



## MORAY LOCAL REVIEW BODY

18 AUGUST 2022

### SUMMARY OF INFORMATION FOR CASE No LR275

**Planning Application 22/00140/APP – Replace modern windows that have failed for other modern windows at 6 Burnside Street, Findochty**

#### **Ward 3: Buckie**

Planning permission was refused under the Statutory Scheme of Delegation by the Appointed Officer on 16 May 2022 on the grounds that:

The proposed development is contrary to Policy DP1: Development Principles, Policy 10: Listed Buildings and Policy EP9: Conservation Areas of the adopted Moray Local Development Plan 2020 and, as a material consideration, associated Replacement Windows and Doors Guidance for the following reasons:

1. The use of non-traditional materials such as uPVC is not acceptable for use on listed buildings and the proposed UPVC windows do not preserve the character and special historic interest of the listed building.
2. The use of UPVC windows would not be in compliance with Historic Environment Scotland advice on alterations to listed buildings (Managing Change in the Historic Environment - Windows) nor with the Moray Council's Replacement Windows and Doors Guidance which is clear that the use of non-traditional materials such as uPVC will not be acceptable in listed buildings.
3. The proposed development would not preserve and enhance the character and appearance of Findochty Outstanding Conservation Area.

Documents considered or prepared by the Appointed Officer in respect of the above planning application are attached as **Appendix 1**.

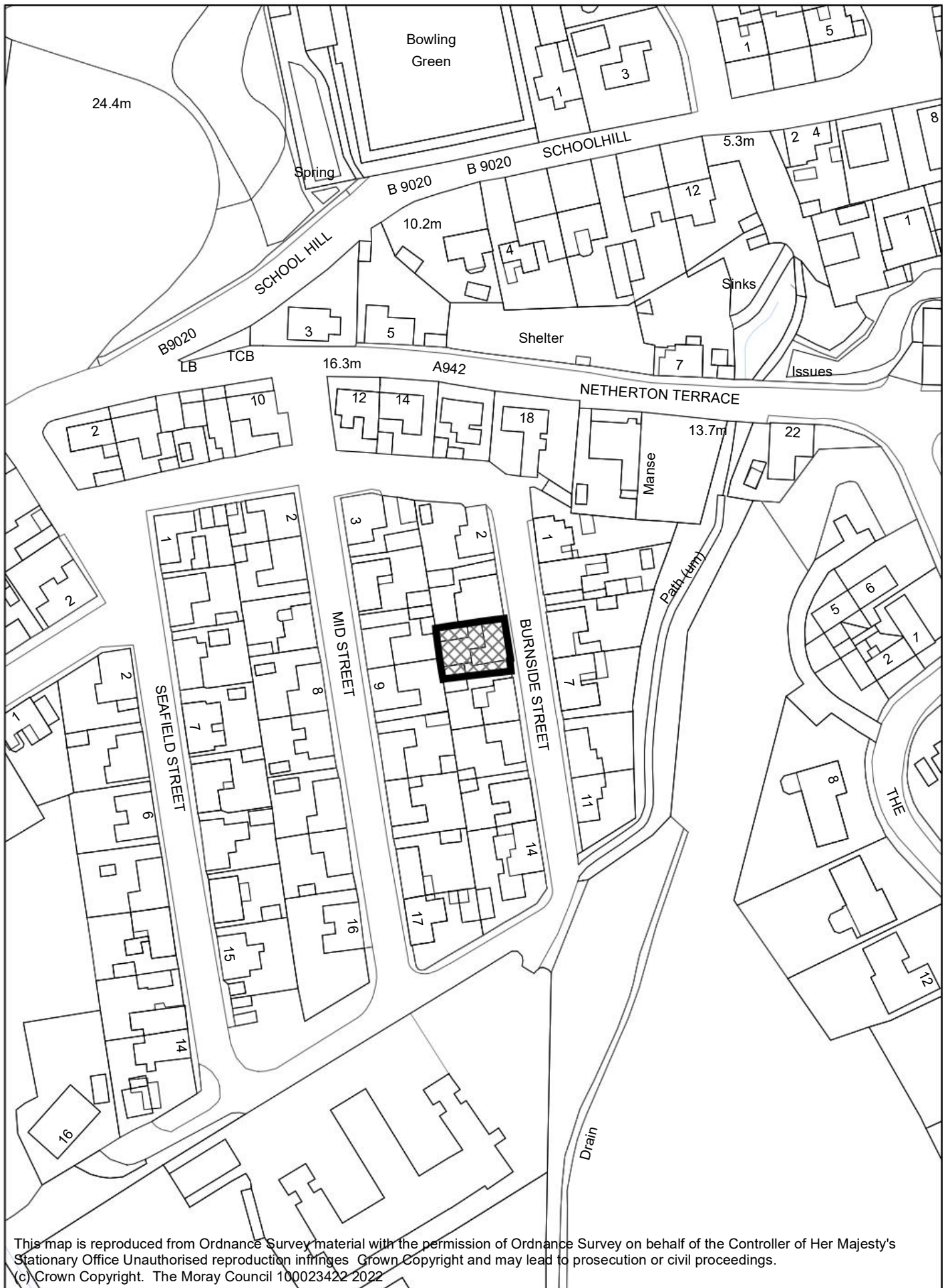
The Notice of the Review, Grounds for Review and any supporting documents submitted by the Applicant are attached as **Appendix 2**.

There were no responses from interested parties.





# Location plan for Planning Application Reference Number : 22/00140/APP







## **APPENDIX 1**

# **DOCUMENTS CONSIDERED OR PREPARED BY THE APPOINTED OFFICER**



# HOUSEHOLDER APPLICATION FOR PLANNING PERMISSION

Town and Country Planning (SCOTLAND) ACT 1997

The Town and Country Planning (Development Management Procedure) (SCOTLAND) REGULATIONS 2013

Please refer to the accompanying Guidance Notes when completing this application

HELP TO THE HOUSEHOLD AND SIMPLER TO SUBMIT PLANNING APPLICATIONS

<https://www.eplanning.scot>

1. Applicant's Details		2. Agent's Details (if any)	
Title	<input type="text" value="Mr"/>	Ref No.	<input type="text"/>
Forename	<input type="text" value="Stephen"/>	Forename	<input type="text"/>
Surname	<input type="text" value="Birtwistle"/>	Surname	<input type="text"/>
Company Name	<input type="text"/>	Company Name	<input type="text"/>
Building No./Name	<input type="text" value="6"/>	Building No./Name	<input type="text"/>
Address Line 1	<input type="text" value="Burnside Street"/>	Address Line 1	<input type="text"/>
Address Line 2	<input type="text"/>	Address Line 2	<input type="text"/>
Town/City	<input type="text" value="Findochty"/>	Town/City	<input type="text"/>
Postcode	<input type="text" value="AB56 4QW"/>	Postcode	<input type="text"/>
Telephone	<input type="text" value="REDACTED"/>	Telephone	<input type="text"/>
Mobile	<input type="text" value="n/a"/>	Mobile	<input type="text"/>
Fax	<input type="text"/>	Fax	<input type="text"/>
Email	<input type="text" value="REDACTED"/>	Email	<input type="text"/>
<b>3. Address or Location of Proposed Development (please include postcode)</b>			
6 Burnside Street, Findochty, AB56 4QW			
NB. If you do not have a full site address please identify the location of the site(s) in your accompanying documentation.			
<b>4. Describe the Proposed Works</b>			
Please describe accurately the work proposed:			
Swapping modern windows for upvc wood effect like for like sized windows.			
Have the works already been started or completed      Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			
If yes, please state date of completion, or if not completed, the start date:			
Date started: <input type="text"/>		Date completed: <input type="text"/>	



If yes, please explain why work has already taken place in advance of making this application.

## 5. Pre-Application Discussion

Have you received any advice from the planning authority in relation to this proposal?

Yes ☒ No ☐

If yes, please provide details about the advice below:

In what format was the advice given?

Meeting ☐ Telephone call ☐ Letter ☐ Email ☒

Have you agreed or are you discussing a Processing Agreement with the planning authority? Yes ☐ No ☒

Please provide a description of the advice you were given and who you received the advice from:

Name:

Date:

Ref No.:

To submit a planning application.

## 6. Trees

Are there any trees on or adjacent to the application site?

Yes ☐ No ☒

If yes, please show on drawings any trees (including known protected trees) and their canopy spread as they relate to the proposed site and indicate if any are to be cut back or felled.

## 7. Changes to Vehicle Access and Parking

Are you proposing a new altered vehicle access to or from a public road?

Yes ☐ No ☒

If yes, please show in your drawings the position of any existing, altered or new access and explain the changes you propose to make. You should also show existing footpaths and note if there will be any impact on these.

Are you proposing any changes to public paths, public rights of way or affecting any public rights of access?

Yes ☐ No ☒

If yes, please show on your drawings the position of any affected areas and explain the changes you propose to make, including arrangement for continuing or alternative public access.

How many vehicle parking spaces (garaging and open parking) currently exist on the application site?

How many vehicle parking spaces (garaging and open parking) do you propose on the site? (i.e. the total of existing and any new spaces or reduced number of spaces)

Please show on your drawings the position of existing and proposed parking spaces and identify if these are for the use of particular types of vehicles (e.g. parking for disabled people, coaches, HGV vehicles, etc).



### 8. Planning Service Employee/Elected Member Interest

Are you / the applicant / the applicant's spouse or partner, a member of staff within the planning service or an elected member of the planning authority? Yes ☐ No ☒

Or, are you / the applicant / the applicant's spouse or partner a close relative of a member of staff in the planning service or elected member of the planning authority? Yes ☐ No ☒

If you have answered yes please provide details:

### DECLARATION

I, the applicant / agent certify that this is an application for planning permission and that accompanying plans/drawings and additional information are provided as part of this application. I hereby confirm that the information given in this form is true and accurate to the best of my knowledge.

I, the applicant/agent hereby certify that the attached Land Ownership Certificate has been completed ☒

I, the applicant/agent hereby certify that requisite notice has been given to other land owners and /or agricultural tenants Yes ☒ No ☐ N/A ☐

Signature:



Name:

Stephen Birtwistle

Date:

2-2-22

# LAND OWNERSHIP CERTIFICATES

Town and Country Planning (Scotland) Act 1997  
Regulation 15 of the Town and Country Planning (Development Management Procedure) (Scotland)  
Regulations 2013

## CERTIFICATE A, B, C, D OR CERTIFICATE E MUST BE COMPLETED BY ALL APPLICANTS

### CERTIFICATE A

Certificate A is for use where the applicant is the only owner of the land to which the application relates and none of the land is agricultural land.

I hereby certify that -

- (1) No person other than the applicant was owner of any part of the land to which the application relates at the beginning of the period of 21 days ending with the date of the application. ☐
- (2) None of the land to which the application relates constitutes or forms part of agricultural land. ☐

Signed:

On behalf of:

Date:

### CERTIFICATE B

Certificate B is for use where the applicant is not the owner or sole owner of the land to which the application relates and/or where the land is agricultural land and where all owners/agricultural tenants have been identified.

I hereby certify that -

- (1) I have served notice on every person other than myself who, at the beginning of the period of 21 days ending with the date of the application was owner of any part of the land to which the application relates. These persons are: ☒

Name	Address	Date of Service of Notice
Cheryl Birtwistle	6 Burnside Street, Findochty, AB56 4QW	1-2-2022

- (2) None of the land to which the application relates constitutes or forms part of agricultural land ☒

or

- (3) The land or part of the land to which the application relates constitutes or forms part of agricultural land and I have served notice on every person other than myself who, at the beginning of the period of 21 days ending with the date of the application was an agricultural tenant. These persons are: ☐

Name	Address	Date of Service of Notice

Signed:

On behalf of:

Date:

### CERTIFICATE C

Certificate C is for use where the applicant is not the owner or sole owner of the land to which the application relates and/or where the land is agricultural land and where it has not been possible to identify ALL or ANY owners/agricultural tenants.

- (1) I have been unable to serve notice on **every** person other than myself who, at the beginning of the period of 21 days ending with the date of the application was owner of any part of the land to which the application relates. ☐

or

- (2) I have been unable to serve notice on **any** person other than myself who, at the beginning of the period of 21 days ending with the date of the accompanying application, was owner of any part of the land to which the application relates. ☐

- (3) None of the land to which the application relates constitutes or forms part of an agricultural holding.

or

- (4) The land or part of the land to which the application relates constitutes or forms part of an agricultural holding and I have been unable to serve notice on any person other than myself who, at the beginning of the period of 21 days ending with the date of the accompanying application was an agricultural tenant. ☐

or

- (5) The land or part of the land to which the application relates constitutes or forms part of an agricultural holding I have served notice on each of the following persons other than myself who, at the beginning of the period of 21 days ending with the date of the application was an agricultural tenant. These persons are: ☐

Name	Address	Date of Service of Notice



- (6) I have \_\_\_\_\_ taken reasonable steps, as listed below, to ascertain the names and addresses of all other owners or agricultural tenants and have \_\_\_\_\_ been unable to do so.

