

# Planning Appeals Update

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## **Planning Committee**

Report of Head of Planning and Infrastructure

### **DATE OF COMMITTEE**

**October 2020**

### **PLANNING APPEALS**

### **WRITTEN REPRESENTATION**

### **HEARINGS**

### **HOUSE HOLDER**

### **ADVERTISEMENTS**

### **APPEAL DECISIONS**

PA/344449/20	141, 143 & 145 Lee Street, Oldham, OL8 1EG – Allowed
HH/344110/19	8 Elgin Road, Glodwick, Oldham, OL4 1QQ - Dismissed

**RECOMMENDATION -** That the report be noted.

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The following is a list of background papers on which this report is based in accordance with the requirements of Section 100D (1) of the Local Government Act 1972. It does not include documents, which would disclose exempt or confidential information as defined by that Act.

Files held in the Development Control Section



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## Appeal Decision

Site visit made on 4 August 2020

**by R Cooper BSc (Hons) MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 7 September 2020**

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**Appeal Ref: APP/W4223/W/20/3250645**

**141, 143 and 145 Lee Street, Oldham OL8 1EG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Mohammed Irfan against the decision of Oldham Metropolitan Borough Council.
  - The application Ref PA/344449/20, dated 26 January 2020, was refused by notice dated 19 March 2020.
  - The development proposed is the change of use for unit 3 to A5 to relocate existing business from unit 1.
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### Decision

1. The appeal is allowed and planning permission is granted for the change of use to create a mixed use A1/A5 premises with associated storage and welfare facilities at 141, 143 and 145 Lee Street, Oldham OL8 1EG in accordance with application Ref PA/344449/20, dated 26 January 2020, subject to the schedule of conditions to this decision.

### Procedural Matters

2. The address on the application form refers to the site as being 145 Lee Street, whilst the plans show the proposal to comprise Nos 141 to 145. The Council's decision notice and appeal form refer to 141, 143 and 145 Lee Road, Oldham OL8 1EG, so I have used this address in the banner heading above.
3. The Council's decision notice and the appellants appeal form describe the proposal as the change of use of units to create a mixed use A1/A5 premises with associated storage and welfare facilities. I understand that this was agreed by the parties, and it is more precise than that given on the application form.
4. The proposal is to relocate the existing hot food takeaway business from No 141, to the former travel agents at No 145 which is positioned on the corner of Lee Street and Park Street. The appellant states No 141 would become storage associated with the shop and take away. However, the submitted floor plans show the units would remain separate, as no internal doorways are proposed. I also understand that No 141 benefits from planning permission for its use as a hot food takeaway.
5. The appellant has stated that they would accept a planning condition requiring the welfare and storage facilities to be implemented at No 141 before the takeaway at No 145 is brought into use. However, although No 141 falls within the application site, the appellant does not own the premises, and the landlord has stated that they would not surrender the hot food takeaway use. In which

case, I consider that a negatively worded condition such as that suggested would have little prospect of the action being performed within the time limit envisaged.

6. Even if the landlord was willing to surrender the use, the suitable mechanism to secure this would be a legal agreement. In the absence of a legal agreement, if the appeal were to succeed, the subsequent permission could be part implemented, with No 141 continuing to operate as a takeaway as well as No 145. Therefore, I have dealt with the appeal on that basis.

### **Main Issues**

7. The effect of the proposal on highway safety; and the living conditions of occupiers of nearby residential properties with regard to noise and disturbance, cooking smells, air quality and littering.

### **Reasons**

#### *Highway Safety*

8. The appeal site comprises three existing units at Nos 141, 143 and 145 Lee Street. These consist of a hot food takeaway, a shop and a former travel agent. They form part of a parade of retail units, located within a residential area. The properties in the area are mainly terraced without off street parking. On street carparking is available to the front of the parade of shops, as well as further down Lee Street, and around the corner on Park Street.
9. The Council and the Local Highway Authority are concerned that an additional takeaway would generate more customers, create additional parking demand and associated vehicle manoeuvres on Lee Street. They are also of the opinion that since the takeaway at No 141 was granted permission, highway conditions have changed, with recent residential development creating additional parking demand in the area.
10. However, No 145 is an existing retail unit which can already operate at the same time as the existing takeaway at No 141, and the other units within the parade. Therefore, when in use, existing customers and staff already utilise the on street parking to the front of the property on Lee Street, and to the side on Park Street, carrying out the necessary manoeuvres to do so. The proposal before me is to continue to use this on street parking.
11. No details of parking availability, or the existing and proposed vehicle movements associated with the proposal have been provided. However, during my site visit there were no signs of traffic congestion on the adjoining highway network. On-street parking was also available to the front of the property on Lee Street and on Park Street.
12. During the site visit I could also see the parking restrictions on the opposite side of the road and the width of the carriageway, which allow for vehicles to pass cars parked to the front of the shops freely. The road is also straight allowing for good visibility of oncoming traffic. And whilst the site is in close proximity to the junction with Park Street, there are pavements on either side of the road, which allow for good inter-visibility with pedestrians, whilst vehicles manoeuvre around the corner.

13. Therefore, whilst the proposal would result in an additional hot food takeaway, it has not been substantiated that the level of additional vehicular movements associated with an additional use would harmfully compromise highway safety.
14. Consequently, the proposed development would not have an unacceptable impact on highway safety, and the residual cumulative impacts on the road network would not be severe. It accords with Policies 9 and 15 of the Oldham Council Joint Core Strategy and Development Management Policies DPD which collectively seek to ensure safe access and satisfactory parking provision in new developments.

