

WARD: Westbury-on-Trym & Henleaze

SITE ADDRESS: 29 Hobhouse Close Bristol BS9 4LZ

APPLICATION NO: 22/01550/F Full Planning

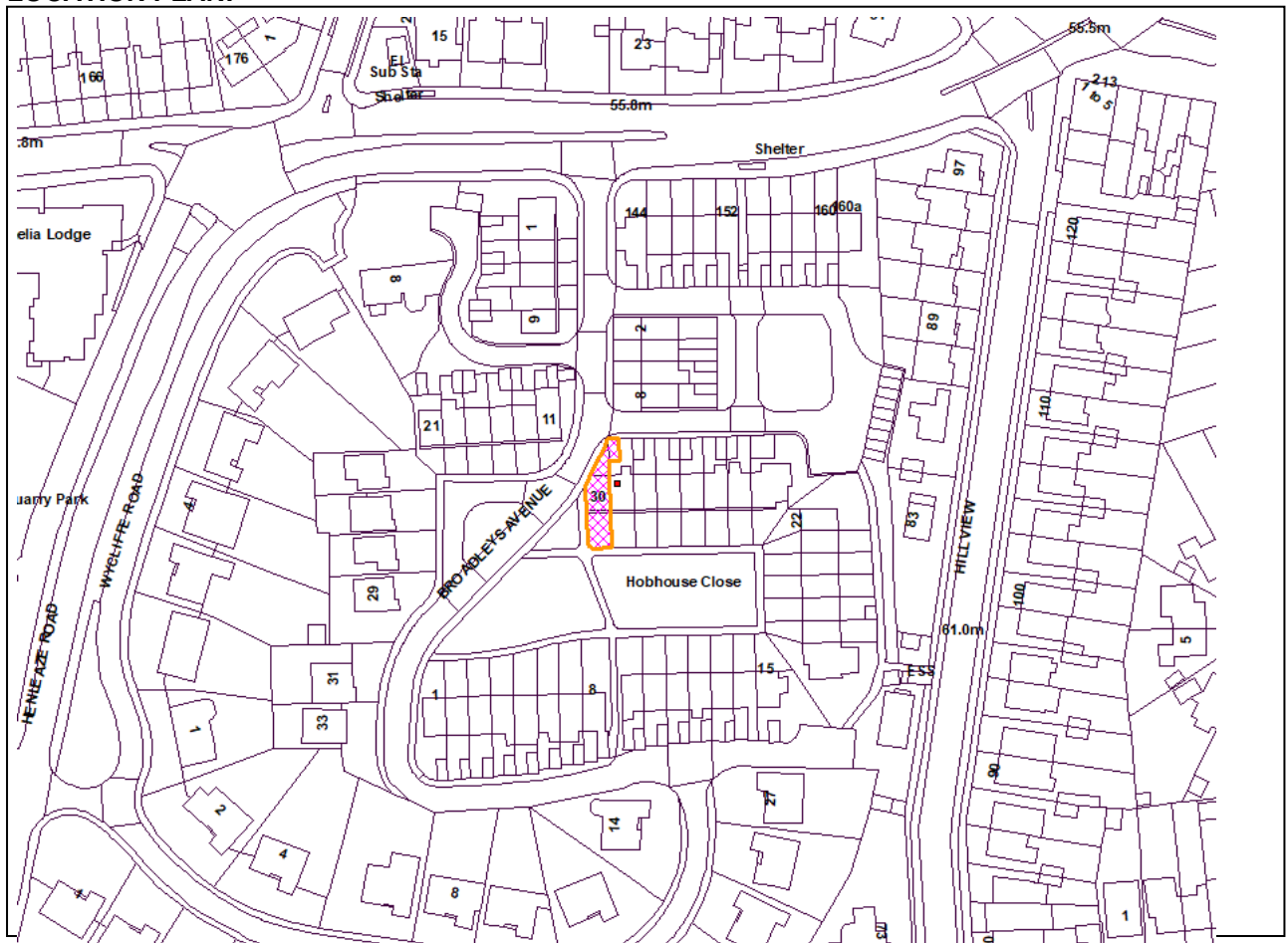
DETERMINATION DEADLINE: 11 July 2022
Retrospective application for retention of dwelling.

RECOMMENDATION: Grant subject to Condition(s)

APPLICANT: Mr Hassan Khaleghi
9 Pycroft Avenue
Bristol
BS9 4NL

The following plan is for illustrative purposes only, and cannot be guaranteed to be up to date.

LOCATION PLAN:



Development Control Committee B – 18 January 2023
Application No. 22/01550/F : 29 Hobhouse Close Bristol BS9 4LZ

This application has been brought back the Development Control Committee following the item being deferred at the last meeting. Since that time planning officers have consulted with the legal services team on the potential to attach a planning condition to any planning permission to control the concern about short-term letting. It should be noted that we have received an indication from the property owner that they have submitted an Appeal against non-determination of the planning application. Whilst we have received initial details and confirmation of a reference number from the Planning Inspectorate we are yet to receive an official start letter confirming the time table and advising the planning authority that it cannot make a decision on the planning application.

The legal team provided a memo dated 15.12.22 which is appended to this committee report. It can be noted that in summary they advise; that imposing the draft condition proposed is inadvisable (due to the wording not satisfying the 6 tests and it also not achieving the proposed aim)

The previous planning committee report is appended and the recommendation being made is that planning permission is granted as per the recommendation set out last time with an additional Note to Applicant being added to the Notice of Decision stating; "For the avoidance of doubt, this permission does not enable the property to be used for short-term letting use outside of the limitations generally agreed to be permissible under a C3 (dwellinghouse) use. Should the property owner wish to utilise this dwelling for short-term letting in a manner that is considered to constitute a material change of use (such as solely for short-term letting) it will require a separate grant of planning permission."

This is on the basis that no start letter has been received regarding an appeal, officer will update the committee in the amendment sheet and explain further what the recommendation is at the meeting.

Members are reminded that this application is retrospective and seeks permission for the retention of dwelling as built subject to a couple of physical amendments which would need to be delivered pursuant to planning condition.

The building would then be able to be occupied as either a C3 dwellinghouse or as a small hmo C4. That is no different from the uses permissible as approved by the Appeal Decision on 11.7.19. That is because such a change of use (from C3 to C4) does not require planning permission. That in practice means that the property could be occupied as a C4 hmo by up to a maximum of 6 unrelated individuals.

This planning application is effectively for a differently designed building (externally) to that consented previously. The committee is reminded that whilst the planning system does control how a building is used, it does not ordinarily control how a building is laid out in terms of internal configuration.

It can be noted that as established as part of a planning enforcement case registered on 15.2.22 (22/30064/NAP refers) officers have identified a breach of planning control in respect of use. We have identified that the property has been in use as a large HMO and has been used for short term letting. This application does not seek to regularise that breach of planning control.

Planning Officers have asked the building owner to bring the unauthorised use to an end, we understand that to date they have not done so.

Members are advised that issuing the new planning permission and making this planning decision today does not fetter the planning authority's opportunities to take formal planning enforcement action against any ongoing or future unauthorised use.

Officers will under the terms of a planning enforcement case, continue to pursue the cessation of any unauthorised use and could serve a Planning Enforcement Notice if a voluntary cessation is not secured.

Unfortunately as the developer has not followed the previous approved details the building does not have planning permission. Members are respectfully reminded that planning processes can and do

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follow a staged or stepped approach and the decision on this application is the next stage in the process and does not authorise a use that would require a further planning application process to be followed.

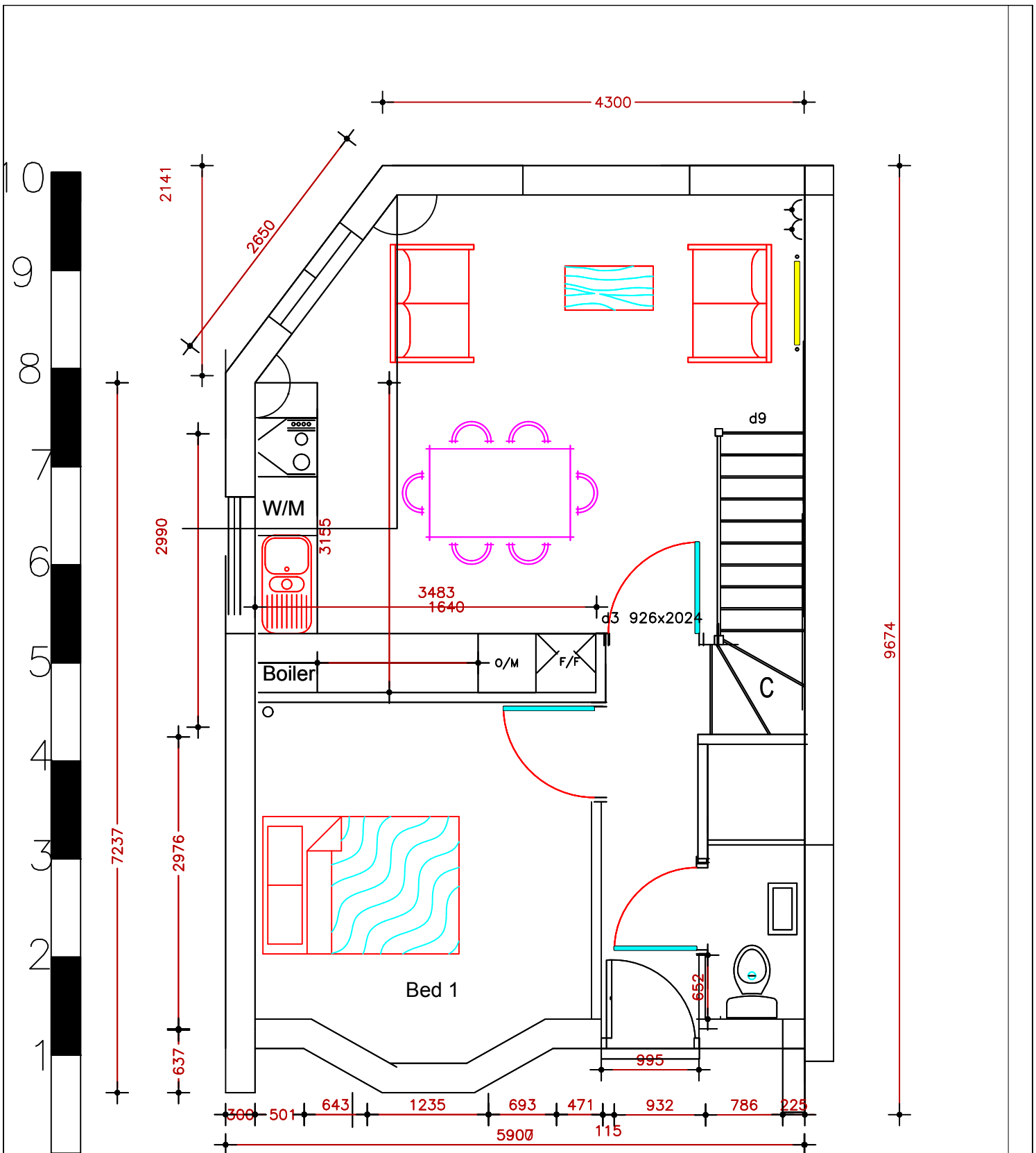
As well as not constructing the approved building correctly they have been using it in an unauthorised way which has understandably caused much public annoyance. This unauthorised use does not form part of the application under assessment, it has not been assessed by officers or considered against the relevant planning policies – it can be subject to formal planning enforcement action.

