

Before the EAST Lothian COUNCIL LOCAL REVIEW BOARD

APPLICATION FOR REVIEW of the refusal of an application for Change of Use from Commercial to Residential Use in application No 22/00233/P.

at 12 Westgate, North Berwick, EH39 4AF.

PLANNING HISTORY

- 1 Previous Applications for PP and LBC are to be found in applications Nos 18/00254/P and 18/00255/LBC, and subsequently in applications No 19/00472/P and 19/00473/LBC, and thirdly in applications No 20/00594/P and 20/00303/LBC.
- 2 All have been refused, as have two prior applications to East Lothian's LRB.
- 3 The present application 22/00233/P, now brought under review, was registered on 8 March 2022 and determined following a Report dated 26 April 2022. The Decision was contained in a letter dated 6 May 2022.
- 4 The present application is for a change of use only. It does not propose any significant alterations to the building, save for the blocking up of an ATM/night safe opening; the blocking up of a small north facing window in matching stone, and the addition of two rooflights in the flat roof.

THE APPLICATION

- 5 This application seeks to secure a change of use from Class 2 commercial use, and to establish the principle of permitted Class 9 residential use within the precise footprint of the existing ground floor structure.

THE DECISION BROUGHT UNDER REVIEW

- 6 The Committee's decision rests on two reasons
 - That the application is contrary to Policy TC 2, and
 - That the application is contrary to Policy DP 5
- 7 The officer's Report is incorporated into the Decision Notice. Together they summarise the prior applications and the applicant's previous submissions. This application stands alone and follows the last refusal dated 6 May 2022.

MARKETING EVIDENCE

- 8 Evidence has been provided in the form of (1) the applicant's submission and (2) material supplied by a reputable agent, Galbraith. RBS abandoned its North Berwick branch in 2018 and advertised it for sale with its existing permission.
- 9 The former banking hall, which has little architectural merit, sits between two residential lots – No 12 B (the former Bank Manager's House); and the former Blenheim Hotel, now converted to four high grade apartments. It sits opposite a flatted dwellinghouse. All are within the TC 2 area.
- 10 The nearest active commercial premises is a Chiropractic clinic, housed opposite No 12 in an unfortunate front facing extension, and a solicitors' office in a run of shops beginning about 70m to the east. TC2 runs to a point west of the subject premises.
- 11 From its text, the policy is not an absolutely exclusive one. By the exercise of discretion centred around the question of whether the premises themselves are no longer viable, it permits a change to residential use.
- 12 The submission explained that the purchase price in 2019 was £555,555.00, offered in an open-market closed-bid sale, and that the applicant was the top offeror only by a small margin. There were twelve offers. That was the market value at that time, and the building was as it stands today. There has been no indication that market value has decreased. All local indications are to the contrary.
- 13 Marketing took place as follows
- 6 July 2021 – Marketing Board erected inside the front garden
 - 6 July 2021- Property advertised on agent's website, and on Costar, Realla, Rightmove and On The Market websites
 - 8 July 2021 – written particulars sent to 86 agents
 - 20 August 2021 – Closing date set.

THE APPLICABLE LAW

- 14 Section 25 TCPSA 1997 applies, and "Decisions must be taken in accordance with the Development Plan unless material considerations indicate otherwise." The Development Plan consists of SES Plan and the adopted East Lothian LDP dating from 27 September 2018.

15 **THE APPLICABLE POLICIES**

16 Nothing arises from the terms of **SES Plan**.

Policy TC2, Local Development Plan

17 Of the two policies relied upon for the Decision, Policy TC 2 provides priority for town and local centre commercial uses, and also that *“Residential use may also be acceptable, particularly ...in a ground floor location, ...only **where there is evidence that the premises is no longer viable as a town or local centre use....Proposals that will have a significant environmental impact, particularly on housing, will not be permitted.**”*

18 The policy therefore *allows* for the grant of planning permission where there is evidence that the premises is **no longer viable** as town centre use. That is well explained in the covering text on page 61 of the LDP.

19 The applicant has provided a schedule of 70 inquiries. This schedule has been sent to the planning officer and Committee. More than 70 schedules have been sent out to inquirers between 6 July 2021 and July 2022. All inquirers have been told the expected price, the nature of the existing planning permission, and the planning history. Of the inquiries, 15 people expressed a commercial interest, three were indeterminate, and 62 were for residential use. About 55 “interested parties” have inspected the property. A number of conditional offers have been received. None was acceptable, either because the price did not reflect market value, or because conditions were unacceptably onerous, or were dependent on planning permission for a use other than the current one. It is not appropriate to identify offerors.

Policy DP 5

20 Policy DP5 applies to “Extension and alterations to existing buildings.”

21 It provides that alterations to existing buildings *“must be in keeping with the original building and not cause loss of amenity or be harmful to existing residential amenity.”*

PLANNING POLICY ANALYSIS

POLICY TC 2

22 The heart of the Planning Officer’s Planning Assessment begins at the foot of page 16.

23 Evidence of a formal marketing campaign for a period in excess of six months has been provided. That should be a matter of agreement. The policy does *not require*

the level of detail provided by this applicant, but nevertheless it has been provided in good faith.

