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<b>Appeal Reference:</b>	2021/A0093
<b>Appeal by:</b>	Ms Emma Regan
<b>Appeal against:</b>	The refusal of full planning permission
<b>Proposed Development:</b>	New dwelling to replace previous dwelling on site, with connection to all existing services to the site and use of existing vehicular access into the site
<b>Location:</b>	11 Ashley Park, Dunmurry, Belfast
<b>Planning Authority:</b>	Belfast City Council
<b>Application Reference:</b>	LA04/2019/1833/F
<b>Procedure:</b>	Written representations and Commissioner's site visit on 10 <sup>th</sup> July 2024
<b>Decision by:</b>	Commissioner Gareth Kerr, dated 29 <sup>th</sup> July 2024

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## Decision

1. The appeal is allowed and full planning permission is granted, subject to the conditions set out below.

## Reasons

2. The main issues in this appeal are whether the proposal would:
  - result in prejudice to road safety; and
  - demonstrate environmental resilience.
3. Section 45 (1) of the Planning Act (Northern Ireland) 2011 (the Act) requires the Commission, in dealing with an appeal, to have regard to the local development plan (LDP), so far as material to the application, and to any other material considerations. Section 6 (4) of the Act states that where regard is to be had to the LDP, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
4. On 2<sup>nd</sup> May 2023, the Council adopted the Belfast Local Development Plan – Plan Strategy 2035 (PS). The Schedule to the Planning (Local Development Plan) Regulations (Northern Ireland) 2015 indicates that where a PS is adopted by a Council, the LDP now becomes a combination of the Departmental Development Plan (DDP) and the PS read together. Any conflict between a policy contained in the DDP and those of the PS must be resolved in favour of the PS. Previously retained policies including those within Planning Policy Statement 3, upon which the refusal was based, have now ceased to have effect within the Council area.

5. Prior to the re-organisation of local government, the appeal site fell within Lisburn City Council. Therefore, the relevant DDP is the Lisburn Area Plan 2001. In it, the site is unzoned land within the Lisburn Urban Area. Although not a DDP, the designations within the draft Belfast Metropolitan Area Plan 2015 (dBMAP), published in 2004, can be material in some circumstances. In it, the site is within the Dunmurry draft Area of Townscape Character. As this part of Dunmurry has now been transferred to Belfast City Council, the appeal should be determined in accordance with the policies of the Belfast PS unless material considerations indicate otherwise.
6. Following the adoption of the PS, the parties were given the opportunity to comment on the revised policy context of the appeal. The Council had no objection to the development in principle, but provided a revised reason for refusal in respect of its road safety concerns, based on Policy TRAN 6 of the PS as visibility splays of 2m x 45m at the entrance could not be provided. The Council also proposed three new reasons for refusal based on the environmental resilience policies of the PS. The appellant was given the opportunity to respond to the new reasons for refusal and provided an amended plan in response to the concerns raised. As this plan was submitted in response to the raising of new issues by the Council at a late stage in proceedings, albeit based on policies which were not material at the time the Council's decision was made, I judge that the amended plan is admissible in the interests of fairness. The amended drawing will be numbered PAC 1 and is appended to this decision.
7. Policy TRAN 6 of the PS relates to access to public roads. It states that planning permission will be granted for a development proposal involving direct access, or the intensification of the use of an existing access, onto a public road where:
  - a. Such access will not prejudice road safety or significantly inconvenience the flow of road users; and
  - b. The proposal does not conflict with TRAN 7 access to protected routes.It states that the acceptability of access arrangements, including the number of access points onto the public road, will be assessed against the DfI's published guidance Development Control Advice Note (DCAN) 15: Vehicular Access Standards. It then sets out the following factors for consideration:
  - c. The nature and scale of the development;
  - d. The character of existing development;
  - e. The established character of an area;
  - f. The contribution of the proposal to the creation of a quality environment, including the potential for urban or small village regeneration and environmental improvement;
  - g. The location and number of existing accesses; and
  - h. The standard of the existing road network together with the speed and volume of traffic using the adjacent public road and any expected increase.
8. The appeal site is a roadside plot with frontage onto Ashley Park, a leafy cul-de-sac in Dunmurry. A two-storey dwelling stood on the site for at least 115 years and was occupied until 2007. In 2008, a planning application was made to redevelop the site. This remained undetermined until a refusal was issued in November 2014. When vacant, the building was subject to anti-social behaviour and vandalism and an arson incident in 2012 left it badly damaged and structurally unsound. Following concerns about its safety, the then owner, in consultation with Lisburn City Council,

agreed to demolish it pending redevelopment of the site. A palisade fence was erected to secure the site and prevent fly-tipping. This included a gate at the original vehicular access which remained in place. The site is now somewhat overgrown. A brick wall to the rear of the footway on the western side of the access limits visibility in that direction.

