

LOCAL MEMBER OBJECTION

COMMITTEE DATE: 19/06/2019

APPLICATION No. **19/0618/MNR**

DATE RECEIVED: 08/03/2019

ED: **CATHAYS**

APP: TYPE: Full Planning Permission

APPLICANT: MR GHANI

LOCATION: 104 RICHARDS STREET, CATHAYS, CARDIFF

PROPOSAL: RETENTION OF CHANGE OF USE FROM C4 HOUSE IN
MULTIPLE OCCUPATION TO 7 BEDROOM SUI GENERIS
HOUSE IN MULTIPLE OCCUPATION

RECOMMENDATION 1: That Planning Permission be **GRANTED** subject to the following conditions:

1 The development shall be carried out in accordance with the following approved plans:

- BDD7/2
- BDD7/3
- BDD7/4a

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.

2 Within one month of the date of this approval seven under cover and secure cycle parking spaces, as identified on the approved plans, shall be provided and shall thereafter be retained and maintained at all times.

Reason: To ensure that secure cycle parking facilities are provided to encourage other modes of transport over the private car.

3 No more than 7 occupants shall reside at the property at any one time.

Reason: To ensure a suitable level of internal and external amenity space is retained for future occupiers to use in accordance with Policy KP5 of the Cardiff Local Development Plan 2006 – 2026.

RECOMMENDATION 2 The applicant be advised that the property may now be licensable under Part 2 of the Housing Act 2004 and in this respect they should contact Shared Regulatory Services on 0300 123 6696 to confirm if a license is required.

1. DESCRIPTION OF PROPOSED DEVELOPMENT

- 1.1 This application seeks planning permission to retain the use of the property as a Sui Generis 7 bedroom House in Multiple Occupation.
- 1.2 Internally the property accommodates two bedrooms, a lounge/kitchen and toilet on the ground floor; three bedrooms and a bathroom on the first floor; and two bedrooms in the second floor roofspace.
- 1.3 Externally a combined amenity space of approximately 46 square metres is provided.

2. DESCRIPTION OF SITE

- 2.1 The site comprises a two storey building located within a terrace of two storey properties within the Cathays Ward of Cardiff.

3. RELEVANT SITE HISTORY

97/1995W – First floor extension and new roof over existing ground floor. Planning permission refused 5th December 1997.

10/730C – Ground and first floor extension and rear dormer. Planning Permission granted 21st June 2010

4. POLICY FRAMEWORK

- 4.1 The site lies within a residential area as defined by the proposals map of the Cardiff Local Development Plan 2016.

4.2 Relevant National Planning Guidance:

- Planning Policy Wales (Edition 8, 2016)
- Planning Policy Wales TAN 12: Design
- Planning Policy Wales TAN 21: Waste

4.3 Relevant Cardiff Local Development Plan Policies:

- Policy KP5 : Good Quality and Sustainable Design
- Policy H5 : Sub-Division or Conversion of Residential Properties
- Policy T5 : Managing Transport Impacts
- Policy W2 : Provision for Waste Management Facilities in Development

4.5 Relevant Supplementary Planning Guidance:

- Managing Transport Impacts (Incorporating Parking Standards) (2018)
- Houses in Multiple Occupation (HMO's) (2016)
- Waste Collection and Storage Facilities (2016)

5. **INTERNAL CONSULTEE RESPONSES**

- 5.1 Waste Management have been consulted and have advised that the present allocation of bins at the property will be suitable for 7 occupants. Current storage is within the front garden and this will be retained.

6. **EXTERNAL CONSULTEE RESPONSES**

- 6.1 South Wales Police South Wales Police recognise that Houses in Multiple Occupation (HMO's) provide an important source of housing and form part of a balanced housing provision mix. With reference to the application South Wales Police believe that the characteristics of an HMO and its more transient population could result in the occupiers being at a significantly at a higher risk of crime than single family occupied dwellings. There is concern that high concentration levels of HMO's could have a negative impact on crime levels in an area and this is supported by Cardiff Supplementary Planning Guidance Houses in Multiple Occupation (HMO) October 2016. Furthermore HMO's can have an impact on crime, disorder, parking, nuisance and general neighbourhood cohesion and research carried out by the Police Foundation (2015) indicates that HMOs had higher burglary, violent incidents and fire risks.

As there is already a high concentration level of HMO's within the vicinity South Wales Police object to this application.

