limited need to consider the detailed issues raised by Environmental Protection. However to the extent the LRB considers these matters remain of relevance, we would respond to their concerns as follows.



**Planning Justification - Response to Matters Raised by Environmental Protection**

**iii) Noise Impact – The need for planning judgement**

- 3.24 Environmental Protection raised similar comments with regard to both the approved scheme (see appendix of the report of handling for 19/00020/FUL) and the current scheme (the EP response is included in our submission). In both cases they raised concern that a restaurant with external seating is likely to cause unacceptable levels of noise, resulting in detriment to amenity of neighbours and they recommended a noise impact assessment was carried out to demonstrate that any noise would be inaudible (ie not breaching NR15).
- 3.25 To put this in context, we understand from the applicant's acoustic consultant that NR15 would require any noise from the restaurant to be inaudible in nearby houses, assuming those residents have their windows open ie a worst-case scenario. This sets the bar extremely high as even two people having a normal conversation in the open air, such as the restaurant garden, are likely to be audible nearby.
- 3.26 It seems bizarre that the same two people having a conversation in the back garden of a house would not be regarded as intrusive to neighbours in determining a planning application proposing a new dwelling. It also seems inconsistent that other sources of noise such as car engines, ambulance sirens, lorries, or motorbikes passing by on Portobello High Street, or even trains on the nearby railway line, are not taken into account as existing background noise in calculating NR15 for a commercial restaurant.
- 3.27 For the approved scheme the planning officer realised that the previous use of the property as a public house, including a beer garden, and its existing use as a fish and chip shop, had already created an environment where disturbance and loss of amenity for neighbours had become established. He therefore used his planning judgement to conclude that a well-managed restaurant would result in reduced impacts and actually **improve** the relationship with neighbours.
- 3.28 On this basis he did not require a noise impact assessment from the applicant, as Env Protection had requested, as he presumably realised that the alternative of reinstating a pub or hot-food takeaway would be undesirable, while the introduction of a restaurant would be preferred. It is likely he realised that all of these uses cause an element of noise, and that requiring total silence, as NR15 seems to expect, is unrealistic. He therefore appears to have taken a pragmatic approach to the response from Env Protection, and applied his planning judgement to consider the best outcome, on balance, in the wider public interest.
- 3.29 It is accepted that the Council's Environmental Protection team are required to strictly consider every proposal against relevant standards, and Mr Murdochy makes no criticism of them. However their role does not seem to give them leeway to consider a bigger picture, or other material factors which are of relevance. That is the role of the planning officer.
- 3.30 For the current scheme, the appointed planning officer does not appear to have exercised any balanced judgement whatsoever. He requested a noise impact assessment (NIA) by the applicant who commissioned this from Sandy Brown Ltd. The NIA showed that the upstairs flat could achieve NR15 by including sound proofing in the restaurant ceiling.

- 3.31 However Env Protection were critical of the NIA in that it was restricted to calculating internal noise breakout in assessing impact on the upstairs flat and did not assess the situation outdoors. They noted that any voices in *'outdoor eating and drinking areas are extremely difficult to modulate and control'*, and then also assumed that the rear folding doors *'will be kept open for long periods'* in concluding that this would fail to meet the standards required to meet residential amenity. The planning officer did not question this conclusion, he did not engage with the applicant and proceeded to refuse consent.
- 3.32 We consider the balanced approach taken by the first planning officer must be the correct way, in this instance, of addressing the otherwise stringent constraints imposed by noise regulations. We submit there are some circumstances where it is unreasonable to impose these noise regulations inflexibly, and the situation of the proposed restaurant is a justified case.
- 3.33 Above all, the same noise impacts have been found acceptable in the previous granting of planning permission for a scheme that can still be built-out. This must presume in favour of again granting consent.
- 3.34 Furthermore there are several management protocols which are part of the proposal yet which appear to have been overlooked by the planning official, or by Env Protection, or both. The applicant trusts these will ameliorate any lingering concerns.

**iv) Management Protocols**

- 3.35 The applicant considers there are several factors by which noise from the restaurant would be moderated:
- The outdoor seating area would only be used when the weather allows which will limit its use to a relatively small number of days each year
  - There will be no canopy or roof above the tables, further reducing the periods of use
  - The garden will be used for restaurant table service only. It will not be a beer garden and people will not be allowed to take drinks into the garden before or after meals. It will not be an 'outdoor drinking area' as presumed by Env Protection.
  - The only source of noise will be customers' voices or conversations and this will be considerably moderated by the above measures, reducing the likelihood of disturbance.
  - There will only be a limited number of customer tables in the garden. Precise numbers are not yet determined and can be moderated through the licensing application. But the total capacity of the restaurant is declared as 90 customers and sufficient tables to accommodate this number will be provided inside.
  - The drawings submitted with the application did not show a table layout for the garden. The approved scheme includes a plan with four tables on the back terrace which provides context. By way of example, an illustrative revision to drawing no9 is submitted with this appeal (see Fig 9 above) which shows a layout of six tables on the east side of the decking and also an illustration of the space to be taken by the

considerable landscaping and planting proposed.

- The Garden of Eden concept will include heavy landscaping with numerous trees, plants, shrubs across the garden and 'planting walls' along each boundary. This will help absorb the sound of people's voices.
- There will be no music played in the garden, either live or recorded. The only music will be gentle background music played inside the restaurant to create a pleasant ambience.
- The rear doors will not be 'kept open for long periods of time' as stated by Env Protection. They assume a worst-case scenario but the restaurant will apply principles of good management to ensure the doors are only open when people require access or egress.
- The current scheme has considerably less glazing in the rear elevations than the approved scheme which will further reduce noise breakout.
- The applicant is willing to install noise-monitoring equipment inside the restaurant and in the garden so that noise levels can be identified and moderated.
- Ultimately the success of the restaurant depends on attracting customers and achieving a good reputation. Neighbour relations is critical to this success and Mr Murdochy is committed to achieving this by regular engagement.

3.36 The applicant is committed to managing and operating the Garden of Eden restaurant in a responsible manner and he places high importance on community engagement and respect for neighbours.

3.37 Against this background, and with planning permission already granted for a similar scheme which can still be implemented, he considers that many of the concerns raised seem exaggerated, and regard aspects which have already been found acceptable with the approved scheme. He urges the LRB to take a flexible approach to achieve the best planning outcome and improving Portobello as a place.

#### **v) Neighbouring Houses**

3.38 The planning officials say that neighbours will suffer loss of amenity but do not specify which houses will be detrimentally affected or give any consideration to the setting or character of the neighbouring properties.

3.39 To the west of the garden is a large block of 4-5 storey height comprising an old folks home. The elevation facing the garden is a blank brick wall with only two large obscure-glazed windows which we understand provide light onto internal stairwells. On the top attic floor there are three velux windows within the sloping roof, but we understand these are from corridors rather than habitable rooms.



**Fig 10 - old folks home abutting the site to the west**

- 3.40 The consideration by Env Protection and also in the NIA has focused on the flat above no227 as it is nearest to the restaurant. The NIA confirms it will achieve acceptable standards of amenity by installation of soundproofing in fitting out the restaurant. The flat is owned by the applicant Mr Murdochy who uses it as his main residence. He evidently has no objection to the restaurant continuing and he can guarantee that the flat will be retained for occupation by restaurant staff. He is willing to enter a legal arrangement with the Council to ensure this.
- 3.41 The occupiers of the neighbouring house to the east (no235) did not object to either application. There is mature planting in their garden including tall trees and a high stone wall provides enclosure along the mutual boundary.



**Fig 11 - neighbouring house on east side, no235**

- 3.42 There are houses to the rear (south) of the restaurant which are set back a considerable distance from the boundary and separated by long gardens. The gardens have tall, mature trees, and a high stone wall along the mutual boundary with 227/229 also acts as a buffer for noise.
- 3.43 It is understood that one of the residents submitted a representation to the Council. This was recorded as a 'neutral' comment and not an objection. They wish noise limits to be imposed on the restaurant garden so there is no disturbance when using their own garden. Mr Murdochy would agree to a regular monitoring of the situation with all neighbouring residents and to introduce a management protocol to ensure amenity is respected.
- 3.44 The objection from the Portobello Amenity Society includes reference to possible noise from the decking area in the back garden in the late evening or night time to the possible detriment of the houses backing onto this 'open courtyard'. The applicant agrees that amelioration of noise is important and he trusts the above measures provide assurance that

this will be given high importance. He believes the landscaping and planting proposed for the back garden will give assurance both of the quality of his proposed operation and that the garden will not be an open courtyard.

- 3.45 Mr Murdochy also notes that the Amenity Society object to the loss of class 1 retail shops by his proposal but this is clearly incorrect and dilutes the wider effect of their observations. The former uses of the property were actually the Bluebell Inn, hot food takeaway and class 2 office which were all established commercial uses of which the pub and takeaway generated greater noise and intrusion to neighbours than the Garden of Eden.
- 3.46 As the planning officer concluded for the approved scheme, the proposal will result in reduced noise, not an increase.

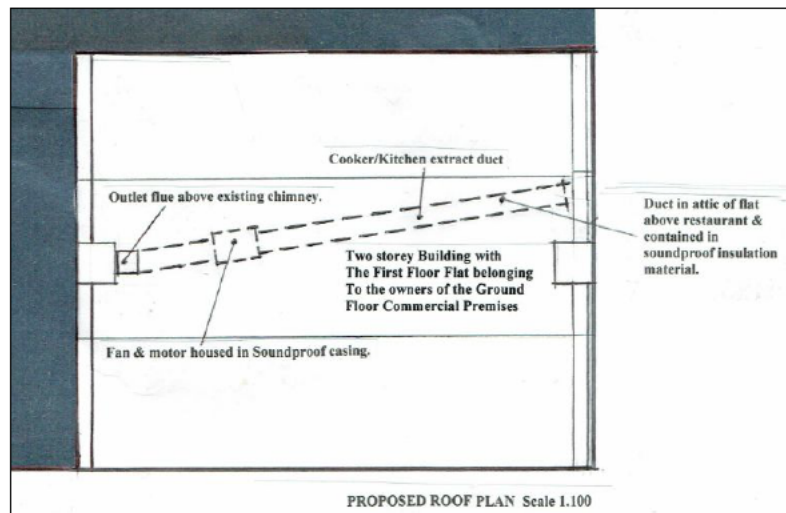
**vi) Opening Hours**

- 3.47 Env Protection refer to the intention of the applicant to operate the restaurant from 10am until 1am and consider this would not be acceptable.
- 3.48 Mr Murdochy agrees that remaining open until 1am would not be appropriate and wishes to point out that the reference to this in the noise impact assessment was a misunderstanding.
- 3.49 He does not anticipate the restaurant trading beyond 12 midnight as there is no identified demand for later hours in the Portobello area, and he would accept 12 o'clock as a restriction for the restaurant as a whole.
- 3.50 For the back garden, the LRB is asked to recognise that outdoor areas of restaurants have become increasingly popular as a consequence of the Covid 19 period and many customers now prefer sitting outside whenever possible.
- 3.51 We understand the Council has a general restriction across Edinburgh for pub beer gardens or similar external areas with residential neighbours to close by 10pm, and the applicant would accept the same requirement by restrictive condition.
- 3.52 Regarding opening times, it is intended that the restaurant would offer a high-quality hotel-style buffet breakfast in the mornings whether for casual or business customers, of a style similar to Dishoom in the city centre. An opening time is therefore requested of 8am. All timings would be subject to verification by the Licensing Committee but we trust that the above times are acceptable for planning purposes.

**vii) Extract Flue Termination Point**

- 3.53 Environmental Protection's response was: *'We have concerns that the position of the extract flue termination point may be too low and cause odour issues in nearby residential properties.'*
- 3.54 When the application was submitted, Drawing No6 indicated that the flue duct from the kitchen would extract through grills within the east-facing side elevation of the proposed rear extension at ground floor level. This would extract into the external passageway between the restaurant and the neighbouring residential house at no235.

- 3.55 While there are no windows in the side elevation of the house, the applicant's architect took steps to redesign the extraction arrangements and submitted an amendment to Drawing no6 on 8 June 2022, together with an explanatory email to Murray Couston the planning officer.



**Fig 12 - route of extract duct through loft of flat at no227**

- 3.56 The amended drawing shows an extract duct rising from the kitchen in the west part of the building and extending up inside the west wall to the upper floor, using the existing arrangement for the hot food takeaway. It will then run into the attic space of the residential flat, extending to the opposite (east) wall, passing into the chimney stack on that elevation and then continuing up through the chimney and extracting at rooftop level. No external ducting will be required.



**Fig 13 - view from rear garden showing the upstairs residential flat with a chimney stack on its gable elevation through which the kitchen flue will extract**

- 3.57 The flue termination point will therefore be at the top of the chimney. This is above the height of the pitched roof, and above the height of any windows in the neighbouring old folks home, the flat at no227 and the house at no235 to the east. The flue extraction is also located in the centre of the roof space of 227/229, which maximises the distance away from these neighbours.

- 3.58 There was no further comment on these amended proposals recorded from Environmental Protection before planning permission was refused by the planning officials, and it is unclear if they were consulted.
- 3.59 The applicant submits that the amended scheme constitutes an acceptable solution that will result in kitchen fume extraction at sufficient height and distance away from neighbours to allow odours to disperse without causing disturbance. This directly addresses the concerns raised by Environmental Protection.

**viii) Noise Caused by the Extract Flue Equipment**

- 3.60 Environmental Protection noted that the location of the extraction fan had not been identified in the initial drawings and that the means of ameliorating any noise it would generate had not been declared.
- 3.61 The amended drawing No6 (Fig 9 above) and the associated email from Mr Tod submitted on 8 June 2022 also address this matter. The amended drawing shows a *'fan and motor housed in a casing'* affixed to the extract duct within the attic of the residential flat and close to the point where it passes into the chimney stack. It also states that the entire duct within the attic will be *'contained in soundproof insulation material'*.
- 3.62 The sound insulation is designed to ensure no noise disturbance is caused to the occupants of the flat at no227, and it will be insulated not to exceed the required noise threshold of 25dba.
- 3.63 There was no further comment on these amended proposals from Environmental Protection before planning permission was refused by the planning officials, and it is unclear if they were consulted. The applicant submits that the amended scheme constitutes a solution that meets relevant standards.

## SECTION 4 CONCLUSIONS

- 4.1 The Local Review Body is respectfully requested to overturn the decision by planning officials to refuse application 21/04749/FUL, and to grant planning permission for the proposals by Harem Murdochy for the conversion, extension and use of 227-229 Portobello High Street as a Class 3 restaurant.
- 4.2 This is justified on the following grounds:
- 1) It is inconsistent and illogical to refuse planning permission for the current proposal based on concerns at noise generation at the rear of the restaurant, when planning permission has been granted by the Council for a similar scheme and the same characteristics were found to be acceptable.
  - 2) The approved scheme has been lawfully implemented, remains extant and could be built-out to completion with the same use of the back garden and rear door arrangement, even if planning permission for the current scheme is refused.
  - 3) It is preferable to deliver the current scheme than the approved scheme as it will achieve a better restaurant, a more beneficial use of the building and the optimum facility for the benefit of Portobello.
  - 4) The restaurant use will be less intrusive to residential neighbours than continuation of the previous uses as a public house or hot food takeaway.
  - 5) The requirement for a commercial use to achieve 'inaudibility' in nearby properties from any noise generated in external areas as required by NR15 is virtually unachievable and assumes a worst case scenario. Yet there is a desire in society for outdoor dining and activities, particularly after Covid 19. The property has a history of the back garden being used as a public house, and permission has already been granted for an alternative restaurant scheme.
  - 6) A pragmatic judgement would recognise that the planning balance lies in favour of granting consent, and to require effective management protocols..
  - 7) The development will return the property to a single commercial use as it was when operated as the Bluebell Inn and the building frontage will be restored to evoke the appearance of the Bluebell.
  - 8) The property will have a high standard décor both within the building and in the garden.
  - 9) The restaurant will operate as a high-quality new-concept Mediterranean style outlet, trading as the Garden of Eden. Its focus will be in providing an innovative and creative food menu for all age groups. Its focus will not be as a drinking establishment.
  - 10) It will provide a new restaurant offer within the town centre and will complement existing cafes, restaurants, pubs.
  - 11) The applicant is a well-known and successful operator of food and drink establishments in Portobello. He is committed to integrating the restaurant as a community facility and



liaising with neighbours and local people in all regards.

- 12) The back garden will be used for table service only, not as a beer garden. It will only be used when the weather allows. Its use will be carefully monitored by management to ensure neighbours' amenity is respected.
- 13) The property and its back garden have very few overlooking neighbours. The old folks home to the west has no windows facing the garden. The houses to the south are set back a considerable distance. The house to the east no 235 has closest proximity and a view into the garden from upstairs windows but is separated by a high wall and mature trees/shrubs. The owner has not objected.
- 14) The flat above no227 is owned and occupied by the applicant and he is willing to tie its occupation to the business by legal agreement. It will achieve necessary noise standards by sound proof panelling installed in the restaurant ceiling.
- 15) Hours of opening are proposed 8am to 12 midnight and 10pm for the garden.
- 16) Kitchen extraction is achieved via the chimney of the upstairs flat and will extract at a point above roof level and away from residential windows.
- 17) The extract fan will be within the attic of the upper flat and will be sound-proofed to achieve the appropriate NR25 standard.

- 4.3 For all the above reasons the proposal accords with LDP policies Ret1, Ret3, Ret11, Hou7 and Des12.

Whitelaw Associates  
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Mr Harem Murdochy  
227 Portobello High Street  
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EH15 2AN

**Decision date: 2 April 2019**

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACTS  
DEVELOPMENT MANAGEMENT PROCEDURE (SCOTLAND) REGULATIONS 2013**

Alterations, extension & change of use of existing hot food takeaway to form class 3 restaurant.  
At 227 Portobello High Street Edinburgh EH15 2AN

**Application No:** 19/00020/FUL

**DECISION NOTICE**

With reference to your application for Planning Permission registered on 4 January 2019, this has been decided by **Local Delegated Decision**. The Council in exercise of its powers under the Town and Country Planning (Scotland) Acts and regulations, now determines the application as **Granted** in accordance with the particulars given in the application.

