

Agenda Item	6.8
Report No	PLS-083-21

HIGHLAND COUNCIL

Committee: South Planning Applications Committee
Date: 14 December 2021
Report Title: 21/04336/FUL: Usman Mustafa
5 Strothers Lane, Inverness IV1 1LR
Report By: Area Planning Manager – South

Purpose/Executive Summary

Description: Change of use from Class 1 (Shop) to Class 3 (Restaurant with Takeaway)
Ward: 14 - Inverness Central
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** the application as set out in section 11 of the report

1. PROPOSED DEVELOPMENT

- 1.1 The proposal is for the change of use from Class 1 (Shop) to Class 3 (Restaurant with Takeaway). The restaurant will have capacity for 19 customers and will operate a takeaway service as well. Ducting for the kitchen extraction will be located to the rear of the building and will run the height of the building.
- 1.2 The proposed hours of operation are 11am – 11pm Sunday to Thursday and 11am – 3am Friday and Saturday. No sale of alcohol is proposed.
- 1.3 Waste storage is located to the rear of the premises facing towards Margaret Street/ bus station and will be undertaken by a private contractor approximately three times per week.
- 1.4 Pre-Application Consultation: none
- 1.5 Supporting Information: design and access statement.
- 1.6 Variations: amendment to the advert design and to the height of the kitchen extraction ducting.

2. SITE DESCRIPTION

- 2.1 The unit sits in a modern mixed-use development between the Poppy Scotland unit and Artysans Café on Strothers Lane in Inverness city centre. Four floors of residential flats are located above the units and on the opposite the site are commercial units including TKMaxx.
- 2.2 There are a number of bicycle stands immediately outside the unit. Adjacent to the site is Artysans café which has a loading bay onto the one-way Strothers Lane.
- 2.3 The site lies immediately outwith the Inverness (Riverside) Conservation Area.

3. PLANNING HISTORY

- | | | | |
|-----|---------------|--|-----------------------------|
| 3.1 | 29 May 2009 | 08/00994/FULIN - Change of use from Class 1 (retail) to restaurant & hot food takeaway | Planning Permission Granted |
| 3.2 | 26 April 2010 | 10/01115/FUL - To sub-divide existing retail unit 2 into two smaller units for use as Class 1 and 2, create new door opening through existing screen | Planning Permission Granted |
| 3.3 | 10 March 2011 | 10/05050/FUL - Install new entrance to allow existing vacant retail unit to be sub-divided | Planning Permission Granted |
| 3.4 | 08 June 2015 | 15/01609/FUL - Change of use from Class 1 (Retail) to Class 2 (Financial, Professional and other services) | Planning Permission Granted |

4. PUBLIC PARTICIPATION

4.1 Advertised: Schedule 3 development and Unknown Neighbour

Date Advertised: 08.10.2021

Representation deadline: 27.10.2021

Timeous representations: 17 (from 17 households)

Late representations: 0

4.2 Material considerations raised are summarised as follows:

- Long proposed operating hours leading to noise late at night;
- Other cafés and restaurants nearby;
- Littering issues and vermin;
- Impact on value of properties;
- Smell and noise

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.

5. CONSULTATIONS

5.1 **Crown and City Centre Community Council:** No objection but suggest the fascia sign is disproportionate and should be restricted to the size and alignment of other units in the street frontage.

5.2 **Environmental Health:** The proposed development is located within the city centre close to other restaurants/takeaways but is situated below a block of residential flats.

The supporting documentation submitted with the application states that the kitchen extract system will contain grease filters and a Plasma Clean Q-zone 4200 Xtract unit. The ducting will run the full height of the building and will terminate one metre above eaves level similar to other kitchen extracts in the vicinity. The duct will be located on the gable end and not positioned directly next to any window of the residential flats. The extract fan will be housed within an acoustic lined box

The site plan shows that there is a shared off street bin storage area with allocated space for two bins.

In view of the above, Environmental Health would have no objections to this application provided conditions are included on any consent which may be granted relating to the extract system and waste storage.

5.3 **Access Officer:** No comment

6. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

6.1 Highland Wide Local Development Plan 2012

3 - City Centre Development
28 - Sustainable Design
29 - Design Quality and Place-making
34 - Settlement Development Areas

6.2 Inner Moray Firth Local Development Plan 2015

Policy 1 – Promoting and Protecting City and Town Centres

6.3 Highland Council Supplementary Planning Policy Guidance

Inverness City Centre Development Brief
Highland Historic Environment Strategy (Jan 2013)
Sustainable Design Guide (Jan 2013)

7. OTHER MATERIAL CONSIDERATIONS

7.1 Scottish Government Planning Policy and Guidance

Scottish Planning Policy (as amended December 2020)

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) residential amenity
- c) siting and design of flue
- d) any other material considerations.

