

PETITION

COMMITTEE DATE: **09/11/2023**

APPLICATION No. **23/02009/FUL**

DATE RECEIVED: 29/08/2023

ED: **PENYLAN**

APP: TYPE: Full

APPLICANT: Dr Mohammed Gazi

LOCATION: 7 Lady Margaret Court, Colchester Avenue, Penylan, Cardiff, CF23 9AW

PROPOSAL: Change of use to class A3 Cafe/Coffee Shop with ancillary takeaway use

RECOMMENDATION: That planning permission be **GRANTED** subject to the following conditions:

- 1 C01 – Statutory Time Limit
- 2 The development shall be carried out in accordance with the approved drawing numbered:
 - CZX6/3 – ground floor proposed;
 - CZX6/5 – side elevations existing and proposed.Reason: To ensure satisfactory completion of the development and for the avoidance of doubt in line with the aims of Planning Policy Wales to promote an efficient planning system.
- 3 The premises shall principally be used as a café or coffee shop with ancillary hot food takeaway only, and for no other purpose (including any other purpose in Class A3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 or in any provision equivalent to that Class in any statutory instrument amending, revoking or re-enacting that Order).
Reason: The use of the premises for other purposes within Class A3 could detract from the amenities of nearby occupiers.
- 4 Members of the public shall only be admitted to or allowed to remain on the premises between the hours of 07:00 and 23:00 on any day.
Reason: To ensure that the amenities of other premises in the vicinity are protected, in accordance with policy EN13 of the Local Development Plan.
- 5 Sound insulation works to the floor/ceiling and party wall structures between the ground floor class A3 use and adjoining residential accommodation shall be installed in accordance with drawing titled 'Upgrading Sound Insulation Party Walls and Floors' prior to commencement of the class A3 use hereby approved, and thereafter retained.
Reason: To ensure that the amenities of occupiers of other premises in

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the vicinity are protected, in accordance with policy EN13 of the Local Development Plan.

- 6 If at any time the use of the premises requires the installation of any external extraction equipment associated with the permitted use, details of the equipment shall be submitted to and approved by the Local Planning Authority in writing prior to installation of the extraction equipment.

Reason: To ensure that the amenities of occupiers of other premises in the vicinity are protected, in accordance with policy EN13 of the Local Development Plan.

INFORMATIVES:

- 1) The applicant is advised that a commercial contract is required for the collection and disposal of all commercial wastes under section 34 of the Environmental Protection Act 1990. Non-domestic premises can have waste collected by Cardiff Council's Trade Waste Team. To discuss prices and the services offered please contact: tradewaste@cardiff.gov.uk
- 2) The granting of planning permission does not remove the need to comply with the statutory nuisance provisions of the Environmental Protection Act 1990. The rating level of the noise emitted from fixed plant and equipment on the site shall achieve a rating noise level of background -10dB at the nearest noise sensitive premises when measured and corrected in accordance with BS 4142: 2014 (or any British Standard amending or superseding that standard).
- 3) The applicant is advised that a suitable grease trap should be provided to prevent entry into the public sewerage system of matter likely to interfere with the free flow of the sewer contents, or which would prejudicially affect the treatment and disposal of such contents.

1. DESCRIPTION OF PROPOSED DEVELOPMENT

- 1.1 The application seeks planning permission to change the use from retail (class A1) to a café/coffee shop with ancillary takeaway (class A3) use and to install an extraction flue.
- 1.2 An external extraction flue (0.3m diameter) is proposed to the west side elevation, projecting approximately 1m above the eaves level. Internally the premises has a floor area of 26 square metres. Pedestrian access would be via the existing shop front door. Opening hours of 07:00 – 23:00 are proposed.

2. DESCRIPTION OF SITE

- 2.1 The application site comprises the ground floor of a two storey end of terrace building, within a group of commercial units along the south west side of Colchester Avenue, adjoined by a hot food takeaway at no. 6 Lady Margaret

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Court. The first floor is in separate use as a residential flat.

3. **SITE HISTORY**

- 3.1 20/00474/MNR – planning permission granted for the installation of an ATM installed through a secure panel to the left hand side of the shop front.
- 3.2 23/01030/FUL – planning permission granted for change of use from a barbers shop to a coffee shop at no. no. 4 Lady Margaret Court.