#### *Living Conditions*

15. No 145 is located at the end of a terraced building. Although the surrounding area is predominantly residential, the property forms part of a well-established parade of shops, which contains a variety of retail uses serving the local community.
16. Concerns have been raised that the proposal would result in an additional takeaway, and that this would have a cumulative effect causing an increase in noise and disturbance associated with the comings and goings of customers and staff, cooking activities and that the associated smells would affect the living conditions of nearby residents, particularly when these take place late into the evening.
17. The takeaway shares a party wall with an existing retail unit. The property on the opposite corner of Park Street is also a commercial unit. The roads to the side and front, and the alleyway to the rear provides a degree of separation from residential properties opposite on Lee Street and those to the rear on Park Street. By virtue of this separation, the comings and goings, and activities within the building associated with cooking and serving of customers would be well contained and would limit the effect on nearby occupiers.
18. I also note that the existing retail unit at 145 does not have any restrictions on hours of use or opening to customers. It could therefore already be open to customers late into the evening, and at the same time as the takeaway at No 141. Whereas, the proposed hot food takeaway would operate between the hours of 12:00 to 22:00, which could be secured by condition.
19. Furthermore, a suitable condition could ensure that the extraction equipment was of an appropriate specification that would minimise disturbance through noise and smell from cooking activities. I also note that the Councils Environmental Health Department do not object to the proposal and have recommended a condition limiting the opening hours. In my view these conditions would adequately mitigate the effects, preventing an unacceptable cumulative impact.
20. I have considered the Council's concerns with regards to air quality and littering. I also note resident's objections to an additional hot food takeaway contributing to anti-social behaviour, and vermin. However, there is no evidence before me of existing problems, or that the proposal would create or exacerbate such matters.
21. Therefore, I conclude that the proposal itself or in combination with the existing hot food takeaway would not give rise to an unacceptable level of harm to the living conditions of occupiers of nearby residential properties. It would accord

with Policy 9 of the Oldham Council Joint Core Strategy and Development Management Policies DPD which seeks to ensure proposals do not have an unacceptable impact on the environment or health caused by noise, disturbance and pollution, amongst other things.

### **Other Matters**

22. I note resident's concerns with regards to the sharing of kitchen facilities between the shop and the takeaway, although, this is not a matter for planning. I have also considered the comments in relation to the potential to put flats above, however, there is no evidence before me of such a proposal.

### **Conditions**

23. The Council have suggested planning conditions in the event of this appeal being allowed. I also have considered the use of planning conditions following the guidance set out in the Planning Practice Guidance and the Framework. In addition to the standard time limit condition, I have included a condition that specifies approved drawings to provide certainty. A scheme for treating fumes and smells from the premises, and a condition for the hours of opening are also necessary to prevent pollution and associated nuisance to nearby occupiers.
24. I have not included a condition for the cessation of use of No 141 as a takeaway, as for the reasons given above.

