SCHEDULE A: Applications with Recommendation

18/0359

Item No: 02 Date of Committee: 24/08/2018

Appn Ref No:Applicant:Parish:18/0359Lowther Used FurnitureBrampton

Agent: Ward: Brampton

Location: Unit 11, Old Brewery Yard, Craw Hall, Brampton, CA8 1TR

Proposal: Change of Use Of Former Gym to Warehouse/Retail Shop

(Retrospective/Revised Application)

Date of Receipt: Statutory Expiry Date 26 Week Determination

17/05/2018 12/07/2018 31/08/2018

REPORT Case Officer: Richard Maunsell

1. Recommendation

1.1 It is recommended that this application is refused.

2. Main Issues

- 2.1 Whether The Principle Of Development Is Acceptable
- 2.2 Highway And Parking Issues
- 2.3 The Impact On The Occupiers Of Neighbouring Premises
- 2.4 The Impact Of The Proposal On The Brampton Conservation Area
- 2.5 Whether The Proposal Would Affect Developed Land In Floodplains

3. Application Details

The Site

- 3.1 Old Brewery Yard is located to the south-east of the centre of Brampton adjacent to Craw Hall. The buildings accommodate a series of small commercial and industrial units together with Brampton Parish Council's office.
- 3.2 From the roadside frontage on Craw Hall, the building varies in height from

single and two storey and is constructed from stone under a slate roof. The footprint of the building extends adjacent with Millfield to the south-east and then returns parallel with the rear of the properties along Millfield resulting in a u-shaped building.

- 3.3 Adjacent to the north-west corner of the building is a vehicular junction with the County highway. This access leads to the rear of the building and a courtyard area where the height of the building varies between two and three storeys and in which there are additional units at ground floor level. The courtyard provides access and parking for tenants and visitors to these units.
- 3.4 Unit 11 is located in the south-east corner of the building, adjacent to the junction of Craw Hall and Millfield and is accessed from Craw Hall. It is approximately 400 metres to the south-east of the centre of Brampton. The building is within the Brampton Conservation Area.

Background

3.5 The use of the premises commenced on 2nd February 2017 and an application for retrospective planning permission to change the use of the former gym to a warehouse/ retail shop was submitted in June 2017. Following lengthy discussions between Officers and the Highway Authority, the application was subsequently withdrawn by the applicant in 2018. Enforcement action was commenced but has not been continued as a result of the submission of the revised application for planning permission.

The Proposal

3.6 Planning permission is sought for a change of use of the building from a gym to a warehouse/ retail shop. The applicant currently operates a used furniture and antiques business. No external changes are proposed as part of this application.

4. Summary of Representations

- 4.1 This application has been advertised by means of a site notice and direct notification to the occupiers of 12 of the neighbouring premises. In response, three letters of objection have been received, two from the occupiers of a neighbouring premises and one from a planning consultant on behalf of these two neighbours. The issues raised are summarised as follows:
 - 1. some of the information provided on the application form is either misleading, confusing or factually incorrect. Part 3 describes the application as a change of use from a Gym to Warehouse /Retail and that this use has already started. Part 18 states 75 sq m are used for retail purposes, yet nothing is shown allocated for warehousing;
 - 2. the answer given to Part 8 implies that the applicant is related to a Member or Officer of the Council, although the nature of that relationship is not stated as it should be;
 - 3. there remains with this revised application a great deal of contradiction

