

Report for Resolution

Report to Planning Applications Committee
Date 1 July 2010
Report of Head of Planning Services
Subject 10/00661/F 31 St Stephens Road Norwich NR1 3SP
(previously advertised as 29-31 St Stephens Road)

Item
5(4)

SUMMARY

Description:	Change of use from shop (Class A1) to restaurant/cafe (Class A3) and installation of an extraction flue system to the rear.	
Reason for consideration at Committee:	Objection	
Recommendation:	Refuse	
Ward:	Town Close	
Contact Officer:	Mr Jonathan Bunting	Planner, Development Management 01603 212506
Valid date:	13th May 2010	
Applicant:	Mr Mehmet Sert	
Agent:	Mr Ali Ay, A Anva Limited	

INTRODUCTION

The Site

Location and Context

1. The application premises is a retail newsagents' shop, grocery and off licence, one of a pair of shops on the west side of St. Stephens Road (A11) some 150m to the south of its roundabout junction with the Inner Ring Road (A147) marking the edge of the City centre, and just south of the junction with St Stephens Square. The rear part of the shop forms the ground floor of a three storey building set well back from the road and dating originally from the early 19th century. Its upper floors are currently in use as offices with an additional flat-roofed office annex at the rear nearest to 43 St Stephens Square. The single storey flat-roofed front section was added at some time in the early 1960s as an extension to the original commercial office premises and is contemporary with the adjoining florists shop at 29 St Stephen's Road. Until the early 1990s both the front and rear parts of the ground floor were used in conjunction with the upper floors of number 31 as a commercial estate agency and associated offices. The ground floor has been in use as a convenience store (and has operated as a separate planning unit) since planning permission was granted for change of use of this part of the building from offices to retail in 1991.
2. From its junction with St Stephens Square northward (approaching the City Centre), the frontage on this side of St Stephens Road is predominantly commercial in nature and includes a retail furniture showroom, two public houses including the Trowel and Hammer nearest to the site, an Indian takeaway, a hairdresser and a laser games centre. South of

the junction with St Stephens Square (which marks the limit of the City centre for planning purposes) St Stephens Road becomes significantly more residential and suburban in character on both sides and includes the extensive former Norfolk and Norwich Hospital buildings immediately to the south of the application site, which are currently being converted to residential apartments, and residential dwellings and a guest house on the opposite side of St Stephens Road. The west and south sides of St Stephen's Square immediately behind the site and to the north-west are also almost wholly residential and the majority of its houses are Listed Buildings dating from the early Victorian era, with the exception of the frontage building to St Stephens Square nearest to the site, currently used as a café and sandwich shop (number 45). There is residential accommodation in St Stephens Square immediately to the rear of the application premises (43 and 43a) as well as a flat above the café.

Constraints

3. 31 St. Stephens Road is closely built up on all sides, backs directly onto residential accommodation and has no amenity space around it and no on-site parking space available for staff or customers. The nearest on-street spaces are three spaces nearby on the south side of St. Stephens Square, which cannot be accessed directly from St. Stephens Road but only from the north via an indirect route from Chapelfield Road. The site falls within the Newmarket Road Conservation Area. The immediately adjoining former hospital buildings and the great majority of the neighbouring buildings in St Stephens Road, Kingsley Road and Victoria Street are either Listed Buildings or on the Council's Local List of buildings of architectural and historic interest.

Topography

4. The site is level with no noted physical constraints on development

Planning History

4/1991/0407 - Change of use from offices to shop (Class A1). Approved 21 June 1991.

4/1994/0012 - Creation of one flat on first and second floor. Approved 1st March 1994: not implemented.

08/00187/F - Change of use from A1 (retail) to A5 (hot food take-away). This application was refused on 8th May 2008 and dismissed on appeal on 29 October 2008, the reasons for refusal (supported by the Inspector) being (1) harm to highway safety through the likelihood of customers' and service vehicles stopping on the highway outside the premises in the absence of any suitable off-street parking; and (2) harm to residential amenity by reason of likely food odour nuisance, litter in and around the premises and the adjoining area, and potential late night noise and disturbance from takeaway customers in an area with a high level of residential occupancy.

An enforcement investigation was initiated in May 2008 in response to the applicant's alleged intention to open the premises as a hot food takeaway despite the Council's refusal of permission. No breach of planning control was found.

09/01461/F - Change of use from shop (Class A1) to restaurant/cafe (Class A3) and hot food take-away (Class A5) including the installation of an extraction flue system to rear. This application was invalid on receipt in December 2009 due to inadequate information submitted, and was subsequently cancelled, superseded by application 10/0228/F below.

10/00228/F - Change of use from shop (Class A1) to restaurant/cafe and hot food takeaway (Class A3/A5) and installation of an extraction flue system. This application was withdrawn

before determination on 6th April 2010 on the advice of planning officers that an A5 hot food takeaway element would not be acceptable.

The Proposal

5. It is proposed to convert the present retail newsagents shop and off-licence on the ground floor to provide a café/restaurant. The back part of the premises would accommodate the food preparation area which would be partitioned off from a lobby leading to toilets at the rear converted from the area currently used as a store. There is no indication on the submitted plans of how the public dining area at the front of the shop would be arranged internally but the plans show a single serving counter between the front part of the shop and the kitchens. An extraction flue with associated noise attenuation and filtration equipment is shown leading from the kitchens and ducted back through the gents toilet at the rear to connect with a vertical ventilation chimney positioned on the external rear (west) wall of 31 St Stephens Road. The ventilation stack would rise two storeys to a height of some 7.4 metres from the point it emerges from the rear of the premises and a total height from ground level of approximately 10 metres. The stack would terminate and vent at a level below the roof ridge around 1 metre above eaves height.
6. The proposed restaurant is intended to be open to the public between 7am and 11pm (0700-2300) Monday-Saturday and 8am and 10.30pm (0800-2230) on Sunday.
7. The application is identical to the earlier withdrawn scheme submitted in February 2010 for a restaurant/takeaway (10/00228/F), aside from the deletion of the takeaway hot food element from the proposal description and the removal of any reference to a takeaway on the submitted plans. No hot food takeaway is therefore proposed as part of this proposal.

