
From: Sheryl Curran <sheryl.curran@icloud.com>
Sent: 28 July 2021 21:51
To: Kilroe, Alan
Cc: Roberts, Chloe
Subject: External Mail: Fwd: Sunnyside cottage LHE
Attachments: a00875 Appendix. 6 - Case Summary.pdf; a00875-Appeal-Decision-Notice-Superseded-Version Appendix 6..pdf; An original rear wall that has been (entirely) removed still forms part of "the rear wall of the original dwellinghouse". .docx; SUNNYSIDE COTTAGE -Rear Boundary Line Historic evidence.pdf; SUNNYSIDE COTTAGE LHE-PROPOSED DWELLING PL02 E.pdf; SUNNYSIDE COTTAGE LHE-EXTG HOUSE SITE LOCATION rev c.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

CAUTION: This email originated from an external source. If you suspect a potential phishing email, report it via the IT Self Service Portal which can be found within the Quick Links section on Bertha

Hi Alan (& Chloe on your return)

Thank you for your time yesterday, nice to put faces to names. You must let me know how to set my background to blurred like you both did, it will save me tidying up!

Please find attached a PDF of CAD plans I have drawn together using the historic photographs forwarded for the application. Bluebeam was beyond my technical expertise! You will see I have scaled the photos (total pain) and used the outbuilding as a reference so you can check accuracy. For each of the historic images and maps, I have drawn what I considered to be a reasonable, notional line to ascertain the position of the rear boundary. These have then been collated so there is a fair representation of boundary position on the balance of probabilities, which is the legal standard I must meet, as I understand it. The outrigger built-in 1986 replacing the previous one, is notionally larger but there really isn't a lot in it, (although of course, that is for you to decide.) I THINK this is what you requested but let me know if not.

The drawings for the application have been altered very slightly to show the original building line more clearly and outlined in colour to make it clear.

Also attached is the case law supporting our position that the original building line is intact as the rear boundary can be accurately ascertained from the evidence I have submitted. The case summary is attached for Appendix 6, please let me know if you want/need the others.

As stated yesterday, we offer no argument the first floor is an extension and its volume should be removed from our 50% Greenbelt allocation. However, I think this is more relevant and will come into play in the final planning permission application, (although I stand to be corrected.)

The matter raised in regard to the publication of the photos is in hand and I should receive written permission for publication tomorrow.

Please don't hesitate to let me know if you require anything further
Best wishes

Sheryl
07758518557

Begin forwarded message:

From: "Roberts, Chloe" <Chloe.Roberts@knowsley.gov.uk>
Date: 27/07/2021
To: Sheryl Curran <sheryl.curran@icloud.com>
Subject: RE: External Mail: Fwd: Historic England Image Order 117127

Hi Sheryl,

We are looking to publish the aerial photos submitted in support of the application as this is information which we will base our decision on. However, looking at the text forwarded from Historic England, they say:

“All information is supplied by the Historic England Archive in accordance with the terms and conditions of this Agreement to the individual, organisation, or company named (“You”), for internal purposes or private research, as specified by You in Your original enquiry. It is supplied in accordance with Historic England service standards and payment terms.

You may not copy, publish, or otherwise make available, or commercially exploit information supplied by Historic England under this Agreement without Historic England’s written permission, whether or not the information supplied is copyright material”.

Are you able to confirm with HE whether you have permission to make these documents available as part of a planning application (i.e. we intend to make this information publicly accessible via Public Access on our website)?

Kind regards,

Chloe Roberts

Planning Officer

Tel: (0151) 443 2281 | Email: chloe.roberts@knowsley.gov.uk
Knowsley Council | Yorkon Building | Archway Road | Huyton | L36 9FB

Save a tree . . . please do not print this e-mail unless you really need to.

From: Sheryl Curran <sheryl.curran@icloud.com>
Sent: 26 July 2021 23:04

To: Roberts, Chloe <Chloe.Roberts@knowsley.gov.uk>
Subject: External Mail: Fwd: Historic England Image Order 117127

CAUTION: This email originated from an external source. If you suspect a potential phishing email, report it via the IT Self Service Portal which can be found within the Quick Links section on Bertha

Chloe

Ahead of our meeting, I just wanted to send you the order details for the historic images purchased from the archives. (So you can establish the images are Kosher.)

Guessing the nub of our discussion may be agreeing on the original boundary line and I am basing my application on the attached case law (some light breakfast reading for you.... ;-)

speak soon

Sheryl

Begin forwarded message:

From: Archive Services <archive@HistoricEngland.org.uk>
Date: 16/06/2021
To: "sheryl.curran@icloud.com" <sheryl.curran@icloud.com>
Subject: Historic England Image Order 117127

Dear Ms Sheryl Curran

Your image(s) are now ready to download. Please [click here](#).

Image reference:

raf_106g_uk_626_rp_3259 (10-AUG-1945) LN.4
raf_82_770_v_0140 (23-APR-1953)
raf_58_1811_f22_0034 (11-JUL-1955)

Historic England (RAF photography)

Your image(s) will be **available to download for 20 working days**, so please ensure that you download promptly.

If you wish to reproduce the images supplied in any way, you need permission to do so. To apply, please see information about our [Licensing Service](#). We'll tell you if there's a fee to pay for the proposed use.

By downloading the image(s) you are agreeing to the terms and conditions listed below.

DESPATCH NOTE

Order ID: 117127

Despatched: 16/06/2021

Enquiry ID: 129347

Your Ref:

Supplied to:

Ms Sheryl Curran

19 Fairfield Street

Liverpool

L7 0JY

sheryl.curran@icloud.com

Products/Services supplied:

Qty	Description
-----	-------------

3	High Resolution digital image from original
---	---

Invoice to follow.

AGREEMENT FOR USE OF INFORMATION FROM HISTORIC ENGLAND

1 Use of Historic England Information

The Historic England Archive is part of the Historic Buildings and Monuments Commission for England ("**Historic England**").

All information is supplied by the Historic England Archive in accordance with the terms and conditions of this Agreement to the individual, organisation, or company named ("You"), for internal purposes or private research, as specified by You in Your original enquiry. It is supplied in accordance with Historic England service standards and payment terms.

You may not copy, publish, or otherwise make available, or commercially exploit information supplied by Historic England under this Agreement without Historic England's written permission, whether or not the information supplied is copyright material.

The information must not be used for purposes which may lead to damage to archaeological sites, historic buildings and landscapes.

2 Reproduction and Charges

Historic England, the Crown, or other licensors are the owners of all rights including copyright and database rights in the information. If You wish to reproduce, publish or otherwise make available or commercially exploit it, or any part of it, You must apply for permission to Archive Services at the

address below before You carry out any reproduction or publication. Reproduction fees may be payable regardless of the copyright status of the information requested. Where applicable, we may direct You to the relevant copyright holder if we are not authorised to give information on the copyright holder's behalf.

Warning: Reproduction fees for applications made at short notice or following reproduction/publication are higher than the standard rates due to the need to expedite the application.

3 Assignment

Your rights under this Agreement cannot be assigned, transferred, or sub-licensed without the prior written permission of Historic England.

4 Breach

Failure to comply with the terms of this Agreement by You will be construed as a material breach of them, and will result in the immediate termination of the Agreement. Historic England may, where appropriate, seek compensatory damages from You and/or the return of any Information supplied under this Agreement.

5 Disclaimer

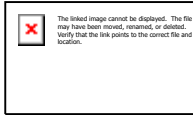
Historic England gives no warranties in connection with the information provided to You pursuant to this Agreement including in relation to its completeness and/or accuracy. Historic England cannot be held responsible for any decisions made in reliance on the information.

6 Jurisdiction

This Agreement shall be governed by the laws of England and subject to the exclusive jurisdiction of the English courts.

Address for Copyright and Reproduction Permission enquiries:

Archive Services, Historic England, The Engine House, Fire Fly Avenue, Swindon, SN2 2EH
Telephone: 01793 414600 Fax: 01793 414606 Email: archive@HistoricEngland.org.uk



This e-mail and any attachments are confidential. It may contain privileged information and is intended for the named recipient(s) only. It must not be distributed without consent. If you are not one of the intended recipients, please notify the sender immediately and do not disclose, distribute, or retain this email or any part of it and do not take any action based on it.

Unless expressly stated, opinions in this email are those of the individual sender, and not of Knowsley MBC. Legally binding obligations can only be created for, or be entered into on behalf of, Knowsley MBC by duly authorised officers or representatives.

Knowsley MBC excludes any liability whatsoever for any offence caused, any direct or consequential loss arising from the use, or reliance on, this e-mail or its contents. We believe but do not warrant that this e-mail and any attachments are virus free. You must therefore take full responsibility for virus checking and no responsibility is accepted for loss or damage arising from viruses or changes made to this message after it was sent. Knowsley MBC reserves the right to monitor and/or record all e-mail communications through its network in accordance with relevant legislation.

Case Summary

Source: October 2017 - Code a00875 Appendix. 6

Summary of Case (1 x split decision, 1 x appeal dismissed):

The property is a two-storey semi-detached house. The property has an original (part-width) two-storey rear projection (i.e. an "outrigger"). The property has an existing unlawful single storey rear extension, single storey side infill extension, and roof extension, which are the subject of enforcement notices. The decision notice covers the following 2 appeals:

- "Appeal A" is an "LDC Appeal" that relates to an application under section 192 (proposed) for the demolition of the existing unlawful extensions, followed by the erection of a single storey rear extension and a roof extension. The proposed rear extension would project 2.9m from the rear wall of the original rear projection, and would project directly sideways to cover the combined width of the original rear projection plus the infill area.

- "Appeal B" is an "LDC Appeal" that relates to an application under section 192 (proposed) for the demolition of the existing unlawful extensions, followed by the erection of a single storey side infill extension.

Note: The Inspector states that *"The appellant noted at the hearing that the basis of the proposed development in the LDC applications is that the extant enforcement notices are to be complied with and demolitions undertaken in accordance with those notices, prior to the proposed development commencing"*.

Note: Towards the end of the original two-storey rear projection, within the infill area, there was originally a small single storey side infill projection (*"lean-to element" / "original side extension" / "outbuilding"*), which was only accessible externally. This original side infill projection has previously been demolished. The applicant believes that this original side infill projection covered the full width of the infill area, whereas the Council believes that its width was less than this.

A key issue was, where works exceed the tolerances of permitted development, whether it's possible to first remove the works and then (subsequently) start and complete another set of works under permitted development rights.

A key issue was, where an existing building is unlawful, whether it's possible for an application under section 192 (proposed) to ask the (hypothetical) question of whether it would be lawful to first make the existing building lawful, and then (subsequently) start and complete another set of works under permitted development rights.

A key issue was whether the development is contrary to article 3(5) of the GPDO 2015, which states the following:

"(5) The permission granted by Schedule 2 does not apply if—

(a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful;

(b) in the case of permission granted in connection with an existing use, that use is unlawful."