- with regards to the number and location of parking spaces serving the development. This has not been helped by the lack of accurate plans and therefore a local surveyor has produced an accurate site plan on behalf of the objectors;
- 4. the Ownership Certificate has been completed indicating that the applicant either owns the Unit or has a leasehold interest with at least 7 years to run. The entire complex is owned by an overseas management company, with local agents and that leases here are generally for 2 or 3 years and not 7 or more, all of which indicates that Certificate B should have been completed. This is particularly important as it is noted that the applicants are showing parking spaces allegedly available exclusively to them that are situated some 200 m from their unit and by using spaces that are apparently allocated to other business at the site in their respective leases. Clearly this aspect requires urgent clarification to establish whether or not the application is in fact legally valid;
- 5. the Old Brewery Yard industrial site is identified in the Local Plan Policies Map as a Primary Employment Area. Policy EC2 restricts uses within these areas to B1, B2 and B8 uses. Condition 3 of the original planning permission relating to the sub-division of the Old Brewery site into 11 units (Ref: 94/0310) also restricts the use to B1 and B8 uses;
- 6. the reality of the use is that it is a retail unit open to visiting members of the public with a very small element of warehousing. The use is not ancillary in nature, is not of a proportionate scale and the introduction does not aid the overall attractiveness or sustainability of the employment area. The proposal is, therefore, clearly contrary to Policy EC2 of the Development Plan and the application should be refused on these grounds alone;
- 7. Policy EC6 requires development proposals for new retail and main town centre uses should, in the first instance, be directed towards defined centres, and for comparison retailing proposals the defined Primary Shopping areas within these centres. Brampton is a Defined Centre with a defined Primary Shopping Area. The application site is not within the Primary Shopping Area, so the application is in conflict with this policy;
- 8. even if the site was within the primary shopping area of Brampton, Policy EC5 indicates that proposals for retail development will be acceptable providing that ... appropriate access, parking and security arrangements can be achieved. Policy IP3 also states requires the provision of a minimum number of parking spaces per new dwelling/ m2 of floor space;
- 9. in this case, there is clearly inadequate parking for the applied-for use and no provision is made to encourage alternative means of travel;
- 10. the business provides a useful service to its customers but it is simply in the wrong place and there other more appropriate units available on the Townfoot Industrial Estate:
- 11. the use has been operating without authorization since February 2017. The extremely limited parking available for the former gym means that customers of the furniture shop park on the forecourt of Winged Heart Stained Glass, or on the road, obstructing access to the forecourt. This is interfering with the efficient working of the business with delivery drivers / outworkers unable to pick up or drop off their stained glass products. Because the nature of the retail use involves the sale of mainly heavy and bulky goods, virtually all shoppers arrive in vehicles;

- 12. one or two parking spaces are clearly insufficient for the applied-for use and the forecourt area is too small to accommodate most cars/ vans and, in any event, which is usually unavailable for parking as it is used for display purposes. If cars are parked end on to the building, they force pedestrians, particularly those with pushchairs or wheelchairs, onto the carriageway of the busy road;
- 13. recent parking problems have resulted in a proposal from Cumbria Highways to use double yellow lines to restrict on-street parking at the junction of Millfield and Craw Hall. Whilst this is welcome in terms of road safety, the restrictions are likely to exacerbate problems experienced by neighbouring premises by further reducing local on-street parking and putting additional pressures on the parking spaces outside of their units;
- 14. the former gym use did not cause as many problems because users mainly attended in the evenings when other businesses are not operating;
- 15. the applicants have shown car parking spaces within the rear courtyard of the complex. It is understood that these spaces are included in the leases of the businesses around the courtyard for their use and there is no evidence provided by the applicant to show that he has any right to claim that his customers can freely use them, or that such parking if allowed would not affect the parking requirements of the other business users;
- 16. even if such parking were to be allowed its practicality is questioned. The business at Unit 11 is a furniture store and the rear courtyard parking area is some 200 m away. It is unrealistic to expect shoppers to carry their often heavy furniture purchases this far, and so it is highly predictable that they are likely to revert to picking up from the front doors of the unit thereby introducing additional traffic exacerbating the unsatisfactory highway situation;
- 17. as well as currently operating without planning permission, the current use is operating in breach of three of the conditions imposed upon the original planning permission for the site (94/0310) which restricts the use to purposes falling within use classes B1 and B8; prevents the outdoor storage or display for sale of goods and materials; and limits the hours of use of the units:
- 18. the application should be refused being contrary to Policies EC2, EC6 and IP3 of the Carlisle District Local Plan 2015-2030 and to continue with the previously agreed planning enforcement action to require the early cessation of the use.

5. Summary of Consultation Responses

<u>Cumbria County Council - (Highways & Lead Local Flood Authority)</u>: - the following comments have been received:

Highway Authority

The Highway Authority have been in discussions with the applicant since the original planning application (17/0549). It was stated throughout the consultation that the parking requirement for an individual shop is 8 car parking spaces, 1 disabled space, 1 motorcycle and 2 pedal cycle spaces. This requirement was calculated on a gross internal floor space of 225m2.

This is in contradiction to the application form that states 75m2. These parking requirements were to be provided by the applicant both in front and in the courtyard to the rear.