Representations Received

8. There have been two separate periods of publicity for this proposal. The application was initially advertised on site and in the press on 21st April 2010, with adjacent and neighbouring occupiers and previous objectors having been notified by letter on 19th April. Following an approach from the operator of the adjoining shop (number 29), it became clear that early advice given to the applicant and the Council's initial publicity for the application had inadvertently quoted an incorrect postal address for the property (largely as a result of out-of-date postal numbering appearing on the official Ordnance Survey map). Accordingly, the necessary amendments were sought from the applicant, neighbours were re-consulted on 16th May and the application was readvertised on 19th May with a corrected address.
9. Seven individual letters of representation have been received citing the issues as summarised in the table below, three of which representations are made via a local ward councillor. Eleven letters of representation had been received to the earlier restaurant/takeaway application made immediately prior to this one (10/00228/F), in which largely similar issues were raised.

Issues Raised	Response
Principle of use inappropriate as proposal will lead to migration and intensification of late night commercial activities (which should be confined to the city centre) into a predominantly residential area.	See paras. 25 - 26

Likelihood that restaurant would be geared primarily to customers returning from City centre after night's drinking: exacerbating problems of late night noise, disturbance, loitering, litter, antisocial behaviour and drunkenness and consequent impact on residential amenity.	See para. 25
Proposal would not attract local customers but those from further afield: would increase likelihood of indiscriminate customer parking in nearby streets and would exacerbate existing problems of business permit holders parking long-term in St Stephens Square. This will restrict availability of parking for local residents and causing loss of residential amenity through increased late night noise and disturbance.	See para. 31 - 32
Area already well served with pubs, restaurants and takeaways and another outlet not needed: preferable to encourage a well designed residential scheme for the site more in keeping with the character of the area.	See para 19. Although longer term a residential redevelopment could be beneficial, this is not the proposal for consideration at this meeting.
Proposal will lead to indiscriminate parking of customer vehicles outside the premises on a busy main road in the bus lane, restricting visibility for traffic emerging from St Stephens Square to the detriment of highway and pedestrian safety.	See para. 39. Deletion of takeaway element will now make this less likely.
Premises have no on-site staff parking or customer parking: nearest available on-street spaces are only indirectly accessible by driving through residential area of St Stephens Square increasing noise and disturbance to residents from passing traffic/vehicle noise.	See para. 31 - 32
Proposed use inappropriate within a conservation area and contrary to national policy – both the use and the associated flue would result in serious harm to the heritage significance of the area.	See para. 27 - 30
Proposal for large extractor on the roof of the building likely to significantly increase food odour nuisance to adjoining residents.	See para. 35
Objection to loss of local shop and off-license which is a valued local amenity and meeting point especially for elderly and has contributed to increased social cohesion in the area.	See para. 22, 24
Current operator has cited recent alcohol-related violence and threats as reason for	Restaurant use in principle would not necessarily result in escalation in anti-social

having to relinquish the shop but there is no evidence that such problems would not continue, or indeed worsen, with a restaurant/takeaway use.	behaviour. Noise nuisance issues are addressed in para 25.
Proposal is not sufficiently distinct from the previous 2008 application for a takeaway only, which was refused and dismissed on appeal by the Planning Inspectorate. The present proposal does very little to address the concerns expressed by the Inspector at that time or overcome the substantial level of local opposition to that scheme which still apply in this case.	Accepted in part (although local opposition is not necessarily a reason to resist proposals which are acceptable in planning policy terms). See conclusions on outstanding unresolved concerns at paras 36 - 40.

10. The applicant has also submitted a petition of support with thirty signatures, the majority of which would appear to be from local residents. This is indicated as being a petition in support of “a kebab shop”. Members are reminded that they are being asked to consider the acceptability of a change of use to an A3 café/restaurant in principle (offering food for consumption solely on the premises) and not the merits or otherwise of a takeaway or any other form of catering establishment. However, a kebab shop is more likely to be geared to the takeaway trade and it has been made clear to the applicant that such a facility could not be accepted here, and this application does not now include any hot food takeaway element.
11. A number of objectors allege that the intention of the applicant has always been to operate a kebab takeaway from the premises (alluding to the previous enforcement investigation) and will pursue this option irrespective of any permissions granted. However, a takeaway is not the proposal before you, and should this eventuality arise the Council would have the option of taking appropriate enforcement action to secure the cessation of any unauthorised takeaway use.

Consultation Responses

12. The Environmental Health Officer (Pollution Control) was consulted on 15th April. He advises that the submitted drawings show the planned route and filter/fan positions for the extraction system but no details of type or specification of these fitments. Accordingly, should the proposal be approved a condition is recommended requiring the submission of these details prior to commencement.

ASSESSMENT OF PLANNING CONSIDERATIONS

Relevant Planning Policies

National Planning Policies

Planning Policy Statement 1 (PPS1) – Delivering Sustainable Development
Planning Policy Statement 1 supplement – Planning & Climate Change
Planning Policy Statement 4 (PPS4) – Planning for Sustainable Economic Growth
Planning Policy Statement 5 (PPS5) – Planning for the Historic Environment
Planning Policy Guidance Note 24 (PPG24) – Planning and Noise

Adopted Policies of the East of England Plan (May 2008)

SS6 – City and Town Centres
ENV6 – The Historic Environment
ENV7 – Quality in the Built Environment
WM6 – Waste Management

Saved Policies of the Adopted Norfolk Structure Plan (October 1999):

T2 – Effect of development on transportation and access

Saved Policies of the Adopted City of Norwich Replacement Local Plan (November 2004):

SHO22 – Food and Drink uses
HBE8 – Development in Conservation Areas
HBE12 – Design
EP10 – Noise protection between different uses
EP22 – Residential Amenity
TRA5 – Approach to design for vehicle movement and special needs
TRA6 - Parking
TRA7 – Cycle Parking
TRA8 – Servicing provision
TRA16 – Bus priority measures

