



**Lake District
National Park**

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Report from the Head of Development Management to the Development Control Committee

Application number:	7/2023/5398
Application type:	Full Planning application
Applicant:	High Spirits Leisure
Location:	Ambleside Tap Yard, Rydal Road, Ambleside, Cumbria, LA22 9AN
Grid reference:	337565, 504629
Proposal:	Installation of plant and equipment (Retrospective)
Report prepared by:	Kevin Richards, Planning Manager – Applications and Advice
Report agreed by:	Andrew Smith, Head of Development Management
Recommendation:	APPROVE with conditions

1 About this report

- 1.1 The case planner has prepared this report, assessment and recommendation taking into account our policies (known as the Development Plan), written representations we have received, and any other material considerations.
- 1.2 Material considerations are things that are relevant to our decision making and which we are able to take into account – for example site specific factors, or Government planning policy (the National Planning Policy Framework) and Government planning guidance (the National Planning Practice Guidance).
- 1.3 The Development Control Committee will determine the application at its meeting having regard to the provisions of the Development Plan, representations we have received, and all other material considerations, following a verbal and visual summary of the application by the case

planner and, where applicable, after hearing any verbal representations made in accordance with our Policy for Public Speaking at Meetings.

- 1.4 Most applications are decided under powers delegated to the Head of Development Management. A small number of significant or more contentious applications are considered by our Development Control Committee as set out in our Scheme of Delegation.

2 Background and proposals

- 2.1 Planning permission is sought retrospectively for the installation of plant and equipment at the rear of Ambleside Tap, off Rydal Road as follows:

- Unit 1 – condenser cooling unit
- Unit 2 – additional unit part of the cooling system
- Unit 3 – air conditioning unit

- 2.2 I am reporting the application to Committee because the recommendation to approve conflicts with objections from Lakes Parish Council. We have also received objections from three households.

- 2.3 The proposals are for the retention of three pieces of extraction / condenser equipment on the rear of the building. All have been installed at height and face the rear of terraced houses and their rear yards on Millans Park.

- 2.4 The application has resulted from an enforcement investigation which initially considered an alleged change of use and the installation of the plant and equipment. The alleged change of use was from the previous use as a bicycle sales and repair shop to a drinking establishment. During our investigation it was determined that the use falls within the E Use Class, as did the previous use of the building and that as consequence there was no change of use and no breach of planning control.

- 2.5 The application follows a previously refused application (7/2022/5598), the reasons for which were as follows:

1- The units are a visually incongruous modern additions and due to their position are dominant in the outlook from neighbouring dwellings first floor windows and back yards causing harm to their amenity. On the basis of the available information it has not been demonstrated that the plant and equipment ensure a high standard of amenity for all existing and future users in terms of noise and odour.

The development is therefore contrary to Policy 6 (Design and development) of the Lake District National Park Local Plan 2020-2035 which requires that development must not have an unacceptable impact on the amenity of adjoining residents and users of the development due to visual intrusion, overlooking, and overbearing effect, noise, light pollution or other adverse impacts. The development is also contrary to paragraph 127 (f) of the National Planning Policy Framework which requires development to ensure high standard of amenity for all existing and future users.

2 - The units have a dominant, utilitarian appearance when viewed from the adjacent passageway. The development has an adverse impact on the character and appearance of the immediate area and fails to preserve the character and appearance of the Ambleside Conservation Area. There are no public benefits of sufficient weight to outweigh this harm. The proposed development is therefore contrary to Policies 02 (Spatial Strategy), 06 (Design and development) and 07 (Historic environment) of the Lake District National Park Local Plan 2020-2035 and the National Planning Policy Framework.

- 2.6 The application has been submitted with a noise assessment to address the first reason for refusal. In respect of the second reason for refusal it is proposed that enclosures will be installed around the equipment. Two acoustic enclosures are designed to provide mitigation to reduce noise levels. A third enclosure is solely to provide visual screening, as noise mitigation is not required by the noise assessment for that unit.