9. While the Council has no objection in principle to the erection of a new dwelling on the site, they consider that because the former dwelling is demolished, the land has a nil use and there is no lawful existing access to the site. They consider that the access is sub-standard and would require improvement to prevent prejudice to road safety. The brick wall to the west of the access (which is in third party ownership) would require to be set back to achieve the visibility splay of 2m x 45m in that direction. The owners of the brick wall are aware of the application and wrote to the Council to advise that no discussion had taken place regarding the set back of the wall to improve sightlines.
10. The appellant is of the view that the existing access has served a single dwelling for many decades and the re-use of the unaltered established access for a single dwelling would not constitute intensification of its use, so it would not pose a new traffic safety hazard and the request for improved visibility splays is not warranted. A plan was submitted to the Council showing the wall set back 400mm, but as these works were outside the red line boundary of the site and the requisite notice has not been served on the neighbouring landowner, I am unable to consider this proposal. In any event, the appellant's final position is that no access improvements are warranted.
11. The Council referred to the case of *Ittenden and Others v Secretary of State for the Environment and Another [1972] 1 WLR 1433* which establishes the principle that where there has been demolition of a building, the established use is lost. While the context of the Ittenden case was an Enforcement Notice and the uses on the site were not residential, I agree with the Council that in legal terms, the appeal site now has no established use as a result of the demolition of the former dwelling. The Council also referred to English appeal decision APP/F2415/X/13/2194150 which considered the lawful use of a site following demolition. While details of this case were not provided for my consideration, I note that the question of lawfulness differs from the question before me of whether planning permission should be granted, which requires a wider range of material considerations to be taken account of.
12. The appellant referred to three legal cases which deal with the issue of abandonment of residential use: *Hartley v Minister of Housing and Local Government [1970]*, *Castell-y-Mynach Estate v Secretary of State for Wales [1985]* and *Hughes v Secretary of State for the Environment, Transport and the Regions and South Holland District Council [2000]*. Copies of these cases were not provided to the Commission, but the appellant draws from them principles regarding abandonment of uses which are now well rehearsed. The criteria for assessing abandonment may be summarised as: (a) the physical condition of the building; (b) the period of non-use; (c) whether there had been any other use, and (d) evidence regarding the owner's intentions. The Council argued that these cases are of no assistance in this appeal as the previous dwelling has been demolished, not simply abandoned. However, the Council's position has no regard to the reasons for

demolition of the building, which to my mind, are significant in the context of this appeal.

