



The Moray Council Council Office High Street Elgin IV30 1BX Tel: 0300 1234561 Email: development.control@moray.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 100479410-001

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.

## Type of Application

What is this application for? Please select one of the following: \*

- Application for planning permission (including changes of use and surface mineral working).
- Application for planning permission in principle.
- Further application, (including renewal of planning permission, modification, variation or removal of a planning condition etc)
- Application for Approval of Matters specified in conditions.

## Description of Proposal

Please describe the proposal including any change of use: \* (Max 500 characters)

Change of use of bakery to restaurant and hot food takeaway with proprietors flat above and 2 No low cost housing units to the rear.

Is this a temporary permission? \*  Yes  No

If a change of use is to be included in the proposal has it already taken place?  
(Answer 'No' if there is no change of use.) \*  Yes  No

Has the work already been started and/or completed? \*

No  Yes – Started  Yes - Completed

## 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:	Plans Plus		
Ref. Number:		You must enter a Building Name or Number, or both: *	
First Name: *	Colin	Building Name:	Plans Plus Offices
Last Name: *	Keir	Building Number:	
Telephone Number: *	01343 842635	Address 1 (Street): *	Main Street
Extension Number:		Address 2:	Urquhart
Mobile Number:		Town/City: *	By Elgin
Fax Number:		Country: *	Moray
		Postcode: *	IV30 8LG
Email Address: *	ctkplans@aol.com		

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

Individual  Organisation/Corporate entity

## Applicant Details

Please enter Applicant details

Title:	Mr	You must enter a Building Name or Number, or both: *	
Other Title:		Building Name:	
First Name: *	Peter	Building Number:	9
Last Name: *	Ford	Address 1 (Street): *	New Street
Company/Organisation		Address 2:	Roths
Telephone Number: *		Town/City: *	Aberlour
Extension Number:		Country: *	UK
Mobile Number:		Postcode: *	AB38 9BQ
Fax Number:			
Email Address: *	ctkplans@aol.com		

## Site Address Details

Planning Authority:

Moray Council

Full postal address of the site (including postcode where available):

Address 1:

9 NEW STREET

Address 2:

ROTHES

Address 3:

Address 4:

Address 5:

Town/City/Settlement:

ABERLOUR

Post Code:

AB38 7BQ

Please identify/describe the location of the site or sites

Northing

849267

Easting

327753

## Pre-Application Discussion

Have you discussed your proposal with the planning authority? \*

Yes  No

## Site Area

Please state the site area:

0.06

Please state the measurement type used:

Hectares (ha)  Square Metres (sq.m)

## Existing Use

Please describe the current or most recent use: \* (Max 500 characters)

Bakery and temporary emporium

## Access and Parking

Are you proposing a new altered vehicle access to or from a public road? \*

Yes  No

If Yes please describe and show on your drawings the position of any existing. Altered or new access points, highlighting the changes you propose to make. You should also show existing footpaths and note if there will be any impact on these.

Are you proposing any change to public paths, public rights of way or affecting any public right of access? \*  Yes  No

If Yes please show on your drawings the position of any affected areas highlighting the changes you propose to make, including arrangements for continuing or alternative public access.

How many vehicle parking spaces (garaging and open parking) currently exist on the application Site?

How many vehicle parking spaces (garaging and open parking) do you propose on the site (i.e. the Total of existing and any new spaces or a reduced number of spaces)? \*

Please show on your drawings the position of existing and proposed parking spaces and identify if these are for the use of particular types of vehicles (e.g. parking for disabled people, coaches, HGV vehicles, cycles spaces).

**Water Supply and Drainage Arrangements**

Will your proposal require new or altered water supply or drainage arrangements? \*  Yes  No

Are you proposing to connect to the public drainage network (eg. to an existing sewer)? \*

Yes – connecting to public drainage network

No – proposing to make private drainage arrangements

Not Applicable – only arrangements for water supply required

Do your proposals make provision for sustainable drainage of surface water?? \*  Yes  No  
(e.g. SUDS arrangements) \*

Note:-

Please include details of SUDS arrangements on your plans

Selecting 'No' to the above question means that you could be in breach of Environmental legislation.

Are you proposing to connect to the public water supply network? \*

Yes

No, using a private water supply

No connection required

If No, using a private water supply, please show on plans the supply and all works needed to provide it (on or off site).

**Assessment of Flood Risk**

Is the site within an area of known risk of flooding? \*  Yes  No  Don't Know

If the site is within an area of known risk of flooding you may need to submit a Flood Risk Assessment before your application can be determined. You may wish to contact your Planning Authority or SEPA for advice on what information may be required.

Do you think your proposal may increase the flood risk elsewhere? \*  Yes  No  Don't Know

**Trees**

Are there any trees on or adjacent to the application site? \*  Yes  No

If Yes, please mark on your drawings any trees, known protected trees and their canopy spread close to the proposal site and indicate if any are to be cut back or felled.

**Waste Storage and Collection**

Do the plans incorporate areas to store and aid the collection of waste (including recycling)? \*  Yes  No

If Yes or No, please provide further details: \* (Max 500 characters)

Bins associated with restaurant and domestic recycling bins for domestic properties

## Residential Units Including Conversion

Does your proposal include new or additional houses and/or flats? \*

Yes  No

How many units do you propose in total? \*

3

Please provide full details of the number and types of units on the plans. Additional information may be provided in a supporting statement.

## All Types of Non Housing Development – Proposed New Floorspace

Does your proposal alter or create non-residential floorspace? \*

Yes  No

## All Types of Non Housing Development – Proposed New Floorspace Details

For planning permission in principle applications, if you are unaware of the exact proposed floorspace dimensions please provide an estimate where necessary and provide a fuller explanation in the 'Don't Know' text box below.

Please state the use type and proposed floorspace (or number of rooms if you are proposing a hotel or residential institution): \*

Class 1 Retail (food)

Gross (proposed) floorspace (In square meters, sq.m) or number of new (additional) Rooms (If class 7, 8 or 8a): \*

11

If Class 1, please give details of internal floorspace:

Net trading spaces:

222

Non-trading space:

126

Total:

If Class 'Not in a use class' or 'Don't know' is selected, please give more details: (Max 500 characters)

## Schedule 3 Development

Does the proposal involve a form of development listed in Schedule 3 of the Town and Country Planning (Development Management Procedure (Scotland) Regulations 2013) \*

Yes  No  Don't Know

If yes, your proposal will additionally have to be advertised in a newspaper circulating in the area of the development. Your planning authority will do this on your behalf but will charge you a fee. Please check the planning authority's website for advice on the additional fee and add this to your planning fee.

If you are unsure whether your proposal involves a form of development listed in Schedule 3, please check the Help Text and Guidance notes before contacting your planning authority.

## Planning Service Employee/Elected Member Interest

Is the applicant, or the applicant's spouse/partner, either a member of staff within the planning service or an elected member of the planning authority? \*

Yes  No

## Certificates and Notices

CERTIFICATE AND NOTICE UNDER REGULATION 15 – TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATION 2013

One Certificate must be completed and submitted along with the application form. This is most usually Certificate A, Form 1, Certificate B, Certificate C or Certificate E.

Are you/the applicant the sole owner of ALL the land? \*

Yes  No

Is any of the land part of an agricultural holding? \*

Yes  No

## Certificate Required

The following Land Ownership Certificate is required to complete this section of the proposal:

Certificate A

## Land Ownership Certificate

Certificate and Notice under Regulation 15 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Certificate A

I hereby certify that –

(1) - No person other than myself/the applicant was an owner (Any person who, in respect of any part of the land, is the owner or is the lessee under a lease thereof of which not less than 7 years remain unexpired.) of any part of the land to which the application relates at the beginning of the period of 21 days ending with the date of the accompanying application.

(2) - None of the land to which the application relates constitutes or forms part of an agricultural holding

Signed: Colin Keir

On behalf of: Mr Peter Ford

Date: 30/09/2021

Please tick here to certify this Certificate. \*

## Checklist – Application for Planning Permission

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Please take a few moments to complete the following checklist in order to ensure that you have provided all the necessary information in support of your application. Failure to submit sufficient information with your application may result in your application being deemed invalid. The planning authority will not start processing your application until it is valid.

a) If this is a further application where there is a variation of conditions attached to a previous consent, have you provided a statement to that effect? \*

Yes  No  Not applicable to this application

b) If this is an application for planning permission or planning permission in principal where there is a crown interest in the land, have you provided a statement to that effect? \*

Yes  No  Not applicable to this application

c) If this is an application for planning permission, planning permission in principle or a further application and the application is for development belonging to the categories of national or major development (other than one under Section 42 of the planning Act), have you provided a Pre-Application Consultation Report? \*

Yes  No  Not applicable to this application

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

d) If this is an application for planning permission and the application relates to development belonging to the categories of national or major developments and you do not benefit from exemption under Regulation 13 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, have you provided a Design and Access Statement? \*

Yes  No  Not applicable to this application

e) If this is an application for planning permission and relates to development belonging to the category of local developments (subject to regulation 13. (2) and (3) of the Development Management Procedure (Scotland) Regulations 2013) have you provided a Design Statement? \*

Yes  No  Not applicable to this application

f) If your application relates to installation of an antenna to be employed in an electronic communication network, have you provided an ICNIRP Declaration? \*

Yes  No  Not applicable to this application

g) If this is an application for planning permission, planning permission in principle, an application for approval of matters specified in conditions or an application for mineral development, have you provided any other plans or drawings as necessary:

- Site Layout Plan or Block plan.
- Elevations.
- Floor plans.
- Cross sections.
- Roof plan.
- Master Plan/Framework Plan.
- Landscape plan.
- Photographs and/or photomontages.
- Other.

If Other, please specify: \* (Max 500 characters)

Provide copies of the following documents if applicable:

- |  |  |
|--|--|
| A copy of an Environmental Statement. *  | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |
| A Design Statement or Design and Access Statement. *                                   | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |
| A Flood Risk Assessment. *   | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |
| A Drainage Impact Assessment (including proposals for Sustainable Drainage Systems). * | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |
| Drainage/SUDS layout. *  | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> N/A |
| A Transport Assessment or Travel Plan  | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |
| Contaminated Land Assessment. *  | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |
| Habitat Survey. *  | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |
| A Processing Agreement. *  | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |

Other Statements (please specify). (Max 500 characters)

## **Declare – For Application to Planning Authority**

I, the applicant/agent certify that this is an application to the planning authority as described in this form. The accompanying Plans/drawings and additional information are provided as a part of this application.

Declaration Name: Mr Colin Keir

Declaration Date: 30/09/2021





Glengrant Distillery

Pavilion  
Bowling Green

Tennis Court

HES

Depot

NORTH

17  
2ha  
12

Glenspey Distillery

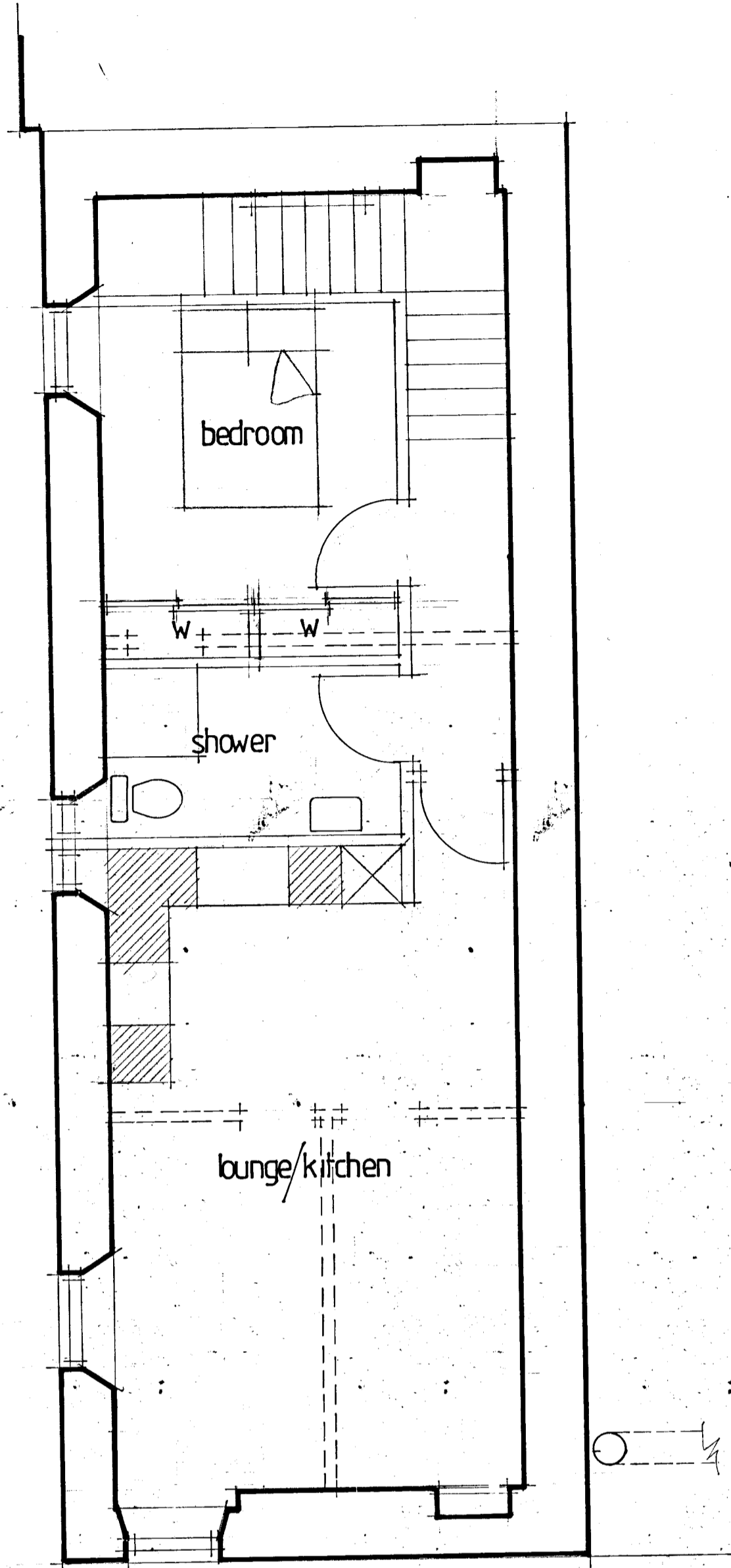
5404  
134ha  
33

Public Park

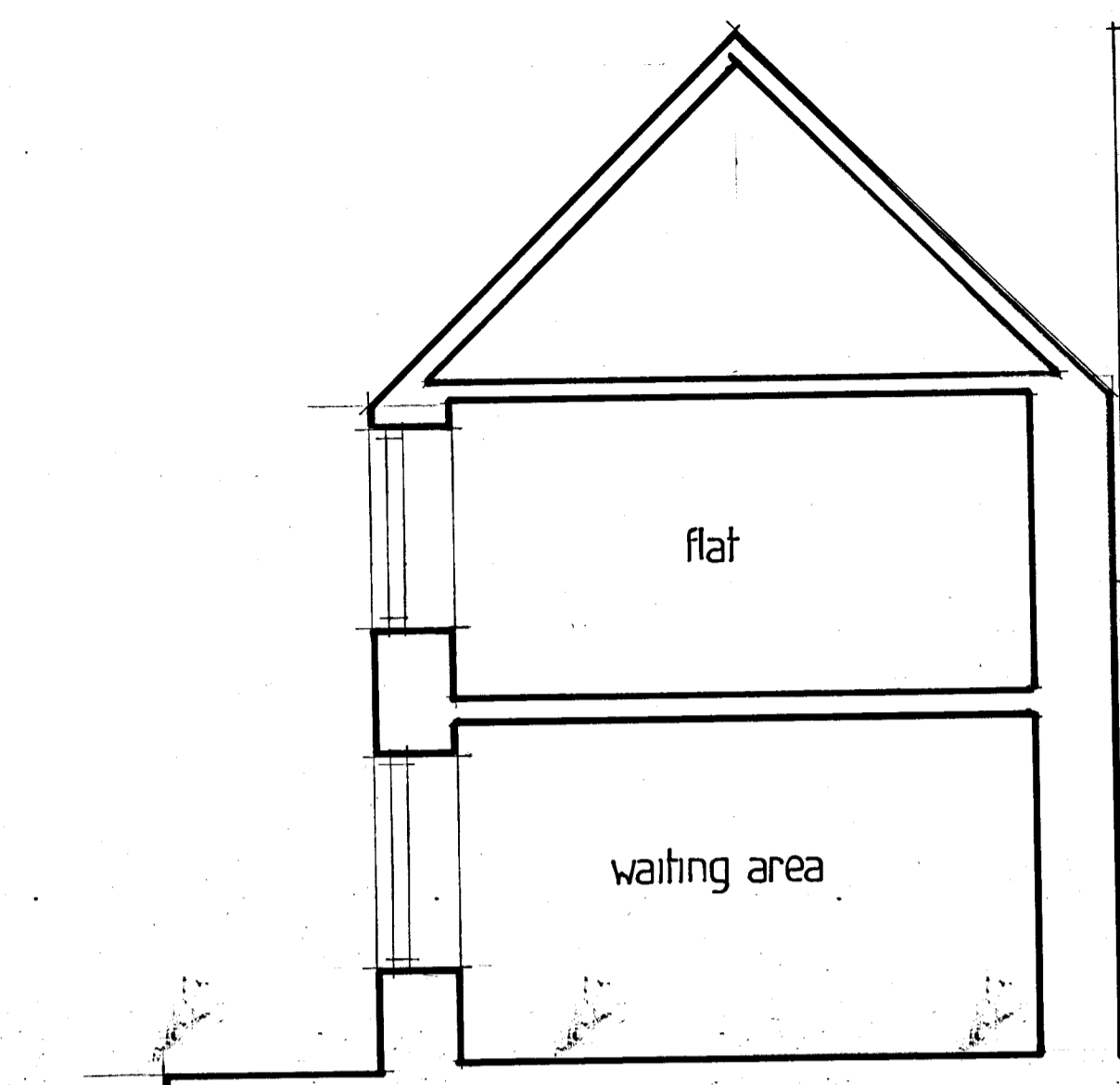
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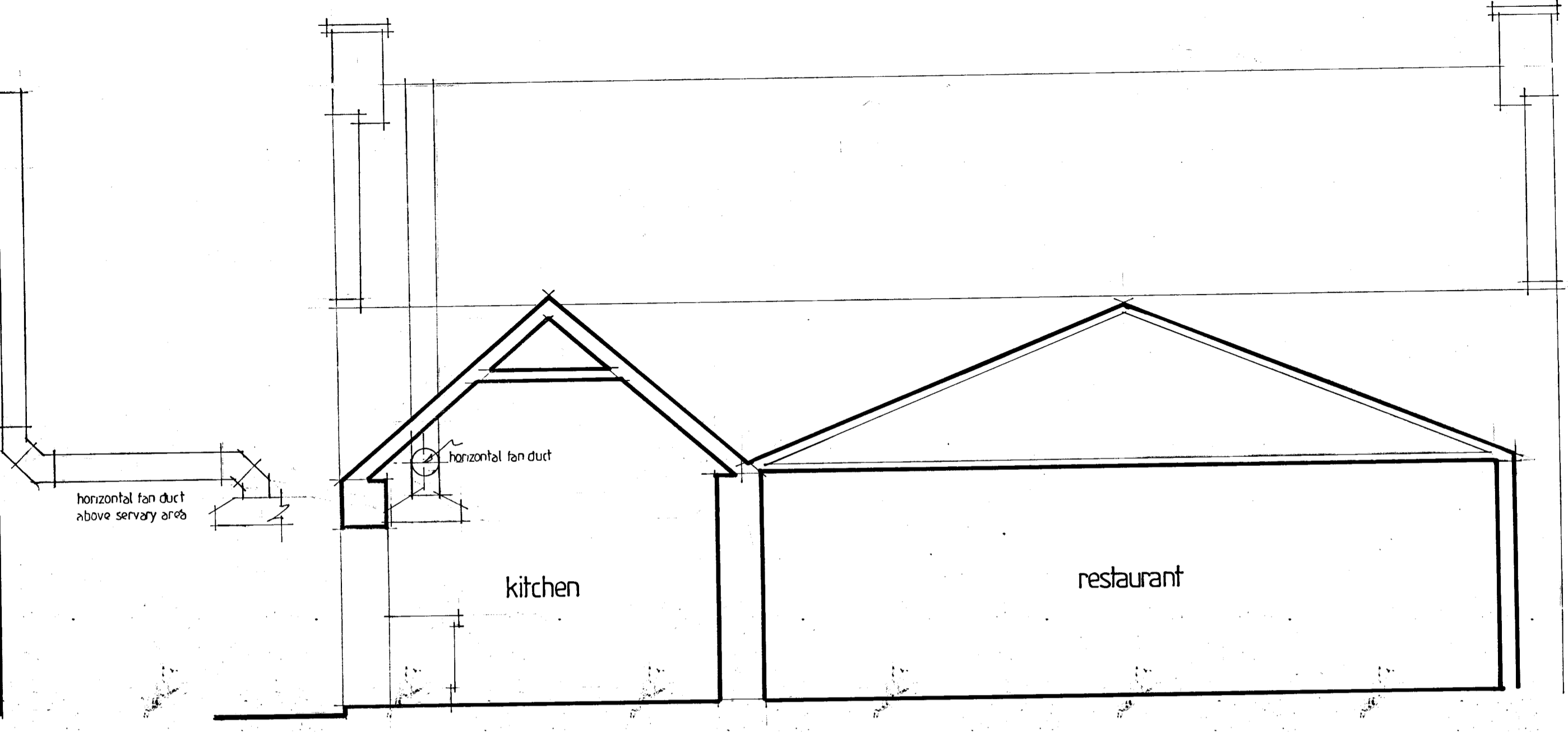
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First floor plan 1:50



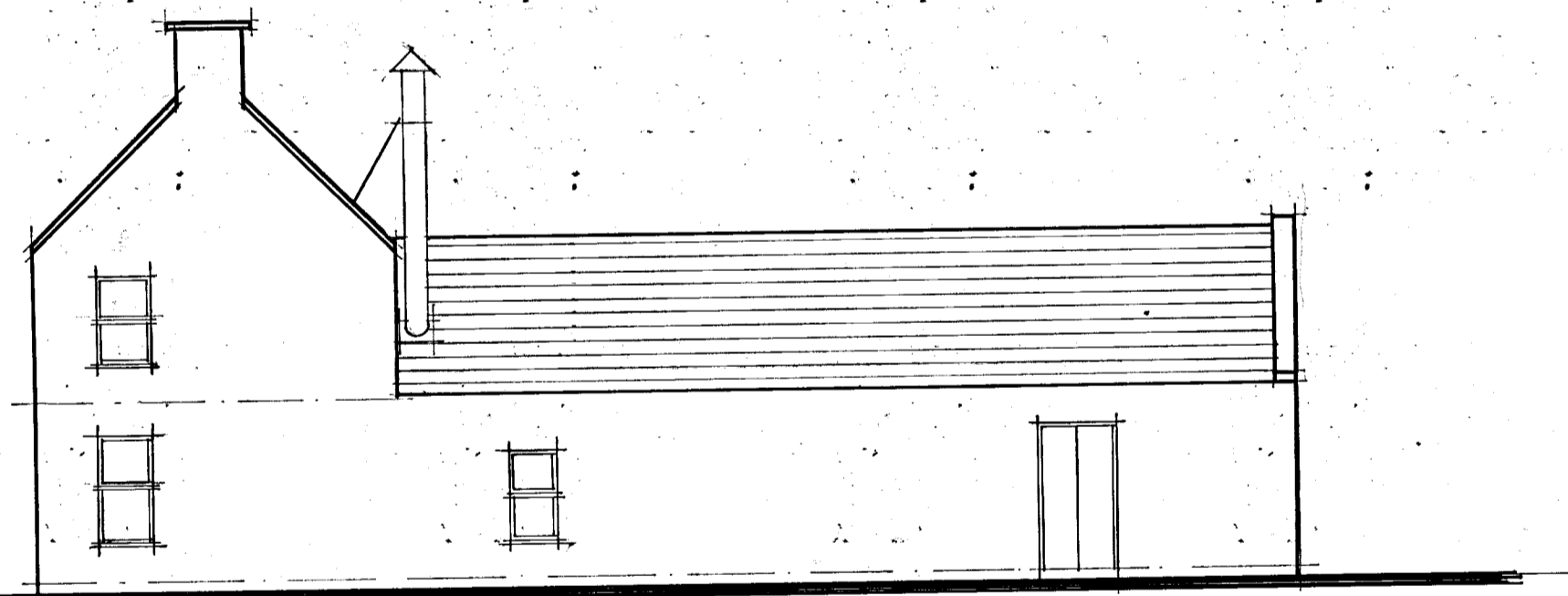
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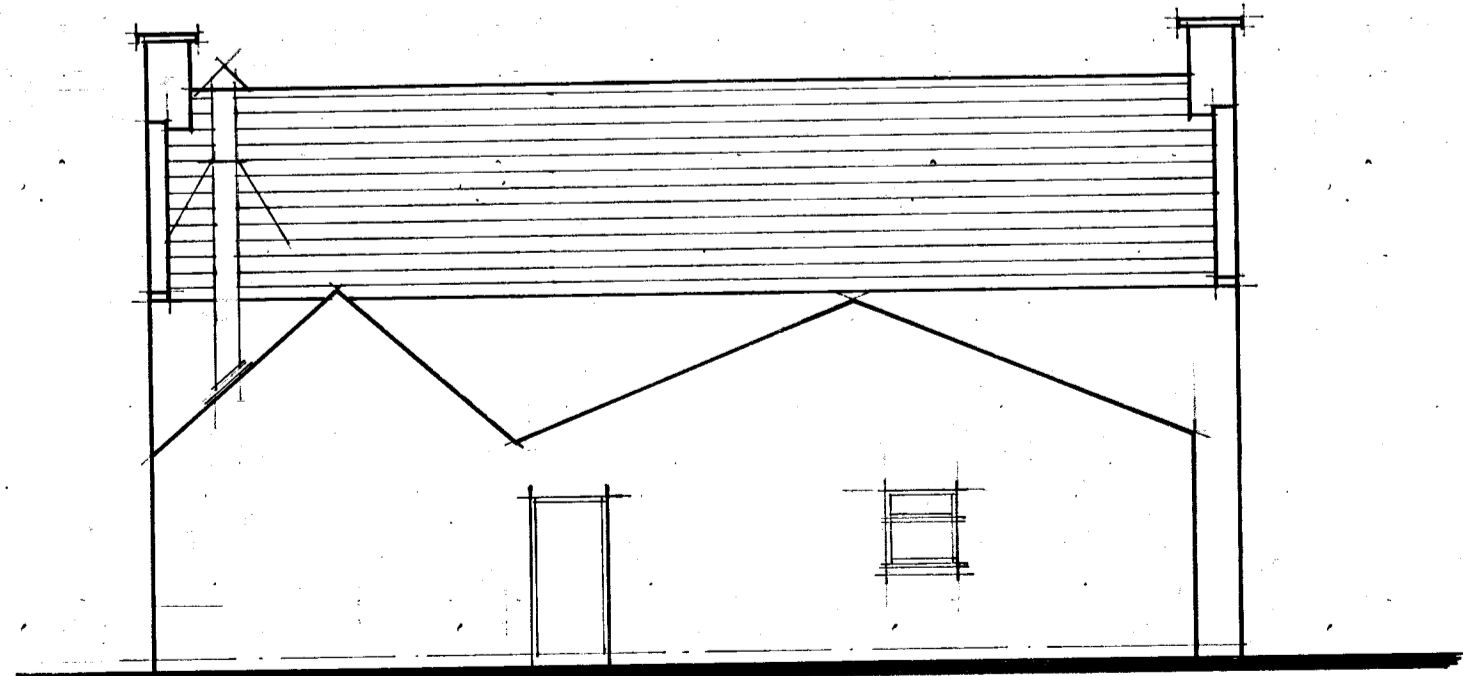
Cross section BB 1:50



Front elevation 1:100



Side elevation 1:100



Rear elevation 1:100

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CONTRACTORS WILL HAVE DEEMED TO HAVE VISITED THE SITE TO FAMILIARIZE THEMSELVES WITH THE PROJECT PRIOR TO SUBMITTING ANY ESTIMATE FOR BUILDING WORKS.

