

Report to Planning applications committee

Item

14 July 2016

Report of Head of planning services

Subject Application nos 16/00276/F and 16/00277/L-
5 Magdalen Street, Norwich

Applicant Line One Interiors (agent)

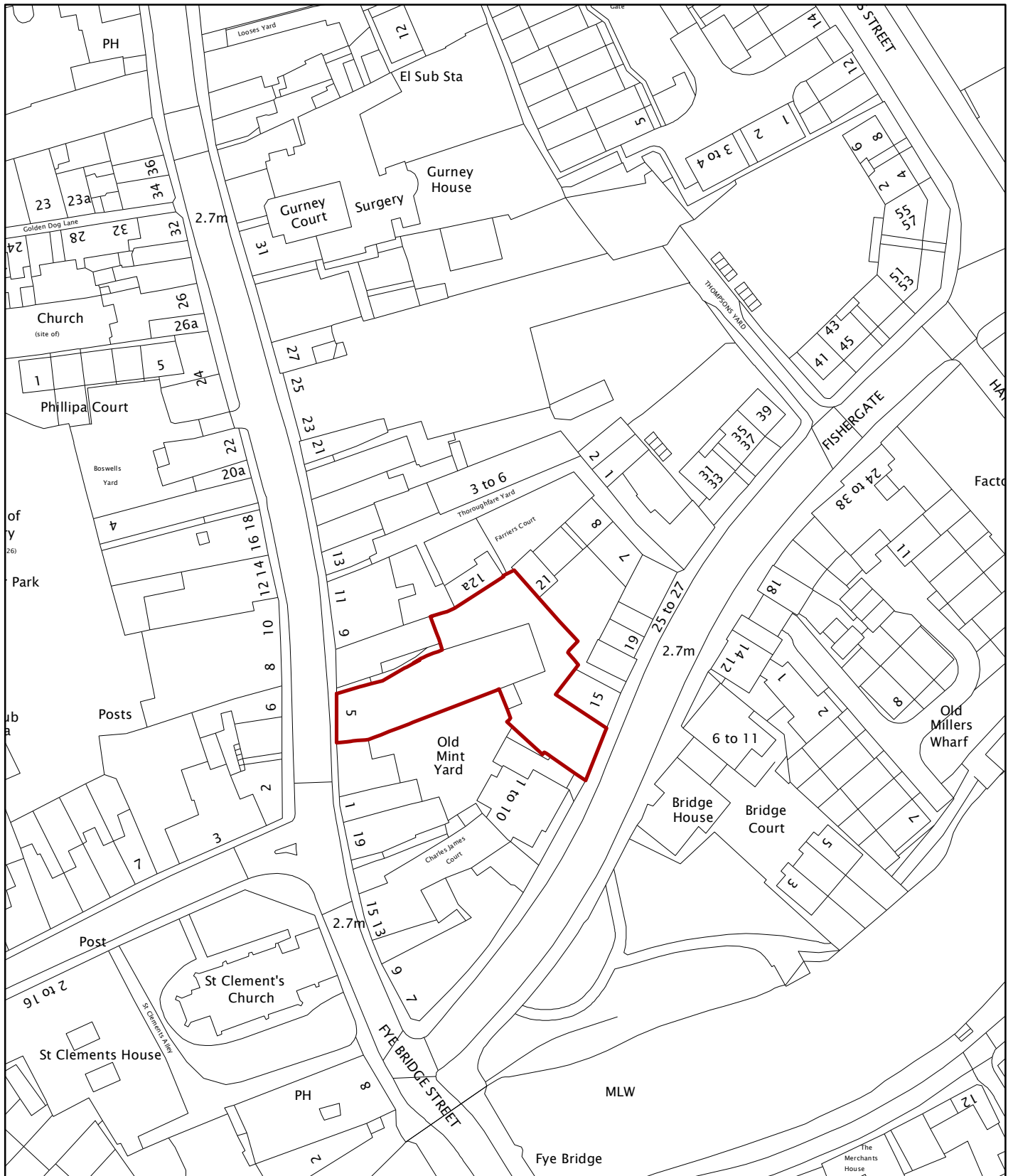
**Reason
for referral** Objection

4(c)

| | |
|---------------------|---|
| Ward: | Mancroft |
| Case officer | James Bonner - jamesbonner@norwich.gov.uk |

| Development proposal | | |
|--|---------|---------|
| Change of use to restaurant with take away facility and installation of extraction system. | | |
| Representations | | |
| Object | Comment | Support |
| 11 | | |

| Main issues | Key considerations |
|-----------------------|---|
| 1 Principle of use | New restaurant and loss of retail; impact on character of area |
| 2 Amenity | Noise, odours, smoking |
| 3 Transportation | Highway hazards, parking issues |
| 4 Design and heritage | Impact of new flue; internal changes on fabric and character of listed building |
| 5 Flooding | Flood risk |
| Expiry date | 3 June 2016 |
| Recommendation | Approve |



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Planning Application No 16/00276/F & 16/00277/L