4. **POLICY FRAMEWORK**

4.1 Relevant National Planning Guidance:

Planning Policy Wales (Edition 11, 2021)
Future Wales - the National Plan 2040

4.2 Relevant Cardiff Local Development Plan (2006-2026) policies:

KP5 (Good Quality and Sustainable Design)
EN13 (Air, Noise, Light Pollution and Contaminated Land)
R8 (Food and Drink uses)
T5 (Managing Transport Impacts)
W2 (Provision for Waste Management Facilities in Development)

4.3 Relevant Supplementary Planning Guidance

Food, Drink and Leisure Uses (2017)
Managing Transportation Impacts (Incorporating Parking Standards) 2018
Waste Collection and Storage Facilities (2016)

5. **INTERNAL CONSULTEE RESPONSES**

- 5.1 Traffic and Transportation: On behalf of the Local Highway Authority I raise no objection for highway safety reasons to this proposed change of use. Ideally one covered long stay cycle parking space should be provided, but note it is below the threshold for requiring staff long stay cycle parking. It is noted the paved area in front of building is privately owned, so the applicant would not need to apply for a table and chairs license on the public highway.
- 5.2 Shared Regulatory Services Neighbourhood Services Team: Conditions are requested with regard to: plant equipment noise; kitchen extraction; use of premises and opening hours.
- 5.3 Waste Management: Current site plans make no reference to the storage of waste and recycling. A location for the storage of waste and recycling must be included on future site plans. A change of use to A3 may lead to an increase in the volume of waste produced. All A3 units are required to provide litter bins at the front of the unit to prevent littering on the adopted highway. The tenant will be required to provide, service and empty a litter bin to be placed at the

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front of the unit during opening hours and removed from the highway during closing hours. (Please refer the applicant to Paragraph 5.12 of the Food, Drink and Leisure Uses Supplementary Planning Guidance: 2017). Please remind the agent/applicant that a commercial contract is required for the collection and disposal of all non-domestic waste. By law (Environmental Protection Act, 1990, section 34) all non-domestic premises have a duty of care to ensure that their waste is transferred to and disposed of by a registered waste carrier. Please be aware that Welsh Government are currently [reviewing](#) Part IV of the Environment (Wales) Act 2016, and are expected to enforce new regulations by April 2022. The proposed regulations will make it a legal requirement for all businesses and non-domestic waste producers to separate the following waste streams for collection; - Food waste (from premises producing more than 5kg per week); Paper/card; Glass; Metal/Plastic; Small Electricals; Textiles; Wood. As a result of this proposed change, recycling and waste storage areas will need to be designed accordingly. Please refer the agent/architect to the Waste Collection and Storage Facilities Supplementary Planning Guidance for further relevant information. www.cardiff.gov.uk/wasteplanning

6. **EXTERNAL CONSULTEE RESPONSES**

6.1 South Wales Police: no comments received.

7. **REPRESENTATIONS**

7.1 The application was publicised via the Council's website and by means of neighbour notification letters, and display of site notice on 15/09/2023. A petition of objection was received, signed by 59 residents with addresses in Cardiff, 44 of which are within the area and could reasonably be affected by the matter. Full details are viewable online, their comments are summarised as follows:

- a) *The unit is very small with limited size and manoeuvring space for wheelchairs and prams;*
- b) *Opening hours later than other cafes and coffee shops;*
- c) *No details of type of food;*
- d) *There are other food outlets within 1 mile of the site;*
- e) *Would set a precedent for other units within Lady Margaret Court;*
- f) *Potential smell disturbance to adjacent premises and residential flats;*
- g) *Increased noise disturbance;*
- h) *Increased anti-social behaviour;*
- i) *Increased litter;*
- j) *Impact upon health and wellbeing as the site is approximately 300m from a school.*

7.2 The applicant has provided a response to the petition of objection, summarised as follows:

Ironically some of the names are not even from the shop vicinity but in fact from 3 miles away. The Council has granted permission for a coffee shop

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serving hot food at number 4 Lady Margaret Court and yet none of those objecting in the current petition for number 7 have presented any objection to number 4. It is ironic the owner of the fish and chip in number 6 is objecting to the possible smell arising from serving hot food at number 7 when the worse smell is that of frying chips for many hours on end. The current petition against number 7 is clearly political, based on false assumptions and unsupported statements.

8. **ANALYSIS**

8.1 The principal issues in the determination of this application concern the acceptability of the proposed use and the effect of the proposal upon the character of the area and the amenity of neighbouring occupiers.