Discussions took place with the applicant to determine if the applicant could provide these parking requirements within the courtyard to the rear of the Old Brewery. In principle this is accepted by the Highways Authority; however a written agreement is required from the landlord that Unit 11 may use the rear yard for car parking or this element should be conditioned.

Within the revised parking plan as submitted on the 28th June 2018 there is enough room for 15 car parking spaces within the courtyard with a dimension of 2.4m x 4.8m. Eight of these spaces are to be allocated towards the Old Brewery which would leave a provision of 7 for the remaining businesses. The application has therefore shown that they can provide the required number of car parking spaces. This is acceptable from a highway point of view. The waiting restrictions proposed at the junction of Millfield and Craw Hall will also improve the road safety at this location.

In light of the above the Highway Authority has no objection to this application. It is however accepted that this parking allocation to a single user could have a real detrimental impact on the neighbouring business. This is however a planning matter and not for this authority to comment on further. The Highway Authority recommend the imposition of a condition requiring the provision and retention of eight parking spaces.

Lead Local Flood Authority Response

The Lead Local Flood Authority has no objection to the proposal as it is considered that it will not affect flood risk on site or downstream of the development;

<u>Brampton Parish Council</u>: - the parish council will only agree to a retail application on condition that the applicant can prove that he has been allocated all the designated spaces shown in the rear of the Brewery Yard;

<u>Planning - Access Officer</u>: - no objection.

6. Officer's Report

- 6.1 Section 70(2) of the Town and Country Planning Act 1990/ Section 38(6) of the Planning and Compulsory Purchase Act 2004, requires that an application for planning permission is determined in accordance with the provisions of the Development Plan unless material considerations indicate otherwise.
- The relevant planning policies against which the application is required to be assessed is the National Planning Policy Framework (NPPF), the National Planning Practice Guidance (NPPG) and Policies of SP2, EC2, EC5, EC6, IP3, CC4, CM5 and HE7 of the Carlisle District Local Plan 2015-2030 are also relevant. Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990 and the Cumbria Development Design Guide 2017 are also

material planning considerations.

6.3 The proposal raises the following planning issues.

1. Whether The Principle Of Development Is Acceptable

- 6.4 Paragraph 8 of the NPPF outlines that there are three dimensions to sustainable development: economic, social and environmental all of which give rise to the need for the planning system to perform a number or roles. These roles should not be undertaken in isolation because they are mutually dependent.
- 6.5 Paragraph 11 of the NPPF highlights the presumption in favour of sustainable development. For decision-taking this means approving development proposals that accord with the development plan; and where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
 - the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
- The land is designated as being Primary Employment Land and as such policies allow for the redevelopment and expansion of employment sites subject to the consideration of the relevant policy criteria, namely that: the use of the site is applicable; and that the residential amenity of the occupiers of any neighbouring properties and parking and transport issues are not adversely prejudiced.
- 6.7 Development should also be appropriate in terms of quality to that of the surrounding area and that development proposals incorporate high standards of design including siting, scale, use of materials and landscaping which respect and, where possible, enhance the distinctive character of townscape and landscape.
- 6.8 Paragraph 89 of the NPPF requires impact assessments to be completed on retail proposals over 2,5000 square metres if there is no locally set threshold.
- 6.9 The NPPF advises in paragraph 85 that decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation by:
 - defining a network and hierarchy of town centres and promote their long-term vitality and viability;
 - defining the extent of town centres and primary shopping areas, and make clear the range of uses permitted in such locations;
 - retaining and enhancing existing markets and, where appropriate, re-introduce or create new ones;
 - allocating a range of suitable sites in town centres to meet the scale and type of development likely to be needed;
 - where suitable and viable town centre sites are not available for main town

- centre uses, allocating appropriate edge of centre sites that are well connected to the town centre; and
- recognising that residential development often plays an important role in ensuring the vitality of centres and encourage residential development on appropriate sites.
- 6.10 In paragraph 86, the NPPF confirms that:

"Local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered."

6.11 It therefore follows in paragraph 90 that:

"Where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the considerations in paragraph 89, it should be refused."