Steps taken:

--

Signed:

On behalf of:

Date:

### CERTIFICATE D

Certificate D is for use where the application is for mineral development.

- (1) No person other than myself \_\_\_\_\_ was an owner of any part of the land to which the application relates at the beginning of the period of 21 days ending with the date of the accompanying application. ☐

or

- (2) I have \_\_\_\_\_ served notice on each of the following persons other than myself \_\_\_\_\_ who, at the beginning of the period of 21 days ending with the date of the accompanying application, was to the applicant's knowledge, the owner, of any part of the land to which the application relates. These persons are: ☐

Name	Address	Date of Service of Notice

- (3) None of the land to which the application relates constitutes or forms part of an agricultural holding. ☐

or

- (4) The land or part of the land to which the application relates constitutes or forms part of an agricultural holding and I have \_\_\_\_\_ served notice on each of the following persons other than myself \_\_\_\_\_ who, at the beginning of the period of 21 days ending with the date of the application, was an agricultural tenant. ☐

- (5) Notice of the application as set out below has been published and displayed by public notice ☐

Signed:

On behalf of:

Date:

### CERTIFICATE E

Certificate E is required where the applicant is the sole owner of all the land and the land to which the application relates is agricultural land and there are or are not agricultural tenants.

**I hereby certify that -**

(1) No person other than myself was the owner of any part of the land to which the application relates at the beginning of the period 21 days ending with the date of the application. ☐

(2) The land to which the application relates constitutes or forms part of an agricultural holding and there are no agricultural tenants. ☐

or

(1) No person other than myself was the owner of any part of the land to which the application relates at the beginning of the period 21 days ending with the date of the application. ☐

(2) The land to which the application relates constitutes or forms part of an agricultural holding and there are agricultural tenants. These people are: ☐

Name	Address	Date of Service of Notice

(3) I have taken reasonable steps, as listed below, to ascertain the names and addresses of the other agricultural tenants and have been unable to do so. ☐

Steps taken:

--

Signed:

--

On behalf of:

--

Date:

--

Any personal data that you have been asked to provide on this form will be held and processed in accordance with Data Protection Legislation.



# NOTICE TO OWNERS AND AGRICULTURAL TENANTS

Town and Country Planning (Scotland) Act 1997  
Regulation 15 (1) of the Town and Country Planning (Development Management Procedure)  
(Scotland) Regulations 2013

Name [Note 1]	
Address	

Proposed development at [Note 2]	

Notice is hereby given that an application is being made to

[Note 3]		Council by	
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For planning permission to [Note 4]

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If you wish to obtain further information on the application or to make representations about the application, you should contact the Council at [Note 5]

--

(The grant of planning permission does not affect owners' rights to retain and dispose of their property unless there is some provision to the contrary in an agreement or lease. The grant of planning permission for non-agricultural development may affect agricultural tenants security of tenure.)

Signed	
On behalf of	
Date	

\*Delete where appropriate

[Note 1] – Insert name and address of owner or agricultural tenants

[Note 2] – Insert address or location of proposed development.

[Note 3] – Insert name of planning authority.

[Note 4] – Insert description of proposed development.

[Note 5] - Insert planning authority address.

# NOTICE TO OWNERS AND AGRICULTURAL TENANTS

The Town and Country Planning (Scotland) Act 1997  
The Town and Country Planning (Development Management Procedure) (Scotland)  
Regulations 2013 (Regulation 15)

## NOTES FOR GUIDANCE

Before applying for planning permission or planning permission in principle under regulations 9 to 11, applicants should notify all persons who (other than themselves), were the owners of any of the land to which the application relates, or were agricultural tenants at the beginning of the prescribed period (in effect 21 days ending with the date on which the application was submitted).

Notices to owners and agricultural tenants should be in the form set out in schedule 1 of the regulations and must include:

1. The name of the applicant
2. The address or location of the proposed development
3. A description of the proposed development and
4. The name and address of the planning authority who will determine the application.

The grant of planning permission will not affect the rights of an owner, or tenant under a lease which has at least 7 years to run, to dispose of the consented property unless there is express provision in the lease/Agreement.

## Applications for the working and winning of underground minerals

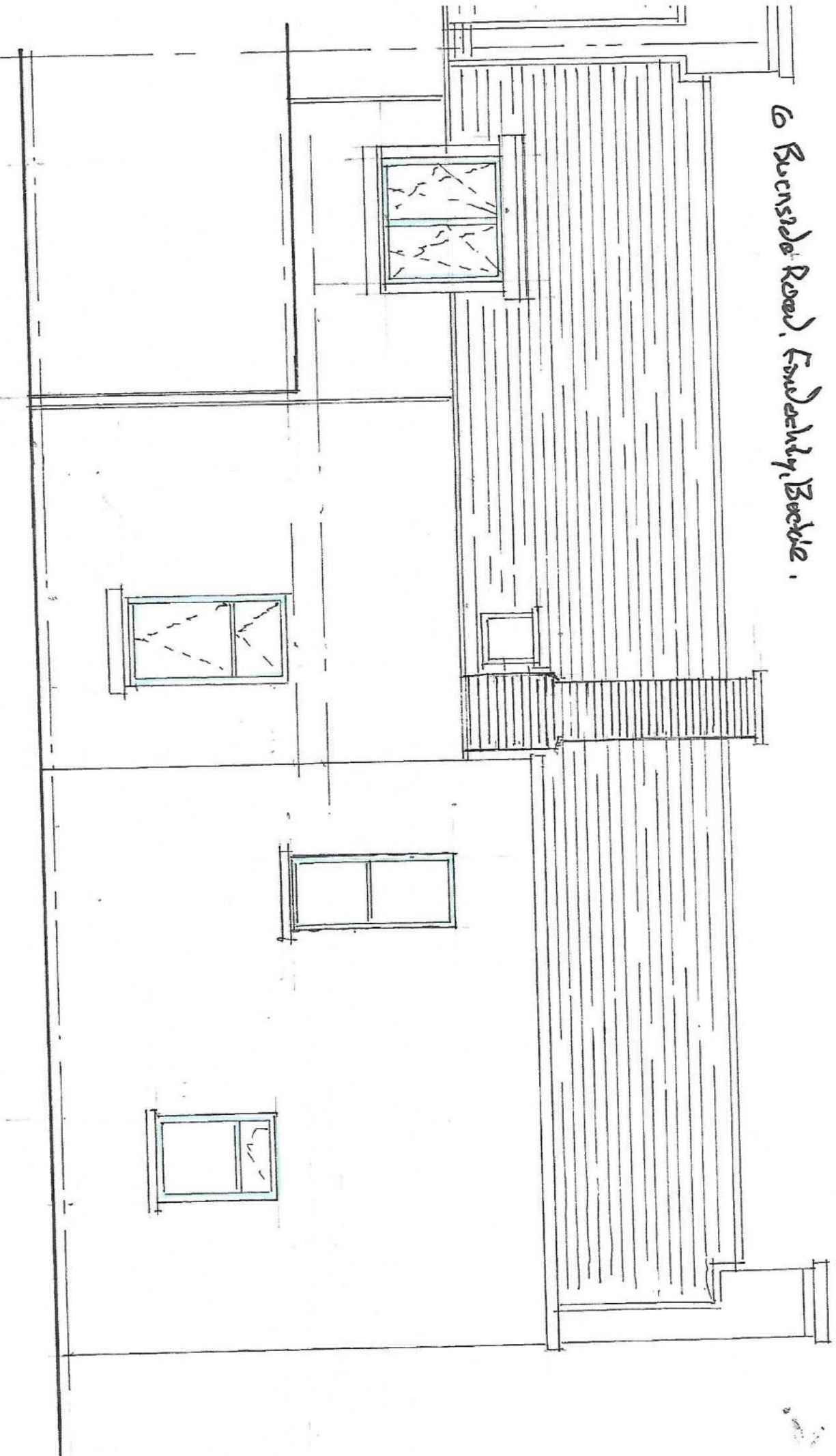
The notification of site owners and agricultural tenants regarding applications for the working and winning of underground minerals may be both onerous and complex. In addition to those owners and agricultural tenants with rights in relation to the relevant surface land, there may be other people with ownership rights to minerals, other than those vested in the Crown (oil, gas, coal, gold and silver), who may be difficult to identify and notify.

For the purposes of these applications, regulation 15(4) amends the requirement to notify owners to relate to those who "to the applicant's knowledge" are owners

Any personal data that you have been asked to provide on this form will be held and processed in accordance with Data Protection Legislation.



6 Ruesside Road, Foxeally, Bective.



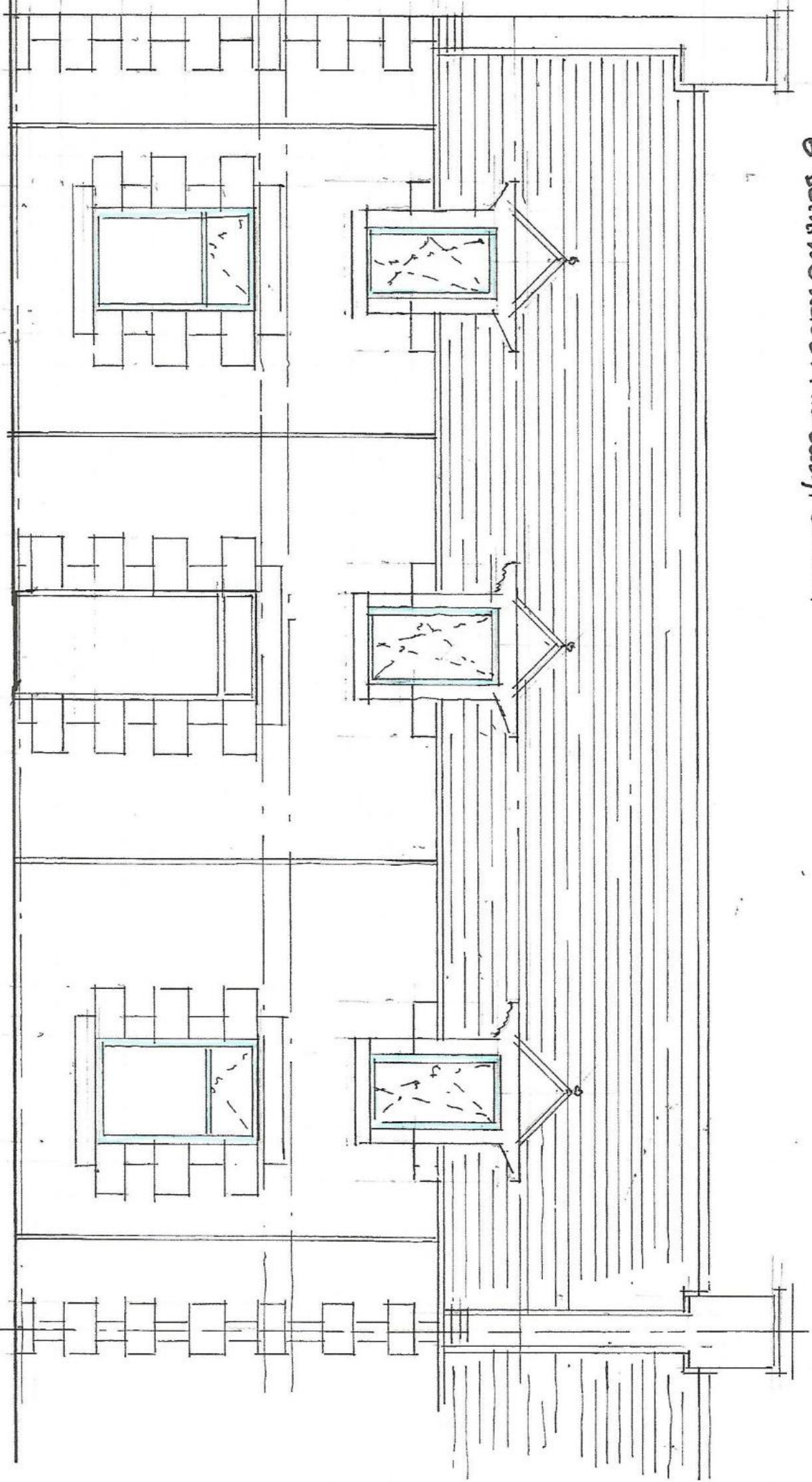
1150 Clevedon C [PROPOSED]

DRL, 2023, BIRTHMISTLE, DALN.





