

WARD: Clifton CONTACT OFFICER: Ann Royce
SITE ADDRESS: 3 & 4 Princes Buildings Bristol BS8 4LB

APPLICATION NO: 14/04860/F Full Planning
EXPIRY DATE: 19 December 2014

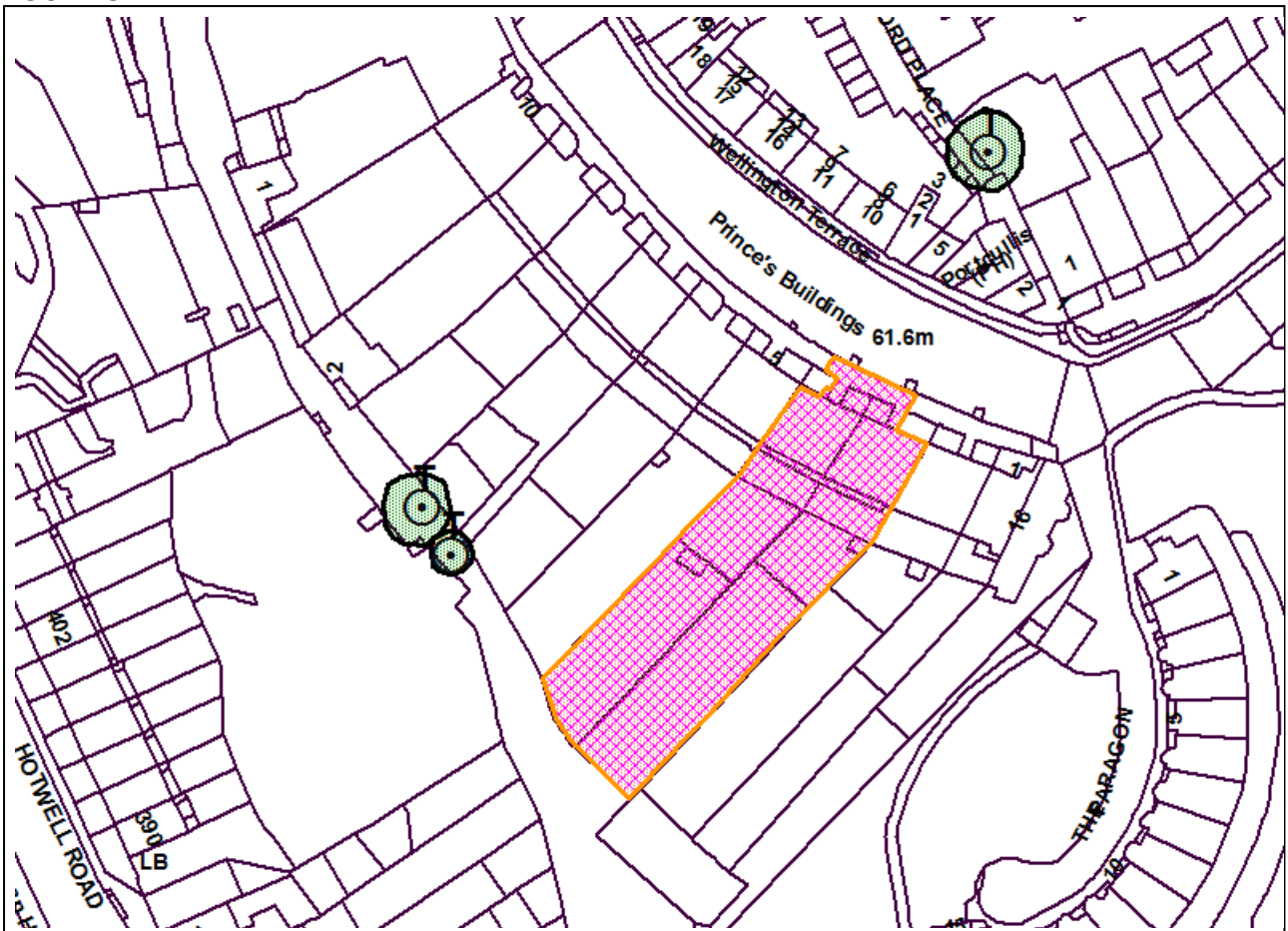
Application for retention of i) detached garden cabin with attached deck located to the rear of the property for purposes ancillary to the main residential use of the property and ii) a raised deck towards the end of the garden.

RECOMMENDATION: Grant subject to Condition(s)

APPLICANT: Mr Andrew Yarme & Ms Joanne
Scofield
Basement Flat
4 Princes Buildings
Clifton
Bristol
BS8 4LB

The following plan is for illustrative purposes only, and cannot be guaranteed to be up to date.

LOCATION PLAN:



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REASON FOR REFERRAL

The application comes before committee due to a referral from one of the Ward Councillors Barbara Janke who sets out her concerns with the planning application as follows; loss of residential amenity, impact on adjoining conservation area, environmental considerations and visual impact on the Avon gorge and implications for future development in gardens and subsequent residential use.

SUMMARY AND BACKGROUND

The recommendation set out to members in this report is to grant conditional planning permission to retain the as built building (including the attached deck to front, side and rear) and to retain the deck structure located further down the garden from the building.

The acceptability of the principle of a building in almost exactly the same location/position and of an almost identical size and design was established by the grant of planning permission by the Local Planning Authority in August 2012, conditional on it being used ancillary and incidental to the main property.

The issue of the planning permission from August 2012 for the building, how it was actually built (and how it could be used) and the erection of the deck structure further down the garden have been following a planning enforcement investigation, the subject of a number of planning applications over the last 16 months, and a recent Appeal.

The planning history in respect of this is recorded below.

The initial planning enforcement investigation began in July 2013. Whilst that planning enforcement investigation centred on the fact that officers had received reports that the building was being used for holiday letting purposes, during the course of the investigation it became apparent that the building itself had not been built in accordance with the plans approved in August 2012 for "a detached green oak garden cabin with decking for purpose ancillary to main residential use"; our reference 2/02456/F. During the course of that planning enforcement investigation it was also discovered that a further detached deck structure had been erected without planning permission at a position lower down the garden from the building.

As a consequence of the planning enforcement investigation an application was submitted in July 2013 seeking permission for "change of use of detached garden cabin located to the rear of the property to allow a mixed use of purposes ancillary to the main residential use and for holiday rental use"; our reference 13/03187/F this was refused on 10 October 2013. Whilst revised plans were submitted as part of that application depicting the "as built" structure these could not be considered by the Local Planning Authority as the application was only for a change of use.

Following the refusal of the above application two further planning applications were submitted on 5 November 2013; the first one was for "Adaptation and retention of detached garden cabin with attached deck located to the rear of the building for purposes ancillary to the main residential use of the property."

This was granted conditional planning permission on 7 February 2014. The conditions required:-

- That within 60 days of the date of the planning permission the following adaptations/modifications to the as built building shall be undertaken in full accordance with the approved plan received on 30th January 2014:-
 - i) The height of the flue shall be reduced to 1000mm from the top edge of the roof.

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ii) All of the raised deck and canopy structure and shower structure from the north-west side and rear elevations shall be entirely removed.

- That within 60 days of the date of the planning permission the privacy screen shown on the approved plan received on 30th January 2014 shall be installed and retained as approved at all times in the future.
- That the detached garden cabin thereby approved shall be used only as an ancillary use incidental to the enjoyment of the property known as Basement Flat, 3 and 4 Princes Buildings and in particular shall not at any time be let or rented out for any purpose.

The second planning application was for "Retention of i) detached garden cabin with attached deck located to the rear of the property for mixed for purposes ancillary to the main residential use and for holiday rental use and ii) a raised deck towards the end of the garden."

This was refused planning permission on 7 February 2014, with the reasons for refusal being:-

1. The formation of a raised deck along the north west elevation and the provision of the deck and outdoor shower to the rear accessed along the above section of deck introduces features that detract from the simple regular form of what should be a utilitarian ancillary structure in a domestic garden. As such the building is judged to be out of context with the site. This built form attached to the side and rear of the building also provides a raised deck area for additional activity and movement which harms residential amenity by virtue of noise and disturbance.

2. The flue due to its excessive height is considered to be an incongruous and alien addition to what was previously approved as a simple ancillary structure, as a design feature it detracts from the appearance of the building and is a prominent and unsightly addition to the building in respect of the sensitive heritage asset that it forms part of.

3. The proposed use of the cabin for holiday rental use is considered to be harmful to the amenity of adjoining residents. This is based on the fact that commercial leisure/recreation uses in this domestic garden setting would give rise to unregulated activity by persons renting the building and facilities which is above and beyond that which would reasonably be expected to occur as a result of usage which is for purposes ancillary to the main residential use. The commercial leisure/recreation uses provides opportunities for users of the building to undertake activities in the garden area at times when the reasonable expectation of residential occupiers around the site would be that they should expect not to be disturbed by noise and disturbance emanating from building. As such the continued use for holiday rental use would enable activities which would seriously harm residential amenity by virtue of noise and disturbance to take place.

4. The lower deck due to its design, form, size and scale and its prominent elevated position on the steeply sloping land is an unacceptable form of development in such a setting, it erodes the open nature of the land and harms the character and appearance of the Conservation Area. Furthermore due to the large level area on the deck of over 20sqm it can readily be used in a manner that would harm residential amenity of adjoining land. The deck structure allows activities to be carried out in such a position above that which could reasonably be expected to occur in this part of a residential garden and furthermore its use by people renting the cabin could further exacerbate amenity harm. In summary, in determining the two planning applications the Local Planning Authority found at the time that; subject to a number of physical adaptations and control over the future use of the building the as built scheme was acceptable. By also refusing the other application, that sought to retain the as built building (without modifications) and allow its use for holiday letting and to retain the lower deck, the Local Planning Authority clearly set out its concerns with and objections to those particular propositions.

The property owner decided to Appeal the refusal notice and lodged the Appeal on 18 March 2014.

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The property owner neglected to make the physical adaptations required by planning condition on the approved scheme (and fallback position) within the prescribed time period and as such invalidated that planning permission rendering it null and void.

The key planning consideration and determining factor in the assessment of this application is the recent planning Appeal decided on 24 June 2014 in respect of the refused application.

The Appeal Decision Letter is appended to this report as Appendix A.