In conclusion, whilst planning officers contend that planning permission should be granted - it may well be the case that the committee will be advised that it is unable to determine the planning application due to an appeal against non-determination. If that is the case the amendment sheet and the verbal update to committee will explain what the options are in this matter. In any event further investigations and follow up planning enforcement action can be pursued should the unauthorised use not cease.

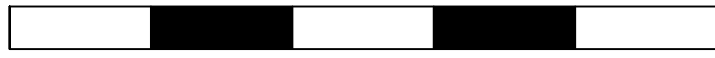
Supporting Documents

29 Hobhouse Close

1. Existing ground floor plan (001A)
2. Existing first floor plan (002A)
3. Existing second floor plans (003A)
4. Existing roof plan (004A)
5. Existing side elevation (007A)
6. Proposed front elevation (005D)
7. Proposed rear elevation (006B)
8. Proposed block plan (008B)
9. Proposed site location plan (009B)
10. Proposed garage/parking arrangement (010A)
11. Refusal of previous scheme - 18/06126/F
12. Appeal decision for previous scheme - 18/06126/F
13. Plans approved on appeal for - 18/06126/F
14. Legal advice on short term let condition
15. 29 Hobhouse Close 7th December committee report

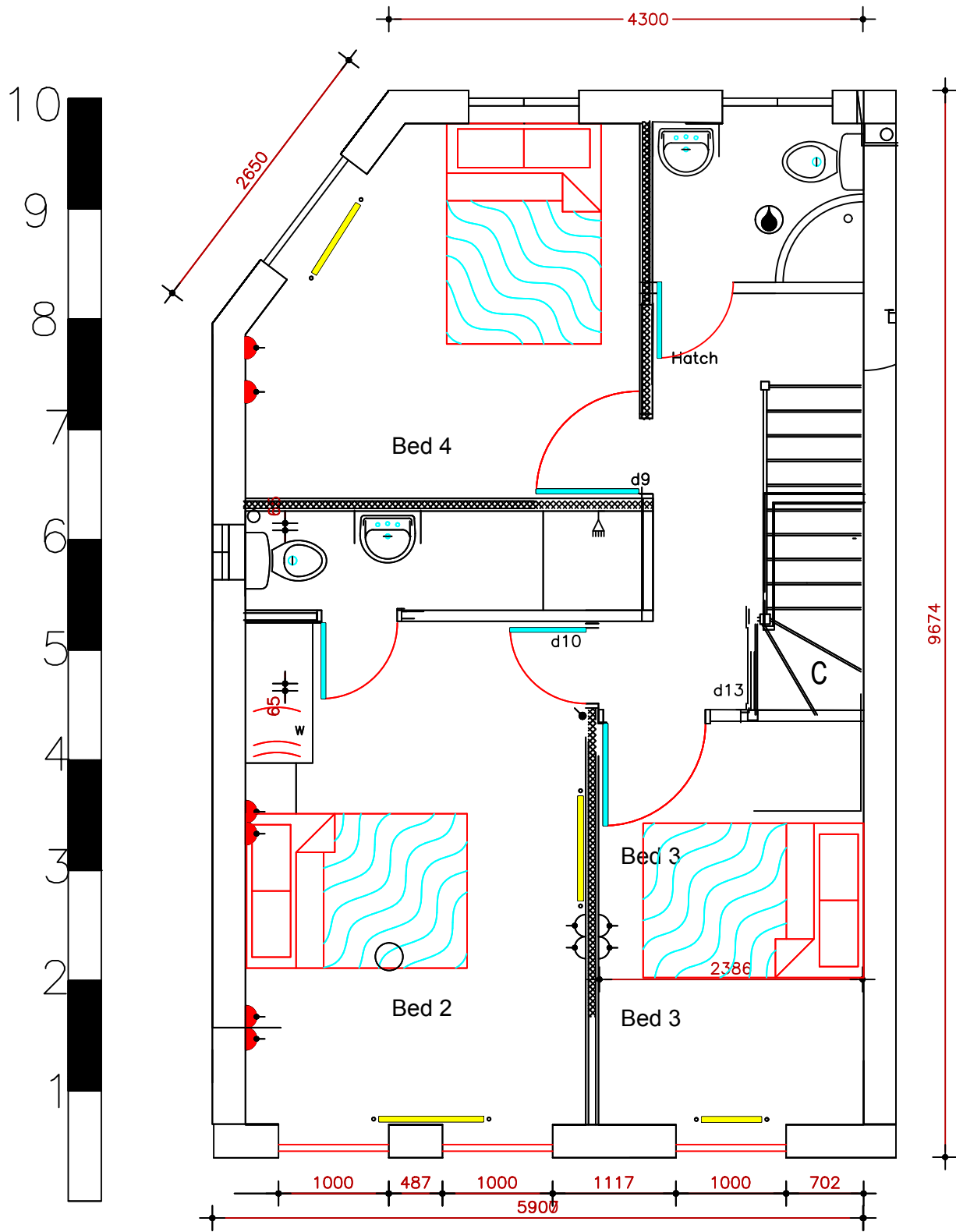


GROUND FLOOR PLAN

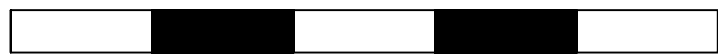


1 2 3 4 5

Title: Ground Floor Plan	SIZE A4	FSCM NO.	DWG NO. 001	REV A
Project: 30 HOBHOUSE CLOSE BS9 4LZ	SCALE 1/50	Drawn: HASSAN KHALEGHI		

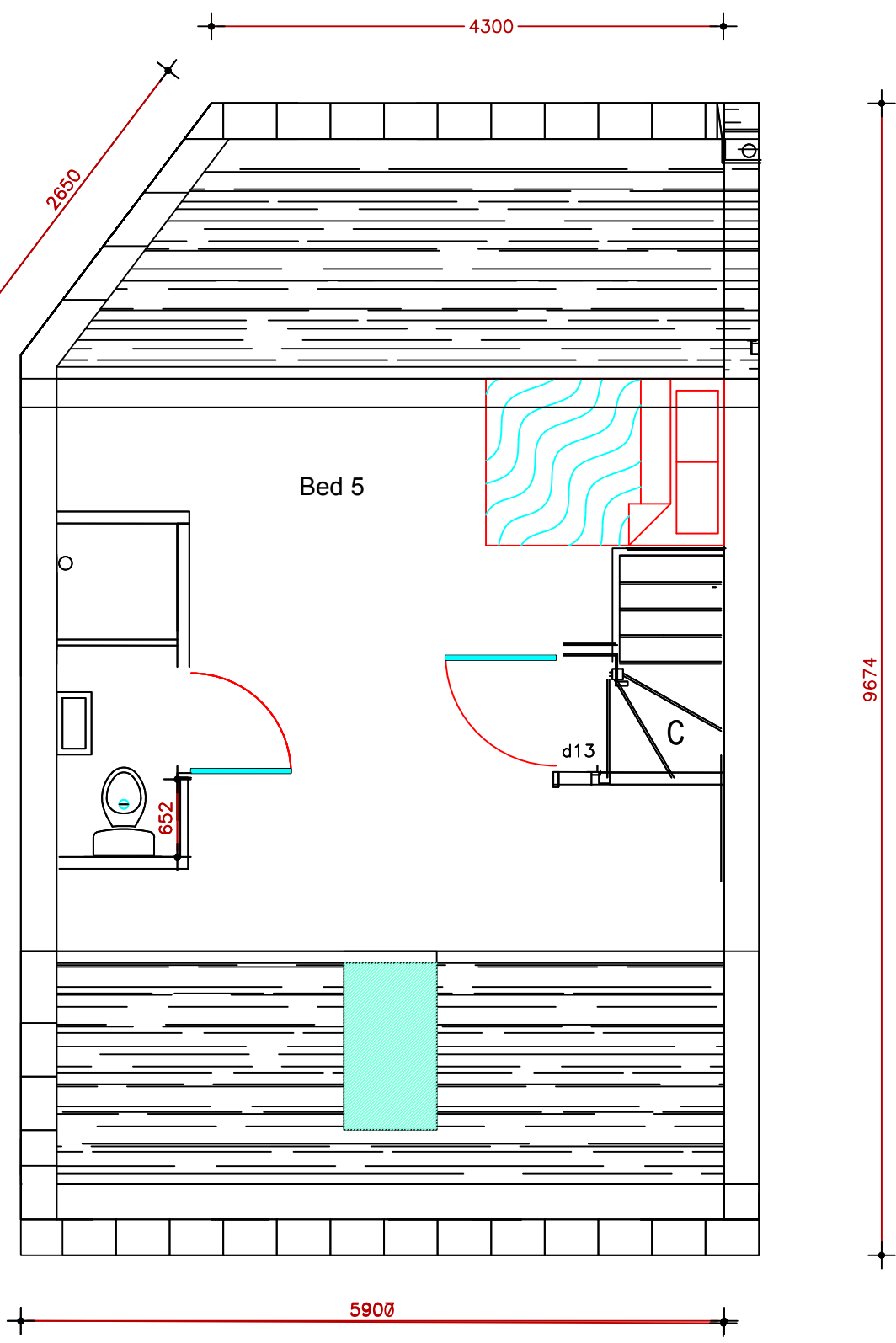
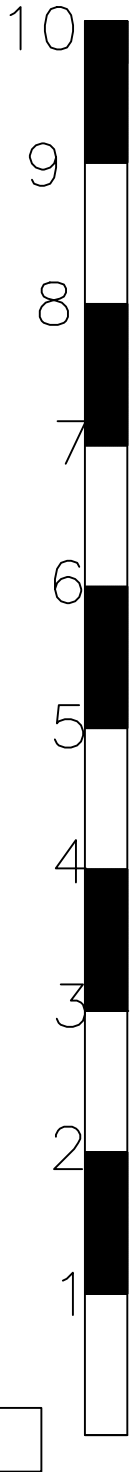