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ANY ROOF TRUSS TYING INTO AN EXISTING ROOF TO BE CHECKED ON SITE BY CONTRACTOR TO ENSURE HEIGHTS MEET CORRECTLY.

CLIENT Premium Bakery	SCALE 1:50	DRAWN BY IR	DATE June 2019
PROJECT CoU of former bakery to hot food takeaway and restaurant at 9/11 New Street, Rothes, AB38 7BQ			PROJECT No. 18-76 Dwg 2-



**ARCHITECTURAL DESIGN CONSULTANTS**

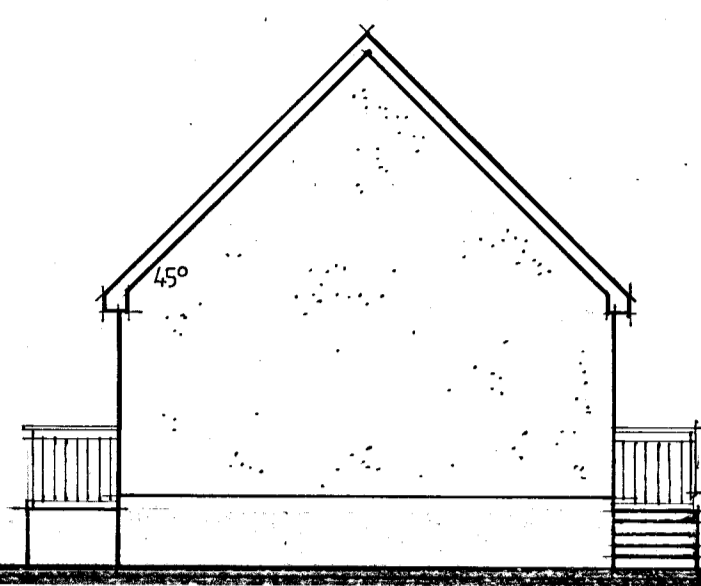
TELEPHONE No. 01343 842635  
 MOBILE No. 07766 315501  
 EMAIL: ctkplans@aol.com  
 WEB: www.plans-plus.co.uk  
 PARTNERS: COLIN & CATRIONA KEIR

MAIN STREET OFFICES: URQUHART, BY ELGIN, IV30 8LG

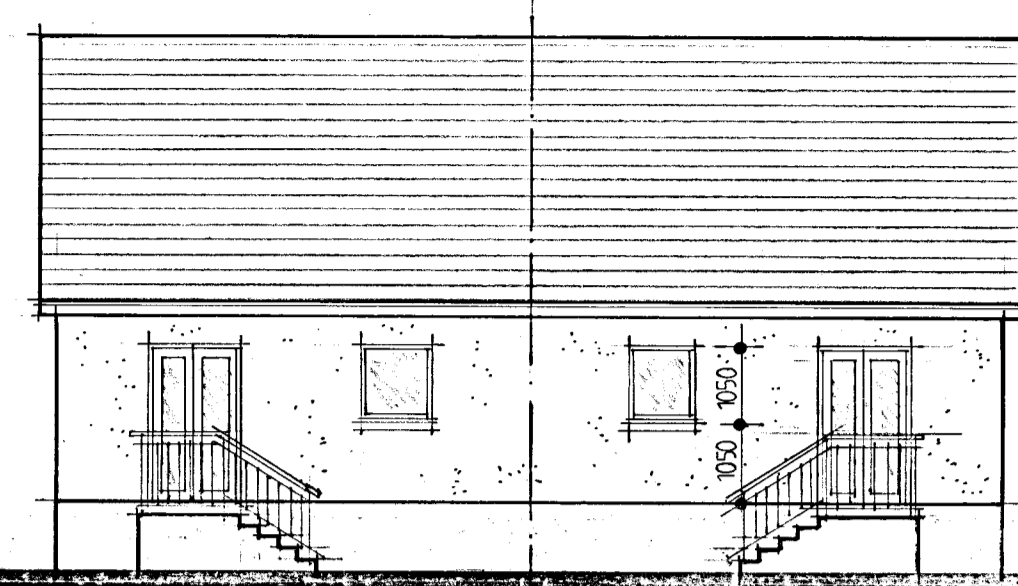




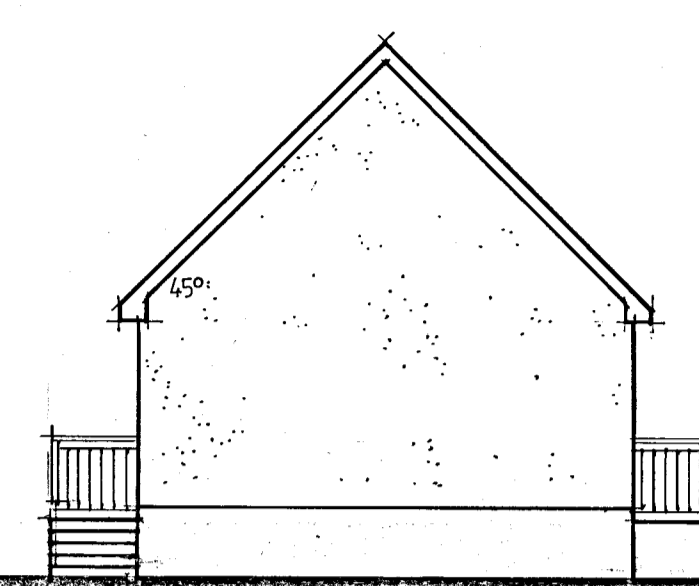
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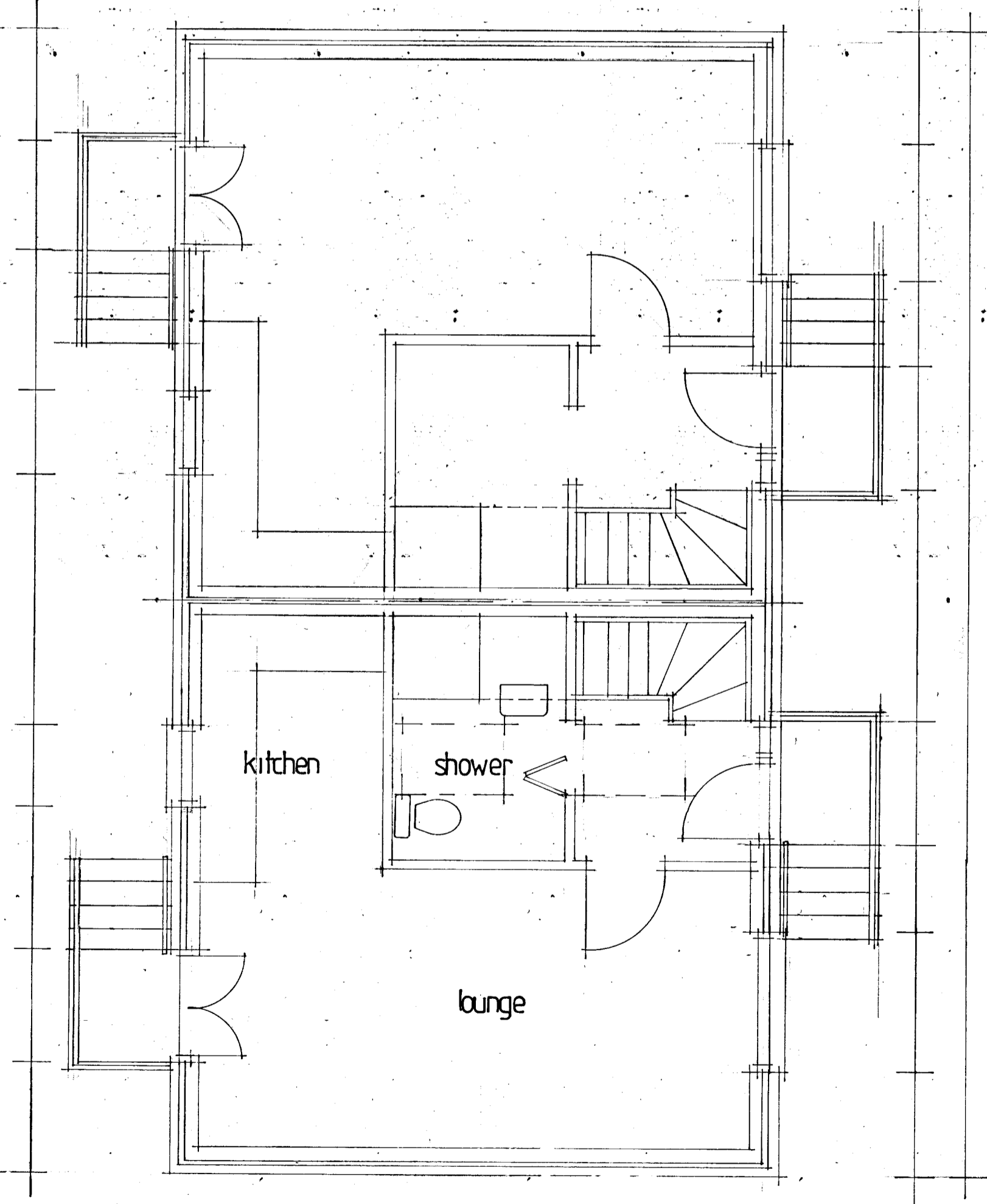
Side elevation 1:100



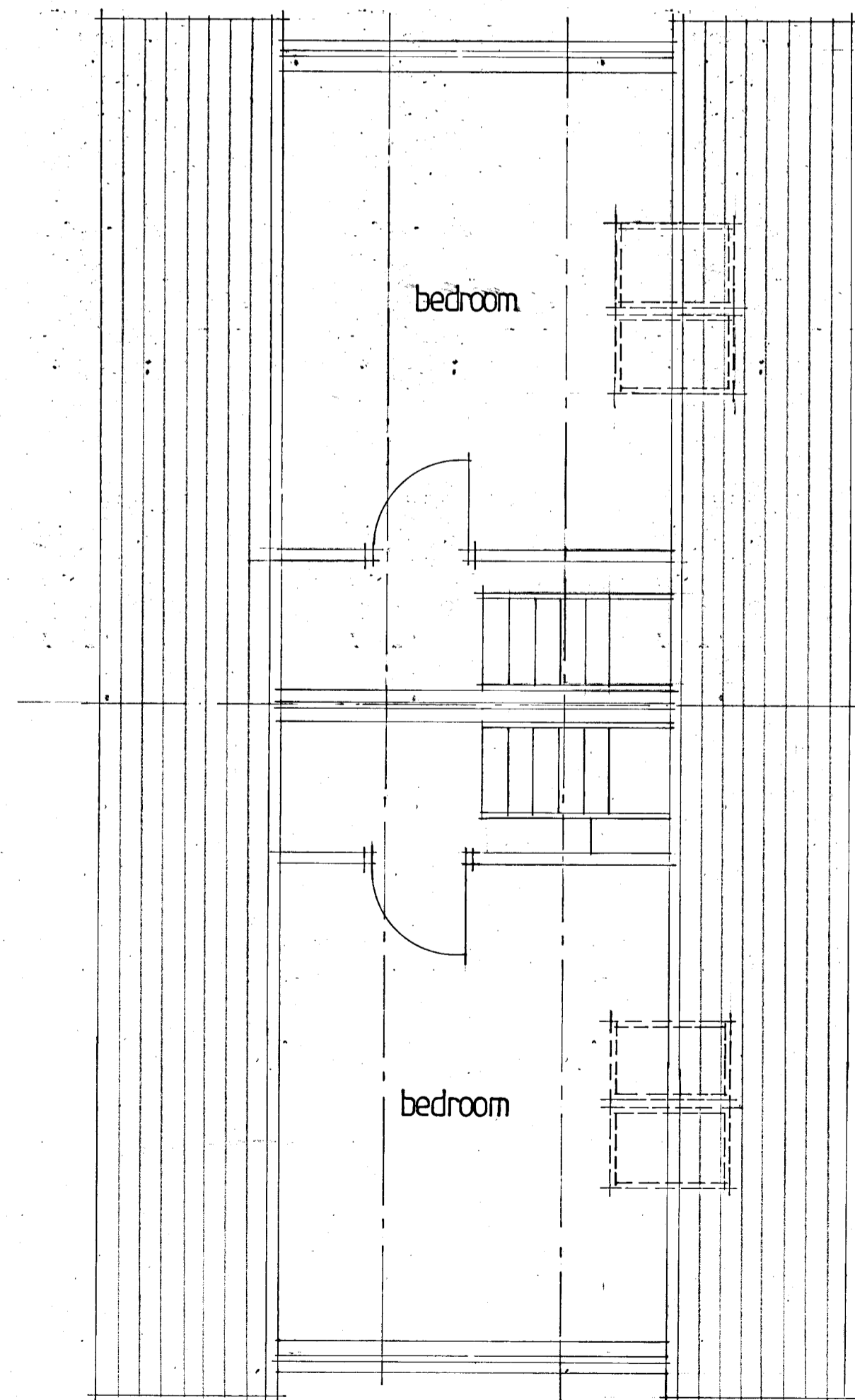
Rear elevation 1:100



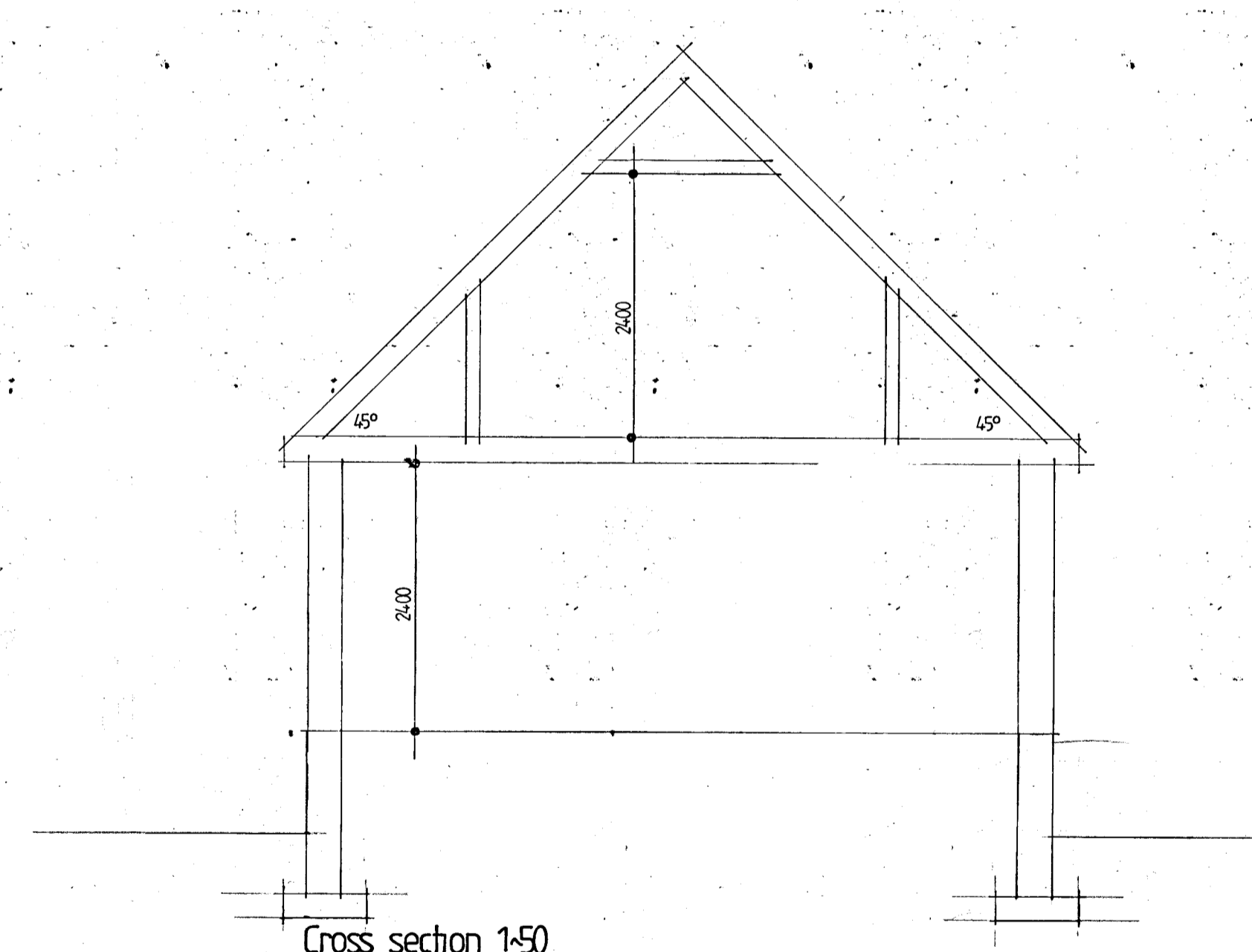
Side elevation 1:100



Ground floor plan 1:50



First floor plan 1:50

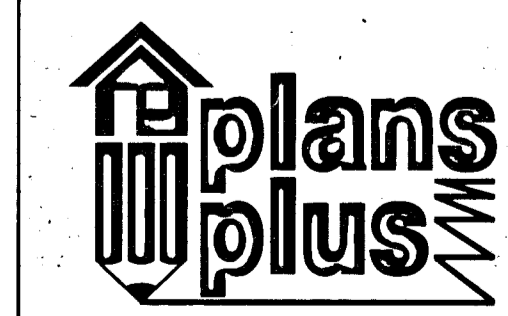


Cross section 1:50

Drawing revisions  
A 15/12/2022 GROUND FLOOR LEVEL RAISED ABOVE POTENTIAL FLOOD HEIGHTS

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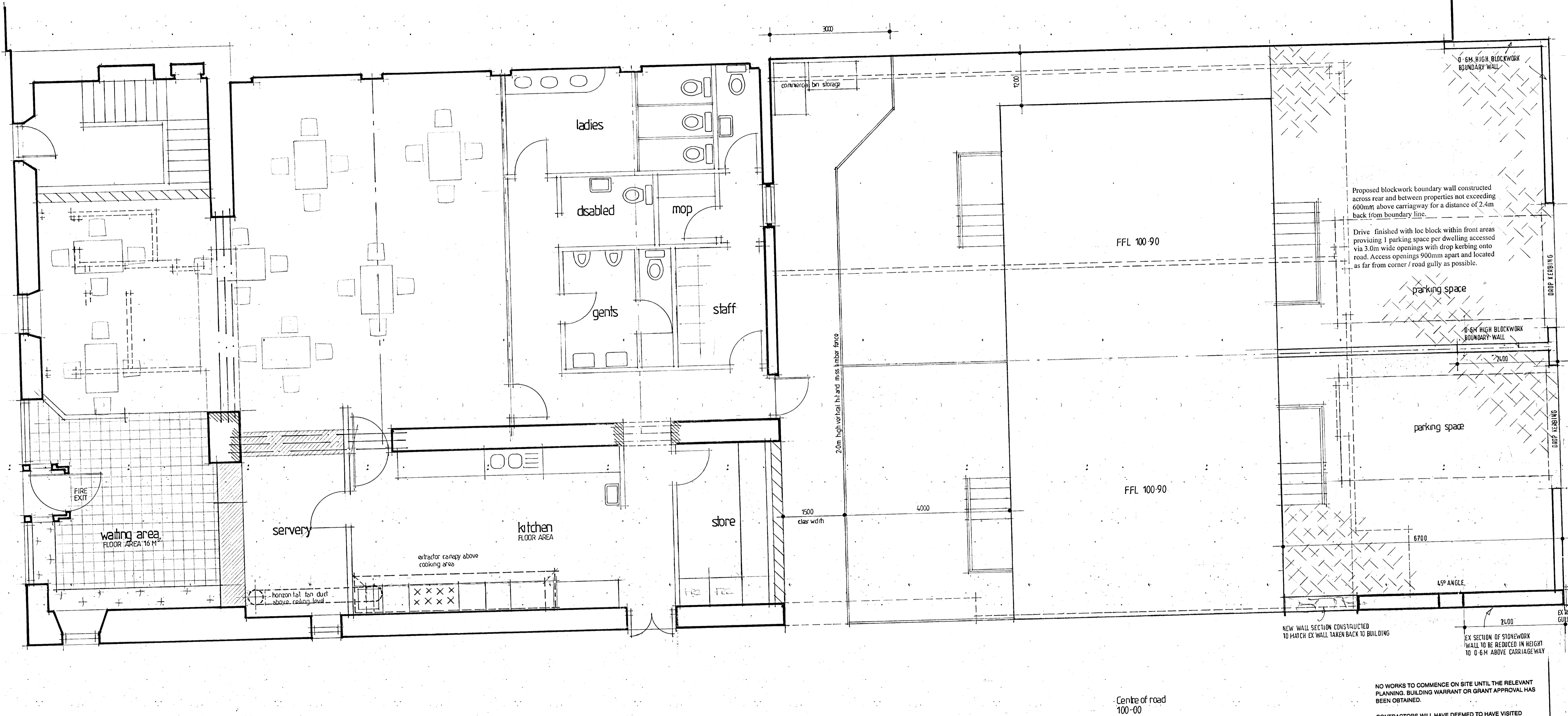
CLIENT Premium bakery	SCALE 1:50 1:100	DRAWN BY IR	DATE Sept 2019
PROJECT Proposed semi detached dwellings behind 9/11 New Street, Rothes, AB38 7BQ		PROJECT No. 18-76 A Dwg 3	



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PARTNERS: COLIN & CATRIONA KEIR

MAIN STREET OFFICES: URQUHART, BY ELGIN, IV30 8LG





Proposed blockwork boundary wall constructed across rear and between properties not exceeding 600mm above carriageway for a distance of 2.4m back from boundary line.

Drive finished with loc block within front areas providing 1 parking space per dwelling accessed via 3.0m wide openings with drop kerbing onto road. Access openings 900mm apart and located as far from corner / road gully as possible.

NEW WALL SECTION CONSTRUCTED TO MATCH EX WALL TAKEN BACK TO BUILDING

EX SECTION OF STONEMWORK WALL TO BE REDUCED IN HEIGHT TO 0.6M ABOVE CARRIAGEWAY

NO WORKS TO COMMENCE ON SITE UNTIL THE RELEVANT PLANNING, BUILDING WARRANT OR GRANT APPROVAL HAS BEEN OBTAINED.

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Drawing revisions  
 A 15/10/2022 GROUND FLOOR LEVEL RAISED ABOVE POTENTIAL FLOOD HEIGHTS  
 B 3/3/2023 PARKING ARRANGEMENTS TO REAR DWELLINGS REDUCED AND REDESIGNED

CLIENT Premium Bakery	SCALE 1:50	DRAWN BY IR	DATE June 2019
PROJECT CoU of former bakery to hot food takeaway and restaurant at 9/11 New Street Rothes AB38 7BQ	PROJECT No. 18-76 B		Dwg 1 <sup>n</sup>

**ARCHITECTURAL DESIGN CONSULTANTS**

**plans plus**

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 PARTNERS: COLIN & CATRIONA KEIR

MAIN STREET OFFICES: URQUHART, BY ELGIN, IV30 8LG









THE ROTHES  
EMPORIUM  
OPEN: MON-SAT





Rothes Emporium

OPEN

# 9 New Street, Rothes Flood Risk Assessment

November 2022



**FAIRHURST**

## CONTROL SHEET

**CLIENT:** Mr Peter Ford  
**PROJECT TITLE:** 9 New Street, Rothes  
**REPORT TITLE:** Flood Risk Assessment  
**PROJECT REFERENCE:** 149203  
**DOCUMENT NUMBER:** 149203/G/W/001

Issue & Approval Schedule	<Issue 1> <STATUS>		Name	Signature	Date	
	Prepared by	Jennifer MacDonald		Signed copy held on file	28/10/22	
	Checked by	Jenny Kirkpatrick		Signed copy held on file	31/10/22	
	Approved by	Kenneth Barr		Signed copy held on file	15/11/22	
Revision Record	Rev.	Date	Status	Description	Signature	
	1				Prepared By	
					Checked	
					Approved	
	2				Prepared By	
					Checked	
					Approved	
	3				Prepared By	
					Checked	
					Approved	

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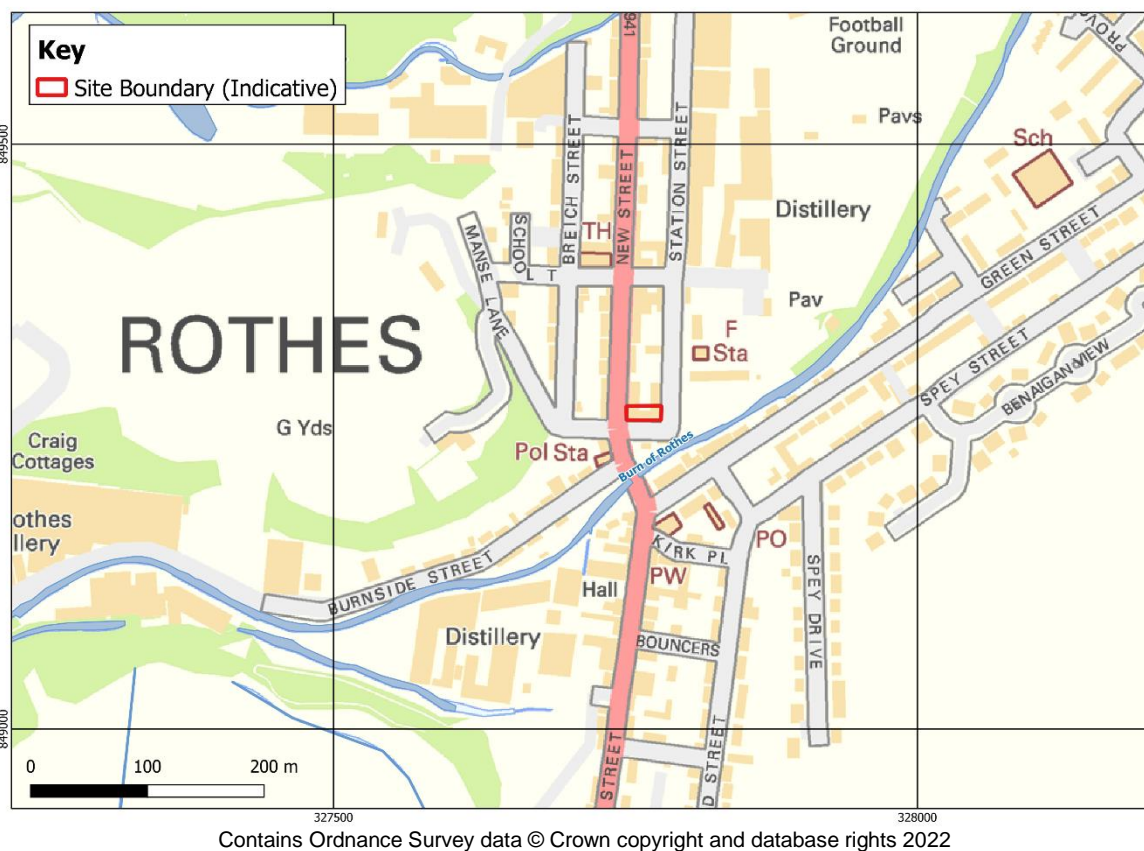
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## 1. Introduction

Fairhurst was appointed by Mr Peter Ford to carry out a Flood Risk Assessment (FRA) for the proposed re-development of an existing commercial site for residential and commercial uses. The proposed development is located at the site of an Old Bakery at 9 New Street, Rothes in the Moray Council Area. A plan of the location of the proposed re-development site in relation to the local area is provided in **Figure 1**.

This report forms an assessment of flood risk for the development as a whole in accordance with Scottish Planning Policy (SPP). Flood risk at the site has primarily been assessed in relation to flood risk from the Burn of Rothes, however other potential sources of flood risk have also been considered.



**Figure 1: Site Location Plan**

## 2. Planning Policy

### 2.1 National Planning Policy

In consideration of planning applications, planning authorities require to be satisfied that due account has been taken of SPP, and the Scottish Government's online Planning Advice on Flood Risk. It is necessary to show that adequate protection against flooding exists or can be provided for the proposed development and that the development does not increase any existing flood risk to persons or property upstream and downstream.

