

PLANNING APPLICATION NUMBER: P08/1541

Type of approval sought	FULL PLANNING PERMISSION
Ward	CASTLE & PRIORY
Applicant	MR JAWAD IMDAD
Location:	SHOP, 38, BEECH GREEN, DUDLEY, DUDLEY, DY1 3QG
Proposal:	CHANGE OF USE FROM RETAIL (A1) TO HOT FOOD TAKEAWAY (A5) WITH PROPOSED FUME EXTRACTION. FIRST FLOOR REAR EXTENSION TO CREATE A ONE BEDROOM APARTMENT WITH ACCESS FROM NEW SEPARATE STAIR CASE. NEW SHOP FRONT. (RESUBMISSION OF WITHDRAWN APPLICATION P08/1077)
Recommendation summary:	APPROVE SUBJECT TO A 106 AGREEMENT

INTRODUCTION

This application was previously granted planning permission at the Development Control Committee of 9th February 2009. The permission was subject to conditions and a planning obligation to guarantee the payment of a sum of £18141.90. This sum comprised contributions towards Libraries £179.53; Open Space, Sport and Recreation £1233.28; Transport Infrastructure Improvements £15729.09 and a Management and Monitoring Charge of £1000.00.

Following the adoption of the revised Planning Obligations Supplementary Planning Document at the full Council Meeting of 18th March 2009, the applicant has requested the renegotiation of the transport contribution based on the newly adopted document. This would reduce the transport infrastructure contribution and would also result in the Management and Monitoring charge reducing from £1,000.00 to £250.00.

Given the general economic situation and in the interests of reasonableness, it is considered that, in situations where a development has been approved but not started and where the planning obligation contribution has not been made, it would be reasonable to review contributions where specific requests are made.

The report which follows is the original report and has only been changed as it relates to this particular issue.

SITE AND SURROUNDINGS

1. The 99 sq. m application site relates to premises which are located in a parade of six neighbourhood shops with a pitched roof over near to the crossroads junction of Beech Green with Mulberry Green. These shops benefit from enclosed yards to the rear which are accessed off a service road running parallel to the rear boundary and which are adjacent to a large green which is fronted on three sides by residential dwelling houses. Opposite the parade of shops are further residential dwelling houses.
2. The shops within the parade are used by two different operators, a retail shop (A1 use) and hot food takeaway (A5 use) whilst the remainder of the premises, including the application premises, are currently lying vacant from their former uses comprising three former retail shops (A1 use) and a former hot food takeaway (A5 use).

PROPOSAL

3. This is a full planning application proposing the change of use of the premises from retail shop (A1 use) to hot food takeaway (A5 use). The application also relates to a two storey rear projecting gable extension projecting 6.7 m and measuring 4.35 m in width to rise to a maximum height of 7.1 m (5.35 m to eaves). Permission is also sought for a new shop front with a predominantly glazed frontage and central access and egress.
4. The extension would provide a staff w/c and preparation area to serve the proposed waiting and cooking areas to the frontage of the premises at ground floor level (56 sq. m) with first floor living accommodation over including a living area, bedroom, bathroom and management office (49 sq. m). Access to the first floor living accommodation would be gained at first floor level only from a rear external steel staircase.
5. The change of use would include a fume extraction duct which would be concealed within the fabric of the building to exit 0.1 metres above the eaves of the rear projecting gable.

6. The applicant states that opening hours would be 12:00 to 22:30 Monday to Sunday. The premises would employ a total of 2 full time staff and 2 part time staff. No specific parking provision has been made within the site other than overnight parking for the two scooters which would be secured within the rear service yard area to the rear of the premises. Parking is available on road to the frontage of the parade of shops and to the rear of the premises on the service road.
7. The application is accompanied by a design and access statement and a statement relating to the kitchen extract system.

