

PLANNING APPLICATION NUMBER: P10/0021

Type of approval sought	FULL PLANNING PERMISSION
Ward	KINGSWINFORD NORTH & WALLHEATH
Applicant	MR SPIROS SPIROS
Location:	10, MARKET STREET, KINGSWINFORD, WEST MIDLANDS, DY6 9JR
Proposal:	CHANGE OF USE OF COFFEE/ JUICE BAR (A1/A3) TO HOT FOOD TAKEAWAY (A5) WITH SINGLE STOREY REAR EXTENSION AND NEW FUME EXTRACTION. (RESUBMISSION OF REFUSED APPLICATION P09/1603)
Recommendation summary:	APPROVE SUBJECT TO A 106 AGREEMENT

SITE AND SURROUNDINGS

1. The application site measures 201 m² and the property is a terraced building located in the District centre of Kingswinford with a small amount of open space to the rear. The application site has been used previously as an insurance office, under A2 class, but is now operating as a coffee shop and juice bar under a temporary 12 month planning permission. The gross internal floor area of the building measures 51.9m² and the premises are located on Market Street. There is a first floor residential flat above.
2. The property is adjoined by a hairdressing salon to the south and a bank to the north. There are some other A3 and A5 uses within the District centre near to the application site. Parking restrictions are in place on this stretch of road in the form of double yellow lines. The property is located on part of the strategic highway network and a bus showcase route.

PROPOSAL

3. This proposal seeks approval for a change of use from a sandwich bar (A1) and café (A3) to use as a hot food take-away (A5) with restaurant facilities at the rear (A3).
4. A single storey rear extension to provide restaurant space and a W.C. would also be constructed which would be located to the south of the existing rear extension. It would measure 2.1 in width and 6.3m in length with a flat roof above measuring 3.4m

in height. A single storey rear infill extension measuring 1.1m in length and 1.6m width would be located to the rear of the existing kitchen extension.

5. The internal café area would be converted into a take-away serving area with kitchen space. The ground floor side entrance would remain and a hallway would provide access to the rear restaurant space.
6. A flue of 11.6m in maximum height would be located at the rear of the building extending from the rear extension.
7. The proposed opening hours are not known at the time of writing.
8. The application has been accompanied by a Design and Access Statement.

HISTORY

9. This property has four previous relevant applications.

APPLICATION No.	PROPOSAL	DECISION	DATE
86/50690	Change of use from retail shop to office (class 2)	Approved with conditions	09.06.1986
86/50957	Change of use from retail shop to hot food take-away and licensed restaurant	Refused	21.08.1986
P09/0414	Change of use from insurance office (A2) to juice bar and coffee shop (A3) and sandwich bar (A1) (retrospective)	Approved with conditions	03.06.2009
P09/1603	Change of use of coffee/juice bar (A1/A3) to Hot Food Takeaway (A5) with single storey rear extension to provide restaurant facilities and new fume extraction	Refused	31.12.2009

P09/1603 was refused on the following grounds:

- The proposed hot food take-away would adversely affect the amenities of the occupiers of the nearby dwellings by reason of the additional disturbance, noise and smells from the proposed extraction flue. This would be exacerbated by the position of the flue adjacent to the windows on nearby residential properties.

- The lack of an undertaking to enter into a planning obligation.

Although this was 23 years ago, the second application was refused on the following grounds:

- that the proposed development would lead to vehicles parking within the carriage-way which would disrupt traffic flow and impact upon highway safety;
- the development would impact upon the residential amenity for the occupiers of dwellings in the area because of the disturbance from unsocial opening hours, and
- that the development would impact upon the amenities of occupiers of dwellings in the area because of the emission of smells.

PUBLIC CONSULTATION

- Direct notification was carried out to thirty-one surrounding properties via neighbour notification letters and an advert in the Express and Star newspaper and one written representation objecting to the scheme has been received.
- The latest date for receipt of neighbour comment was the 5th February 2010.
- A site notice has also been displayed to raise awareness of the application and the latest date for receipt of public comments was 11th February 2010.
- The objection received was based on the following grounds:
 1. Smell
 2. Litter
 3. Parking due to the double yellow lines to the front of the property
 4. Deliveries to the front which would cause congestion

OTHER CONSULTATION

10.

- **Group Engineer (Development) – no objections.**
- Head of Environmental Health and Trading Standards – concerns about the height of the flue according to the submitted plan, but this can be dealt with by condition. There are also concerns with potential noise disturbance which can be dealt with by restricting hours of opening. Sound insulation would also be required but this would be dealt with under Building Control.
- Planning Policy – no objections.

- Economic Regeneration – no objections.
- Historic Environment – no objections.

