

## **Supporting Documents**

### **3. Land adjacent to 2 Southernhay Avenue**

1. Proposed block plan
2. Plans
3. Historic map
4. Daylight & sunlight report
5. Photographs

existing wall (shown as hatched) to be demolished and reinstated as new party wall



Scale 1:200

Block Plan shows area bounded by: 357668 55, 172594 04, 357705 56, 172630 04 (at a scale of 1:200). The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.

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BLOCK PLAN

SH 023 scale 1:200



Scale 1:1250

Site Plan shows area bounded by: 357668 55, 172493 04, 357792 53, 172630 04 (at a scale of 1:1250). The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.

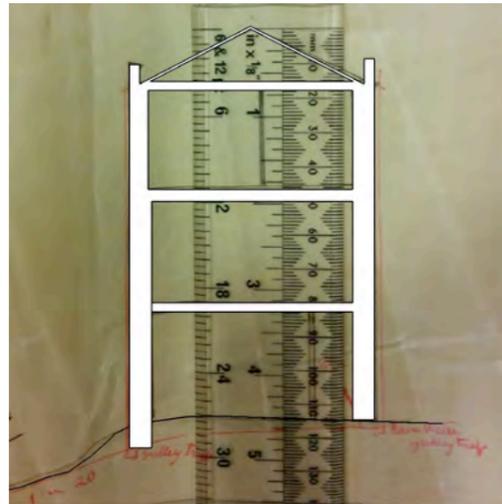
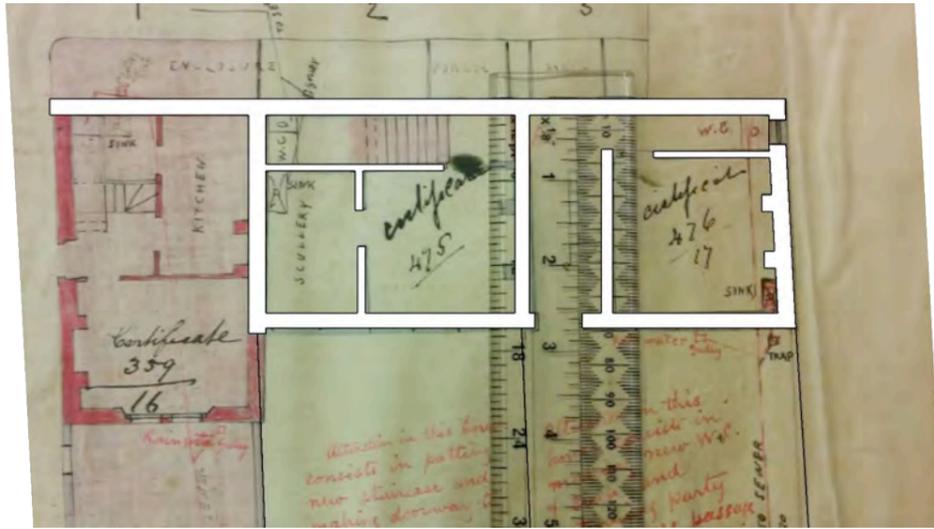
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LOCATION PLAN

SH 024 scale 1:1250

- Footprint of proposed dwelling
- Existing boundary line
- Existing party wall, to remain
- Existing party wall, to be demolished/reinstated



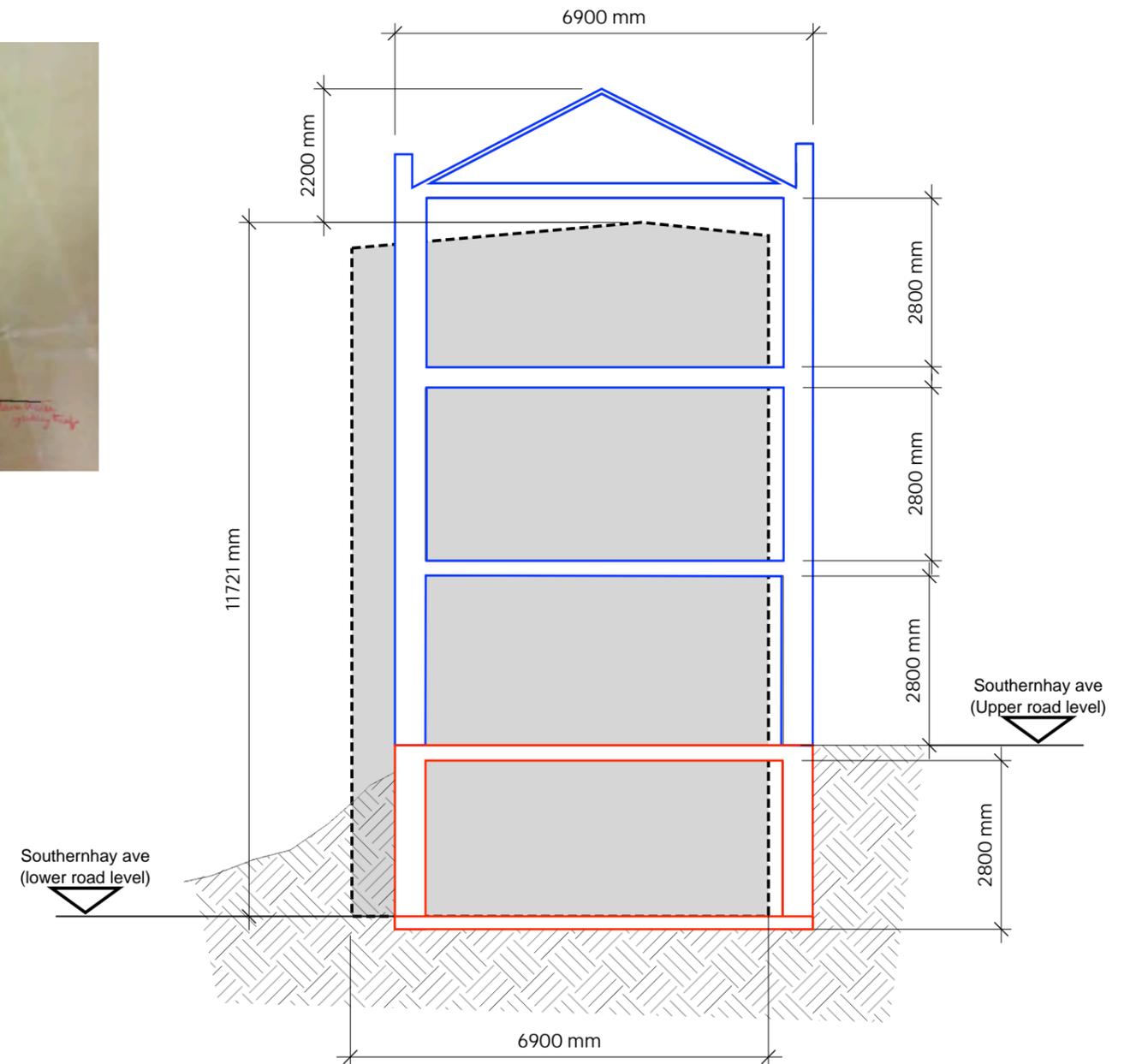
Archive drawings of original building.  
(source- Bristol record office original scale 1/8 inch to 1 foot)

SH 025 scale 1:200



3d view- previous house over proposed

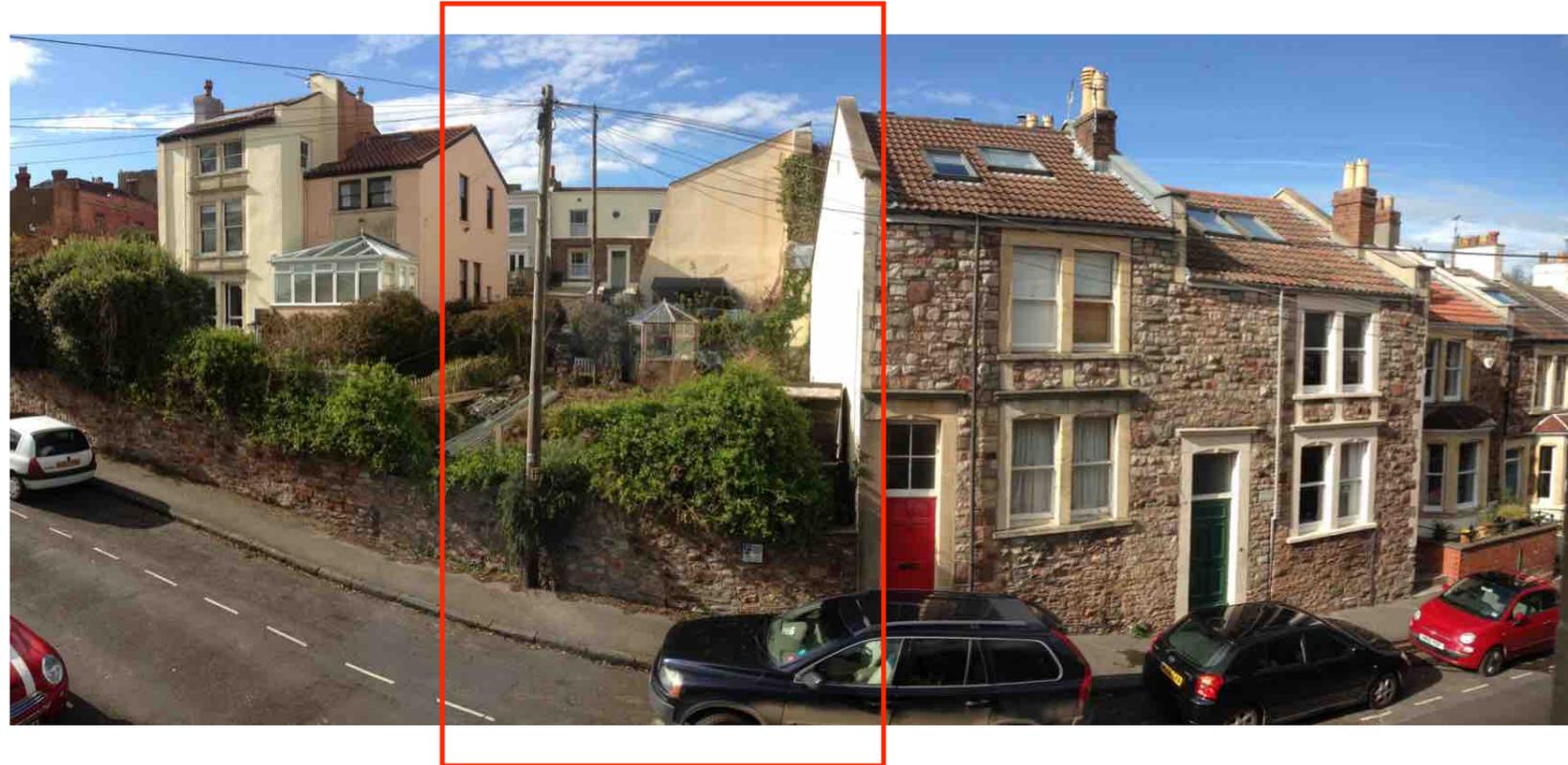
SH 026 scale N/A



- Outline of proposed house- east elevation
- section through previous house (taken from archive drawings above)
- section through existing cellar (surveyed on site by structural engineer)

East elevation- previous and proposed

SH 027 scale 1:100



Existing plot from south- photograph

SH 001 scale N.A



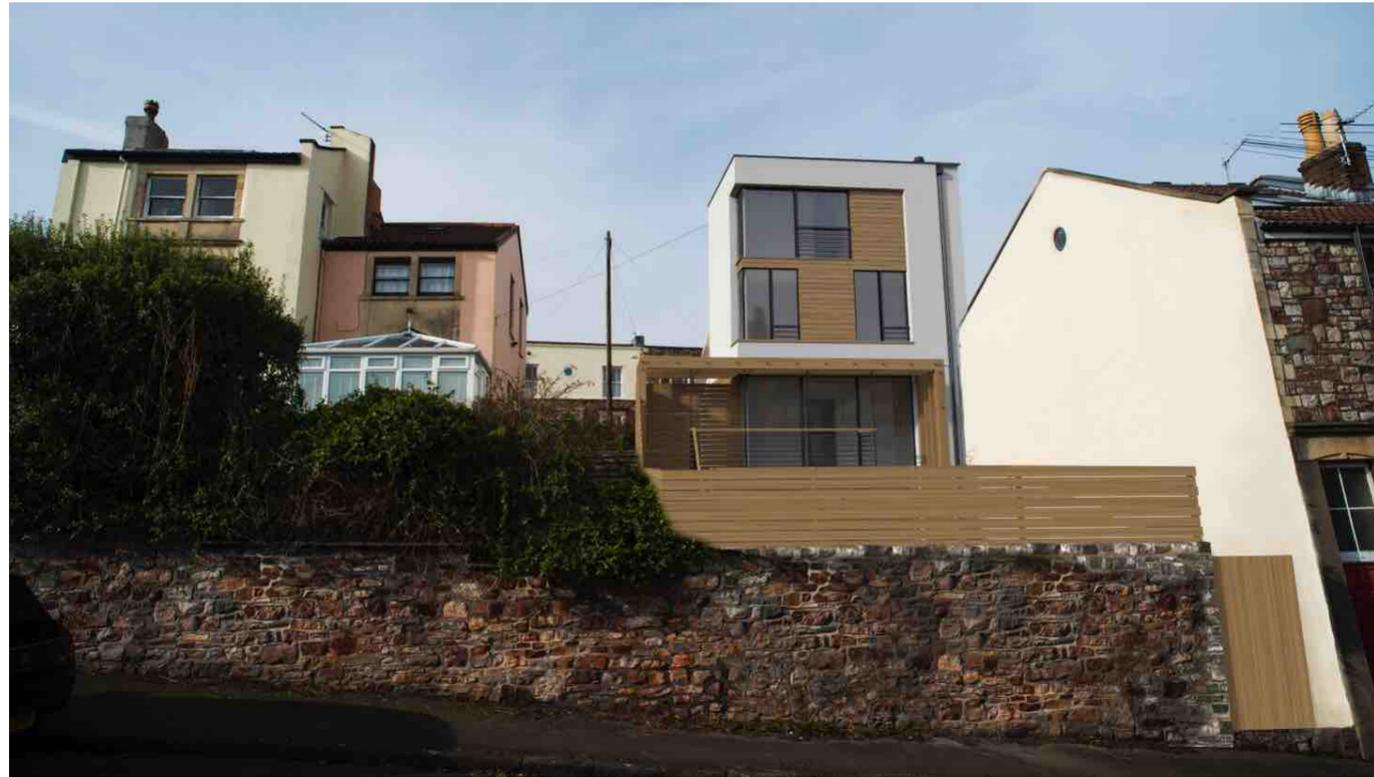
Existing plot from North- Photograph

SH 002 scale N.A



Proposed building- view from south of the river

SH 003 scale N.A



Proposed building from south- 3d visualisation

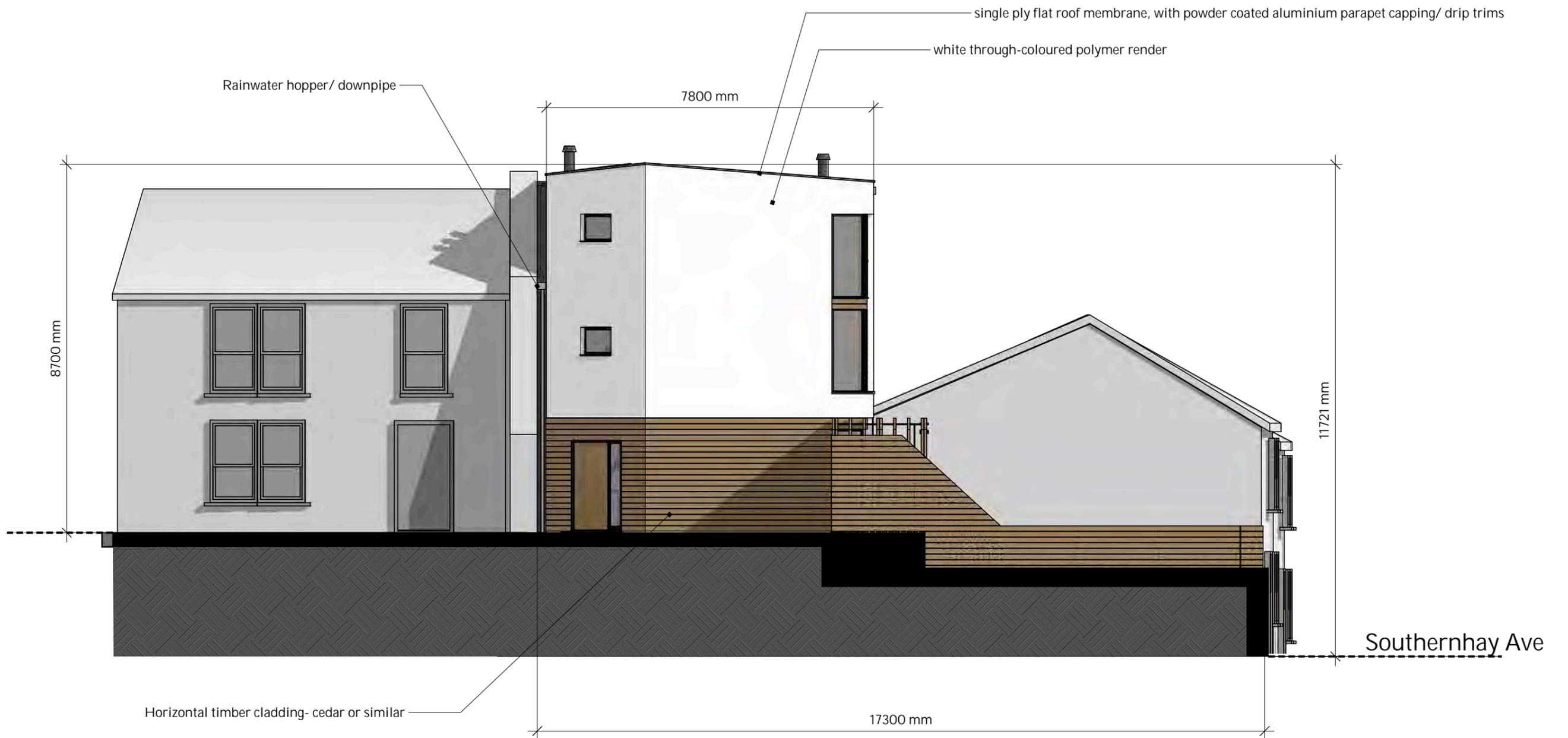
SH 004 scale N.A



Proposed building from north- 3d visualisation

SH 005 scale N.A





West Elevation

SH 008 scale 1:100





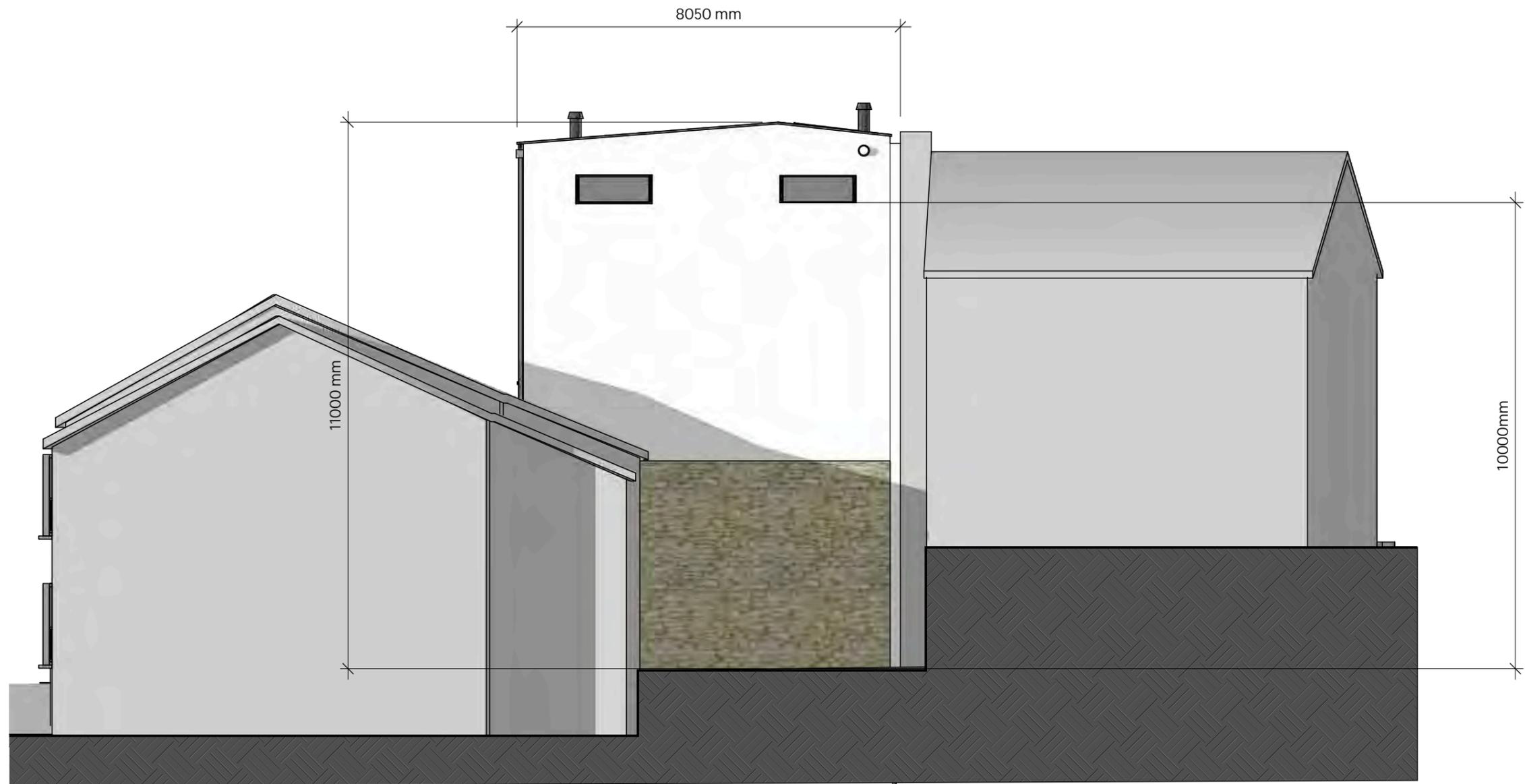
South Elevation

SH 009 scale 1:100

South Elevation (section through courtyard)