6 Barnside Road, Freshy, Bude, Cornwall

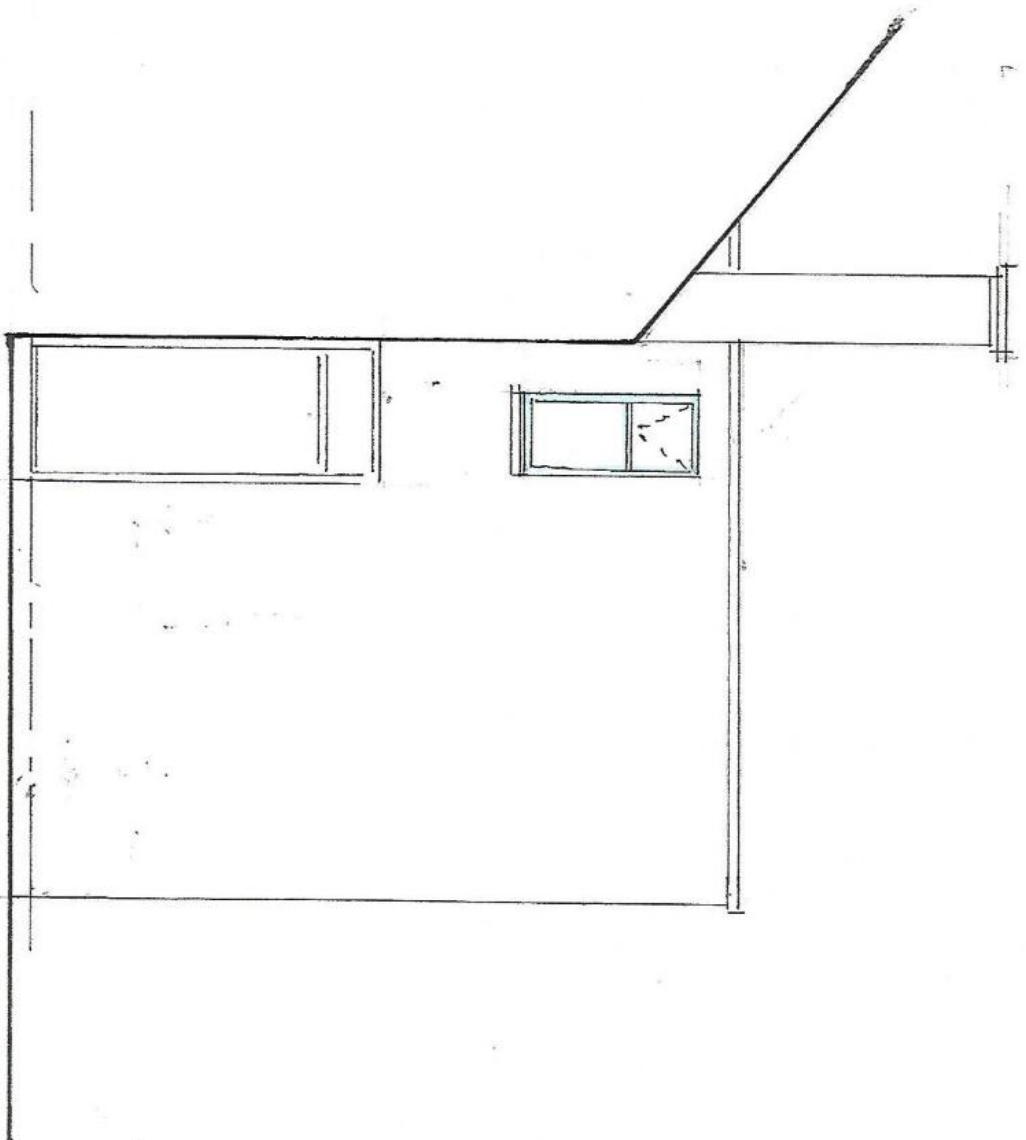


1:50 Elevation A, [Proposed]

026.0023, BIRT W 41570 002 A.

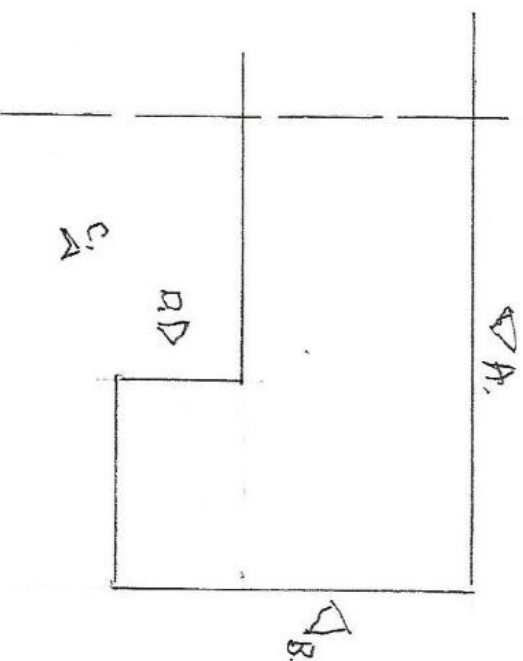


6 Burnside Road, Inverclyde, Buckie.



1:50 Elevation D.

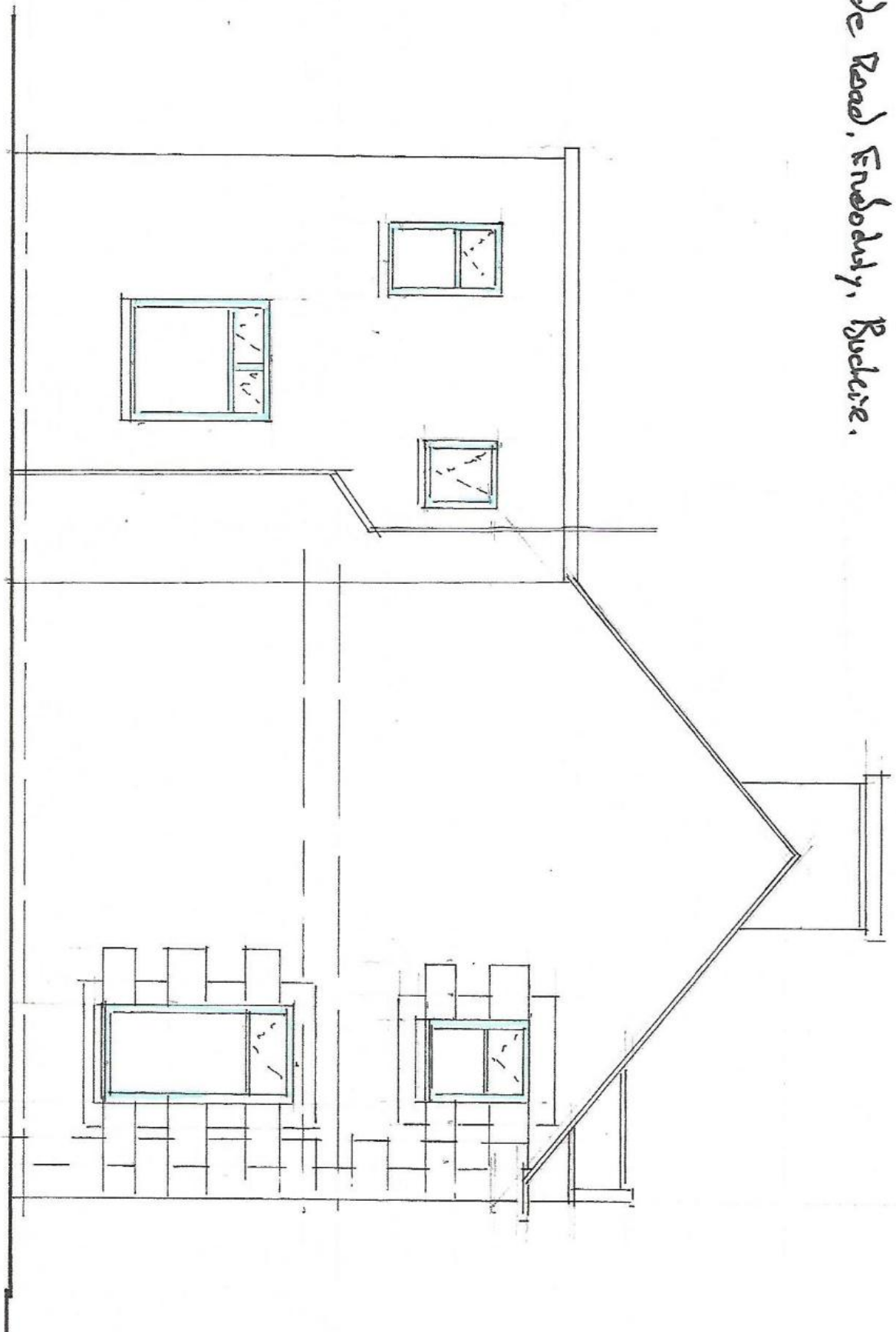
(PROPOSED)



1:200 Block Plan.



6 Riverside Road, Endoduly, Buckle.



1:50 Elevation B.

[PROPOSED]

DRL, 2022, BIRKENWISTLE 004, P.





# Location Plan of ab564qw



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0m 20m 40m 60m 80m 100m

Scale: 1:1250, paper size: A4



## PLANS FOR 'U'

### PLANNING & WARRANT APPLICATIONS

**Jim Cairns**

2 Victoria Street, PORTKNOCKIE, AB56 4LQ

Tel: 01542 841892 Mob: 07767 493462

Email: [plansforu@btinternet.com](mailto:plansforu@btinternet.com)