13. Although the dwelling was demolished 11 years ago, it is worth remembering that the appeal site has been in the planning process for 13 of the last 17 years. A proposal to replace the building had already been under consideration for five years at the point when the building was demolished, and this was only done to ensure public safety following the arson attack. After the initial proposal was refused in November 2014, the site was placed on the market by the financial institution that provided a mortgage to the previous owner. The current applicant acquired it in 2019 on the basis that it has long standing residential use and a direct vehicular access to the road and immediately made the current application to replace it with a single dwelling. The application sat with the Council for two years before being refused and has now been in the appeal process for three years through no fault of the appellant.
14. Planning history provided by the Council indicated that a sole dwelling on the site was desirable to the previous planning authority and the present applicant proceeded with her proposal in light of this. The Council continues to have no objection to the principle of a single dwelling on the site. Had it not been for the arson incident in 2012, it is likely that the original dwelling would have remained standing to this day. Indeed, it was only demolished the following year after intervention from the former Lisburn City Council when safety concerns were raised. At that time, a planning application remained in progress. While Belfast City Council is not bound by decisions of the former local authority, it seems to me that weight ought to be attributed to the specific circumstances that have resulted in the current application. There was a clear intention by both the previous and current owner to replace the original building with a new residential property, as demonstrated by their planning applications. They should not be penalised for the delays in determining both applications and the appeal.
15. Even though the original dwelling has been demolished, it should be noted that the access to the site remains in situ. There is a dropped kerb where it crosses the footway and a gate within the fence. This has been used to access the site for maintenance as shown in the appellant's photos. The area inside the gate is still block paved. This same access would be used for the proposed dwelling. I consider it to constitute an existing access onto the public road. Policy TRAN 6 would only apply to a new access, or the intensification of the use of an existing access. Since this access was used to serve a single dwelling in the relatively recent past, up until 2007, its re-use for a single dwelling would not, to my mind, result in intensification of its use. This is not a case where a ruin from the days before motor vehicles is being replaced. Cars would have used the access within the last 20 years and the main reason for a gap in its use is delays in the planning process. I consider that the Council did not give sufficient weight to the owners' intentions regarding this site and the site-specific reasons why the dwelling no longer exists.
16. In making an assessment of prejudice to road safety or flow of road users, Policy TRAN 6 states that the standards set out in DCAN 15 should be taken account of along with other factors relating to the development and its surroundings as set out above. As I have found that the proposal would not constitute intensification of use of the existing access, which was previously used for a single dwelling, the

development is not required to comply with the standards set out in Policy TRAN 6. However, in the interest of completeness, there are a number of site-specific factors that will limit any prejudice to road safety or flow of road users. DfI Roads estimated traffic speeds along Ashley Park to be 25 mph coming from the west. I agree that this is a reasonable estimate given the geometry of the road. In accordance with the guidance in DCAN 15, visibility splays of 2.0m x 45m would be requested where intensification would occur. However, the y-distance can be reduced to 33m where danger to road users is unlikely to be caused.

17. Ashley Park continues beyond the appeal site to serve around 20 properties. It is not a through road. As such, traffic passing the appeal site is limited. Other dwellings along the street have a similar standard of visibility at their entrances including the dwelling at 10A to the west. Account should be taken of a slight bend in the road to the west of the appeal site which has the twin effect of slowing traffic and making it easier to see vehicles approaching from that direction. Although it would not be possible to see the nearside of the road past the existing wall when emerging from the entrance, any vehicles approaching from the west would be on the opposite side and could be seen in good time and for at least 33m while edging out carefully. Finally, the proposed development has been designed to allow cars to enter and leave the site in forward gear which will reduce the need to reverse onto the road. For these reasons, I am not persuaded that resuming the use of the existing entrance to serve a single dwelling would prejudice road safety or significantly inconvenience the flow of road users.
18. While the site legally has a nil use as a result of the demolition of the former dwelling during the planning process to ensure public safety, I attach significant weight to the fact that the access remains in place, both owners clearly intended to redevelop the site, that the demolition was requested by the then local authority, that delays in redeveloping the site were caused by the planning process and not the appellant, and that danger is not likely to be caused due to the characteristics of the local road environment. I do not consider the proposal to constitute intensification of use of the existing access, so access improvements are not required. The Council has not sustained its first reason for refusal based on Policy TRAN 6 of the PS.
19. Section 9.5 of the PS introduces a new suite of policies relating to environmental resilience. Policy ENV2 concerns mitigating environmental change. It states that planning permission will be granted for development that incorporates measures to mitigate environmental change and reduce GHG (greenhouse gases) by promoting sustainable patterns of development. It further states that all new development proposals will maximise opportunities to incorporate sustainable design features where feasible (such as grey water recycling, green roofs, maximising use of recycled materials, orientating buildings to optimise solar gain, energy efficiency). The use of the caveat, "where feasible", recognises that there may be circumstances where the incorporation of sustainable design features is not feasible in a particular development. However, in this case, there is an opportunity to incorporate such features as part of the new development.
20. In response to the Council's concern about the absence of such features, the appellant stated that she has engaged an eco homes company to ensure that the dwelling will be as environmentally sustainable as possible, and she intends the dwelling to be constructed to "nearly zero carbon" standard. The amended drawing

PAC 1 indicates a number of sustainable design features including a grey water recycling system for flushing toilets, a green roof to the balcony area, a heat pump for heating and solar panels for the production of hot water and electricity to eliminate the need for fossil fuels. Energy efficiency measures will be incorporated including enhanced insulation and triple glazed windows. The building is orientated to maximise solar gain and salvaged natural slates will be used for the roof if possible. I consider that the above measures are proportionate to the scale of the proposed development and represent an appropriate use of sustainable design features. The development of a brownfield site in an urban area close to public transport links is a sustainable pattern of development. I consider that the amended proposal satisfies the provisions of Policy ENV2. The Council has not sustained its second reason for refusal.