- 24 The first reason for refusal is predicated upon the existence of a “*proposed scheme of development*”. The application does not advance either a scheme, nor any development. It is an application for change of use. It is submitted that the first reason for refusal is therefore irrelevant, since it is based on a false premise.
- 25 The assessment continues by stating that “*what has been offered*” is a material consideration (see, TCPSA s. 25, above, §8). With respect, that is incorrect; the test in the policy is “***(whether) the premises is no longer viable as a town centre use.***” The fulcrum of the policy is the test of viability as a town centre use, not the price paid or offered.
- 26 Without asking or telling the applicant, the Planning Officer has sought the opinion of the District Valuer, whose opinion, it is said, is that the building has a value of £400,000. The DV may have been to the property. He has not been inside it. He has not asked for a key. He has not sought any information from the applicant. The Planning Officer’s Report does not cite comparable examples. He has not discussed value, nor any putative valuation with the Applicant or the Agent. The DV’s ‘market value’ has not been justified in writing in any way.
- 27 With respect, by its terms it demonstrates that the value of £400,000 is clearly wrong, since in 2018 the Applicant paid a price of £555,555.55 and was only just successful (as disclosed to the Planning Officer and as set out above and in the Report to Committee). A market in property works on the basis that the best offer generally secures the premises on offer. As between a willing seller and willing buyer, that is the measure of market value.
- 28 **However, and of even greater significance, the “correctness” or “reasonableness” of market value is not the actual criterion found within the words of the policy upon which refusal has been based. The Planning Officer’s approach is therefore fundamentally incorrect.**
- 29 “***Viability***” is the only test in the policy. As it says, the question guiding a decision for a proposed change of use is “***(whether) the premises is no longer viable as a town centre use.***” What then does “viable” mean?
- 30 The ELC Local Development Plan helpfully defines “*viability (of town centres)*” at page 221 as “***a measure of its capacity to attract ongoing investment, for maintenance, improvement and adaptation to changing needs.***”

- 31 A dictionary definition of “*viable*” is “*able to succeed*”.
- 32 **By the terms of Policy TC 2 and East Lothian’s own definition, the proper understanding of “*viability*” therefore has nothing to do with whether or not the “*correct*” or a “*reasonable*” or a “*market*” price was paid for a property. £1, or £1 million pounds. It does not matter.**
- 33 Testing the policy’s wording, this building, being located within the designated North Berwick Town Centre has been abandoned by its commercial occupant (RBS). When advertised, it “*attracted ongoing investment*” because 11 offers were made to RBS, and the applicant’s was the highest. Four of those offers were in excess of the DV’s purported valuation, and two of them exceeded £500,000.00. Those numbers may properly be seen as a “*measure*” of its capacity to attract ongoing investment.
- 34 It requires “*maintenance*” and “*improvement*” because of the condition in which it was left abandoned by its previous owner. That is another “*measure*”, but alteration is not proposed by this application.
- 35 Finally, the premises is *adaptable to changing needs*, since from all the interest sent to this Applicant, no definable *commercial* interest conforming to the existing planning permission has been advanced by any prospective purchaser. By far the majority of inquirers before and since it was bought by the Applicant expressed their interest in conversion to residential use. That too is a “*measure*” of its capacity.
- 36 The East Lothian property market, and particularly the North Berwick residential property market has expanded by 21% in under a year. Value is a reflection of the existing market, not an abstract concept.
- 37 The planning officer has not addressed the way in which viability (as defined) may be affected. It is submitted that the change of use of one commercial premises (No 12) on the fringe could not reasonably be said to affect the viability of an entire town centre.
- 38 It is submitted that the policy is honoured and fulfilled, and that the reason for refusal is simply incorrect.

POLICY DP 5

- 39 The present application is for change of use, *not for alterations to the existing building*. It is submitted that it follows that there are no alterations proposed which can affect the amenity of any neighbour.

- 40 The second Reason for Refusal states that *“the proposed **scheme of development** would result in a loss of residential amenity...to neighbouring property, and would fail to provide...an acceptable level of residential property contrary to Policy DP5....”*
- 41 With respect, there is no *“scheme of development”* proposed by this application. The second reason for refusal is therefore irrelevant, since it is predicated on the assumption of a “scheme” which is incorrect, namely that alterations to the property are actually proposed by this application (they are not); and they would be carried out in a manner which would be injurious to neighbouring residential amenity (they would not).
- 42 Any judgment about amenity in *this* application could not be made by any Planning Officer properly applying the policy since nothing is proposed which could injure amenity. The only garden for this property is to the front on Westgate, where it can be inspected by any passing pedestrian. To the rear, IF there was scheme of conversion before the Council at present, (which there is not), a combination of the intelligent use of opaque glazing, and venting to the roof would secure neighbouring privacy. For example, the former Blenheim Hotel, next door, allows visibility from both ground and first floors to rear garden ground which lies in differing ownerships. That is the case with almost any town centre property.

CONCLUSION ON POLICY TC 2

- 43 On its review of the decision, it is submitted that the LRB may safely conclude that IF Policy TC 2 applies (because there is no actual “scheme”) then it has been fully complied with, and the Planning Officer and Committee’s conclusions in this application are, with respect, fundamentally incorrect.
- 44 Secondly, the Officer and Committee have not applied the correct measure, namely the measure of viability as that term is defined by their own Plan, and, as the policy requires them to do.
- 45 It follows that the terms of Policy TC 2 have been scrupulously observed.