7. **REPRESENTATIONS**

- 7.1 Councillors Mackie, Weaver and Merry object to this application. Their objection is as follows:

I am writing on behalf of myself, Cllr Weaver and Cllr Merry to object to these planning applications on the following grounds:

"It contravenes our declared policy to change a HMO from a C4 to a 7 bedroom Sui Generis HMO within an area to preserve the character and amenity of the area

I understand this house has been used to house more people than previously agreed

The plans give no indication of amenity space for bins or cycles

The minimum amenity space for a HMO might not be met as laid out in our HMO SPG

We have had many issues in Cathays that we have fought long and hard on. It would not be appropriate to allow this if has been done without approval especially if it does not meet our standards."

7.2 An objection has been received from the owner of 101 Richards Street. They object because the property was converted to a HMO over 7 years ago without the required planning permission.

8. **ANALYSIS**

8.1 This application seeks planning permission to retain the use of the property as a 7 bedroom Sui Generis HMO. Council records indicate that the property had previously been used for multiple occupancy since at least mid 2010. There are no records that the property has been used as family accommodation since that time. The applicant describes the previous use of the property as a C4 HMO. Whilst planning permission has not been granted for the change of use of the property to Use Class C4. It should be noted that prior to the introduction of Use Class C4 in February 2016 planning permission was not required to use the property as a HMO for up to six residents.

Use Class C4 allows for tenanted living accommodation occupied by up to six people, who are not related and who share one or more basic amenities, as their only or main residence therefore the main issue for consideration is the impact one additional resident will have on the character of the area and the community.

8.2 **Policy considerations** - In respect of the conversion of the property to a 7 bedroom sui generis HMO Policy H5 of the adopted Cardiff Local Development Plan is considered relevant. Further guidance can also be found in the adopted Houses in Multiple Occupation Supplementary Planning Guidance.

8.3 Policy H5 of the LDP is considered to be a prescriptive policy whereby as long as the relevant criteria is met there is unlikely to be any objection to such proposals. It advises that:

“Proposals for any conversion to flats or Houses in Multiple Occupation will be permitted where:

- i. The property is of a size whereby the layout, room sizes, range of facilities and external amenity space of the resulting property would ensure an adequate standard of residential amenity for future occupiers.*
- ii. There would be no material harm to the amenity of existing, nearby residents by virtue of general disturbance, noise or overlooking.*
- iii. The cumulative impact of such conversions will not adversely affect the amenity and/or the character of the area.*
- iv. Does not have an adverse effect on local parking provision.”*

8.4 The approved Supplementary Planning Guidance on HMO's further expands on this Policy and aims to provide background information on, and provide a rationale for how the council will assess applications for planning permission to create new C4 and Sui Generis HMOs. It aims to identify the threshold at which it is deemed that the concentration of HMOs in an area has reached a level considered to adversely impact upon the community. It is recognised that HMOs can provide an important source of housing, and it is recognised that demographic change has driven many of the changes that have seen traditional

family homes become HMOs. HMOs are popular accommodation source for many groups, including students, young professionals, migrant workers and often people on lower incomes.

However, in spite of the above, concentrations of HMOs, clustered in small geographical areas can detract from the character of the area and actively contribute towards a number of perceived problems, including, but not limited to, those listed below. It is considered that this may conflict with policy KP13 of the LDP which aims to improve the quality of life for all.

- Increased population density, leading to greater demand for infrastructure, such as waste collections and on-street parking.
- Higher proportion of transient residents, potentially leading to less community cohesion, undermining existing community facilities
- Areas of higher HMO concentrations becoming less popular with local residents, with many properties taken out of the owner-occupier market.
- A proliferation of properties vacant at certain points of the year
- Subsequent impact on crime, local centre viability, as a result of the number of properties temporarily vacant for long periods.

Having identified some of the issues caused by HMOs it is necessary to determine the threshold at which new HMOs may cause harm to a local area. This threshold will resist further HMOs in communities that already have a concentration above this limit, while also controlling the growth of HMOs in communities below this threshold. A two-tier threshold will therefore be applied to determine when an area has reached the point at which further HMOs would cause harm. In Cathays and Plasnewydd the figure of 20% is to be applied' and in all other Wards, the figure of 10% is to be applied.

Therefore when considering HMO's within Cathays or Plasnewydd, if more than 20% of the dwellings within a 50m radius of the proposed HMO are already established HMOs (i.e. either C4 or sui generis in Planning terms) then this development would be considered unacceptable. In other Wards the figure would be 10%.