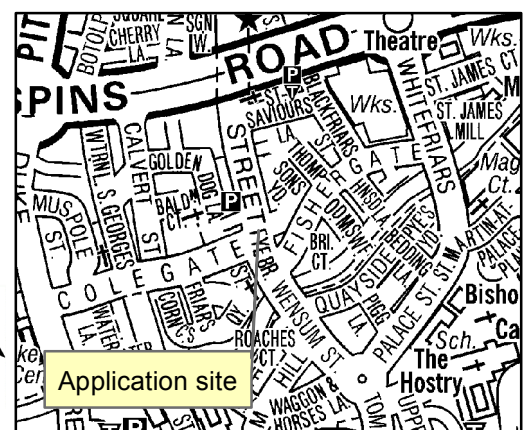
Site Address 5 Magdalen Street

Scale 1:1,000



NORWICH
City Council

PLANNING SERVICES



The site and surroundings

1. A listed building on the east side of Magdalen Street, just north of the junction with Colegate. The original building has two storeys plus a gabled storey fronting onto the street. There is a large, two storey flat roof extension stretching ~30m east towards a rear yard, which has vehicle access from Fishergate. By virtue of it being attached to the original building, the extension is also listed.
2. It is a large building with the current use being A1 retail, however the building has been vacant for some time. It is unclear when it was last in use but the July 2008 Google Street View suggests its most recent use was a Marie Curie store, vacant at the time. The Valuation Office Agency website does not show any records for the ground floor on 2005 or 2010, but it suggests the first floor may have been in use as an office in 2010.
3. In terms of neighbouring uses, Magdalen Street is predominately commercial, with a number of restaurants nearby; to the immediate east of the site Fishergate is primarily residential, including the dwellings backing onto the site.

Constraints

4. The building itself is grade II listed with the following list description (alongside No.7 – Brummells Restaurant):

Shop and restaurant. Late C18 with C17 range behind No. 7 Rendered with applied timber work on the gables and No. 7. Pantile roof. Street range: 2 storeys. 3 large dormer gables. C20 glazed shop and restaurant fronts 3 sash windows with glazing bars and 2 C20 casements at first floor. Casement and sash windows in dormers. Crow-step north gables Rear range:-2 storeys, first floor jettied. Central door and 3 C17 windows Casement windows at first floor.
5. It is within the city centre conservation area and nearby a number of locally and statutory listed buildings, including the adjoined buildings to the north and south (3 and 7 Magdalen Street); 12A Thoroughfare Yard to the north is locally listed.
6. The site is within flood zone 2 and a critical drainage catchment [*NB. the majority of the car park at the rear of the site is not within this*]. It is also within a regeneration area and a large district centre.

Relevant planning history

7. None.

The proposal

8. The change of use of the ground floor of the building from retail (A1) to a restaurant/takeaway use (A3/A5). An extract system is proposed on the north elevation of the rear section. No changes are proposed to the front elevation at this time.
9. A number of internal changes are proposed, including the removal of a modern staircase.

Summary information

| | |
|-------------------------------|--|
| Proposal | Key facts |
| Operation | |
| Opening hours | Applicant proposes until 2330 |
| Ancillary plant and equipment | Flue on rear extension |
| Transport matters | |
| Vehicular access | Via Fishergate |
| No of car parking spaces | 5 staff spaces to be conditioned |
| No of cycle parking spaces | Cycle store shown but no specific number provided. To be conditioned. |
| Servicing arrangements | Via Fishergate |

Representations

10. Advertised on site and in the press. Adjacent and neighbouring properties have been notified in writing. 11 letters of representation have been received citing the issues as summarised in the table below. All representations are available to view in full at <http://planning.norwich.gov.uk/online-applications/> by entering the application number.

| Issues raised | Response |
|---|--|
| Will change nature of residential area | See main issues 1 and 2 |
| Noise and disturbance | See main issue 2 |
| Parking issues | See main issue 3 Amenity issues from parking – main issue 2 |
| Impact on right of way [to 7 Magdalen Street] | Not a planning issue but there is no operational development blocking the access |
| Drainage | No material issues raised for drainage |
| Position and quality of extract system, including impact on listed building | Amenity – see main issue 2 Visual – see main issue 4 |

| Issues raised | Response |
|---|---|
| Highway hazard and congestion, including deliveries | See main issue 3 |
| Saturated Indian market / no need for an additional restaurant | The planning system cannot limit competition. Principle of additional restaurant – see main issue 1 |
| Anti-social behaviour from large parties | The police have commented and raised no particular issues providing no opening beyond midnight |
| Lack of information. Questions raised about opening hours, smokers, deliveries, lack of staff room. | The points have been addressed and there is considered to be adequate information to assess the scheme and utilise conditions to address any outstanding concerns. It is worth noting that there is no planning requirement for a staff room. |
| Overlooking | There is no increase in overlooking as no use of the upper floors is proposed |
| Effect on desirability of letting property | Amenity and living conditions discussed generally in main issue 2 |
| Exacerbate vermin issue / lack of adequate bin store | See main issue 3 and paragraph 44 |
| Would object to opening beyond 10pm | See main issue 2 |
| Impact of litter from takeaway | See paragraph 44 |
| You should concentrate on regenerating sites within conservation area | The Council has a duty to consider any planning application submitted to it. |

Consultation responses

11. Consultation responses are summarised below the full responses are available to view at <http://planning.norwich.gov.uk/online-applications/> by entering the application number.