Supplementary Planning Documents and Guidance

Not applicable

Principle of Development

Policy Considerations

13. National policy in PPS1 seeks to ensure that development is located appropriately and accessibly in accordance with sustainable principles. PPS4 encourages appropriate business development to support economic growth, seeking (inter alia) to safeguard retail vitality by focusing accessibly located shopping development and other supporting services and facilities within town centres. Planning Policy Statement 5 requires new development to safeguard and (where appropriate) enhance the significance of designated heritage assets which includes protecting the character and appearance of Conservation Areas, whilst Planning Policy Statement 24 sets out the general planning considerations in relation to uses likely to cause noise.
14. East of England Plan policy SS6 sets out a preferred hierarchy of retail centres, seeking to focus new development and retail and service uses predominantly in defined centres. Policy ENV6 aims to safeguard areas of historic interest and heritage assets within the region, whilst policy ENV7 requires a high quality of design in all new development. Policy WM6 requires new development to make proper provision for waste management and disposal.
15. Saved Policy T2 of the Norfolk Structure Plan requires new development proposals to be assessed for their effect on traffic generation and alternative modes of access, resisting development proposals with which do not have adequate or safe access arrangements.
16. City of Norwich Replacement Local Plan saved policy SHO22 applies controls over food and drink uses by allowing limits on opening hours and resisting proposals which would have unacceptable effects on neighbourhood amenity or highway safety. Policy HBE8

requires new development to be appropriate to the character and appearance of Conservation Areas, Policy HBE12 seeks a high standard of design in all new development. Policy EP10 requires development to take account of the likely impacts on adjacent uses from noise, and policy EP22 requires that development should not harm the amenity of residents through noise, odour, light pollution or loss of outlook and daylighting. Policies TRA6, TRA7 and TRA8 require adequate provision for vehicle and cycle parking and servicing,

Other Material Considerations

17. The Inspector's conclusions in dismissing the appeal on the previously refused application for a hot food takeaway (08/00187/F) are relevant, since the issues relating specifically to residential amenity, noise and smell nuisance and impact on the Conservation Area would still apply here. The Inspector's decision letter is appended for information.
18. In the course of considering this and previous applications, objectors have made reference to various issues around the operation of the applicant's present business and aspects of his personal conduct. Members are reminded that these are not material planning considerations and must be disregarded in the assessment of this application, whose determination should turn solely on the acceptability of a café/restaurant use in principle irrespective of operator.

Retail and Town Centre Uses – Locational Principle

19. Established national policy on the location of shops and supporting services seeks to focus such uses in town centres, in district and local centres and in other locations of high accessibility adopting the sequential approach which puts "town centres first". PPS4 defines restaurants as town centre uses; accordingly any new restaurants and cafes should preferably seek to locate within or adjacent to centres and in other locations of high accessibility where they are best placed to serve their intended customer base. There is no policy basis for restricting the number or controlling the distribution of A3 uses, as there would be with shops.
20. 31 St Stephens Road is not in the city centre retail area or a local shopping centre, nor in the wider city centre as defined for planning purposes. As shown in the Local Plan, the city centre boundary has been drawn to include the mainly commercial frontage of shops and pubs on St. Stephens Road directly to the north of St. Stephens Square, but to exclude the cluster of shops at 29-31 St Stephens Road and 43 St Stephens Square, which are local shops relating more closely to the surrounding residential area. There is a clear functional break at the St Stephens Square junction between zones of "town centre" and suburban character.
21. Members may recall that a similar change of use to A3 was recently approved at 13 St. Stephens Road (application 09/01546/F), also involving the loss of a shop. However, in contrast to the present application those premises were within the defined City centre for planning purposes, situated in a largely commercial frontage and somewhat closer to, and more accessible on foot from, the central shopping area than is number 31. The commercial frontage to the north of St Stephens Square therefore represents a more suitable location for restaurants and cafes in retail policy terms (albeit marginally so) than the application site.

Loss of the shop

22. It is important for local planning authorities to protect a range of accessible shops and services meeting local needs, and this proposal would result in the loss of a long-established local convenience store. However, there are alternative local shops in the area

(the nearest being at Brunswick Road and Grove Road) as well as a range of food shopping facilities in the city centre. Planning policy officers have advised that it would be difficult to sustain an objection to the loss of this shop since this is not a recognised local centre or a defined shopping frontage and the Local Plan does not explicitly protect shops outside these defined areas.

23. National policy in PPS4 advises that in local centres and rural villages, proposals which fail to protect facilities which provide for people's day-to-day needs (for example, resulting in the loss of local shops and pubs) should be refused. However in urban situations the advice again applies to local centres and it would be difficult to argue that this protection can be extended to *all* local shops in towns and cities.
24. On balance it is considered that the loss of the convenience shop could not necessarily be prevented and the proposal cannot therefore be resisted on these grounds. However, the location of new restaurants (as town centre uses) must be assessed in accordance with the sequential test as set out in PPS4. Even though there is a shop here already, in strict policy terms this cannot be regarded as a city centre location suitable for a restaurant unless the applicant can show that there are no other alternatives available, or if there is some other overriding planning benefit from the new use. No such evidence has been provided.

Impact on Living Conditions

Noise and Disturbance

25. Objectors have drawn attention to the numerous food and drink outlets already existing in St Stephens Road which are acknowledged to give rise to a certain amount of noise, disturbance and food odour nuisance in the wider area, particularly in the evenings when the nearby Indian takeaway is open. The two pubs and the takeaway already open to 11pm and beyond. The present shop also opens well into the evening. It could be argued that the change to a restaurant/café may not add appreciably to the current issues of late night noise experienced by local residents in what is a lively, mixed use area. Typically however, a restaurant could be expected to have significantly different patterns of usage to a "top-up" shop and there would tend to be more obvious peaks of noise and activity from this more intensive restaurant use, particularly at closing time when customers may be leaving the premises in larger groups and lingering outside in conversation. This would tend to have a pronounced noise impact on immediate neighbours directly opposite and to the rear in St. Stephens Square. It should be noted that there is significantly more housing near to this site than was the case with the restaurant recently permitted at 13 St. Stephens Road and that the permission granted in that case was conditioned to a 10pm closure.
26. On balance it is considered that the change of use to a restaurant would extend more intensive commercial uses further into a residential area adding appreciably to the potential evening and late night noise and disturbance apparent in the area. This could not be wholly mitigated by conditions limiting opening hours.

Design

Conservation Area – Impact on Setting

27. The only substantive alteration proposed is the installation of an eaves-height external ventilation chimney on the rear side of the building nearest to 43 St Stephens Square. The premises have been significantly altered over the years and although the original three-storey range standing back from the street dates from the 19th century, the unsympathetic

1960s additions at the front have obliterated much of its original historic and architectural merit. Accordingly the building is neither listed nor locally listed. No elevations have been provided illustrating precisely how the chimney would appear against the backdrop of the building, although it would not be readily visible from the street from St Stephens Road. The overall impact of the flue on the appearance of an already somewhat despoiled building would be marginal. Nevertheless it would be visible from certain viewpoints in St. Stephens Square and the area immediately behind the street range, which is more significant in conservation terms, with a largely unspoilt frontage of early Victorian terrace houses contributing to the character of this part of the Conservation Area.