Having regard to the "cumulative impact" of such conversions, in respect of this application, an analysis has been made on the extent of HMO's (including those defined as such under Sections 254 to 259 of the Housing Act 2004 and those covered under the Additional Licensing Scheme which operates within the Cathays and Plasnewydd Wards of Cardiff) against the threshold limits identified above. As the application site is located within the Cathays Ward of Cardiff a 20% threshold limit will be relevant and having undertaken such checks within 50m of the application site it was found that there were 21 HMO's within 50m of the application which equates to 65.5% of the properties. This is above the 20% limit which would trigger the active consideration of negative cumulative impact consequences

Notwithstanding the above, it should be noted that while Supplementary Planning Guidance is a material consideration when making planning decisions is not the sole planning consideration and other factors may also influence the decision making process. Each application will be considered on

its individual merits and it should be noted that regardless of whether this application is approved or refused it will still remain in use as a HMO (up to 6 persons) and will not revert back to C3 family accommodation unless the owner decided otherwise.

- 8.5 **Room Sizes** – The Cardiff HMO Licensing Fire & Safety Standards (updated in 2014) sets standards in terms of amenity, space standards and facilities which must be adhered to in order to obtain a License from the Council. From a planning perspective, paragraph 6.1.1 of the adopted HMO SPG identifies that this would be the minimum that would be expected to be achieved for all applications for both C4 HMO's and larger sui generis HMO's. Having had regard to this criteria the submitted plans indicate that these standards would be met.
- 8.6 **Waste** – Policy W2 of the Cardiff Local Development Plan seeks to ensure that adequate provision is made for waste management facilities within new developments, in order to aid the Council in meeting the challenging waste recycling targets set by European and National targets. Facilities provided should be secure, unobtrusive and easily accessible.

The adopted Waste Collection and Storage Facilities SPG supplements policies adopted in the Local Development Plan relating to the provision of waste management facilities in new development. Paragraph 4.12 of the approved SPG on Waste Collection and Storage Facilities advises that for Houses in Multiple Occupation the recommended bin allocation for between 6 & 8 residents is as follows :-

1 x 240L bin for general waste
1 x 240L bin for garden waste (if required)
2 x 25L bins for food waste
Green bags for recycling (240 litres).

Waste Management have advised the current facilities for the storage of waste and recycling is acceptable.

- 8.7 **Transportation** - Policy KP8 of the adopted Cardiff Local Development Plan seeks to reduce travel demand and dependence on the car. It identifies that to accommodate the planned growth levels predicted for the city, existing and future residents will need to be far less reliant on the private car and seeks to ensure that more everyday journeys are undertaken by sustainable modes of transport. Policy T5 of the Cardiff Local Development Plan also identifies that all new development for which planning permission is required will contribute to reducing reliance on the private car, in line with national planning policies and the strategic transport objectives of the LDP. The Council's approved Supplementary Planning Guidance on Managing Transportation Impacts (Incorporating Parking Standards) supplements the LDP in this respect and sets out the Council's approach to assessing and managing the transport impacts of developments within the City. Section 6 of the SPG refers to parking standards and is therefore an important tool to be used in managing demand for travel by car and encouraging a shift to sustainable transport modes.

In respect of car parking the SPG identifies that the current use does not require any off street car parking spaces to be policy compliant. When assessed against the SPG the change of use of the property to a sui generis HMO also does not require any off street car parking spaces. As such the proposal is policy compliant with no off street car parking facilities.

With respect to cycle parking the use of the property as a 7 person sui generis HMO requires 1 undercover and secure cycle parking space per bedroom to be policy compliant. As this application seeks to retain the use of the property as a 7 bedroom sui generis HMO then 7 undercover and secure cycle parking spaces will need to be provided. Details have been submitted showing the provision of 7 under cover and secured cycle parking

- 8.8 **Amenity Space** – Policy H5 of the Cardiff Local Development Plan deals with the sub-division or conversion of residential properties to flats or HMO's. Criterion i) advises that planning permission will be granted where "The property is of a size whereby the layout...external amenity space of the resulting property would ensure an adequate standard of residential amenity for future occupiers."

This is further reinforced by the Houses in Multiple Occupation SPG which advises that amenity space is important in retaining a quality of life for people living within the dwelling. Paragraph 6.3.2 of the SPG states "The City of Cardiff Council has typically used the figure of 25m² as the minimum expected external useable amenity space for C3 dwellings, i.e. for those dwellings up to 6 persons. This level should also apply to C4 properties. Each additional person would be expected to have 2.5m². As such, for example, the minimum expected for a 7 bed HMO would be 27.5m² of external amenity space. Each additional person should result in a corresponding increase of 2.5m²."