Design and conservation

12. The building was formerly used as a public house until 1932 when it became a branch of Woolworths. During this period extensive works were carried out including the large extension and a significant 'tin' ceiling (actually steel) which has extensive detailing throughout the ground floor.
13. The proposals are generally acceptable but internal treatment of the building, particularly the ceiling, is important and should be conditioned – including lighting

and internal decoration. The extract is somewhat large and will have some impact on the building being located through the window, however it is to the rear and less visible. It may create issues for the potential uses of the upper floor.

14. It will also be preferable to retain and repair the existing metal windows. There are no details of works to the front elevation or signage.

Environmental protection

15. Following the adjustments to the specifications I would consider this to be acceptable, with the adherence to the conditions and an established ongoing maintenance and cleaning plan.

Highways (local)

16. No objection on highway/transportation grounds with some further clarifications needed.

17. *On responding to specific objections to highway concerns:*

I appreciate that the objector has concerns about a large restaurant in this location, but the premises has merit for a city centre restaurant.

Waiting restrictions and parking:

- The primary purpose of waiting restrictions is to facilitate the movement of traffic on the highway.
- I am satisfied that the extant waiting restrictions are adequate to maintain traffic flow as they restrict loading at peak hours.
- At off peak times, loading is possible directly adjacent to the premises on Magdalen Street; so it is acceptable for deliveries to occur then.
- With regard to on-street parking, this is heavily controlled in this locality, but there is some available, and several car parks nearby.

Pavement width:

- The pavement is very narrow at this part of Magdalen Street and a waiting area is recommended so as to avoid spilling out onto the street.
- A Boards; the footway is too narrow to accommodate A boards and should not be used by this business.

Informatives:

- If access to the rear of the premises is available, this would be useful for food deliveries, waste collection and food deliveries by the restaurant itself.
- As a city centre business, it would not be entitled to parking permits.
- A Travel Information Plan would be useful for staff and customers to be aware of their travel and parking options.

- Cycle parking for staff to the rear of the premises would be advisable e.g. minimum of 2 stands (4 spaces).

My general observation is that the majority of customers arrive on foot having arrived at the city centre by cab or car share as they are drinking alcohol. For this reason a restaurant in a central location is an entirely reasonable use of this premises, and there are not substantive reasons for an objection on highway/transportation grounds.

Norfolk police (architectural liaison)

18. As premises is outside Late Night Activity Zone, opening time should be limited to 0000hrs (midnight) on any day.

Assessment of planning considerations

Relevant development plan policies

19. **Joint Core Strategy for Broadland, Norwich and South Norfolk adopted March 2011 amendments adopted Jan. 2014 (JCS)**
 - JCS1 Addressing climate change and protecting environmental assets
 - JCS2 Promoting good design
 - JCS3 Energy and water
 - JCS5 The economy
 - JCS6 Access and transportation
 - JCS7 Supporting communities
 - JCS9 Strategy for growth in the Norwich policy area
 - JCS11 Norwich city centre
20. **Norwich Development Management Policies Local Plan adopted Dec. 2014 (DM Plan)**
 - DM1 Achieving and delivering sustainable development
 - DM2 Ensuring satisfactory living and working conditions
 - DM3 Delivering high quality design
 - DM5 Planning effectively for flood resilience
 - DM6 Protecting and enhancing the natural environment
 - DM9 Safeguarding Norwich's heritage
 - DM11 Protecting against environmental hazards
 - DM18 Promoting and supporting centres
 - DM21 Protecting and supporting district and local centres
 - DM23 Supporting and managing the evening and late night economy
 - DM24 Managing the impacts of hot food takeaways
 - DM28 Encouraging sustainable travel
 - DM29 Managing car parking demand in the city centre
 - DM30 Access and highway safety
 - DM31 Car parking and servicing

Other material considerations

21. Relevant sections of the National Planning Policy Framework March 2012 (NPPF):

- NPPF0 Achieving sustainable development
- NPPF1 Building a strong, competitive economy
- NPPF2 Ensuring the vitality of town centres
- NPPF4 Promoting sustainable transport
- NPPF7 Requiring good design
- NPPF8 Promoting healthy communities
- NPPF10 Meeting the challenge of climate change, flooding and coastal change
- NPPF11 Conserving and enhancing the natural environment
- NPPF12 Conserving and enhancing the historic environment

22. Supplementary Planning Documents (SPD)

- Main town centre uses and retail frontages SPD adopted December 2014

Case Assessment

23. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Relevant development plan policies are detailed above. Material considerations include policies in the National Planning Framework (NPPF), the Councils standing duties, other policy documents and guidance detailed above and any other matters referred to specifically in the assessment below. The following paragraphs provide an assessment of the main planning issues in this case against relevant policies and material considerations.

Main issue 1: Principle of development

24. Key policies and NPPF paragraphs – DM18, DM21 DM23, DM24.

25. Local policy DM21 aims to protect the large district centre by avoiding harmful impacts on vitality, viability and diversity of the services in the centre. In addition it aims to avoid harmful impacts on residential amenity, traffic or the environment which cannot be overcome by conditions. As established in the respective main issues (2, 3 and 4), these raise no in-principle issues and the main issue for DM21 is the acceptability of the permanent loss of the A1 retail use at ground floor. The policy, supported by the SPD, aims to retain the proportion of A1 uses at 60%. The current situation (as of Sep 2015) is calculated at 64.3%; this proposal would result in a figure of 62%, which would comply with the policy.

