

Agenda Item	6.6
Report No	PLS 071/17

## HIGHLAND COUNCIL

**Committee:** South Planning Applications Committee

**Date:** 12 December 2017

**Report Title:** 17/03503/FUL: Mrs Catherine Brown  
67 Tomnahurich Street, Inverness, IV3 5DT

**Report By:** Area Planning Manager – South/Major Developments

### Purpose/Executive Summary

**Description:** Change of use of shop to class 3(5) to Chinese hot food takeaway and alterations to door

**Ward:** 13: Inverness West

**Development category:** Local

**Reason referred to Committee:** 5 or more objections

All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

### Recommendation

Members are asked to agree the recommendation to **GRANT** planning permission as set out in section 11 of the report.

## 1. PROPOSED DEVELOPMENT

- 1.1 The proposal is to change the use of the shop (Class 1) to Class 3(5) for a Chinese hot food takeaway and alterations to the door arrangement.
- 1.2 No pre-application discussion took place with the Planning Authority.
- 1.3 This is a city centre location with permit holders' car parking along the street.
- 1.4 The application was supported by a ventilation report.
- 1.5 **Variations:** No variations have been made since the application was submitted.

## 2. SITE DESCRIPTION

- 2.1 This is a two storey traditional building within the defined city centre at the junction of a busy trunk road through the city and Ardross Place. A block of modern flats are located opposite the rear of the building and a 1½-2½ storey residential terrace opposite the front of the building. The site is within the Inverness (Riverside) Conservation Area.

## 3. PLANNING HISTORY

- 3.1 No planning history.

## 4. PUBLIC PARTICIPATION

- 4.1 Advertised: Schedule 3 development and unknown neighbour: 11.08.17

Representation deadline: 01.09.17

Timeous representations: 13

Late representations: 0

- 4.2 Material considerations raised are summarised as follows:

- Potential noise, particularly late at night;
- Lack of car parking;
- Light pollution;
- Litter;
- Smell particularly on Samaritan's office upstairs;
- Effect on the historic traditional nature of this part of the city;
- Loss of residential amenity;
- Safety of school children with increase in vehicles.

- 4.3 All letters of representation are available for inspection via the Council's eplanning portal which can be accessed through the internet [www.wam.highland.gov.uk/wam](http://www.wam.highland.gov.uk/wam). Access to computers can be made available via Planning and Development Service offices.

## **5. CONSULTATIONS**

- 5.1 **Park Community Council:** Object on the basis of parking, safety and refuse collection.
- 5.2 **Transport Scotland:** No objection.
- 5.3 **Transport Planning:** Raised concerns on the lack of information regarding car parking in the area.
- 5.4 **Environmental Health:** No objection, but conditions to be included if permission is granted.

## **6. DEVELOPMENT PLAN POLICY**

The following policies are relevant to the assessment of the application

### **6.1 Highland Wide Local Development Plan 2012**

Policy 28 - Sustainable Design  
Policy 56 - Travel

### **6.2 Inner Moray Firth Local Development Plan (June 2015)**

Policy 1 - Promoting and Protecting City and Town Centres

## **7. OTHER MATERIAL CONSIDERATIONS**

- 7.1 No specific policies apply
- 7.2 **Highland Council Supplementary Planning Policy Guidance**  
Inverness City Centre Development Brief
- 7.3 **Scottish Government Planning Policy and Guidance**  
Not applicable

## **8. PLANNING APPRAISAL**

- 8.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

### Determining Issues

- 8.2 This means that the application requires to be assessed against all policies of the Development Plan relevant to the application, all national and local policy guidance and all other material considerations relevant to the application.

### Planning Considerations

8.3 The key considerations in this case are:

- a) compliance with the development plan and other planning policy;
- b) car parking, traffic and road safety;
- c) residential amenity.

### Development plan/other planning policy

8.4 The application site lies within the Inverness City Centre boundary as defined within the Inner Moray Firth Local Development Plan (IMFLDP) but otherwise has no specific allocation or designation. Policy 1 Promoting and Protecting City and Town Centres of the IMFLDP is applicable. This policy requires developers of proposals that generate footfall (visits by the general public) to consider sites that are suitable, in terms of the scale and type of development proposed, within a list of centres including Inverness City Centre.

8.5 A hot food takeaway use is appropriate to a city centre location particularly where the unit does not occupy part of the prime retail frontage and the replacement use, if anything, will generate a higher footfall than the existing use. Accordingly, the principle of the use proposed is accepted.