In respect of amenity space as the application seeks permission for 7 occupants to reside at the property then 27.5 square metres will be required. Having undertaken an assessment of the property an amenity space of approximately 56 square metres will be available for occupiers to use. However when taking into consideration provision for bin and cycle storage facilities this will be reduced to approximately 46 square metres. The minimum amenity space requirement as specified in the HMO SPG is 27.5 square metres therefore the proposed amenity space is considered unacceptable.

- 8.9 **Relevant Planning Appeal** – Notwithstanding the consideration of each case on its merits it should be of note that since the adoption of the SPG on HMO's the Council has tried to resist the change of use from C4 to sui generis HMO's where the threshold identified in the SPG has been exceeded. In this respect 70 Gelligaer Street (reference APP/Z6815/A/17/3169335) - change of use of an existing C4 HMO to a 7 person HMO is of note. In considering the appeal and awarding costs to the applicant the appointed Planning Inspector stated:

"3. Policy H5 of the Cardiff Local Development Plan, 2016 (LDP) is permissive of conversions to Houses in Multiple Occupation (HMO) subject to a number of criteria being met. These include that there would be no material harm to the

living conditions of nearby residents and that the cumulative impact of conversions should not adversely affect the amenity and/or the character of the area. Planning Policy Wales (PPW) requires local planning authorities to promote sustainable residential environments and advises that the cumulative impact of, amongst other things, conversions should not be allowed to damage and area's character or amenity.

4. The Council has produced supplementary planning guidance (SPG) to provide background information and provide a rationale for how decision makers should approach HMOs. The SPG was adopted following public consultation and I afford it considerable weight. The SPG sets thresholds above which it deems that the concentration of HMOs would have an adverse impact on the community and includes advice relating to proposals to increase the number of occupants above 6.

5. In this case the SPG threshold of 20% has been exceeded. However, the appeal property can lawfully be used as a 6 person HMO and, whatever my decision, the appeal proposal would not result in an increase in HMOs or have any effect on the percentage of HMOs in the area. The appeal property is in use as a 6 person HMO and the issue narrows, therefore, to the impact an additional person living in this property would have on the character of the area and the community.

6. With regard to proposals to increase the number occupants in a Class C4 HMO, the Council's SPG states: 'Even though it is already an HMO, if the concentration in the area is high, then by definition, the creation of the larger sui generis HMO will only likely heighten the issues caused by HMOs'. However, I agree with Council officers that: 'SPG's are guidance and whilst they are a material consideration when making planning decisions they are not the sole planning consideration and other factors may also influence the decision making process'. I have considered the comments in the SPG regarding the impacts HMOs can have on communities. Whilst this provides useful background each case must be determined on its merits and actual harm must be demonstrated in order for planning permission to be properly withheld.

7. The reason for refusal alleges that the proposal to increase the number of people living in the appeal property from 6 to 7 would lead towards less community cohesion and undermine the objectives of securing a sustainable mixed use community, lead to an increase of cumulative demand on social, community and physical infrastructure and further exacerbate the negative impacts caused by HMOs in respect of crime and anti-social behaviour.

8. The Council present no evidence to demonstrate that the social, community or physical infrastructure in the area is not able to accommodate demand or that its continued provision is threatened by the appeal proposal. The Council's Waste Management service state that the proposal would have little impact on the production of waste and that the current arrangements are sufficient.

9. The objection from South Wales Police is predicated on general concerns regarding the impact of HMOs and a record of incidents 'in the near vicinity'. In

an e mail to the appellant the Police admit that 'near vicinity' in this case included 9 post code areas. In its response to the planning application the Police say this: 'Where the density of HMO's in a street/area exceeds 20% then South Wales Police will consider objecting to any proposed development upon confirmation of existing HMO density by the planning officer. There are 38 properties within a 50m radius of 70 Gelligaer Street and records show that there are 16 registered HMO's within this area. This equates to 42% HMO's in the vicinity of the application. Due to the above factors South Wales Police would wish to object to this application'.