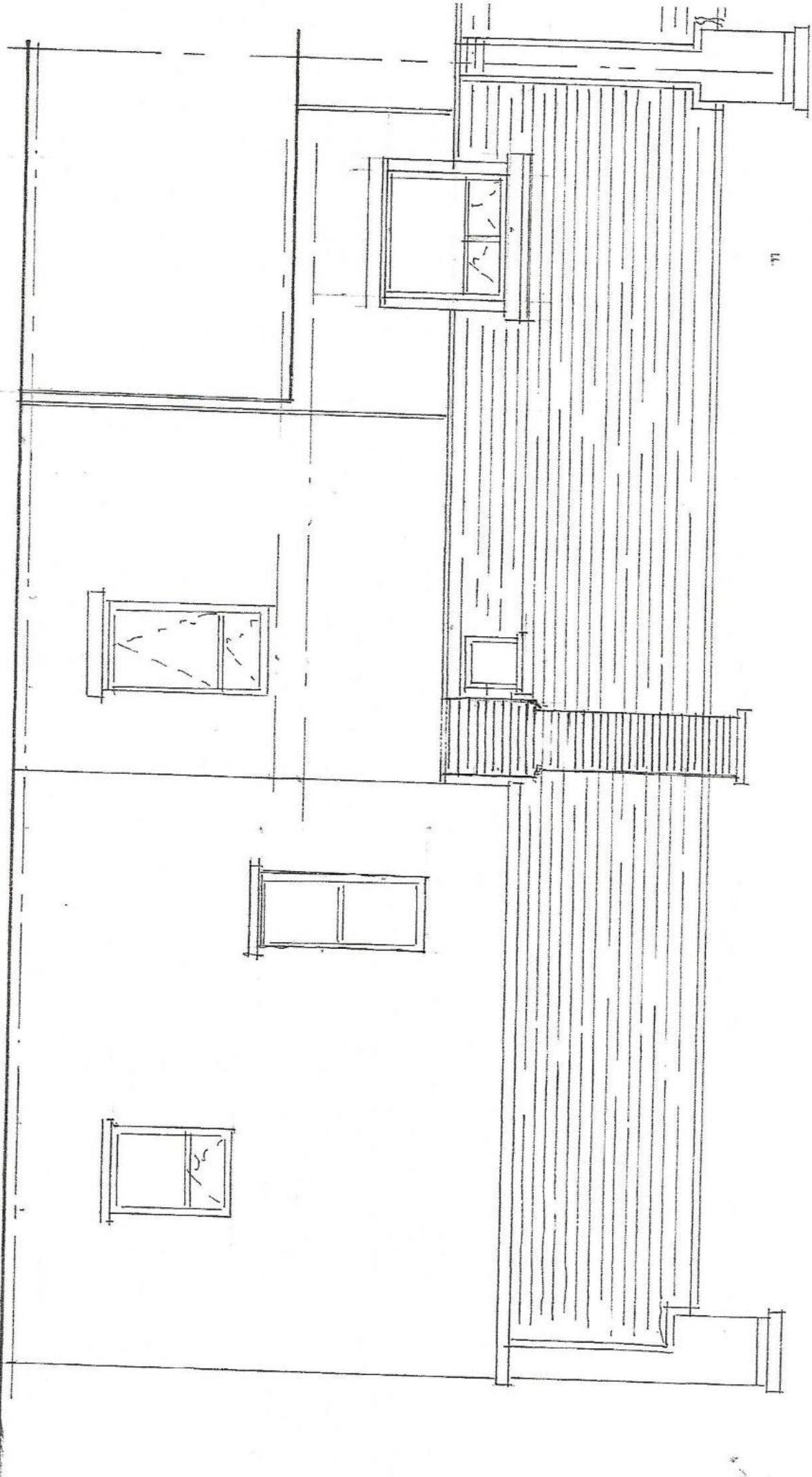


**emapsite™**  
plans

Prepared by: Stephen Birtwistle, 01-10-2021



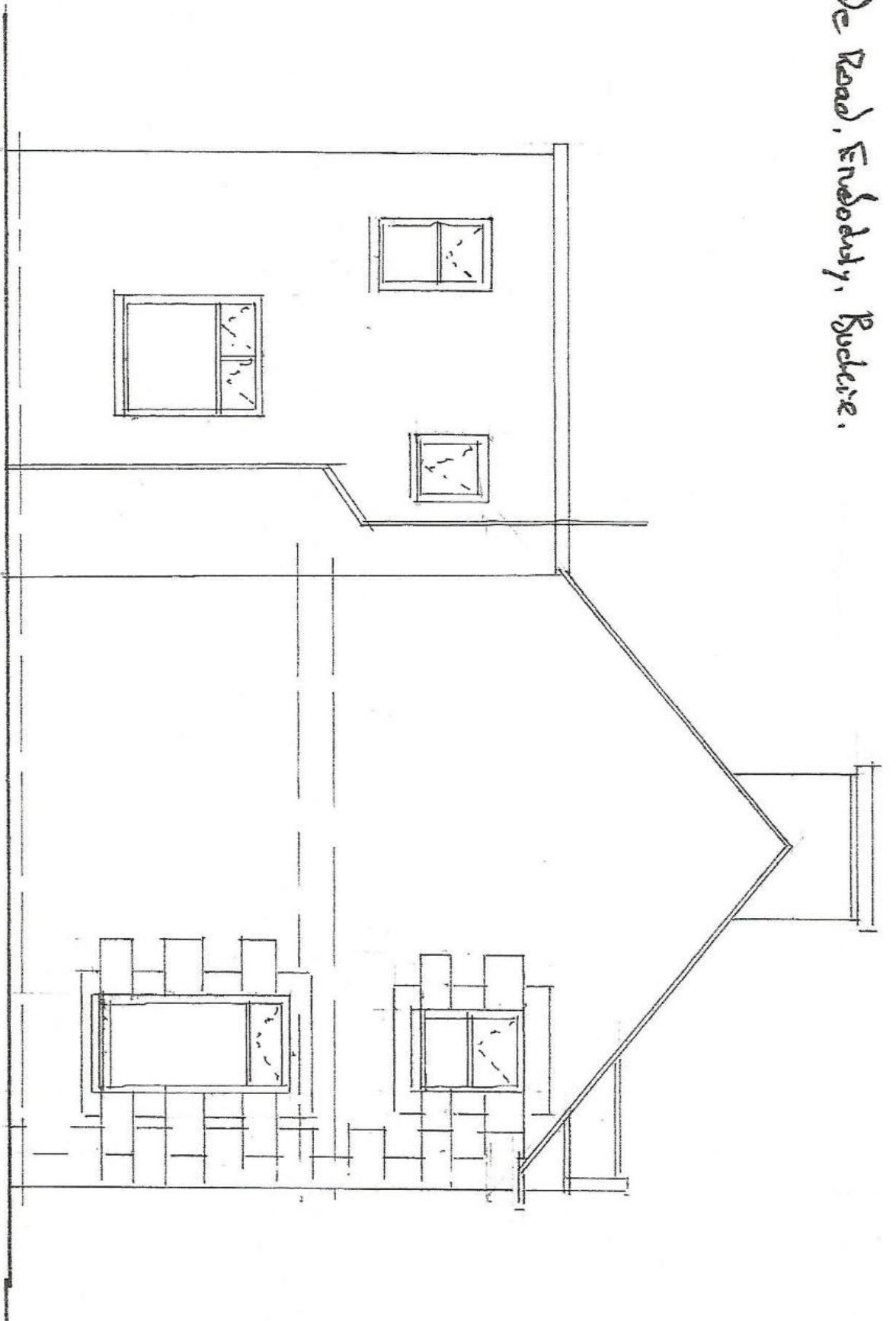
6 Burnside Road, Tindobity, Burarie.



also elevation [Existing]



6 Riverside Road, Finedon, Rutland.



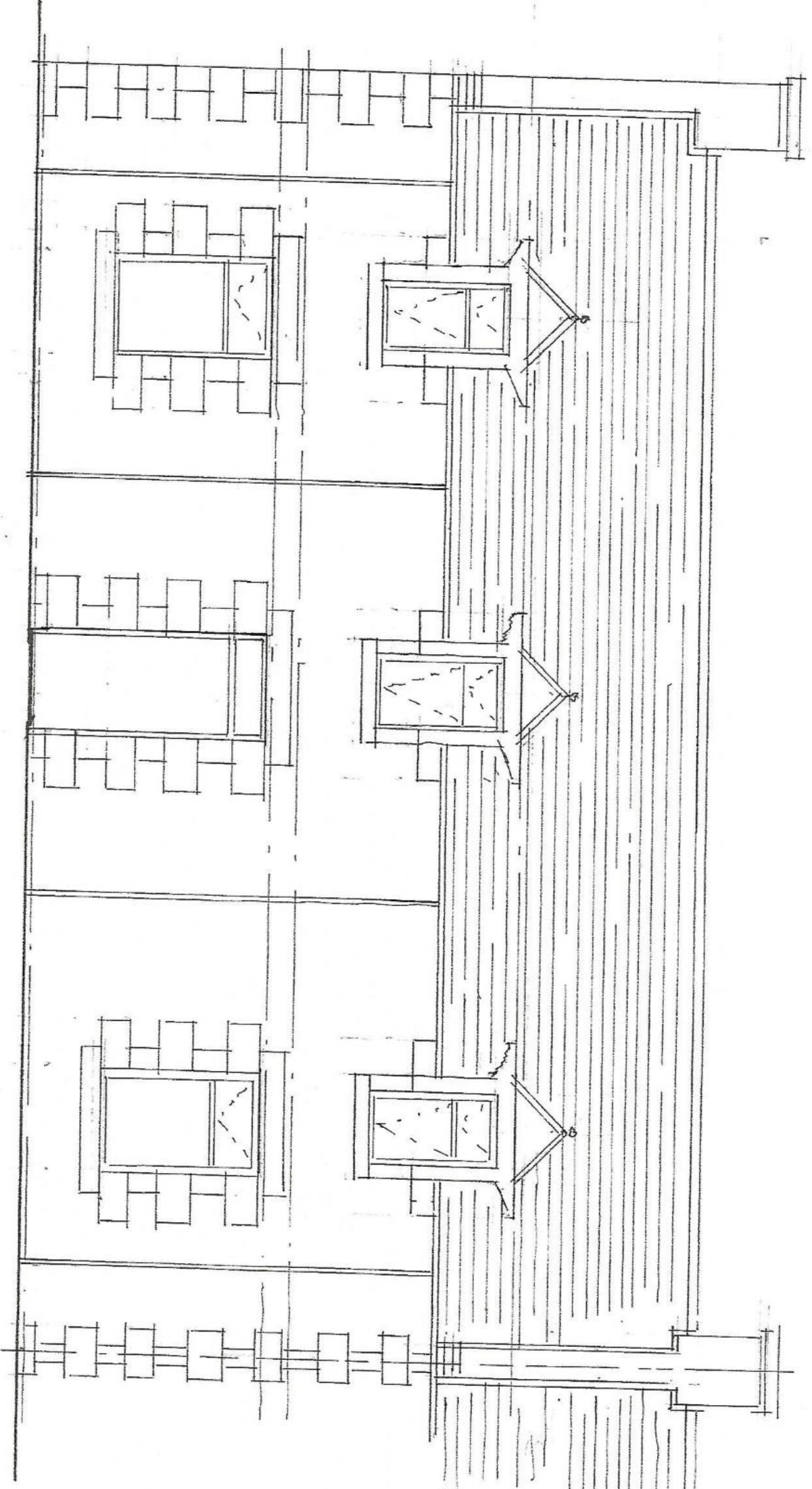
1:50 Elevation B.

(EXISTENCE)

DRG. 2620131RTVHUSTLE, 004



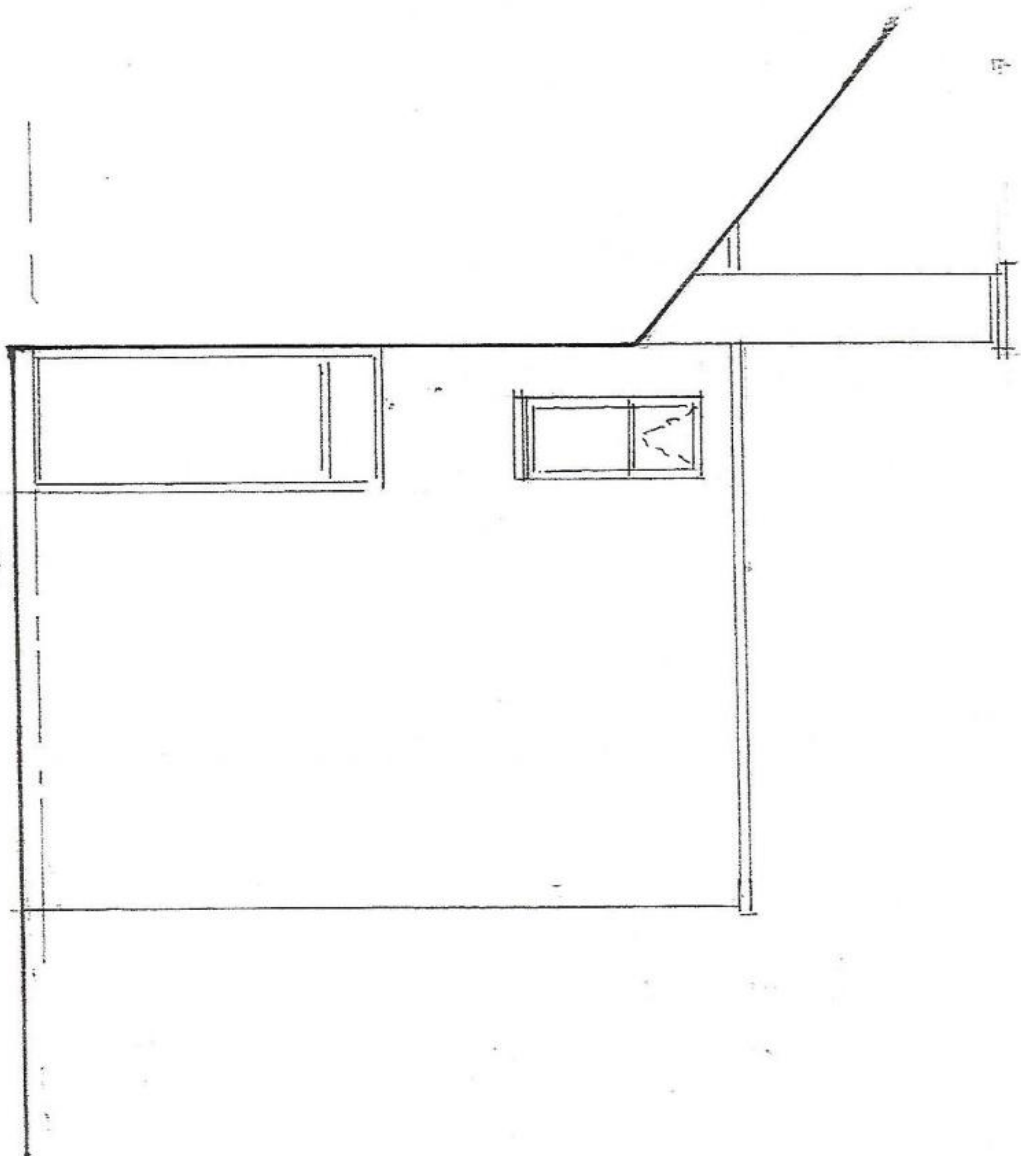
6 Burnside Road, Findochty, Buchie.