Development plan/other planning policy

8.4 The proposal lies within Inverness City Centre where Policy 1 of the Inner Moray Firth Local Development Plan applies. This states that proposals which generate footfall should be located within existing centres where possible and that

residential uses are encouraged within the upper floors of buildings within the City Centre.

- 8.5 Policy 3 (City Centre Development) of the Highland-wide Local Development Plan states that the Council will support development proposals for the city centre which maintain and strengthen its vitality and viability. The policies do not differentiate between use Classes 1-3, all of which generate footfall and all of which are appropriate within the city centre. Policy 28 of the Highland-wide Local Development Plan support economic development where proposals are, amongst other matters, compatible with public service provision and do not have a significantly detrimental impact on individual and community residential amenity. Policy 29 of the Highland-wide Local Development Plan seeks to ensure that development is designed to make a positive contribution to the architectural and visual quality of place.
- 8.6 The site is an existing ground floor shop unit, located within a row of commercial units with four floors of flats above on Strothers Lane in Inverness City Centre. The surrounding area is primarily a mixture of commercial and residential properties, which reflects its location within the city centre. Indeed, this unit has had a number of changes of use as indicated in the planning history. The most relevant to this current application is the planning permission granted in 2009 (08/00994/FULIN) for the same use as the current application.
- 8.7 Providing that the design of flue is compatible with the character of the building and appropriate to the location and that the use would not be significantly detrimental to amenity, the proposal would comply with the Development Plan.

Residential Amenity

- 8.8 By its very nature the proposal will result in an increase in activity during evening hours and therefore introduce change to the area. It is therefore understandable that neighbouring residents would not wish to have a takeaway in this location. However, it must be recognised that the unit is situated within the city centre, with its mix of commercial and residential uses, where evening activity, including into the early hours, could reasonably be expected.
- 8.9 The extent to which the use could continue beyond 11pm on Friday and Saturday nights is yet to be determined. This would require the applicant to make an application to the Council for a Late Hours Catering Licence. This will cover the hours the business can operate and any conditions relating to requirements for disposal of litter/keeping the area around the business clean and tidy.
- 8.10 Environmental Health is satisfied that the proposed odour control system, which is by means of a new flue, meets the relevant guidance for achieving the required high level of odour control. A condition can be used to limit noise levels. Environmental Health has not identified any other matters relating to residential amenity. Matters relating to antisocial behaviour would be a matter for Police Scotland.

Siting and design of flue

- 8.11 The new flue system will be located on the rear elevation of the building and run the full height of the gable terminating above the gable ridge at fourth floor level. This gable faces towards Margaret Street and the bus station to the northwest.
- 8.12 The application does not provide visualisations of what this flue would present as. However, both the gables to the northeast have similar metal fabricated extraction flues to what is proposed here. These are therefore a good reference. The rear gable features are reasonably prominent in views across Farraline Park, as therefore are the flues. The lower portion of the proposed flue will be largely screened by the bus station building in such views. While this flue will add to visual clutter on the gables, a flue on this gable is likely to be less prominent than the existing ones, even in longer distant views, given the location towards the centre of the block. The flues, while large, are relative in size to the massing of this building as a whole.
- 8.13 There will be some visibility of the flue at lower level for those passing through on foot from Strothers Lane to Margaret Street and vice versus. However, these areas have services associated with the commercial units and the flue is unlikely to be prominent in these close views.
- 8.14 On this basis, the amenity and visual impact of the proposed flue on the rear, and secondary, elevation of this large building is not considered to be unacceptable in principle. Exact details of the flue and fixings can be secured by condition.

Other material considerations

- 8.15 Matters relating to potential anti-social behaviour, littering, and the attraction of vermin, are not matters that can be directly controlled by the Planning Authority, although bin provision and uplift can be addressed by condition. Matters relating to impact on neighbouring amenity, noise, and potential disturbance that have been raised by neighbours in relation to the planning application can also be considered separately by the Licensing Authority in respect of any application for a Late Hours Catering Licence.
- 8.16 Some representations noted that there are many restaurant and takeaway businesses in the surrounding area therefore another should not be allowed. It is for the market to determine the capacity that a location has to support a number of competing uses. It is the role of the planning system to determine only whether or not the proposal is an appropriate use of the site, taking into consideration any likely impacts upon amenity and any mitigating factors.
- 8.17 In the initial submission, the applicant indicated signage for the proposed restaurant and takeaway as much larger than currently exists on Strothers Lane commercial units. The Community Council raised no objection to the proposal but did consider that the original proposed signage to be disproportionate to other signage in Strothers Lane and should be reduced in height. The applicant agreed with the Community Council and submitted an amended drawing (RS-0061-004 Rev B) that shows the signage restricted to the strip above the doors and windows consistent with the other properties. It should be noted however that any grant of

planning permission does not authorise the signage proposed. Any signage may well require a separate consent for its display under The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984.