CONCLUSION ON POLICY DP 5

- 46 Policy DP 5 does not apply to this application since its application is predicated upon the existence of a “scheme of development”, and no such scheme is proposed. There is no yardstick against which amenity can be measured.

OVERALL CONCLUSIONS AND SUBMISSION

- 47 This application for review by the East Lothian Local Review Body of the decision in application No 22/00233/P, dated 6 May 2022 rests *only* upon the application of policies TC 2 and DP 5.
- 48 Applying the law and a proper understanding of the purpose and effect of both policies, it is submitted that Policy TC 2 has regrettably been misapplied, since
- (1) it refers to a “*scheme of development*” when there is no scheme advanced, and
 - (2) there has been no assessment of the viability of the premises, that being the sole criterion required.
- 49 Policy DP 5 is not relevant, since from its terms it also depends on the existence of a “*scheme of development*” which would injure neighbouring amenity. There is no such scheme, and accordingly, there can be no injury to amenity. In any event, there is no basis for the assessment of amenity or any injury to amenity.

SUBMISSION

- 50 The Local Review Board is therefore respectfully requested to review the decision, to reverse it, and to grant planning permission for a change of use from commercial to residential use, as applied for.

RESPECTFULLY SUBMITTED

John Campbell, QC
Advocates Library, Edinburgh
27 July 2022

App No. 22/00233/P

**EAST LoTHIAN COUNCIL
DECISION NOTICE**

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
TOWN AND COUNTRY PLANNING
(DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATIONS 2013**

**Mrs Patricia Sharp
c/o Environment & Planning Scotland Ltd
Per John Campbell
Nisbet Stables
Coldstream Road
Duns
TD11 3HU**

APPLICANT: Mrs Patricia Sharp

With reference to your application registered on 8th March 2022 for planning permission under the above mentioned Acts and Regulations for the following development, viz:-

**Alterations and change of use of bank to form 1 flat
at
12 Westgate
North Berwick
East Lothian
EH39 4AF**

East Lothian Council as the Planning Authority in exercise of their powers under the above-mentioned Acts and Regulations hereby **REFUSE PLANNING PERMISSION** for the said development.

The reasons for the Council's refusal of planning permission are:-

- 1 The proposed scheme of development would result in the loss of a ground floor Class 2 commercial premises within North Berwick Town Centre where there is no evidence that the premises is no longer viable as a town or local centre use, contrary to Policy TC2 of the adopted East Lothian Local Development Plan 2018.

2 The proposed scheme of development would result in a loss of residential amenity to the occupiers of the existing neighbouring residential property and would fail to provide the occupants of the proposed residential property with an acceptable level of residential amenity contrary to Policy DP5 of the adopted East Lothian Local Development Plan 2018.

The report on this application is attached to this Decision Notice and its terms shall be deemed to be incorporated in full in this Decision Notice.

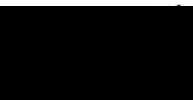
Details of the following are given in the application report:

- the terms on which the Planning Authority based this decision;
- details of any variations made to the application in terms of Section 32A of the Town and Country Planning (Scotland) Act 1997.

The plans to which this decision relate are as follows:

<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>
1141-PL-06	-	24.02.2022
18/683/03	-	24.02.2022
DWG 01	-	02.03.2022
18/683/02	A	04.03.2022
18/683/02	B	04.03.2022
1141-PL-01	-	08.03.2022
1141-PL-04	-	08.03.2022
1141-PL-07	-	08.03.2022