8.6 Two Highland wide Local Development Plan general policies are relevant. Policy 28: Sustainable Design lists several development management criteria against which proposals must be assessed and Policy 56: Travel requires assessment and if necessary mitigation of the travel impacts of any development. Applying these general policies to this particular application there is a need to consider the extent to which the proposal will impact on individual and community residential amenity through consideration of the effects of odour, increase in activity, parking and access and availability of waste facilities.

8.7 Subject to the proposal having no significant detrimental impact on road safety and/or residential amenity, the proposal would comply with the development plan.

### Car Parking, Traffic and Road Safety

8.8 This property frontage is situated on the A82(T). Transport Scotland, as the roads authority, has advised that it has no objection to this application. It is therefore concluded that the operation of the A82(T) will not be adversely impacted by this proposal. The Council's Transport Planning Team however, raised concerns regarding the lack of information on car parking within the area and whether the proposal would or would not generate any unwanted adverse operational and/or safety issues on the roads in the local area, albeit recognising that this is a trunk road and that therefore Transport Scotland's views must be taken into account.

8.9 Concerns raised by the community around road safety largely centred on children walking to and from school. As the applicant has advised that the opening hours of the takeaway will be 12:30-14:00 and 17:00-22:30 seven days a week it will not be open during the hours that young people will be walking to and from school. Given

this, and the response from Transport Scotland, it is not considered that the proposal will have an adverse impact on road safety.

- 8.10 As this is a city centre location, albeit edge of centre, it is expected that car parking requirements will be to a reduced standard. Tomnahurich Street has resident's parking during the day along its length concluding at the application site. There are a number of flats and houses in this area which mean that the on street parking can be busy, but the parking bays along Tomnahurich Street are open to anyone in the evening. It is also accepted that there are a number of side streets within the vicinity on which people could park for a short time and because of the residential nature of the area, a number of people may well walk to the premises. The nature of the use, and its location, should not have an unacceptable impact on resident parking.

#### Residential Amenity

- 8.11 While within the City Centre, the property is at the very edge of it with the opposite side of the road outwith it. The area has a more residential appearance within the immediate vicinity. This makes a proposal for something like a takeaway, that has an evening function and there are often concerns about smells, quite a complex consideration.
- 8.12 In this case, Environmental Health has been consulted and is satisfied that the extraction system intended for the site is adequate to deal with odours and will meet current guidelines. A condition can be included to ensure that this is implemented.
- 8.13 In relation to bin storage and collection, the applicant has indicated that there will be an internal store and rubbish collection will be by private arrangement. Again this can be conditioned as part of any permission.
- 8.14 Although the technical aspects of the proposal can be addressed through application of appropriate conditions, the proposal will result in an increase in activity around the property within the evening and therefore introduce change to the area. The principle of a takeaway at a location like this might not be considered favourable by neighbouring residents. This is understandable. However, it must be recognised that the site is within the City Centre and therefore an acceptable location for a use like a hot food takeaway.

#### Other material considerations

- 8.15 There are no other material considerations.

#### Non-material considerations

- 8.16 There are no non-material planning considerations.

#### Matters to be secured by Section 75 Agreement

- 8.17 None.

## 9. CONCLUSION

- 9.1 The proposal will introduce change into the area with nearby residents experiencing an increase in activity; particularly in the evening. While the technical considerations regarding parking, ventilation and waste can be adequately addressed, the perception of impact on amenity from residents resulting from an increase in evening activity cannot. However, it must be recognised that this is a City Centre location where such uses should be directed to/located. In this case, it is considered that the site designation within the Development Plan should outweigh any perceived residual adverse effects on amenity.
- 9.2 All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

## 10. IMPLICATIONS

- 10.1 Resource: Not applicable
- 10.2 Legal: Not applicable
- 10.3 Community (Equality, Poverty and Rural): Not applicable
- 10.4 Climate Change/Carbon Clever: Not applicable
- 10.5 Risk: Not applicable
- 10.6 Gaelic: Not applicable

## 11. RECOMMENDATION

<b>Action required before decision issued</b>	N
Notification to Scottish Ministers	N
Notification to Historic Scotland	N
Conclusion of Section 75 Agreement	N
Revocation of previous permission	N

**Subject to the above**, it is recommended that planning permission be **GRANTED** subject to the following conditions and reasons:

1. Prior to the premises being brought into use for the purpose hereby granted, the kitchen extract system as detailed in Specification document "Proposals for New Extract System for Chinese Takeaway at 67 Tomnahurich Street" shall be installed in full and thereafter retained and maintained at all times.