- 6.12 The proposed development is predominantly retail with ancillary storage facility to the rear of the premises and is therefore defined in the NPPF as a "main town centre use". The guidance confirms that when edge and out of centre proposals are considered, preference should be given to accessible sites. In accordance with paragraph 86 of the NPPF a sequential test is therefore required.
- 6.13 Policy EC6 of the local plan echoes the national planning policy guidance and requires the submission of a sequential test for sites and premises outside defined centres.
- 6.14 The site is approximately 400 metres south-east from the centre of Brampton. Whilst the principle of the reuse of the building <u>may</u> be acceptable, no sequential test accompanies the application and therefore an appropriate assessment of a retail use in this location cannot be undertaken. The applicant is aware of this requirement but has thus far opted to attempt to address the parking and highway issues which are discussed in the following paragraphs of this report. Nevertheless, in the absence of a sequential test, the proposal fails to meet to the planning policy requirements of both the NPPF and the local plan.

2. Highway And Parking Issues

6.15 The frontage of the building is adjacent to Craw Hall, along with the neighbouring buildings. A small area exists in front of these premises and is demarked by block paving, adjacent to the footpath and then the road. These parking areas are narrow and taper in front of Unit 11. To the rear, due to the change in topography, the building is occupied by other users in the lower floors of the building which are served by parking facilities within a courtyard arrangement.

- 6.16 Cumbria County Council as the Highway Authority has advised that the use would generate the need for eight car parking spaces, one disabled space, one motorcycle and two pedal cycle spaces. It was suggested by the Highway Authority that these parking requirements could be provided within the courtyard provided that this arrangement is not to the detriment of other business users in the vicinity.
- 6.17 The Highway Authority further requested that a written agreement be provided from the landlord that occupier of Unit 11 may use the rear yard in perpetuity for car parking and that the provision for Unit 11 would not affect the parking requirements for other business users.
- 6.18 Within the current application the plans submitted illustrate that one parking spaces for disabled persons would be provided in front of and parallel to the premises along Craw Hall. A further 15 spaces would be provided within the courtyard that would accommodate customers visiting the premises subject to the application together with tenants and visitors of the other units. On this basis, subject to the submitted plan being implemented, the Highway Authority has raised no objection.
- Officers have concerns that the submitted parking layout plan is unachievable and therefore cannot be implemented. For example, where four spaces are shown in the east of the courtyard, only three spaces can be physically achieved. In addition, the two to the south are proposed where a tenant stores his machinery. The three spaces further along are shown in a narrow area of paving where there is an external fire escape. As such, although an attempt has been made to demonstrate that the parking spaces can be made available to the rear, these are not physically achievable. The plan fails to take account of the layout, physical obstacles such as the presence of an external metal fire escape and existing access requirements to the units.
- 6.20 The objector has commissioned a survey of the site which shows that only nine spaces can be achieved which reflects the conclusion of Officers. It therefore follows that whilst the Highway Authority has no objection to the application provided that the parking plan can be implemented, if it cannot be implemented, then the proposal raises highway and parking issues.
- 6.21 Correspondence submitted by the applicant from his landlord confirms that the footprint of the building is subject to the lease with the area to the front (adjacent to Craw Hall) permitted for parking. When commenting on the land within the courtyard subject to the parking layout plan, the landlord states:
 - "Extract 2 shows our overall ownership edge blue. As with all of the occupiers at this estate parking at the front of the estate is limited so we have no objection in principle to their visitors parking within the "Courtyard Area" (being the area where Old Brewery Yard is written on the plan) on a temporary basis providing of course that this does not interfere with the use and operation of those occupiers that are located within the Courtyard."
- 6.22 This statement has two implications in the consideration of this application.

Firstly, the landlord makes reference to being accepting of the principle on a "temporary" basis and secondly, it is only acceptable provided that the arrangement does not affect other tenants and visitors to the site.

- 6.23 Officers are concerned that if customers of the premises subject to this application park in the courtyard, which it has already been stated is limited due to existing parking requirements and the physical layout and restrictions of the courtyard, this may then displace existing tenants and visitors thus resulting in parking issues elsewhere. As such, it is less than certain that the landlord is supportive of the scheme as required by the Highway Authority.
- 6.24 The use has the potential to generate additional vehicle movements and parking requirements. A number of Officers have passed the site since the business has been trading and witnessed up to 5 vehicles parked indiscriminately at the front of the premises across the parking area, footpath and highway. In practical terms, it is difficult to conclude whether patrons of the business would, in fact, park in the courtyard, walk to the premises and then walk back to the courtyard. In any event, vehicles may still have to park on the front to load any large items purchased.
- 6.25 In overall terms, the submitted plan shows a parking layout which is, in reality, unachievable. As such, the development fails to provide adequate access and parking facilities and is therefore contrary to both national and local planning policies.