26. Even if further units had been lost since this survey (it would take five including this one to exceed the above threshold), the conclusion would still be the same: that the loss of the retail unit is acceptable in policy terms. This is due to the long-term vacancy here, which given the abnormally large size of the unit in this location, is unlikely to let for a viable retail use any time soon. Despite this creating a run of restaurants alongside No.7 and Nos.9-11 to the north and No.3 to the south, it will not create an unacceptable concentration of inactive frontage. This is helped by the confirmation that the restaurant is proposed to open for lunch between 12 and 2,

which should assist with the vitality of the shopping area. In principle the change of use is supportable.

27. In terms of the character of the area, despite the area along Fishergate becoming increasingly residential within the recent decade with a number of developments, the area is not predominately residential. Magdalen Street is clearly a historically commercial street and there were – and still are – a number of employment uses further east along Fishergate. The area is mixed in character and as noted in the second main section, with the use of conditions the majority of the activity can be concentrated on the Magdalen Street entrance where the increase in activity would be fine.
28. Given the extensive floorspace above consideration has been given to avoiding prejudicing the beneficial use of the upper floors for residential. As noted in main issue 2, conditions will seek to protect amenity for these potential future occupiers as well as those existing.

Main issue 2: Amenity

29. Key policies and NPPF paragraphs – DM2, DM11, NPPF paragraphs 9 and 17.
30. Given the length of the building and extent of the site boundary there is the potential for a number of conflicts with existing occupiers, most notably from the use of the restaurant itself, including comings and goings from customers, staff and deliveries; and from the operation of the kitchen itself, particularly noise and odours from the flue. The kitchen is located at the eastern end of the building, with the flue on the north side rather than facing the neighbours to the east. The specification of the extraction has been revised and shows carbon filters with a dwell time of 0.4 seconds (considered 'heavy duty'). Subject to a proper maintenance scheme, this does not raise any unacceptable issues for odour. In terms of noise there is a fan and silencer within the building rather than externally, which will result in a noise of around 46dBA @ 3m. With the additional length of the flue and the distance to the nearest neighbour (around 7 or 8m), this is estimated to result in an acceptable noise level within these nearest habitable rooms, similar to background noise in the area. Again providing a maintenance scheme is approved and adhered to this should raise no particular issues.
31. The majority of the concerns regarding noise and disturbance through the restaurant's operation can be managed via condition. The applicant does not propose that customers use the rear of the site, and this is supported by the proposed layout which only has one customer entrance/exit from Magdalen Street with no customer parking to the rear. This can be secured via condition. The rear space of the site will be used for servicing, which is both logical and preferred to avoid any highway issues. While it may cause some disturbance issues, it is unlikely to be severe given the way a restaurant typically operates. A condition limiting deliveries after 7pm can be attached to avoid adverse impacts later at night, which is considered necessary due to the close proximity of the neighbouring occupiers, especially 15 Fishergate, the habitable windows of which front directly onto the yard with no physical separation.
32. In terms of the disturbance from staff, this is likely to come from the intensive use of the kitchen and smoking outside of it. On the former point, there are only windows in the north elevation and the extraction system should avoid the need for these to

be regularly opened. On these windows there are two fresh air inlets for the extraction system, which have the potential to leak noise out. The condition requiring detail of the extraction system will include a requirement to address this to avoid disturbance from the extraction fan and the kitchen noise generally leaking out. Regarding smoking, there is a concern that staff will use the only exit on the eastern side to go on a smoking break, causing disturbance through conversation. The applicant's agent has agreed to restrict staff smoking to an area towards the north/north west of the building. While difficult to control perfectly, this can be agreed within a management plan and can be assisted with the physical demarcation with a smoking area or shelter. As noted above, customers will have no use of the rear yard and would have no reason to use this exit for smoking. Customers smoking on Magdalen Street before midnight does not raise any particular amenity concerns given the general activity and other pubs and takeaways on the street.

33. The proportion of takeaways is estimated at 5% of turnover, which would actually be ancillary to the main restaurant use and would not require the unit to be a mixed use as described. There may however be the potential for the intensity of the takeaway proportion to increase and again given the sensitivities of the nearby uses, the impact of the takeaway aspect needs to be controlled via condition. This includes the time limit of midnight and details within the management plan of how delivery drivers collect takeaways from the premises – the logical place is from the rear, which although arguably causing some disturbance, would reduce the likelihood of highway hazards. The disturbance would be limited if well managed in line with the scheme to be agreed. Given the vast majority of coming and goings will be concentrated on Magdalen Street, the overall amenity impact is not considered to be severe given the surrounding context. This is bearing in mind any cumulative impacts of other restaurants and takeaways as required by DM23.
34. The amenity of future occupiers who may hopefully live above the restaurant one day should also be considered. The time limit condition should go some way to addressing most concerns but given the potential conflict and the sensitivity of the building a condition is required to secure details of sound proofing. The position of the flue cuts across one of the upper floor windows and some consideration was given to moving it towards the rear, however this would increase its prominence in public views and would concentrate the perception of impact upon the neighbours to the east. It is considered that any future layout of the upper floor can overcome this impact easily and accordingly this does not raise any unacceptable issues.