21. Policy ENV3 of the PS relates to adapting to environmental change. Planning permission will be granted for development that incorporates measures to adapt to environmental change, in order to support sustainable and enduring development. The policy sets out four measures which may (my emphasis) be used to help adapt to the impacts of environmental change and five further measures to minimise the impact of extreme weather conditions and embed resilience to current and future climates. The use of the term “may” indicates that the policy is somewhat aspirational and not all of the measures suggested could apply to all proposed developments. The Council was concerned that the original proposal provided no measures of the types suggested.
22. On receipt of the Council’s concerns, the appellant proposed the use of permeable paving, a rainwater harvesting and recycling system and a green roof, all of which would reduce the risk of flooding. The other design features referred to in paragraph 20 above will also result in reduced energy consumption and thus will assist in adapting to environmental change, in order to support sustainable and enduring development. I consider the measures proposed by the appellant to be appropriate to the nature and scale of the proposed development. Given the suggestive rather than mandatory nature of the policy wording, I find that it is satisfied in this instance. The Council has not sustained its third reason for refusal.
23. Policy ENV5 of the PS encourages the use of sustainable drainage systems (SuDS). It states that all built development should include, where appropriate, SuDS measures to manage surface water effectively on site, to reduce surface water runoff and to ensure flooding is not increased elsewhere. It suggests seven potential SuDS measures that can be considered by developers. Notwithstanding the suggestive language used in terms like “consider” and “where appropriate”, the appellant has incorporated three of the seven suggested SuDS measures, namely a green roof, permeable paving and the use of trees and landscaping to take up moisture from the ground. The limited size of the site would preclude the use of other suggested measures like swales, ponds or detention basins. The measures proposed by the appellant will manage surface water effectively on the site, reduce surface water runoff and ensure flooding is not increased elsewhere. The revised proposal complies with Policy ENV5 and the Council has not sustained its fourth reason for refusal.
24. A planning condition could ensure that the development is carried out in accordance with Drawing No. PAC 1 to incorporate the environmental resilience measures

referred to above. A further condition would be necessary to require that hard surfaced areas for the parking of cars are constructed before the dwelling is occupied to limit the need for vehicles to park on the narrow road along the site frontage. Subject to these conditions, the development would accord with the PS and is acceptable in principle. As none of the Council's reasons for refusal have been sustained, the appeal succeeds.

### **Conditions**

- (1) Environmental resilience measures shall be incorporated in the development as indicated on the approved drawing No. PAC 1 before the dwelling is occupied and shall be permanently retained.
- (2) Hard surfaced areas shall be constructed within the site for the parking of cars in accordance with the approved drawing No. PAC 1 before the dwelling is occupied and shall be permanently retained.
- (3) The development shall be begun before the expiration of five years from the date of this permission.

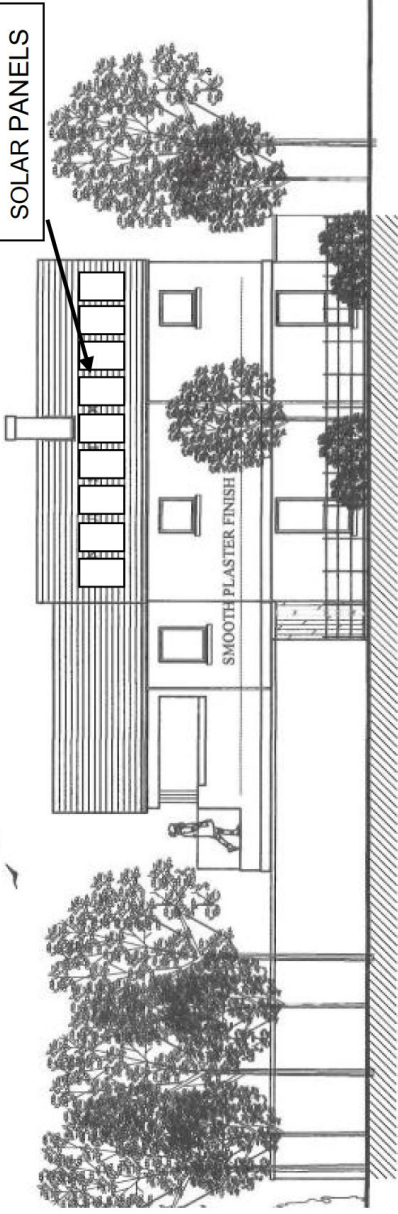
This decision is based on Drawing No. 01 (Location Map at scale 1:1250) which was received by the Council on 25<sup>th</sup> July 2019 and Drawing No. PAC 1 (Elevations and Floor Plans incorporating Environmental Resilience Measures) which was received by the Commission on 28<sup>th</sup> June 2024 (copy attached).