HISTORY

Application Site

APPLICATION No.	PROPOSAL	DECISION	DATE
CO/53/979	Full planning permission for three lock-up shops	Approved	20 October 1953
99/50643	Full planning permission for a change of use from retail shop (A1) to a young persons 'drop-in' centre	Approved with conditions	18 June 1999
P08/1077	Full planning permission for a change of use from retail (A1) to hot food takeaway (A5) with proposed fume extraction. First floor rear extension to create a one bedroom apartment with access from new separate stair case. New shop front.	Withdrawn	19 August 2008

PUBLIC CONSULTATION

8. The application was advertised by way of neighbour notification letters being sent to the occupiers of thirty eight properties within close proximity to the site. The application was also advertised by way of a newspaper advert and the display of a site notice.

9. In response to the consultation exercise, two letters of objection have been received voicing concern over unfair competition to the existing hot food takeaway. A petition containing eighty three signatures has also been received objecting to a potential increase in anti social behaviour and car parking prejudicing highway safety. The final period for comments expires on 12 November 2008. Any further comments relating to the scheme will be reported to Development Control Committee Members as a Pre-Committee Note.

OTHER CONSULTATION

10. Group Engineer (Development): No objections raised.
11. Head of Environmental Health and Trading Standards: This proposal is located in the middle of a residential area. Two premises within this parade of shops have already been granted hot food takeaway consent (A5 use). No recent complaints have been made by local residents about noise and smell. The addition of a third hot food takeaway (A5 use) would increase the potential for noise and odour to affected local residents but on balance it is considered that these uses can be controlled by conditions to control both odours and hours of operation.

RELEVANT PLANNING POLICY

- Adopted Dudley Unitary Development Plan (2005)
 - Policy S2 Creating a more Sustainable Borough
 - Policy DD1 Urban Design
 - Policy DD3 Design of Retail Development
 - Policy DD4 Development in Residential Areas
 - Policy DD6 Access and Transport Infrastructure
 - Policy DD7 Planning Obligations
 - Policy CR11 Retail (A3) Uses and Amusement Arcades
 - Policy CR13 Residential Development in Centres
 - Policy EP7 Noise Pollution
 - Policy AM15 Personal Mobility
- Supplementary Planning Document(s)
 - Parking Standards and Travel Plans

Planning Obligations

- Supplementary Planning Guidance

PGN28 Hot Food Takeaway Shops, Restaurants and Cafes (Class A3 Uses)

- Regional Planning Guidance

QE2 Restoring degraded areas and managing and creating high-quality environments

QE3 Creating a high quality built environment for all

T2 Reducing the need to travel

- National Planning Guidance

PPS1 Delivering Sustainable Development

ASSESSMENT

12. Key Issues

- Principle
- Amenity
- Highways
- Planning Obligations

Principle

13. The site is not located within a defined main or district shopping centre or allocated for any particular use within the adopted Dudley Unitary Development Plan (2005). The key issues in determining this application are therefore whether the change of use of the premises to an A5 hot food take-away unit, specifically for the preparation and sale of pizzas is appropriate in this residential location whilst assessing the impact upon the amenities of nearby residents and the highway implications.

Amenity

14. Policy CR11 (Retail (A3) Uses and Amusement Arcades) of the adopted Dudley Unitary Development Plan (2005) states that planning permission for hot food take

away shops will be allowed in appropriately located and accessible sites provided there would not be an adverse impact upon environmental quality, residential amenity, public or highway safety or the vitality or viability of nearby centres.

15. Policy CR11 also recognises that hot food takeaway shops can often *'generate considerable volumes of traffic, attracting mobile passing trade which may cause congestion or disturbance problems, create noise and smells and are often open at night. Consequently, care must be taken to avoid any adverse effects arising from proposed developments in locations which are in proximity to residential areas and other environmentally sensitive locations'*.
16. Policy DD4 (Development in Residential Areas) of the adopted Dudley Unitary Development Plan (2005) is also of relevance and applies in the consideration of proposals within residential areas. Policy DD4 seeks to ensure that there would be no adverse affect on the character of the area or residential amenity. Policy DD4 also states that the scale nature and intensity of use of the proposed development would be in keeping within the character of the area.
17. The Head of Environmental Health and Trading Standards whilst acknowledging that two premises within this parade of shops have already been granted hot food takeaway consent (A5 use) note that despite only one premises being in operation as a hot food takeaway (A5 use) at this time, a third hot food takeaway within the parade has the potential to exacerbate both noise and smell to local residents through these A5 land uses, however, through robust conditioning restricting hours of operation and controlling odours it is considered that the use could be adequately controlled ensuring residential amenity would not be prejudiced.
18. The proposed change of use would bring a vacant somewhat run down premises within the parade of shops into active use. The use would contribute to the vitality and viability of the parade of shops in which it is sited. The proposed use would also not undermine the overall retail function of the shopping parade. In this regard the proposal would comply with the requirements of Policy CR11.
19. The application also proposes a two storey rear projecting gable extension to provide first floor accommodation in the form of a one bedroom flat over with an external steel rear staircase. The application also proposes a new shop front and fume extraction