3 Representations

- 3.1 Lakes Parish Council: Recommend Refusal on the following grounds. These units have caused nearby residents much distress as they have been unable to enjoy the space in their back gardens which should be quiet, peaceful and relaxing. The units have caused and are currently causing a humming/buzzing noise, producing overbearing odours and a visual intrusion.

This is completely unacceptable. Policies 2 and 6 clearly state that a development must not have an unacceptable impact on the amenity of adjoining residents in respect of a visual intrusion, overbearing effect or noise pollution - which this proposal clearly contradicts. The Noise Impact Assessment, point 5, clearly states two measures for mitigation. One is to lower the units and the second is to box them in by means of acoustic-treated louvres. The proposal complies with boxing the units in but fails to address lowering the units, therefore will still negatively impact nearby residents.

The benefits of the proposal do not outweigh the negative amenity on residents' quiet enjoyment of their homes.

- 3.2 Environmental Protection: Recommend conditions.
- 3.3 Objections have been received from three households. Reasons for objection can be summarised as follows:
- 24hr a day nuisance – constant distracting noise.
 - Enclosures will not work – units need air intake and may make noise worse.
 - Should be placed at the front of the building away from houses.
 - Use of the building still not been regularised.
 - Affects quiet enjoyment of rear gardens.
 - Extract, air intake, noise and smell should be taken into account in regularisation of planning use of building.

- Question noise survey – location of receptors, background levels taken in noisiest locations, acoustic penalties not applied, Noise Exposure Hierarchy indicated avoidance or prevention, not mitigation.
- Overhanging rear lane and right of access.
- Does not address utilitarian appearance.

4 Development plan policies and other relevant guidance

- 4.1 The relevant Development Plan comprises:
- The Lake District National Park Local Plan 2020-2035
- 4.2 The following Lake District National Park Local Plan policies are relevant to this application:
- Policy 01: National and international significance of the Lake District
 - Policy 02: Spatial strategy
 - Policy 06: Design and development
 - Policy 07: Historic environment
- Design Code Supplementary Planning Document
- 4.3 The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these are expected to be applied. It is a material consideration in the determination of planning applications.
- 4.4 There is no community plan in this area.

5 Main issues and assessment

- 5.1 The proposals are in accordance with the spatial strategy set out in Policy 02 and are acceptable in principle. The main issues are:
- Impact on the character and appearance of the area
 - Impact on the amenity of neighbours

Impact on the character and appearance of the area

- 5.2 The proposed plans show two louvred enclosures; a single enclosure around one of the units and a single larger enclosure around the other two units.
- 5.3 Subject to being finished in an appropriate colour the enclosures would disguise the functional nature of the equipment and mitigate for the previously identified dominant and utilitarian appearance.
- 5.4 Having regard to the immediate context, which is characterised by the rear of the application building, a shared access lane and the rear of houses on Millans Park together with a variety of sheds, fences gates and rear extensions, overall the proposals would preserve the character and appearance of the Ambleside Conservation Area and satisfy the requirements of Local Plan Policies 01, 02, 05, 06, 07 the Design Code SPD and the NPPF.