### **Conclusion**

25. For the reasons given above, the appeal is allowed.

*R. Cooper*

INSPECTOR

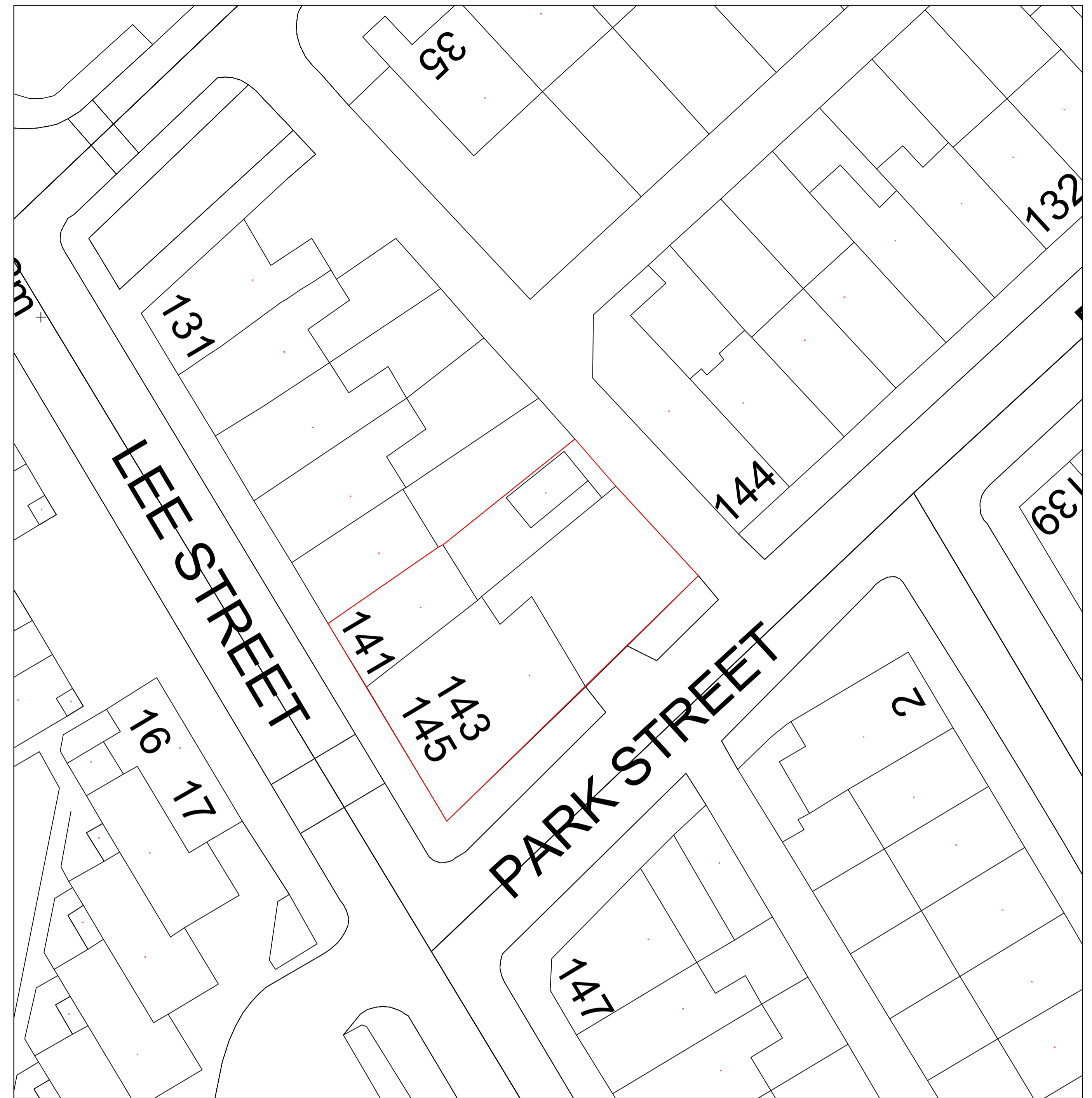
### **SCHEDULE**

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Nos 001 Rev 000 (page 1 of 2) and 001 Rev 000 (page 2 of 2).
3. Before the use hereby permitted takes place, equipment to control the emission of fumes and smell from the premises shall be installed in accordance with a scheme to be first submitted to and approved in writing by the local planning authority. All equipment installed as part of the approved scheme shall thereafter be operated and maintained in accordance with that approval and retained for so long as the use continues.
4. The premises shall only be open for customers between the following hours:  
1100 – 22:00 Mondays to Sundays

**SCHEDULE ENDS**



Site Plan scale 1:500



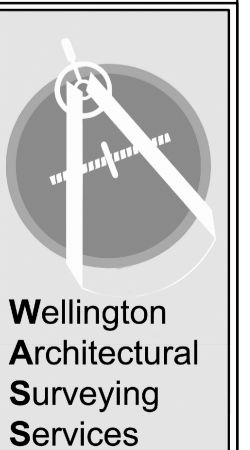
Location Map scale 1:200



Location Map scale 1:1250

CDM 2015 & PARTY WALL ACT are applicable.  
 Client & contractor to apply as required before  
 commencement of any work.

Scale 1:100 & 1:50	Project
Drawn	Mohammed Irfan
Checked	141 to 145 Lee Street
Date 21.01.2020	Oldham, OL8 1EG
CAD File M/LEEST/1019	Title
Dwg No 001	Proposed remodelling to form three
Revision 000	units for storage, grocery / butchers
	shop and relocation of takeaway.





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## Appeal Decision

Site visit made on 27 August 2020

**by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10 September 2020**

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**Appeal Ref: APP/W4223/D/20/3250219**

**8 Elgin Road, Glodwick, Oldham OL4 1QQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr S Amin against the decision of Oldham Metropolitan Borough Council.
  - The application Ref HH/344110/19, dated 23 October 2019, was refused by notice dated 6 January 2020.
  - The development proposed is proposed rear dormer and a new gable wall.
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. The description and address of the development provided on the planning application form have been replaced by amended versions on the decision notice and in subsequent appeal documents. I consider those subsequent versions to accurately reflect the proposal and I have therefore used them within this decision.

### Main Issue

3. The main issue is the effect of the proposal on the character and appearance of the host building and the area.

### Reasons

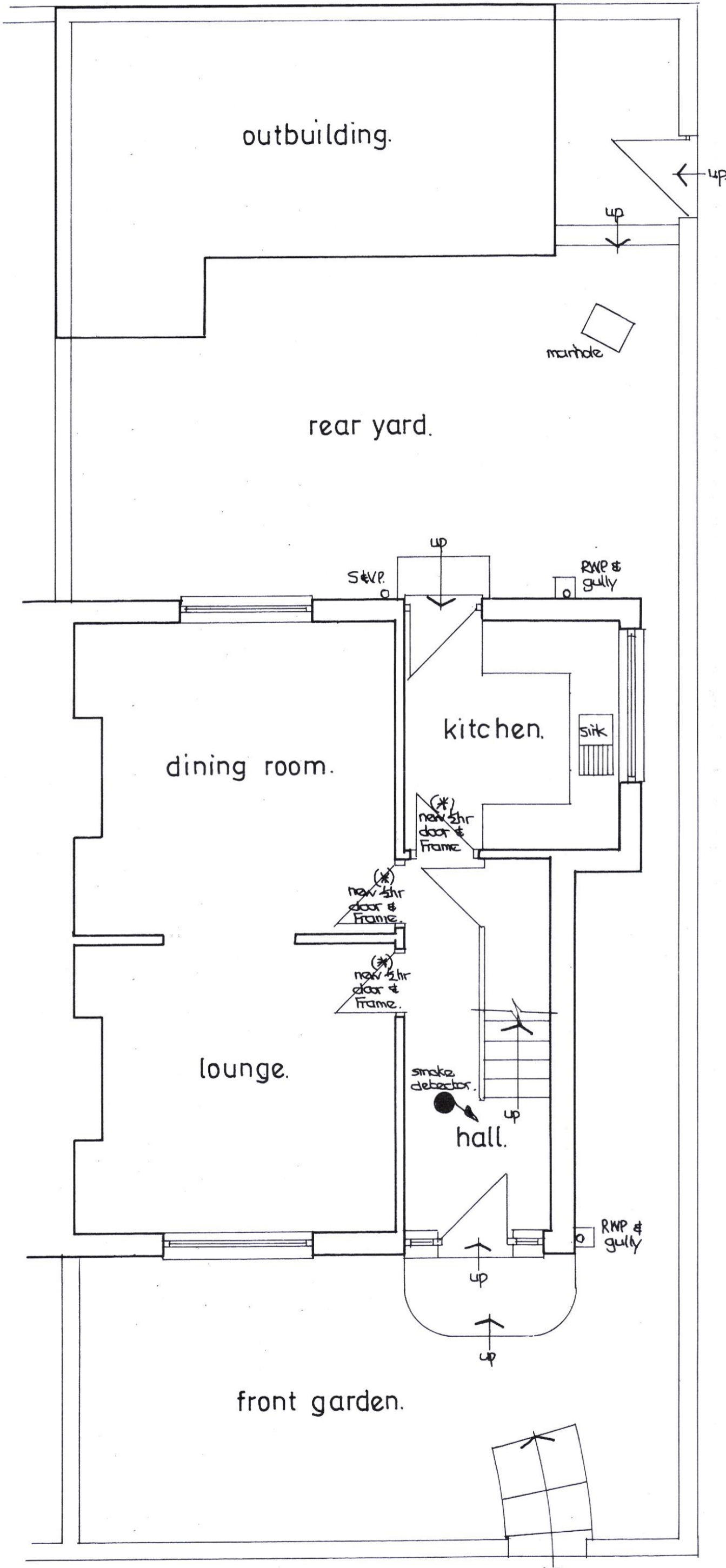
4. The appeal property is a dwelling at the end of a terrace of properties. The existing building has a hipped roof, and it is proposed to change this to a gable roof to enable the construction of a rear dormer. Due to its location at the end of the terrace and adjacent to an access lane, the side elevation of the property is relatively prominent within the streetscape.
5. The terraces in the immediate vicinity of the site are terminated by hipped roofed dwellings. However, due to the length of the terrace containing the appeal site, the hipped roof form is not a defining characteristic of the terrace. I also saw that there was some variation in roof designs in the wider area, including gable roofs on the terrace to the rear of the appeal site and on more recent development in the area. Within this context, I consider that the proposed gable roof would not appear unduly out of character with the host building or the area.