RELEVANT PLANNING POLICY

Unitary Development Plan (2005)

- CR1 – Hierarchy of town centres and regeneration areas
- CR4 – Protected Frontages
- CR5 – Regeneration and Development of Centres
- CR11 – Retail (A3) uses and amusement arcades
- AM3 Strategic Highway Network
- AM14 - Parking– Adopted UDP 2005
- DD1 – Urban Design
- DD6 – Access and Transport Infrastructure
- DD7 – Planning Obligations

Supplementary Planning Documents

- Planning Obligations SPD
- PGN 28. Hot food takeaway shops, restaurants and cafes (class A3 uses)
- Parking Standards and Travel Plans Supplementary Planning Document
- Historic Environment SPD

ASSESSMENT

11. The proposed development must be assessed with regard to the following key issues.

12. Key Issues

- Principle
- Protected frontages
- Residential amenity
- Vehicle Parking and Highway Safety

- Planning Obligations

Principle

13. The application site is within the District Centre of Kingwinford and protection of the viability and vitality of this area is paramount. This change of use would provide a hot food take-away and restaurant within a District Shopping Centre and would replace the previous use of the building as a coffee shop and juice bar. This is considered to have an increased intensity due to the nature of the goods being sold and the business type. Within this District centre A3 is a preferred use whilst A5 is an acceptable use and would increase the provision of functions within the centre. A3 is also the existing use of the premises and although the range of hot food provided would be increased the extraction equipment would ensure that there would be no impact on residential amenity.
14. The proposed change of use would provide a hot food take-away and small restaurant that is appropriate in size to its location and surrounding centre and would help to maintain the vitality and viability of Kingswinford District Centre. In this regard the proposal complies with the requirements of Policies CR5 – Regeneration and Development of Centres and CR11 – Retail (A3) uses and amusement arcades of the Adopted UDP (October 2005).
15. The policy requires consideration to be given to the impact on nearby town centres. The floor space of the unit would be less than 200m² and as such there would be no harm to the vitality or viability of nearby centres. The increased evening activity associated with a hot food take-away would not cause harm to neighbour amenity and the local area already attracts some existing evening uses.
16. Policy CR1 identifies Kingswinford as a District Shopping Centre and the area is therefore a main shopping destination. The A3 and A5 uses would attract people to use this area increasingly and provide further opportunities for local people. An A3 and A5 use would provide an ancillary activity to shopping which would make a positive contribution to the role of the centre.

Protected Frontages

17. The property falls within a protected frontage in the UDP where A1 uses would be preferable. However, the site has not been in A1 use recently and there would be no loss of retail (A1) floorspace associated with this development. This proposal would also make a positive contribution to the overall role of the centre and would not undermine the retail function of Kingswinford. As there would still be more than 50%

A1 retail uses in Kingswinford District Centre, it is considered that the change of use would not affect the overall vitality and functioning of the centre. It is noted however that no.8 Market Street, adjacent to the application site is also a non retail use. This would therefore result in two non-retail premises being adjacent to each other. However, this is acceptable in this location and the proposed use is compatible with nearby uses. This proposal therefore complies with Policy CR4 – Protected Frontages of the UDP (2005).

Residential amenity

18 .The application site is located within a District Centre where the predominant nearby uses are commercial. There is a residential unit above the application site and there are a few other residential units within close proximity of the application site. However, the current A3 use has had no detrimental impact on residential amenity from noise, disturbance or smell. The height of the proposed extraction flue would also now be adequate to effectively disperse cooking odours from the proposed A5 use so it would not adversely impact on amenity for the occupiers of the flat above. In this regard the proposal would be in accordance with the requirements of Policy CR11 – Retail (A3) uses and amusement arcades of the Adopted UDP (October 2005).

Vehicle Parking and Highway Safety

19. The use of the premises as a hot food take-away is expected to increase the level of trips to the premises. However, as an existing centre this would be an appropriate and sustainable location for such a development and public transport is readily available. Although there is no parking provided on-site the proximity of nearby car parking areas would provide adequate parking for the proposed uses. There is also a strong walk-in catchment within the area. It is considered that the double yellow lines to the front of the site would prevent customers parking directly outside the premises. The development is therefore considered to have no adverse impact on traffic flow or vehicular parking within this retail centre as it is not located adjacent to any junctions. This has been confirmed by the comments made by the Group Engineer (Development). Although this property is located along part of the strategic highway network and along a bus showcase route the development would not have a negative impact. This proposal would therefore be in accordance with Policy DD6 of the UDP and would also comply with the requirements of Policy AM14 - Parking– Adopted UDP 2005.

Planning Obligations

20. The proposed development has a requirement to provide planning obligations to mitigate against the consequential planning loss to the existing community. Should permission be granted a S106 agreement would be required in respect of the following contributions:

Offsite Contributions:

The proposal attracts a requirement for a commuted sum to be paid towards the following infrastructure:

Transport Infrastructure Improvements	= £ 2787.78
Management and Monitoring charge	= £ 250.00
Total Offsite Contributions	= <u>£ 3037.78</u>

The applicant has not yet agreed to the payment of these offsite planning obligations.

Onsite Contributions:

No onsite contributions would be required for this development.

CONCLUSION

21. The proposed A5 use is appropriate in this District centre location and would complement the vitality and viability of the centre. The extension would not be visible from the street scene so there would be no impact on visual amenity. The proposed flue at the rear of the property would also effectively disperse odours so there would not be any impact on the nearby residential properties. Subject to the suggested conditions the development would therefore comply with all relevant policies including Policy CR11 (Retail (A3) Uses and Amusement Arcades) of the adopted Dudley Unitary Development Plan (2005) and Planning Guidance Note 28 (Hot Food Takeaway Shops, Restaurants and Cafes).