Any condition(s) attached to this consent, with reasons for imposing them, or reasons for refusal, are shown below;

**Conditions:-**

**Informatives:-**

It should be noted that:

1. The development hereby permitted shall be commenced no later than the expiration of three years from the date of this consent.

2. As soon as practicable upon the completion of the development of the site, as authorised in the associated grant of permission, a 'Notice of Completion of Development' must be given, in writing to the Council.

3. No development shall take place on the site until a 'Notice of Initiation of Development' has been submitted to the Council stating the intended date on which the development is to commence. Failure to do so constitutes a breach of planning control, under Section 123(1) of the Town and Country Planning (Scotland) Act 1997.

Please see the guidance notes on our [decision page](#) for further information, including how to appeal or review your decision.

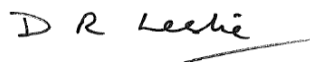
Drawings 1-5,  
represent the determined scheme. Full details of the application can be found on the [Planning and Building Standards Online Services](#)

The reason why the Council made this decision is as follows:

The proposed use complies with policy on food and drink establishments and the extension would preserve the character and appearance of the conservation area by enhancing a dead and functionless space. The size of the new use has the potential to cause amenity issues. However there are few properties directly overlooking the site and the owner of the flat above supports the proposals. The development complies with local development plan policies and non-statutory guidelines.

This determination does not carry with it any necessary consent or approval for the proposed development under other statutory enactments.

Should you have a specific enquiry regarding this decision please contact Stephen Dickson directly on 0131 529 3529.



**Chief Planning Officer**  
**PLACE**  
**The City of Edinburgh Council**

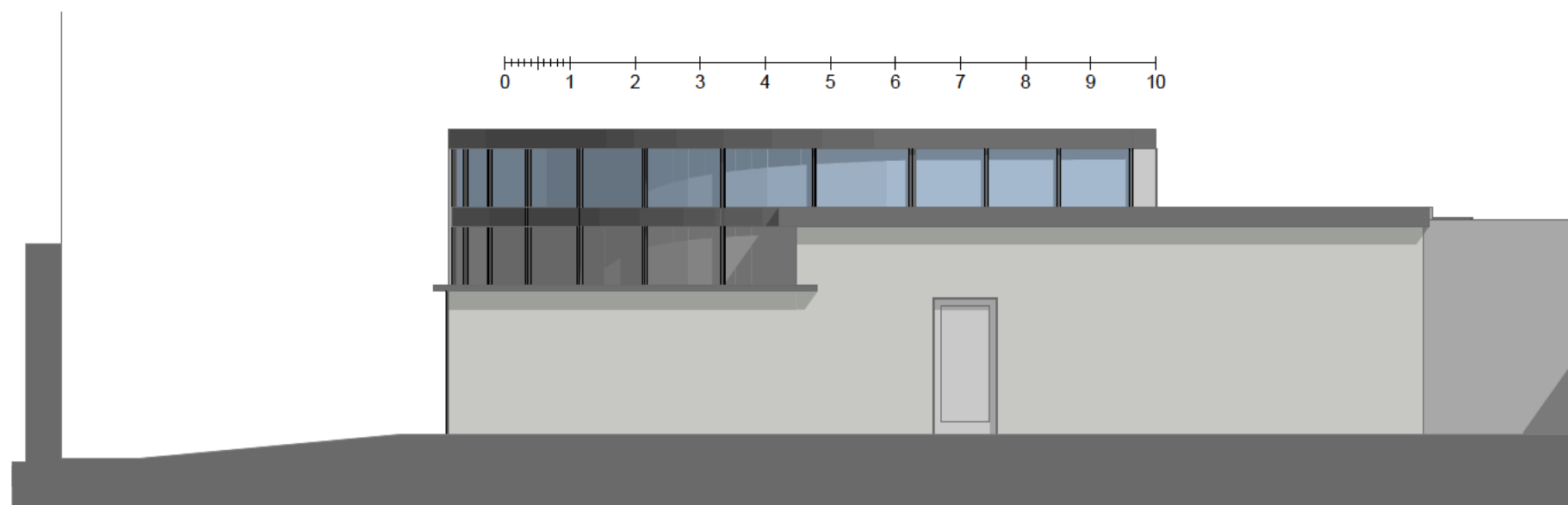
## NOTES

1. If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months beginning with the date of this notice. The Notice of Review can be made online at [www.eplanning.scot](http://www.eplanning.scot) or forms can be downloaded from that website. Paper forms should be addressed to the City of Edinburgh Planning Local Review Body, G.2, Waverley Court, 4 East Market Street, Edinburgh, EH8 8BG. For enquiries about the Local Review Body, please email [localreviewbody@edinburgh.gov.uk](mailto:localreviewbody@edinburgh.gov.uk).

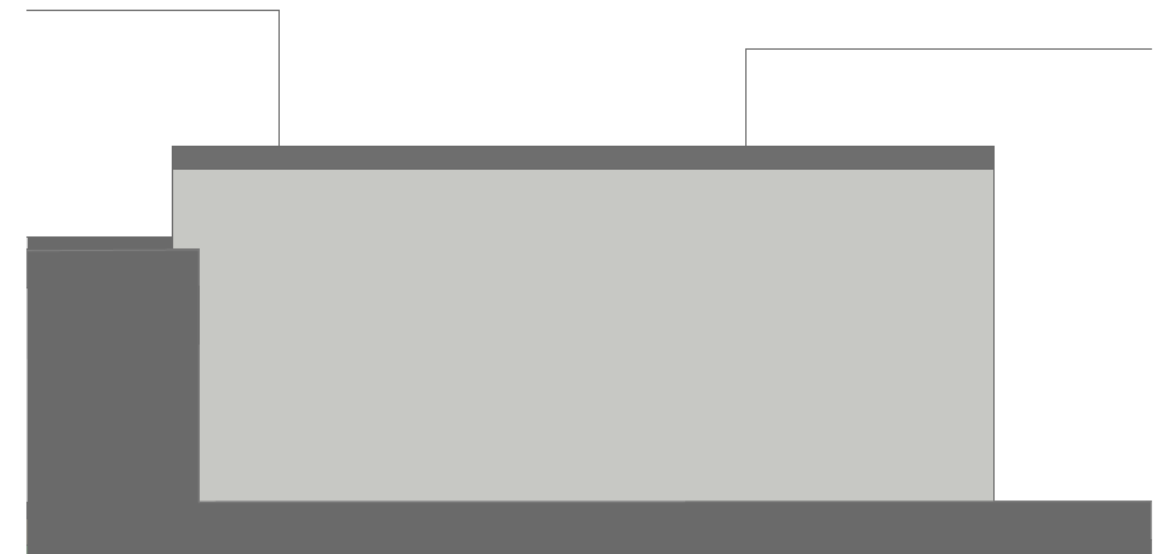
2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.



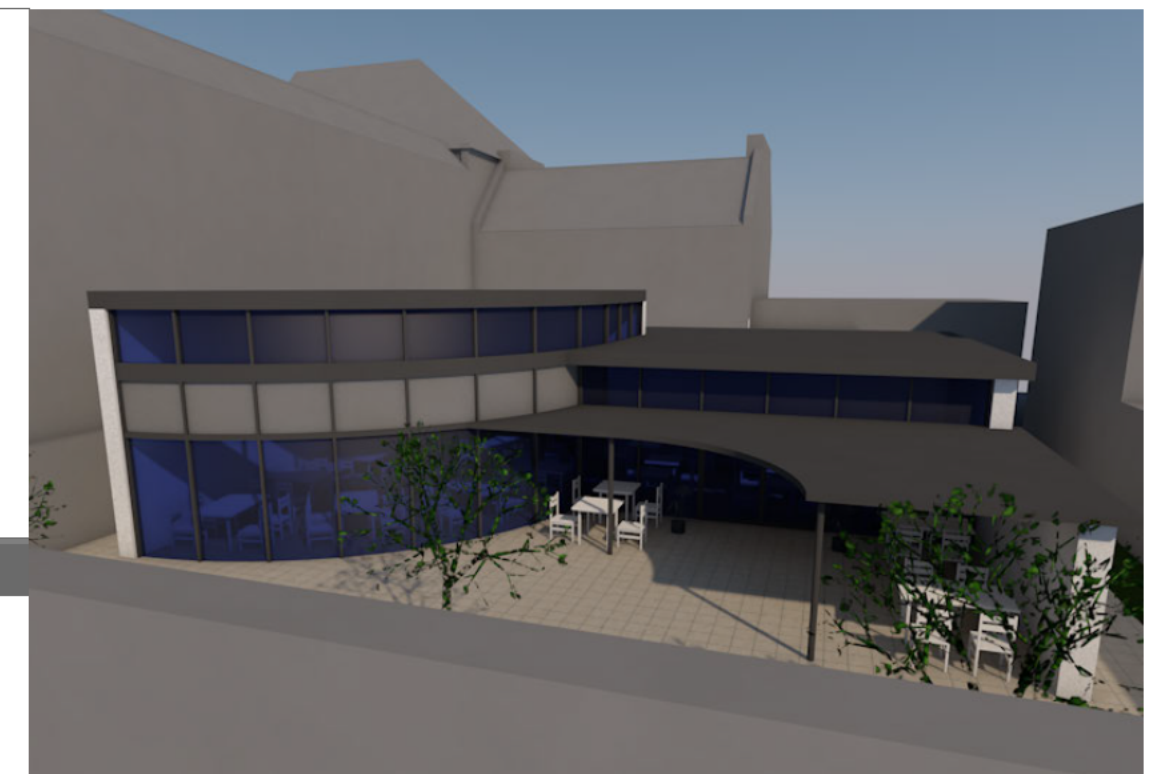
***south to gardens***



***east gable***



***west gable***



*grey membrane flat roof  
white rendered walls  
dark grey aluminium faced timber  
composite windows & screens*

*alterations, extension & change of use of existing hot  
food takeaway to form class 3 restaurant*

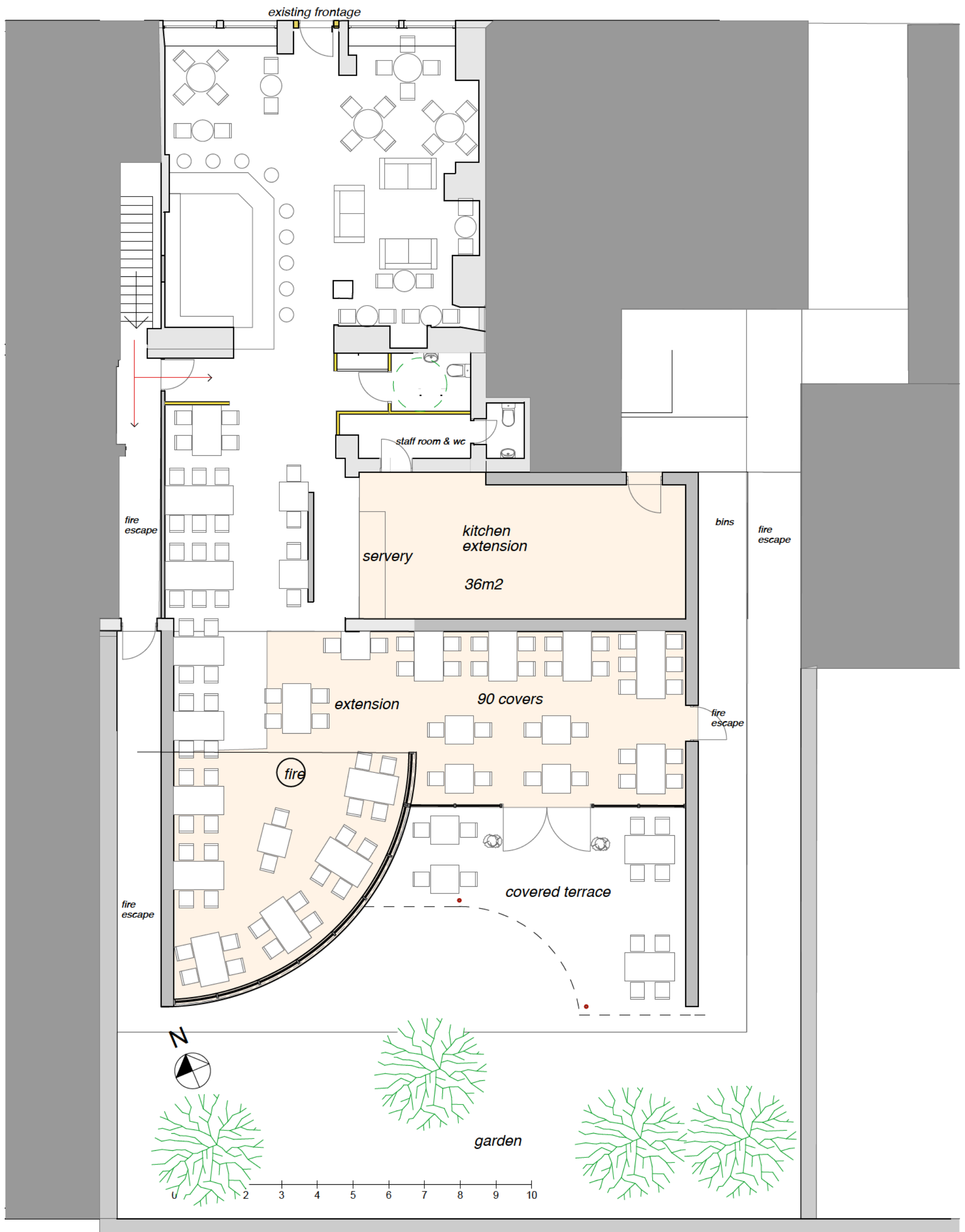
**227 PORTOBELLO HIGH STREET  
EDINBURGH, EH15 2AN**

***elevations***

scale 1:100  
White & Associates 01968 660452

Jan. 2019

**drg. 04**



*Note : area of extension shown tinted*  
*new roofs drained to soakaway*

*alterations, extension & change of use of existing hot  
 food takeaway to form class 3 restaurant*  
**227 PORTOBELLO HIGH STREET**  
**EDINBURGH, EH15 2AN**  
***proposed plan***

scale 1:100  
 White aw Assoc. 01968 660452

Jan. 2019

**drg. 03**

# Report of Handling

## **Application for Planning Permission 19/00020/FUL At 227 Portobello High Street, Edinburgh, EH15 2AN Alterations, extension & change of use of existing hot food takeaway to form class 3 restaurant.**

<b>Item</b>	Local Delegated Decision
<b>Application number</b>	19/00020/FUL
<b>Wards</b>	B17 - Portobello/Craigmillar

### Summary

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The proposed use complies with policy on food and drink establishments and the extension would preserve the character and appearance of the conservation area by enhancing a dead and functionless space. The size of the new use has the potential to cause amenity issues. However there are few properties directly overlooking the site and the owner of the flat above supports the proposals. The development complies with local development plan policies and non-statutory guidelines.

### Links

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<b><u><a href="#">Policies and guidance for this application</a></u></b>	LDPP, LRET11, LDES12, LEN06, LTRA02, LHOU07, NSG, NSLBCA, OTH, CRPPOR,
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# Report of handling

## Recommendations

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**1.1** It is recommended that this application be Granted subject to the details below.

## Background

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### 2.1 Site description

The property is an existing hot food take-away (fish and chip shop) within the existing retail area in the centre of Portobello. It has one flat above (in independent ownership). It is noted that the unit was previously a public house (see History).

To the east form drops to single storey, the closest unit being an estate agent. A modern old folks home stands to the immediate west, but this specifically turns its back on the site, with a blank three storey wall facing the rear courtyard. The church beyond has a nursery at ground floor.

To the rear, the courtyard is highly enclosed on three sides but looks south over allotments. The Portobello GPO Sorting Office backs onto the site to the south-west. The closest housing to the south is some 50m distant, beyond the allotments.

To the east a backland house presents a two-storey blank gable to the site.

This application site is located within the Portobello Conservation Area.

### 2.2 Site History

6.5.1998 - change of use from public house to hot food takeaway (98/00179/FUL)

11.8.2017 - refusal of part change of use to create a residence within part of the existing floor area (17/02368/FUL)

7.8.2018 - refusal of two houses in the rear courtyard (17/02373/FUL)

## Main report

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### 3.1 Description Of The Proposal

The application proposes change of use from hot food take-away to class 3 restaurant plus a glazed extension to the rear looking into an enclosed courtyard (proposed for outdoor seating).

### 3.2 Determining Issues



Section 25 of the Town and Country Planning (Scotland) Act 1997 states - Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise.

Do the proposals harm the character or appearance of the conservation area? If they do, there is a strong presumption against granting of permission.

Do the proposals comply with the development plan?

If the proposals do comply with the development plan, are there any compelling reasons for not approving them?

If the proposals do not comply with the development plan, are there any compelling reasons for approving them?

### **3.3 Assessment**

To address these determining issues, it needs to be considered whether:

- a) the principle of the use is acceptable
- b) the works impact on the character or appearance of the conservation area
- c) the proposal impacts on the amenity of neighbours
- d) parking issues

a) LDP policy Ret 11 considers location of food and drink establishments.

No shop unit is lost due to the change. The existing use is as a hot food take-away, i.e. already a food and drink establishment.

A class 3 use is generally seen as less onerous than a hot food take-away in terms of potential nuisance. Although the property is expanded to the rear to create seating, this is in an area with very few overlooking neighbours. The only person directly affected (the flat above) has written in support of the application.

Although Environmental Protection requested a Noise Impact Assessment this is not considered appropriate due to the existing use and the fact that ventilation routes will remain as is.

Potential noise within the rear courtyard is possible. However, the sole neighbour on the High Street (over this courtyard) specifically supports the proposal.

It is also noted that the previous use as a public house may have used this area, as part of their ownership.

In the circumstances the "nuisance" value is seen as potentially reduced both in relation to the current take-away and the former public house.

Given this, and the lack of restaurants within the wider area, policy Ret 11 is met.

b) LDP policy Env 6 considers impact on the character and appearance of the conservation area and policy Des 12 considers extensions to property.

The Portobello Conservation Area Character Appraisal recognises the importance of a vibrant High Street.

No alterations are proposed to the frontage and the appearance of the conservation area is unchanged.

The existing courtyard is a dead and functionless space. Extensions are common along the High Street as a whole. The quality of the design is acceptable and (although unseen) will improve the character of the area as a whole.

c) LDP policy Hou 7 considers inappropriate uses and their impact on residents.