3. The Impact On The Occupiers Of Neighbouring Premises

- 6.26 Planning policies require that development proposals do not adversely affect the amenity of occupiers of neighbouring premises or properties. The proposed use, based on its own merits as a retail unit, subject to the trading hours proposed on the application form of 9am until 5pm Mondays to Saturdays and 11am until 4pm on Sundays and Bank Holidays would not in itself give rise to any loss of amenity to neighbouring occupiers, subject to the imposition of appropriate conditions.
- 6.27 The issues arising from the parking situation are discussed in the preceding paragraphs.

4. Impact Of The Proposal On The Brampton Conservation Area

- 6.28 The application site is located within the Brampton Conservation Area. Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990, the NPPF, PPG, Policy HE7 of the local plan are relevant.
- 6.29 Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990 highlights the statutory duties of Local Planning Authorities whilst exercising of their powers in respect to any buildings or land in a conservation area. The aforementioned section states that:

"special attention shall be paid to the desirability or preserving or enhancing the character or appearance of that area".

- 6.30 The aim of the 1990 Act is reiterated in the NPPF, PPG and policies within the local plan. Policies HE6 and HE7 of the local plan advise that proposals should preserve or enhance their character and appearance, protecting important views into and out of conservation areas.
- 6.31 The proposal involves the reuse of the existing building with no external alterations and as such, it is not considered that the character or setting of the conservation area would be adversely affected should planning permission be granted for this development.

5. Whether The Proposal Would Affect Developed Land In Floodplains

6.32 Old Brewery Yard is located within Flood Zone 2 and 3 of the Environment Agency's Flood Map. No external or internal alterations are proposed, therefore, the proposed change of use of the premises would not affect the floodplain. No issues are therefore raised in respect of the objectives of Policy CC5 of the local plan.

Conclusion

- 6.33 In overall terms, the premises is allocated as being within a Primary Employment Area. Whilst alternative uses may be acceptable, as evidenced by the planning permission granted for the building for the change of use to a gym, such uses much be compliant with planning policies and in particular, given that the proposed use is a main town centre use, must be supported by a sequential test. No sequential test has been submitted in respect of this application.
- 6.34 The use of the premises results in additional traffic and parking demands which would need to satisfy the criteria outlined in the Cumbria Development Design Guide. Whilst parking is shown within he courtyard, this is neither achievable, realistic or supported by the landlord who advocates a temporary use provided that it does not prejudice other users.
- 6.35 In light of this report, it is considered that the application is contrary to both national and local planning policies and Members are recommended to refuse the application.

7. Planning History

- 7.1 Planning permission was granted in 1994 for the subdivision of existing buildings into 11 light industrial letting units.
- 7.2 Planning permission was granted in 1996 for the change of use of the building from a gymnasium (Use Class D2) to business (Use Class B1/ B2/ B8).
- 7.3 In 2012, retrospective planning permission was granted for the change of use to a gymnasium (Use Class D2).

7.4 An application for retrospective planning permission was submitted in 2017 for the change of use of former gym to a warehouse/ retail shop but was withdrawn in 2018.

8. Recommendation: Refuse Permission

1. Reason:

The proposal is for a retail unit with ancillary warehousing which is defined in the National Planning Policy Framework as a "main town centre use". The site is outside a Defined Centre and as such, a sequential test is required to ensure that main town centre uses are located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) consideration can be given to out of centre locations. The proposal is therefore contrary to Paragraph 86 of the National Planning Policy Framework and Policy EC6 (Retail and Main Town Centre Uses Outside Defined Centres) of the Carlisle District Local Plan 2015-2030.

2. Reason:

The proposal requires the provision of eight car parking spaces, one disabled space, one motorcycle and one pedal cycle spaces. The application fails to adequately demonstrate that appropriate levels of parking provision can be satisfactorily achieved and is likely to result in the displacement of other tenants and visitors to the neighbouring premises. As such, the proposal is contrary to Paragraph 102 of the National Planning Policy Framework, Appendix A of the Cumbria Development Design Guide 2017 and Policy IP3 (Parking Provision) of the Carlisle District Local Plan 2015-2030.