SH 010 scale 1:100





East Elevation

SH 011 scale 1:100

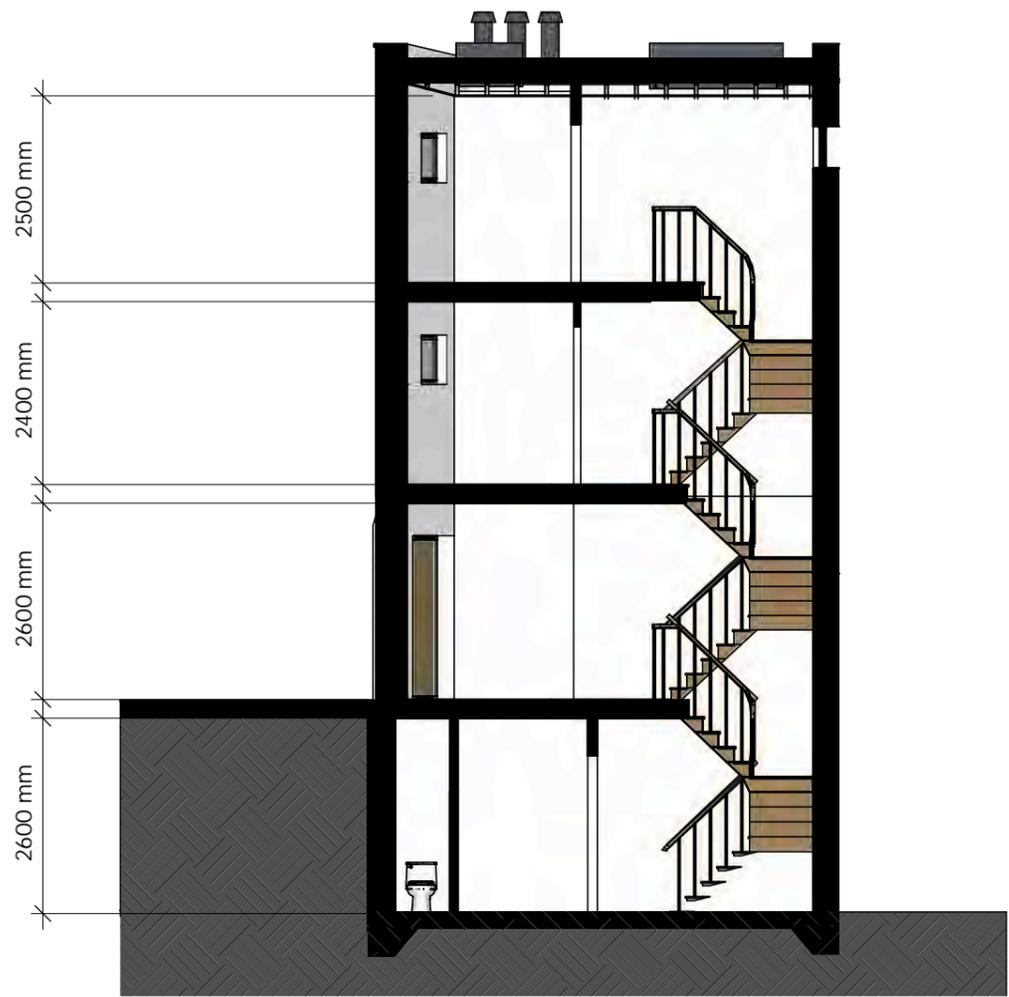




North Elevation

SH 012 scale 1:100

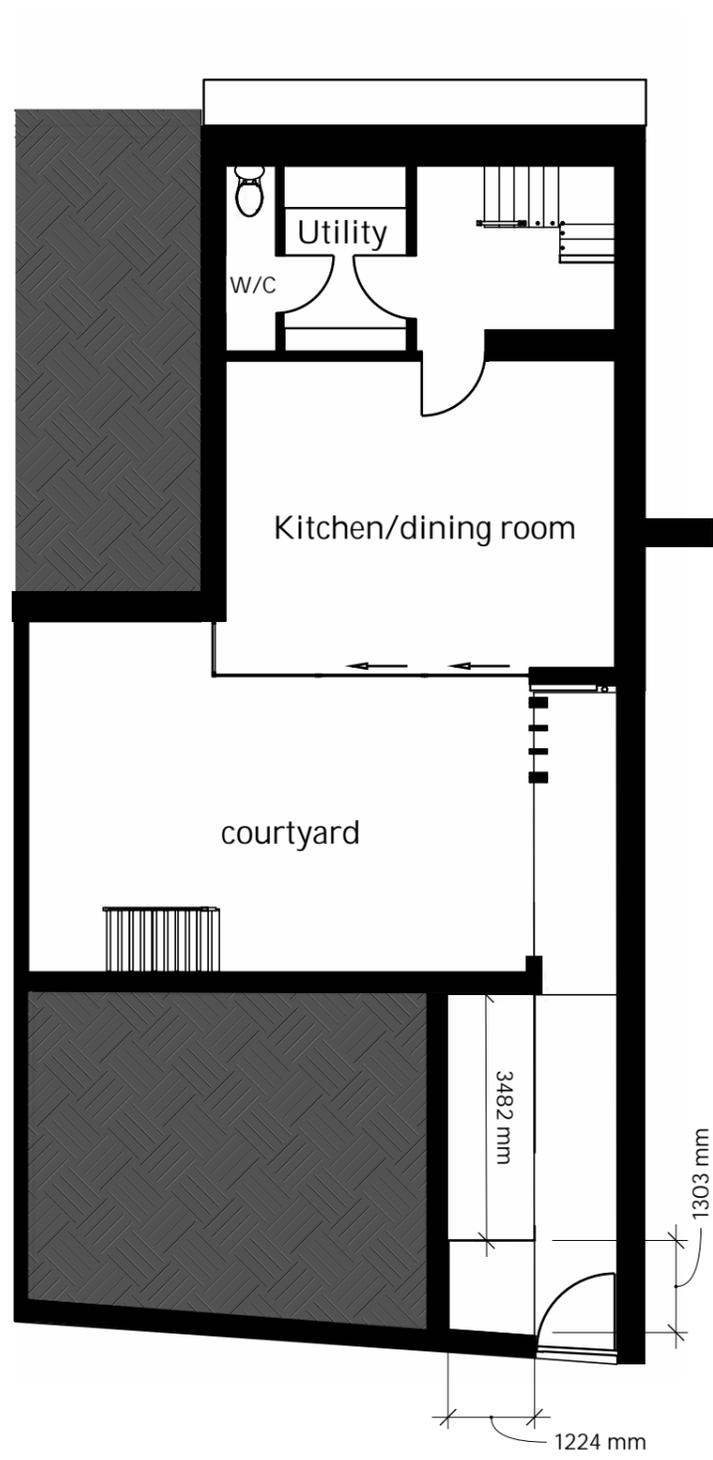




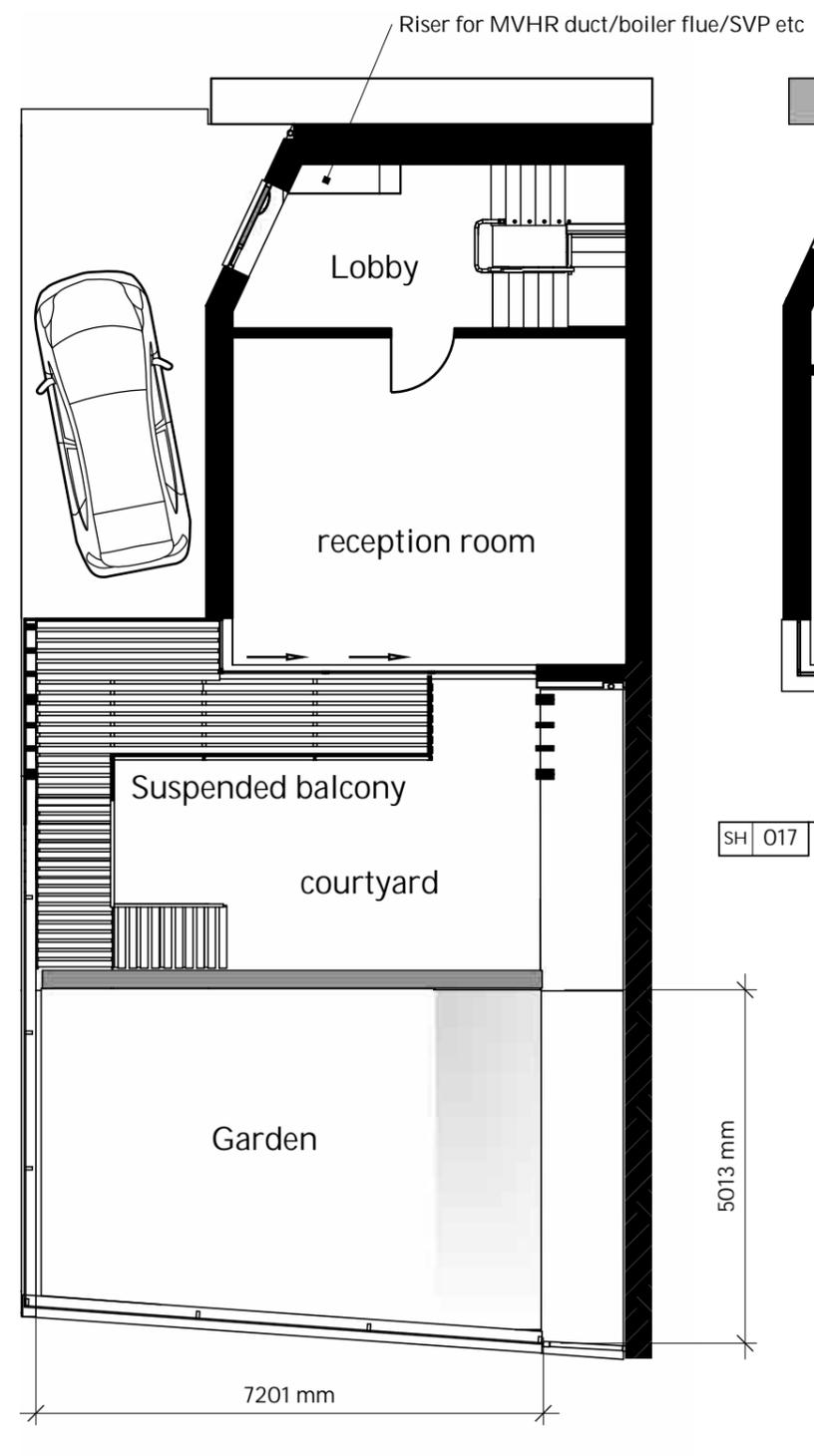
Section West-East  
 SH 013 scale 1:100



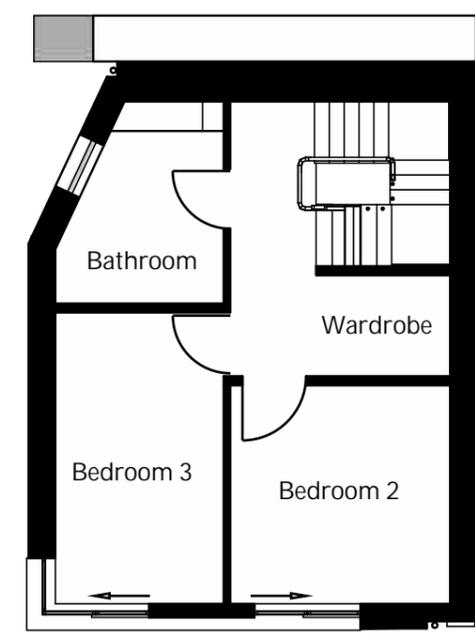
Section South-North  
 SH 014 scale 1:100



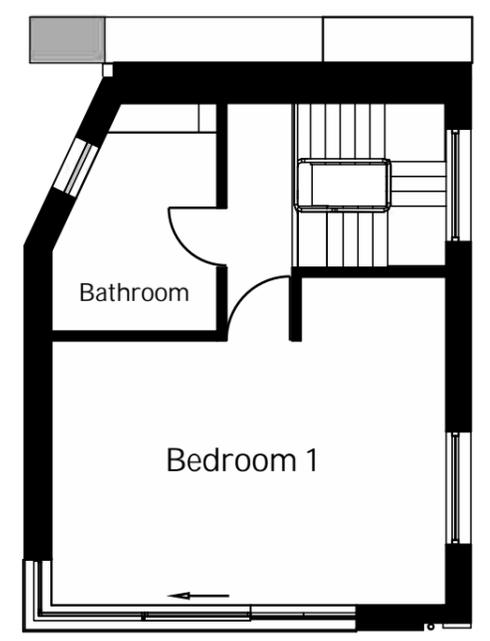
Lower Ground Floor Plan  
SH 015 scale 1:100



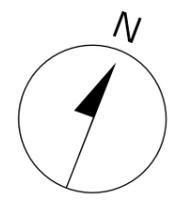
Ground Floor Plan  
SH 016 scale 1:100

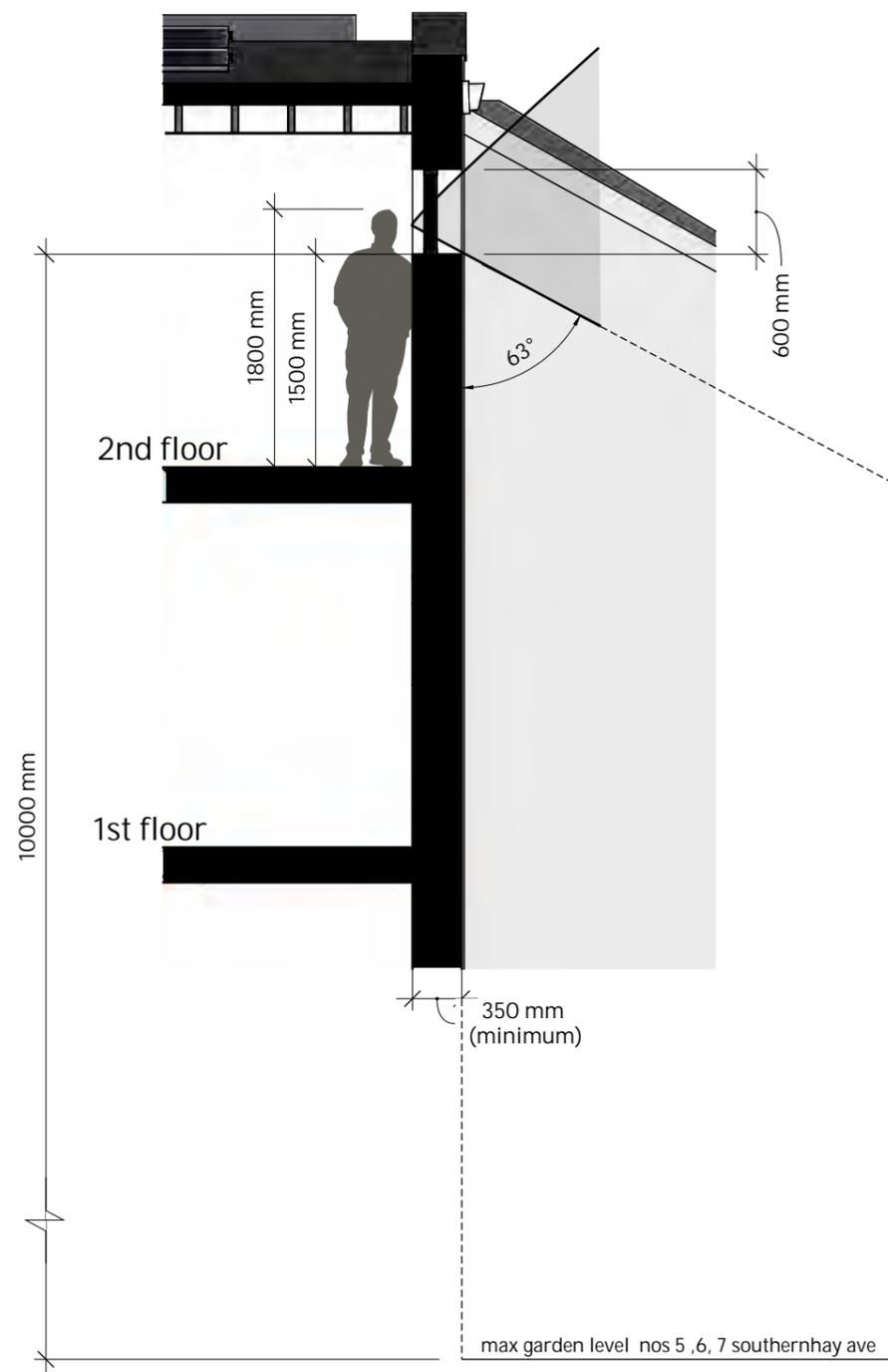


First Floor Plan  
SH 017 scale 1:100

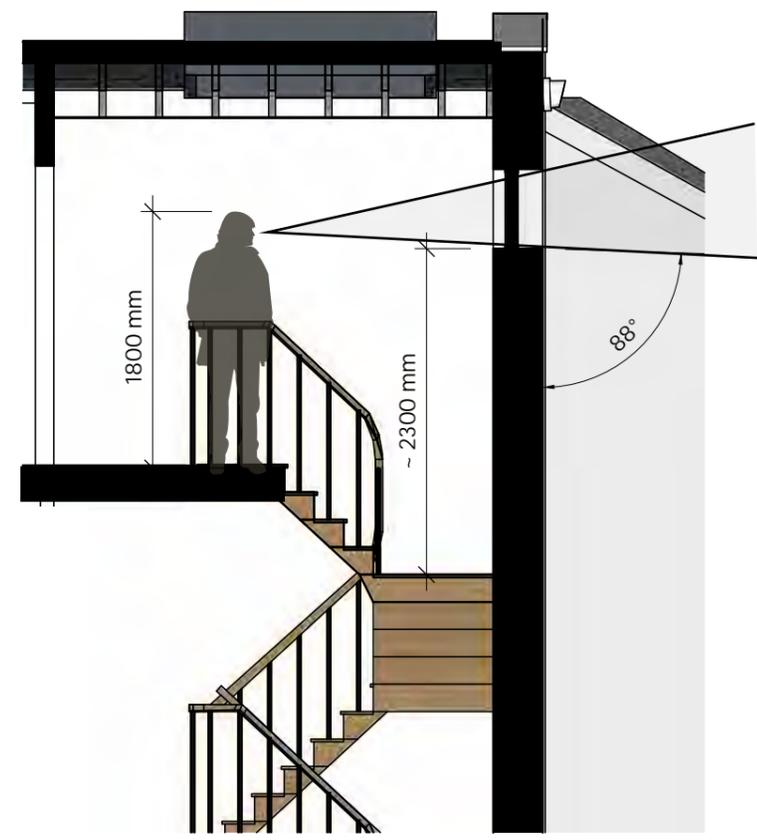


Second Floor Plan  
SH 018 scale 1:100





window positions on the east elevation are determined as shown.  
 both sills will be at least 1.5m from the interior FFL.  
 The highest external ground level in gardens to the east is approx 10m below the sill level.  
 therefore a person 1.8m tall, standing 16m or less from the proposed building (i.e in any of the 3 gardens to the east, each of which is approximately 5m wide), cannot be seen from the bedroom window.  
 the stairwell window poses no overlooking risk due to its height from the landing



stairwell window sightline diagram  
SH 020 scale 1:50

bedroom window sightline diagram  
SH 019 scale 1:50

max garden level nos 5 ,6, 7 southernhay ave

16000 mm



17/04/2016

## **Design, Heritage & Access Statement- Southernhay Ave**

### **Introduction**

We are proposing to build a 3 bedroom, 154m<sup>2</sup> family home over 3 storeys and a basement on a vacant piece of land adjacent to 2 Southernhay Avenue, Cliftonwood, Bristol. We hope this will be a house for our young children to grow up in, close to our family and extended community.

### **Site**

This was the site of a pre-existing terraced house that was demolished following bomb damage in the Second World War (see images below). It has since been partly concreted over and is now used as a private car park, domestic storage and ancillary garden.

The site has access both to the north and south section of the road, Southernhay Avenue forming a U-shape at this point. Due to a steep change in levels, numbers 1, 1a and 2 (the group of houses to which the proposed building would naturally belong) are on higher ground than their neighbours at 5 - 14. The properties are therefore set further back from the road and up the hill, with elevations fronting onto the upper part of Southernhay Avenue.

### **Location & wider context / heritage**

Cliftonwood is a historical, residential part of Bristol, dramatically rising over the hills above the harbour. The colourful and quirky houses are a local landmark. It is a designated conservation area, with a characterful mixture of modest terraced houses and brightly coloured contemporary and postwar architecture.

Many of the adjacent buildings, (in particular no 1 southern hay ave), have been altered significantly over the years and their original character has substantially diminished. Others, e.g. the 1960s buildings at the top of Southernhay Crescent are of poor quality construction. Despite the age of many of the surrounding properties, There is no clear common style or firm context in the area which ought to be adhered to, but a mix of styles to which the only appropriate addition would be something contemporary. an honest reflection of current design ethos, and very much a part of the mix.



Map with examples of contemporary new builds in the area (marked in yellow), and the Southernhay plot (marked in pink). The street names of these sites, from left to right, are : Cliftonwood Terrace, Old School Lane, Bellevue Crescent.



1900 street plan showing position/footprint of the previous house



1946 ariel photo showing bomb damaged buildings on the proposed plot



1949. post demolition

## **Design**

Our design reflects our commitment to sustainable architecture and our wish for the house to be an energy efficient eco home. The house has a simple, compact envelope to enhance its energy performance and large windows on the south elevation to maximise the solar gain and reduce heat loss.

The proposed house will cover part of the footprint of the previous terraced house. The garden is raised in relation to the basement courtyard, but would in fact be at a similar level to the existing, and accessed from a path leading onto the southern part of Southernhay Avenue. The garden contains secure storage for 3 bicycles and ample bin/recycling storage built discretely into the hill.

from ground level to the north, the building is 3 storeys high and is of similar scale to surrounding houses and the previous house, (In as far as it is possible to determine from the remaining party wall). We consider the height of the building to be close to the minimum needed to accommodate the necessary rooms. Especially given the modest footprint.

## **Layout**

The layout follows that of the typical houses built on the Cliftonwood slopes, lower ground floor kitchen and courtyard, ground floor sitting room and bedrooms above. A staircase is joining the floors at the north-east corner. There are separate bathrooms servicing each of the bedroom floors and a toilet on the lower ground.

All main windows are facing south looking over the garden, and there are 2 east facing smaller windows to let in light to stairs and top bedroom respectively. They are both placed high, above sightline of any neighbouring gardens as illustrated in drawing SH020 in the plans.

## **Scale**

Pre-application concerns of scale have been addressed by lowering the overall height and by pitching the roof in both directions, and reducing the overall width to be in line with the extent of the remaining party wall. The design aims to minimise the impact on views from surrounding housing, retaining a substantial gap between the proposed house and its neighbour, Unlike the previous building which covered the full width of the plot.

## **Materials**

The main materials are white render and full height glazing with timber cladding details.

The existing rubble stone wall along the southern part of Southernhay Ave will be retained at its existing height and with existing materials, in order to retain the character. A simple wooden door will provide access to the alley leading to the courtyard.

## **Landscaping**

The current garden area will be retained on two levels, courtyard and raised garden. The western boundary will have a wooden fence to separate it from the adjoining garden and the south side will have hedges and trees to soften the impact and obscure views of the houses opposite.

## **Sustainability**

Our wish to minimise our ecological footprint manifests itself both through the choices of materials, construction methods and contractors. With consideration for the complete life cycle of the house and Sustainability in the broadest sense.

The building will include a super-insulated timber frame (above ground level), an airtight envelope and largely thermal bridge free construction aimed at achieving, or approaching passivehaus standards and measures to Optimise natural lighting, passive solar heat gains and shading. Other sustainability features of the proposal are:

High performance, triple glazed windows and doors.

FSC certified timber cladding.

Mechanical ventilation with Heat recovery system, ensuring a high level of indoor air quality and thermal comfort while minimising ventilation heat losses.

Renewable energy through PV solar panels.

Use of low embodied energy, and recyclable materials such as timber, cellulose fibre insulation and wood fibre render panels (warmcell and Pavatex/difutherm respectively), and reuse of existing material on site e.g the stonework from the existing remaining walls.

## **Biodiversity and green infrastructure**

Pond and wildlife garden : The garden is planned to provide ample habitats to insects, birds and invertebrates and encourage biodiversity through the inclusion of a small pond, bird boxes, log pile, a couple of fruit trees for example bird cherry and aromatic bee-friendly bushes such as lavender & rosemary. The roof area of the bikeshed will be covered in long grasses and wildflowers, and next to it there will be a composting area.

A small vertical kitchen garden in the courtyard with herbs and some smaller fruits plants. The courtyard is will also be the base for a honeysuckle climbing over the sun shades, going up two floors.

## **Community considerations**

The immediate neighbours have been consulted and their views have been taken into consideration as part of the design process. Particular attention has been given to avoiding any direct overlooking issues and selecting construction techniques that cause minimal disruption. Concerns have been raised relating to the build process which we have begun to address, bringing the contractor into the conversation early in order to instigate a positive and candid forum for discussion. Communication will continue to be a priority throughout the project. We are satisfied that despite peoples concerns, our proposal will provide a considerable net benefit for the local area and its community.

