

PLANNING APPLICATION NUMBER: P21/1423

Type of approval sought	Full Planning Permission
Ward	St James's
Agent	Mr R. Staien
Case Officer	Richard Stevenson
Location:	148, WOLVERHAMPTON STREET, DUDLEY, DY1 3AH
Proposal	VARIATION OF CONDITIONS 2 AND 9 OF PLANNING PERMISSION P19/1312 IN RELATION TO FIRST FLOOR WINDOWS TO EASTERN ELEVATION.
Recommendation Summary:	APPROVE SUBJECT TO CONDITIONS

This application was deferred from the previous Development Control Committee to seek clarification in relation to the first floor windows to the rear elevation.

SITE AND SURROUNDINGS

- 1 The application site includes an area of land to the rear of No 146 and 148/149 Wolverhampton Street on the edge of Dudley town centre. Access is presently through a gap site where No. 147 once stood.
- 2 No. 146 has a hot food takeaway use to the ground floor with established residential accommodation on the upper two floors.
- 3 Nos. 148 and 149 are a retail shop and hot food takeaway respectively to the ground floor with residential accommodation above.
- 4 There is a secondary access through the site to land at the rear owned by Dudley College where it has its motor repair teaching facility. The college buildings here are comparatively modern and have the appearance of small industrial sheds. There is also an area of car parking associated with this use.

- 5 To the north west of the site are the rear gardens of associated dwellings which face onto The Belper. These dwellings are generally late 19th century and have no off-road parking.
- 6 The south eastern boundary is to Nos. 150/151/152 Wolverhampton Street, with the boundary consisting of two storey wing to rear of No. 150/151/152, and 3m high wall. No. 150 is shop with residential accommodation and Nos. 151/152 has been converted to residential use.
- 7 The area to the rear of Nos 146, 148/149 has been developed with three terraced two storey dwellings along the south-eastern (rear) boundary of the site which are finished in brick and render.

PROPOSAL

- 8 This planning application under Section 73 of the Town and Country Planning Act 1990 (as amended) seeks to vary conditions 2 and 9 of planning permission P19/1312. Condition 2 required the development to be carried out in accordance with the approved plans. Condition 9 sought control the insertion of first floor windows in the south-eastern elevation. The reason behind condition 9 was to prevent overlooking of the dwelling (No. 150/151/152) and associated garden to the south, where concerns had been previously expressed by the neighbour.
- 9 However, three windows that serve bathrooms have been inserted in the rear elevation, which means the application deviates from the approved plans and currently conflicts with condition 9. These windows are comparatively small and have been finished in obscured glazing with top opening lights.
- 10 This application therefore seeks to regularise these breaches of planning control through a retrospective Section 73 application.

HISTORY

APPLICATION No.	PROPOSAL	DECISION	DATE
DY/65/144	Change of Use to Lock-Up Shop (148 Wolverhampton Street).	Granted	15/03/1965
DB/69/6138	Formation of Vehicular Access (147 Wolverhampton Street)	Granted	12/12/1969
DB/73/11823	Extension to Existing Bakery and Provide Car Park.	Granted	07/06/1973
DB/73/12647	Conversion of Garage into Staff Room and Erection of Sta (147 Wolverhampton Street)	Granted	16/10/1973
DB/73/12734	Erection of Storage Building (Rear of 147 Wolverhampton Street)	Granted	17/10/1973
85/52143	Installation of Shop Front (149 Wolverhampton Street).	Granted	06/05/1986
92/51216	Change of Use from Retail Shop to Hot Food Takeaway (149 Wolverhampton Street)	Granted	08/10/1992
98/50711	Section 73 Application to Vary Condition 4 of Permission (149 Wolverhampton Street)	Dismissed	13/11/1998
P17/0574	Demolition of existing single storey storage units and erection of building to create 14 living units with associated kitchen and dining facilities and create 1 no. flat over the entrance way.	Refused	08-Mar-2018
P18/1218	Demolition of existing storage units and the erection of 4No.	Granted	21-Nov-2018

	dwelling and associated parking		
P19/1312	Demolition of existing storage units and the erection of 4 no. dwelling and associated parking. Alterations to shop frontages. (Resubmission of granted application P18/1218)	Granted	10-Jan-2020

- 11 As noted above, P19/1312 granted full planning permission for development with the erection of three dwellings to the rear of No 146 and 148/149 Wolverhampton Street and included a standard condition requiring the development to be carried out in the accordance with the approved plans and a further condition which prevented the insertion of first floor windows in the southeastern (rear) boundary of the approved dwellings. The permission included a dwelling over the entrance between Nos. 146 and 148.
- 12 Planning permission P19/1312 was a modified version of planning permission P18/1218 which had been granted in 2018, the difference being that detached dwellings became linked detached filling the gaps between.