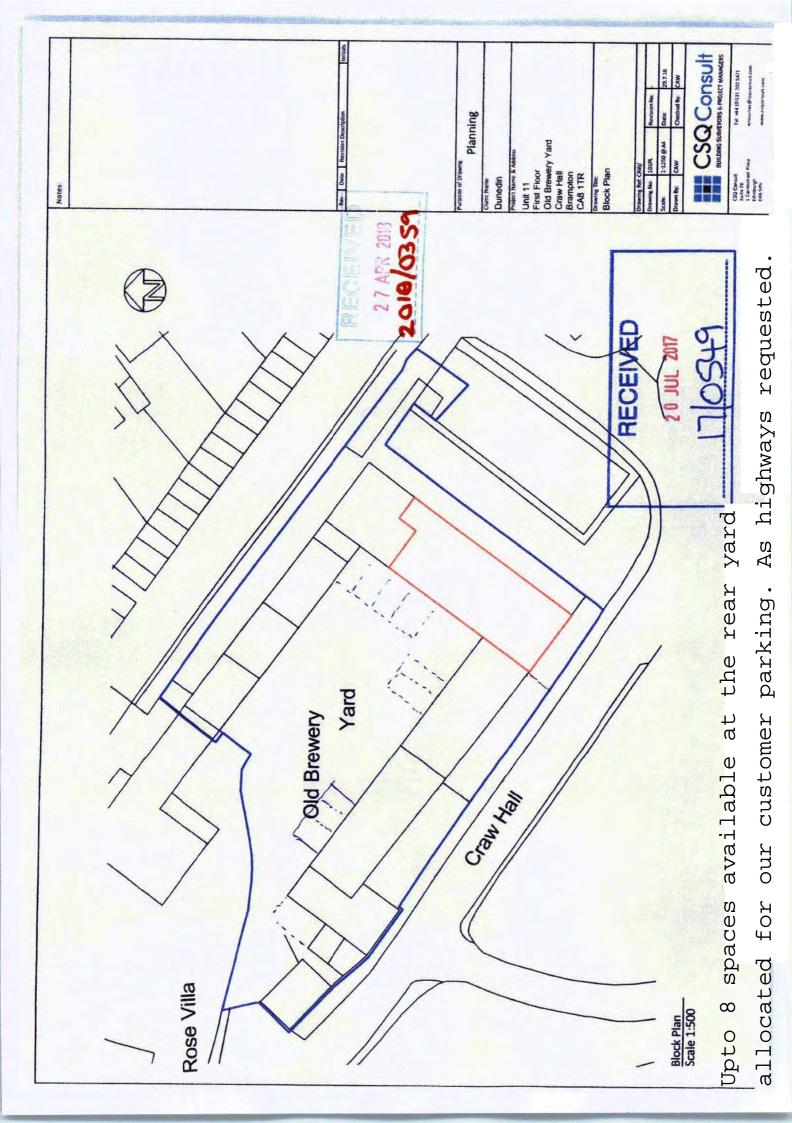




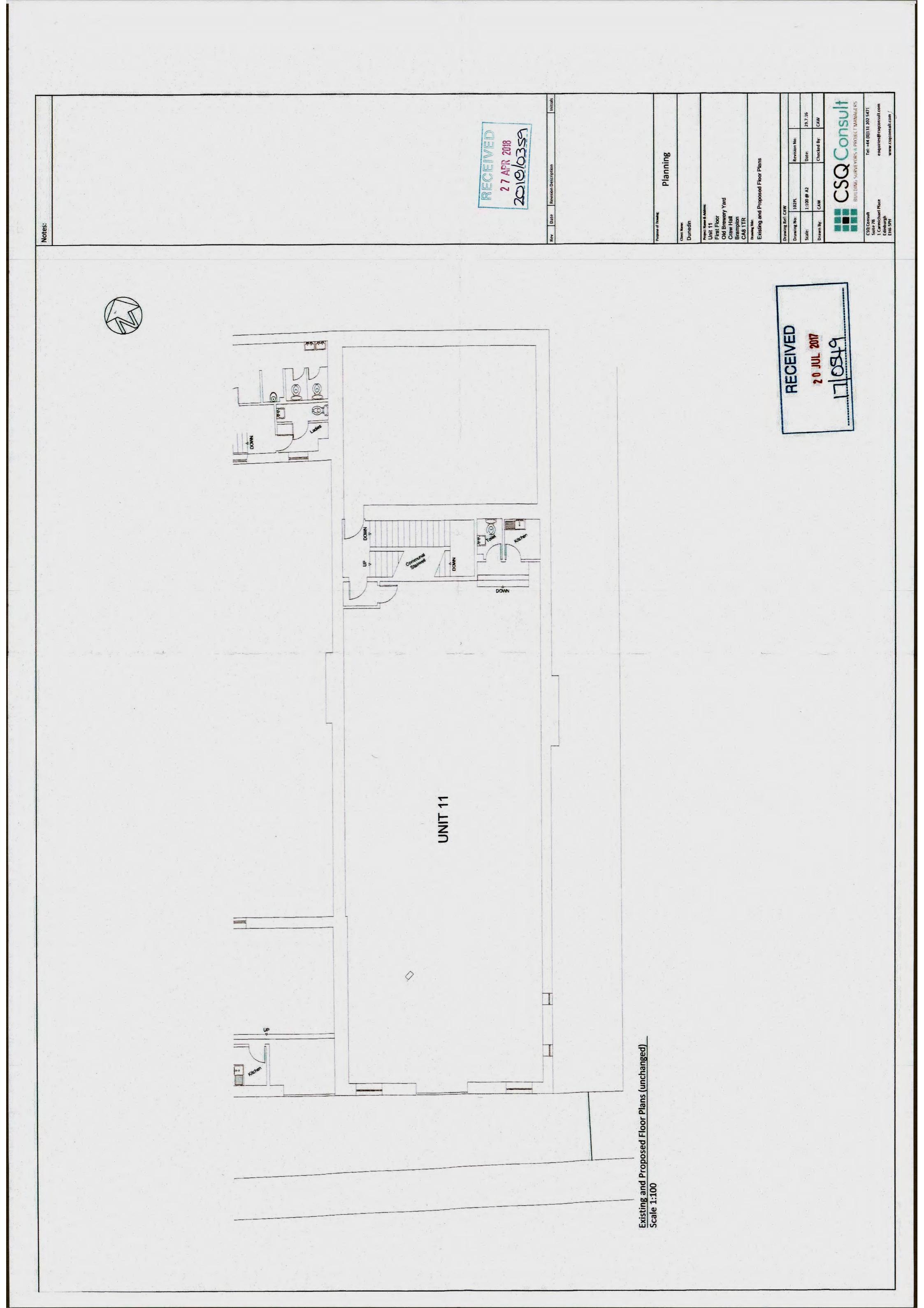




CSG Consult Suze 78 1 Carmichan Pl Edinburgh KH6 SPH



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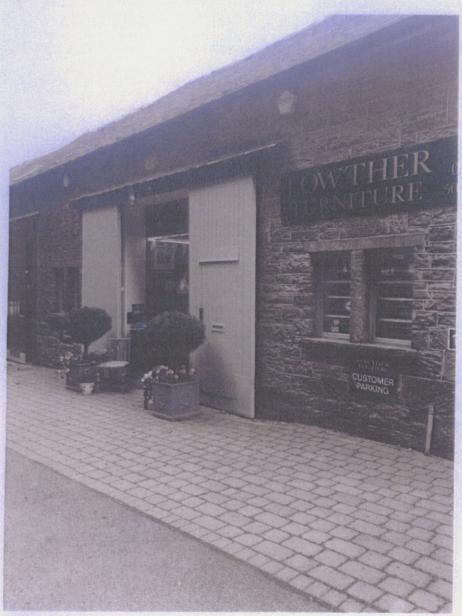
Heritage Statement

The building is unlisted, it is believed to be built in 1783.

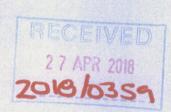
We have no intention to change anything structural inside or outside.

We have parking bays on the front of the building for 2/3 cars at any one time, we unload the van on the front of the premises then move the van elsewhere so the parking is free for customers.

We have 2 potted fir trees (as pictured) either side of our doors purely for decoration to draw the eye to our business for passing trade, these do not obstruct the customer parking.







These were the pictures from our last planning, tree's etc are now removed for ease of customer parking, Also no furniture is displayed on the shop front except for loading and unloading times.