The flood risk framework guiding development sets out three categories of coastal and watercourse flood risk, together with guidance on surface water flooding, and the appropriate planning approach for each. The three categories relate to annual probabilities associated with the land at the time a plan is being prepared or a planning application is made. These are as follows:

- **Little or No Risk** - annual probability of coastal or watercourse flooding is less than 0.1% (1:1000 years)
  - No constraints due to coastal or watercourse flooding.
- **Low to Medium Risk** - annual probability of coastal or watercourse flooding is between 0.1% and 0.5% (1:1,000 to 1:200 years)
  - Suitable for most development. A flood risk assessment may be required at the upper end of the probability range (i.e. close to 0.5%), and for essential infrastructure and the most vulnerable uses. Water resistant materials and construction may be required.
  - Generally not suitable for civil infrastructure. Where civil infrastructure must be located in these areas or is being substantially extended, it should be designed to be capable of remaining operational and accessible during extreme flood events.
- **Medium to High Risk** - annual probability of coastal or watercourse flooding is greater than 0.5% (1:200 years)
  - May be suitable for:
    - residential, institutional, commercial and industrial development within built-up areas provided flood protection measures to the appropriate standard already exist and are maintained, are under construction, or are a planned measure in a current flood risk management plan;
    - essential infrastructure within built-up areas, designed and constructed to remain operational during floods and not impede water flow;
    - some recreational, sport, amenity and nature conservation uses, provided appropriate evacuation procedures are in place; and
    - job-related accommodation, e.g. for caretakers or operational staff.
  - Generally not suitable for:
    - civil infrastructure and the most vulnerable uses;
    - additional development in undeveloped and sparsely developed areas, unless a location is essential for operational reasons, e.g. for navigation and water-based recreation, agriculture, transport or utilities infrastructure (which should



be designed and constructed to be operational during floods and not impede water flow), and an alternative, lower risk location is not available; and

- new caravan and camping sites.
- Where built development is permitted, measures to protect against or manage flood risk will be required and any loss of flood storage capacity mitigated to achieve a neutral or better outcome.
- Water-resistant materials and construction should be used where appropriate. Elevated buildings on structures such as stilts are unlikely to be acceptable.

Guidance on surface water flooding includes the following:

- Infrastructure and buildings should generally be designed to be free from surface water flooding in rainfall events where the annual probability of occurrence is greater than 0.5% (1:200 years).
- Surface water drainage measures should have a neutral or better effect on the risk of flooding both on and off the site, taking account of rain falling on the site and run-off from adjacent areas.

## 2.2 Local Planning Policy

The Moray Local Development Plan 2020 sets out the council's vision for development within the Moray Council area over the course of the next 10 years. The plan outlines the policies which will be considered when determining planning applications and provides guidance on the types and extents of development which are proposed for areas identified for growth within the Moray Council area. Policy EP12 (*Management and Enhancement of the Water Environment*) states that:

'New development will not be supported if it would be at significant risk of flooding from any source or would materially increase the possibility of flooding elsewhere. For development at or near coastal locations, this includes consideration of future flooding that may be caused by sea level rise and/or coastal change eroding existing natural defences in the medium and long term.

Proposals for development in areas considered to be at risk from flooding will only be permitted where a flood risk assessment to comply with the recommendations of Scottish Planning Policy and to the satisfaction of Scottish Environment Protection Agency and the Council is provided by the applicant.

There are different levels of flood risk assessment dependent on the nature of the flood risk. The level of assessment should be discussed with the Council prior to submitting a planning application.

- Level 1 – a flood statement with basic information with regard to flood risk.
- Level 2 – full flood risk assessment providing details of flood risk from all sources, results of hydrological and hydraulic studies and any appropriate proposed mitigation.

Assessments must demonstrate that the development is not at risk of flooding and would not increase the probability of flooding elsewhere. Level 2 flood risk assessments must be signed off by a competent professional. The Flood Risk

Assessment and Drainage Impact Assessment for New Development Supplementary Guidance provides further detail on the information required.'

Due to continuing changes in climatic patterns, the precautionary principle will apply when reviewing any application for an area at risk from inundation by floodwater. Proposed development in coastal areas must consider the impact of tidal events and wave action when assessing potential flood risk.

The following limitations on development will also be applied to take account of the degree of flooding as defined in Scottish Planning Policy;

- a) In areas of little to no risk (less than 0.1%), there will be no general constraint to development.
- b) Areas of low to medium risk (0.1% to 0.5%) will be considered suitable for most development. A flood risk assessment may be required at the upper end of the probability range i.e. (close to 0.5%) and for essential civil infrastructure and the most vulnerable uses. Water resistant materials and construction may be required. Areas within this risk category will generally not be suitable for civil infrastructure. Where civil infrastructure must be located in these areas or is being substantially extended, it should be designed to be capable of remaining operational and accessible during flooding events.
- c) Areas of medium to high risk (0.5% or above) may be suitable for:
  - Residential, institutional, commercial and industrial development within built up areas provided that flood protection measures to the appropriate standard already exist and are maintained, are under construction, or are a planned measure in a current flood management plan.
  - Essential infrastructure within built up areas, designed and constructed to remain operational during floods and not impede water flow.
  - Some recreational, sport, amenity and nature conservation uses, provided appropriate evacuation procedures are in place, and
  - Employment related accommodation e.g. caretakers or operational staff.

Areas within these risk categories will generally not be suitable for the following uses and where an alternative/lower risk location is not available;

- Civil infrastructure and most vulnerable uses.
- Additional development in undeveloped and sparsely developed areas, unless a location is essential for operational reasons e.g. for navigation and water based recreation, agriculture, transport or utilities infrastructure (which should be designed to be operational during floods and not impede water flows).
- New caravan and camping sites. Where development is permitted, measures to protect against or manage flood risk will be required and any loss of flood storage capacity mitigated to achieve a neutral or better outcome. Water resistant materials and construction must be used where appropriate. Land

raising and elevated buildings on structures such as stilts are unlikely to be acceptable.'

Moray Council recently adopted the new supplementary guidance 'Flood Risk and Drainage Impact Assessment for New Developments' in August 2020. This supplementary guidance which further expands on Policy EP12 and provides details of what should be included within any Flood Risk Assessment.

### 3. Development Site

#### 3.1 Existing Conditions

The proposed development site covers a total area of approximately 360m<sup>2</sup>, comprising developed land with the existing building currently used as a commercial premises. Site access is from New Street (A941) immediately to the front (West) of the property, and from Station Street located immediately to the side (South) and rear (East) of the property. The land to the north of the property is currently occupied by a mix of commercial and residential properties. LiDAR data indicates that ground levels in the site are situated at approximately 71mAOD.

The Burn of Rothes flows south west to north east in the vicinity of the site, and is located approximately 25m to the south east of the site at its closest point. The river is crossed by the New Street (A941) Road Bridge approximately 40m to the south of the site.

The Burn of Rothes forms part of the Rothes Flood Alleviation Scheme (FAS) which was completed in 2011. The FAS included undertaking various engineering works on the Burn of Rothes and two other watercourses – the Back Burn and the Black Burn. The scheme is comprised of earthworks embankments, flood walls, a new flood relief channel and bank protections works. Channel widening and replacement of bridge structures were also undertaken during construction of the scheme. The FAS was designed to protect Rothes against flooding in a 1 in 100 year flood event including an allowance for climate change.

#### 3.2 Proposed Development

The proposed development (Planning Ref: 21/01545/APP) is for a change of use of an existing bakery to create a restaurant and hot food takeaway with a flat above. Two semi-detached low cost housing units are also proposed for the land to the rear of the restaurant. Existing access routes would be maintained from New Street to the west, and Station Street to the south and east.

The proposed site layout is provided in **Appendix A**.

#### 3.3 Sources of Flood Risk Information

##### 3.3.1 SEPA Flood Maps

SEPA's flood maps provide guidance on the possible extent, depth and velocity for different likelihoods ('High, Medium and Low') of fluvial, coastal and pluvial flooding, alongside various associated information. These maps are a strategic planning tool, the resolution of which does not take account of individual hydraulic structures or drainage infrastructure. These provide indicative flood risk information, rather than site-specific detail.

The SEPA flood maps indicate that the site is likely to be at risk of fluvial flooding in a 1 in 200 year flood event, and that New Street to the west of the site is at risk of surface water flooding in an event of the same magnitude.

Whilst the flood maps can be a useful tool for initially considering whether a site may be at risk of flooding, the following caveat is attached to their use:

*"The Flood Maps are indicative and of a strategic nature. Whilst all reasonable effort has been made to ensure that the Flood Maps are accurate for their intended purpose, no*

*warranty is given by SEPA in this regard... It is inappropriate for these Flood Maps to be used to assess flood risk to an individual property."*

More detailed analysis is required to fully understand the flood risk to any development site and is provided in **Section 5** of this report.

### 3.3.2 SEPA Reservoirs Map

In order to implement the Reservoirs (Scotland) Act 2011, SEPA produced reservoir inundation maps (RIMs). These maps illustrate the areas likely to be flooded by an uncontrolled release of water from a reservoir with storage volume of 25,000 m<sup>3</sup> or more.

The SEPA RIMs indicates that the site is not at risk of reservoir flooding.

### 3.3.3 SEPA Consultation

SEPA were consulted in December 2021 in relation to the proposed development. In their response (dated February 2022) they submitted a holding objection and requested that further information in relation to flood risk is provided.

SEPA highlighted that the site is currently afforded some flood risk protection from the existing Burn of Rothes Flood Alleviation Scheme, and advised that further information on the scheme should be obtained from Moray Council to support the proposed development.

SEPA also stated that the proposals for change of use from commercial to partly residential is an increase in flood risk vulnerability, and they would therefore not support the site proposals if the development was at risk of flooding. It was also specified that a freeboard allowance of at least 0.6m should be provided between FFLs and design flood levels, including an allowance for climate change. The full response is provided in **Appendix B**.

### 3.3.4 Local Authority

Moray Council Flood Risk Management Department provided flood levels from the Rothes Flood Alleviation Scheme Flood Model Update (2021) for use within this FRA.

Further consultations were undertaken with Moray Council to confirm the approach to setting Finished Floor Levels for the development. The council confirmed by email (dated 12/10/22) that a freeboard of 600mm above the modelled depth of flooding at the site in a 200 year + CC event was acceptable, as opposed to a freeboard above the adjacent in-channel flows which are considered to be artificially high due to the confinement caused by the Rothes FAS flood walls.

### 3.3.5 Previous Flood Studies

#### Rothes Flood Alleviation Scheme: Flood Model Update (2021)

The Flood Model Update study was undertaken by AECOM on behalf of Moray Council in 2021 to review existing hydraulic models previously developed for the watercourses in Rothes as part of the Rothes FAS. This project included the updating of the hydrology used in the existing hydraulic models in order to allow for assessment of the current standard of protection afforded by the existing FAS.

The results of the study indicate that flood water is predicted to be contained in a 1 in 200 year flood event, although in a 1 in 200 year plus climate change flood event floodwater is predicted to overtop

the banks. The flood extent maps indicate that the site will be affected by flooding in a 1 in 200 year plus climate change flood event. This is discussed further in **Section 5.2**.

These results are different to those shown in the SEPA flood maps (discussed in **Section 3.3.1**). The SEPA flood maps do not consider the impact of the Rothes FAS, and therefore are not considered to accurately reflect flood risk at the site. The flood depths and extents presented in the 2021 Study have therefore been taken as representative of flood risk at the site and have been utilised in this study.

## 4. Potential Sources of Flood Risk

There are several potential sources of flooding that require consideration:

- **Coastal flooding:** Extreme sea levels and coastal waves have the potential to cause rapid inundation of a development, posing a threat to the welfare of occupants and potentially preventing emergency access to properties and essential infrastructure.
- **Fluvial flows:** Extreme fluvial flood events have the potential to cause rapid inundation of a development, posing a threat to the welfare of occupants and potentially preventing emergency access to properties and essential infrastructure.
- **Overland flow:** Overland flow occurs when the infiltration capacity of the ground is exceeded in a storm event. This could result in water travelling as sheet flow overland or excess water being conveyed from one location to another via local road networks.
- **Infrastructure failure:** The failure of conveyance infrastructure such as culverts or bridges, or the failure of any man-made water storage or conveyance infrastructure that could increase the risk of flooding at the site.
- **Sewer flooding:** If the capacity of sewers is exceeded in an extreme event, or a blockage occurs, surcharging of the network can result in surface flooding. The local drainage network should be considered with a view to assessing flood risk to the site.
- **Groundwater:** High groundwater levels could exacerbate flooding occurring at low points on any given site, potentially contributing to flood risk from other sources.

## 5. Flood Risk Analysis

Potential sources of flood risk identified for consideration in **Section 4** are discussed below.

### 5.1 Coastal Flooding

The proposed development is located over 17km from the nearest coast and at approximately 71mAOD. The inland location and elevation of the site mean it is not at risk from tidal inundation or coastal waves.

### 5.2 Fluvial Flows

The Burn of Rothes flows south west to north east in the vicinity of the site, and is located approximately 25m to the south east of the site at its closest point.

As previously discussed in **Section 3.1** and **Section 3.3.5**, the Burn of Rothes forms part of the Rothes FAS, and a recent study was undertaken on behalf of Moray Council in 2021 to update the hydrology and hydraulic modelling developed as part of the Rothes FAS project. The results of the 2021 study indicate that the FAS will protect Rothes against flooding in flood events with magnitudes of up to 1 in 200 years. Flood events of 1 in 200 years plus climate change are predicted to overtop the scheme, with floodwater spilling out-of-bank.

Whilst the proposed development site is not considered to be located in the functional floodplain (1 in 200 year flood extents), the site is predicted to be at risk of fluvial flooding in a 1 in 200 year plus climate change flood event. Residential and commercial development land uses are considered appropriate for the site, in line with Moray Council Planning Policy and SEPA guidance, although the Finished Floor Levels (FFL) of any buildings which constitute an increase in land use vulnerability (e.g. residential accommodation) will require to be located at least 600mm above the adjacent 1 in 200 year plus climate change flood levels.

The 2021 Rothes FAS Study indicates that flood depth of up to 0.25m are predicted at the location of the proposed development site. It is therefore recommended that FFLs for residential buildings are set at least 0.85m above the current ground levels at the site.

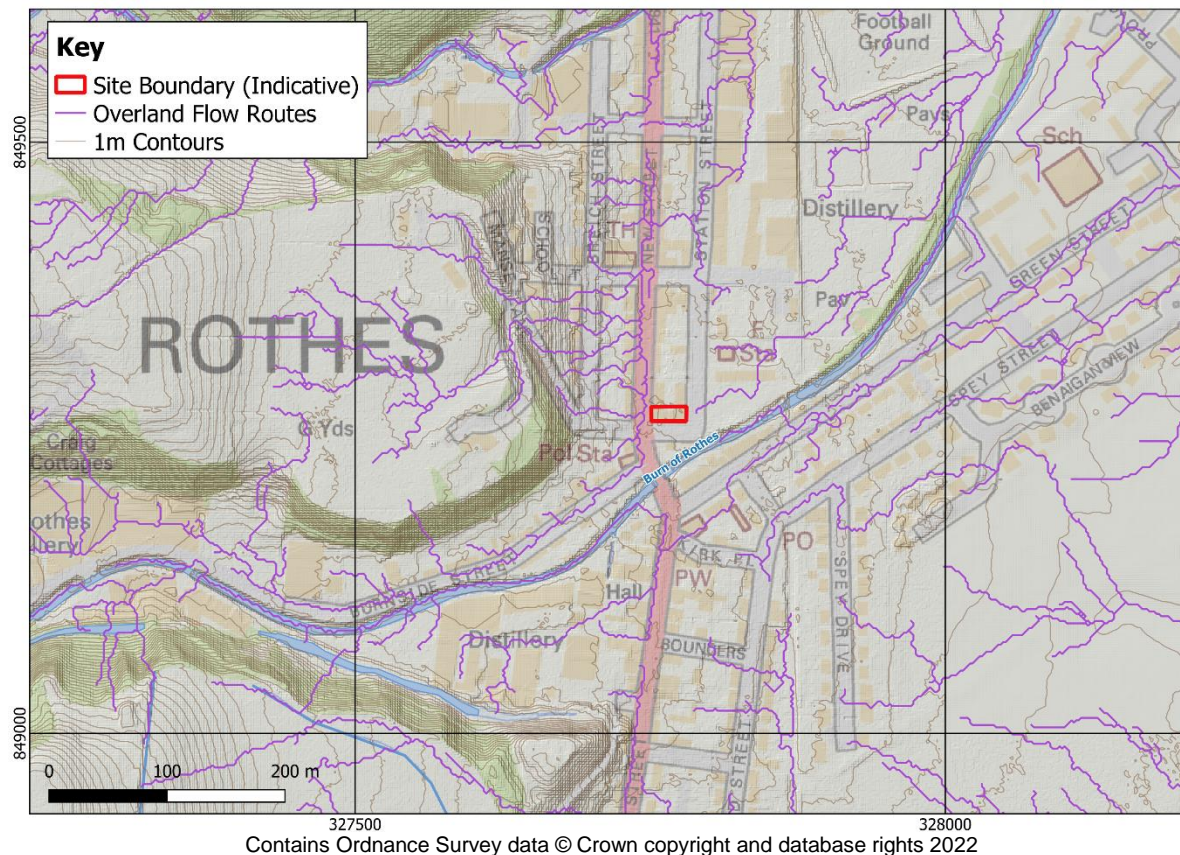
As any buildings proposed for commercial use at the site will not represent an increase in land use vulnerability, there will be no restriction on FFLs in order to mitigate against fluvial flood risk.

The 1 in 200 year plus climate change flood extents maps provided in the 2021 Rothes FAS study indicate that a dry access and egress route will be maintained via the eastern boundary of the site.

### 5.3 Overland Flow

Potential overland flow routes through the development site have been assessed using QGIS watershed analysis tools and LiDAR topographic data. Flow route are shown in purple in Figure 3.





**Figure 2: Overland Flow**

The site itself is small and relatively flat. It is therefore unlikely that significant volumes of runoff will be generated within the site itself. The land surrounding the site is situated at a lower level and therefore runoff through the site is also expected to be limited. The land to the north and east of the site slopes north eastwards and therefore any runoff from these areas will be conveyed away from the site.

The higher land to the west of the site is shown to drain eastwards towards New Street which slopes down past the western boundary of the site to a low point approximately 150m to the north. There is the potential for floodwater to pond in this location following periods of prolonged or heavy rainfall, before spilling to the east at an elevation of approximately 70.4mAOD. This is approximately 0.6m below the level of the site and therefore ponded water is not predicted to impact the site. The Scottish Water Assets Database indicates the presence of a combined sewer underlying New Street and therefore the road gullies will help to intercept any runoff along the road and divert it into the existing sewer network, thereby helping to limit the extent of any ponding.

The small strip of land between the Burn of Rothes and the southern boundary of the site slopes northwards towards Station Street. Whilst overland flows from this small area are likely to be limited, there is the potential for runoff to flow towards the site during period of heavy rainfall. The Scottish Water Assets plan indicates the presence of surface water sewer underlying Station Street which is shown to discharge directly into the burn in the vicinity of the site. Whilst the presence of a limited number of road gullies on Station Street will help to intercept runoff and divert in into the sewer network, it should be noted that the existing building is located at road level with no pavement or kerb present to deflect runoff away from the building. This should be considered as part of the drainage

strategy and taken into account when setting the FFLs of the buildings, to ensure road runoff from Station Street does not affect the proposed development.

Surface water flow generated within the site should be dealt with by a dedicated drainage system. Residual flood risk should be mitigated by setting FFLs above surrounding ground where possible. With this mitigation implemented, the risk of flooding from overland flow is considered to be low.

#### **5.4 Infrastructure Failure**

In the event that channel structures become partially blocked by sediment or debris, there is the potential for flood levels upstream of the structure to increase, resulting in an increase in fluvial flood risk. The 2021 Rothes FAS study therefore included hydraulic modelling scenarios which simulated a partial blockage of structures located along the Burn of Rothes, Back Burn and Black Burn.

Due to the presence of a large trash screen located upstream of the structures on the Burn of Rothes, the 2021 Rothes FAS Study concluded that the risk of a debris blockage of the Burn of Rothes structures was low, and therefore a 20% blockage was modelled for each of the structures.

The results indicate that a 20% blockage of the Cemetery Road Bridge, located approximately 470m upstream of the site, would result in out-of-bank flow from the Burn of Rothes in a 1 in 200 year flood event. The floodwater is predicted to flow north eastwards with the potential to affect the site. The maximum depth of flooding in the vicinity of the site is predicted to be 0.25m in a flood event of this magnitude. The proposed FFLs recommended in **Section 5.2** would be maintain a freeboard of 600mm in this scenario.

None of the other structure blockage scenarios, including a 20% blockage of the New Street (A941) Road Bridge located 40m to the south of the site, was found to increase flood risk to the proposed development in a 1 in 200 year flood event.

The risk of flooding to the site as a result of infrastructure failure is therefore considered to be low.

#### **5.5 Sewer Flooding**

Sewer flooding can occur when prolonged or heavy rainfall exceeds the capacity of the sewer network, or if the sewer network becomes blocked.

Review of the Scottish Water Asset Database indicates a network of sewers in the vicinity of the site. A 300mm diameter combined sewer is present beneath New Street (A941) immediately to the west of the site and a 225mm surface water drain is present beneath Station Street immediately to the south of the site.

Should surcharging from the sewer network occur in the vicinity of the site, floodwater would flow overland following the overland flow routes described in **Section 5.3**.

Residual flood risk should be mitigated by setting FFLs above surrounding ground where possible. With this mitigation implemented, the risk of flooding from sewer flooding is considered to be low.

#### **5.6 Groundwater Flooding**

Groundwater is generally a contributing factor to flooding rather than the primary source. SEPA flood maps indicate areas where groundwater could influence the duration and extent of flooding from other sources. The proposed site is situated outwith groundwater influenced flood extents shown on these

maps. Groundwater below the site is likely to be in hydraulic connectivity with the Burn of Rothes. This is expected to limit the potential for emerging above ground on the site, which is at a higher elevation than the watercourse.

Groundwater flooding is, therefore, considered unlikely. In the event groundwater levels exceed the ground levels at the site, the excess water would follow the same flow patterns as for overland flow. Residual risk from this source of flooding can be mitigated by setting finished floor levels above surrounding ground and profiling ground levels to route flood water around and away from buildings.

## **6. Conclusion and Recommendations**

Fairhurst was appointed by Mr Peter Ford to carry out a Flood Risk Assessment (FRA) for the proposed re-development of a commercial site at 9 New Street, Rothes for both commercial and residential uses. Flood risk at the site has been assessed in relation to fluvial flows from the Burn of Rothes, coastal flooding, overland flows, infrastructure failure, sewer flooding and groundwater flooding.

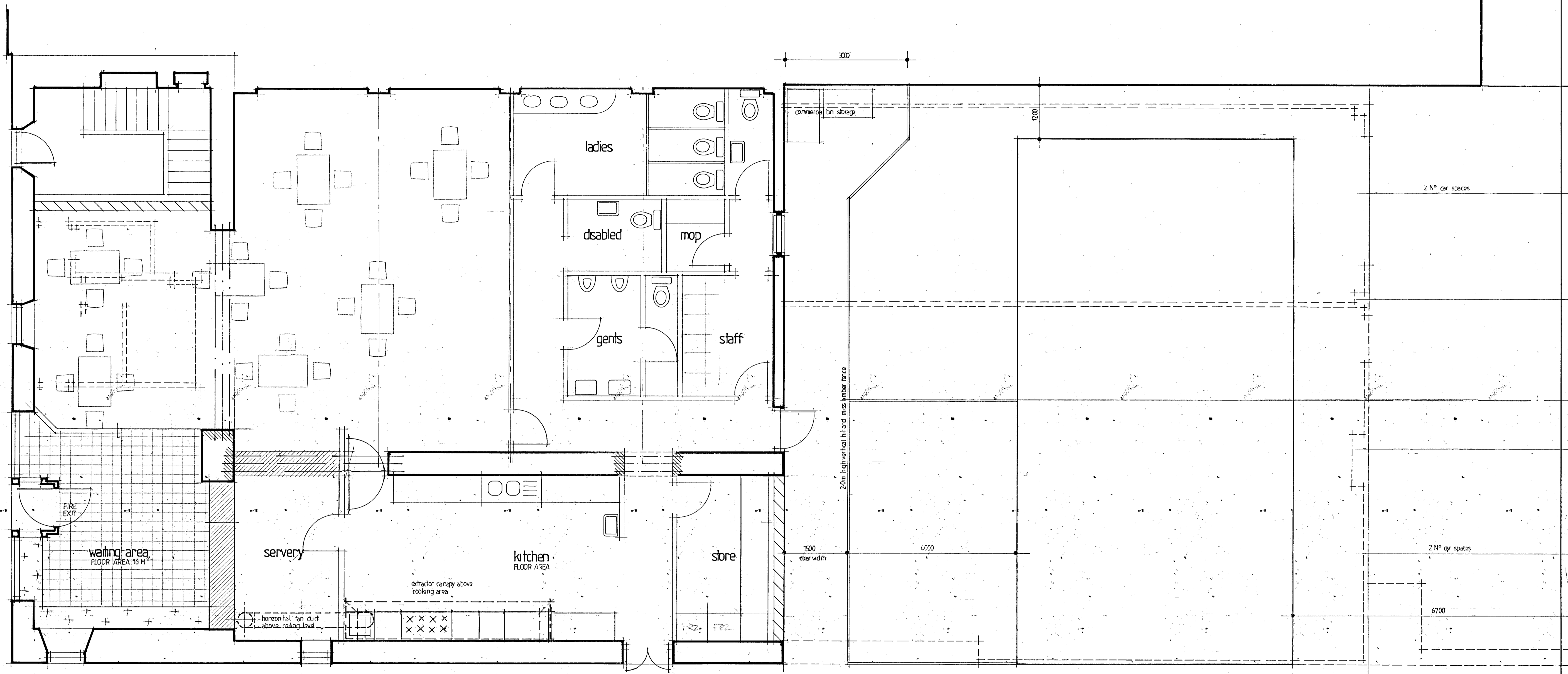
Hydraulic modelling previously undertaken in 2021 as part of an update to the Rothes Flood Alleviation Scheme (FAS) project, indicates that the site is not located within the functional floodplain of the Burn of Rothes and is therefore considered suitable for development. Any proposed residential buildings will be subject to minimum FFLs given the increase in land use vulnerability. FFLs for residential buildings within the site should be set a minimum of 850 mm above surrounding ground to provide at least 600 mm freeboard above the predicted depth of flooding at the site in a 1 in 200 year plus climate change event.

Residual risk from other sources, including overland flow, infrastructure failure, sewer flooding and groundwater is considered to be relatively low provided that the recommended mitigation measures are adopted. Proposed mitigation measures include the installation of appropriate drainage measures and siting FFLs above surrounding ground levels. The site is not considered to be at risk of coastal flooding.

## Appendix A

### Site Layout Drawings





NO WORKS TO COMMENCE ON SITE UNTIL THE RELEVANT PLANNING, BUILDING WARRANT OR GRANT APPROVAL HAS BEEN OBTAINED.

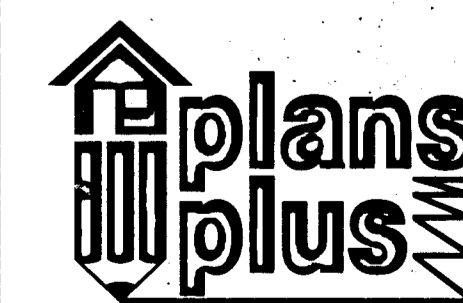
CONTRACTORS WILL HAVE DEEMED TO HAVE VISITED THE SITE TO FAMILIARIZE THEMSELVES WITH THE PROJECT PRIOR TO SUBMITTING ANY ESTIMATE FOR BUILDING WORKS.