A key issue was whether the development is contrary to Part 1 Class A paragraph A.1(f) of the GPDO 2015, which states the following:

"A.1 Development is not permitted by Class A if—

(f) subject to paragraph (g), the enlarged part of the dwellinghouse would have a single storey and—

(i) extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse, or

(ii) exceed 4 metres in height;"

The Inspector stated the following:

"The building has been altered and extended in the past and has been the subject of enforcement action and extant enforcement notices are in place. This decision does not affect the validity of those notices and only deals with the development proposed in the two LDC applications now before me, which are for proposed development.

Page 1233 of 3218

The appellant noted at the hearing that the basis of the proposed development in the LDC applications is that the extant enforcement notices are to be complied with and demolitions undertaken in accordance with those notices, prior to the proposed development commencing.

There was also a question over the use of the building. The appellant confirms that it has now changed from a use as separate flats and is a dwellinghouse in multiple occupation, which appeared to be the case at the site visit. The Council also questions the status of the building (whether flats or a dwellinghouse) when the current extensions were built. These matters are not relevant to my consideration of the proposed development, as the basis of the applications is that the building is a dwellinghouse in multiple occupation and the status of the current extensions is not relevant.

The lawfulness of the side and rear elements of the proposed ground floor extensions is tied into whether the small lean-to element of the building, as it was prior to the present works being undertaken, was part of the original building and its size/arrangement.

The overall building of which the appeal site forms a part is clearly constructed as a symmetrical pair of semi-detached dwellings and the ordnance survey plans show that each of the two properties had a similar side extension. It seems to me that had these not been part of the original building, it is unlikely that the different owners would have added the same extensions. On the balance of probability I consider that it is likely that the appeal property had a small projecting extension.

The Council argues that this should not be considered as being part of the original property as it was outside, only accessible by going out of the building and could have been used as a coal shed and not necessarily a wc as suggested by the appellant. The lean-to, which no one argues was not attached to the main building, would have been integral to it and part and parcel of it, whether for coal storage or a wc and the fact that you had to go outside to get into the building does not mean it is not an integral part of the main house.

The Council also argue that as the outbuilding has been demolished, its rear wall could not be taken into

consideration. The way permitted development works is that the 'original' building is used as a basis for measurements and the fact that some changes are made does not mean that the original wall positions should now be ignored for measurement purposes. The development is permitted if the enlarged part of the dwellinghouse would have a single storey and would extend beyond the rear wall of the original dwellinghouse by no more than 3 metres in the case of a semi-detached house.

It is clear that it is the original dwellinghouse that is to be considered for measuring purposes. 'Original' means a building as it existed on 1 July 1948 where it was built before that date, and it is acknowledged that is the case with the appeal building. I therefore conclude that the presence of the original side extension is to be taken into consideration for the purposes of assessing the permitted development rights, but it is for the applicant to demonstrate what the original arrangement would have been on the balance of probability.

There are no original drawings of the buildings to show the size and layout of the original side extension. The appellant presented drawings as existing as part of the application. The existing ground plan showed the side extension as a relatively narrow structure with its length along the building less than its projection out from the building. It also showed the access door at the side. However, an aerial photograph provided to show the original side extension was of a structure that had no door in the side, but what appears to be a small window and the structure appears to be longer along the building than its projection out from the building.

The appellant then produced further plans at the hearing of the 'original floor plan' that showed the door in the wall of the structure facing the road, but it was still seen to be narrower along the building than its projection out from the building. The appellant acknowledged that the original extension would have been longer. Clearly the plans provided are contradictory and do not fully represent the arrangement of the original building as suggested by some of the evidence. At the site visit the structure of the original building was not open to inspection. It could be seen along the side elevation of the current structure that the external blockwork beneath the render was consistent along the whole of the width of the building, suggesting it is all contemporary with the new extension. However, it was also clear that the wall internally forming the back wall of the building was a consistent width where it passed from the main building position to where the rear wall of the original outbuilding would have been.

The only other evidence of the size of the original side extension is the ordnance survey plans. The scale of these is small, but inspection of the various plans suggests that the side extension shown, which is matched on the other side of the pair of semi-detached buildings, is slightly narrower than the return wall between the front and rear parts of the building.

The Court has held in relation to Lawful Development Certificates (see *F W Gabbittas v SSE and Newham LBC* [1985] JPL 630) the principle that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA has no evidence of its own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability".

To my mind, the appellant's evidence of the original side extension is not sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. The plans submitted are inaccurate in relation to demonstrating what was originally there, and they differ between them, some showing the door in the front another in the side. The building shown on the plans as existing does not appear to be of similar proportions to that of the structure shown in the aerial photographs and the ordnance plan suggests the extension might not have been as far out as the side of the front part of the building.

Extending out for part of the width of the original side extension at the rear for a depth of 3m would be acceptable for permitted development. However, if the original side extension was not the full width, it would not be possible to extend out 3m for the full width of the main building, as the extension would then extend more than 3m from a rear wall (being that of the back part of the main frontage part of the building) for part of its width. The side extension would also connect for a part with the rear part of the extension and the overall width would then be more than half the width of the original building."

[PJL comments: In my opinion, it's not clear whether the Inspector assessed whether the works would have been lawful at the time of the application (i.e. in 2014 and 2015) or at the date the application was determined (i.e. in 2017). Similarly, it's not clear whether the Inspector assessed the works against the GPDO 1995 or the GPDO 2015.]

[PJL comments: The Inspector states that "The appellant noted at the hearing that the basis of the proposed development in the LDC applications is that the extant enforcement notices are to be complied with and demolitions undertaken in accordance with those notices, prior to the proposed development commencing". For "Appeal A", the Inspector then issues an LDC for "Demolition of single storey rear extension, single storey side infill and roof enlargements, making all good, then following demolition, enlargement of the roof". In my opinion, this implies that 1) where works exceed the tolerances of permitted development and have been substantially completed (i.e. unlawfully), then it **is** possible to first **remove** the works and then (subsequently) start and complete another set of works under permitted development rights. Furthermore, in my opinion, this also implies that 2) where an existing building is unlawful (e.g. due to an unlawful extension, outbuilding, etc), it **is** possible for an application under section 192 (proposed) to ask the (hypothetical) question of whether it would be lawful to first make the existing building lawful (e.g. by removing the unlawful extension, outbuilding, etc), and then (subsequently) start and complete another set of works under permitted development rights.]

Note: For "Appeal A", the Inspector allowed the appeal with respect to the demolition of the existing unlawful extensions followed by the erection of the proposed roof extension, and dismissed the appeal with respect to the proposed single storey rear extension.

Note: For "Appeal B", the Inspector dismissed the appeal.

Main Conclusions:

- This appeal decision provides an **example** of where it was concluded that a particular structure **is** part of the “dwellinghouse”.
- An original rear wall that has been (entirely) removed **still** forms part of “the rear wall of the **original** dwellinghouse”.
- In an application for an LDC, the **burden of proof** is firmly on the **applicant**.
- In the fourth of the above diagrams, “Extension J” **is** subject to the “extend beyond” type restrictions in relation to “**Wall 1**” and “**Wall 2**”.
- **More than one wall** facing the same direction can form “the rear wall” (in the case where the elevation is **staggered horizontally**).
- Where works **exceed** the tolerances of permitted development and have been **substantially completed** (i.e. unlawfully), then it **is** possible to first **remove** the works and then (subsequently) start and complete another set of works under permitted development rights.
- This appeal decision states, or implies, that **where an existing building is unlawful** (e.g. due to an unlawful extension, outbuilding, etc), it **is** possible for an application under **section 192 (proposed)** to ask the (hypothetical) question of whether it would be lawful to **first** make the existing building lawful (e.g. by removing the unlawful extension, outbuilding, etc), and **then** (subsequently) start and complete another set of works under permitted development rights.

Appeal Decisions

Site visit made on 20 October 2015

by Mr N P Freeman BS(Hons) DipTP MRTPI DMS

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 October 2015

Appeal A: APP/T5150/X/15/3002207

93 Beaumont Avenue, Wembley, Middlesex, HA0 3BY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr A Hakda against the decision of the Council of the London Borough of Brent.
 - The application Ref. 14/3436, dated 1 September 2014, was refused by notice dated 27 October 2014.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a LDC was sought as so described on the application form is "demolition of single storey rear extension, single storey side infill and roof enlargements, making all good, then following demolition, enlargements to rear, side and roof shown on 9 plans".
-

Appeal B: APP/T5150/X/15/3009744

93 Beaumont Avenue, Wembley, Middlesex, HA0 3BY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr A Hakda against the decision of the Council of the London Borough of Brent.
 - The application Ref. 15/0163, dated 16 January 2015, was refused by notice dated 13 March 2015.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a LDC is sought is not specified on the application form. The Council's decision notice describes it as "the demolition of existing single storey infill and the construction of a new single storey side infill extension. The same wording is used to describe the proposal on the appeal form".
-

Procedural matters

1. The Council's Delegated Report on application 14/3436 (Appeal A) states¹ that the infill extension was removed from the proposal following discussion with the applicant. The description of the proposed development on the relevant decision notice states "proposed demolition of existing single storey rear

¹ Page 2 – Remarks – 2nd paragraph

extension, single storey side infill and rear dormer extension with replacement single storey rear extension and rear dormer roof extension to dwellinghouse” which does exclude the replacement infill extension. I will deal with Appeal A on this basis. Appeal B deals separately with the infill extension.

2. The first bullet point of reason for refusal of 14/3436 refers to the proposal being contrary to an existing enforcement notice² and the third line contains the word “not” twice. It would seem that the second “not” is a mistake as it leads to a double negative that does not make sense. I take it that the phrase in question should have read “and the submission does not confirm that the enforcement notice will be complied with....” which is consistent with the argument in the Council’s statement.
3. Paragraph 5.1 of the Council’s statement on Appeal A argues that a LDC can only be granted for all of the development described in the application if found to be lawful and not parts. This is incorrect. Section 193(4)(b) indicates that where an application specifies two or more uses, operations or other matters, a certificate may be issued for all or some of the elements of the development so described. As a consequence it would be possible to grant a certificate for one element, such as the dormer, but not for the others depending on whether the various elements were found to be lawful.