FIRST FLOOR PLAN

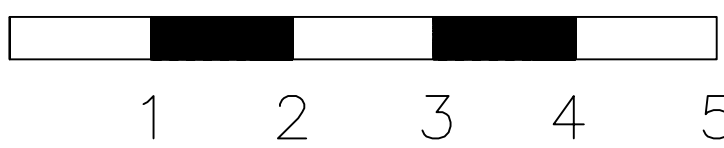


1 2 3 4 5

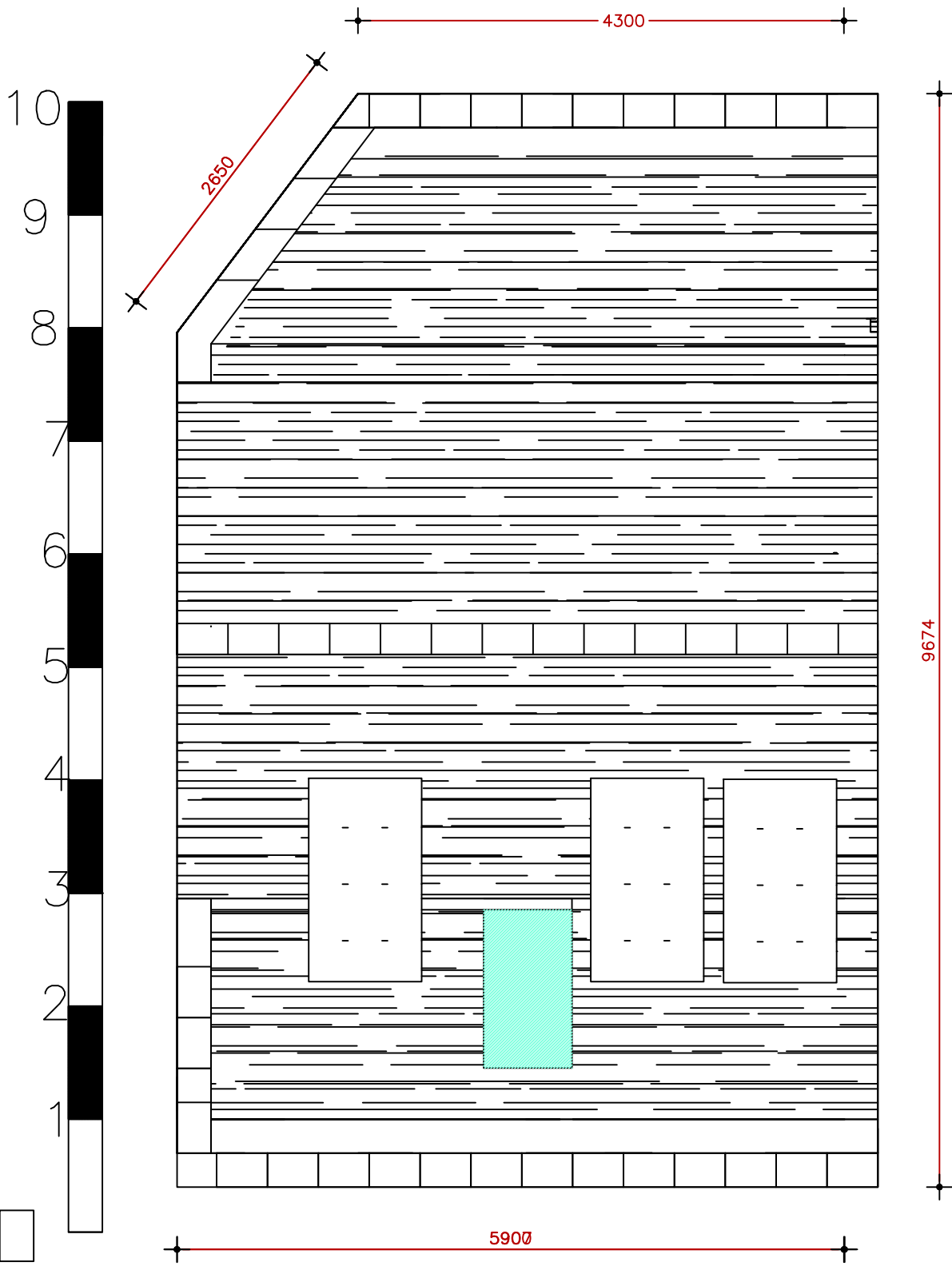
Title: First Floor Plan	SIZE A4	FSCM NO.	DWG NO. 002	REV A
Project: 30 HOBHOUSE CLOSE BS9 4LZ	SCALE 1/50	Drawn: HASSAN KHALEGHI		



SECOND FLOOR PLAN

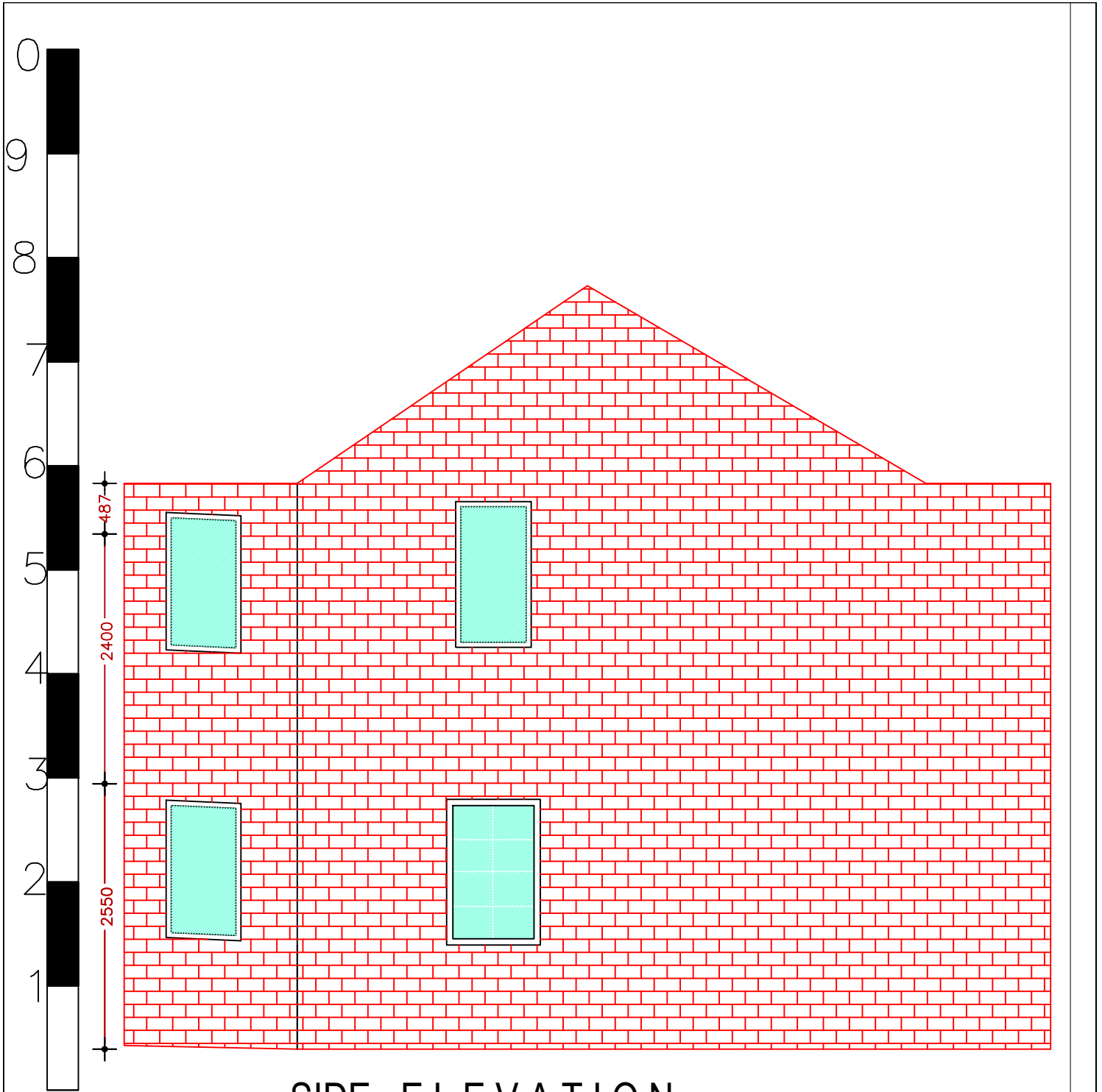


Title: Second Floor Plan	SIZE A4	FSCM NO.	DWG NO. 003	REV A
Project: 30 HOBHOUSE CLOSE BS9 4LZ	SCALE 1/50		Drawn: HASSAN KHALEGHI	

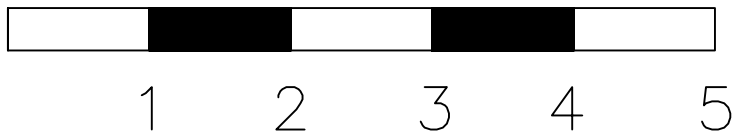


ROOF PLAN

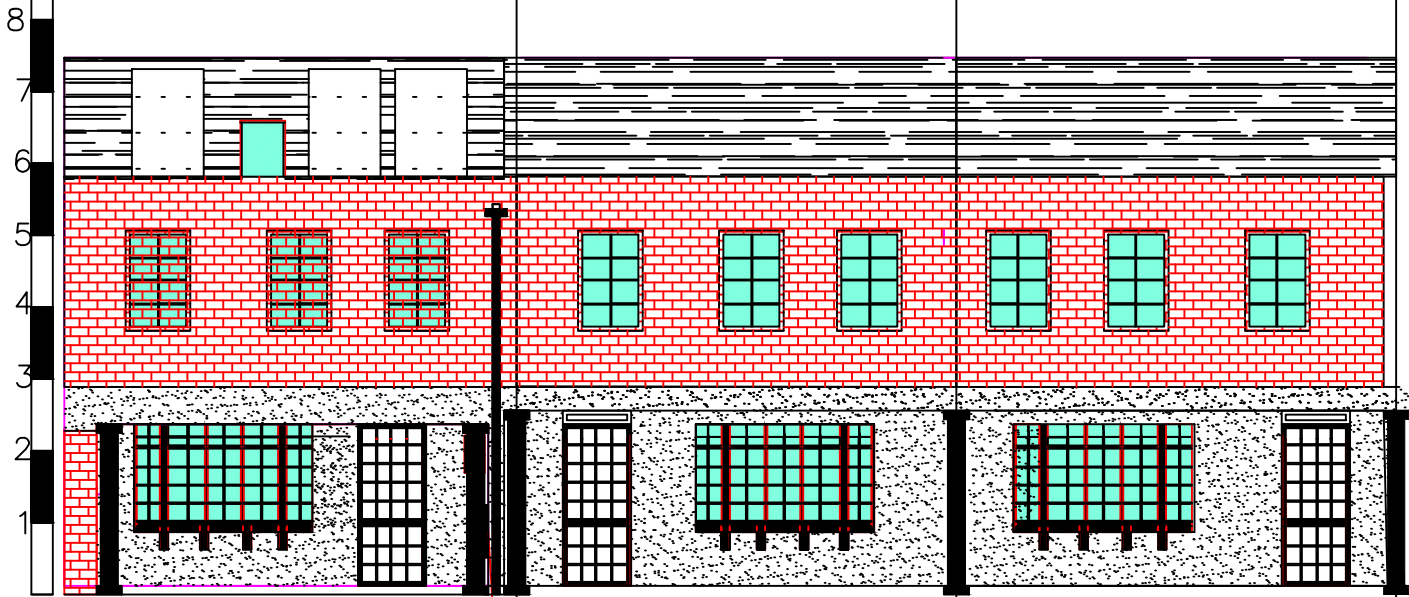
Title:Roof Floor	SIZE A4	FSCM NO.	DWG NO. 004	REV A
Project: 30 HOBHOUSE CLOSE BS9 4LZ	SCALE 1/50	Drawn: HASSAN KHALEGHI		