10. I do not make light of the concerns of the Police or others with regard to crime or anti-social behaviour. However, the Police's objection appears to be a generic response based on general background data. The Council state that 6 crimes were recorded 'for the length of Gelligaer Street' but not what they were or whether they were related to HMOs. Nor have I seen or read anything to demonstrate that Gelligaer Street suffers to a greater extent than anywhere else from such problems or that the addition of one person would make any material difference if it does.

12. For the reasons given above and having regard to all matters raised, I find that the proposed development does not conflict with local and national policies designed to secure and maintain sustainable communities and that it would not have an adverse impact on the living conditions of neighbouring residents. Consequently, I conclude that the proposal complies with Policies H5 and KP5 of the LDP and that the appeal should be allowed. "

- 8.10 Further to this appeal decision the Council has also resisted the change of use of a C4 HMO to an 8 bedroom HMO at 36 Wyeverne Road and the change of use of a C4 HMO to a 9 bedroom HMO at 34 Wyeverne Road. Both appeals were allowed with the Planning Inspectors taking the view that the proposals would not cause any adverse effects on the character and/or amenity of the area and were in compliance with Policy H5 of the LDP.

The Council has also been successful in defending its position with respect to the refusal to grant C4 and larger sui generis HMO's – 51 Llantrisant Street, 60 Alfred Street and 22 Flora Street. However these applications related to the loss of C3 residential accommodation. In this present case the application site already benefits from being a C4 HMO and therefore whilst these appeal decisions are worth noting the site circumstances are different to that which is presently before Committee.

- 8.11 In regards to comments made by the Ward Councillors the following should be noted:

"Each application has to be considered on its merits in light of current and national planning policy together with consideration to relevant planning appeals.

This application seeks to regularise the current use of the property as a 7 bedroom HMO

Details with respect to amenity space, cycle storage and waste storage have been submitted, are considered acceptable and are referenced earlier in this report.