Impact on the amenity of neighbours

- 5.5 Policy 06 states that development must not have an unacceptable impact on the amenity of adjoining residents and users of the proposed development, due to visual intrusion, overlooking, overshadowing, overbearing effect, noise, light pollution or other adverse impacts.
- 5.6 The NPPF requires that decisions should ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.
- 5.7 This application and the previous application were the result of an ongoing enforcement case. Neighbours initially complained about noise and odour from the units and that they had been installed without planning permission.
- 5.8 The applicant has submitted a noise assessment. It concludes that a 22db reduction is required. It confirms that according to the manufacturer's specification of the acoustic enclosure an average sound reduction of approximately 24db would be achieved.
- 5.9 Were these levels unachievable, the noise assessment also states that the units could be lowered to provide the required reduction.
- 5.10 Westmorland and Furness Council Environmental Protection have been consulted and have visited the site. They have also considered the proposals specifically in light of the objections regarding the adequacy of the noise assessment. Having had regard to these matters Environmental Protection consider three conditions are necessary. These are summarised below:
- 1) The level of noise emitted from the proposed plant and equipment to be installed shall be at least 3dB below the existing measured 'ambient' noise level during the night.
 - 2) The level of noise emitted from the proposed plant and equipment to be installed on the site shall be at least 3dB below the existing measured ambient noise level during the day.
 - 3) An acoustic assessment of compliance with the noise conditions shall be submitted to the Local Planning Authority no later than two months after commencement of the development hereby permitted.
- 5.11 I note the Environmental Protection officer's recommended conditions, but I consider that rather than the submission of a further survey, it would be more effective for a condition to require the required noise levels to be achieved within 1 month of any permission and be maintained thereafter. If the units cannot achieve the required noise levels a condition should require that the units are not operated. Removal of the units in their entirety is not considered reasonable or necessary given that their physical appearance is considered to be acceptable subject to the proposed enclosures.

- 5.12 Following the response from Environmental Protection the applicant has confirmed that the 22db reduction is possible leaving the units in-situ and adding an acoustic enclosure.
- 5.13 Neighbours have also complained about odour.
- 5.14 Whilst neighbours refer to odour in their representations it is not clear that the units the subject of the application are the source of the odour. A cellar cooling unit, condenser unit and an air conditioning unit seem unlikely to result in cooking smells. And despite the objections from neighbours, Environmental Protection have made no comments on odour.
- 5.15 It is a well-established principle of the planning system that it should operate on the basis that related regulatory controls should not be duplicated. The NPPF states that planning decisions should assume that these regimes will operate effectively.
- 5.16 The Environmental Protection Act 1990 contains legislation for complaints made about statutory nuisances which would include bad smells from trade premises in this case. Whilst using this legislation the local authority can use an abatement notice to stop or reduce bad smells the NPPF and Local Plan test for a high standard of amenity is arguably a higher standard.
- 5.17 Taking the above into account, having regard to the nature of the units that are the subject of this application, the consultation response from Environmental Protection, and the presence of non-planning pollution control regimes, I have not identified evidence of odour impacts from the development as being likely to result in unacceptable planning amenity impacts. Nor am I persuaded it would be reasonable to use planning conditions to seek to control odour. If odour does become a problem in the future it can be effectively dealt with under the Environmental Protection Act were it to constitute a statutory nuisance.
- 5.18 Subject to conditions regarding noise limits the development would avoid adverse impacts and ensure a high standard of amenity and is therefore considered to be acceptable and in accordance with the requirements of Local Plan Policy 06, the Design Code SPD and the NPPF.

Other matters

- 5.19 Neighbours are also concerned that the units overhang a private access and question whether the units can be moved to ground level if required.
- 5.20 The rear lane is not a public right of way. Any obstruction of the access now or in future is a private and civil matter among the landowners and those who have a right of access over the land. This is not a material planning consideration.
- 5.21 In any case, the applicant considers that the units can be left in situ and the required noise reduction can be achieved with the proposed enclosures. Any permission in line with the recommended conditions would require the units to meet the noise reduction levels while in situ. If the units need to be

moved to an extent which is materially different to that currently proposed, planning permission would be required.

6 Conclusion

- 6.1 Having regard to the provisions of the development plan, in particular Lake District National Park Local Plan Policies 01, 02, 06 and 07, the Design Code SPD and other material considerations (including the provisions of the NPPF), the development is considered to be acceptable, subject to the conditions recommended.

RECOMMENDATION: APPROVE with conditions

Conditions/Reasons

- 1 The development hereby permitted shall not be carried out otherwise than in conformity with the following submitted plans and details received by the Local Planning Authority:

- Site location plan 3720-01
- Elevation and sections as proposed 2507-101
- Plant Noise Impact Assessment Tap Yard, Ambleside Reference: 50-594-R1-3 Date: January 2024
- Design, Access & Heritage Statement

REASON: For the avoidance of doubt.