As stated above, the use is seen as potentially less nuisance than the existing use.

The person most likely to suffer disturbance (the owner of the only flat overlooking the rear courtyard) wrote to support the application.

Policy Hou 7 is met.

d) LDP policy Tra 2 considers parking issues.

Council objectives now seek to minimise car generation in the city as a whole.

Car parking on site is not possible, but a car-free scheme now fits with these Council objectives. The property lies on a bus route linking to both Leith and the City Centre.

It is recommended that this application be Granted subject to the details below.

### **3.4 Conditions/reasons/informatives**

#### **Informatives**

It should be noted that:

1. The development hereby permitted shall be commenced no later than the expiration of three years from the date of this consent.

2. As soon as practicable upon the completion of the development of the site, as authorised in the associated grant of permission, a 'Notice of Completion of Development' must be given, in writing to the Council.

3. No development shall take place on the site until a 'Notice of Initiation of Development' has been submitted to the Council stating the intended date on which the development is to commence. Failure to do so constitutes a breach of planning control, under Section 123(1) of the Town and Country Planning (Scotland) Act 1997.

## Risk, Policy, compliance and governance impact

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**4.1** Provided planning applications are determined in accordance with statutory legislation, the level of risk is low.

## Equalities impact

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### **5.1 The equalities impact has been assessed as follows:**

The application has been assessed and has no impact in terms of equalities or human rights.

## Consultation and engagement

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### **6.1 Pre-Application Process**

There is no pre-application process history.

### **6.2 Publicity summary of representations and Community Council comments**

The application was advertised on 1 February 2019. Three representations were received.

Two objections were received. One Portobello resident objected on grounds of overdevelopment and suggested a building further along the High should be used instead. Portobello Amenity Society also stated the proposal was overdevelopment, and stated the courtyard would get little sun, and the pavement was too narrow outside the unit. Parking was also said to be an issue.

In support, the owner of the flat over the unit (the only flat viewing onto the area in question from the High Street) wrote to specifically clarify that he had no objections to the proposal.

## Background reading / external references

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- To view details of the application go to
- [Planning and Building Standards online services](#)

## **Statutory Development**

### **Plan Provision**

The property lies just outside the defined Portobello Town Centre as shown in the LDP.

### **Date registered**

4 January 2019

### **Drawing numbers/Scheme**

1-5

Scheme 1

David R. Leslie  
Chief Planning Officer  
PLACE  
The City of Edinburgh Council

Contact: Stephen Dickson, Senior planning officer  
E-mail: [stephen.dickson@edinburgh.gov.uk](mailto:stephen.dickson@edinburgh.gov.uk) Tel: 0131 529 3529

## **Links - Policies**

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### **Relevant Policies:**

#### **Relevant policies of the Local Development Plan.**

LDP Policy Ret 11 (Food and Drink Establishments) sets criteria for assessing the change of use to a food and drink establishment.

LDP Policy Des 12 (Alterations and Extensions) sets criteria for assessing alterations and extensions to existing buildings.

LDP Policy Env 6 (Conservation Areas - Development) sets out criteria for assessing development in a conservation area.

LDP Policy Tra 2 (Private Car Parking) requires private car parking provision to comply with the parking levels set out in Council guidance, and sets criteria for assessing lower provision.

LDP Policy Hou 7 (Inappropriate Uses in Residential Areas) establishes a presumption against development which would have an unacceptable effect on the living conditions of nearby residents.

## **Relevant Non-Statutory Guidelines**

**Non-statutory guidelines** 'LISTED BUILDINGS AND CONSERVATION AREAS' provides guidance on repairing, altering or extending listed buildings and unlisted buildings in conservation areas.

## **Other Relevant policy guidance**

**The Portobello Conservation Area Character Appraisal** emphasises the village/small town character of the area, the importance of the long sea-front promenade, the high quality architecture, and the predominant use of traditional building materials

# Appendix 1

## Consultations

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### Environmental Protection

The rear garden of the premises has several residential properties overlooking it and / or in close proximity.

Noise from outdoor areas such as that proposed, in particular vocals, are extremely difficult to modulate and control. There are no mitigation measures, beyond fully enclosing the area, which has not been suggested as part of this application. Nearby residents would likely be subjected to unacceptable levels of noise, and it would be detrimental to residential amenity.

Environmental Protection therefore cannot support this application and would be likely to recommend refusal.

Should the applicant wish to remove the proposed outdoor seating area, then there still some concerns which the applicant would need to address before we could consider supporting the proposal.

We would need a Noise Impact Assessment to ensure that all operational noise be inaudible (i.e. not breaching NR15) within the flat above the existing premises. Noise sources should include, but are not limited to: kitchen noise, music, raised voices. A worst-case scenario should be assumed. Please note we would not accept noise-limiting devices in relation to the control of music noise. Plant equipment should not breach NR25 at any noise-sensitive receptor with windows open for ventilation.

I have visited the site and can't determine where their kitchen ventilation vents to - is it an internal flue? We would need details of where the ventilation exhausts at to ensure there is no potential for odour complaints.

END

To: Murray Couston  
From: Claire Devlin, Environmental Protection

Date: 27 May 2022

## **TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

21/04749/FUL | Proposed alterations extension and use of a hot food takeaway and an office to form a restaurant. | 227 & 229 Portobello High Street Edinburgh EH15 2AN

Environmental Protection is unable to support this application.

The current takeaway part of the proposed site is the ground floor of a two-storey building with residential property above. The application also includes a proposal to have decking and seating for patrons in the rear garden with folding doors at the rear of the ground floor premises to provide access. There are residential properties overlooking the garden.

Environmental Protection has significant concerns about the noise from outdoor activities affecting the amenity of nearby residents. Noise, in particular vocals, from outdoor eating and drinking areas are extremely difficult to modulate and control. There are no mitigation measures, beyond fully enclosing the area, which has not been suggested as part of this application. Nearby residents would likely be subjected to unacceptable levels of noise, and it would be detrimental to residential amenity. In addition, the Noise Impact Assessment (Sandy Brown Limited, ref: 22165-R01-B, dated 17 May 2022) submitted by the applicant relies on the sound insulation properties of glazing to the rear, including large folding doors to meet the expected sound insulation standards. It is highly likely these doors will be kept open for long periods to provide access to the rear seating area, thus no longer meeting the standards set to protect nearby residential amenity.

The Noise Impact Assessment advises that the intention is to operate the business between 10.00 – 01.00 hours. Our Planning colleagues have advised that conditions on hours of operation would not be accepted.

We also have concerns that the position of the extract flue termination point may be too low and cause odour issues in nearby residential properties. In addition, no detail has been provided about the sound levels from the extract flue.

Therefore, Environmental Protection cannot support the application and recommend refusal.

Should you wish to discuss the above please contact me on 0131 469 5685.



John Tod Associates.  
59 Edinburgh Road  
Musselburgh  
EH21 6EE

Mr Murdochy  
227 Portobello High Street  
Edinburgh  
EH15 2AN

**Decision date: 17 June 2022**

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACTS  
DEVELOPMENT MANAGEMENT PROCEDURE (SCOTLAND) REGULATIONS 2013**

Proposed alterations extension and use of a hot food takeaway and an office to form a restaurant.

At 227 & 229 Portobello High Street Edinburgh EH15 2AN

**Application No:** 21/04749/FUL

**DECISION NOTICE**

With reference to your application for Planning Permission registered on 6 October 2021, this has been decided by **Local Delegated Decision**. The Council in exercise of its powers under the Town and Country Planning (Scotland) Acts and regulations, now determines the application as **Refused** in accordance with the particulars given in the application.

Any condition(s) attached to this consent, with reasons for imposing them, or reasons for refusal, are shown below;

**Conditions:-**

**Reason for Refusal:-**

1. The proposal is contrary to the Local Development Plan Policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as it would have a materially detrimental effect on the living conditions of nearby residents.
2. The proposal is contrary to the Local Development Plan Policy Ret 11 in respect of Food and Drink Establishments, as it would be likely to lead to an unacceptable increase in noise and disturbance to the detriment of living conditions for nearby residents.

Please see the guidance notes on our [decision page](#) for further information, including how to appeal or review your decision.

Drawings 01-08, represent the determined scheme. Full details of the application can be found on the [Planning and Building Standards Online Services](#)

The reason why the Council made this decision is as follows:

The proposal does not comply with the relevant policies within the Edinburgh Local Development Plan and the relevant Guidance in that it would have an unacceptable impact on amenity. No material considerations would outweigh this decision.

This determination does not carry with it any necessary consent or approval for the proposed development under other statutory enactments.

Should you have a specific enquiry regarding this decision please contact Murray Couston directly at [murray.couston@edinburgh.gov.uk](mailto:murray.couston@edinburgh.gov.uk).



**Chief Planning Officer**

**PLACE**

**The City of Edinburgh Council**

## NOTES

1. If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months beginning with the date of this notice. The Notice of Review can be made online at [www.eplanning.scot](http://www.eplanning.scot) or forms can be downloaded from that website. Paper forms should be addressed to the City of Edinburgh Planning Local Review Body, G.2, Waverley Court, 4 East Market Street, Edinburgh, EH8 8BG. For enquiries about the Local Review Body, please email [localreviewbody@edinburgh.gov.uk](mailto:localreviewbody@edinburgh.gov.uk).

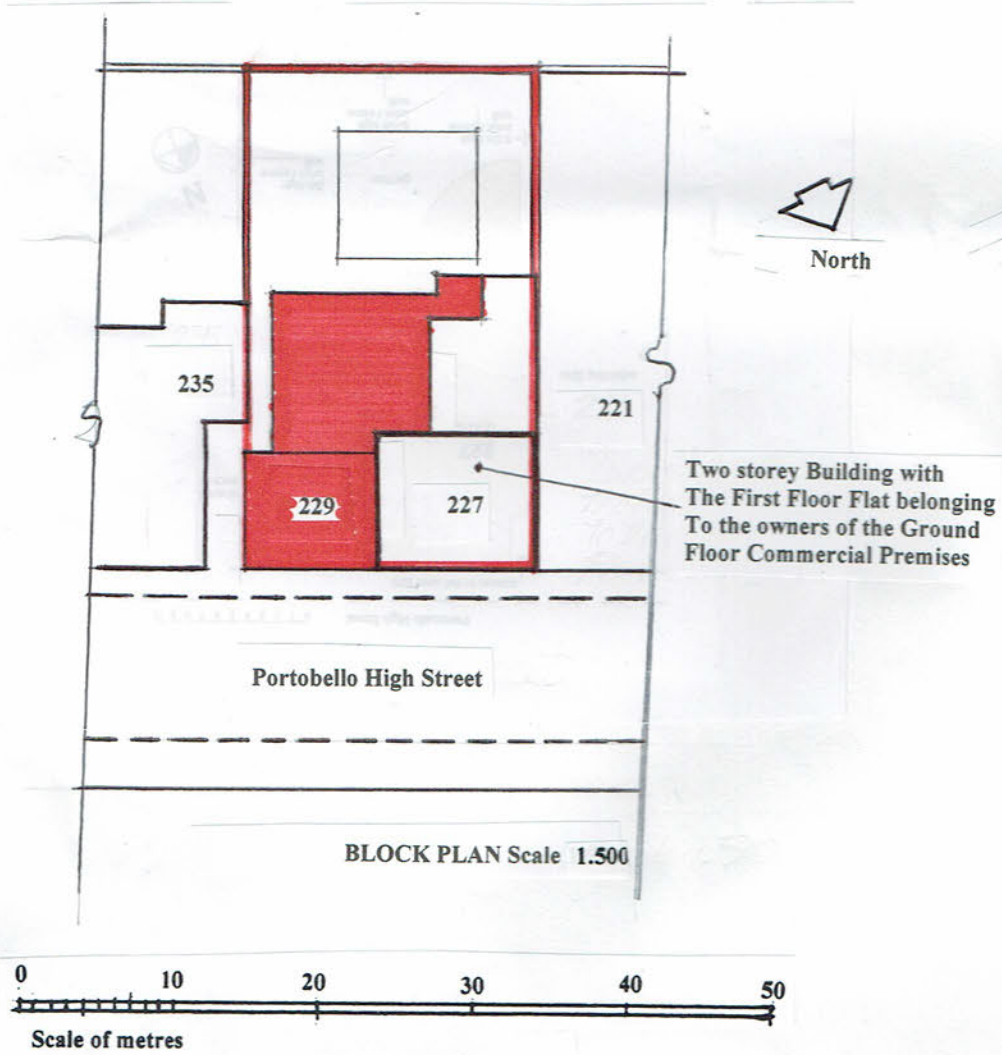
2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

**PROPOSED ALTERATIONS EXTENSION & CHANGE OF USE  
OF A HOT FOOD TAKEAWAY & AN OFFICE TO FORM A RESTAURANT  
AT No227 & 229 POROTBELLO HIGH STREET  
EDINBURGH.EH15 2AN. FOR HAREM MURDOCHY**

**BLOCK PLAN & LOCATION PLAN**

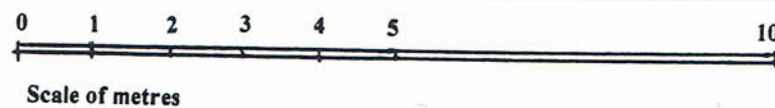
**DRAWING REGISTER**

DRG B.L.P	BLOCK PLAN & LOCATION PLAN
DRG No1	EXISTING GROUND FLOOR PLAN
DRG No2	EXISTING ROOF PLAN
DRG No3	EXISTING ELEVATIONS
DRG No4	EXISTING & PROPOSED BASEMENT PLANS
DRG No5	PROPOSED OVERALL PLAN
DRG No6	PROPOSED ROOF PLAN, ELEVATIONS & GARDEN SECTION
DRG No7	PROPOSED PLAN & ELEVATION
DRG No8	PHOTOGRAPHS OF WORKS IN REAR & GARDEN PROGRESSING



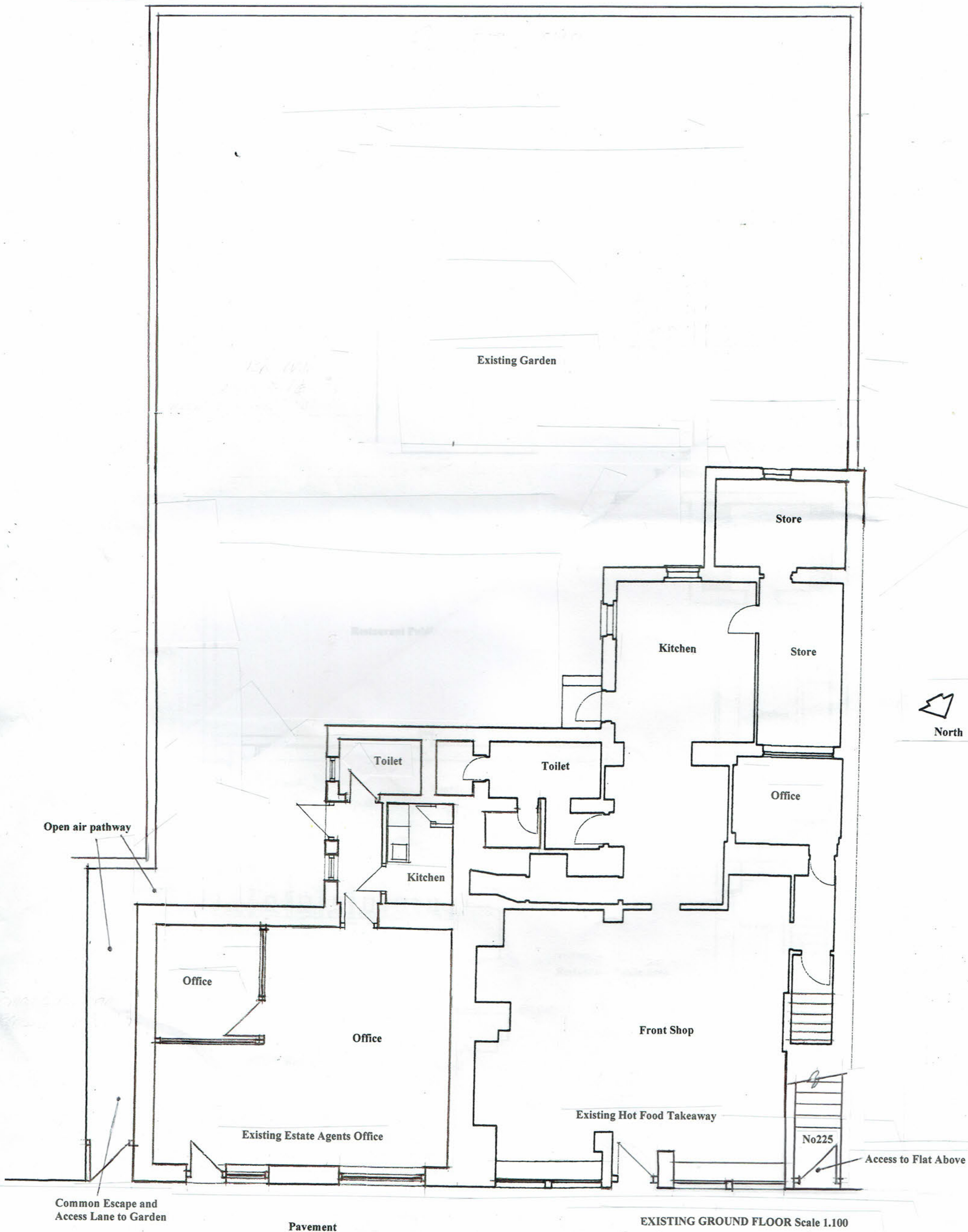


**PROPOSED ALTERATIONS EXTENSION & CHANGE OF USE  
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Existing stone & brickwork walls to be made good & repaired / repointed as required