8.2 Land Use Policy

Whilst the site has no specific designation or allocation and falls outside of any designated district centre or local centre with retail policy protection, it is located within a local shopping area. In relation to the proposed change of use of the retail unit, Para 5.282 of the LDP states 'In addition to local centres identified on the proposals Map, there are numerous smaller groups of shops and individual 'corner shops' across the county that provide valuable shopping facilities to surrounding communities. Proposals that could lead to the loss of such local shops will be assessed having regard to the role of those shops in meeting local shopping needs and the viability of the premises for continued shopping use. In this instance the unit has been vacant a number of months, and is of modest scale (26 sqm). The loss of retail in this location subsequently does not raise any retail policy concerns. In relation to the proposed A3 use (coffee shop) Policy R8 (Food and Drink Uses) is of relevance to the assessment of the proposal. Policy R8 sets out the most appropriate locations for food and drink uses. Although the guidance generally directs such uses to designated centres, it is recognised that food and drink uses may be acceptable in other commercial areas, depending on the character of the area and whether there are residential properties nearby. Assessed against the above policy framework, the application raises no land use policy concerns.

8.3 Impact upon the Character of the Area

Policy KP5 seeks to ensure that new development responds '*to the local character and context of the built and landscape setting so that layout, scale, form, massing, height, density. Colour, materials, detailing and impact on the built and natural heritage are all addressed within development proposals*'. The proposed external extraction flue would be of slender appearance and sited at the side towards the rear on a secondary elevation of minimal architectural merit, not excessively prominent from the public realm. As such, it is considered that the proposal would not have any adverse visual impact.

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8.4 Impact upon Neighbouring Occupiers

Policy KP5 seeks to ensure that 'no undue effect on the amenity of neighbouring occupiers' results from development and Policy EN13 seeks to ensure that no undue impact results as a result of sources of pollution.

Policy R8 of the LDP identifies that A3 (food and drink) uses are most appropriately located in the City Centre, the Bay and District and Local Centres, and the Food, Drink and Leisure Uses SPG identifies that A3 (food and drink) uses are most appropriately located in the City Centre Principal Shopping Area, District and Local Centres and the City Centre Principal Business Area.

It is noted that the site is not located within a designated commercial centre and there is residential accommodation at upper levels of the building and to the west side. However, the premises is of very small scale and located within a parade of commercial uses including a class A3 hot food takeaway premises adjacent at no. 6 Lady Margaret Court and a coffee shop at no. 4. Furthermore, the site is located on a busy road. The use would be restricted to a café or coffee shop which would have potentially have lesser amenity impact than the existing adjacent premises which is open up to 23:00 and has no planning restriction upon use or opening hours. Neighbourhood Services have no objection. Conditions are considered necessary: (3) to prevent any future changes of use within the A3 use class to a more harmful use such as a public house; (4) to restrict the opening hours to 07:00 – 23:00; (5) to require sound insulation to the structure separating the premises with the adjoining first floor residential accommodation to be installed in accordance with the submitted specifications; and (6) to require details of any future external kitchen extraction system to be submitted and agreed. Having regard to the above it is considered that the proposal would not have any unreasonable amenity impact.

8.5 Transportation

Policies KP8, T1, T5 and T6 are relevant in respect of sustainable transport and ensuring there is no detrimental effect to the existing transport network. The Managing Transportation Impacts (Incorporating Parking Standards) SPG identifies a minimum requirement of no car parking spaces and cycle parking for staff at a ratio of 2 per 100 square metres for class A3 uses. The proposed use is therefore considered to be car parking policy compliant. Having regard that the premises is of very small scale below the threshold for staff cycle parking space to be provided, it is not considered reasonable for cycle parking to be provided within the premises in this instance.

8.6 Representations

The petition of objection received is noted. Specific issues are addressed as follows:

a) Small size of unit. There is no planning requirement specifying a minimum

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internal size of a commercial food & drink premises. Internal circulation and manoeuvring space would be controlled as required by the Building Regulations and Food Premises licensing.