Main issue 3: Transport

35. Key policies and NPPF paragraphs – JCS6, DM28, DM30, DM31, NPPF paragraphs 17 and 39.
36. The restaurant is in a central and accessible location with adequate customer cycle parking nearby. The extent of the takeaway use and its location suggests that the potential for frequent customer pickups (and associated transport and amenity implications) is relatively low and not considered to cause any concerns. The level of staff parking raises no issues and its layout can be finalised via condition. The unit can easily and practically be serviced via Fishergate without causing any particular hazards. Given the width of the pavement and the potential for large groups to be catered for, the plans have been revised to show a waiting area in the entrance, which should avoid people spilling out onto the street. People smoking on

Magdalen Street is inevitable and difficult to control without raising other issues. It is not considered that this will cause unacceptable safety issues.

37. Bin and staff bicycle stores are shown on an indicative plan and there is no question that there is adequate room for them at the rear. A condition will secure details of the stores to ensure they are sufficient.

Main issue 4: Design and heritage

38. Key policies and NPPF paragraphs – JCS2, DM3, NPPF paragraphs 9, 17, 56 and 60-66. Heritage Key policies and NPPF paragraphs – DM9, NPPF paragraphs 128-141.
39. There are no proposed changes to the most sensitive front elevation. None of the metal windows in the rear will be replaced, only refurbished, the details of which will be secured via condition. The flue is relatively large but considered necessary to service the kitchen without causing harm to residential amenity. It is positioned to avoid any prominent public views but it is acknowledged it does cause less than substantial harm to the heritage asset itself and those neighbouring (both designated and non-designated). The harm is relatively low given the nature of the rear yard but regardless is outweighed by the public benefits of bringing the heritage asset back into use and the associated economic benefits.
40. Internally the extensively detailed tin/steel ceiling is in relatively good condition and contributes to the significance of the heritage asset. The decoration is well suited to the restaurant use and the applicant is keen to incorporate it. A condition is attached requiring detail of the lighting and air conditioning to ensure that only existing holes are used for fixing unless where absolutely necessary. Alongside a condition on internal decoration this should ensure that the special architectural interest of the heritage asset is maintained.

Main issue 5: Flood risk

41. Key policies and NPPF paragraphs – JCS1, DM5, NPPF paragraphs 100 and 103.
42. The existing use (retail) and proposed (restaurant/takeaway) are both classified as 'less vulnerable' in flooding terms and as such despite its location within flood zone 2, no particular issues for flood risk are raised. Similarly, in the absence of any additional operational development there is no risk of increasing surface water flooding.

Compliance with other relevant development plan policies

43. A number of development plan policies include key targets for matters such as parking provision and energy efficiency. The table below indicates the outcome of the officer assessment in relation to these matters.

| Requirement | Relevant policy | Compliance |
|-----------------------|------------------------|---------------------------------|
| Cycle storage | DM31 | Yes subject to condition |
| Car parking provision | DM31 | Yes subject to condition |

| Requirement | Relevant policy | Compliance |
|----------------------------|------------------|---------------------------------|
| Refuse Storage/servicing | DM31 | Yes subject to condition |
| Energy efficiency | JCS 1 & 3 DM3 | Not applicable |
| Water efficiency | JCS 1 & 3 | Not applicable |
| Sustainable urban drainage | DM3/5 | Not applicable |

Other matters

44. The following matters have been assessed and considered satisfactory and in accordance with relevant development plan policies, subject to appropriate conditions and mitigation:

- **Hygiene** – this is an Environmental Protection matter and there has been no objection on this basis. The plans show an indicative bin store position which is adequately positioned and sized. The details will be secured via condition.
- **Litter** – the applicant claims the proportion of takeaway will be 5% of turnover and even if this increased it is unlikely that the use would cause a significant issue which would substantiate refusal.

Equalities and diversity issues

45. There are no significant equality or diversity issues.

Local finance considerations

46. Under Section 70(2) of the Town and Country Planning Act 1990 the council is required when determining planning applications to have regard to any local finance considerations, so far as material to the application. Local finance considerations are defined as a government grant or the Community Infrastructure Levy.

47. Whether or not a local finance consideration is material to a particular decision will depend on whether it could help to make the development acceptable in planning terms. It would not be appropriate to make a decision on the potential for the development to raise money for a local authority.

48. In this case local finance considerations are not considered to be material to the case.

Conclusion

49. While there are some amenity concerns, this is an inevitable consequence of the proximity to residential uses from the building's unusually long footprint – a contributing factor to its lack of interest for a feasible retail use. It is considered that

subject to well-worded conditions, including on the management of the most sensitive rear yard, the noise and disturbance issues can be reduced to ensure there are no adverse impacts on residential amenity. In this central and accessible location there is unlikely to be significant numbers of customers travelling by car and the rear yard allows for servicing and deliveries to be safely managed without causing highway issues.