**Reason:** In the interest of residential amenity.

2. The kitchen extract system (as detailed in condition 1 above) shall be effectively operated and maintained in order that cooking odours are not detectable, as far as reasonably practicable, at any neighbouring premises.

**Reason:** In the interest of residential amenity.

3. All plant, machinery and equipment associated with ventilation, air-conditioning, heating and refrigeration services or similar and including fans, ducting and external openings shall be so installed, maintained and operated such that either of the following standards are met: -

- any associated operating noise must not exceed NR 20 when measured or calculated within the bedroom of any noise-sensitive premises with windows open for ventilation purposes.

OR

- the operating noise Rating level must not exceed the Background noise level by more than 5dB(A) including any characteristics penalty. Terms and measurements to be in accordance with BS 4142: 2014 Methods for Rating Industrial & Commercial Sound.

(For the purposes of this condition, “noise-sensitive premises” includes, but is not necessarily limited to, any building, structure or other development the lawful use of which a) falls within Classes 7 (Hotels & Hostels), 8 (Residential Institutions) or 9 (Houses) of the Town and Country Planning (Use Classes) (Scotland) Order 1997 (as amended), or b) is as a flat or static residential caravan.)

**Reason:** In the interest of residential amenity.

4. For the avoidance of any doubt, a suitable and sufficient off street storage area shall be maintained at all times for refuse containers associated with this development. All refuse and recyclable materials associated with the development shall be stored within the approved area detailed on the layout plan. No refuse or recycling material shall be stored or placed for collection on the public highway or pavement, except on day of collection

**Reason:** In the interest of residential amenity.

### **REASON FOR DECISION**

The proposals accord with the provisions of the Development Plan and there are no material considerations which would warrant refusal of the application.

### **TIME LIMIT FOR THE IMPLEMENTATION OF THIS PLANNING PERMISSION**

In accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended), the development to which this planning permission relates must commence within THREE YEARS of the date of this decision notice. If development has not commenced within this period, then this planning permission shall lapse.

## **FOOTNOTE TO APPLICANT**

### **Initiation and Completion Notices**

The Town and Country Planning (Scotland) Act 1997 (as amended) requires all developers to submit notices to the Planning Authority prior to, and upon completion of, development. These are in addition to any other similar requirements (such as Building Warrant completion notices) and failure to comply represents a breach of planning control and may result in formal enforcement action.

1. The developer must submit a Notice of Initiation of Development in accordance with Section 27A of the Act to the Planning Authority prior to work commencing on site.
2. On completion of the development, the developer must submit a Notice of Completion in accordance with Section 27B of the Act to the Planning Authority.

Copies of the notices referred to are attached to this decision notice for your convenience.

### **Accordance with Approved Plans & Conditions**

You are advised that development must progress in accordance with the plans approved under, and any conditions attached to, this permission. You must not deviate from this permission without consent from the Planning Authority (irrespective of any changes that may separately be requested at the Building Warrant stage or by any other Statutory Authority). Any pre-conditions (those requiring certain works, submissions etc. prior to commencement of development) must be fulfilled prior to work starting on site. Failure to adhere to this permission and meet the requirements of all conditions may invalidate your permission or result in formal enforcement action.

### **Scottish Water**

You are advised that a supply and connection to Scottish Water infrastructure is dependent on sufficient spare capacity at the time of the application for connection to Scottish Water. The granting of planning permission does not guarantee a connection. Any enquiries with regards to sewerage connection and/or water supply should be directed to Scottish Water on 0845 601 8855.

### **Local Roads Authority Consent**

In addition to planning permission, you may require one or more separate consents (such as road construction consent, dropped kerb consent, a road openings permit, occupation of the road permit etc.) from the Area Roads Team prior to work commencing. These consents may require additional work and/or introduce additional specifications and you are therefore advised to contact your local Area Roads office for further guidance at the earliest opportunity.

Failure to comply with access, parking and drainage infrastructure requirements may endanger road users, affect the safety and free-flow of traffic and is likely to result in enforcement action being taken against you under both the Town and Country Planning (Scotland) Act 1997 and the Roads (Scotland) Act 1984.