6th May 2022



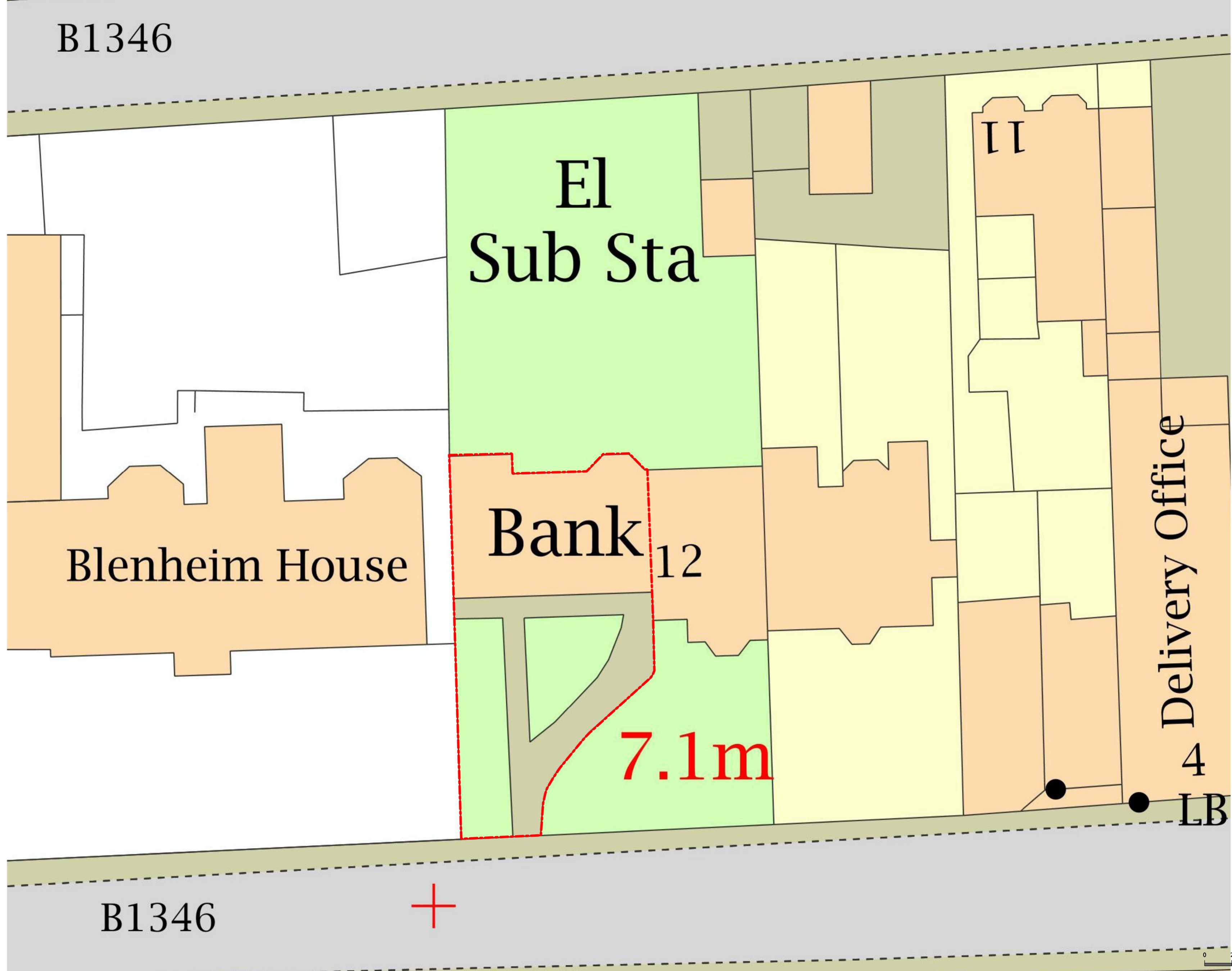
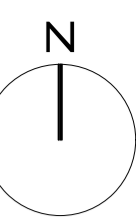
Keith Dingwall
Service Manager - Planning

NOTES

If the applicant is aggrieved by the decision to refuse permission for the proposed development, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of review should be addressed to the Clerk to the Local Review Body, Committee Team, Communications and Democratic Services, John Muir House, Haddington, East Lothian EH41 3HA.

If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the Planning Authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

B1346



Blenheim House

El Sub Sta

Bank 12

7.1m

Delivery Office

4

LB

B1346



CLIENT	Mr & Mrs N Sharp										
PROJECT	Proposed Development to 12 Westgate, North Berwick										
DRAWING	Existing Site Plan (Roof Level)										
STATUS	PLANNING										
DRAWN	AM	DATE	FEB 22	DRG NO	1141-PL-03	JOB	1141	REV	/	SCALE	1:200 @ A2

Andrew Megginson Architecture
 128 Dundas Street
 New Town
 Edinburgh
 EH3 5DQ
 Tel: 0131 557 9129
 Email: info@andrew
 megginsonarchitecture.com