SIDE ELEVATION.



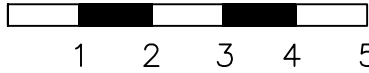
Title:Side Elevation	SIZE A4	FSCM NO.	DWG NO. 007	REV A
Project: 30 HOBHOUSE CLOSE BS9 4LZ		SCALE 1/50	Drawn: HASSAN KHALEGHI	



NO 30 Surface Mounted Electric Meter Box

NO 29

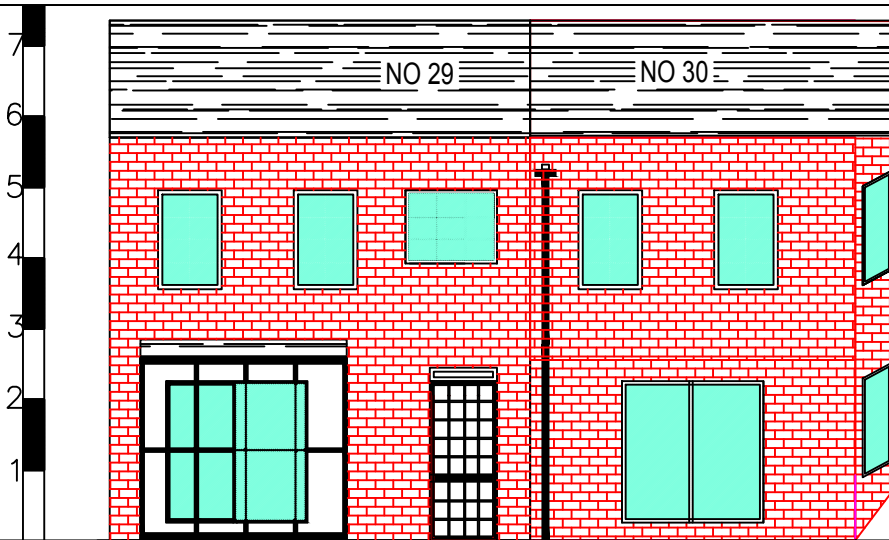
NO 28



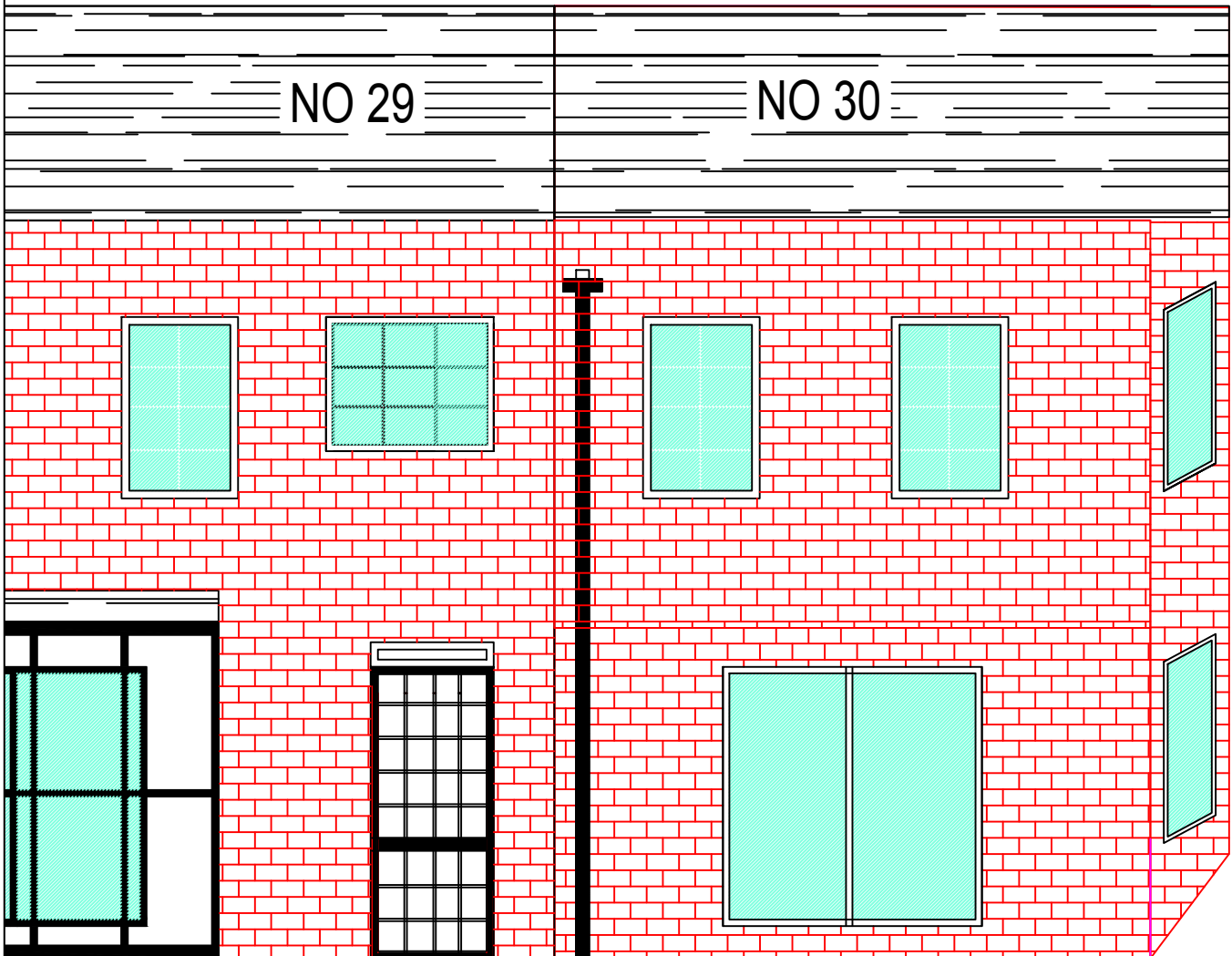
FRONT ELEVATION.



Title: Front Elevation	SIZE	FSCM NO.	DWG NO.	005	REV
	A4				D
Project: 30 HOBHOUSE CLOSE BS9 4LZ	SCALE	1:100	1:50	Drawn: HASSAN KHALEGHI	

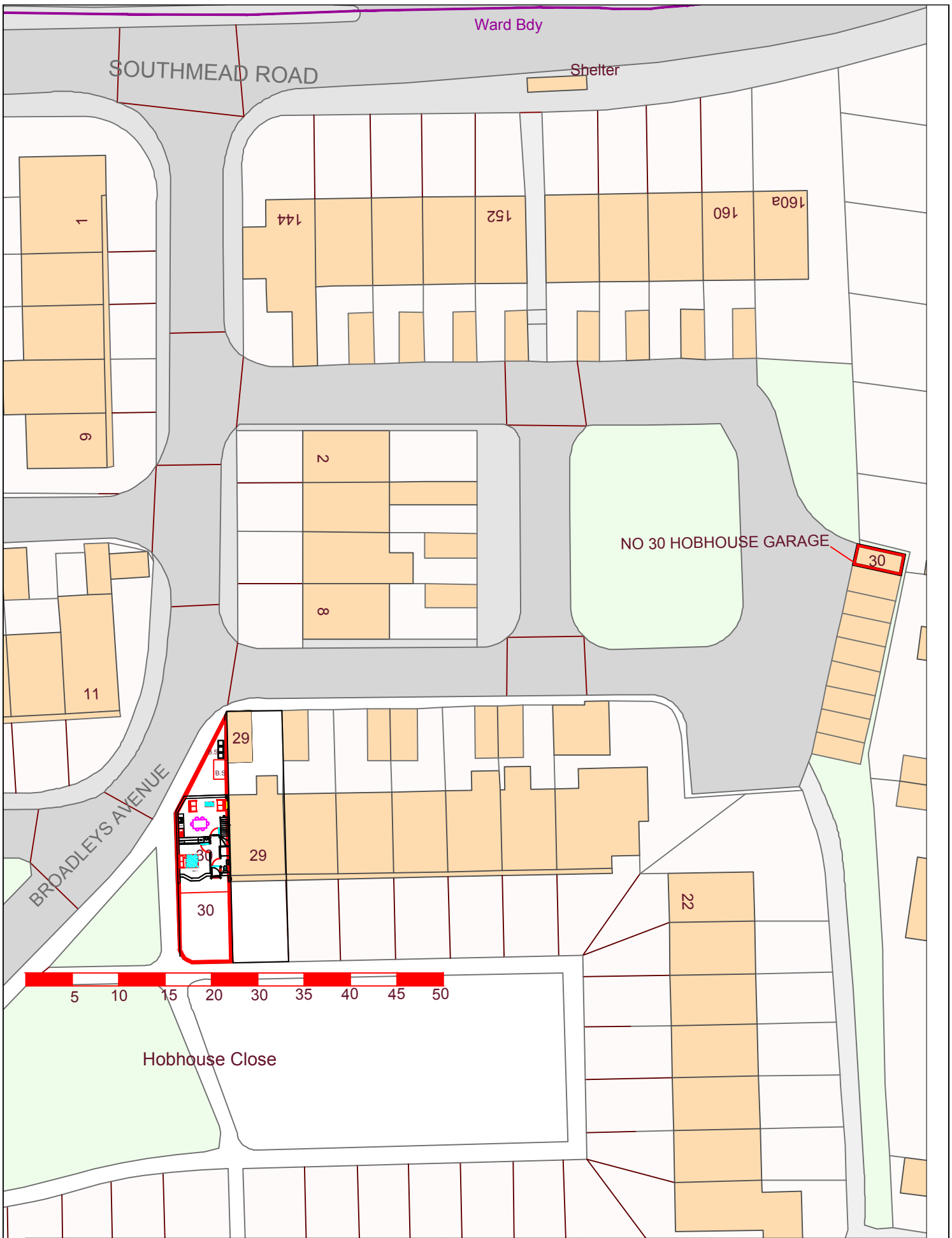


REAR ELEVATION.