6. However, the proposed dormer would be constructed with a side wall flush with the gable. The angular extent of brickwork projecting above the perceived roof slope would appear as a stark and obtrusive feature which would give the resulting building an incongruous and top-heavy character. Due to the end of terrace location, this unsympathetic addition to the property would be readily visible from the public realm. Whilst this specific design may not be expressly prohibited by planning policy, the effect on character and appearance is a matter of planning judgement and the lack of a prescriptive policy does not lead me to a different conclusion in respect of the harm arising from the proposal.
7. The appellant has referred to a number of other properties in the area which are of a similar design. However, I have not been provided with details of the circumstances that led to these developments gaining approval, and in any event they served to confirm the unacceptable appearance of this roof design. Whilst nearby dormers may project in close proximity to side gables, even a limited set-back can break up views of the side elevation and mitigate the potential harm arising from bulky dormer extensions at roof level.
8. Notwithstanding my conclusions in respect of the proposed gable roof, I conclude that the use of a flush side wall for the dormer would lead to significant harm to the character and appearance of the host building and the area. The proposal would therefore be contrary to the design and visual amenity requirements of Policies 9 and 20 of the Oldham Joint Core Strategy and Development Management Policies 2011. The proposal would also be contrary to the National Planning Policy Framework with regards to achieving well-designed places.
9. For the reasons given above, I conclude that the appeal should be dismissed.