50. Given the nature of Magdalen Street this restaurant is considered an appropriate use with economical and heritage benefits in bringing a long-term vacant listed building back into use. These benefits are considered to outweigh the concerns raised and as a result the development is in accordance with the requirements of the National Planning Policy Framework and the Development Plan, and it has been concluded that there are no material considerations that indicate it should be determined otherwise.

Recommendation

Application no 16/00276/F

- (1) To approve application no. 16/00276/F - 5 Magdalen Street Norwich and grant planning permission subject to the following conditions:
1. Standard time limit;
 2. In accordance with plans;
 3. Details of flue/extraction system and maintenance system (including details of fresh air vents to reduce sound leakage);
 4. Details of management of restaurant specifics such as smoking area for public and staff; servicing etc;
 5. No amplified music (including in kitchen) before agreeing a detailed scheme;
 6. Details of parking, cycle parking and refuse storage;
 7. Travel Information Plan;
 8. No customer car parking within site, only staff;
 9. Pedestrian entrance and exit (except in the case of emergency) via Magdalen Street only;
 10. Opening restriction between midnight and 0730 on any day (including kitchen and takeaway aspect);
 11. Restriction on servicing delivery times between 1900 and 0700 hours on any day.

Article 35(2) statement

The local planning authority in making its decision has had due regard to paragraph 187 of the National Planning Policy Framework as well as the development plan, national planning policy and other material considerations, following negotiations with the applicant and subsequent amendments the application has been approved subject to appropriate conditions and for the reasons outlined in the officer report.

Informatives:

Business not entitled to parking permits

And,

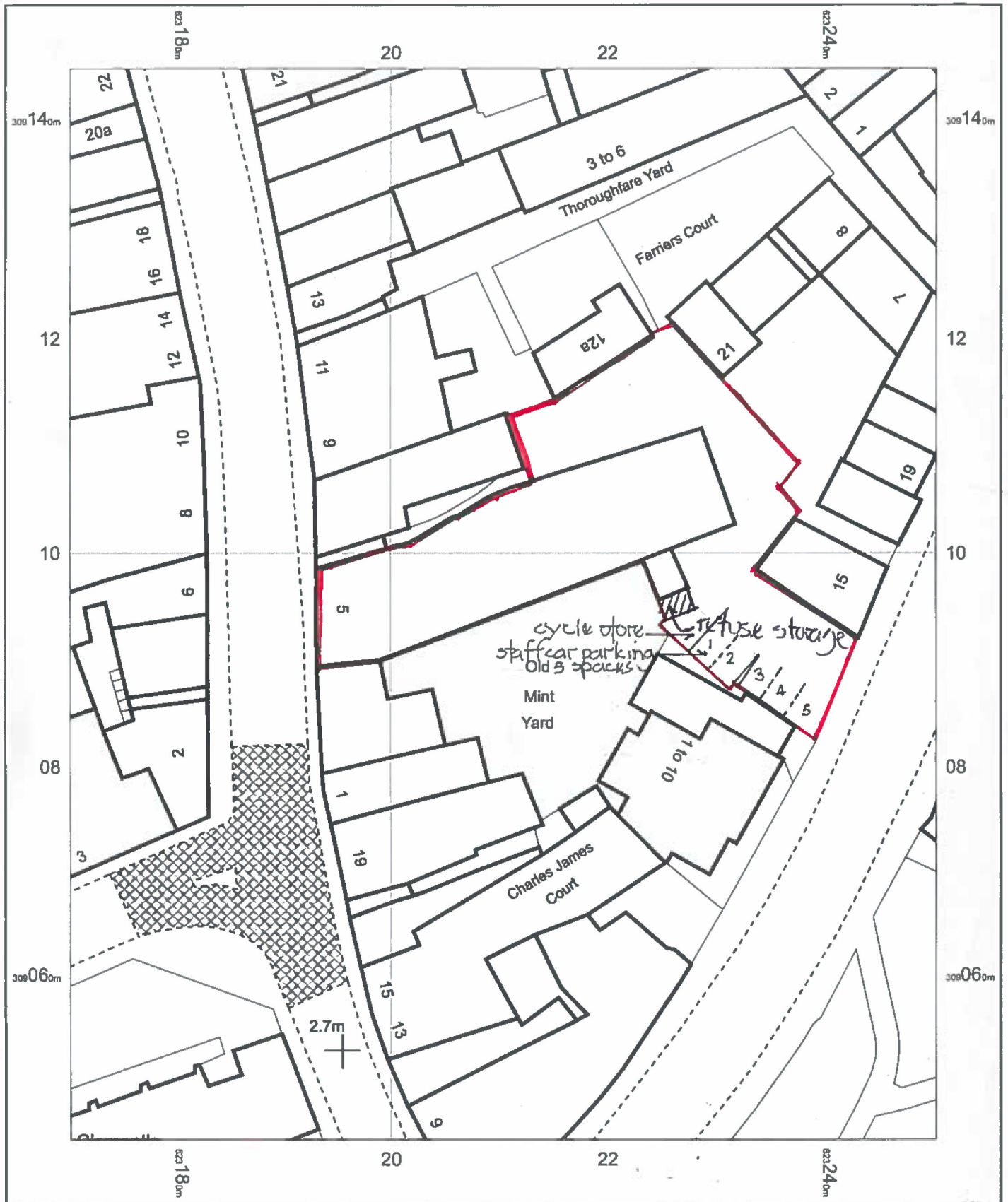
Application no 16/00277/L

(2) To approve application no. 16/00277/L - 5 Magdalen Street Norwich and grant listed building consent subject to the following conditions:

1. Standard time limit;
2. In accordance with plans;
3. Internal detail on air conditioning system;
4. Internal detail on new lighting and other fixtures within ceiling;
5. Detail of internal decoration;
6. Details of any repairs to existing windows and/or secondary glazing;
7. Details of noise proofing between floors;
8. Any damage to be made good within 3 months

Reason for approval:

While the extract system will cause some less than substantial harm to the heritage asset, it affects the less sensitive area at the back. The level of harm, although relatively low, is considered to be outweighed by the public benefits of bringing the heritage back into use. This accords with section 12 the NPPF and NPPF and policy DM9 of the Development Management Policies Local Plan 2014.



SITE LOCATION PLAN

2 JUN 2016

Planning Services

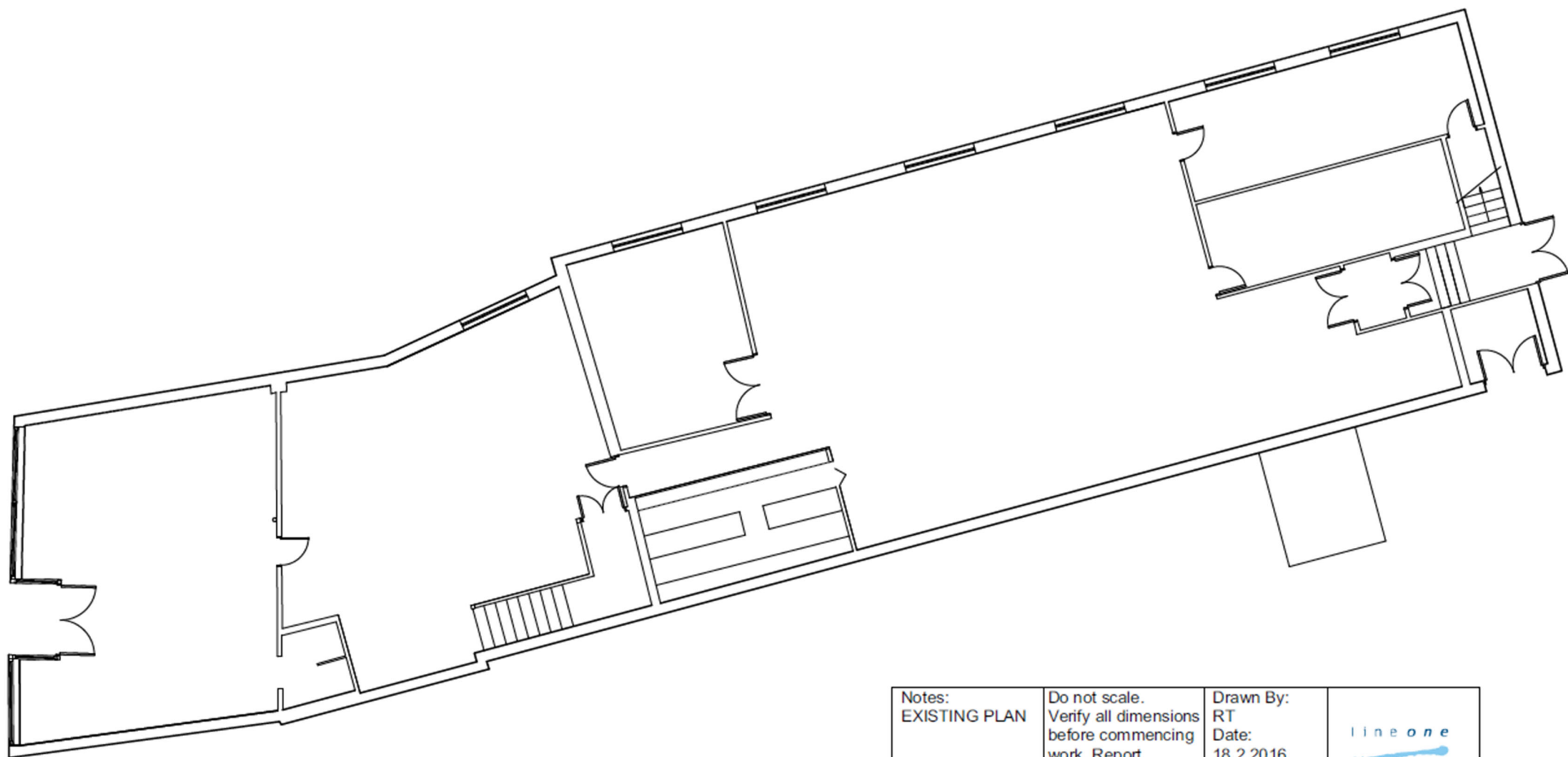
OS MasterMap 1250/2500/10000 scale
08 February 2016, ID: MNOW-00499144
mapsnow.co.uk