RECOMMENDATION

22. It is recommended that the application is approved subject to:

- a) The development shall not be commenced until a scheme for the submission and approval of a planning obligation to guarantee the provision of contributions towards transport infrastructure improvements and a monitoring and management charge totalling £1172.77 has been submitted to and agreed in writing by the Local Planning Authority.
- b) The Scheme shall include the method, timing and arrangements including a means to guarantee a financial payment, increased through index linking from the first April each subsequent year, in accordance with the Council's planning obligations policies.
- c) The following contributions, with delegated powers to the Director of the Urban Environment to make amendments to these as necessary.

Reason for the Grant of Planning Permission

It is considered that the proposed change of use to A3 and A5 and single storey rear extension with flue is acceptable from a policy point of view. There would be no significant harm to neighbouring properties and there would be no adverse effect on the street scene or character of the area due to the location of the extension and flue at the rear of the property. The change of use would not adversely affect vitality of the area and would not have a negative impact on highway safety. The proposal, therefore, complies with the following Council policies and guidance; DD1 Urban Design, DD6 Access and Transport Infrastructure, DD7 Planning Obligations, CR1

Hierarchy of Centres, CR11 Retail (A3) Uses and Amusement Arcades and AM3 Strategic Highway Network of the Dudley Unitary Development Plan.

The decision to grant planning permission has been taken with regard to the policies and proposals in the Dudley Unitary Development Plan and to all relevant material considerations including Supplementary Planning Guidance.

The above is intended as a summary of reasons for the grant of planning permission for further detail please see the application report.

Note for Applicant

The development hereby approved will remain in accordance with the approved drawings received on the 7th January 2010 and referenced Drawing No. '0907/101' unless otherwise agreed in writing by the Local Planning Authority.

Conditions and/or reasons:

1. Development shall not commence until an arrangement for the provision of off site transport infrastructure improvements and the monitoring and management charge has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include the method, timing and arrangements to comply with the Council's policies for the provision of the infrastructure required in connection with the proposed development.
2. BA01 Commencement within 3 years (full)
3. BE06I Materials to match existing
4. Prior to the commencement of development a scheme containing full details of arrangements for internal air extraction, odour control, and discharge to atmosphere from cooking operations, including any external ducting and flues, shall be submitted to and approved in writing by the Local Planning Authority. The height of any extract flue approved as part of this scheme shall terminate at least 1m above the roof ridge. The works detailed in the approved scheme shall be installed in their entirety before the use hereby permitted is commenced. The equipment shall thereafter be maintained in accordance with the manufacturer's instructions and operated at all times when cooking is being carried out unless otherwise agreed beforehand in writing with the Local Planning Authority.

5. Before any internal or external fixed plant or machinery (including plant, machinery or ducting used for air extraction, odour control, and discharge to atmosphere) associated with the development is used, a scheme to prevent disturbance to other occupiers of the building from conducted noise and vibration arising from its operation shall be submitted to and approved in writing by the local planning authority. All works that form part of the approved scheme shall be completed before use of the plant or machinery, and retained during use of the plant or machinery for the duration of the development.
6. No delivery of goods to the site shall take place, before the hours of 07:00 nor after 22:00 Monday to Saturday, or at all on Sundays and Bank Holidays.
7. The premises shall not be open to the public before the hours of 08:00 nor after 22:30 Monday to Saturday, nor before 10:00 or after 17:00 on Sundays and Public Holidays.
8. Any external bins associated with the operation shall not be used/emptied outside the hours of opening to the public.



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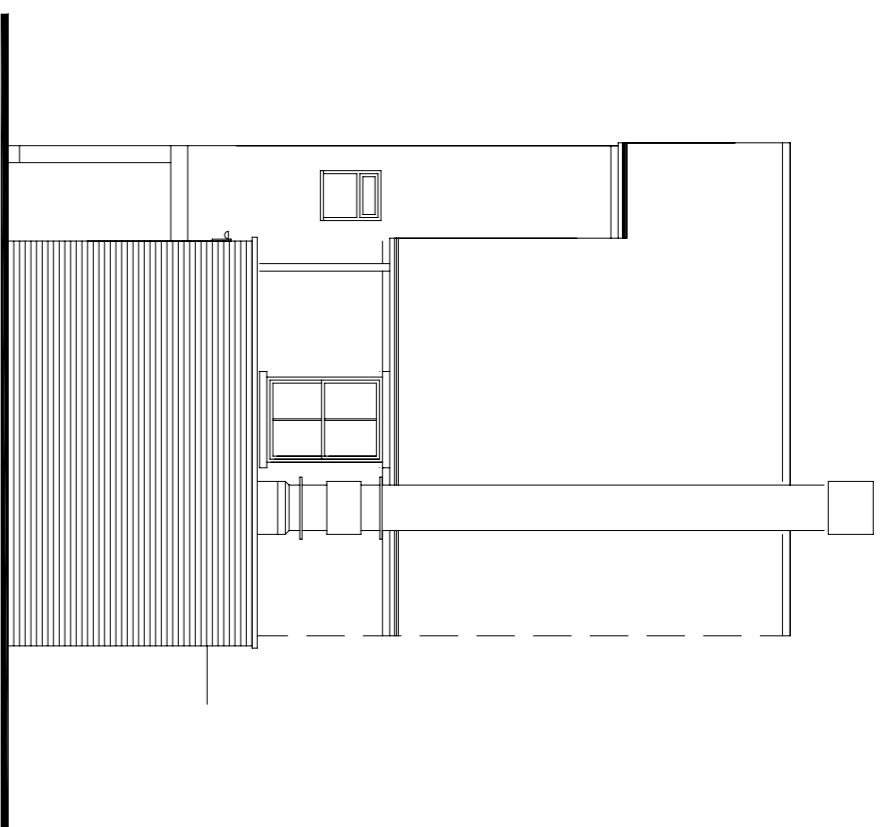