**EXISTING PLAN**



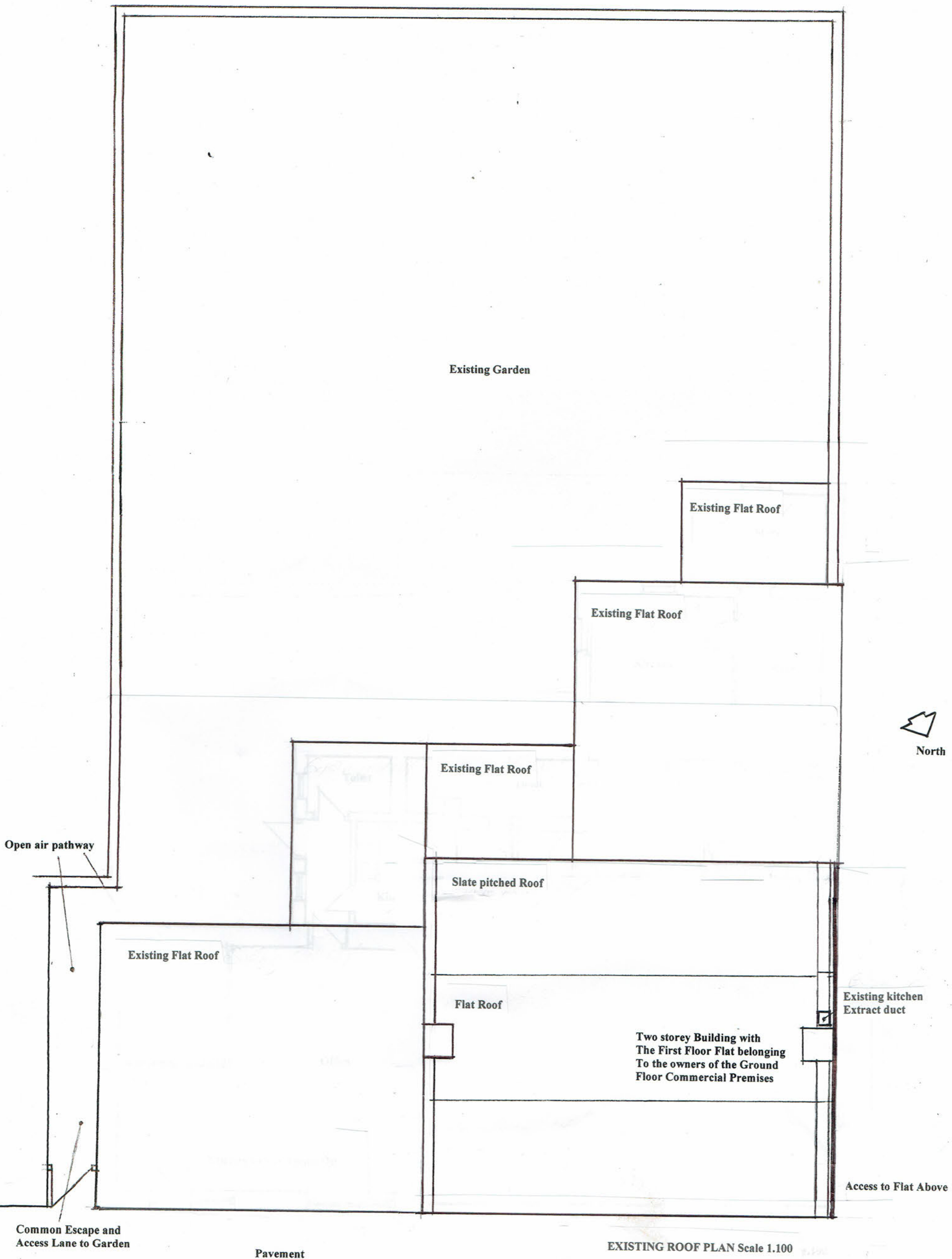
**EXISTING GROUND FLOOR Scale 1:100**

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Existing stone & brickwork walls to be made good & repaired / repointed as required

**EXISTING ROOF PLAN**

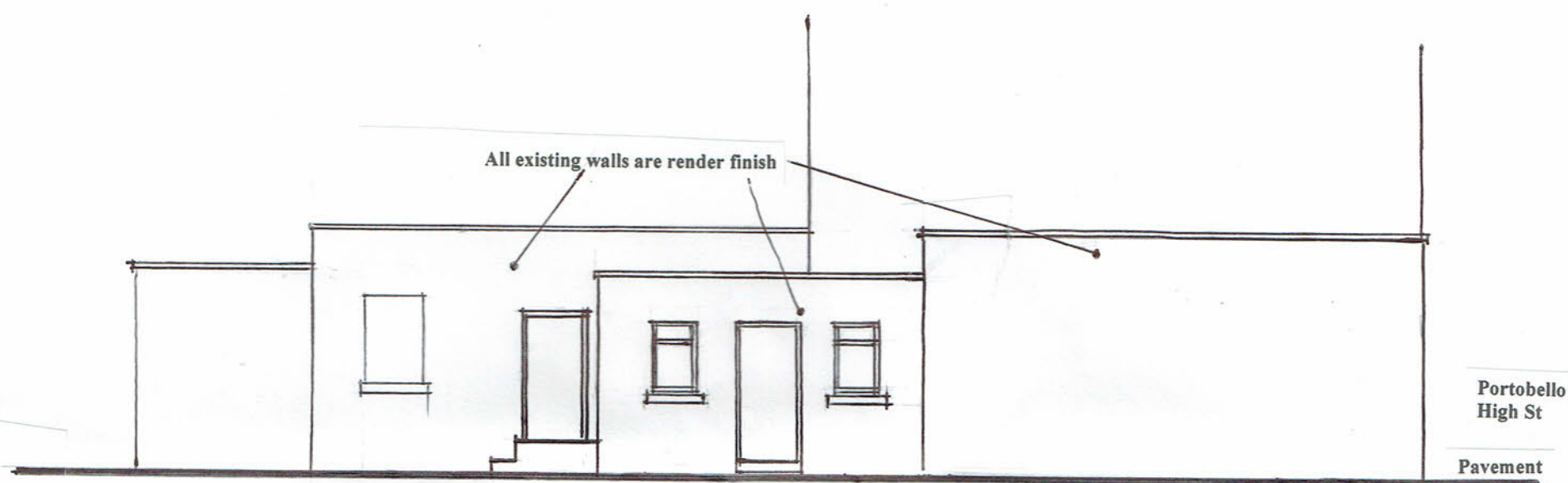
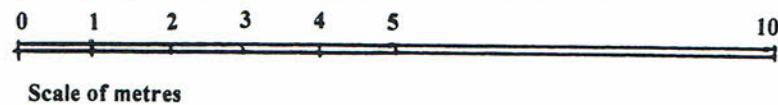


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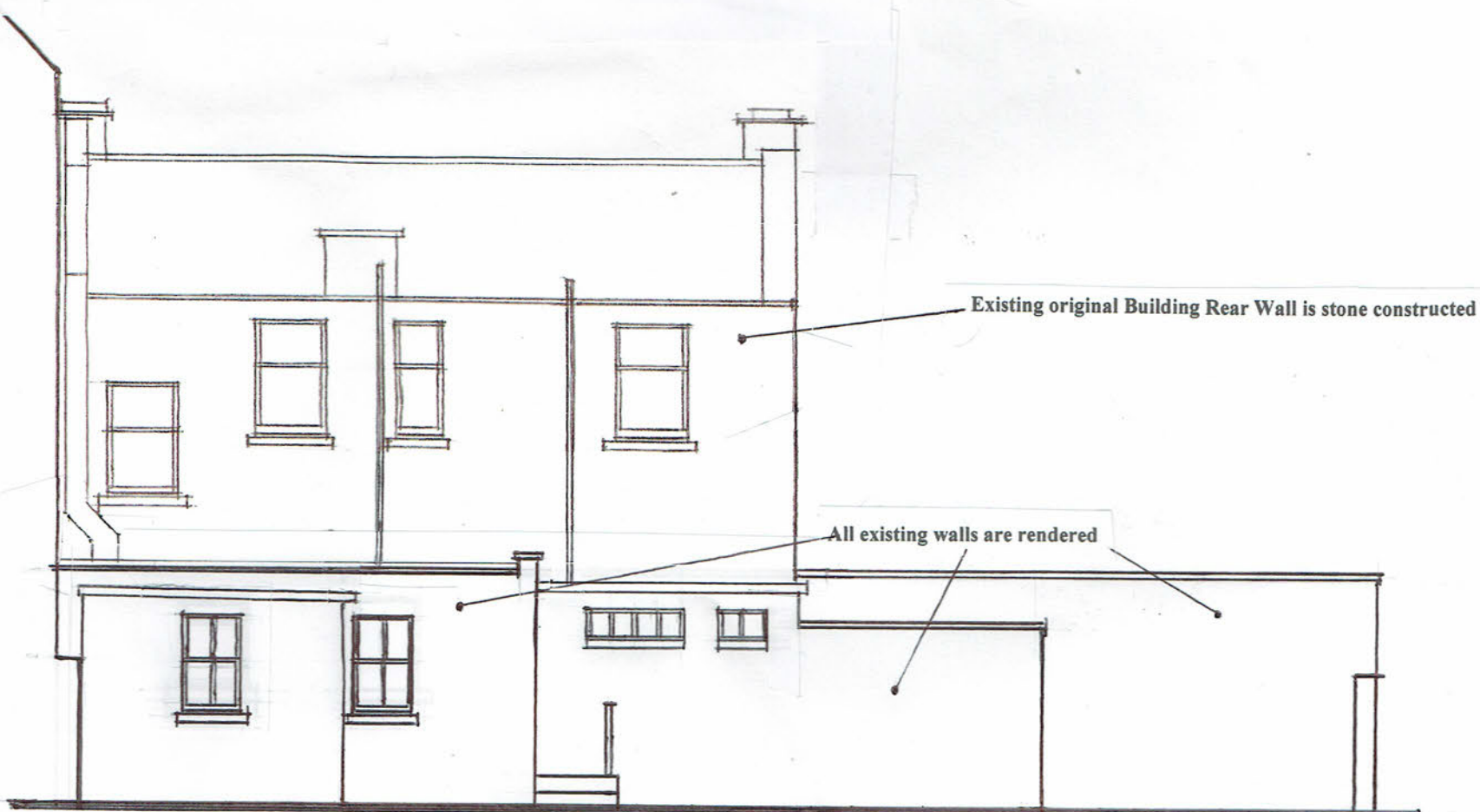


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**EXISTING ELEVATIONS**



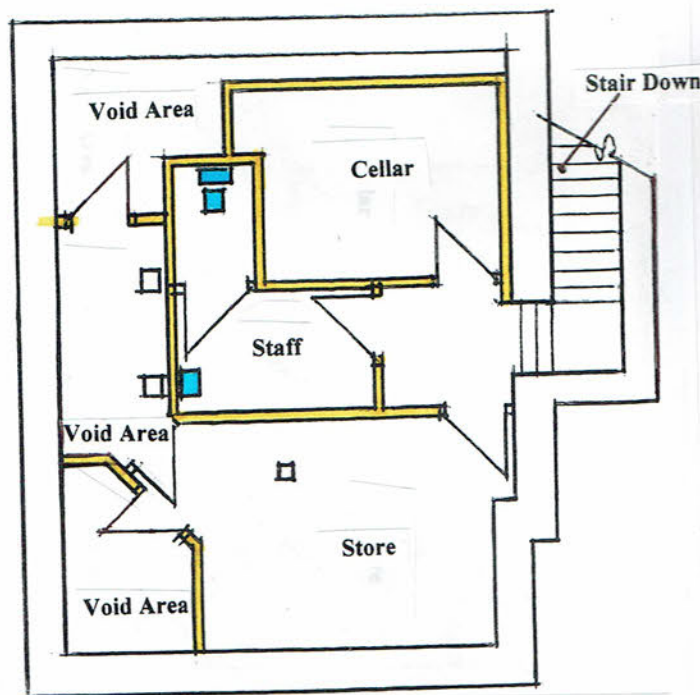
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EAST ELEVATION**



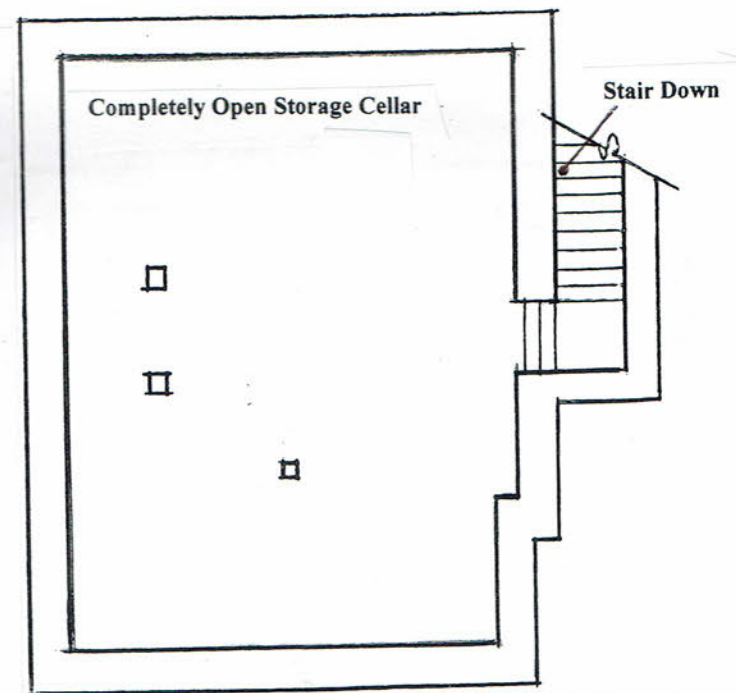
**EXISTING REAR ELEVATION Scale 1:00  
SOUTH ELEVATION**

**PROPOSED ALTERATIONS EXTENSION & CHANGE OF USE  
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**EXISTING & PROPOSED BASEMENT PLANS**



**PROPOSED BASEMENT PLAN Scale 1:100**



**EXISTING BASEMENT PLAN Scale 1:100**



**PROPOSED ALTERATIONS EXTENSION & CHANGE OF USE  
OF A HOT FOOD TAKEAWAY & AN OFFICE TO FORM A RESTAURANT  
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Scale of metres

**PROPOSED OVERALL PLAN**

Existing 3.4 metres high  
Stone / Brick wall  
to be renovated &  
made good as required

Existing stone & brickwork walls to be made good & repaired / repointed as required

Existing 3 metres high  
Stone/Brick wall  
to be renovated  
made good as required

Existing 2.5 metre high  
Stone/Brick wall  
to be renovated &  
made good as required

Traditional Timber Decking

Restaurant Public Area

AREA OF ENTIRE PREMISES 354m<sup>2</sup>

Gents

Ladies

Disabled  
Toilet

Wash-up

Kitchen

Servery

Existing Stair to  
Existing Basement

Restaurant Public Area

Restaurant Public Area

Open air pathway

Escape

No229

No 227

No225

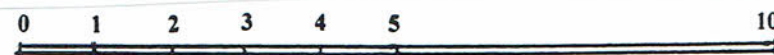
Access to Flat Above

Pavement

**PROPOSED GROUND FLOOR Scale 1:100**

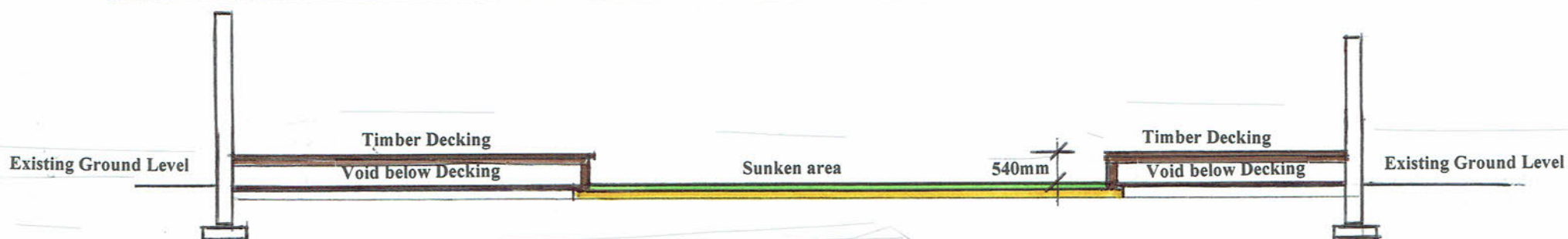


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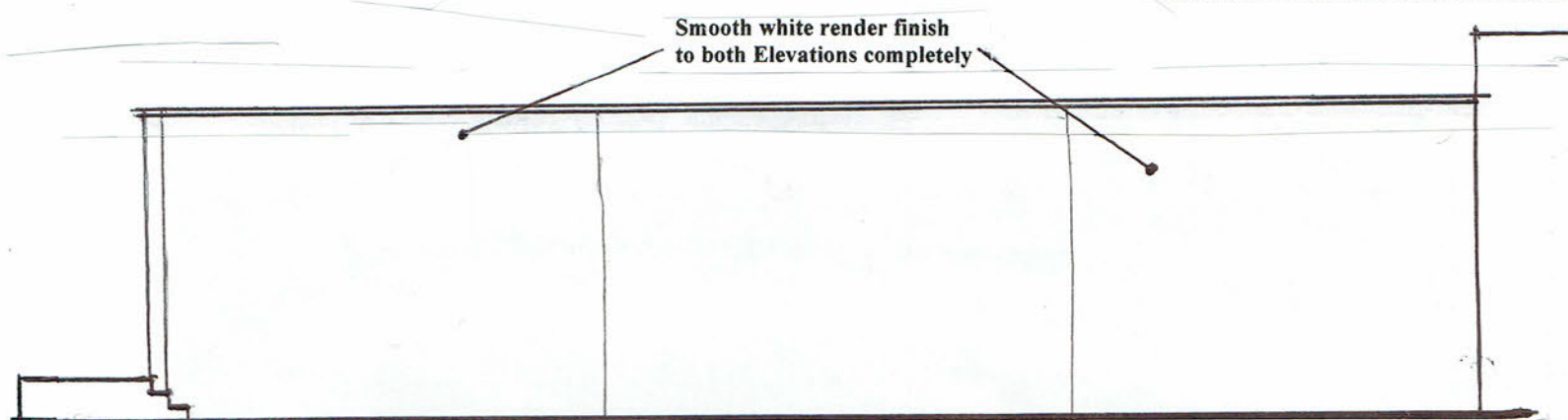