28. Objectors have cited various clauses of the recent national policy advice in PPS5 which now requires a somewhat broader (and stricter) appraisal of overall harm to the significance of heritage assets from development proposals. Reference is made in particular to the demonstrably harmful impact of this proposal on a designated heritage asset (the Conservation Area), the lack of public benefit arising from the restaurant use, and the fact that the proposal would neither enhance nor better reveal the significance of the heritage asset. Also mentioned is the presumption in favour of conservation contained in PPS5, which this proposal would not deliver.
29. Members are reminded that although the previously refused takeaway proposal was dismissed on appeal, the Inspector accepted that neither the ventilation flue nor the change of use then proposed (A5) would actually harm the *character* of the conservation area. Although the new advice in PPS5 puts more emphasis on the impact of new uses as a whole, a judgement needs to be made on the degree of intrinsic harm to the significance of the heritage asset that a more intensive restaurant use *in principle* would cause compared to the retail use which exists now. It is particularly difficult to gauge and successfully argue the degree of harm to heritage significance caused by incremental changes such as this (and of course many restaurants operate wholly successfully in Conservation Areas). However, the generally quieter residential character of this area, in contrast to the busier and more commercial character of St Stephens Road nearer the City centre, could be argued to make a significant contribution in itself to the conservation area's general ambience and heritage significance which this proposal would undermine.
30. Should these issues need to be debated on appeal, the Inspector's previous judgements on conservation impact would be relevant. Although this is arguably a use more suited to the City centre, its overall Conservation Area impact could be seen as fairly marginal and it may be difficult to show that a single change of use would cause material harm to the setting of the area or its heritage significance as a whole. Planning officers remain unconvinced of the merits of a refusal based on conservation area impact. If members are minded to overturn the proposal on conservation grounds, care needs to be taken to frame reasons appropriately.

Car Parking and Public Transport Access

31. There is no on-site parking available and the nearest off-site spaces are only indirectly accessible in St. Stephens Square. The site is on a high frequency bus route close to City centre stops with additional stops in St Stephens Road nearby. The bus lane on this part of St Stephens Road is now in operation 24 hours a day and there would be no opportunity for customers to park directly outside the premises without either obstructing the bus lane, blocking visibility for drivers emerging from St. Stephens Square, or both. .
32. The areas to the west and north-east (around St. Stephens Square and Victoria Street) fall within residents-only parking zones S and V which operate 24 hours a day, although areas south of Kingsley Road - including the St Stephens Road frontage just to the south - only

have such parking restrictions in place between 8.30am and 6.30pm). In contrast to the recently approved restaurant at 13 St. Stephens Road it is considered that customers arriving by car would be generally less likely to park in the City centre and walk to the premises and would be more likely to seek opportunities to park in the vicinity in residential roads. Consequently it is considered that a change of use to A3 would put more pressure on nearby off-street parking to the detriment of residential amenity, particularly in the areas to the south.

Environmental Issues

Waste Management

33. No details have been provided on plan of the provisions to be made for waste storage on site, and the one existing storage area within the building would be lost as a consequence of converting the area to customer toilets. In view of the very limited space around the building (and the likelihood that significantly more waste would be generated from a restaurant use) the proposal is not acceptable as it stands. Waste collection is understood to be carried out by a commercial contractor who collects at very early hours, so unless this aspect could be limited by condition, the additional waste generated would have knock-on effects on residential amenity through additional noise disturbance from early collections.

Noise

34. Substantive issues relating to potential noise and disturbance from customers are dealt with above. Immediate noise to adjoining premises from the fume extraction and filtration system can be addressed by noise limiters within the system to an appropriate specification. Extensive generic information has been included with the application as to the desirability of including such provision but (as the Environmental Health Officer notes) no *specific* technical information is provided for the system proposed. If approved, further details covering both noise and odour control should be required by condition.

Air Quality and Odour

35. The Environmental Health Officer has indicated that further details are needed in respect of odour control before the scheme is acceptable. In his decision to dismiss the previous appeal, the Inspector took the view that *“modern filtration equipment ... cannot entirely eliminate smells and there is likely to be some residual odour. ... In my view, cooking odours would have some impact on neighbours living conditions”*. There is residential accommodation immediately behind the site in the vicinity of the proposed extraction flue, both above the sandwich bar at number 45a St. Stephens Square and in the adjoining house at 43/43a. Objectors have also referred to the potential for odour leakage to neighbouring period houses which have poorly fitting sash windows. It is considered that even if conditions were in place to cover the specification and future maintenance of the filtration system, the proposal would most likely lead to some intensification of food odour nuisance to immediate neighbours which could not be entirely mitigated however high its specification. Accordingly, this remains a significant planning concern weighing against the proposal.

Conclusions

36. Members will be aware of the history of the proposal and its various incarnations, whether for a takeaway, a combined takeaway and restaurant or (as now) a restaurant only. Throughout this time there has been sustained, vocal and articulate opposition to the change of use from local residents, much of which arises from legitimate planning

concerns, but some of which is more related to the alleged difficulties caused by a specific operator, an intrinsic opposition to fast food takeaways and restaurants per se or the problems such uses commonly cause in suburban areas in general and Conservation Areas in particular. At the same time it must be recognised that the proposal arises from a legitimate wish from a local business to expand and diversify, which planning policy normally encourages. Limited weight can be given to the particular *form* of outlet proposed or to the particular characteristics of the operator.