Non-material considerations

- 8.18 The issues of potential impact on property values, potential increase in buildings insurance costs, and potential anti-social behaviour, and Police Scotland's response to it, are not material planning considerations.

Matters to be secured by Section 75 Agreement

- 8.19 None

9. CONCLUSION

- 9.1 The proposal is for the change of use of the unit from a shop to a restaurant with takeaway.
- 9.2 Policies 1 and 3 of the Inner Moray Firth Local Development Plan promotes uses which encourage footfall and maintain and strengthen the vitality and viability of the City Centre by providing extended choice of commercial opportunities, including food offerings. This is therefore a location where such uses should be directed to and located within. Indeed, a previous permission had been granted for such use in this unit.
- 9.3 While the technical considerations regarding ventilation and waste can be adequately addressed through the provision of a high-level extraction flue and bin storage with private uplift arrangements, the perception of impact on amenity from residents resulting from an increase in evening activity cannot. It is considered that, while the proposal will introduce change into the area, particularly during the evening, the residential impact should not be significantly detrimental where the business is well managed given its location. A licence will be required for the business to operate beyond 11pm and so it is not proposed that a condition to restrict opening hours is necessary in this instance. Matters relating to antisocial behaviour at any time can be directed to Police Scotland.
- 9.4 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

Action required before decision issued

Notification to Scottish Ministers	N
Conclusion of Section 75 Obligation	N
Revocation of previous permission	N

Subject to the above actions, it is recommended to **GRANT** the application 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 detailed in "Proposed Ventilation Plan - Drawing ref 0061-007", shall be installed and fully operational. Thereafter it shall be maintained in working condition at all times until such time that it is removed, which will be at the time that the use of the premises as restaurant/takeaway has ceased.

Reason: In the interests of the amenity of nearby residential and business property, to guard against cooking odours being detectable within neighbouring premises, and to secure removal of the equipment following cessation of the use in the interest of visual amenity.

2. No development shall commence until full details of the materials for the external flue, and the method and location of its fixing, has been submitted to, and agreed in writing by, the Planning Authority. Only the agreed details shall be implemented.

Reason: In the interests of visual 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 any associated operating noise does not exceed NR 25 curve when measured or calculated within any noise-sensitive property with windows open for ventilation purposes.

Reason: In the interest of residential amenity.

4. No development shall commence on site until the developer has provided full written and plan details, of the off-street waste storage area, including timetable details of the regular uplift and disposal of commercial waste, for the approval in writing of the Planning Authority in consultation with the Environmental Health Authority.

Reason: In the interests of the amenity of nearby residential and business properties.

REASON FOR DECISION

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.

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.

INFORMATIVES

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.

Control of Advertisements

It is important to note that the grant of planning permission does not give consent for the display of any advertisement associated with the development and that, unless deemed to be granted by Schedule IV of The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984, a separate consent for the display of advertisement will be required.

Flood Risk

It is important to note that the grant of planning permission does not imply there is an unconditional absence of flood risk relating to (or emanating from) the application site. As per Scottish Planning Policy (paragraph 259), planning permission does not remove the liability position of developers or owners in relation to flood risk.

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_f_or_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 for more information.

Environmental Health

The development must comply with the Food Safety (Scotland) Regulations 2006 and the Health and Safety at Work etc. Act 1976. For advice on the above regulations please contact Environmental Health Service email: envhealth@highland.gov.uk.

Protected Species – Halting of Work

You are advised that work on site must stop immediately, and NatureScot must be contacted, if evidence of any protected species or nesting/breeding sites, not previously detected during the course of the application and provided for in this permission, are found on site. For the avoidance of doubt, it is an offence to deliberately or recklessly kill, injure or disturb protected species or to damage or destroy the breeding site of a protected species. These sites are protected even if the animal is not there at the time of discovery. Further information regarding protected species and developer responsibilities is available from NatureScot: <https://www.nature.scot/professional-advice/protected-areas-and-species/protected-species>.