**COMMISSIONER GARETH KERR**

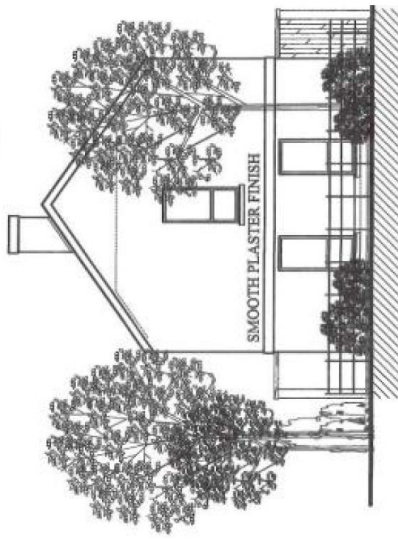
## **List of Documents**

Planning Authority:-	A	Statement of Case Belfast City Council
	B	Rebuttal Statement Belfast City Council
	C	Additional Comments Following Adoption of Belfast LDP 2035: Plan Strategy Belfast City Council
Appellant:-	D	Statement of Case T. A. Gourley Planning Consultancy
	E	Rebuttal Statement T. A. Gourley Planning Consultancy
	F	Statement of Conformity with Belfast Local Development Plan Strategy 2035 T. A. Gourley Planning Consultancy
	G	Rebuttal of Council LDP Comments T. A. Gourley Planning Consultancy