Scale of metres

**PROPOSED ROOF PLAN, ELEVATION & GARDEN SECTION**



SECTION THROUGH REAR GARDEN EAST TO WEST Scale 1.100

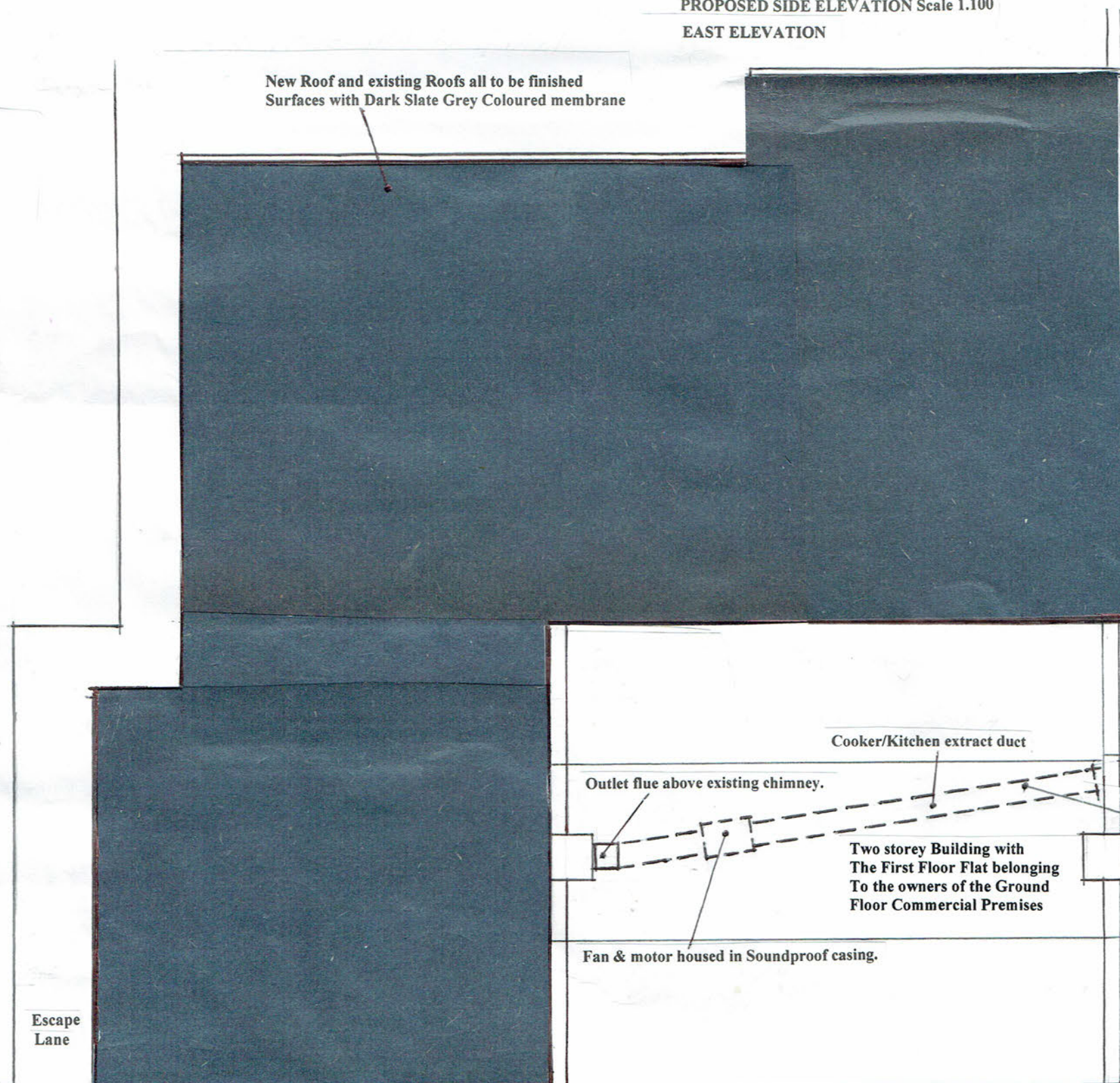


PROPOSED SIDE ELEVATION Scale 1.100  
EAST ELEVATION

New Roof and existing Roofs all to be finished  
Surfaces with Dark Slate Grey Coloured membrane



North



PROPOSED ROOF PLAN Scale 1.100



**From:** John Tod  
**Sent:** 08 June 2022 15:37  
**To:** harem murdochy  
**Subject:** FW: 227-229 Portobello High Street REF 21/04749/FUL

FYI

Sent from [Mail](#) for Windows

**From:** [John Tod](#)  
**Sent:** 08 June 2022 14:51  
**To:** [murray.couston@edinburgh.gov.uk](mailto:murray.couston@edinburgh.gov.uk)  
**Subject:** 227-229 Portobello High Street REF 21/04749/FUL

Murray Couston

08 June 2022

Hi Murray

I have added to and adjusted the drawings for this project and the set now consists of drawing No.BLP and drawing No.1 to 10 inclusive.

Drawing No.9 shows the approved and proposed plans and elevation.  
Drawing No.10 some more site progress photographs.

Drawing No.9 I think shows that the proposed application now with you takes up much less of the garden space and is a much more an appropriate scheme having a great deal less glazing, which obviously will reduce noise breakout and will have a much better performance in noise containment.

I have sent our revised drawings to Sandy Browns our Acoustic Consultants for their updated comments which I will pass to you as soon as they come to hand.

My client is prepared to install acoustic monitoring equipment in the premises and the garden to allow him to record noise generation in order to be able to at all times keep within agreed noise level limit.

The extract fan and ducts will all be contained within the flat above the proposed restaurant which is now in the same ownership, and the flue will terminate through the chimney stack flues to the east side of the above flat which is where the existing flues from the previous take away are located.

My client informs me that as far as he is aware the flue termination in this location has caused no problems in the past.

My client is of the opinion as I am that very little noise will be generated from this proposed restaurant premises with its proposed opening hours being 12 noon till 10pm at night.

I am still of the opinion that a face-to-face meeting possibly onsite would be of a great benefit to all parties concerned.

My phone number is [REDACTED] and would welcome a phone discussion.  
The E-Planning.Scot online Ref is 100469672-007

I am sure that between us we can come up with a satisfactory solution to this proposal and avoid the problems that will undoubtedly arise if my client has to revert to construction the approval, he has Ref: 19/00020/FUL.

I can email the drawings to you directly and individually if that would be of assistance to you.

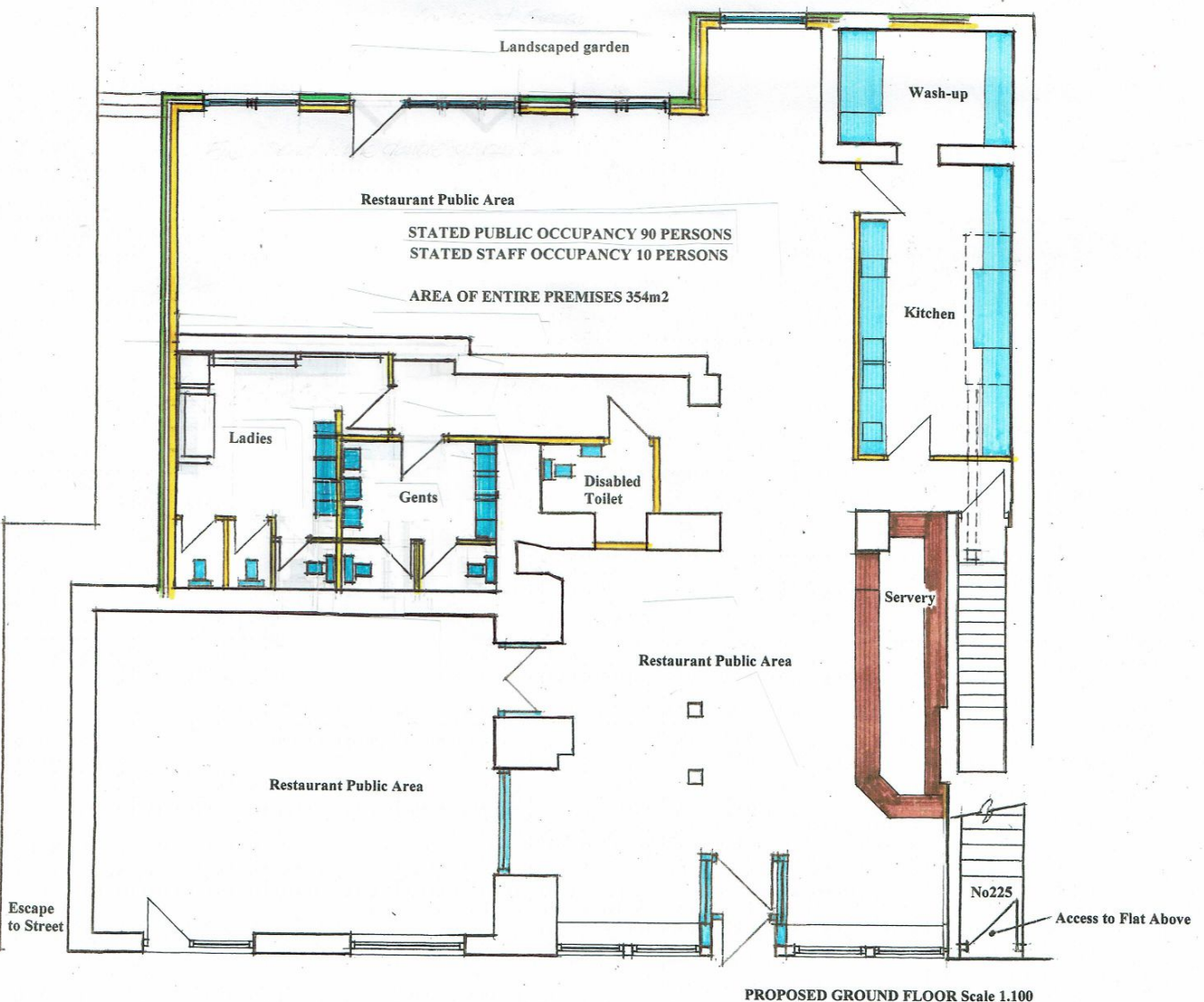
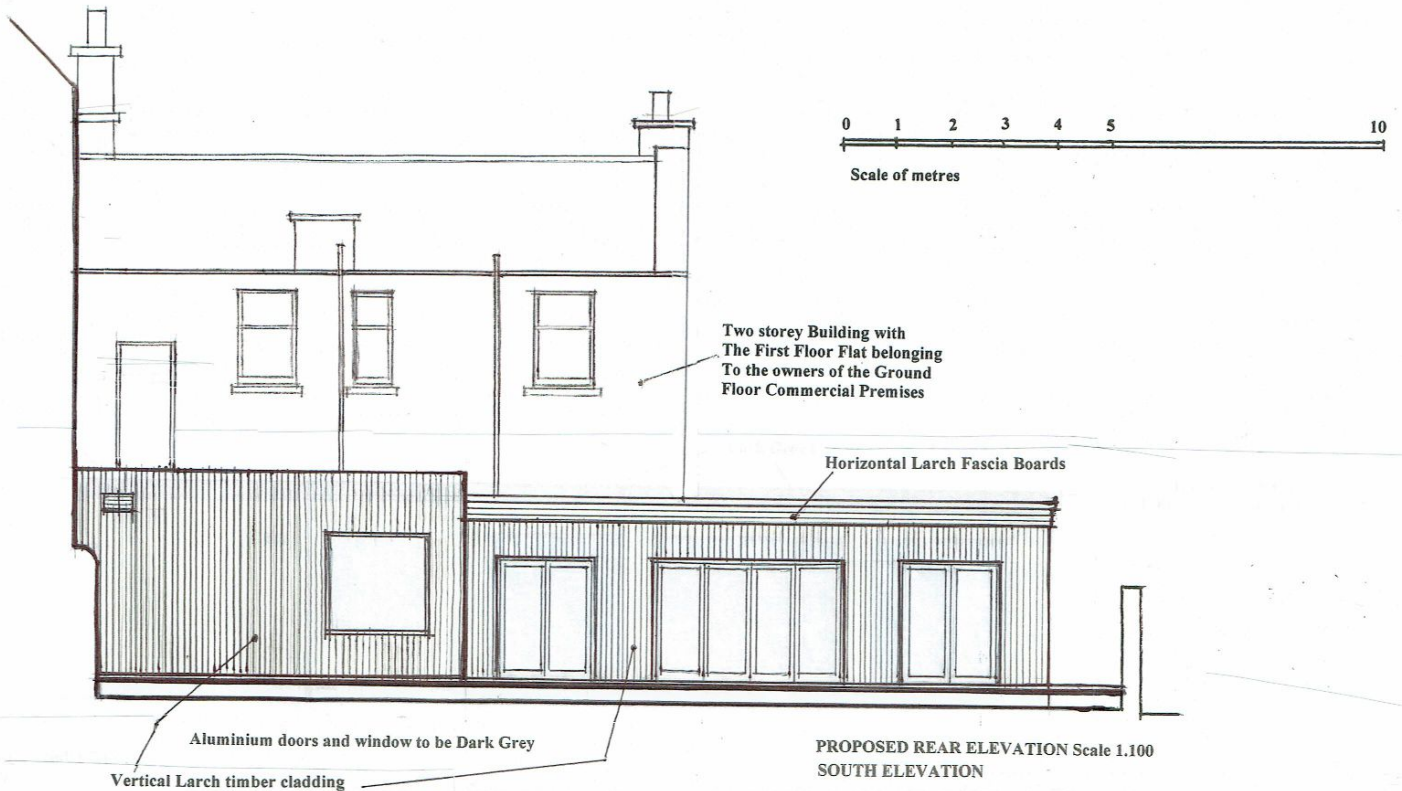
Thanks and Regards,  
John

John Tod Associates

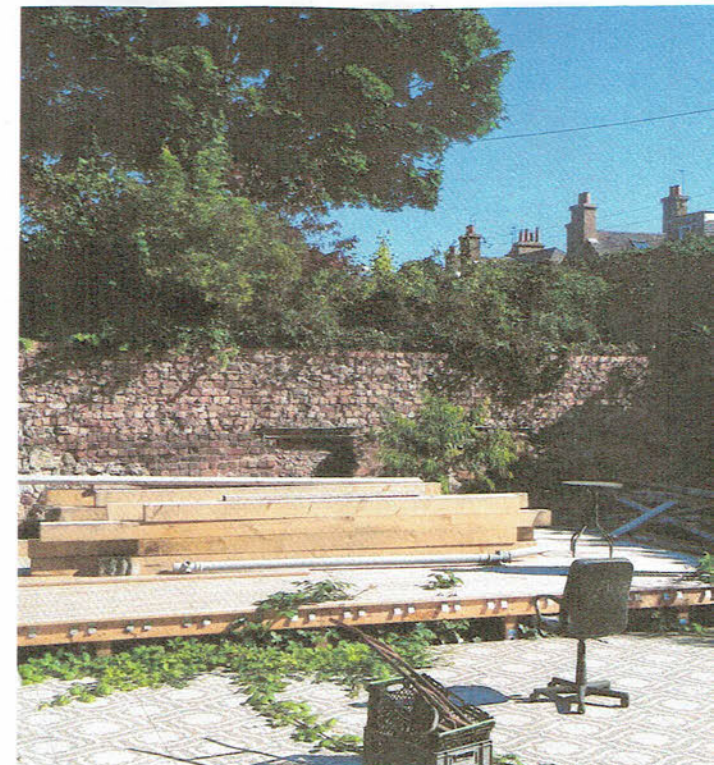
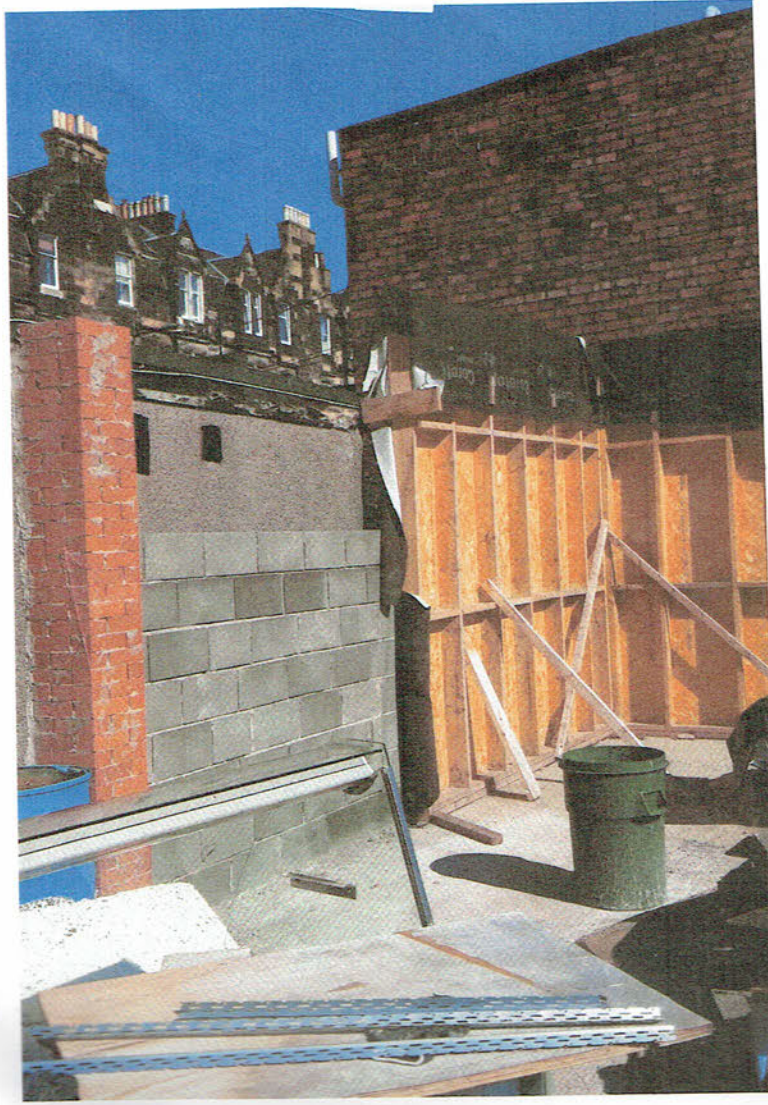
Sent from [Mail](#) for Windows