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 Title:
Location Plan

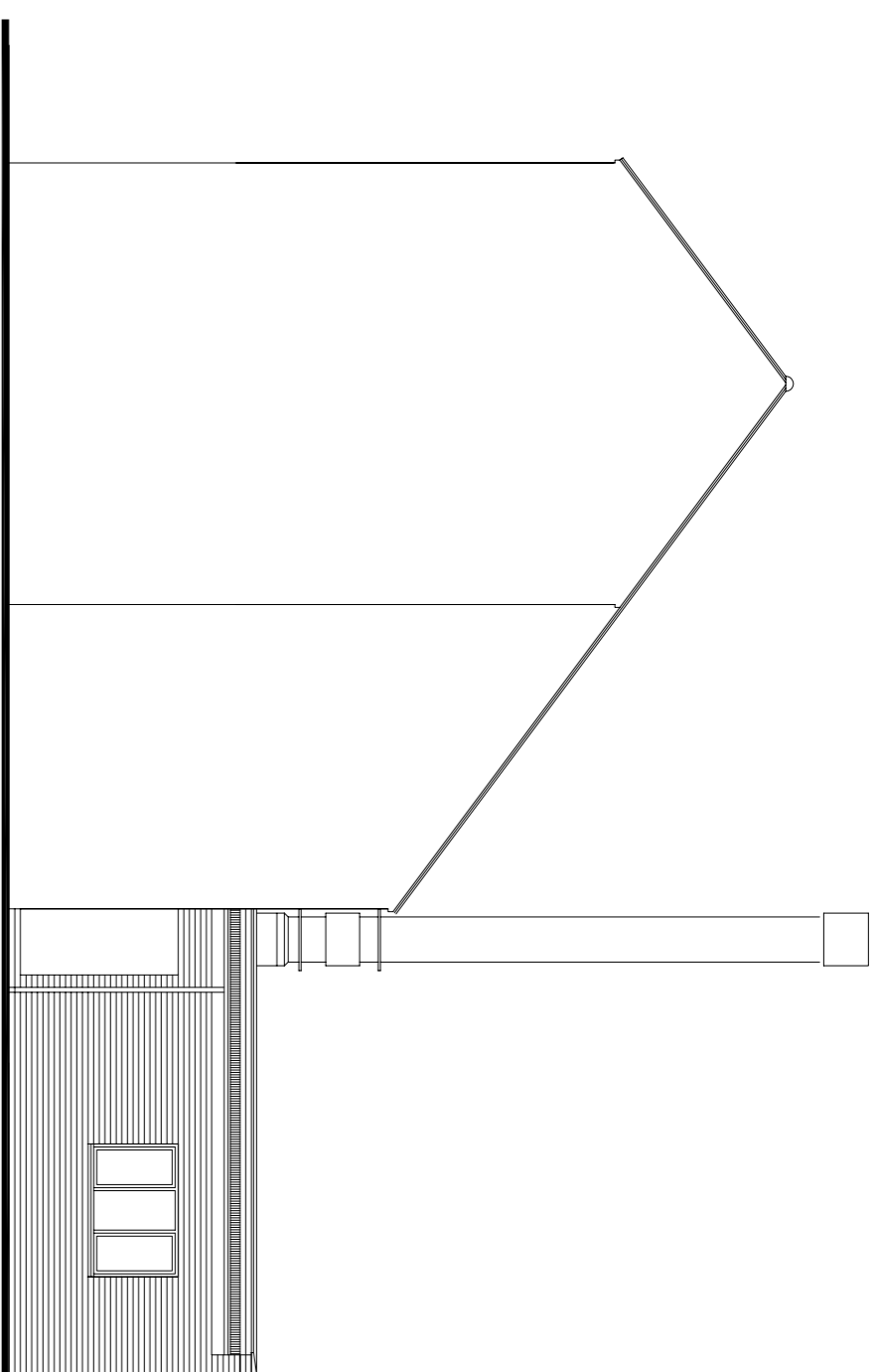
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