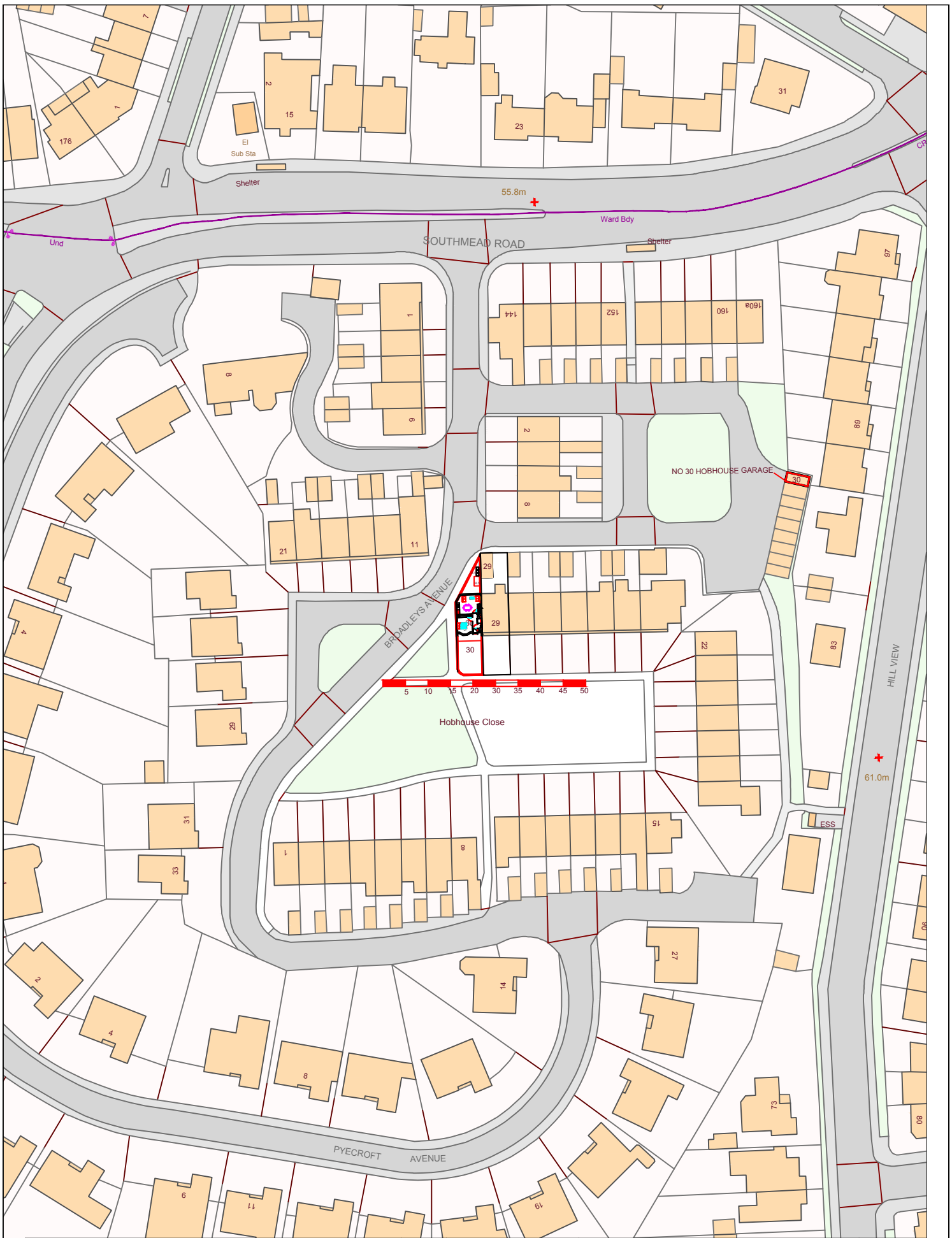


REAR ELEVATION.

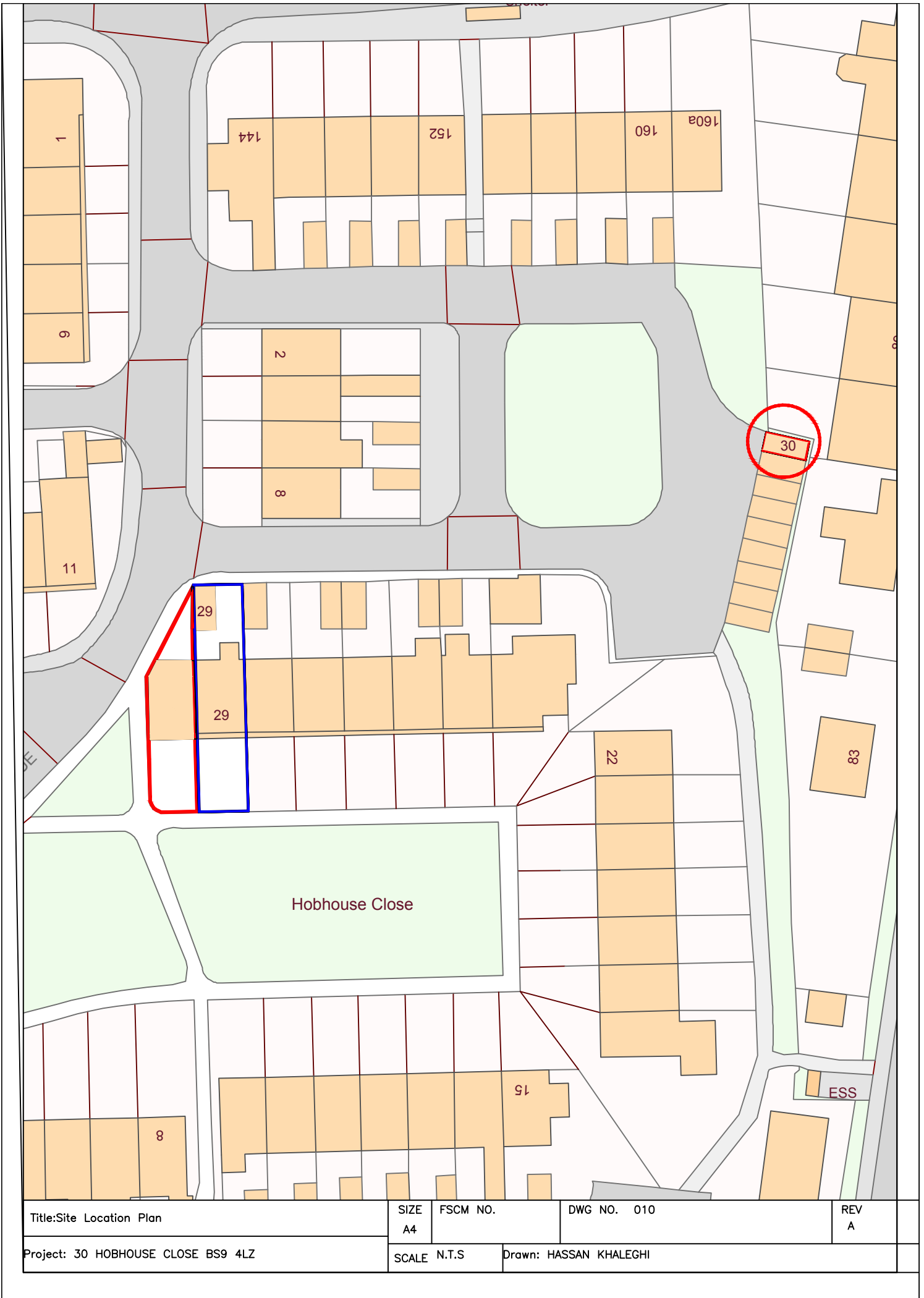
Title:Rear Elevation	SIZE	FSCM NO.	DWG NO. 006	REV
	A4			B
Project: 30 HOBHOUSE CLOSE BS9 4LZ	SCALE	1:50	1:100	Drawn: HASSAN KHALEGHI



Title: Site Location Plan	SIZE A4	FSCM NO.	DWG NO. 008	REV B
Project: 30 HOBHOUSE CLOSE BS9 4LZ	SCALE 1/500	Drawn: HASSAN KHALEGHI		



Title: Site Location Plan	SIZE A4	FSCM NO.	DWG NO. 009	REV B
Project: 30 HOBHOUSE CLOSE BS9 4LZ	SCALE 1/1000	Drawn: HASSAN KHALEGHI		



Title: Site Location Plan

SIZE
A4

FSCM NO.

DWG NO. 010

REV
A

Project: 30 HOBHOUSE CLOSE BS9 4LZ

SCALE N.T.S

Drawn: HASSAN KHALEGHI



NOTICE OF DECISION

**Town and Country Planning Act 1990 (as amended)
Town and Country Planning (Development Management Procedure)
(England) Order 2015**

Decision :	REFUSED
Application no:	18/06126/F
Type of application:	Full Planning
Site address:	29 Hobhouse Close, Bristol, BS9 4LZ.
Description of development:	Erection of new 2 storey dwelling attached to side of 29 Hobhouse Close and associated structures.
Applicant:	Mr G Eskell
Agent:	M B Grieve Chartered Architect
Committee/Delegation Date:	29.01.19
Date of notice:	29.01.19

The reason(s) for refusal associated with this decision are attached

DECISION: REFUSED

The following reason(s) for refusal are associated with this decision:

Reason(s)

1. As a result of the physical constraints of the site and the overall design approach the proposal would appear as an unsympathetic and incongruous addition to the host terrace owing to its siting scale, form, proportions and detailed design (including roof form). The proposal fails to sympathetically reflect the locally characteristic uniform architectural styles, rhythms, patterns, features and themes of the buildings and the surrounding character including open plan gardens and fluid, curved layouts of streets to the detriment of the street scene and local distinctiveness of this part of the Broadleys Avenue character area. The proposal fails to comply with guidance contained within the National Planning Policy Framework 2012 (as amended), Policy BCS21 of the Core Strategy and policies DM26, DM27, DM29 and DM30 of the Site Allocations and Development Management Policies as well as guidance within the adopted Henleaze Character Appraisal (2016).