37. National advice in PPS4 encourages local authorities to adopt a flexible attitude to new business development and to encourage a diversity of uses in accessible fringe of centre locations. Although the application premises are on the edge of an extensive and growing residential area, they are in a zone of transition which is relatively close to the City centre. In assessing the suitability of the use, and a balance must therefore be struck between protecting the outlook and amenity of residents, safeguarding the character and significance of the Conservation Area as a heritage asset and allowing an appropriate range of service uses to meet the needs of local residents and the wider public.
38. Despite the sustained public opposition to the longstanding “kebab shop” proposal, the principle of a restaurant/café use *in itself* would not necessarily be unacceptable in an edge of centre location such as this (nor even in a more obviously residential area) if the premises were suitable and accessible, no reasonable alternative existed, they could be properly serviced, there was sufficient parking space available and there were no overriding residential amenity concerns. Given the wide range of formats a restaurant or café might take, there is relatively little basis in policy to resist A3 uses as a matter of principle because they are inherently “incompatible” to the mix of uses in an area, or that they would inevitably result in antisocial behaviour, or that they would have an unacceptably harmful impact on visual character or heritage significance. In certain contexts, none of these are the case and restaurants and cafes are proven to have a positive and beneficial impact on vitality and viability. Consequently it is difficult to justify resisting such proposals based on reasons of general unsuitability. Rather the determination of this application should rest on its specific planning merits:
- the appropriateness of a restaurant use in this particular location
 - whether or not a restaurant use could be satisfactorily accommodated within these particular premises, and
 - any factors causing demonstrable harm to the locality which would apply irrespective of operator, and which could not be controlled by condition.
39. Following the deletion of the takeaway element it is not considered that there would be any significant risks to highway safety or to the free flow of traffic arising solely from a restaurant use – customers would tend to stay to dine for longer periods, to park and walk in and not to stop indiscriminately on the street outside. Nor is there a compelling policy basis to overturn the proposal on conservation grounds, given the Inspector’s previous judgement that a takeaway use and the associated flue would not harm the character of the area. Careful consideration has been given to all the other relevant issues taking account of the policies of the development plan and other material considerations as set out above. In the opinion of planning officers there remain several legitimate concerns with the proposal as submitted which are unlikely to be negotiable or resolvable by condition:
- a) the extension and intensification of a commercial use into the late evening period on a very restricted site with no customer amenity space around it;
 - b) the establishment of a late night use outside of a defined centre, in very close proximity to residential property in St Stephens Road and St Stephens Square.

- c) the likelihood that the restaurant would attract a proportion of its custom from outside the area leading to pressure on on-street parking spaces in the vicinity;
- d) the likelihood of additional noise nuisance (but not *necessarily* antisocial behaviour) from customers leaving the premises late at night
- e) in the absence of specific technical information on the fume extraction system, the likelihood of at least some increased food odour nuisance to residents immediately adjoining the premises
- f) the absence of adequate facilities for waste storage on the premises and the lack of any meaningful information on waste collection.

40. Accordingly it is considered that the proposal is unacceptable and should be refused for the four reasons given below.

RECOMMENDATIONS

To REFUSE planning permission for Application No 10/00661/F, 31 St. Stephens Road for the following reasons:-

1. The proposal would result in the introduction of a late night food and drink use and the further intensification of late night commercial activity in the area in very close proximity to residential accommodation in St Stephens Road and St Stephens Square. It would therefore result in increased noise and disturbance and loss of amenity and outlook to neighbouring residential occupiers by reason of customers entering, leaving and loitering outside the premises at unsociable hours, and would thereby be contrary to saved policies EP10 and EP22 of the City of Norwich Replacement Local Plan (adopted November 2004).
2. The premises occupy a very restricted site which does not offer any external amenity and circulation space for restaurant customers and fails to provide a positive and attractive setting for the development. The proposal also fails to demonstrate adequate provision has been or can be made for the increased waste storage, waste collection and servicing needs arising from the proposed use. The proposal therefore represents an overintense and unsatisfactory form of development which would be contrary to policies WM6 of the East of England Plan (adopted May 2008) and saved policies TRA5 and TRA8 of the City of Norwich Replacement Local Plan (adopted November 2004).
3. Notwithstanding the site's relative proximity to the City centre, the proposed restaurant would be likely to attract a proportion of car-borne customers from outside the area. In the absence of any parking on site or readily accessible off-site parking provision directly adjacent, the proposal would be likely to result in an increase in sporadic and indiscriminate parking in nearby residential streets leading to further pressure on limited on-street residents' parking and an increase in traffic, vehicle noise and general disturbance to nearby residents. It would therefore fail to provide adequate parking or safe and adequate access to and around the site and would be contrary to saved policy T2 of the Norfolk Structure Plan (adopted October 1999) and saved policies TRA6, TRA8 and EP22 of the City of Norwich Replacement Local Plan (adopted November 2004).
4. In the absence of any meaningful information on the technical capabilities of the proposed fume extraction and ventilation system, the proposal fails to demonstrate that the system would not have an unacceptable impact on immediately adjoining residents

in St. Stephens Square and potential future residents on the former Norfolk and Norwich Hospital site adjacent, either by reason of food odour nuisance, mechanical noise, or both. The proposal therefore fails to maintain a high standard of amenity for residential occupiers in the vicinity, and would therefore be contrary to saved policies EP10 and EP22 of the City of Norwich Replacement Local Plan (adopted November 2004).



Appeal Decision

Site visit made on 13 October 2008

by **Michael R Moffoot** DipTP MRTPI
DipMgt MCMI

an Inspector appointed by the Secretary of State
for Communities and Local Government

The Planning Inspectorate
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Decision date:
29 October 2008

Appeal Ref: APP/G2625/A/08/2077558

31 St Stephen's Road, Norwich NR1 3SP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Ali Capti against the decision of Norwich City Council.
- The application Ref. 08/00187/F, dated 25 February 2008, was refused by a notice dated 8 May 2008.
- The development proposed is change of use from A1 to A5 (take-away).

Decision

1. I dismiss the appeal.

Main Issues

2. The main issues in this case are:
 - (i) the effect of the proposed development on the living conditions of residents in the area, with particular reference to noise and disturbance, smell, litter and overlooking; and
 - (ii) the implications of the proposal for highway safety.

Reasons

Living Conditions

3. The appeal site comprises an off-licence, grocery and newsagent's shop and is prominently located on the busy St Stephen's Road, a main arterial route serving the city. The surrounding built environment includes established housing and new residential development on a former hospital site, with commercial uses extending to the north-east towards the city centre, including a public house, hot food takeaway and café.
4. In addition to the proposed change of use, the submission incorporates details of an extraction flue on the flat roof of the premises above the new kitchen area and parking for 2 cars to the side of the building. Although the opening time of the proposed takeaway is not specified, the appellant indicates that it would close at 2300 hours.
5. The development plan for the area includes the adopted *City of Norwich Replacement Local Plan*. Saved Policy SH022 only permits hot food takeaways where, amongst other things, they do not give rise to unacceptable environmental effects which could not be overcome by conditions, and would

not be detrimental to highway safety, whilst saved Policy EP22 permits new development provided it safeguards privacy and avoids noise and odour.