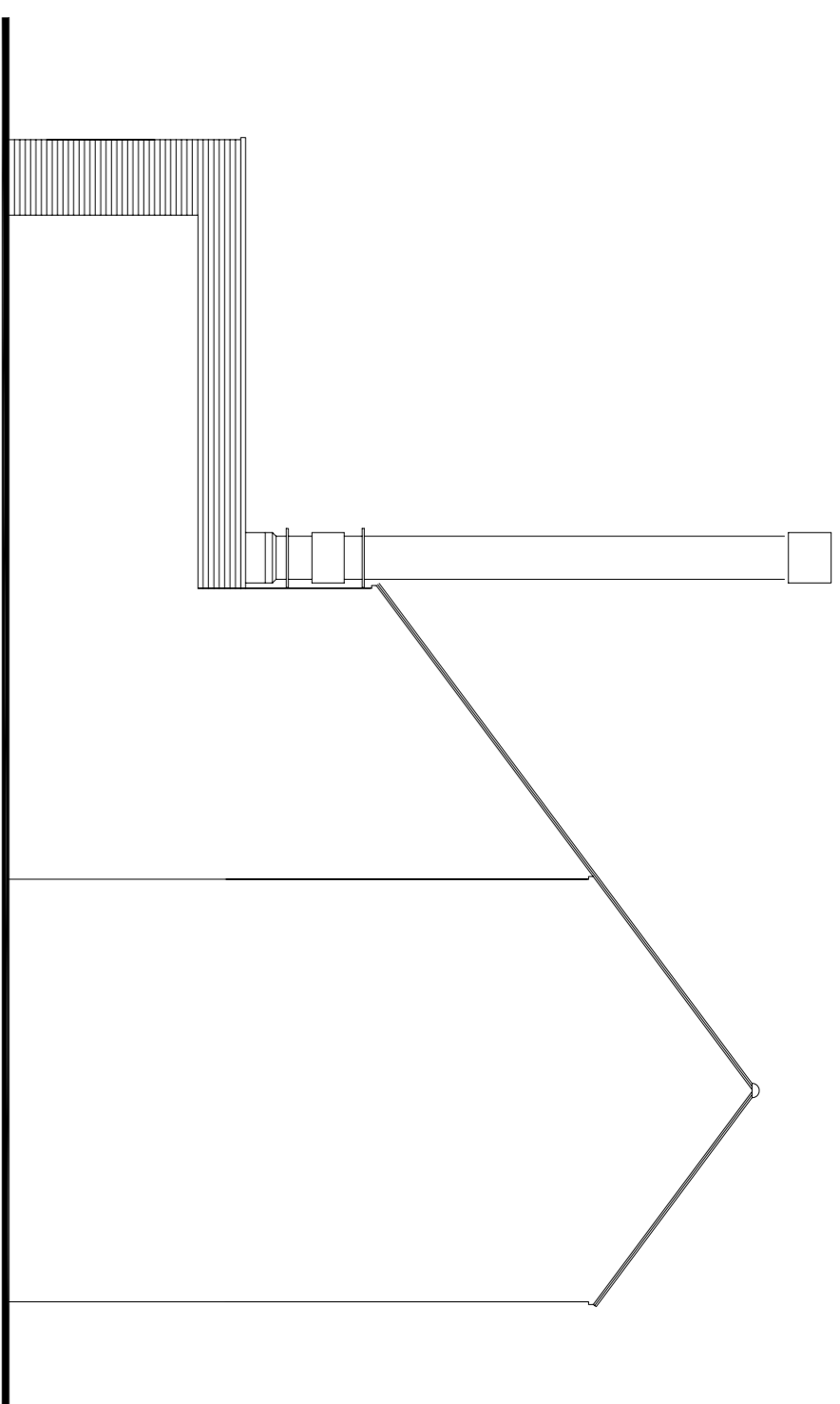
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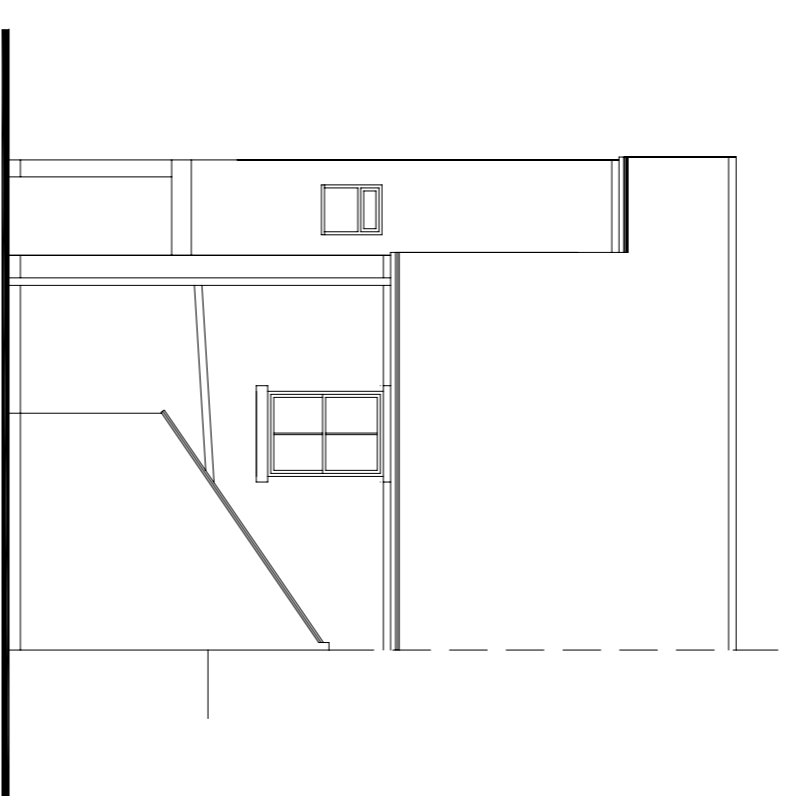
**PROPOSED
REAR ELEVATION**