Further information on the Council's roads standards can be found at:  
<http://www.highland.gov.uk/yourenvironment/roadsandtransport>

Application forms and guidance notes for access-related consents can be downloaded from:

[http://www.highland.gov.uk/info/20005/roads\\_and\\_pavements/101/permits\\_for\\_working\\_on\\_public\\_roads/2](http://www.highland.gov.uk/info/20005/roads_and_pavements/101/permits_for_working_on_public_roads/2)

### **Mud & Debris on Road**

Please note that it is an offence under Section 95 of the Roads (Scotland) Act 1984 to allow mud or any other material to be deposited, and thereafter remain, on a public road from any vehicle or development site. You must, therefore, put in place a strategy for dealing with any material deposited on the public road network and maintain this until development is complete.

### **Construction Hours and Noise-Generating Activities**

You are advised that construction work associated with the approved development (incl. the loading/unloading of delivery vehicles, plant or other machinery), for which noise is audible at the boundary of the application site, should not normally take place outwith the hours of 08:00 and 19:00 Monday to Friday, 08:00 and 13:00 on Saturdays or at any time on a Sunday or Bank Holiday in Scotland, as prescribed in Schedule 1 of the Banking and Financial Dealings Act 1971 (as amended).

Work falling outwith these hours which gives rise to amenity concerns, or noise at any time which exceeds acceptable levels, may result in the service of a notice under Section 60 of the Control of Pollution Act 1974 (as amended). Breaching a Section 60 notice constitutes an offence and is likely to result in court action.

If you wish formal consent to work at specific times or on specific days, you may apply to the Council's Environmental Health Officer under Section 61 of the 1974 Act. Any such application should be submitted after you have obtained your Building Warrant, if required, and will be considered on its merits. Any decision taken will reflect the nature of the development, the site's location and the proximity of noise sensitive premises. Please contact [env.health@highland.gov.uk](mailto:env.health@highland.gov.uk) for more information.

Signature: Nicola Drummond  
Designation: Area Planning Manager – South/Major Developments  
Author: Elaine Watt (01463 785039)  
Background Papers: Documents referred to in report and in case file.  
Relevant Plans: 2017-SY-02, 2017-SY-01, 2017-SY-03



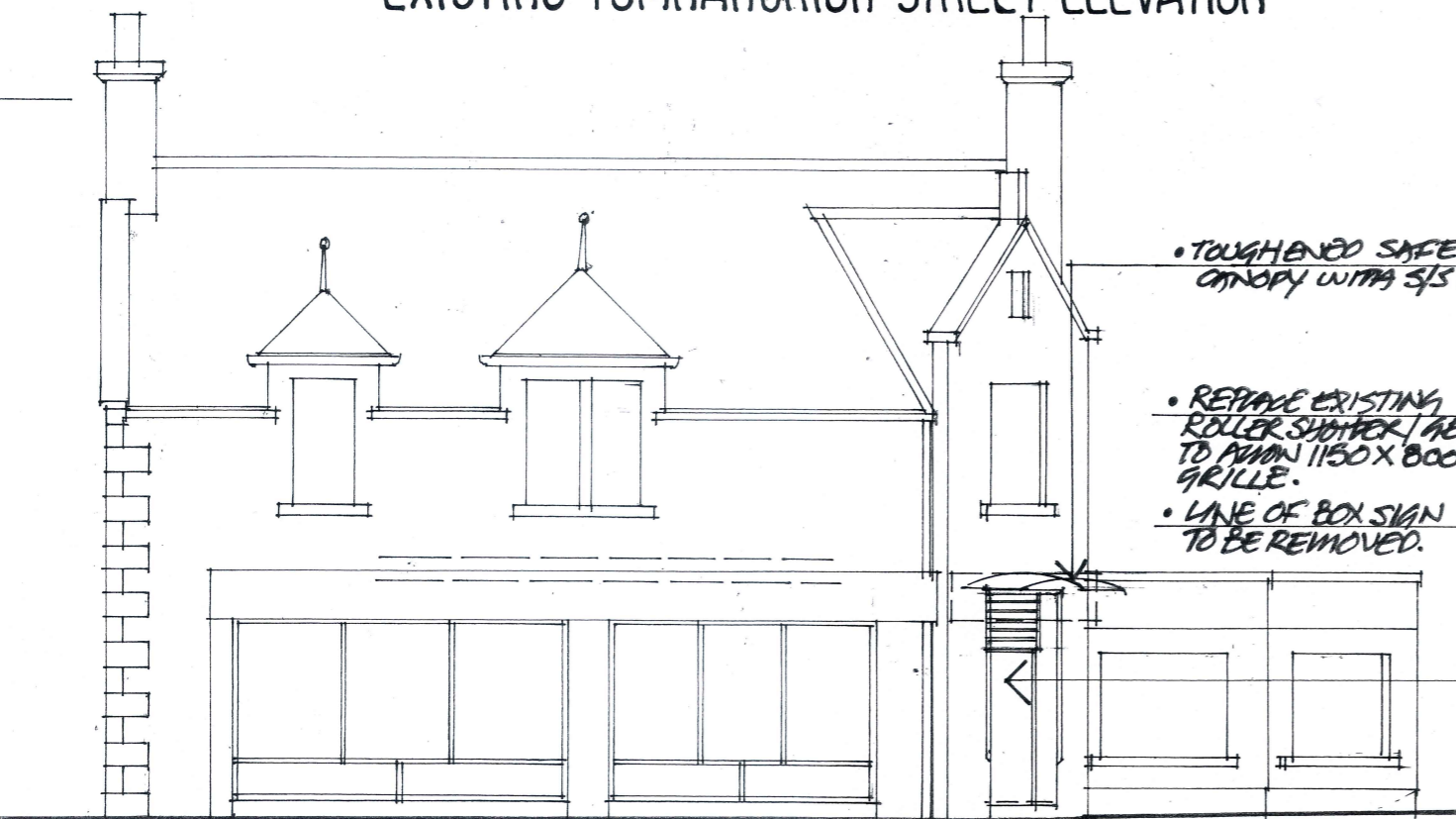
• EXISTING TOMNAHURICH STREET ELEVATION •