Reasons

4. I have had regard to the previous Inspector’s appeal decisions, dated 26 September 2013 concerning earlier enforcement appeals³, in particular paragraphs 11-17. The appellant (Mr Hakda) argued at that time that the front porch (now predominantly demolished) and rear dormer (still existing) were ‘permitted development’ under the rights conveyed by The Town and Country Planning (General Permitted Development) Order 1995 (GPDO), as amended. The Inspector was not persuaded that this was so as no evidence had been produced to support the claim that the works were undertaken when the property was in use as a one dwelling. He went on to analyse the information he did have before him including the Design and Access Statement, dated June 2013, which was submitted in respect of the change of use to two flats and a maisonette and the existing and proposed plans supplied at that time. From these he found that the existing plans did not show the dormer window, ‘wraparound’ single storey extension or front porch but the proposed plans did. From this evidence he concluded that on balance that the works to extend the property were to facilitate the use of the property as 3 flats.
5. He also considered grounds (a), (f) and (g) but there was no success on these grounds with the exception of a variation under ground (f) to only require the cessation of the use as self-contained flats and not the requirement to use the property as only one dwellinghouse which he found to be excessive. The enforcement notices were upheld with this variation to Notice E/13/0198. As well as the requirement to cease the use as flats the other requirements taken together concerned the demolition of the unauthorised extensions and an outbuilding in the rear garden⁴ and the removal of all kitchens except one and all bathrooms except two and all items, materials and debris arising therefrom.

² In fact two notices – LPA refs. E/13/0198 & E/12/0619 which were the subject of dismissed appeals – Appeal Decisions document on both dated 24 September 2013

³ Appeal Refs. APP/T5150/C/13/2199461 & APP/T5150/C/13/2191689

⁴ I observed that this outbuilding had been demolished with the exception of the slab

6. What can be gleaned from this background is that the property was converted to flats without planning permission and the extensions, which are the subject of these appeals with the exception of the porch, were added to facilitate this use. The basic argument advanced for the appellant, upon which all the other arguments put forward depend, is that because the property has now reverted to use as a dwellinghouse, as so defined in the GPDO, the development "proposed" would therefore be 'permitted development' and lawful. So the first and foremost consideration is whether this has actually happened and if so whether that entitles the appellant to rely on permitted development rights.
7. An unsworn witness statement has been provided by Mr Hakda dated 7 November 2014. In his statement he says that following the upholding of the notices the flat tenants' leases expired in March 2014 and they were then required to move out. He states that the building was then converted back to a single dwellinghouse and the Council were informed of this on 30 April 2014. He then goes on to say that the house is rented out to tenants who have no access to the loft floor or the side and rear extensions and that the suggestion of a Council officer, Mr Davies, that he would simply convert the house back to flats or use it as a large House in Multiple Occupation (HMO) is untrue. The statement continues with reference to other matters concerning compliance with the requirements of the notice and visits by Mr Davies.
8. On my inspection I noted that the 2 main rooms at the loft/second floor level appeared disused and a toilet and washbasin in a small separate cubicle remain on this floor. The rear single storey extension contained stored household furniture. Part of the infill or side extension contains a toilet and shower cubicle. In terms of the rest of the property this appeared to be in use as living accommodation. On the ground floor there was a double bedroom in the front room, a kitchen behind and lounge at the rear. These uses differ in some respects from those annotated on the proposed plan Drg.No. 93-02a which shows no bedroom on this floor. The first floor was in use as 3 double bedrooms with the one at the front containing some lounge furniture which suggests it may be in use as some sort of bedsitting room. There is also a bathroom on this floor.
9. The impression I gained from what I saw is that the house is multiple occupation and not being used as a dwellinghouse. As to who may be living there no tenancy agreement has been provided to show that it is let under a single tenancy which would be consistent with a claim that it has reverted to use as a single dwellinghouse. In the appellant's statement he uses the word tenants in the plural. I appreciate that this could refer to a couple (married or partners) or one family but there is nothing to corroborate this. I consider this to be odd as if it had genuinely been brought back into use as a dwellinghouse it would have been simple to have provided the details of who the occupants are, their relationship, if any, and the nature of the tenancy.
10. I am mindful of the case of *F W Gabbitts v SSE and Newham LBC [1985] JPL 630* which remains good authority for the finding that if a local planning authority has no evidence of its own, or from others, to contradict or otherwise make the applicant's version of events less than probable, then there is no good reason to refuse the application for an LDC. Nevertheless, the onus of proof in an LDC case rests firmly upon the applicant and the relevant test is to show that the claim is made out on the balance of probability. From what is before me and my own observations I do not accept that it has been shown on

the balance of probability that the property has actually been reinstated and reverted to use as a dwellinghouse following its unauthorised use as flats. I appreciate that Notice E/13/0198 as varied does not require this to happen but it is essential if the claimed rights to construct the proposed extensions are to be relied upon. This being the case I am not persuaded that the appellant can rely on 'permitted development' rights which only apply to dwellinghouses to support a claim of lawfulness for the proposed extensions.

11. The Council have emphasised their belief that the development in both appeals cannot be lawful unless the enforcement notices are first complied with in every respect. They cite Section 191(2)(b) in support of this argument but as the appellant's agent argues this comes under the heading of existing uses and development. Having said that taking the actual wording of s191(2) it states "For the purposes of this Act uses and operations are lawful if:- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force". As this test is said to apply for the purposes of the Act and not just s191 it could be taken as applying to proposed development under s192 as well. I appreciate the logic that it would seem unfair and unreasonable to require extensions to be knocked down because that is what is required by an enforcement notice if they could then simply be rebuilt as permitted development in a slightly modified fashion. Nevertheless that begs the question as to whether in this case this is possible and for the reasons given above I consider it is not.
12. I have noted that the wording of the proposals in both appeals is to actually demolish all the extensions which are the subject of the extant enforcement notices "and make good" before erecting the new extensions which would be only marginally different as regards the single storey rear extension⁵. The proposed plan for the dormer shows this with a face set back 200mm from the edge of the eaves which is a condition [B.2(b)] of Class B of Part 1 of Schedule 2 of the relevant GPDO. I could not accurately measure the present set back of the face but it may possibly be 200mm from the edge of the eaves as existing. The details of the existing and proposed infill extensions appear from the plans to be the same.
13. In these circumstances, given the relatively minor differences between the existing and proposed extensions it seems hardly credible given the costs involved that the appellant would chose to knock down the existing extensions in their entirety only to then rebuild them in a marginally different form. The Council could as suggested by the agent exercise their powers under s173A of the Act to waive or relax any requirement of the notice to allow for what he asserts is a legitimate 'fallback' position based on the claimed lawfulness of the proposed extensions. However, they are not obliged to do so and this is not an enforcement appeal where ground (f) could be argued. Without doing so the notice still bites and demolition is required. In these circumstances the appellant could not simply retain the majority of the fabric of the existing extensions and make the relatively minor alterations to create the proposed extensions which are asserted as being lawful. It is not for me to gainsay the wording of the applications to firstly demolish and then rebuild the extensions but the circumstances suggest to me that this is certainly questionable given the expense that would be incurred. Be that as it may, this observation is not essential to my decision which is reached for other reasons set out above.

⁵ According to the plans reduced in depth from 3.11m to 2.9m

14. Bringing these points together, it has not been shown on the balance of probability that the property had reverted to use as a dwellinghouse from the previous unauthorised use as flats on the dates that the LDC applications were made. As a consequence the permitted development rights advanced to support the claim that the proposed development is lawful cannot be relied upon as they only apply to premises in use as a dwellinghouse. For this reason it is unnecessary to go on to consider the detail of the particular parts of the Class A and Class B of Part 2 of Schedule 2 of the GPDO relied upon as they do not assist the appellant.
15. I conclude that the Council's refusal to grant the LDCs in respect of the matters described in the applications was well-founded and that the appeals should fail. Accordingly, I will exercise the powers transferred to me in section 195(3) of the 1990 Act as amended⁶.

Decisions:

Appeal A: APP/T5150/X/15/3002207

16. The appeal is dismissed.

Appeal B: APP/T5150/X/15/3009744

17. The appeal is dismissed.

N P Freeman

INSPECTOR

⁶ Although I have not agreed with all the arguments advanced by the Council the legal test under s195(3) is whether the refusal, and not necessarily the reasoning, was well-founded. I have concluded that this is so for the reasons set out

An original rear wall that has been (entirely) removed still forms part of “the rear wall of the original dwellinghouse”.

[Source: May 2010 - Code a00119, Appendix. 1]. [Note: Relates to the rear wall of an original (part-width) single storey rear projection]. [Quote: “In any event, it seems to me that, even if the Council is correct, this does not prevent the original line from being used to assess whether the extension would be permitted development. I see no implication that “original” means “unaltered”.”].

[Source: December 2013 - Code a00429 Appendix. 2]. [Note: Relates to the rear wall of an original (part-width) single storey rear projection]. [Quote: “Article 1(2) of the GPDO defines “original” in relation to a building existing on 1 July 1948, as existing on that date and there is no question that the conservatory was part of the original building; therefore its rear wall was the rear wall of the original building and the extended part now erected does not extend beyond 3m from that wall. However, does the original building have to remain in situ for permitted development rights to still be available? It seems to me that what has taken place at No.36 was all one operation which consisted of the incorporation of the footprint of the former conservatory into the new enlargement of the building, and on the strict wording of the GPDO I consider it is unnecessary for the original part of the building to have had to remain in place.”].

[Source: November 2015 - Code a00617 Appendix. 3]. [Note: Relates to the rear wall of an original single storey rear projection]. [Quote: “The meaning of ‘original dwellinghouse’ is provided by the GPDO and summarised in the DCLG document “Permitted Development for householders – Technical Guidance”. Put simply, ‘original’ means a building as it existed on 1 July 1948 - where it was built before that date - and as it was built when built after that date. A complication can arise where part of an original dwellinghouse has been demolished and subsequently rebuilt. The Council asserts that this might have occurred here. The Council’s Delegated Report of 18 February 2015 states that “it appears that the existing single storey and closet wing rear additions are not part of the original dwellinghouse due to their architectural design features and materials which are not consistent(sic) with the original building and other buildings in the streetscene.” In cases where some rebuilding or remodeling of parts of a house has taken place, it is customary to regard the footprint (the ground area) of the ‘original dwellinghouse’ as the appropriate starting point for considering whether the proposed works would be permitted by Class A.”].

[Source: May 2016 - Code a00689 Appendix 4.]. [Note: Relates to the rear wall of an original single storey side and rear projection]. [Quote: “Again, a part of the enlarged part of the dwellinghouse would be single storey but it does not theoretically extend more than 4m beyond the rear wall of the original dwelling. I deliberately say theoretically because of course the rear wall no longer exists. The question is whether this is critical. I have to give the ordinary meaning to the words in the GPDO in a broad and commonsense manner. This paragraph is not qualified by the use of such words as “existing” or “remaining” and I see no justification for implying such a qualification. I do not see this interpretation will allow piggy-backing or incremental development to any significant extent. The baseline remains the same, namely that the starting point is the original dwellinghouse. It merely means that in these particular circumstances where an element has been demolished it may potentially be replaced as permitted development and thereafter further extensions added.”].

[Source: July 2016 - Code a00716 Appendix. 5]. [Note: Relates to the rear wall of an original (part-width) single storey rear projection]. [Quote: “The Technical Guidance issued by the Department for Communities and Local Government on Permitted Development for Householders states that measurement of the extension beyond the rear wall should be made from the base of the rear wall of the original house to the outer edge of the wall of the extension (not including any guttering or barge boards). Whilst this represents the Government’s interpretation of the law, the legislation itself does not reveal any error in that interpretation.”].