6. Ambient noise levels were high at the time of my site visit (late afternoon on a weekday), due mainly to the large volume of rush-hour traffic on this principal route. This probably has a marked impact upon the living conditions of occupiers of properties on St Stephen's Road. In these circumstances, I do not consider that noise generated by customers visiting the appeal premises would be unduly intrusive for residents during the day or the late afternoon/early evening period. However, I have significant concerns regarding the impact of activity later in the evening, and especially towards closing time, as I shall explain.
7. I am not convinced that the majority of evening trade would finish by 2100 hours as the appellant suggests, and consider it far more likely that the proposal would attract customers up to the closing time of the premises. Although most would probably walk or cycle to the facility given its proximity to a large residential area and the city centre, a significant number of customers would be likely to arrive by car or motorcycle. Due to a permit system operating on most of the surrounding streets, public parking in the vicinity of the appeal site is very limited. The nearest I saw comprised some 3 spaces round the corner on a short section of St Stephen's Square, which is accessed via a circuitous one-way route.
8. It is highly likely that the majority of car-borne customers would park on St Stephen's Road, notwithstanding the parking restrictions. This would result in the revving of engines, slamming of car doors and noise from in-car stereo systems outside the premises, whilst customers arriving on foot would significantly add to activity levels by congregating and indulging in high-spirited behaviour. Parking on St Stephen's Square and other streets in the vicinity of the site would also occur.
9. I have no doubt that these activities would be a significant disturbance for local residents during late evening, when ambient noise levels would be lower and occupiers are entitled to reasonable peace and quiet. This would especially be the case during fine weather, when windows would be open and gardens in use. Whilst the existing store may be open during the evening, I consider that the noise and disturbance associated with the proposal would be much more intrusive. I am not persuaded that a home delivery service would appreciably reduce customer numbers and would, in any event, involve the coming and going of a delivery vehicles, adding to activity at the site.
10. Concerns have also been raised regarding the impact of noise and odours associated with the takeaway. In my experience modern filtration equipment can run quietly and significantly contain cooking smells provided that it is installed, operated and maintained in accordance with the manufacturer's instructions and extraction flues are carefully sited in relation to nearby residential accommodation. However it cannot entirely eliminate smells, and there is likely to be some residual odour. As well as residential properties in the vicinity of the site, there appears to be a flat above the nearby sandwich bar and adjacent to the roof where the flue would be sited. In my view, cooking odours would have some impact on neighbours' living conditions, and whilst not a determining factor, adds weight to my concerns.

11. There are litter bins in the locality, and the appellant has volunteered additional facilities. Moreover, litter generated by hot food takeaways rarely occurs within the immediate vicinity of the premises but over a wider area, where the operator has no control over the behaviour of customers. I consider that this is generally a matter for other legislation to deal with.
12. Concern has also been raised about loss of privacy due to takeaway customers parking outside residential properties. In itself, this would not justify dismissal of the appeal, but it adds weight to my view that the proposal is unacceptable.
13. Drawing these findings together, I conclude on the first issue that the proposed development would severely harm the living conditions of residents in the area, in conflict with saved Policies SHO22 and EP22 of the Local Plan.

Highway Safety

14. As I have previously noted, public parking opportunities are extremely limited in the locality, and restrictions include double yellow lines and a bus lane on St Stephen's Road fronting the appeal site. Given this, I consider it highly likely that many customers would park outside the premises despite the restrictions, thus impeding the flow of traffic. Of greater concern however, is the obstruction to visibility to the south-west for a driver emerging from St Stephen's Square, who would be unable to clearly see oncoming traffic if, as is likely, vehicles were parked outside the appeal site.
15. I accept that service vehicles would park outside the premises and obstruct visibility and the free flow of traffic, but this would be little different to the existing situation where such vehicles visit the premises. In any case, loading/unloading is permitted outside the premises during defined periods.
16. The appellant advises that he has the use of 2 parking spaces to the side of the building after 1700 hours. However, this area is not within the red-lined application site, nor is it blue lined to indicate that the appellant owns or controls the land. Accordingly, I would be unable to impose a condition to require the use of these spaces. In any case, it would involve vehicles crossing the footway, which would prejudice the safety of pedestrians and road users.
17. I find no conflict with Local Plan Policy TRA8 to which I have been referred, as this deals with servicing of sites. However, on its highway merits and having regard to all material considerations, I conclude on balance that the proposal would unacceptably compromise highway safety.
18. I now turn to other matters raised in representations. The presence of similar facilities in the area is not a reason for me to dismiss this appeal and it is for market forces to resolve competition between commercial operations, whilst the closure of the existing shop and loss of the facility is a private decision for the owner and has no bearing on the planning merits of the case.
19. The appeal site is within the Newmarket Road Conservation Area. Given the existing retail use of the premises and the presence of air conditioning equipment on the roof, I consider that the proposed change of use and extraction flue would preserve the character and appearance of the Conservation Area.

20. Concerns regarding the Council's neighbour consultation process for the application relate to procedural matters that are not for me to comment on and do not affect my consideration of the merits of the case. I have no technical evidence before me to demonstrate that the proposal would aggravate any existing drainage problems in the area, and fire risk is a matter for the relevant authorities to deal with.
21. Although I have found that most of these other matters do not militate against the proposal, none of them outweighs the conflict with local planning policies that would occur if the appeal were to be allowed, and the significant objections to the proposal could not be resolved by imposing conditions on a grant of planning permission. For the reasons given above and having regard to all other matters raised, I conclude that that the appeal should be dismissed.