The key conclusions of the Planning Inspector were:-

- the use of the building and the lower deck for commercial lettings for holiday accommodation was unacceptable (paras 7 and 10 refer);
- the design and form of the building, the attached deck and the lower deck as built on site (subject to privacy screens) do not harm residential amenity, the character and appearance of the locality (para 16 refers) and do not significantly impinge on the setting of the Listed Building (para 18 refers).

What this means in practice is that:-

The building and attached deck and the lower deck do not have planning permission, but the Planning Inspector has found them to be acceptable in planning terms provided they are used in an incidental and ancillary manner to the main dwelling.

Following the outcome of the Appeal officers contacted the property owners advising that no further planning enforcement intervention could be reasonably considered other than to insist that they submit a planning application to retain the cabin and deck as built for ancillary incidental use. This application was submitted and made valid on 24 October 2014 as a consequence of the above mentioned request by officers and is before Members now for determination.

In terms of considering the application the starting point for an assessment of design, form, scale, position and size of the building and any impacts from it is a comparison with the building approved in August 2012. Also relevant in terms of use is the planning controls that can be re-introduced and the aforementioned planning Appeal decision, which also provides guidance to the assessment of the lower deck structure.

Such an assessment is undertaken below in the Key Issues sections of this report, the conclusion that has been reached is that the as built building and the lower deck are (subject to planning conditions) acceptable and the recommendation therefore is to grant planning permission.

Officers recognise that this matter has been under consideration for a lengthy and prolonged period; however the planning system does provide the mechanisms for multiple planning applications to be submitted to seek to overcome breaches of planning control. The position on the relevant matters are now clearer and certain findings have been established by the Appeal decision from June last year.

It should be understood that officers currently contend that the building and lower deck do not have planning permission and are therefore in breach of planning control, but the property owner could at any time adapt the structure so that it accords with the plans approved as part of the original planning permission from August 2012 and dismantle the lower deck and thus address the breach of planning control.

The considerations in this application are a slightly different design of building and attached deck to previously approved and the retention of the lower deck, both of these aspects have recently been

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found to be acceptable by a Planning Inspector, and officers have to give significant weight to these findings.

The conditional grant of this planning permission will regularise the breach of planning control, but importantly it enables the imposition of a planning condition requiring that the building is only used in a manner incidental and ancillary to the applicants' main property and specifically that it cannot be let or rented for any purpose. The grant of planning permission therefore enables the introduction of enforceable planning control over the future use of the building, which does not exist at present.

THE SITE

The application relates to the basement flat at 3 and 4 Princes Buildings, which are mid terrace buildings which are Grade II Listed Buildings and are also within the Clifton Conservation Area. It is understood that the applicants flat at 3 and 4 spans across both buildings.

The property has a substantial combined garden that leads to the Avon Gorge and includes a greenhouse, the cabin building, a decking area further down the garden (both of which are the subject of this application) the garden is double width.

RELEVANT HISTORY

11/00220/F - Installation of photovoltaic structure over top of existing greenhouse together with solar thermal canopy fixed to the supporting wall of terrace, Approved 13 July 2011

12/02456/F - Proposed detached green oak cabin with decking for purposes ancillary to main residential use, Approved 6 August 2012.

13/30420/BCN - Planning enforcement investigation commenced 26 June 2013 into "Breach of condition 2 of planning permission 12/02456/F - Use of detached green oak garden cabin with decking in non-ancillary use and not incidental to the enjoyment of the dwellinghouse". The case also included the fact that building was not in accordance with the approved plans. This case has been closed and the requirement or otherwise for further planning enforcement consideration will be determined by the outcome this planning application.

13/03187/F - Change of use of detached garden cabin located to the rear of the property to allow a mixed use of purposes ancillary to the main residential use and for holiday rental use, Refused 10 October 2014. - The reason for refusal was as follows:-

"The proposed use of the cabin for holiday rental use is considered to be harmful to the amenity of adjoining residents. This is based on the fact that commercial leisure/recreation uses in this domestic garden setting would give rise to unregulated activity by persons renting the building and facilities which is above and beyond that which would reasonably be expected to occur as a result of usage which is for purposes ancillary to the main residential use. The commercial leisure/recreation uses provides opportunities for users of the building to undertake activities in the garden area at times when the reasonable expectation of residential occupiers around the site would be that they should expect not to be disturbed by noise and disturbance emanating from building. As such the continued use for holiday rental use would enable activities which would seriously harm residential amenity by virtue of noise and disturbance to take place which is contrary to policy BCS23 of the Bristol Core Strategy (June 2011), policy ME4 of the Bristol Local Plan (December 1997) and policy DM35 of Bristol Site Allocations and Development Management Policies (emerging)."

13/05146/F - Adaptation and retention of detached garden cabin with attached deck located to the rear of the building for purposes ancillary to the main residential use of the property, Approved 7

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February 2014 subject to planning conditions as set out the Summary and Background Section of this Report. Due to non-compliance with planning conditions this planning permission has been invalidated.

13/05575/F - Retention of i) detached garden cabin with attached deck located to the rear of the property for mixed for purposes ancillary to the main residential use and for holiday rental and ii) a raised deck towards the end of the garden, refused 7 February 2014. - The reasons for refusal are set out the Summary and Background Section of this Report.

A/14/2215241 - Planning Appeal in respect of above refusal. Decision was to dismiss the Appeal, but certain positions were established by the Planning Inspector.

APPLICATION

The application seeks to retain the as built building and attached deck for purposes incidental and ancillary to the property and to retain the lower deck.

RESPONSE TO PUBLICITY AND CONSULTATION

Site Notices were placed near the site and a notice placed in the Local Press, 127 nearby properties have been consulted.

23 letters of objection have been received from residents within the vicinity of the site, one of whom included with their letter some advice they had received from a law firm they had instructed for guidance on the planning application. Letters of objection have also been received from The Clifton and Hotwells Improvement Society and The Bristol Civic Society which reiterate views expressed when commenting on previous applications.

The objection comments include:-

- Development not build in accordance with the approved plans and includes a shower, toilet, woodburning stove and hob.
- The building is still being used for holiday letting.
- Princes Buildings is one of Bristol's finest Georgian terraces.
- Local residents are no longer able to benefit from the private enjoyment of their own garden as they are routinely overlooked.
- The enjoyment of the gorge is compromised and the building detracts from the landscape.
- The development is detrimental to wildlife.
- Unacceptable precedent.

29 letters of support have been received, 25 from residents within the vicinity of the site, 1 from a resident elsewhere in the city and 3 from family relatives of the applicants' (2 from overseas and one from the south coast).

The support comments include:-

- The Inspector noted in his report in its present form the cabin is a modest structure in keeping with the woodland garden setting and not detrimental to the neighbourhood.
- It was granted planning permission in the first instance; it truly would be shameful if the Council were to revoke the permission.
- We live right above the cabin yet cannot even see it.
- The Inspectors report has been very positive and complimentary on the cabin and deck.

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- This has gone on too long, I would like to see it signed off and for the Council to move onto more pressing Council business.
- It was my understanding that planning had already been approved for this structure.
- It has been so discretely built.
- On no occasion have I heard any noise coming from the area.
- No enjoyment of the gorge has been compromised as the construction cannot be viewed by anyone other than by people standing in the garden.
- No loud or anti-social behaviour has been witnessed and no concerns are raised about disruption, invasion of privacy and no comings and goings have been seen.
- The applicants have improved the garden and encouraged others to get involved through gardening, fruit picking and bee keeping.
- It is a sympathetic/sustainable development which enhances the environment.

In December last year when the statutory consultation period had expired the applicant submitted a commentary and rebuttal statement on the objection comments.

WARD MEMBERS

One Ward Councillor (Cllr Janke) has formally commented on the application and her views are set out at the start of this report.

RELEVANT POLICIES

National Planning Policy Framework – March 2012

Bristol Core Strategy (Adopted June 2011)

BCS21	Quality Urban Design
BCS22	Conservation and the Historic Environment
BCS23	Pollution

Bristol Site Allocations and Development Management Policies (Adopted July 2014)

DM29	Design of new buildings
DM31	Heritage assets
DM33	Pollution control, air quality and water quality

KEY ISSUES

- (A) WOULD THE DEVELOPMENT AS BUILT DETRACT FROM THE LISTED BUILDING OR HARM THE CHARACTER AND APPEARANCE OF THIS PART OF THE CLIFTON CONSERVATION AREA WHEN COMPARED TO THE CONSENTED SCHEME?

Whilst the Planning Inspector's decision on the recent Appeal is a key material planning consideration in the assessment of this application another assessment that needs to be made is one of reviewing and comparing the as built scheme to the scheme approved in August 2012 under reference 12/02456/F which granted consent for the detached garden cabin with decking for purposes ancillary to the main residential use.

The approved scheme from August 2012 was considered by the Heritage Conservation Team who advised that; the proposed development would pose no harm to the special interest or setting of the designated heritage asset. The Landscape Team also commented that; the form, scale and location of the scheme was such that it had the potential to sit discretely within its garden setting without adversely affecting the character and appearance of the Conservation Area, that the proposed green roof would ensure that it is not visible from the properties above, and that views from the Clifton

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Suspension Bridge were limited by the oblique angle and the canopies of garden trees and shrubs. They advised that the only concern they had was the possible bright reflectivity of the glass frontage in views from Leigh Woods riverbank and viewpoint. Consequently, they recommended approval subject to a condition for the installation of non reflective glass.

These two views informed the case officer's assessment of the proposal who concluded that, the scale and form of the single storey building was considered acceptable given its location within the land, sloping garden. The delegated report set out that the lower slopes and terraced sections of the application site garden have dense vegetation and that the proposed cabin building would comprise green oak frame with green oak boarding and glazing, and would also have a sedum roof covering. It was concluded that those materials proposed were considered appropriate given the immediate surrounding context and would aid in reducing the visibility of the structure from the neighbouring properties and beyond. The case officer also concluded that given the distance from the listed building and the proposed building's isolation within the existing foliage, it would not adversely impact the special interest of the listed terrace (even in autumn and winter). The delegated report explained that the representation received from the Council's Landscape Officer (in respect of glazing glare) had been considered but from the case officer site visit, it was apparent that the proposed building would be concealed within the surrounding foliage. Furthermore, the proposed plans showed that the roof would overhang the front elevation by approximately 1m, which would reduce potential reflection from the glazing. Subsequently, the Landscape Officer's recommendation that non-reflective glass be used was not considered necessary in that instance.