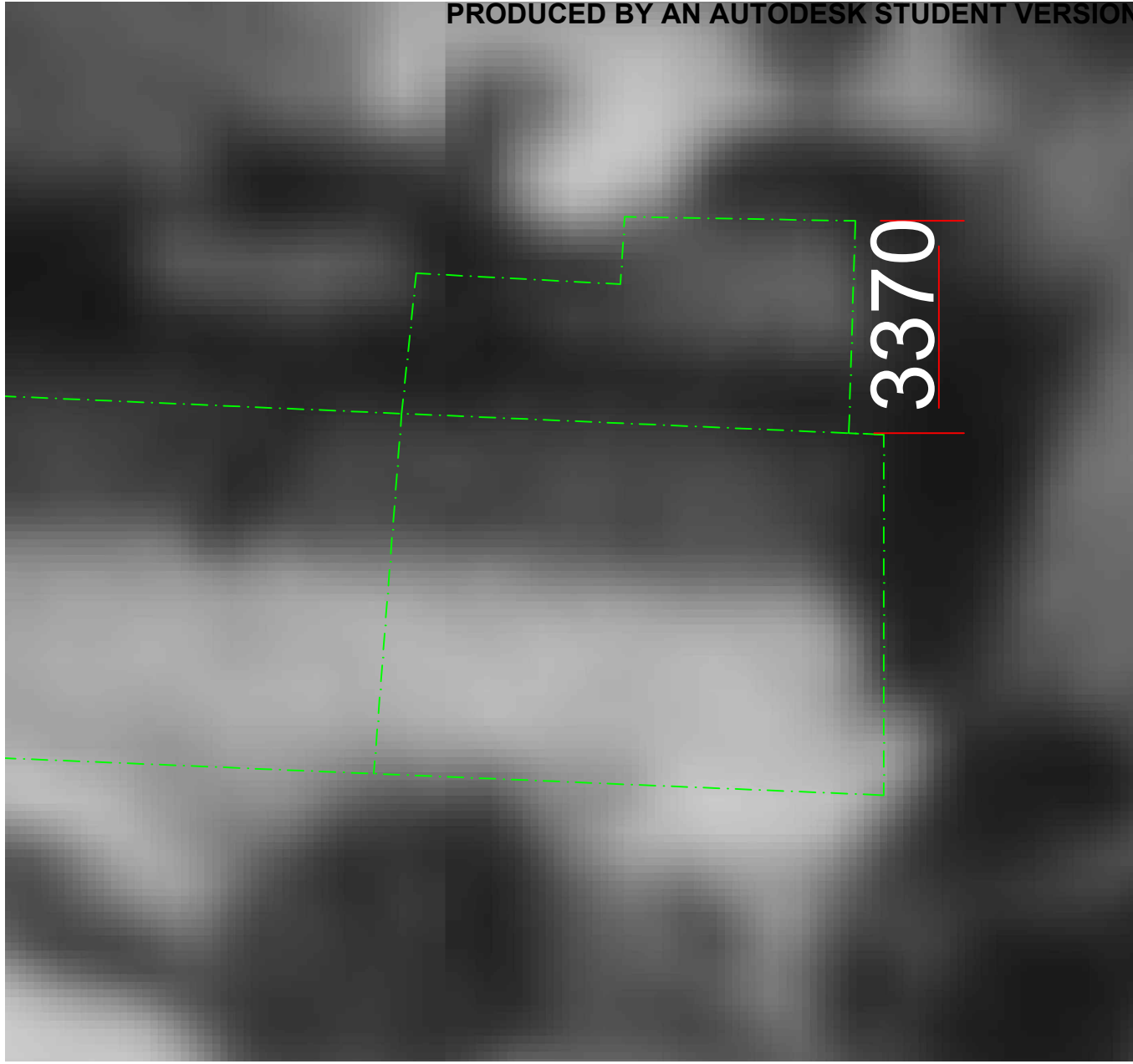
[Source: October 2017 - Code a00875 Appendix. 6]. [Note: Relates to the rear wall of an original single storey side infill projection]. [Quote: “The Council also argue that as the [original side projection] has been demolished, its rear wall could not be taken into consideration. The way permitted development works is that the ‘original’ building is used as a basis for measurements and the fact that some changes are made does not mean that the original wall positions should now be ignored for measurement purposes. The development is permitted if the enlarged part of the dwellinghouse would have a single storey and would extend beyond the rear wall of the original dwellinghouse by no more than 3 metres in the case of a semi-detached house. It is clear that it is the original dwellinghouse that is to be considered for measuring purposes. ‘Original’ means a building as it existed on 1 July 1948 where it was built before that date, and it is acknowledged that is the case with the appeal building. I therefore conclude that the presence of the [original side projection] is to be taken into consideration for the purposes of assessing the permitted development rights, but it is for the applicant to demonstrate what the original arrangement would have been on the balance of probability.”].

[Source: November 2018 - Code a00998 Appendix. 7]. [Quote: “Where permitted development rights are based on the ‘original’ building the definition in the GPDO must be used. If there is a missing element of a pre-1948 dwelling, it is necessary to ascertain from the available evidence what the dimensions were in 1948, in order to determine the extent of the permitted development right. The appellant makes reference to an appeal decision elsewhere [May 2016 - Code a00689] and also to the Arnold [Arnold v SSCLG [2015] EWHC 1197 (Admin), [2017] EWCA Civ 231] case in support of how the term “original” building is interpreted and I agree with this position. However, I make a distinction between what constitutes an original building and what constitutes an original dwellinghouse, which could be different as a building could contain more than one dwelling. I do not accept the Authority’s interpretation of the GPDO or their reliance on DCP where reference is made to the ‘reduced building’ as the starting point for calculations and as set out in the officer’s report on the LDC application in respect of A.1.(e) and A.2 (b). The Authority did not provide any further explanation of their position in their appeal statement that would have allowed me to understand how they reached this view.”].

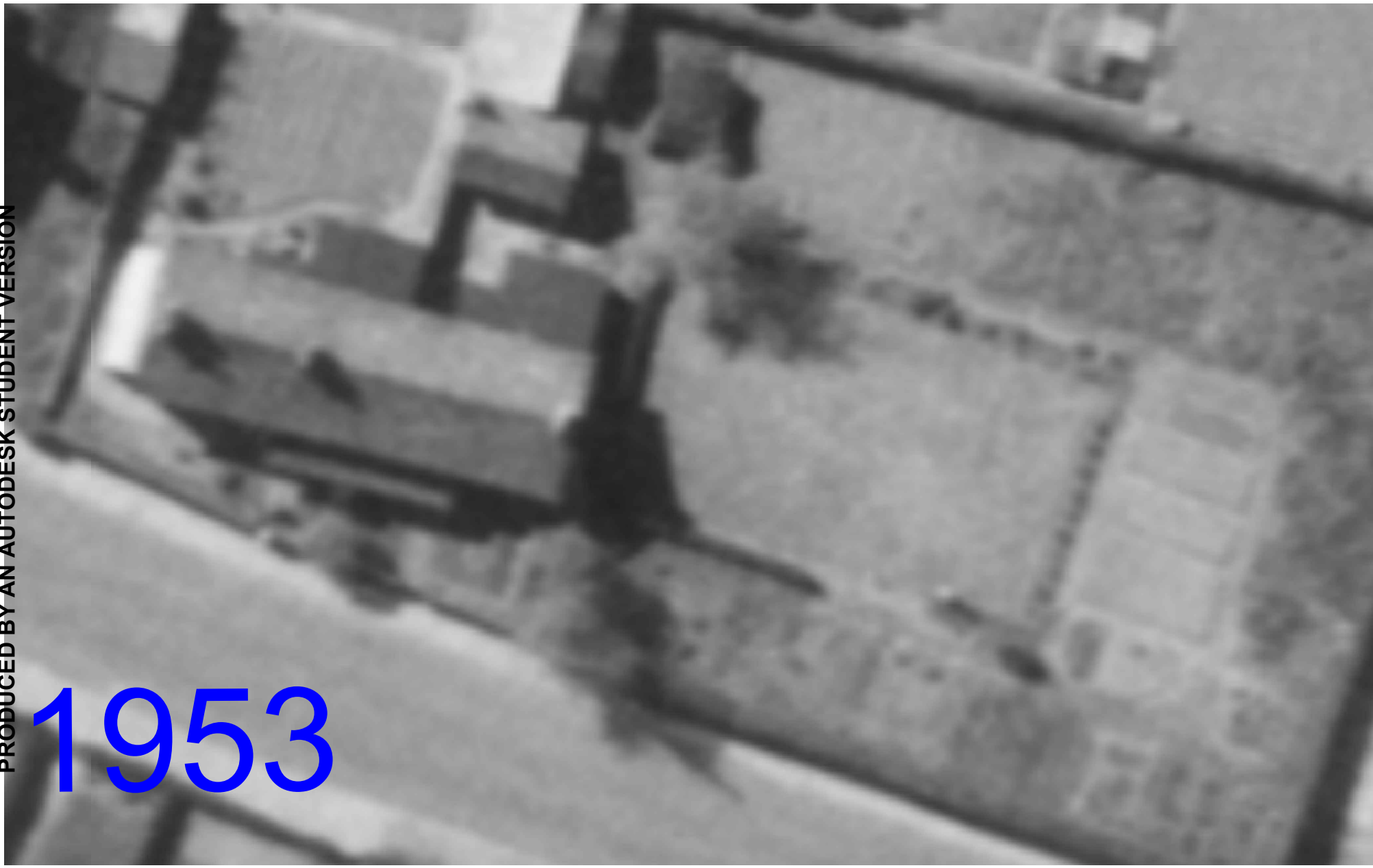
[Source: May 2020 - Code a01169 Appendix. 8]. [Note: Relates to the rear wall of an original (part-width) single storey rear projection]. [Quote: “The Council argues that as the original lean-to has now been demolished, the extension is therefore now a wraparound extension that extends beyond the rear elevation of the original dwelling by 5.1 metres. However, in Article 2 Interpretation (1), the GPDO defines ‘original’ as (a) a building existing on 1st July 1948 as the building as existing on that date; or (b) in relation to a building built on or after 1st July 1948, as so built. There is no dispute between the parties that the lean-to was part of the original building. It is evident from the submitted drawings and from what I observed on site that the rear extension as built does not extend beyond the rear of the original dwelling, being the rear wall of the now demolished lean-to.”].