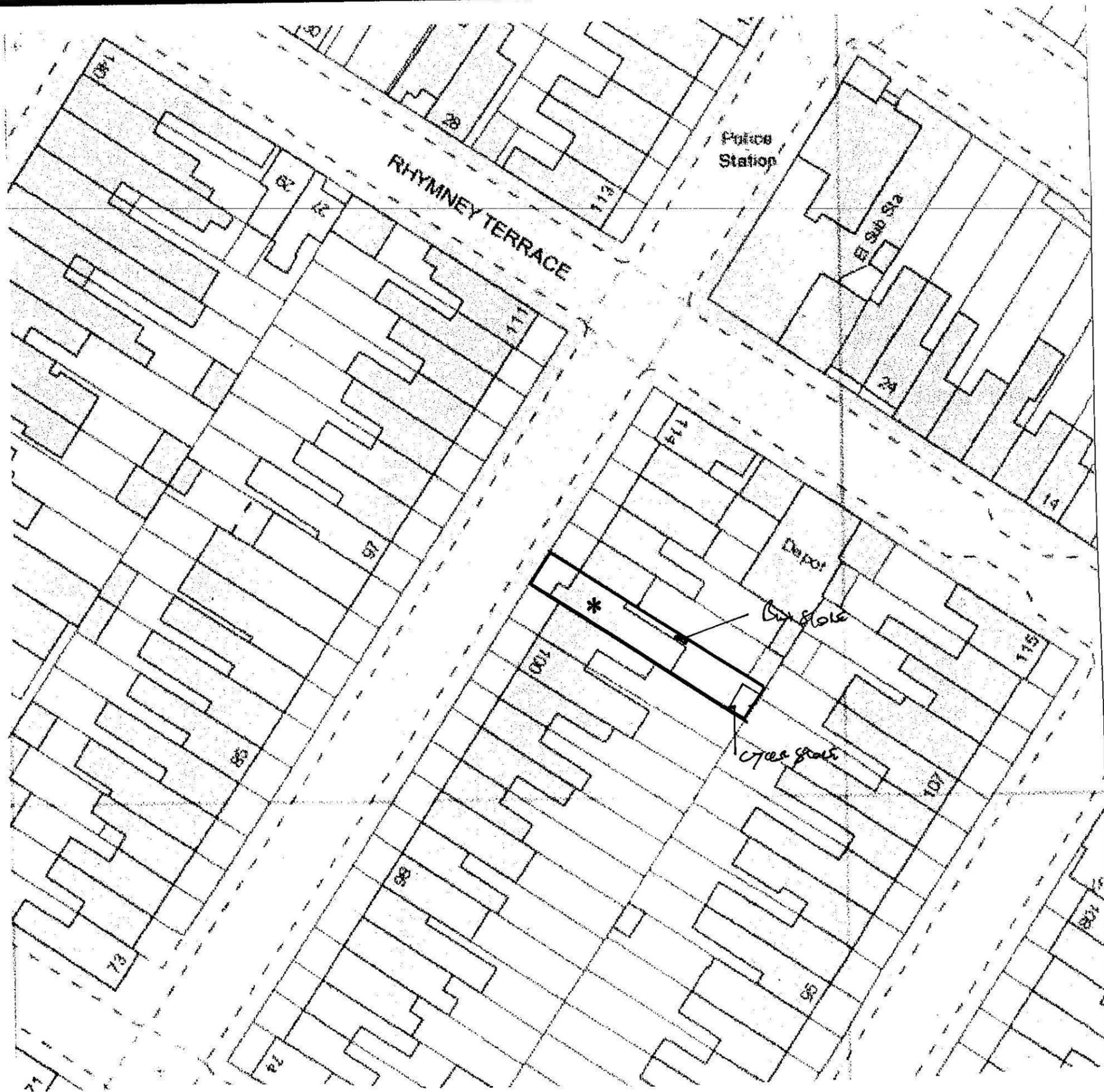
9. **CONCLUSION**

- 9.1 Having taken all of the relevant factors into consideration it is concluded that whilst the threshold of HMO's as stated in the SPG has been exceeded in respect of the locality the Council is mindful of its previous attempt to resist a similar proposal in respect of 70 Gelligaer Street where costs were awarded to the applicant for the Council's unreasonable actions, and the two other examples quoted where Inspectors did also not find in favour of the Council. In this case the property can lawfully be used as a HMO and a refusal will not result in the property reverting back to C3 residential accommodation. It is however considered necessary to include a condition that will restrict the number of occupants to seven.

Further to the above report it is considered that there are insufficient grounds to refuse this application and it is therefore recommended that planning permission be granted, subject to conditions.

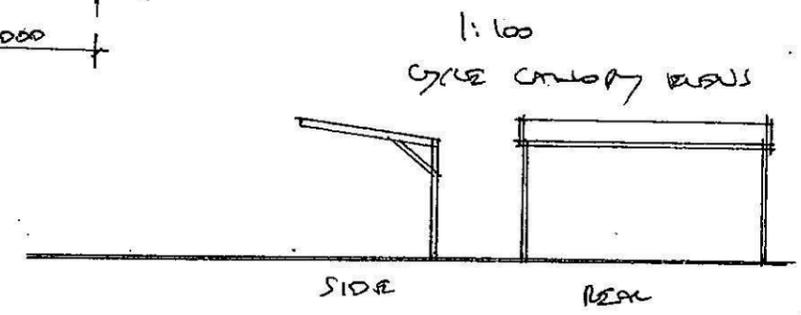
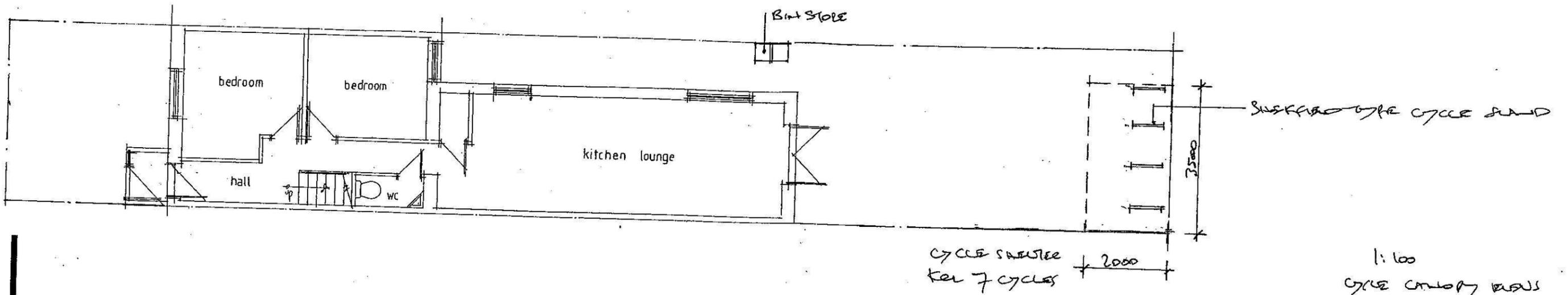
10. **OTHER LEGAL CONSIDERATIONS**

- 10.1 Crime and Disorder Act 1998 – Section 17(1) of the Crime and Disorder Act 1998 imposes 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.
- 10.2 Equality Act 2010 – The Equality Act 2010 identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and 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.
- 10.3 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.