- b) Opening hours. The proposed opening hours are considered appropriate having regard to the context of the site and that the adjacent class A3 hot food takeaway premises is open up until 23:00 and has no planning restriction upon opening hours, as detailed in the analysis.
- c) No details of type of food. The type of food is not required to be provided as that cannot specifically be controlled by planning. Class A3 café and coffee shop uses are considered appropriate as detailed in the analysis.
- d) Other food outlets within 1 mile of the site. The proposed use for food & drink purposes is considered appropriate as detailed in the land use policy analysis. Competition is not a material planning matter.
- e) Precedent for other units within Lady Margaret Court. Separate applications would be required for any future food & drink uses within other premises, which would be considered on their own merits.
- f) Potential smell disturbance. It is considered that the proposal would not result in unacceptable odour impact. Condition 6 would require details of any future kitchen extraction system to be submitted and agreed prior to installation.
- g) Increased noise nuisance. It is considered that the proposal is not likely not likely to result in unreasonable harm to the amenity of nearby residents, as detailed in the above analysis.
- h) Antisocial behaviour. It is considered that the proposed use as a café/coffee shop with ancillary takeaway would not intrinsically result in antisocial behaviour, the proposed use is considered as detailed within the analysis. Condition 3 would prevent any future changes of use within the A3 use class to more harmful uses such as a public house, and condition 4 would restrict opening to the hours of 07:00 – 23:00.
- i) Increased litter. There is an existing litter bin within close proximity to the application site.
- j) Impact upon health and wellbeing, and proximity to school. The healthiness of food products sold from a premises cannot be controlled by planning, and there is no planning policy specifying a minimum distance between schools and commercial food & drink premises.

The response from the applicant is noted.

8.7 Other Legal Considerations

Crime and Disorder Act 1998 – Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed decision.

Equality Act 2010 – The Equality Act 2010 identifies a number of ‘protected characteristics’, namely age; disability; gender reassignment; pregnancy and

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maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership. The Council's duty under the above Act has been given due consideration in the determination of this application. It is considered that the proposed development does not have any significant implications for, or effect on, persons who share a protected characteristic.

Well-Being of Future Generations Act 2016 – Section 3 of this Act imposes a duty on public bodies to carry out sustainable development in accordance with the sustainable development principle to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs (Section 5). This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the recommended decision.

8.8 Conclusion

It is concluded that the application is acceptable in accordance with the planning policies listed, and is recommended that planning permission be granted, subject to conditions.



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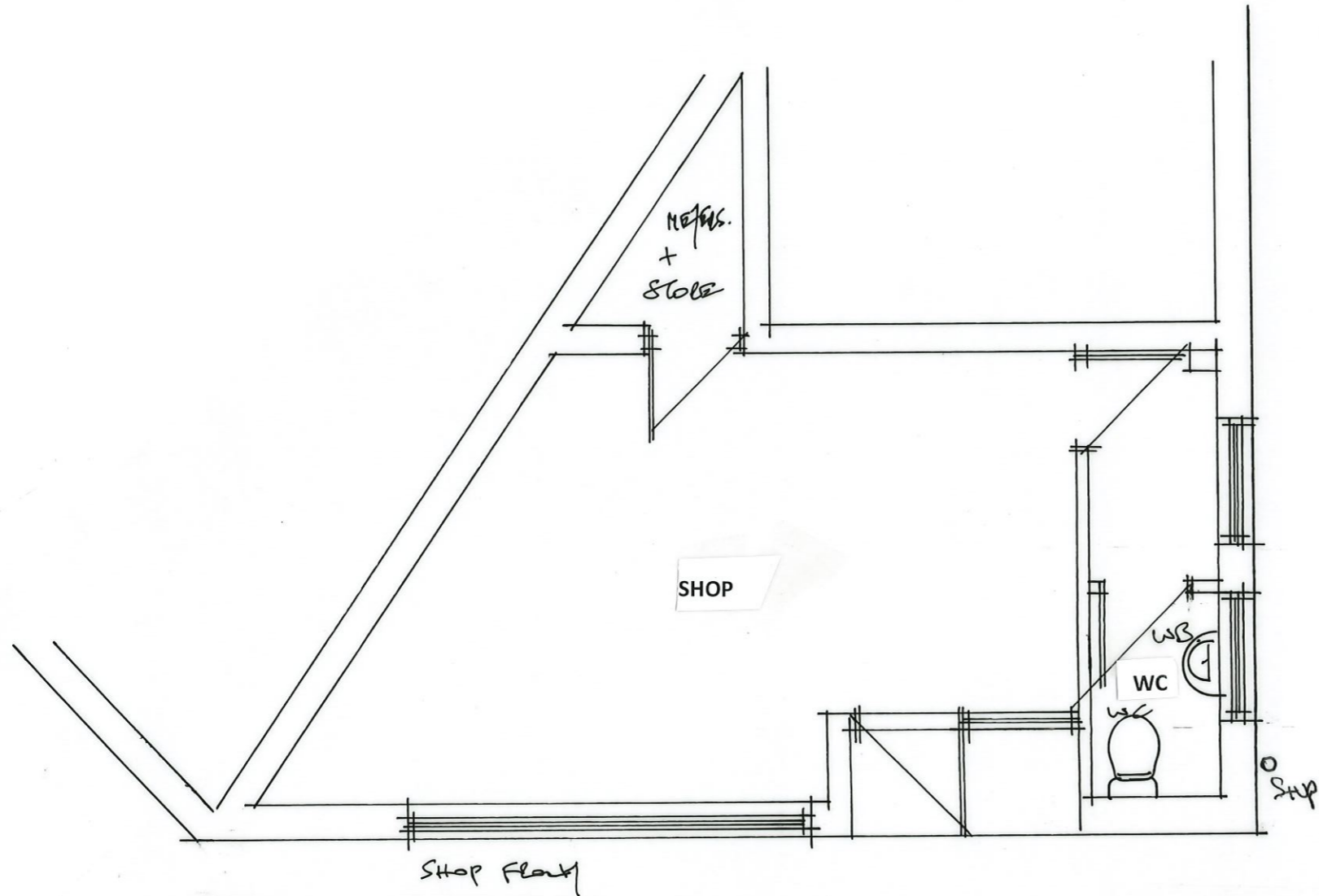
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DESCRIPTION