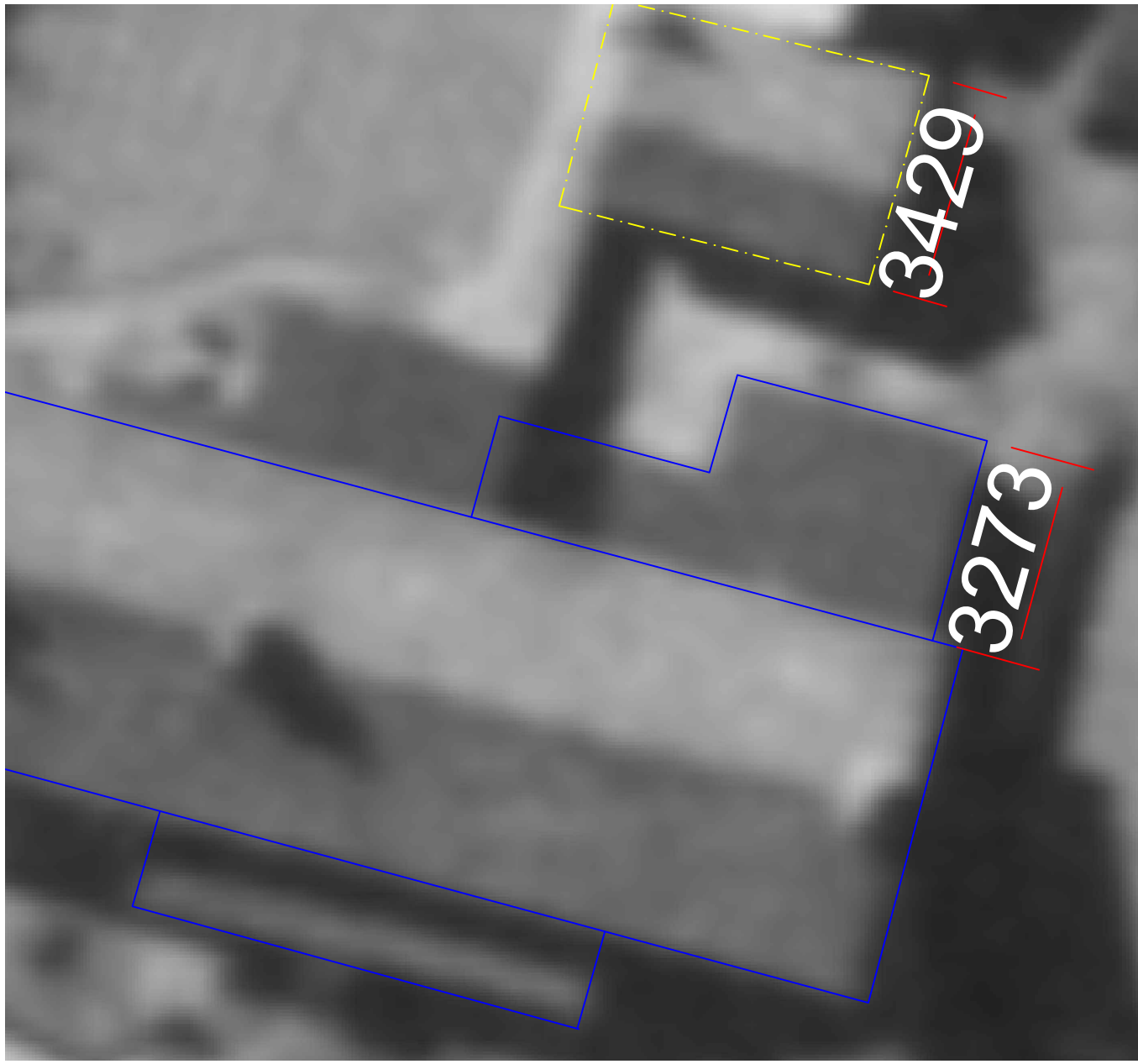
0 1 2 3 4 5 6 7 8 9 10m 1:200



0 1 2 3 4 5m 1:100



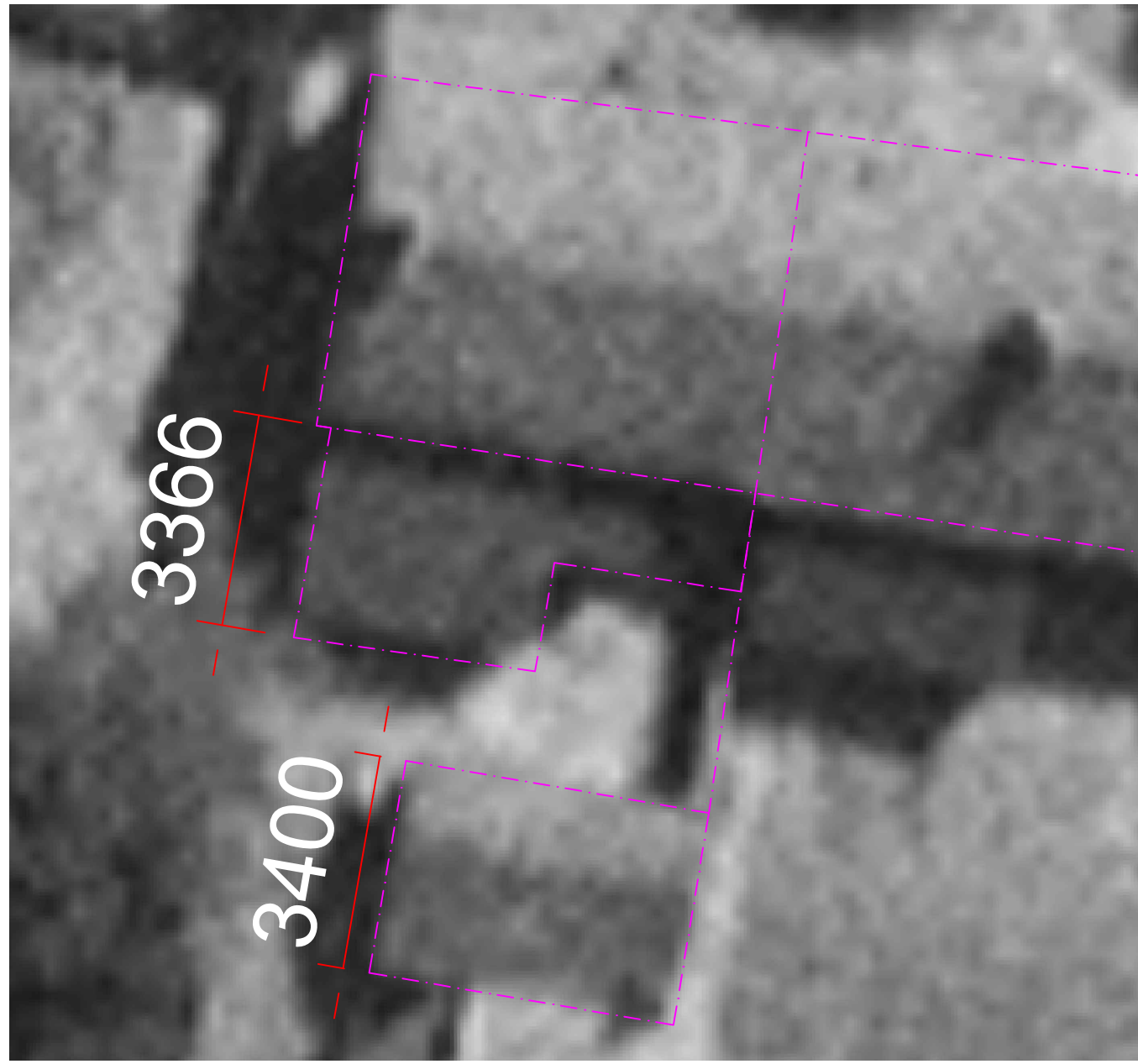
0 1 2 3 4 5 6 7 8 9 10m 1:200



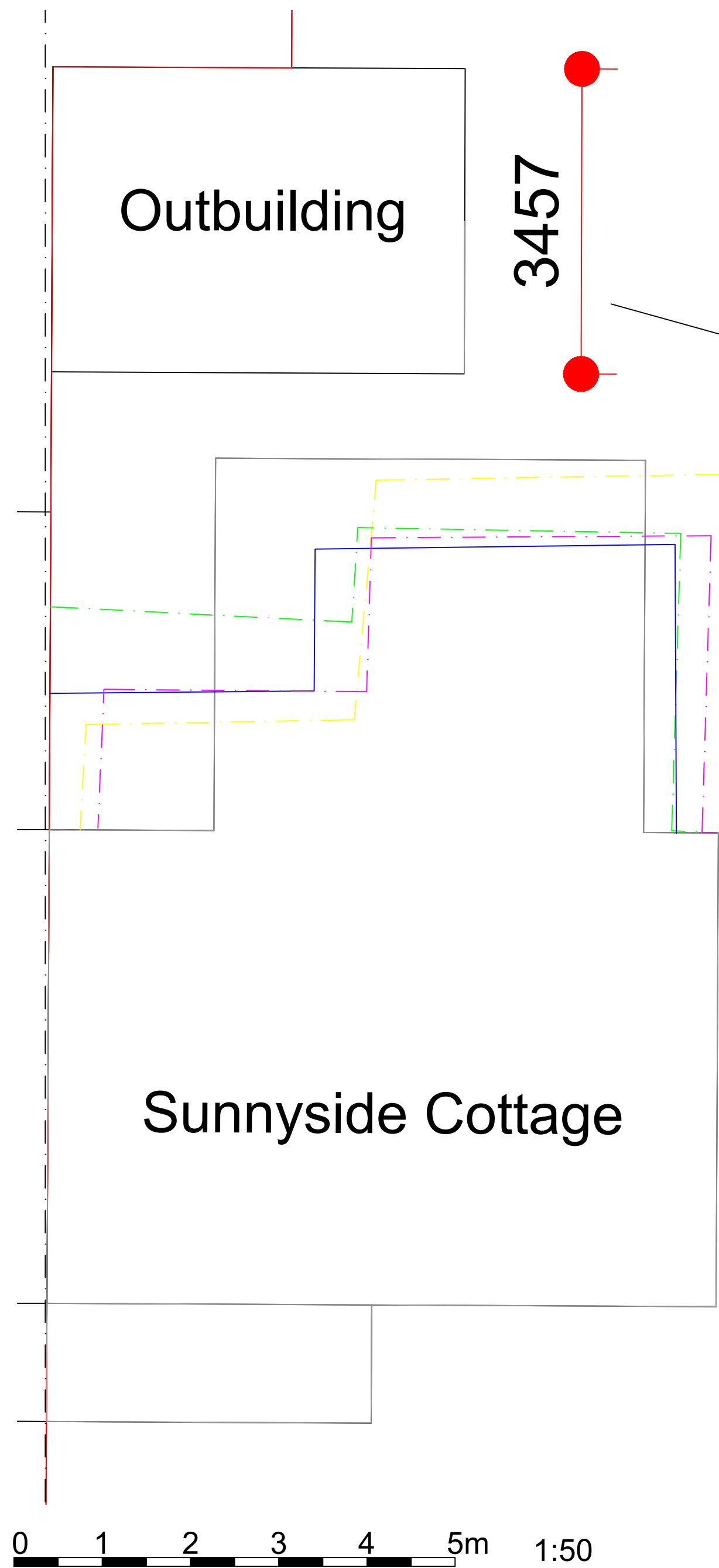
0 1 2 3 4 5m 1:100



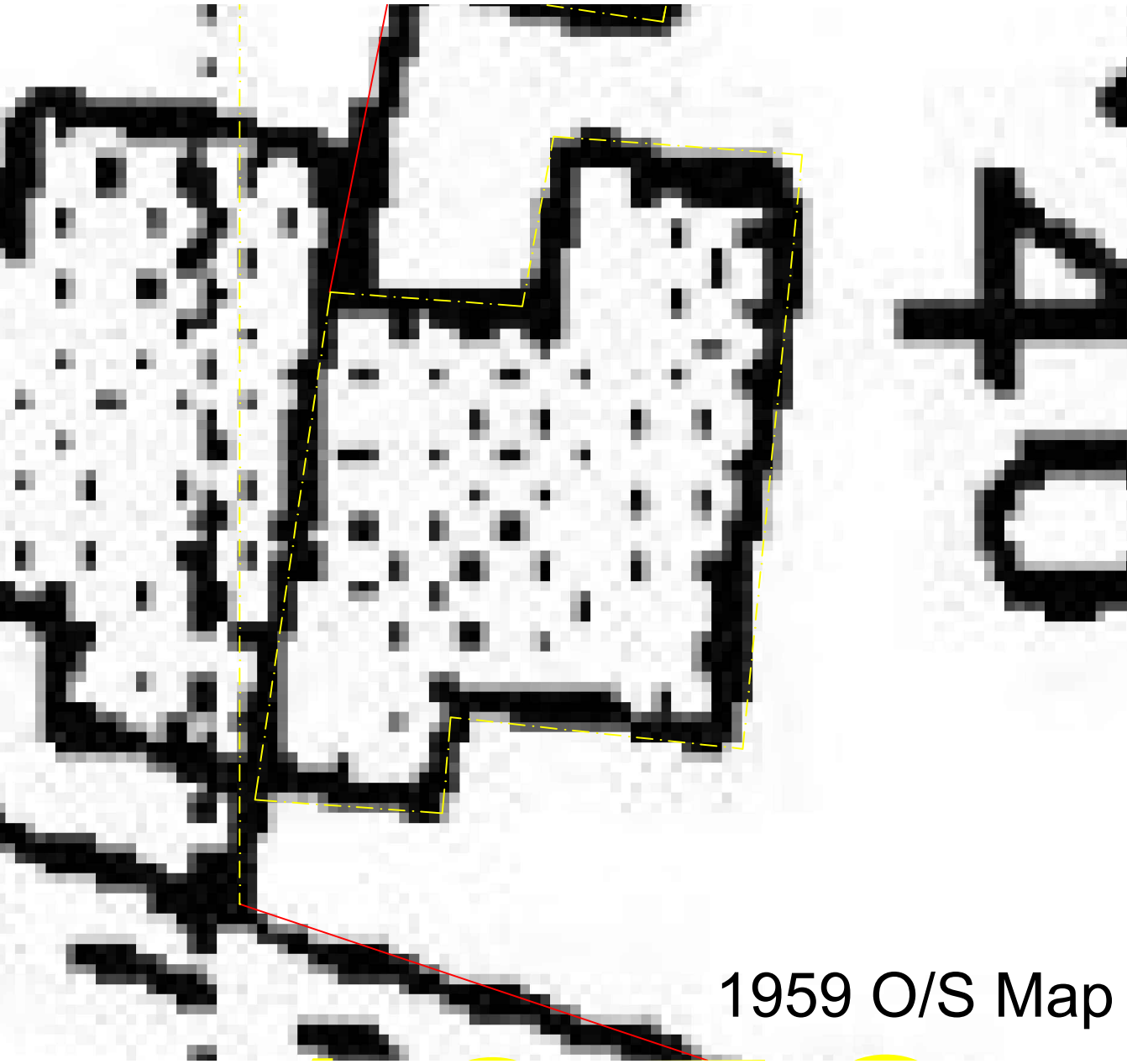
0 1 2 3 4 5 6 7 8 9 10m 1:200



0 1 2 3 4 5m 1:100



0 1 2 3 4 5m 1:100



0 1 2 3 4 5m 1:100

Combined interpretation of "original rear boundary line" evidence