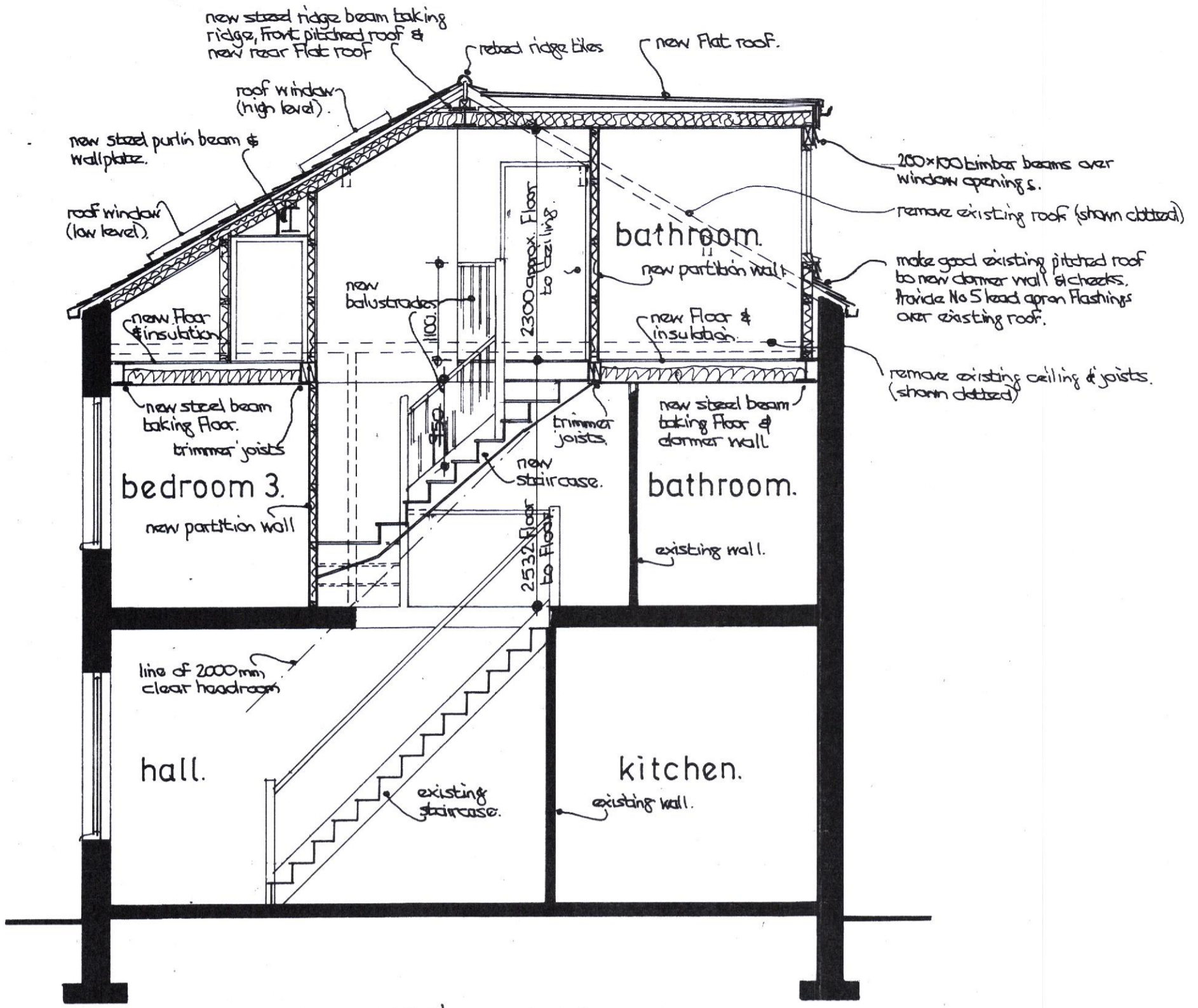
*David Cross*

INSPECTOR

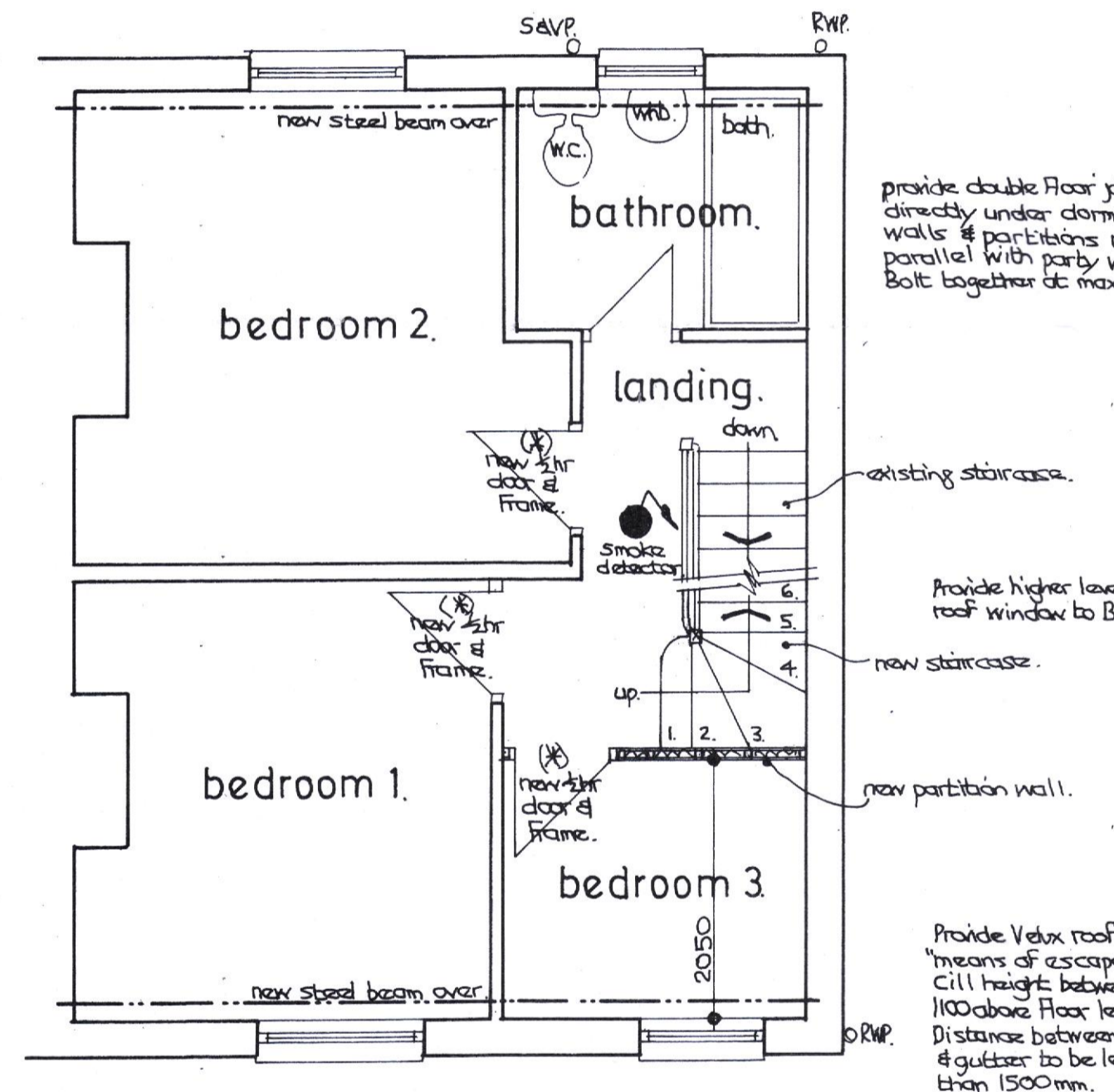