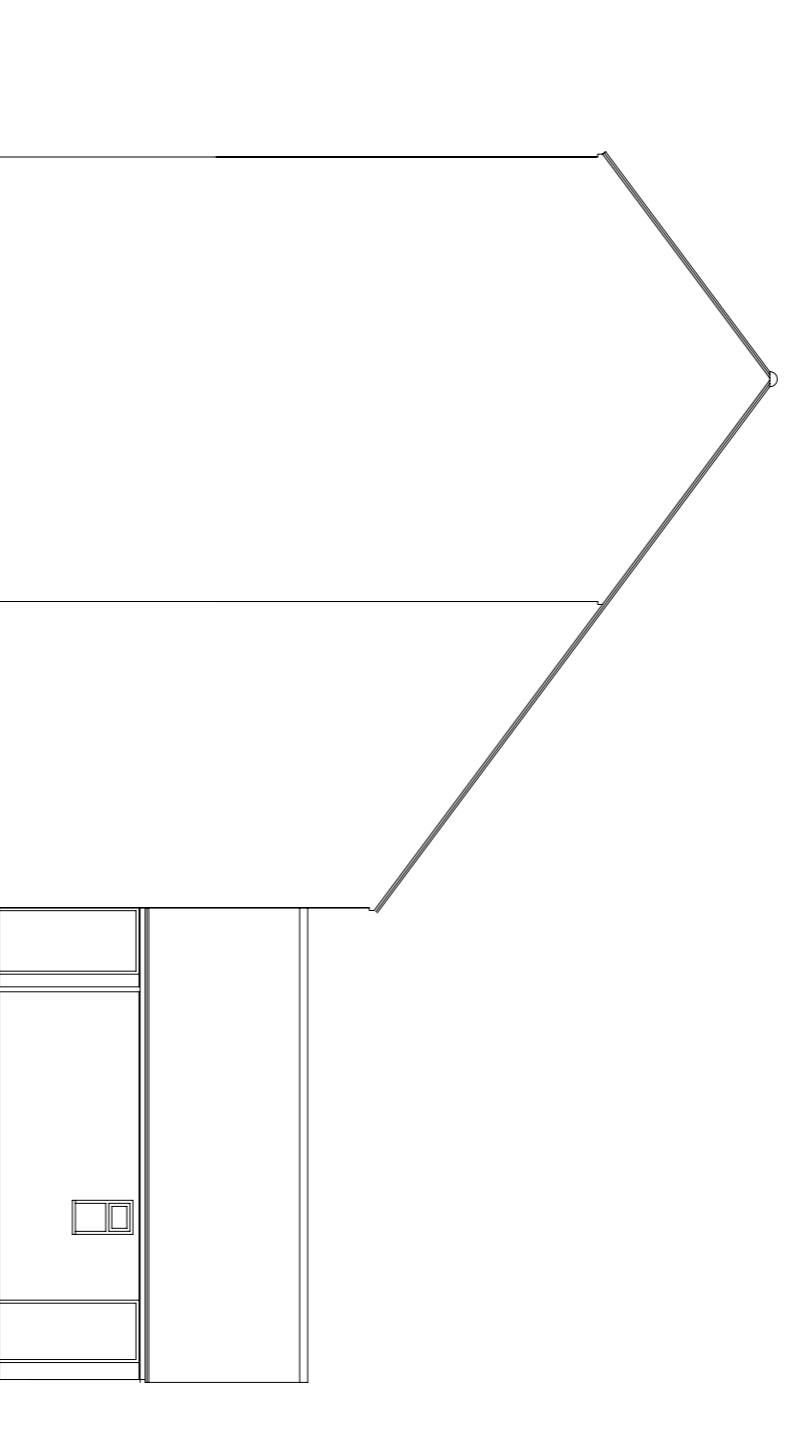
**PROPOSED
SIDE ELEVATION**



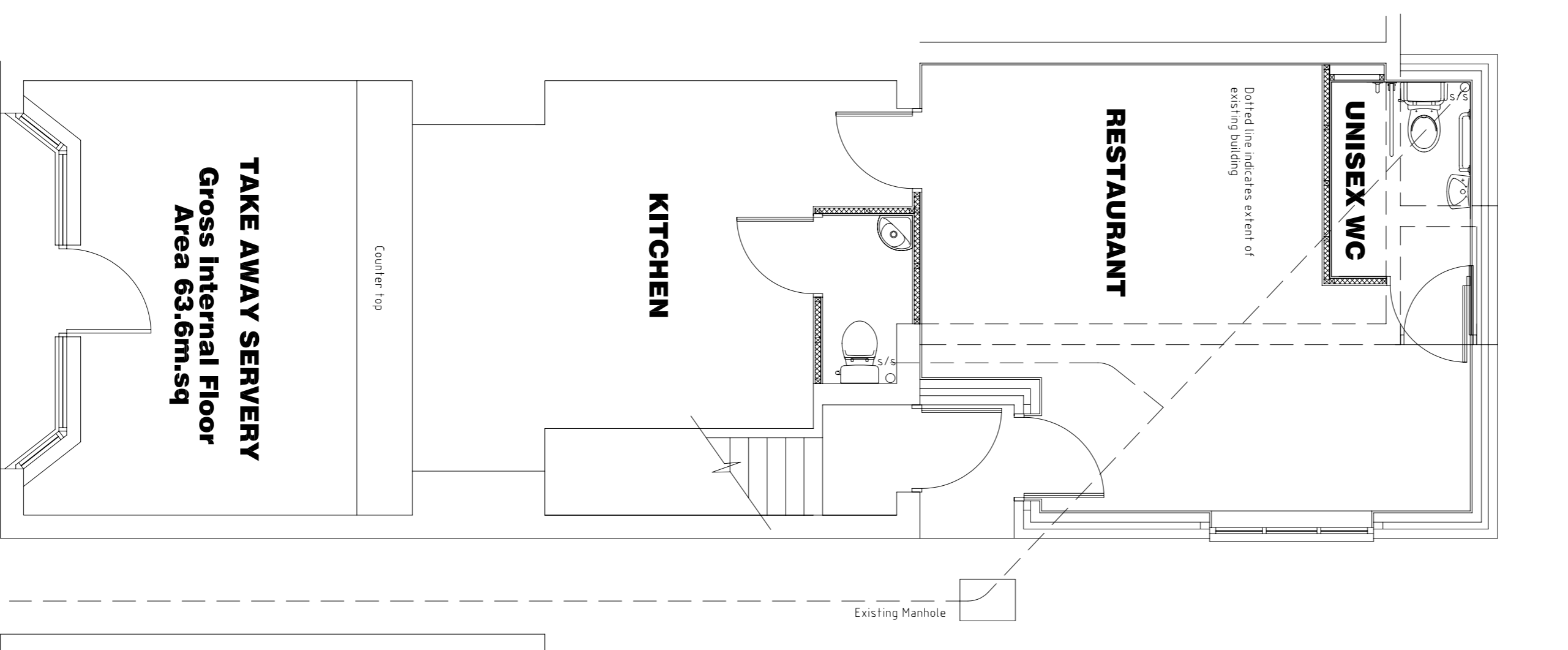
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SIDE ELEVATION**