### **Vehicular and transport links**

The site is close to local shops and amenities that can be easily reached on foot or bike. There is a shed at the south-side entrance providing secure storage for at least 3 bikes. Local buses are close by on Hotwells Road.

The design incorporates one car parking space adjacent to the property, to the west side of the house and accessed from the northern branch of Southernhay Avenue, requiring no amendment to existing rights of way.

### **Inclusive access**

Level access will be provided on the southern boundary, Southernhay Avenue, to the lower ground floor where all necessary services will be accessible, bathroom, kitchen and living area. The external door threshold on first floor will also provide level access. Efforts will be taken to ensure reasonable levels of accessibility throughout including internal doorways of at least 850mm clearance on ground and lower ground floors.



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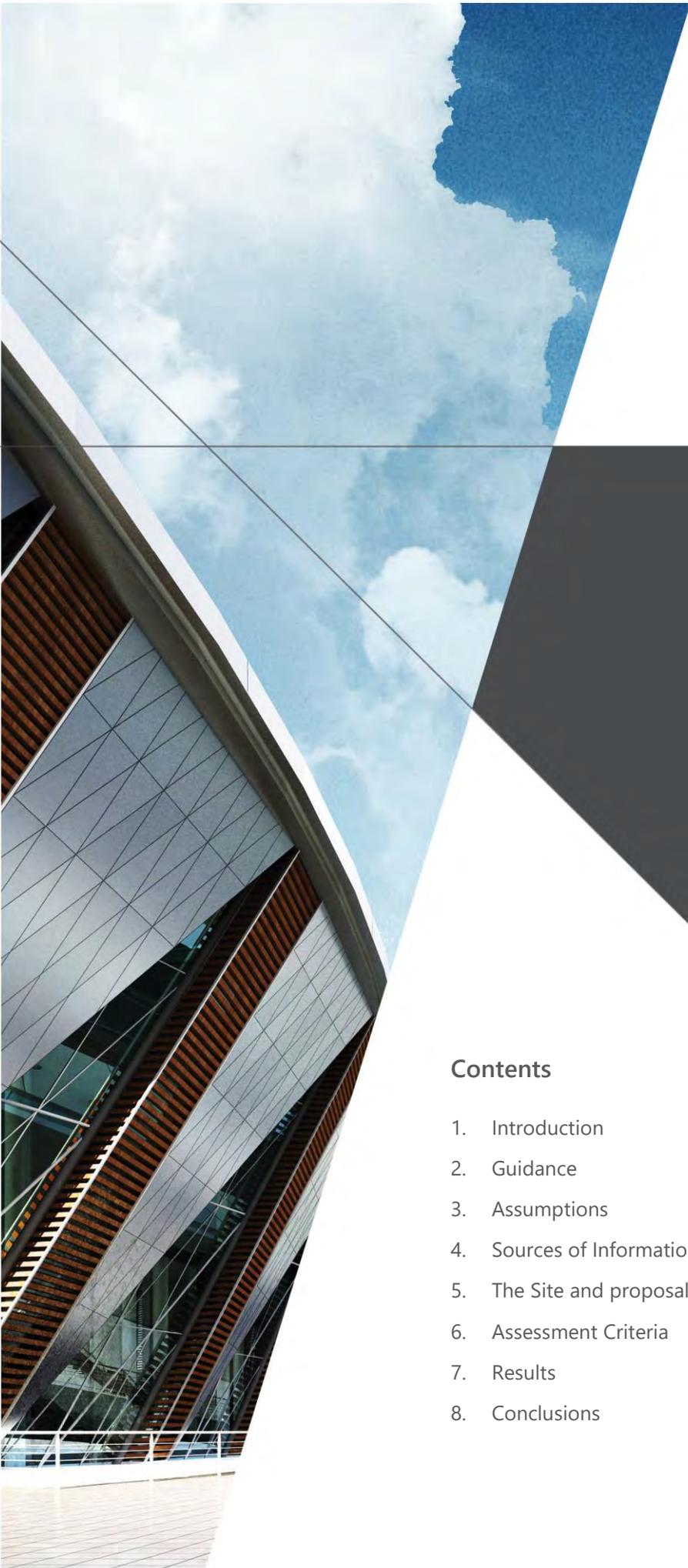
W: [eb7.co.uk](http://eb7.co.uk)

# DAYLIGHT & SUNLIGHT REPORT

## Southernhay

1 Cliftonwood Road, Clifton, Bristol

July 2016

A photograph of a modern building's facade, viewed from a low angle looking up. The building features a complex, geometric design with a mix of materials, including dark wood slats and light-colored panels. The sky is blue with scattered white clouds. The image is partially obscured by a large, dark grey geometric shape on the right side of the page.

## Contents

1. Introduction
2. Guidance
3. Assumptions
4. Sources of Information
5. The Site and proposal
6. Assessment Criteria
7. Results
8. Conclusions

# 1. Introduction

- 1.1. This practice has been instructed to provide an assessment of the daylight & sunlight implications of the proposed new development at Southernhay, Cliftonwood Road, Clifton, Bristol.
- 1.2. The methodology and criteria used for these assessments is provided by the Building Research Establishments guidance 'Site layout planning for daylight and sunlight: a guide to good practice' (BRE, 2011) and the British Standard document BS8206 Pt2.

## 2. Guidance

### **Daylight & sunlight for planning**

Site layout planning for daylight and sunlight: a guide to good practice, BRE 2011

- 2.1. This document follows from previous guidance produced by Her Majesty's Stationary Office (HMSO) on daylight and sunlight in the built environment and is now the accepted methodology used by local authorities for assessing daylight and sunlight in relation to new developments. It provides methods for calculating the impact to daylight and sunlight within existing neighbouring buildings and for assessing the provision of amenity provided within new buildings.
- 2.2. The guidance details three methods for calculating daylight; the Vertical Sky Component (VSC), the No-Sky Line Contour (NSC) and the Average Daylight Factor (ADF). The first two assessments are primarily used for the assessment of existing buildings, whilst the ADF test is used for the assessment of new buildings. The assessment of sunlight within both existing and new buildings is undertaken using the Annual Probable Sunlight Hours (APSH) test.

#### *Daylight to existing buildings*

- 2.3. The Vertical Sky Component (VSC) test measures the amount of sky that is visible to a specific point on the outside of a property, usually a window, which is directly related to the amount of daylight that can be received. It is measured on the outside face of the external walls, again usually at the centre point of a window.
- 2.4. The No Sky-Line Contour (NSC) test calculates the distribution of daylight within rooms by determining the area of the 'working plane' which can and cannot receive a direct view of the sky and hence 'sky light'. The working plane height is set at 850mm above floor level within a residential property and 700mm for non-residential.
- 2.5. For buildings that neighbour a new development, the guidance suggests that daylight will be adversely affected by the development, if either; its windows achieve a VSC below 27% and have their levels reduced to less than 0.8 times their former value, or the levels of NSC within rooms are reduced to less than 0.8 times their former values.

#### *Daylight to new buildings*

- 2.6. The ADF test calculates the average illuminance within a room as a proportion of the illuminance available to an unobstructed point outdoors, under a sky of known luminance and luminance distribution. This is the most detailed of the daylight calculations and considers the physical nature of the rooms and windows, including; window transmittance, window size, room size, angle of external obstruction and room surface reflectivity. Some of the inputs can be accurately quantified (room size, angle of obstruction, window size), but some need to be based upon assumptions. These are as follows:-

Internal reflectance of rooms	Existing buildings = 0.5
	Newly built & proposed dwellings = 0.6

Window transmittance	Double Glazed = 0.68
	Single glazed = 0.8

- 2.7. The guidance suggests that, for new dwellings provided with electric lighting, kitchens should attain at least 2% ADF, living and dining rooms at least 1.5% ADF and bedrooms at least 1% ADF.

*Sunlight*

- 2.8. For sunlight the APSH test calculates the percentage of statistically probable hours of sunlight received by each window in both the summer and winter months. March 21<sup>st</sup> through to September 21<sup>st</sup> is considered to be the summer period while September 21<sup>st</sup> to March 21<sup>st</sup> is considered the winter period. For properties surrounding a new development only those windows orientated within 90° of due south and which overlook the site of the proposal are relevant for assessment.
- 2.9. The BRE guidelines suggest that the main living rooms within new buildings should achieve at least 25% of annual sunlight hours, with 5% during the winter period. For neighbouring buildings the guide suggests that occupiers will notice the loss of sunlight if the APSH to main living rooms is both less than 25% annually (with 5% during winter) and that the amount of sunlight, following the proposed development, is reduced to less than 0.8 times its former value.

*Sunlight to gardens and outdoor spaces*

- 2.10. The impact to overshadowing and the provision of well sunlit open spaces is assessed using the Sunlight Amenity test. This looks at the proportion of an amenity area that receives at least 2 hours of sun on the 21<sup>st</sup> of March in the present condition and compares this with the proportion of the area that receives at least 2 hours of sun on the 21<sup>st</sup> of March with the proposal in place.

**BS 8206 Lighting for buildings - Part 2: Code of Practice for daylighting, BSI 2008**

- 2.11. This document gives guidance upon the design and provision of good daylight and sunlight within new developments. It suggests that the ADF test should be used to assess daylight and APSH to assess internal sunlight. The methodologies for these assessments are the same as those discussed in the BRE guidance above.

### 3. Methodology and application

#### Scope of the assessments

- 3.1. The BRE guidelines state that when assessing any potential effects on surrounding sensitive receptors, only those windows and rooms that have a 'reasonable expectation' of daylight and sunlight need to be considered. Paragraph 2.2.2 of the guidelines clarifies what are considered sensitive receptors with a 'reasonable expectation' of daylight and sunlight as follows:-

*"The guidelines given here are intended for use for rooms in adjoining dwellings where daylight is required, including living rooms, kitchens and bedrooms. Windows to bathrooms, toilets, storerooms, circulation areas and garages need not be analysed. The guidelines may also be applied to any existing non-domestic building where the occupants have a reasonable expectation of daylight; this would normally include schools, hospitals, hotels and hostels, small workshops and some offices."*

- 3.2. Commercial properties are not treated as having a reasonable expectation of daylight or sunlight. This is because they are generally designed to rely on electric lighting to provide sufficient light by which to work, rather than natural daylight or sunlight. No further assessment has therefore been carried out in relation to commercial properties in the vicinity of the proposed development.

#### Application of the guidance & criteria

- 3.3. The opening paragraphs of the BRE guidelines state: -

*"The guide is intended for building designers and their clients, consultants and planning officials. The advice given here is not mandatory and the document should not be seen as an instrument of planning policy. Its aim is to help rather than constrain the designer. Although it gives numerical guidelines, these should be interpreted flexibly because natural lighting is only one of many factors in site layout design. In special circumstances the developer or planning authority may wish to use different target values. For example, in a historic city centre a higher degree of obstruction may be unavoidable if new developments are to match the height and proportions of existing buildings"*.

- 3.4. It is therefore important to understand that the BRE guidance needs to be applied sensibly and flexibly, after taking account of site context. It is considered important to note that in high density areas, achieving good levels of daylight and sunlight in accordance with the BRE guidelines, can conflict with other beneficial design factors.

## 4. Sources of Information

- 4.1. A measured survey, architects drawings, site photographs and Ordnance Survey information have been used to create a 3D computer model of the proposed development in the context of the existing site and surrounding buildings.
- 4.2. It is important to note that where survey information has not been supplied, the precise position of the neighbouring property elevations has been estimated based upon brick counts from site photographs.
- 4.3. It has not been possible to gain access to any of the surrounding properties, therefore details of the internal layouts and floor level heights have been estimated from the external appearance of the building and the locations of windows. Unless known or otherwise appropriate the depths of rooms have been assumed at 4.27m or half the building depth if this is more appropriate.

### **Clifton Surveys Ltd**

Topographical Survey

3198-1 Cliftonwood Road.dwg

Received 14/07/2016

### **Greenhart Construction**

3D model of the proposed development

southernhay-PlanningV1.skp

Received 14/07/2016

## 5. Daylight and Sunlight Results

- 5.1. Full results of the daylight and sunlight assessments are attached within appendix 2. Drawings to show the existing and proposed buildings in the context of the neighbouring properties are attached within appendix 1.
- 5.2. The following properties have been considered within our assessments:-
- 2 Southernhay
  - 1a Southernhay
  - 5 Southernhay Avenue
  - 6 Southernhay Avenue

### 2 Southernhay



- 5.3. This is a two-storey house situated directly to the west of the Site. It has three windows at ground floor and two at first floor level that face east overlooking the proposed house. These can be seen on drawing WM01, attached within the appendix.
- 5.4. We understand that the small window at ground floor level (W10) serves a toilet and that the two windows at first floor level (W1 & W2) serve a hallway. These rooms are non-habitable and are therefore not relevant for assessment following the BRE methodology. The only rooms relevant for consideration are, therefore, the ground floor kitchen and conservatory to the rear of the property.

### Daylight

- 5.5. The results of the VSC assessment have shown that two of the facing kitchen windows (W8 & W9) and one of the conservatory windows (W6) will receive reductions in VSC leaving them below 0.8 times their former value.
- 5.6. Both the kitchen and conservatory are served by multiple windows and, therefore, have other windows that provide daylight into the rooms. The further NSC assessment considers the contribution made by all windows together, by calculating the distribution of direct skylight (daylight) throughout both rooms. The results of the NSC assessment have shown that the daylight within both rooms will remain unchanged by the proposed development. Furthermore, each room will continue to receive direct skylight to at least 98% of the room area.

### Sunlight

- 5.7. The BRE guidance suggests that sunlight is most important in main living rooms and that kitchens and bedrooms are less important. Furthermore, only windows which face within 90 degrees of due south are relevant for consideration as part of an APSP assessment.
- 5.8. As such only the windows within the southern elevation of the house (W1 – W7) have been included. The results of this assessment have shown that both the kitchen and the conservatory will retain very good levels of sunlight, well in excess of the 25% annual and 5% winter targets suggested by the BRE guide.
- 5.9. The impact to both daylight and sunlight within this property is therefore considered acceptable and consistent with the BRE guidance.

## 1a Southernhay



### Daylight

- 5.10. The results of our VSC, NSC and ADF assessments show that the rooms and windows within this property will retain good levels of daylight well in excess of the BRE target criteria.

## Sunlight

- 5.11. The BRE guidance suggests that sunlight is most important in main living rooms and that kitchens and bedrooms are less important. Furthermore, only windows which face within 90 degrees of due south are relevant for consideration as part of an APSP assessment.
- 5.12. Only room R1 at ground floor (served by windows W1 & W2) within the front elevation of the property appears to be a living room. The results of this assessment have shown that this room will retain very good levels of sunlight following the development, well in excess of the 25% annual and 5% winter targets suggested by the BRE guide.
- 5.13. The impact to both daylight and sunlight within this property is well within the criteria of the BRE guidance.

## 5 Southernhay Avenue



- 5.14. This two-storey house is located to the east of the Site and directly abuts the eastern boundary. Most of its windows face south across Southernhay Avenue or north onto the rear garden, but there are three windows in the western elevation that will overlook the proposed development. Each of these windows is secondary or ancillary in nature, either serving a non-habitable space, or serving as a smaller secondary window.
- 5.15. Window W2 at ground serves a kitchen that is also lit by a patio door in the rear elevation. Window W3 at ground serves a hallway and window W2 at second floor appears to serve an attic room, also served by a rooflight. Only the kitchen and attic room are considered to be habitable rooms relevant for assessment.

### Daylight

- 5.16. The results of our VSC assessment have shown that the main patio window serving the kitchen, and the two windows serving the attic room, will each retain at least 0.8 times their former values, whilst the smaller secondary window serving the kitchen retains 0.5 times its former value.
- 5.17. The further NSC assessment, which considers the amount of daylight within each room and accounts for light from all windows together, shows that both of these rooms will continue to receive near 100% of the light they currently receive, and that there will be very little impact to daylight within these rooms.

### Sunlight

- 5.18. The BRE guidance suggests that sunlight is most important in main living rooms and that kitchens and bedrooms are less important. Furthermore, only windows which face within 90 degrees of due south are relevant for consideration as part of an APSH assessment.
- 5.19. The south facing living room windows within this property overlook Southernhay Avenue and will receive no impact from the proposed development.

## 6 Southernhay Avenue



- 5.20. This is a two-storey mid-terrace house, which adjoins No.5 Southernhay Avenue and is located to the east of the Site. Most of the windows within this property face either north or south and do not overlook the proposed development. We understand, however, that there is a conservatory to the rear of the property that will have some view of the Site and has therefore been considered within our assessment.

### Daylight

- 5.21. The windows in the roof of the conservatory are horizontal and face directly upwards. As such they are not relevant for VSC (Vertical Sky Component). The results of our NSC analysis have shown that this room will continue to receive skylight to 100% of its area and is therefore unaffected by the proposed development.

### Sunlight

- 5.22. The BRE guidance suggests that sunlight is most important in main living rooms and that kitchens and bedrooms are less important. Furthermore, only windows which face within 90 degrees of due south are relevant for consideration as part of an APSH assessment.
- 5.23. The south facing living room windows within this property overlook Southernhay Avenue and will receive no impact from the proposed development.

## 6. Sunlight Amenity Results

- 6.1. The BRE guidance suggests that the impact of new development upon neighbouring gardens should be assessed using the sunlight amenity test (as described in the guidance section above). This assessment determines the proportion of a garden that receives two or more hours of sunlight, throughout the whole day. This assessment has been undertaken both on 21<sup>st</sup> March (equinox) and 21<sup>st</sup> June (summer solstice) in order to demonstrate the sunlighting conditions with the Sun at its mid-point and high-point. The results of this assessment are shown within appendix 3.

### March 21<sup>st</sup>

- 6.2. The results on March 21<sup>st</sup> show that, in the existing situation, the rear garden of 5 Southernhay Avenue does not see two or more hours of sun across any of its area. With the proposal in place this, clearly, would not be reduced any further. There will be no impact to this garden.
- 6.3. The assessment within the rear garden of 6 Southernhay shows that, currently, 0.7sq.m (3%) of the garden receives 2 or more hours of sunlight on 21<sup>st</sup> March. With the proposed development in place this area of sunlight is reduced to 0sq.m. Clearly this garden is very poorly sunlit on March 21<sup>st</sup> and is therefore unlikely to receive any direct sunlight through the winter, in either the current or proposed conditions.

### June 21<sup>st</sup>

- 6.4. A further assessment of sunlight conditions undertaken on the summer solstice (June 21<sup>st</sup>) has shown that both of these gardens will receive very good level of sunlight, above 50%, in both the current and proposed conditions, thereby complying with the BRE criteria.
- 6.5. The proposal therefore easily complies with the BRE criteria and as such can be considered compliant with Local Planning Policy.

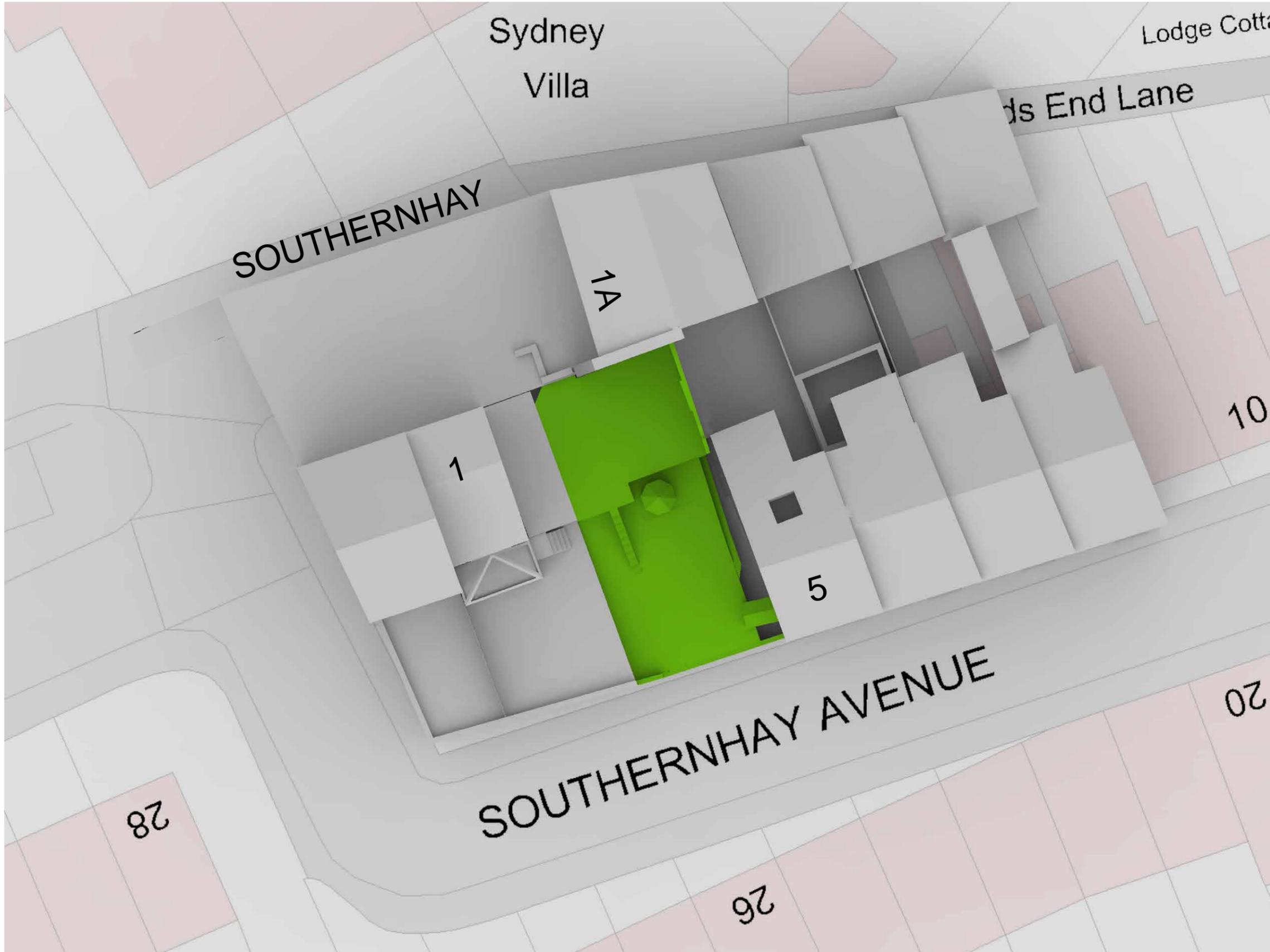
## 7. Conclusions

- 7.1. This report considers the impact caused, by the proposed new development at Southernhay, Clifton upon the daylight and sunlight currently received by the closest neighbouring properties. The assessment has been undertaken using the VSC, NSC and APSH tests set out within the BRE guidance 'Site layout planning for daylight and sunlight: a guide to good practice' (BRE, 2011) and the British Standard document BS8206 pt2.
- 7.2. The results of these tests have shown that, whilst there will be some reductions in daylight to individual windows, the amount of direct skylight received within each of the neighbouring habitable rooms will remain very high and in excess of the BRE criteria. The assessment of sunlight to neighbouring windows has also shown full compliance with the BRE criteria.
- 7.3. The assessment of sunlight amenity (overshadowing) within the rear gardens of 5 and 6 Southernhay Avenue has shown that both gardens currently receive very little sunlight on March 21<sup>st</sup>, with only a very small area (0.7sq.m) of the rear garden to 6 Southernhay Avenue receiving 2 hours of sunlight. The impact of the proposed development is therefore negligible.
- 7.4. A further assessment of sunlight on 21<sup>st</sup> June (Summer Solstice) shows that both gardens will receive 2 or more hours of sunlight, to more than 50% of their area, in both the current condition and with the proposed development in place.
- 7.5. The developments impact upon the neighbouring properties is therefore considered to be entirely consistent with the BRE guidance and relevant planning policy in terms of daylight and sunlight.