ANDREWMEGGINSONARCHITECTURE

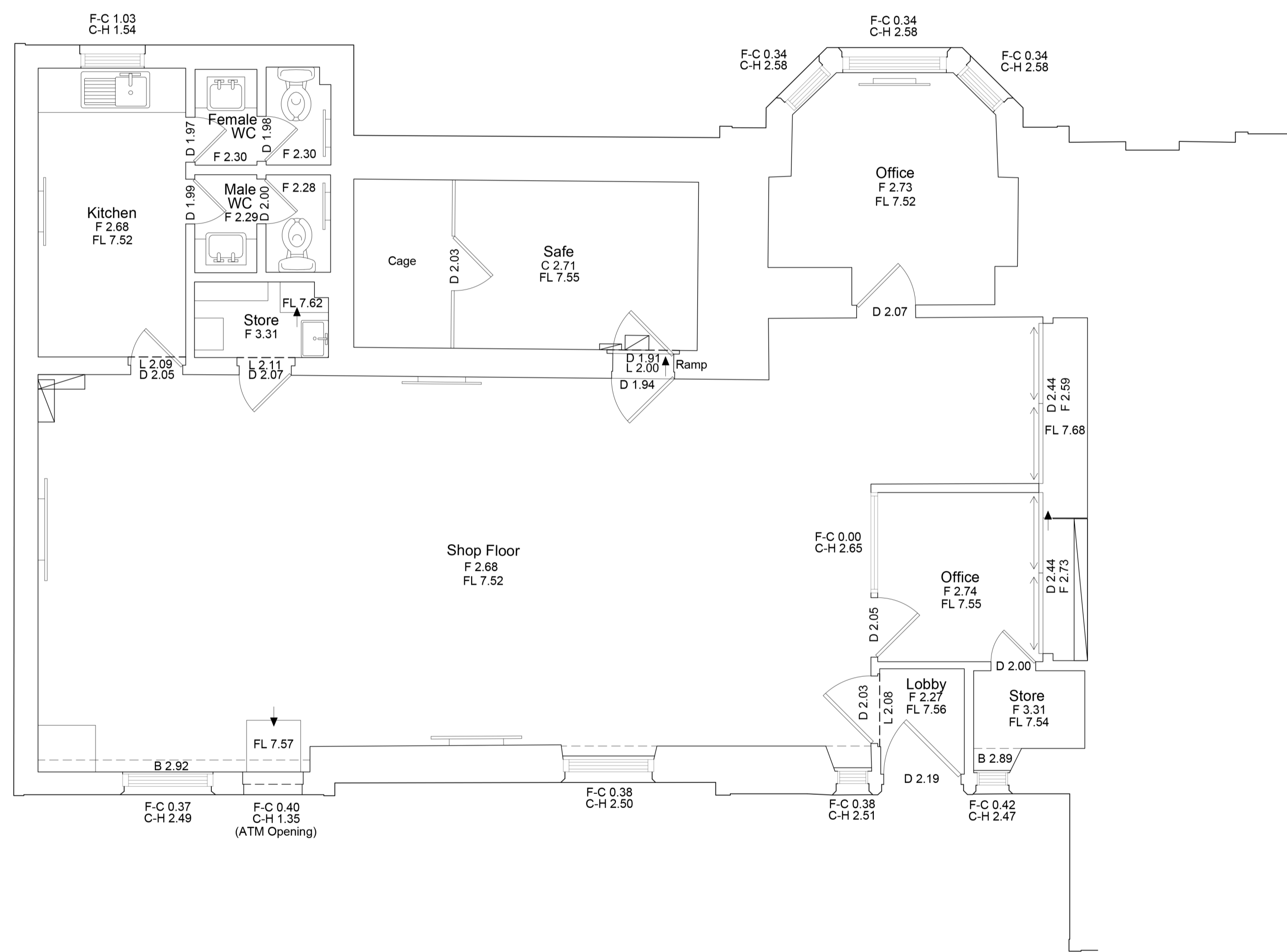
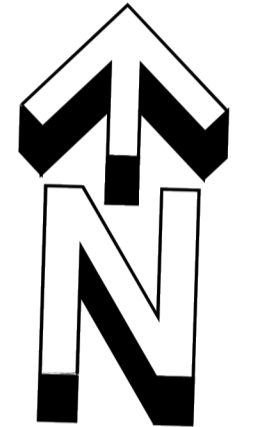
This drawing and its data are property of AMA and should not be reproduced without written consent. All dimensions to be checked on site prior to any works and ordering of materials, with any discrepancies reported immediately. Drawings should be read in conjunction with all other relevant building consultants drawings and information. This drawing was prepared to obtain planning and/or building standards permission and can only be used as a working drawing. AMA's liability ends upon receipt of a decision from the planning department and/or the building standards department. AMA accepts no responsibility for any inaccuracy in printing of this drawing by any parties.

LEGEND

ACCESS HATCH		FLUORESCENT LIGHTING	
AIR CONDITIONING		FLOOR LEVEL	
A/C CONTROL PANEL		FUSED SPUR	
ALARM SENSOR		HAND DRYER	
ARCH HEAD HEIGHT		HOSE REEL	
ARCH SPRINGER HEIGHT		HOT WATER BOILER	
BEAM HEIGHT		INSPECTION COVER	
BELL		LINTEL HEIGHT	
BLANKING PLATE		LIGHT SWITCH / SINGLE	
BREAK GLASS		LIGHT SWITCH / DOUBLE	
CEILING		LIGHT SWITCH / TRIPLE	
CEILING LIGHT		LIGHT SWITCH / QUADRUPLE	
CILL TO HEAD		LOW VOLTAGE SUPPLY	
CLOSE CIRCUIT CAMERA		PHONE / DATA POINT	
DISTRIBUTION BOARD		PULL CORD SWITCH	
DOOR HEAD HEIGHT		RADIATOR	
DOOR RELEASE		RAIN WATER PIPE	
DOUBLE SOCKET		SINGLE SOCKET	
DUCTING		SKYLIGHT	
EMERGENCY DOOR RELEASE		SLOPED CEILING	
EMERGENCY EXIT LIGHTING		SMOKE DETECTOR	
EMERGENCY LIGHTING		SERVICE PIPE	
EXTRACTOR FAN		SPOTLIGHT	
FALSE / SUSPENDED CEILING		SWITCH	
FAN		SWITCHED FUSED SPUR	
FIRE ALARM BELL		THERMOSTAT	
FIRE EXTINGUISHER		UNKNOWN SERVICE	
FLOOR TO CILL		WALL LIGHT	



Accuracy commensurate with scale of drawing.



REV.	NOTES	DWN	DATE



Notes:
 Grid is arbitrary.
 All levels relate to OS Datum OSGM15.