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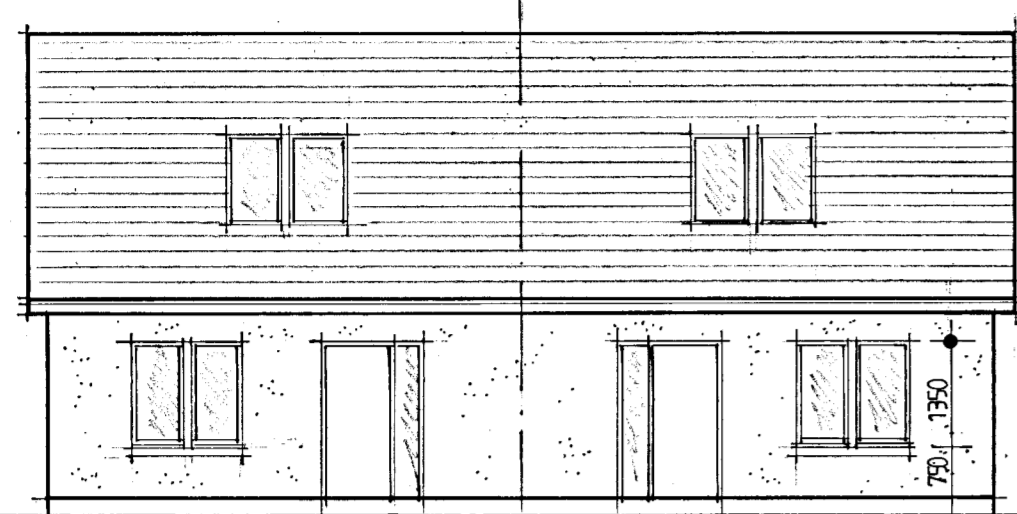
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PROJECT CoU of former bakery to hot food takeaway and restaurant at 9/11 New Street Rothes AB38 7BQ		PROJECT No. 18-76 Dwg 1*	



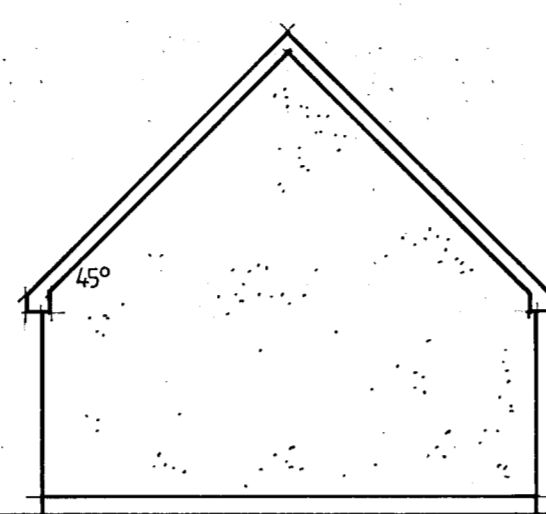
**ARCHITECTURAL  
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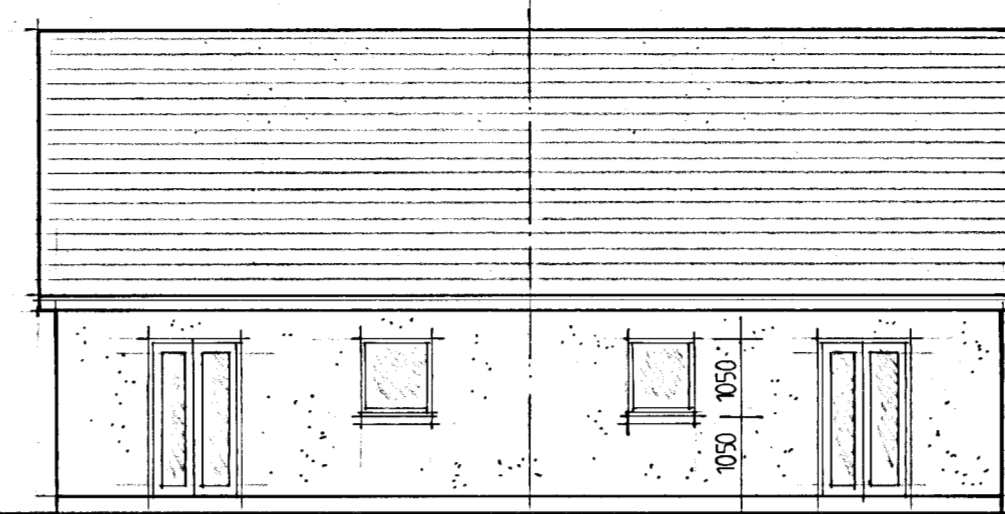
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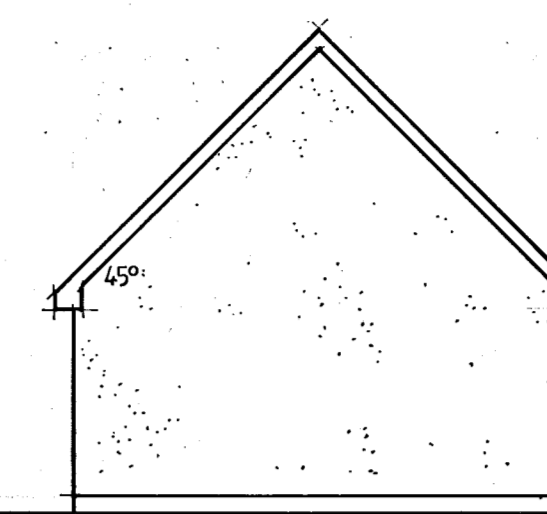
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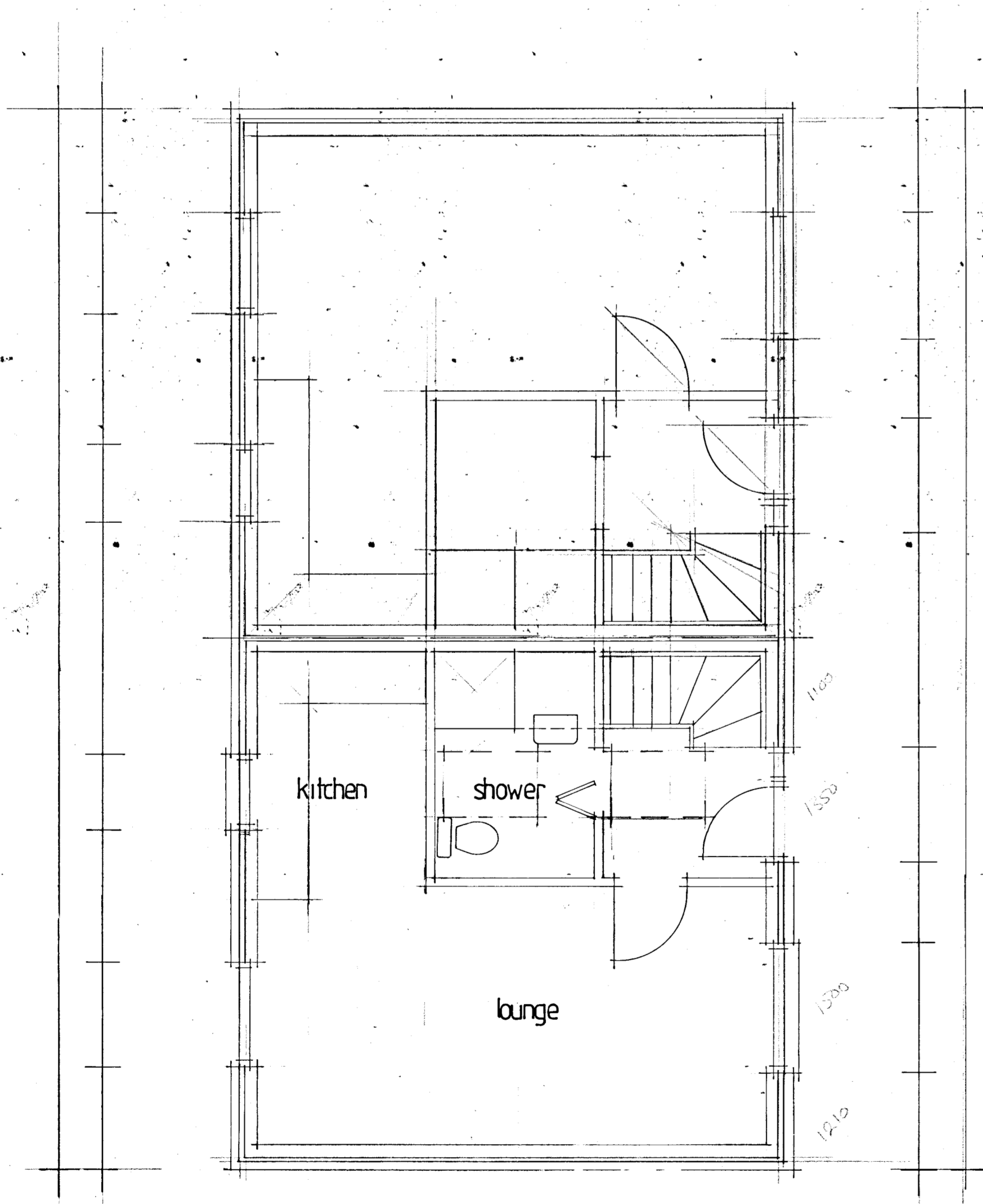
Side elevation 1:100



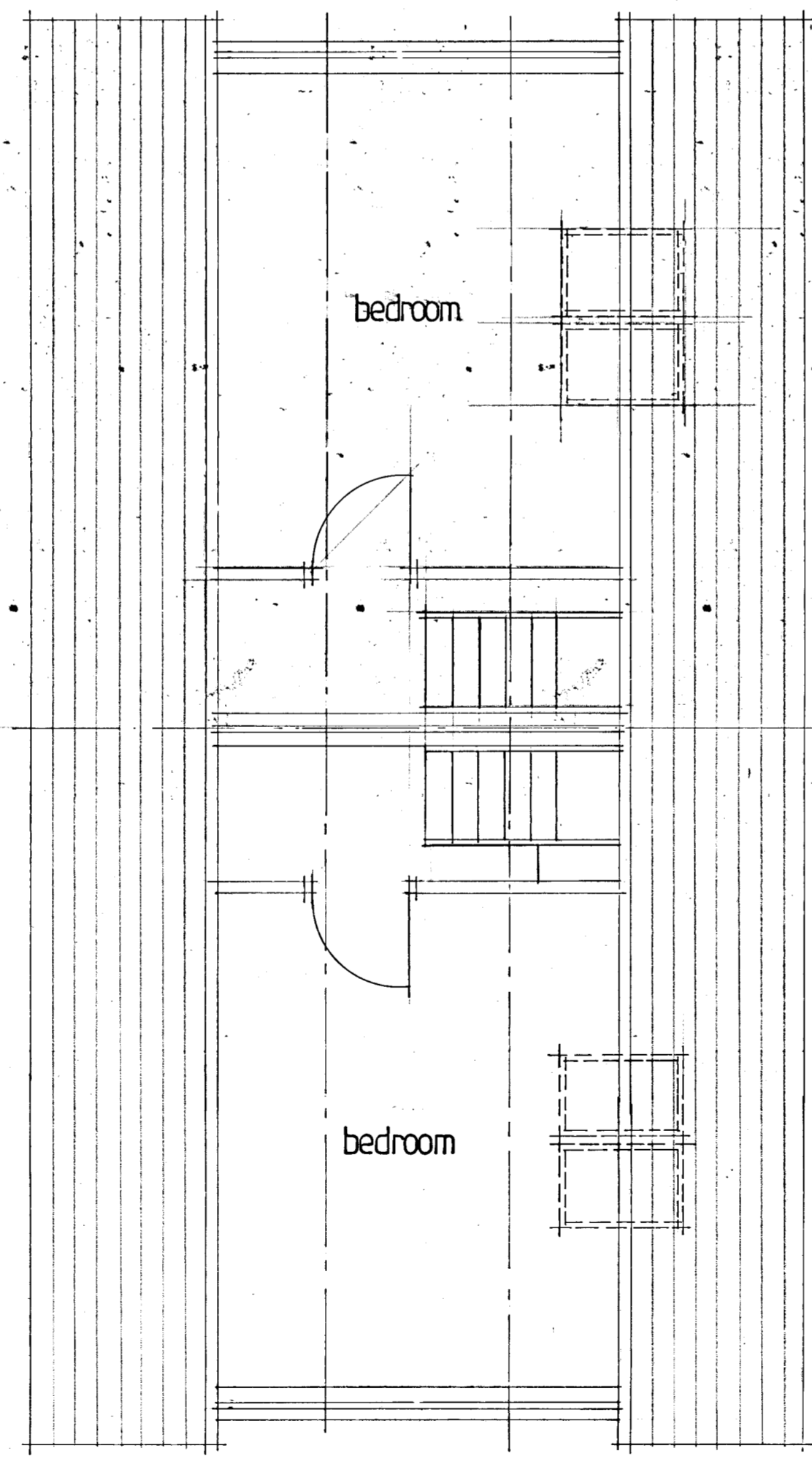
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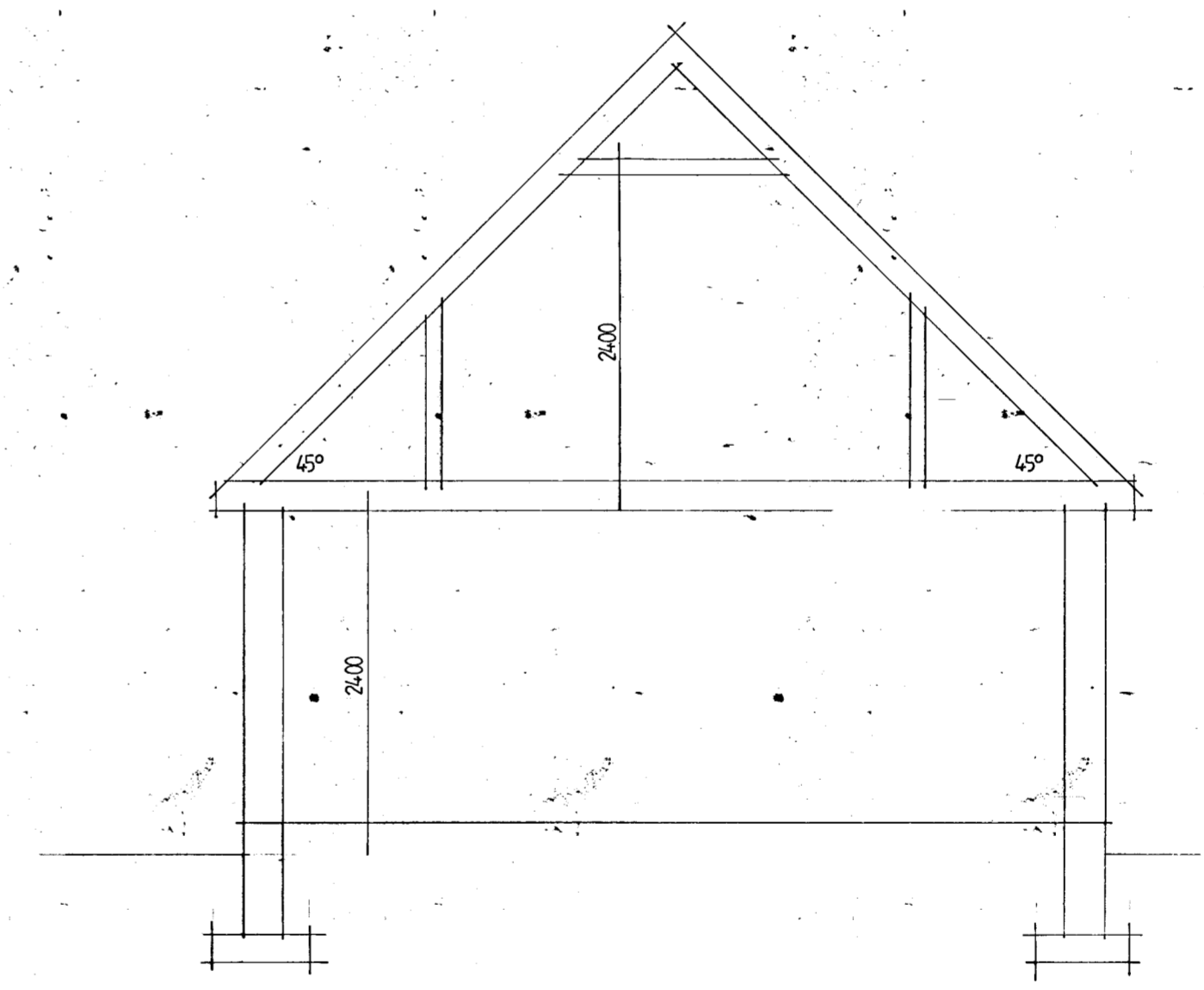
Side elevation 1:100



Ground floor plan 1:50



First floor plan 1:50



Cross section 1:50

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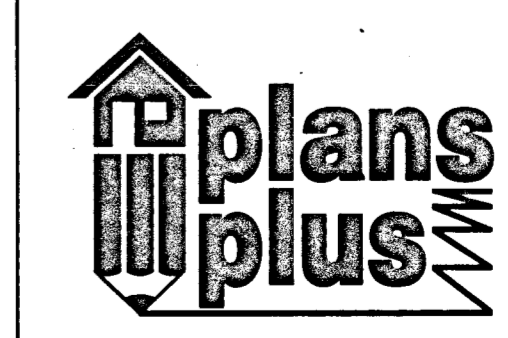
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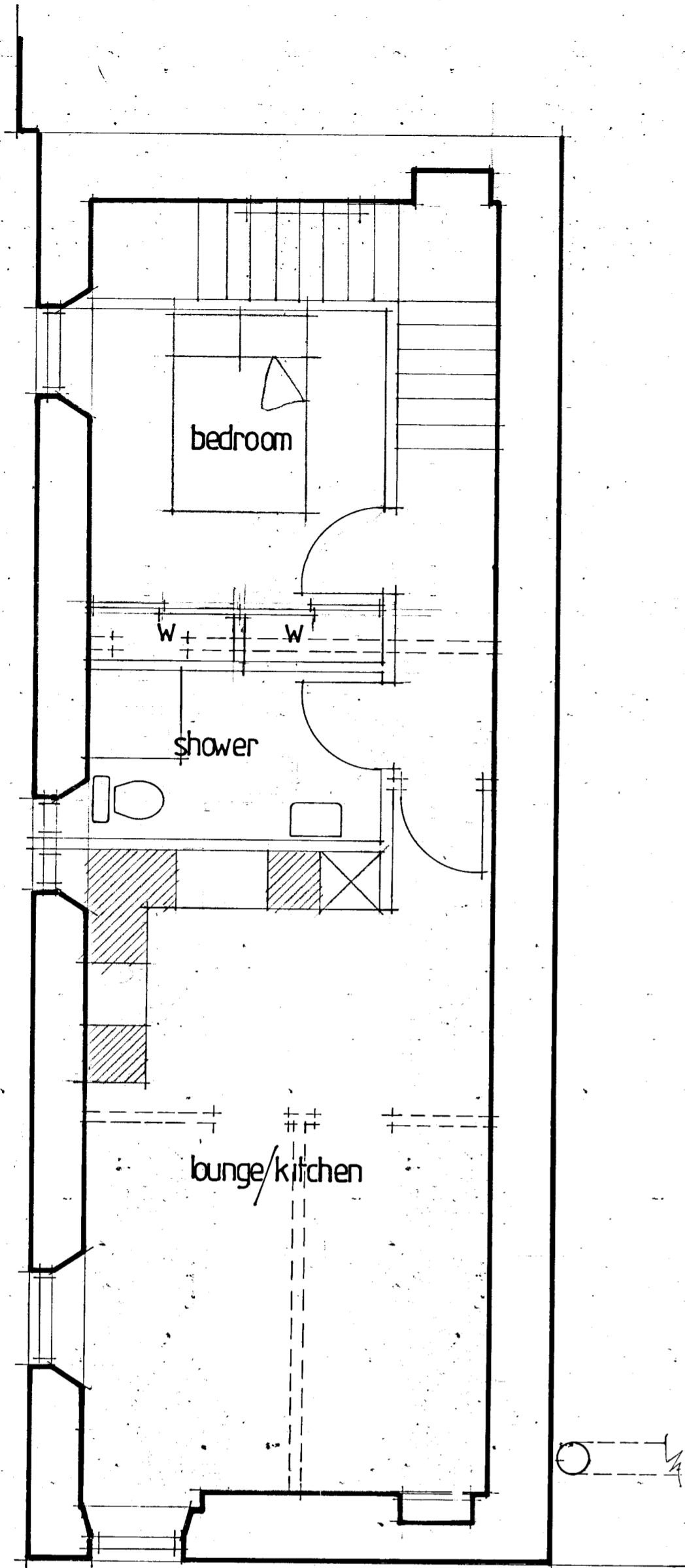
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PROJECT Proposed semi detached dwellings behind 9/11 New Street, Rothes, AB38 7BQ		PROJECT No. 18-76 Dwg 3	