Overall it was concluded that the proposal was acceptable in visual terms, in the context of the Listed Building and the wider Conservation Area.

This report has set out that the as built structure is in a slightly different location which was necessary as a mains sewer was identified where the proposed foundations were to be installed. A mono-pitched roof rather than a flat roof has been used but this has been finished with a green sedum roof as approved. The materials and the configuration of windows are as approved.

The front attached deck is actually smaller than the approved deck and another change is that a narrow attached terrace deck extends down the north western elevation of the building that provides access to a raised deck at the rear on which is sited an outdoor shower enclosed by timber walls. Another difference from the consented scheme is the installation of a 1.7m high [from the roof] chimney flue which provides for smoke discharge from a solid fuel boiler that has been installed inside the building. It should be noted that the February 2014 planning approval for the retention of the adapted structure required the shortening of the flue to 1m but on balance it is not considered that the flue is harmful in visual terms.

Planning permission is also sought as part of this application to retain the lower deck, the Planning Inspector at paragraph 19 of the decision letter concluded that the cabin and the lower deck do not impinge on such significance and the setting of the listed buildings would be preserved. In overall conclusion the Inspector at paragraph 20 concluded that the Appeal scheme (which is identical in position, form and design to this application) would preserve the character and appearance of the locality and the conservation area whilst preserving the setting of the Listed Buildings.

This report has established that the changes from the consented building are acceptable and it has reviewed the officer assessment and expert input from Heritage and Conservation and Landscape officers on the consented scheme which was found to be acceptable.

The Local Planning Authority in now determining this application for an identical proposition in built form terms to one that was considered so recently by a Planning Inspector has to be guided by the conclusions of the planning Inspector. It would be unreasonable of the Local Planning Authority to not reach the same conclusions as the Planning Inspector. If the application were to be refused it would be extremely difficult to sustain an argument on the unacceptability of the building in position, design

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or form terms at Appeal. The Council would also be exposed to the very likely risk of having an award of cost made against it.

Officers can now conclude for the reasons explained above that both components of the application; the cabin and lower deck in respect of their physical form satisfy policies BCS21 and BCS22 of the Core Strategy and policies DM29 and DM31 of the Development Management Policies.

(B) IS THE ONGOING USE OF THE BUILDING ACCEPTABLE WHEN COMPARED TO THE USE OF CONSENTED SCHEME?

In response to consultation some observers have made reference to the connection of the building to a water supply, to electricity and to a sewer drainage system, the inclusion of a woodburning stove (with a flue) and the introduction of cooking and wc facilities. None of these items (with the exception of the flue which is considered in Key Issue A above require planning permission and nor do they mean that the building is no longer in an ancillary use to the dwellinghouse.

There is nothing within planning legislation that precludes such an ancillary building from having such facilities or from it being slept in; provided it is slept in an ancillary and incidental nature. The issue of it being used for overnight sleeping does though have an impact on its status under the Building Regulations and this is discussed in more detail in a later section of this report.

So in planning terms these items do not affect how the building is to be used and a restriction on the use can be imposed on this building in a new planning permission.

The connection of the building to a water supply, to electricity and to the sewer drainage system, and the inclusion of a woodburning stove (with a flue) and the introduction of cooking and wc facilities are also likely to be matters that will need to be addressed under the Building Regulations and again this is discussed below.

Condition 2 of the planning permission for the consented scheme reads; "The outbuilding hereby approved shall be used only as an ancillary use incidental to the enjoyment of the dwellinghouse known as Basement Flat, 3 Princes Buildings."

The reason for the condition is stated to be "Any other use requires further assessment as it has the potential to cause harm the character of the surrounding area which would conflict with the adopted Bristol Development Framework (June 2011) and the Bristol Local Plan (1997)"

In conclusion and subject to the re-imposition of the planning condition, slightly reworded, the development the subject of this application would not differ materially in use planning terms from the use approved for the consented scheme in August 2012.

(C) WOULD THE DEVELOPMENT AS NOW PROPOSED HARM RESIDENTIAL AMENITY WHEN COMPARED TO THE CONSENTED SCHEME?

The Council on two occasions now (by refusing two planning applications) has set out that any letting of the building for holiday use would be harmful to residential amenity and a Planning Inspector has concurred with this view.

This planning application only allows for ancillary and incidental residential use and so the building could only be used in the future in the same manner as was envisaged when the initial permission was granted in August 2012. It has been established in Key Issue B above that notwithstanding the introduction of certain servicing connections and facilities within the building its use in planning terms would be as per the approved situation. As such there are no reasons to conclude that a grant of consent for this application would result in any additional residential amenity harm in terms of noise and disturbance than the consented scheme.

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The August 2012 approved scheme had a privacy screen along the side south east facing building and deck. This application initially proposed a combination of a timber louvered screen and timber trellis in this position but officers did not think that was sufficient to rule out unacceptable levels of overlooking and sought amendments. A revised plan was submitted on 4 December 2014 which showed a solid timber privacy screen, officers consider that this can be required by condition and retained and that this would rule out overlooking. The Planning Inspector also set out that they believed a privacy screen could be employed to rule out overlooking from an ancillary residential use.

A privacy screen is now in place on the lower deck and provided again that it is only used in association with ancillary residential occupation ensures that its use does not harm privacy, a position also agreed by the Planning Inspector.

In summary, the potential residential amenity harm could come from; noise and disturbance from use or from overlooking. Officers' advise that the use could only be as per the previously consented scheme which was judged not to harmful by way of noise and disturbance and with the privacy screen as previously approved no adverse overlooking would occur.

(D) DISCUSSION ON BUILDING REGULATION COMPLIANCE

Planning enforcement officers reported the issue of the building and possible non-compliance with Building Regulations to the Council's Building Regulations and Standards Enforcement Team in late 2013.

The Building Regulations and Standards Enforcement Team then wrote to the property owner to advise that in certain circumstances approval under the Building Regulations would be required for the structure depending on matters such as size and build type, the level of accommodation and facilities and services and how it was being occupied.

The property owner advised the Building Regulations and Standards Enforcement Team that they were awaiting the outcome of the planning applications before addressing Building Regulations. This is not unreasonable in the circumstances and it is usual that Building Regulations follow planning approval.

However, as this matter is effectively retrospective it was important that the Building Regulations and Standards Enforcement Team kept a watching brief on the matter. It is understood that discussions are at an advanced between that team and the applicants.

The Building Regulations is a separate regime from planning and the absence of one form of approval cannot preclude or rule out approval under another.

(E) OVERVIEW ON PLANNING ENFORCEMENT MATTERS

It has to be recognised that officers assert that the structure in question does not benefit from planning permission, as the deviations from the approved plans have invalidated the previous consent. It is therefore a breach of planning control. Also the lower deck does not have planning permission

This application seeks to regularise this breach by seeking approval to retain the building and lower deck.

Some commentators have raised concerns about the potential for the property owners to resume holiday letting and they question how the Local Planning Authority will monitor this and what action could be taken to ensure that it does not continue to happen.

The recommended planning condition is clear and unequivocal in that it restricts the use to being ancillary and incidental the residential dwelling, it has been adapted from the previous condition to

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specifically state that; at any time be let or rented out for any purpose.

Should the Council receive reports that it was being let or rented out or indeed not being used in an ancillary and incidental manner officers would be able to make enquiries to the property owners, should officers not be satisfied with the response then a Planning Contravention Notice (PCN) could be served. This is a tool that enables specific questions to be formally put to someone to establish for instance if a breach of condition has/is occurring. It is an offence to not complete such a PCN and it is also an offence to provide inaccurate responses.

In this case specific questions could be put on how the building was being used. Should a breach of condition occur (i.e. that it is not being used ancillary and incidental because it had been let or rented out). If this was established it would be a breach of planning condition and the Council would have powers to serve a Breach of Condition Notice (BCN) against which there is no right of appeal and the BCN would compel the applicant to adhere to the condition on how the building was used. Failure to comply with a BCN is prosecutable in the Magistrates Court.

As such the Council has robust powers to investigate and monitor the use of the building and the mechanism to take formal planning enforcement action to secure the agreed use.

CONCLUSION

The decision maker on this application needs as a starting point to recognise that planning permission has previously been granted for a building in an almost identical position and design to the one now proposed. Moreover, the use in planning terms would be the same as the use that the previous planning permission allowed and this can be controlled and enforced against if necessary.

Equally important are the conclusions of the Planning Inspector, namely, that provided only ancillary residential usage takes place the use of the building and deck would not harm residential amenity, and, that in design and form terms the two structures are acceptable even when taking account of the heritage position in terms of the setting of the Listed Buildings and the character and appearance of the Conservation Area.

It is noted that some commentators are concerned with the nature of this retrospective application, but it has to be realised and accepted that the planning system allows for such applications to be made. The motivations and actions of an applicant in the planning process are not material to the assessment at hand.

The approval of this planning application will address the breaches of planning control identified during the planning enforcement investigations, but most importantly the planning permission has the mechanism to ensure that holiday letting does not occur. Officers are therefore able to recommend the grant of planning permission.

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Appendix A – Appeal Decision Letter

RECOMMENDATION: GRANT conditional planning permission.

1. This planning permission does not convey approval for the louvered privacy screen and trellis shown on the approved plan numbered 03/A dated October 2014 and within 30 days of the date of this planning permission the solid privacy screen depicted on approved plan numbered 04/A dated December 2014 and entitled Revised Privacy Screen Detail shall be installed in full accordance with the approved plan and retained in-situ at all times in the future.

Reason: For the avoidance of doubt and to ensure that the modifications necessary to make the as built structure acceptable in terms of removing harmful overlooking are delivered in a timely fashion to secure compliance with the relevant policies of the adopted Bristol Development Framework (2011) and the Bristol Site Allocations and Development Management Policies (2014).

2. The Privacy Screens on the south east side of the lower deck shall be retained in-situ at all times in the future.

Reason: For the avoidance of doubt and to ensure that harmful overlooking does not occur and to ensure compliance with the relevant policies of the adopted Bristol Development Framework (2011) and the Bristol Site Allocations and Development Management Policies (2014).