Signature: David Mudie

Designation: Area Planning Manager - South

Author: Elaine Watt

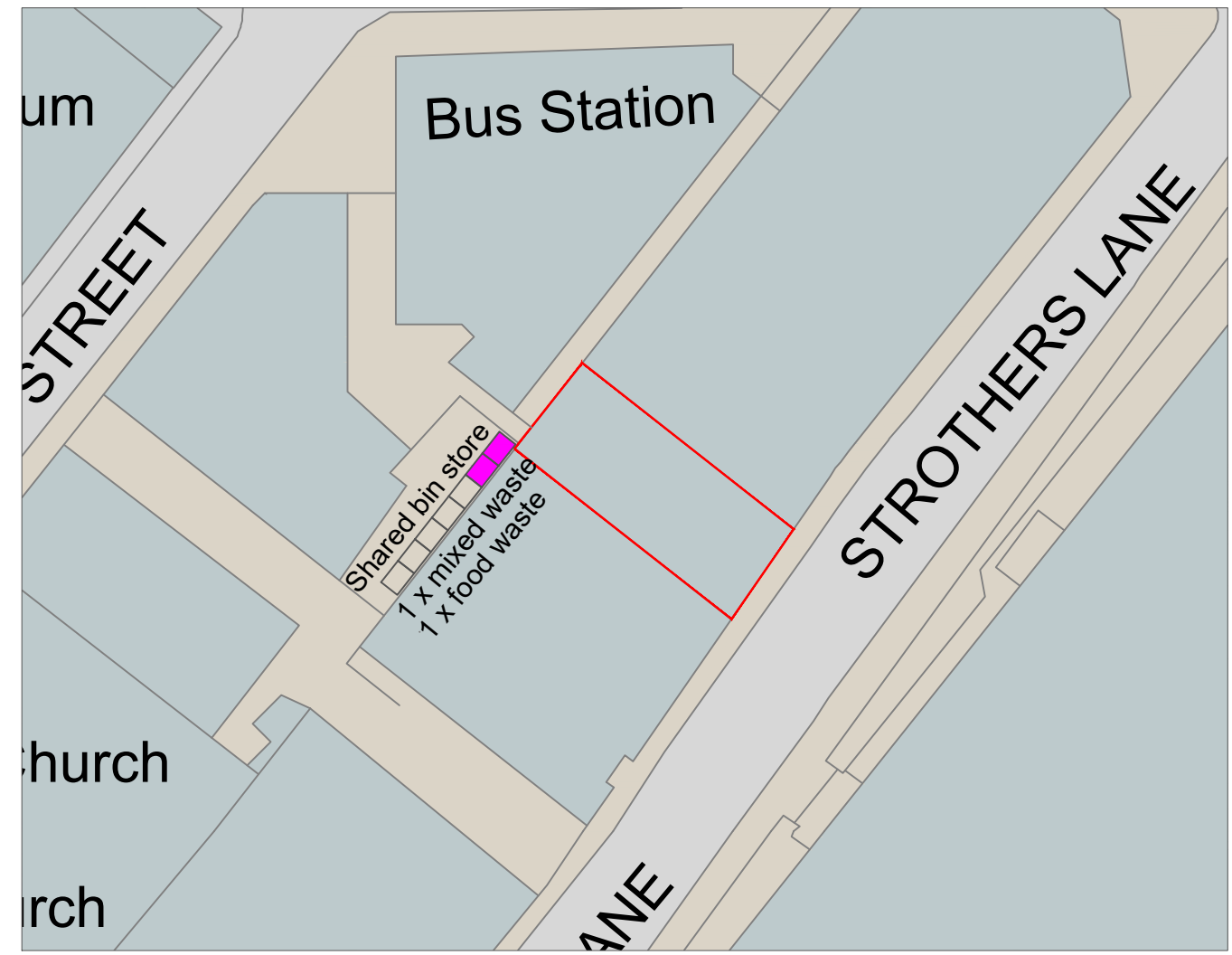
Background Papers: Documents referred to in report and in case file.

Relevant Plans: Plan 1 – Location plan – RS-0064-001 Rev B
Plan 2 – Existing elevation plan - RS-0061-002 Rev A
Plan 3 – Proposed elevation plan - RS-0061-003 Rev B
Plan 4 – Proposed elevation plan - RS-0061-004 Rev B
Plan 5 – Existing floor plan - RS-0061-005
Plan 6 – Proposed floor plan - RS-0061-006 Rev A
Plan 7 - General plan ventilation RS-0061-007



LOCATION PLAN
1:1250

RED LINE DENOTES APPLICATION SITE.