## Appendix 1

### **Drawings of the existing, proposed and surrounding buildings**



Sources of information

CLIFTON SURVEYS Ltd  
3198-1 Cliftonwood Road.dwg  
Received 14/07/2016

LIGHTING TD  
southernhay-PlanningV3.skp  
Received 26/07/2016

EB7 Ltd  
Site Photographs  
Ordnance Survey

Project Southernhay, Clifton  
Bristol

Title Existing Condition  
Plan View

Drawn	YH	Checked	IT
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Date	27/07/2016	Rel no.	02
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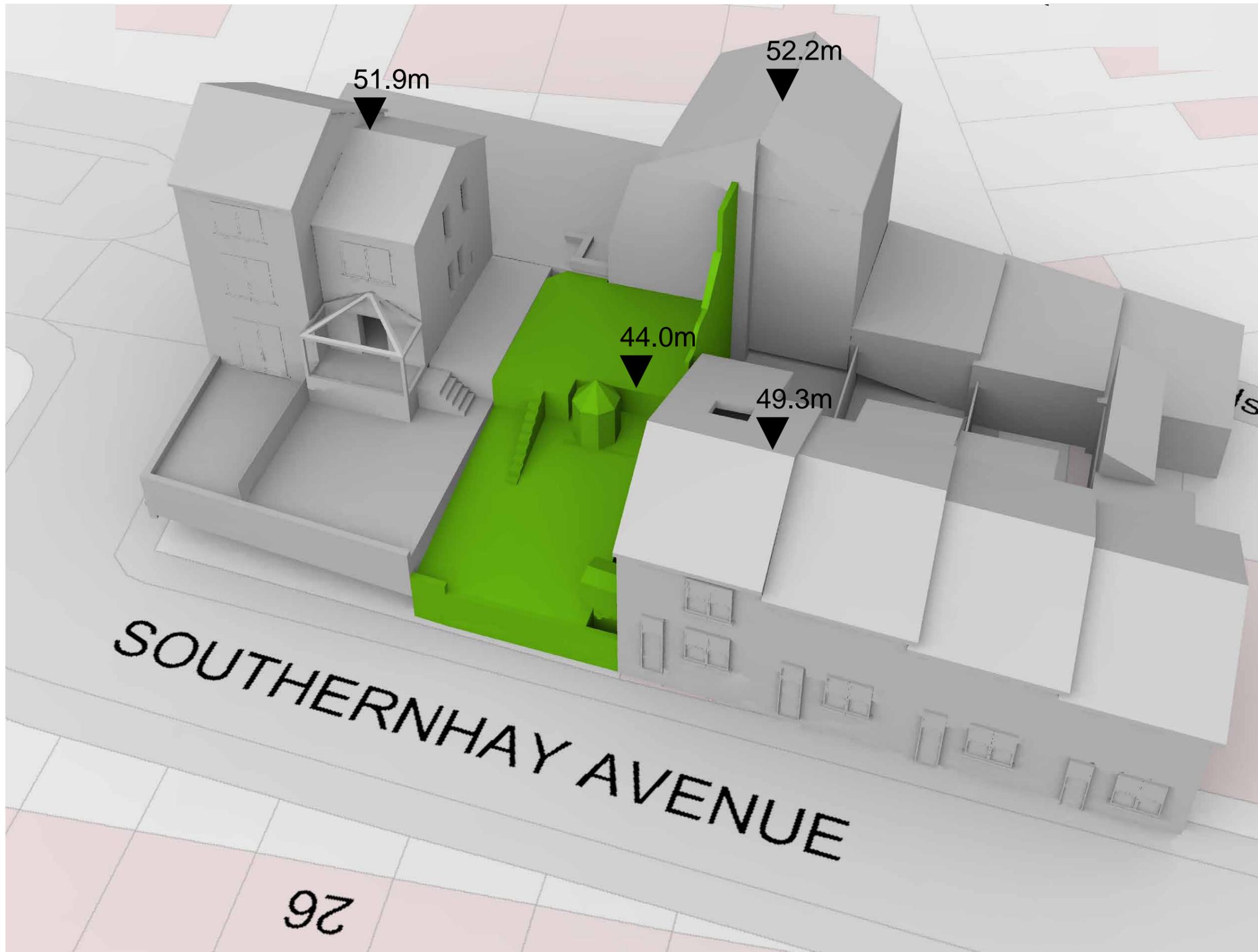
Drawing no. 2282-01

Sources of information

CLIFTON SURVEYS Ltd  
3198-1 Cliftonwood Road.dwg  
Received 14/07/2016

LIGHTING TD  
southernhay-PlanningV3.skp  
Received 26/07/2016

EB7 Ltd  
Site Photographs  
Ordnance Survey



Project Southernhay, Clifton  
Bristol

Title Existing Condition  
3D View

Drawn	YH	Checked	IT
-------	----	---------	----

Date	27/07/2016	Rel no.	02
------	------------	---------	----

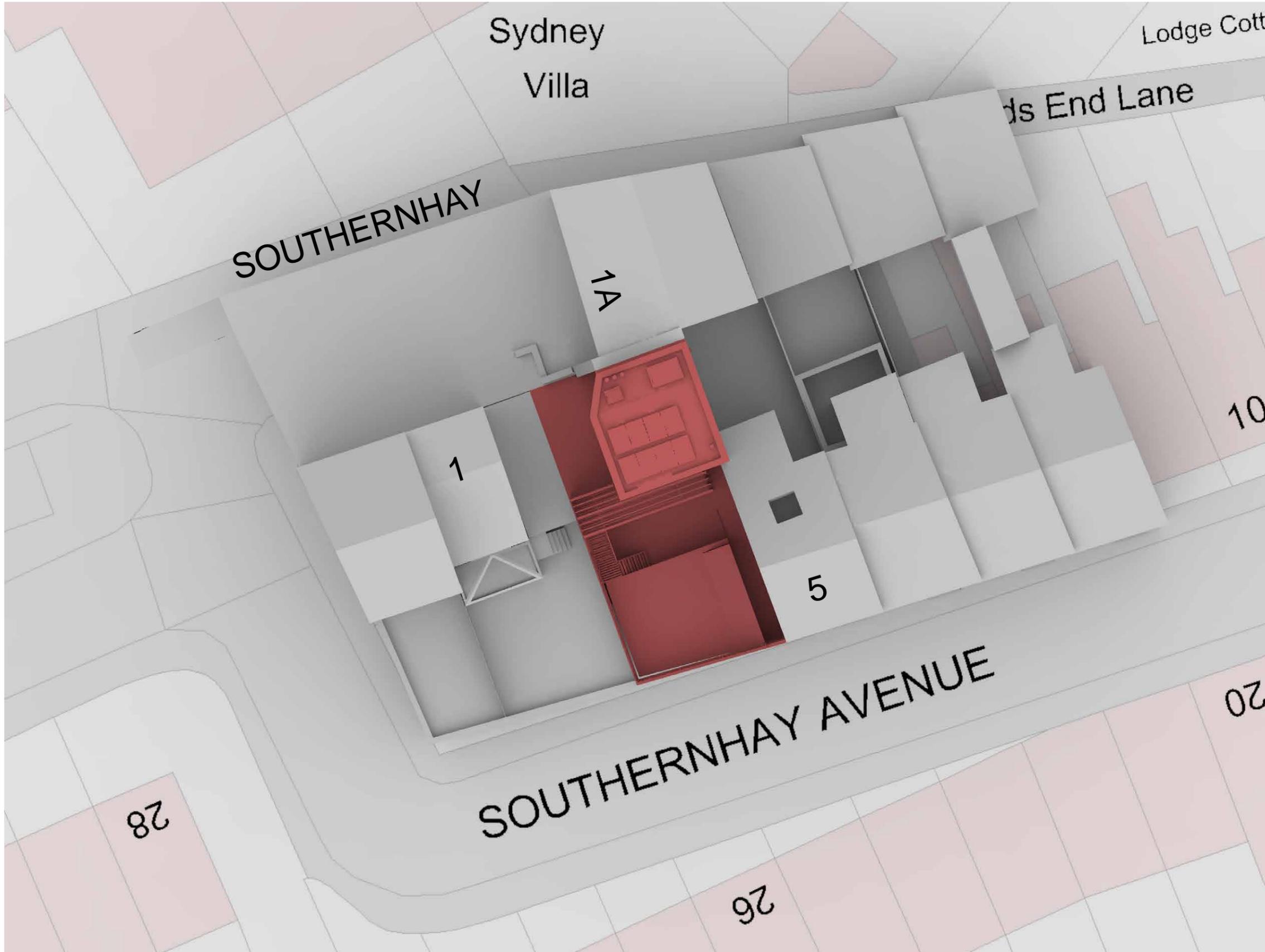
Drawing no. 2282-02

Sources of information

CLIFTON SURVEYS Ltd  
3198-1 Cliftonwood Road.dwg  
Received 14/07/2016

LIGHTING TD  
southernhay-PlanningV3.skp  
Received 26/07/2016

EB7 Ltd  
Site Photographs  
Ordnance Survey



Project Southernhay, Clifton  
Bristol

Title Proposed View  
Plan View

Drawn YH Checked IT

Date 27/07/2016 Rel no. 02

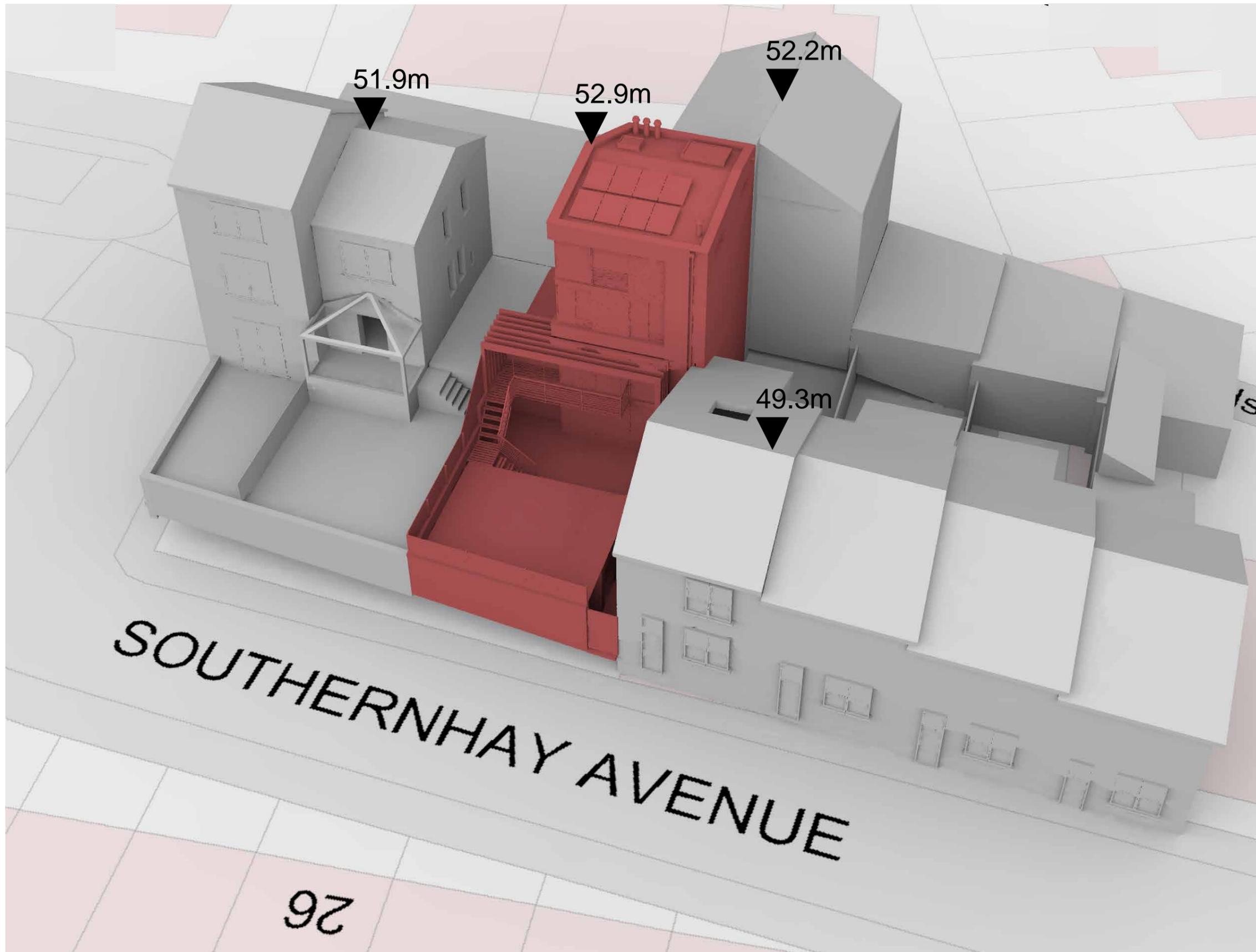
Drawing no. 2282-03

Sources of information

CLIFTON SURVEYS Ltd  
3198-1 Cliftonwood Road.dwg  
Received 14/07/2016

LIGHTING TD  
southernhay-PlanningV3.skp  
Received 26/07/2016

EB7 Ltd  
Site Photographs  
Ordnance Survey



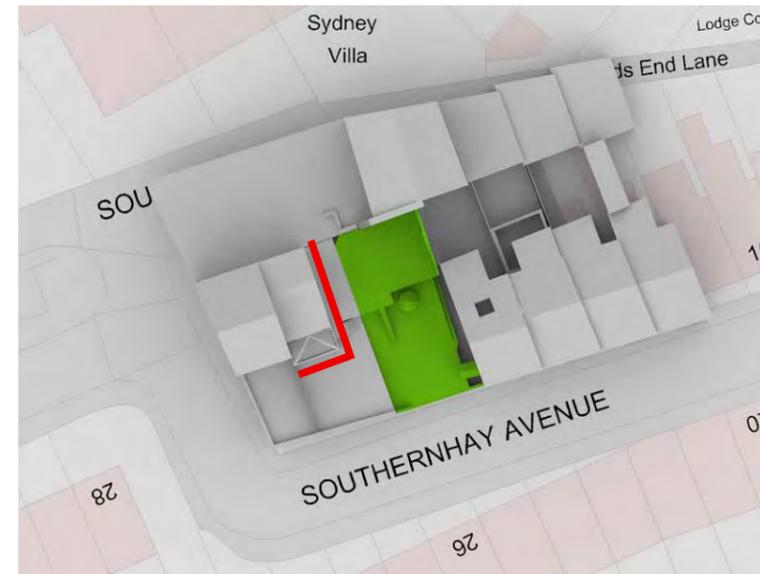
Project Southernhay, Clifton  
Bristol

Title Proposed View  
Plan View

Drawn	YH	Checked	IT
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Date	27/07/2016	Rel no.	02
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Drawing no. 2282-04