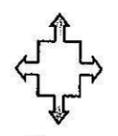
SITE PLAN 1:500 at A3

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SITE PLAN LAYOUT 1:100 at A3

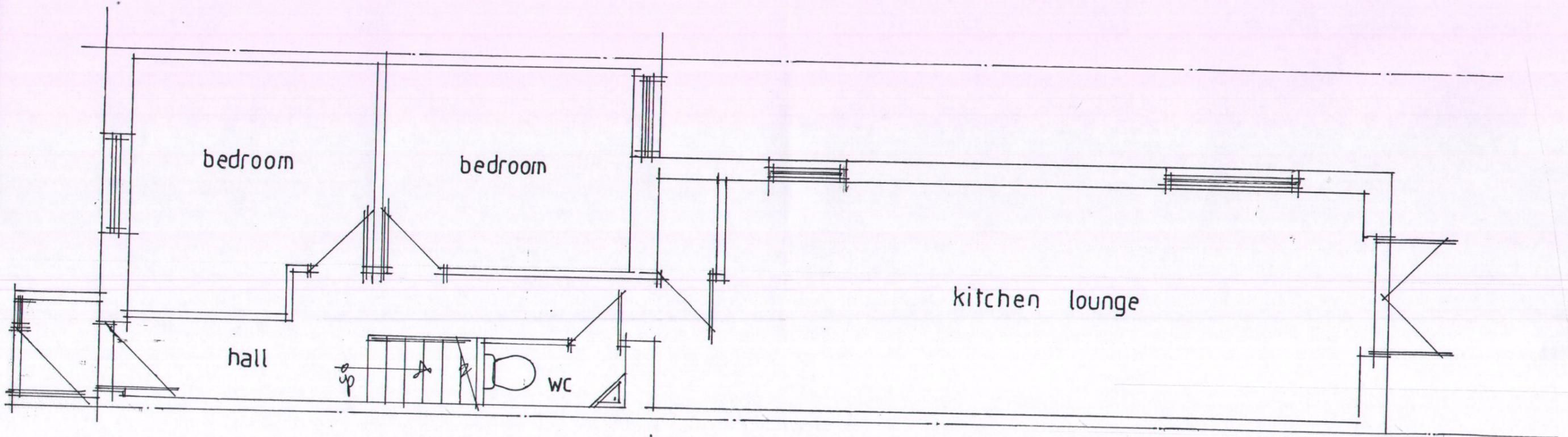
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104 RICHARDS STREET
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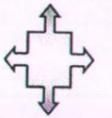
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GROUND FLOOR LAYOUT 1:50 at A3