3. The detached garden cabin hereby approved shall be used only as an ancillary use incidental to the enjoyment of the property known as Basement Flat, 3 and 4 Princes Buildings and in particular shall not at any time be let or rented out for any purpose.

Reason: Any other use requires further assessment as it has the potential to cause harm to the character and amenity of the surrounding area which could conflict with the adopted Bristol Development Framework (2011) and the Bristol Site Allocations and Development Management Policies (2014), in particular both the Local Planning Authority and the Secretary of State have found previously that the use of the cabin for holiday rental use is harmful to the amenity of adjoining residents.

4. The development shall conform in all aspects with the plans and details shown in the application as listed below, unless variations are agreed by the Local Planning Authority in order to discharge other conditions attached to this decision.

Site location plan, received 24 October 2014
Proposed block plan, received 24 October 2014
01/C - Lower deck plan, received 24 October 2014
01/E - Lower deck side elevation, received 24 October 2014
03/A - Green Oak cabin plan and elevations, received 24 October 2014
04/A - Revised Privacy Screen Detail dated December 2014, received 4 December 2014

Reason: For the avoidance of doubt.

Appeal Decision

Site visit made on 17 June 2014

by Andrew Seaman BA (Hons) MA MRTPI

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

Decision date: 24 June 2014

Appeal Ref: APP/Z0116/A/14/2215241

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- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Andrew Yarme and Ms Joanne Scofield against the decision of Bristol City Council.
 - The application Ref 13/05575/F, dated 4th December 2013, was refused by notice dated 7th February 2014.
 - The development proposed is described as 'retention of existing oak cabin and use for mixed residential and holiday accommodation'.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Andrew Yarme and Ms Joanne Scofield against Bristol City Council. This application is the subject of a separate Decision.

Procedural Matters

3. The cabin and lower deck have been constructed. I have dealt with the appeal scheme with due regard to the existence of both structures.

Main Issues

4. The main issues raised by this appeal are twofold. Firstly, the effect of the development upon the living conditions of the occupants of nearby properties. Secondly, the effect of the development upon the setting of the listed buildings of Princes Buildings and the character and appearance of the immediate locality and the Clifton and Hotwells Conservation Area.

Reasons

Living Conditions

The Cabin

5. The Council has previously granted permission¹ for the erection of a cabin with decking for purposes ancillary to the main residential use of the Basement Flat at the appeal site. In reaching its decision to approve the development, the

¹ Application ref 13/05146/F et al

Council considered that, if used for domestic purposes ancillary to the host dwelling, the impacts from such incidental use would be acceptable. This approval is a fallback position of significant weight and has established the principle of the development in this location.

6. The current appeal scheme differs from its predecessor applications. Such differences include the provision of a shower, an additional decking area and the absence of side screening. Whilst the separation distance of the cabin from its neighbours is sufficient to avoid any undue overbearing effects, it was clear from my inspection that the use of the cabin, with its glazing and front decking area, would lead to elevated and direct overlooking of the neighbouring gardens to the south east. Whilst such gardens have limited existing privacy from one another, the introduction of the cabin and deck without screening, even allowing for the uncertain effect of internal louvres over the windows, would exacerbate unreasonably both the perceived and actual degree of overlooking.
7. A key component of the appeal scheme is an intention to commercially let the cabin as holiday accommodation. Even if restricted to a limited number of days (for example 60/year), such a use would represent a business activity that would introduce occupants who would more likely use the cabin and its deck at a greater level of intensity, particularly evenings, night time and early mornings, than if it were limited to being ancillary to the host dwelling. As a consequence the scope for greater noise and general disturbance would be increased considerably, for example from the use of the cabin as the sole base for its occupants and the use of the decking as the obvious congregation/circulation point. Such activity would introduce a level of use that would conflict with the existing quiet and secluded rear garden nature of the appeal site and its surrounds and be likely to cause unreasonable noise and disturbance that would harm the reasonable amenity of near neighbours.
8. Whilst I consider that the tucked away position and basic nature of the shower and associated decking have no substantive impact upon these matters and that a 'privacy' screen could be secured by the use of planning condition to prevent overlooking, no such reasonable conditions could mitigate adequately the noise and disturbance arising from the holiday use of the cabin and its deck. I do not consider the appeal scheme to be comparable to the operation of a Bed and Breakfast premises due to its nature and specific rear garden location. As a consequence this element of the appeal proposal is unacceptable.

Lower Deck

9. Similar to above, the use of the lower deck area, if unscreened, would enable overlooking of the lower garden areas of the properties to the south east. Whilst these lower gardens appear to be areas in more limited active use, both the actual and perceived degree of overlooking would exacerbate that which would result from the cabin and thereby would be unacceptable.
10. Whilst a screening condition could mitigate such an effect, the appeal scheme explicitly seeks a mixed use activity. The use of the cabin for holiday letting would likely increase the use of the deck as a congregation point and thereby the potential for unacceptable levels of more intense activity with consequent noise and disturbance would arise. Such an outcome would be harmful to the

reasonable living conditions of neighbours and is not capable of adequate mitigation by the use of reasonable planning conditions.

Summary

11. With due regard to the fall back position established by the Council's earlier planning decisions, the use of the cabin and lower deck for purposes which include holiday letting not ancillary to the host dwelling would cause harm to the reasonable living conditions of neighbours. This would run contrary to the objectives of the development plan in this regard, particularly Policies BCS 23 of the Bristol Core Strategy (CS), Policy ME4 of the Bristol Local Plan (LP) and Policies DM30 and DM35 of the Bristol Site Allocations and Development Management Policies (DMP) (Publication March 2013).

Character and Appearance

Cabin and lower deck

12. The appeal site slopes considerably towards the bottom of Avon Gorge. It is an established garden in keeping with others in this residential context wherein the Council has previously approved a cabin.
13. Whilst the appeal scheme contains elements not previously approved, for example a higher flue, larger decking area and a shower, these are not prominent features. Indeed, the cabin and deck is not generally visible from the public domain. Whilst visible from neighbouring properties and their gardens, the cabin and lower deck are set into the existing and established verdant landscape and neither element is particularly intrusive. Their modest scale, design and materials are essentially domestic in nature and not harmful to their setting.
14. The height of the flue is not a discernible feature, being set back from the edge of the cabin roof and being seen against the canopy of existing trees which frame the site. The shower and additional deck are tucked away to the rear corner of the cabin and are neither prominent nor unduly disruptive to the simple plan form of the main structure itself.
15. The lower deck is of relatively limited scale in the context of the garden as a whole. It represents a domestic accoutrement to the property as a whole and is neither publicly prominent nor visually intrusive in the context of the residential gardens to the rear of Princes Buildings.
16. As a consequence of the above, I find that the appeal scheme would not harm the character or appearance of the locality.
17. I am mindful of my statutory duties in relation to heritage assets and that great weight should be given to their conservation. The Clifton and Hotwells Conservation Area is extensive in its scale and is dominated by the diversity of its Character Areas. Indeed, it is the layout of its principal streets and the design, age, scale and materials of the dominant buildings which dictate both its appearance, its character and its significance. The appeal scheme would not harm such attributes and I am satisfied that both the character and appearance of the Conservation Area as a whole would be preserved.
18. As indicated by the list description, the significance of Prince's Buildings lies in their age, their design and their location which includes gardens that slope

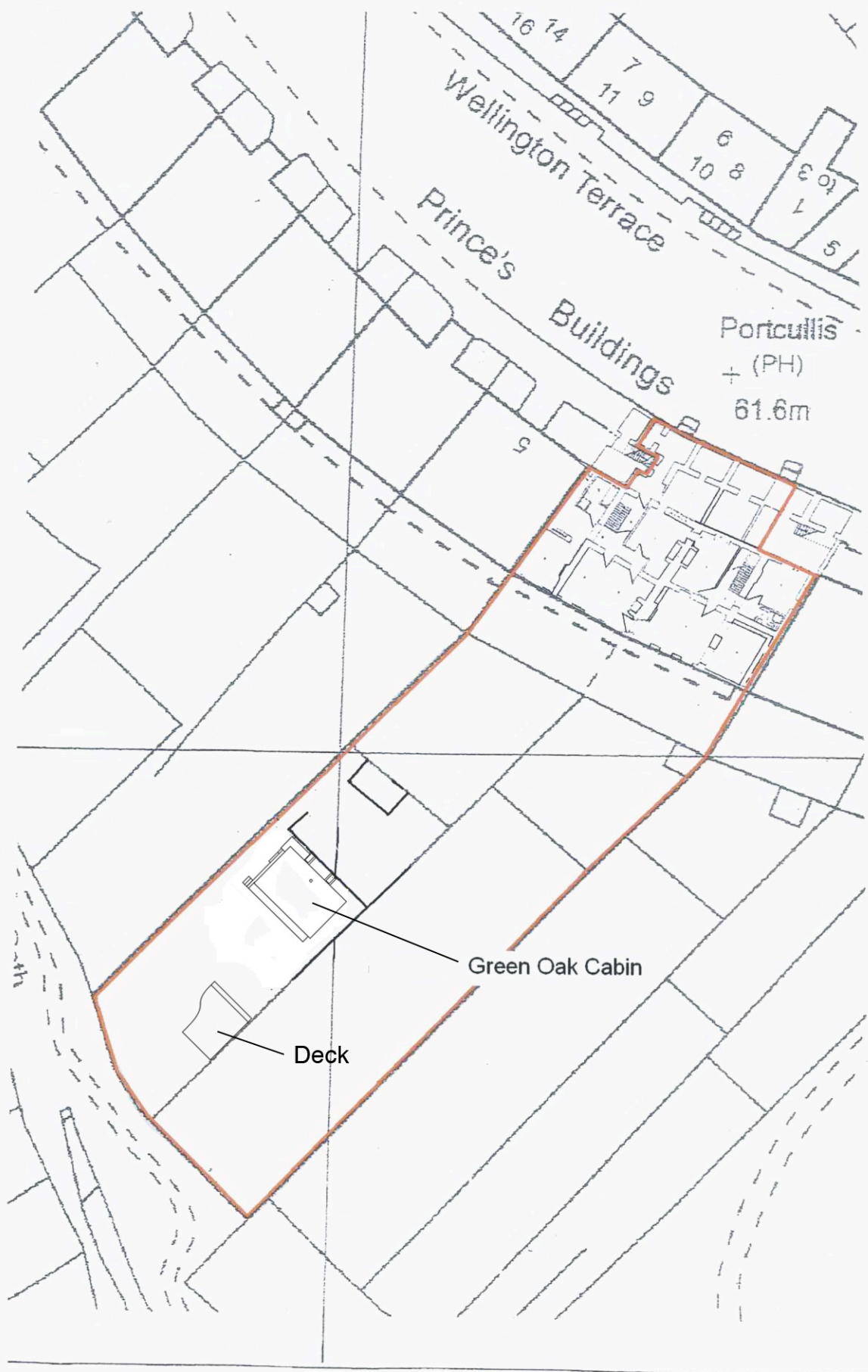
universally towards the Gorge. The cabin and lower deck do not impinge on such significance and the setting of the listed buildings would be preserved.