(Where possible, original outbuilding dimensions are given as a benchmark to accuracy)

Key

1945 Image

1953 Image

1955 Image

1959 O/S Map

2021 O/S Map

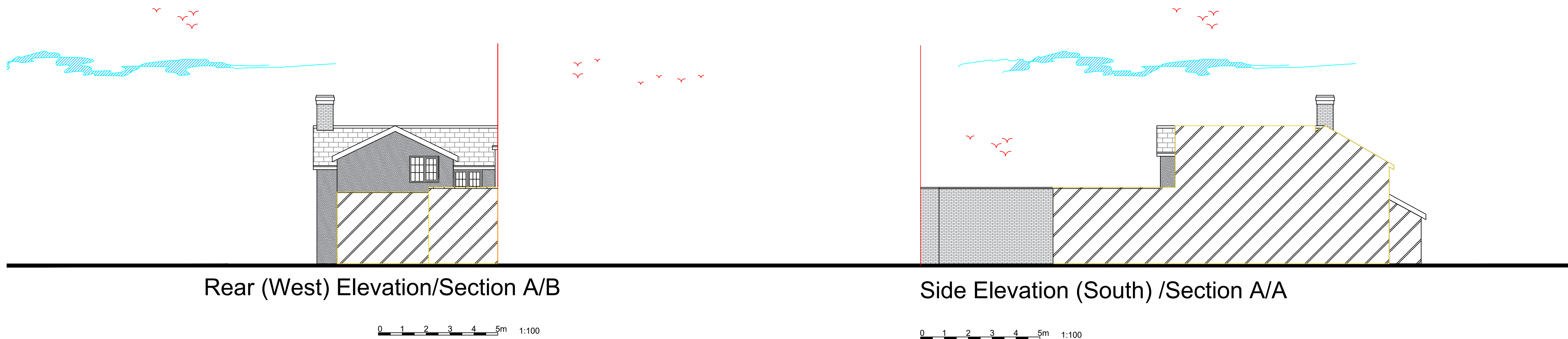
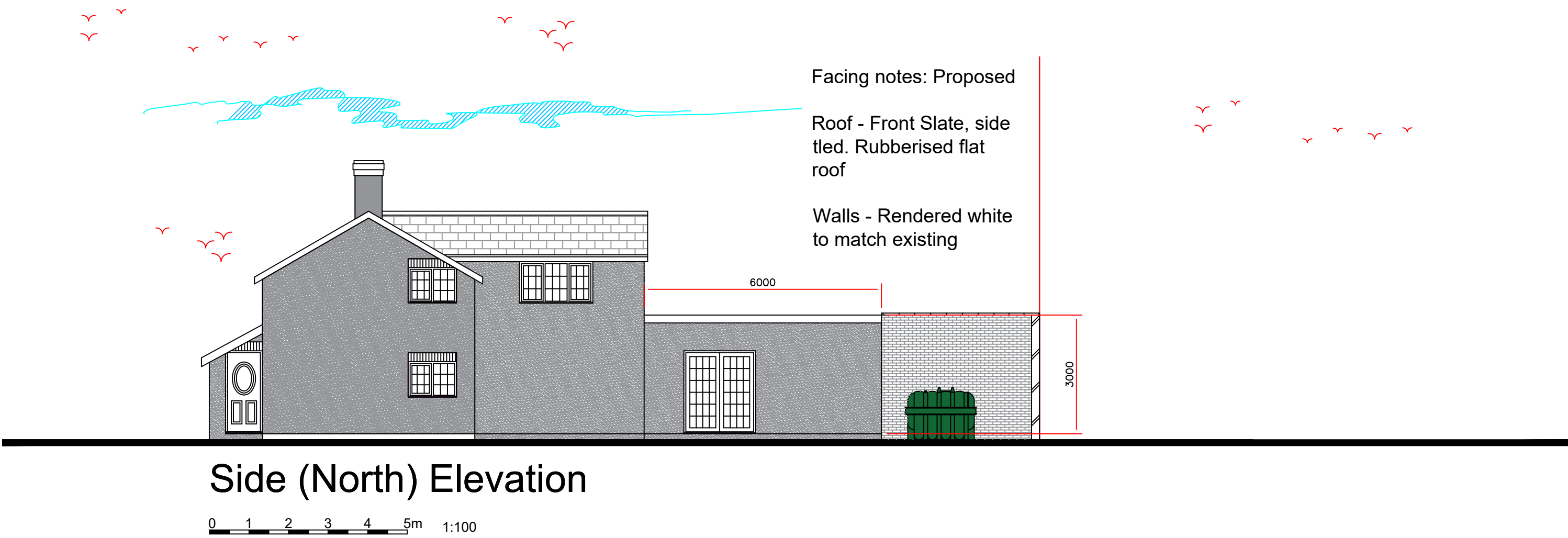
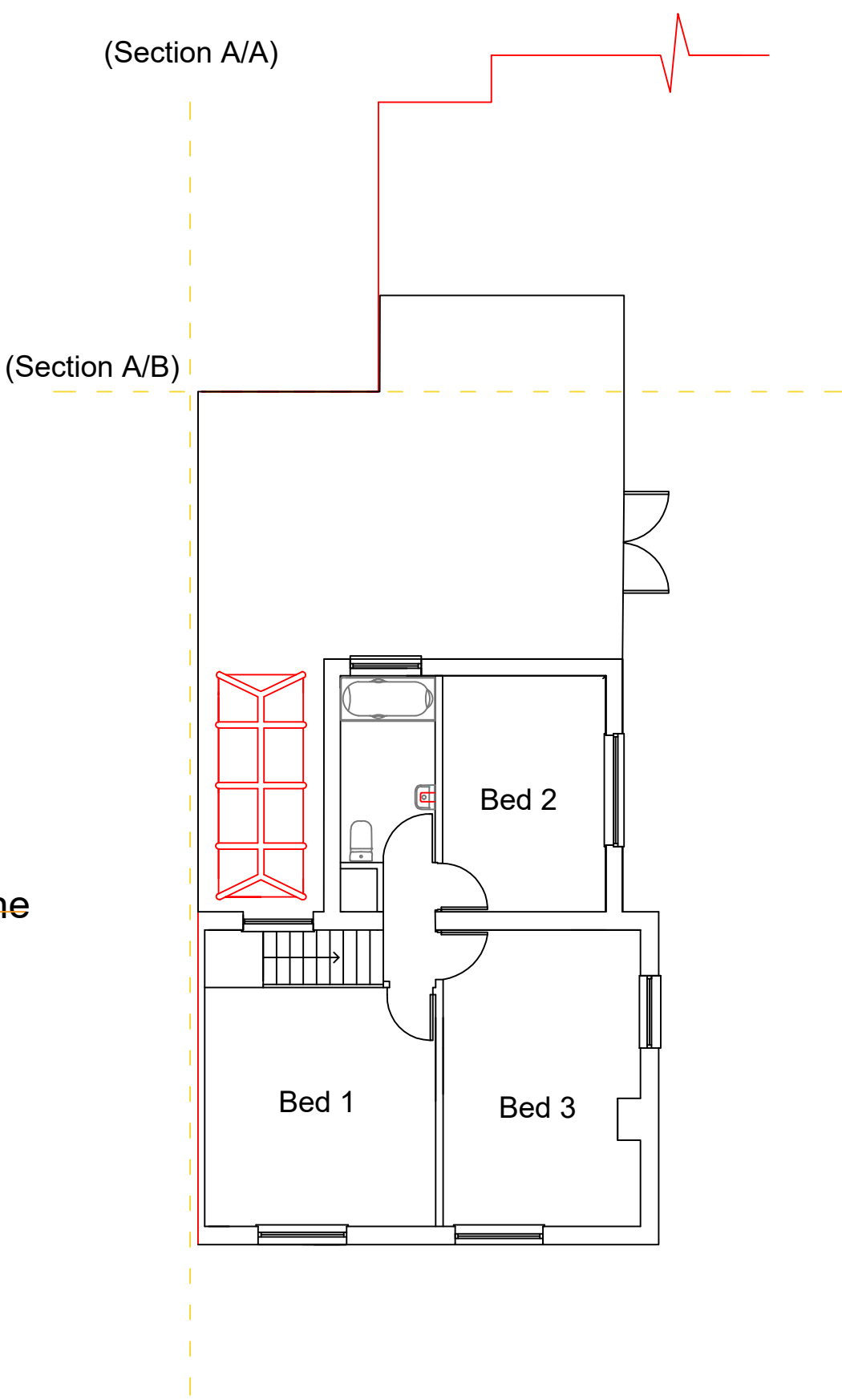
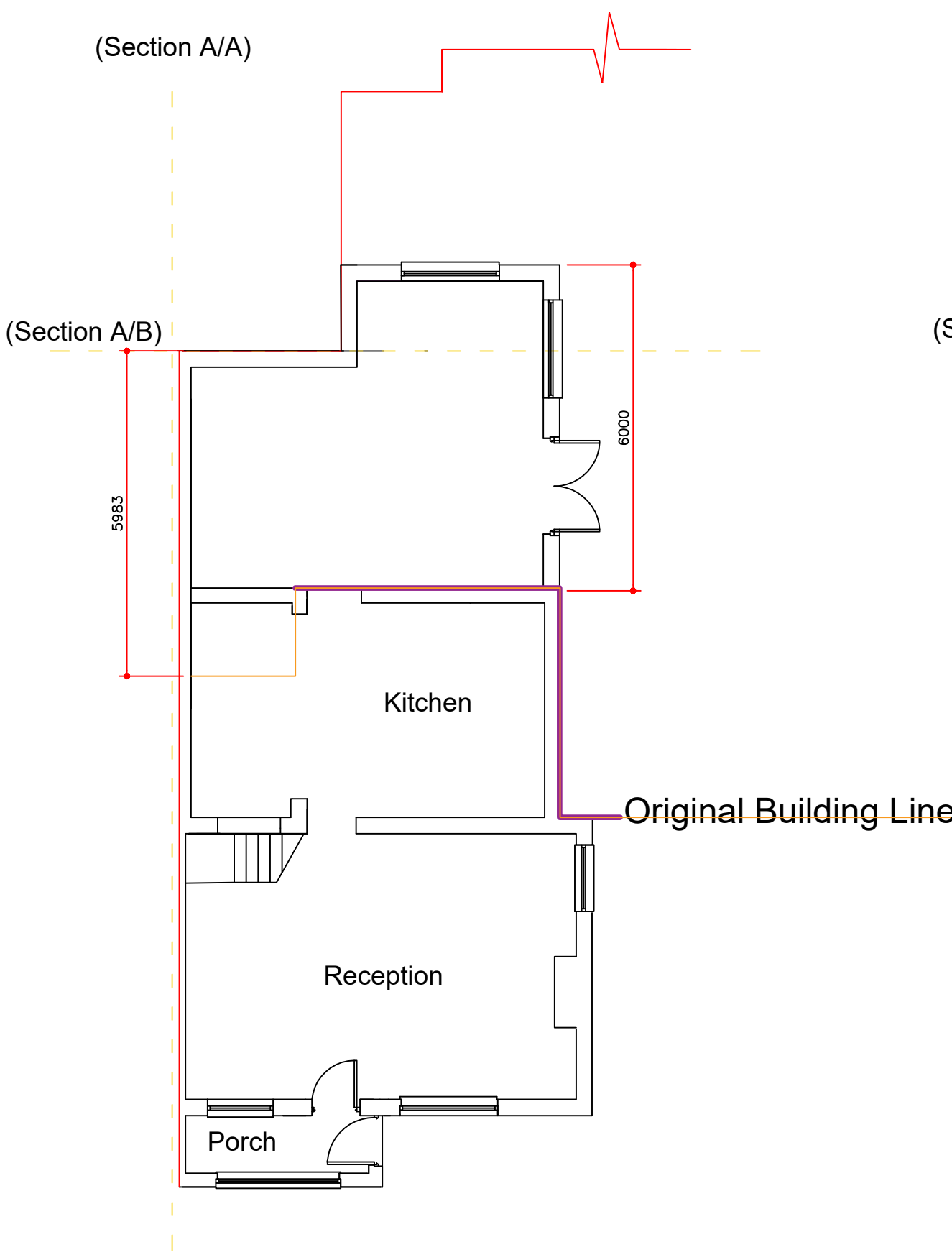
There will be some variance in dimensions due to:
Scaling from photographs
The effects of shadows and eaves overhang
Lighting and the direction from which the images were taken.