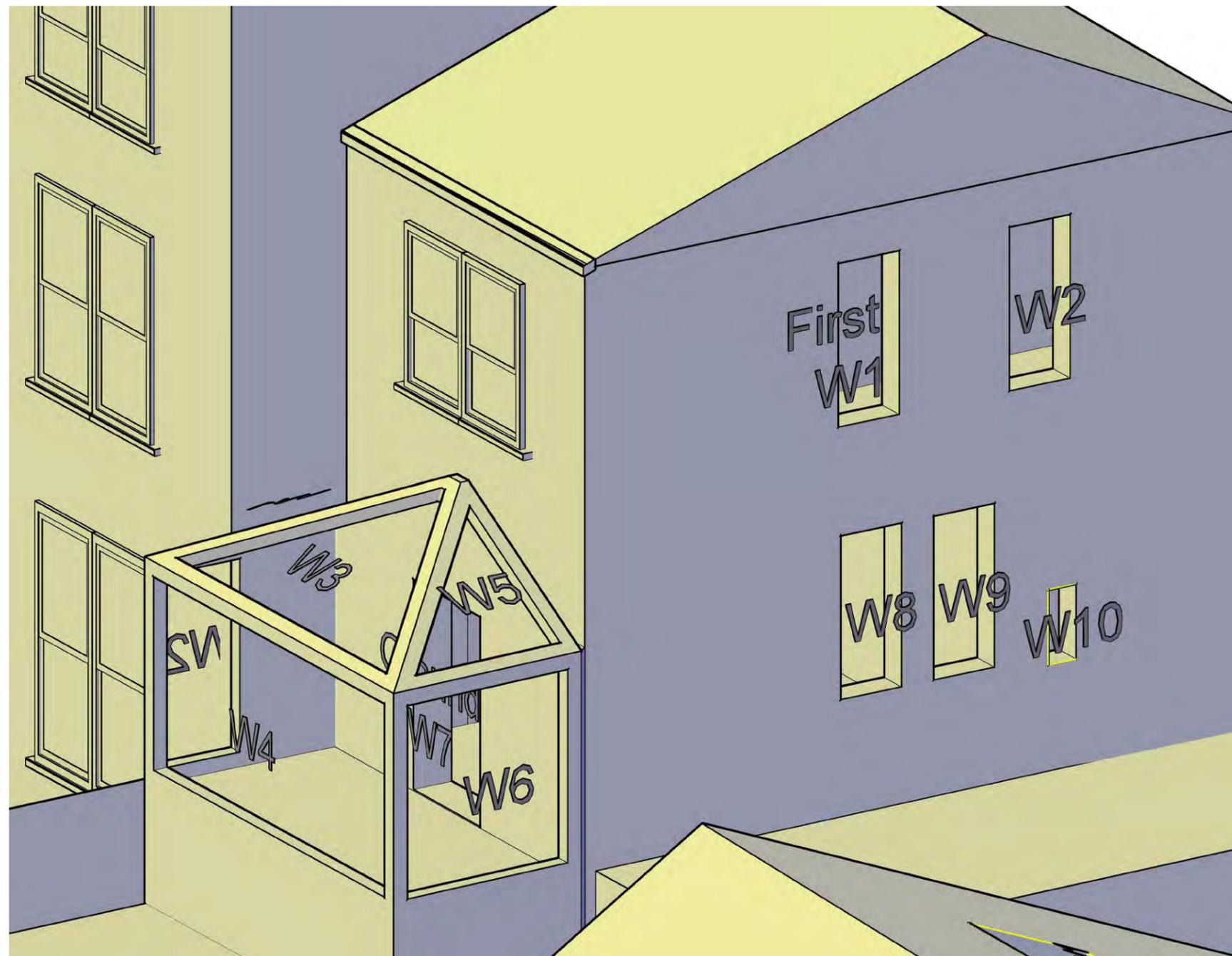


Sources of information

CLIFTON SURVEYS Ltd  
3198-1 Cliftonwood Road.dwg  
Received 14/07/2016

LIGHTING TD  
southernhay-PlanningV3.skp  
Received 26/07/2016

EB7 Ltd  
Site Photographs  
Ordnance Survey



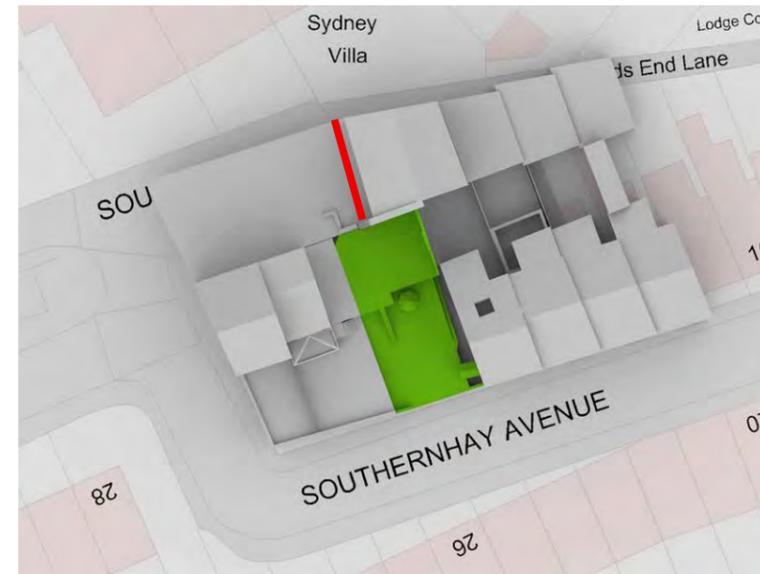
Project Southernhay, Clifton  
Bristol

Title 1 Southernhay  
Window Map

Drawn YH Checked IT

Date 27/07/2016 Rel no. 02

Drawing no. 2282-WM01

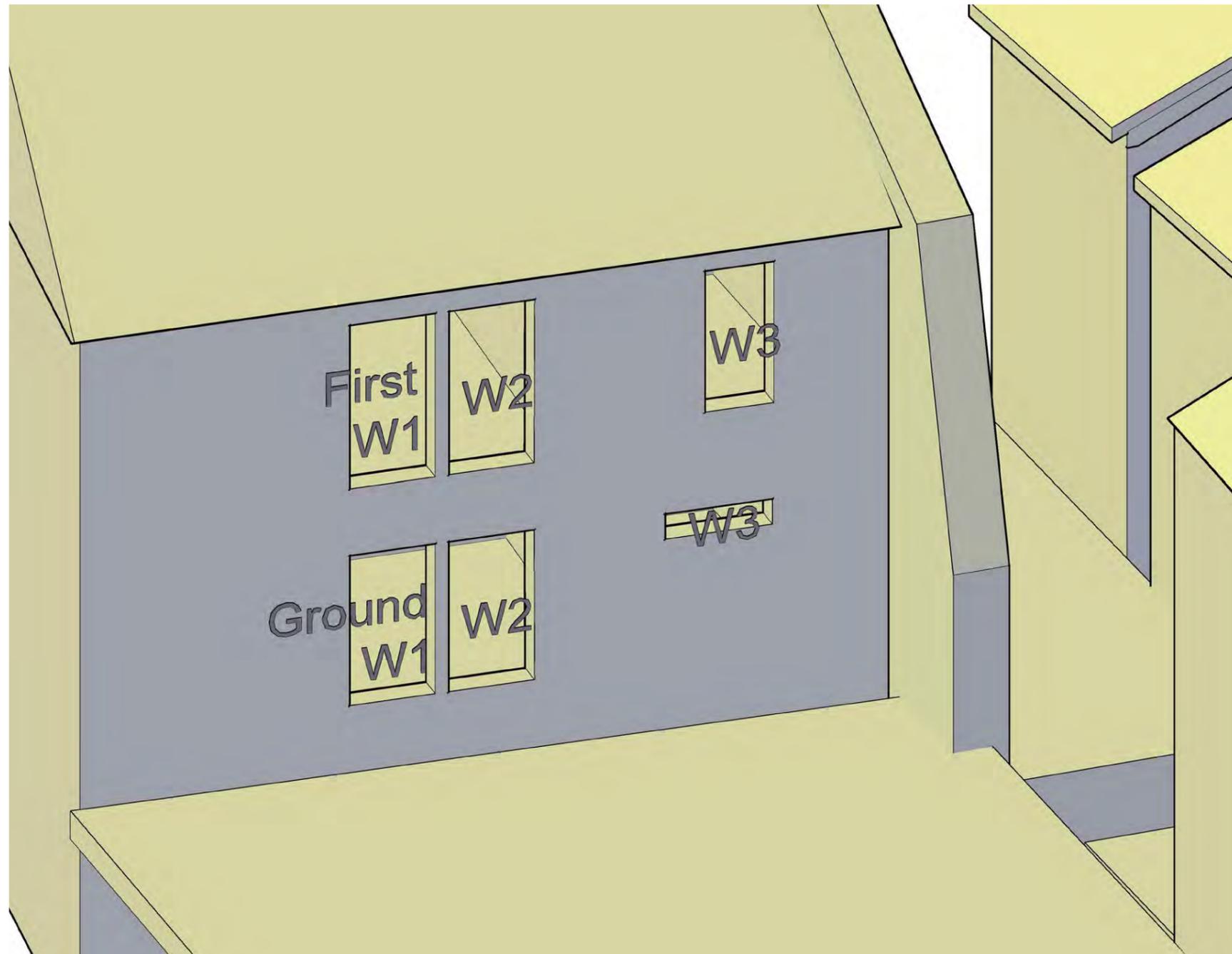


Sources of information

CLIFTON SURVEYS Ltd  
3198-1 Cliftonwood Road.dwg  
Received 14/07/2016

LIGHTING TD  
southernhay-PlanningV3.skp  
Received 26/07/2016

EB7 Ltd  
Site Photographs  
Ordnance Survey



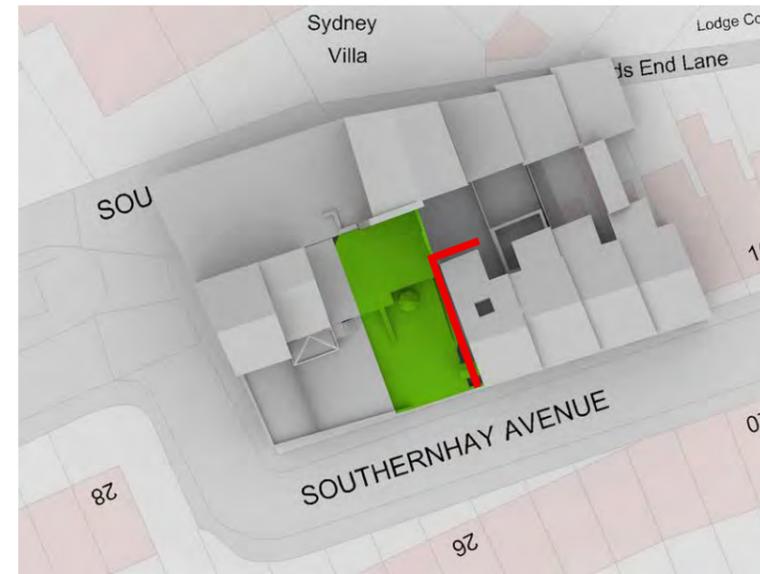
Project Southernhay, Clifton  
Bristol

Title 1A Southernhay  
Window Map

Drawn YH Checked IT

Date 27/07/2016 Rel no. 02

Drawing no. 2282-WM02

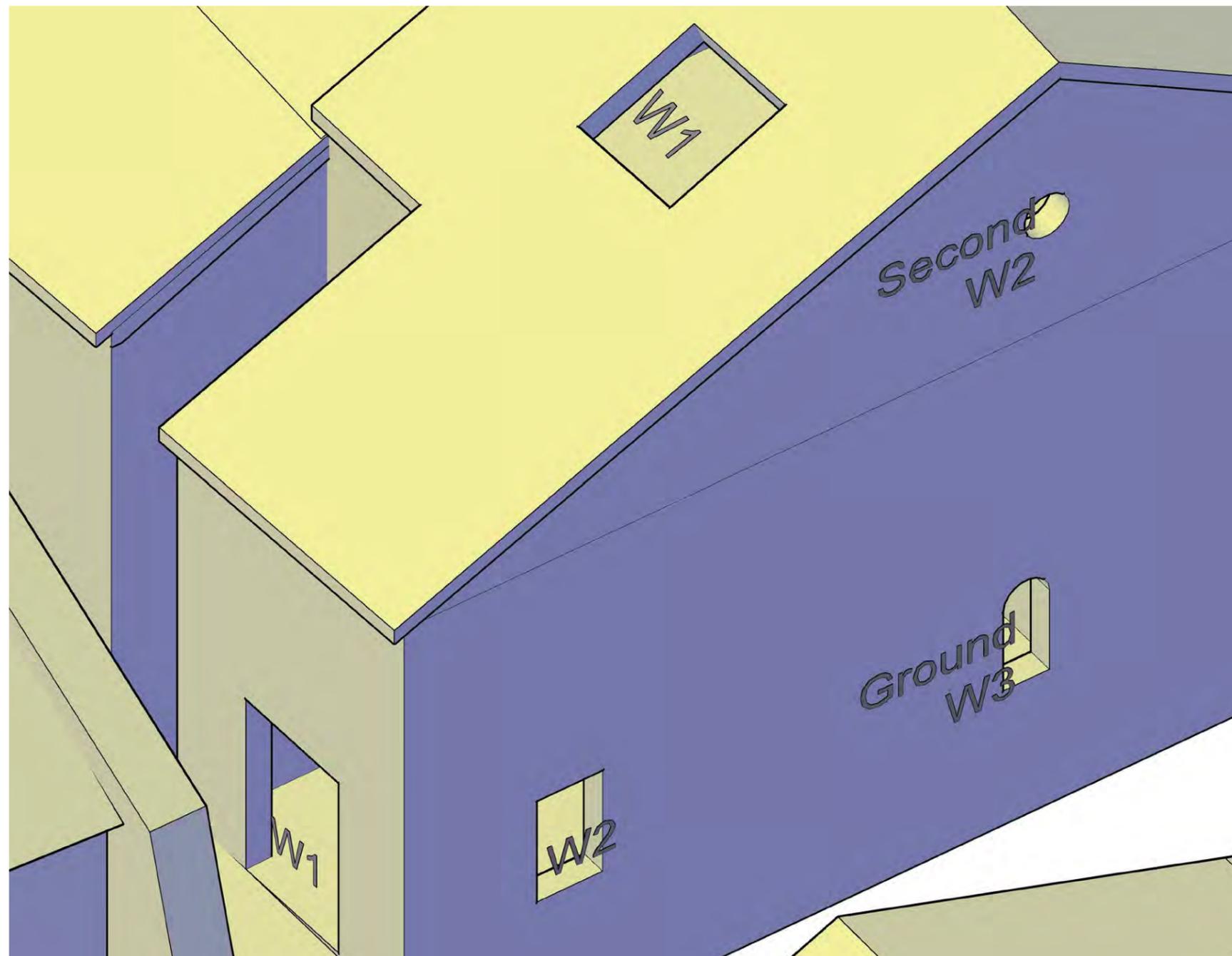


Sources of information

CLIFTON SURVEYS Ltd  
3198-1 Cliftonwood Road.dwg  
Received 14/07/2016

LIGHTING TD  
southernhay-PlanningV3.skp  
Received 26/07/2016

EB7 Ltd  
Site Photographs  
Ordnance Survey



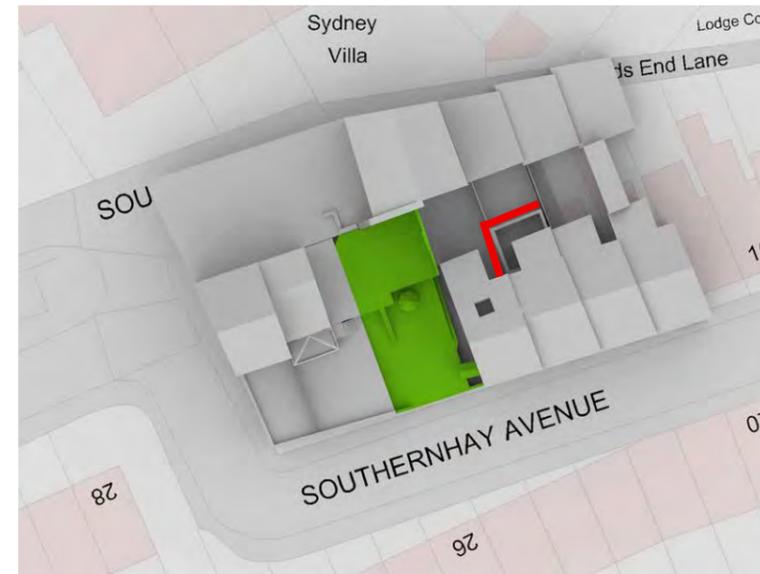
Project Southernhay, Clifton  
Bristol

Title 5 Southernhay Ave  
Window Map

Drawn YH Checked IT

Date 27/07/2016 Rel no. 02

Drawing no. 2282-WM03



Sources of information

CLIFTON SURVEYS Ltd  
3198-1 Cliftonwood Road.dwg  
Received 14/07/2016

LIGHTING TD  
southernhay-PlanningV3.skp  
Received 26/07/2016

EB7 Ltd  
Site Photographs  
Ordnance Survey



Project Southernhay, Clifton  
Bristol

Title 6 Southernhay Ave  
Window Map

Drawn YH Checked IT

Date 27/07/2016 Rel no. 02

Drawing no. 2282-WM04



## Appendix 2

### Results of the daylight & sunlight assessments

Address	Room	Window	Room Use	Existing VSC	Proposed VSC	Proportion Retained	Room Area	Existing NSC	Proposed NSC	Proportion Retained	Existing APSH Total	Existing APSH Winter	Proposed APSH Total	Proposed APSH Winter	Total Retained	Winter Retained
<b>2 Southernhay</b>																
Ground	R1	W1	Conservatory	11.9	11.9	1.0	85.0	85.0	85.0	1.0	90	30	89	30	1.0	1.0
		W2-L		21.3	21.3	1.0										
		W2-U														
		W3		39.4	39.4	1.0										
		W4-L		39.2	39.2	1.0										
		W4-U														
		W5		31.4	25.1	0.8										
W6-L	33.0	25.1	0.8													
Ground	R2	W7-L	Kitchen	29.3	29.3	1.0	195.5	191.4	191.4	1.0	66	20	64	20	1.0	1.0
		W7-U														
		W8		33.1	21.1	0.6										
		W9		32.4	20.4	0.6										
<b>5 Southernhay Avenue</b>																
Ground	R1	W1-L	Kitchen	11.8	10.7	0.9	131.8	89.0	89.0	1.0	41	17	37	16	0.9	0.9
		W1-U														
		W2-L		20.0	9.5	0.5										
		W2-U														
Second	R1	W1	Attic room	35.4	28.6	0.8	334.7	329.2	316.7	1.0	57	20	53	20	0.9	1.0
		W2		36.3	33.4	0.9										
<b>6 Southernhay Avenue</b>																
Ground	R1	W1	Conservatory	n/a	n/a	n/a	106.5	106.5	106.5	1.0	N/A	N/A	N/A	N/A	N/A	N/A
		W2		n/a	n/a	n/a										
<b>1A Southernhay</b>																
Ground	R1	W1-L	Living room	35.5	35.4	1.0	265.8	241.1	241.1	1.0	50	13	47	11	0.9	0.8
		W1-U														
		W2-L		34.7	34.6	1.0										
		W2-U														
First	R1	W1-L	Bedroom	37.0	36.9	1.0	238.2	225.3	225.3	1.0	51	16	51	16	1.0	1.0
		W1-U														
		W2-L		36.7	36.6	1.0										
		W2-U														



## Appendix 3

### Results of the sunlight amenity assessment

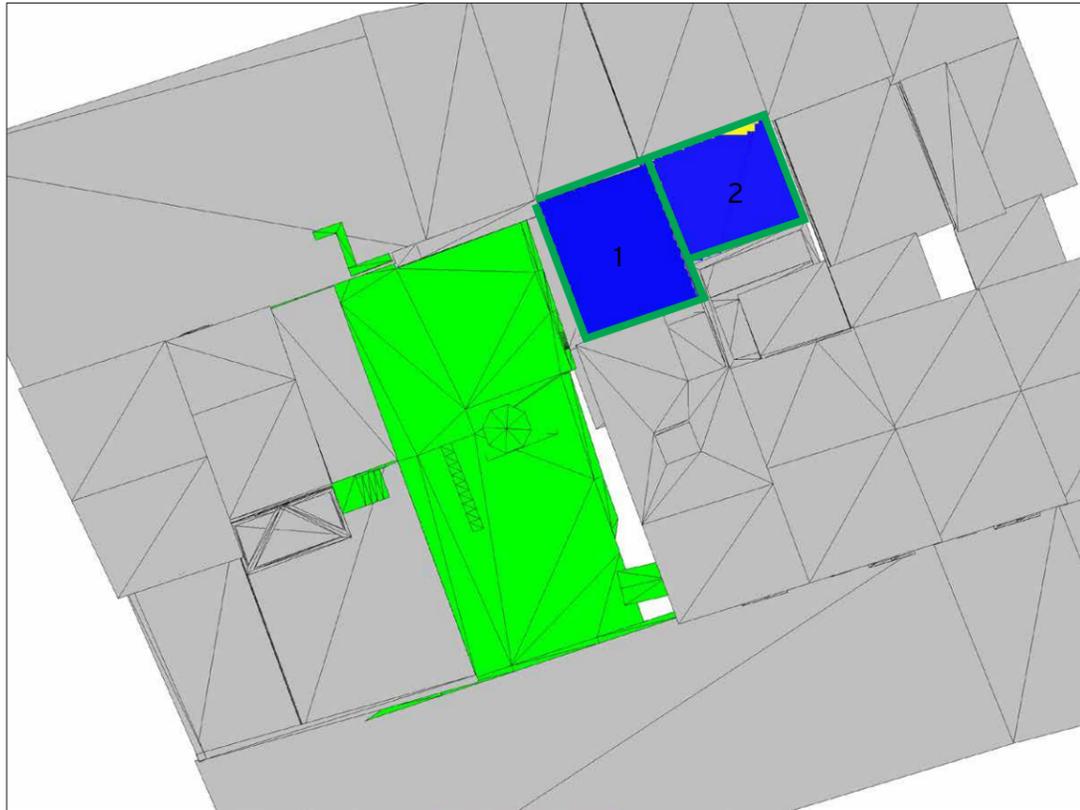
Sources of information

CLIFTON SURVEYS Ltd  
 3198-1 Cliftonwood Road.dwg  
 Received 14/07/2016

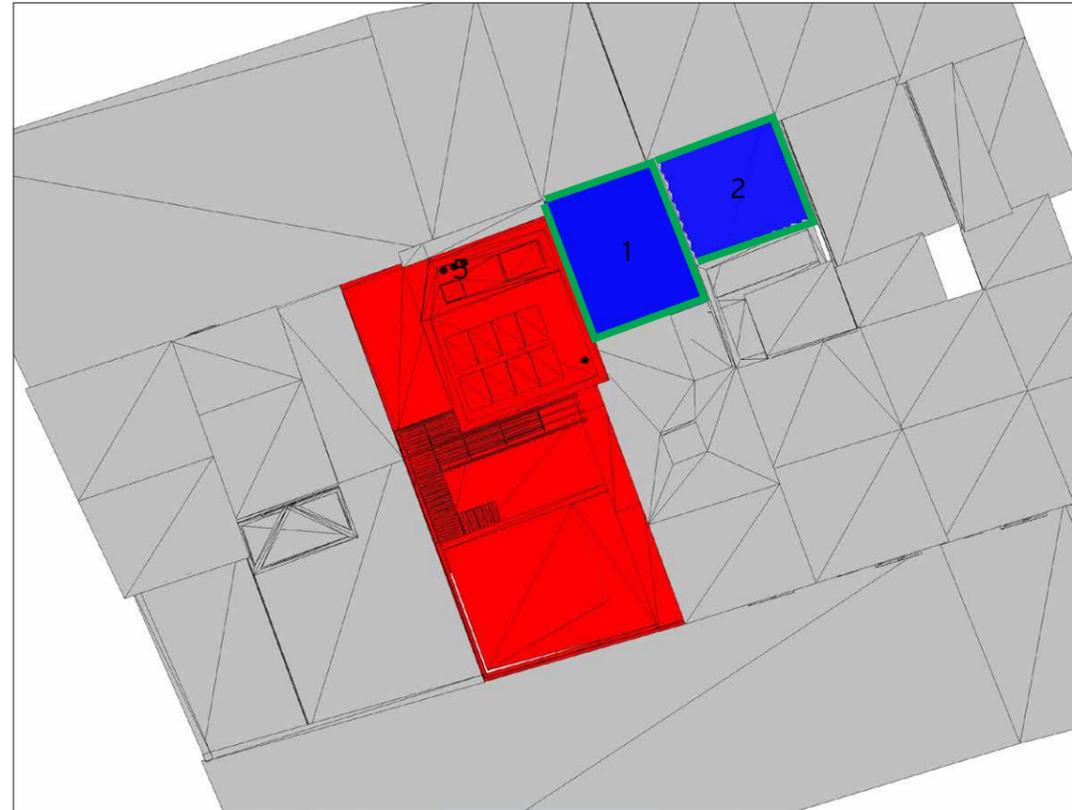
LIGHTING TD  
 southernhay-PlanningV1.skp  
 Received 14/07/2016

EB7 Ltd

Site Photographs  
 Ordnance Survey



March 21st Sunlight Amenity study - E X I S T I N G



March 21st Sunlight Amenity study - P R O P O S E D

Assessment Area	TotalArea (sq.m)	EXISTING		PROPOSED		RETAINED Pr/Ex
		Area 2Hrs (sq.m)	Area 2Hrs (%)	Area 2Hrs (sq.m)	Area 2Hrs (%)	
1	29.8	0.0	0.1	0.0	0.0	1.0
2	23.4	0.7	3.0	0.0	0.0	0.0

Key:

Hours of sunlight on 21st March

Area of assessment

More than 2 hours of sunlight

Less than 2 hours of sunlight

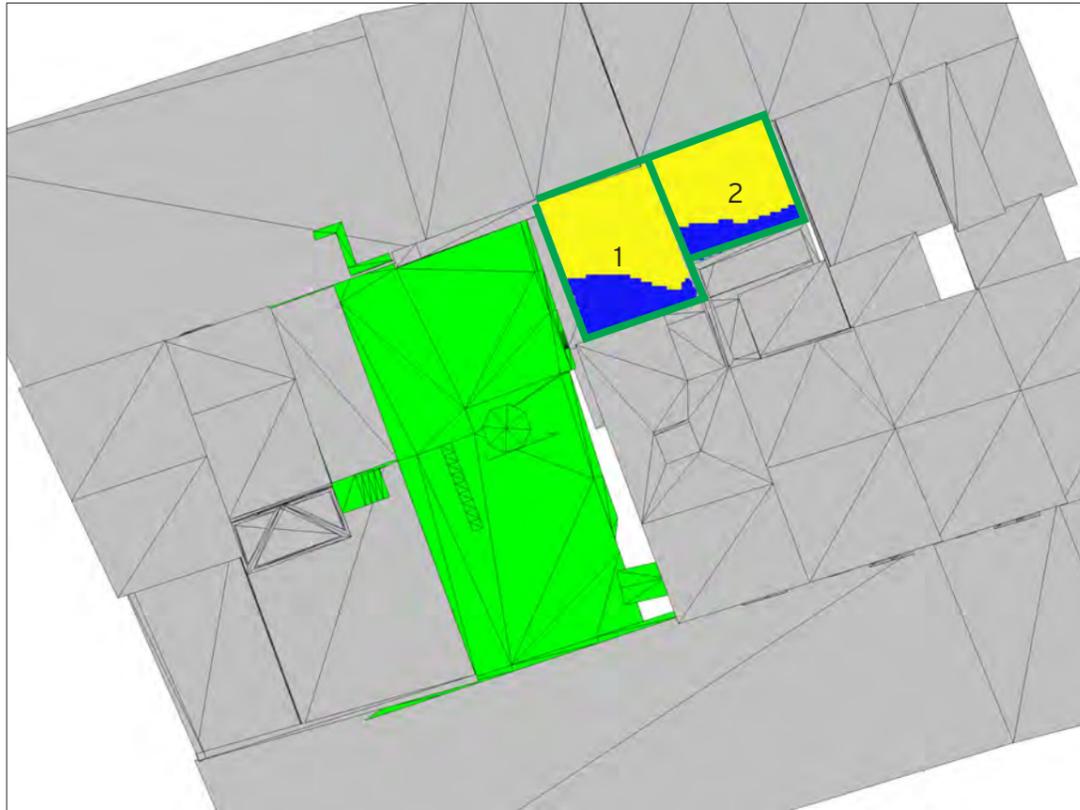
Project Southernhay, Clifton  
 Bristol

Title March 21st Sunlight Amenity  
 study

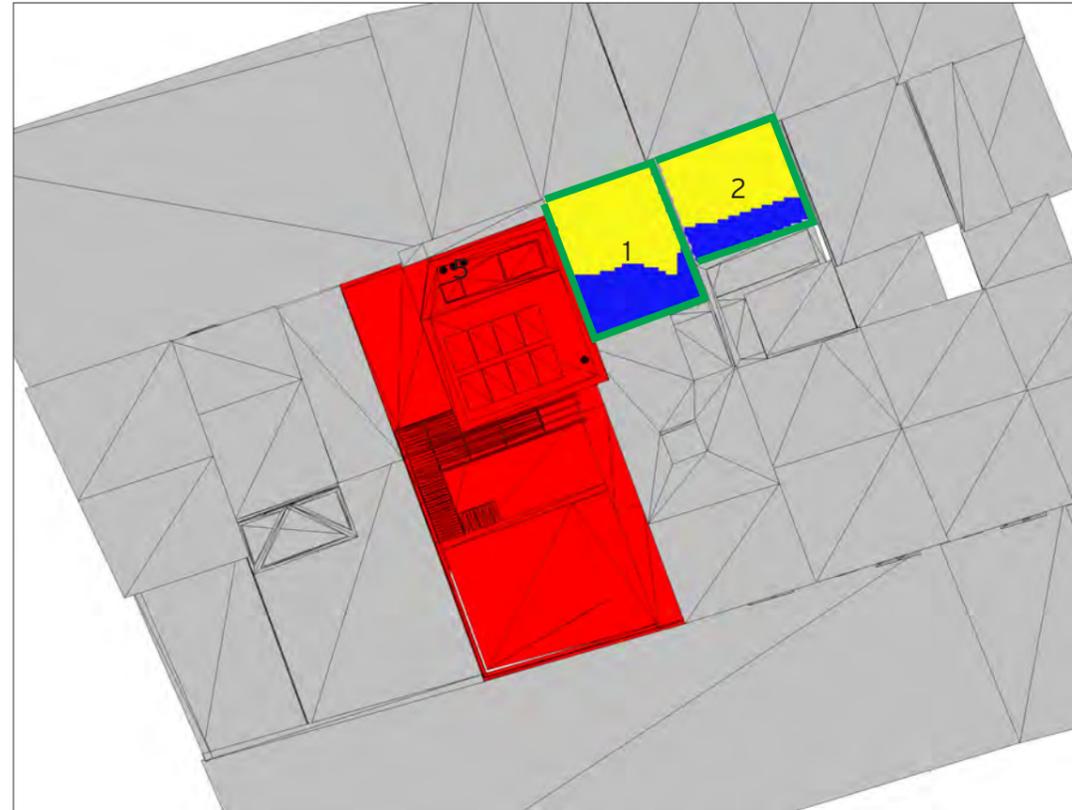
Drawn DB Checked IT

Date 29/07/2016 Rel no. SA02

Drawing no. 2282-SA01



June 21st Sunlight Amenity study - E X I S T I N G



June 21st Sunlight Amenity study - P R O P O S E D

Assessment Area	TotalArea (sq.m)	EXISTING		PROPOSED		RETAINED Pr/Ex
		Area 2Hrs (sq.m)	Area 2Hrs (%)	Area 2Hrs (sq.m)	Area 2Hrs (%)	
1	29.8	20.9	70.2	17.9	60.3	0.9
2	23.4	18.1	77.3	16.7	71.4	0.9

Sources of information

CLIFTON SURVEYS Ltd  
 3198-1 Cliftonwood Road.dwg  
 Received 14/07/2016

LIGHTING TD  
 southernhay-PlanningV1.skp  
 Received 14/07/2016

EB7 Ltd

Site Photographs  
 Ordnance Survey

Key:

Hours of sunlight on 21st June

Area of assessment

More than 2 hours of sunlight

Less than 2 hours of sunlight

Project Southernhay, Clifton  
 Bristol

Title June 21st Sunlight Amenity  
 study

Drawn DB Checked IT

Date 29/07/2016 Rel no. SA03

Drawing no. 2282-SA02





Blue parking sign with a car icon and text.