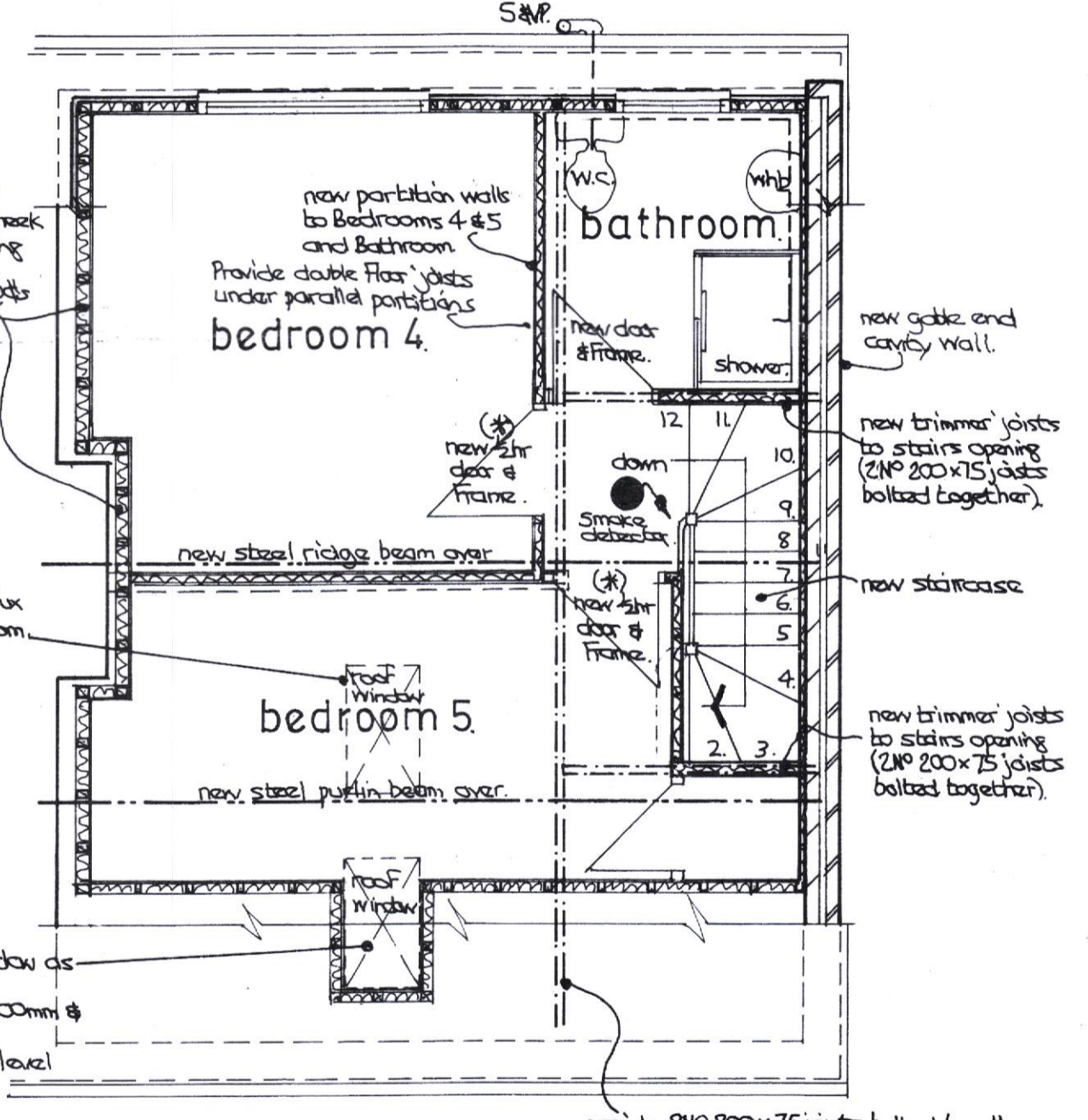
GROUND FLOOR PLAN.



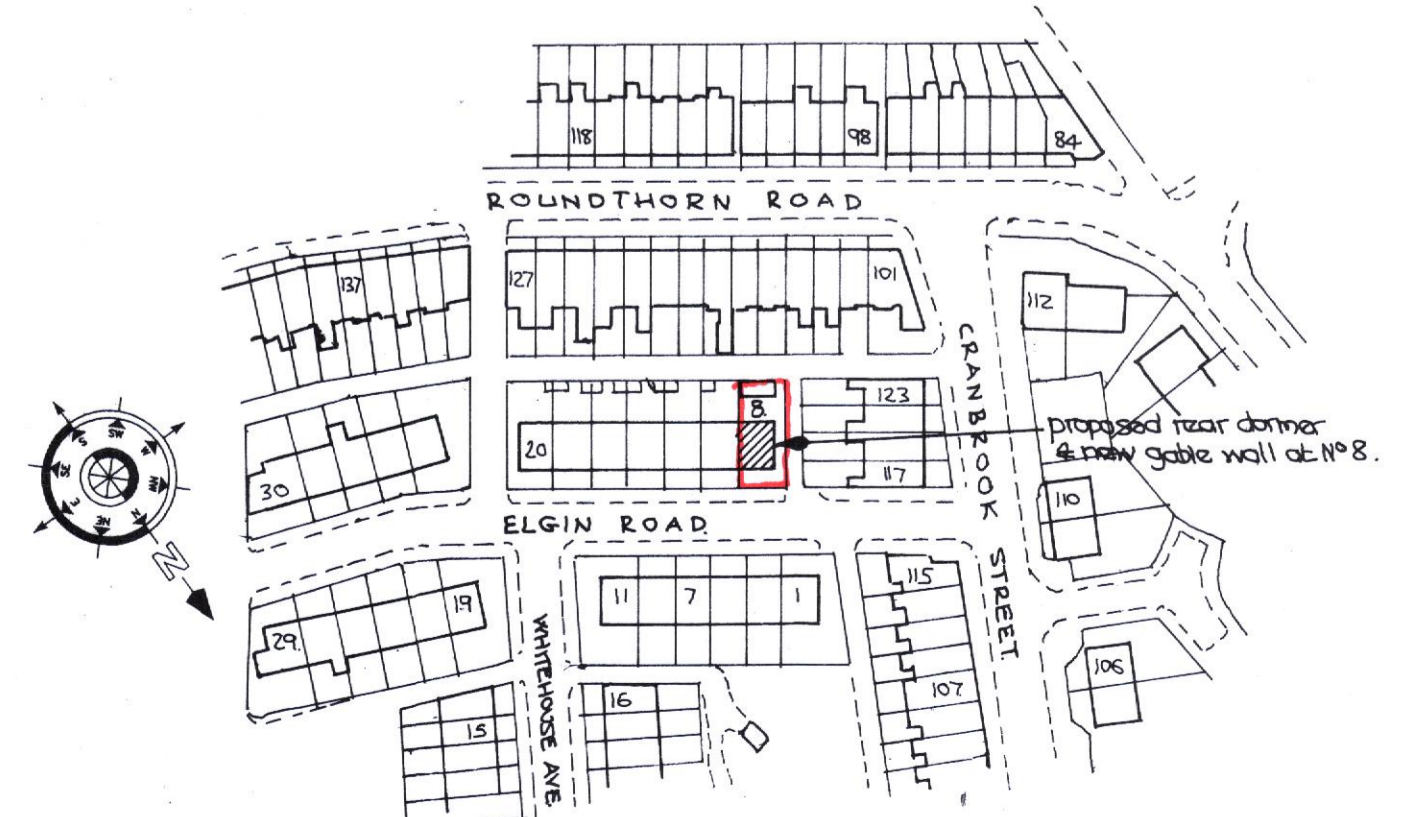
CROSS SECTION THRO' STAIRCASES.