Similarly, there will be some variation due to scaling from O/S maps.

PLANNING ISSUE

19 Fairfield Street, Liverpool, L7 0JY			SEC
Rev. No.	Date	Amendment	Initial
E sheryl.curran@icloud.com			T 07758518557
Client:			
SE Curran			
Project:			
REFURBISHMENT & UPGRADE WORKS			
Sunnyside Cottage, Greensbridge Lane,			
Tarbock Green, Prescot L35 1QD			
Drawing:			
ORIGINAL REAR BOUNDARY LINE- HISTORIC EV			
Scale:			Date:
1:50 1:100 1:200 @A1			28/07/20
Drawn By:		Checked By:	Drawing No:
SEC		SEC	01/PL/03
			Rev. No:
			A

1959 O/S Map



A	28/02/21	Planning issue	
Rev. No.	Date.	Amendment.	Initial.

Client:
SE Curran

Project:
Rear Extension LH/NC
Sunnyside Cottage, Greensbridge Lane,
Tarbock Green, Prescot L35 1QD

Drawing:
PROPOSED DRAWINGS

Scale:	Date:		
1:100 1:200 @A1	03/07/21		
Drawn By:	Checked By:	Drawing No:	Rev. No:
SEC		01/PL/02	A

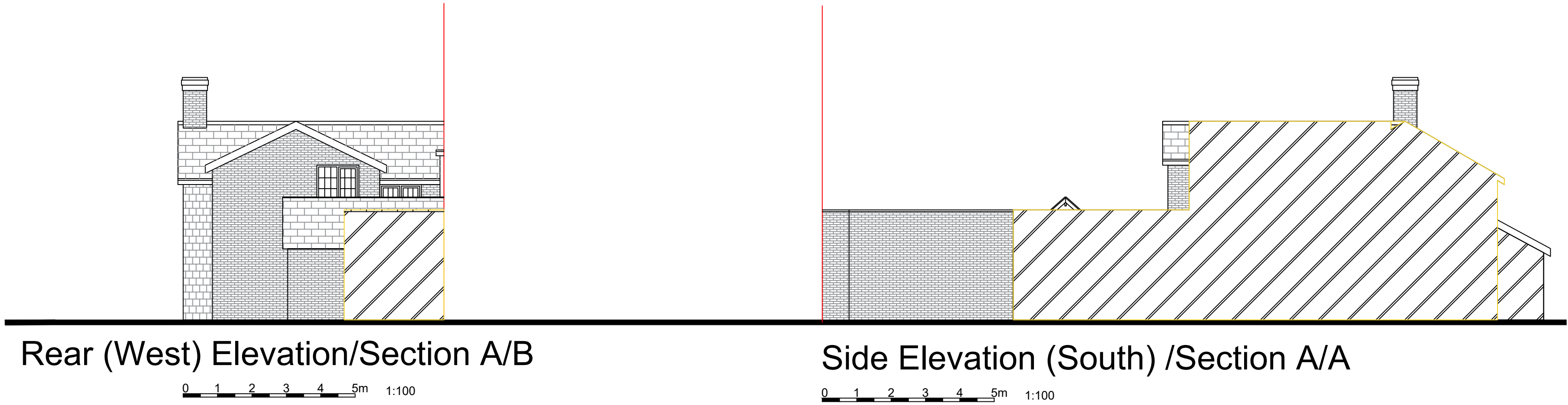
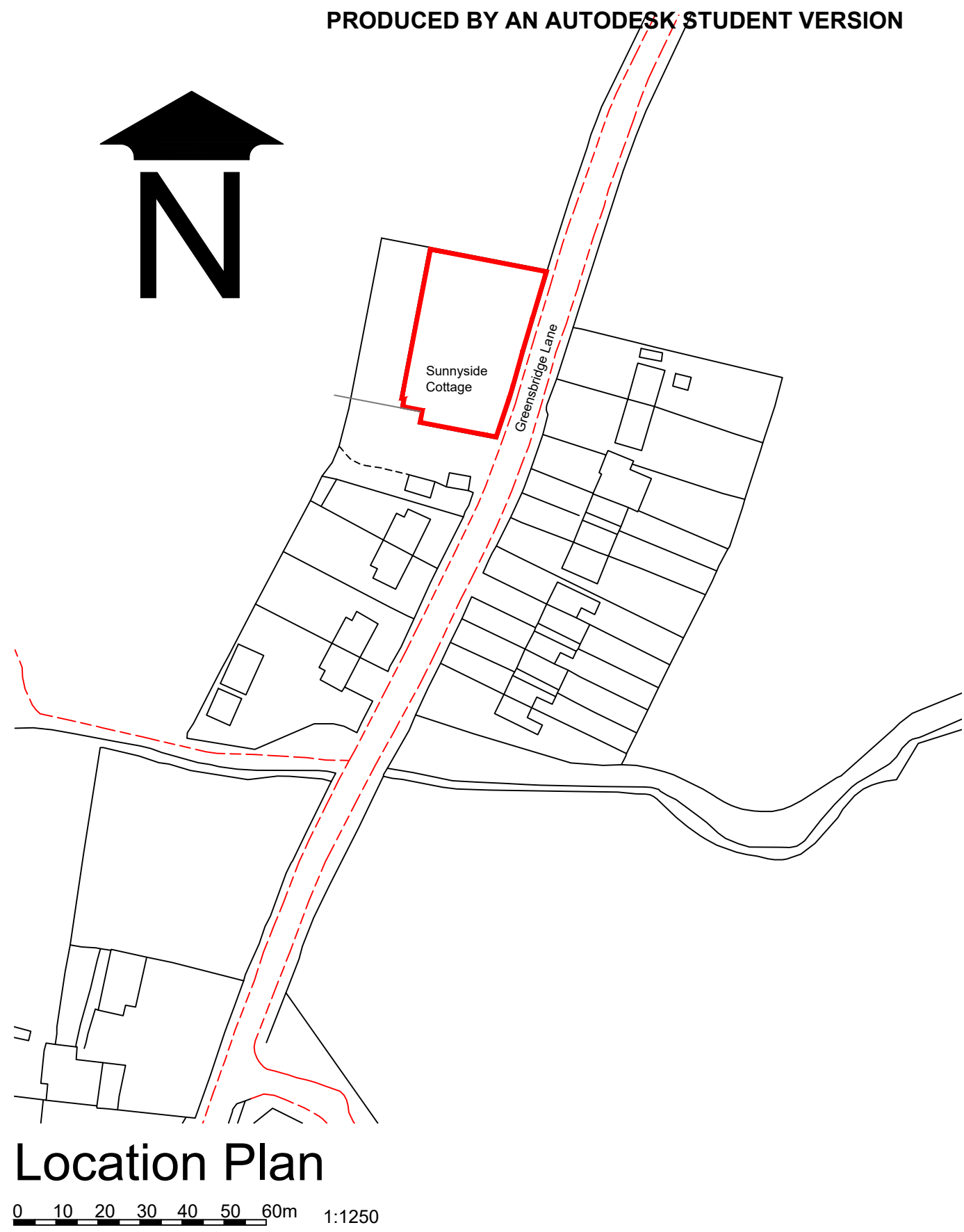
PLANNING ISSUE