PUBLIC CONSULTATION

- 13 One letter of objection has been received from the adjacent resident following consultation with 10 adjoining neighbours and the posting of a site notice. Main issues raised:
- Condition was imposed to prevent windows from being installed in elation facing No. 152 and was imposed to protect privacy to dwelling and garden
 - Planning condition ignored by developer
 - Windows overlook property – have to keep curtains/blinds closed
 - Concerns about crime, have had attempted break ins and a burglary
 - Windows allow surveillance of house so know when is unoccupied
 - Windows should be removed

A further letter has been received from the Community Safety Team which supports this objection on information provided by the neighbour in terms of personal circumstances and recent events.

- 14 One letter of objection received from one of the ward members, Main issues raised:
- Requests application is presented to Development Control Committee.
 - Application has been significantly amended
 - Rooms were to be served by rooflights which would have caused no impact
 - Windows inserted in the elevation which faces to the neighbour
 - Windows look directly into garden, lounge and kitchen of neighbour.

OTHER CONSULTATION

- 15 None.

RELEVANT PLANNING POLICY

- National Planning Guidance
National Planning Policy Framework (Revised 2021)
Planning Practice Guidance
Community Infrastructure Levy Regulations (as amended) (2014)
National Design Guide (Revised 2021)
National Model Design Code (2021)
- Black Country Core Strategy (2011)
CSP1 The Growth Network
HOU1 Delivering Sustainable Housing Growth
HOU2 Housing Density, Type and Accessibility
TRAN2 Managing Transport Impacts of New Development
ENV 2 Historic Character and Local Distinctiveness
ENV 3 Design Quality
ENV 7 Renewable Energy
ENV 8 Air Quality

- Dudley Borough Development Strategy (2017)
 - S1 Presumption in favour of Sustainable Development
 - S6 Urban Design
 - S17 Access & Impact of Development on the Transport Network
 - L1 Housing Development, extensions and alterations to existing Dwellings
 - D2 Incompatible Land Uses
 - D3 Contaminated Land
 - D5 Noise Pollution

- Dudley Area Action Plan (2017)
 - Policy 1 Sustainable Development
 - Policy 2 Design Quality
 - Policy 3 Urban Structure and Built Form
 - Policy 4 Sense of Place and Connectivity
 - Policy 5 Landmarks, Views, Vistas and Gateways
 - Policy 17 Land uses outside Dudley's Primary Shopping Area
 - Policy 18 Housing within the Dudley Area Action Plan Boundary
 - Policy 21 Conservation and Enhancement of Local Character and Distinctiveness in Dudley
 - Policy 28 Walking and Cycling
 - Policy 29 Car Parking

- Supplementary Planning Guidance/Documents
 - CIL Charging Schedule (2015) (updated 2017)
 - Design for Community Safety Supplementary Planning Guidance (2002)
 - Parking Standards Supplementary Planning Document (2017)
 - PGN 12. The 45 degree code

ASSESSMENT

- 16 As noted above planning permission (Ref P18/1218) was originally granted amongst other things for the detached two dwellings to the rear of No 146 and Nos.

148/149 by the Development Control Committee in November 2019. This was subsequently amended by further planning permission (Ref P19/1312) which proposed three larger linked detached dwellings, which was determined in January 2020 under delegated powers.

- 17 The approved plans which were controlled through condition 2, illustrated that no windows would be provided to the rear (south-eastern) elevation which faced towards the rear garden of Nos. 150/151/152. In addition, a further condition (No 9) sought to prevent the insertion of any windows to this elevation without the express grant of planning permission. The reason for the latter condition was to protect the amenity of the neighbour to the south.
- 18 It came to light that in February 2021 that three windows had been constructed in the rear (south-eastern) elevation which faces towards the rear garden of Nos. 150/151/152. As such the applicants were advised to submit a Section 73 (of the Town and Country Planning Act 1990) application to vary condition 2 (plan numbers) and condition 9 (removal of right to insert windows to rear elevation).
- 19 The three windows which have been provided to the rear (south-eastern) elevation, each serve a first-floor bathroom, which is considered to be a non-habitable room. Each of the windows is considered to be modest in size and is obscured glazed.
- 20 It has been ascertained having undertaken a site visit and measured the windows, that units A2 and A4 (the two end units) have a cill height of the opening light at 1.8m above the finished floor level within the respective rooms, meaning that the potential for any outlook from eye level is extremely limited. The level of the opening light is, therefore, slightly above that required by the Government for the insertion of windows in side elevations of buildings to be classified as permitted development, thus preventing potential for overlooking and loss of privacy.
- 21 It was found however that unit A3, (the middle unit) had a cill level of only 1.5m above the floor level of the bathroom. This being below the level that would constitute permitted development if inserted in a side elevation. As such the

applicant has been advised that this is unacceptable and that the window needs to be replaced with an obscure glazed fixed light. The provision and retention of this requirement can be controlled by planning condition.