DEVELOPMENT AT
 7 LADY MARGARET COURT
 PENYLAN
 CARDIFF

August 2023 PLAN NO. CZX6/4

SITE PLAN PROPOSED 1:500 at A3



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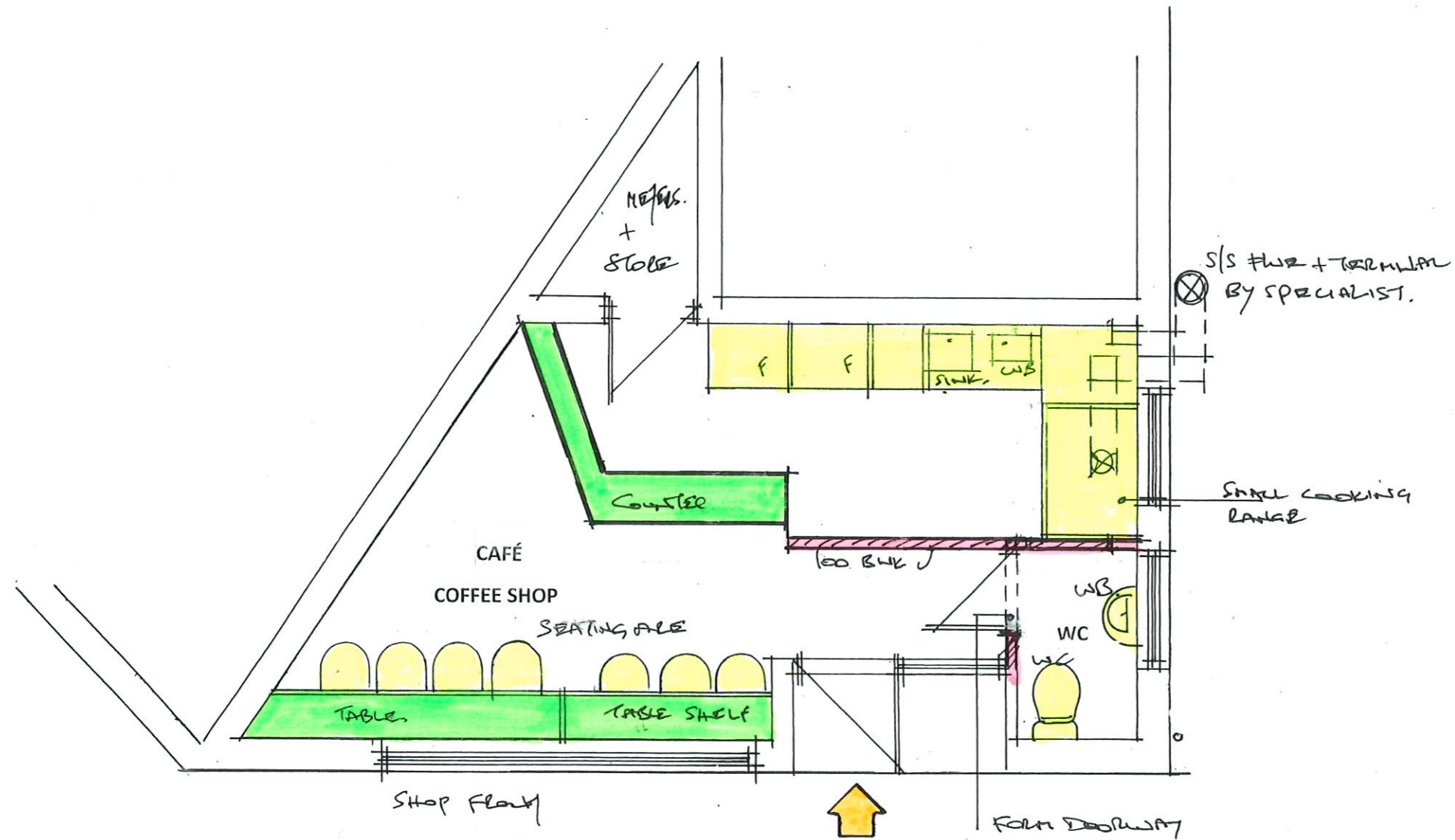
DESCRIPTION