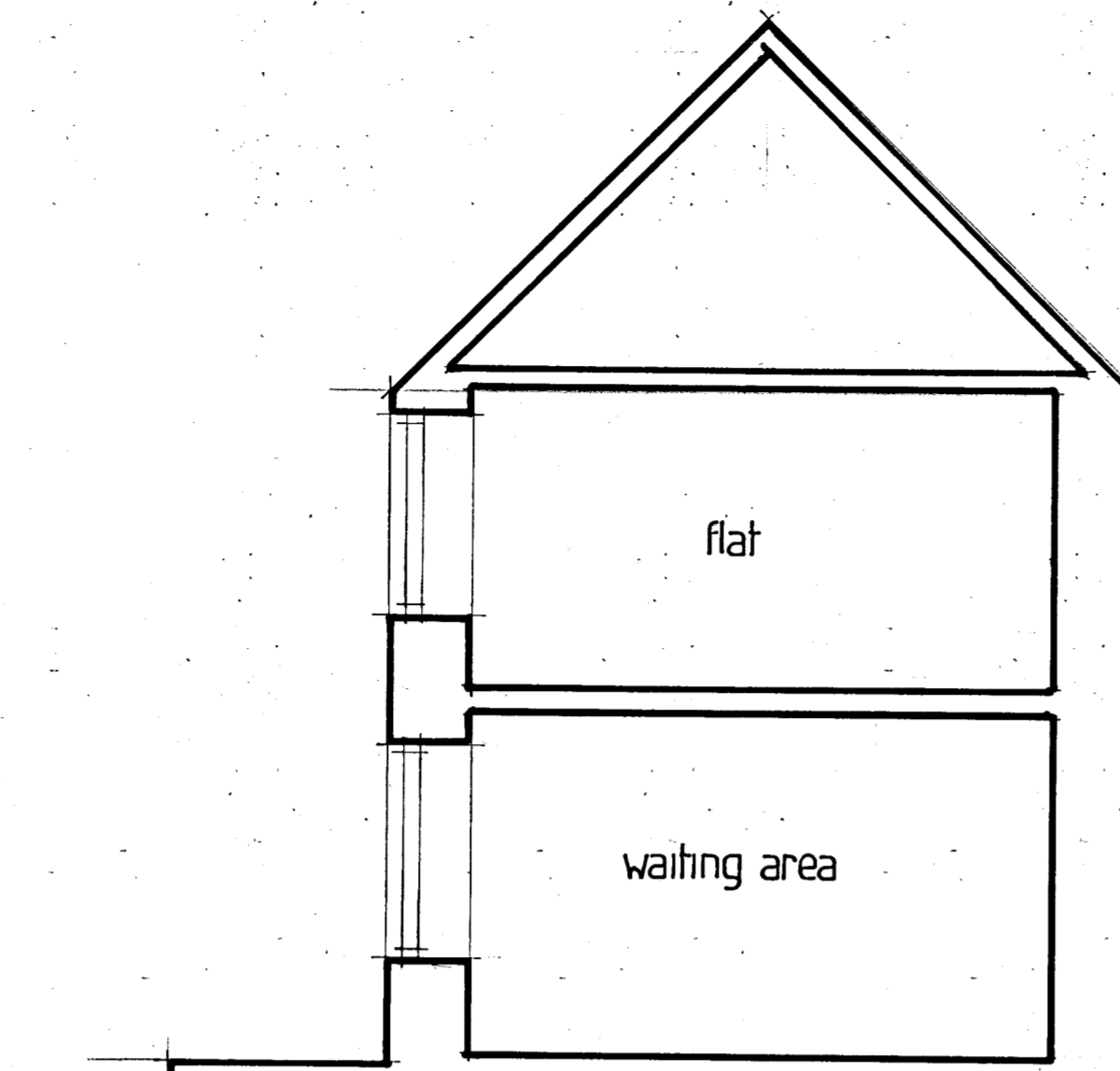
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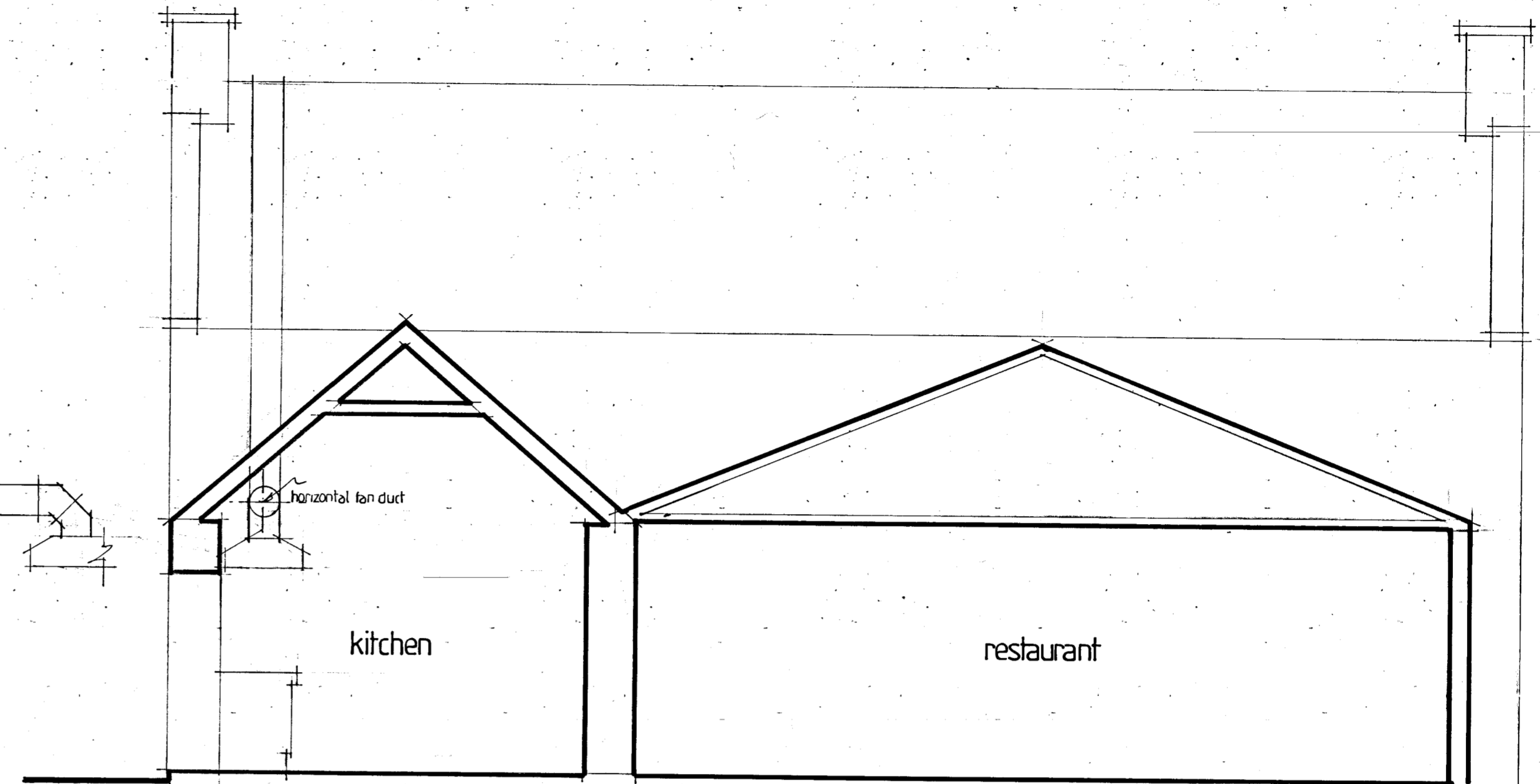
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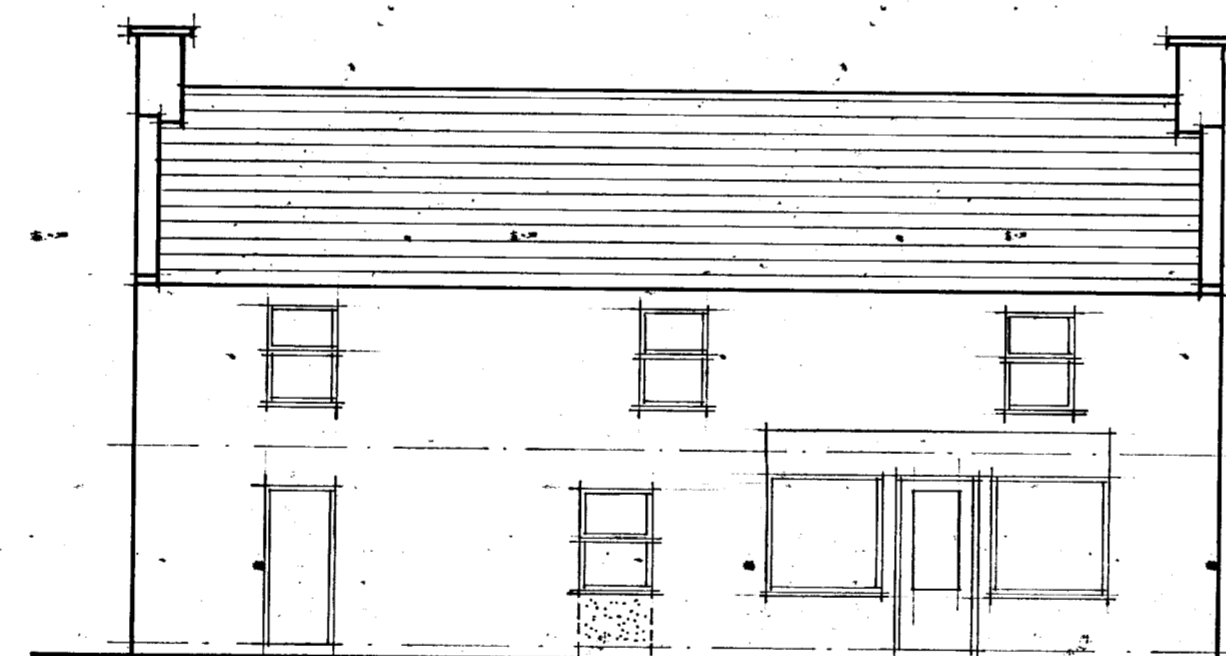
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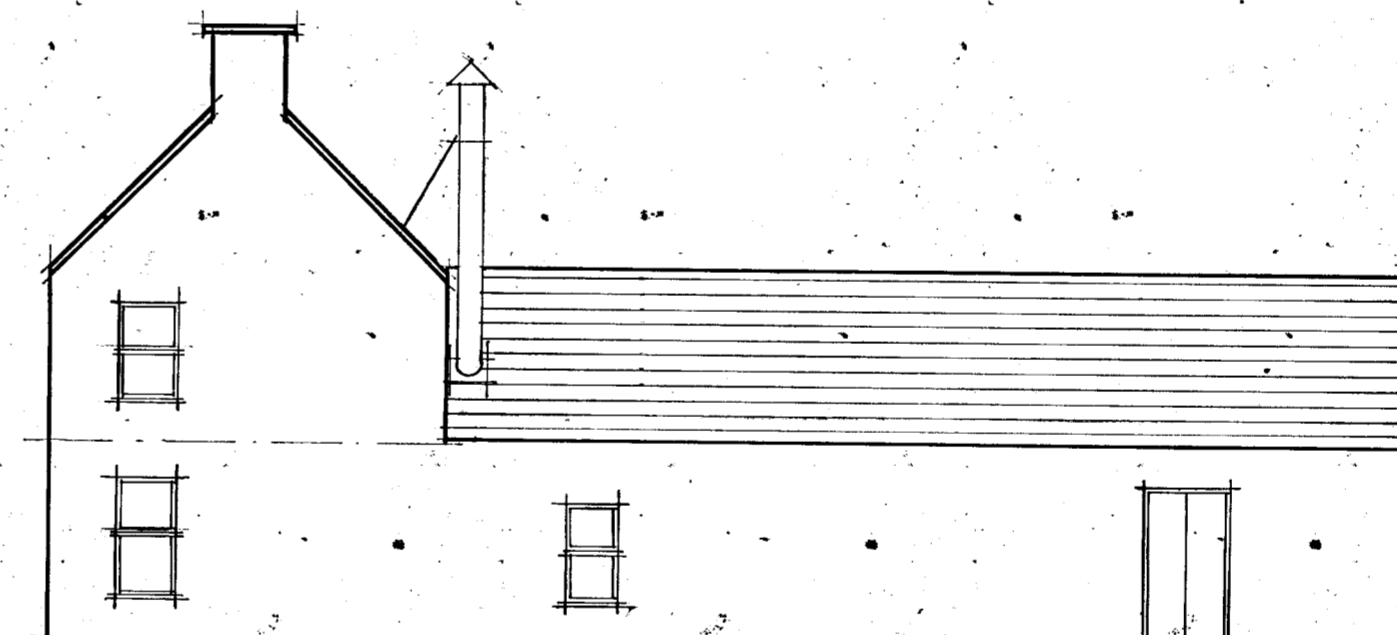
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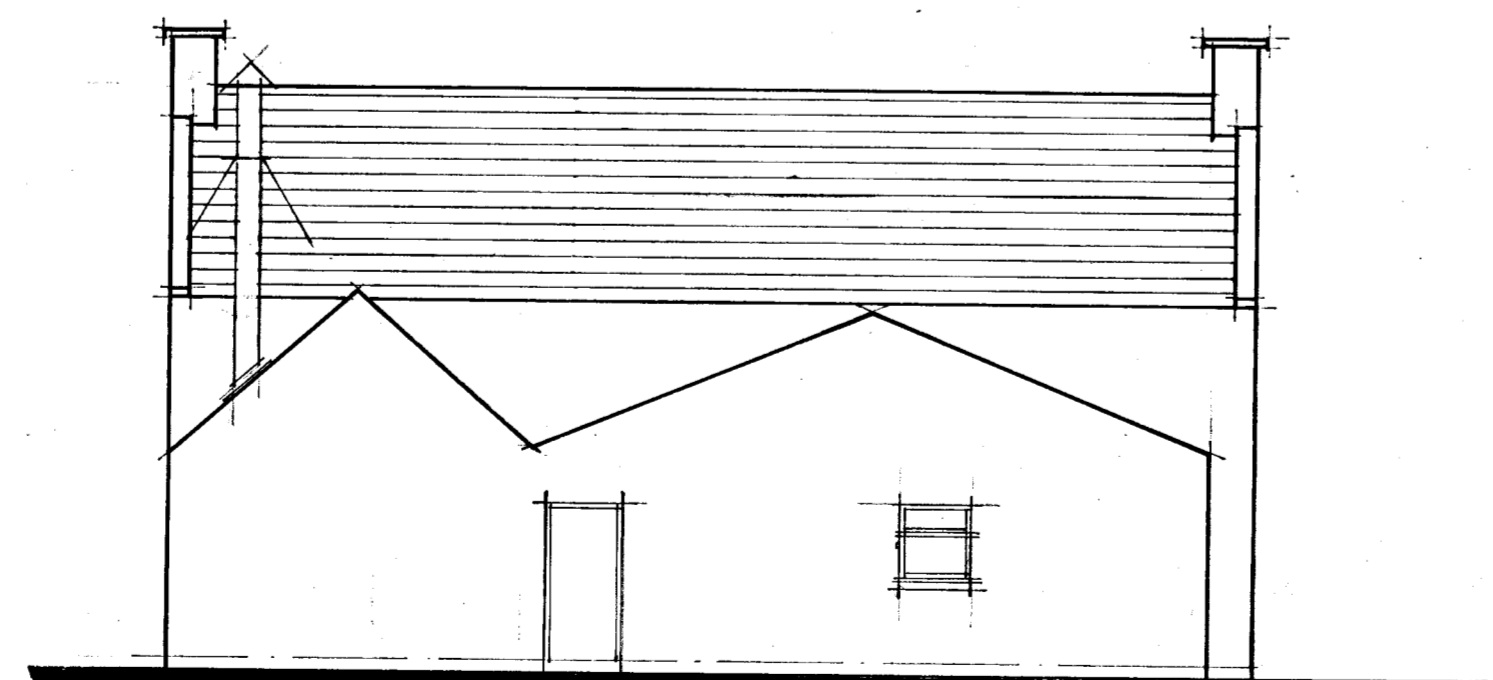
Cross section BB 1:50



Front elevation 1:100



Side elevation 1:100



Rear elevation 1:100

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PROJECT Co U of former bakery to hot food takeaway and restaurant at 9/11 New Street, Rothes, AB38 7BQ		PROJECT No. 18-76 Dwg 2-	



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## Appendix B

### Consultation Responses

Our ref: 3754  
Your ref: 21/01545/APP

SEPA email contact:  
planning.north@sepa.org.uk

Andrew Miller  
The Moray Council

By email only to: [consultation.planning@moray.gov.uk](mailto:consultation.planning@moray.gov.uk)

7 February 2022

Dear Mr Miller

**Town and Country Planning (Scotland) Acts**  
**Change of use of bakery to restaurant and hot food takeaway with flat above and 2 no**  
**low cost housing units to the rear**  
**9 New Street Rothes Aberlour Moray AB38 7BQ**

Thank you for your consultation which was received by SEPA on 17 December 2021 in relation to flood risk. I apologise for the delay in this response.

**Advice for the planning authority**

Unfortunately, due to a lack of information in relation to flood risk we submit a **holding objection** and request that determination be deferred until the information outlined below has been provided for our assessment. If the planning authority is not minded to request this information, or the applicant does not provide it, then this representation should be considered as an objection from SEPA.

**1. Flood risk**

- 1.1 The site is fully within the functional floodplain based on the SEPA Flood Maps. This indicates that there is a medium to high risk of flooding from the Burn of Rothes. There is a long and well-documented history of flooding in this area, including significant events in 1829, 1846, 1997, 2002 and 2009. You can view the SEPA Flood Maps and find out more about them at [Flood Maps | SEPA - Flood Maps | SEPA](#)
- 1.2 Following the flood events, Moray Council constructed a Flood Prevention Scheme (FPS) for the Burn of Rothes which was completed in 2011. The Standard of Protection (SOP) for the FPS is 1 in 100-year plus an allowance for climate change. Moray Council has recently undertaken a review of the Burn of Rothes FPS and we advise that further information from this review should be obtained from the local authority's flood risk management team in order to support the proposed development. The results of the flood study should be assessed against the site topography and it should be clearly demonstrated that the proposals are in accordance with Scottish Planning Policy and will not result in an increased flood risk.
- 1.3 Although there is currently a bakery on site, the proposals for change of use to partly residential is



Chairman  
Bob Downes

Chief Executive  
Terry A'Hearn

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an increase in flood risk vulnerability and as such we would not support such proposals where the development is at flood risk. An appropriate freeboard allowance of at least 0.6m should be provided between the design flood level and the floor levels of properties to account for uncertainties in the modelling and other factors. We would also recommend that an allowance for climate change is also provided in the design of the site for finished floor levels. Safe access and egress should be demonstrated for the residential properties.

- 1.4 Should it not be possible to demonstrate the above then we would object in principle to the proposals for residential accommodation and would suggest a lower vulnerability land use, in line with the current usage, is more appropriate.

## **2. Other planning matters**

- 2.1 For all other planning matters, please see our [trriage framework and standing advice](#) which are available on our website: [www.sepa.org.uk/environment/land/planning/](http://www.sepa.org.uk/environment/land/planning/).

## **Advice for the applicant**

### **3. Regulatory advice**

- 3.1 Details of regulatory requirements and good practice advice, for example in relation to private drainage, can be found on the [regulations section](#) of our website. If you are unable to find the advice you need for a specific regulatory matter, please contact a member of the local compliance team at: [GS@sepa.org.uk](mailto:GS@sepa.org.uk)

If you have queries relating to this letter, please contact [planning.north@sepa.org.uk](mailto:planning.north@sepa.org.uk) including our reference number in the email subject.

Yours sincerely

Susan Haslam  
Senior Planning Officer  
Planning Service

Ecopy to: [ctkplans@aol.com](mailto:ctkplans@aol.com); [andrew.miller@moray.gov.uk](mailto:andrew.miller@moray.gov.uk)

#### Disclaimer

This advice is given without prejudice to any decision made on elements of the proposal regulated by us, as such a decision may take into account factors not considered at this time. We prefer all the technical information required for any SEPA consents to be submitted at the same time as the planning or similar application. However, we consider it to be at the applicant's commercial risk if any significant changes required during the regulatory stage necessitate a further planning application or similar application and/or neighbour notification or advertising. We have relied on the accuracy and completeness of the information supplied to us in providing the above advice and can take no responsibility for incorrect data or interpretation, or omissions, in such information. If we have not referred to a particular issue in our response, it should not be assumed that there is no impact associated with that issue. For planning applications, if you did not specifically request advice on flood risk, then advice will not have been provided on this issue. Further information on our consultation arrangements generally can be found on our [website planning pages - www.sepa.org.uk/environment/land/planning/](#).

## Appendix C

### Compliance Certificate



## Appendix 2 - FRA Compliance Certificate



### Flood Risk Assessment Compliance Certificate

I certify that all reasonable skill, care and attention to be expected of a qualified and experienced professional in this field have been exercised in carrying out the attached Assessment. I also confirm that I maintain the required Professional Indemnity Insurance\*. The report has been prepared in support of the below named development in accordance with the reporting requirements issued by Moray Council.

Assessment Ref No: 149203/G/W/001

Assessment Date: 15/11/22

Assessment Revision:

Name of Development:

Planning Application No:

9 NEW STREET, ROTHES

Name of Developer:

MR PETER FOED

Supporting Information

Name and Address of Organisation preparing this Assessment:

FAIRHURST GROUP LLP  
4<sup>th</sup> FLOOR, TAY HOUSE  
300 BATH STREET  
GLASGOW G2 4JR

Signed: *Jennifer Kirkpatrick*

Name: JENNIFER KIRKPATRICK

Date: 15/11/22

Position Held: SENIOR ENGINEER

Qualification \*\* CHARTERED WATER AND ENVIRONMENTAL MANAGER (C.WEM)

\* Please attach appropriate evidence of Professional Indemnity Insurance

\*\* A chartered member of a relevant professional institution



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**FAIRHURST**



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## **PLANNING / DRAINAGE STATEMENT**

**PROJECT :-CONVERT FORMER BAKERY INTO RESTAURANT,  
TAKE AWAY FACILITY, CONVERT FLAT AND ERECT 2  
HOUSES TO REAR AT 9/11 NEW STREET, ROTHES.**

### **PROJECT NUMBER 18-76**

This is an application to convert the former bakery business into a hot food takeaway and restaurant facility. To the rear of the building we have introduced 2 small scale one bedroom housing units. There is space above the old shop at the front to provide an upgraded flat which we would see as being associated with the restaurant. This area appears to have been used as accommodation in the past but latterly just for storage.

The introduction of this facility to Rothes would in our opinion be a welcomed asset to the town which has a distinct lack of restaurant facilities. The main part of the building fronting on to New Street will remain relatively unchanged and due to the size of the entire building, we felt it prudent to remove the untidy building at the rear of the property. Proposals were sketched up to have the entire building as a restaurant but the area was far too large for a town the size of Rothes and therefore the decision was taken to reduce the restaurant floor area and introduce 2 small low cost houses to the rear. These houses are simple in design and have their own parking spaces at the front of the buildings.

The Southern elevation is perhaps the most prominent of all the elevations and we felt that by removing the older part of the building at the rear would give the floor space actually required for a restaurant and afford an opportunity to tidy up this aspect



by introducing the houses at the end. Passers by on the main road would see this elevation before any other and we feel this will be an enhancement to the village of Rothes. The finishes of the houses would be a grey concrete tile (Marley Duo) and a dry dash harl to match the existing building.

It is anticipated that staff will be required to run both the restaurant and the takeaway facility which could provide welcomed jobs for the Rothes community. At present it is unclear as to what type of restaurant would open but we have included a canopy and high level flue to cover all possibilities. The opening hours for this premises would be anticipated as being 4.30pm until 11.00pm latest 7 days a week. A sound report has been included with the application.

At present both the foul drainage and surface water drainage are connected into the Scottish Water sewer system. We do not envisage this changing with the new proposals. The entire building would remain connected to the sewerage system and the rainwater from the 2 new builds would also connect here as there is no room on site to have any SUDS system. An attenuation tank could be used with a drip feed into the sewer to slow down the amount of rainwater going into the system. Rothes and the wider community would benefit from this building being modernised and the low cost housing units would also be a benefit to the Speyside area.



Report on behalf of Peter Ford

In respect of

**PREMIUM BAKERY, 9-11 NEW STREET, ROTHES**

**Proposed Change of use of former bakery  
to hot food takeaway / restaurant and 2 residential properties**

## Contents

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## 1 Introduction

1.1 Alistair Somerville Associates have been instructed to review the proposals for a composite development at 9-11 New Street, Rothes for a change of use from a former bakery to the following uses:

- (i) a hot food takeaway and restaurant fronting onto New street, incorporating a managers flat, and
- (ii) a two residential units fronting onto the south end of Station Street.

The application site (Fig. 1) comprises a two story building structurally attached to a residential property to the north on New Street and a large attached single storey building projecting out at the rear up to Station Street.

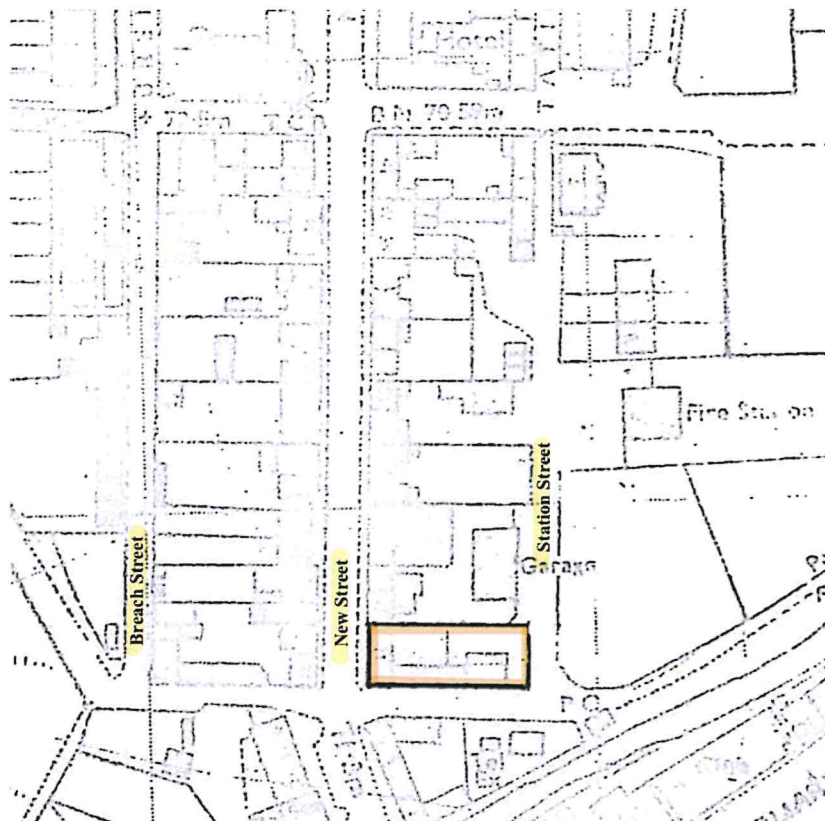


Fig. 1 Site plan submitted with application (*Plans Plus*)

1.2 The planning use is as a bakery, however it's most recent use has been as second hand retail (the Rothes Emporium). A previous planning application (19/00330/APP) was submitted for this development but withdrawn.

1.3 A glossary of acoustics term is given in Appendix 2.

1.4 The qualifications and experience of the author are given in Appendix 3.

## 2 Neighbouring uses and related context of the development

2.1 The application site is located in a mixed residential and commercial area with the nearest residential properties being terraced to the north (structurally attached) and opposite to the west on the other side of New Street. Figure 2 shows the location of neighbouring uses - residential (green) and commercial (blue) in relation to the development site (yellow). Nearby commercial activities include the following:

To the south; East bank Hotel, 11-17 High St.  
Victoria Bar, 1-3 Seafield Sq.

To the north; Speyside Car Sales, 17 New St. and workshop / garage Station St.  
Kool Cut, Hair Salon, 33 Main St.  
Rothes Fish & Chip Shop, 34 New St.  
McKerron & Milne Ltd, Plumbing and Heating Contractors, 35 Main St.  
The Station Hotel, 51 New St.

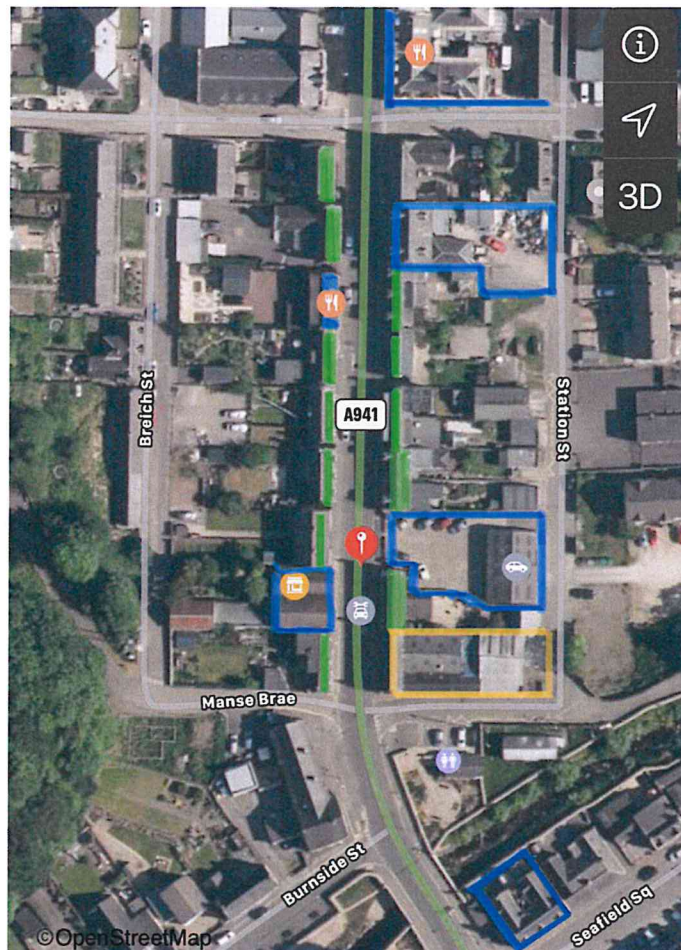


Fig. 2 Location of development with neighbouring residential and commercial uses

2.2 The neighbouring uses are described below.

### Residential

These are a mix of mainly two storey and some single storey residential properties, located in the midst of and overlooking the existing commercial uses listed above. Commercial activities are overlooked from the front and rear of the neighbouring residential properties.

### Commercial

There are nearby existing hot food takeaways, auto repairs and building services activities, all with immediately adjacent and overlooking residential properties. This demonstrates that the character of the area is such that such commercial activities can co-exist with neighbouring residential uses. However, it is still important that any proposal to introduce a new commercial use is (a) supported with a noise assessment which demonstrates it can operate without significant impact and (b) constrained by the attaching of appropriate conditions to ensure the design, installation and ongoing operation of the use remains satisfactory.

### Development summary

It is proposed to change the current bakery use to a hot food takeaway & restaurant on the west part of the site (fronting on to New Street /the A941) and 2 x residential units on the east part of the site (fronting on to Station Street).



Fig. 3 View on New Street looking south towards the proposed development

## **3 Planning and Environmental Health considerations**

3.1 Early communications with Moray Council Environmental Health were helpful in identifying the considerations which should be addressed in relation to this planning application. These are outlined in the paragraphs below.

### Planning

3.2 In relation to such applications the Planning Authority has previously given advice that a Local Plan Policy EP8 applies, particularly in relation to the potential for noise arising from the proposals significantly affecting existing neighbourhood amenity and a Noise Impact Assessment (NIA) should be carried out by a competent person having regard to Planning Advice Note PAN1/2011 and the associated Technical Advice Note - Assessment of Noise (TAN). They further advise that Environmental Health staff will be requested for comments in relation to measuring pre-existing ambient noise levels, noise predictions / criteria for assessing the impact and measures to reduce noise impact to acceptable levels.

### Environmental Health

3.3 In accordance with the above, the Environmental Health Service (EHS) has been contacted and the appropriate noise impact report and criteria discussed. Initial communications from the EHS made the following observations and comments:

- (i) The NIA should cover both an external assessment in terms of BS 4142, as well as internal criteria in living apartments based on NR25 with windows moderately ajar (typically up to 13 dB attenuation from out to in).
- (ii) There is a rear garden at number 15 and immediately adjacent is Rothes Car sales with a garage to the east marked as 17 New Street.
- (iii) Subjectively the background noise appears to considerably reduce as you go the rear, when compared with the fairly busy façade facing the street.
- (iv) Early evening background surveys could provide a robust baseline assessment and enable the existing noise level to be established at a time when the mechanical ventilation system will most likely be operating and there is no peak traffic flow influence.
- (v) The assessment should consider sound levels in gardens and amenity areas.
- (vi) A desk-top based assessment to predict noise levels from all the significant plant in operation, including ventilation and air conditioning compressors etc. and to report in terms of internal criteria against NR 25. Should proposals include plant with significant low frequency characteristics then NANR 45 would be appropriate to also consider.
- (vii) Routes of any potential structure borne transmission should be considered and once the plans are known then the location of the kitchen relative to the existing living apartments at number 15 will be apparent.
- (viii) The premises has been in use as an antique shop for several years now and the former bake-house and bakers shop was in need of considerable upgrade before closing. A site visit inside the premises may assist you in evaluating the current fabric of the building and its ability to contain any internal noise.
- (ix) No details have yet been provided and it may be feasible that other assessments may be required if for example, the intention is to include a

new flat immediately above the restaurant. The agent is advised to contact Planning to discuss any such proposals in terms of Planning Policy.

#### 4 Development proposal details

4.1 This section provides a more detailed description of the proposed development and reasons for the the internal layout. Annotated plan and section views of the development are provided in Figs 4 and 5.

- (i) It would include an ancillary residential unit exclusively for use as a manager’s flat.
- (ii) There would be two new separate residential properties developed at the east of the site, fronting onto Station Street.
- (iii) As yet the application for restaurant / hot food takeaway use is not in respect of any particular catering occupancy type. Accordingly, appliance details cannot be predetermined at this stage.