• SCALE 1:100 •



• ELEVATION 01 •

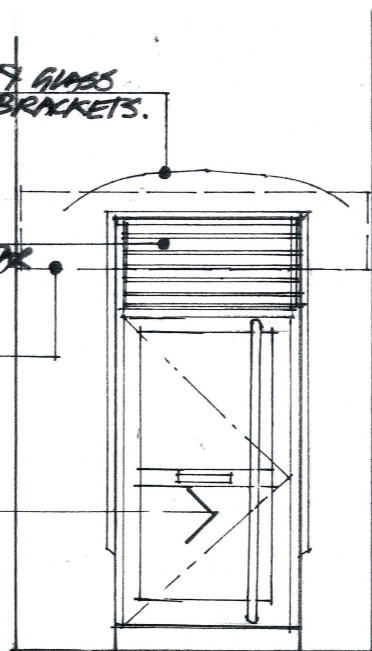


• PROPOSED TOMNAHURICH STREET ELEVATION •

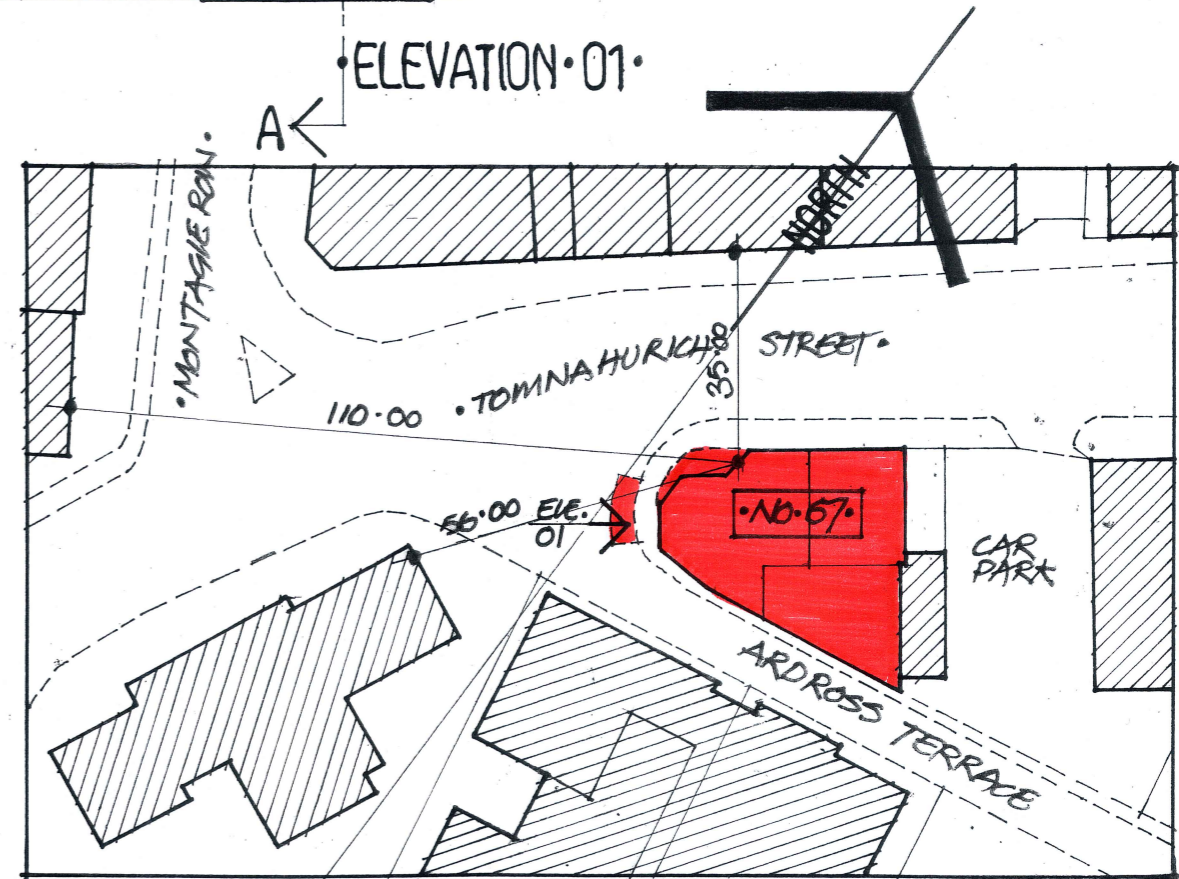
• TOUGHENED SAFETY GLASS  
CANOPY WITH S/S BRACKETS.

• REPAIR EXISTING  
ROLLER SHUTTER / HEAVY  
TO FINISH 1150 X 800  
GRILLE.

• LINE OF BOX SIGN  
TO BE REMOVED.



• DOOR/GRILLE • (SCALE 1:50)