**PROPOSED ALTERATIONS EXTENSION & CHANGE OF USE  
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AT No227 & 229 POROTBELLO HIGH STREET  
EDINBURGH.EH15 2AN. FOR HAREM MURDOCHY  
TO BE CALLED THE GARDEN OF EDEN**

**PROPOSED PLAN & ELEVATION**



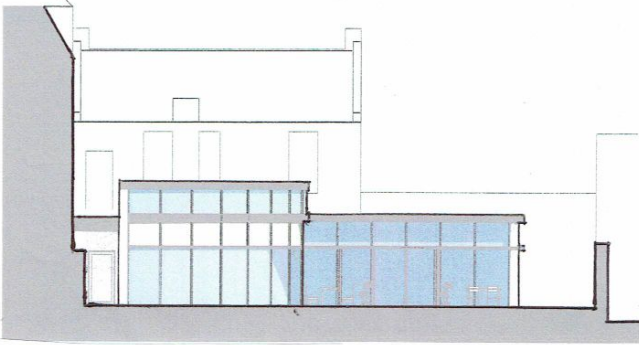




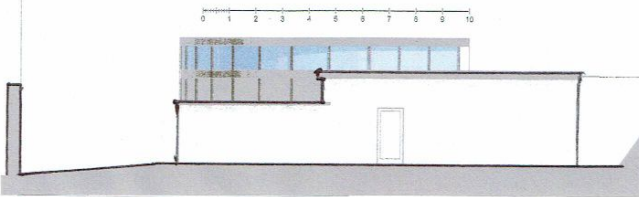


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**APPROVED & PROPOSED PLANS & ELEVATIONS**



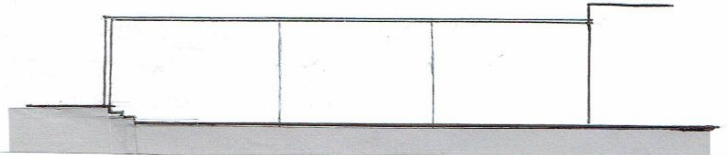
**APPROVED SOUTH ELEVATION**



**APPROVED EAST ELEVATION**



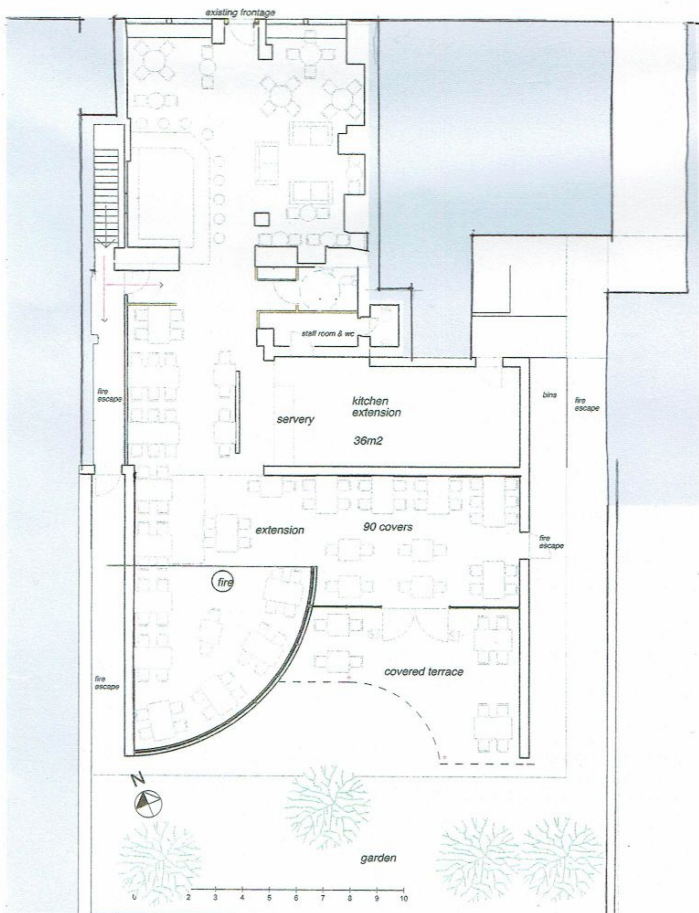
**PROPOSED SOUTH ELEVATION**



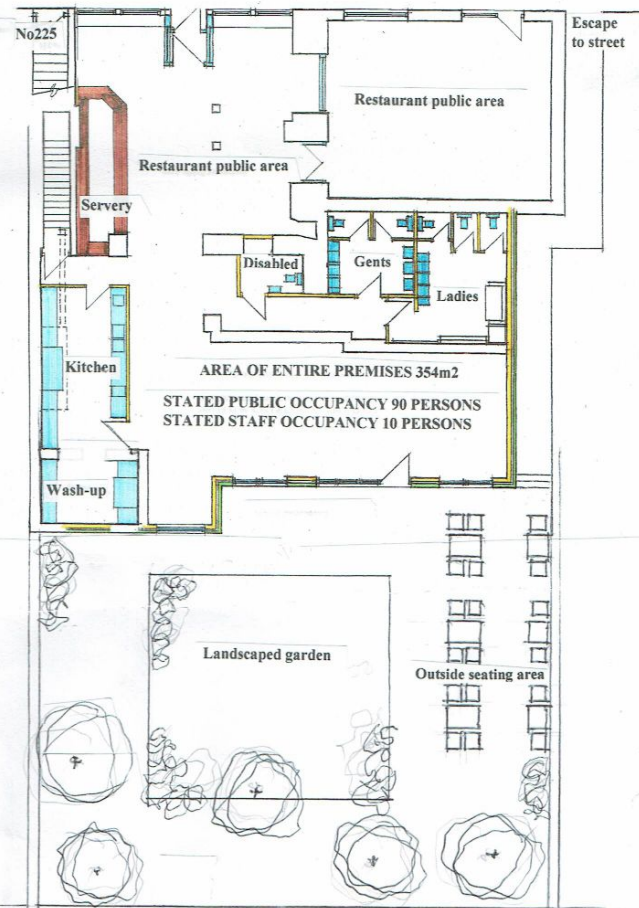
**PROPOSED EAST ELEVATION**

Portobello High Street

Portobello High Street



**APPROVED PLAN Scale 1.200**



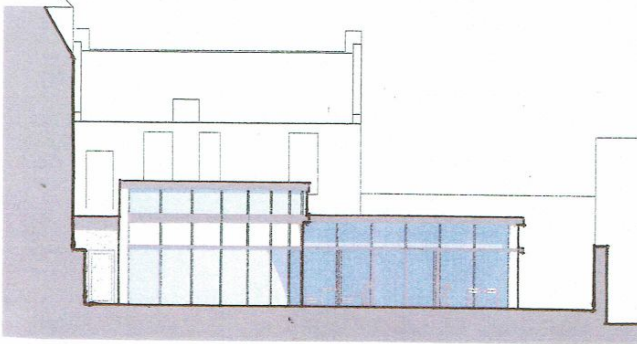
**PROPOSED PLAN Scale 1.200**

**NOTE: THE ONLY ACCOMODATION ABOVE THIS PROPERTY IS A SINGLE FLAT WHICH IS NOW IN THE SAME OWNERSHIP AS THE APPLICATION PROPERTY AND WILL BE USED AS A MANAGER FLAT & FOR STAFF ACCOMODATION AND THE TWO PROPERTIES CAN BE LEGALLY TIED TOGETHER SO THAT THEY CAN NEVER BE SOLD AS SEPARATE UNITS**

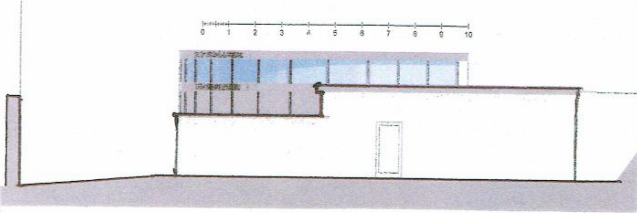


**PROPOSED ALTERATIONS EXTENSION & CHANGE OF USE  
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EDINBURGH EH15 2AN. FOR HAREM MURDOCHY  
TO BE CALLED THE GARDEN OF EDEN**

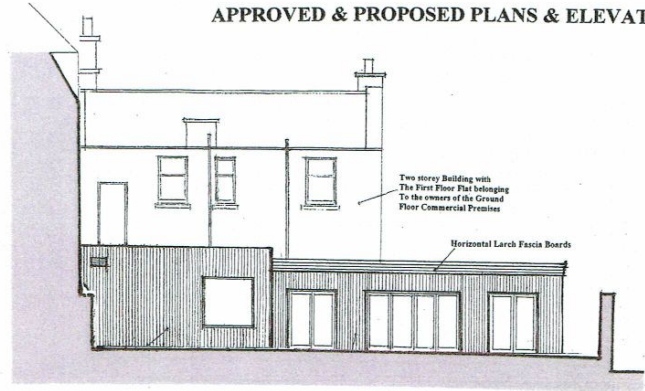
**APPROVED & PROPOSED PLANS & ELEVATIONS**



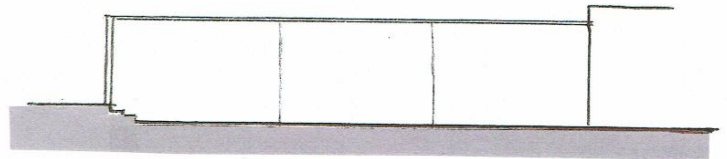
**APPROVED SOUTH ELEVATION**



**APPROVED EAST ELEVATION**



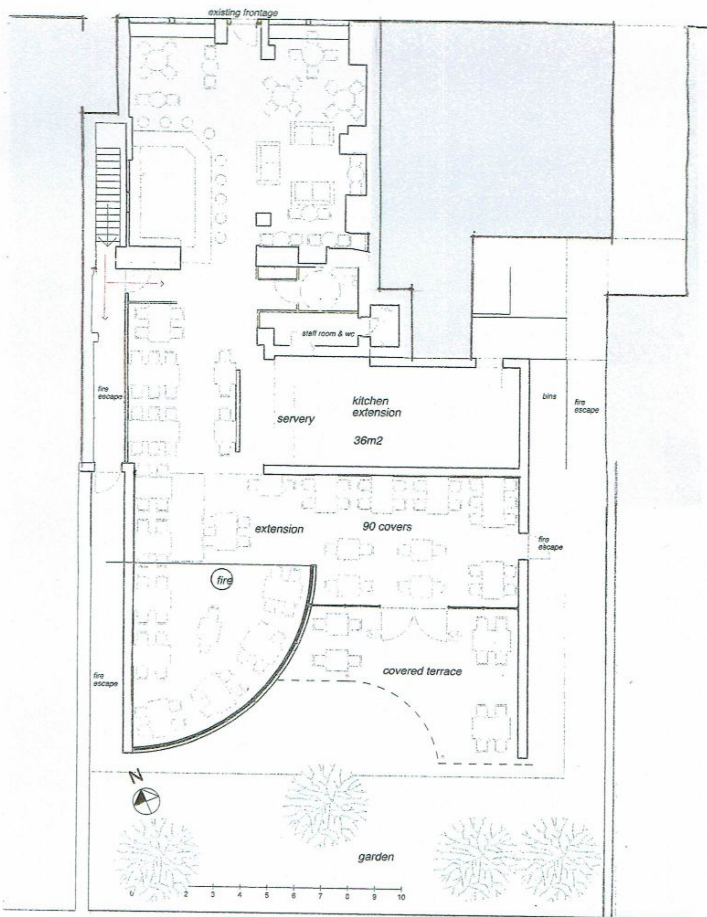
**PROPOSED SOUTH ELEVATION**



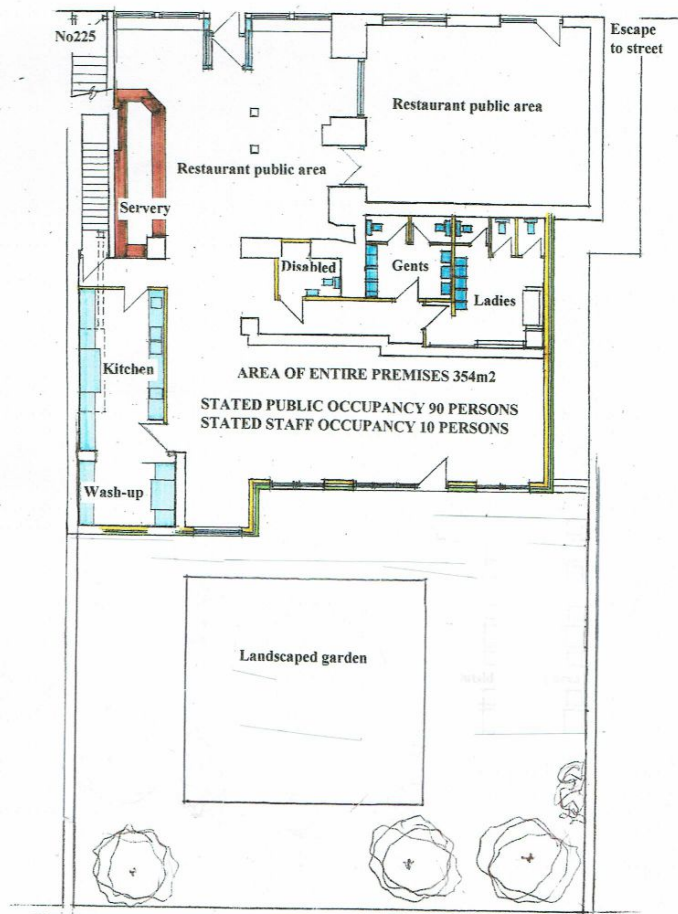
**PROPOSED EAST ELEVATION**

Portobello High Street

Portobello High Street



**APPROVED PLAN Scale 1.200**



**PROPOSED PLAN Scale 1.200**

**NOTE: THE ONLY ACCOMMODATION ABOVE THIS PROPERTY IS A SINGLE FLAT WHICH IS NOW IN THE SAME OWNERSHIP AS THE APPLICATION PROPERTY AND WILL BE USED AS A MANAGER FLAT & FOR STAFF ACCOMMODATION AND THE TWO PROPERTIES CAN BE LEGALLY TIED TOGETHER SO THAT THEY CAN NEVER BE SOLD AS SEPARATE UNITS**



**SITE PROGRESS PHOTOGRAPHS**



**PHOTOGRAPH OF REAR ELEVATION & GARDEN UNDER CONSTRUCTION**



**PHOTOGRAPH OF GABLE OF BUILDING TO THE EAST**



**PHOTOGRAPH OF GARDEN UNDER CONSTRUCTION & SOUTH GARDEN WALL**



# Comments for Planning Application 21/04749/FUL

## Application Summary

Application Number: 21/04749/FUL

Address: 227 & 229 Portobello High Street Edinburgh EH15 2AN

Proposal: Proposed alterations extension and use of a hot food takeaway and an office to form a restaurant.

Case Officer: Local1 Team

## Customer Details

Name: Not Available

Address: Not Available

## Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer made comments neither objecting to or supporting the Planning Application

Comment Reasons:

Comment: While I support the diversification of businesses on Portobello High St and the range of restaurants available, I would like to note that this proposed restaurant is surrounded by residential properties. Our garden backs on to the proposed extension at the back of Oscar's and we have heard work being conducted there since the start of the first lockdown.

I would like to strongly urge the Council to set and enforce noise limit levels around the use of the outside space which ensure that my family and I and our neighbours are not disturbed when using our own garden in good weather. I would also like to note that adjoining the property is elderly residential housing (where my mother is resident) and the residents there should not be disturbed with loud music either.

# SANDY BROWN

*Consultants in Acoustics, Noise & Vibration*

**22165-R01-B**

**17 May 2022**

## 227-229 Portobello High Street

*Noise impact assessment report*

London, Manchester, Edinburgh, Birmingham, Belfast, Leeds

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# SANDY BROWN

*Consultants in Acoustics, Noise & Vibration*

Version	Date	Comments	Author	Reviewer
A	13 Apr 22	Initial issue	Zanyar Abdalrahman	Craig Simpson
B	17 May 22	Appendix B added, which provides tables of calculations	Zanyar Abdalrahman	Craig Simpson

## Disclaimer

This report has been prepared for the sole benefit and use of our client based on their instructions and requirements. Sandy Brown Ltd extends no liability in respect of the information contained in the report to any third party.

## Summary

Sandy Brown has been appointed to provide an assessment of noise in relation to the proposed development at 227-229 Portobello High Street, Edinburgh.

The project is the extension and change of use of an existing hot food takeaway and an office to form a single-storey restaurant. There is an existing apartment on the first floor of plot number 227 which is to be retained.

As part of the planning application, a noise impact assessment is required to assess the impact of the development on the noise sensitive receptors around the site.

The potential noise sources associated with the scheme can be broadly divided into two categories:

- Building services plant
- Internal activities in the restaurant such as background music.

The City of Edinburgh Council (CEC) has set absolute noise limits (NR15 from internal activities and NR25 from building services plant) without reference to the existing background sound level at and around the site. A background noise survey has therefore not been carried out.

We visited the site on 2 April 2022 to measure the airborne sound insulation of the existing separating floor between the residential apartment and the restaurant.

The measured sound insulation of the existing floor is  $D_{nT,w}$  57 dB.

To meet the CEC building services plant noise requirement, noise from the extract grilles must be controlled so that a sound pressure level of 55 dBA is not exceeded at 1 m in front of each grille. This is an onerous requirement and might require the installation of suitable attenuators on the extract ducts, and/or using extract fans that are relatively quiet in operation.

To control activities noise breakout, the following minimum sound insulation must be achieved:

- External windows must have a minimum sound insulation performance of  $R_w + C_{tr} \geq 33$  dB. This is also applicable to the external folding door open to the back garden. Example glazing configuration is provided in the report
- The roof of the extension to the rear should have a sound insulation performance of  $R_w + C_{tr} \geq 45$  dB. The newly built roof is capable of meeting this requirement
- Each doorset of the lobbied external front doors leading to the restaurant should have a minimum sound insulation of  $R_w$  27 dB
- The separating floor must have a minimum sound insulation performance of  $D_{nT,w}$  60 dB. The measured performance is 3 dB short of this requirement, however, remedial works to the edges of the floor can improve the performance to meet the requirement.

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## 1 Introduction

Sandy Brown has been appointed to provide an assessment of noise in relation to the proposed development at 227-229 Portobello High Street, Edinburgh.