11

P

P  
Parker  
Parker  
Parker  
Parker  
Parker  
Parker  
Parker  
Parker  
Parker











11  
12  
13

11A















## **Supporting Documents**

### **4. Unit 4 Eastgate Centre, Eastgate Road**

1. Location plan
2. Applicant covering letter
3. Applicant latest comments
4. Retail advice to council
5. 2013 appeal decision

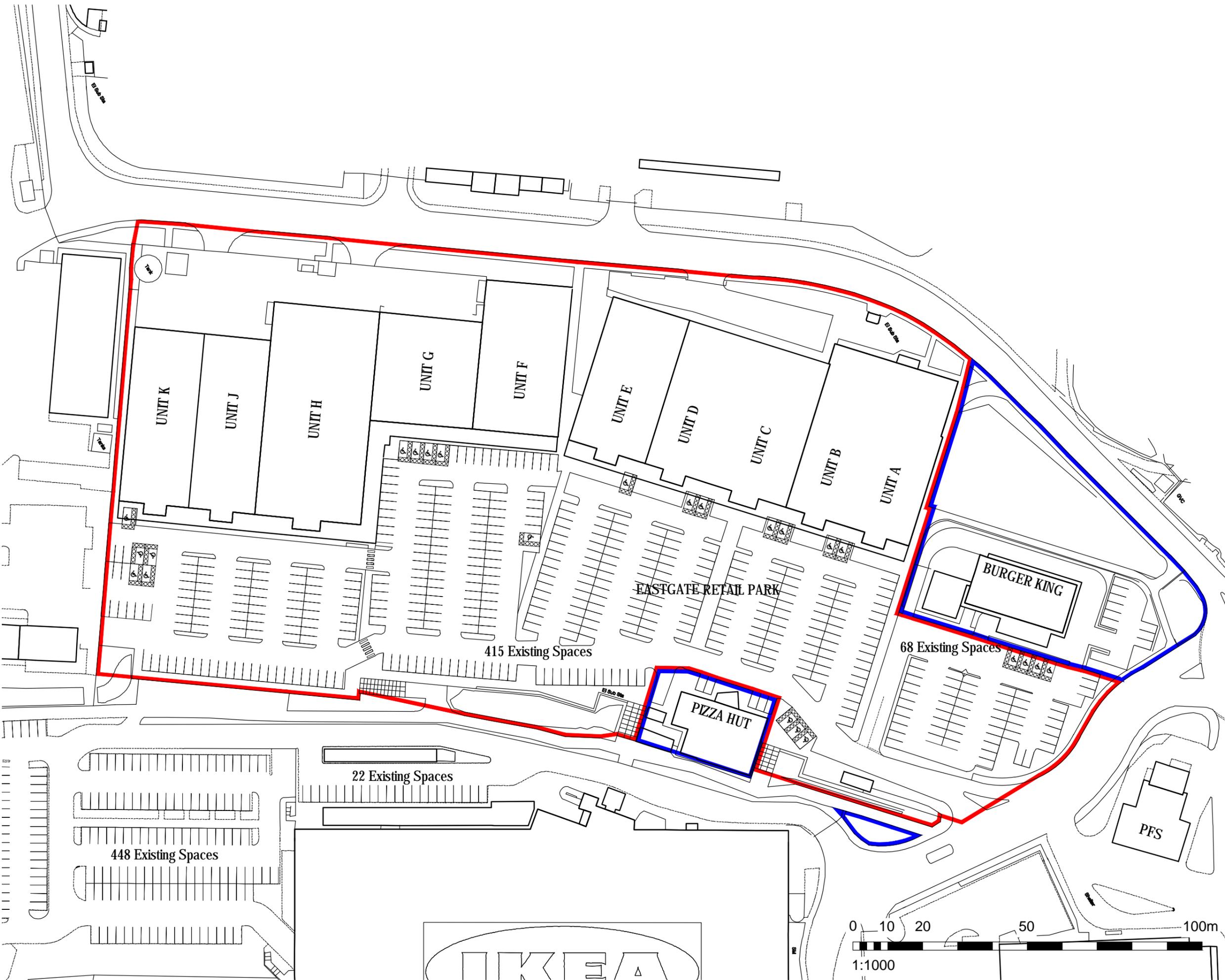
This drawing is copyright and shall not be reproduced nor used for any other purpose without the written permission of the Architects. This drawing must be read in conjunction with all other related drawings and documentation. It is the contractors responsibility to ensure full compliance with the Building Regulations. Do not scale from this drawing, use figured dimensions only. It is the contractors responsibility to check and verify all dimensions on site. Any discrepancies to be reported immediately.  
 IF IN DOUBT ASK.  
 Materials not in conformity with relevant British or European Standards/Codes of practice or materials known to be deleterious to health & safety must not be used or specified on this project.

XREF'S IN THIS DRAWING



Site Area  
**8.19 Acres**  
 3.314 Ha

Site Area  
**1.30 Acres**  
 0.527 Ha



A	23/02/15	(red line boundary and unit annotation amended.)	DG/DC
---	----------	--	-------

No.	Date	Description	Drawn/Chkd By
			CLIENT

Consolidated  
 Property  
 Group

PROJECT

Bristol Eastgate  
 Retail Park

TITLE

Site Location Plan

DRAWING STATUS

For Comment

DRAWN	AP	CHECKED	DG
-------	----	---------	----

SCALE 1:1000 @ A3

DATE January 2015

**WCEC architects**

Chesterfield 01246 260261 London 020 3388 0019 Livingston 08700 555915  
 email@wcec.co.uk www.wcec.co.uk

JOB NO.	DRAWING NO.	REV
14-114	SK_07	A

23 February 2016  
L160223 S73 Application Covering letter



Head of Planning  
Planning, Transport and Sustainable Development  
Planning Services  
Bristol City Council  
Brunel House  
St George's Road  
BS1 5UY

Savills  
DL: +44 (0) 161 277 7291

Belvedere  
12 Booth Street  
Manchester M2 4AW  
T: +44 (0) 161 236 8644  
savills.com

**Submitted via Planning Portal Reference PP-04858375**

Dear Sir or Madam

**The Town and Country Planning Act 1990 (as amended)  
Units A/B, C/D, E, F, G, H, J and K, Eastgate Retail Park, Eastgate Centre, Eastgate Road, Bristol, BS5  
6XX  
Planning Application for a Variation of Condition 6 of Planning Permission Reference 15/00907/X  
Application by CPG South East Ltd**

### **Introduction**

We write on behalf of CPG South East Limited to apply for planning permission for the above.

This application is submitted under Regulation 9 of The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 following the refusal of Planning Application Reference 15/04749/X for an identical proposal.

This application addresses is submitted with the intention of avoiding the requirement to appeal the earlier refusal.

### **Application Documents**

In accordance with the Town and Country Planning (Development Management Procedure) Order 2010 (as amended), the application comprises the following documents:

- This covering letter
- The completed application forms
- Plan Reference 14-114 SK\_07 Revision A – 'Site Location Plan'
- A Retail Planning Statement prepared by Savills

As the application has been submitted under Regulation 9 of The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012, it is exempt from the requirement to provide a fee.

### **The Proposal**

The application proposes to vary Condition 6 of Planning Permission Reference 15/00907/X. Condition 6 is one of two conditions that controls the retail use of Units A/B, C/D, E, F, G, H, J and K at the retail park. Condition 5 permits the sale of food from Unit J and restricts it from any other unit unless the sale of food is ancillary. This planning application intends to leave that condition in place.

The existing Condition 5 states:

*'Unless otherwise agreed in writing by the Local Planning Authority the amount of floor space to be used for the retail sale of clothing, fashion accessories, sporting goods, books or stationery or any of them, shall not exceed 1,858 sqm in Units C/D and 3,473 sqm in the total combined floorspace of Units A, B, E, F, G, H, J and K.'*

The application seeks permission to remove the above condition. As can be seen from the condition, the majority of the floorspace at the Retail Park can already be used for the sale of all non-food retail goods, with the remainder, minor element of the floorspace, able to sell a significant number of non-food products. The restriction on the minor element of the floorspace only relates to five product categories.

Accordingly, the proposal will not alter the role and function of the Eastgate Centre. The Centre will remain an important retail destination in Bristol providing a full range of large format floorspace for national multiple retailers of food and non-food retail goods. The proposal represents a modest change to the planning controls to the Retail Park as a whole. In terms of its effect on land use considerations, the proposal is small-scale, and would have an almost discernible impact on the character of the retail park, its role and function and on overall shopping patterns.

In addition, and to ensure that the Local Planning Authority has complete control over the type of retail operation at the Retail Park, we suggest a new minimum unit size condition that will ensure that the minimum unit size of the Retail Park will be no less than 929 sq. m.

## **The Case for the Proposal**

### **Context**

Planning Application Reference 15/04749/X was refused under the following reason:

*'The submitted retail assessment fails to satisfy the requirements of the sequential test as set out in the National Planning Policy Framework (NPPF) and DM7 of the Bristol Local Plan, as there are sequentially preferable, suitable and available alternatives within Bristol City Centre. These existing sites could accommodate retail development that might otherwise locate within Eastgate retail park. In so doing, this proposal would lead to the loss of existing and potential retail investment, undermining the growth of the city centre contrary to the objectives of the National Planning Policy Framework, Bristol Core Strategy 2011 (Spatial visions and objectives) and the Bristol Central Area Plan 2015.'*

The Local Planning Authority has been unable to confirm what the sequential sites are. Accordingly, in the absence of this information, no evidence has been provided to support the reason for refusal. The applicant has worked proactively with the Local Planning Authority to ensure that sustainable development is delivered including requests for meeting to avoid the appeal. This application forms part of our continued efforts to meet and avoid an appeal which is unnecessary and avoidable in the light of the minor nature of the proposal. We suggest dates below for a meeting.

In the meantime, the enclosed documents and the information in this letter provide the evidence to address the reason for refusal, namely satisfying the sequential test.

In terms of the impact assessment, it has been confirmed by officers that the proposal will not have a significant adverse impact on Bristol City Centre.

## Satisfying the Sequential Test

Under the terms of the National Planning Policy Framework ('The Framework') and the National Planning Practice Guidance ('The Guidance') and confirmed by the Secretary of State and Supreme Court in appeal and Court decisions<sup>1</sup>, the assessment of alternative sites as part of the sequential test relates to whether:

1. An alternative site is suitable for the proposal?
2. The whole proposal and not an altered, disaggregated or reduced version of the proposal can be accommodated on an alternative site?
3. A suitable site is available now?

The term proposal can only refer to what is proposed. In summary this is:

1. An application to vary a retail condition that relates to all of the retail units at the Retail Park.
2. The application seeks permission to vary the condition and replace it with a new condition that will control all of the retail units.
3. For any permission granted to take effect from the day that it is granted, not at some point in time in the future.
4. The proposal relates to a retail park where eight conjoined retail units measuring a total of approximately 15,216 sq. m over ground and first floor level (configured as 9,914 sq. m at ground floor and 5,302 sq. m at mezzanine level).
5. Accordingly, the proposal delivers the above configured retail floorspace to be used for any non-food retail purpose in Use Class A1<sup>2</sup>. There is no other form of development that the proposal would deliver.

## Consideration of Alternative Sites

The alternative sites in Bristol City Centre can be categorised as:

- a. Vacant units
- b. Development Plan Sites

We take each in turn below:

### a. Vacant Units

The largest vacant units in Bristol City Centre are the former PC World unit at 26 Cabot Circus that provides 1,180 sq. m of floorspace and the former Peacocks unit at 60 The Horsefair. The unit measures approximately 630 sq. m at ground floor level and 590 sq. m at first floor level. The units are not suitable for the proposal as it would have to be:

- i. Altered and reduced to a form that no longer represents what it is that has been applied for; or
- ii. A disaggregated version of the proposal where individual retail units were disaggregated and analysis of their suitability to be accommodated at the site undertaken.

Accordingly, there are no available vacant units that are suitable for the proposal under the terms of The Framework and The Guidance.

---

<sup>1</sup> Further details provided at Paragraphs 1.18, 3.9 – 3.10 and Table 3.1 of the Retail Planning Statement, dated September 2015.

<sup>2</sup> With Unit J also permitted to be used for the sale of food.

## **b. Development Plan Sites**

There are two development plan sites in the City Centre that were identified as part of the previous appeal as being potentially capable of accommodating retail development. These are sites KS02 and KS03 identified in the Bristol Central Area Action Plan (AAP). The outlines of both sites are shown on the Goad plans included at Appendix 7 of the Retail Planning Statement.

The conclusions set out at Paragraphs 4.14 – 4.19 of the Retail Planning Statement apply to these sites, namely:

1. The sites are in existing retail use.
2. Any vacant units in the sites are small and not suitable for the proposal.
3. There are no development proposals for either site.
4. The sites are not available for the proposal now. Any development at KS02 or KS03 would not be delivered beyond the medium to long-term.

Accordingly, the sites cannot be considered to be available sites that are suitable for the proposal under the terms of The Framework and The Guidance as confirmed by the Secretary of State. The Secretary of State has confirmed as part of the Rushden Lakes decision that for the purpose of The Framework an available site must be available now and not at some point in time over a plan period (see cross reference to Paragraph 17 of the Secretary of State's decision and Paragraph 8.55 of the Inspector's Report above). Sites KS02 and KS03 are not available now and so are not suitable sites that are available for the proposal. There is no planning application for the redevelopment of either site, let alone an implementable planning permission. Both sites contain a number of existing operational uses. The sites are not available.

## **Overall Case for the Proposal**

The overall case for the proposal is:

1. It complies with relevant local and national policies assessing retail development.
2. The application is supported by evidence addressing the sequential test and impact assessment. Both tests are passed.
3. The proposal is a positive economic investment in Bristol that will contribute towards the Government's agenda to promote sustainable economic growth.
4. The proposal does not represent a material change to the permitted retail use of the Retail Park or the role and function of the wider Eastgate Centre.
5. The proposal is acceptable in all other regards. It accords with Policies DM1 and DM7 of the SADMP.

The proposal accords with the development plan and The Framework. Therefore, the application should be approved in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004.

## Conclusion

Given the proposal accords with the relevant policies in the development plan, The Framework, The Guidance and the Secretary of State and Supreme Court's authority on the application of policies relating to retail proposals, the application should be approved.

We welcome the opportunity to discuss the application at a meeting to ascertain whether the application will be recommended for approval in the light of the above. The meeting will be beneficial as it will help all parties understand whether there is any common ground on the application proposal and if not, what areas need to be considered and the policy basis for this. With that in mind, we suggest the 15<sup>th</sup> or 17<sup>th</sup> March as suitable dates to meet and would be grateful if you could confirm whether you would be available to meet on these dates.

If you have any questions, please contact either Matthew Sobic or Lewis Wright.

Yours faithfully

A handwritten signature in black ink, appearing to read "Savills", written in a cursive style.

**Savills (UK) Limited**  
Retail Planning

Enc.

cc. Sally Dawson – CPG South East Limited  
Stuart Dawson – CPG South East Limited

Angelo

Planning Application for the Variation of Condition No 6 for Planning Permission 15/00907/X

Application at Eastgate Retail Park, Eastgate Centre, Bristol

Application by CPG South East Limited

Application Reference 16/01193/X

## **Introduction**

Thank you for taking the time to run through the above with me yesterday. I found the discussions positive and very helpful and thought best to set out the key points discussed.

In particular, we discussed an alternative solution to the application whereby the two bulky goods retail units at the Eastgate Centre (Pets at Home and Halfords) were restricted and the restriction was removed from the remaining floorspace. This would reflect the current operator retail use line-up at the Eastgate Centre and I set out further details of this below, including the material considerations that weigh in favour of permission being granted. It follows that the alternative solution proposed would not result in an amendment to the shopping patterns at the Centre, or result in any demonstrable impacts on land use planning considerations.

Our view is that the current terms of the application (i.e. the removal of the existing retail use restriction) should be supported, but we consider that the alternative solution proposed is the best way forwards to address the issues that affect the operation of the Eastgate Centre. I'd therefore be hopeful that we'd be able to agree a way forwards on the basis of the alternative solution given the positive nature of our earlier discussions.

## **Consideration**

The Eastgate Centre is an important retail destination in Bristol. Although it's not a designated centre in the development plan, it plays an important role in the retail hierarchy providing floorspace that meets local food and non-food retail shopping needs. It is in a very accessible and sustainable location that is well-related to surrounding residential and commercial development in Bristol's urban area. The Eastgate Centre cannot be described as being in an isolated retail location within the City.

The retail characteristics of the Eastgate Centre is therefore one of a modern retail centre that meets the needs of existing residents in the City. The proposal represents on a modest change to the planning controls at the Eastgate Centre that would not alter its role or function given the retail offer of existing tenants (i.e. large format national multiple retailers selling largely unrestricted non-food retail goods, a large format food superstore and a furniture and furnishings warehouse).

Condition 6 of Planning Permission Reference 15/00907/X that provides retail use controls over the application site causes significant management and operational difficulties that aren't of any real benefit and perversely cause potential harm to the Eastgate Centre. The condition limits the overall amount of floorspace that can be used for the sale of certain goods. This means that individual retailers may inadvertently breach the planning condition without knowing, because of activities in units not in their control.

In terms of the existing retail operations and restrictions, we comment:

1. Units A/B, C/D, E, J and K provide floorspace for open A1 non-food retail operators (e.g. Mothercare, Asda Living, Boots, Next and Laura Ashley).
2. There are only two bulky goods retailers at the Retail Park – Pets at Home and Halford (Units F and G).
3. Units A/B, E, F, G, J and K are all subject to the same floorspace restriction (Unit C/D (Asda Living) is subject to a separate control).
4. That control permits 3,473 sq. m of floorspace to be used for the retail sale of clothing, fashion accessories, sporting goods, books or stationary.
5. If we take Pets at Home and Halfords (Unit F and G) out of the equation (as we are suggesting a bulky goods restriction for these retail units set out below), the total retail sales floorspace of Units A/B, E, J and K is 5,467 sq. m. These retail units are all occupied by 'open A1' non-food retailers.

6. Therefore, the question is what happens if the range of goods permitted under Condition 6 is sold from all of the sales area in Units A/B, E, J and K? The permission permits those goods to be sold and the retailers in those units are open A1 non-food retailers.

7. How, in those circumstances, will the retailers know if they are operating within the terms of the Condition 6, or who would be responsible for any breach of condition? The issue can easily arise during seasonal sales or even if a retailer re-balances their display stock. The answer is not helped by trying to identify the last retailer that may have caused the breach as the condition applies to all retailers.

8. The Landlord can't control that position as every individual tenant can lay claim to operating under the terms of its lease. Who would the Council therefore enforce against? Would it enforce against the Landlord who can't control the position or the tenants who all lay claim to operating under the terms of their leases?

9. Would the Council in these circumstance require the national multiple retailers of Units A/B, E, J and K to all cease trading as that would be the only way a continued breach could be prevented? In that circumstance the tenants would all be able to vacate their premises citing breach of lease by the Landlord (even though the Landlord had no control over the operation of the existing permission). This would result in loss of employment, wages and retail facilities and critically undermine the viability of the Eastgate Centre as a retail destination that meets retail needs in the City. How would the Landlord ever be able to attract new tenants to occupy the floorspace that had been vacated? No national multiple retailers' legal teams would ever endorse another their clients taking space at the Eastgate Centre in that scenario.

10. The above seems an unmanageable and undesirable position for all parties concerned, particularly where the retailers of those units are open A1 non-food retailers and the amendment sought by the application wouldn't alter the role or function of the existing Eastgate Centre.

We agreed that the operation of the Centre does not pose a harm to designated centres in the City including the City Centre. Bristol City Centre is the principal Centre in the South West and one of eight core cities in Bristol (further details of the strength of Bristol City Centre are provided in my letter of 14 July 2016). It follows that the application proposal is not of a scale that could have a material impact on the vitality and viability of Bristol City Centre or any potential planned investment within it given its strength as a vital and viable regional centre.

We have a differing view on the application of the sequential test and I understand that your advisor GVA has referenced the Exeter Secretary of State appeal decision that it has recently been involved in (Appeal Reference APP/Y1110/W/15/3005333). We also referenced this appeal in our letter of 14 July 2016 and I comment here that the two cases are not comparable. The Exeter appeal was dismissed on the basis that the bus and coach station site on the edge of Exeter City Centre was a sequentially preferable available and suitable site. The bus and coach station site is subject to an application for retail uses. The application case and the Exeter case aren't comparable. A bus and coach station site that can be readily developed is different to the Broadmead site which contains existing retail uses and is not yet subject to a planning application. To deliver the Broadmead scheme, existing agreements with operators will need amending, agreements to close shops (permanently or temporarily) will be required, floorspace will need to be reconfigured. The best guess estimate is that the scheme could be open by 2022, some six years from now. The Broadmead site cannot be considered to be an available site for the proposal.

That said, the key and important land use point we're agreed on is that given the strength of Bristol City Centre, the calibre of tenants it attracts, the large-scale potential plans of Hammerson for Broadmead and the small-scale nature of the application proposal it cannot harm any potential planned investment in the City. It follows that the proposal doesn't harm the operation of defined centre locations.

This position is further supported by the alternative proposal discussed and set out above where Units F and G would be restricted to the sale of bulky goods and Units A/B, C/D, E, J and K would be permitted to be operated by open A1 non-food retailers. A condition worded in this way, would reflect the current retail operation that occur at the Eastgate Centre. Accordingly, we propose the following condition that would reflect this operation and remove the unmanageable position that arises as a result of the current restrictions:

'The retail floorspace can be used for the sale of non-food retail goods within Use Class A1 of the Town and Country Planning (Use Classes) Order 1987 (as amended).

Unless sold ancillary or related to pets, bicycles and motor vehicles the retail sale of clothing, fashion accessories, sporting goods, books or stationary or any part of them is not permitted from Units F and G'

The National Planning Policy Framework outlines that planning should be a creative exercise that should seek solutions to approving applications. The above proposal would accord fully with that requirement. When considered in the round, the planning balance is that there are a number of positive material considerations for the proposal, namely:

1. The proposal will amend an existing restriction that is unmanageable and undesirable for all parties concerned and potentially causes harm to employment and economic growth in the City.
  
2. The proposed alternative solution restriction reflects the retail operators that operate from the Eastgate Centre.
  
3. The proposal is modest and will not alter the role and function of the Eastgate Centre.
  
4. The proposal will not harm the vitality and viability of existing centres or any existing or planned investment within centres.
  
5. The proposal will safeguard the Eastgate Centre as a destination that plays an important role in the retail hierarchy providing floorspace that meets local food and non-food retail shopping needs at an accessible and sustainable location. This accords with Paragraph 70 of the National Planning Policy Framework that require planning decisions to 'ensure established shops, facilities and services are able to develop and modernise in a way that is sustainable, and retained for the benefit of the community'.

The material considerations all weigh in favour of permission being granted. This is the fourth application made for this identical proposal in addition to two appeals. The risk of the existing restriction to our client is real and considerable, which provides the background to our continued pursuance of the proposal.

The alternative solution set out above presents a positive and constructive way forwards that doesn't raise any planning conflict with land use considerations as it would not alter the existing land use operation of the Eastgate Centre. I'd be hopeful we could agree a way forwards on this basis given our discussions yesterday. I would be grateful if you are able to contact me by return to confirm that you are able to agree to the alternative solution on the basis of the information included within this e-mail and our earlier discussions.

Many thanks

Matt



Our ref:

26<sup>th</sup> May 2016

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**BY E-MAIL**

Dear Angelo

## Variation of Condition 6, Planning Permission 15/00907/X, Eastgate Retail Park, Bristol

### Introduction

Further to your recent instructions, we have now completed our review of planning application 16/01193/X which proposes the variation of condition No.6 on planning permission 15/00907/X to allow the sale of an unrestricted range of comparison goods from Units A-K at Eastgate Retail Park.