• LOCATION PLAN •

A3-SHEET  
SCALE 1:100 AND 1:1250

CHANGE OF USE OF SHOP TO  
CLASS 3 (5) CHINESE HOT FOOD  
TAKE AWAY AT  
67 TOMNAHURICH STREET.  
INVERNESS IV3 50T

DRG. NO. 2017/SY/02 •  
EXISTING AND PROPOSED  
ELEVATIONS + LOCATION PLAN  
JULY 2017



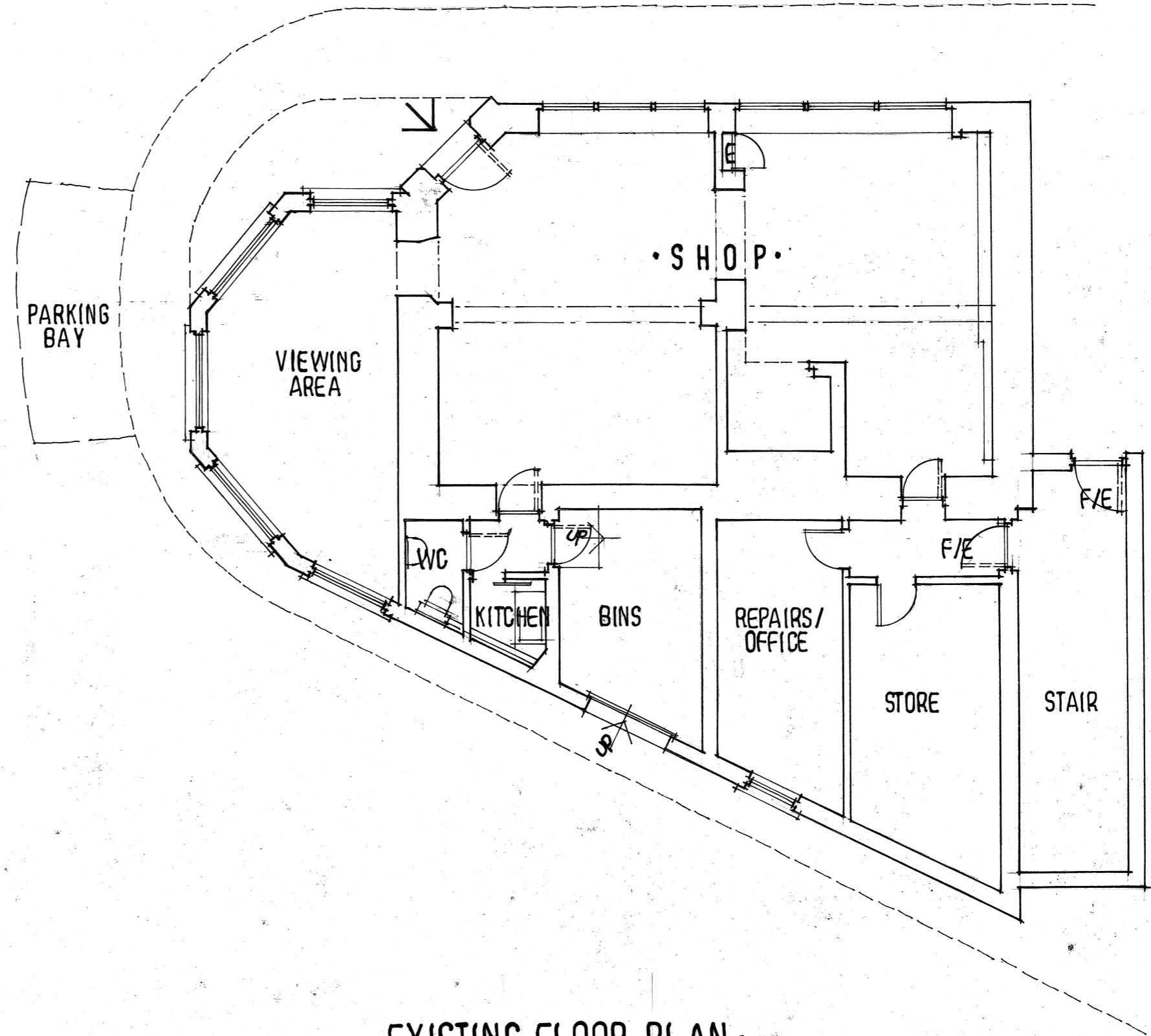
2017/SY/01

PLANNING APPLICATION BY MRS. C. BROWN FOR CHANGE OF USE OF SHOP TO CLASS 3(5) CHINESE TAKE-AWAY AT 67 TOMNAHURICH STREET, INVERNESS, IV3 5DT COMPRISING OF THE FOLLOWING DRAWINGS -

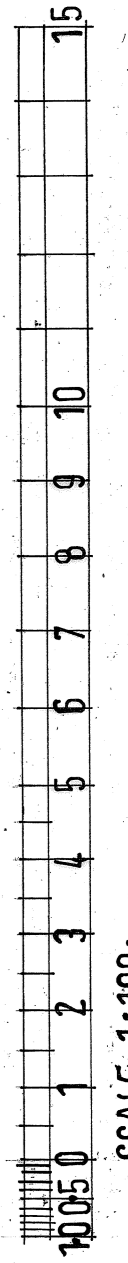
- DRG. NO.
- 01 • EXISTING FLOOR PLAN AND INDEX.
  - 02 • PRINCIPLE EXISTING AND PROPOSED ELEVATIONS + LOCATION PLAN.
  - 03 • PROPOSED FLOOR PLAN AND SECTION A-A

VENTILATION STATEMENT + MANUFACTURES EQUIPMENT DETAILS.

- ① • 4.00 X 1.2 EXTRACT CANOPY WITH PLASMA COIL FILTERS.
- ② • 800 X 400 DUCT
- ③ • COMBINED ELECTROSTATIC WITH UV-C.
- ④ • ATTENUATOR
- ⑤ • EXTRACT FAN
- ⑥ • ATTENUATOR
- ⑦ • DISCARB UNIT - MULTIPANEL CARBON UNITS.