Other Matters and Conclusion

19. I note that the appeal scheme seeks to be sustainable in both construction and use and that it would generate some benefit to the local economy through its mixed use. However and with due regard to the tourism aims of the development plan including LP Policy L11, such benefits are inevitably limited in their scale and do not outweigh my concerns. Whilst the Avon Gorge Hotel is in the vicinity to the north-west and other B&B premises and the Portway arterial route are nearby, the activities and potential noise associated with their operation are not a justification for introducing a new use that would cause harm to the more immediate living conditions of neighbours in a different location.
20. In conclusion, the appeal scheme would preserve the character and appearance of the locality and the conservation area whilst preserving the setting of the listed buildings. This would not run contrary to the design and heritage objectives of LP Policy B2, CS Policies BCS21, BCS22 and DMP Policies DM31. However, the mixed nature of the use would be likely to cause unacceptable harm to the reasonable living conditions of nearby residents such that dismissal of the appeal is warranted. The scheme would run contrary to the objectives of those policies cited in this regard. With due regard to all other matters raised, including the submissions of interested parties, the National Planning Policy Framework and associated Guidance, nothing leads me to a different decision.

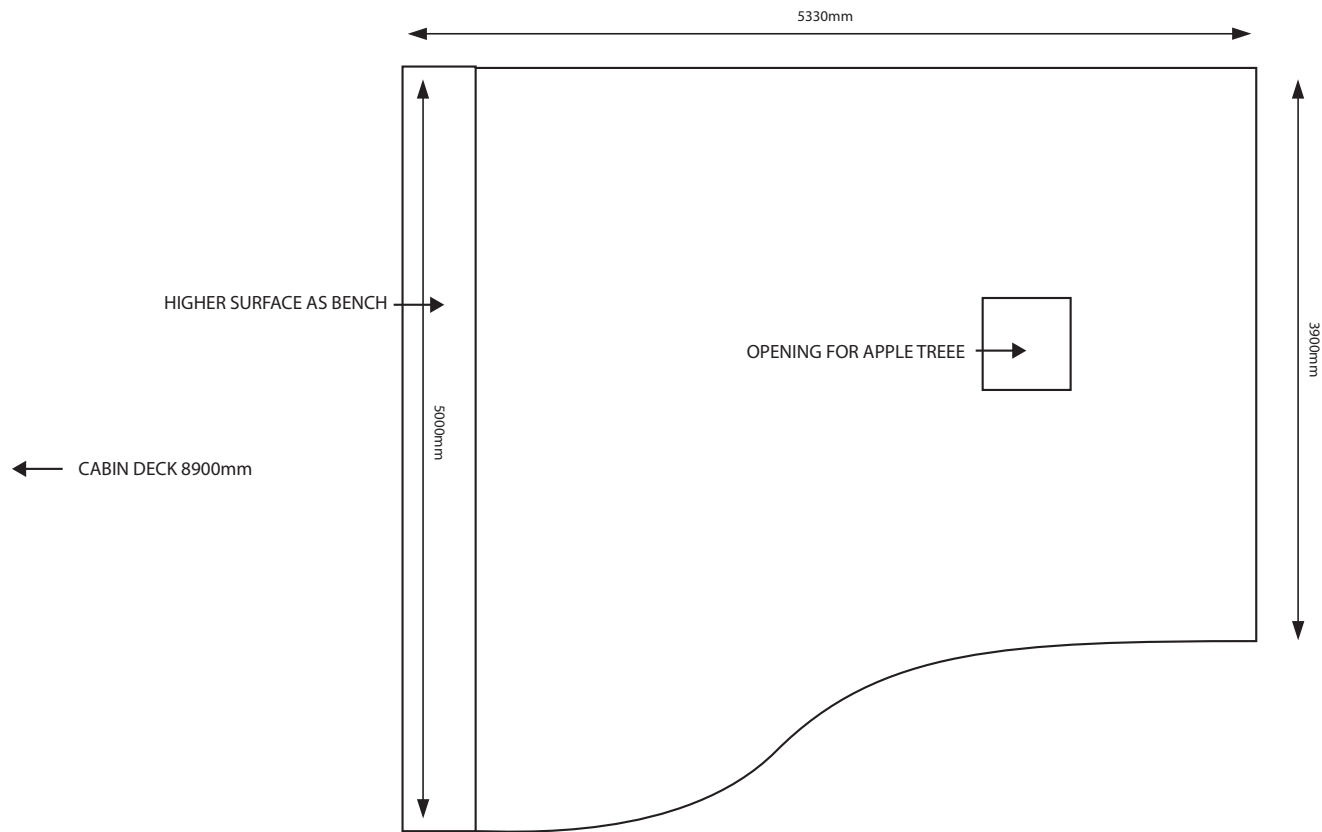
Andrew Seaman

Inspector



The Garden Flat, 3/4 Princes Buildings, Clifton, Bristol BS8 4LB

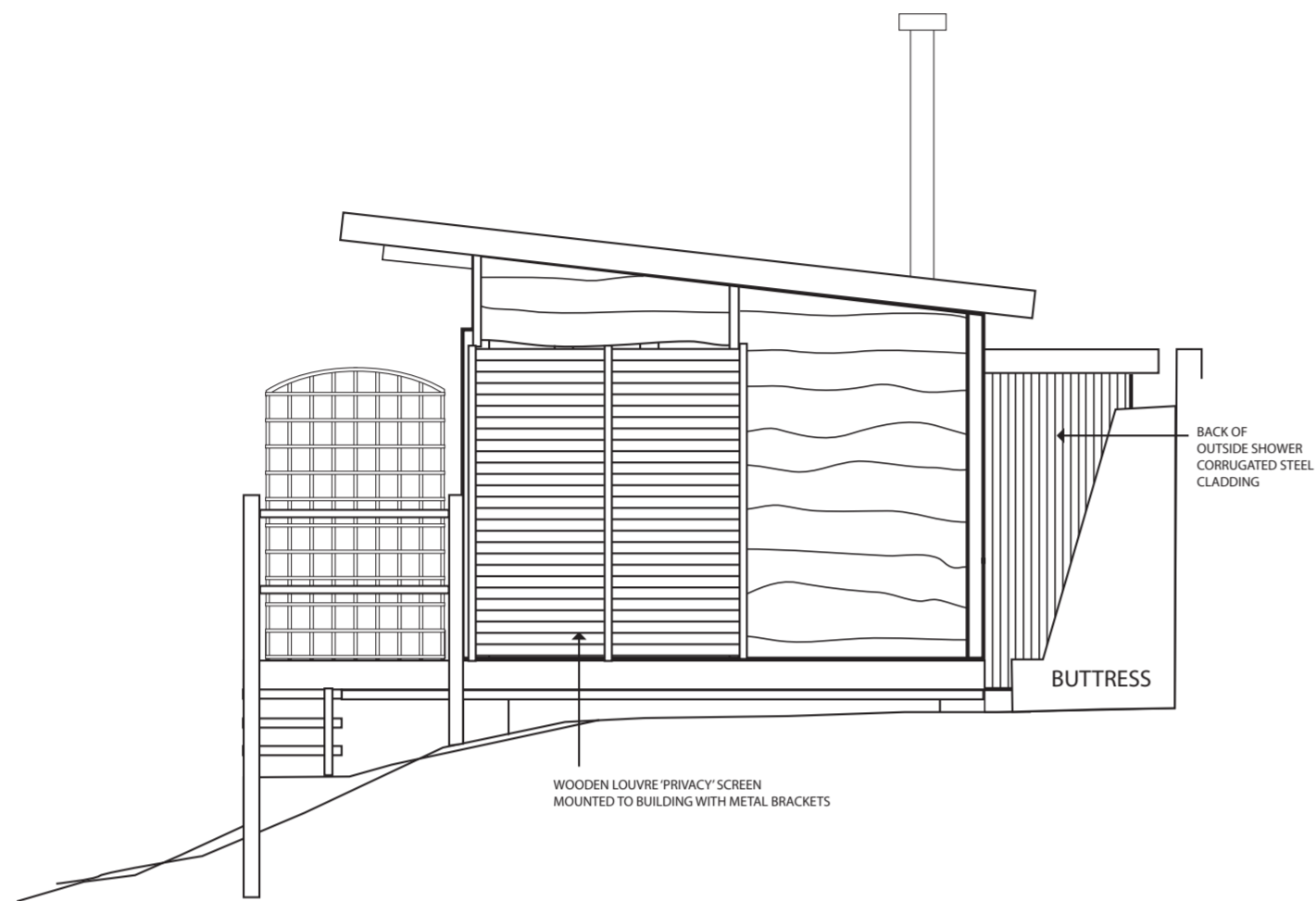
Site Layout 1:500



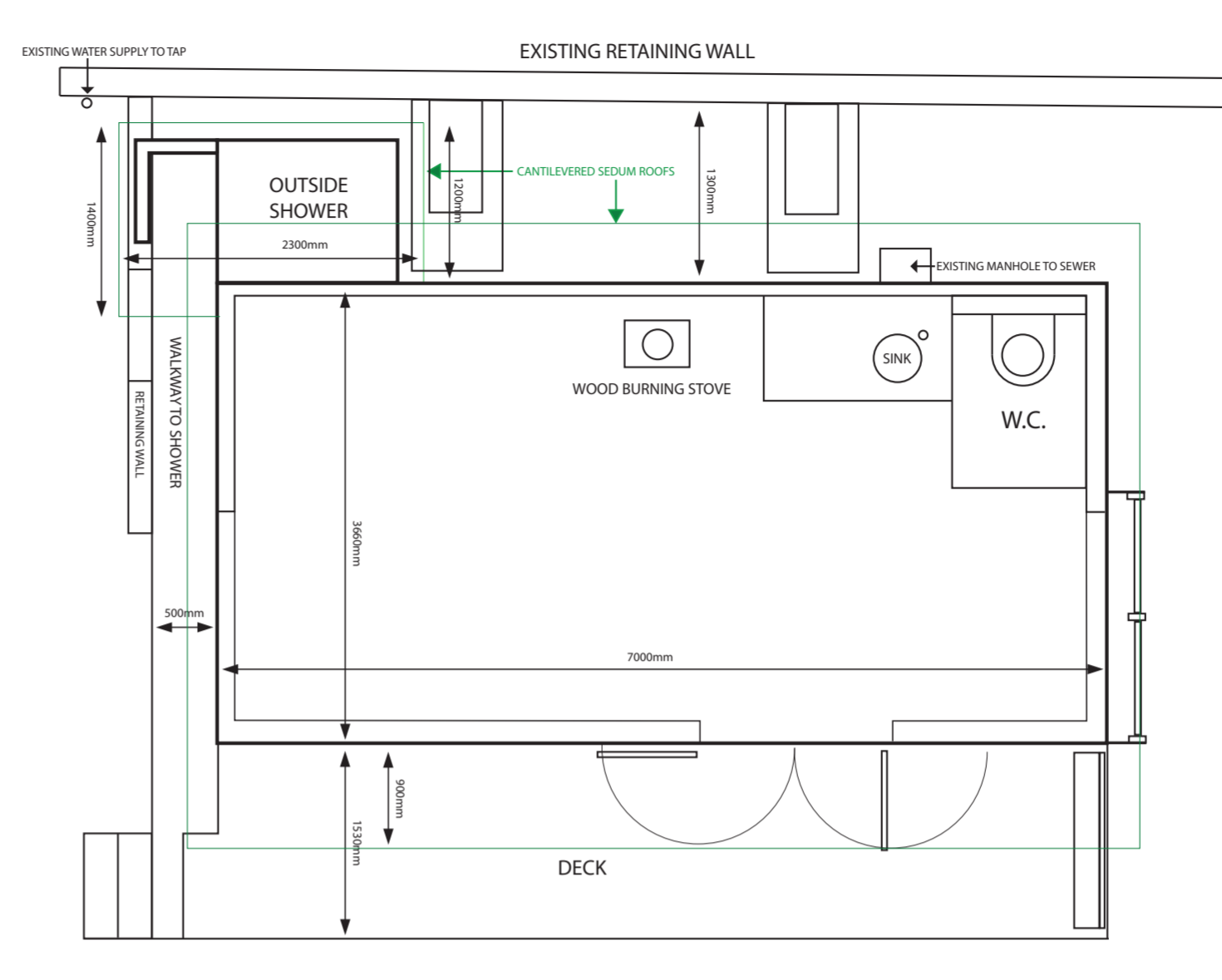
Lower Deck
3-4 Princes Buildings
Sion Hill
Clifton
Bristol BS8 4LB