- 2 Within one month of the date this permission the 'rating' level of noise emitted from the plant and equipment hereby permitted (determined using BS 4142:2014 Methods for rating and assessing industrial and commercial sound) shall be at least 3dB below the existing measured 'ambient' noise level LA90, T during the night time period (23:00 – 07:00) and shall be maintained as such thereafter

REASON: To protect the amenity of neighbours in accordance with Policy 06 of the Lake District National Park Local Plan 2020-2035.

- 3 Within one month of the date this permission the 'rating' level of noise emitted from the plant and equipment hereby permitted (determined using the guidance of BS 4142:2014 Methods for rating and assessing industrial and commercial sound) shall be at least 3dB below the existing measured ambient noise level LA90, T during the day time period (07:00 – 23:00) and shall be maintained as such thereafter.

REASON: To protect the amenity of neighbours in accordance with Policy 06 of the Lake District National Park Local Plan 2020-2035.

- 4 Should the plant and equipment hereby permitted fail to achieve the levels specified in conditions 2 and 3 of this permission, it shall not be operated.

REASON: To protect the amenity of neighbours in accordance with

Policy 06 of the Lake District National Park Local Plan 2020-2035.

- 5 Within one month of the date of this permission, the enclosures of the plant and equipment shown on the permitted plans shall be installed in a colour which shall first be submitted to and approved in writing by the Local Planning Authority and shall be retained thereafter.

REASON: In the interests of the character and appearance of the area in accordance with Policies 06 and 07 of the Lake District National Park Local Plan 2020-2035.

NPPF decision notice requirements

Town and Country Planning (Development Management Procedure) (England) Order 2015 Article 35(2) statement.

The Local Planning Authority have worked with the applicant in a positive and proactive manner by seeking solutions to problems arising in relation to dealing with the application by liaising with Environmental Protection.