PROPOSED SITE PLAN
1:500

REV	DESCRIPTION	BY	DATE
B	Planning Response	AM	30/09/21
A	Planning Response	AM	22/09/21

ALL SIZES TO BE TAKEN AND CHECKED ON SITE BY THE CONTRACTOR PRIOR TO PREPARATION OF SHOP DRAWINGS OR FABRICATION OF PARTS. THIS DRAWING SHOULD NOT BE SCALED. ANY DISCREPANCIES TO BE BROUGHT TO THE IMMEDIATE ATTENTION OF THE DESIGNER. COPYRIGHT OF DESIGN AND DRAWING RESERVED.



CLIENT	Mr Usman Mustafa	STATUS	Planning
PROJECT	5 Strothers Lane		
TITLE	Site and Location		
JOB NO	0061	SCALE	NOTED @ A3
DRAWN	AM	DATE	08/09/21
		DRG. No.	RS-0061-001
		REV	B



EXISTING ELEVATION
1:100



CLIENT	Mr Usman Mustafa	STATUS	Planning
PROJECT	5 Strothers Lane		
TITLE	Rear Elevation		
JOB NO	0061	SCALE	NOTED @ A3
DRAWN	AM	DATE	08/09/21
		DRG. No.	RS-0061-002
		REV	-

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REV	DESCRIPTION	BY	DATE



PROPOSED ELEVATION
1:100

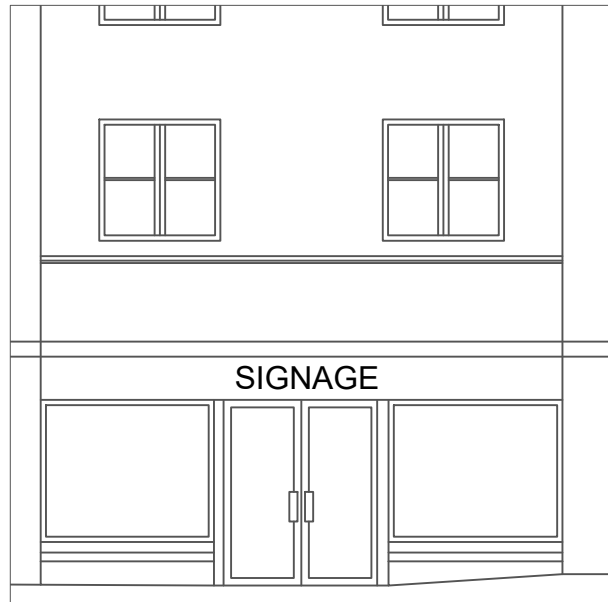


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A	Planning Response	AM	08/11/21
REV	DESCRIPTION	BY	DATE



CLIENT	Mr Usman Mustafa	STATUS	Planning
PROJECT	5 Strothers Lane		
TITLE	Rear Elevation		
JOB NO	0061	SCALE	NOTED @ A3
DRAWN	AM	DATE	08/09/21
		DRG. No.	RS-0061-003
		REV	A