1:500 scale print at A4, Centre: 623210 E, 309095 N


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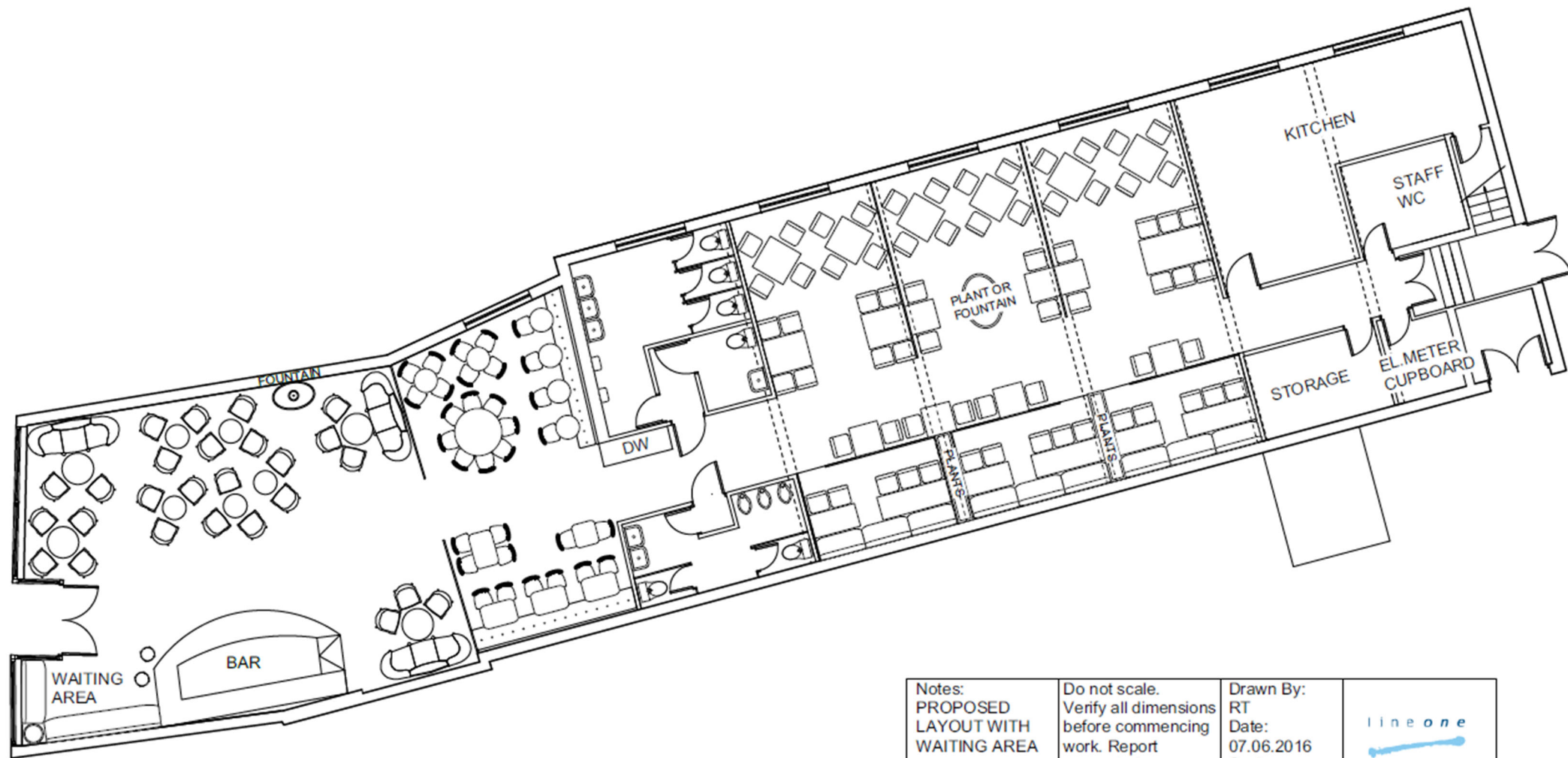


mapsnow



EXISTING GROUND FLOOR PLAN

| | | | |
|---|---|---|--|
| Notes: EXISTING PLAN | Do not scale. Verify all dimensions before commencing work. Report suspected discrepancies or omissions | Drawn By: RT Date: 18.2.2016 Scale: 1:100 @ A3 Drawing No: 1 | <i>line one</i>  interior design |
| Job: 5 Magdalen Street NR3 Norwich | | | |



PLAN AS PROPOSED

| | | | |
|---|--|--|---|
| <p>Notes: PROPOSED LAYOUT WITH WAITING AREA</p> | <p>Do not scale. Verify all dimensions before commencing work. Report suspected discrepancies or omissions</p> | <p>Drawn By: RT Date: 07.06.2016 Scale: 1:100 @ A3 Drawing No: 9</p> | <p>line one interior design</p> |
| <p>Job: 5 Magdalen Street NR3 Norwich</p> | | | |

PROPOSED EXTRACTION SYSTEM
FOR
MAGDALEN STREET NORWICH

SCALE : 1 : 50
DATE : 28.06.2016
DRAWN BY : SIMON BEAN
CONTACT No 07984750849
OR
01603 783783
Email: simonbean35@hotmail.com