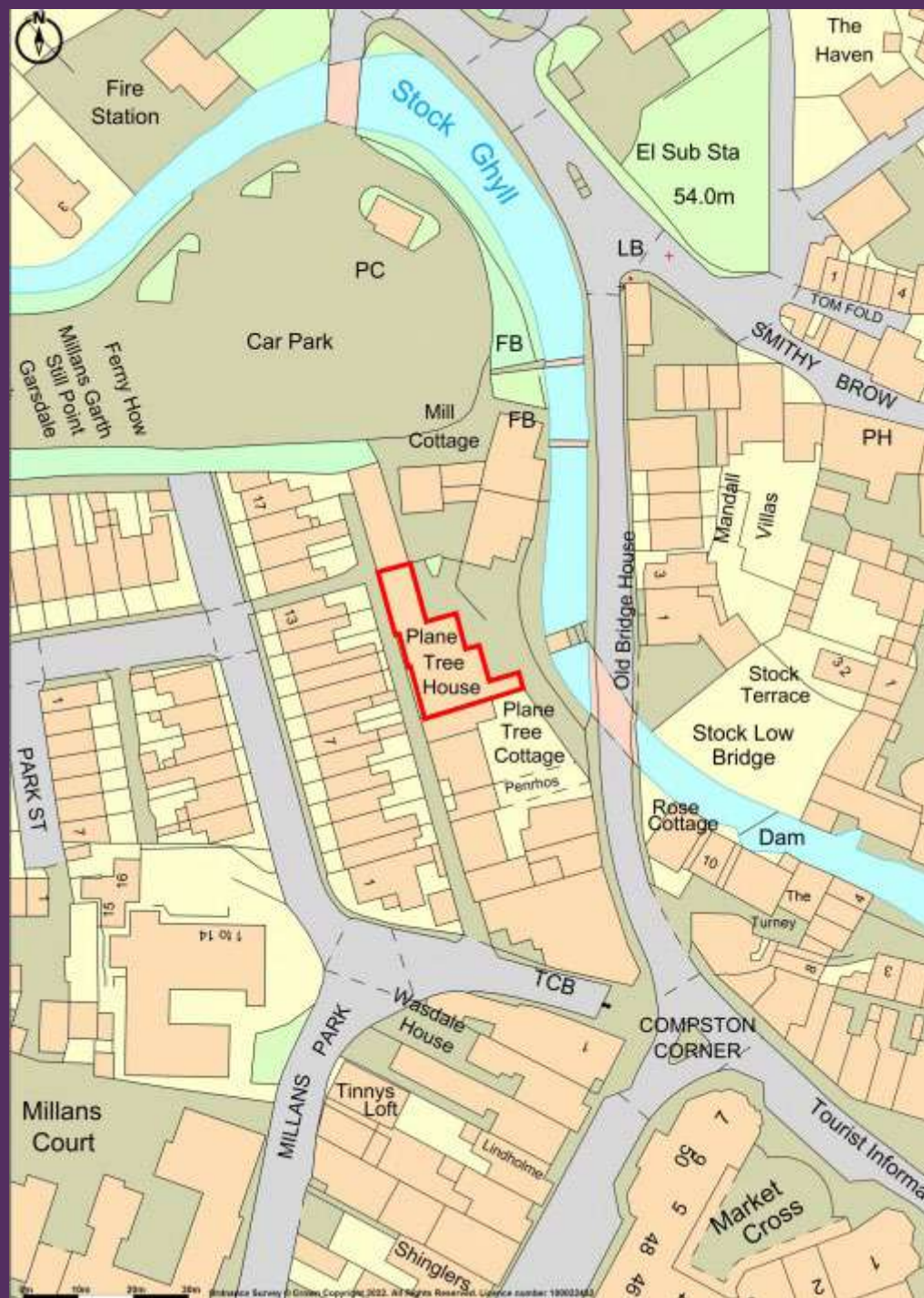
Background papers

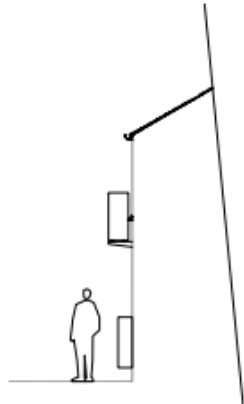
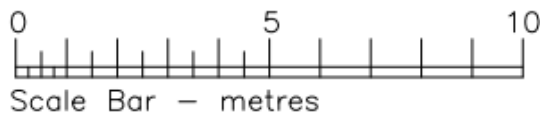
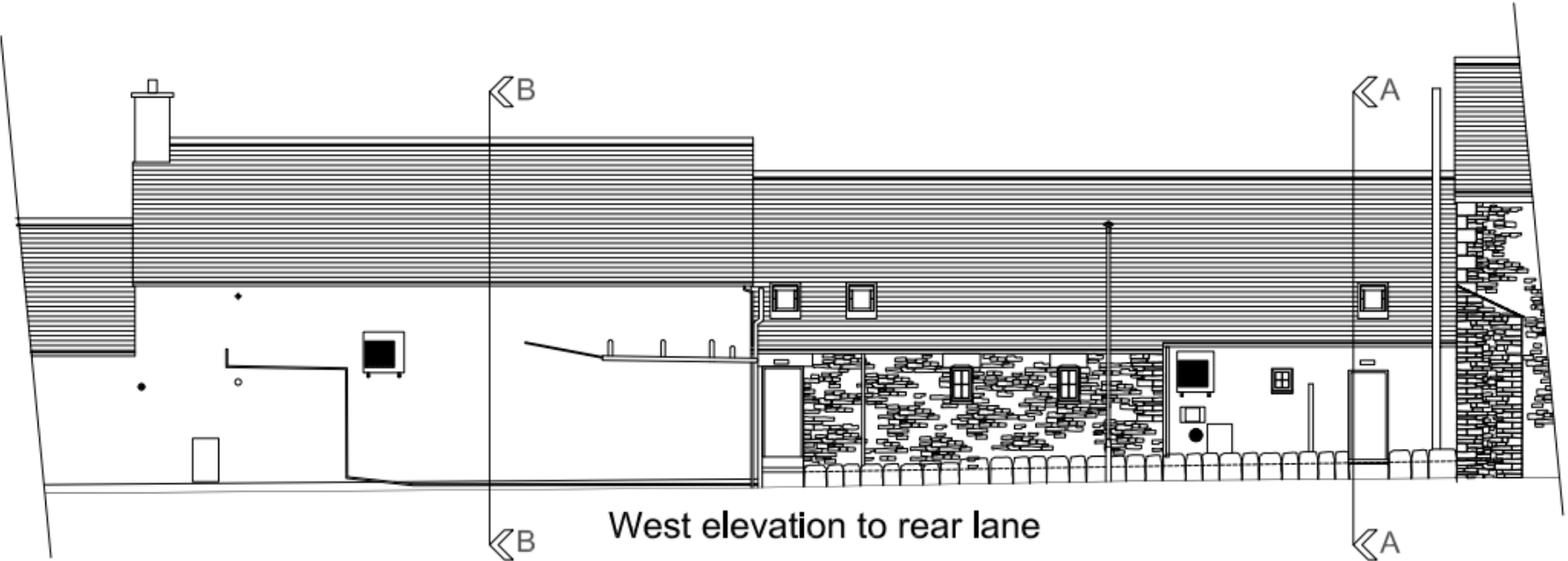
Background papers are available for inspection on the planning application file unless otherwise specified on that file as confidential by reasons of financial/personal circumstances in accordance with the Local Government (Access to Information) Act 1985.