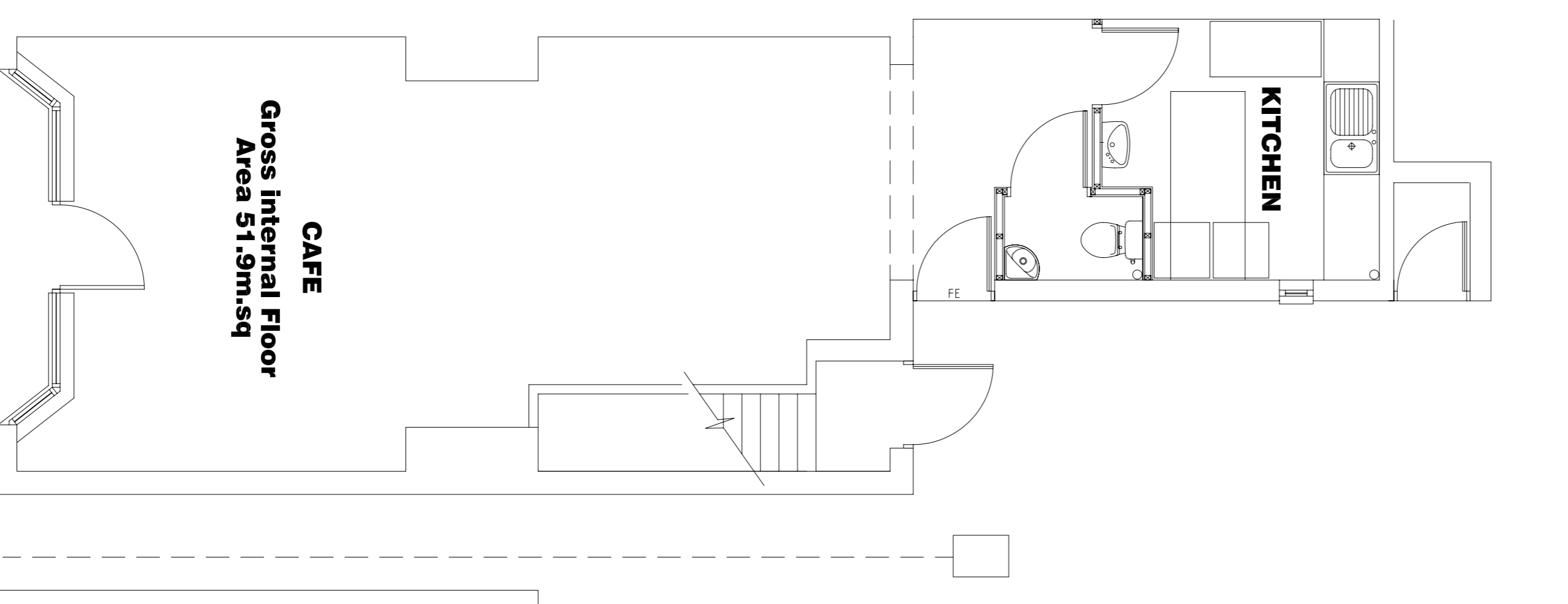
**EXISTING
REAR ELEVATION**



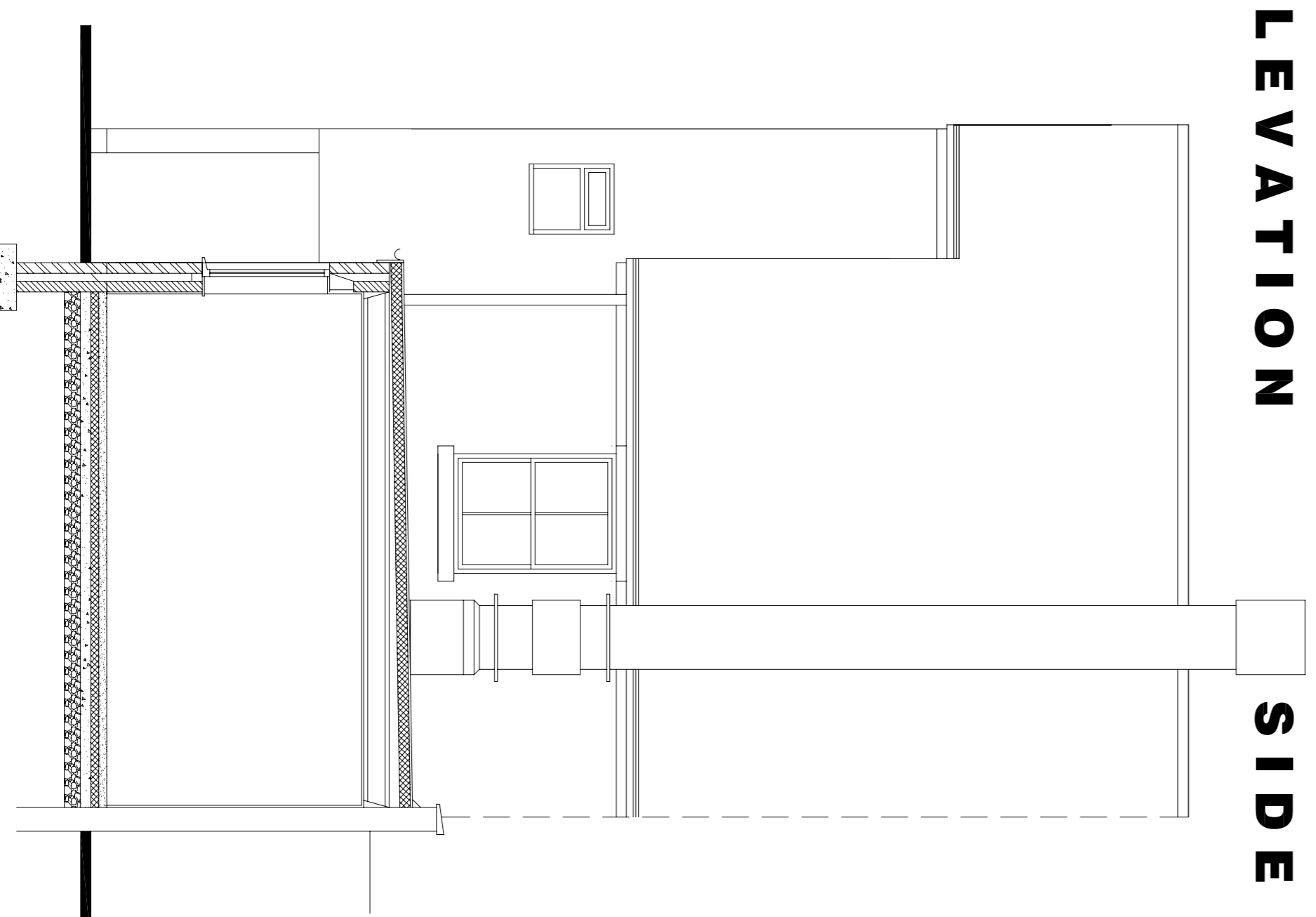
**EXISTING
SIDE ELEVATION**



**PROPOSED
GROUND FLOOR PLAN**



**EXISTING
GROUND FLOOR PLAN**



PROPOSED SECTION

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Scale: 1/50, 1/100
 Date: November 2009
 Sheet Size: A1

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