PAVILION 2
 BUCHANAN BUSINESS PARK
 STEPPS
 GLASGOW, G33 6HZ
 TEL: 0141 779 7971
 WWW.SIGMA-SURVEYS.COM

10 LOCHSIDE PLACE
 EDINBURGH PARK
 EDINBURGH
 EH12 9RG
 TEL: 0131 202 7861
 QUOTES@SIGMA-SURVEYS.COM

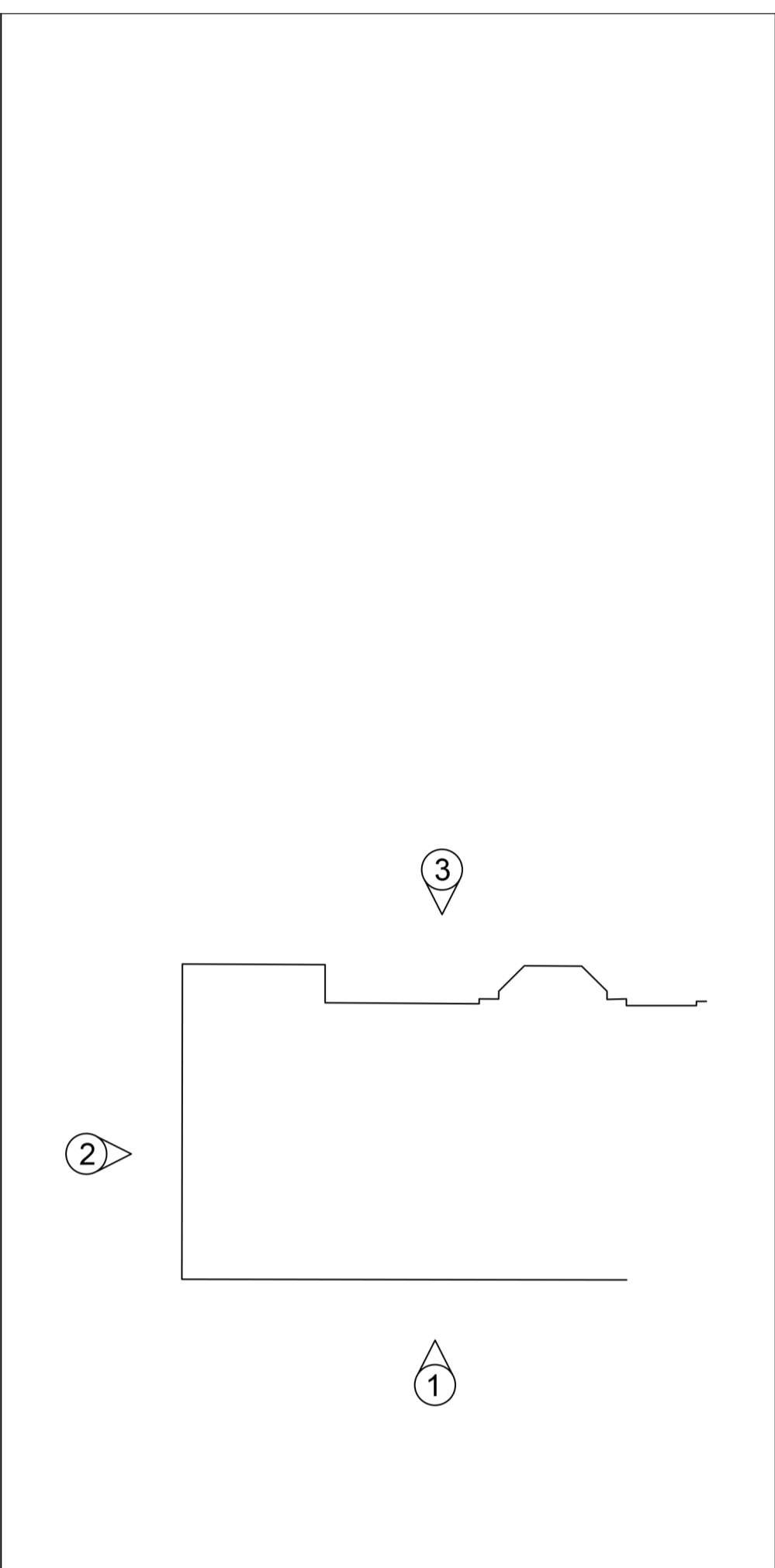
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DRAWN	G. QUAIL	1:50 (A1 Sheet)
CHECKED	R. RENNIE	

RBS, NORTH BERWICK

MEASURED BUILDING SURVEY
 GROUND FLOOR

Job No	Rev	Drawing Number
18/683		18/683/03
Date :	November 2018	





REV.	NOTES	DWN	DATE





Notes:
 Grid is arbitrary.
 All levels relate to OS Datum OSGM15.