This application is the latest in a line of identical proposals by CPG South East Ltd at Eastgate Retail Park, which have included two appeal dismissals (in 2013) and refusal of permission in 2015. GVA has advised Bristol City Council ('BCC') on all of these applications and our most recent advice on the proposed variations to condition No.6 are contained a letter dated 27<sup>th</sup> November 2015 (which is attached for ease of reference).

Apart from the plans and covering letter, the only piece of supporting material is a Retail Planning Statement, dated September 2015. This is the same document as submitted with the most recent application (15/04749/X) and our review of that document is contained in our 27<sup>th</sup> November 2015 advice letter.

Given that the application site lies in an out-of-centre location and is not allocated in the development plan, there is a need for BCC to consider whether the proposal complies with the salient national and local policy tests of 'impact' and 'the sequential test'. The applicant's covering letter concentrates upon the sequential test and brushes over the issues associated with the impact of the proposed development despite the observations and conclusions of the Inspector in relation to the second appeal in 2013.

This advice letter deals with both the sequential and impact tests in turn below.

## The Sequential Test

The covering letter with the latest application makes reference to reasons for refusing application 15/04749/X and notes that:

*“The Local Planning Authority has been unable to confirm what the sequential sites are”*

The covering letter goes on to suitability and availability of vacant premises in Bristol city centre and development plan allocations in the adopted Bristol Central Area Action Plan. However, it does so, the letter discusses how the sequential test should be approached and (A) repeats the contents of paragraph 4.5 of the September 2015 Retail Planning Statement and (B) outlines, in the applicant's view, what is being proposed.

in its attempt to define 'the proposal', the applicant places particular emphasis on condition No.6 relating to all of the units at the retail park, allowing for the sale of any non-food goods and, if granted, the permission applying the day it is granted and not at some point in time in the future, The effect of this definition is to suggest that the proposal, in the context of the sequential test, can only be considered as relating to the whole of the proposal floorspace in one single block. In addition, the covering letter also suggests that to consider the proposal in any other way would be to suggest disaggregation which is not part of the National Planning Practice Guidance.

However, this is, in our opinion, a repeat of the applicant's arguments used at the appeals in 2013 and also within the 2015 application. Our November 2015 advice letter (attached) outlines the approach which was taken by the Inspector in 2013/14 and confirms that the correct approach is to recognise that 'the proposal' will allow different retail units to become available to retailers selling the wider range of goods sought over a period of time. In this regard, it is different from a proposal for a new retail park or store.

As a consequence, we can see no reason for the Council to depart from its previous position which it adopted for the appeals in 2013 and in its reason for refusal for the previous application in 2015.

In relation to the sequentially preferable alternative sites within Bristol city centre, the applicant complains that the Council has not been clear over the identity of these sites. The applicant has therefore examined vacant units in the city centre and also the two allocations in the city centre AAP. Before we go on to consider the specific details of these sites, it should be noted from the outset that the applicant's assessment proceeds on the basis that the alternative sites must be able to accommodate the whole of the retail park. As outlined above, this approach is not, in our opinion, the correct one and therefore the applicant's latest analysis should not be given any weight.

In relation to the specifics of the alternative sites, page 3 of the covering letter refers to two large vacant units: the former PC World unit in Cabot Circus of 1,180sq m and the former Peacocks store on the Horsefair of circa 1,200sq m. Both of these units are larger than the smallest units at Eastgate Retail Park and the availability of such units was sufficient for the previous Inspector to conclude that the sequential test had not been passed.

In relation to the potential redevelopment sites / AAP allocations, apart from the assumption that they must be able to accommodate the whole of the retail park, the applicant has suggested that they can (A) only be delivered in the medium to longer term and (B) they are not available now so cannot be considered to be genuinely 'available' and (C) there must be planning permission(s) in place in order to classify them as being 'available'.

In relation to the applicant's analysis, we do not consider that the existence of a planning permission is a pre-requisite of availability. In addition, the suggestion that these sites, particularly the Horsefair/Callowhill Court allocation, are medium to long term opportunities only appears to be based on the conclusions of the Inspector in 2013/14. Since that time, the city centre AAP has been adopted and it is clear that matters regarding the redevelopment of the Horsefair/Callowhill Court area are advancing. In their representations to the current application to extend The Mall at Cribbs Causeway, The Bristol Alliance (who own Cabot Circus and are promoting the redevelopment of the

Horsefair/Callowhill Court area) make it clear that they are now in pre-application discussions with BCC regarding the redevelopment for new retail floorspace and set out a timetable for bringing this development forward.

It is this information which we consider BCC should place weight upon as it shows how Bristol Alliance is making the Horsefair/Callowhill Court area available for retail development and how a key investment project in Bristol city centre is progressing. This supersedes part of the information that was available to the Inspector at the second appeal in 2013/14 and reinforces the Horsefair/Callowhill Court area as a suitable and available sequentially preferable site for comparison goods retailers who could be attracted to Eastgate Retail Park should this application succeed.

### **Impact**

Whilst the applicant's covering letter is correct to note that the Inspector at the second appeal in 2013 did not conclude that the previous (identical) proposal would have a significant adverse impact upon the vitality and viability of Bristol city centre, we nevertheless indicated that there would be "*adverse effects*". Whilst such a conclusion does not suggest that the provisions of paragraph 27 of the NPPF apply, this is still a negative impact of the proposal to be weighed in the overall planning balance when BCC reaches its final view on this application.

However, given that the Horsefair/Callowhill Court proposals are now progressing, and given that the effect of the proposed variation of condition would allow high street style retailers to occupy Eastgate Retail Park rather than the city centre site, we consider that there is now more of a concern over the scale of impact on city centre investment. This should be taken into account by BCC when it reaches a conclusion the effects of the proposed development.

In addition, it should be noted that the current proposal to extend The Mall at Cribbs Causeway has the potential to have a further cumulative impact on the health of the city centre. Whilst this remains an undetermined application at this stage, an approval for The Mall extension, when combined with the Eastgate Retail Park proposal, would increase the cumulative impact on the health of, and investment within, Bristol city centre.

### **Conclusions**

Overall, and having considered the latest information submitted in support of this proposal, we see no reason for BCC to change its position in relation to the sequential test. In particular, we consider that the applicant's approach to the sequential test is incorrect and, when properly considered, there are suitable and available sites within Bristol city centre to accommodate what is actually being proposed in this application. In addition, there remains a likelihood of a clear adverse impact upon the health of, and investment within, the city centre which could now be larger due to the progress being made on the Horsefair/Callowhill Court redevelopment area.

I trust that the contents of this letter are sufficient for your current requirements. However, if you have any queries, or require additional information, then please do not hesitate to contact me.

Yours sincerely



**M S Morris BSc(Hons) DipTP MRTPI**  
**Director – Planning, Development & Regeneration**  
**For and on behalf of GVA Grimley Ltd**

enc



Our ref:

27<sup>th</sup> November 2015

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**BY E-MAIL**

Dear Angelo

## Variation of Condition 6, Planning Permission 15/00907/X, Eastgate Retail Park, Bristol

Further to your recent instructions, I have now completed my review of the information that has been submitted in support of the above planning application at Eastgate Retail Park in Bristol.

As you know, this current application proposed to vary the terms of Condition No.6 of planning permission 15/00907/X. This condition restricts the sale of clothing, fashion accessories, sporting goods, books or stationery to 1,858sq m within Units C &D and to 3,473sq m in the combined floorspace of Units A, B, E, F, G, H, J and K. The applicant proposes that this condition is replaced with a control which allows all types of non-food goods to be sold from the entirety of the retail park<sup>1</sup>.

This application takes the same form as two previous applications<sup>2</sup> which were both subject to appeals and heard at the same public inquiry in October 2013. The appeals were dismissed primarily on the basis of a conflict with the sequential test although the Inspector also noted that the appeal proposals would have adverse effects on Bristol city centre.

In support of the current application, the applicant claims that "since the appeal was determined, there have been material changes in circumstance that supports approving a planning application for the proposal". These changes are given as:

- o The decision of the Secretary of State for Communities and Local Government ('SSCLG') in relation to the Rushden Lakes planning application; and
- o The removal of the 2009 Practice Guidance, published by DCLG, on need, impact and the sequential test.

The applicant suggests that the effect of the Rushden Lakes decision and the removal of the Practice Guidance is:

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<sup>1</sup> i.e. Units A, B, C, D, E, F, G, H, J and K – excluding the existing Burger King and Pizza Hut units.  
<sup>2</sup> 12/00254/X and 12/05316/X



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- o That the sequential test relates entirely to what is proposed by the application;
- o The question is whether an alternative site is suitable for the proposed development, not whether the proposed development could be altered or reduced to make it fit on an alternative site.

The applicant also makes reference to the Dundee Supreme Court decision, including the meaning of the term 'suitable' in the context of the sequential test. However, this is not a new material consideration as it was available at the time of the previous appeals at Eastgate Retail Park.

The applicant then goes to claim that these material changes in circumstance address in full the reasons for dismissing the previous appeals because:

- o The sites in the development plan for the city centre are not available now, which the applicant considers relevant in light of the Rushden Lakes decision;
- o In any event, the city centre sites are not suitable as they cannot accommodate the whole of Eastgate Retail Park; and
- o There is now no requirement for disaggregation following the cancellation of the Practice Guidance.

Based upon the information and arguments I turn to consider whether there has in fact been any material changes in circumstances in relation to the sequential test and other material matters since the previous public inquiry in October 2013 and the Inspector's decision letter dated January 2014.

### **Sequential Test**

In short, the applicant's case in relation to the alleged changes in circumstances are the effect of the Rushden Lakes decision and the cancellation of the 2009 Practice Guidance, the latter of which was in force at the time of the previous inquiry.

The applicant claims that Rushden Lakes is important because of the comments of the Inspector in relation to the 'availability' of alternative sites and also references to disaggregation. In relation to 'availability' it appears to be suggested by the applicant that the decision changes or clarifies national policy as to what this term can mean. However, a Secretary of State decision cannot change policy in the NPPF and in any event this is not the only post-NPPF decision from the Secretary of State which deals with the issue of 'availability'. One other relevant decision is Bath Press, in Bath, which was published in December 2013. This decision indicates that a site which could become available by 2020 (i.e. 7 years after the Bath Press inquiry/decision) could be classified as an available site. It will be noted that the Bath Press decision was released at a time when the 2009 Practice Guidance was still in force, although the change from the Practice Guidance to the NPPG cannot change NPPF policy on the sequential test.

Therefore, I cannot see how there has been a material change in how the decision-maker should approach the issue of the 'availability' of alternative sites. There has been no change in national policy on this issue since October 2013 and the publication of the NPPG has not sought to change guidance on this issue. Therefore, I consider that it is still appropriate to consider sites and premises which are either available now or within a reasonable period of time in the future.

On these issues, it will be noted that:

- o There are current vacant retail units in the city centre which are of a similar size to some the existing size of units at Eastgate Retail Park. Given that, as will be outlined below, the relevant exercise in this instance is to find sites and premises which can accommodate individual retailers as and when units become available at the application site, there are suitable alternative vacant premises in the city centre.

- o It is reasonable to examine sites which could come forward in the future and this includes allocations in the Bristol Central Area Plan. This plan shows areas which are allocated for retail development and, given their location and role, it is likely that they will be available to accommodate the sorts of retailers who could also occupy unrestricted retail units at the application site. At the time of making this decision, the Inspector placed reduced weight on the contents of the Central Area Plan, due to the stage of preparation. However, the plan has now been adopted and thus carries considerably more weight. Indeed, the adopted plan continues to include the proposed allocations which were before the Inspector in October 2013 and I would highlight his comments at the end of paragraph 47 of the decision letter which noted that leases at the Retail Park would not be renewed until after 5 years which could make the city centre allocations sequentially preferable.

Turning to the issue of disaggregation, the applicant suggests that the comments of the Rushden Lakes Inspector make a turning point for this issue and confirm that it is now not a requirement of the sequential test. Whether or not this is the case, and there has certainly not been a change in the NPPF in this regard, I don't consider it a particularly salient issue for the current application at Eastgate Retail Park. Indeed, it is also related to the applicant's keenness to highlight the Dundee judgement and the meaning of 'suitability'. In particular, the applicant suggests that, in light of the Rushden Lakes decision, that a different approach must now be taken to the relaxation of controls at Eastgate Retail Park. However, the Inspector didn't mention disaggregation and instead approached the sequential test in the same way as the City Council which was to acknowledge that individual units at the retail park would become available separately and over time. Thus, the proposal was to allow the opportunity for numerous separate changes in the future and therefore it was correct to consider the availability of sites and premises on that basis. The conclusions and recommendations of the Rushden Lakes Inspector do not effect this valid approach as the Rushden Lakes development was for a new retail park and was not to introduce changes to an existing retail park.

As a consequence of the above, I do not consider that there have been any material changes in circumstance in relation to the proposals at Eastgate Retail Park and their relationship with national or local planning policy. As a consequence, I would recommend to the Council that it continues to conclude that the proposal is contrary to paragraph 24 of the NPPF.

### **Other Matters**

I has also considered whether there are any other material considerations which are relevant to this application:

- o Impact on the city centre. The applicant has not provided any additional information on this issue and I consider that the conclusions of the Inspector remain relevant on this issue, namely that there will be an adverse effect of the proposal on the health of the city centre. This impact may not be significantly adverse in its own right, but is nevertheless a material factor to be considered in the overall planning balance.
- o The applicant has also repeated its view that the existing condition is not practical. This issue was debated at length at the inquiry in October 2013 and was ultimately not given any particular weight by the Inspector. No new information has been provided and I therefore I recommend that the Council continues with its position that the conditions meets the tests in Circular 11/95.
- o The applicant considers that the removal of the condition will secure the long-term viability of the retail park and raises concerns over the impact of other new retail developments such as the impact of the extension of The Mall at Cribbs Causeway. In my view, this is not relevant consideration as the retail park is not afforded any planning policy protection in the development plan. In any event, if the wider trading impacts of proposals at The Mall are relevant it is to increase the adverse impact upon Bristol city centre and which could thus become more of a concern for the Council.

## Conclusions

Overall, and having considered the information and arguments put forward by the applicant, I do not agree that there has been a material change in circumstances in relation to Eastgate Retail Park and national planning policy which should prompt the City Council to change its view on the relationship of the relaxation of planning controls at the retail park with the sequential test. In particular, I would recommend that the Council continues to conclude that there are suitable and available sites and premises in the city centre which can accommodate the proposal and therefore it is contrary to paragraph 24 of the NPPF.

I trust that the contents of this letter are sufficient for your current purposes. However, if you have any queries, or require additional information, then please do not hesitate to contact me.

Yours sincerely



**M S Morris BSc(Hons) DipTP MRTPI**  
**Director – Planning, Development & Regeneration**  
**For and on behalf of GVA Grimley Ltd**



## Appeal Decisions

Inquiry held on 16 and 17 October 2013

Site visits made on 15 and 18 October 2013

**by M Middleton BA(Econ) Dip TP Dip Mgmt MRTPI**

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

**Decision date: 17 January 2014**

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### **Appeal Ref: APP/Z0116/A/12/2184068**

#### **Eastgate Retail Park, Eastgate Road, Bristol, BS5 6XX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
  - The appeal is made by CPG South East Limited against the decision of Bristol City Council.
  - The application Ref 121/00254/X is dated 24 January 2012.
  - The application sought planning permission for the insertion of additional mezzanine floorspace into combined Units C/D and alterations to the front of Units C/D without complying with a condition attached to planning permission Ref 08/01342/F, dated 14 May 2008.
  - The condition in dispute is No. 4 which states that: *Unless otherwise agreed in writing by the Local Planning Authority the amount of floor space to be used for the sale of clothing, fashion accessories, sporting goods, books or stationery or any of them, shall not exceed 1,858 sqm. in Units C/D and 3,473 sqm. in Units A, B, E, F, G, H, J and K.*
  - The reason given for the condition is: *To minimise any adverse impact upon the existing shopping hierarchy occasioned by the development above permitted.*
  - This decision supersedes that issued on 14 February 2013. That decision on the appeal was quashed by order of the High Court.
- 

### **Appeal Ref: APP/Z0116/A/13/2197824**

#### **Units A/B, C/D, E to H, J & K, Eastgate Centre, Eastgate Road, Bristol, BS5 6XX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with a condition subject to which a previous planning permission was granted.
- The appeal is made by CPG South East Limited against the decision of Bristol City Council.
- The application Ref 12/05316/X, dated 29 November 2012, was refused by notice dated 25 January 2013.
- The application sought planning permission for the insertion of additional mezzanine floorspace into combined Units C/D and alterations to the front of Units C/D without complying with a condition attached to planning permission Ref 08/01342/F, dated 14 May 2008.
- The condition in dispute is No. 4 which states that: *Unless otherwise agreed in writing by the Local Planning Authority the amount of floor space to be used for the sale of clothing, fashion accessories, sporting goods, books or stationary or any of them, shall not exceed 1858sqm. in Units C/D and 3,473 sqm. in Units A, B, E, F, G, H, J and K.*
- The reason given for the condition is: *To minimise any adverse impact upon the existing shopping hierarchy occasioned by the development above permitted.*

## Decisions

### **Appeal ref: APP/Z0116/A/12/2184068**

1. The appeal is dismissed.

### **Appeal ref: APP/Z0116/A/13/2197824**

2. The appeal is dismissed.

## Procedural Matters

3. In August 2013 the Appellant applied for a Lawful Development Certificate for Use Class A1 at all of the units that now comprise Eastgate Retail Park (ERP). This application was refused shortly before the opening of this Inquiry. The Appellant and Council agreed that it would not be appropriate to discuss this decision at this Inquiry or for me to comment on it in my decision. I have not therefore considered the lawfulness of the appealed condition in my assessment of these appeals.
4. Both of these appeals concern the removal of the same condition (condition No.4 attached to planning permission Ref 08/01342/F, dated 14 May 2008) and give rise to the same issues. I therefore propose to deal with them together, using the same reasoning to justify the decision in each case. Draft issues were circulated before the Inquiry and were discussed and amended at its beginning.

## Main Issues

5. The main issues are:
  - a) whether the condition is necessary, relevant and reasonable in order to
    - i) protect the vitality and viability of Bristol City Centre  
and
    - ii) enable the development to accord with the requirements of paragraph 24 of the National Planning Policy Framework (the sequential test);  
and
  - b) whether the condition is enforceable and precise and thereby meets the other tests set out in Circular 11/95: *The Use of Conditions in Planning Permissions*.

## Background

6. Planning permission for non-food retail warehousing at ERP was granted in 1987. Condition 7 prevented the retail sale of clothing, fashion accessories, sporting goods, books or stationary (the restricted goods) from being predominant in all of the retail warehouses permitted. In 2005 and in order to enable Unit K to be able to retail restricted goods from a majority of its floorspace, planning permission was given to enable that unit and three other units together, to sell restricted goods from up to 5331 sqm. of floorspace. Further variations were subsequently approved. These changed

and clarified the terms of trade across the whole park, whilst retaining the 5331 sqm. limit, until in 2008, and at the then owner's request, the appealed condition was established.

7. The Appellant's floorspace analysis was accepted by the Council for the purposes of the appeals. It suggests that only about 4,200 sqm. of the 5,331 sqm. of unrestricted floorspace is currently used for that purpose. Consequently, whilst 57% of the retail floorspace could be used to sell restricted goods, the Appellant's survey suggests that only about 45% is actually being used for that purpose at the present time. There are currently eight retail warehouses at the appeal site. At the time of my site visit, five were selling restricted goods to a significant extent<sup>1</sup>. The three others had little floorspace devoted to these types of retailing.
8. As well as the eight retail warehouse units, there is also a large Ikea and a Tesco Extra on adjacent land. Together these units comprise the Eastgate Centre which, having a total floorspace equivalent to about 30% of that found in Broadmead/Cabot Circus (Bristol City Centre's prime retail area), must be a significant destination for retail expenditure in the Bristol area.
9. The reason for the condition was to protect the existing shopping hierarchy from any adverse impact. National policy now suggests that I should add to this 'to facilitate the growth of town centres by requiring proposals for main town centre uses to be located there'.

## Reasons

10. The Development Plan includes the *Bristol Core Strategy* (BCS) 2011 and saved policies of the *Bristol Local Plan* (LP) 1997. Policy BCS7 says that retail development will be primarily located within or, where appropriate, adjoining the centres in the identified network and hierarchy serving Bristol. Despite its size and turnover, the Eastgate Centre is not listed in the Hierarchy of Centres. The scale of the proposal (about an additional 4,000 sqm. of floorspace that could sell the restricted goods) would not affect the primacy of the defined shopping hierarchy and in particular Bristol City Centre (BCC)<sup>2</sup>, which is the only centre of concern to the Council. The proposal is not in conflict with Policy BCS7.
11. Saved LP Policy S10 says that non-food retail warehouses will be permitted on four sites as defined on the Proposals Map. Eastgate Centre, Eastville is one of these. However, given the age of this policy and the absence of a replacement in the adopted BCS and the draft *Site Allocations and Development Management Policies* document, it can not be considered to be up to date. The supporting text to LP Policy S10 says that proposals for additional floorspace will be assessed against the criteria in Policy S9. However, Policy S9 similarly referred to new retail stores and in any event has not been saved.

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<sup>1</sup> At the times of my site visit about 30% of the net floorspace in unit J, which is occupied by Mamas and Papas, was selling restricted goods. This is appreciably higher than the estimate put forward by the Appellant (<3%).

<sup>2</sup> For the purposes of this decision, references to Bristol City Centre (BCC) refer to the Broadmead/Cabot Circus shopping area as defined in the Bristol City Centre Retail Study (BCCRS).

12. The BCS was prepared at a time when it was not considered appropriate to repeat national policy in Development Plans. The supporting text to retail policy therefore says that PPS4: *Planning for Sustainable Economic Growth* contains national policies towards development in town centres and that these will inform decisions on specific proposals falling outside the network and hierarchy of centres. PPS4 has now been revoked and replaced by the National Planning Policy Framework (Framework). Consequently, as well as LP Policy S10, the background to Policy BCS7 is not completely up to date. Because of the considerations discussed in paragraphs 10 and 11, I conclude that the proposal does not conflict with the Development Plan retail Policies as currently constituted.
13. At paragraph 14 the Framework says that where relevant Development Plan policies are out-of-date, permission should be granted unless specific policies in the Framework indicate development should be restricted.
14. The Framework in Section 2 incorporates the thrust of the policies in PPS4 that in particular sought to concentrate retail development in a network and hierarchy of defined centres. It also says at paragraph 24 that a sequential test should be applied to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. In these circumstances paragraph 26 requires an impact assessment if the development is over 2,500 sqm. The floorspace affected by the condition is significantly larger than this threshold and so the impact of the proposal on existing and committed investment in a centre or centres in the catchment area of the proposal should be assessed. The impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area should also be considered. It was agreed that BCC was the only centre upon which the proposal could have an adverse effect.

### ***Vitality and viability***

15. The removal of the restriction from the restricted floorspace would allow it to be used by retailers for whom the principal location of available floorspace in Bristol is BCC. Analysis undertaken for the Bristol City Centre Retail Study (BCCRS) 2013<sup>3</sup> suggests that about 80% of the BCC's turnover is derived from the restricted goods. Retailers, mainly specialising in the sale of the restricted items and investing in Bristol, could choose ERP in preference to BCC if there were vacant units and an ability to sell the restricted items to the extent required from them. That would reduce BCC's ability to recover from the recession, which has manifested itself in a large number of vacant units. It could also affect consumer choice and future investment there, leading to declines in its vitality and viability.
16. River Island was highlighted at the Inquiry as a retailer that could potentially locate at ERP if the condition were to be removed. It has stores at other retail parks and it is therefore appropriate to include it in the basket of retailers used to derive an average sales density. Using this, the Council's worst case analysis suggests that the impact on BCC from a change in the use of the existing restricted floorspace, to non-restricted

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<sup>3</sup> Bristol City Centre Retail Study, DTZ, June 2013.