11.5 elevation A. [EXISTING]

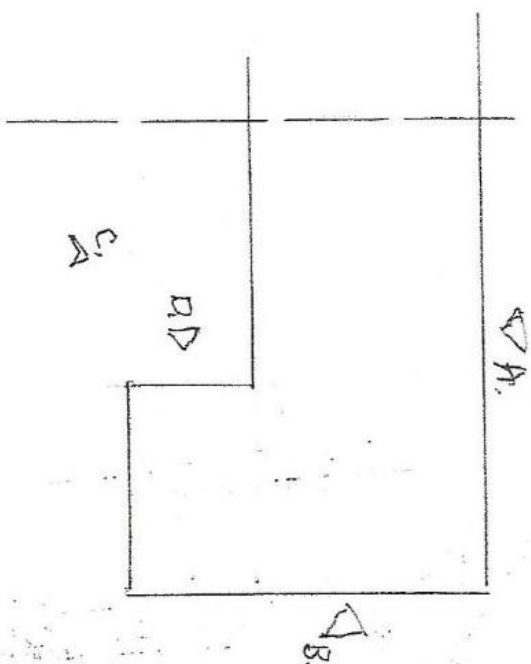
DRG. 2022, BIRTHWATER, 003.

6 Barnside Road, Gmbadaly, Bueche.



1:50 Elevation D,

[EXISTING]



1:200 Block Plan,

DRG. 2022 BILTRUST 16, 003,

**1) PROPOSED INSTALLATION OF REPLACEMENT INDOWS at no 6 BURNSIDE ROAD,  
FINDOCHTY, BUCKIE, MORAY, AB564QW, for STEVEN BIRTWHISTLE:**

*The specification notes and drawings are for the Planning applications to the Moray Council, and for the use of the applicant only:*

**BUILDING WORKS / SPECIFICATION NOTES:**

*Builders and Sub-contractors to be fully responsible for all site safety, with the use of ladders, scaffolding, machinery, electrical equipment etc:*

**NEW WORK:**

*All existing aluminium framed windows to be removed and new double glazed upvc windows to be installed in the existing openings, with mastic pointing round all openings both inside and outside:*

*NB. Existing window to the stair, with decorated glass, to have a replacement upvc window fitted to the outside, set within the existing window in goes:*

*NB. All bedroom windows to function as 'fire exit' with 'tilt – turn -to open inward' to allow cleaning from the inside:*

*Extract fan to be installed in the bathroom window, with a suitable fused electrical supply:*

**WINDOW SECURITY:**

*Windows to be provided and installed to the requirements of Reg 4.13: As follows:-*

*4.13.1 Windows to be designed, installed and glazed to resist forced entry, by the use of windows manufactured to meet recognised product standards and defined component performance:*

*4.13.2. a window should meet the recommendations for physical security in Section 2 of 'secured by design':*

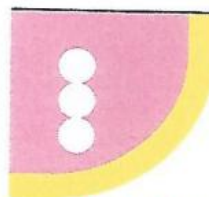
*4.13.3. a window should be tested and certified by a notified body as meeting a recognised standard for security such as BS 7950:1997 for windows:*

*4.13.4. windows that can be opened should be fitted with a keyed locking system that uses a removable key:*

*4.13.5. installation and fixings of windows to ensure a robust installation according to the recommendations given in Section 8 of BS 8213-4:2007; or manufacturers written instructions where they meet or exceed the recommendations within this British Standard: Max., height of opening handles = 1.7m: U Value of windows to be 1.4max;*

**J D Cairns – 16.02.22:**

**Email – [planforu1942@gmail.com](mailto:planforu1942@gmail.com)**



**PLANS FOR 'U'**

**PLANNING & WARRANT APPLICATIONS**

**Jim Cairns**

2 Victoria Street, PORTKNOCKIE, AB56 4LQ

Tel: 01542 841892 Mob: 07767 493462

Email: [planforu1942@gmail.com](mailto:planforu1942@gmail.com)





Rainwater fittings	
Repair category	2
Notes	There is a sagging gutter to the rear.

Main walls	
Repair category	2
Notes	There is cracking to render to the rear. Cracking should be sealed in order to prevent further deterioration.

Windows, external doors and joinery	
Repair category	2
Notes	<p>Seals on some of the double glazed window units have failed, resulting in condensation build up between the panes. The top opening pane of the kitchen window is loose and does not open and close properly. The windows are of an older type. They may be nearing the end of their useful lifespan.</p> <p>There is a cracked pane in the W.C.</p>

External decorations	
Repair category	2
Notes	External timbers and paintwork is weathered. There is peeling paint to window surrounds.

Conservatories/porches	
Repair category	-
Notes	n/a

Communal areas	
Repair category	-
Notes	n/a

Garages and permanent outbuildings	
Repair category	2
Notes	The garage roof appears to include asbestos based products in its construction.



# Location Plan of ab564qw



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Scale: 1:1250, paper size: A4





This document we include as a bit of background for our application and to explain our circumstances and our justification for wanting to replace the inadequate and damaged windows

I am feeling very lost, frustrated and desperate for my family. A bit of background, we bought a house in Findochty which required some modernisation and repairs, the windows of which being smashed and boomed UPVC and aluminium windows. This was picked up in the home report (also included – page 14 “Seals on some of the double-glazed window units have failed, resulting in condensation build up between the panes. The top opening pane of the kitchen window is loose and does not open and close properly. The windows are of an older type. They may be nearing the end of their useful lifespan. There is a cracked pane in the W.C.”).

We had assumed, wrongly it now seems as 95% if not more of the surrounding houses have aluminium or UPVC we would be allowed to upgrade to UPVC. I submitted a development enquiry (domestic) to yourselves and unfortunately received the response from planning officer Craig Wilson which I quote from – “The use of UPVC is unacceptable for replacement windows to a listed building.

Unsympathetic works, and use of UPVC windows, to other buildings are not recent or set a precedent: and is not justification to allow incongruous works to your property.” For some reason we also later received one from Fiona Olsen stating the same – I assume generic responses.

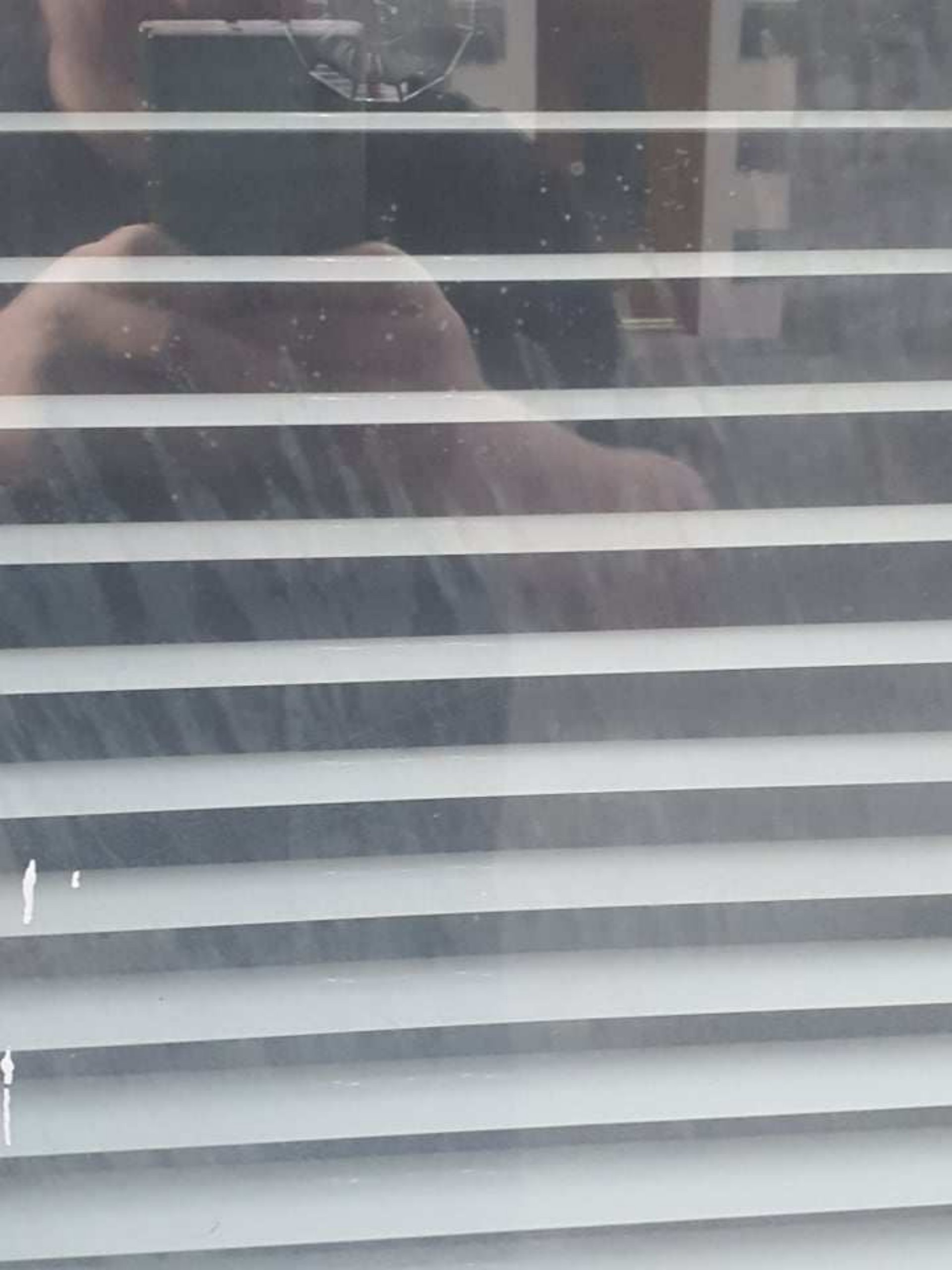
Our gas and electric is £315 a month to heat as the windows are all failed units, this has already jumped in price and I have been advised by my energy firm this will jump much further at the end of our fixed rate contract, my daughter has a lifelong heart condition and requires consistent warmth, she has poor circulation and can get cold very easily, this in turn leads to increase in painful leg cramps, so turning the heating down or off is not a justifiable option for us, not if we are to provide her with the care she requires. I have investigated the price of wooden windows, and we simply cannot afford to replace with these – I have looked around and we are looking at an estimated 30-40k whereas UPVC is coming in at 7.5k which is a much more manageable cost. I have also included pictures of the windows and the state they are currently in so you can see how bad it is, but with rising energy costs and a real terms 20% pay cut at the council over the past 12 years, I am left with the tough decision of if we aren't able to do this, we will have to sell up having just got my 3 kids and ourselves settled at a new school and go onto the council list because we just can't afford to start again having used our lifetime savings upgrading and modernising this property to be our forever family home.

I am asking in desperation, for you to please take it under consideration allowing us to upgrade to UPVC the same as the majority of the properties surrounding us. It would in not look out of place when you see the considerable amount of other listed buildings which have UPVC and ours already being classed as modern windows.