PAVILION 2 BUCHANAN BUSINESS PARK STEPPES GLASGOW, G33 6HZ TEL: 0141 779 7971 WWW.SIGMA-SURVEYS.COM	10 LOCHSIDE PLACE EDINBURGH PARK EDINBURGH EH12 9RG TEL: 0131 202 7861 QUOTES@SIGMA-SURVEYS.COM
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SURVEYED	G. QUAIL	SCALE
DRAWN	GQ / JT	1:50 (A1 Sheet)
CHECKED	R. RENNIE	

RBS, NORTH BERWICK

**ELEVATION SURVEY
ELEVATIONS 1 & 2**

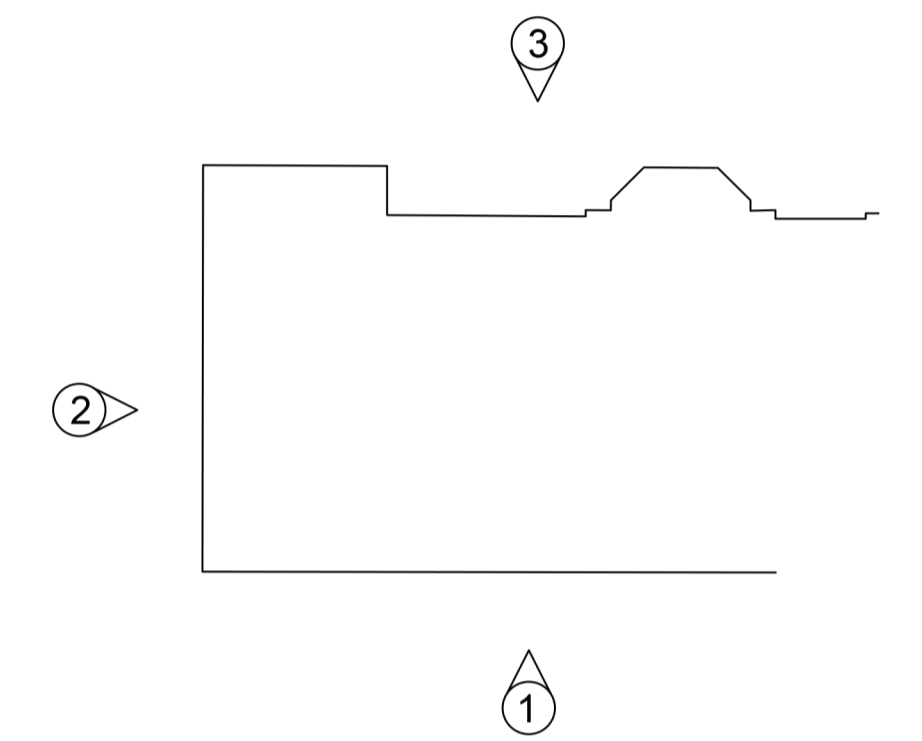
Job No	Rev	Drawing Number
18/683		18/683/02A
Date :	November 2018	

20m
15m
10m
5m



ELEVATION 3

20m
15m
10m
5m



REV.	NOTES	DWN	DATE



Notes:
Grid is arbitrary.
All levels relate to OS Datum OSGM15.



PAVILION 2 BUCHANAN BUSINESS PARK STEPPE GLASGOW, G33 6HZ TEL: 0141 779 7971 WWW.SIGMA-SURVEYS.COM	10 LOCHSIDE PLACE EDINBURGH PARK EDINBURGH EH12 9RG TEL: 0131 202 7861 QUOTES@SIGMA-SURVEYS.COM
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SURVEYED	G. QUAIL	SCALE
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CHECKED	R. RENNIE	