- 22 Given that all three windows in question serve non-habitable rooms and are obscurely glazed with two of the units having top opening lights in excess of 1.7m above the floor level, with a requirement for the third to have fixed obscured glazing, it is difficult to argue that the neighbour to the rear would suffer any significant impact to amenity or privacy, in that any overlooking towards the private rear garden and dwelling would be severely restricted. As such there is no material planning reason why the amendments to the previously approved permission should not be granted.
- 23 Overall the development which is near completion, is considered to be of an acceptable design and has assisted in regenerating an unattractive and underused site, in a sustainable location close to Dudley town centre.
- 24 The concerns are noted in relation to crime prevention and crime being a material consideration, however, the provision of a rear garden to rear garden arrangement as proposed, provides added security and is an accepted principle of good urban design practice. The fact that it may be possible to discern if lights were on in the adjacent property is not considered to represent a sustainable reason to withhold retrospective planning permission.

CONCLUSION

- 25 The changes which have been made to the rear (south-eastern) elevation, subject to a planning condition requiring no further windows to be inserted in the relevant elevation and that the windows are provided with high level lights/fixed lights and obscured glazing, to be retained for the life of the development, are considered to be acceptable from amenity point of view in relation to the neighbour at Nos. 150/151/152. Consideration has been given to policies within the Black Country Core Strategy (2013); and the Dudley Borough Development Strategy (2017).

RECOMMENDATION

It is recommended that the application be APPROVED subject to the following conditions:

Conditions and/or reasons:

1. The development hereby permitted shall be carried out in accordance with the following approved plans:
SAP.WS.18.07.GA.01B Ground Floor
SAP.WS.19.06.GA.06.B First Floor
SAP.WS. 17.04. LP.01-Location Plan
SAP.WS.18.06.EL.04C Rear Elevations
SAP.WS.21.04.EL.05C Front Elevations

REASON: For the avoidance of doubt and in the interests of proper planning.

2. The dwellings hereby approved shall not be occupied until details of the electric vehicle charging points, to be provided for the dwellings in accordance with the Council's standard (Parking Standards SPD), has been submitted to and approved in writing by the Local Planning Authority. Prior to first occupation the electric vehicle charging points shall be provided in accordance with the approved details and shall be maintained for the life of the development.

REASON: In the interests of creating a sustainable form of development and to encourage the use of ultra low emission vehicles in accordance with Policies ENV8 (Air Quality) and DEL1 (Infrastructure Provision) of the Black Country Core Strategy.

3. The houses shall be occupied until details of the access(es) into the site, together with parking and turning area(s) [including details of lines, widths, levels, gradients, cross sections, drainage and lighting] have been submitted to and approved in writing by the Local Planning Authority. The houses shall not be occupied until the access(es) into the site, together with parking and turning area(s) within the site have been laid out in accordance with the approved details. These area(s) shall thereafter be retained and not be used for any other purpose for the life of the development.

REASON: In the interests of highway safety and to comply with Borough Development Strategy 2017 Policy S6 Urban Design, Policy L1 Housing Development, extensions and alterations to existing dwellings Policy D2 Incompatible Land Uses (in part) and policies CSP5, DEL1, TRAN2, CEN8 and TRAN5.

4. Notwithstanding the details shown on the submitted plans, no works shall commence to the flat over the entry or to the Wolverhampton Street elevation until details of the detailed designs of the shopfronts, shopfront security, sliding sash windows and entrance doors in the Wolverhampton Street elevation have been submitted to and approved in writing by the Local Planning Authority.

Large scale architectural drawings at 1:5 or 1:10 shall be provided along with details of their proposed colour and finish. Development shall proceed in accordance with the agreed details and be retained for the lifetime of the development.

REASON: To ensure that the Wolverhampton Street elevations are designed to reinforce and enhance local character and distinctiveness in accordance with Policy ENV 2 of the Black Country Core Strategy and Policy S8 of the Dudley Borough Development Strategy and to ensure the shopfronts, signage and shopfront security is in accordance with the Council's adopted Shopfront and Advertisement Supplementary Planning Document and Policy L12 of the Dudley Borough Development Strategy.

INFORMATIVE: Attention is drawn to the design of sash windows used at No.42 Wolverhampton Street. We expect these to be replicated here for new windows to the Wolverhampton Street elevation.