duct with the latter being predominantly internal and protruding above the eaves of the rear projecting gable by 0.1 m.

20. The proposed two storey rear extension associated with the change of use with residential accommodation over would also incorporate a staircase allowing for access to the residential accommodation above the proposed pizza shop. The proposed extension would be constructed with facing brickwork which would relate to the character and architectural appearance of the host property with all existing and proposed windows aligning through. The extension would adopt a pitched roof over of a pitch and type to match that of the existing to ensure the scale and mass of the extension would not harm neighbouring amenity and would have no detrimental impact on the neighbouring properties or the street scene due to its location to the rear of the property. In this regard the proposed extension would comply with the requirements of Policy CR11 and DD4.
21. The provision of residential accommodation within the scheme results in a mixed use development that would benefit from an on-site presence and observation of all areas of the site from first floor windows. Whilst there would be no amenity area associated with the residential unit at first floor level, there is a large green located immediately to the rear of the premises. It is considered that, on balance, the residential use would be a positive element to this proposal contributing to enhancing the viability and vitality of the area whilst making beneficial use of the building within the parade. In this regard the proposed residential element of the proposal would comply with the requirements of Policy CR13 (Residential Development in Centres) of the adopted Dudley Unitary Development Plan (2005).
22. Policy DD3 (Design of Retail Development) of the adopted Dudley Unitary Development Plan (2005) requires that all retail development should ensure active elevations to public areas which are in scale and proportion within the street scene in which it is contained. The proposed new shop front is of an appropriate scale in relation to the host building and will enhance the existing appearance of the parade to the benefit of the visual amenities of the area.

Highways

23. The development as proposed requires three parking spaces as prescribed within the adopted Supplementary Planning Document relating to Parking Standards and Travel Plans, however, a recent traffic count by the local highway authority has indicated that the proposed development would not have a serious impact upon highway safety within the vicinity of 38 Beech Green. In addition, a service road is positioned adjacent to the rear boundary of the site and could be used for temporary parking for passing trade. The proposal is therefore not considered to exacerbate the existing parking provision levels or impede traffic flow. In addition no objection is raised by the Group Engineer (Development).

Planning Obligations

24. Policy DD7 (planning Obligations) of the adopted Unitary Development Plan (2005) and the Planning Obligations Supplementary Planning Document requires that developments should mitigate against the consequential planning loss to the existing community. Should permission be granted a Section 106 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:

- Libraries - £179.53
- Open Space, Sport and Recreation - £1233.28
- Transport Infrastructure Improvements - £994.75
- Management and Monitoring Charge - £250.00

Total Offsite Contribution equates to £2657.56

CONCLUSION

25. On balance, the proposal would bring a vacant unit into use through modernisation whilst enhancing the image and attractiveness of the site where it formerly comprised of a fairly run down premises within a parade of shops. This has the potential to boost vitality and viability whilst facilitating the regeneration of the site and wider area. The site is considered to be of a sufficient size in which to accommodate a mixed use unit of this size that is able to address the street scene whilst natural surveillance afforded by the windows of the residential accommodation to all areas of the site would discourage anti-social activities at all times. The proposed extraction duct is considered to be adequate to ensure residential amenity would not be prejudiced whilst the proposed shop front and two storey extension are considered to relate satisfactorily to the host property ensuring that there would be no harm to visual amenity or demonstrable harm to neighbouring properties or wider street scene. In addition, highway safety would not be prejudiced. The principle of this mixed use hot food takeaway (A5 Use) and residential (C3 Use) development is therefore wholly acceptable in terms of policy criteria and the associated guidance.