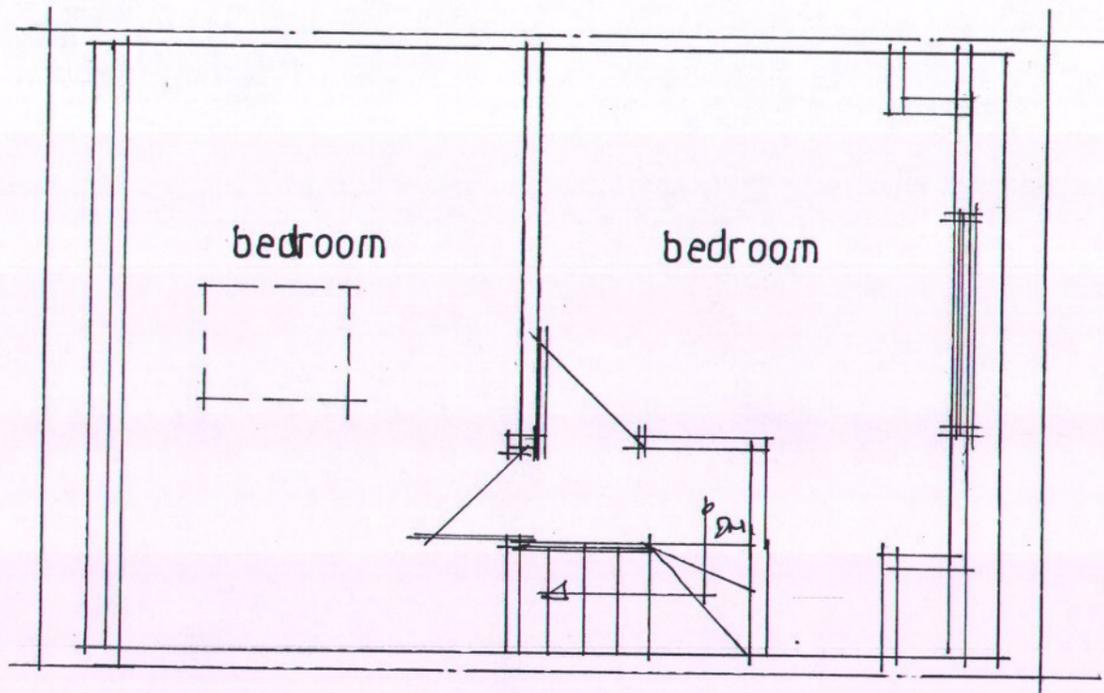
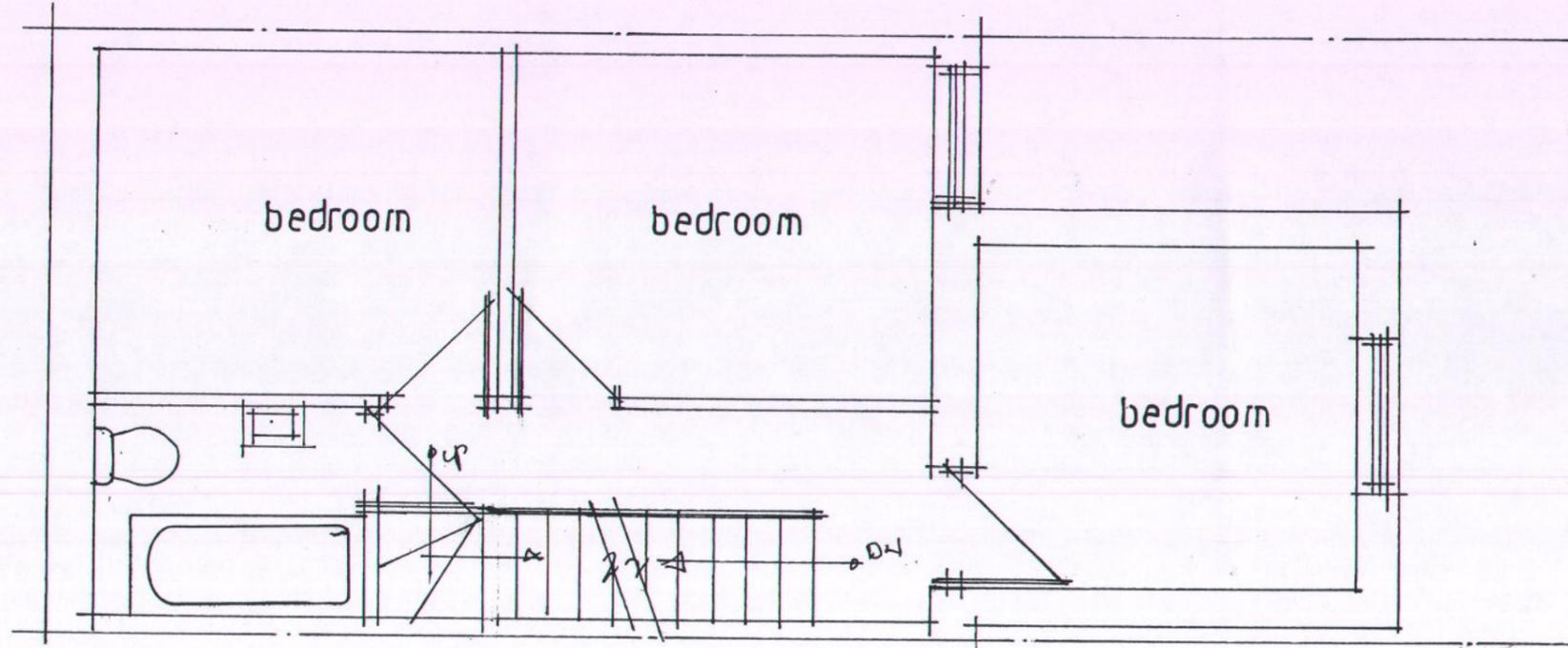
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**104 RICHARDS STREET
CARDIFF**

DATE MAR 2019 PLAN NO. BDD7/3

FIRST & SECOND FLOOR LAYOUTS 1:50 at A3