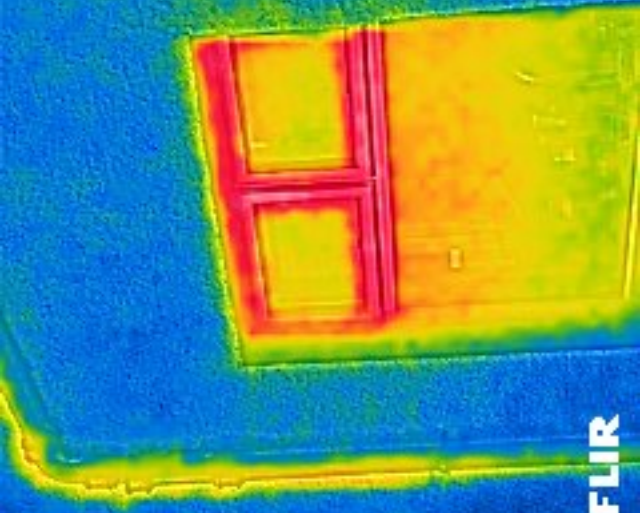






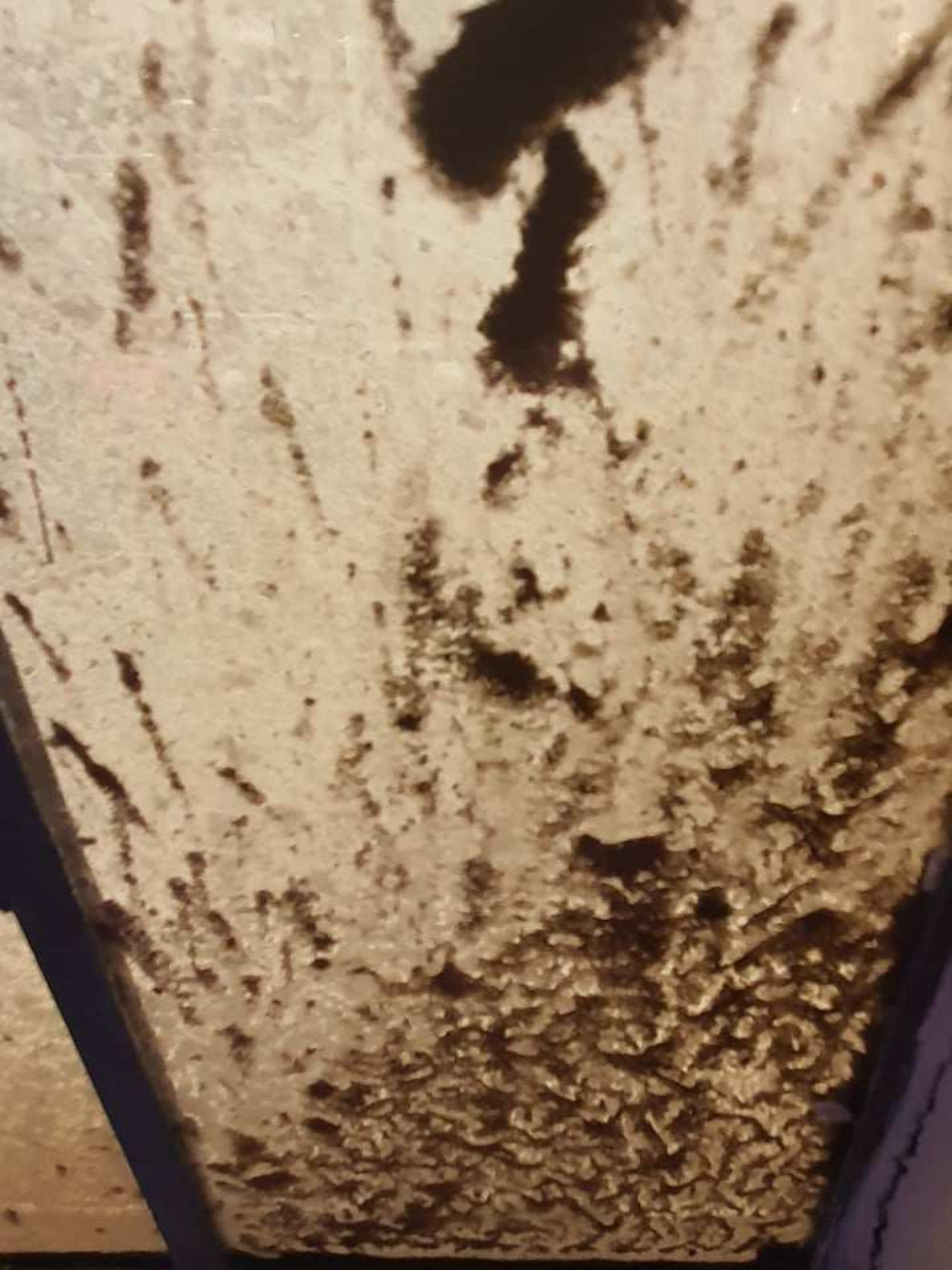
9.4

1.0



FLIR













# Location Plan of ab564qw



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0m 20m 40m 60m

Scale: 1:1250, paper size: A4





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I am feeling very lost, frustrated and desperate for my family. A bit of background, we bought a house in Findochty which required some modernisation and repairs, the windows of which being smashed and boomed UPVC and aluminium windows. This was picked up in the home report (also included – page 14 “Seals on some of the double-glazed window units have failed, resulting in condensation build up between the panes. The top opening pane of the kitchen window is loose and does not open and close properly. The windows are of an older type. They may be nearing the end of their useful lifespan. There is a cracked pane in the W.C.”).

We had assumed, wrongly it now seems as 95% if not more of the surrounding houses have aluminium or UPVC we would be allowed to upgrade to UPVC. I submitted a development enquiry (domestic) to yourselves and unfortunately received the response from planning officer Craig Wilson which I quote from – “The use of UPVC is unacceptable for replacement windows to a listed building. Unsympathetic works, and use of UPVC windows, to other buildings are not recent or set a precedent: and is not justification to allow incongruous works to your property.” For some reason we also later received one from Fiona Olsen stating the same – I assume generic responses.

Our gas and electric is [REDACTED] to heat as the windows are all failed units, this has already jumped in price and I have been advised by my energy firm this will jump much further at the end of our fixed rate contract, [REDACTED]

turning the heating down or off is not a justifiable option for us, not if we are to provide her with the care she requires. I have investigated the price of wooden windows, and we simply cannot afford to replace with these – I have looked around and we are looking at an estimated 30-40k whereas UPVC is coming in at 7.5k which is a much more manageable cost. I have also included pictures of the windows and the state they are currently in so you can see how bad it is, but with rising energy costs and a real terms 20% pay cut at the council over the past 12 years, I am left with the tough decision of if we aren't able to do this, we will have to sell up having just got my 3 kids and ourselves settled at a new school and go onto the council list because we just can't afford to start again having used our lifetime savings upgrading and modernising this property to be our forever family home.

I am asking in desperation, for you to please take it under consideration allowing us to upgrade to UPVC the same as the majority of the properties surrounding us. It would in not look out of place when you see the considerable amount of other listed buildings which have UPVC and ours already being classed as modern windows.



## **REPORT OF HANDLING**

<b>Ref No:</b>	22/00140/APP	<b>Officer:</b>	Katherine Donnachie
<b>Proposal Description/ Address</b>	Remove existing windows and replace UPVC windows at 6 Burnside Street Findochty Buckie Moray		
<b>Date:</b>	13.05.2022	<b>Typist Initials:</b>	LMC

### **RECOMMENDATION**

<b>Approve, without or with condition(s) listed below</b>		<b>N</b>
<b>Refuse, subject to reason(s) listed below</b>		<b>Y</b>
<b>Legal Agreement required e.g. S,75</b>		<b>N</b>
<b>Notification to Scottish Ministers/Historic Scotland</b>		<b>N</b>
<b>Hearing requirements</b>	<b>Departure</b>	<b>N</b>
	<b>Pre-determination</b>	<b>N</b>

### **CONSULTATIONS**

<b>Consultee</b>	<b>Date Returned</b>	<b>Summary of Response</b>

### **DEVELOPMENT PLAN POLICY**

<b>Policies</b>	<b>Dep</b>	<b>Any Comments (or refer to Observations below)</b>
PP1 Placemaking		Refer to observations
DP1 Development Principles		Refer to observations
EP3 Special Landscape Areas		Refer to observations
EP9 Conservation Areas	N	Refer to observations
EP10 Listed Buildings	N	Refer to observations

### **REPRESENTATIONS**

Representations Received		NO
Total number of representations received		
Names/Addresses of parties submitting representations		
Summary and Assessment of main issues raised by representations		
Issue:		
Comments (PO):		

## OBSERVATIONS – ASSESSMENT OF PROPOSAL

### Site and Proposals

This application seeks planning permission to replace all the windows in a category C listed building of architectural and historic importance at 6 Burnside Crescent Findochty. This property, along with the adjoining house at number 4, is listed category C with the Historic Environment Scotland listing, which dates from 1989 stating as follows:

- Circa 1900. Pair 2-storey, 3-bay houses. Rubble with contrasting painted concrete dressings. Each house with centre entrance and with 3 finialled gabled dormers breaking wallhead. Coped end stacks; slate roof. NO 4: modern glazing. NO 6: modern glazing, original panelled door.

The site is located within Findochty Outstanding Area and is located on Burnside Street which is part of number of streets located to the south of the main A942 road through Findochty leading to Buckie with the primary school lying to the south. Burnside Street is characterised by traditional stone and slate properties hard onto the street and the application site is surrounded by other residential properties the majority of which are listed.

This house has been extended to the years by way of flat roofed extensions and these date from some considerable time ago with the only recent planning applications being a retrospective application for a gym/store building in the rear garden which was approved in 2020. (Reference 21/01565/APP) An accompanying planning application for listed building consent to change the windows is currently pending too (22/00139/LBC).

At present the windows in this house are aluminium and are they are in poor condition. It is proposed to replace all these windows with UPVC windows. The majority will be similar proportions - 2/3 and 1/3 split to each window apart from one of the rear windows which will be split 50-50 vertically and another which will be split 50-50 horizontally. The three upper floor windows on the front elevation will be single pane. The total number of windows to be replaced is 10 (5 to gable end, 1 to side of rear extension and 4 on rear elevation).

## APPRAISAL

### Policy Background

Section 25 of the 1997 Act as amended requires applications to be determined in accordance with the development plan i.e. the adopted Moray Local Development Plan 2020 (MLDP) unless material considerations indicate otherwise. The main planning issues are considered below:

### Principle

Policy PP1 Placemaking seeks to ensure that new development is designed to create successful healthy places that improve people's wellbeing, safeguard the environment and support economic development, promote character and identity and biodiversity. Similarly Policy DP1 Development Principles is supportive of new development providing it meets all other relevant planning policies. Again this policy supports new development providing it is in keeping with the area and this will now be considered below.

### Design, layout and impacts on Conservation Area and Listed Building

Policy DP1 Development Principles sets out the need for the scale, density and character to be appropriate to the surrounding area to create a sense of place, integrated into the surrounding landscape with no adverse impact upon neighbouring properties in terms of privacy, daylighting, or overbearing loss of amenity.

It is considered that this window replacement proposal will have no impacts upon neighbours, nor will there be any impact upon environmental interests. The key policy issue therefore is the impact on the architectural quality and townscape given that this is a Listed Building of architectural and historic



importance and is located within Findochty Outstanding Conservation Area.

A key planning policy is Policy EP10 Listed Buildings which seeks to ensure that new development does not have a detrimental effect on the character, integrity or setting of a listed building. This policy highlights that any alterations to listed buildings must be of the highest quality, and respect the original structure in terms of setting, scale, materials and design. Policy EP9 Conservation Areas also applies and this requires that all development within a Conservation Area preserves and enhances the established traditional character or appearance of the area explaining that this will typically require the use of traditional materials and styles. It also highlights that there is always a presumption in favour of retention and repair of windows and doors over replacement, noting that UPVC windows on a listed building are not acceptable. The policy highlights that advice on the type of windows considered acceptable for listed buildings is set out in the Council's Replacement Windows and Door Guidance.

Following consideration of the applicants' supporting case and a site visit it is fully accepted that the existing windows are in very poor condition and require replacement. It is also accepted that the vast majority of windows in the surrounding area are not traditional. However the key point to consider here is whether the replacement windows are appropriate for the application site which comprises a category C listed building of architectural and historic importance located in an outstanding Conservation Area.

Guidance on replacement windows is provided by Historic Environment Scotland in "Managing Change in the Historic Environment Windows - October 2010" which set out that the windows of a historic building form an important element in defining its character and special interest explaining that the form and design of the framing and astragals are important as is the method of opening which can contribute significantly to the authenticity and appearance of a historic building, noting that windows were historically painted and this is the preferred finish. It notes that where windows are beyond repair or of little historic interest it should be acceptable to replace them as is the case here. It explains that generally replacement windows should seek to match the original windows in design, form, fixing, method of opening materials, noting that when replacing sash windows materials other than timber (e.g. UPVC) will rarely be acceptable.

Moray Council also adopted guidance on replacement windows as contained in the "Replacement Windows and Door Guidance" which is a material consideration in decision making. This guidance sets out the importance of windows and doors to the character of historic buildings both individually and in the wider streetscape, explaining the desire to protect and preserve original windows where possible. It highlights that replacement will only be approved where there is no alternative, for example where they have clearly deteriorated beyond practical repair or are not original with the Council likely to request evidence to demonstrate that there is no scope for repair works. The guidance also goes on to state that in all instances the proposed replacements will be required to match the originals in materials, design and opening method expressly stating that the use of non-traditional materials such as UPVC will not be acceptable in listed buildings.

In this case it is proposed to replace non-traditional aluminium windows with non-traditional UPVC windows. Neither the existing windows nor the proposed new windows are in keeping with the original character of this listed building and it is considered that the opportunity should be taken to install windows which do respect the original character which would have been defined by wooden windows.