- retail uses, would be about 2%. In terms of loss of turnover this is not significant.
17. Furthermore, I am not persuaded that 60% of the trade would be drawn from BCC. Only 24% of clothing and footwear and 16% of other comparison goods, which includes personal luxury and recreational goods, expenditure generated in Bristol's catchment area is actually spent in BCC<sup>4</sup>. The size of the Eastgate Centre and its proximity to BCC do not justify such a leap, especially when ERP is competing against other similar retail warehouse destinations within the City and the Cribbs Causeway shopping centre, all of which offer a retail experience similar to the Eastgate Centre but different to BCC. I am therefore not convinced that the impact would be as large as 2%.
  18. Be that as it may, the Framework refers to existing, committed and planned investment. The combination of the opening of Cabot Circus followed by the national economic recession, which has seen the demise of a number of formerly prominent national multiple retailers, has resulted in profound changes in the occupancy of retail floorspace within BCC. In April 2013 over 20% of the units within BCC were vacant and over 13% of the floorspace. Both of these statistics are noticeably above the national averages. The removal of the condition would potentially increase the competition for tenants to occupy the larger vacant units.
  19. Nevertheless, the BCCRS<sup>5</sup> points to latent retailer demand within BCC. It suggests that a number of national and international retail chains will have requirements within Broadmead/Cabot Circus in the 12 to 24 months after June 2013 and lists ten key fashion/toy retailers that can be expected to locate there. BCCRS also notes that there are forty-three specific requirements of national multiple retailers for representation in BCC. Whilst the Council's survey suggests that about 80 units are vacant at the present time, this is a reduction from the 90 identified for BCCRS in April 2012. The Council's survey was carried out in early September 2013. By the time of my site visit there had been occupation of other previously vacant units pointing further to the existence of latent retailer demand in BCC. If the identified retailer demand was to be converted into representation, then the vacancy rate would be noticeably reduced and possibly to a level below the national average.
  20. Additionally, in February 2012 the Council granted planning permission for the extension and refurbishment of Units Nos. 2-9 New Broadmead, Union Street, vacant units that are at the western end of the prime shopping area. The above considerations do not suggest to me that there is limited retailer demand or that investor confidence in BCC is low.
  21. The results of an analysis undertaken for BCCRS<sup>6</sup> suggest that there is sufficient population and expenditure growth to support additional comparison goods floorspace within BCC, including a major retail-led development, in the medium to long term. It also identifies a need to

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<sup>4</sup> Table 9, Appendix C. BCCRS

<sup>5</sup> Paras 2.9 and 7.4-7.8, BCCRS

<sup>6</sup> Section 11, Conclusions and Implications for Strategy, BCCRS

provide larger and more flexible retail floorspace, possibly through the amalgamation of smaller units. It recognises the Broadmead/Horsefair area as the most prominent development opportunity and recommends its active promotion as a location to make a substantial contribution towards accommodating forecast capacity. Whilst not actual investment, this analysis suggests that there is a firm basis upon which to justify future investment in BCC, irrespective of any changes to the format at ERP. Nevertheless, the removal of the condition would increase the competition for clothing and fashion retailers who, given the nature of retail expenditure within BCC, are likely to be the bedrock of redevelopment for retail purposes within BCC.

22. Representations were handed into the Inquiry from Destination Bristol, which represents almost 1,000 businesses in the Bristol area and on behalf of Bristol Alliance who developed and own Cabot Circus and have a major ownership interest in the Broadmead/Horsefair area. Despite a process that began in January 2012 and involved the consultation and publicity surrounding two planning applications and two appeals, this was the first time either of these bodies had made any representations about the proposal. In cross examination the Council accepted that these representations followed direct or indirect discussions with its officers. Whilst accepting their central role in retail investment within BCC and noting their opposition to the scheme, as they were not present at the Inquiry and their evidence was unable to be cross-examined, the weight that I can attach to it must be limited.
23. The Appellant has offered to replace the appealed condition with one that would limit the ability to subdivide the approved retail floorspace into small units, thereby removing the potential to attract any but large space format retailers and thus preserving the warehouse characteristics of the park. The absence of such a restriction at the present time was raised in the representation from Bristol Alliance. Its substitution for the appealed condition could restrict the ability of many retailers to choose ERP in preference to BCC. Any effect the appealed condition could have on consumer choice would thereby be reduced.
24. Details of lease expiry dates were submitted to the Inquiry. These reveal that the leases on the five units that devote significant amounts of their floorspace to the restricted items all expire between 2017 and 2023. Their departure from ERP is unlikely to be imminent. Indeed there was agreement that these tenants and the others were at the top of their respective retail categories and would be an asset to any retail development.
25. The leases of two of the units that do not devote significant areas to the sale of the restricted goods have already expired and the third, occupied by Boots expires in May 2014. The parties accepted that Boots were a prestigious tenant and that the Appellant would be unlikely to wish to see them depart. It was also agreed that the rents paid by different types of retailers were unlikely to vary significantly so there is no financial advantage in changing tenants. The Appellant advanced the argument that retail developments require a mix of tenant types to maximise their

- attractiveness. My experience does not lead me to dispute this. The tenants of the remaining two units, Halfords and Pets at Home are still in occupation so also presumably do not wish to leave at this point in time.
26. Consequently, there is unlikely to be an overnight transformation in the occupation of the retail park. Whilst there could be a gradual change that resulted in a higher proportion of units selling mainly restricted items and the introduction of retailers that only sold these items, the nature of the current tenants and their leases suggests that this would only fully manifest itself over the next decade and beyond if at all. At any one point in time only one or possibly two units would be likely to be competing for tenants with BCC.
27. However, even this finding should be cautioned by the fact that three of the existing tenants are also represented in BCC in similar, albeit larger formats. Consequently it does not automatically follow that the establishment at ERP of a retailer currently located in BCC would automatically lead to the closure of the City Centre store or that all medium or large format retailers wishing to establish in Bristol would locate at ERP in preference to BCC.
28. I note that the Inspector considering the 2000 appeal<sup>7</sup> found a lower estimated impact to be significantly harmful. However, that appeal was determined in a different retail market climate in the Bristol area, following extensive new retail developments at Cribbs Causeway and before the development at Broadmead/Cabot Circus had begun to redress the balance. It was also determined under a different Development Plan regime and before the Council decided that the retailing of the restricted goods from a significant proportion of the floorspace within individual units at Eastgate Retail Park was acceptable. I therefore attach little weight to it.
29. When considered in the round, the above considerations suggest to me that although the proposal could have an adverse effect on BCC, it would not have a significantly adverse impact on the factors discussed in paragraph 26 of the Framework. I conclude that the condition is not necessary in order to protect the vitality and viability of BCC and in this context it is also not relevant or reasonable.

### ***Sequential Test***

30. Paragraph 24 of the Framework says that Local Planning Authorities should require applications for main town centre uses to be located in town centres and only if suitable sites are not available should out of centre sites be considered. The sale of the restricted goods is a main town centre use and the appeal site is in an out of centre location. It is therefore necessary to establish whether or not there are any sequentially preferable sites within BCC that are available to accommodate the development that would arise out of the proposal. The sites should also be suitable and viable for the development proposed.

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<sup>7</sup> Appeals ref: T/APP/Z0116/A/00/1040142/P7 & 1040145/P7, Unit 3, Eastgate Centre, Eastville, Bristol.

31. The Appellant suggests that the development that should be tested is all of the floorspace that currently exists at ERP. It argued that the condition does not directly control the amount of floorspace that could sell the restricted goods in each individual unit. Instead, the nature of the condition makes them all interdependent. Additionally, because there is no control over unit size, there are an infinite number of permutations.
32. Neither of these is strictly correct. Firstly, it would not be in the landlord's financial interest to amalgamate all of the space into one unit because the undivided floorspace would attract a lower overall rent than if it was divided. Secondly, because of the shape and configuration of the buildings this option would be difficult for any tenant to optimise its trading potential. Thirdly, for operational reasons, there is likely to be a maximum limit to unit size and fourthly, the number of small units that it could be subdivided into is also limited because of the configuration of the units and circulation space. However, more fundamentally, the sequential test should be applied to the situation that would result if the condition were to be removed, not the situation that currently exists and which would continue to exist if it were not removed.
33. The removal of the condition would remove the interdependency of the units in the context of the amount of floorspace that could be used to sell restricted goods. The maximum effect would occur if all of the units sold nothing other than the restricted goods. At most this could only result in an additional 4,026 sqm. of additional retail floorspace selling the restricted goods and this totality would be unlikely to come into effect other than over a period in excess of ten years and in subdivisions of this total amount.
34. None of the units currently devoting significant amounts of floorspace to restricted goods do so completely. About 20% of the currently available floorspace is not used for this purpose. This suggests that the condition is not the cause of these retailers not using more floorspace to sell restricted goods but that they are doing so because of operational reasons. Two of these retailers, Laura Ashley and Next, have City Centre stores where the proportion of floorspace selling goods that are restricted at ERP is noticeably below 100%. The nature of the business at Mamas and Papas and Mothercare suggests that they too would also be unlikely to use 100% of their floorspace to sell restricted goods.
35. The evidence suggests that in the cases of five of the units, the removal of the condition would not make any significant difference to the amount of floorspace used to sell restricted goods unless the tenant changed. The leases on these units do not expire until after 2016 and as noted above, the evidence suggests that there is no expectation that they will do other than renew their leases. Consequently, sequentially preferable sites would be unlikely to be required for these units until after that date if at all.
36. Planning for Town Centres<sup>8</sup> at para. 6.35 specifically says, in the context of retail parks, that it will be relevant to consider whether any of the proposed units could be accommodated on more centrally located sites. This does

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<sup>8</sup> Planning for Town Centres, Practice guidance on need, impact and the sequential approach, Department of Communities and Local Government, December 2009

not mean that all of the units have to be capable of relocation together on more centrally located sites. In the context of suitability it says that it is necessary to have a proper understanding of the scale and form of development needed but it goes on to say that it is not necessary to demonstrate that a town centre site can accommodate precisely the scale and form of development being proposed, rather to consider what contribution more central sites are able to make either individually or collectively, to meeting the same requirement.

37. The Dundee judgement<sup>9</sup> at paragraphs 24 and 27 says that suitable in the context of the sequential test means suitable to meet the requirements of the developer and/or retailer and that the focus should be on the availability of sites, which might accommodate the proposed development. However in paragraph 28 it goes on to point out that the application of the sequential approach requires flexibility and realism from developers and retailers as well as planning authorities. It also says that the applicant is expected to have given consideration to the scope for accommodating the development in a different form, having had regard to the circumstances of the particular town centre. The advice in the Practice Guide is consistent with this judgement.
38. The Council identified all the vacant floorspace within BCC in September 2013. There are about 80 units ranging in size from 30 to 690 sqm. but only about 10 with a ground floor area above 300 sqm. and only 4 with a ground floor area above 400 sqm. Consequently, whilst there are probably sequentially preferable opportunities to accommodate all of the retail park's floorspace in small units, a more realistic assessment that is based on sequentially testing the likely reality at ERP and looks at comparative suitability has a limited number of opportunities.
39. The Appellant has offered to accept a replacement condition that would prevent any of the development being subdivided into units of less than 697 sqm. The developer or retailer would not therefore require a unit smaller than this. The floorspace occupied by Halfords and Pets at Home could become available in the short term and reused by a retailer using 100% of the floorspace to sell restricted goods, as could the Boots unit, although both parties considered this to be unlikely. These units occupy gross floorspaces between 885 and 1,000 sqm on a single floor. In these circumstances I consider that the sequential test should be based on the availability of units in a similar floorspace range to the above i.e. between 700 and 1,000 sqm. As four of the units have sales areas that extend up to mezzanine floors, units with retail floorspace on an upper floor as well as a ground floor would be suitable, providing the ground floor floorspace was above the minimum threshold.
40. In a number of instances, within BCC, there are comparatively large vacant units adjacent to each other. The Appellant pointed out that the Council had provided no evidence to demonstrate that the owners were prepared to amalgamate the units. By the same token the Appellant did not provide any information to demonstrate that they were not. Its eagerness to

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<sup>9</sup> Judgement given on Tesco Stores Ltd v Dundee City Council, United Kingdom Supreme Court Judgement 13 [2012]

provide information during the course of the Inquiry in an attempt to demonstrate that the vacant floorspace at Units 2-9 Broadmead (Union Gate) had already been let, suggests that if there was such evidence then it would have been provided. There are numerous examples within the various shopping developments, within BCC, of individual retailers occupying more than one adjacent unit. The PG clearly states that it is for the Applicant to demonstrate compliance with the sequential approach and clearly justify its position.

41. The assessment of floorspace within adjacent vacant units within the same development/building as sequentially preferable to floorspace at the appeal site is therefore appropriate. The floorspace referred to by the Council has recently been used by retailers and adjacent floorspace still is. There is no substantiated evidence to suggest that it would not be suitable or viable.
42. The Council submitted three plans of BCC showing vacant floorspace at different levels, together with a schedule of vacant units and specifically referred to 5 sites. The unit at Brigstowe Street as identified on the plans appears to have 1,020 sqm. of floorspace but at the time of my site visit it was being fitted out and had clearly been let.
43. The former Peacocks unit on Horsefair should be considered as available within the timescales that are relevant to this appeal, despite the Appellant's point that the company is in receivership. Once removed from receivership, the owner would no doubt be keen to secure a new tenant. It has ground level floorspace of 630sqm. and 590 sqm. on the first floor. The adjacent former New Look unit that the Council referred to was also vacant at the time of my site visit. Together these units would provide ground floor retail floorspace similar to that available at Eastgate Retail Park, with the added option of first floor retailing, a trading format used by four of the retailers at Eastgate Retail Park. Being in a prominent location within BCC and having recently been occupied by two well known national retailers, there is no reason to suggest that this floorspace is not viable. Given some flexibility on the part of developers / retailers then this unit could be as suitable as one at ERP.
44. There are a number of vacant units in the Galleries shopping centre. Whilst for the most part they are individually of a size that is less than 400 sqm, such is the level of vacancies that there are a number of vacant units adjacent to one another, which could be combined to provide suitably sized retail space. Units 20, 21 and 22, for example, have a combined floorspace of 820 sqm. The notices suggesting that the floorspace is to let confirm that it is available and it was used by viable retail businesses, some of whom have moved to other parts of the City Centre, following the opening of the new Cabot Circus/Broadmead shopping area.
45. Planning permission has recently been granted for the extension and amalgamation of floorspace on Union Street to provide a 955 sqm. unit on the ground floor and with a similar amount above. This would be a suitable alternative to a unit at ERP. Whilst the Appellant claimed that this had already been offered to prospective tenants, it accepted that it was unable to verify this with direct evidence from the developers or their agents and

that its information suggested that there was no legal contract. The quoted floorspace also differs from that which received planning permission. Consequently, on balance I consider that it is reasonable to assume that at the present time this unit is available.

46. The Council also referred to the identification of a large site at Broadmead / The Horsefair, which is owned by the City Council and leased to Bristol Alliance. BCCRS considered the site (BMS10) to be the best opportunity in strategic terms for the delivery of a next phase of major retail development within BCC and with a capability of delivering some larger modern stores. The Preferred Options Consultation of the Bristol Central Area Plan<sup>10</sup> takes this site forward in Policy BCAP36, which proposes redevelopment at Horsefair/Callowhill Court (site KS02) and also at Union Street (site KS03). Part of the latter has already received planning permission<sup>11</sup>. Although this plan is in its early stages and can not be given significant weight, it indicates the direction of travel. The City Council has clearly taken on board the findings of the BCCRS and intends to pursue this aspect of its recommendations for retail development / redevelopment within BCC.
47. Whilst the KS02 site is unlikely to come to fruition until beyond 5 years, the potential timescale for replacing retailers at the Eastgate Retail Park with ones selling a higher proportion of restricted goods extends until at least 2024. The PG, at paragraph 6.39, discusses the timescales for availability and suggests that periods beyond five years may be appropriate according to local circumstances. At 6.41 it also points out that when promoting a proposal on a less sequentially preferable site, it will not be appropriate for a developer or retailer to dismiss a more central location on the basis that it is not available to the developer or retailer in question. In this context and although of only limited weight, as some of the leases at Eastgate Retail Park will not be renewed until beyond 5 years, the emerging redevelopment proposals could quite easily be sequentially preferable.
48. I conclude that there are sequentially available sites within BCC, a location that is prioritised by paragraph 24 of the Framework. In consequence, the proposal does not meet the requirements of the sequential test and is contrary to this aspect of the Framework. The condition is therefore necessary, relevant and reasonable.

### ***Other tests set out in Circular 11/95***

49. The Appellant says that the condition creates uncertainty and a logistical headache for the landlord. The latter may be so but although the referencing of the restricted goods allowance to all the units was introduced at the request of the owners, the removal of the restriction is not the answer to that problem. In retrospect it may be difficult for the landlord to control the amount of floorspace each individual tenant is using to sell restricted goods so as to ensure that the condition is not breached. However, if the condition has proved to be unduly onerous to administer, the restricted floorspace could be divided between the units through a

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<sup>10</sup> Bristol Central Area Plan, Preferred Options Consultation, Bristol City Council, September 2013.

<sup>11</sup> This is the same site as is referred to in paragraph 45.

revised condition, if it has not already been done via the leases. No such suggested revised condition is before me.

50. The Appellant also considers that the Council in reality would be unable to enforce the condition. However, it is clear from the Appellant's table of floorspaces that it is possible to define what floorspace is used to sell restricted goods and what is not. There are widely accepted conventions as to where and when not to include circulation space, which one assumes were used by the Appellant when calculating its figures. I have no doubt that the Council could similarly calculate the overall floorspace selling the restricted goods in order to monitor the situation and to establish whether or not there has been a breach of the condition.
51. If a breach of condition is alleged and enforcement action is to be pursued, then Paragraph 172 (2) of the Town and Country Planning act 1990 specifically says that a copy of an enforcement notice shall be served on the owner and on the occupier of the land to which it relates. There is therefore no ambiguity as to whom to serve the notice on. It would then be a matter for the Appellant and its tenants to resolve the matter to the satisfaction of the Local Planning Authority. I therefore consider the condition to be enforceable.
52. The condition specifically refers to the maximum amounts of floorspace that can be used for the sale of the restricted goods. It does not therefore create uncertainty for the Appellant. In this respect it is clear and precise. I conclude that the condition meets the other tests in Circular 11/95.

### ***Other considerations***

53. ERP is located within the Bristol urban area and there are residential areas close by to which there are footpath connections. The site is served by four bus routes and frequent bus services pass the site. In this context it is a comparatively accessible and sustainable location. However, BCC is the focus of public transport routes for the whole urban area and from beyond and is consequently a much more sustainable location. In this context I can only attach minimal weight to the site's sustainability credentials.
54. There are also opportunities for linked trips, not only between the retail units within the retail park but also with the nearby Tesco and Ikea stores. However, BCC has a much larger number of retail outlets and far wider customer choice. If the removal of the condition were to lead to a greater concentration of retailers predominantly selling restricted goods at the expense of those who currently do not, then this would weaken consumer choice in the context of holistic shopping trips to the Eastgate Centre and is a disadvantage of the proposal.
55. The Appellant suggests that the removal of the condition would reduce its management costs and free up finance for capital investment, which would contribute to the Framework's objective of building a strong responsive and competitive economy. Whilst this may be so, I am not persuaded that it would free up significant amounts of capital for reinvestment. This consideration therefore attracts limited weight. I am also not persuaded

that the changes that could be brought about by the removal of the condition would necessarily result in an increase in jobs in the locality.

56. Whilst a replacement condition that set a minimum unit size would prevent significant sub-division of the retail park and could be to the benefit of BCC, I am not persuaded that this and the other considerations when taken together outweigh the harm to national policy that I have identified.

### **Conclusions**

57. Although I have concluded that the proposal would not have a significantly adverse impact on BCC's vitality and viability, I have found that it could have adverse effects on BCC and concluded that the proposal does not meet the sequential test. The Framework seeks to promote competitive town centre environments and encourages their growth over time in order to provide improved customer choice and a diverse retail offer. The emerging Development Plan is seeking to achieve this by identifying suitable sites for major redevelopment and town centre retail expansion within BCC. Although these are unlikely to become available until the medium and long term, allowing the appeal proposal, which would widen the opportunities for retailers selling comparison goods such as clothing and fashion accessories and compete for these retailers with new city centre developments, would clearly conflict with these objectives.
58. There are currently suitable, viable and available premises within BCC to accommodate these uses. Allowing the appeals could prolong their vacancy longer than would otherwise be necessary and to this extent there would be an adverse impact on BCC's vitality and viability in the short term. When considered along with the above there would clearly be some overall harm.
59. The Framework says at paragraph 27 that where an application fails to satisfy the sequential test it should be refused. In the context of this proposal, the adopted Development Plan is out of date. However, the benefits of the proposal that I have been referred to do not outweigh the harm to national policy that seeks to facilitate the growth of town centres by requiring proposals for main town centre uses to be located there unless suitable and viable town centre sites are not available. The condition, which meets the tests in Circular 11/95, is therefore necessary. I find for the reasons discussed above and having taken account of all of the other matters raised that the appeal should be dismissed.

*M Middleton*

INSPECTOR

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Richard Ground of Counsel	Instructed by Director of Legal Services, Bristol City Council
He called	Angelo Calabrese, Bristol City Council Matthew Morris, GVA, Bristol

### FOR THE APPELLANT:

Paul G Tucker Queens Counsel	Instructed by Matthew Sobic of Savills, Manchester
He called	Jeremy Hinds, Savills

## **ADDITIONAL DOCUMENTS PRESENTED TO THE INQUIRY**

- 1 Representation from Destination Bristol, dated 15 October 2013
- 2 Representation from Turley Associates on behalf of Bristol Alliance, dated 15 October 2013
- 3 Copy of letter from RPS that accompanied planning application ref: 07/02550/F, dated 8 June 2007, submitted by the Council
- 4 Appellant's written response to Inspector's pre Inquiry questions on, impact, floorspace, sustainability, replacement condition, leases, Policy S10 sites and vacancies
- 5 Details of other S10 retail warehouse sites, submitted by the Council
- 6 River Island, retail warehouse locations, submitted by the Council
- 7 Agreed vacant units in UK regional shopping centres, October 2013
- 8 Vacant floorspace in UK Regional shopping centres, October 2013, submitted by the Council
- 9 Comparison of potential trade diversion estimates from and impact on Bristol City Centre
- 10 Lease expiry dates for current occupiers at Eastgate Retail Park, submitted by the Council
- 11 Application No. 11/04183/F, Units 2-9 New Broadmead, Union Street, Bristol, notice of decision, submitted by the Council
- 12 Email from Luke Sowerby of Curson Sowerby Partners LLP to Sally Dawson of Savills about Union Gate, dated 15 October 2013, submitted by the Appellant
- 13 Land at Barnfield Drive, Chichester, Sequential Assessment Statement, submitted by the Appellant
- 14 First bus services, Bristol Network Diagram, submitted by the Council
- 15 Bus stops and bus services serving Eastgate, Retail Park, submitted by the Appellant

## **PLANS**

- A Plan ref: CPG/ERP/SLP, 1/1250 Site Location Plan (Application Plan)
- B Plan ref: CPG/2013/RP, 1/7500 plan showing residential uses surrounding the Eastgate Centre
- C Plan ref: CPG/ERP/USP, 1/1250 Unit Size Plan, showing unit subdivision at the time of the Inquiry
- D 1/1250 Site Location Plan, Union Gate, Bristol
- E 1/500 Existing ground floor plan, Union Gate, Bristol
- F 1/200 Proposed ground floor plan, Union Gate, Bristol