5. No above ground development shall commence in relation to the proposed flat over the entry way between Nos. 146 and 148 Wolverhampton Street, from noise from road traffic has been submitted to and approved in writing by the Local Planning Authority. All works which form part of the approved scheme shall be completed before occupation of the permitted dwellings, unless otherwise agreed in writing by the Local Planning Authority. The protection measures in the agreed scheme shall be maintained throughout the life of the development

REASON: To protect amenity of future occupiers and to comply with DBDS Policy D2 Incompatible Land Uses

6. In order to minimise the impact of the development on local air quality, any gas boilers provided within the development must meet a dry NO_x emission concentration rate of <40mg/kWh.

REASON: To safeguard the air quality of the Borough which is an Air Quality Management Area in compliance with the Black Country Core Strategy Policy ENV8 and the adopted Air Quality SPD.

7. The houses shall not be occupied until details of the types, colours and textures of the materials to be used in the hard surfacing of the development hereby approved have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in complete accordance with the approved details and retained for the lifetime of the development unless otherwise agreed in writing with the Local Planning Authority.

REASON: In order to make a positive contribution to place-making and provide a high quality landscaping in accordance with BCCS Policies CSP4 - Place-Making, ENV 2 Historic Character and Local Distinctiveness, ENV3 - Design Quality and DEL1 - Infrastructure Provision Borough Development Strategy 2017 Policy S6 Urban Design and

Policy L1 Housing Development, extensions and alterations to existing dwellings Policy D2 Incompatible Land Uses (in part)

This detail is required as landscaping is integral to providing a high quality and sustainable development.

8. The dwellings hereby approved shall not be first occupied until a scheme for the upgrade of the flue to the rear of No. 149 has been submitted to and approved in writing by the Local Planning Authority. The approved scheme which should

have regard to reducing noise, odour and vibration to adjoining residents shall constructed in complete accordance with the approved details and brought in to use prior to the first occupation of any of the dwellings. The flue shall thereafter be maintained in accordance with manufactures guidance/specification for the life of the development. The existing flue to the rear of No.149 shall be removed prior to the occupation of any of the dwellings.

REASON: To protect amenity and comply with DBBS Policies D2 Incompatible Land Uses and D5 Noise Pollution.

9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order (England) 2015 (or any order revoking or re-enacting that order with or without modification) no development referred to in Schedule 2, Part 1, Classes A, B, C and D of that order shall be carried out without the express grant of planning permission.

REASON: In the interests of the privacy and amenity of surrounding residents in accordance with Borough Development Strategy 2017 Policy L1 Housing Development, extensions and alterations to existing dwellings Policy D2 Incompatible Land Uses (in part).

10. Notwithstanding the provisions of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (Order) 2015 (England) (or any order revoking or re-enacting that order with or without modification) no additional openings shall be formed in the south western, south eastern or north eastern elevation of the houses to the flat over the entrance without the express grant of planning permission.

REASON: In the interests of the privacy and amenity of surrounding residents in accordance with Borough Development Strategy 2017 Policy L1 Housing Development, extensions and alterations to existing dwellings Policy D2 Incompatible Land Uses (in part).

11. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order (England) 2015 (as amended) (or any order revoking or re-enacting that order with or without modification) the dwellings hereby approved shall be used for no other purpose than as defended by Class C3 of the Town and Country Planning (use Class) Order 1987 (as amended) or any order revoking or re-enacting that order with or without modification)

REASON: In the interests of highway safety and to comply with BCCS Policy TRAN2.

12. Notwithstanding the details shown on the approved plans and the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and/or re-enacting that Order) the windows in the south eastern (rear) elevation of the units A2 and A4 (Outside units) facing towards the garden of Nos150/151/152 Wolverhampton Street building shall be:

i) obscure glazed,

ii) and non-opening, unless the parts of the window which can be opened are top hinged and more than 1.7 metres above the floor of the room in which the window is installed.

The windows shall be permanently maintained thereafter as obscure glazed and non-opening.

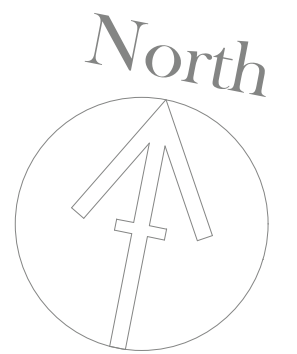
REASON: In the interests of the privacy and amenity of surrounding residents and in accordance with Borough Development Strategy 2017 Policy L1 Housing Development, extensions and alterations to existing dwellings.

13. Notwithstanding the details shown on the approved plans and the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and/or re-enacting that Order) the windows in the south eastern (rear) elevation of the units A3 (middle unit) facing towards the garden of Nos150/151/152 Wolverhampton Street building shall be:

- i) obscure glazed,
- ii) and non-opening

The windows shall be permanently maintained thereafter as obscure glazed and non-opening.