The project is the extension and change of use of an existing hot food takeaway and an office to form a single-storey restaurant. There is an existing apartment on the first floor of plot number 227 which is to be retained.

As part of the planning application, a noise impact assessment is required to assess the impact of the development on the noise sensitive receptors around the site.

We have visited the site and carried out necessary acoustic measurements to allow us to assess the noise impact of the proposals.

This report provides details of the acoustic measurements, including measurement results, and provides recommendations.

## 2 Site and development description

### 2.1 The site and its surroundings

The site location in relation to its surroundings is shown in Figure 1. The existing and proposed floor plans are shown in Figure 2 and Figure 3, respectively.

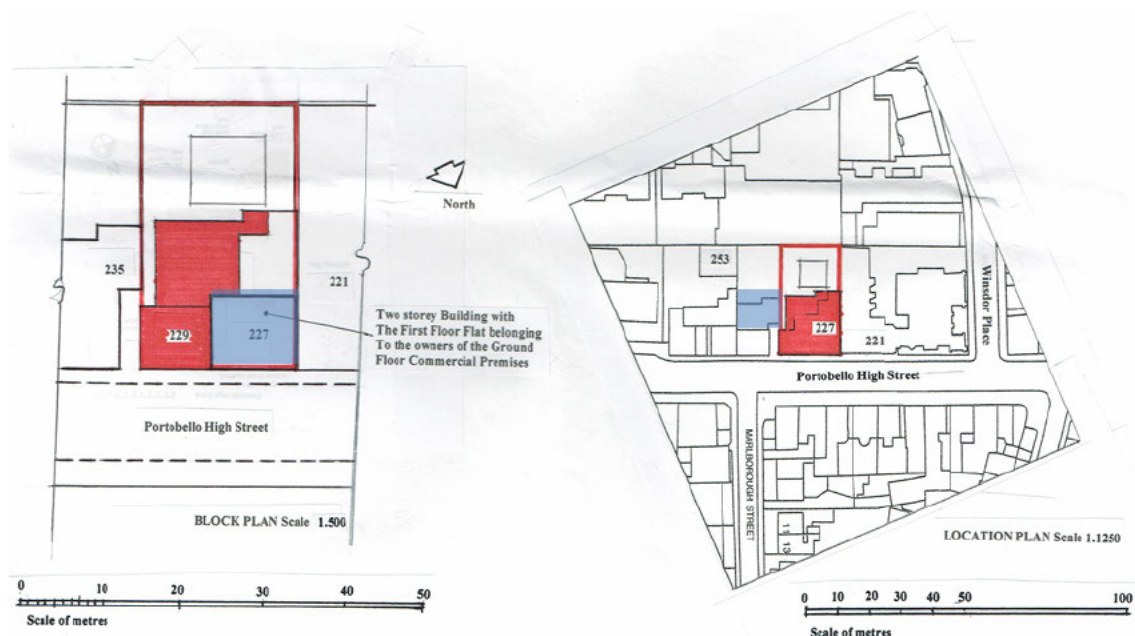


Figure 1 Site location. The proposed site is highlighted in red. The nearest noise sensitive receptors are highlighted in blue

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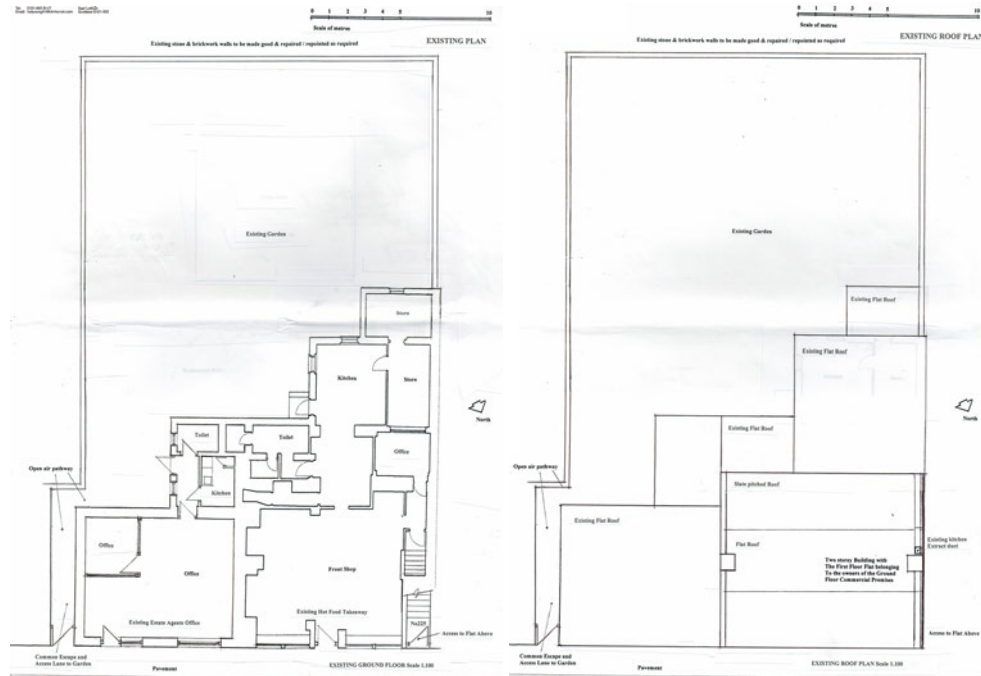


Figure 2 Existing ground floor plan (left) and first-floor plan (right)

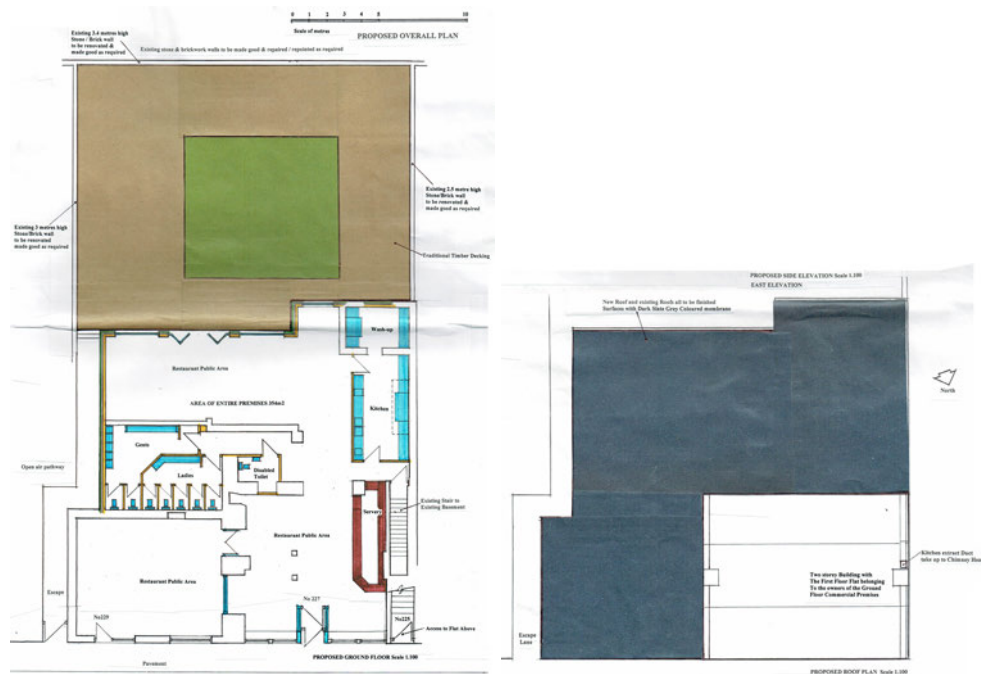


Figure 3 Proposed ground floor plan (left) and first-floor plan (right)

## 2.2 Nearest noise sensitive receptors

The nearest noise sensitive receptor from the development is the existing first-floor apartment at 227 Portobello High Street directly above the restaurant, followed by a dwelling to the south of the site. These receptors are highlighted in blue in

Figure 1.

## 3 Development proposals

### 3.1 The development

The ground floor of plot number 227 has, until recently, been used as a takeaway shop. Plot number 229 is an existing single-storey premises which is proposed to be merged with the ground floor of plot number 227 to form a restaurant. The existing first-floor apartment above the restaurant remains unchanged.

### 3.2 Hours of operation

The commercial uses proposed as part of the development would likely to operate between 10:00 am and 01:00 am from Monday to Saturday.

### 3.3 Potential noise sources

The potential noise sources associated with the scheme can be broadly divided into two categories:

- Building services plant
- Internal activities in the restaurant such as background music.

The potential impact of these sources has been assessed and mitigation measures have been proposed to minimise the impact on the existing noise sensitive premises around the development.

## 4 The City of Edinburgh Council criteria

Planning Application 21/04749/FUL makes reference to the following conditions, which need to be addressed in the noise impact assessment:

- *‘Noise from all proposed mechanical plant cumulatively meets NR25 within the living apartments of any nearby noise-sensitive receptors, with windows partially open for ventilation.’*
- *‘NR15 is met within the nearest noise-sensitive premises for all commercial noise (such as vocals, music, impact, kitchen noise etc.). A worst-case scenario should be assumed.’*



## 5 Acoustic measurements

The City of Edinburgh Council (CEC) has set absolute noise limits (NR15 and NR25) without reference to the existing background sound level at and around the site. A noise survey is therefore not required. The main issue is noise transfer from the restaurant to the apartment above through the restaurant's facades, roof and separating floor.

Zanyar Abdalrahman of Sandy Brown visited the site on 2 April 2022 to measure the airborne sound insulation of the existing separating floor between the residential flat and the restaurant. Details of the equipment used are given in Appendix A.

No sound insulation tests of the existing glazed front door and windows have been carried out as they are to be replaced.

## 6 Results

The separating floor between the restaurant and the residential flat is a traditional ash-deafened timber floor with T&G floorboards above the timber joists and lathe and plaster underneath. Two layers of additional plasterboard linings have also been installed below the lath and plaster ceiling.

The measured sound insulation of the floor is  $D_{nT,w}$  57 dB. This is a good standard for a traditional building and meets the Scottish building regulations' minimum requirement of  $D_{nT,w}$  53 dB by 4 dB.

## 7 Noise egress assessment and recommendations

### 7.1 Noise egress from building services plant

At this stage, plant selections have not been made, however, two extract fan grilles are proposed on the east facade as illustrated in Figure 4. The nearest noise sensitive receptor from these grilles is a dwelling to the south. The location of the grilles in relation to the dwelling is shown in Figure 5.

To meet the CEC requirement, noise from the extract grilles must not exceed NR 25 inside the dwelling, with windows open for ventilation. NR25 is approximately equivalent to  $L_{Aeq}$  30 dB.

An open window for ventilation can typically provide 10-15 dB noise reduction from outside to inside.

Taking into account the distance of the dwelling (approximately 7 m), and assuming a 12 dB reduction provided by an open window, to meet the CEC requirement, noise emission from the extract grilles must be controlled so that a sound pressure level of 55 dBA is not exceeded at 1 m in front of each grille. This is an onerous requirement and might require the installation

## SANDY BROWN

Consultants in Acoustics, Noise & Vibration

of suitable atmospheric side attenuators on the extract ducts, and/or using extract fans that are relatively quiet in operation.

Details of the calculations are provided in Appendix B.

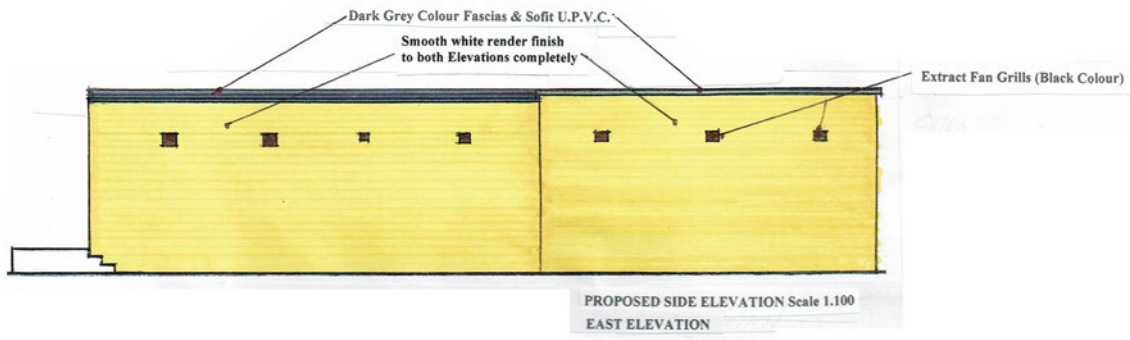


Figure 4 East facade showing the location of the extract grilles

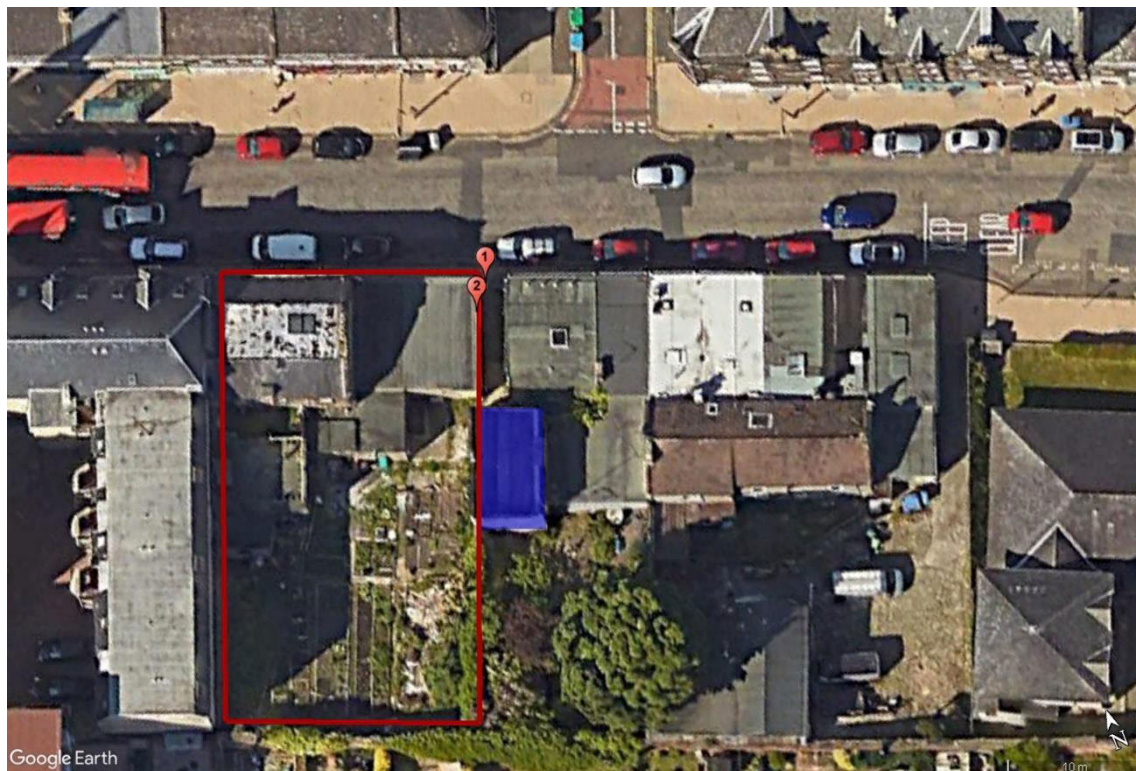


Figure 5 Aerial view of the site showing the location of the extract grilles (denoted as 1 and 2) and the nearest noise sensitive receptor (highlighted in blue) (courtesy of Goggle Earth Pro)

## 7.2 Noise egress from activities within the restaurant

We understand no live music will be played in the restaurant, and noise is mainly limited to moderate levels of background music along with typical noise made by staff and customers.

### 7.2.1 Typical noise levels from a restaurant with background music

We have carried out noise measurements in similar restaurants and the typical worst-case (ie Friday night) noise levels are as follows

- $L_{Aeq}$  77 dB
- $L_{AFmax}$  83 dB

The octave-band noise levels used in the assessment are given in Appendix B.

### 7.2.2 Guidance on envelope construction and glazing

The existing external masonry wall is expected to provide a high level of sound insulation. The weakest element of the facade is the glazed windows and doors.

Based on a noise level of  $L_{Aeq} \leq 77$  dB, and to meet the City of Edinburgh Council's requirements, all external windows must have a minimum sound insulation performance of  $R_w + C_{tr} \geq 33$  dB. This is also applicable to the external folding door open to the back garden.

An example glazed configuration that would achieve this performance is:

- 6.4 mm acoustic laminated glass / 16 mm air gap / 6 mm float glass.

The roof of the extension to the rear should have a sound insulation performance of  $R_w + C_{tr} \geq 45$  dB. The roof build-up consists of 3 layers of felt on 200 mm rigid board insulation on 18 mm OSB decking on 250 × 50 mm timber joists at 400 mm centres with two layers of 15 mm SoundBloc plasterboard underneath and 50 mm mineral fibre insulation in the roof cavity between the joists. This roof build-up is capable of meeting the sound insulation requirement.

For the external front door leading to the restaurant, a lobbied door is proposed which is advantageous in minimising egress when patron enter and leave the premises. The sound insulation performance of each doorset should be at least  $R_w$  27 dB.

Details of the calculations are provided in Appendix B.

## 7.3 Noise breakout to the accommodation above

Noise from the restaurant can break into the first-floor bedrooms of the apartment above through the separating floor. To meet the City of Edinburgh Council criterion of NR15, the separating floor must have a minimum sound insulation performance of  $D_{nT,w}$  60 dB.

The measured sound insulation performance of the floor is  $D_{nT,w}$  57 dB, which is 3 dB short of meeting the requirement. At the time of our test, there were obvious weaknesses at the edges

of the floor (from within the restaurant), where the plasterboard ceiling had been removed and the ceiling cavity exposed as shown in Figure 6.

When the ceiling cavity is filled with mineral fibre insulation and the plasterboard ceiling is reinstated such that there are no gaps in the ceiling, and between the plasterboard and the perimeter walls, we estimate the sound insulation performance of the floor will improve to around  $D_{nT,w}$  60-65 dB and this would be capable of controlling noise breakout to meet the CEC requirement.

Details of the calculations are given in Appendix B.