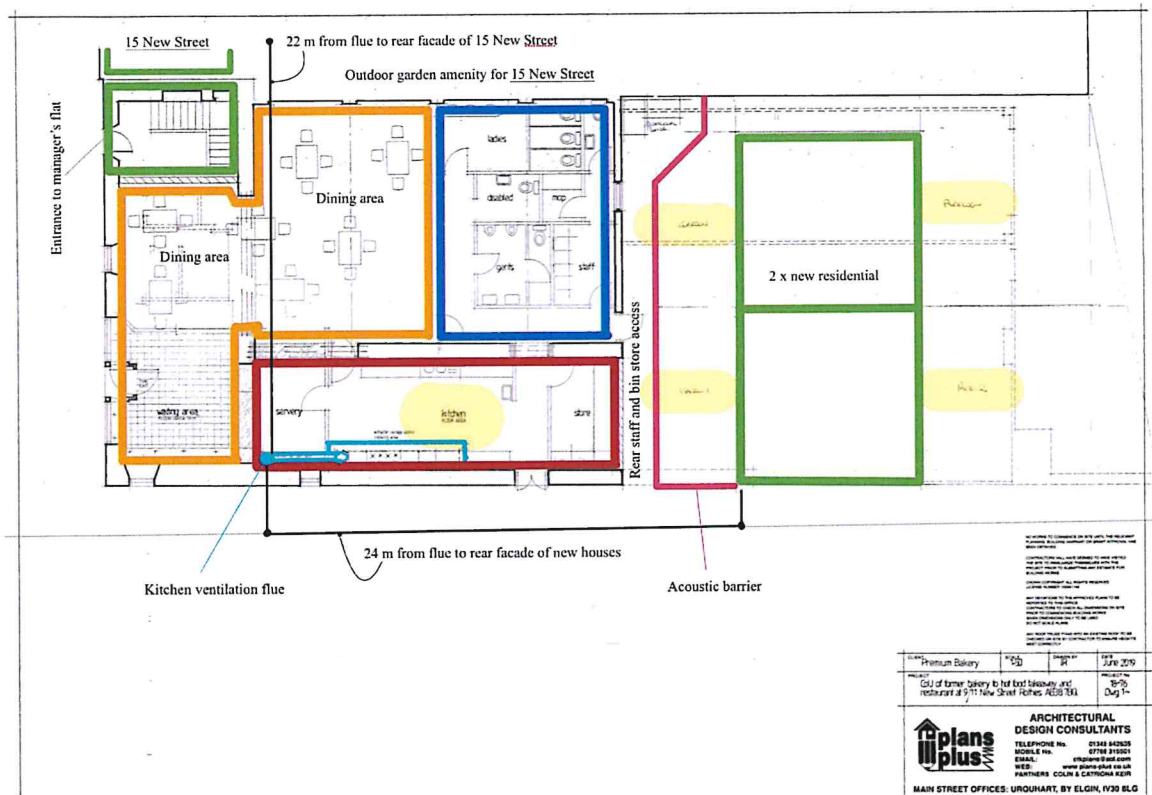


Fig. 4 Plan view of ground floor development





## 5 Determining the pre-existing baseline sound levels

5.1 As recommended by Environmental Health, pre-existing early evening noise measurements have been undertaken to “*provide a robust baseline assessment at a time when the mechanical ventilation system will most likely be operating and there is no peak traffic flow influence*”.

5.2 These measurements were made by means of attended surveys on Monday 17 February 2020 between 20:30 and 21:00 hrs. This was prior to any COVID lockdown and the measurement results are considered to be representative of the quieter weekday evening conditions. The background sound level ( $L_{A90}$ ) for measurement position 1 (in Station Road and shielded from the main residual traffic source in New Street) was measured at 42 dB. Contemporaneous measurements were also obtained at measurement position 2 (adjacent to the front of the development site and exposed to the traffic on New Street) and these gave a background noise level 4 dB higher at 46 dB(A). For completeness, contextual measurements were also undertaken on Tuesday 18 February at times of around 14:00 and 18:00 hrs. These yielded higher levels as would be expected in relation to the times and location of these measurements. The measured sound level results are presented along with contemporaneous measured weather data and notes in Appendix 1, Table 1.

## 6 Sound source considerations and calculations

6.1 The sound level calculations in this section are necessarily indicative rather than detailed. Detailed calculations are not required at this stage as they will be part of the design of any plant prior to installation or subsequently if altered, replaced or added to. What is important is to demonstrate that the recommended noise condition will achieve an appropriate level of protection for neighbouring occupiers and that the noise levels required by this condition are achievable.

6.2 The sound emission from this development is essentially comprised of relatively steady state plant noise, with any other sources (e.g. access and egress via the rear door) being of such short duration as to be insignificant to the average sound emission level. For this reason it is considered that a BS4142 assessment is of limited practical value in terms of rating, assessing and controlling neighbourhood impact. Never-the-less, as requested by Environmental Health, comment is made with regard to the expected average ( $L_{Aeq}$ ) ventilation sound level relative to the pre-existing background levels ( $L_{A90}$ ) in paragraph 6.5 of this report.

6.3 It has been advised by Moray Council that sound levels within neighbouring living apartments should not exceed NR25, assuming an open window assessment which means that internal levels are assumed to be about 13 dB less than those immediately outside. This allows for indicative calculations to be made to confirm

whether compliance with an NR25 planning noise condition will (a) provide acceptable external sound levels when compared to the pre-existing background noise levels and (b) be achievable in terms of the associated ventilation flue sound power levels.

6.4 The two nearest noise-sensitive receptor locations are the residential properties at 15 New Street and the two newly created residential properties on Station Road. There will be little difference in terms of plant sound levels experienced at each of these locations as they are roughly the same distance from the kitchen ventilation flue. Although the adjacent New Street property is marginally closer at 22 m, the sound level at this location is expected to be slightly less as there will be no significant additional reflected component due to the sound propagation being at grazing incidence. The rear facades of the new residential properties are further away at 24 m, however, there will be approximately a 2-3 dB additional reflected component present. This means these are likely to represent the most noise-sensitive locations.

6.5 Experience from years of undertaking NR25 compliance measurements of ventilation plant sources indicates that, with a typical ventilation noise spectrum shape, the compliance point is associated with an A weighted reading of about 32 dB. This results in an indicative external level of 32 + 13, i.e. 45 dB(A). As can be seen from the results in Appendix 1, this is 2-3 dB less than the pre-existing evening average sound level ( $L_{Aeq}$ ) and about 3 dB above the pre-existing evening background sound level ( $L_{A90}$ ). This will not result in a significant adverse noise impact.

6.6 Indicative ventilation flue source sound power levels ( $L_{WA}$ ) can be back-calculated using the external level of 45 dB(A) at 24 m and assuming spherical propagation from the flue exit point. The formula  $L_{WA} = L_{PA} + 20 \text{ Log } (r) + 11 \text{ dB}$  yields an indicative source sound power level of 84 dB(A). This is typical of such sources and further reductions can readily be achieved by means of acoustic treatment measures.

*Note:  $L_{WA}$  is the A weighted sound power level at the flue,  $L_{PA}$  is the average A weighted sound pressure level outside the residence, 'r' is the distance to the flue of 24 m and 11 dB takes account of reduction due to spherical divergence propagation.*

6.7 No other plant source is considered significant. However, should any be introduced at a later time, this would have to be designed and installed to comply with the relevant planning condition requiring noise levels within neighbouring living spaces not to exceed NR 25 and NANR 45 (see recommended planning condition (2) in Para 8.3 below. It has been advised that, in the event of complaint, a compliance assessment would be undertaken by recording representative  $L_{Zeq}$  measurements in each octave band. Although low frequency noise is not anticipated, including the NANR 45 criterion within the planning noise condition will act as a control for this possibility in any future plant alterations.

6.8 The garden / amenity space for the new Station Road properties is immediately adjacent to the rear of the restaurant premises, where there is a 1.5 m wide staff access

to a bin storage area and staff door. Although the rear access will only be for pedestrian use and short duration delivery / removal of refuse activities, a 2.0 m acoustic barrier is proposed in order to mitigate any associated activity noise and provide a visual barrier to the newly created garden / amenity space.

6.9 As the ventilation plant is significantly distant from the common separating wall with 15 New Street, it is not anticipated that there will be any significant level of structure-borne vibration experienced. Should alterations take place to re-locate plant or introduce new plant, any re-radiated noise as a result of associated vibrations will also be controlled by the NR25 / NANR 45 condition.

## **7 Conclusions and recommendations**

7.1 This development is consistent with the character of the area and should be able to operate without significant adverse noise impact to occupiers of neighbouring residential properties.

7.2 The proposed internal layout, location of plant and provision of an acoustic barrier will significantly mitigate any potential noise impact.

7.3 The introduction of a manager's flat will act as a buffer between the structurally attached commercial and residential uses. This is a net planning gain from the current undesirable juxtaposition of bakery and residential uses.

7.4 The restaurant / hot food takeaway use should be subject to planning controls / conditions which protect neighbouring residents on an ongoing basis. These are discussed in Section 8, along with recommendations regarding specific controls and conditions.

7.5 It is recommended that, as part of the development process, the north and east building envelope structures of the rear extension containing the restaurant / hot food takeaway be examined for potential 'acoustic leaks'. This is advised as both are directly adjacent to garden amenity spaces. Any such deficiencies should be made good to avoid unexpected internal noise breakout. Particular attention should be given to potential air pathways e.g. at the eaves, and the presence of lightweight building materials.

7.6 It is recommended that any space ventilation intake and extract points for the restaurant / hot food takeaway use be located on the south facade.

## **8 Appropriate Planning and Environmental sound emission controls**

8.1 Technical Advice Note - Assessment of Noise (TAN), Para 3.8, advises that “*The choice of appropriate criteria noise levels and relevant time periods are the responsibility of the local authority*”. In terms of noise criteria selection and approach to demonstrating compliance, this report takes into account the initial Planning and Environmental Health considerations outlined above in Section 3 and the further follow-up discussions with Moray Council Environmental Health Service. Below was agreed as a reasonable and appropriate approach.

8.2 Protecting amenity for neighbouring noise sensitive uses is best achieved through good internal space layout / design and the use of appropriate planning conditions which specify the ongoing noise standard to be achieved when the use is taken up and operational, rather than one based on a predictive design standard which only considers one specific configuration of plant proposed at the outset. Once planning consent as a hot food takeaway has been granted, it is possible to change from one type of cuisine to another without the need to reapply for further planning consent and such a change may well necessitate a change of kitchen cooking and ventilation plant. It may also be necessary in due course to replace existing equipment due to plant failures, refurbishment and changing needs. In such a situation, any predictive design based condition does not provide neighbouring residents with any ongoing protection.

8.3 The planning controls /conditions given below are recommended in order to protect the neighbouring residents from any significant impact arising from the operations of the restaurant /hot food takeaway. These take account of: the criteria identified by Environmental Health; the design / layout / mitigation measures detailed in section 4; the fact that the restaurant / hot food takeaway use is not for any particular catering type; and planning conditions should specify the ongoing noise standards / mitigations to be achieved.

### Recommended planning controls and conditions

- (1) A manager’s flat should be created as part of and ancillary to the main commercial use and located as per the plan given in Figure 4. The developer is willing to enter into any planning agreement, restriction, obligation or condition which the planning authority deems necessary to achieve this purpose. This will achieve a net planning gain by introducing a buffer between the existing neighbouring residential use and the neighbouring commercial use. At ground floor this is provided for by the manager’s flat stair access and at upper level by the manager’s flat itself. There will be no common party wall between a restaurant / takeaway activity space and the residential property.

- (2) A condition should be attached to the restaurant / hot food takeaway use to control noise emission from the operation of any plant and machinery associated with the restaurant / takeaway activities. The following condition (or similar which achieves the same effect) is recommended:

*The design, installation, operation and maintenance of all plant and machinery shall be such as to ensure that any associated noise does not exceed the NR25 criterion (ref. BS 8233, Annex B) and the NANR. 45 criterion (ref. Procedure for the assessment of low frequency noise, University of Salford, 2005) as measured from within any neighbouring residential living apartment. Designs and installations to meet this standard shall assume compliance will be determined by octave band  $L_{Zeq}$  measurements of the source(s) undertaken within any neighbouring living apartment and with windows open sufficiently to provide moderate ventilation.*

- (3) A condition should be attached to protect the outdoor space garden amenity of the new residential properties. The following condition, or similar which achieves the same effect, is recommended:

*A 2.0 m acoustic barrier shall be constructed on the east boundary between the rear of the restaurant / hot food takeaway use and the two newly developed residential uses. The acoustic barrier shall have a minimum surface mass of 10 kg/m<sup>2</sup>, with no holes / gaps or damage and be complete down to the ground over the full length of the property boundary from the north boundary wall to the south boundary access and rebated along the south boundary to meet the west building line of the two residential properties. If made of timber, this should be of good quality with no knot holes or damage and the design shall be such that joins have an overlap of at least 20 mm (to accommodate expansion / contraction and minimise gaps appearing over time) and be protected by twice weathered capping. The barrier from the north boundary wall to the south access shall be maintained to the above design standards.*

- (4) A condition should be attached to the restaurant / hot food takeaway use to protect the outdoor space garden amenity of the new residential properties. The following condition, or similar which achieves the same effect, is recommended:

*The acoustic barrier from the north boundary wall to the south boundary access shall be maintained have a minimum surface mass of 10 kg/m<sup>2</sup>, with no holes / gaps or damage and be complete down to the ground over the full length of the property boundary.*

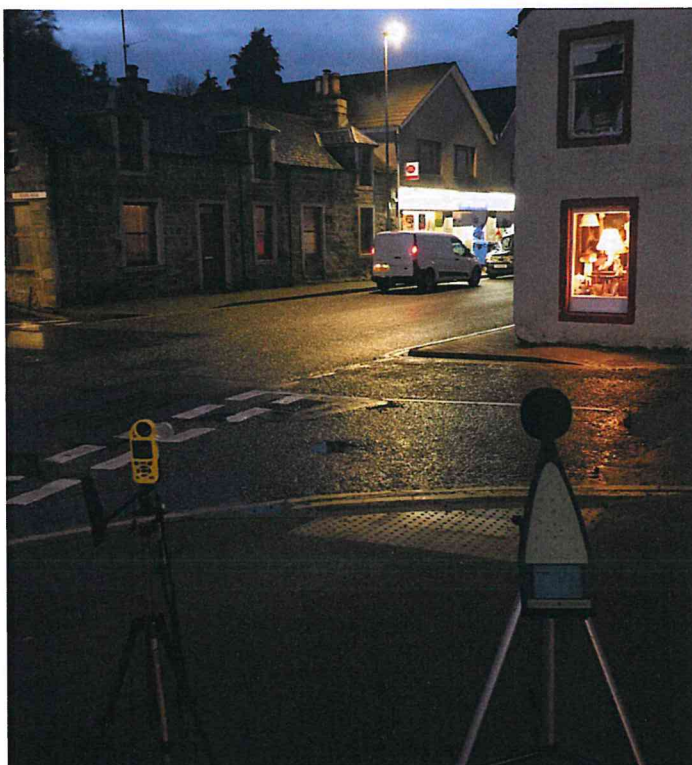
### Appendix 1 - Pre-existing sound level measurements

Start Time	LAeq (5min)	LAeq (15min)	LA90 (15min) Pos 1 (Stat'n Rd)	LA90 (15 min) Pos 2 (New St)	Comments	Sound measurement Instrumentation	Weather							
					All measurements in dB(A) re 20 x 10 <sup>-5</sup> µPa	B&K Type 2260; serial no. 2431587	Kestrel 5500 Weather Meter; serial no. 2489268							
					Time wtg - Fast; Range 20.4 - 100.4 dB	B&K 1/2" Microphone Type 4189; serial no. 2429844								
					Tripod mounted with microphone at 1.2 m height; diaphragm horizontal; Windscreen 90mm used and corr applied.	Cal cert - 28 Nov 2019 (ANV Cert no TCRT19/1884)								
	<b>Position 1 - Outside garage adjacent to proposed 2 residential on Station St (Nth/Sth)</b>				Meas set-up pic 20:33, 51, River source pic 20:46; weather pics 20:32, 33		DATE-TIME	Wind Direction	Wind Speed	Temp	RH	Station Pressure		
17/02/2020 20:25						Acoustic Cal 93.8 dB; -26.7 dB re 1V/Pa		° (Deg true)	m/s	°C	%	mb		
17/02/2020 20:30	47.7				Start of residual sound measurements (mainly from river - steady at about 42 dB(A))		2020-02-17 20:30:00	268	0.0	4.4	72.7	986.8		
20:35	51.0	48.4	42.3	46.2	Passing van 20:38		2020-02-17 20:35:00	268	7.9	3.8	73.6	986.8		
20:40	43.8				Voices 20:43		2020-02-17 20:40:00	265	7.3	4.0	74.2	987.0		
20:45	43.0						2020-02-17 20:45:00	217	7.5	4.0	74.6	987.0		
20:50	43.3	46.7	42.1	46.3			2020-02-17 20:50:00	278	6.7	3.9	74.8	987.0		
20:55	49.9				Cars passed 20:57-58; Slight drizzle started 20:55		2020-02-17 20:55:00	205	6.6	3.9	76.0	987.2		
					Steady drizzle 20:58		2020-02-17 21:00:00	281	7.1	3.6	76.8	987.2		
					Church chime 21:00									
	<b>Station Street - Rear of development site; in front of proposed 2x residential</b>				Sunny & light cloud; occasional vehicles; no noise from within garage; pics 14:20, 30; weather pic 14:31									
18/02/2020 14:09						Acoustic Cal 93.8 dB; -26.7 dB re 1V/Pa	2020-02-18 14:15:00	144	1.4	4.9	67.0	990.8		
14:10		52.1	45.0				2020-02-18 14:20:00	143	1.8	5.4	66.2	990.7		
14:25		53.6	46.4		Car from garage revving then tickover; left 14:35		2020-02-18 14:25:00	144	2.2	5.5	64.7	990.7		
					Flight overhead 14:37; also car passing		2020-02-18 14:30:00	144	1.3	5.9	63.6	990.5		
					Car 14:38		2020-02-18 14:35:00	144	1.0	5.6	64.0	990.4		
							2020-02-18 14:40:00	139	1.7	5.6	62.5	990.4		
							2020-02-18 14:45:00	187	2.3	5.6	62.8	990.3		
	<b>Opposite Manse Brae (10m fr dev; 5m fr kerb)</b>				Overcast; dry overhead; roads damp; pics 17:51									
17:50		67.8	49.4		Mainly cars but fairly frequent HGV / tankers; Short chimes at 18:00;									

**Appendix 1 (cont.) - Measurement locations and set-up**



Measurement position 1  
Station Road



Measurement position 2  
New Street

## Appendix 2 - Glossary of Acoustics Terms

**Decibels, dB** - This is a unit of sound level measurement. It is a logarithmic ratio of sound pressure with reference to 20  $\mu$ Pa (micro Pascals). With this reference pressure the threshold of human hearing is at 0 dB and pain at 140 dB. Measurements of sound are often referred to as SPL (sound pressure level) measurements.

**A-weighted decibels, dB(A)** - This unit is used to reflect the way humans perceive the loudness of sounds across the frequency range (Hz) of hearing. As the frequency of a sound goes further below 1 kHz and further above 6 kHz, it is progressively less well heard. A-weighted filters are used in sound level meters to reflect this in dB(A) measurements.

**Equivalent Continuous SPL,  $L_{Aeq,T}$  or  $L_{Zeq,T}$**  - This is the notional steady sound pressure level which has the same acoustic energy as the actual fluctuating sound pressure levels over the measurement time period, T. Environmental noise is typically assessed using  $L_{Aeq,T}$  measurements and  $L_{Zeq,T}$  used to measure the sound levels within the frequency bands whilst undertaking frequency analysis measurements.

### Frequency (Hz)

Sound waves can be described in terms of the number of pressure variations there are per second. The unit is hertz, Hz (or cycles per second) and is related to the 'pitch' of the sound. Human hearing ranges from 20 Hz (low frequency sound) to 20,000 Hz, sometimes written as 20 kHz (high frequency sound).

**Octave and 1/3 Octave Band frequency measurements** - Selected 'bands' of frequencies can be measured with sounds at all other frequencies being excluded from the measurement. These bands are recognised by the 'centre' frequencies within these bandwidths, which are twice or half the neighbouring band centre frequencies. Each octave interval is heard as representing the lower and upper note in a musical scale. Octave bandwidth measurements contain sounds at all frequencies within each octave. The octave can be divided into three 1/3 octave band measurements in order to obtain more detailed information about the spread of the frequency content in a sound.

**Noise Rating Criterion Curves, NR** - NR Curves are a family of reference curves used to take account of human frequency response to sound and set target compliance levels at each frequency, rather than at just one overall dB(A) sound level which may not adequately reflect the tonal content of a sound. NR curves are identified by the sound level of the curve at 1 kHz.

**Facade and Free-field (ff) sound levels** - Facade sound levels typically represent those at 1m in front of a facade and includes facade sound reflection components, whereas free-field sound levels represent the sound measured, or as would be measured, at a location unaffected by reflected components other than the ground.



### **Appendix 3 - Summary of the author's qualifications and experience**

Alistair Somerville holds a Master of Science Degree in Acoustics, Vibration and Noise Control. He is an Honorary Fellow of the Institute of Acoustics (IoA) and a corporate Member and Past-President of the Royal Environmental Health Institute of Scotland (REHIS). He was Chairman of the IoA Scottish Branch between 2005 and 2021 and is the Institute's current President Elect.

He has over thirty years experience in acoustics and thirty-five years experience in Environmental Health, having managed the Noise & Environmental Assessment and several other Service functions within the City of Edinburgh Council. Since March 2013 he has operated as a self-employed acoustic consultant and lecturer/trainer in noise and vibration, with a broad range of private and public sector clients throughout the UK.

He has acted as an expert witness at numerous planning public inquiries and court cases and as an advisor to Scottish Government in relation to acoustics and planning issues and the drafting and implementation of government research, guidance and standards.

As a part-time lecturer at Heriot Watt University he wrote and examined the Environmental Noise & Vibration module for their Master of Science Degree in Acoustics and delivered the acoustics modules for undergraduate and postgraduate Mechanical and Building Services Engineering courses.

He has been influential in the development of national noise and vibration guidance and served on various British Standard Committees and professional working groups which produced UK wide noise standards and guidance.



## Consultation Request Notification

<b>Planning Authority Name</b>	Moray Council
<b>Response Date</b>	26th October 2021
<b>Planning Authority Reference</b>	21/01545/APP
<b>Nature of Proposal (Description)</b>	Change of use of bakery to restaurant and hot food takeaway with flat above and 2 no low cost housing units to the rear
<b>Site</b>	9 New Street Rothes Aberlour Moray AB38 7BQ
<b>Site Postcode</b>	N/A
<b>Site Gazetteer UPRN</b>	000133002364
<b>Proposal Location Easting</b>	327753
<b>Proposal Location Northing</b>	849267
<b>Area of application site (M<sup>2</sup>)</b>	600
<b>Additional Comment</b>	
<b>Development Hierarchy Level</b>	LOCAL
<b>Supporting Documentation URL</b>	<a href="https://publicaccess.moray.gov.uk/eplanning/centralDistribution.do?caseType=Application&amp;keyVal=R0ABE9BGIHG00">https://publicaccess.moray.gov.uk/eplanning/centralDistribution.do?caseType=Application&amp;keyVal=R0ABE9BGIHG00</a>
<b>Previous Application</b>	19/00330/APP
<b>Date of Consultation</b>	12th October 2021
<b>Is this a re-consultation of an existing application?</b>	No
<b>Applicant Name</b>	Mr Peter Ford
<b>Applicant Organisation Name</b>	
<b>Applicant Address</b>	9 New Street Rothes Aberlour UK AB38 9BQ
<b>Agent Name</b>	Plans Plus
<b>Agent Organisation Name</b>	Plans Plus
<b>Agent Address</b>	Main Street URQUHART By Elgin Moray IV30 8LG
<b>Agent Phone Number</b>	
<b>Agent Email Address</b>	N/A
<b>Case Officer</b>	Iain T Drummond
<b>Case Officer Phone number</b>	01343 563607
<b>Case Officer email address</b>	iain.drummond@moray.gov.uk

<b>PA Response To</b>	consultation.planning@moray.gov.uk
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**NOTE:**

If you do not respond by the response date, it will be assumed that you have no comment to make.

The statutory period allowed for a consultation response is 14 days. Due to scheduling pressures if a definitive response is not received within 21 days this may well cause the two month determination period to be exceeded.

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For full terms please visit [http://www.moray.gov.uk/moray\\_standard/page\\_121513.html](http://www.moray.gov.uk/moray_standard/page_121513.html)

For full Data Protection policy, information and rights please see [http://www.moray.gov.uk/moray\\_standard/page\\_119859.html](http://www.moray.gov.uk/moray_standard/page_119859.html)

You can contact our Data Protection Officer at [info@moray.gov.uk](mailto:info@moray.gov.uk) or 01343 562633 for more information.

Please respond using the attached form:-

## MORAY COUNCIL

### PLANNING CONSULTATION RESPONSE

**From:** Contaminated Land

**Planning Application Ref. No:** 21/01545/APP

**Change of use of bakery to restaurant and hot food takeaway with flat above and 2 no low cost housing units to the rear 9 New Street Rothes Aberlour Moray for Mr Peter Ford**

I have the following comments to make on the application:-

- |   | <b>Please</b>                        |
|---|--------------------------------------|
| (a) I OBJECT to the application for the reason(s) as stated below   | <b>x</b><br><input type="checkbox"/> |
| (b) I have NO OBJECTIONS to the application and have no condition(s) and/or comment(s) to make on the proposal            | <input type="checkbox"/>             |
| (c) I have NO OBJECTIONS to the application subject to condition(s) and/or comment(s) about the proposal as set out below | X                                    |
| (d) Further information is required in order to consider the application as set out below                                 | <input type="checkbox"/>             |

### Reason(s) for objection

### Condition(s)

[Informative]

This development has been identified from Council archives as being located on a former bakery and five metres south of a former garage, which included an underground petrol tank of uncertain location. Moray Council does not have any further information as to whether the ground is contaminated. Safe development is the responsibility of the developer. You should consider investigating these matter further prior to proceeding with the proposed works. Should contamination be encountered, contact the Environmental Health section immediately (email [contaminated.land@moray.gov.uk](mailto:contaminated.land@moray.gov.uk), tel 0300 1234561) to agree an appropriate course of action.

### Further comment(s) to be passed to applicant

### Further information required to consider the application

**Contact: Adrian Muscutt**  
**email address:**  
**Consultee:**

**Date.....25/10/21.....**  
**Phone No .....**

<b>Return response to</b>	<b>consultation.planning@moray.gov.uk</b>
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Please note that information about the application including consultation responses and representations (whether in support or objection) received on the proposal will be published on the Council's website at <http://publicaccess.moray.gov.uk/eplanning/> (You can also use this site to track progress of the application and view details of any consultation responses and representations (whether in support or objection) received on the proposal). In order to comply with the Data Protection Act, personal information including signatures, personal telephone and email details will be removed prior to publication using "redaction" software to avoid (or mask) the display of such information. Where appropriate other "sensitive" information within documents will also be removed prior to publication online.

# Developer Obligations & Affordable Housing: ASSESSMENT REPORT



**moray**  
council

Date: 27/10/2021

Reference: 21/01545/APP

**Description:** Change of use of bakery to restaurant and hot food takeaway with flat above and 2 no low cost housing units to the rear 9 New Street, Rothes, Aberlour, AB38 7BQ

**Applicant:** Mr Peter Ford

**Agent:** Plans Plus

This assessment has been carried out by Moray Council. For developer obligations, the assessment is carried out in relation to policy PP3 Infrastructure and Services of the adopted Moray Local Development Plan 2020 (MLDP2020) and Supplementary Guidance (SG) on Developer Obligations which was adopted on 30 September 2020. And, for affordable housing, the assessment is carried out in relation to policy DP2 Housing of the MLDP2020. Affordable housing is a policy requirement not a developer obligation however for ease of reference the Affordable Housing contribution is included within this assessment.

The MLDP2020 can be found at [www.moray.gov.uk/MLDP2020](http://www.moray.gov.uk/MLDP2020) and the Developer Obligations SG can be found at <http://www.moray.gov.uk/downloads/file134184.pdf>

## Summary of Obligations

Primary Education	Nil
Secondary Education	Nil
Transport	Nil
Healthcare (Contribution towards 1 Additional Dental Chair)	██████████
Sports and Recreation	Nil
Total Developer Obligations	██████████
Affordable Housing	██████████
TOTAL	██████████

## Breakdown of Calculation

Proposals for developer obligations are assessed on the basis of Standard Residential Unit Equivalents (SRUE) which is a 3-bedroomed residential unit. This application is considered to comprise of the following:

3 x 1 bed = 1.8 SRUE

This assessment is therefore based on 1.8 SRUE.

Please note that 1 bed units are not assumed to generate any pupils, therefore not included within any calculations for education infrastructure mitigation.



**Moray Council DEVELOPER OBLIGATIONS**



## INFRASTRUCTURE

### Education

Please note that 1 bed units are not assumed to generate any pupils, therefore not included within any calculations for education infrastructure mitigation.

Contribution towards Education = Nil

### Transport

The Moray Council Transportation Services has confirmed that no developer obligations will be sought for this proposal.

Contributions towards Transport = Nil

### Healthcare

Healthcare Facilities include General Medical Services (GMS), community pharmacies and dental practices. Scottish Health Planning Notes provide national guidance on standards and specification for healthcare facilities. The recommended number of patients is 1500 per General Practitioner (GP) and floorspace requirement per GP is 271m<sup>2</sup>.