REASON: In the interests of the privacy and amenity of surrounding residents and in accordance with Borough Development Strategy 2017 Policy L1 Housing Development, extensions and alterations to existing dwellings.



Application site
edged in Red.

Site area 559 sq.m



Application site
edged in Red.

Site area 559 sq.m

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0 20 40 60

O S EXTRACT PLAN SCALE 1:1250



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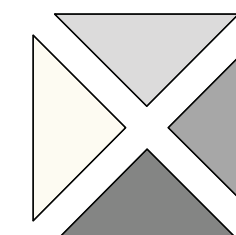
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0 10 20 30 40

LOCATION PLAN SCALE 1:500

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Client: Private Client			
Project: Residential redevelopment		Title: Location and OS extract Plan	
Date: April 2017	Scale: as shown	Dwg No: SAP.WS.17.04.LP.01	Rev:

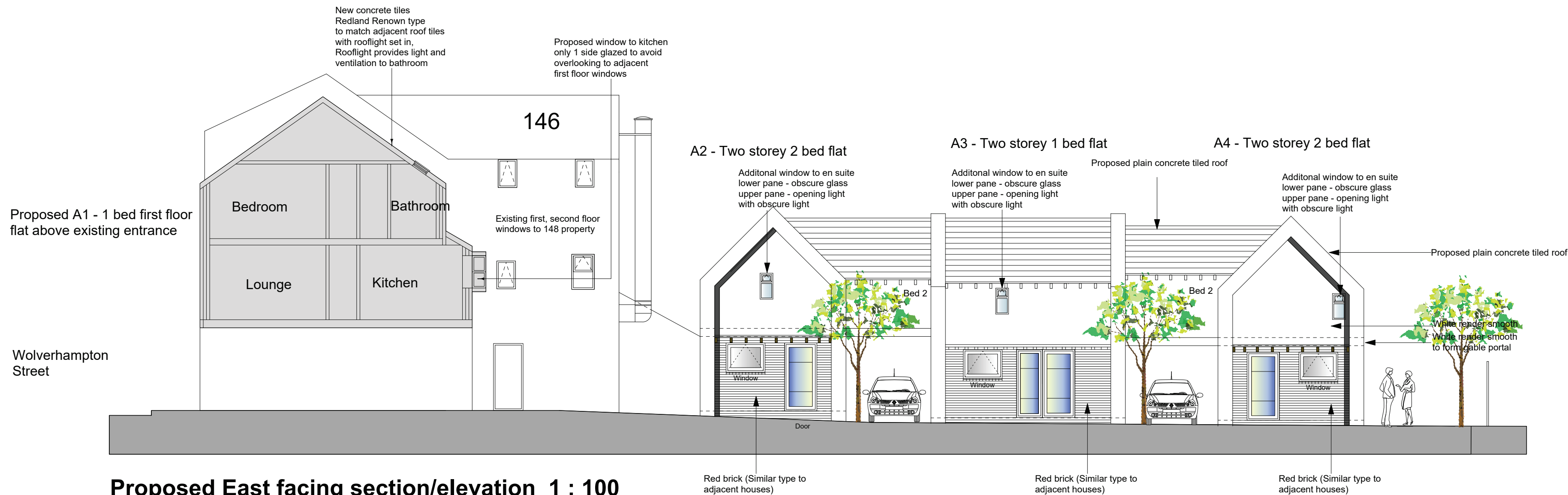


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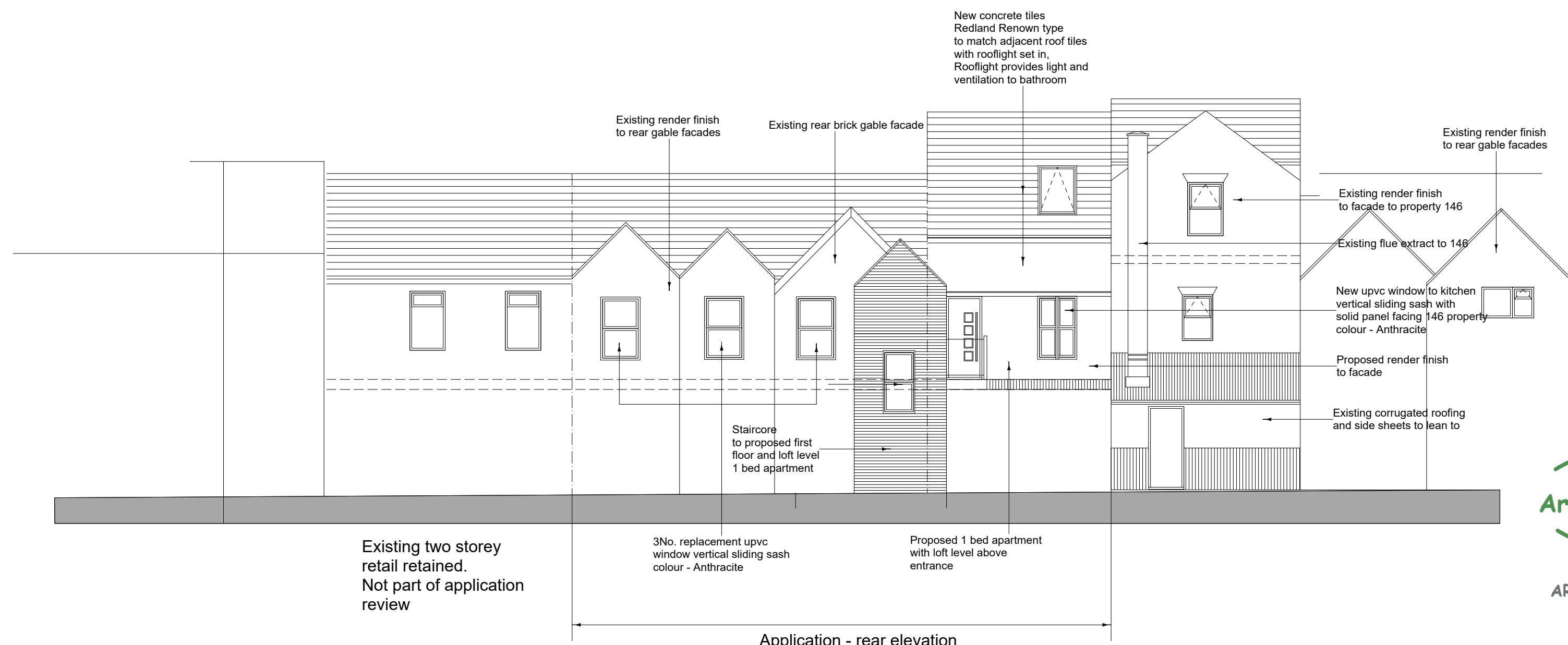
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Proposed East facing section/elevation 1 : 100



Proposed Wolverhampton Street rear elevation 1 : 100

148 Wolverhampton Street, Dudley. DY1 3AH



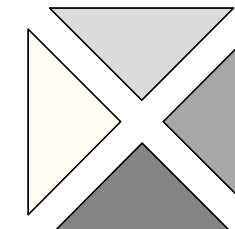
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Rev C March 2021 RS En suite windows added to rear elevation
Rev B Jan 2020 RS Roof lights added to bedroom area
Rev A Oct 2019 RS Pitched roof added to Kitchen



Client: Private Client			
Project: Planning		Title: Elevations - Rear	
Date: July 2018	Scale: 1 : 100	Dwg No: SAP.WS.18.06.EL.04	Rev: C