Advice(s)

1. Refused Applications Deposited Plans/Documents

The plans that were formally considered as part of the above application are as follows:-

Residential supplementary information template, received 4 December 2018

Design statement, received 4 December 2018

Energy strategy for a proposed new dwelling, received 4 December 2018

157P/01 - Existing north and south elevation, location and block plan, received 4 December 2018

157P/02 - Proposed ground, first floor plans and rear elevations and street view, received 4 December 2018

Cover letter, received 4 December 2018

Tree Survey, received 4 December 2018

Article 35 Statement

The council always wants to work with the applicant in a positive and proactive manner. Unfortunately the proposed development is contrary to the policies of the Development Plan as set out in the officer report. Clear reasons have been given to help the applicant understand why planning permission has not been granted.

The right to appeal

You have the right to appeal against this decision. Any such appeal should be made on a form obtainable from The Planning Inspectorate at Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN or by contacting them on 0303 444 5000. Further information can also be obtained from the Planning Inspectorate's web-site, and it is possible to download copies of appeal forms and questionnaires and booklets giving guidance about the appeal process. The address is www.gov.uk/appeal-planning-inspectorate

You are allowed six months from the date of this notice of decision in which to lodge an appeal.

Application No: 18/06126/F

Negotiations

Before making an appeal, you may wish to contact the case officer who dealt with your application, who may be able to advise you, how the council's objections to your proposal might be overcome if you amend your scheme. Please note that if negotiations are successful, you will need to submit a new planning application, which may, of course, be refused by committee.

Lodging an appeal will not prejudice your negotiations but you may need to agree with the council to postpone the appeal, to allow negotiations to take place.

Complaints

Only planning matters can be considered at an appeal. If you think that the council did not properly consider your application, you can make a complaint under the council's complaints procedures, details can be found on the website www.bristol.gov.uk/complaints-and-feedback or by calling 0117 9223000.



Appeal Decision

Site visit made on 5 May 2019

by A. J. Boughton MA (IPSD) Dip.Arch. Dip.(Conservation) RIBA MRTPI
an Inspector appointed by the Secretary of State

Decision date: 11 July 2019

Appeal Ref: APP/Z0116/W/19/3222132
29 Hobhouse Close Henleaze Bristol BS9 4LZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr G. Eskell against the decision of Bristol City Council.
 - The application Ref 18/06126/F, dated 21 November 2018, was refused by notice dated 29 January 2019.
 - The development proposed is the erection of one 2-storey dwelling and associated works.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of one 2-storey dwelling and associated works at 29 Hobhouse Close Henleaze Bristol BS9 4LZ in accordance with the terms of the application, Ref:18/06126/F, dated 21 November 2018, subject to the 7 conditions appearing on the schedule appended.

Preliminary Matters

2. The appellant did not enter a description on the application form. I have used that appearing on the decision notice, with appropriate adjustments.
3. The appellant has indicated that the roof of No.29 could be extended as a hipped roof over the proposed dwelling as shown on a drawing included at section 3 of the statement of case. This change would address objections to the submitted roof design and given the limited extent of the change my acceptance of this amendment would not affect the rights of any party.

Main Issue

4. The main issue is the effect of the development on the character and appearance of the Broadleys Avenue character area.

Reasons

Character and Appearance

5. The proposal extends an existing terrace block forming part of a neo-georgian housing development identified as the Broadleys Avenue estate. This is identified as a character area within the Council's supplementary planning document (SPD) the Henleaze Character Assessment. Hobhouse Close is an open-ended quadrangle of 4 terrace blocks overlooking a large semi-formal open space in the middle of this estate. The appeal site is a side-garden to the end of the terrace block adjacent to Broadleys Avenue.

6. The character of the area largely derives from the spacious estate layout and homogeneous architectural treatment ('neo-georgian'), characterised by a very limited range of house types in terrace blocks and larger detached properties.
7. Although each terrace block incorporates a repetitive-design of dwelling, the architectural form and appearance of the development is discerned at the scale of the terrace blocks rather than the individual dwellings therein. So although the width of the dwelling proposed would differ from the other properties, to my mind this would not be obtrusive where the architectural approach and detailing is wholly consistent, as the development intends.
8. The proposed roof form is, however, discordant, and although it would be seen only in certain viewpoints, as proposed it would unacceptably disrupt the visual integrity of the terrace block. The appellant has suggested an amendment to the roof design which does not materially change the nature or scale of the development, the detailing of which could be required by condition.
9. The character of the area rests not only in the fluid layout, but also in the semi-formality of the open space formed by the dwellings of Hobhouse Close. The proposal would be located on a side garden at the end of a terrace block and would not intrude or disrupt the sense of enclosure of the central space created by the terrace blocks of housing. Although the flank wall of the dwelling would directly abut the pavement, the positioning and proximity of other terrace blocks similarly 'squeeze' views and vistas along Broadleys Avenue. To my mind the proposal would not diminish the distinctive sense of place or the contribution to high quality urban design found in the form and layout of the existing development.
10. I conclude that the proposal would accord with the principles set out in Policy BCS21 of the Bristol Core Strategy (2011) (BCS) for positive contributions to urban design, and with Policies DM26, DM27, DM29 and DM30 of the Site Allocations and Development Management Policies Local Plan (2014)(SADM) which, taken together (amongst other things) require development to respect the local pattern and grain of development, reflect local characteristics and architectural styles, and also safeguard the amenity of the host property. The proposal would, therefore, accord with the development plan taken as a whole.

Other Matters

11. A number of interested parties raise concerns about parking. The proposal includes one off-road space and the area is not subject to a controlled parking scheme. Although my observations are necessarily a 'snapshot', and noting the information provided by the appellant, I am not persuaded from what I saw that the addition of one two-bedroom dwelling would cause 'parking stress' from a shortage of on-street parking in this relatively low-density suburban environment.

Conditions

12. The Council have suggested a number of conditions which I have considered and adjusted to meet the tests required by Planning Practice Guidance and the Framework. Conditions are necessary to ensure the development proceeds only on the basis approved which includes details of a variation to the roof design and other related architectural matters together with materials approval. To ensure the necessary visual integration I consider these materials

and details should be expressly approved rather than 'to match' as the Council suggest. Details of energy-saving measures/emission reduction are necessary as set out in BCS13 of the BCS; also of arrangements for bins and recycling to ensure proper management thereof and of sustainable drainage in order to deal with flood risk from climate change. Cycle storage is necessary to contribute to sustainable transport objectives. As the site is garden land, noting what has stated in section 6 of the planning application form, in the absence of evidence to the contrary a condition relating to ground contamination would not be necessary or appropriate.

Conclusion

13. The appeal is allowed.

Andrew Boughton

INSPECTOR

Schedule of Conditions:

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 157P/02 except in respect of the roof design there appearing.
- 3) Notwithstanding condition 2, no construction above ground level shall take place until details of all matters listed below have been submitted to and approved in writing by the local planning authority:
 - (i) design and detailing of roof construction as an extension of the existing roof of the host dwelling, including eaves/parapets,
 - (ii) external facing materials, architectural features and windows/doors,
 - (iii) photo-voltaic panel installation in accordance with the submitted energy strategy.

Development shall be carried out in accordance with the approved details.

- 4) The development shall be carried out in complete accordance with the Energy Strategy prepared by A&H Energy Rating Ltd. dated 10 August 2018 (ref. 020718 V3) and maintained as such in perpetuity unless otherwise agreed in writing by the Local Planning Authority.
- 5) The development hereby approved shall not be occupied until the cycle parking provision shown on the approved plans has been completed, and thereafter, shall be kept free of obstruction and available for the parking of cycles only.
- 6) The development hereby approved shall not be occupied until the refuse store, and area/facilities allocated for storing of recyclable materials, as shown on the approved plans have been completed in accordance with the approved plans.

7) No construction above ground level shall take place until a Sustainable Drainage Strategy and associated detailed design, management and maintenance plan of surface water drainage for the site using SuDS methods has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Memo - proposed condition on short term lets

To: Nigel Butler and Sam Brown

From: Dawn Bodill, solicitor, Legal

Date: 15 December 2022

Dear Nigel and Sam,

You have sought the following legal advice:

“We would like legal to review the potential condition we have drafted below. The planning committee is likely to wish to attach such a condition to any planning permission – can we impose such a condition or would it be better for the planning authority to consider any breaches under a planning enforcement process?”

The proposed condition wording is as follows:

- **The property, hereby approved, shall not be used solely for short-term letting (defined as lettings for less than 14 continuous days).**
- **Reason: this would constitute a material change of use and requires consideration to protect the amenity of neighbouring properties.**

If I understand it correctly, the reason for suggesting a condition is to control the amount of short term lets at the proposed property so that the use remains as a dwelling house (C3) and isn't changed to a *sui generis* use. This is following neighbour complaints (and website information) suggesting/confirming that the property is being used for short term lets which is impacting amenity.

As you will know, it is possible to use a dwelling house as a residence whilst also allowing a number of short term lets without there being a material change in use. This change of use only becomes material when the character of the use changes. As confirmed in the Court of Appeal decision in Moore v Secretary of State for Communities and Local Government [2012]¹, whether the change is material is a matter of fact and degree in each case.

The Moore judgement also concerned the use of a dwelling house for short term holiday lets. There have also been recent planning enforcement appeal decisions² considering the same issue. They also concluded that material change is a matter of fact and degree in each case.

The key issue here, it seems, is to ensure the character of the use isn't materially changed so as to impact residential amenity. If it does materially change however, that changed use wouldn't be permitted by the current permission and a new permission would be needed.