In these overall circumstances the proposed development is not considered to comply with policy EP10 Listed Buildings. The proposed development is also considered to fail to comply with Policy EP9 Conservation Areas

The applicants supporting case and family circumstances have been carefully considered. Whilst fully sympathising with their difficult situation, this does not form a land use planning reason to support a

departure from policy. There could be some scope to consider the use of UPVC windows on the rear elevation on the flat roofed elements of the building where they are not part of the traditional building which may help reduce costs- - however the applicant has indicated they wish all windows to be UPVC as the costs of wooden windows in the front elevation in itself is too costly so wish the application to be considered as submitted.

It is also fully acknowledged that there are buildings within the immediate surroundings that have either uPVC or a mixture of uPVC and aluminium and it is regrettable that these windows appear to have been replaced without seeking consent. However the current case must still be considered in relation to the impact upon the listed building. The council's own guidance on replacement windows provides a clear steer in this regard stating that UPVC windows will not be permitted on listed buildings.

## Conclusion

Notwithstanding the fact that this application seeks to replace non-traditional windows, it is considered that it would be damaging to the original architectural character and quality of this listed building to allow the replacement of these windows with UPVC framed double glazed windows. This would not be in compliance with Local Development Plan Policies EP9 and EP10, nor with Historic Environment Scotland advice on alterations to listed buildings (Managing Change in the Historic Environment - Windows). In addition the Moray Council's own Replacement Windows guidance is quite clear that the use of non-traditional materials such as uPVC will not be acceptable in listed buildings. The existing aluminium and proposed replacement UPVC windows fail to preserve the character and are not consistent with the original architectural character. It is considered that timber replacement windows would be a better option and go some way to reinstating features that are more authentic and historically accurate for a listed building. The pressing need for energy efficiency is acknowledged, but there are other ways to improve thermal efficiencies including replacing windows with suitable double glazed timber windows. Not only would this improve the thermal efficiency of the window units it would also enable continued use of the building with less impact on its special interest.

## OTHER MATERIAL CONSIDERATIONS TAKEN INTO ACCOUNT

Moray Council advice entitled "Replacement Windows and Doors Guidance"

HISTORY				
Reference No.	Description			
22/00139/LBC	Remove existing windows and replace UPVC windows at 6 Burnside Street Findochty Buckie Moray AB56 4QW			
	Decision	Refuse	Date Of Decision	13/05/22
21/01837/ID	Replacement windows at 6 Burnside Street Findochty Buckie Moray AB56 4QW			
	Decision	Planning Permission and LBC consent req.	Date Of Decision	20/12/21
21/01565/APP	Retrospective consent to erect garden store/gym at 6 Burnside Street Findochty Buckie Moray AB56 4QW			
	Decision	Permitted	Date Of Decision	19/11/21

ADVERT		
Advert Fee paid?	Yes	
Local Newspaper	Reason for Advert	Date of expiry
Banffshire Advertiser and Herald	Planning application affecting LB/CA	28/03/22
PINS	Planning application affecting LB/CA	28/03/22

DEVELOPER CONTRIBUTIONS (PGU)	
Status	N/A

<b>DOCUMENTS, ASSESSMENTS etc. *</b> <i>* Includes Environmental Statement, Appropriate Assessment, Design Statement, Design and Access Statement, RIA, TA, NIA, FRA etc</i>		
Supporting information submitted with application?	YES	
Summary of main issues raised in each statement/assessment/report		
Document Name:	Planning statement and map	
Main Issues:	<p>Sets out that when the applicants bought the house they were aware that the windows were nearing the end of their life – this was also picked up in the Home Report. They assumed that, as more than 95% of the surrounding houses had either aluminium or UPVC windows, they would be allowed to upgrade to UPVC. When they submitted an inquiry to the Planning Service they were advised that consent would be required and that the use of UPVC was unacceptable and that use of the UPVC in other houses was not justification to allow incongruous works to the applicant's property.</p> <p>The statement explains that due to the poor state of the existing windows the hearing costs are extremely high and due to increase. The cost of wooden windows is likely to around £30-40,000 as compared to around £7,000 for UPVC which is unaffordable for the applicants. They will need to sell the house and join the housing waiting list if they cannot resolve this issue as they have already used all their savings modernising this house in the expectation that it would be the forever home for their family.</p> <p>It stresses that the existing windows are not traditional and new UPVC windows will not look out of place being the same as the majority of the properties around the site, many of which are listed buildings. A map has also been provided which notes all the properties with non-traditional windows in the area – there being only a few which still have wooden windows.</p> <p>This is supported by a series of photographs to illustrate the poor condition of the windows. A further confidential supporting e mail has also been submitted which explains the particular family circumstances in more detail and the medical reasons why good heating of the house is so important. This also outlines the applicant's view that their family will be discriminated on disability grounds if they are not able to change their windows.</p>	

<b>S.75 AGREEMENT</b>		
Application subject to S.75 Agreement		NO
Summary of terms of agreement:		
Location where terms or summary of terms can be inspected:		

<b>DIRECTION(S) MADE BY SCOTTISH MINISTERS</b> (under DMR2008 Regs)			
Section 30	Relating to EIA		NO
Section 31	Requiring planning authority to provide information and restrict grant of planning permission		NO
Section 32	Requiring planning authority to consider the imposition of planning conditions		NO
Summary of Direction(s)			



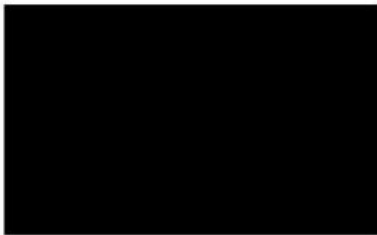


**MORAY COUNCIL  
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997,  
as amended**

**REFUSAL OF PLANNING PERMISSION**

**[Buckie]  
Application for Planning Permission**

TO



With reference to your application for planning permission under the above mentioned Act, the Council in exercise of their powers under the said Act, have decided to **REFUSE** your application for the following development:-

**Remove existing windows and replace UPVC windows at 6 Burnside Street  
Findochty Buckie Moray**

and for the reason(s) set out in the attached schedule.

Date of Notice: **16 May 2022**



**HEAD OF ECONOMIC GROWTH AND DEVELOPMENT**

Economy, Environment and Finance  
Moray Council  
Council Office  
High Street  
ELGIN  
Moray  
IV30 1BX

**IMPORTANT**  
**YOUR ATTENTION IS DRAWN TO THE REASONS and NOTES BELOW**

**SCHEDULE OF REASON(S) FOR REFUSAL**

By this Notice, Moray Council has REFUSED this proposal. The Council's reason(s) for this decision are as follows: -

The proposed development is contrary to Policy DP1: Development Principles, Policy 10: Listed Buildings and Policy EP9: Conservation Areas of the adopted Moray Local Development Plan 2020 and, as a material consideration, associated Replacement Windows and Doors Guidance for the following reasons:

1. The use of non-traditional materials such as uPVC is not acceptable for use on listed buildings and the proposed UPVC windows do not preserve the character and special historic interest of the listed building.
2. The use of UPVC windows would not be in compliance with Historic Environment Scotland advice on alterations to listed buildings (Managing Change in the Historic Environment - Windows) nor with the Moray Council's Replacement Windows and Doors Guidance which is clear that the use of non-traditional materials such as uPVC will not be acceptable in listed buildings.
3. The proposed development would not preserve and enhance the character and appearance of Findochty Outstanding Conservation Area.

**LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT**

The following plans and drawings form part of the decision:-

<b>Reference</b>	<b>Version</b>	<b>Title</b>
001		Proposed elevation
002		Proposed elevation
003		Proposed elevation
004		Proposed elevations
		Location plan
		Specification notes

**NOTICE OF APPEAL  
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of review should be addressed to The Clerk, Moray Council Local Review Body, Legal and Committee Services, Council Offices, High Street, Elgin IV30 1BX. This form is also available and can be submitted online or downloaded from [www.eplanning.scotland.gov.uk](http://www.eplanning.scotland.gov.uk)

If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.







## **APPENDIX 2**

# **NOTICE OF REVIEW, GROUNDS FOR REVIEW & SUPPORTING DOCUMENTS**





The Moray Council Council Office High Street Elgin IV30 1BX Tel: 0300 1234561 Email: [development.control@moray.gov.uk](mailto:development.control@moray.gov.uk)

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100569638-003

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

## Applicant or Agent Details

Are you an applicant or an agent? \* (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

☒ Applicant ☐ Agent

### Applicant Details

Please enter Applicant details

Title:	<input type="text" value="Mr"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text"/>	Building Name:	<input type="text"/>
First Name: *	<input type="text" value="Stephen"/>	Building Number:	<input type="text" value="6"/>
Last Name: *	<input type="text" value="Birtwistle"/>	Address 1 (Street): *	<input type="text" value="Burnside street"/>
Company/Organisation	<input type="text"/>	Address 2:	<input type="text"/>
Telephone Number: *	<input type="text" value=""/>	Town/City: *	<input type="text" value="Findochty"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="Moray"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="AB56 4QW"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text" value=""/>		

## Site Address Details

Planning Authority:

Moray Council

Full postal address of the site (including postcode where available):

Address 1:

6 BURNSIDE STREET

Address 2:

FINDOCHTY

Address 3:

Address 4:

Address 5:

Town/City/Settlement:

BUCKIE

Post Code:

AB56 4QW

Please identify/describe the location of the site or sites

Northing

867717

Easting

346012

## Description of Proposal

Please provide a description of your proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority: \*  
(Max 500 characters)

Replacing modern windows that have failed for other modern windows.

## Type of Application

What type of application did you submit to the planning authority? \*



Application for planning permission (including householder application but excluding application to work minerals).



Application for planning permission in principle.



Further application.



Application for approval of matters specified in conditions.



What does your review relate to? \*

- ☒ Refusal Notice.
- ☐ Grant of permission with Conditions imposed.
- ☐ No decision reached within the prescribed period (two months after validation date or any agreed extension) – deemed refusal.

## Statement of reasons for seeking review

You must state in full, why you are seeking a review of the planning authority's decision (or failure to make a decision). Your statement must set out all matters you consider require to be taken into account in determining your review. If necessary this can be provided as a separate document in the 'Supporting Documents' section: \* (Max 500 characters)

Note: you are unlikely to have a further opportunity to add to your statement of appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account.

You should not however raise any new matter which was not before the planning authority at the time it decided your application (or at the time expiry of the period of determination), unless you can demonstrate that the new matter could not have been raised before that time or that it not being raised before that time is a consequence of exceptional circumstances.

We wish for this to be reviewed as we feel we are being discriminated against and unfairly denied. Please see our supporting documents towards our justification for this case.

Have you raised any matters which were not before the appointed officer at the time the Determination on your application was made? \*

☐ Yes ☒ No

If yes, you should explain in the box below, why you are raising the new matter, why it was not raised with the appointed officer before your application was determined and why you consider it should be considered in your review: \* (Max 500 characters)

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review. You can attach these documents electronically later in the process: \* (Max 500 characters)

Windows permission Support Statement Further Supporting Statement Street Windows Un-closable bedroom window Un-closable kitchen window Bedroom damp 1 Bedroom mould Bedroom mould 2 Bedroom mould 3 Stairs window Kitchen window Boomed lounge window Broken bathroom window Boomed lounge window 2 House front House rear

## Application Details

Please provide the application reference no. given to you by your planning authority for your previous application.

22/000140/APP

What date was the application submitted to the planning authority? \*

02/02/2022

What date was the decision issued by the planning authority? \*

13/05/2022

## Review Procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. \*

☒ Yes ☐ No

In the event that the Local Review Body appointed to consider your application decides to inspect the site, in your opinion:

Can the site be clearly seen from a road or public land? \*

☒ Yes ☐ No

Is it possible for the site to be accessed safely and without barriers to entry? \*

☒ Yes ☐ No

## Checklist – Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

Have you provided the name and address of the applicant?. \*

☒ Yes ☐ No

Have you provided the date and reference number of the application which is the subject of this review? \*

☒ Yes ☐ No

If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? \*

☐ Yes ☐ No ☒ N/A

Have you provided a statement setting out your reasons for requiring a review and by what procedure (or combination of procedures) you wish the review to be conducted? \*

☒ Yes ☐ No

Note: You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. You may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and Drawings) which are now the subject of this review \*

☒ Yes ☐ No

Note: Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice (if any) from the earlier consent.

## Declare – Notice of Review

I/We the applicant/agent certify that this is an application for review on the grounds stated.