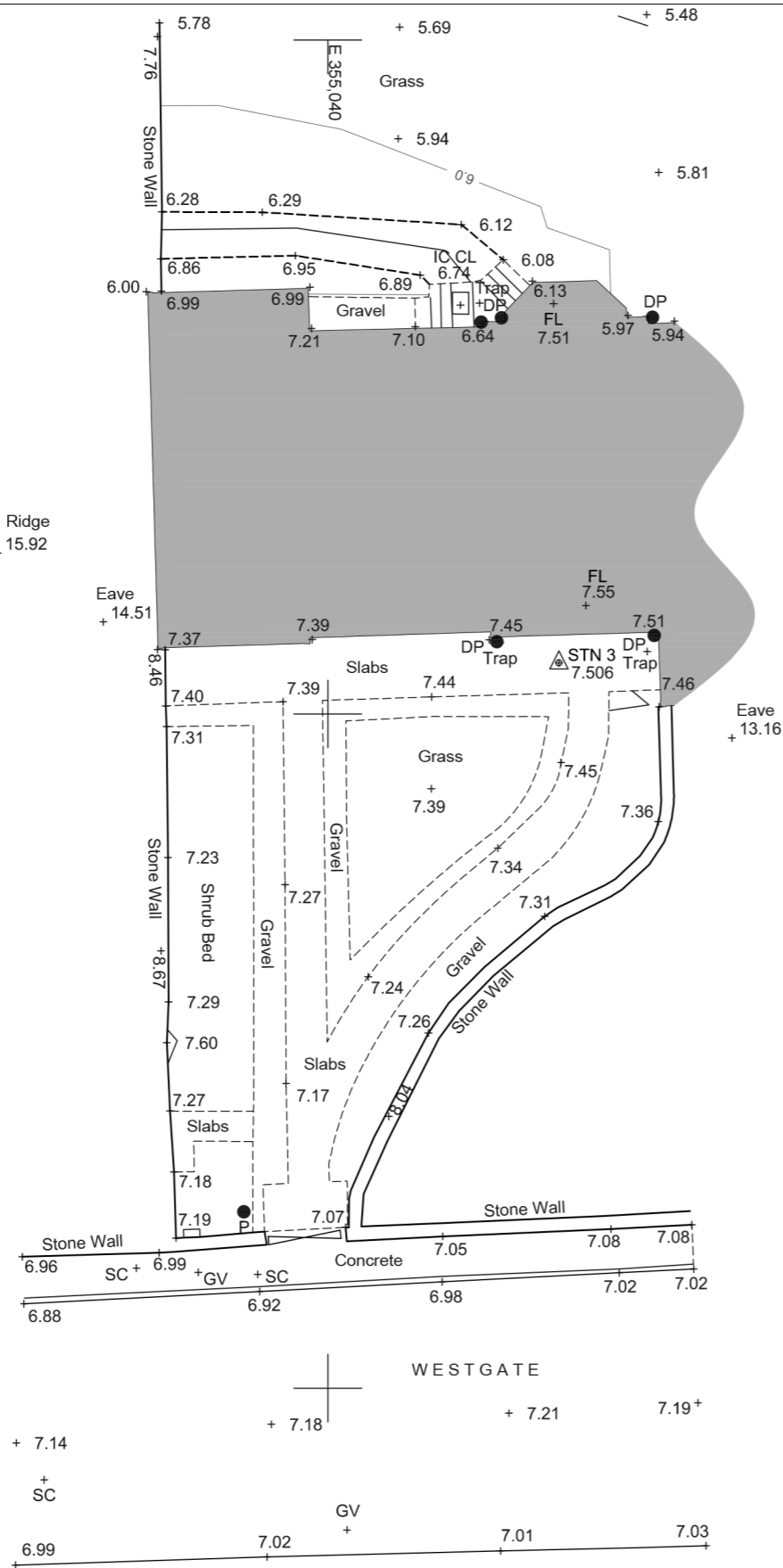
RBS, NORTH BERWICK

ELEVATION SURVEY
ELEVATION 3

Job No	Rev	Drawing Number
18/683		18/683/02B
Date :	November 2018	

N 685,300

E 355,020



N 685,280

N 685,260

E 355,060

Eave + 11.84

Ridge + 14.50

Ridge + 14.45

Eave + 11.88

Ridge + 16.70

Station	Easting	Northing	Elevation	Description
1	355066.460	685342.625	5.295	Nail
2	355046.614	685304.375	3.350	Flag
3	355046.854	685281.516	7.506	Nail

LEGEND

TOP OF EMBANKMENT	ROAD CHANNEL	
BOTTOM OF EMBANKMENT	FENCE	
FOLIAGE & HEDGES	CRASH BARRIER	
TREE	WALL	
BUSH	OVERHEAD TELECOMMS	
NOTE: SPREADS AND HEIGHTS ARE INDICATIVE ONLY	OVERHEAD ELECTRICITY	
GATE	BUILDING	
VERGE	OPEN SIDED BUILDING	
CONCRETE / TARMAC EDGE	CONTOURS	
	ROCK OUTCROP	

ABBREVIATIONS (WHERE APPLICABLE)

AIR VALVE	AV	LIGHT BOX	L Box
BED LEVEL	BL	MANHOLE	MH
BOLLARD	Bd	MARKER POST	MP
BOREHOLE	BH	MILE STONE	MS
BRITISH TELECOM	BT	MOORING RING	MR
BUSHING TRAP	Trap	PARKING METER	PM
BUS STOP	BS	POST	P
CABLE TV	CTV	POST BOX	PB
CCTV	CCTV	POWER POINT	Power Pt.
COVER LEVEL	CL	REFLECTING POST	RP
DOWN PIPE	DP	ROAD SIGN	RS
ELECTRICITY POLE	EP	RODDING EYE	RE
ELECTRICITY BOX	EB	RETAINING WALL	RTW
EARTH ROD	ER	SIGN	SN
FIRE HYDRANT	FH	STOP VALVE	SV
FLOOR LEVEL	FL	STOP COCK	SC
FLAG POLE	FP	TREE STUMP	ST
GAS VALVE	GV	TELEGRAPH POLE	TP
GATE POST	GP	THRESHOLD LEVEL	TH
GULLY	G	TRAFFIC CONTROL BOX	TCB
HALDO PILLAR	HP	TRAFFIC LIGHT	TL
INSPECTION COVER	IC	TRAIL PIT	T.Pit
INVERT LEVEL	IL	UNABLE TO LOCATE	UTL
JUNCTION BOX	JB	UNABLE TO RAISE	UTR
KERB OUTLET	KO	VENT PIPE	VP
LAMP POST	LP	WATER METER	WM
LITTER BIN	LB	WATER LEVEL	WL
LIGHT	Light		

Accuracy commensurate with scale of drawing.



REV.	NOTES	DWN	DATE



Notes:

Grid relates to OS Active Network OSTN15.
 All levels relate to OS Datum OSGM15.
 Drawing Scale Factor : 1
 Contours drawn at 0.5m intervals.



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SURVEYED	S. BROWN	SCALE
DRAWN	S. BROWN	1:200 (A3 Sheet)
CHECKED	R. RENNIE	

RBS, NORTH BERWICK

TOPOGRAPHICAL SURVEY

Job No	Rev	Drawing Number
18/683		18/683/01A
Date :	November 2018	

Eave + 13.31

Ridge + 16.08

Eave + 13.78

Ridge + 16.91

Eave + 13.80