I mention the relevant law here as this does seem to be more an enforcement matter rather than a planning control matter, and it is difficult to see how a condition could be drafted to

¹ [2012] EWCA Civ 1202

² Cambridge City Council (APP/Q0505/C/18/3193261); and Oxford City Council (APP/G3110/C/19/3239740)

adequately address this issue whilst also comply with the '6 tests' for conditions. The 6 tests are that the condition is:

1. necessary
2. Relevant to planning
3. Relevant to the development being permitted
4. Enforceable
5. Precise; and
6. Reasonable in all other respects

Considering the 6 tests as against the draft condition:

- It is not clear what 'not be used solely for short-term letting' means in this context. You could argue it means that a person can use the property as a dwellinghouse for one weekend per year, with the remainder time being used as short term let. Or it could mean someone can use it for short term lets under 14 days but also for slightly longer term lets (of 14+ days); just as long as the short term let is not the sole use. This wording therefore fails the test of '**precision**'. In addition, such a restriction wouldn't necessarily stop the character of the use materially changing as that will depend on the fact and degree of the change.
- It is not clear why the time period of 'less than 14 continuous days' is the key time period proposed to ensure no material changes. Short term lets of 14 day+ could still amount to a material change of use depending on the facts and degree of the changed use. It would also be extremely difficult for the Council to monitor this restriction. This wording would therefore arguably fail the test of **reasonableness** and **enforceability**.
- It is also not clear why a condition is necessary here to stop a material change of use (as mentioned above, this seems more like an enforcement issue). For instance, you wouldn't impose a similar condition restricting material change of use to an office, as that use is also not approved by the permission. Usually, you would just enforce against the planning breach as and when it occurs. Arguably, therefore this wording is **not necessary** and/or **relevant to the development being permitted**.

Whilst I believe the condition would fail several of the 6 tests for the reasons set out above, I don't think imposing a condition will actually assist the Council. On the contrary, imposing seemingly arbitrary restrictions could mean that you aren't allowing yourself the flexibility to enforce against a change of use which, although satisfying the condition requirements, actually results in a material change in the character of the use and so is a breach of planning control. The key point is that it is a **matter of fact and degree** in each case as to whether there has been a material change of use, and you want to retain that flexibility.

I am also not aware that there is currently any local plan policy support for this type of condition. Unlike in London, where there is now the '90 nights' limit for short term lets, we don't have a similar policy/law to validate this type of restriction by condition (yet).

Ultimately, until similar legislation or policy is published by the Government (or Council), it would be more beneficial for the Council to regulate this use by planning enforcement if necessary. Additionally, there are other statutory means available if needed, such as:

- environmental health intervention if there is a public nuisance, such as noise;
- HMO licencing (if applicable); and
- Building control re: fire safety etc

I hope the above is of assistance. As you suggest in your request for legal advice, and for the reasons set out above, for now this issue is best left to enforcement as and when a planning breach is understood to have arisen.

Kind regards

Dawn

Development Control Committee B – 7 December 2022
Application No. 22/01550/F : 29 Hobhouse Close Bristol BS9 4LZ

SUMMARY AND BACKGROUND

This application has been brought to the Development Control Committee following a Member referral made on 9 June 2022.

The application the subject of this report is recommended for approval; i.e. that a new planning permission is issued to regularise the breach of planning control identified as part of a planning enforcement case registered on 15 February 2022 (22/30064/NAP refers).

The planning permission in question was issued on Appeal by Decision Letter dated 11/07/2019 (the appeal decision is included as a supporting document to this report). The appeal was following the City council refusal on 29/01/2019 of application 18/06126/F (and the Notice of Decision is also included as supporting document this report).

The planning permission granted on appeal was for a two storey dwelling. It was granted subject to 7 planning conditions.

The planning enforcement case established that the building was not built in accordance with the approved plans and that conditions had not been satisfied or adhered to. The investigation also considered how the building was being used.

On 28 March 2022 the planning application the subject of the report was submitted to seek to regularise the breach of planning control. Revised plans have been submitted during the period of assessment and re-consultation exercise undertaken. The results of these consultation exercises are recorded below.

Whilst it is always regrettable when approved plans are not followed after a planning permission is granted (particularly when it is an Appeal decision), it is unfortunately too often the case that breaches of planning control do occur, i.e. that things are built differently to what is approved. This happens nationally and is not limited to development in Bristol. The Government is clear on how planning authorities should deal with such scenarios. In paragraph 59 of the National Planning Policy Framework it states that "Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate". This approach (acting proportionately) to planning enforcement is echoed in our own published procedures.

National guidance for Local Planning Authorities (Planning Enforcement Handbook 2020) states that planning enforcement action is intended to be remedial rather than punitive and should always be commensurate with the breach of planning control. This is further reflected within the Council's own Local Enforcement Plan (April 2017).

The report below assesses the differences between the consented scheme and the scheme as built and having regard to the planning enforcement provisions referenced above, the Local Plan referenced below and the commentary on this matter from the public and ward councillors it concludes that it is entirely acceptable in planning terms for a new planning permission to be granted.

The dwelling in question has been completed and a number of recommended planning conditions below secure some adaptations and the delivery of facilities like cycle and refuse storage and parking. The report below also assesses the use of the building and explains what planning controls are in place by virtue of primary legislation to control the occupation in the future. The site address for

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planning purposes remains as previously - but it is understood that the new property has a postal address which it is now known by.

Overall, and whilst not condoning deviating from approved plans the recommendation being made to Committee is very clear; that a new planning permission should be granted.

RELEVANT PLANNING HISTORY

18/06126/F - Erection of new 2 storey dwelling attached to side of 29 Hobhouse Close and associated structures.

Refused - 29 January 2019

Appeal allowed - 11 July 2019

22/30064/NAP (registered 15 February 2022) - Development not completed in accordance with details approved at Appeal ref W/19/3222132 (which consented a new dwelling) and use of building as small hmo (Use Class C4) and or for short term letting.

Case being held In abeyance pending the outcome of this application.

22/30232/TPO (registered 22/06/22) - Development of site impacted on adjacent tree the subject of TPO - 1167/R

Case being held In abeyance pending the outcome of this application.

RESPONSE TO PUBLICITY AND CONSULTATION

38 neighbouring properties were consulted on the original proposal, and a further re-consultation was carried out on the revised proposal with the same properties and any properties that had commented on the application being consulted.

In total, 91 number of comments have been received on this application. All received comments have been objecting to the proposal and set out the following concerns:-

- o The property is being used an Airbnb which is having a detrimental impact on the amenity of surrounding properties.
- o The property was previously approved as 2 bed and is now 5 bed.
- o The property is being used as a small HMO.
- o The front elevation of the property, as built, is incongruous with the character of the area.
- o The black downpipe on the front elevation has a detrimental impact on the character of the area.
- o The previous permission was only granted on appeal.
- o The property is resulting in a detrimental impact to the parking situation due to the use and occupancy.
- o The exterior alterations are not sufficient to address the harm.
- o The internal arrangements do not match the approved scheme and is not adequate for the intended purposes.
- o The development has resulted in unauthorised works to the nearby TPO tree. [This matter is being considered by the planning enforcement team separately]
- o There is a restrictive covenant on the wider development which stops the dwellings being used for commercial purposes. [Restrictive covenants on deeds are not a material planning consideration]

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RELEVANT POLICIES

National Planning Policy Framework – July 2021

Bristol Local Plan comprising Core Strategy (Adopted June 2011), Site Allocations and Development Management Policies (Adopted July 2014) and (as appropriate) the Bristol Central Area Plan (Adopted March 2015) and (as appropriate) the Old Market Quarter Neighbourhood Development Plan 2016 and Lawrence Weston Neighbourhood Development Plan 2017 and the Hengrove and Whitchurch Park Neighbourhood Development Plan 2019.

In determining this application, the Local Planning Authority has had regard to all relevant policies of the Bristol Local Plan and relevant guidance.

A) IS THE USE OF THE LAND AND BUILDING ACCEPTABLE?

PRINCIPLE OF CREATING A NEW DWELLING

The principle of erecting a new dwelling in this location has previously been considered acceptable by the allowed appeal. No material changes to adopted policies has occurred since the previous decision, and therefore the principle of creating a new dwelling in this location remains acceptable.

ARE THE INCREASED NUMBER OF BEDROOMS ACCEPTABLE?

Significant public contention to the application revolves around the increased number of bedrooms within the building. The previously approved dwelling showed 2 bedrooms with a study. The dwelling, as built, has 5 bedrooms, through the living room and study becoming bedrooms, and the creation of a bedroom in the loft space. Whilst it is acknowledged that this results in an intensification of the expected number of occupants, internal alterations to dwellings which are not Listed Buildings do not require planning permission. As such, this application cannot be refused for this reason and doing so would not be reasonable.

For the above reasoning, the increased number of bedrooms within the dwelling does not form part of this application and cannot have any weight on the decision making.

USE AS A SMALL HMO (USE CLASS C4)

There are allegations that the property is being used in manner that constitutes a small HMO (Use Class C4), and the property was granted a Mandatory HMO License for 5 occupants in June 2022, which corroborates these allegations, and also restricts the property to an occupancy level that constitutes a C4 use.

The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) grants land and properties permitted development rights which enables development to be carried out without planning permission being granted from the Local Authority.

Schedule 2, Part 3 (changes of use), Class L permits the change of use of a single dwelling or flat from Use Class C3 (dwellinghouses) to Use Class C4 (small HMO) and vice versa. Local Planning Authorities can impose Article 4 Directions to revoke any Permitted Development Right for an area where it is considered expedient to remove these Rights for a specified reason, such as preserving the character of an area, and therefore making this change of use require planning permission in the area specified by the Direction. Bristol City Council has imposed several Article 4 Directions revoking the previously discussed Permitted Development Right, however, none of these Article 4 Directions cover the property which is the subject of this application.

Therefore, under Schedule 2, Part 3 (changes of use), Class L of the Town and Country Planning

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(General Permitted Development) (England) Order 2015 (as amended), the change of use of this property between Use Class C3 (dwellinghouse) and C4 (small HMO) does not require planning permission. As such, this application cannot be refused for this reason and doing so would not be reasonable.

For the above reasoning, the use of the property as a small HMO under Use Class C4 does not form part of this application and cannot have any weight on the decision making.

USE FOR SHORT-TERM LETTING

There have been allegations that the property is being used for short term lets (Airbnb or similar) and the Local Authority has evidence that corroborates these allegations.

The applicant has confirmed that the use of the property in this manner will be ceased. Therefore, it is considered that this issue has fallen away. In any event the use of a property for short-term letting does not require planning permission.

B) IS THE DESIGN AND SCALE/CONTEXT ACCEPTABLE?

Policy DM26 Local Character & Distinctiveness of the Site Allocations and Development Management Policies of the Local Plan outlines that development proposals should contribute to local character and distinctiveness by means of design. This will be achieved by responding to local patterns and the grain of historic development within the area. Policy DM27 'Layout and Form' provides consideration to factors such as layout, form, pattern and arrangement of streets, open spaces, development blocks, buildings and landscapes and how they contribute toward achieving high quality urban design. Policy DM29 'Design of New Buildings' states that new buildings should be designed to a high standard of quality, responding appropriately to their importance and reflecting their function and role in relation to the public realm. As detailed in Policy DM30: Alterations to Existing Buildings of the Site Allocations and Development Management Policies of the Local Plan, the proposed side extension should respect siting, scale, form, proportions, materials, design and character of the host building.