RECOMMENDATION

26. It is recommended that the application is approved subject to:
- a) the development not be beginning until a scheme for the submission and approval of a planning obligation to guarantee the payment of £2657.56 for off site public open space/play provision and enhancement; library and transport improvements as well as monitoring, management and implementation costs has been submitted to and agreed in writing by the Local Planning Authority; and
 - 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 conditions, with delegated powers to the Director of the Urban Environment to make amendments to these as necessary; and

Reason for Determination of Planning Permission

On balance, the proposal would bring a vacant unit into use through modernisation whilst enhancing the image and attractiveness of the site where it formerly comprised of a fairly run down premises within a parade of shops. This has the potential to boost vitality and viability whilst facilitating the regeneration of the site and wider area. The site is considered to be of a sufficient size in which to accommodate a mixed use unit of this size that is able to address the street scene whilst natural surveillance afforded by the windows of the residential accommodation to all areas of the site would discourage anti-social activities at all times. The proposed extraction duct is considered to be adequate to ensure residential amenity would not be prejudiced whilst the proposed shop front and two storey extension are considered to relate satisfactorily to the host property ensuring that there would be no harm to visual amenity or demonstrable harm to neighbouring properties or wider street scene. In addition, highway safety would not be prejudiced. The principle of this mixed use hot food takeaway (A5 Use) and residential (C3 Use) development is therefore wholly acceptable in terms of policy criteria and the associated guidance.

The decision to grant planning permission has been taken with regard to the policies and proposals in the adopted Dudley Unitary Development Plan (2005) and to all other relevant material considerations:

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

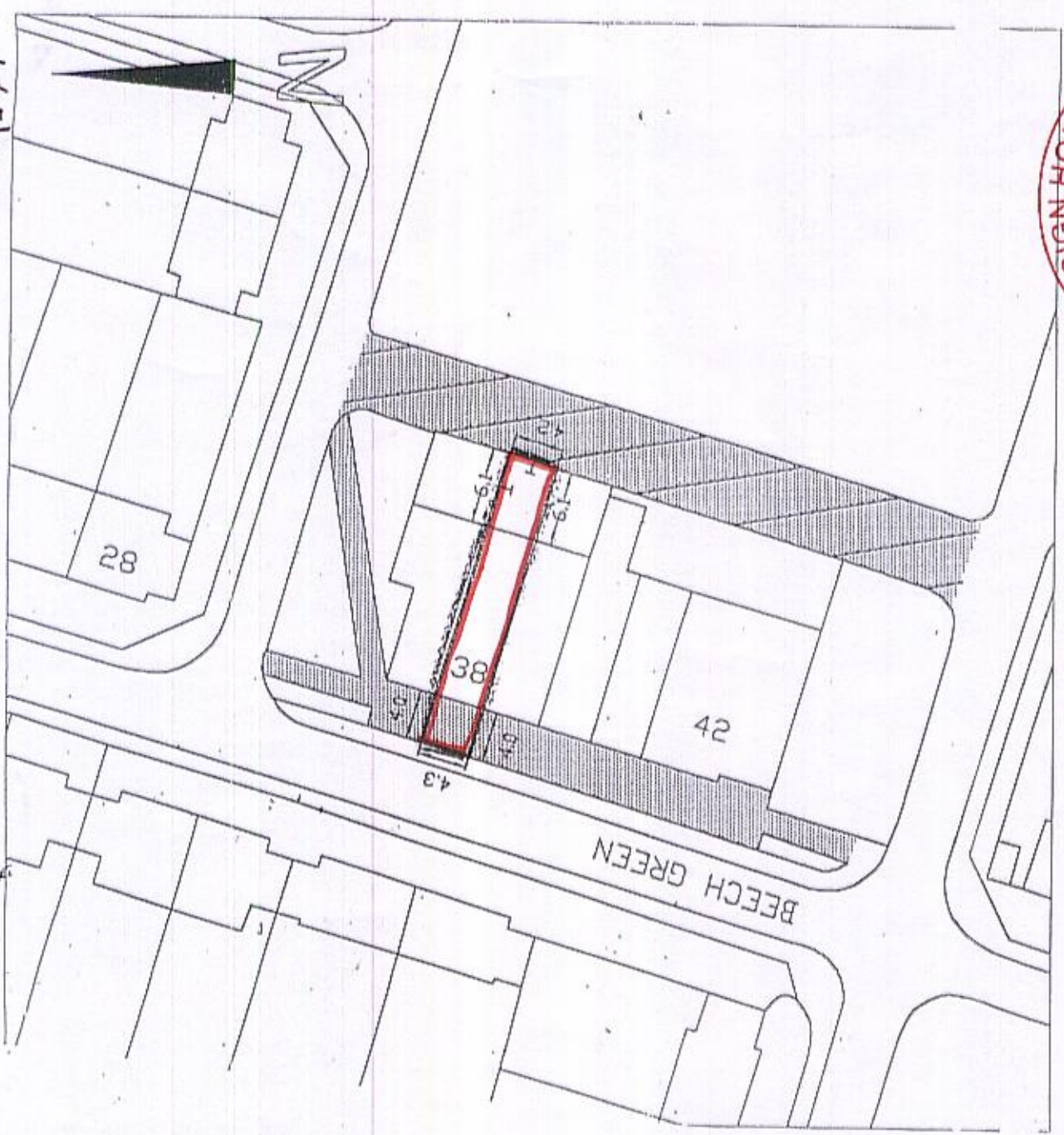
Note for Applicant

For the avoidance of the doubt, this permission relates to the plans marked 01, 02, 03, 04, 05, 06, 07, 08, 09, 10 and 11 and date stamped 'received 19 September 2008' unless otherwise agreed in writing by the Local Planning Authority.

Conditions and/or reasons:

1. A05A Commencement within 3 years - Full
2. The external materials used in the development hereby permitted shall match in colour, form and texture those of the existing property, unless otherwise agreed in writing by Local Planning Authority.
3. No development shall be started until full details of the colour scheme of the staircase has been submitted to and approved in writing by the Local Planning Authority, and thereafter maintained to the satisfaction of the Local Planning Authority.
4. F03A * Restricted opening hours
5. The use hereby permitted shall not commence until the premises have been provided with an extract ventilation system for the control of fumes, grit, dust, gas or mist the details of which shall be submitted to and agreed in writing by the Local Planning Authority. The agreed system shall be operated and maintained in accordance with the manufacturer's instructions and shall not be replaced unless any replacement has first been approved in writing by the Local Planning Authority.
6. The use hereby permitted shall not begin until litter bins, the type and siting of which shall be first approved in writing by the local planning authority, have been provided in the vicinity of the premises. Such bins shall be retained for the life of the development.

LOCATION PLAN + SITE PLAN. P081541



DESIGN HOUSE LTD
REVISED

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19 SEP 2008

Scale 1:500

AREA EDGED RED 100 SQ.M. APPROX.

RIGHT OF ACCESS.