FIRST FLOOR PLAN.



SECOND FLOOR PLAN.



LOCATION PLAN. SCALE 1:1250.

**Electrical Contractor (Competent Person)**  
All the wiring and electrical work will be designed, installed, inspected and tested in accordance with the requirements of BS 7671, the IEE 18th edition wiring guidance and Building Regulations Part P (electrical safety) by a competent person registered with an electrical self certification body authorised by the Secretary of State, AND  
The competent person is to send to the approved inspector a 'self certification certificate' within 30 days of the completion of the electrical works. The Client is to be provided with a copy of the self certification certificate and a BS 7671 electrical installation test certificate.

**Rear dormer wall construction**  
Marley grey concrete tiles class 'v' fire resistant cladding plain fixed to 38 x 19 treated sw counter-battens at a gauge to suit on breathable sarking felt membrane on plywood sheathing, 125 x 50 treated sw framing at 400 centres with nogginns at 600 vertical centres. Provide 38 x 19 treated sw counter-battens with no.4 lead fixed to counter-batten and dressed to window frame. At abutments with gable wall provide no.3 lead soakers (felt to overlap) and dressed down min. 200 mm over roof 100 mm thick 125 mm thick KINGSPAN insulation between studding and vapour barrier to warm side of insulation giving a u value of 0.28 insert 100 x 100 mm sw corner posts and each side of any windows, insert 150 x 100 lintel over any opening in dormer.

**Dormer cheeks to adjoining boundaries.**  
Insert 6 mm thick solumax for boundary dormer cheeks fixed to the outside of the dormer framework in addition to 12.5 mm plasterboard to inside face of framework.

**Electrical Fittings.**  
All sockets to be positioned above 450 mm from floor level, and all switched to be positioned below 1200 mm from finished floor level to comply with Part M of the Building Regulations. Minimum 3 out of every 4 internal light fittings and all external lights to incorporate only fittings with LED lamps-luminous efficacy greater than 45 lamp lumens/circuit-watt and total output greater than 40 lamp lumens, with and external lights to incorporate daylight sensor, all in accordance with Part L1B section 4.24 Building Regulations (2010 Edition with 2013 amendments) and Table 42 of Domestic Building Service Compliance Guide 2013 Edition.  
Electrical installation to be designed and installed and tested on completion by an NICEIC registered contractor in accordance with BS 7671:2001 to comply with Part P of Building Regulations.

**Demolish**  
Carefully take down existing ceiling and main roof, prepare site for new building works.

**External walls with no cavity insulation to new gable.**  
102mm brick external leaf, 50mm cavity and 100mm Thermalite Shield blockwork internal leaf. Cavity walls to be finished internally with 62.5mm thick Kingspan Kooltherm K118 insulated plasterboard dabbed to walls, finished with 3mm plaster skim to give U Value of 0.25. Proprietary stainless steel double triangle wall/vertical twist ties to be provided to cavity walls at maximum 450mm vertical centres and 750mm horizontal centres - staggered across wall elevation. 225mm max vertical centres of reveals. Ties to be long enough to have 50mm minimum embedment into wall. Proprietary insulation clips to be provided to suit cavity insulation system. Wall ties to comply with BS:1234:1978

**Existing Structure**  
The existing structure including foundations, beams, walls and lintels carrying new and altered loads are to be exposed and checked for adequacy to support new imposed 'dead' and 'live' loading conditions prior to commencement of work and as required by the Local Authority Building Control Officer.

**Cavities**  
To be continuous with existing closed at eaves with Superlux

**Cavity closer**  
Insert Isofoam XCC insulated cavity closer to all new openings all as document I 2013. Width and fixing to suit opening

**Steel Beams and Brick Piers**  
The design has required the use of a number of steel beams and brick piers as designed by a Structural Engineer.  
The method of carrying out the safe and secure temporary support, nailing and propping of the existing building structure whilst this building work is being undertaken is the sole responsibility of the builder who is to ensure that NO settlement or disturbance/cracking of the fabric of the building takes place during the construction process.

**First Floor**  
22 mm moisture resistant tongue and groove chipboard flooring (minimum mass per unit area 15kg/m<sup>2</sup>), on 50 x 200 mm C16 tanalised softwood joists at 450 mm centres, to first floor supported off new steelwork and mid section load bearing wall. Joists doubled up and spiked together beneath all first floor partitions. Joists built into external walls and packed as necessary. Lateral restraint provided by 30 mm x 5 mm galvanized mild steel straps at maximum 2000 mm centres, in accordance with Building Regulations, Galvic Herringbone joist struts at mid span between 2.5 m and 4.5 m and one third span greater than 4.5 m. Floor void between joists to incorporate minimum 100 mm of Rockwool Flexi quilt (minimum density 10kg/m<sup>3</sup>). Joists to be underlined with 12.5 mm Gyproc Wallboard TEN complete with skim finish to form ceiling.