Healthcare infrastructure requirements have been calculated with NHS Grampian on the basis of national standards and specifications for healthcare facilities and estimating the likely number of new patients generated by the development (based on the average household size of 2.17 persons -Census 2011).

Roths Medical Centre is the nearest GP Practice within which healthcare facilities can be accessed by the proposed development. NHS Grampian has confirmed that works have been completed to reconfigure Roths Medical Centre, therefore no contributions will be required towards the healthcentre.

However contributions will be sought towards 1 Additional Dental Chair.

Contributions are calculated based on a proportional contribution of £517 per SRUE for the additional dental chair.

Contribution towards Healthcare [REDACTED]

### Sports and Recreational Facilities

Sports and Recreation Facilities

Existing sports provision within Roths is considered to be adequate to serve the needs of the residents anticipated to be generated by this development. Therefore, in this instance, no contribution will be required.

Contribution for Sports and Recreation Facilities = Nil

---

## AFFORDABLE HOUSING

The average market value of a serviced plot for 1 Affordable Unit within the Speyside Local Housing Market Area is [REDACTED]

Contributions are based on 25% of the total number of units proposed in the application:

[REDACTED]

Therefore, the total contribution towards affordable housing is:

[REDACTED]

Affordable housing is a policy requirement not a developer obligation and will not be subject to negotiation.





## TERMS OF ASSESSMENT

This assessment report is valid for a period of 6 months from the date of issue.

Please note that any subsequent planning applications for this site may require a re-assessment to be undertaken on the basis of the policies and rates pertaining at that time.

## PAYMENT OF CONTRIBUTIONS

Remittance of financial obligations can be undertaken either through the provision of an upfront payment or by entering into a Section 75 agreement. The provision of an upfront payment will allow a planning consent to be issued promptly. However, where the amount of developer contributions are such that an upfront payment may be considered prohibitive a Section 75 will likely be required. The payment of contributions may be tied into the completion of houses through a Section 75 Agreement or equivalent, to facilitate the delivery of development. Please note that Applicants are liable for both the legal costs of their own Legal Agent fees and Council's legal fees and outlays in the preparation of the document. These costs should be taken into account when considering the options.

## INDEXATION

Developer obligations towards Moray Council infrastructure are index linked to the General Building Cost Price Index (BCPI) as published by the Building Cost Information Service (BCIS) of the Royal Institute of Chartered Surveyors (RICS) from Q3, 2017 and obligations towards NHS Grampian infrastructure are index linked to All in Tender

Price Index (TPI) as published by the Royal Institute of Chartered Surveyors (RICS) from Q2, 2017.





## Consultation Request Notification

<b>Planning Authority Name</b>	Moray Council
<b>Response Date</b>	26th October 2021
<b>Planning Authority Reference</b>	21/01545/APP
<b>Nature of Proposal (Description)</b>	Change of use of bakery to restaurant and hot food takeaway with flat above and 2 no low cost housing units to the rear
<b>Site</b>	9 New Street Rothes Aberlour Moray AB38 7BQ
<b>Site Postcode</b>	N/A
<b>Site Gazetteer UPRN</b>	000133002364
<b>Proposal Location Easting</b>	327753
<b>Proposal Location Northing</b>	849267
<b>Area of application site (M<sup>2</sup>)</b>	600
<b>Additional Comment</b>	
<b>Development Hierarchy Level</b>	LOCAL
<b>Supporting Documentation URL</b>	<a href="https://publicaccess.moray.gov.uk/eplanning/centralDistribution.do?caseType=Application&amp;keyVal=R0ABE9BGIHG00">https://publicaccess.moray.gov.uk/eplanning/centralDistribution.do?caseType=Application&amp;keyVal=R0ABE9BGIHG00</a>
<b>Previous Application</b>	19/00330/APP
<b>Date of Consultation</b>	12th October 2021
<b>Is this a re-consultation of an existing application?</b>	No
<b>Applicant Name</b>	Mr Peter Ford
<b>Applicant Organisation Name</b>	
<b>Applicant Address</b>	9 New Street Rothes Aberlour UK AB38 9BQ
<b>Agent Name</b>	Plans Plus
<b>Agent Organisation Name</b>	Plans Plus
<b>Agent Address</b>	Main Street URQUHART By Elgin Moray IV30 8LG
<b>Agent Phone Number</b>	
<b>Agent Email Address</b>	N/A
<b>Case Officer</b>	Iain T Drummond
<b>Case Officer Phone number</b>	01343 563607
<b>Case Officer email address</b>	iain.drummond@moray.gov.uk

<b>PA Response To</b>	consultation.planning@moray.gov.uk
-----------------------	------------------------------------

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You can contact our Data Protection Officer at [info@moray.gov.uk](mailto:info@moray.gov.uk) or 01343 562633 for more information.

Please respond using the attached form:-

**MORAY COUNCIL**

**PLANNING CONSULTATION RESPONSE**

**From:** Environmental Health Manager

**Planning Application Ref. No: 21/01545/APP**

**Change of use of bakery to restaurant and hot food takeaway with flat above and 2 no low cost housing units to the rear 9 New Street Rothes Aberlour Moray for Mr Peter Ford**

I have the following comments to make on the application:-

- |   | <b>Please</b>                        |
|---|--------------------------------------|
| (a) I OBJECT to the application for the reason(s) as stated below   | <b>x</b><br><input type="checkbox"/> |
| (b) I have NO OBJECTIONS to the application and have no condition(s) and/or comment(s) to make on the proposal            | <input type="checkbox"/>             |
| (c) I have NO OBJECTIONS to the application subject to condition(s) and/or comment(s) about the proposal as set out below | <b>X</b>                             |
| (d) Further information is required in order to consider the application as set out below                                 | <input type="checkbox"/>             |

**Reason(s) for objection**

**Condition(s)**

Informative notes:

- The premises will require to comply with the Food Hygiene (Scotland) Regulations 2006.
- The business operator will require to register the premises in terms of the Food Premises (Registration) Regulation 1991.
- The premises will require to comply with The Health and Safety at Work etc. Act 1974 and associated regulations enforced by this section.
- Operation of the premises shall not give rise to a Statutory Nuisance in terms of the Environmental Protection Act 1990.

**Further comment(s) to be passed to applicant**

**Further information required to consider the application**

**Contact: Tim Betts**  
**email address:**  
**Consultee:**

**Date.....25/10/21.....**  
**Phone No .....**

<b>Return response to</b>	<b>consultation.planning@moray.gov.uk</b>
---------------------------	---

Please note that information about the application including consultation responses and representations (whether in support or objection) received on the proposal will be published on the Council's website at <http://publicaccess.moray.gov.uk/eplanning/> (You can also use this site to track progress of the application and view details of any consultation responses and representations (whether in support or objection) received on the proposal). In order to comply with the Data Protection Act, personal information including signatures, personal telephone and email details will be removed prior to publication using "redaction" software to avoid (or mask) the display of such information. Where appropriate other "sensitive" information within documents will also be removed prior to publication online.

**MORAY COUNCIL  
PLANNING CONSULTATION RESPONSE**

**From:** The Moray Council, Flood Risk Management  
**Planning Application Ref. No:**  
**21/01545/APP**

I have the following comments to make on the application:-

	<b>Please</b>
	<b>x</b>
(a) I OBJECT to the application for the reason(s) as stated below	<input checked="" type="checkbox"/>
(b) I have NO OBJECTIONS to the application and have no condition(s) and/or comment(s) to make on the proposal	<input type="checkbox"/>
(c) I have NO OBJECTIONS to the application subject to condition(s) and/or comment(s) about the proposal as set out below	<input type="checkbox"/>
(d) Further information is required in order to consider the application as set out below	<input type="checkbox"/>

The original consultation response has been withdrawn following a review of active applications and compliance with NPF4. In the case of this application the review has found that this application is not in compliance with Policy 22 in NPF4 for the following reason and therefore **Moray Council Flood Risk Management team object to the development.**

As identified in section 5.2 of the FRA the site is at risk of flooding to a depth of 250mm in a 0.5% exceedance event. A flood risk area is defined in NPF4 as:-

*“For planning purposes, at risk of flooding or in a flood risk area means land or built form with an annual probability of being flooded of greater than 0.5% which must include an appropriate allowance for future climate change.”*

This site is at flood risk and the development does not comply with Policy 22 for the following reason:-

- The construction of new residential properties at the rear of the development are not in line with part a) iii. *redevelopment of an existing building or site for an equal or less vulnerable use; and a) iv redevelopment of previously used sites in built up areas where the LDP has identified a need to bring these into positive use and where proposals demonstrate that long-term safety and resilience can be secured in accordance with relevant SEPA advice*
- The site does not have safe access and egress in the time of flood and contrivances policy a) iv. *Additionally, for development proposals meeting criteria part iv), where flood risk is managed at the site rather than avoided these will also require: the first occupied/utilised floor, and the underside of the development if relevant, to be above the flood risk level and have an additional allowance for freeboard; and that the proposal does not create an island of development and that safe access/egress can be achieved.*

---

Contact: Will Burnish

12/4/23

email address: will.burnish@moray.gov.uk

**Consultee:** The Moray Council, Flood Risk Management





**From:** Andrew Miller <Andrew.Miller@moray.gov.uk>  
**To:** DMSMyEmail <DMSMyEmail@moray.gov.uk>  
**CC:**  
**Date:** 02 Dec 2021 14:04  
**Subject:** FW: Moray Council Planning Application Consultation for 21/01545/APP

The email body is shown below. Some embedded objects (including images) may have been removed.

---

-----Original Message-----

**From:** Fiona Geddes <Fiona.Geddes@moray.gov.uk>  
**Sent:** 17 November 2021 08:23  
**To:** Andrew Miller <Andrew.Miller@moray.gov.uk>  
**Subject:** RE: Moray Council Planning Application Consultation for 21/01545/APP

Ok - we did discuss I think.

To date, I have not been approached by any developer about including these in the SHIP, nor by any Housing Association.

Please regard these as private sector properties for implementation of Policy DP2.

Yours

Fiona

-----Original Message-----

**From:** Andrew Miller <Andrew.Miller@moray.gov.uk>  
**Sent:** 17 November 2021 07:40  
**To:** Fiona Geddes <Fiona.Geddes@moray.gov.uk>  
**Subject:** RE: Moray Council Planning Application Consultation for 21/01545/APP

Hi - yes its three units but its more the description of "low cost housing" I'm concerned about for the two bungalows.

Many Thanks

Andrew

-----Original Message-----

**From:** Fiona Geddes <Fiona.Geddes@moray.gov.uk>  
**Sent:** 16 November 2021 18:38  
**To:** Andrew Miller <Andrew.Miller@moray.gov.uk>  
**Subject:** FW: Moray Council Planning Application Consultation for 21/01545/APP

Hi Andrew,

I am not usually required to provide a response where the affordable housing requirement is less than one whole unit. Am I right in thinking that 3 units of housing are proposed?

Fiona

-----Original Message-----

**From:** Edward Thomas <Edward.Thomas@moray.gov.uk>  
**Sent:** 03 November 2021 12:32  
**To:** Fiona Geddes <Fiona.Geddes@moray.gov.uk>  
**Subject:** FW: Moray Council Planning Application Consultation for 21/01545/APP

-----Original Message-----

**From:** consultation.planning@moray.gov.uk <consultation.planning@moray.gov.uk>  
**Sent:** 03 November 2021 11:30  
**To:** Edward Thomas <Edward.Thomas@moray.gov.uk>  
**Subject:** Moray Council Planning Application Consultation for 21/01545/APP

Please find attached notification of consultation

Wednesday, 13 October 2021



Local Planner  
Development Services  
Moray Council  
Elgin  
IV30 1BX

Development Operations  
The Bridge  
Buchanan Gate Business Park  
Cumbernauld Road  
Stepps  
Glasgow  
G33 6FB

Development Operations  
Freephone Number - 0800 3890379  
E-Mail - [DevelopmentOperations@scottishwater.co.uk](mailto:DevelopmentOperations@scottishwater.co.uk)  
[www.scottishwater.co.uk](http://www.scottishwater.co.uk)



Dear Customer,

**9 New Street, Rothes, Aberlour, AB38 7BQ**  
**Planning Ref: 21/01545/APP**  
**Our Ref: DSCAS-0050444-4RN**  
**Proposal: Change of use of bakery to restaurant and hot food takeaway with flat above and 2 no low cost housing units to the rear**

**Please quote our reference in all future correspondence**

### **Audit of Proposal**

Scottish Water has no objection to this planning application; however, the applicant should be aware that this does not confirm that the proposed development can currently be serviced and would advise the following:

### **Water Capacity Assessment**

Scottish Water has carried out a Capacity review and we can confirm the following:

- ▶ There is currently sufficient capacity in BADENTINAN Water Treatment Works to service your development. However, please note that further investigations may be required to be carried out once a formal application has been submitted to us.

### **Waste Water Capacity Assessment**

- ▶ This proposed development will be serviced by ROTHES Waste Water Treatment Works. Unfortunately, Scottish Water is unable to confirm capacity currently so to allow us to fully appraise the proposals we suggest that the applicant completes a Pre-Development Enquiry (PDE) Form and submits it directly to Scottish Water via [our Customer Portal](#) or contact Development Services.

### **Please Note**

- ▶ The applicant should be aware that we are unable to reserve capacity at our water and/or waste water treatment works for their proposed development. Once a formal connection application is submitted to Scottish Water after full planning permission has been granted, we will review the availability of capacity at that time and advise the applicant accordingly.
- 

## Surface Water

For reasons of sustainability and to protect our customers from potential future sewer flooding, Scottish Water will not accept any surface water connections into our combined sewer system.

There may be limited exceptional circumstances where we would allow such a connection for brownfield sites only, however this will require significant justification from the customer taking account of various factors including legal, physical, and technical challenges.

In order to avoid costs and delays where a surface water discharge to our combined sewer system is anticipated, the developer should contact Scottish Water at the earliest opportunity with strong evidence to support the intended drainage plan prior to making a connection request. We will assess this evidence in a robust manner and provide a decision that reflects the best option from environmental and customer perspectives.

### **General notes:**

- ▶ Scottish Water asset plans can be obtained from our appointed asset plan providers:
  - ▶ Site Investigation Services (UK) Ltd
  - ▶ Tel: 0333 123 1223
  - ▶ Email: [sw@sisplan.co.uk](mailto:sw@sisplan.co.uk)
  - ▶ [www.sisplan.co.uk](http://www.sisplan.co.uk)
- ▶ Scottish Water's current minimum level of service for water pressure is 1.0 bar or 10m head at the customer's boundary internal outlet. Any property which cannot be adequately serviced from the available pressure may require private pumping arrangements to be installed, subject to compliance with Water Byelaws. If the developer wishes to enquire about Scottish Water's procedure for checking the water pressure in the area, then they should write to the Customer Connections department at the above address.
- ▶ If the connection to the public sewer and/or water main requires to be laid through land out-with public ownership, the developer must provide evidence of formal approval from the affected landowner(s) by way of a deed of servitude.
- ▶ Scottish Water may only vest new water or waste water infrastructure which is to be laid through land out with public ownership where a Deed of Servitude has been obtained in our favour by the developer.
- ▶ The developer should also be aware that Scottish Water requires land title to the area of land where a pumping station and/or SUDS proposed to vest in Scottish Water is constructed.

- ▶ Please find information on how to submit application to Scottish Water at [our Customer Portal](#).
- 

## **Next Steps:**

### **▶ All Proposed Developments**

All proposed developments require to submit a Pre-Development Enquiry (PDE) Form to be submitted directly to Scottish Water via [our Customer Portal](#) prior to any formal Technical Application being submitted. This will allow us to fully appraise the proposals.

Where it is confirmed through the PDE process that mitigation works are necessary to support a development, the cost of these works is to be met by the developer, which Scottish Water can contribute towards through Reasonable Cost Contribution regulations.

### **▶ Non Domestic/Commercial Property:**

Since the introduction of the Water Services (Scotland) Act 2005 in April 2008 the water industry in Scotland has opened to market competition for non-domestic customers. All Non-domestic Household customers now require a Licensed Provider to act on their behalf for new water and waste water connections. Further details can be obtained at [www.scotlandontap.gov.uk](http://www.scotlandontap.gov.uk)

### **▶ Trade Effluent Discharge from Non Dom Property:**

- ▶ Certain discharges from non-domestic premises may constitute a trade effluent in terms of the Sewerage (Scotland) Act 1968. Trade effluent arises from activities including; manufacturing, production and engineering; vehicle, plant and equipment washing, waste and leachate management. It covers both large and small premises, including activities such as car washing and launderettes. Activities not covered include hotels, caravan sites or restaurants.
- ▶ If you are in any doubt as to whether the discharge from your premises is likely to be trade effluent, please contact us on 0800 778 0778 or email [TEQ@scottishwater.co.uk](mailto:TEQ@scottishwater.co.uk) using the subject "Is this Trade Effluent?". Discharges that are deemed to be trade effluent need to apply separately for permission to discharge to the sewerage system. The forms and application guidance notes can be found [here](#).
- ▶ Trade effluent must never be discharged into surface water drainage systems as these are solely for draining rainfall run off.
- ▶ For food services establishments, Scottish Water recommends a suitably sized grease trap is fitted within the food preparation areas, so the development complies with Standard 3.7 a) of the Building Standards Technical Handbook and for best management and housekeeping practices to be followed which

prevent food waste, fat oil and grease from being disposed into sinks and drains.

- ▶ The Waste (Scotland) Regulations which require all non-rural food businesses, producing more than 50kg of food waste per week, to segregate that waste for separate collection. The regulations also ban the use of food waste disposal units that dispose of food waste to the public sewer. Further information can be found at [www.resourceefficientscotland.com](http://www.resourceefficientscotland.com)

I trust the above is acceptable however if you require any further information regarding this matter please contact me on **0800 389 0379** or via the e-mail address below or at [planningconsultations@scottishwater.co.uk](mailto:planningconsultations@scottishwater.co.uk).

Yours sincerely,

**Pamela Strachan**

Development Services Analyst

Tel: 0800 389 0379

[planningconsultations@scottishwater.co.uk](mailto:planningconsultations@scottishwater.co.uk)

### **Scottish Water Disclaimer:**

*"It is important to note that the information on any such plan provided on Scottish Water's infrastructure, is for indicative purposes only and its accuracy cannot be relied upon. When the exact location and the nature of the infrastructure on the plan is a material requirement then you should undertake an appropriate site investigation to confirm its actual position in the ground and to determine if it is suitable for its intended purpose. By using the plan you agree that Scottish Water will not be liable for any loss, damage or costs caused by relying upon it or from carrying out any such site investigation."*

Andrew Miller  
Planning Department  
Moray Council

Our Ref: 8344  
Your Ref: 21/01545/APP

By email only to: [consultation.planning@moray.gov.uk](mailto:consultation.planning@moray.gov.uk)

SEPA Email Contact:  
[planning.north@sepa.org.uk](mailto:planning.north@sepa.org.uk)

14 March 2023

Dear Andrew Miller

**Town and Country Planning (Scotland) Acts  
21/01545/APP**

**Change of use of bakery to restaurant and hot food takeaway with flat above and 2 no low cost housing units to the rear  
9 New Street Rothes Aberlour Moray AB38 7BQ**

Thank you for your consultation which was received by SEPA on 23 February 2023 in relation to the above application. We understand the reason for consultation is seeking SEPA's flood risk advice A. Flooding.

**Advice for the planning authority**

In line with the advice in the [Transitional Arrangements for National Planning Framework 4 letter](#), issued by the Chief Planner, Fiona Simpson, on 8 February 2023, that "From 13 February, on adoption and publication by Scottish Ministers, NPF4 will form part of the statutory development plan, along with the LDP applicable to the area at that time and its supplementary guidance. NPF4 will supersede National Planning Framework 3 and Scottish Planning Policy (SPP) (2014). NPF3 and SPP will no longer represent Scottish Ministers' planning policy and should not therefore form the basis for, or be a consideration to be taken into account, when determining planning applications on or after 13 February", our position and advice given below is based on the NPF4 policy.

**1. Flood Risk Advice**

- 1.1 We **object in principle** to the application. This is because the proposed development is expected to put people or property at risk of flooding which is contrary to National Planning Framework 4.
- 1.2 In the event that the planning authority proposes to grant planning permission contrary to this advice on flood risk, the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009 provides criteria for the referral to the Scottish Ministers of such cases. You may therefore wish to consider if this proposal falls within the scope of this Direction.
- 1.3 We previously commented on this application in February 2022 and advised that the applicant obtain information from the flood study commissioned by Moray Council on the Rothes Flood Prevention Scheme (FPS) to determine the flood risk at the site, given the area is afforded



Chairman  
Bob Downes

CEO  
Nicole Paterson

Angus Smith Building  
6 Parklands Avenue  
Eurocentral  
Holytown,  
North Lanarkshire, ML1 4WQ

Tel: 03000 99 66 99  
[www.sepa.org.uk](http://www.sepa.org.uk)

some protection from the FPS, and whether the proposals would be in accordance with Scottish Planning Policy in ensuring there was no increase in flood risk as a result of development. Our advice is now provided in accordance with National Planning Framework 4 (NPF4) adopted on 13 February 2023. Under NPF4, avoidance of flood risk areas in the 200 year plus climate change scenario is now a requirement and all applications must be assessed in line with the most up to date guidance. Previously, under Scottish Planning Policy, consideration of climate change was a recommendation only.

- 1.4 The Flood Risk Assessment (Fairhurst, Nov 2022) provided in support of this application summarises the information from the Moray Council commissioned study, which indicates that the site is not at flood risk during the 1 in 200 year event due to the presence of the Rothes FPS but during a 1 in 200 year plus climate change event, or when blockage is taken into account, the defences are predicted to overtop and the site is at flood risk during this scenario.
- 1.5 It is noted within the FRA that dry access and egress is maintained via the eastern boundary of the site. However, we have received a copy of the Moray Council commissioned study and do not believe this access would constitute a safe and flood free route to and from a secure place that is connected to ground above the design flood level and/or wider area as it is not possible to connect to the wider area from this point due to flooding and the surrounding buildings are also at flood risk. Access to New Street is also impacted by floodwater at this location.
- 1.6 At this time, we consider that it is for the Planning Authority to determine if this proposal is *“the redevelopment of previously used sites in built up areas where the LDP has identified a need to bring these into positive use.”*
- 1.7 Unfortunately, notwithstanding the above determination of the proposal, we consider that the site is unsuitable for redevelopment to a more vulnerable land use which is the case for the proposed residential element of the development, including the upper floor flat and two new dwellings. SEPA advise that the proposals do not demonstrate that long-term safety and resilience can be secured and would not accord with the principles of National Planning Framework 4.
- 1.8 We note that we have no objection on flood risk grounds to the proposed change of use to a restaurant/takeaway and would support other redevelopment to a similar land use or retail as existing.

## **2. Other planning matters**

- 2.1 For all other planning matters, please see our [triage framework and standing advice](#) which are available on our website: [www.sepa.org.uk/environment/land/planning/](http://www.sepa.org.uk/environment/land/planning/). Details of regulatory requirements and good practice advice, for example in relation to private drainage, can be found on the [regulations section](#) of our website

If you have queries relating to this letter, please contact us at the email above including our reference number in the email subject.

Yours sincerely  
Clare Pritchett  
Senior Planning Officer  
Planning Service



Ecopy to: [andrew.miller@moray.gov.uk](mailto:andrew.miller@moray.gov.uk)

Disclaimer: This advice is given without prejudice to any decision made on elements of the proposal regulated by us, as such a decision may take into account factors not considered at this time. We prefer all the technical information required for any SEPA consents to be submitted at the same time as the planning or similar application. However, we consider it to be at the applicant's commercial risk if any significant changes required during the regulatory stage necessitate a further planning application or similar application and/or neighbour notification or advertising. We have relied on the accuracy and completeness of the information supplied to us in providing the above advice and can take no responsibility for incorrect data or interpretation, or omissions, in such information. If we have not referred to a particular issue in our response, it should not be assumed that there is no impact associated with that issue. For planning applications, if you did not specifically request advice on flood risk, then advice will not have been provided on this issue. Further information on our consultation arrangements generally can be found on our [website planning pages - www.sepa.org.uk/environment/land/planning/](http://www.sepa.org.uk/environment/land/planning/).



## Consultation Request Notification

<b>Planning Authority Name</b>	Moray Council
<b>Response Date</b>	26th October 2021
<b>Planning Authority Reference</b>	21/01545/APP
<b>Nature of Proposal (Description)</b>	Change of use of bakery to restaurant and hot food takeaway with flat above and 2 no low cost housing units to the rear
<b>Site</b>	9 New Street Rothes Aberlour Moray AB38 7BQ
<b>Site Postcode</b>	N/A
<b>Site Gazetteer UPRN</b>	000133002364
<b>Proposal Location Easting</b>	327753
<b>Proposal Location Northing</b>	849267
<b>Area of application site (M<sup>2</sup>)</b>	600
<b>Additional Comment</b>	
<b>Development Hierarchy Level</b>	LOCAL
<b>Supporting Documentation URL</b>	<a href="https://publicaccess.moray.gov.uk/eplanning/centralDistribution.do?caseType=Application&amp;keyVal=R0ABE9BGIHG00">https://publicaccess.moray.gov.uk/eplanning/centralDistribution.do?caseType=Application&amp;keyVal=R0ABE9BGIHG00</a>
<b>Previous Application</b>	19/00330/APP
<b>Date of Consultation</b>	12th October 2021
<b>Is this a re-consultation of an existing application?</b>	No
<b>Applicant Name</b>	Mr Peter Ford
<b>Applicant Organisation Name</b>	
<b>Applicant Address</b>	9 New Street Rothes Aberlour UK AB38 9BQ
<b>Agent Name</b>	Plans Plus
<b>Agent Organisation Name</b>	Plans Plus
<b>Agent Address</b>	Main Street URQUHART By Elgin Moray IV30 8LG
<b>Agent Phone Number</b>	
<b>Agent Email Address</b>	N/A
<b>Case Officer</b>	Iain T Drummond
<b>Case Officer Phone number</b>	01343 563607
<b>Case Officer email address</b>	iain.drummond@moray.gov.uk

<b>PA Response To</b>	consultation.planning@moray.gov.uk
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**NOTE:**

If you do not respond by the response date, it will be assumed that you have no comment to make.

The statutory period allowed for a consultation response is 14 days. Due to scheduling pressures if a definitive response is not received within 21 days this may well cause the two month determination period to be exceeded.

Data Protection - Moray Council is the data controller for this process. Information collected about you on this form will be used to process your Planning Application, and the Council has a duty to process your information fairly. Information we hold must be accurate, up to date, is kept only for as long as is necessary and is otherwise shared only where we are legally obliged to do so. You have a legal right to obtain details of the information that we hold about you.

For full terms please visit [http://www.moray.gov.uk/moray\\_standard/page\\_121513.html](http://www.moray.gov.uk/moray_standard/page_121513.html)

For full Data Protection policy, information and rights please see [http://www.moray.gov.uk/moray\\_standard/page\\_119859.html](http://www.moray.gov.uk/moray_standard/page_119859.html)

You can contact our Data Protection Officer at [info@moray.gov.uk](mailto:info@moray.gov.uk) or 01343 562633 for more information.

Please respond using the attached form:-

## MORAY COUNCIL

### PLANNING CONSULTATION RESPONSE

**From:** Transportation Manager

**Planning Application Ref. No: 21/01545/APP**

**Change of use of bakery to restaurant and hot food takeaway with flat above and 2 no low cost housing units to the rear 9 New Street Rothes Aberlour Moray for Mr Peter Ford**

I have the following comments to make on the application:-

- |   | <b>Please</b>                       |
|---|-------------------------------------|
| (a) I OBJECT to the application for the reason(s) as stated below   | <input type="checkbox"/>            |
| (b) I have NO OBJECTIONS to the application and have no condition(s) and/or comment(s) to make on the proposal            | <input type="checkbox"/>            |
| (c) I have NO OBJECTIONS to the application subject to condition(s) and/or comment(s) about the proposal as set out below | <input checked="" type="checkbox"/> |
| (d) Further information is required in order to consider the application as set out below                                 | <input type="checkbox"/>            |

#### **Condition(s)**

1. Notwithstanding the submitted details no development works shall commence until a detailed drawing (scale 1:200 or 1:500) has been submitted to and approved in writing by the Council, as Planning Authority in consultation with the Roads Authority showing the proposed new vehicular accesses onto the U179E Station Street being amended to each provide an access width of 4.0m-4.5m, including provision of edge kerbing installed along the rear of the existing carriageway across the full width of each new access (to delineate and protect the edge of the footway following the removal of the existing boundary wall); and thereafter the vehicular accesses shall be provided in accordance with the approved drawing and details prior to the first occupation of each dwelling house.