The Henleaze Character Appraisal (2016) identifies Broadleys Avenue as a character area and makes specific reference to the enclosed area of Hobhouse Close as a contributor to the positive context of the area, in addition to the strong residential character, open plan gardens and fluid, curved layouts of streets.

There have been several public comments expressing that the black downpipe on the front elevation is out of keeping with the character of the area and should be removed. Under Schedule 2, Part 1, Class G of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), the installation of chimneys, flues and soil and vent pipes on the front elevation of dwellings outside of Conservation Areas does not require planning permission. Therefore, the installation of the downpipe on the front elevation of this property is not considered to require planning permission. However for completeness the down pipes have been included in the submitted plans.

It is acknowledged that the dwelling, as built, has deviated from the previously approved plans, and the resultant building displays some differences to the other properties forming the terrace and character of the surrounding area. During the lifetime of this application, officers have agreed alterations to the dwelling with the property owner and received an undertaking that they will be implemented within an agreed and reasonable timescale. The alterations are as follows:

- o Pillars
- o Bay window

These alterations bring the appearance of the front elevation more in-line with the previously approved scheme, however, it is acknowledged that this would not resolve all of the deviations. The

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alterations secured to the elevation are considered sufficient to minimise the impacts on the character of the area without being overly punitive. To bring the front elevation of the building back entirely in-line with the previously approved scheme would result in substantial works to the building and require the building to be supported. Whilst it is unfortunate that further deviations would remain, the currently proposed alterations are considered to sufficiently overcome the harm such that, on balance, the resulting development would have an acceptable impact on the character of the locality.

On the above basis, it is considered that the proposed alterations to the front elevation of the dwelling are sufficient to overcome the majority of the harm presented by the deviations to the previously approved scheme. Therefore, on balance, it is considered that the proposed alterations are sufficient to preserve the character and visual amenity of the locality, and to ensure the detailed design of the dwelling sufficiently reflects the prevailing design characteristics of the surrounding properties

It should be noted that the Appeal Inspector considered that a roof redesign should be agreed pursuant to a planning condition but this was never followed by the developer. The roof form as now built does follow the form envisaged by the Appeal Inspector. The roof form would be approved as part of this planning permission and is an acceptable form and design so as to suitably form the end to the terrace at roof level.

C. WOULD THE PROPOSED DEVELOPMENT CAUSE ANY UNACCEPTABLE HARM TO RESIDENTIAL AMENITY OF FUTURE OR ADJACENT OCCUPIERS?

Policy BCS21 states that new development should safeguard the amenity of existing development. Policy DM30 states that proposals should not prejudice the existing and future development potential of adjoining sites.

The proposed development has no material differences to the development previously in terms of the impact on the amenity of neighbouring properties through overbearing, overshadowing or overlooking.

On this basis, it is considered that the proposed development would not result in a detrimental impact to the amenity of surrounding properties, and therefore the proposal conforms to the objectives of Policies BCS21 and DM30.

D. DAMAGE TO TREE COVERED BY TREE PRESEVATION ORDER (TPO)

It has been noted above that the development of the dwelling has resulted in several branches to be lopped off a nearby tree which is covered by a TPO, which was unauthorised.

The planning enforcement team have investigated this matter separately to this application, and it appears that the works were carried out at the instruction of the management company of the wider development. The unauthorised works to the tree are not considered to have resulted in fatal damage to the tree, and therefore the longevity and public amenity of the tree will not be impacted.

On this basis, the damage is not considered to be a barrier to issuing a new planning permission, the tree is not positioned within the application site but is adjacent to it on communal amenity land; the planning enforcement team will follow this matter up with warnings to the involved parties following the determination of this application.

E) HIGHWAY SAFETY, TRANSPORT AND MOVEMENT ISSUES

- Refuse and Recycling Storage and Collection

The Waste and Recycling guidance for developers, owners and occupiers (2010) sets out guidance on how new development could provide accommodation for refuse and recycling storage following the principle that bins should be housed within a storage solution which avoids harm to the visual amenity

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of the area as well as a location which avoids prejudice to neighbouring amenity and that the storage location should have easy access to the highway for collection.

The refuse storage is located to the rear of the dwelling and is of an adequate scale. It would be separated from cycle storage and would not impede access to the house via the rear driveway. Although it is commonly recommended that refuse storage be situated to the front of dwellings, in this instance refuse collection occurs to the rear of houses along the terrace, and so there is no concern in this regard.

- Cycle Parking

Policy DM23 sets standards for the level of cycle parking within new houses. Cycle parking should be secure, weather tight and have easy and direct access to the public highway. Generally Sheffield stands are preferred as bikes can be individually secured and easily accessed.

The location and scale of the cycle storage is found to be acceptable. Likewise and as described above cycle storage is easily accessible from the rear of the dwelling and bikes would not need to be wheeled through the house.

- Off-street parking

There is no minimum provision within adopted policy for off-street parking, however previously a single off- street space had been proposed in the existing garage at number 29.

That no longer forms part of the proposal although the applicant has advised that he has obtained ownership and use of a sperate garage in the vicinity.

Whilst it is acknowledged that there is substantial concern and opposition to the scheme amongst local residents in relation to a general increase in parking congestion in the area the non-provision of a dedicated parking space should not form the basis for resisting the development. The nearby garage mentioned by the applicant cannot realistically be controlled by this planning permission but its use in association with the application property would be a positive feature.

It is noted that the area is not protected by a resident's parking zone, so controlling where road users choose to park is not possible and does not form a relevant consideration in assessment of this scheme.

F) SUSTAINABILITY, CLIMATE CHANGE AND FLOOD RISK

Since the adoption of the Bristol Development Framework Core Strategy (2011) and with it Policies BCS13-16 applications are required to demonstrate how the proposed development would secure a saving in CO2 emissions from energy use through efficiency measures and incorporate of renewable forms of energy as well as protecting and ensuring against flooding.

The energy strategy submitted in support of the application (the same as previously submitted) states that it proposed a minimum of 0.24 kWp of roof mounted photo-voltaic cells located on the south facing roof slope and 0.48 kWp of roof mounted photo-voltaic cells located on the west facing roof slope to give a reduction in carbon dioxide emissions of 20.83 % as compared to the "residual" emissions.

This is found to be acceptable and any forthcoming approval would be accompanied by a condition requiring confirmation that the terms of the energy statement have been met. Officers note that pv panels are in situ. A condition that confirms that sustainable urban drainage principles have been followed is required.

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G) RECOMMENDED PLANNING CONDITIONS

It is noted that the Planning Appeal Inspector attached 7 conditions as detailed below.

1. commencement condition.

Not required as this is now retrospective.

2. listed approved plans

An approved plans condition is required.

3. Required future approval of certain design features including; i) detailing of roof construction as an extension of the existing roof of the host dwelling, including eaves/parapets, (ii) external facing materials, architectural features and windows/doors, (iii) photo-voltaic panel installation in accordance with the submitted energy strategy.

The roof and materials would be approved as part of this planning permission as would the pv panels as installed.

4. Required the development to accord with the Energy Strategy prepared by A&H Energy Rating Ltd. Dated 10 August 2018 (ref. 020718 V3)

A condition requiring confirmation of adherence needs to be imposed.

5. Dealt with cycle parking provision.

Such a condition needs to be reimposed.

6. Dealt with refuse storage.

Such a condition needs to be reimposed.

7. Required a Sustainable Drainage Strategy.

A condition requiring confirmation of adherence needs to be imposed.

Having commented above on which conditions are and are not required the recommended conditions are set out below.

CONCLUSION

On the basis of this report, it is considered that the proposed development is of an appropriate design, scale and material palette as to respect the overall design of the application property and the character of the locality. Additionally, the proposed development would not result in a detrimental impact to the residential amenity of future or adjacent occupiers by means of overlooking, overshadowing or overbearing impacts. As set out above it is always regrettable that a developer does not follow the provisions of planning permissions. In this case if a new planning permission is granted and following verification of new condition detail compliance the planning enforcement case can be closed.

The application is therefore recommended for approval, subject to the conditions listed.

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COMMUNITY INFRASTRUCTURE LEVY

It is understood that CIL provisions were met previously.

EQUALITY ASSESSMENT

During the determination of this application due regard has been given to the impact of this scheme in relation to the Equality Act 2010 in terms of its impact upon key equalities protected characteristics. These characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. There is no indication or evidence (including from consultation with relevant groups) that different groups have or would have different needs, experiences, issues and priorities in relation this particular proposed development. Overall, it is considered that this application would not have any significant adverse impact upon different groups or implications for the Equality Act 2010.

RECOMMENDED GRANTED subject to condition(s)

Pre occupation condition(s)

1. Within 60 days of the date of this permission the revisions to the front ground floor bay window and pillars as shown on the approved plans shall have been completed in strict accordance with the approved plans.

Reason: To improve the appearance of the building.

2. Within 60 days of the date of this permission confirmation that the development has been completed in accordance with the Energy Strategy prepared by A&H Energy Rating Ltd. dated 10 August 2018 (ref. 020718 V3) shall have been submitted to and agreed in writing by the LPA.

Reason: To support sustainability initiatives.

3. Within 60 days of the date of this permission the cycle parking provision shown on the approved plans shall have been completed, and thereafter, shall be kept free of obstruction and available for the parking of cycles only.

Reason: To encourage cycling.

4. Within 60 days of the date of this permission the refuse store and area/facilities allocated for storing of recyclable materials, as shown on the approved plans, shall have been completed. The refuse store and area/facilities allocated for storing of recyclable materials shall be retained thereafter in perpetuity and kept free from of obstruction.

Reason: in the interests of amenity.

5. Within 60 days of the date of this permission confirmation that the development has been completed with a Sustainable Drainage Strategy shall have been submitted to and agreed in writing by the LPA.

Reason: To support sustainability initiatives.

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List of approved plans

6. List of approved plans and drawings

The development shall conform in all aspects with the plans and details shown in the application as listed below, unless variations are agreed by the Local Planning Authority in order to discharge other conditions attached to this decision.

001A Ground floor plan, received 16 May 2022
002A First floor plan, received 16 May 2022
003A Second floor plan, received 16 May 2022
004A Roof plan, received 16 May 2022
005D Front elevation, received 31 August 2022
006B Rear elevation, received 31 August 2022
007A Side elevation, received 16 May 2022
008B Location plan, received 16 September 2022
009B Block plan, received 16 September 2022
010A Block plan, received 13 September 2022
Sustainability Statement, received 16 May 2022

Reason: For the avoidance of doubt.

Advices

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V1.0211