Drawing 01/C
OCTOBER 2014

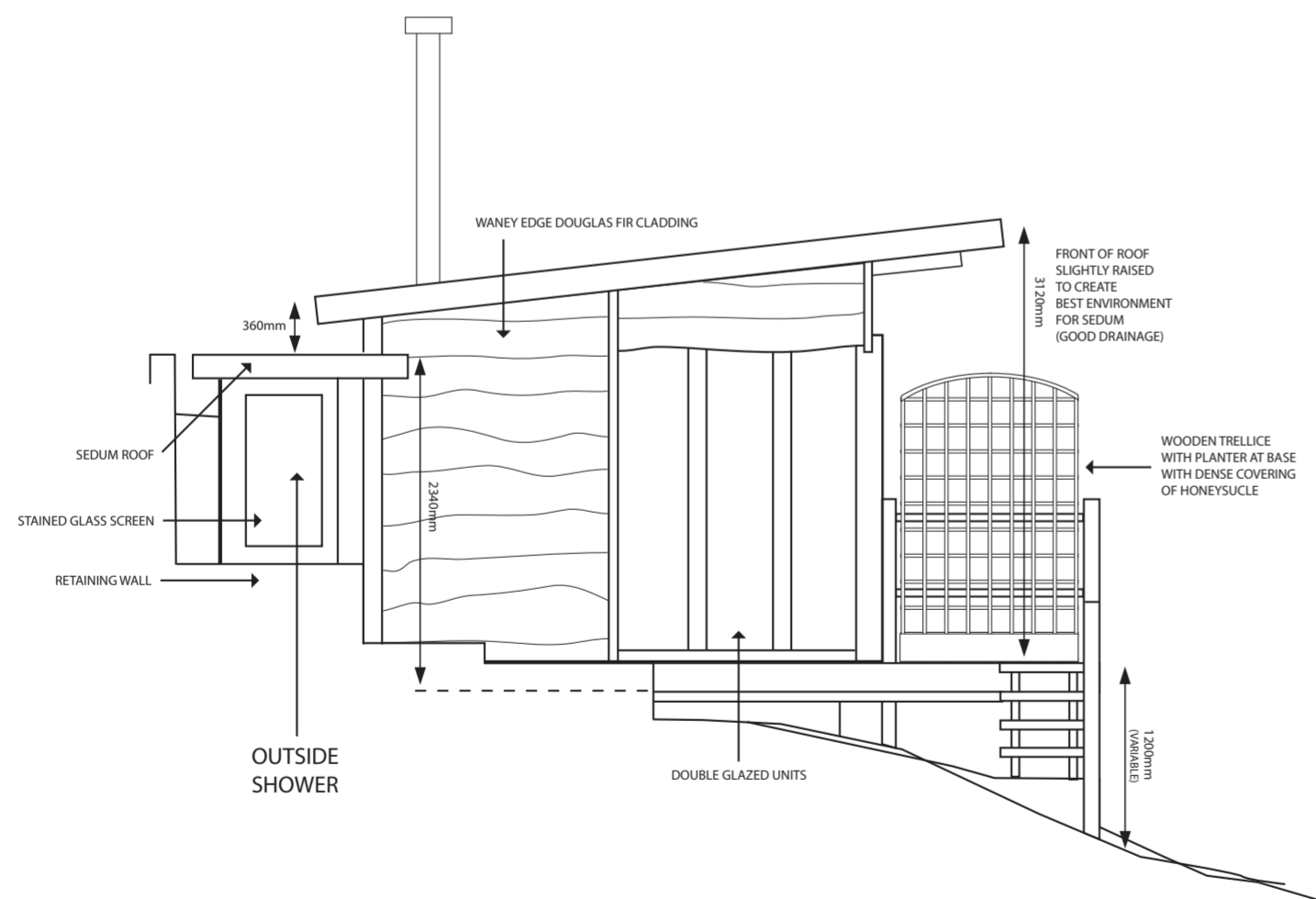
Plan
Scale 1:50



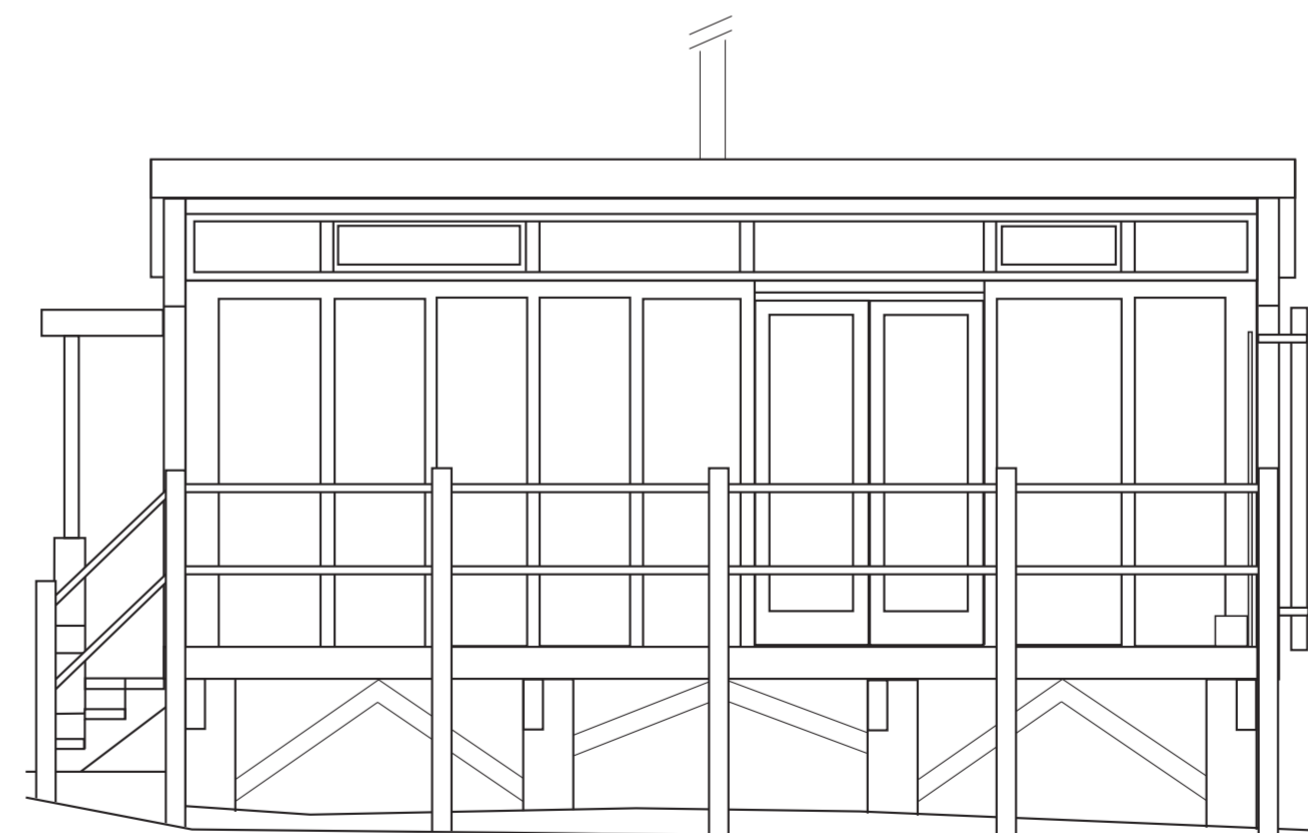
South East Elevation



Plan



North West Elevation



South West Elevation

Green Oak Cabin
 3-4 Princes Buildings
 Sion Hill
 Clifton
 Bristol BS8 4LB

AMENDED DRAWINGS 03/A
 OCTOBER 2014

Elevations

Scale 1:50

Green Oak Cabin