EXISTING FRONT ELEVATION
1:100



PROPOSED FRONT ELEVATION
1:100

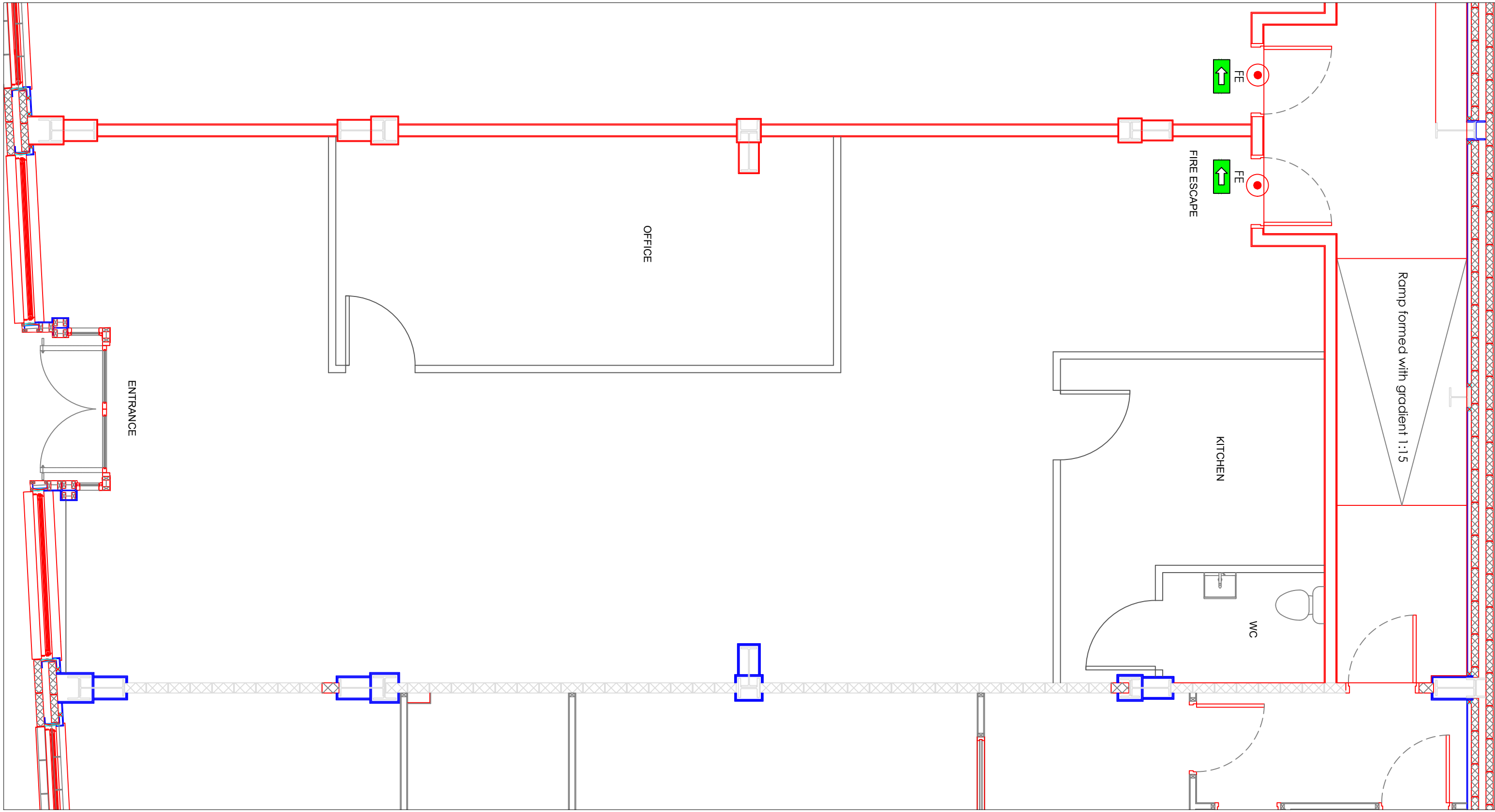


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REV	DESCRIPTION	BY	DATE
B	Planning Response	AM	04/11/21
A	Planning Response	AM	30/09/21



CLIENT Mr Usman Mustafa	STATUS Planning
PROJECT 5 Strothers Lane	
TITLE Elevations	
JOB NO 0061	SCALE NOTED @ A3
DRAWN AM	DATE 08/09/21
	DRG. No. RS-0061-004
	REV B