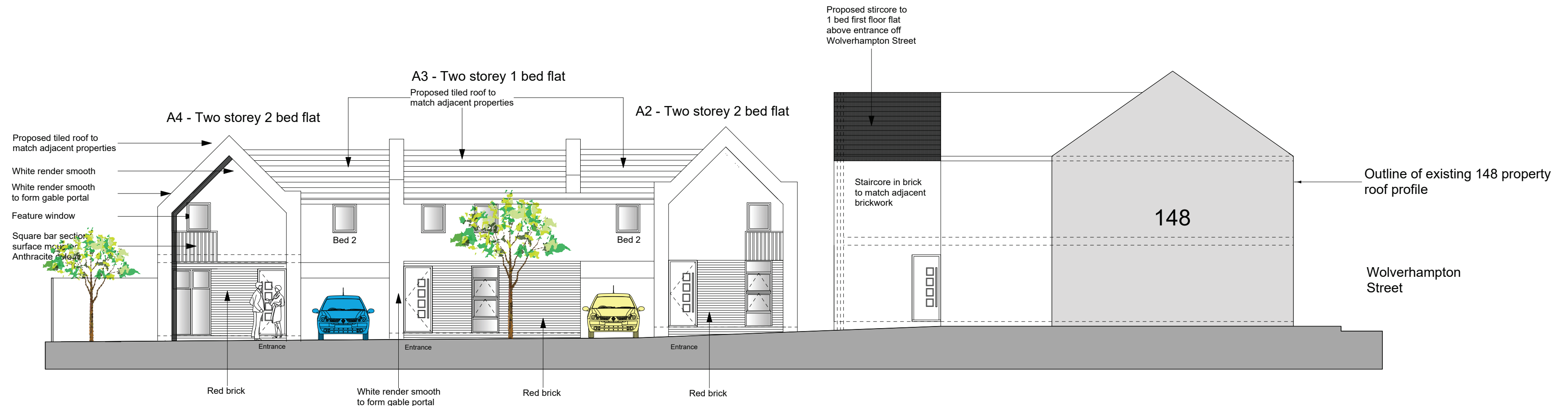
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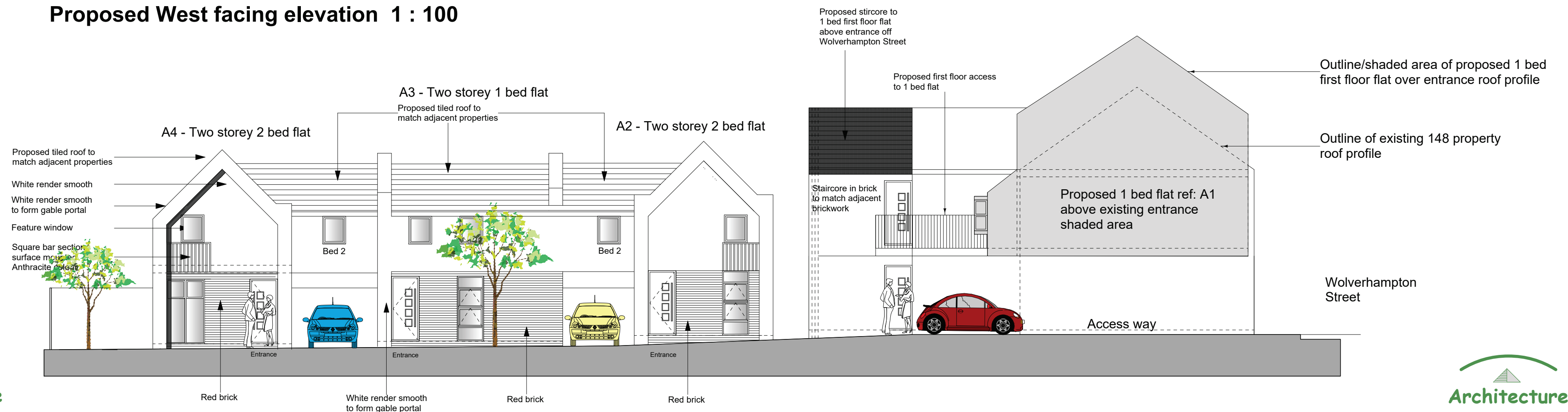
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Proposed West facing elevation 1 : 100



Proposed West facing elevation/section 1:100 through proposed 1 bed flat above entrance 1 : 100

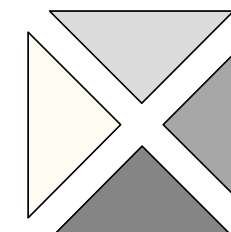
ELEVATIONS SCALE 1:100

148 Wolverhampton Street, Dudley. DY1 3AH

Rev C April 2021 RS Elevation updated to reflect as built

Rev B Nov 2019 RS Window positions amended

Rev A Oct 2019 RS 1 bed flat length amended



Client: Private Client			
Project: Planning		Title: Elevations + Bed 2	
Date: April 2021	Scale: 1 : 100	Dwg No: SAP.WS.21.04.EL.05	Rev: C



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Wolverhampton Street

Existing Retail delivery vehicles park on road. Due to size of retail units only small delivery vehicles arrive - low frequency visits

Sustainable location:
Public transport enables occupants to connect to town centre and other localities. (Bus stop located outside retail unit number 150)
Bike hub incorporated within scheme to encourage an alternative mode of travel.
Local retail is within walking distance of proposal.