Figure 6 Unsealed gaps at the edge of the separating floor (from within the restaurant)

## Appendix A

### Equipment list

Equipment description	Type/serial number	Manufacturer	Calibration expiry	Calibration certification number
2250				
Sound level meter	2250/3010038	Brüel & Kjær	29 Nov 23	UCRT21/2456, UCRT21/2457
Microphone	4189/3036540	Brüel & Kjær	29 Nov 23	UCRT21/2456, UCRT21/2457
Pre-amp	ZC-0032/31255	Brüel & Kjær	29 Nov 23	UCRT21/2456, UCRT21/2457
Calibrator	4231/3016410	Brüel & Kjær	29 Nov 23	UCRT21/2451
Loudspeaker	K12.2	QSC	N/A	N/A
Noise source	MR2	NTI Audio	N/A	N/A

## Appendix B

### Calculation details

Table B1 Calculation details of noise transfer between the restaurant and the accommodation above through the separating floor

Comments	Octave band centre frequency (Hz)							Rating 1		Rating 2	
	63	125	250	500	1k	2k	4k				
Assumed reverberant noise level in the restaurant (dB)	78	73	72	73	72	70	65	$L_{Aeq}$	77	-	-
Measured sound insulation, $D$ (dB)	38	40	45	53	61	63	65	$D_w$	57	-	-
Improvement in sound insulation after remedial work (dB)	3	3	3	3	3	3	3	-	-	-	-
Reverberant noise level in the rooms above the restaurant (dB)	37	29	24	17	8	4	-3	$L_{Aeq}$	20	NR	14

Table B2 Calculation details of noise transfer between the restaurant and the accommodation above through the glazed windows

Comments	Octave band centre frequency (Hz)							Rating 1		Rating 2	
	63	125	250	500	1k	2k	4k				
Assumed reverberant noise level in the restaurant (dB)	78	73	72	73	72	70	65	$L_{Aeq}$	77	-	-
Reduction provided by recommended glazing specifications (dB)	20	26	26	34	43	46	57	$R_w+C_{tr}$	33	-	-
Reduction due to distance and directivity correction (dB)	14	14	14	14	14	14	14	-	-	-	-
Open-window reduction (dB)	12	12	12	12	12	12	12	-	-	-	-
Reverberant noise level in the rooms above the restaurant (dB)	32	21	20	13	3	-2	-18	$L_{Aeq}$	15	NR	9

Table B3 Cumulative reverberant noise level through the floor and glazed windows in the rooms above

Comments	Octave band centre frequency (Hz)							Rating 1		Rating 2	
	63	125	250	500	1k	2k	4k				
Reverberant noise level in the rooms above through floor (dB)	37	29	24	17	8	4	-3	$L_A$	20	NR	14
Reverberant noise level in the rooms above through windows (dB)	32	21	20	13	3	-2	-18	$L_A$	15	NR	9
Cumulative reverberant noise level through windows and floor (dB)	38	30	26	18	9	5	-3	$L_A$	21	NR	15

Table B4 Plant noise level inside the nearest noise sensitive receptor from the proposed plant

Comments	Octave band centre frequency (Hz)							Rating 1		Rating 2	
	63	125	250	500	1k	2k	4k				
Sound pressure level of plant at 1 m (assumed, dB)	66	60	59	51	46	43	40	$L_A$	55	NR	51
Unit correction (2 units, dB)	3	3	3	3	3	3	3	-	-	-	-
Reduction due to distance and directivity correction (dB)	17	17	17	17	17	17	17	-	-	-	-
Open window reduction	12	12	12	12	12	12	12	-	-	-	-
Resultant noise level inside (dB)	40	34	33	25	20	17	14	$L_A$	29	NR	23



# Comments for Planning Application 21/04749/FUL

## Application Summary

Application Number: 21/04749/FUL

Address: 227 & 229 Portobello High Street Edinburgh EH15 2AN

Proposal: Proposed alterations extension and use of a hot food takeaway and an office to form a restaurant.

Case Officer: Murray Couston

## Customer Details

Name: Org Portobello Amenity Society

Address: 4a Elcho Terrace Edinburgh

## Comment Details

Commenter Type: Amenity Body

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: Portobello Amenity Society wishes to object to this application for the following reasons:

The drawings are incomplete in that no proposed front elevation to the two premises is shown.

Whilst there may be no major changes proposed there will undoubtedly be an illuminated sign and this design for this should be included in this application. It is particularly important to do so as the applicant has on many occasions ignored the need for planning permission, notably at King's Place. As shown, work has already started on a rear extension that does not comply with consented approval.

Clarity of use of the raised decking area to the rear is required as it could be used as an outdoor seated area for serving drinks and food. If this is intended then it should be shown on the application and any possibility of noise nuisance, especially during the late evening and night time taken into account when assessing this proposal. There are domestic properties backing onto this open court yard that may be affected.

The agent states that waste storage and recycling storage will be provided on site but these areas are not indicated on the submitted plans. It is not conceivable that these areas could be accommodated in the cellars. Again, as there are residential properties adjacent, these facilities should be located so as not to cause a nuisance to existing residents.

In addition to these objections, the Society is concerned about the loss of another commercial/shop unit in Portobello High Street. Recent applications in close proximity for change of use to class 3 from class 1 have been granted or are under consideration. It is necessary for a vibrant town centre to have a mixture of uses.

# Report of Handling

## **Application for Planning Permission**

**227 & 229 Portobello High Street, Edinburgh, EH15 2AN**

**Proposal: Proposed alterations extension and use of a hot food takeaway and an office to form a restaurant.**

## **Item – Local Delegated Decision**

**Application Number – 21/04749/FUL**

**Ward – B17 - Portobello/Craigmillar**

## **Recommendation**

It is recommended that this application be **Refused** subject to the details below.

## **Summary**

The proposal does not comply with the relevant policies within the Edinburgh Local Development Plan and the relevant Guidance in that it would have an unacceptable impact on amenity. No material considerations would outweigh this decision.

## **SECTION A – Application Background**

### **Site Description**

The application site is a two storey building with the existing takeaway at ground floor and a flat above. The site also takes in the neighbouring single storey office.

### **Description Of The Proposal**

Planning permission is sought for a change of use from hot food takeaway and office to a restaurant including a rear extension.

### **Supporting Information**

A noise impact assessment has been submitted.

### **Relevant Site History**

19/00020/FUL  
227 Portobello High Street  
Edinburgh

EH15 2AN

Alterations, extension & change of use of existing hot food takeaway to form class 3 restaurant.

Granted

2 April 2019

17/02368/FUL

227 Portobello High Street

Edinburgh

EH15 2AN

Sub-divide existing shop to form shop and 2 bedroom flat

Refused

11 August 2017

## **Other Relevant Site History**

## **Consultation Engagement**

Environmental Protection

## **Publicity and Public Engagement**

**Date of Neighbour Notification:** 17 June 2022

**Date of Advertisement:** 15 October 2021

**Date of Site Notice:** 15 October 2021

**Number of Contributors:** 2

## **Section B - Assessment**

### **Determining Issues**

Due to the proposed development falling within a conservation area, this report will first consider the proposals in terms of Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997:

- Is there a strong presumption against granting planning permission due to the development conflicting with the objective of preserving or enhancing the character or appearance of the conservation area?
- If the strong presumption against granting planning permission is engaged, are there any significant public interest advantages of the development which can only be delivered at the scheme's proposed location that are sufficient to outweigh it?

This report will then consider the proposed development under Sections 25 and 37 of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act):

Do the proposals comply with the development plan?

If the proposals do comply with the development plan, are there any compelling material considerations for not approving them?

If the proposals do not comply with the development plan, are there any compelling material considerations for approving them?

In the assessment of material considerations this report will consider:

- the Scottish Planning Policy presumption in favour of sustainable development, which is a significant material consideration due to the development plan being over 5 years old;
- equalities and human rights;
- public representations; and
- any other identified material considerations.

## **Assessment**

To address these determining issues, it needs to be considered whether:

### **a) The proposals harm the character or appearance of the conservation area?**

The proposed changes represent minor alterations to the building. By virtue of their size, location and suitable materials, the works would not have a detrimental impact on the character and appearance of the conservation area.

## **Conclusion in relation to the conservation area**

The proposal has regard to the desirability of preserving or enhancing the character or appearance of the conservation area. The proposal is acceptable with regards to Section 64 of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997.

### **b) The proposals comply with the development plan?**

The development plan comprises the Strategic and Local Development Plans. The relevant Edinburgh Local Development Plan 2016 (LDP) policies to be considered are:

- LDP Environment policy Env 6
- LDP Retail policies Ret 3 and Ret 11
- LDP Housing policy Hou 7
- LDP Design policy Des 12

The non-statutory 'Listed Buildings and Conservation Area' guidance is a material consideration that is relevant when considering policy Env 6. The non-statutory Guidance for Businesses is a material consideration that is relevant when considering policies Ret 3 and Ret 11.

## **Principle**

The site is located within Portobello Town Centre. The existing uses are a hot food takeaway and office. The proposal would not result in the loss of a retail unit and therefore complies with policy Ret 3.

Policy Ret 11 states that if a proposal is likely to lead to an unacceptable increase in noise to the detriment of living conditions for nearby residents then it will not be supported. Although it is acknowledged that the current use is that of a hot food takeaway, the extension to the rear would intensify the use of the premises and potentially impact on surrounding properties. Furthermore, consent was granted for a similar proposal in 2019 (19/00020/FUL), however, this was assessed with no noise impact assessment and on the basis that the flat above did not object.

Environmental Protection have objected to the proposal. This is discussed further in the section on amenity below. The proposal does not comply with policy Ret 11 and is therefore not acceptable in principle.

#### Scale, form and design

The proposed external works would represent suitable additions that would be acceptable in this location. The proposed materials are also acceptable in that they would be congruous to the application site and the surrounding area.

This would comply with Des 12 in terms of design.

#### Amenity

Following submission of a noise impact assessment, Environmental Protection have objected to the proposal. Concerns have been raised regarding breakout noise from the rear extension and the lack of information regarding the flue and ventilation. As noted above, permission for a similar scheme was granted in 2019 without the benefit of a noise impact assessment. Furthermore, regardless of the ownership or stance on the scheme of the property above the proposed restaurant, this is not something that can be controlled in perpetuity by the Council and any future tenants may find the restaurant a nuisance.

Taking this into consideration, the proposal would not be acceptable in terms of amenity by virtue of its potential adverse impact on residential amenity.

This is contrary to Hou 7 in terms of amenity.

#### Conservation area

This has been addressed above. The proposal complies with policy Env 6.

### **Conclusion in relation to the Development Plan**

The proposal is not acceptable in principle and is likely to have an adverse impact on neighbouring residential amenity. It is, therefore, contrary to the Development Plan.

#### **c) There are any other material considerations which must be addressed?**

The following material planning considerations have been identified:

#### SPP - Sustainable development

Scottish Planning Policy (SPP) is a significant material consideration due to the LDP being over 5 years old. Paragraph 28 of SPP gives a presumption in favour of development which contributes to sustainable development. Paragraph 29 outlines the thirteen principles which should guide the assessment of sustainable development.

The proposal is contrary to Paragraph 29 of SPP, specifically principle 13.

#### Emerging policy context

The Draft National Planning Framework 4 is being consulted on at present and has not been adopted. As such, little weight can be attached to it as a material consideration in the determination of this application.

While City Plan 2030 represents the settled will of the Council, it has not yet been submitted to Scottish Ministers for examination. As such, little weight can be attached to it as a material consideration in the determination of this application.

#### Equalities and human rights

Due regard has been given to section 149 of the Equalities Act 2010. No impacts have been identified.

Consideration has been given to human rights. No impacts have been identified through the assessment and no comments have been received in relation to human rights.

#### Public representations

Two letters of representation have been received, one objecting and one making neutral comments. A summary of the representations is provided below:

##### *material considerations*

- noise: this has been assessed in the amenity section;
  - extension and decking: this has been assessed in the scale, form and design section;
  - principle: this has been assessed in the section on principle;
  - potential signage: this would be assessed separately by way of an advert application.
- No changes to the front elevations were submitted as part of the application.

##### *non-material considerations*

- recycling

#### **Conclusion in relation to identified material considerations**

The proposal is not acceptable with regards to the above as it does not comply with Paragraph 29 of SPP.

#### **Overall conclusion**

The proposal does not comply with the relevant policies within the Edinburgh Local Development Plan and the relevant Guidance in that it would have an unacceptable impact on amenity. No material considerations would outweigh this decision.

## **Section C - Conditions/Reasons/Informatives**

The recommendation is subject to the following;

### **Reason for Refusal**

1. The proposal is contrary to the Local Development Plan Policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as it would have a materially detrimental effect on the living conditions of nearby residents.
2. The proposal is contrary to the Local Development Plan Policy Ret 11 in respect of Food and Drink Establishments, as it would be likely to lead to an unacceptable increase in noise and disturbance to the detriment of living conditions for nearby residents.

### **Background Reading/External References**

To view details of the application go to the [Planning Portal](#)

**Further Information** - [Local Development Plan](#)

**Date Registered:** 6 October 2021

### **Drawing Numbers/Scheme**

01-08

Scheme 1

**David Givan**  
**Chief Planning Officer**  
**PLACE**  
**The City of Edinburgh Council**

Contact: Murray Couston, Planning Officer  
E-mail: [murray.couston@edinburgh.gov.uk](mailto:murray.couston@edinburgh.gov.uk)

## Appendix 1

### Consultations

NAME: Environmental Protection

COMMENT: Environmental Protection is unable to support this application.

The current takeaway part of the proposed site is the ground floor of a two-storey building with residential property above. The application also includes a proposal to have decking and seating for patrons in the rear garden with folding doors at the rear of the ground floor premises to provide access. There are residential properties overlooking the garden.

Environmental Protection has significant concerns about the noise from outdoor activities affecting the amenity of nearby residents. Noise, in particular vocals, from outdoor eating and drinking areas are extremely difficult to modulate and control. There are no mitigation measures, beyond fully enclosing the area, which has not been suggested as part of this application. Nearby residents would likely be subjected to unacceptable levels of noise, and it would be detrimental to residential amenity. In addition, the Noise Impact Assessment (Sandy Brown Limited, ref: 22165-R01-B, dated 17 May 2022) submitted by the applicant relies on the sound insulation properties of glazing to the rear, including large folding doors to meet the expected sound insulation standards. It is highly likely these doors will be kept open for long periods to provide access to the rear seating area, thus no longer meeting the standards set to protect nearby residential amenity.

The Noise Impact Assessment advises that the intention is to operate the business between 10.00 - 01.00 hours. Our Planning colleagues have advised that conditions on hours of operation would not be accepted.

We also have concerns that the position of the extract flue termination point may be too low and cause odour issues in nearby residential properties. In addition, no detail has been provided about the sound levels from the extract flue.

Therefore, Environmental Protection cannot support the application and recommend refusal.

DATE:

The full consultation response can be viewed on the Planning & Building Standards Portal.



MacDonald Licensing.  
21A Rutland Square  
Edinburgh  
EH1 2BB

Mr Harem Murdochy  
16/12 Brunswick Road  
Edinburgh  
EH7 5NQ

**Decision date: 7 June 2019**

**LICENSING (SCOTLAND) ACT 2005**  
**CERTIFICATE BY PLANNING AUTHORITY Reference 19/02640/S50**

Request for Section 50 Certificate.

**Planning Section 50 Certificate**

I certify that for the premises situated, or to be situated at:

**Address:** 227 Portobello High Street Edinburgh EH15 2AN

Planning permission was granted for a change of use of the premises from a 'hot food takeaway' use to a class 3 cafe or restaurant use on 2 April 2019 (Ref 19/00020/FUL).

The applicant has confirmed that the consent has been lawfully taken up and that there has been no further change of use of the premises since that implementation.

Therefore, it is acceptable in planning terms for the premises to operate with a liquor licence as requested.

It is acceptable in planning terms for the premises at the above address to operate with an alcohol licence, based on the certified information provided with your application.

Should you have a specific enquiry regarding this decision please email [planning.licensing@edinburgh.gov.uk](mailto:planning.licensing@edinburgh.gov.uk) including the above reference.

*Steven Humphreys*

Customer support assistant



From: John Tod  
Sent: 08 June 2022 15:37  
To: harem murdoch  
Subject: FW: 227-229 Portobello High Street REF 21/04749/FUL

FYI

Sent from [Mail](#) for Windows

From: [John Tod](#)  
Sent: 08 June 2022 14:51  
To: [murray.couston@edinburgh.gov.uk](mailto:murray.couston@edinburgh.gov.uk)  
Subject: 227-229 Portobello High Street REF 21/04749/FUL

Murray Couston

08 June 2022

Hi Murray

I have added to and adjusted the drawings for this project and the set now consists of drawing No.BLP and drawing No.1 to 10 inclusive.

Drawing No.9 shows the approved and proposed plans and elevation.  
Drawing No.10 some more site progress photographs.

Drawing No.9 I think shows that the proposed application now with you takes up much less of the garden space and is a much more appropriate scheme having a great deal less glazing, which obviously will reduce noise breakout and will have a much better performance in noise containment.

I have sent our revised drawings to Sandy Browns our Acoustic Consultants for their updated comments which I will pass to you as soon as they come to hand.

My client is prepared to install acoustic monitoring equipment in the premises and the garden to allow him to record noise generation in order to be able to at all times keep within agreed noise level limit.

The extract fan and ducts will all be contained within the flat above the proposed restaurant which is now in the same ownership, and the flue will terminate through the chimney stack flues to the east side of the above flat which is where the existing flues from the previous take away are located.

My client informs me that as far as he is aware the flue termination in this location has caused no problems in the past.

My client is of the opinion as I am that very little noise will be generated from this proposed restaurant premises with its proposed opening hours being 12 noon till 10pm at night.

I am still of the opinion that a face-to-face meeting possibly onsite would be of a great benefit to all parties concerned.

My phone number is [REDACTED] and would welcome a phone discussion.  
The E-Planning Scot online Ref is 100469672-007

I am sure that between us we can come up with a satisfactory solution to this proposal and avoid the problems that will undoubtedly arise if my client has to revert to construction the approval, he has Ref: 19/00020/FUL.

I can email the drawings to you directly and individually if that would be of assistance to you.

Thanks and Regards,  
John

John Tod Associates

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