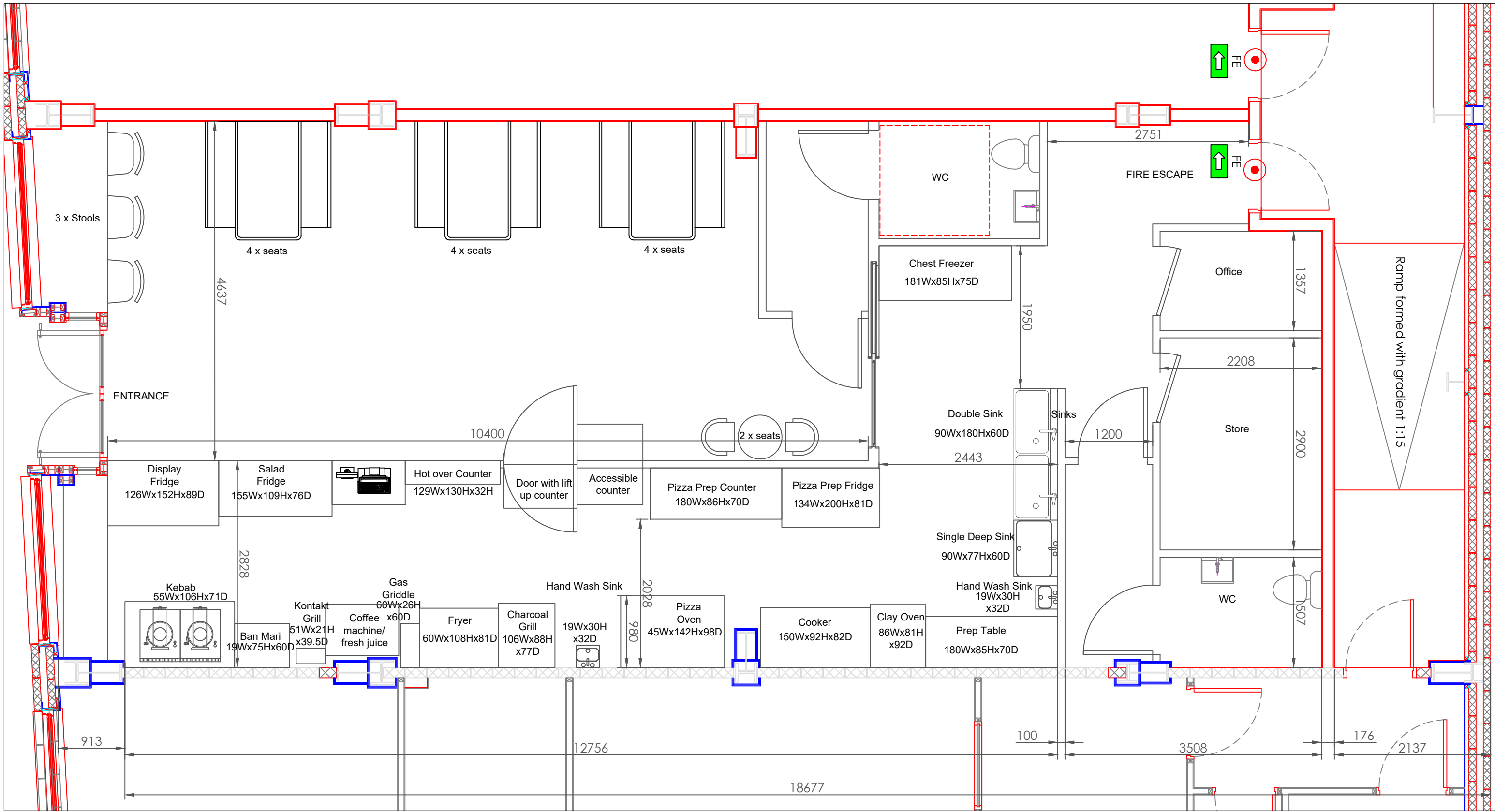
EXISTING PLAN
1:50



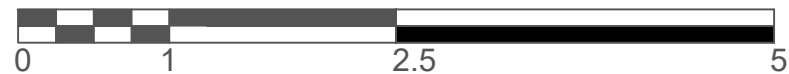
CLIENT	Mr Usman Mustafa	STATUS	Planning
PROJECT	5 Strothers Lane		
TITLE	Existing Floor Plan		
JOB NO	0061	SCALE	NOTED @ A3
DRAWN	AM	DATE	08/09/21
		DRG. No.	RS-0061-005
			REV