3-4 Princess Buildings

Sion Hill

Clifton

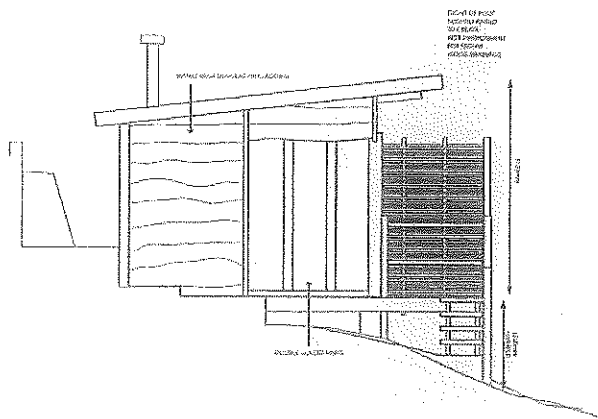
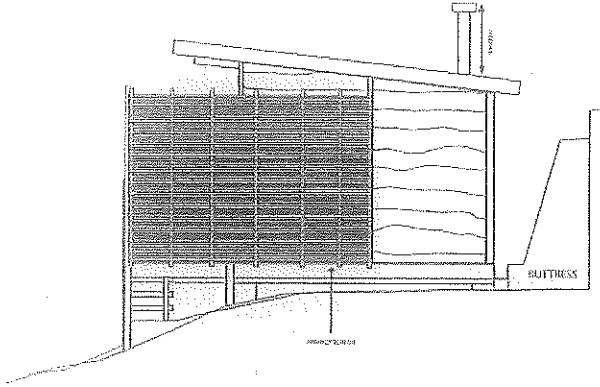
Bristol BS8 4LB

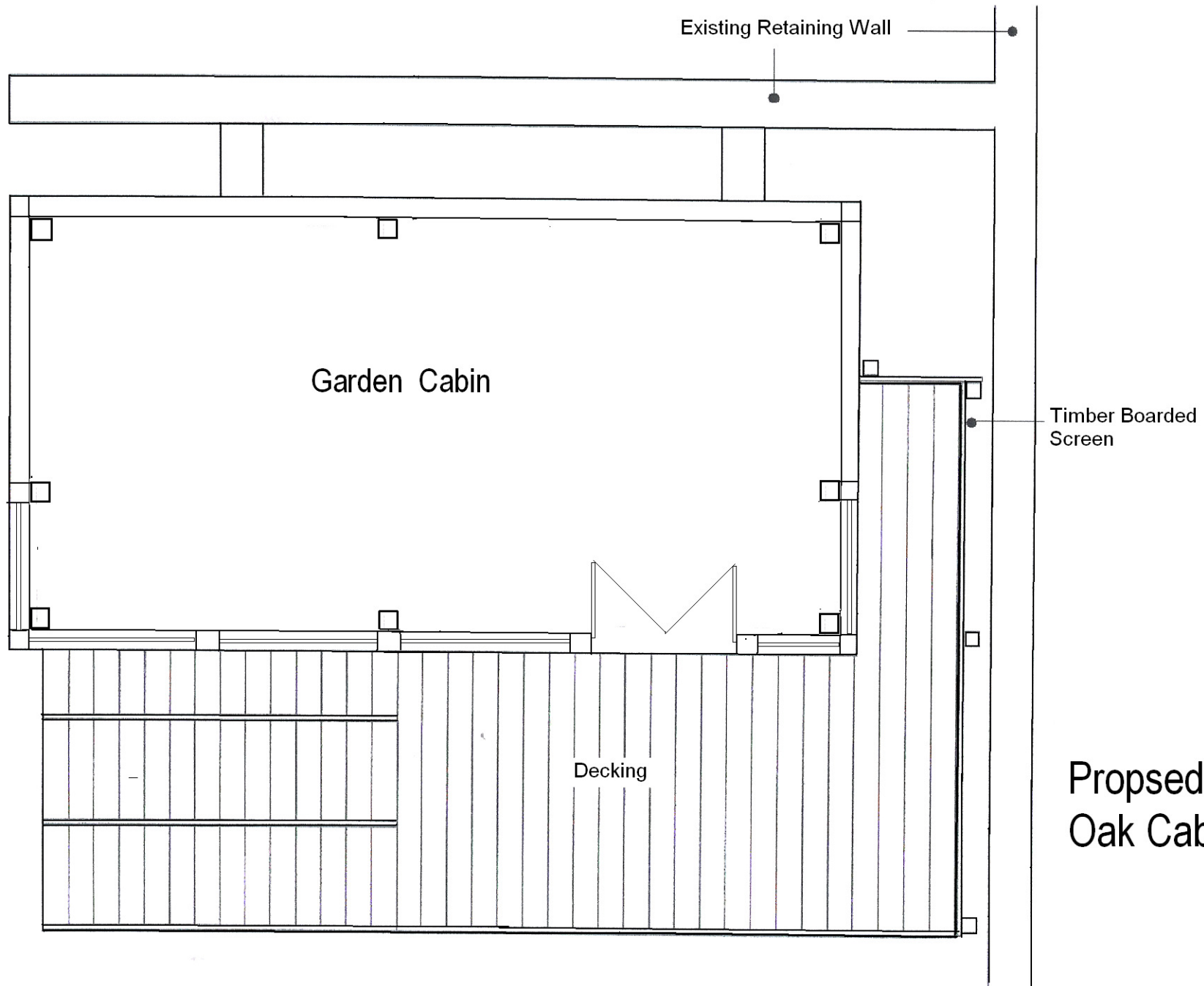
Revised Privacy Screen Detail

Drawing 04/A

December 2014

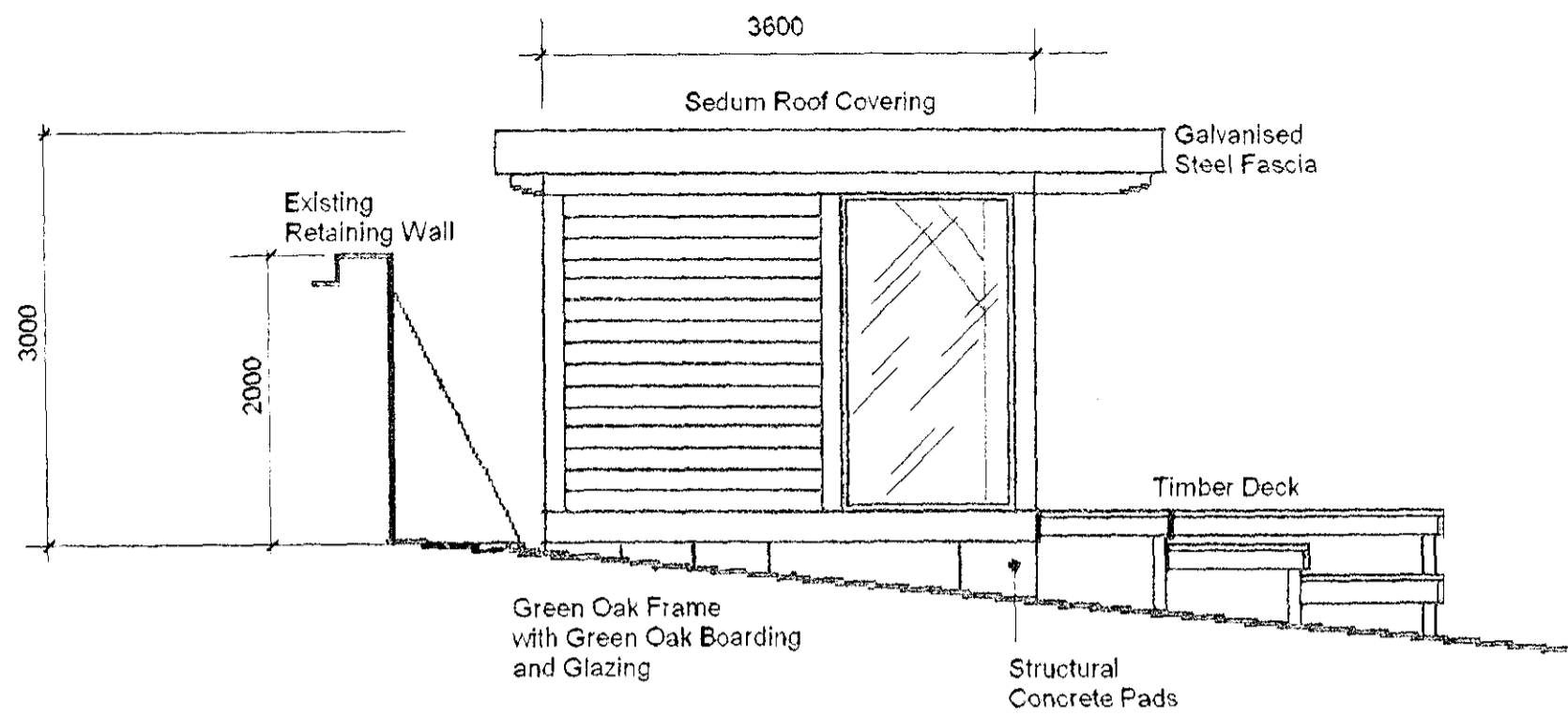
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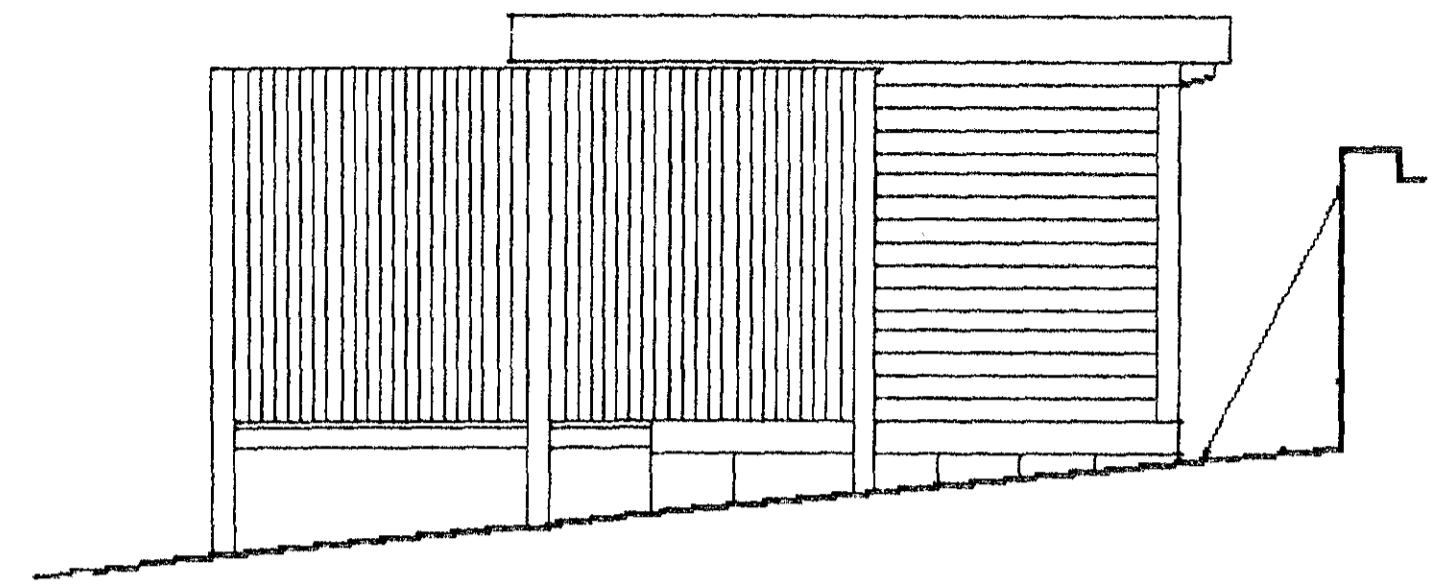