Declaration Name: Mr Stephen Birtwistle

Declaration Date: 27/05/2022









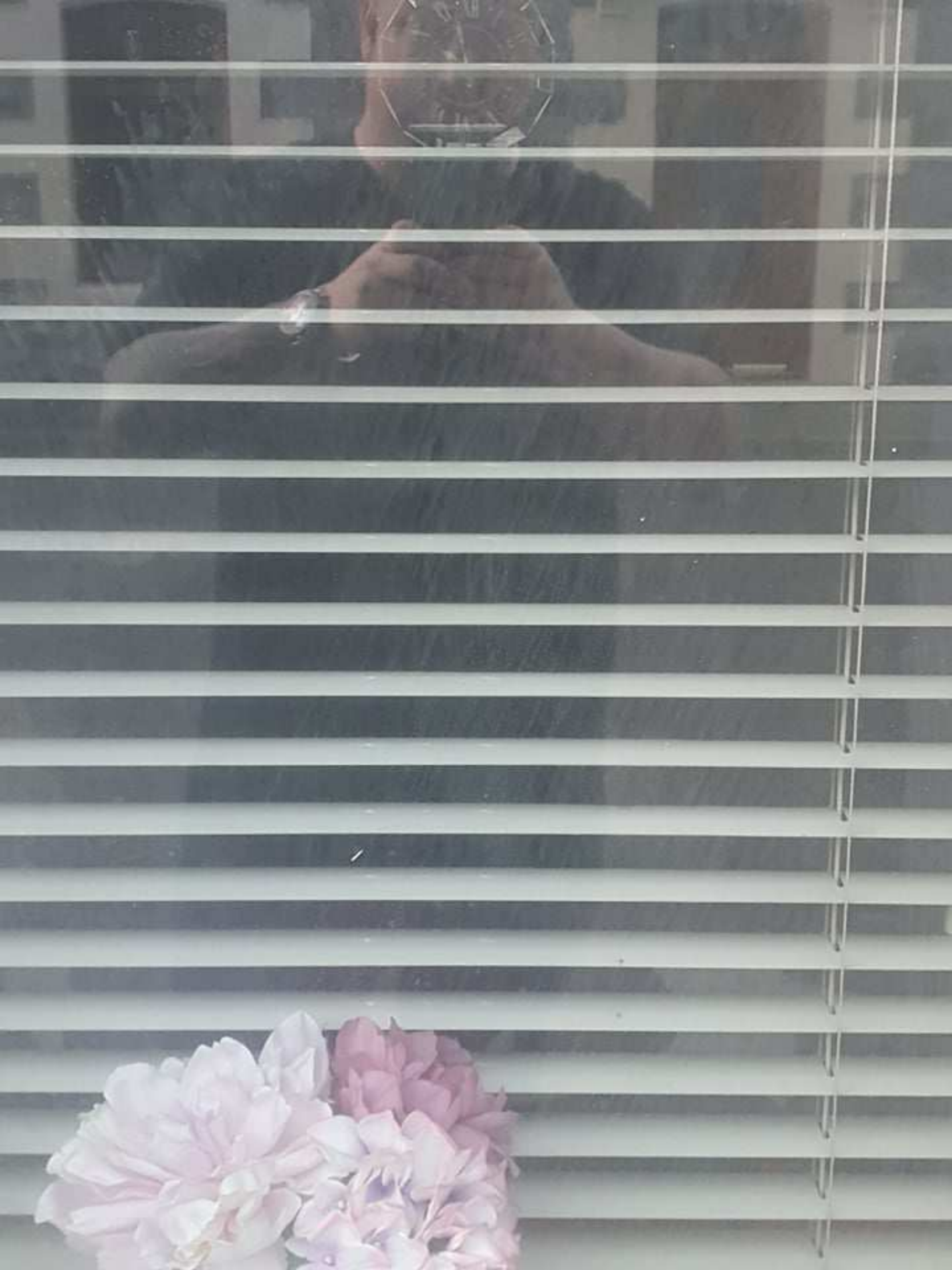


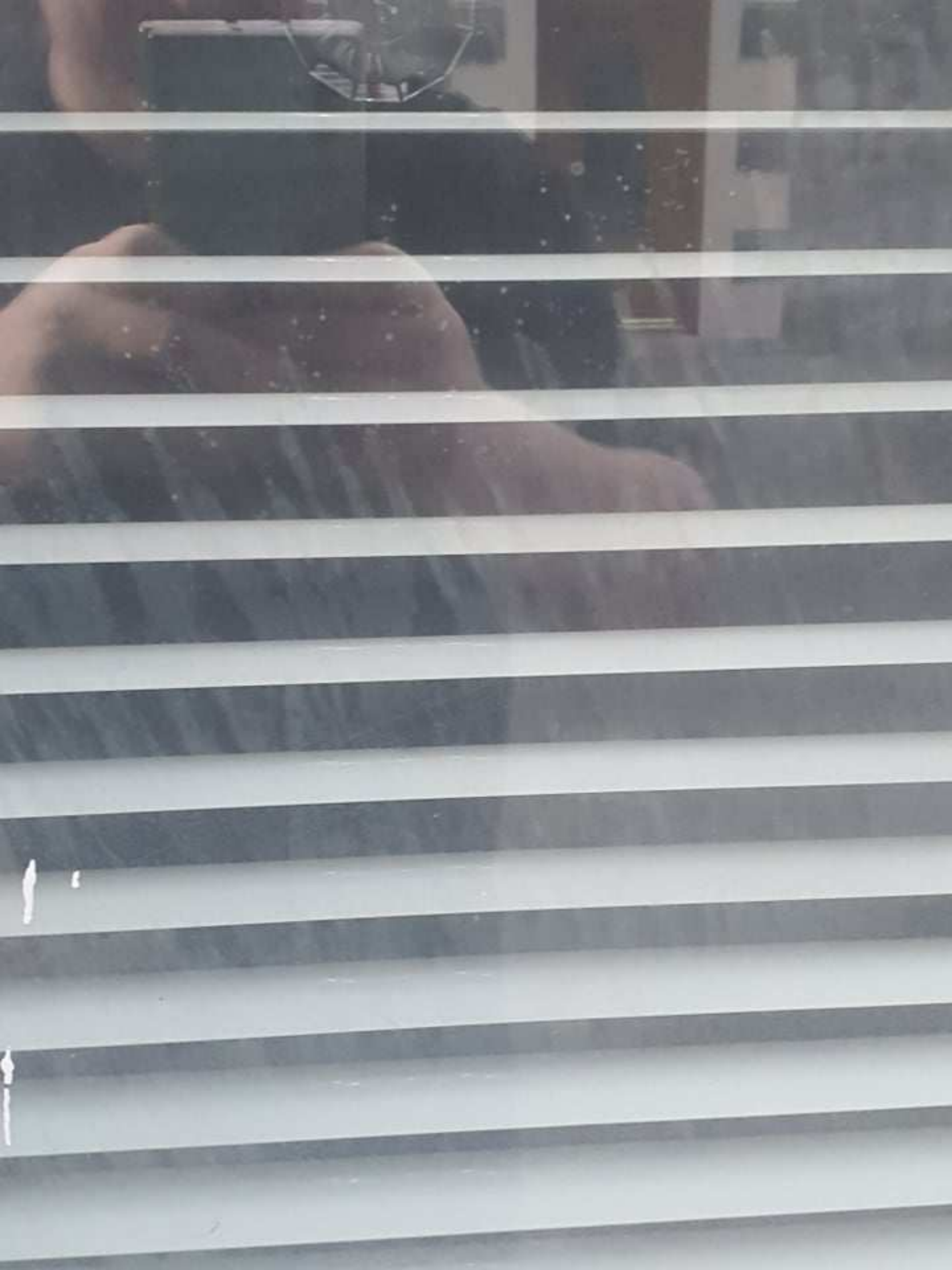


















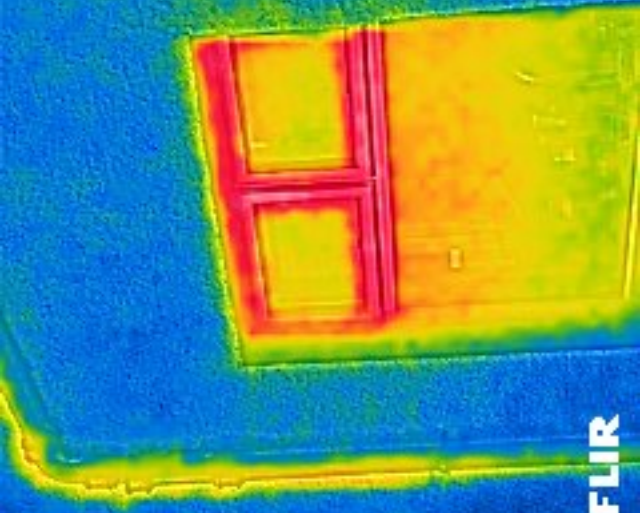






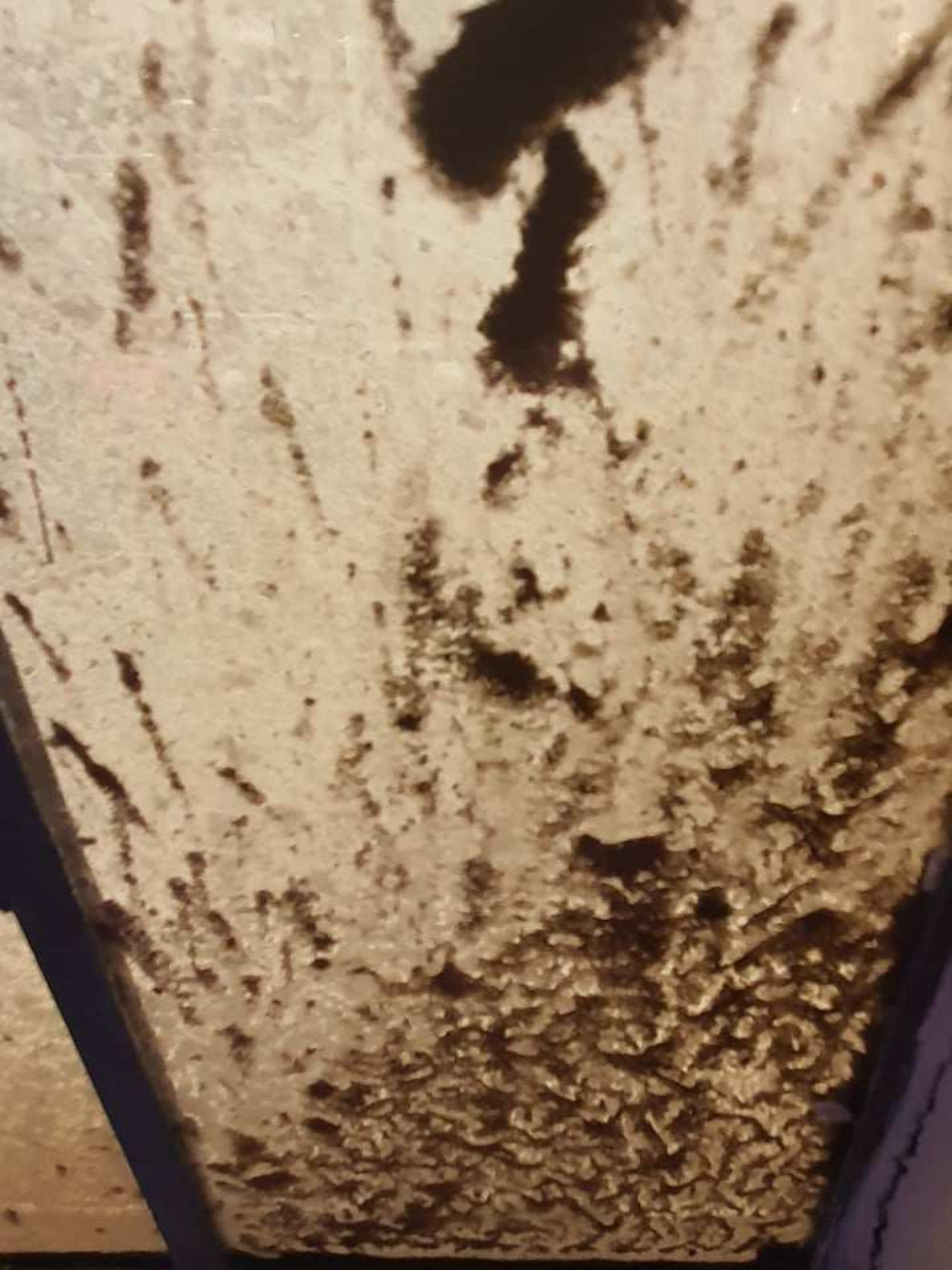
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FLIR







Location Plan of ab564qw



Scale: 1:1250, paper size: A4

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