Reason: To ensure acceptable infrastructure at the development access through the provision of details currently lacking.

2. No development works shall commence on the dwelling houses until a detailed drawing (scale 1:200) has been submitted to and approved in writing by the Council, as Planning Authority in consultation with the Roads Authority confirming the provision of, or location where a future Electric Vehicle (EV) charging unit is to be connected to an appropriate electricity supply for each dwelling, including details (written proposals and/ or plans) to confirm the provision of the necessary cabling, ducting, and consumer units capable of supporting the future charging unit for each dwelling; and thereafter the EV charging infrastructure shall be provided in accordance with the approved drawing and details prior to the first occupation of each dwelling house.

Reason: In the interests of an acceptable form of development and the provision of

infrastructure to support the use of low carbon transport, through the provision of details currently lacking.

3. No development works shall commence on site until a Construction Traffic Management Plan has been submitted to and approved in writing by the Council as Planning Authority in consultation with the Roads Authority. The Construction Traffic Management Plan shall include as a minimum the following information:

- duration of works;
- construction programme;
- areas identified for parking, delivery loading and unloading, storage of materials;
- full details of temporary arrangements to safeguard pedestrian movements during the construction period;
- full details of any temporary closures or diversions;
- measures to be put in place to prevent material being deposited on the public road;
- traffic management measures to be put in place during works including any specific instructions to drivers.

Thereafter, the development works shall proceed in accordance with the approved details, unless otherwise approved in writing by the Planning Authority in consultation with the Roads Authority.

Reason: To ensure an acceptable form of development in terms of the arrangements to manage traffic during construction works at the site, road safety and the amenity of the area/adjacent properties

4. One car parking space shall be provided within the site for each new dwelling house, prior to the first occupation of each dwelling house. The parking spaces shall thereafter be retained throughout the lifetime of the development, unless otherwise agreed in writing with the Council as Planning Authority

Reason: To ensure the permanent availability of the level of parking necessary for residents/visitors/others in the interests of an acceptable development and road safety.

5. No water shall be permitted to drain or loose material be carried onto the public carriageway.

Reason: To ensure the safety and free flow of traffic on the public road and access to the site by minimising the road safety impact from extraneous material and surface water in the vicinity of the new access's

6. The opening path of the new front entrance door onto the A941(W) New Street shall be fully contained within the site and not encroach onto/over the public footway. Any alterations to the threshold levels must be fully accommodated within the building itself. No alterations to the level of the public footway would be permitted at this location.

To ensure acceptable development that does not create any hazard to road users in the interests of road safety.

7. New boundary walls/fences shall be set back to the rear of the existing carriageway.

Reason: To ensure acceptable development in the interests of road safety.

8. Boundary fences/walls shall be no greater than 0.6m in height within 2.4m of the edge of the public carriageway, unless otherwise approved in writing by the Planning Authority in consultation with the Roads Authority

Reason: To enable drivers of vehicles entering or exiting the site to have a clear view so that they can undertake the manoeuvre safely and with the minimum interference to the safety and free flow of traffic on the public road.

**Further comment(s) to be passed to applicant**

Planning consent does not carry with it the right to carry out works within the public road boundary.

The provision of Electric Vehicle (EV) chargers and/or associated infrastructure shall be provided in accordance with Moray Council guidelines. Cabling between charging units and parking spaces must not cross or obstruct the public road including footways. Infrastructure provided to enable EV charging must be retained for this purpose for the lifetime of the development unless otherwise agreed in writing by the Planning Authority. Guidance on Electric Vehicle (EV) Charging requirements can be found at: <http://www.moray.gov.uk/downloads/file134860.pdf>

Before starting any work on the existing public road the applicant is obliged to apply for a road opening permit in accordance with Section 56 of the Roads (Scotland) Act 1984. This includes any temporary access joining with the public road. Advice on these matters can be obtained by emailing [roadspermits@moray.gov.uk](mailto:roadspermits@moray.gov.uk)

Public utility apparatus may be affected by this proposal. Contact the appropriate utility service in respect of any necessary utility service alterations which have to be carried out at the expense of the developer.

No building materials/scaffolding/builder's skip shall obstruct the public road (including footpaths) without permission from the Roads Authority.

The applicant shall be responsible for ensuring that surface/ground water does not run from the public road into their property.

The applicant shall free and relieve the Roads Authority from any claims arising out of their operations on the road or extension to the road.

**Contact: AG**  
**email address: [transport.develop@moray.gov.uk](mailto:transport.develop@moray.gov.uk)**  
**Consultee: TRANSPORTATION**

**Date 22 March 2023**

<b>Return response to</b>	<b><a href="mailto:consultation.planning@moray.gov.uk">consultation.planning@moray.gov.uk</a></b>
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Please note that information about the application including consultation responses and representations (whether in support or objection) received on the proposal will be published on the Council's website at <http://publicaccess.moray.gov.uk/eplanning/> (You can also use this site to track progress of the application and view details of any consultation responses and representations (whether in support or objection) received on the proposal). In order to comply with the Data Protection Act, personal information including signatures, personal telephone and email details will be removed prior to publication using "redaction" software to avoid (or mask) the display of such information. Where appropriate other "sensitive" information within documents will also be removed prior to publication online.





29 OCT 2021

MOMMY COUNCIL  
MANAGE DEVELOP MANAGE MONT ANI  
BUILDING STANDARDS WAY OCTOBER  
Fund

P/APPLICATIONS 21/01585/APP +  
21/01487/APP + 21/01457/APP + 21/01545/APP  
+ 21/01546/LBC + 21/01275/APP + 21/01524/  
APP + 21/01606/APP + 21/00961/AMC

ALL POSSIBLE PROTECTION FOR  
ALL WILDLIFE FOUND ON EACH  
WALL MAYBE FOUND ON EACH  
SITE

AS NOVEMBER DRAWS CLOSE  
LEGISLATION COMMENCES  
AMPHIBIANS REPTILES BATS  
SMALL MAMMALS etc etc IN PARTICULAR  
MOWS & HERBIVORES COME TO  
MIND MY POSITION TO THE  
SCOTTISH PETITIONS COMMITTEE  
BECOME A BILL AND WILL BE  
VOTED ON ON NOVEMBER 11TH  
WHATEVER THE OUTCOME  
YOUR PROTECTION WOULD BE

II

WIND TURBINES AN EVER  
GROWING HAZARD THAN EVER  
TO WINDSHIELD FROM WIND FARM  
PLEASE NOTE AND PASS COMMENTS  
TO WHOM EVER IT MAY  
CONCERN

Yours faithfully



NB NOTHING BELONGS TO  
WINDSHIELD FROM A FARM,  
IS SUBJECT TO PLANNING  
APPLICATIONS

1 November 2021

Development Management & Building Standards  
Moray Council  
PO Box 6760  
Elgin,  
IV30 1BX

Dear Sirs,

Application No. 21/1545/APP : Change of Use of Bakery to restaurant and hot food takeaway with flat above and 2 No. low cost housing units to the rear 9 New Street, Rothes, Aberlour.

We have lived [REDACTED] to the above premises for over 30 years and object to the above planning application for the reasons stated below. However, if a decision was made to go ahead with the project, we would ask that the undernoted be given consideration.

1: Removal of the walls of the building to the rear of the bakery building, adjacent to our garden will cause a major impact on our privacy. We would ask that the walls of the building being demolished, adjacent to our garden/garage, be retained to a minimum height of 2 metres. This is the same height as wall of the bakery building being retained and less than the height of the large rear building being demolished. It would also avoid any possible damage to the roots of the 40 year old flowering cherry tree which is adjacent to the wall.

2: We have a concern in regard to both noise and cooking fumes. We note that a filtration system is being installed but we would appreciate guarantee that this will be effective regardless of choice of catering type chosen in respect of both noise and smell.

3: Provision of parking for a restaurant/takeaway is a major consideration. New Street in on A941 which is the main route from Elgin or A96 to A9. There are double yellow lines from outside the premises under application to beyond the Station Hotel. On the opposite side of the road, McColls deliveries and customers, plus residents cars use much of the area available for vehicles. McColls frequently have to use traffic cones to save space for expected delivery HGV vehicles. The queue from traffic lights at junction of High Street and Green Street can also feed back, particularly, again when the road is busy with HGV vehicles. At the rear of the property on Station Street again there are double yellow lines down one side of the (much narrower) road. The fire station is situated on this road and these are necessary to allow free exit/return of the fire engine and fire services.

4: With possible hours of trading until 11.00 p.m. we are at considerable risk of noise later in the evening. The other takeaways in the village close at 8.00 p.m. and 9.00 p.m. and the Eastbank Hotel which also offers takeaway food, stops at 8.30 p.m.

Your consideration to the above points would be appreciated.

Yours faithfully,

[REDACTED]

[REDACTED]



## **REPORT OF HANDLING**

<b>Ref No:</b>	21/01545/APP	<b>Officer:</b>	Andrew Miller
<b>Proposal Description/ Address</b>	Change of use of bakery to restaurant and hot food takeaway with flat above and 2 no low cost housing units to the rear 9 New Street Rothes Aberlour Moray		
<b>Date:</b>	17.04.2023	<b>Typist Initials:</b>	LMC

<b>RECOMMENDATION</b>		
<b>Approve, without or with condition(s) listed below</b>		<b>N</b>
<b>Refuse, subject to reason(s) listed below</b>		<b>Y</b>
<b>Legal Agreement required e.g. S,75</b>		<b>N</b>
<b>Notification to Scottish Ministers/Historic Scotland</b>		<b>N</b>
<b>Hearing requirements</b>	<b>Departure</b>	<b>N</b>
	<b>Pre-determination</b>	<b>N</b>

<b>CONSULTATIONS</b>		
<b>Consultee</b>	<b>Date Returned</b>	<b>Summary of Response</b>
Planning And Development Obligations	27/10/21	Developer obligations sought towards healthcare (dental chair) and affordable housing.
Moray Flood Risk Management	13/04/23	Object on bass of flood risk to this proposal, contrary to NPF4 requirements to provide a safe access and egress from the site during a flood event.
Environmental Health Manager	25/10/21	No objections, informative notes provided.
Contaminated Land	25/10/21	No objections, informative notes provided.
Transportation Manager	22/03/23	No objections subject to conditions in respect of parking and EV charging, visibility, and submission of a Construction Traffic Management Plan.
Scottish Water	13/10/21	No objections, sufficient capacity for water supply from Badentinan, unable to confirm capacity for sewage connection to Rothes Waste Water Treatment Works. Advise applicant undertakes a pre-development enquiry with Scottish Water.
Scottish Environment Protection Agency	14/03/23	Object on basis of flood risk to the residential elements of this proposal. The FRA submitted with the application does not demonstrate that a safe and flood free route to and from a secure place that will not be affected by a flooding event. On this basis

Scottish Environment Protection Agency (Cont.)		the site is unsuitable for redevelopment to a more vulnerable land use (the two houses and flat above the shop). SEPA has no objection on flood risk grounds to the proposed restaurant/takeaway.
Moray Council Other Depts - Housing	17/12/21	For the purposes of this application it is to be treated as open market housing rather than "affordable".

<b>DEVELOPMENT PLAN POLICY</b>
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<b>Policies</b>	<b>Dep</b>	<b>Any Comments (or refer to Observations below)</b>
NPF1 - Tackling the Climate	Y	
NPF2 - Climate mitigation and adaptation	Y	
NPF3 - Biodiversity	N	
NPF9 - Brownfield, vacant, derelict land	N	
NPF13 - Sustainable transport	N	
NPF14 - Design, quality and place	N	
NPF16 - Quality homes	Y	
NPF18 - Infrastructure first	N	
NPF22 - Flood risk	Y	
NPF23 - Health and safety	N	
NPF27 - City, town, local comm centres	N	
PP3 Infrastructure and Services	N	
DP1 Development Principles	N	
DP2 Housing	Y	
DP7 Retail/Town Centres	N	
EP3 Special Landscape Areas	N	
EP12 Management and Enhancement Water	Y	
EP13 Foul Drainage	N	
EP14 Pollution Contamination Hazards	N	

<b>REPRESENTATIONS</b>
------------------------

Representations Received	YES	
Total number of representations received: ONE		
Names/Addresses of parties submitting representations		
Name and address details of parties submitting representations withheld in accordance with the General Data Protection Regulations.		

Summary and Assessment of main issues raised by representations
<p><b>Issue:</b> Mutual boundary with house to north should be retained at a minimum height of two metres to avoid impacts on privacy.</p> <p><b>Comments (PO):</b> No detail is shown on the plans of the proposed mutual boundary to the north, however this could be conditioned (if approved).</p>
<p><b>Issue:</b> Adverse impact of noise and cooking fumes on residential amenity.</p> <p><b>Comments (PO):</b> A Noise Impact Assessment has been submitted with the application Environmental Health service raised no objections to this application, and a noise impact assessment has been submitted with the application.</p>
<p><b>Issue:</b> Adverse impact of proposal on parking, particularly with shop adjacent and fire station to rear.</p> <p><b>Comments (PO):</b> The Transportation Manager has raised no objections to this proposal in respect of parking, noting there are parking control measures in place in the area and the proposal provides parking for the new residential properties to the rear.</p>
<p><b>Issue:</b> With possible hours of trading until 11pm there will be impacts on neighbouring residents. Other takeaways in Rothes close between 8pm and 9pm.</p> <p><b>Comments (PO):</b> The Environmental Health service raised no objections to this application, however were it to be approved there would likely be conditions applied restricting operating hours in the interests of residential amenity in the surrounding area.</p>
<p><b>Issue:</b> Impact of proposal on flora and fauna.</p> <p><b>Comments (PO):</b> The proposal is not considered to result in a significant adverse impact on flora and fauna.</p>

## OBSERVATIONS – ASSESSMENT OF PROPOSAL

Section 25 of the 1997 Act as amended requires applications to be determined in accordance with the development plan, namely the adopted National Planning Framework 4 and adopted Moray Local Development Plan 2020 (MLDP) unless material considerations indicate otherwise.

The main planning issues are considered below:

### Site

A two storey stone and slate building with various single storey extensions to the rear, on the corner of New Street (A941) and Station Street in Rothes. The building is currently used as a shop (Rothes Emporium). The surrounding area contains a mix of commercial and residential uses, with public toilets to the south and the Burn of Rothes beyond. It is located within The Spey Valley Special Landscape Area as designated in the MLDP and identified as being at risk of flooding from river sources (per SEPA flood maps).

### Proposal

Planning permission is sought for the partial demolition of the rear single storey elements of the building, and alterations to accommodate change of use of the existing building to form a restaurant and takeaway at ground floor level, along with the formation of a flat at first floor level of the building. On the site of the demolished elements of the building, two 1.5 storey semi-detached houses would be erected fronting to Station Street. Each house would have one parking space to the front.

## **Principle of Development**

Under NPF Policy 16 (f) provision of new residential development outwith allocated sites in an LDP will only be supported in limited circumstances. In this case, the proposal involves redevelopment of a site and is a relatively small scale development. In such circumstances, proposals should be consistent with the MLDPs spatial strategy and other relevant policies. MLDP Policy DP2 - Housing has a similar requirement, noting that all housing development (including those on windfall sites such as this) must be in compliance with all relevant policies of the LDP. This proposal is not acceptable due to the risk of flooding to the new residential properties (as noted below), and thus the general principle of this application cannot be supported under NPF Policy 16 and MLDP Policy DP2.

The site would be classed as brownfield land, and redevelopment of such land is suitable in principle under NPF Policy 9.

As noted above there is a mix of uses commercial uses in the surrounding area, therefore in principle the restaurant and takeaway element is suitable (noting that SEPA had no objection to this element of the proposal due to it having the same "vulnerability" as the existing use as a shop). This proposal is not considered to decrease the vitality and viability of the retail/commercial offering in Rothes and thus is not contrary to NPF Policy 27 and MLDP Policy DP7.

## **Flooding**

The sites location within an area of flood risk means the risk of the development from flooding must be considered. NPF Policy 22 presumes against development at risk of flooding/in a flood risk area, though there are exceptions (as does MLDP Policy EP12). This includes instances where the redevelopment of an existing building for an equal or less vulnerable land use. The restaurant and takeaway element of this proposal is suitable in light of this. However further consideration must be given to the risk of flooding to the residential element of this proposal.

Protection offered by an existing flood scheme can be taken into account when determining flood risk under NPF Policy 22. This site is offered protection via the Rothes Flood Alleviation Scheme (FAS). In such instances, the applicant must demonstrate that:

- all risks of flooding are understood and addressed;
- there is no reduction floodplain capacity, increased risk for others, or a need for future flood protection schemes;
- the development remains safe and operational during floods;
- flood resistant and resilient materials and construction methods are used; and
- future adaptations can be made to accommodate the effects of climate change.

A Flood Risk Assessment (FRA) was submitted in support of this application following an initial objection from both SEPA and Moray Flood Risk Management. This is due to the introduction of residential accommodation which sees an increase in the vulnerability of use of the site and requires detailed consideration. The FRA identifies the risk of flooding to the site from various sources, noting that the site, New St and Station St are at risk of flooding from fluvial flooding at a 1 in 200 year flood event. It notes the FAS is designed to contain flood waters during such an event. However taking account of climate change during a 1 in 200 year flood event, flood waters are likely to overtop the FAS. In such instances flood water will reach a level of 250 mm are predicted at the site. With 600 mm freeboard requirements, the FRA proposes the finished floor levels of the proposed new houses be set at 850 mm above current ground levels. It also notes that dry access and egress is maintained via the eastern boundary of the site.

Having reviewed the FRA, both SEPA and Moray Flood Risk Management have objected to this application on flood risk grounds. They highlight the requirements of NPF Policy 22, notably the requirement for development to remain "safe and operational during floods". SEPA note the statement within the FRA that dry access and egress is maintained via the eastern boundary of the site, but also note a Moray Council study on the FAS commissioned recently. This access would not



constitute a safe and flood free route to and from a secure place that is connected to ground above the design flood level and/or wider area. It is not possible to connect to the wider area from this point due to flooding and surrounding buildings are also at flood risk.

In light of this the proposal does not satisfy the requirement of development to remain safe and operational during a flood event and is therefore contrary to NPF Policy 22 and MLDP Policy EP12. The proposal is subsequently contrary to NPF Policy 1 on the basis the impact of climate change must be considered for all proposals (noting significant weight must be given to the climate crisis). It is also contrary to NPF Policy 2 because the proposal is not sited and designed to adapt to current and future risks from climate change.

### **Design and Siting**

NPF Policy 14 requires all development to be designed to improve the quality of an area and be consistent with the six qualities of successful places. MLDP Policy DP1 requires the scale, density and character of development to be appropriate to the surrounding area.

The alterations to the shop frontage (change window to door and door to window) and the rear following the part demolition would be in keeping with the building. No detail has been provided of material finishes on the plans, however this could be conditioned.

The houses to the rear would comprise a pair of semi-detached 1.5 storey houses. They would sit at an elevated position in the site in light of the flood risk to the site and recommendations of the FRA as outlined above. As a result both houses have steps to the front and rear. The houses themselves are of a simple design and proportion, modest in scale and would not be out of character with the surrounding area (a mix of building design and ages). The supporting planning statement notes a grey roof tiles and a dry dash harl to match the existing building would be used (presumably in white as the shop is painted smooth render).

As noted in the supporting planning statement the redevelopment of this site would bring the building up to more modern standards, while also improving the appearance of the rear of the site (which has a mix of building styles and is in a relatively poor condition).

Overall, the proposal is considered to suitably designed and sited in terms of the aforementioned design policies.

### **Special Landscape Areas**

The sites location in The Spey Valley SLA as designated in the MLDP means policy EP3 must be considered. In this case, the location within the settlement means it must comply with policies PP1, DP1 and DP3 where appropriate. The design and siting evaluation above concludes it is designed in accordance with DP1, and the proposal reflects the traditional pattern of development in Rothes. Accordingly this proposal is not in conflict with MLDP Policy EP3.

### **Biodiversity**

Under NPF Policy 3 all development must contribute to biodiversity enhancement. No detail of any biodiversity enhancement has been provided with this application, though this could be conditioned were this application to be approved (e.g. though landscaping, bird/bat boxes etc.).

### **Access and Parking**

MLDP Policy PP3 contains a number of criteria to ensure developments are served by suitable access and parking (including EV charging), which is echoed at a national level by NPF Policy 13.

With regard to the takeaway/restaurant element, on street parking within the surrounding streets is limited - however it is accepted that the previous use(s) of this building would already have had an associated parking demand. Waiting restrictions are also present within the surrounding streets (preventing inconsiderate/inappropriate parking) and in curtilage parking is to be provided for the new

residential dwellings. There are no footways present within this part of Station Street, and a doorway currently opens straight out onto the carriageway. The proposal includes the retention of this door however the customers entrance to the restaurant and take-away (as well as to the 'manager flat') is to be via New Street where a footway is present, and based on the limited use (mostly associated with deliveries) the existing door may remain.

Following a number of amendments to the parking arrangement of the two new houses to the rear, the Transportation Manager raised no objections to this proposal. Subject to conditions as recommended, the proposal complies with NPF Policy 13 and MLDP Policy PP3.

### **Amenity Impacts**

NPF Policy 23 (e) does not support development that raises unacceptable noise issues, which is echoed by MLDP Policy EP14. The use of the building as a takeaway/restaurant could give rise to an adverse impact on the amenity of the surrounding area. The supporting planning statement states this would operate 7 days a week, 4.30pm to 11pm (at the latest). A Noise Impact Assessment was submitted with the application. Environmental Health raised no objection to this application, recommending a number of informative notes. The mitigation measures contained in the Noise Impact Assessment recommend the flat be tied to the restaurant/takeaway due to a lack of party wall, provision of acoustic fencing between the new houses and restaurant, and ensure plant and machinery does not emit noise above a certain level. Conditions would be recommended in line with this, along with restrictions on operating hours should the application be approved in order to satisfy NPF Policy 23 and MLDP Policy EP14.

### **Developer Obligations/Affordable Housing**

Developer obligations have been identified towards healthcare (provision of dental chairs in Rothes) and affordable housing. The developer has indicated a willingness to contribute to this, in line with the requirements of NPF Policy 16, NPF Policy 18 and MLDP Policy PP3 (and the Developer Obligations Supplementary Guidance to the MLDP).

Whilst described as “low cost housing” this application is being assessed as open market housing following discussions with the Council’s housing service, who have confirmed the development is not suitable for affordable housing provision.

### **Conclusion**

This proposal would undoubtedly enhance appearance of the site and subsequently the character of the area, however allowing an increase in the number of people at risk from flood events goes against flood risk policy at a local and national level. Accordingly this application is recommended for refusal.

## **OTHER MATERIAL CONSIDERATIONS TAKEN INTO ACCOUNT**

None

## **HISTORY**

Reference No.	Description		
19/00330/APP	Change of use from a bakery and shop to a hot food takeaway and storage at 11 New Street Rothes Aberlour Moray AB38 7BJ		
	<b>Decision</b>	Withdrawn	<b>Date Of Decision</b> 28/03/19

<b>ADVERT</b>		
<b>Advert Fee paid?</b>	<b>Yes</b>	
<b>Local Newspaper</b>	<b>Reason for Advert</b>	<b>Date of expiry</b>
Northern Scot	Development specified in Schedule 3 No Premises	11/11/21
PINS	Development specified in Schedule 3 No Premises	11/11/21

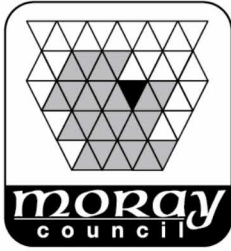
<b>DEVELOPER CONTRIBUTIONS (PGU)</b>	
<b>Status</b>	Cont sought

<b>DOCUMENTS, ASSESSMENTS etc. *</b>		
<i>* Includes Environmental Statement, Appropriate Assessment, Design Statement, Design and Access Statement, RIA, TA, NIA, FRA etc</i>		
Supporting information submitted with application?	YES	
Summary of main issues raised in each statement/assessment/report		
Document Name:	Planning and Drainage Statement	
Main Issues:	Background to proposal, and details of drainage arrangement proposed.	
Document Name:	Flood Risk Assessment	
Main Issues:	Identifies sources and risk of flooding to the proposed development.	
Document Name:	Noise Impact Assessment	
Main Issues:	Background to proposal, and details of drainage arrangement proposed.	

<b>S.75 AGREEMENT</b>		
Application subject to S.75 Agreement		NO
Summary of terms of agreement:		
Location where terms or summary of terms can be inspected:		

<b>DIRECTION(S) MADE BY SCOTTISH MINISTERS (under DMR2008 Regs)</b>			
Section 30	Relating to EIA		NO
Section 31	Requiring planning authority to provide information and restrict grant of planning permission		NO
Section 32	Requiring planning authority to consider the imposition of planning conditions		NO
Summary of Direction(s)			



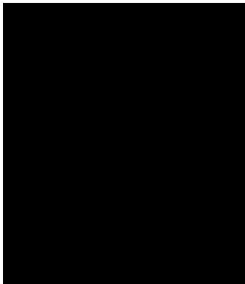


**MORAY COUNCIL  
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997,  
as amended**

**REFUSAL OF PLANNING PERMISSION**

**[Speyside Glenlivet]  
Application for Planning Permission**

TO



With reference to your application for planning permission under the above mentioned Act, the Council in exercise of their powers under the said Act, have decided to **REFUSE** your application for the following development:-

**Change of use of bakery to restaurant and hot food takeaway with flat above and 2 no low cost housing units to the rear 9 New Street Rothes Aberlour Moray**

and for the reason(s) set out in the attached schedule.

Date of Notice: **17 April 2023**



**HEAD OF ECONOMIC GROWTH AND DEVELOPMENT**

Economy, Environment and Finance

Moray Council

Council Office

High Street

ELGIN

Moray

IV30 1BX

## IMPORTANT

**YOUR ATTENTION IS DRAWN TO THE REASONS and NOTES BELOW**

### **SCHEDULE OF REASON(S) FOR REFUSAL**

By this Notice, Moray Council has REFUSED this proposal. The Council's reason(s) for this decision are as follows: -

The proposal is contrary to the development plan (i.e. National Planning Framework 4 and the Moray Local Development Plan 2020) because the site is at risk of fluvial flooding from the nearby Broad Burn, as identified via SEPA flood maps and noted in the Flood Risk Assessment that accompanied this application. The site is offered a degree of protection from flooding via the Rothes Flood Alleviation Scheme however during a 1 in 200 year event along with an allowance for climate change, flood water is likely to overtop the flood defences. The site is therefore at risk of flooding and a safe and flood free route to and from a secure place that is connected to ground above the design flood level and/or wider area. On this basis the proposal therefore fails to comply with the following development plan policies:

- NPF4 Policy 22 - Flood Risk and Water Management
- MLDP Policy EP12 - Management and Enhancement of the Water Environment
- NPF4 Policy 1 - Tackling the Climate and Nature Crises
- NPF4 Policy 2 - Climate Mitigation and Adaption

### **LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT**

The following plans and drawings form part of the decision:-

<b>Reference</b>	<b>Version</b>	<b>Title</b>
		Location plan
DWG2~		Elevations and floor plans
DWG3~		Elevations and floor plan
DWG1~		Proposed floor plan

### **DETAILS OF ANY VARIATION MADE TO ORIGINAL PROPOSAL, AS AGREED WITH APPLICANT (S.32A of 1997 ACT)**

Amendments to layout of parking arrangement to front of houses.

**NOTICE OF APPEAL  
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

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 from the date of this notice. The notice of review should be addressed to The Clerk, Moray Council Local Review Body, Legal and Committee Services, Council Offices, High Street, Elgin IV30 1BX. This form is also available and can be submitted online or downloaded from [www.eplanning.scotland.gov.uk](http://www.eplanning.scotland.gov.uk)

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 the 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 in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