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REV	DESCRIPTION	BY	DATE



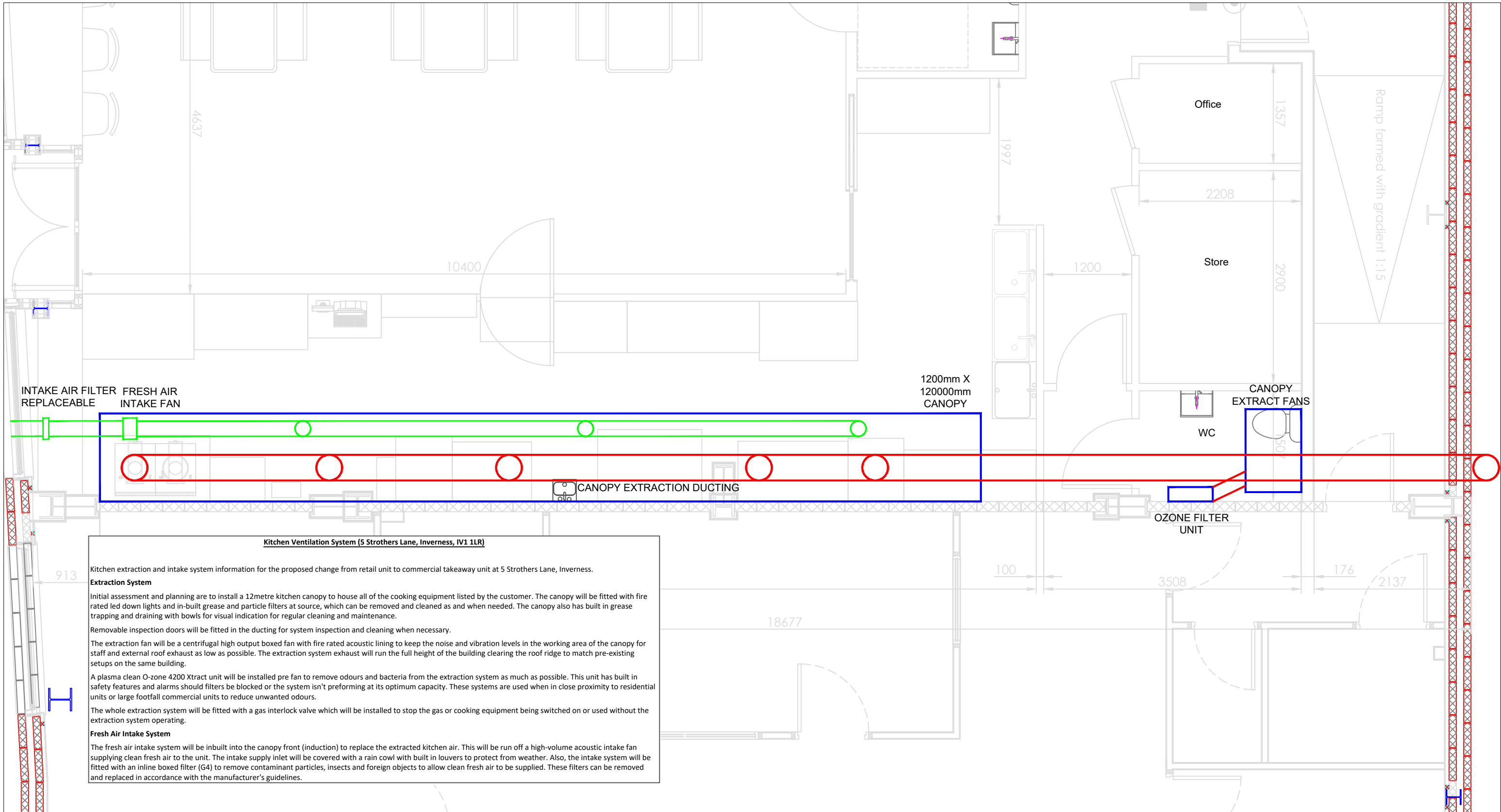
PROPOSED PLAN
1:50



CLIENT	Mr Usman Mustafa	STATUS	Planning
PROJECT	5 Strothers Lane		
TITLE	Proposed Floor Plan		
JOB NO	0061	SCALE	NOTED @ A3
DRAWN	AM	DATE	08/09/21
		DRG. No.	RS-0061-006
		REV	A

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REV	DESCRIPTION	BY	DATE
A	Revised fryer location and additional hand wash basin	AM	12/10/21



Kitchen Ventilation System (5 Strothers Lane, Inverness, IV1 1LR)

Kitchen extraction and intake system information for the proposed change from retail unit to commercial takeaway unit at 5 Strothers Lane, Inverness.

Extraction System

Initial assessment and planning are to install a 12metre kitchen canopy to house all of the cooking equipment listed by the customer. The canopy will be fitted with fire rated led down lights and in-built grease and particle filters at source, which can be removed and cleaned as and when needed. The canopy also has built in grease trapping and draining with bowls for visual indication for regular cleaning and maintenance.

Removable inspection doors will be fitted in the ducting for system inspection and cleaning when necessary.

The extraction fan will be a centrifugal high output boxed fan with fire rated acoustic lining to keep the noise and vibration levels in the working area of the canopy for staff and external roof exhaust as low as possible. The extraction system exhaust will run the full height of the building clearing the roof ridge to match pre-existing setups on the same building.

A plasma clean O-zone 4200 Xtract unit will be installed pre fan to remove odours and bacteria from the extraction system as much as possible. This unit has built in safety features and alarms should filters be blocked or the system isn't performing at its optimum capacity. These systems are used when in close proximity to residential units or large footfall commercial units to reduce unwanted odours.

The whole extraction system will be fitted with a gas interlock valve which will be installed to stop the gas or cooking equipment being switched on or used without the extraction system operating.

Fresh Air Intake System

The fresh air intake system will be inbuilt into the canopy front (induction) to replace the extracted kitchen air. This will be run off a high-volume acoustic intake fan supplying clean fresh air to the unit. The intake supply inlet will be covered with a rain cowl with built in louvers to protect from weather. Also, the intake system will be fitted with an inline boxed filter (G4) to remove contaminant particles, insects and foreign objects to allow clean fresh air to be supplied. These filters can be removed and replaced in accordance with the manufacturer's guidelines.

PROPOSED VENTILATION PLAN
1:50



CLIENT	Mr Usman Mustafa	STATUS	Planning
PROJECT	5 Strothers Lane		
TITLE	Ventilation		
JOB NO	0061	SCALE	NOTED @ A3
DRAWN	AM	DATE	08/09/21
		DRG. No.	RS-0061-007
		REV	-