DEVELOPMENT AT
 7 LADY MARGARET COURT
 PENYLAN
 CARDIFF

August 2023 PLAN NO. CZX6/2

GROUND FLOOR EXISTING


1:50 at A3



GROUND FLOOR PROPOSED 1:50 at A3

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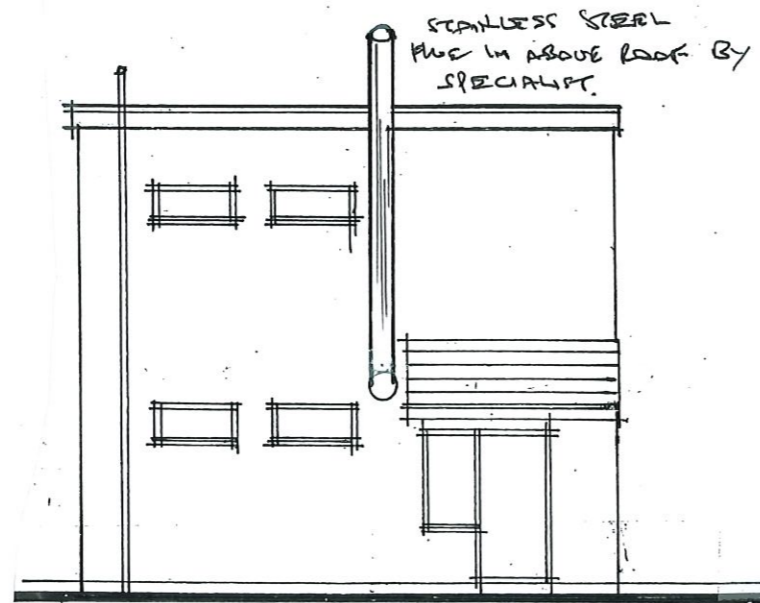
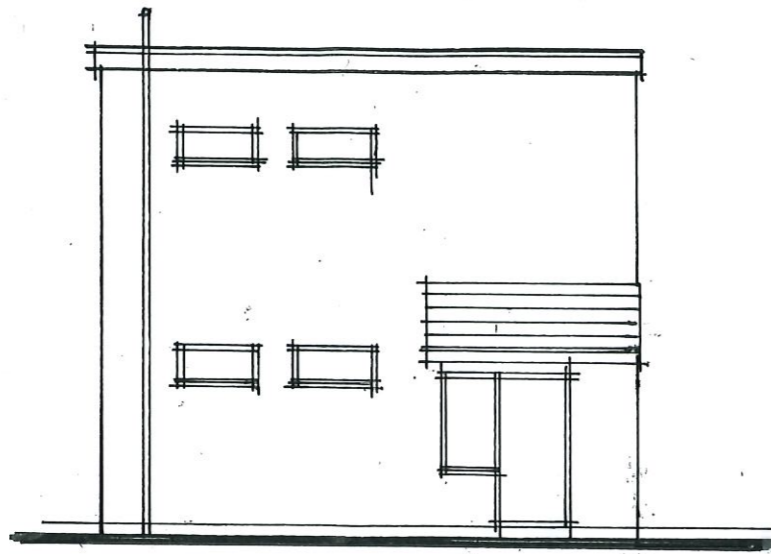
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DESCRIPTION

DEVELOPMENT AT
 7 LADY MARGARET COURT
 PENYLAN
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August 2023 PLAN NO. CZX6/3



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DEVELOPMENT AT
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SIDE ELEVATIONS EXISTING & PROPOSED 1:100 at A3

August 2023 PLAN NO. CZX6/5