**Roof void Insulation**  
To be 100 mm thick rock wool laid between joists and cross-laid with 200 mm Rock wool to give total thickness of 300 mm and a U value of 0.16W/m<sup>2</sup>K

**Front section Pitch roof**  
Natural blue slate pitch 30 degrees all to match existing nailed to 38 x 25 mm sw tanalised timber battens at gauge to suit. Use aluminium alloy nails to BS 1202 part 3 on type 1. Reinforced bitumen felt to BS 747:1977 on 100 x 50 mm treated timber rafters at max 400 mm centres supported on wall plate and pole-plate and new steel purlins coils to be provided.

**Restraint straps**  
Insert 30 x 5 mm lateral restraint straps between the external walls and floor joists.

**Fixings**  
Strap down new roof and ceiling with 1000 x 5 x 38 mm mild steel straps at 7 centres fixed across two rafters/joists with 3.35x50 wire nails at rafter and ceiling tie level

**Flat roof**  
To be 3 layers of felt top layer 350 ht finish, 10 mm limestone chippings bottom based on 19 mm exterior grade plywood decking with sw firings to give fall of 1:60. Provide 200 x 50 mm sw flat roof joists at max 400 mm centres, trim out with double joists around any roof openings.

**Insulation to flat roof**  
Provide 150mm thick Kingspan Kooltherm K7 insulation between roof joists leaving min. 50mm air gap between top of insulation and top of joists. Provide 32.5mm Kingspan Kooltherm K18 insulated plasterboard ceilings with skim finish to underside of flat roof joists to give a U value of 0.18W/m<sup>2</sup>K.

**Continuous Ventilated Ridge**  
Provide new continuous ventilated ridge to be mechanically fixed and bedded in sand/cement mortar, or dry fixed system in accordance with BS 5534:2014

**Staircase**  
New staircase to be 225 x 32 mm sw strings 25 mm sw treads, 19 mm sw risers with sw blocks and wedges 211 mm rise 245 mm going 12 no. Treads. 850 mm wide. 2000 mm headroom. 950 mm high handrail mop stick type, min 50 mm tread on winders at newel post. Pitch 40.74 degrees.

**Soil and vent pipe (Extend existing)**  
100 mm diameter upvc with airtight rodding access above floor level and sealed into Hepworth 'Hepseal' drain connector at floor level. Stack taken up and terminated 450 mm above springing level with pvc bird cage (900 mm above any opening lights)

**Sanitary fittings to en-suite**  
W.C. To have dual flushing action to NWWA regulations and to have 25 mm overflow direct to external air. Connect with 'y' trap and 100 mm diameter upvc soil branch pipe to new 100 mm diameter upvc s & w. Lavatory basin to have 75 mm deep seal anti vac trap and 38 mm diameter upvc waste connected to s & w. Shower to have 75 mm deep seal anti vac trap and 42 mm diameter upvc waste to run between floor joists connected to new s & w. Connect all fittings to new hot and cold system

**Non-loadbearing Walls**  
All non-loading partitions to comprise of 75x50 mm softwood studs@ 450 mm centres, and 75 mm softwood nogginns @900 mm centres, with continuous header and sole plates, and with 15 mm Gyproc Wallboard (minimum mass per unit area 10kg/m<sup>2</sup>) and 15 mm Gyproc moisture resistant board to bathroom, en-suite and WC, joints sealed complete with skim finish to both sides. All stud partitions to have 60 mm thick Rockwool Flexi insulation quilt between studs (minimum density 10kg/m<sup>3</sup>).

**Gutters and fascia**  
W.C. To have dual flushing action to NWWA regulations and to have 25 mm overflow direct to external air. Connect with 'y' trap and 100 mm diameter upvc soil branch pipe to new 100 mm diameter upvc s & w. Lavatory basin to have 75 mm deep seal anti vac trap and 38 mm diameter upvc waste connected to s & w. Shower to have 75 mm deep seal anti vac trap and 42 mm diameter upvc waste to run between floor joists connected to new s & w. Connect all fittings to new hot and cold system

**Smoke alarms and heat detectors.**  
Fire Safety Approved Doc B  
Where new habitable rooms are provided above ground level, a fire detection system shall be installed. Provide a mains linked smoke alarm in the circulation space on all levels in accordance with Paragraph 1.10 to 1.18. Also provide 1 no smoke detector to ground floor. There shall be a compatible interlinked heat detector or heat alarm in the kitchen, in addition to whatever smoke alarms are needed in the circulation space.

**Notes**  
These drawings are for the purpose of obtaining Building Regulations and Planning permission only.  
All work thereafter is undertaken solely at the clients'/contractors discretion and liability is therefore transferred. With regards to any matters relating to Planning or Building Regulation, they are solely at the discretion of the client, no information or advice given prior to or after the drawings are completed are for information only and not binding. All work must be carried out in accordance with the relevant building regulations and codes of practice. Do not scale from drawing. All dimensions to be checked on site and any discrepancies to be notified to the relevant bodies immediately.  
Services i.e. Electric, heating, plumbing etc. Are not included in these drawings.

344110

04 NOV 2019

PROJECT  
PROPOSED REAR DORMER AND NEW GABLE WALL.  
DRAWING TITLE  
PROPOSED LAYOUTS AND SECTION.  
CLIENT  
MR. S. AMIN.  
ADDRESS  
8, ELGIN ROAD,  
GLODWIN, OLDHAM.  
SCALE DATE  
SCALE 1:50@A1. OCT 2019.  
DRAWING No  
JK 10195500/2.