PRODUCED BY AN AUTODESK STUDENT VERSION
PROPOSED DWELLING

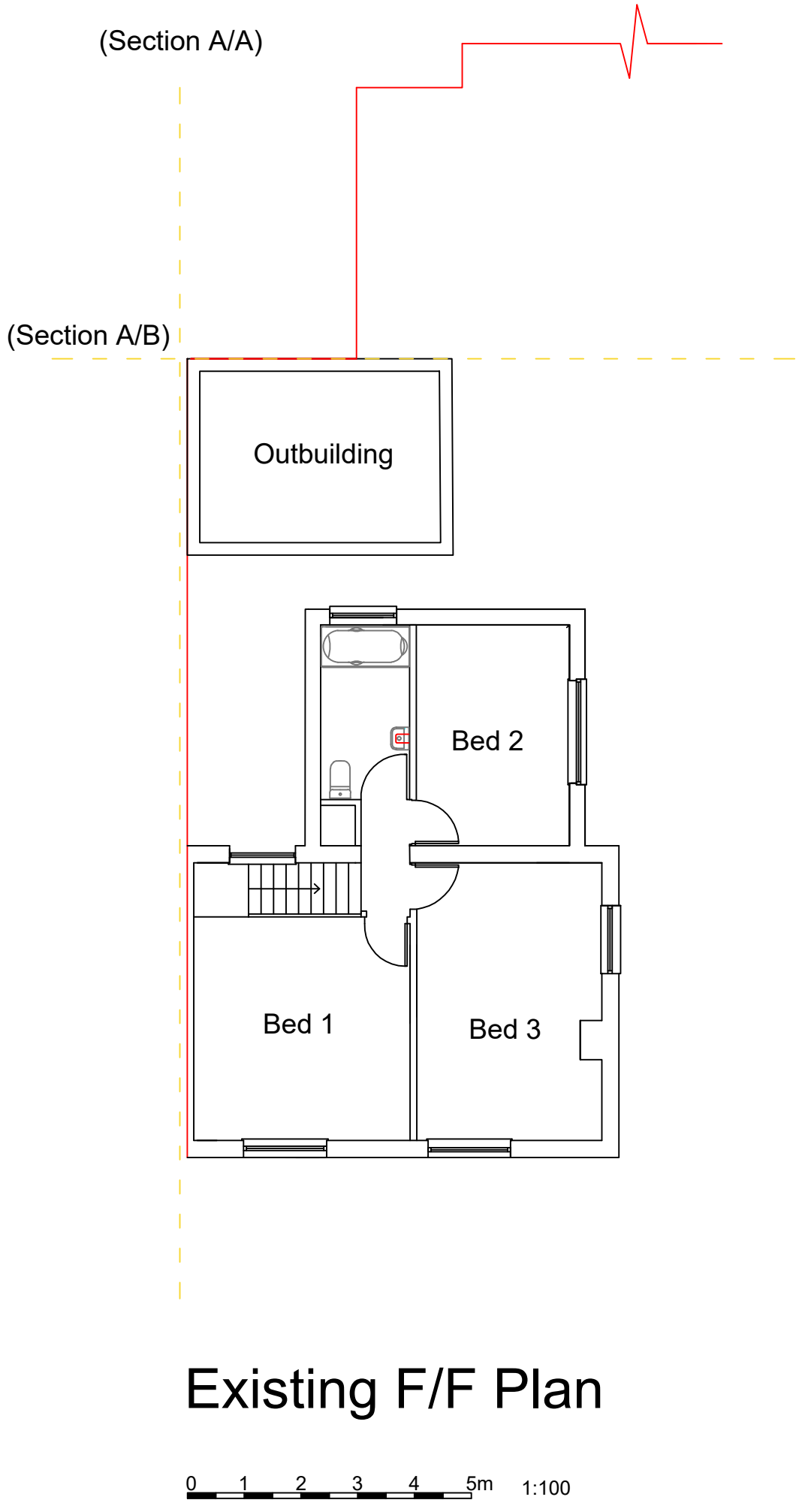
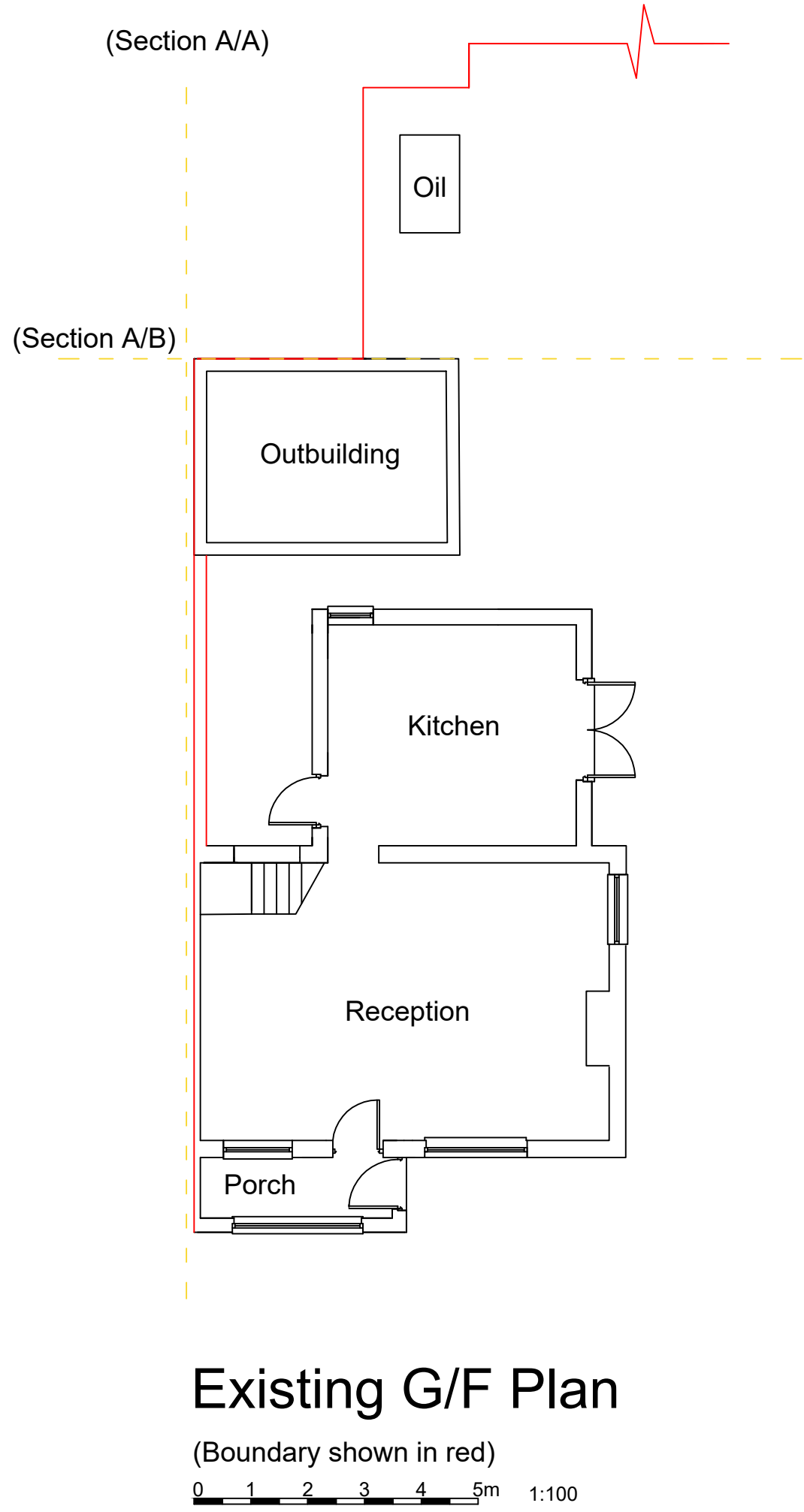
PRODUCED BY AN AUTODESK STUDENT VERSION

PRODUCED BY AN AUTODESK STUDENT VERSION

EXISTING DWELLING



PRODUCED BY AN AUTODESK STUDENT VERSION



PRODUCED BY AN AUTODESK STUDENT VERSION

PLANNING ISSUE

A		28/02/21		Initial draft Issued		Initial.	
Rev. No.	Date.	Amendment.					
Client:							
S E Curran							
Project:							
Rear Extension LH/NC							
Sunnyside Cottage, Greensbridge Lane,							
Tarbock Green, Prescot L35 1QD							
Drawing:							
EXISTING DRAWINGS							
Scale:				Date:			
1:100 1:200 1:1250 @A1				03/07/21			
Drawn By:		Checked By:		Drawing No:		Rev. No:	
SEC				01/PL/01		A	