Michael R. Moffoot

Inspector



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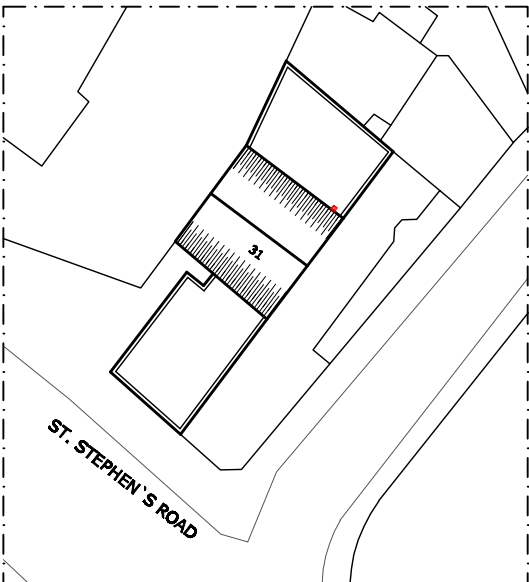
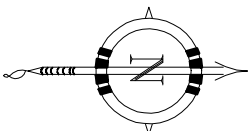
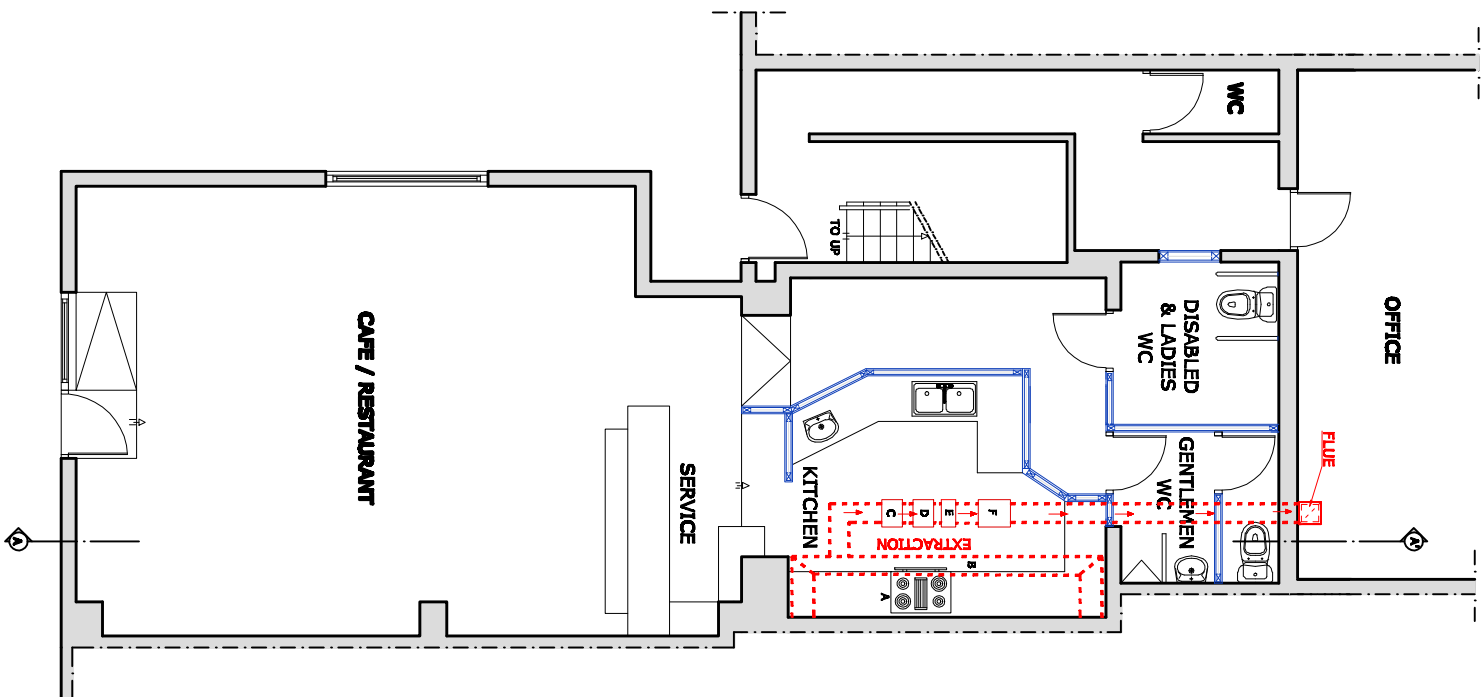
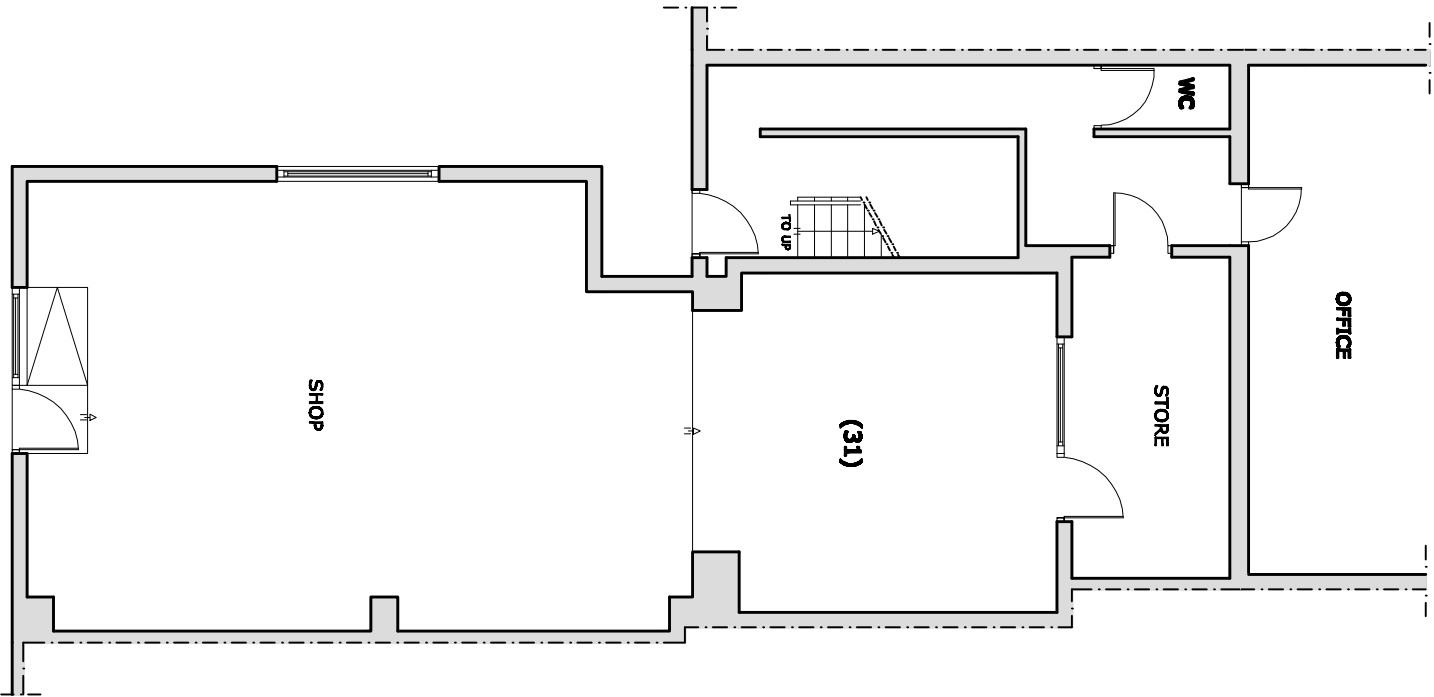
Planning Application No - 10/00661/F
 Site Address - 31 St Stephens Road
 Scale - 1:1,000