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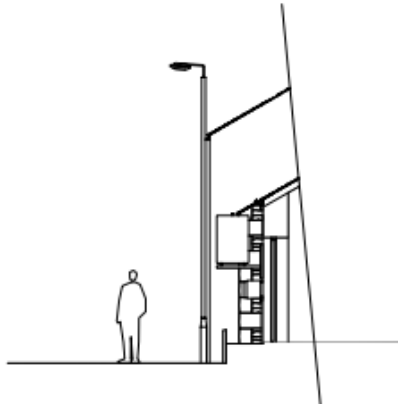
Ambleside Tap Yard, Rydal Road, Ambleside

Installation of plant and equipment
(Retrospective)



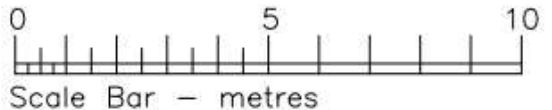
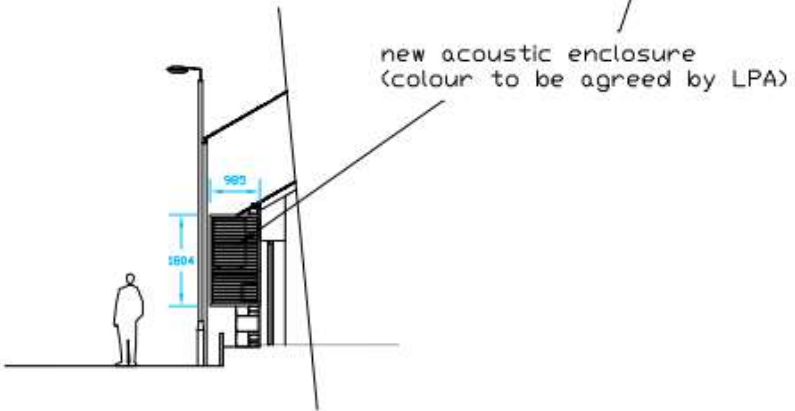
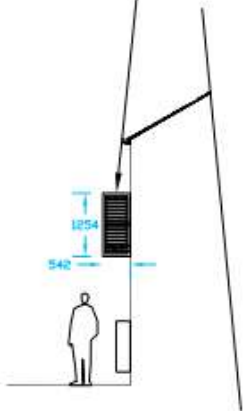
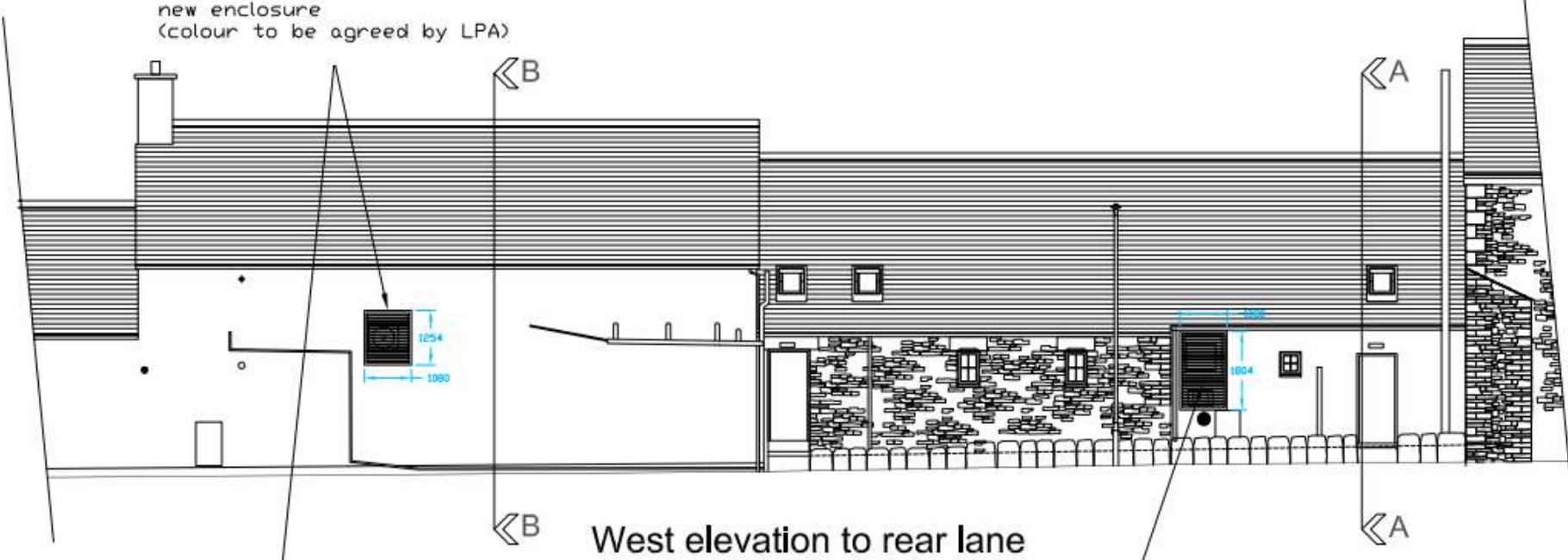


section B-B



section A-A

DATE	SK	
DRAWING STATUS	Planning	
REVISIONS		
PROJECT	Cooling units at: Rear of Ambleside Tap Yard Rydal Road Ambleside Cumbria LA22 9AN	
CLIENT		
DRAWING TITLE	elevation & sections as existing	
DWG NO	SCALE	DATE
2507-001	1:100 @ A3	19.06.2023
SIMON KENT DESIGN		
130 HIGHGATE KENDAL CUMBRIA LA9 4HE		
		TEL 07113767898 email: simon@simonkentdesign.co.uk



DATE	SK	
DRAWING TITLE	Planning	
REVISIONS		
PROJECT	Cooling units at: Rear of Ambleside Tap Yard Rydal Road Ambleside Cumbria LA22 9AN	
CLIENT		
DRAWING TYPE	elevation & sections as proposed	
DWG NO	SCALE	DATE
2507-101	1:100 @ A3	19.06.2023
SIMON KENT DESIGN		
130 HIGHGATE KENDAL CUMBRIA LA9 4HE		
		TEL 0713767598 email: simon@simonkentdesign.co.uk