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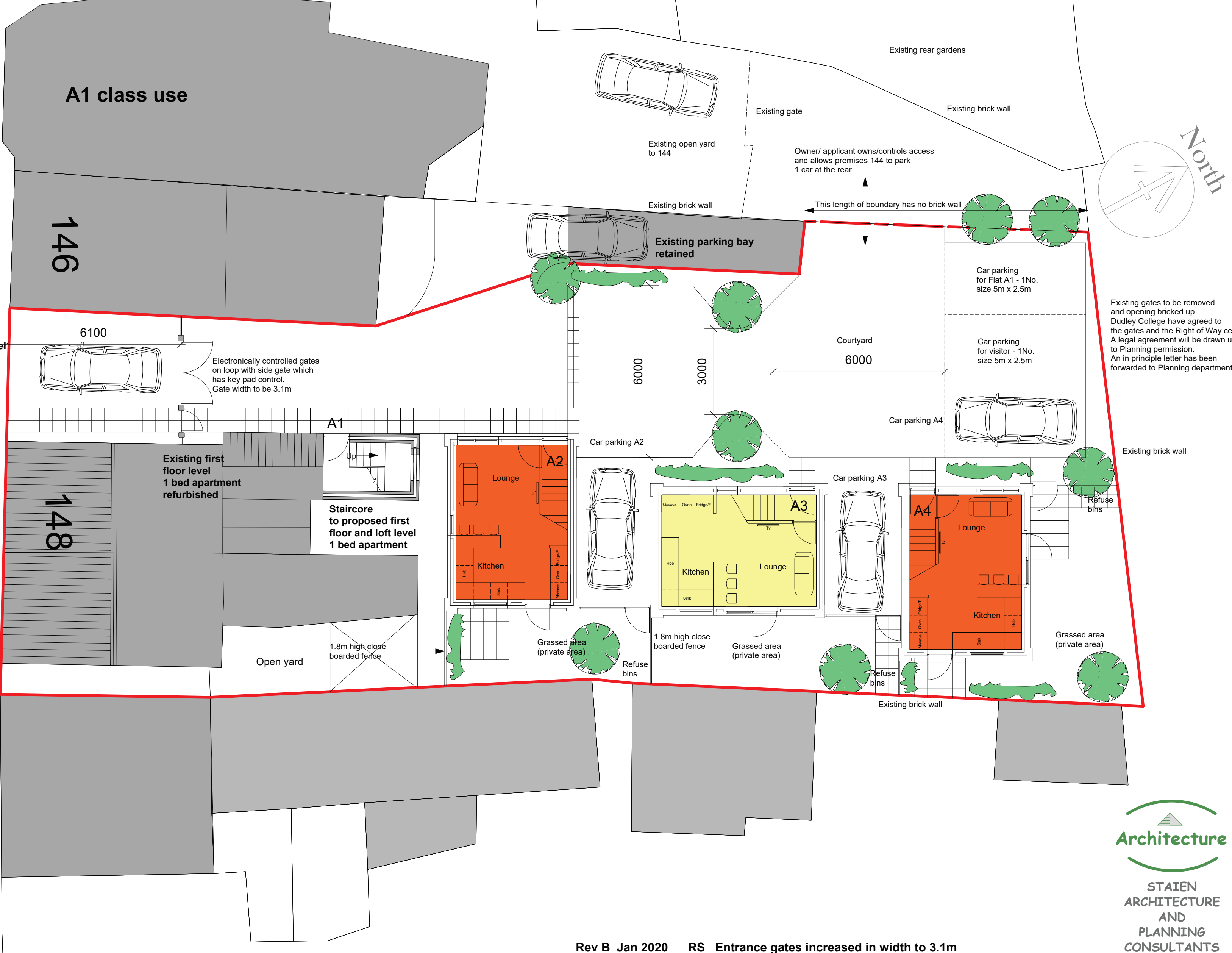
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GROUND FLOOR LAYOUT SCALE 1:100

148 Wolverhampton Street, Dudley. DY1 3AH



- Rev B Jan 2020 RS Entrance gates increased in width to 3.1m
- Rev A Nov 2019 RS Window positions amended

Client: Private Client			
Project: Planning		Title: Proposed Ground floor Plan	
Date: June 2019	Scale: 1 : 100	Dwg No: SAP.WS.18.07.GA.01	Rev: B



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FIRST FLOOR LAYOUT SCALE 1:100

148 Wolverhampton Street, Dudley. DY1 3AH

Proposed 1 bed apartment
with loft level above
entrance - 50 sq.m

Existing single storey
out buildings retained.
(Storage)
Not part of application
review

This property is not part
of the planning application

This elevation to 146 has 2 No. first floor
windows - internal use/layout uncertain.
Refer side elevation drawing

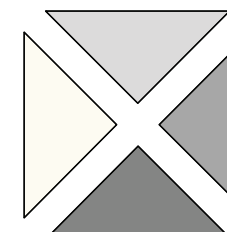
Owner/ applicant owns/controls access
and allows premises 146 to park
1 car at the rear

Owner/ applicant owns/controls access
and allows premises 144 to park
1 car at the rear

Existing gates to be removed
and opening bricked up.
Dudley College have agreed to
the gates and the Right of Way ceased.
A legal agreement will be drawn up subject
to Planning permission.
An in principle letter has been
forwarded to Planning department.

Rev B May 2021 RS Room layouts amended - As Built

Rev A Nov 2019 RS Window positions amended



Client: Private Client			
Project: Planning		Title: Proposed First floor Plan + Bed 2	
Date: June 2019	Scale: 1 : 100	Dwg No: SAP.WS.19.06.GA.06	Rev: B

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