Plan 1 : 50

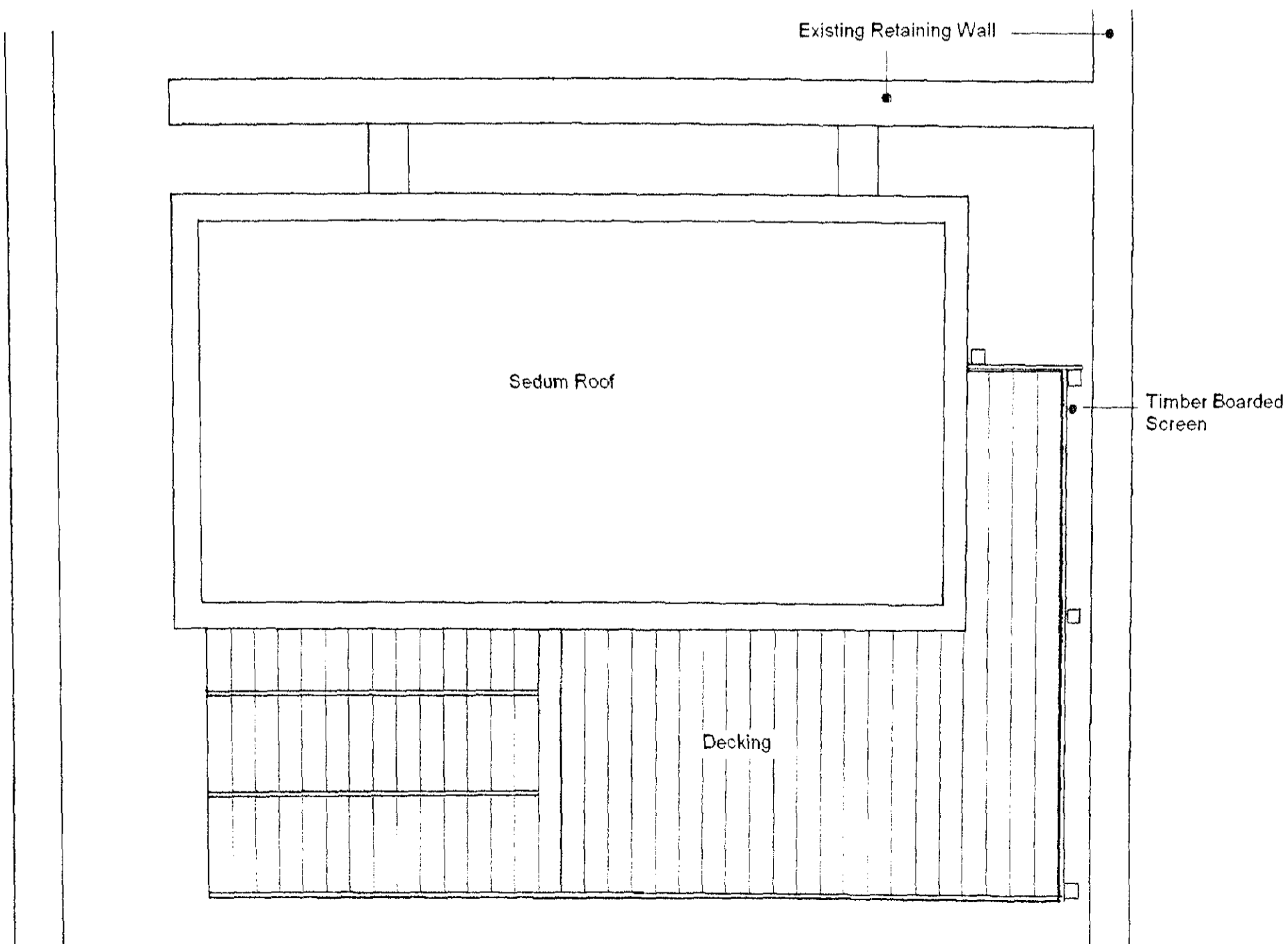
3/4 Princes Buildings, Clifton, Bristol BS8 4LB



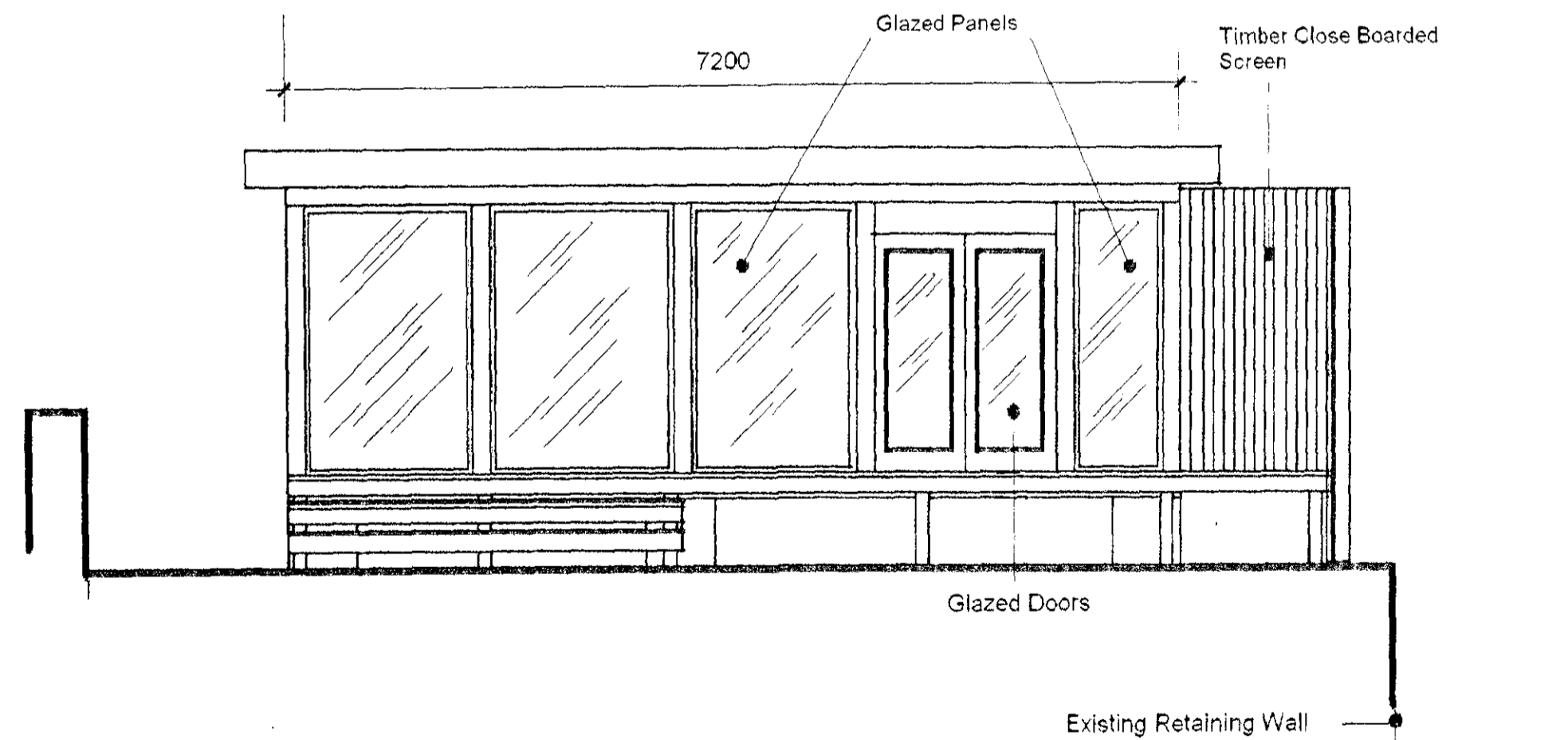
North West Elevation 1 : 50



South East Elevation 1 : 50



Plan 1 : 50



South West Elevation 1 : 50

875 Sk 01

Proposed Green Oak Cabin
 at
 3 Princess Buildings, Clifton, Bristol BS8 4LB
 for
 Mr Andrew Yarne & Ms Joanne Scofield
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