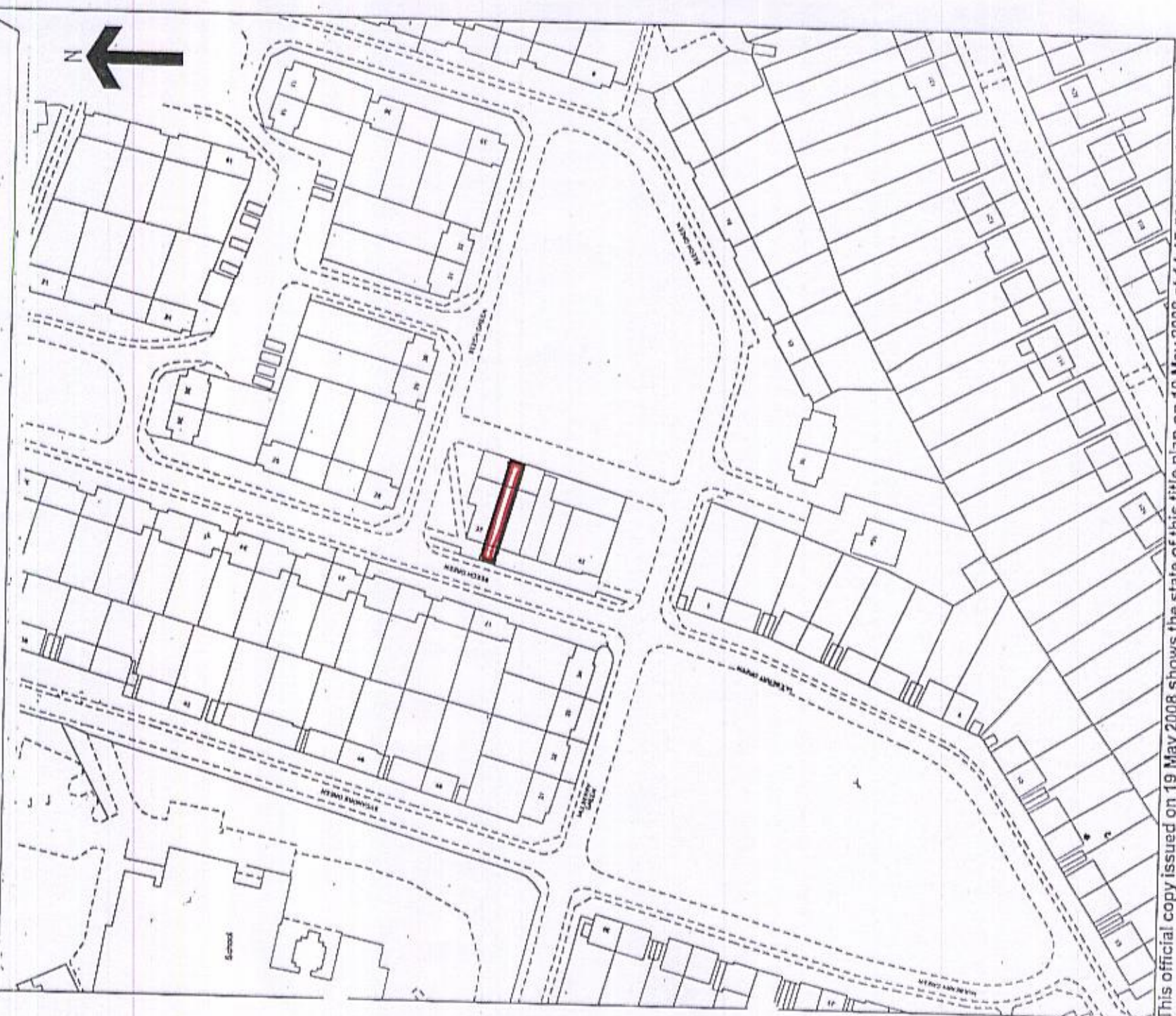
RIGHT OF ACCESS.

ACCESS WITH OR WITHOUT VEHICLES(S).

DESIGN HOUSE	
580, Moseley Road, Moseley, Birmingham B12 9AA Alan Garnett TEL: +44(0) 7913 358 580	
PROJECT:	38 BEECH GREEN, DUDLEY DY1 3QG
TITLE:	LOCATION PLAN & PROPOSED SITE PLAN
STATUS:	PLANNING
DATE:	24-05-08
PLAN SERIES NO:	001
REVISION:	
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REFERENCE:	AG/DH
SCALE: 1:1250 & 1:500	

Land Registry
Official copy of
title plan

Title number WM929095
Ordnance Survey map reference S09392SW
Scale 1:1250
Administrative area West Midlands: Dudley



This official copy issued on 19 May 2008 shows the state of this title plan on 19 May 2008 at 14:15:50. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002).
This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale.

PLAN : No 01 ... LOCATION PLAN & PROPOSED SITE PLAN