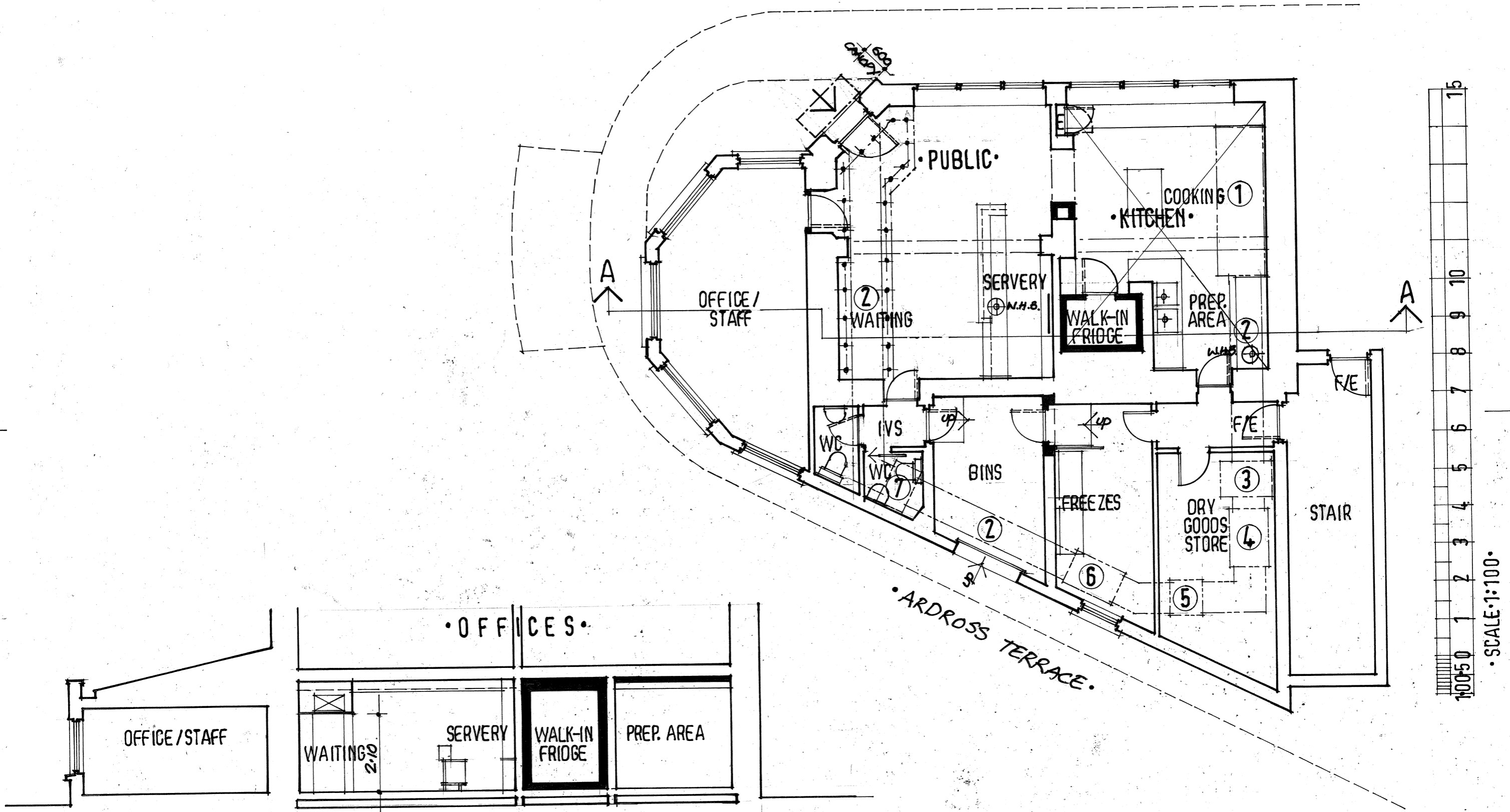
• EXISTING FLOOR PLAN •



A3 SHEET  
SCALE 1:100

CHANGE OF USE OF SHOP TO CLASS 3(5) CHINESE HOT FOOD TAKE-AWAY AT 67 TOMNAHURICH STREET, INVERNESS, IV3 5DT

DRG. NO. 2017/SY/01  
EXISTING FLOOR PLAN AND INDEX  
JULY 2017



• SECTION A-A •

• PROPOSED FLOOR PLAN •

A3 SHEET  
SCALE 1:100

CHANGE OF USE OF SHOP TO  
CLASS 3 (5) CHINESE HOT FOOD  
TAKE AWAY AT  
67 TOMNAHURICH STREET.  
INVERNESS IV3 5DT

DRG. No. 2017/SY/03.  
PROPOSED FLOOR PLAN AND  
SECTION A-A.  
JULY 2017