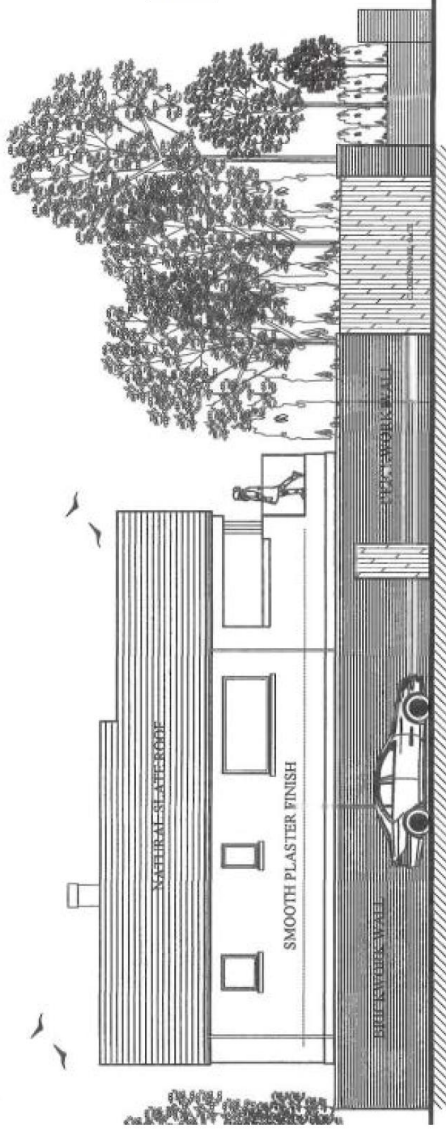




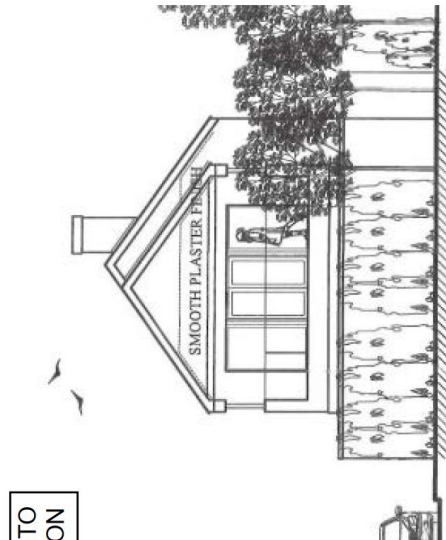
REAR (SOUTHEASTERN) ELEVATION



SIDE (NORTHEASTERN) ELEVATION



SIDE (NORTHWESTERN) ELEVATION

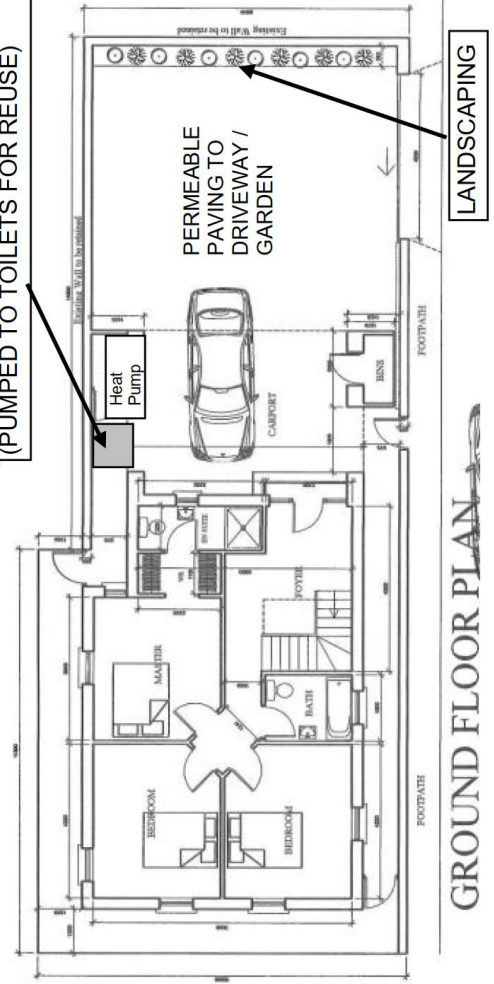


SIDE (SOUTHWESTERN) ELEVATION

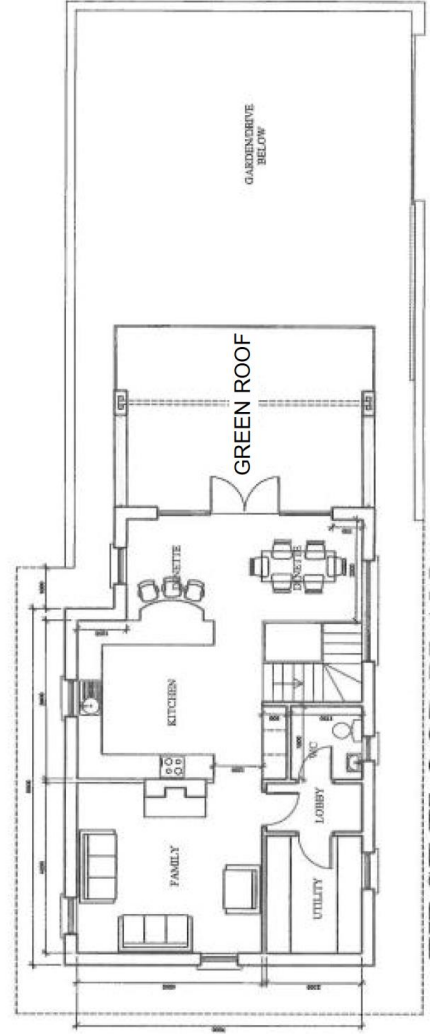
ALL WINDOWS TO BE OPENABLE TO ALLOW FOR NATURAL VENTILATION

SALVAGED NATURAL SLATE TO BE USED WHERE POSSIBLE

GREY / RAIN WATER COLLECTION SUMP (PUMPED TO TOILETS FOR REUSE)



GROUND FLOOR PLAN



FIRST FLOOR PLAN