NORWICH
 City Council

PLANNING SERVICES





SITE PLAN
SCALE:1/500

- A. COOKING AREA
- B. COOKER HOOD/CANOPY
- C. GREASE FILTERS
- D. COARSE PRE-FILTER
- E. FINE PRE-FILTER
- F. ACTIVATED CARBON FILTERS
- G. FAN/MOTOR UNIT

EXISTING GROUND FLOOR SHOP AREA:80.45 m2
PROPOSED GROUND FLOOR SHOP AREA:80.45 m2
TOTAL SEATING CAPACITY:30 PEOPLE

REV.	MAY.	10	ADDRESS
B	10		
REV.	APR.	10	REVISION OF CHANGE OF USE
A	10		

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31 ST. STEPHEN'S ROAD
NORWICH NR1 3SP

EXISTING, PROPOSED
- GROUND FLOOR PLAN

SITE PLAN

SCALE: 1/100 , 1/500

REF. NO : 229.09/01

DATE: NOV/09

CHECKED BY: AAY

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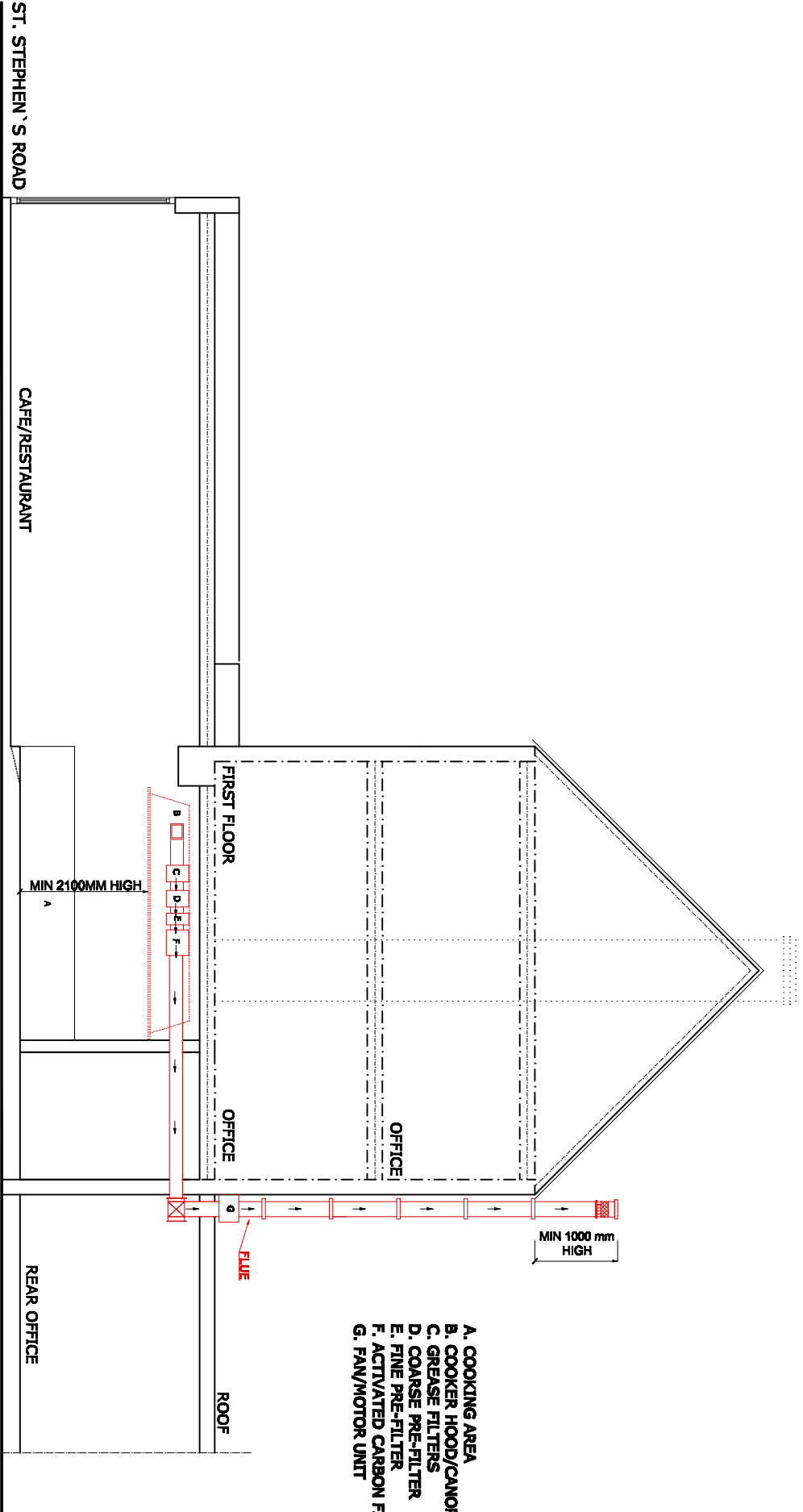
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EXISTING GROUND FLOOR PLAN
SCALE:1/100

ST. STEPHEN'S ROAD

PROPOSED GROUND FLOOR PLAN
SCALE:1/100

ST. STEPHEN'S ROAD



REV.	MAY.	ADDRESS
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REV.	APR.	REVISION OF CHANGE OF USE
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31 ST. STEPHEN`S ROAD
NORWICH NR1 3SP

PROPOSED
- SIDE ELEVATION
- SIDE SECTION A-A'

SCALE: 1/100	REF. NO : 229.09/02
DATE: NOV.09	DWG BY: A.AV

ST. STEPHEN`S ROAD

PROPOSED SIDE ELEVATION

SCALE:1/100

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